

# SUHAKAM

HUMAN RIGHTS COMMISSION  
OF  
MALAYSIA

ANNUAL REPORT 2000



*[Handwritten signature]*  
18/4/2001

Cetakan Pertama / *First Printing*, 2001  
Hak cipta Suruhanjaya Hak Asasi Manusia  
*Copyright Human Rights Commission, 2001*

Kesemua atau mana-mana bahagian laporan ini boleh disalin dengan syarat pengakuan sumber dibuat. Penghargaan penggunaan amatlah dihargai.  
*All or any portion of this report maybe reproduced provided acknowledgement of the source is made. Notification of such use would be appreciated.*

Diterbitkan di Malaysia oleh / *Published in Malaysia by*  
Suruhanjaya Hak Asasi Manusia Malaysia /  
Human Rights Commission Of Malaysia  
Tingkat 29, Menara Tun Razak,  
Jalan Raja Laut, 50350 Kuala Lumpur.  
*E-mail: humanrights@humanrights.com.my*  
[www.humanrights.com.my](http://www.humanrights.com.my)

Dicetak di Malaysia oleh / *Printed in Malaysia by*  
PERCETAKAN WATAN SDN. BHD.  
26, Jalan Daud, Kampung Bharu  
50300 Kuala Lumpur, MALAYSIA

Perpustakaan Negara Malaysia

Data-Pengkatalogan-dalam-Penerbitan  
*Cataloguing-in-Publication-Data*

ISSN : 1511-9521  
ISSN : 1511-9513 (International Edition)



**SURUHANJAYA HAK ASASI MANUSIA MALAYSIA**  
**HUMAN RIGHTS COMMISSION OF MALAYSIA**

Our Ref: SHM.001/1/27 ( )

Date: 19 April, 2001.

Y.A.Bhg. Tun Dr. Mohamed Zahir bin Haji Ismail  
Yang Di Pertua Dewan Rakyat  
Parlimen Malaysia  
50680 Kuala Lumpur.

*Ya Bhg. Puan,*

**HUMAN RIGHTS COMMISSION OF MALAYSIA**  
**ANNUAL REPORT 2000**

It is my honour and privilege to submit the first Annual Report of the Human Rights Commission of Malaysia for the period covering from 24 April 2000 to 31 December 2000. This Report is made pursuant to Section 21 of the Human Rights Commission of Malaysia Act 1999 (Act 597) for tabling before Parliament. Our plan to submit to you the Bahasa Melayu version of our report has been delayed until a satisfactory translation of the original English version is finalized. We are also unable to include our audited accounts in this report as our funds have been managed by the Ministry of Foreign Affairs since our inception.

Thank you.

*Salam baragia,*

**MUSA BIN HITAM**  
**( TAN SRI, DATO' )**

Tan Sri Dato' Harun Mahmud Hashim



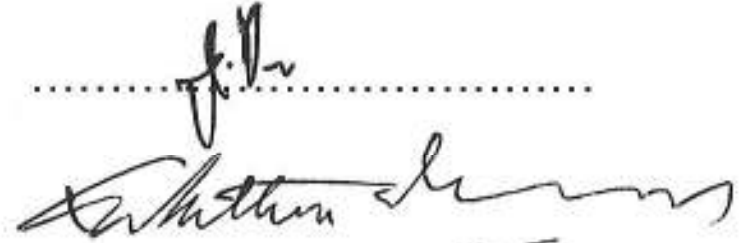
.....

Tan Sri Dato' Haji Anuar bin Dato' Haji Zainal Abidin



.....

Tan Sri Datuk Seri Panglima Simon Sipaun



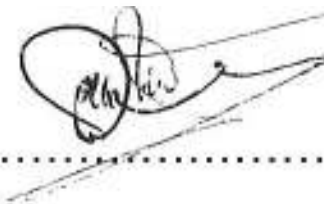
.....

Dato' K. Pathmanaban



.....

Dato' Mahadev Shankar



.....

Dato' Dr. Salleh bin Mohd. Nor




.....

Dato' Lee Lam Thye



.....

Professor Chiam Heng Keng



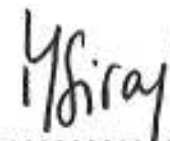
.....

Professor Mohd. Hamdan Adnan



.....

Dr. Mohammad Hirman Ritom bin Abdullah



.....

Puan Mehrun Siraj



.....

Cik Zainah Anwar

# HUMAN RIGHTS COMMISSION OF MALAYSIA ANNUAL REPORT 2000

<b>Contents</b>		<b>Pages</b>
Chapter		
1	Introduction	1
2	Functions and Powers	5
3	Management and Manpower	9
4	The State of Human Rights in Malaysia	11
5	Report of the Education Working Group	17
6	Report of the Law Reform Working Group	21
7	Report of the Treaties and International Instruments Working Group	27
8	Report of the Complaints and Inquiries Working Group	31
9	Summary and Conclusion	35
	Appendices:	
I.	The Paris Principles	39
II.	SUHAKAM Dialogue Sessions	43
III.	Universal Declaration of Human Rights, 1948	47
IV.	SUHAKAM Press Statements	53
V.	SUHAKAM Commissioners on TV and Radio	57
VI.	Talks, Seminars and Conferences - Local	58
VII.	Talks, Seminars and Conferences - International	59
VIII.	SUHAKAM Complaints Procedure	60
IX.	SUHAKAM Inquiries Guidelines	63



## CHAPTER 1 INTRODUCTION

The Human Rights Commission of Malaysia (SUHAKAM) was established by Parliament under the Human Rights Commission of Malaysia Act 1999, Act 597. The Act was gazetted on 9 September 1999. The inaugural meeting of SUHAKAM was held on 24 April 2000.

The initiative to set up a national human rights institution in Malaysia began with Malaysia's active participation in the United Nations Commission for Human Rights (UNCHR) in 1993-95 when it was elected as a member of the Commission by the United Nations Economic and Social Council. Malaysia was honoured in 1995 with the election of the leader

of its delegation, Tan Sri Dato' Musa bin Hitam, as the Chairman of the 52nd session of the UNCHR. Malaysia was elected to serve a second term in the UNCHR from 1996-1998 and will serve its third term from 2001-2003.

The impetus for the Malaysian Government to finally consider the setting up of a national human rights institution came from several sources. Malaysia's active involvement in the UNCHR was one. The international attention on human rights as a result of the success of the 1993 World Conference on Human Rights in Vienna where governments, including Malaysia, agreed that human rights are universal and indivisible, and they recognised the importance of setting up national human rights institutions, also influenced the Government.



**Members of the Human Rights Commission of Malaysia**

Front Row (L to R)

*Prof Chiam Heng Keng, Dato' Lee Lam Thye, Tan Sri Dato' Harun Mahmud Hashim, Tan Sri Dato' Musa bin Hitam, Dato' K. Pathmanaban, Cik Zainah Anwar, Puan Mehrun Siraj*

Back Row (L to R)

*Dato' Mahadev Shankar, Tan Sri Dato' Hj. Anuar Dato' Hj. Zainal Abidin, Prof. Mohd. Hamdan Adnan, Tan Sri Datuk Seri Panglima Simon Sipaun, Dr. Mohammad Hirman Ritom Abdullah, Dato' Dr. Salleh Mohd Nor*

As leader of the Malaysian delegation to the UNCHR, Tan Sri Musa in 1994 first suggested to the Government that the time was right for Malaysia to establish its own independent national human rights institution. Several factors influenced this proposal: the growing international emphasis on human rights and recognition that it crosses boundaries and sovereignty; Malaysia's active involvement in the United Nations system; the changing political climate in Malaysia with a more politically conscious electorate and dynamic civil society. By the mid-1990s, seven Asian countries, including two from Asean - Indonesia and the Philippines - had already established national human rights institutions, while Thailand was in the midst of setting up its own.

On 24 April 1999, five years after the idea was first mooted, the Foreign Minister, Datuk Seri Syed Hamid Albar, announced that the Government would table a Bill in the July 1999 sitting of Parliament to establish the Human Rights Commission of Malaysia. The Bill was guided by the Paris Principles of 1992 (see Appendix I) which provided the international criteria by which an independent human rights commission should be established, and also by the experience of established human rights institutions, especially in the Asia-Pacific region.

On 3 April 2000, the Government announced the appointment of SUHAKAM's first Chairman, Tan Sri Dato' Musa bin Hitam, and the 12 other members of the Commission to serve a two-year term, which is renewable. The appointments were made by His Majesty the Yang DiPertuan Agong on the recommendation of the Prime Minister. Although the Human Rights Commission of Malaysia Act allows for the appointment of up to 20 members, it was decided that SUHAKAM would begin its task with 13 members until such time when more are needed. SUHAKAM members were selected to

reflect the diversity and pluralism of Malaysian society and also on the basis of the experience, commitment, independence and integrity of the individual.

At its first meeting on 24 April 2000, the Commission formed four working groups, on education, law reform, treaties and international instruments, and complaints and inquiries, in order to carry out its duties and functions more effectively. The Commission chose the Bahasa Malaysia acronym SUHAKAM to make itself easily known to the public. The Commission also took immediate steps to set up its own premises and to recruit full-time staff. By November, SUHAKAM had its own logo, a triangle of blue, red and yellow to symbolise strength, stability and equality and the distinctive brush strokes that make up the triangle are translucent to represent transparency. This logo was chosen after a national-level competition.

SUHAKAM decided that it would adopt a consultative approach to its work. By its second meeting in May, it began a series of dialogues with non-governmental organizations (NGOs) and government agencies to hear out expectations and concerns, and to establish channels for effective co-operation and communication. SUHAKAM's first dialogue session was with three key human rights NGOs, HAKAM, SUARAM and ALIRAN, and the second, with the Police, led by the Inspector General of Police. By 31 December, SUHAKAM had held 13 dialogue sessions with about 33 ministries and government agencies, 34 NGOs, the Bar Council, the mainstream media, the alternative media and the Youth Wings of the Barisan Nasional and Barisan Alternatif (see Appendix II).

SUHAKAM would like to thank the Minister of Foreign Affairs for leading the Government's effort to set up this Commission, and the staff of

the Ministry for their dedicated assistance in the first few months of SUHAKAM's existence when it operated from Wisma Putra.

This Report covers the activities of SUHAKAM in the first eight months of its existence, from 24 April to 31 December 2000.



*SUHAKAM'S Temporary Office at Wisma Putra*



## CHAPTER 2 FUNCTIONS AND POWERS

### A. Role of National Human Rights Institutions

The term “national human rights institution” usually refers to “a body which is established by a Government under the constitution or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.” There are basically two categories of national institutions, the ombudsman and the human rights commission. There is no one model for national institutions and each country will have to determine the kind of institution it will set up and the functions and powers that it will provide for it. Malaysia has chosen to establish a Human Rights Commission.

In promoting and protecting human rights, a Human Rights Commission (HRC) may be empowered to undertake at least three specific functions:

#### *(i) an advisory function*

This involves advising government with regard to law and policy on human rights, including accession to international conventions and treaties. It requires the systematic review of legislation as well as government’s human rights policy in order to detect shortcomings in human rights observance and to recommend measures for improving the situation. It may also involve the monitoring of the government’s compliance with its own legislation and with international human rights laws and, if necessary, to suggest changes. It requires constant negotiation with government to persuade it to accede to or ratify international conventions and treaties.

#### *(ii) an investigative function*

This involves inquiring into allegations of human rights violations, whether on its own motion or on the basis of a complaint made to it. Some HRCs have only an advisory power and can only make recommendations to the relevant authorities regarding violations they may have established at the inquiry. Others have the power to prosecute human rights violations in properly established Courts of Human Rights. Generally, however, HRCs are not empowered to impose legally binding decisions on parties to a complaint. This does not mean that any settlement or remedial measure recommended by the HRC can be ignored. Usually, a special tribunal is set up to determine unresolved matters or the HRC can refer the matter to the regular courts for a final decision.

The investigative process helps not only to prevent further violations of human rights, it also serves as an educational tool to create awareness about human rights. Inquiries are to be conducted in public and given wide publicity and this process contributes to educating the public about their rights.

#### *(iii) an educational function*

HRCs are often entrusted with the responsibility of raising awareness about human rights because it is recognised that the full realisation of human rights cannot be achieved solely through adequate legislation and appropriate administrative arrangements. Education about human rights may involve informing the public about a commission’s own functions and purposes, arranging talks and discussions about various issues in human rights, organizing seminars and training programmes, setting up counselling services, and producing and disseminating publications on human rights.

**(d) Complaints and Inquiries Working Group**

Tan Sri Dato' Harun Mahmud  
Hashim - Chairperson  
Tan Sri Dato' Anuar Zainal  
Abidin - Deputy Chairperson  
Dato' Mahadev Shankar  
Dato' Dr Salleh Mohd Nor  
Professor Mohd Hamdan  
Adnan  
Puan Mehrun Siraj  
Dr Mohamad Hirman Ritom

## CHAPTER 3 MANAGEMENT AND MANPOWER

The Human Rights Commission of Malaysia Act provides for the independence and autonomy of SUHAKAM, including its staffing and funding. However, in practice, SUHAKAM faces bureaucratic hurdles in exercising independent financial control over the funds allocated to it and in the recruitment of staff. The Commission hopes that this is a temporary hiccup in the early stage of its existence as government agencies come to grips with the functioning of an independent national human rights institution. SUHAKAM is in the midst of negotiation with the various government agencies and is hopeful that its independence in both staff recruitment and financial control will soon be established as envisaged by the Act.

### Staff

Section 16 of the Act empowers SUHAKAM to appoint a Secretary and such other officers and servants as may be necessary to assist it in the discharge of its functions. The Ministry of Foreign Affairs, which spearheaded the formation of SUHAKAM, had requested 33 positions but to date only 12 have been approved by the Public Services Department. As at 31 December 2000, only eight positions have been filled including that of Secretary. These positions were filled by officers seconded from other Ministries. In addition, SUHAKAM was allowed to recruit four temporary and two contract personnel as support staff.

The lack of staff, both professional and support, has hampered the work of SUHAKAM, especially of the Complaints and Inquiries Working Group. It is hoped that SUHAKAM will soon be able to recruit its own staff, without the bureaucratic procedures which slow down the process. This will enable

SUHAKAM to advertise for vacant positions and recruit from a national pool of applicants, rather than just the government service as is currently practised.

### Finance

By section 19(1) of the Act, the Government is to provide SUHAKAM with adequate funds to enable it to discharge its functions. The Government allocated a sum of RM6 million for the year 2000, through the Ministry of Foreign Affairs. It is a priority task for SUHAKAM to establish its own independence in controlling and managing the funds allocated to it. Since its inception SUHAKAM's accounts have been managed by Wisma Putra. Due to this, SUHAKAM will not submit its audited account in this report. As of now, it is still subject to Treasury approval for every item of expenditure. This hampers the efficiency and effectiveness of SUHAKAM.

SUHAKAM is clearly accountable for the funds it receives. Stringent financial procedures will be put in place to manage the funds allocated by the Government for SUHAKAM's effective functioning. Negotiations are on-going with Treasury officials to establish SUHAKAM's control over its own funds.

### Premises

The SUHAKAM secretariat began operating from a container cabin at the Ministry of Foreign Affairs (Wisma Putra). This was due to space constraints at the Ministry. For the first four months, meetings of the Commission and its dialogue sessions with government officials and various interest groups were held at Wisma Putra, with professional and administrative support provided generously by officials of the Foreign Ministry. Given the frequency of meetings and dialogue sessions, SUHAKAM, by August began to meet at other venues,

including hotel function rooms. By then, SUHAKAM had already recruited a few staff and could begin to function without the assistance of Wisma Putra officials.

The Commission finally rented its own premises on the 29th and 30th floors of Menara Tun Razak at Jalan Raja Laut, Kuala Lumpur and moved in on 24 November 2000. The building was chosen in particular for its central location and easy access to the public.



*SUHAKAM'S New Office*

SUHAKAM would like to express its sincere gratitude to Wisma Putra for providing us with our first premises in spite of space constraints and to the Public Works Department for supervising the renovation of the new office in record time and within the budget.

### **Website**

Within three months of its existence, SUHAKAM established its own website. This was made possible through the voluntary contribution of one of the Commissioners, Dato' Dr Salleh Mohd Nor.

The website aims to provide the public with information about SUHAKAM and will also serve

as a tool for educating the public on human rights issues.

From the date of its launch until 31 December 2000, the site received about 4,000 hits.

The SUHAKAM website is located at [www.humanrights.com.my](http://www.humanrights.com.my). SUHAKAM also established its e-mail address at [humanrights@humanrights.com.my](mailto:humanrights@humanrights.com.my).

## CHAPTER 4 THE STATE OF HUMAN RIGHTS IN MALAYSIA

SUHAKAM recognises that human rights encompasses not just civil and political rights, but also social, cultural and economic rights. Malaysia is recognised internationally as an exemplary developing country whose Government has channelled much resources into socio-economic development that have benefited large segments of the population, both in the urban and rural areas. The right to development, to education, to health care, to work, to shelter, to be free from poverty and hunger, and to practise one's choice of religion are some of the rights enjoyed by Malaysians and promoted by the Government.

However, as Malaysia develops and its citizenry becomes better educated and more sophisticated, the demand for civil and political rights has become louder. For increasingly larger segments of Malaysian society, a full stomach is no longer enough. The growth of a politically conscious Malaysian civil society has meant that Government action that infringes the fundamental rights of its citizens no longer remains unchallenged.

The demand for a transparent and accountable Government that respects human rights is a fundamental concern of Malaysian civil society today. This brief overview of the state of human rights in Malaysia will focus on civil and political rights to reflect the areas of priorities of Malaysian civil society today.

Since its establishment, SUHAKAM has received several reports and memoranda on human rights infringements and other areas of discrimination from NGOs, the Bar Council and other interested parties. Most of these reports had been submitted earlier to the Government. A review of the reports and discussions by SUHAKAM form the basis of this evaluation of the state of civil and political rights in Malaysia. The areas of focus include:

- Freedom of assembly
- Detention without trial
- Freedom of expression
- Right to a fair trial
- Failure to annul four proclamations of states of emergency
- Laws that discriminate against women
- Ratification of international human rights instruments
- Native customary rights



*Public Forum on Human Rights Forum With Responsibility organised by SUHAKAM on World Human Rights Day, 10 December 2000. L to R: Foreign Minister Datuk Seri Syed Hamid Albar and Tan Sri Dato' Harun Mahmud Hashim, SUHAKAM Vice Chairman.*

### Freedom of Assembly

The right to peaceful assembly is provided for under Article 10 (1) of the Federal Constitution and Article 20 of the UDHR. However, the Police Act requires that an application for a police permit be made 14 days before any public assembly. A 1989 amendment to the Police Act (section 27A) also empowers the police to break up large gatherings on private premises if the police deemed it a threat to national security or a breach of the peace. Failure to obey an order to disperse is an offence.

NGOs and political parties have criticised these restrictions on freedom of assembly on several grounds. First, they constitute an infringement of a fundamental liberty. Second, double standards and selectivity are applied in their implementation. Opposition parties and NGOs have complained that they have often been denied permits for gatherings, and sometimes, permits already granted were revoked at the last minute because of alleged political interference. Third, police have used disproportionate force and violence in breaking up peaceful assemblies.

Given the political developments in the past two years, the right to peacefully assemble has become an urgent issue. SUHAKAM has received complaints from opposition parties and NGOs of denial of police permits, and the use of tear gas, batons and water canons laced with chemicals to break up assemblies. As a result of alleged police brutality on the break up of a peaceful assembly on 5 November 2000, SUHAKAM, on its own motion under section 12(1) of the Act, instituted a public inquiry into these complaints. This inquiry continues into 2001.

The Law Reform Working Group, as its first priority task, is reviewing all laws that restrict the right to peaceful assembly with a view to

proposing their repeal or amendments and to introduce administrative procedures to govern public gatherings.

### Detention Without Trial

Three major statutes provide for detention without trial in Malaysia. They are:

- The Internal Security Act (ISA) 1960;
- The Emergency (Public Order and Prevention of Crime) Ordinance 1969;
- The Dangerous Drugs (Special Prevention Measures) Act 1985.

Under these laws, the Minister of Home Affairs may detain a person for a period not exceeding two years to prevent him from acting in any manner prejudicial to national security. The detention order may be extended or reviewed from time to time. The ISA also empowers the police to detain a person for up to 60 days pending enquiries if he has acted, about to act or likely to act in a manner prejudicial to national security. Nonetheless, detention without trial does constitute an infringement of Articles 3, 9 and 10 of the UDHR.

It has been argued that the ISA, which was enacted in 1948 for the sole purpose of fighting the communist insurgency, has outlived its purpose since the Malayan Communist Party laid down its arms and disbanded in 1989. It is also argued that existing legislation, such as the Penal Code and the Police Act, is sufficient to deal with every conceivable eventuality relating to public order and security.

At the end of 2000, 40 persons remained detained under the ISA at Tempat Tahanan Perlindungan in Taiping for various alleged crimes :

- Counterfeiting of coins - 14
- Counterfeiting fire arms document - 3
- Aceh Independence Movement - 4

- Al-Maunah - 16
- Counterfeiting of documents - 3

The Government had first indicated in 1996 its intention to review and amend the ISA. Over the years, a number of ministers have also spoken about the need to review the ISA, the latest coming from the Minister in the Prime Minister's Department, Y.B. Dato' Dr Rais Yatim. During a SUHAKAM dialogue session with officials from the Ministry of Home Affairs and the Attorney-General's Chambers, we were also informed that the Government was in the midst of reviewing the ISA. To date, however, no concrete action has yet been taken.

The SUHAKAM Law Reform Working Group will examine these laws that provide for detention without trial and recommend appropriate action for their repeal or amendments to restrict their scope.

### **Freedom of Expression**

Freedom of expression is protected under Article 10 (1)(a) of the Federal Constitution and under Article 19 of UDHR. However, this right is restricted by several laws, including the Printing Presses and Publications Act (PPPA) and the Official Secrets Act (OSA). Government critics have been charged under section 8A (1) of the PPPA for 'malicious publication of false news'. The actions taken include prosecution of a case of printing pamphlets which alleged official mishandling of a statutory rape case and a report of alleged systematic abuse of migrant workers in detention. In the past few years, it was reported that the police had also used the section to lodge police reports to initiate investigation of journalists for press stories on issues critical of the police force. While the police might have the right under the law to take such action, this was criticised by many as a form of intimidation. The police had made reports under section 8A (1) against journalists for writing on alleged

inadequate police action on domestic violence reports, alleged corruption of an Assistant Superintendent of Police in Penang, and alleged adverse impact on residents in Gombak due to construction work on a police golf course.

These may be regarded by the authorities as 'malicious publication of false news', but others saw the response of the authorities as an attempt to silence fair criticism of governmental action or inaction. The NGOs claim that such punitive action and threats of investigation against journalists and critics tantamount to intimidation and constitute an infringement of freedom of expression.

The PPPA and OSA together are seen as restrictions on freedom of the press. An amendment to the PPPA in 1987 requires a publisher to make a fresh application for a printing permit when the existing one expires after a 12-month period. Should the application be rejected, the publisher has no recourse for appeal as the decision of the Minister of Home Affairs cannot be reviewed by the courts. Several complaints have been lodged with SUHAKAM against the Ministry of Home Affairs for its rejection of permits to publish or renewal of existing permits of newspapers and periodicals supporting opposition parties.

In 1986, the OSA was amended to provide for a mandatory one-year imprisonment upon violation of the Act and an end to judicial review in determining whether or not a document justifies its stamp of secrecy.

These restrictive laws and their amendments made in the mid-1980s, together with an accompanying section that denies the right to judicial review of administrative decisions, will be reviewed by the SUHAKAM Law Reform Working Group. Complaints on denial of publishing permits are being investigated by the Complaints and Inquiries Working Group.

### Right to a Fair Trial

This right is protected under Article 8(1) of the Federal Constitution and Articles 7, 8, 10 and 11 of the UDHR. Without an independent judiciary, the public right to a fair trial will be jeopardised. The independence of the Malaysian judiciary came under question following the removal of the then Lord President, Tun Salleh Abbas in 1988 and two other Supreme Court judges. The judiciary was further mired in controversy in 1996 when a High Court judge distributed an anonymous letter containing details of allegations of abuse of power, corruption and misconduct against a number of judges. Further complaints against the judiciary were made on the handling of the case against the former Deputy Prime Minister, Datuk Seri Anwar Ibrahim and other related cases.

Several proposals have been made to the Government to make the process of judicial appointments more transparent and consultative. Currently, only the Chief Justice has the sole prerogative to recommend to the Prime Minister the short list of eligible candidates for elevation to the Bench or for promotion. It has been suggested that an independent commission be established to make the appropriate recommendations for appointments to and promotions in the judiciary.

### Emergency Proclamations

Since independence, four states of emergency have been proclaimed under Article 150 of the Federal Constitution. None of these proclamations have been annulled by Parliament. States of emergency were proclaimed in 1964 over the Indonesian confrontation, in 1966 in Sarawak because of a constitutional crisis at the state level, in 1969 after the May 13 incident, and in 1977 in Kelantan due to a political crisis.

The original Article 150 in the Merdeka Constitution specified that a proclamation of emergency, if not sooner revoked, expired after two months from the date of its issue, while any ordinance promulgated during the state of emergency would expire 15 days from the date when both Houses of Parliament first sat. In 1960, however, these specific restraints and limitations on emergency rule were removed in a constitutional amendment which stated that a state of emergency and any ordinance promulgated would remain in force until revoked by Parliament.

As yet, none of these four proclamations have been revoked. This perpetual state of emergency enables the Government to promulgate emergency regulations even though both Houses of Parliament are sitting and the events that occasioned the states of emergency had come to pass. In 1975, to deal with an upsurge of violent subversive acts, the Government used the Emergency (Essential Powers) Ordinance 1969 to promulgate the Essential (Security Cases) Regulations 1975 (ESCAR) which provided for special procedures to try security cases. In 1979, in response to a Privy Council decision which declared that ESCAR 1975 was rendered invalid once Parliament sat on 20 February 1971, the Government promulgated the Emergency (Essential Powers) Act 1979 which validated all subsidiary legislation and all acts done under the Emergency (Essential Powers) Ordinance 1969.

The Bar Council and human rights NGOs have called on the Government to take immediate steps to annul these proclamations and also the emergency regulations promulgated that remain in force. The SUHAKAM Law Reform Working Group will review the matter and make the appropriate recommendations.

### Laws that Discriminate Against Women

Since the mid-1980s, women's groups have submitted several memoranda to the Government to end all laws that discriminate against women, both in the civil and syariah systems. The SUHAKAM Law Reform Working Group has discussed some of the issues raised in the various memoranda and will prioritise the actions to be taken.

By 2000, the Government had amended the Distribution Act, the Income Tax Act, the Guardianship of Infants Act and laws relating to rape to protect the rights of women. However, in the case of guardianship, the amendments only apply to non-Muslims as Muslim women come under the jurisdiction of syariah law. Women's groups have complained that the codification of the law in this area only recognises the right of men to be guardians and this therefore discriminates against women. As a short-term measure to address the right of Muslim women to guardianship of their children, the Government has issued an administrative order that all mothers would now be allowed to sign any government form that requires the signature of the guardian on matters related to children. This has enabled both Muslim and non-Muslim mothers to sign applications for passports, transfer of schools and consent for surgery on behalf of their children.

Other laws that discriminate against women include the Immigration Act 1959, the Employment Act 1955, and the Employees Social Security Act. The Federal Constitution provides that foreign wives of Malaysian men may be conferred citizenship, but denies Malaysian women the equal right to confer citizenship on their foreign husbands. Women NGOs have also submitted to the Government three memoranda on discrimination against women and infringement of fundamental liberties in the Islamic Family Law, the Syariah

Criminal Offences Act and the administration of justice in the syariah system.

Women's groups are now leading a campaign to amend Article 8(2) of the Federal Constitution to provide that sex should not be a ground for discrimination.

SUHAKAM plans to hold consultations with NGOs and the relevant authorities in 2001 to look into the areas of discrimination against women.

*Good Trend . Improved situation.*

### Ratification of International Human Rights Instruments

Of the 25 major international human rights instruments, Malaysia has ratified only five, while one has been signed, but not ratified. These instruments are:

- Convention on the Elimination of All Forms of Discrimination Against Women;
- Convention on the Rights of the Child;
- Convention on the Nationality of Married Women;
- Convention on the Prevention and Punishment of the Crime of Genocide;
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;
- International Convention Against Apartheid in Sports (signed, but not ratified).

The Government has been criticised for not signing and ratifying the other human rights instruments, in particular the two core instruments: the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) which together with the Universal Declaration of Human Rights (UDHR) 1948, are referred to as the International Bill of Human Rights.

The Treaties and International Instruments Working Group has reviewed the major international instruments and the process and implications of ratification. Its report and recommendations are in Chapter 7 of this Report.

### **Native Customary Rights**

All indigenous peoples have a special relationship to their land which is the basis of their social organisation, economic system and cultural identification. Complaints and representations have been made to SUHAKAM that the fast pace of development in Malaysia has meant that the customary land rights of the Orang Asli in the Peninsula and the indigenous people of Sabah and Sarawak have been adversely affected because of logging, plantation crop cultivation, construction of dams and other development projects.

As presented to SUHAKAM, the main concern of the indigenous peoples is that their customary rights to land have been substantially eroded by the federal and state governments despite the protection provided for in the Aboriginal Peoples Act, the Land Ordinance of Sabah and the Sarawak Land Code. In the past, their communal access and customary ownership of land they had lived on for generations were recognised and respected without the need of an official document or title deed. However, the introduction of legislation and policies which recognised the ownership of land only through the issuance of certificates and titles meant that indigenous communities which have not applied for the title deed to their land or have had their application rejected or ignored faced the threat of eviction. The indigenous peoples of Sarawak and Sabah and the Orang Asli in the Peninsula have complained of several such violations of their customary land rights.

## CHAPTER 5 REPORT OF THE EDUCATION WORKING GROUP

As set out in section 4(1)(a) of the Human Rights Commission of Malaysia Act, SUHAKAM is assigned 'to promote awareness of and provide education in relation to human rights'.

Education on human rights is therefore a fundamental responsibility of SUHAKAM. Every Malaysian should know the fundamental rights that all human beings are entitled to enjoy for their well-being. This knowledge will also enable them to use SUHAKAM effectively as an institution set up to protect and defend their rights.

### Objectives

At its first meeting on 4 May 2000, the Education Working Group formulated five objectives which are:

- i. to promote respect for and protection of human rights through educational activities for all members of society.
- ii. to assess needs and formulate strategies for the furtherance of human rights education.
- iii. to strengthen the role and capacity of the media in promoting human rights education.
- vi. to co-ordinate the development of effective human rights education materials with the collaboration of Governmental and Non-government agencies.
- v. to foster learning environments that encourage participation and development of a caring personality that upholds the dignity of human beings and values friendship, understanding, tolerance and equality.

SUHAKAM's education programmes on human rights are not confined to just civil and political rights such as freedom to express thoughts, feelings and opinions, freedom from harm and torture, and equality before the law. They also encompass social, cultural and economic rights such as right to education, employment and recreation, the right to adequate standard of living, health and shelter and the right to safe environment.

The Education Working Group believes that the promotion and provision of human rights education must be carried out from the perspective of knowledge, development of values, beliefs and attitudes, and action. Hence the programmes of SUHAKAM are aimed to:

- provide all strata of society with information on human rights and existing mechanisms to protect these rights.
- develop beliefs in and positive attitudes toward human rights that will be translated into action so that individuals are likely to act to uphold their rights and those of others.

### Activities

The activities carried out in 2000 fell into two categories:

- (a) immediate, informal activities to promote awareness of human rights;
- (a) formal human rights education which is long-term in its objectives.

### Raising Awareness

- (i) *The SUHAKAM logo competition*, which took place in August and September, was open to primary and



**LOGO Launching Ceremony**  
**L to R: SUHAKAM Chairman Tan Sri Dato' Musa bin Hitam, Tan Sri Kamarul Ariffin, Chairman National Art Gallery and SUHAKAM Commissioner Prof. Chiam Heng Keng.**

secondary school students as well as to the public. A total of 225 entries were received, with 22 from primary schools, 91 from secondary schools and 112 from the public. The winning logo was submitted by Encik Yunos bin Oon, an architect from Kuala Lumpur, and is used as the official logo of SUHAKAM. The winners of the primary and secondary categories were Choong Miao Chien from Chi Wa National Type Primary School, Seremban and Choong Lee Chien from Chan Wa National Type Secondary School, Seremban respectively.

**Datuk Seri Syed Hamid Albar handing award to one of the winners of the essay writing competition**



- (ii) *An essay competition*, entitled "Human Rights for All", which was held in conjunction with World Human Rights Day on 10 December, was open to lower and upper secondary school students. From the lower secondary school students, 18 Bahasa Malaysia and 15 English essays were received while 104 entries were received from upper secondary school students. Of these 104 entries, 55 were in Bahasa Malaysia and 49 in English. The winners for the Bahasa Malaysia entries were Norhayati binti Abd. Hamid from Tat Beng Secondary School, Trong, Perak (Lower Secondary School category) and Siti Hasniza binti Muhammad Arshad from Dr. Burhanuddin National Secondary School, Taiping, Perak (Upper Secondary category). For the entries in English, the winners of the two respective categories were Ling Ing Lee from Kuching High School, Kuching, Sarawak (Lower Secondary School category) and Jessica Florence a/p Rajadran from Sultan Ibrahim Secondary Girls' School, Johor Bahru, Johor (Upper Secondary School category).

- (iii) *Media Campaign*. To familiarise Malaysians with human rights and the work of SUHAKAM, the Commission worked closely with the electronic media. On the third Friday of every

month, a member of SUHAKAM was a guest of TV2 *Moving On 2* to discuss an aspect of human rights (see Appendix V).

SUHAKAM and human rights issues were discussed twice on TV2's *Global Talk Show*. The first on 6 August discussed "SUHAKAM and its Functions" while the second, which was aired on 10 December on World Human Rights Day, focused on "Human Rights Commission: Its Roles and Responsibilities".

In conjunction with the World Human Rights Day on 10 December, *Malaysia Hari Ini* of TV3, *Jendela Pagi* of TV1, Radio 1 and Radio 4 of RTM interviewed members of SUHAKAM (See Appendix V).

- (iv) *Talks, seminars and conferences*. The Commissioners had attended several seminars and conferences in the course of the year. Information on SUHAKAM and human rights were disseminated through their talks and papers presented (See Appendix VI).
- (v) *Dialogue sessions*. Awareness of human rights is also promoted through official meetings of SUHAKAM with specific groups such as the police, government officials, political parties, mass media and non-governmental organizations.

SUHAKAM would like to thank the mass media for their support and co-operation in disseminating information on human rights and in assisting the Commissioners to raise public awareness of human rights and the role of SUHAKAM.

Barisan Alternatif. A further consultation was held with key individuals and organisations to discuss their views on the recommendations that ought to be made in relation to both Freedom of Assembly and Rights of Remand Prisoners. All who attended the dialogue sessions were also requested to send in written opinions if they so chose. Several did so, providing the Group with useful information.

### **(ii) Rights of Remand Prisoners**

The Group is continuing its research on remand prisoners. Testimonies from persons who have been detained were obtained and the concerns of representatives of the Bar Council Legal Aid Centre whose lawyers are involved in remand hearings have been recorded. Furthermore, commissioners have visited prisons in Sungai Buloh and Kota Kinabalu as well as the Detention Centre for illegal immigrants to inspect the conditions of people in detention.

### **(iii) Issues under Review** ✓

The Working Group has identified other areas of concern, specific fundamental rights and the laws relating to them for review:

(a) *The Human Rights Commission of Malaysia Act 1999, Act 597.* Several NGOs and political parties have brought to SUHAKAM's attention, the limitations of the Act. SUHAKAM will make recommendations regarding the Act only after it has had time to carry out its functions, during which time the limitations and weaknesses of the Act and consequently the changes needed to overcome them will become more apparent.

(b) *Legislative process.* The process of law-making needs to be reviewed as there is

concern about the lack of consultation with public interest groups while a Bill is being drafted, the secrecy attached to draft Bills before they are tabled in Parliament, the short time frame between tabling and passage of Bills, and the lack of public debate before they are passed by Parliament.

(c) *Liberty of the person (Article 5 of the Federal Constitution).* Some of the laws that have been identified as affecting the right to liberty are:

- ✓ Internal Security Act 1960 (Revised 1972) Act 82
- ✓ Prevention of Crime Act 1959 (Revised 1983) Act 297
- ✓ Emergency (Public Order and Prevention of Crime) Ordinance 1969
- ✓ Essential (Security Cases) Regulations 1975 made under section 2 of the
- ✓ Emergency (Essential Powers) Act 1979, Act 216
- ✓ Dangerous Drugs (Special Preventive Measures) Act 1985, Act 316

(d) *Freedom of speech and expression (Article 10(1)(a)).* Some of the laws identified as restricting the freedom of speech and expression are:

- ✓ Internal Security Act 1960 (Revised 1972) Act 82
- Sedition Act 1948 (Revised 1969) Act 15
- ✓ Printing Presses and Publications Act 1984, Act 301
- ✓ Official Secrets Act 1972, Act 88
- ✓ Universities and University Colleges Act 1971, Act 30 and Discipline of Staff Rules made there under.

(e) *Freedom of association (Article 10(1)(c)).* Some of the laws identified as restricting the freedom of association are:

- ✓ The Societies Act 1966 (Revised 1987) Act 335
  - ✓ Trade Unions Act 1959 (Revised 1981) Act 262
  - ✓ Universities and University Colleges Act 1971, Act 30
- (f) *Right to equality.* While Article 8(1) of the Federal Constitution provides that all citizens are equal before the law and are entitled to equal protection of the law, Article 8 (2) is silent on the issue of discrimination on the basis of sex. It merely states that “there shall be no discrimination against citizens on the ground only of religion, race, descent, or place of birth...”. SUHAKAM supports the efforts of women’s groups to urge the Government to amend the Constitution to include “sex” as a prohibited ground for discrimination. This will also be consistent with the Government’s commitment to equality and to end discrimination against women through its accession to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995.

The areas of discrimination that have so far been identified for review are:

- (i) gender discrimination, in particular in relation to laws, policies and regulations;
- (ii) discrimination of marginalised groups such as sex workers, transsexuals, transvestites, people living with HIV/AIDS;
- (iii) discrimination against urban settlers/squatters;
- (iv) racial discrimination;
- (v) religious discrimination.

## SUHAKAM Recommendations

### 1. Legislative Process

SUHAKAM recommends that:

- (i) Bills should be referred to a Select Committee of Parliament and State Assemblies after the first reading. This will provide experts, public interest groups and other concerned individuals with the opportunity to give their views and inputs into Bills that will have a direct impact on their lives.
- (ii) The authorities cease the practice of declaring draft legislation as official secret before it is tabled in the legislative bodies.
- (iii) Major legislation should be drafted in consultation with public interest groups and with the benefit of a well-informed public debate.

### 2. Right to Equality

SUHAKAM recommends that:

- (i) Article 8(2) of the Federal Constitution be amended to include “sex” as a prohibited ground for discrimination.
- (ii) the constitutional amendment also defines discrimination in terms of Article 1 of the CEDAW Convention which recognises that any action which has the effect (not just the intention) of discriminating on the basis of sex constitutes an act of discrimination. For example, even though a law was not purposely intended to discriminate, if the effect of its implementation denies equality between men and women, then that law has discriminated against women.
- (iii) the Government takes steps to incorporate this constitutional principle of equality and non-discrimination into specific laws and

other appropriate mechanisms to enable women to truly benefit from it.

- (iv) the Government takes steps to incorporate its international commitments to the CEDAW Convention into domestic law.

### Interim Recommendations

- 1. Freedom of Assembly:** The main concern revolves around the restrictions imposed on the constitutional guarantee of right to peaceful assembly. Stringent provisions in the Police Act leave this right entirely to the discretion of the authorities which is sometimes arbitrary.

While SUHAKAM recognises that peace and stability are paramount and public order needs to be maintained, conditions in the country today call for a fresh look at the new found needs of Malaysians to express themselves as responsible citizens in a democratic society like ours. The days of the communist threat and its method of infiltrating groups and movements to cause public disorder are over.

Within the last few years, Malaysians across the board of political affiliations have asserted themselves in exercising the right to peaceful assembly. Most were allowed to enjoy this right, but the more high profile, politically controversial attempts have met with failure for approval by the authorities. In a number of cases, the assemblies were held even without permits. Force had to be used to disperse these attempted assemblies, inevitably resulting in unnecessary violence.

SUHAKAM reiterates its stand that peaceful assemblies should be allowed. Obviously though, in order to ensure that the assemblies are peaceful, there needs to be orderliness. This can only be

achieved by mutually acceptable procedures. It is with this in view and within the context of the existing laws of Malaysia that SUHAKAM proposes some provisional procedures while a longer term solution is being looked into.

The Working Group is studying laws and regulations in place in other countries on how public assemblies are regulated. Its final report will recommend amendments to the laws, and a full code of procedure and conduct to facilitate a more reasonable and consistent approach to the regulating of public gatherings to enable citizens to exercise their right to peaceful assembly.

Pending the completion of our final report, SUHAKAM would like to make the following interim recommendations on freedom of assembly for urgent action by the Government:

- (i) that applications for permits to hold static assemblies (as opposed to processions) in premises such as stadiums, halls, and private properties, be approved as a general rule, without restrictions on freedom of expression. The organizers are to ensure that no disturbance to public order occurs;
- (ii) that other specific outdoor areas/- compounds/spaces be determined by the authorities for the holding of peaceful assemblies. These should include locations and public spaces in major urban centres, including Kuala Lumpur.
- (iii) that the procedure for applying for permits be simplified by using a standard form to be issued to organizers to fill in the following details:

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>(a) name/names of sponsoring organization;</li><li>(b) names of at least three organizers, identity card numbers and addresses;</li><li>(c) location where assembly will be held;</li><li>(d) date of assembly;</li><li>(e) purpose of assembly;</li><li>(f) estimated starting and ending times; and</li><li>(g) estimate of crowd expected.</li></ul> <p>(iv) that a declaration be signed by a minimum number of organizers to</p> | <p>assume responsibility for the assembly to be peaceful, orderly and that cleanliness be restored.</p> <p>(v) that "marshalls" be appointed and identified by the organizers to ensure orderliness.</p> <p>(vi) that the law enforcement agencies maintain a discreet presence to ensure orderly movement of people and traffic control and that public order personnel be on standby away from the assembly site.</p> |
|---|---|



## CHAPTER 7 REPORT OF THE TREATIES AND INTERNATIONAL INSTRUMENTS WORKING GROUP

Section 4(1)(c) of Act 597 empowers SUHAKAM "to recommend to the Government with regard to the subscription or accession of treaties and other international instruments in the field of human rights." This task is assigned to the Treaties and International Instruments Working Group.

Malaysia has been a member of the United Nations (UN) since 17 September 1957. In joining this international organization, Malaysia undertook to uphold the UN Charter by signing a Declaration of Acceptance of the obligations contained in the Charter. One primary purpose of the UN is to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, language or religion". Article 55 of the Charter places upon the UN an obligation to promote "universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." Through Article 56 "the members of the UN pledge co-operation with the UN to take joint and separate action to achieve these purposes."

Since its founding in 1946, the UN has passed numerous international instruments in the field of human rights for ratification by member countries. Of these, 25 have been identified as major international instruments. Malaysia has ratified only five, while one has been signed, but not ratified.

### Terms of Reference

- To review existing and prospective human rights treaties and instruments in the international arena and to recommend

appropriate Government action to ratify the instruments.

- To recommend ways and means through which the provisions in human rights instruments ratified by Malaysia could be incorporated into Malaysian law to enable citizens to seek redress should those rights be violated.

### Current International Instruments in the Field of Human Rights

From time to time the UN Human Rights Commission issues a chart showing the ratification status of the 25 major international instruments in the field of human rights.

According to the latest chart issued by the UN on 31 December 1997, as read with the statement issued by the Ministry of Foreign Affairs on 8 August 2000, Malaysia's ratification status at present is as follows:-

- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery - ratified on 18 November 1957.
- Convention on the Nationality of Married Women - ratified on 24 February 1959;
- International Convention Against Apartheid in Sports - only signed on 16 May 1986;
- Convention on the Prevention and Punishment of the Crime of Genocide - ratified on 20 October 1994.
- Convention on the Rights of the Child - acceded on 19 March 1995 subject to reservations;
- Convention on the Elimination of All Forms of Discrimination Against Women - ratified on 4 August 1995 subject to reservations;

### Legal implications of signature, ratification and accession

Signing a Convention is only an act of symbolic significance that the signatory has taken

### Major Instruments on Human Rights

Of the 25 major instruments listed in the UN chart, SUHAKAM has identified the following nine as crucial to the protection of human rights:-

1. The International Covenant on Civil and Political Rights (ICCPR) (144\*);
2. The First Optional Protocol thereto which allows the Human Rights Commission established under the ICCPR to investigate complaints from individuals in signatory countries of alleged violations (95);
3. The Second Optional Protocol which aims to abolish the death penalty (36);
4. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) (141);
5. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (153);
6. The Convention Against Torture and Other Cruel, Inhuman, or Degrading Punishment (CAT) (113);
7. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (163);
8. The Convention on the Rights of the Child (CRC) (191);
9. The International Convention Relating to the Status of Refugees (133).

\* The numbers in brackets after each of the above show, as on 1 April 1999, the number of member countries of the UN which have ratified out of a total of 195.

cognizance of the existence of the instrument. Ratification on the other hand means that the member state has formally acknowledged its liability to be bound by the provisions of the Convention and will take the necessary steps to make its provisions a part of its domestic law. It is done by depositing the formal instrument of ratification duly executed by the Government concerned in the office of the Secretary General of the United Nations. The terms of a Convention will usually provide how many member countries are required to ratify a Convention before it will be regarded as having become international law. Once the required minimum has been reached, other member countries which are not part of the original minimum number may also formally indicate their willingness to be bound by depositing an instrument of accession to the Convention in question.

The strict rules of international law require a party ratifying a multilateral Convention to accept the whole of the Convention without

qualification if the ratification is not to be regarded as void.

However in 1952, the General Assembly passed a resolution which enabled governments to enter reservations to multilateral Conventions. It has thus become the norm for countries to enter reservations on various grounds in their instruments of ratification of human rights treaties. These reservations are, however, subject to regulation. Section 2 of the Vienna Convention on the Law of Treaties 1969 (which came into force in 1980) specifically deals with the kinds of reservations which may lawfully be made and their effect in international law. By Article 19 of the Vienna Convention, a reservation which is incompatible with the object and purpose of the treaty is not permitted. Article 27 prohibits a government from invoking its internal law as justification for its failure to perform a treaty.

Based on these articles, several UN bodies have interpreted that the provision for

reservations in all international treaty obligations is designed only as a temporary measure to give time to governments to put in place all conditions necessary for the full implementation of the Conventions concerned. This has now become an international customary human rights norm. For example, the Economic and Social Council (ECOSOC) passed a resolution in 1993 which "requests states parties to the Convention on the Elimination of All Forms of Discrimination Against Women to review regularly their reservations and make efforts to withdraw them in order to enable the full implementation of the Convention." The CEDAW Convention has the largest number of reservations of all UN Conventions.

In 1993, too, the Chairpersons of Human Rights Treaty Bodies urged states parties to undertake a "regular review of the continuing need for, and desirability of, all such reservations." In 2000, the Sub-Commission on the Promotion and Protection of Human Rights of the Human Rights Commission passed a resolution encouraging "states to ratify human rights treaties without reservations and those states that have ratified human rights treaties with reservations to remove them as soon as possible."

Malaysia has entered reservations on two of the treaties it ratified. In relation to the Convention on the Rights of the Child, Malaysia entered a formal reservation to eight articles where it stated that the "provisions shall be applicable only if they are in conformity with the Constitution, national laws, and national policies of the Government of Malaysia". However, in its reservation on Article 28 paragraph 1(a) of the Convention, which requires that primary education be made compulsory and available free to all, Malaysia declared that while primary education is not compulsory and free, it is still "available to everybody and Malaysia has

achieved a high rate of enrolment for primary education i.e. at the rate of 98 per cent enrolment."

Malaysia entered a reservation to five articles in the CEDAW Convention, stating that "Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Shariah law, and the Federal Constitution of Malaysia."

On 6 February 1998, after representations were made by women's groups in the country, Malaysia entered a withdrawal of its reservations on all but two articles.

It has to be emphasised that mere ratification does not make the provisions of the Convention ratified a part of the domestic law of the country. Such ratification only amounts to an obligation by the nation to the other member states of the UN who are also parties to the multilateral instrument in question. In legal parlance these Conventions are not self-executing. For the provisions of the Convention to be regarded as part of the domestic legislation, Parliament must first pass a separate law to that effect. Its powers to do so are contained in Article 74(1) of the Federal Constitution if the subject matter relates to the Federal list or the Concurrent List, and Article 76(1)(a) if it relates to a matter in the State List.

None of the five human rights Conventions listed above which Malaysia has ratified has yet been specifically enacted into the domestic legislation. Consequently the Convention provisions do not confer any rights of direct enforcement on Malaysian residents.

There is no time table provided in the Convention as to how soon after the ratification that the domestic legislation must follow. Nevertheless, it has to be recognised that once

the minimum number of ratifications have been achieved and a Convention becomes part of international law, and even more so when a particular country has ratified a Convention, the courts of that country have a recognised legal obligation to bring its own decisions into conformity with the international norms so established, provided that these norms do not conflict with existing domestic legislation.

In the Malaysian context there is an added safeguard that where a law passed by Parliament is inconsistent with the provisions of the Constitution, Article 4 of the Federal Constitution provides that law to the extent of the inconsistency is to be treated as void.

Against this backdrop it must be observed that Malaysia's omission to ratify the major human rights instruments in the international sphere is unduly cautious and not in line with international trends.

The international human rights Conventions which are currently in force in the field of international law represent a move by their proponents to provide international norms for civilised conduct in line with the obligations spelt out by the UN Charter. It is a new field of jurisprudence which no nation can afford to ignore if it is to keep pace with the international community of nations.

A possible reason why Malaysia may have delayed ratification of the critical human rights instruments listed above could be due to the time and effort which have been expended by the officials concerned in going through the Conventions article by article to determine the compatibility and consistency of each Convention provision to its counterpart in the local laws. The reservations made to the CEDAW Convention is indicative of this approach.

SUHAKAM feels that such an approach is counter-productive because whether a law is good, or bad, must be judged by how it applies

to a particular set of facts in a real life situation. As matters now stand, and even after Parliament has enacted legislation to import the Convention provisions into the domestic legislation, it is the Courts which must decide what legal standards are applicable in terms of interpretation, consistency, and compatibility with local requirements. 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.

### **SUHAKAM Recommendations**

1. Malaysia ratifies as soon as possible the following instruments:-
  - The International Covenant on Civil and Political Rights;
  - The International Covenant on Economic, Social, and Cultural Rights;
  - The Convention Against Torture.
2. The Government takes steps to draft new legislation to incorporate the provisions of the Conventions which have been ratified into domestic law.
3. Existing legislation, regulations and administrative directives be reviewed to bring them into line with the Conventions ratified.
4. The Malaysian Judiciary be more responsive in interpreting the definition of "human rights" in the Federal Constitution. If human rights are indivisible and universal, then they are an inherent and integral part of the common law of Malaysia and should be enforced accordingly.
5. Reservations to the Conventions ratified be reviewed periodically with a view towards their eventual withdrawal.

## CHAPTER 8 REPORT OF THE COMPLAINTS AND INQUIRIES WORKING GROUP

The Complaints and Inquiries Working Group is assigned "to inquire into complaints regarding infringements of human rights", the fourth function of SUHAKAM as set out in section 4(1)(d) of the Human Rights Commission of Malaysia Act.

Empowering a human rights commission to investigate complaints of human rights infringements is a clear indication of a government's commitment to human rights and of its willingness to take international and domestic obligations seriously. Inquiring into complaints is perhaps the most important function of any human rights commission because the very existence of a national mechanism with powers to investigate abuses is a disincentive to abusive behaviour. The importance of this function is underscored by the fact that Part III of the Act specifically deals with the Powers of Inquiry of the Commission.

### Terms of Reference

- To act on complaints of allegations of human rights infringements;
- To act on its own motion to inquire into any allegation of human rights infringements;
- To make recommendations to the relevant authorities of appropriate action to be taken to redress any human rights infringements that had taken place;
- To make recommendations to the relevant authorities of appropriate action to be taken to prevent the recurrence of human rights infringements;
- To make recommendations to the

complainants on further action that could be taken to seek compensation and redress should a human rights infringement be proven.

### Complaints

The first task for the Working Group was to develop a complaints procedure as a guide to assist members of the public in lodging complaints with SUHAKAM. To do this, the group had to determine the kinds of complaints that it could act on, based on the mandate given to SUHAKAM by the Act. It also decided on the process that would be followed. The procedure approved by SUHAKAM was disseminated through the media on 26 June 2000 and included in the SUHAKAM website. The procedure is set out in Appendix VII.

### Complaints Received

From its inception until 31 December 2000, SUHAKAM received a total of 475 letters of complaint. A breakdown of the complaints is as follows:

- (a) Complaints about various matters - 80
- (b) Repeats of complaints in (a) - 12
- (c) Letters from overseas in support of some complaints in (a) - 284
- (d) Copies to SUHAKAM of letters addressed to Ministers, the Police and other authorities - 31
- (e) Statements about human rights made by NGOs with copies to SUHAKAM - 21
- (f) Cases before the courts and not within the jurisdiction of SUHAKAM - 25
- (g) Complaints against government departments not carrying out their work - 22

Complaints in categories (b) and (c) which essentially repeat a number of the complaints in

category (a), will be considered together with the main complaint in (a). The repeat complaints and overseas complaints refer largely to two specific incidents of alleged police brutality in the dispersal of public assemblies and the arrest and detention of political figures on 15 April 2000 and 5 November 2000.

With regard to complaints in category (f), section 12(2) prevents SUHAKAM from looking into the matter. In some cases, SUHAKAM advised the complainants on possible courses of action open to them. Advice was also given to complainants on matters in category (g) and those complaints were forwarded to the respective government departments with a request for action. A number of the complaints received did not constitute an infringement of human rights. In such cases, the complainants were advised to seek redress through other government agencies or legal avenues.

The nature of complaints among the 80 in category (a) that need to be inquired into are as follows:

- *Freedom of assembly:* Complainants alleged that they were unable to obtain police permits to assemble peacefully for ceramahs (political talks) and discussion of social issues.
- *Freedom of religion:* Complainants alleged that the proposed Islamiah Aqidah Protection Bill being drafted by the Federal Government constituted an infringement of the constitutional guarantee of freedom of religion.
- *Freedom of expression:* Complainants reported that the Ministry of Home Affairs denied them permits to publish newspapers and magazines, refused to renew their annual permit to publish; restricted the number of issues allowed to be published in a month.
- *Right to just conditions of work:* Complainants alleged exploitation of foreign workers in restaurants; forced resignation without payment of compensation; unjustly denied absorption into pensionable scheme after 23 years of service as a temporary clerk in a government office; victimisation and unfair treatment by headmaster in transfer and promotion.
- *Right to a fair trial:* Complainant reported delay in deciding on a Syariah Court case had resulted in hardship and injustice.
- *Right to equal protection of the law:* Complainants reported failure of police to take action on complaints made; dissatisfaction with results of police investigation or delay in police investigation; failure of relevant authorities to take action against developers for noise and air pollution.
- *Right to life, liberty and security of person:* Complainants alleged police brutality in breaking up public assemblies and ill treatment of those detained.
- *Right to leave and return to own country:* Complainant reported denial of Malaysian passport by Immigration Department prevented him from travelling abroad.
- *Right of asylum:* Complainant reported on uncertain status of Rohingas (Arkan Muslims from Myanmar) seeking asylum in Malaysia which resulted in denial of rights as refugees.
- *Right to property:* Complainants alleged that state governments and private

companies encroached and violated their customary land rights.

One inquiry, No. 1/2000, on unfair treatment at work has begun, but the matter is yet to be resolved. For some of the other complaints, letters requesting further information and clarification either from the complainant or the person/ department complained against, have been sent.

To expedite matters, the members of the Working Group were divided into three sub-groups and the work distributed according to subject matter.

Sub-group (a) - abuse of power (police and other agencies)

Sub-group (b) - matters involving bureaucracy

Sub-group (c) - land matters, immigration and refugees

It is the hope of the Working Group that with more support staff in 2001, its workings will be expedited.

#### **Inquiries on its own motion**

Section 12(1) empowers SUHAKAM to conduct inquiries on its own motion. On 8 November 2000, following reports and allegations of disproportionate use of force by the police in dispersing a gathering at the Kesas Highway on 5 November, resulting in injuries to a number of people, SUHAKAM decided to conduct an inquiry into the incident. The Inquiry No. 2/2000 began on 29 November 2000 and is ongoing.

SUHAKAM assigned three members of the Commission to conduct the inquiry. A guideline on how the inquiry would proceed was disseminated through the media for public knowledge. A copy of the Inquiries Guidelines is set out in Appendix VIII.



*The Police giving evidence at the SUHAKAM public inquiry on alleged disproportionate use of force by the police.*

*L to R: SUHAKAM Commissioners Tan Sri Datuk Seri Panglima Simon Sipaun, Tan Sri Dato' Hj. Anuar Dato' Hj. Zainal Abidin and Puan Mehrun Siraj*

### **Regulations Sub-group**

Under section 22 of the Act, the Minister may enact regulations for the implementation of the Act, including the conduct of inquiries. Although the provisions in the Act and related domestic laws are sufficient to enable SUHAKAM to conduct inquiries without other regulations, the Working Group nevertheless felt that regulations made under this section would simplify the procedures for the public and clarify the powers of SUHAKAM in relation to inquiries.

A sub-group was formed and two lawyers with expertise in both human rights and drafting were invited to join the sub-group. All the provisions relating to the conduct of inquiries will be placed in one set of regulations thus eliminating the need to refer to different laws. The draft regulations will be submitted to the Minister for approval and further action as required under section 22.

## CHAPTER 9 SUMMARY AND CONCLUSION

SUHAKAM has been in operation since 24 April 2000, and this report therefore covers a period of the first eight months of its life. As in any new organization, the first priority was to establish itself as a functional institution. As a statutory body, the Act gives SUHAKAM autonomy in administrative matters. However, it has to abide by various government rules and regulations. As such, it took time before the minimal and appropriate staff were recruited and its own premises established. However, SUHAKAM had the support and guidance of the Ministry of Foreign Affairs during this establishment phase, including the use of facilities within Wisma Putra for which SUHAKAM is grateful.

As soon as SUHAKAM came into being, the Commission began receiving complaints from the public and one of the first tasks of SUHAKAM was to establish Working Groups to handle its various functions and prepare guidelines for complaints. SUHAKAM addressed its educational, advisory, and investigative functions by establishing four Working Groups to cover education, law reform, international instruments, and complaints and inquiries. Within three months, SUHAKAM had launched its own home page and in this world of information technology, the website had played an important role in publicising SUHAKAM and enhancing communication amongst members and the public. By the end of November 2000, SUHAKAM had moved into its own rented premises at Menara Tun Razak in Jalan Raja Laut.

During the first months of its formation, SUHAKAM dedicated itself to meeting the important stakeholders in the task of protecting and promoting human rights by holding dialogue sessions. Amongst the parties with whom SUHAKAM met included the Bar Council,

the NGOs, the Police, political parties and various government departments, including those in Sarawak. A meeting in Sabah was planned for early 2001. These dialogues were important to inform the relevant institutions on the functions and responsibilities of SUHAKAM, its mode of operation and to introduce the members of SUHAKAM, as well as to receive advice and feedback on the state of human rights in the country. During that period, SUHAKAM received numerous reports and memoranda from various organisations and these form the basis of Chapter 4 of this report on the state of human rights in Malaysia.

SUHAKAM commissioners also attended meetings, gave lectures, presented papers and attended seminars and conferences, nationally and internationally to inform the general public on the formation of the Commission and also to share and learn from the experience of others in the effective workings of human rights institutions. The various media were used and a regular forum for SUHAKAM was established on television to discuss human rights and SUHAKAM.

Based upon the numerous memoranda presented to SUHAKAM, the Commission concludes that there is an increasing demand for a more transparent and accountable government that protects and promotes human rights. This is a fundamental concern of Malaysian civil society today. Fundamental liberties such as freedom of assembly, freedom of expression, and freedom of religion need to be upheld. Detention without trial, the continuous state of emergency, discrimination against women, native customary rights and the ratification of various international human rights instruments are all issues that SUHAKAM have identified as deserving its priority attention.

There are many laws in the country that restrict or infringe the basic human rights of its citizens.

- (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To co-operate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness; especially through information and education and by making use of all press organs.

#### **Composition and Guarantees of Independence and Pluralism**

1. The composition of the national institution and the appointment of its members; whether by means of an election or otherwise shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:
  - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists ;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have

its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

### **Methods of Operation**

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by non-governmental organizations in expanding the work of national institutions, develop relations with non-governmental organizations devoted to promoting and protecting human rights, economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

### **Additional Principles Concerning the Status of Commissions with Quasi-judicial Competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative

organization. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or where necessary, on the basis of confidentiality;
- (b) Informing the party who filled the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

## Appendix III

## SUHAKAM DIALOGUE SESSIONS

- 15.5.2000 - Aliran Kesedaran Negara (ALIRAN)  
Persatuan Hak Asasi Manusia (HAKAM)  
Suara Rakyat Malaysia (SUARAM)
- 5.6.2000 - Polis DiRaja Malaysia
- 26.6.2000 - Majlis Peguam Malaysia
- 10.7.2000 - Kementerian Luar Negeri  
Kementerian Dalam Negeri  
Kem. Perpaduan Negara & Pembangunan Masyarakat  
Unit Perancang Ekonomi  
Jabatan Hal Ehwal Orang Asli  
Jabatan Imigresen Malaysia  
Jabatan Kemajuan Islam Malaysia  
Jabatan Hal Ehwal Wanita  
Jabatan Peguam Negara
- 31.7.2000 - Kementerian Sumber Manusia  
Kementerian Sains, Teknologi & Alam Sekitar  
Kementerian Kesihatan  
Kementerian Perumahan & Kerajaan Tempatan  
Kementerian Pendidikan  
Jabatan Penjara Malaysia  
Agensi Dadah Kebangsaan
- 22.8.2000 - Pemuda Barisan Nasional  
Pemuda Barisan Alternatif
- 26.8.2000 - **Jabatan Kerajaan di Sarawak**  
  
Pejabat Setiausaha Persekutuan Sarawak  
Jabatan Kastam & Eksais DiRaja  
Jabatan Penjara  
Jabatan Polis DiRaja Malaysia  
Jabatan Imigresen  
Jabatan Kesihatan  
Jabatan Pendidikan  
Jabatan Kemajuan Islam Malaysia  
Unit Perancang Negeri  
Kementerian Pembangunan Sosial

Jabatan Agama Islam Sarawak  
 Majlis Adat Istiadat Sarawak  
 Pejabat Residen Kuching  
 Unit Pengurusan Sumber Manusia  
 Kementerian Perancangan & Pengurusan Sumber  
 Kementerian Perumahan  
 Jabatan Kebajikan Masyarakat Negeri Sarawak

- **Pertubuhan Bukan Kerajaan di Sarawak**

Sarawak Women for Women Society  
 Advocates Association of Sarawak  
 Angkatan Belia Islam Malaysia  
 Dayak Cultural Foundation  
 Orang Ulu Association  
 Yayasan Budaya Melayu Sarawak  
 Angkatan Zaman Mansang  
 Indian Association Kuching  
 The Federation of Kuching and Samarahan Divisions  
 Chinese Associations, Sarawak  
 Nadatul Islam Bersatu Sarawak  
 Association of Churches Sarawak  
 Pertubuhan Kebajikan Islam Sarawak  
 Dayak Bidayu National Association  
 Sarawak Development Institute  
 Sarawak Dayak Iban Association  
 Persatuan Melanau

11.9.2000 - **NGO Monitoring Group**

- Pertubuhan Jemaah Islah Malaysia (JIM)
- People's Manifesto Initiative (PMI)
  - Persatuan Sahabat Wanita
  - Persatuan Masyarakat Selangor & Wilayah Persekutuan
  - Women's Candidacy Initiative (WCI)
  - Majlis Graduan Malaysia
  - Pusat Komunikasi Malaysia (KOMAS)
  - Jawatankuasa Sokongan Peneroka Bandar
  - Bosses Group
  - Ex-ISA Detainees Group
  - ERA Consumer
  - Gabungan Rumah Panjang
  - Group of Concerned Citizens
  - SUARAM

- 2.10.2000 - **Media Utama**  
Utusan Melayu (Malaysia) Bhd.  
Berita Harian Sdn. Bhd.  
New Straits Times Sdn. Bhd.  
Star Publications (M) Berhad  
The Sun  
Sin Chew Jit Poh  
Nanyang Siang Pau  
Kwong Wah Yit Poh  
Guang Ming Daily  
Malaysia Nanban  
MakkalOsai  
Tamil Nesan  
ASTRO  
Sistem TV Malaysia Bhd  
TV Malaysia
- 6.10.2000 - **Media Alternatif**
- Wartawan Kumpulan Aktivistis Media Independen (KAMI)
- Muslimah  
Harakah  
Wasilah  
Tamadun  
Makalah Politik Tidak Berkala  
Penulis Buku Politik  
Penyair  
Kartunis  
Penulis Bebas  
Penerbitan Hemah  
Wartawan Politik  
Malaysiakini
- 3.11.2000 - Penduduk Pribumi Ulu Baram, Sarawak



## Appendix III

**UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948****Preamble**

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

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

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

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

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

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

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

Now, therefore,

The General Assembly,

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

**Article 1**

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

**Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3**

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

**Article 4**

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

**Article 5**

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

**Article 6**

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

**Article 7**

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

**Article 8**

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

**Article 9**

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

**Article 10**

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

**Article 11**

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

**Article 12**

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

**Article 13**

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

**Article 14**

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

**Article 15**

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

**Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17**

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

and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

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

**Article 30**

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

## Appendix IV

**SUHAKAM PRESS STATEMENTS****1. The Right to Attend a Public Trial  
31 July 2000**

SUHAKAM recognizes that the Dato' Seri Anwar Ibrahim trial evokes strong sentiments among followers of all political parties and the public alike. SUHAKAM would like to appeal for restraint from all sides. Towards this end, SUHAKAM would like to emphasize that :-

- 1) Those wishing to come to the High Court to know first hand of the verdict should be allowed to do so. The case is certainly of national interest.
- 2) All who go should be aware that there could be provocations from any quarter that would wish to incite violence and even rioting. They should thus be on the look-out for such negative elements and frustrate them.
- 3) The Police should ensure that crowd control be people friendly and not confrontational.
- 4) Those in attendance should not be provocative either and restrain from any jeering, taunting or sloganeering.

SUHAKAM would like to remind all, the authorities and the public alike, that its own efforts to ensure the basic human right of peaceful assembly would be considerably influenced by the 4th August event. The emphasis is that all should ensure that the gathering be peaceful. SUHAKAM proposes to send a few Commissioners to be at the scene as observers.

**2. The Use of the Internal Security Act  
31 July 2000**

SUHAKAM welcomes the decision of the authorities to charge those involved in the Sauk arms heist under the Penal Code, the Kidnapping Act and the Firearms Act.

We urge the Police that those detained under the ISA in the past few days be brought to trial as soon as possible. If there is no evidence that they have committed any offences, then they should be released.

**3. SUHAKAM Observer Report on 8 August 2000 Gathering  
9 August 2000**

SUHAKAM is gratified that the right of citizens to come to the High Court to hear the verdict of the Datuk Seri Anwar Ibrahim trial was respected by the authorities.

SUHAKAM commends the restraint and professionalism displayed by the police in handling the crowd in the High Court vicinity. About 1,000 Malaysians were gathered to hear the Court verdict first hand. Most of them were clustered in three areas, in front of the High Court building, at the junction of Jalan Tun Perak and Jalan Raja Laut and at the Benteng square across the river from the Court.

SUHAKAM observers noticed that the police kept their distance, much of the time standing at the peripheries of the crowds.

The biggest and potentially volatile cluster was at Benteng square. A crowd of a few hundred sat on the floor, surrounded by bystanders to listen to speeches made by Keadilan and Reformasi leaders. Occasionally a police officer walked over to the crowd to tell the leaders of the gathering to stop making political speeches. Even though speeches and shouts of reformasi continued to be made, the police used their discretion to allow some level of freedom of expression. The assembly, while noisy, was peaceful. The leaders maintained discipline over their supporters.

In another incident in front of the High Court, a senior police officer quietly told his subordinate to leave a Reformasi supporter alone when the latter refused to come down from the steps of the court building and started taunting the policeman. A few others had joined him in the taunting and this confrontation could have developed into an ugly scene. But when the policeman walked away, the crowd calmed down.

A Free Anwar Campaign banner was also displayed, first among the crowd, and later it was tied to the railing at the court building. Police did not intervene to remove the banner.

The police exercise of restraint and discretion in handling demonstrations of emotion and provocation helped to make the gathering on August 8 remain a peaceful one. The police were, in general, people friendly and non-confrontational in handling the crowd that had gathered from 6 am. The people's right to peaceful assembly was respected for over six hours.

The police moved in to disperse the big crowd at Benteng square at about 12.30 p.m., after Datuk Seri Anwar's sentencing was announced. A police officer with a loud hailer told the crowd to disperse. Most moved on very fast. A few refused to budge and stayed seated on the floor. SUHAKAM observers noticed plain clothes policemen wearing yellow police vests talking to those seated to persuade them to get up and leave. They eventually did.

SUHAKAM did not observe any display of physical violence during the dispersal of the crowd nor did they receive any report of violence at the scene. A police officer was however seen displaying a rock to a Bar Council monitor which the officer reported was thrown at a policeman by one of those assembled at the Benteng square.

Subsequently, SUHAKAM received a report from the NGO monitoring team that police personnel were later seen chasing members of the public in Leboh Ampang and Jalan Masjid India and it was reported that a few were hit by the police.

Apart from this incident, yesterday's events, on the whole, showed that the ability of political leaders to

maintain control and discipline over their supporters, the police exercise of restraint, discretion and professionalism, and the presence of observers from SUHAKAM, the Bar Council and NGOs had gone a long way in ensuring that peace and order were maintained throughout the day.

**4. SUHAKAM to Hold a Public Inquiry into Alleged Police Violence  
8 November 2000**

SUHAKAM is deeply concerned over the reports it received from various sources that numerous untoward incidents had occurred in connection with the attempt by political parties to hold an assembly at Jalan Kebun, Shah Alam on 5 November 2000.

SUHAKAM does not condone violence in any form.

SUHAKAM at its meeting on 8 November 2000 has decided to hold a full inquiry into the 5 November 2000 incident under the chairmanship of Commissioner Tan Sri Dato' Anuar bin Dato' Haji Zainal Abidin. He will be assisted by Commissioners Tan Sri Datuk Seri Panglima Simon Sipaun and Puan Mehrun Siraj.

In the meantime SUHAKAM urges leaders of all political parties to work with the authorities on an appropriate framework to govern assemblies in the country.

For its part, SUHAKAM is conducting its own study of laws and procedures governing the right to peaceful assembly and will make its recommendations to the authorities.

**5. Siasatan SUHAKAM Terhadap Insiden 5hb November 2000  
23 November 2000**

1. SUHAKAM akan memulakan siasatannya terhadap insiden 5hb November 2000 yang berlaku di Jalan Kebun, Shah Alam bermula pada 29hb November 2000. Siasatan ini akan diadakan di kamar penyiasatan pejabat SUHAKAM. Tingkat 29, Menara Tun Razak, Jalan Raja Laut, Kuala Lumpur pada waktu pejabat.
2. SUHAKAM akan memanggil kesemua orang yang terlibat dalam insiden di atas dan mereka ini dikehendaki hadir sepertimana yang telah diperuntukkan di dalam Seksyen 14(1)(c) Akta Suruhanjaya Hak Asasi Manusia Malaysia 1999.
3. Siasatan ini akan dijalankan secara terbuka dan dibuka kepada orang yang berminat. Memandangkan tempat duduk yang terhad, sesiapa yang berminat hendaklah datang awal.

**6. SUHAKAM Inquiries Procedure  
29 November 2000**

Procedure for Inquiries by the Commission Acting on its Own Motion under Section 12 of the Human Rights Commission of Malaysia Act 1999

1. The inquiry shall be opened to the public unless there are reasonable grounds for excluding the public from such inquiry or any part thereof. [s.14 (l) (e)]
2. The inquiry will be inquisitorial and not adversarial in nature.
3. The inquiry is not a proceeding in a Court of Law and the Commission shall not be bound by the rules of procedure applicable in such a forum. However the Commission shall adopt a fair procedure at the inquiry.
4. All evidence shall be given on oath or affirmation. The Commission may accept sworn affidavits. [s.14(1)(b)]
5. The rules relating to admissibility and the other rules of evidence as set out in the Evidence Act 1950 (Act 50) shall not apply to the inquiry. [s.14(1)(d)]
6. There shall be no right to legal counsel for any party attending the inquiry except with the approval of the Commission.
7. Only members of the Commission shall be entitled to examine the witnesses. No person shall be entitled to ask questions of the witnesses appearing at the inquiry. However, the Commission may, for the purpose of clarification only, allow questions to be asked of witnesses by any interested party, provided always that such questions shall be asked through the Commission.
8. The Commission will complete the inquiry as expeditiously as possible and thereafter publish its findings.

**7. Forum SUHAKAM Sempena Hari Hak Asasi Manusia Sedunia pada 10hb Disember 2000**

SUHAKAM akan mengadakan satu Forum sempena Hari Hak Asasi Manusia Sedunia pada 10hb Disember 2000 (Ahad) di Dewan Tun Hussein Onn, Pusat Dagangan Dunia Putra (PWTC) dari pukul 8.45 pagi hingga 12.30 tengah hari.

Tajuk Forum ialah "Hak Asasi Dengan Bertanggungjawab". Seramai tiga ahli penal terkemuka tempatan akan mengambil bahagian dalam Forum ini. Mereka adalah Y.Bhg. Datuk Amar Dr. Leonard Linggi Jugah; Y. M. Raja Aziz Addruse dan Puan Shanthi Dairiam.

Penyertaan adalah percuma. Dengan itu, orang ramai adalah digalakkan menghadiri Forum ini supaya dapat bersama-sama mempelajari sedikit sebanyak mengenai hak asasi.

## Appendix V

## SUHAKAM COMMISSIONERS ON TV AND RADIO

## (a) TV2: Moving on 2 Friday Programme

NO	NAME	TOPIC	DATE
01	Prof. Chiam Heng Keng	Educating Children on Human Rights	July 21, 2000
02	Tan Sri Dato' Hj Anuar Dato' Hj Zainal Abidin	Filing Human Rights Complaints with SUHAKAM Part 1	Aug 18, 2000
03	Dato' Dr Salleh Mohd Nor	Filing Human Rights Complaints with SUHAKAM Part 2	Sept 15, 2000
04	Prof. Chiam Heng Keng	Children Rights Convention (CRC)	Oct 20, 2000
05	Prof. Chiam Heng Keng	Double Promotion: Rights or Abuse of Children	Nov 17, 2000
06	Prof. Chiam Heng Keng	Rights of Indigenous People	Dec 15, 2000

## (b) TV2: Global Talk Show

NO	NAME	TOPIC	DATE
01	Tan Sri Dato' Haji Anuar bin Dato' Haji Zainal Abidin	SUHAKAM and Its Functions	Aug 6, 2000
02	Tan Sri Dato' Harun Mahmud Hashim	Human Rights Commission: Its Roles and Responsibilities	Dec 10, 2000

## (c) Celebrating World Human Rights Day

NO	NAME	STATION	DATE
01	Puan Mehrun Siraj	TV3's <i>Malaysia Hari Ini</i>	Dec 10, 2000
02	Prof. Mohd Hamdan Adnan	RTM's <i>Jendela Pagi</i>	Dec 10, 2000
03	Prof. Mohd Hamdan Adnan	RTM Radio 1	Dec 10, 2000
04	Dato' K. Pathmanaban	RTM Radio 1	Dec 6, 2000
05	Dato' K. Pathmanaban	RTM Radio 4	Dec 11, 2000

## (d) Others

NO	NAME	STATION	DATE
01	Tan Sri Dato' Harun Mahmud Hashim	RTM TV1's <i>Gemilang Malaysia</i> <i>SUHAKAM Isu dan Tanggungjawab</i>	Dec 21, 2000
02	Puan Mehrun Siraj	Radio WOW FM	Dec 27, 2000

**SUHAKAM COMPLAINTS PROCEDURE****A : What complaints can the Human Rights Commission inquire into?**

1. The Human Rights Commission of Malaysia or SUHAKAM is empowered to inquire into complaints of infringement or violation of human rights.
2. The term "Human Rights" covers but is not limited to the following areas:
  - a. Right to life and personal liberty, which includes freedom from unlawful detention, freedom from abuse on being arrested and while in detention, right to be informed of the grounds of one's arrest, right to consult and be defended by a lawyer of one's choice, right to be released from detention within twenty-four hours unless otherwise ordered by a magistrate (or Syariah judge in the case of offences tried by a Syariah court).
  - b. Right to equality and freedom from discrimination.
  - c. Right to freedom of movement.
  - d. Right of citizen not to be banished.
  - e. Right to freedom of speech and expression.
  - f. Right to assemble peacefully and without arms.
  - g. Right to form associations.
  - h. Right to freedom of religion.
  - i. Rights in respect of education.
  - j. Right to Property.
3. In accordance with the Human Rights Commission of Malaysia Act 1999, SUHAKAM is not empowered to inquire into allegations that are the subject matter of proceedings pending in any court or have been finally decided by a court. If an allegation becomes the subject matter of a court case after an inquiry has begun, SUHAKAM must cease inquiries.
4. SUHAKAM will not normally inquire into matters that come within the jurisdiction of another agency or amounts to duplication of the work of another body.
5. SUHAKAM is not an enforcement agency. If the inquiry conducted by SUHAKAM discloses that an infringement or violation of human rights has taken place, SUHAKAM will refer the matter to the relevant authority or person with its recommendations.

6. Any person who believes that any of his or her rights has been infringed or violated may submit a complaint to SUHAKAM.

**B : Submission of complaints**

**1. Who can submit complaints of infringements or violations of human rights?**

- (i) an aggrieved person or victim
- (ii) a group of aggrieved persons or victims
- (iii) a person acting on behalf of either (i) or (ii) above

**2. How can complaints be made?**

In writing to the following address:

The Human Rights Commission of Malaysia  
Tingkat 29, Menara Tun Razak,  
Jalan Raja Laut, 50350 Kuala Lumpur  
Malaysia;

or by E-mail to: [humanrights@humanrights.com.my](mailto:humanrights@humanrights.com.my)

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

Complaints may be made in any language but preferably in Bahasa Malaysia or English.

**4. What should the complaint set out?**

The complaint should briefly describe the allegation of infringement or violation of human rights.

The description should include the following information:

- (i). what rights are being or were infringed (if you can identify the right)
- (ii). whose rights are being or were infringed?
- (iii). who is infringing or has infringed the rights?
- (iv). how are the rights being infringed or how were the rights infringed?
- (v). when did the infringement take place
- (vi). where did the infringement take place?
- (vii). what redress do you seek?

**C : Admissibility of complaints**

1. A complaint is admissible if on the face of it, it shows that there is or has been an infringement of human rights.
2. The commissioners may request for further information in order to determine whether a complaint is admissible.
3. A complaint may not be admissible if it is frivolous, vexatious or too trivial a matter or the complaint is beyond the jurisdiction or powers of SUHAKAM.

4. The admissibility of the complaint will be established as soon as possible.
5. The complainant will be notified of the admissibility or otherwise of the complaint.

**D : The Inquiry**

1. If the complaint is admissible, a date will be fixed for the inquiry and the complainant will be informed accordingly.
2. The inquiry will be conducted in the manner prescribed by SUHAKAM.
3. SUHAKAM shall inform the complainant from time to time of the status of the inquiry.
4. When the inquiry is completed, SUHAKAM shall inform the complainant of the outcome of the inquiry.

## Appendix VIII

**SUHAKAM INQUIRIES GUIDELINES**

Guidelines for Inquiries by the Commission Acting on its Own Motion under Section 12 of the Human Rights Commission of Malaysia Act 1999

1. The inquiry shall be opened to the public unless there are reasonable grounds for excluding the public from such inquiry or any part thereof. [s.14 (l) (e)]
2. The inquiry will be inquisitorial and not adversarial in nature.
3. The inquiry is not a proceeding in a Court of Law and the Commission shall not be bound by the rules of procedure applicable in such a forum. However the Commission shall adopt a fair procedure at the inquiry.
4. All evidence shall be given on oath or affirmation. The Commission may accept sworn affidavits. [s.14(1)(b)]
5. The rules relating to admissibility and the other rules of evidence as set out in the Evidence Act 1950 (Act 50) shall not apply to the inquiry. [s.14(1)(d)]
6. There shall be no right to legal counsel for any party attending the inquiry except with the approval of the Commission.
7. Only members of the Commission shall be entitled to examine the witnesses. No person shall be entitled to ask questions of the witnesses appearing at the inquiry. However, the Commission may, for the purpose of clarification only, allow questions to be asked of witnesses by any interested party, provided always that such questions shall be asked through the Commission.
8. The Commission will complete the inquiry as expeditiously as possible and thereafter publish its findings.



