



SUHAKAM
HAK ASASI UNTUK SEMUA

laporan tahunan

Annual Report

HUMAN RIGHTS COMMISSION OF MALAYSIA
SURUHANJAYA HAK ASASI MANUSIA MALAYSIA

2001

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Human Rights Commission Of Malaysia
Tingkat 29, Menara Tun Razak,
Jalan Raja Laut, 50350 Kuala Lumpur.
E-mail:humanrights@suhakam.org.my

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SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
HUMAN RIGHTS COMMISSION OF MALAYSIA

Pengerusi

Chairman

Our Ref: SHM.001/1/27 (37)

Date: 22 April, 2002.

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

Y. a. Bhg. Tun,

HUMAN RIGHTS COMMISSION OF MALAYSIA
ANNUAL REPORT 2001

It is my honour and privilege to submit the second Annual Report of the Human Rights Commission of Malaysia for the period covering from 1 January to 31 December 2001. This Report is made pursuant to Section 21 of the Human Rights Commission of Malaysia Act 1999 (Act 597) for tabling before Parliament.

Thank you.

Salam hormat,

MUSA BIN HITAM
(TAN SRI DATO')
Chairman
Human Rights Commission of Malaysia.

HUMAN RIGHTS COMMISSION OF MALAYSIA ANNUAL REPORT 2001

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CHAPTER 1

CHALLENGES AND DIRECTION

The year 2001 began with SUHAKAM settled in its own new premises in the heart of Kuala Lumpur. The availability of space, proper meeting and hearing rooms removed one more teething obstacle to SUHAKAM's smooth functioning. However, SUHAKAM's work was still hampered by the lack of staff as it was not until much later in the year that SUHAKAM was able to appoint officers to assist the commissioners in their work. Nevertheless, 2001 was a productive year. SUHAKAM released several reports, including its first annual report, and organized a major conference as well as two other workshops. SUHAKAM also made statements on various human rights issues. All the reports are available on SUHAKAM's website and some have been summarized in Chapter 3: Issues in Focus.

The response to SUHAKAM's reports and statements has been mixed. Former critics who had doubted SUHAKAM's independence felt that SUHAKAM had gained credibility by making recommendations that were aimed at promoting human rights in Malaysia and preventing recurrences of human rights violations. Some Government leaders, however, expressed disapproval at what they considered to be biased recommendations that ignored national security considerations. One even commented that SUHAKAM was going beyond its jurisdiction and questioned the necessity of SUHAKAM taking a stand on issues such as freedom of assembly and detention without trial as these matters were regulated by law.

SUHAKAM reiterates that all activities of the Commission are not just permitted by the Act of Parliament that established it; they are, in fact, a duty imposed on SUHAKAM. SUHAKAM would be failing to discharge its duties if it did not carry out its functions as set out in the Act and, as a corollary, make recommendations that are designed to improve the state of human rights in the country, however unpalatable the recommendations may be.



Handing over of SUHAKAM first annual report to Parliament

The Commissioners are aware that the very nature of the functions and powers accorded to SUHAKAM could at times lead to an uncomfortable relationship with the Government. At the same time, SUHAKAM recognizes the importance of maintaining a professional working relationship with various arms of the Government to enable the Commission to work effectively in the promotion and protection of human rights in the country. SUHAKAM would like to stress that it does not lean in favour of one group or another. It acts according to its enabling Act and to internationally accepted standards of human rights but, at the same time, takes note of cultural and religious considerations. To date, nothing recommended by SUHAKAM has conflicted with any cultural or religious prescriptions. On the contrary, some recommendations are influenced by Islamic teachings. If they coincide with "Western values", it is probably because fundamental human rights are universal values.

SUHAKAM wishes to point out that its reports and statements are based on research and consultations, and a great deal of thought goes into them, which explains why they take a long time to be released. Some quarters have condemned SUHAKAM for being slow in reacting to human rights violations. SUHAKAM has always waited for sufficient information before deliberating an issue, and SUHAKAM's statements are by consensus.

An important point to note is the fact that SUHAKAM's recommendations are just that.

Ultimately, it is up to the Government to decide whether or not to implement the recommendations. Government action will, of course, be influenced by various considerations and forces, including reaction from the media, NGOs, and political parties. All SUHAKAM requests is that the recommendations be weighed and discussed fully before a final decision is made. SUHAKAM is encouraged by the fact that Cabinet has set up a task force to study its report on its first public inquiry on its own motion, "the Kesas Highway Inquiry". It also welcomes the amendment to Article 8 of the Federal Constitution to include "gender" as a prohibited ground for discrimination, a recommendation of the SUHAKAM annual report for 2000. SUHAKAM is also pleased with the various actions taken by the Police and the Home Ministry to address the issue of overcrowding in police lock-ups and the



SUHAKAM roadshow in Johor

treatment of young prisoners. SUHAKAM has received the fullest co-operation from the Police, the Home Ministry, and the Attorney-General's Chambers in dealing with these two issues.

Throughout the year, SUHAKAM continued to work closely with Government departments and agencies and with civil society, holding

several dialogue sessions which provided a forum for consultation. (See **Appendix I.**) In its efforts to reach out beyond the Klang Valley, SUHAKAM visited four states to meet Government officers, political parties and NGOs. (See **Appendix II.**)

As part of its efforts to improve access on a national level, SUHAKAM acquired office space in Sabah and Sarawak. These branch offices, which will be opened in early 2002, represent the first step towards setting up SUHAKAM regional offices. They will facilitate human rights education programmes, workshops, consultations and the investigation of complaints of human rights violations at state level.

Society's expectations of SUHAKAM remain high and SUHAKAM continues to receive memoranda and other forms of complaint on human rights infringements. SUHAKAM has attempted to act on these complaints as speedily as possible but, despite its efforts, there still remains a backlog. Understandably, some complainants are not satisfied with SUHAKAM's performance. It is hoped that the year 2002 will see improvements in the handling of complaints. The hiring of more officers to handle complaints and investigations and the implementation of the "flow chart" system which sets a time frame for the entire process will expedite the management of complaints submitted to SUHAKAM.

As the present Commission comes to the end of its term, it intends to leave two major proposals for the Government to consider. One is a report containing recommendations for



Press briefing in Parliament after handing over of first annual report

amendments to the Human Rights Commission of Malaysia Act 1999. In the course of its work, SUHAKAM has noted the limitations of the existing law and is of the view that there is a need for these to be overcome. Clarifying ambiguous provisions will make application of the law less problematic.

The second, and perhaps more important, proposal is for the Government to start developing a National Human Rights Plan of Action. A national action plan will help improve the promotion and protection of human rights in Malaysia by placing human rights improvements in the context of public policy, so that Government and civil society can endorse human rights improvements as practical goals, devise programmes to ensure the achievement of those goals and allocate sufficient resources

for the implementation of the programmes. The action plan will provide guidance to Government officials, NGOs, professional groups, educators, and other members of civil society on the tasks that need to be accomplished to ensure that human rights are effectively observed.

An action plan that is well formulated and managed can produce the following results:

- Ratification of international standards and more effective incorporation of these standards into domestic law and practice, thereby expanding the range of human rights protection for individuals;
- A stronger legal system, improved rule of law and strengthened independence of the judiciary;
- A better functioning electoral system;
- Greater awareness and implementation of economic, social and cultural rights, leading to an improved quality of life for the people of Malaysia;
- Improved linkage between human rights and development;
- Enhanced programmes for vulnerable groups.

The benefits of developing and implementing a National Human Rights Plan of Action cannot be denied. It forms part of the recommendations of the Handbook on National Human Rights Plans of Action by the United Nations Office of the High Commissioner for Human Rights.

With political will, Malaysia can achieve all this and thereby be a role model for the world.



SUHAKAM Commissioner, Datuk K. Pathmanaban, passed away on 9 June 2001. Datuk Pathmanaban served on the Law Reform Working Group and also acted as the SUHAKAM liaison person for dealings with the Police. He was a man of honour and integrity whose judgement and measured deliberations were much appreciated by SUHAKAM members.

Dr Pathmanaban was an outstanding civil servant who left government service to join politics where he rose up the ladder to eventually become the Deputy Minister of Health. His contributions to uplifting the standard of living of poor Indian communities, his commitment to improving race-relations among Malaysians, and his own modest lifestyle endeared him to many.

We at SUHAKAM will always value the contributions he made to this Commission at its most fledgling stage.

CHAPTER 2

THE STATE OF HUMAN RIGHTS

Malaysia's human rights record in the year 2001 was a mixed one. Two key areas of fundamental liberties suffered particularly: the right to an open and fair trial and the right to peaceful assembly. In other areas, however, Malaysia made some progress. SUHAKAM welcomes, in particular, the amendment to Article 8 of the Federal Constitution which prohibits discrimination on the basis of gender, a recommendation made in the SUHAKAM annual report for 2000. This amendment will go a long way to enable the Government and women's groups to work towards amending all laws that discriminate against women.

The appointment of two highly respected personalities, Tan Sri Mohd. Dzaiddin Hj. Abdullah as Chief Justice and Datuk Ainum Mohd. Saaid as Attorney-General in early 2001 raised hopes that two important arms of democratic governance in Malaysia, the judicial and legal institutions, would once again be able to enjoy public confidence. The judicial activism displayed by a High Court judge in Shah Alam in his judgement on a habeas corpus hearing for two ISA detainees was seen as an indication that judicial independence could be restored in Malaysia.

It is hoped that SUHAKAM's exercise of its functions and powers to protect and promote human rights in Malaysia will eventually go a long way towards creating a culture of human rights in Malaysia, exercised by all sectors of society, including the Government and political parties.

SUHAKAM's inquiry into Native Customary Rights will, we hope, begin a process of dialogue between state governments and indigenous groups to solve their long-standing problems over land. SUHAKAM has offered to play a mediating role in resolving this issue in Sarawak. It is also hoped that SUHAKAM recommendations to ratify key international human rights instruments will provide an impetus to the Foreign Ministry to speed up the process of ratification that it had already begun.

Detention Without Trial

Earlier indications by certain Government officials that the authorities were willing to review the Internal Security Act (ISA) seem to have been put on hold in 2001 as the Government resorted to detention without trial to deal with what it claimed to be threats to national security. These threats were allegedly posed by smugglers of illegal immigrants, Reformasi activists for allegedly trying to overthrow the Government through street demonstrations and alleged Islamist militants accused of trying to establish an Islamic state in Malaysia, Indonesia and Southern Philippines through violent means.

The number of those detained in Kamunting almost doubled from 40 at the end of 2000 to 78 by the end of 2001. They included 21 who were detained for allegedly smuggling illegal immigrants, five were Reformasi activists, and 13 alleged members of the Malaysian Militant Group (*Kumpulan Militan Malaysia-KMM*).

The arrest of seven Reformasi activists in April, and the subsequent detention of five under the ISA, sparked widespread condemnation from civil society groups and opposition political parties. SUHAKAM issued a press statement stating unequivocally its position that detention without trial constituted a fundamental human rights violation and it urged the Government to charge all detainees in open court or to release them. (See **Appendix III.**)

From August until the end of the year, the Government began a series of arrests and detention under the ISA of alleged members of KMM. While the Government justifies the ISA as a preventive detention law to deal with threats to national security, civil society groups see it as an oppressive law which can, and has been, abused to serve the political interest of the Government. They argue that existing legislation, such as the Penal Code and the Police Act, is sufficient to deal with threats to public order and national security.

The situation is now further complicated by the aftermath of the attack on the World Trade Center Twin Towers in New York City on September 11. As old democracies such as the United States and Britain resort to preventive detention laws in their war against terrorism, the Malaysian Government sees their action as further validation for the retention of the ISA.

Such action by Western governments and the threat of religious militancy in countries like Malaysia have made the struggle by civil liberties groups to get the ISA repealed even more difficult. A persuasive argument was

made that the ISA, which was enacted in 1948 to fight the communist insurgency, had outlived its purpose since the disbandment of the Malayan Communist Party in 1989. By the end of 2001, however, arguments were made that the ISA was still needed to deal with a new threat confronting Malaysia, that of religious extremism and terrorism. In many countries today, there is much debate as to where the balance lies between protection of the fundamental liberties of citizens and the responsibility of the state to maintain national security. Questions are raised: Should we give up freedom in order to protect freedom? Should the rights of the minority be sacrificed in order to protect the majority? These issues are being debated in many democratic societies as they grapple with new anti-terrorism laws that violate much cherished fundamental liberties.

SUHAKAM plans to hold wide consultations in 2002 to examine the ISA and other preventive detention laws with a view either to repeal or amend specific provisions to ensure that judicial and procedural safeguards are strengthened such that the fundamental rights of those detained, the right to judicial review, access to counsel, the right to be present in court during habeas corpus hearings are protected.

In this context, SUHAKAM welcomes the enlightened judgement of Justice Mohd Hishamuddin Mohd Yunus in the Shah Alam High Court in releasing two ISA detainees in May on the grounds that their detentions were unlawful, done in bad faith, violated their constitutional rights and ignored procedural safeguards.

As an interim measure, it is hoped that the authorities will study closely his grounds of judgement to ensure that any use of the ISA will strictly comply with its provisions on justification for arrests, uphold constitutional requirements, and follow procedure. It is also hoped those arrested will be given immediate access to their families and lawyers.

Freedom of Assembly

SUHAKAM regarded the blanket ban imposed in July on political ceramah (talks/rallies) held in open spaces as an undue restriction on freedom of assembly and freedom of expression. Furthermore, there is no provision in the Federal Constitution which provides for such a blanket ban. Opposition political parties criticized the ban as it denied them an important avenue to communicate with the Malaysian public. The Islamic party, PAS, announced that it would defy the ban. Since then, there have been several incidents when Police intervened to stop PAS assemblies and a number of PAS leaders were arrested and charged for holding illegal assemblies.

The Government justified its ban by stating that political rallies posed a threat to national security as some gatherings had ended violently. However, opposition parties countered that they had held thousands of ceramah throughout the country over the years without any untoward incident, thus proving that the ceramah posed no threat to national security or public order.

They also alleged that if there had been any isolated incidence of violence, they were provoked by agent provocateurs and they called on the authorities to set up independent inquiries to ascertain who was responsible for the use of force in public meetings which resulted in the breakdown of law and order.

Earlier this year, SUHAKAM, in response to several complaints on restrictions on freedom of assembly, undertook a review of all laws that restricted the right to peaceful assembly and made recommendations to improve the present laws and practices to ensure that both the right to freedom of assembly, and preservation of national security and public order are met. (See summary of the report in Chapter 3: Issues in Focus.)

SUHAKAM hopes that the Government will seriously consider the recommendations in the Report, which were made after consultations with the Police, political parties and NGOs. We feel that a relaxation on restrictions imposed on the right to peacefully assemble will go a long way to ease public discontent as it provides an avenue for the public to voice their concerns and exercise their right to free speech.

For a start, SUHAKAM welcomes the statement by the Prime Minister that the Government will consider the proposal for the authorities to identify suitable public areas for peaceful assemblies.

CHAPTER 3

ISSUES IN FOCUS

(i) FREEDOM OF ASSEMBLY

The right to peaceful assembly was the first report of the Law Reform Working Group (LRWG) as part of its responsibility to review existing laws that might infringe or erode human rights in Malaysia. In response to several complaints submitted to SUHAKAM by opposition political parties and NGOs that the exercise of their right to peaceful assembly had been repeatedly infringed by the authorities, the LRWG undertook to review all laws that restrict the right to peaceful assembly and make recommendations to improve the present laws and practices to ensure that both the right to freedom of assembly and the preservation of national security and public order are met.



Informal discussion with the Foreign Minister, Datuk Seri Syed Hamid Albar.

The report, which was submitted to Parliament on 8 October 2001, examined several factors which restrict the right to peaceful assembly.

1. Granting of police licences

This section looks at the power the Police have to regulate assemblies and meetings in public places and police criteria and procedure for the issuing of licences for public assembly. It examines complaints and case law on improper conditions which restrict freedom of speech, including the number of speakers and the subject matter of speeches; inadequate or lack of grounds for refusal of a police licence and last-minute cancellation of licences.

The Police have indicated that their grounds for refusing to issue a licence are the threat to public order and national security, and also causing disturbance to the public in a public place. However, there are instances where the facts of the case do not seem to justify the

grounds given for refusal and there are other instances where no reasons were given for the refusal of the licence. Further, the report noted that refusals are often issued a day or two before the scheduled event.

2. Dispersal of Assembly

The Police may stop an assembly if no licence has been issued for that assembly or if the licence was subsequently cancelled or if the assembly contravenes any of the conditions of the licence issued. In stopping the assembly, the Police may order the persons attending the assembly to disperse.

The report examines complaints of insufficient time given to the public to disperse after the order to disperse was given. It was alleged that Police would move in as soon as the order was given and would start hitting people with their canes or batons. It also examines several complaints of improper or excessive use of force, including the use of tear gas and water cannons, chasing people who were running away and physically abusing them when they were caught, chasing people into shops and restaurants and arresting people at random, including innocent bystanders.

3. Omnipresence of the Police

It was found that the omnipresence of the Police, FRU trucks, water cannons, and the use of dogs at assemblies tend to create a hostile environment. Demonstrators, rightly or wrongly, regard the Police as partial and their omnipresence generates the perception that the Police are ready to strike the moment an order of dispersal is made.

4. Amendments to the Police Act 1967

Major amendments were made to the Police Act 1967 through the Police (Amendment) Act 1987, which came into force on 8 January 1988. The amendments erred too much on the side of caution against the interests of those exercising their right to peaceful assembly. These amendments included restrictions on who could apply for a licence to assemble, expanding the scope of those who may be found guilty of an offence to include "... all persons attending, found at or taking part in such (unlawful) assembly...".

With the latter amendment, innocent passers-by could find themselves arrested and prosecuted. The situation is made worse by the fact that sometimes people are found at the scene of an unlawful assembly due to a police

roadblock or other congestion preventing them from moving on.

Figures provided by the Bar Council Legal Aid Centre (Kuala Lumpur) indicate that the majority of people arrested (over 800 in the period 1998-2001) were not charged, and a majority of those charged for being at an unlawful assembly under section 27 of Police Act 1967 were either acquitted or discharged not amounting to an acquittal, proving that these people should not have been arrested in the first place.

RECOMMENDATIONS

The report concluded with a list of short-term and long-term recommendations. The main recommendations include:

1. Short-term Measures

1.1 Grant of Police Licences

- a) Applications for licences to hold assemblies in premises such as stadiums, halls, and private properties to be approved as a general rule, without restrictions on freedom of expression;
- b) Public places of different sizes and at various locations are to be identified by the authorities for the holding of public assemblies to help overcome the difficulty that some organizers have in securing suitable places for their assemblies;
- c) The procedure for applying for licences to be simplified by using a standard form to be issued to organizers to include details such as location of assembly, estimated starting and finishing times and estimate of crowd expected.

1.2 Guidelines for Organizers

Guidelines for organizers of public assemblies and processions should be prepared, setting out the responsibilities of organizers in areas such as public safety, avoiding damage to property, avoiding fear or alarm to the public, avoiding disruption to the local community.

1.3 Line of Communication between the Police and Organizers

A line of communication between the Police and organizers of public assemblies and processions should be established and be kept open to enable friendly negotiations to take place, particularly in relation to conditions to be imposed on organizers.

1.4 Dispersal of Assembly

a) The Police should review methods of crowd dispersal:

- The emphasis should be on restraint, particularly in the use of canes, batons, tear gas and water cannons;
- The order to disperse should be given three times at ten-minute intervals. The order to disperse should be clearly audible;
- Sufficient time must be given to allow people to move. The larger the crowd, the more time will be required to disperse it;
- If the crowd starts moving away, they should not be chased and arrested and/or assaulted; and
- Only if there is clearly resistance to the order to disperse should force be used, and even then it should only be such force as is reasonably necessary to overcome the resistance.

b) The Police should review procedure for maintaining law and order:

- At assemblies and processions, the

Police should maintain a discreet presence, concentrating on minimizing disruption to traffic, commercial life and business, and ensuring free movement of other users of public spaces;

- Riot police (FRU and PORU) may be on standby, if necessary, but should be out of sight.

c) The Police should establish a monitoring system for ensuring enforcement of set procedures:

- The Police should establish an internal monitoring unit;
- Official recognition should be given to SUHAKAM, Bar Council and recognized NGOs as observers.

2 Long-term Measures

2.1 Attitude of Authorities

In the past three years, Malaysian civil society has strengthened and the demand for civil and political rights has become louder. This has meant that Government action that infringes the fundamental rights of its citizens no longer remains unchallenged. It is imperative for the Government to respond to the changing political climate and the changing aspirations of Malaysian civil society.

In order for values of civil society, democracy and the rule of law to be understood, internalized, and welcomed by the authorities, the following are recommended:

- a) Regular dialogue sessions should be held between:
- SUHAKAM and top-level police officers;
 - SUHAKAM and policy-makers;
 - the Police and NGOs; and
 - the Police and political parties.

- b) Training programmes organized by SUHAKAM and/or NGOs should be attended by the Police, decision-makers and policy-makers of all levels.

2.2 Amendments to the Police Act 1967

All provisions in the Police Act regarding applications for licences need to be amended to incorporate the changes suggested in the other recommendations.

2.3 Establishment of Drafting Committee

A drafting committee should be set up to prepare the necessary amendments to the Police Act to be tabled in Parliament. The committee should have representatives from the Police, Attorney-General's Chambers, NGOs and SUHAKAM.

2.4 Review of the Public Order (Preservation) Act 1958

In view of the changed and changing circumstances in Malaysia and the proposed amendments to the Police Act suggested above, the Public Order (Preservation) Act 1958 (Act 296) imposes undue restrictions on the right to freedom of assembly. It is proposed, therefore, that the Drafting Committee also review the Public Order (Preservation) Act 1958 and make amendments consistent with the proposed amendments to the Police Act.

CONCLUSION

SUHAKAM acknowledges that the preservation of peace and stability is paramount, and public order needs to be maintained at all times. SUHAKAM is also of the view that peaceful assemblies do not necessarily disrupt peace and stability and

need not cause any public disorder if all persons involved—the public and the authorities alike—conduct themselves with propriety. SUHAKAM believes that the recommendations made will ensure that freedom of assembly and the greater right of freedom of expression can be enjoyed in a peaceful environment.

- The full report on freedom of assembly can be obtained from SUHAKAM or our website.

(ii) THE KESAS HIGHWAY INQUIRY

SUHAKAM's first public inquiry was into an incident that occurred on the Kesas Highway on 5 November 2000 when the Police prevented a rally taking place. Concerned by media reports about the large number of people arrested at the incident, some of whom were injured, SUHAKAM decided to exercise its power to conduct an inquiry, on its own motion, to determine whether there had been any violation of human rights during the incident. Three commissioners were appointed to the Inquiry Panel.

The Inquiry was spread over 20 days and 46 witnesses gave evidence on oath-23 persons who had been at the scene of the incident, seven expert witnesses called by the Panel, and 16 witnesses produced by the Police. These sessions were given extensive coverage in the media. The publicity proved to be an effective means of raising public awareness on human rights and of informing the public about SUHAKAM and its role in relation to human rights.

The Panel visited two sites (one along Kesas Highway and the other at Jalan Kebun where the rally had been scheduled to take place) as well as the Kapar Police Station Lock-up, and recorded evidence from nine additional witnesses. The Panel also received other information relating to the incident. However, before such information was accepted, the panel evaluated the probity of the source of information and weighed the information against the other evidence adduced at the Inquiry. The information the Panel found to be admissible was considered in the Panel's deliberations.

From the evidence adduced, 22 issues were raised. The report deals with the issues under 10 topics as related issues were considered together. For each topic, the evidence adduced was set out briefly, then the applicable law was examined and, where relevant, international instruments were referred to. The Panel then set out its findings. Where violations of human rights were found to have occurred, the Panel made recommendations aimed at improving the situation and/or preventing a recurrence of the violations.

This summary highlights the more significant findings and recommendations. The full report of the Inquiry is available on the SUHAKAM website. The ten topics and the issues dealt with under each topic are set out below.

1 No Police licence for the proposed rally/Opposition to proposed rally by residents of Jalan Kebun

The Panel found that there was an application of double standards on the part of the Police in relation to public assemblies. Some residents of Jalan Kebun objected to the proposed rally and staged a demonstration. The Police did not stop the demonstration. The Panel strongly recommended that the law relating to assemblies be applied equally and without discrimination.

The Panel was of the view that if the rally had been allowed to take place at the Bukit Jalil Stadium, as applied for by the organizers, with Police exercising traffic and crowd control, no untoward incident would have occurred.

The Panel recommended that the authorities, including managers of public places, allow the use of public places, if they are suitable, for gatherings organized by all sectors of society without any discrimination. This would avoid the problem of unsuitable venues.

2. Preventing public from proceeding to private property / Roadblocks causing traffic jams / Innocent passers-by at scene of alleged illegal gathering due to roadblocks

The Panel found that it was the Police roadblocks that initially caused the traffic congestion on the Kesas Highway on 5 November 2000. As a result of the roadblocks, several people not involved with the gathering were held up and subsequently arrested.

The Panel recommended that roadblocks should not be used to prevent gatherings and assemblies from taking place.

3. Insufficient warning and time to disperse

The Panel found that insufficient time was given for the crowd to disperse. The Panel also found that Police personnel continued to chase people even when they were running away from the scene or, in other words, trying to disperse.

The Panel recommended that ;

- a) Warnings to disperse should be given loudly and clearly, three times at ten-minute intervals.
- b) People should be given sufficient time to disperse. The actual time given should depend on the size of the crowd. The larger the crowd, the longer the time given to enable them to disperse.
- c) Police should not chase people who are trying to get away from the scene after a warning to disperse has been given.

4. Use of force on persons attempting to disperse / Causing damage to property / Confiscating private property

At the Inquiry, 16 witnesses testified to the use of force and, in some cases, the excessive use

of force, by Police personnel on persons who were leaving the scene after an order to disperse was given by the Police. Their evidence of the injuries they suffered was corroborated by medical evidence given by four of the doctors who attended to them. One witness suffered a fractured skull caused by a tear gas canister fired directly at the crowd and another suffered temporary blindness caused by tear gas being sprayed on his face while he was detained in a Police vehicle. Other injuries suffered included a fractured nose, bruises and lacerations on the face and body. There was also evidence of cars and motorcycles being damaged and film from a camera confiscated. One young woman had her *tudung* pulled off while she was being beaten with a cane.

The Panel found that force was used to stop persons attempting to get away from the scene rather than to overcome resistance to the order to disperse as allowed by law. The Panel was of the view that the force used was not reasonably necessary, particularly in the case of persons sitting in their cars who were unable to move due to the traffic congestion and who were forced out of their cars and assaulted. The Panel also found that excessive force was used on people who had already been arrested and were being taken away to Police vehicles.

The Panel made the following recommendations:

- (i) The Police should review the methods of crowd dispersal. In particular:
 - (a) Police personnel on duty should be ordered to exercise restraint when dispersing unlawful assemblies, especially in the use of canes and batons, tear gas and water cannons.
 - (b) If the crowd starts moving away after a warning to disperse has been given, they should not be chased and arrested and/or assaulted.

- (ii) The headgear (*tudung* or *hijab* or scarf) of women should never be pulled off by Police personnel, and women should not be manhandled.
- (iii) Police personnel should not destroy property belonging to members of the public nor should they confiscate property without a justifiable reason.
- (iv) The Police should conduct their own investigations to determine which of their officers had used force in a manner not permitted by law. The Panel stressed that the purpose of the exercise should be to prevent a recurrence of the incident.

5. Causing injury to persons in detention / Delay in providing medical treatment for injured detainees / Failure to provide medication prescribed

The Panel accepted the evidence of the persons injured that tear gas was sprayed into the truck in which they had been held. The Panel noted from the evidence of the expert witnesses that tear gas should never be released in a confined space as it is possible to create a lethal concentration. The Panel found that one witness had had tear gas sprayed into his eyes at close quarters causing him to lose his sight temporarily. The Panel also found that although several persons detained had suffered injuries, there was a delay in providing medical treatment. Some were brought to the hospital the next morning while others only the next night, after ordered by the Magistrate. The Panel found that some detainees were not given the medication prescribed by the doctors.

The Panel recommended that:

- a) The Police should not assault persons who have been arrested and/or are in detention.
- b) Medical treatment should be provided without delay.

6. Conditions of detention / Treatment in detention

There was evidence of mistreatment, but the most serious complaint was from a female detainee who was asked to strip and do ten squats. The Police explanation was that stripping and squatting (once only) was part of a thorough body search to ensure that the woman did not have any drugs or dangerous materials concealed in her body. The Panel was of the view that requiring a person to strip and squat is degrading treatment and such a body search should be carried out, if at all, only on suspects in drug related offences or violent crimes.

The Panel recommended that the practice be stopped.

7. Remand proceedings / Remand of juveniles / Taking of statements from detainees

All the witnesses were produced before a Magistrate to enable a remand order to be made so that they could be detained for a further period pending investigation. The period of remand requested by the Police was 10 days, but the Magistrate allowed only five days, his reason being that there would be overcrowding if they were detained for a longer period. Among the arrested persons was a 17-year old student who was due to sit for a major national school examination a week later.

The Panel was of the view that the remand period sought was unnecessarily long as the alleged offence was that of being present at an unlawful assembly and no investigation was necessary. The Panel felt that all the arrested persons could have been released on Police bail and not remanded at all. The Panel was of the view that incarceration for five days was unnecessary and a violation of the individual's right to liberty. The Panel felt that the student should have been released on Police bail and not remanded.

What was more disturbing, perhaps, was that the detainees were questioned by the Special Branch about matters not directly related to the alleged offence for which they were detained. The Panel was of the view that any questioning of, and recording of statements from, detainees must comply with sections 112 and 113 of the Criminal Procedure Code, and that the Police general power to gather intelligence under section 3(3) of the Police Act was circumscribed by those two specific provisions. As such, detainees must be informed that they have a right not to answer questions that might incriminate them, statements taken from them must be read back to them and they must be given the opportunity to make corrections or additions before signing the statement. These rights were not given.

The Panel recommended that the Police have a training or retraining programme for all personnel involved in seeking remand orders so that remand is obtained only when there is a real need to investigate a crime and not used for the purpose of collecting security intelligence or of "turning over" detainees. Shorter remand, or none at all, would reduce the overcrowding in lock-ups and would ultimately ease the burden on the Police.

8. Police Bail

All detainees were released at the end of the remand period on Police bail and were required to report to the Police station at least once a month. One witness had reported to the Police on the 29 November, 12 December 2000 and 9 January 2001. The Panel was concerned about the misuse of Police bail for an indefinite period.

The Panel recommended that if persons on Police bail are not charged in court within the first month, they should be released unconditionally.

9. Provocation of Police / Injuries to Police personnel

The Panel accepted the Police evidence that the crowd was throwing stones and sticks at the Police during the last incident that day. The Panel noted, however, that the crowd's behaviour was a reaction to earlier Police brutality, excessive use of tear gas and water cannons.

The Panel was of the view that if the Police had exercised restraint in crowd control, this violence would not have happened and persons assembled would have dispersed peacefully.

10. Police personnel on duty for unduly long periods

The Panel received information from sources that the Panel considers reliable, that Police personnel were on duty for long periods without rest and/or proper meals. The senior officers who gave evidence insisted that Police personnel worked on shifts and were provided with food and drinks.

The Panel recommended that smaller numbers be deployed for crowd control so that each unit can work for a shorter period.

CONCLUSION

The Inquiry Report was sent to the relevant authorities for consideration and action. Although it has been described as "biased", SUHAKAM is encouraged to know that a task force was set up to study the recommendations. One change that SUHAKAM notes is that Magistrates now do consider whether there is a real need to remand an arrested person for further investigation and they do sometimes refuse to make remand orders when they find that there is no need to have the person in custody for investigations to be carried out.

(iii) RIGHTS OF ISA DETAINEES

As a result of complaints made on behalf of those detained in 2001 under the Internal Security Act (ISA), the Visitation Sub-Working Group (VSG), under the Complaints & Inquiry Working Group (CIWG), made two visits to Kamunting Detention Camp in Taiping, Perak (Kamunting).

The first visit to Kamunting, in July, was to look into the conditions of Reformasi and Shia detainees ensuing from two memoranda received by the CIWG, while the second visit, in November, was to look into the conditions of the *Kumpulan Militan Malaysia* (KMM) detainees. The second visit also served as a follow-up to monitor the implementation, if any, of earlier recommendations made by SUHAKAM resulting from the earlier visit.

The main complaints made by the ISA detainees to the VSG are summarized below. The full visitorial reports are available on the SUHAKAM website.

1. Disputed Grounds for Detention and Duration of Detention

Some ISA detainees were uncertain as to the reasons behind their detention. The Shia faith followers were told by the authorities that their detention was not related to their faith, but because of their association with an international terrorist organization. However, they objected to this charge as they claimed they had not engaged in acts of violence.

Other ISA detainees were particularly concerned about the actual length of time they were to be detained. This is because the two-year detention order can be extended to an indefinite number of two-year terms.

2. Right to Practise Religious Beliefs

All male Muslim members amongst the ISA detainees were not allowed to perform the compulsory Friday prayers as a congregation. One reason for this, according to the authorities, was to ensure the separation of new detainees from the other detainees who have gone through a substantial rehabilitation process. During the second visit made to Kamunting, it was made known to SUHAKAM that a fatwa had been issued by the Perak Religious Council to the effect that it is not compulsory for persons who are not "free" (*merdeka*) to carry out the compulsory Friday prayers as a congregation. Furthermore, the number of ISA detainees does not reach the required number of 40 persons to render congregational Friday prayers compulsory.

SUHAKAM recommends that all :

- a) male Muslim detainees be permitted to attend Friday prayers as a congregation on the following grounds:
 - i) the performance of Friday prayers does not provide opportunity for prolonged interaction among members of the congregation. Moreover, the detainees are under constant supervision of prison officers.
 - ii) the quota of 40 persons can be met if the number of other persons held in Kamunting is considered. (Kamunting also holds pre-release convicted prisoners besides the ISA detainees.)
 - iii) the request to perform the Friday prayers as a congregation is a request made on the basis of the detainees' religious beliefs. To refuse that request is an infringement of the freedom to practise one's religion.

3. Separation of Reformasi Activists

During both visits to Kamunting, the Reformasi activists were kept separated at all times in groups of two or three. Prison officers explained that this was the usual practice with new detainees who were beginning the assimilation/rehabilitation process. This, they said, was an unwritten policy and this process was carried out on a case-to-case basis.

It was pointed out that the KMM detainees also went through a period when they were separated for three months upon arrival at Kamunting. During the VSG's second visit, the KMM detainees were no longer kept separated, unlike the Reformasi detainees. Prison officers said the Reformasi detainees remained separated because they apparently had not shown much progress in the rehabilitation/assimilation process. It was noted, however, that during the fasting month of Ramadan, this particular restriction was relaxed for purposes of breaking fast and *tarawih* prayers. The Reformasi detainees were allowed time together from 4.00 p.m. to 10.00 p.m.

SUHAKAM recommends that :

- a) a set programme in carrying out the rehabilitation/assimilation process be established and applied. This programme should include time limits on the separation of detainees and the employment of trained professionals such as counsellors to undertake the rehabilitation programme and to monitor the progress of the detainees *vis-a-vis* the rehabilitation programme.

4. Legal Professional Privilege - Communication between Legal Counsel and Client

Meetings between the Reformasi activists and their legal advisers were within the sight and hearing of the prison officers. Further, documents exchanged between lawyer and client/detainee were also vetted by the prison officers. The prison officers explained that actions taken by them were necessary measures to maintain peace and security and were in accordance with ISA rules.

SUHAKAM is of the view that rules made under the ISA cannot override Section 126 of the Evidence Act 1950 which provides for legal professional privilege regarding communications between legal counsel and client. Further, it is noted that there are provisions in the ISA rules that allow the relaxation of requirements on visits.

SUHAKAM recommends that :

- a) detainees should be allowed to consult their lawyers within sight but out of hearing of prison officers.

5. Visits

Reformasi detainees complained that they were not allowed to interact freely with their families during visits, except to hug shortly before sitting down to talk separated by a screen. According to the prison officers, this was the normal practice for all visits as it was a safety precaution. Families also complained that prison authorities made last-minute changes to their visiting times, resulting in them being unable to make the visits at the new time slots.

SUHAKAM recommends that:

- a) there is no necessity for a screen or partition to physically separate the detainees and their visitors. These visits are supervised and monitored by prison officers;
 - b) alternatively, visitors could be searched for any unauthorized articles before and after meeting detainees;
 - c) any last-minute changes to previously approved visits be kept to a minimum to avoid any inconvenience or hardship for the detainees' families.
- b) an interpreter or an official of the same nationality as the foreign detainees meet with them at least once a month to ensure that they are able to communicate their needs to the prison authorities or any other relevant persons/authorities.

This Visitation Report was submitted to the relevant authorities in the Home Ministry for their consideration.

6 Foreign Detainees

There were a number of foreign nationals detained under ISA in Kamunting during both visits there. According to the prison authorities, embassies of these foreign nationals were informed of their detention and efforts were made to have them deported. A number of them did not speak English or Malay and were thus unable to communicate effectively with members of the SUHAKAM delegation and the prison authorities. The prison authorities believed it was sufficient that the foreign detainees have access to an interpreter at least once in six months, when they made representations to the Advisory Board.

SUHAKAM recommends that:

- a) foreign nationals should be deported to their home countries unless their lives would be endangered, in which case they should be deported to third countries willing to accept them;

(iv) RIGHTS OF REMAND PRISONERS

SUHAKAM is of the view that all detained persons and prisoners have a right to be treated with respect due to their inherent dignity and value as human beings. SUHAKAM upholds that no one should be subjected to torture or to cruel, inhumane or degrading treatment or punishment. As such, when SUHAKAM's attention was drawn to the questionable manner in which some persons were treated when arrested and while in detention during investigations, two working groups began looking at the conditions of detention of remand prisoners. The Law Reform Working Group (LRWG) carried out a study on "The Rights of Remand Prisoners" and the Visitation Sub-Working Group (VSG) under the Complaints and Inquiry Working Group made several visits to various places of detention. Reports of the study and the various visits are available on the SUHAKAM website.

The main areas of concern for remand prisoners - rights upon arrest, remand proceedings and conditions while in detention and selected recommendations made by SUHAKAM are summarized below.

1. Rights upon Arrest

Some arrested persons complained that they were not informed of the grounds for their arrest and of what was going to happen to them. Their families and/or employers were also not informed of their arrest.

SUHAKAM recommends that:

- (a) the constitutional right of arrested persons to be informed of the grounds for their arrest as soon as possible be strictly applied;

- (b) arrested persons be provided information about remand proceedings, their rights to counsel and bail and in relation to interrogation in custody;
- (c) families and/or employers of arrested persons be notified as soon as possible.

Arrested persons also complained that they were denied visits from their families and access to counsel. The Police insisted that they could not allow arrested persons to see either their families or counsel until after the completion of investigations as there was a possibility of them giving instructions for the disposal of evidence.

As all visits are within sight and hearing of Police personnel, SUHAKAM recommends that:

- (a) families be allowed to visit as this access can determine whether the detainee has been abused;
- (b) the Federal Court decisions allowing the Police the right to decide when an arrested person can consult counsel should be reviewed so that the constitutional right to consult counsel can be exercised immediately upon arrest.

2. Remand Proceedings

Persons arrested are to be produced before a Magistrate within 24 hours of their arrest if they are to be detained for a further period pending investigation. The present practice of interpreting "24 hours" as "a day" and the consequent exclusion of public holidays has resulted in persons arrested before or on a public holiday being detained for much longer than the permitted 24 hours before a remand order is sought from the Magistrate.

SUHAKAM recommends that:

- (a) the words "24 hours" be interpreted strictly as the liberty of an individual is at stake and the interpretation in favour of the individual's liberty be enforced. As such, persons arrested should be produced before a Magistrate within 24 hours of their arrest regardless of whether the end of the 24-hour period will fall on a holiday. SUHAKAM is of the view that having a Duty Magistrate would enable applications for remand to be considered at any time. SUHAKAM believes that the liberty of the individual should not be sacrificed for administrative expediency.

Persons arrested also complained that neither they nor their families were informed of remand proceedings, that they were not allowed to brief counsel and during proceedings were kept at a distance from the Magistrate.

SUHAKAM recommends that :

- (a) family members and counsel be told when and where remand proceedings are to be held and that counsel be allowed to take instructions from the persons arrested;
- (b) Magistrates should consider whether there is any real need for the arrested person to be in detention while investigations are carried out, and not simply grant whatever period is sought by the Police;
- (c) Magistrates should take the initiative to inquire whether the family of the arrested person has been informed, whether he would like to have counsel representing him, whether he is physically and mentally well or in need of medical attention or medication and, finally, how long he has already been in detention.

Aware of the current shortage of Magistrates and the time that would be required for remand proceedings if a Magistrate did ask the above questions, SUHAKAM recommends that :

- (a) more Magistrates be appointed to cope with the increasing number of cases, and

- (b) except for serious offences, the Police release arrested persons on police bail as this would reduce overcrowding in lock-ups.

3. Conditions of Detention

Complaints that conditions in the lock-ups were appalling was borne out by SUHAKAM's visits to several detention centres. Overcrowding, male detainees stripped to their underwear, having to sleep on the cement floor, no privacy in the use of toilets, lack of water for the toilets and the consequent stench, contribute to making detention a traumatic experience. Clearly, the gazette notification for the number of persons that can be detained in a particular lock-up and the Lock-up Rules 1953 which sets out the rights of persons detained in lock-ups are not complied with.

SUHAKAM recommends that :

- (a) the Lock-up Rules be applied, particularly in relation to the provision of bedding and clothes for the detainees, which includes the right to wear their own clothes;
- (b) the Lock-up Rules be reviewed and brought in line with relevant United Nations Instruments (Standard Minimum Rules for the Treatment of Prisoners, Basic Principles for the Treatment of Prisoners, and Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment). At the very least, the Lock-up Rules should be amended to be in line with those provisions of the Prisons Regulations 2000 that apply to remand or unconvicted prisoners who are detained in prison.

The VSG reports also recommend that :

- (a) water tanks and pumps be purchased to alleviate the water problem at police lock-ups. SUHAKAM understands that the Police have taken steps to implement this recommendation.
- (b) Pudu Jail be used for detaining persons arrested for drug-related offences to reduce overcrowding in the police lock-ups.

(v) RIGHTS OF YOUNG PRISONERS

As a result of a public outcry, SUHAKAM, on its own motion, decided to investigate the predicament of young prisoners. As part of its investigation, visits by SUHAKAM Commissioners included the Kapar Police Station, the Sungai Buloh and Kajang Prisons and the Henry Gurney Schools in Teluk Mas, Malacca and Batu Gajah, Perak. Consultations between SUHAKAM Commissioners and volunteer lawyers from the Kuala Lumpur Legal Aid Centre were also held.

A workshop on the Rights of Young Prisoners was organized by SUHAKAM on 20 November 2001. The purpose of the Workshop was to identify and to find solutions to the problems faced by young prisoners in Malaysia. Representatives from various Government ministries and departments, the courts as well as non-government organizations were invited to the Workshop.



National Unity and Social Development Minister, Dato' Dr. Siti Zaharah Sulaiman at the Workshop on 'Rights of Young Prisoners'

The main problems identified at the Workshop and resolutions made are summarized below. The full report on the Workshop may be downloaded from SUHAKAM's website, whilst the transcript of the discussion of the Workshop and the Background Paper of the

Workshop may be obtained from SUHAKAM's library.

1. Police not contacting parents or guardians of young prisoners immediately after their arrest

Family members or guardians of young prisoners (aged below 21 years) must be informed of the arrest of a young prisoner immediately. Amongst the resolutions made were:

- (a) the Police shall issue a written memorandum as soon as possible to remind all Police officers of their responsibility to inform the parents or guardians of young prisoners about their arrest immediately after the arrest;
- (b) the Police shall issue guidelines containing all the steps that must be taken by a Police officer to trace the parents or guardian of a young prisoner and shall distribute the said guidelines to all Police officers for their guidance as soon as possible; and
- (c) the Court shall issue a circular that when a young prisoner appears before the court, especially if the young prisoner is not represented by counsel, the Court shall question whether the parents or guardian of the said prisoner have been contacted. If the Court finds that the parents or guardian of the young prisoner have not been contacted, the Court shall order that the prisoner's parents or guardian be contacted within 24 hours before proceeding with the case.

2. Police not contacting a probation officer immediately after the arrest of juveniles

It shall be the duty of the Police officer, immediately after the arrest of a juvenile-and not only at the pre-sentencing stage-to inform a probation officer of the arrest of the juvenile (age below 18). Amongst the resolutions made were:

- (a) the Police shall issue a written memorandum as soon as possible to remind all Police officers that it is mandatory for them to immediately inform a probation officer of the arrest of the juvenile and to transmit to the probation officer a copy of the charge and other information required by the probation officer;
- (b) the Ministry of National Unity and Social Development shall take the appropriate steps to ensure that at least one S3 and five S5 probation officers are placed at each district as soon as possible in view of the fact that the Government has approved an additional 398 officer positions; and
- (c) the Court shall issue a circular that where a juvenile appears before the Court, especially if the juvenile is not represented by counsel, the prosecution shall be questioned as to whether or not a probation officer has been contacted. If the Court finds that a probation officer has yet to be contacted, the Court shall order that a probation officer be contacted within 24 hours before proceeding with the case.

3. Police brutality and abuse of powers in Police lock-ups

The Workshop agreed that Police brutality and abuse of powers in Police lock-ups are serious matters. The main resolution made was that the Police shall issue a written memorandum as soon as possible to remind all Police personnel that they are prohibited from beating or using force against a prisoner and accepting any payment or reward from, or on the behalf of, a prisoner or from a visitor of a prisoner.

4. Young prisoners who are not allowed bail by the Police or who are not able to meet the high level of bail required by the Courts

Wherever possible, a young prisoner should be allowed bail. Amongst the resolutions made were:

- (a) the Police shall issue a written memorandum as soon as possible to remind all Police officers that if a case cannot be resolved in a short time, subject to the facts of each case, a young prisoner must be allowed bail; and
- (b) the Court shall issue a circular that when faced with a case concerning a young prisoner who is unable to provide bail other forms of bail such as the personal bond of the parents or relatives should be considered.

5. Remand of young prisoners in prisons

Wherever possible, a person under the age of 21 who has been accused of committing a crime shall not be detained in prison. Amongst the resolutions made were:

- (a) the Social Welfare Department shall inform all probation officers that they must attend Court at the dates when a juvenile is brought before the Court to enable them to provide the judge or the magistrate with information in relation to the juvenile, including information as to where the juvenile should be placed;
- (b) the Social Welfare Department shall inform all probation officers that they must follow the developments of the case of a juvenile from the time they have been informed of the arrest of the juvenile by the Police;
- (c) the Ministry of National Unity and Social Development shall investigate whether a Social Welfare Department detention centre for juveniles which has tighter security than other Social Welfare Department detention centres should be established specifically to remand juveniles who are thought to be out of control or cannot be safely detained in the current Social Welfare Department centres;

- (d) the Court shall issue a circular that all juveniles who are charged shall be remanded to Social Welfare Department institutions unless there is an application by the prosecution, the probation officer or any other relevant parties for the juvenile to be sent to other places of detention;
- (e) the Judicial and Legal Training Institute (ILKAP), Prime Minister's Department, shall organize training programmes for all relevant parties, that is the Court, the prosecution and officers from the Social Welfare Department, concerning the handling of cases involving persons under the age of 21 years; and
- (f) the Home Affairs Ministry shall investigate whether a remand centre specifically for young prisoners between the ages of 18 and 21 years should be established.

6. Young prisoners remanded in prisons for a long period of time whilst awaiting trial or sentencing

A young prisoner should not be detained for too long in prison whilst awaiting trial or sentencing because this will interfere with his mental and emotional development. Amongst the resolutions made were:

- (a) the Court shall begin a study in relation to the issuance of Practice Directions with the aim of achieving the completion of cases involving young prisoners, especially juvenile prisoners, within three months;
- (b) the Court shall fix other days for juvenile court proceedings as a replacement for the first and third Saturdays of the month which were juvenile court proceedings days before those days were declared to be holidays in the Government sector;
- (c) the Legal Affairs Division, Prime Minister's Department and the Court shall begin a study to ascertain the merits of the

proposal for the establishment of a court specifically for juveniles in each state;

- (d) the Court, the Prisons Department, the Social Welfare Department and the Legal Aid Centre shall as soon as possible begin to expedite the hearings and the sentencing of young prisoners (where applicable), especially juvenile prisoners; and
- (e) the Health Ministry, the Chemistry Department and the Social Welfare Department shall take no longer than three weeks from the date of the request for a report to complete their respective reports.

7. Students dismissed from schools because they were arrested by the Police and/or charged in Court

The principle that a person is innocent until proven guilty is a fundamental principle and, as such, a student must not be dismissed from school merely because the said student has been arrested by the Police or charged in Court. Amongst the resolutions made were:

- (a) the Legal Aid Bureau shall inform the Education Ministry about students who have been dismissed from schools and other educational institutions because they have been arrested by the Police or because they have been charged in Court; and
- (b) the Education Ministry shall issue a circular to order all schools and educational institutions not to take any disciplinary action against students who have been arrested by the Police or because they have been charged in Court until their cases have been finally decided by the relevant authorities.

8. Lack of proper rehabilitation programmes for young prisoners in prisons

Suitable rehabilitation programmes for young prisoners must be conducted in all prison institutions to prepare them to return to society. Amongst the resolutions made were:

- (a) the Court shall issue a circular that, subject to the facts of each case and also subject to the discretion of the Court, when faced with a case concerning young prisoners, alternatives to prison sentence should be given full consideration by the Court;
- (b) the Judicial and Legal Training Institute (ILKAP), Prime Minister's Department, shall organize training programmes for all officers of the Court in relation to sentencing of persons under 21 years old;
- (c) the Prisons Department shall increase the quality of its current rehabilitation programme in prison institutions whilst awaiting the building of new prison institutions with better facilities. Amongst the steps that should be taken by the Prisons Department are:
 - (i) the Prisons Department shall train prison officers in the fields of counselling and child psychology to enable them to assist in the care of young prisoners, especially inmates of Henry Gurney Schools;
 - (ii) the Prisons Department and the Home Affairs Ministry shall conduct a study on how a work placement scheme in both the public and the private sectors may be implemented for young prisoners, especially inmates of Henry Gurney Schools;
 - (iii) the Prisons Department and the Education Ministry shall conduct a study on possible joint ventures between prison institutions, especially Henry Gurney Schools, and Institutions of Higher Learning (IPTA) to assist in the enhancement of chances of acceptance into the respective IPTAs of former young prisoners; and
 - (iv) the Prisons Department and the Education Ministry shall co-operate to fill the vacant positions for academic teachers at Henry Gurney Schools as soon as possible.
- (d) SUHAKAM, with the co-operation of the Prisons Department, shall organize a workshop for non-governmental organizations and other individuals to inform them of the necessity of public support to encourage and facilitate the return of former young prisoners to society.

(vi) RIGHTS OF OTHER PRISONERS

The Visitation Sub-Working Group (VSG) visited several places of detention in 2001, mostly prisons and lock-ups. Each visit normally serves a particular purpose, for example, to look into the conditions of specific groups of detainees such as young prisoners or ISA detainees. However, that does not mean that the conditions of other prisoners met during these visits are ignored or neglected. In the various visitorial reports, issues regarding other prisoners such as foreign nationals, female prisoners who are pregnant or with babies/children in the prison grounds, civil prisoners, and prisoners with HIV/AIDS were also raised and discussed. This section of "Issues in Focus" covers these issues.

1. Foreign Nationals

- (a) **Language Barrier:** Some of the foreign prisoners were unable to communicate effectively with the prison authorities as they do not speak Malay or English. At the Kajang Prison for Women, for example, the prison authorities had to "appoint" a spokesperson from amongst foreign prisoners of the same nationality to be the "go-between" with those who do not speak Malay or English. Efforts should be made for interpreters or an official of the same nationality as those unable to communicate properly with the prison authorities to visit these prisoners at least once a month. This is to enable them to express themselves and convey their needs or concerns to the prison authorities.
- (b) **Overcrowding:** It was noted during the visit to the Kajang Prison for Women that of the 787 prisoners held on that day, 560 were foreign nationals. Further, the

capacity of this prison is 450 prisoners. If the foreign nationals are deported to their home country, the prison could easily accommodate the remaining 227 Malaysian prisoners without the possible consequences of overcrowding. According to the Sungai Buloh Prison officers—as affirmed by the prison authorities from the Kajang Prison for Women—when there is a foreign national detained, the Immigration Department and relevant embassy are notified to ensure that he/she is deported as soon as possible. Usually the prison authorities detain the foreign national for as long as a month before following up with the Immigration Department again.

- (c) **"Banduan Dagang":** These are foreign nationals who have completed their sentence and are awaiting deportation. At the time of the visit to the Kajang Prison for Women, there were 135 of them. If and when the deportation process is not carried out expeditiously, these foreign detainees have their "sentence" extended. This is of concern in view of the fact that foreign detainees at the Kajang Prison for Women have had to wait up to two years to be deported.

2. Prisoners with Special Needs

- (a) **Pregnant Prisoners:** Prisoners at the Kajang Prison for Women include pregnant women, with some of them giving birth while in prison. The prisoners and their babies receive medical attention and treatment from medical staff of the prison and Kajang Hospital. However, there is no specific nutritional regime provided to meet pre/post-natal dietary needs. SUHAKAM was informed that the prison authorities and the Ministry of Health were working on a menu to cater for the nutritional needs of pregnant prisoners and their children.

- (b) **Prisoners with Babies/Children:** Prison Regulation 13(1) of the Prison Regulations 2000 provides that a child up to three years of age may be admitted with his mother by the Director-General. During the visit to the Kajang Prison for Women, there were 10 children kept within the prison grounds. They spend the day in a children's corner in the care of other prisoners while their mothers carry out their daily duties and return to their mothers in the evening.

We observed that some of these children suffered from a skin disorder. The well-being of the children needs to be improved.

Fathers of these children are encouraged by the prison authorities to visit them. However, they can only meet over counters. Some fathers do not visit their children at all, and alternative father figures should be encouraged to visit these children to familiarize them with men.

It must be highlighted that in the Standard Minimum Rules for the Treatment of Prisoners (as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1997), Rule 23 from the Medical Services section provides:

- i) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements

shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

- ii) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

- (c) **HIV/AIDS Prisoners:** Kamunting Detention Camp at Taiping, Perak is the designated northern zone for the holding of HIV/AIDS from Perak, Penang and Kedah. This zoning system has been implemented since October 1991 and is referred to as the AIDS Control Centre according to zones (*Pusat Kawalan AIDS mengikut zon*). It was explained that the zonal system is implemented to better facilitate the treatment and monitoring of HIV/AIDS prisoners. There were also HIV/AIDS prisoners at the Kajang Prison for Women; no special diet appeared to be provided for them. There were also a few young male prisoners with HIV/AIDS at the Sg. Buloh Prison.

3. Civil Prisoners

At the Kajang Prison for Women, it was brought to the attention of SUHAKAM that there were 12 civil prisoners held there on the day of the visit. They were held in the same area as remand prisoners. These prisoners were held under section 396 of the Criminal Procedure Code, which provides for the detention of witnesses in criminal trials whom the Public Prosecutor or accused fears may abscond before the trial.

Although the financial responsibility for these civil prisoners falls upon the courts, the prison authorities have had difficulty in getting financial support from the courts. As such, these civil prisoners are an added financial burden to the prison authorities.

SUHAKAM recommends that the courts fulfil their responsibility in maintaining the civil prisoners.

CONCLUSION

The authorities need to appreciate that not all detainees/prisoners are the same. While equality of treatment is imperative, there may be instances when the needs of different detainees/prisoners need to be catered to, particularly if this could improve the overall condition of the place of detention. As an example, by expediting the deportation of foreign detainees, overcrowding could be avoided.

(vii) REPEAL OF THE BANISHMENT ACT 1959 (Act 79)

The Banishment Act 1959 is a law providing for the banishment and expulsion from Malaysia of persons who are not citizens. The Act was frequently used in the 1960s, but since then it has not been used at all.

Under the Act, the Minister of Home Affairs is empowered to make a banishment order if he is satisfied that the banishment of the person is conducive to the good of Malaysia. Usually, the banished person will be sent back to his country of origin by the Malaysian authorities. While waiting to be sent back, he is detained in jail.

The Minister also has powers to make an expulsion order. The person so expelled is not detained, and is required to make his own arrangements to leave Malaysia.

For those who were banished, a problem arose when their country of origin refused to take them back. They continued to be detained in jail. In December 1973, there were 75 banished persons detained in prison; some had been detained for seven years with no hope of being sent anywhere.

This matter was raised in Parliament several times and eventually, in December 1975, 63 of the banished persons were released from prison.

SUHAKAM has obtained the following information from the Ministry of Home Affairs:

1. The authorities have not used this Act for a long time.
2. All persons detained in prison under a banishment order have been released.

This Act is no longer required as non-citizens can be deported to their country of origin by using the Immigration Act 1959/63 (Act 155) if they are in Malaysia on a visit pass, employment pass or are illegal immigrants.

SUHAKAM recommends that the Banishment Act 1959 be repealed.

**(viii) SARAWAK: NATIVE
CUSTOMARY RIGHTS (NCR)
LAND ISSUE**

In 2001, the Commission received five memoranda from the various Pribumi communities of Sarawak highlighting the failure of the state government to recognize their native customary rights over land. This has resulted, amongst others, in non-payment of compensation, encroachment of their land by logging companies and development of that land without considering the rights of the Pribumi to their traditional land.

Subsequently in October 2001, a team of three Commissioners, visited the Orang Ulu (Kayan, Kenyah, Penan) settlements in Belaga, Sg. Asap Resettlement Area in Bakun, the Bakun Dam site, a logging concession camp and areas extending into Ulu Baram. Visits were also made to an Iban kampung in Ulu Baram, Miri Division for a better understanding of the actual situation. Discussions were held with the communities visited, the District Officer at Sg. Asap and the Bakun Dam Authority.

Meetings were later held with various Government agencies concerned with native land and native issues, as well as the State Economic and Planning Unit and the State Attorney-General to obtain the State Government's perspective on the issues raised by the Pribumi and to share their experiences with the Government officials.

1. Penan Issue

The main issue raised was the encroachment of their native land by logging companies, which had resulted in degradation of the

forests around their villages and pollution of their water supply. Other issues included the encroachment of their traditional lands for development of oil palm plantations without involvement of the natives, and the unavailability of birth certificates and identity cards for the native children. The remote location of the Penan community also means limited access to infrastructure, school and health care for the elderly, mothers and young children. Lack of basic infrastructure and inaccessibility means many children of school going age are not attending school.

2. Bakun Dam Development Project

The team visited the Bakun Development Authority and the Bakun Dam site, received a briefing from the District Officer on the resettlement at Kampung Asap and visited a number of Government-built longhouses at the Kampung Asap resettlement area. The complaints focused on the quantum of compensation received in terms of land size, perceived unfair resettlement arrangements, inadequate compensation-which excluded the value of old houses and farmlands left behind and poor infrastructure at the new settlement.

- (a) **Land Size:** The settlers claimed that the three acres provided by the authorities are inadequate to support a sustainable livelihood. It is also unrealistic to expect the families to be able to earn a living by farming a three-acre plot because most of the settlers have no experience in intensive agriculture. Some families also claimed that their farmland is a long way from their homes and access is difficult, while others claimed that the land is not suitable for intensive farming due to poor soil or topography.

SUHAKAM recommends that the State Government allocate alternative land for the settlers to cultivate commercial crops to sustain their livelihood or to consider the FELDA resettlement model.

- (b) **Housing:** Each family is allocated a "home" within a longhouse with about 15 or 20 homes per longhouse. Each home is a 20 x 20 foot double-storey link unit, complete with kitchen and bathroom, but without bedrooms and septic tank. The space provided appears quite adequate for a family. The complaints centred on the price of the house (RM52, 000) to be paid five years after settlement. The families said that they are in no position to pay for these houses, with many saying that workmanship was shoddy and materials used were sub-standard.

SUHAKAM recommends that the State Government should seriously look into the issues raised and address them accordingly. For example, the State Government should subsidize the cost of their new homes.

- (c) **Compensation for Lands Left Behind and/or Flooded:** The Government had promised compensation to the settlers if they agreed to resettle at Kampung Asap. However, the settlers claimed that the compensation given is inadequate as they were not compensated for their old houses and most of the farmlands, which had been abandoned. The hardship allowance of RM2,500 per family was also not paid. The Land and Survey Department's decision on which piece of land to be included for compensation was often disputed.

SUHAKAM recommends that the provision of adequate and equitable compensation to the families who were forced to resettle due to the pending flooding by the Bakun Dam be reviewed and hardship allowance paid.

- (d) **Employment Opportunities, Health & Security:** The settlers claimed that there are very limited employment opportunities around Kampung Asap to enable them to earn a reasonable living. They also expressed concern over the unhealthy conditions of the longhouses and the absence of a proper access road to the nearest town, poor maintenance and drainage.

SUHAKAM recommends that the State Government look into these complaints as a matter of priority.

3. Communities against Resettlement in Sg. Asap

Seven Pribumi communities refused to move out of their villages and had either remained at the old villages or moved further upstream above the predicted high-water level of the Bakun Dam. The team visited three of these communities.

The main reasons expressed by the communities for their unwillingness to resettle are mostly related to the issue of compensation. These issues are:

- i) Factors considered in calculation of compensation;
- ii) Amount of compensation (monetary value and land size); and
- iii) Delay in full payment of compensation.

4. Iban Communities

Eight Iban communities affected by oil palm development by the Sarawak Oil Palm Sdn Bhd (SOP) had been offered development of their native customary land into oil palm plantations. Each family was originally offered seven acres of oil palm for their land. This was later reduced to two acres, but was eventually rejected by the Iban communities. Disputes resulted in the death of four Chinese workers on 1 September 1999. On 3 September 1999, 18 Iban surrendered to the Police. All were released the following day except Encik Jalin ak Aton, who was then 73 years old. He was charged and later convicted and sentenced to 12 years' imprisonment. It was alleged by his family members that he was a scapegoat in the case.

The Iban were unhappy with the terms offered by SOP for the development of their lands and sought more appropriate terms. The Iban also requested SUHAKAM to assist in the appeal against the imprisonment of Encik Jalin. As his case is before the courts, SUHAKAM is unable to assist due to the limitations of the SUHAKAM Act. However, two Commissioners, visited Encik Jalin in Miri Prison on 14 December 2001 and noted that he suffered a serious eye infection and was in need of an operation.

SUHAKAM recommends that the relevant state agencies, such as Sarawak Land Consolation and Rehabilitation Authority (SALCRA), assist the Iban communities in the development of their lands. SUHAKAM also recommends that Encik Jalin ak Aton be given appropriate medical treatment, including surgery.

5. Communities Living Downstream of the Bakun Dam

Although the team did not visit any of the communities living below the Bakun Dam, the concerns expressed in their memorandum were discussed with the Bakun Authority. They were concerned about the environmental impact of the dam, which would include reduction in water flow and fish stock. Their main concern, however, was for their safety and their fear if anything untoward should happen to the dam. These issues were discussed with the Bakun Authority who assured us that the fears were unfounded and that all necessary measures will be taken to ensure the safety of the dam, and that adequate supply of water will be provided to the communities downstream.

SUHAKAM recommends that the proposed safety measures of the dam be monitored regularly.

RESPONSE FROM GOVERNMENT AGENCIES

Sarawak Attorney-General, Datuk J.C. Fong, briefed SUHAKAM on native customary laws and native rights over land in Sarawak and also on Government policies and practices regarding recognition of native rights to land. SUHAKAM was also informed by various government agencies-State Economic and Planning Unit (UPEN), Land Custody and Development Authority (LCDA) and Sarawak Land Consolation and Rehabilitation Authority (SALCRA)-of their extensive efforts to develop their respective lands as well as Native Customary Rights (NCR) lands. Development efforts are carried out either through joint venture schemes or by these agencies acting

as managing agents, identifying suitable partners or investors to develop the land.

The Sarawak Timber Association claimed they have played their role to remedy the effects of logging on the livelihood of the Pribumi by providing water tanks, constructing longhouses and roads.

Further consultations with the state agencies were planned for 2002.

SUHAKAM further recommends that:

- i) Alternative land be provided in addition to the three acres earlier provided for those who shifted to Sg. Asap Resettlement Area.
- ii) Three or more villages of people within the same ethnic community, such as the Penan or the Iban, be combined to form a new settlement.
- iii) There should be clear demarcation or delineation of these settlements between the different ethnic communities to avoid possible disputes over boundaries.
- iv) The Government should also consider providing Forest Reserve Areas to the natives for hunting and foraging purposes.
- v) A foundation should be set up, to be funded by the logging companies, to offer financial assistance to the Pribumi where areas they claimed to be NCR land are affected by logging activities. The fund can also be utilized to develop and construct new settlements for the Pribumi.
- vi) The Pribumi should be given opportunities to be involved in the development of the reserved lands through a co-operative or share scheme as practised at the Kg. Suai resettlement area in Miri.
- vii) Relevant Government agencies should conduct roadshows and dialogue sessions to provide clarifications to affected Pribumi. This is to provide a forum in which the natives are able to discuss openly their problems and needs with representatives of Government agencies. This will contribute towards a more constructive relationship between the Pribumi and the Government.

CONCLUSION

SUHAKAM considers claims by natives for their livelihood and practice of their customs as a basic human right and it is important that the issues raised be resolved amicably. In this regard, SUHAKAM is willing to be the mediator between the natives and the State Government to resolve the many outstanding issues. SUHAKAM planned to meet with the Chief Minister of Sarawak in early 2002 before finalizing its report on the Native Customary Rights (NCR) land issue.

CHAPTER 4

RIGHTS OF THE DISADVANTAGED: REPORT ON THE FIRST MALAYSIAN HUMAN RIGHTS DAY PUBLIC FORUM

The First Malaysian Human Rights Day with its theme of "Rights of the Disadvantaged" was launched by the Deputy Prime Minister, Dato' Seri Abdullah Haji Ahmad Badawi, on 9 September 2001 at the Putra World Trade Centre, Kuala Lumpur.



Datuk Seri Abdullah Hj. Ahmad Badawi
launching the First Malaysian Human Rights Day

A total of 450 participants from 190 civil society organizations and government departments attended the two-day Public Forum. The Forum was divided into a plenary session, six concurrent workshops, and a concluding session. Five speakers Mr. Adrian Lasimbang, Professor Norani Mohd Salleh, Dato' Sayed A. Rahman bin Sayed Mohd, Ms Ivy Josiah and Datin Paduka Marina Mahathir spoke on the Rights of the Indigenous, the Disabled,

Children, Women and People Living with HIV/AIDS respectively. Following this plenary session, the participants broke into six workshops to discuss in depth issues surrounding the needs and rights of the Indigenous People, the Disabled, Children, Women, Workers and Special Groups (such as People Living with HIV/AIDS and the elderly). Each workshop, chaired by a Commissioner, identified issues of concern pertaining to the rights of the respective disadvantaged groups and proposed solutions to the problems.

SUHAKAM plans to submit the report of the first Human Rights Day Public Forum on the Rights of the Disadvantaged to the various government departments for follow-up action.

The main recommendations are summarized below.

1. Indigenous People

(a) Forest and Land Rights

- (i) To support the Indigenous People in their efforts to obtain recognition of forest and land rights;
- (ii) To lobby for the amendment or repeal of provisions of legislation relating to land and forest that restrict or revoke the rights of Indigenous People to land and forest;

- (iii) To be aware of the conflict between native customary land rights and existing legislation;
- (iv) To organize a fact-finding mission on the case of the Penan in Baram as soon as possible. To obtain guidance and suggestions from the NGOs and the Penan community as to the places to visit, and the villagers with whom dialogues should be held. SUHAKAM should not depend on the authorities to arrange programmes for its delegation. SUHAKAM should also send fact-finding missions to other areas where the rights of Indigenous People are being violated.

(b) Right to Resources

- (i) To lobby for the revision of gazetted areas such as National Parks and Forest Reserves which prohibit the Indigenous People from collecting and utilizing resources in these areas;
- (ii) To bring to the attention of state governments the plight of the indigenous communities that lead a nomadic existence and depend on the forest for their livelihood, and urge them to make exceptions to the laws that restrict the hunting and gathering of resources from the forests.

(c) Right to Development

- (i) To ensure that Federal and State Governments and other development agencies directly involve the Indigenous People in the decision-making process relating to any development projects;
- (ii) To review the efficacy of the Department of Orang Asli Affairs in protecting the interests and welfare of the Orang Asli in Peninsular Malaysia;

- (iii) To understand and recognize that Indigenous People are not against development but want sustainable development that meets their needs and benefits them particularly during the transition to a different lifestyle;
- (iv) To understand and recognize that decisions affecting Indigenous People, especially in relation to development projects involving Native Customary Land should be made by the Indigenous People themselves, and not by private companies or any Government agency;
- (v) To ensure that all developers, timber concessionaires or agencies that intend to implement projects in the territories of Indigenous Peoples, hold open consultations with all levels of the communities that will be affected and not just with the Village Head, especially if he is a political appointee.

(d) Right to Self-worth and Dignity

- (i) To support the Indigenous People in their efforts to obtain recognition of their ancestral customs, native customary rights, culture and language;
- (ii) The Indigenous People should be given the opportunity to promote their indigenous history, origin, culture and knowledge and this should be included in the formal education curriculum;
- (iii) To discuss with the Department of Education with a view to finding solutions to implement policies pertaining to the following issues:
 - To provide complete and high quality basic facilities for the children of Indigenous People;
 - To appoint teachers from the same community to serve in their own village if they are willing to do so;

- To provide an effective channel of communication between the community and the Department to enable parents and other family members to lodge complaints, if any, about their children's education;
- To review the process and procedure of transfer of teachers to avoid any disruption in the development and education of indigenous children.

(e) Problems of No Identity Cards and Birth Certificates

- (i) To negotiate with the Registration Department to assist villagers to register names of Indigenous People who do not possess identification cards or birth certificates. Without valid documents, their right to vote and tertiary education will be affected. A proposal should also be made for the Registration Department to make special visits and provide mobile offices to resolve this problem;
- (ii) To inform the Government about the problems of Indigenous People i.e. the Penans who still do not have or have not been given valid identification cards and/or birth certificates.

(f) Right to Security

- (i) To inform the Government about problems regarding Police personnel who carry out their duties in an unjust manner and are allegedly biased towards logging companies and oil palm plantation developers.

2. The Disabled

(a) Legislation

- (i) To enact a basic law (Disabled Persons Act) with an effective in-built implementation and enforcement mechanism to protect the rights of

people with disabilities, including people with intellectual disabilities, to promote affirmative action in their favour and to eliminate discriminatory practices as well as architectural and communication barriers.

(b) Educational Needs

- (i) Basic educational programmes, especially early intervention programmes for disabled children, should be made available by the Government according to the specific needs and disabilities;
- (ii) More special needs teachers should be made available for all areas of disability and, to be effective, these teachers should specialize only in one area of disability;
- (iii) Assistance, especially in terms of scholarships, be given to assist those with disabilities pursue master and doctoral degrees;
- (iv) Insurance companies and banks should offer health, education and other related policies to the disabled to enable them to pursue further education;
- (v) The Government should take the responsibility in providing occupational and rehabilitation needs of the disabled once their parents are deceased.

(c) Education Legislation and Policies

- (i) To review the existing education acts, charters and administrative policies that:
 - deny disabled children the right to education, and
 - segregate disabled children to separate institutions for care, treatment or education;

- Financial Needs - to establish a mechanism to enable deductions for maintenance payments from the EPF accounts of fathers who have defaulted in payments:
 - To consider apportioning to the divorced wife a portion of the deceased's estate, if he had misrepresented the true value of their matrimonial assets at the time of divorce;
 - To establish effective procedures and guidelines in the disbursement of funds from Bait-ul-Mal to expedite assistance to female heads of households in financial need.

(c) Syariah and Civil Courts

- (i) To expedite procedures for interim maintenance and custody;
- (ii) To establish a Government Child Support Agency to manage the enforcement of maintenance arrangements for children and divorced women;
- (iii) To expedite the implementation of reciprocal enforcement of Syariah court orders across all state jurisdictions;
- (iv) Under Section 51 of the Law Reform Act, all ancillary relief must be settled in the civil court before remarriage by the converting party. The converting party should also be allowed to file a petition under Section 51 for divorce and ancillary relief.

(d) Unregistered Marriages

- (i) Unregistered customary marriages- to disseminate information to raise public awareness on the illegality of such marriages in order to end such practice;
- (ii) Unregistered syariah marriages- to disseminate information to raise public awareness on the dangers of such

marriages in order to end such practice.

(e) Gender Sensitization Training

- (i) To introduce gender sensitization training for all policy-makers and Government officers, with priority given to syariah and civil court officials and lawyers.

4. Children

(a) Orphanages and Shelter Homes

- (i) Caregivers in children's homes must be trained in childcare and child development.

(b) Birth Registration

- (i) Extend period of registration of births from the present 14 days to at least three months to assist, especially, those who live in remote areas;
- (ii) It should be mandatory that the Registration Department registers all applications for birth certificates, including late registrations, without unnecessary delay;
- (iii) More campaigns should be carried out to inform parents of the necessity to register the birth of their children;
- (iv) The use of the term "illegitimate children" should be abolished.

(c) Children in Court

- (i) Courts should revise their current procedure when dealing with children to minimize their trauma when appearing in court proceedings;
- (ii) The Evidence Act 1950 should be amended so that the child victim is able to testify without face-to-face encounter with the accused (who probably is the father or close relative);
- (iii) Cases involving crimes against children be put on the fast track.

(d) Education

- (i) There should be greater monitoring by the Government, corporate sector and NGOs of stereotypical images in the electronic and print media to minimize negative values;
- (ii) The Ministry of Education should set up more Technical Schools for children who are not academically inclined. Technical training should be broadened to cater for a wide range of careers;
- (iii) Compulsory education should be extended to 17, or at least 15 years of age as children younger than 15 years old are too young to work;
- (iv) In accordance with Article 28 of the Convention on the Rights of the Child (CRC) that every child has a right to education, schools should admit all children, even if they do not have a birth certificate;
- (v) In accordance with Article 31 of the CRC, local authorities should create more opportunities for children (including disabled children and teenagers) to participate in leisure and play as well as in cultural and artistic activities;
- (vii) The Ministry of Education, media, parents and society should focus on the holistic development of children, instead of the unhealthy obsession with examination results.

(e) Child Abuse and Neglect (physical, psychological and sexual)

- (i) Parents should be trained in parenting skills and child development to enable them to be better parents. Employers should sponsor parenting courses for their staff;
- (ii) The implementation of counselling services for perpetrators of sexual abuse and sex offenders, especially those in prisons, should be expedited;
- (iii) Mandatory reporting of child abuse

cases should be extended to cover kindergarten and school teachers to provide a wider net of protection and help services for more affected children;

- (iv) In accordance with Articles 17, 24 and 28 of the CRC, access to appropriate information and education, including medical care, counselling and support services, should be readily available to teenage mothers;
- (v) Research on child sexual abuse should be carried out so that strategies, prevention programmes, care and treatment and support services are based on empirical data.

(f) Childcare

- (i) Attractive tax incentives should be given to encourage the corporate sector to provide affordable childcare and after-schoolcare facilities for their employees.

(g) Juvenile Justice

- (i) Separate remand centres should be provided for juvenile offenders (Article 40 of the CRC);
- (ii) Juvenile offenders who claim trial should be put on the "fast track" so that they do not wait longer than necessary (Article 40 of the CRC);
- (iii) Sentences on juveniles should begin from the day of arrest and not day of sentencing;
- (iv) Intervention programmes should be established for juvenile offenders, to build their self-esteem, provide them with living skills, help them in decision-making and anger management;
- (v) Corporal punishment in all juvenile remand homes/approved schools should be abolished and counselling services enhanced.

(h) Social Welfare Services

- (i) Human resources in welfare services should be increased, especially in specialized services such as child protection, juvenile justice, domestic violence, services for the elderly and disabled groups. Create smart-partnerships with NGOs for more efficient management of human resources;
- (i) Recruit welfare officers and staff who have social work qualifications at certificate, diploma or degree level for more effective delivery services.

5. Special Groups**(a) Testing**

- (i) The Ministry of Human Resources' Code of Practice on the Prevention and Management of HIV/AIDS in the Workplace, which includes no pre - or in-employment testing, should be supported;
- (ii) Information on test results should be given to third parties only on a need-to-know basis and with the consent of the patient.

(b) Corporatization of Health/Health Care

- (i) Corporatization of health/health care, if at all, should be accompanied with adequate government funding and must remain in effective government control.

(c) Insurance

- (i) The Insurance Act should be amended to cover these special groups with an equitable premium;
- (ii) There should be no unfair exclusion, for example by virtue of mental illness or age;
- (iii) To expedite the national health care financing scheme which is community rated and to ensure all marginalized communities are included.

(d) Employment

- (i) Pre-employment questionnaires or forms should contain only job-specific questions;
- (ii) Public health education should be provided for all at the workplace.

6. Workers**(a) Plantation Workers**

- (i) To enact and implement a law on monthly wage for plantation workers which guarantees:
 - Monthly Wage Scheme of RM750 per month;
 - Annual increment of RM50;
 - Annual bonus-minimum of a month's wages;
 - Retirement benefit of RM1000 for each year of service.
- (ii) To enact and implement a law on housing to provide for:
 - Adequate facilities in the new housing area for places of worship, playgrounds and a community hall;
 - Right of workers to remain in the plantation with all the existing facilities supplied to them, until and unless the houses are built.

(b) Migrant Workers

- (i) To impose more stringent penalties against unscrupulous employers and labour importing agents who are trafficking human beings;
- (ii) To allow migrant workers to seek employment while waiting for legal redress related to labour disputes;
- (iii) To take steps to ensure that judgements awarded by the Industrial and Magistrate Courts are enforced.

HIGHLIGHTS OF THE FIRST MALAYSIAN HUMAN RIGHTS DAY



*In Lighter Mood: (L to R)
Tan Sri Musa Hitam, Datuk Seri Abdullah Hj. Ahmad
Badawi and Datuk Seri Syed Hamid Albar*



The Chairman in deep thought



Forum Panel Speakers



Sign Language for the Deaf



Disabled Participants



Registration of Participants

CHAPTER 5

REPORT OF THE EDUCATION WORKING GROUP

Human rights education continues to be one of SUHAKAM's main concerns because the Human Rights Commission of Malaysia Act (Act 597) requires SUHAKAM "to promote awareness of and provide education in relation to human rights". In 2001, SUHAKAM decided to declare 9 September as the Malaysian Human Rights Day as this would help draw the attention of the public to human rights and therefore enhance their awareness. That particular date was chosen because the Human Rights Commission of Malaysia Act was gazetted on 9 September.

SUHAKAM promoted awareness of human rights through several programmes and activities, both in formal and informal education. Informal human rights education included talks, interviews, press statements, newspaper articles and papers presented at seminars and conferences. As for formal human rights programmes, the Education Working Group concentrated on drawing up curricula for the Police and for schools.

First Malaysian Human Rights Day

SUHAKAM organized two events to celebrate the First Malaysian Human Rights Day on 9 September. A two-day Public Forum on the "Rights of the Disadvantaged", was organized to address the concern of the Commission for disadvantaged groups in society who may not only be unaware of their rights but are also most vulnerable to having their rights violated.

Forum on Rights of the Disadvantaged

The response to this two-day Forum which was launched by the Deputy Prime Minister, YAB Dato' Seri Abdullah Haji Ahmad Badawi, was

overwhelming. A full report of the Forum is in Chapter 4.

Seminar on Human Rights and the Media

As part of the Malaysian Human Rights day celebrations, SUHAKAM also organized a seminar on the Role of the Media in Promoting Human Rights on 13 September. About 47 senior journalists from 24 media organizations participated in the seminar.



Marzuki Darusman addressing the Seminar on Human Rights and the Media

This seminar was opened by SUHAKAM Chairman Tan Sri Musa Hitam. Mr. Marzuki Darusman, the former chairman of the Indonesian Human Rights Commission (Komnas Ham) and also the Attorney-General delivered the keynote address on "Rights Practices and Democracy: Indonesia as a Context". He also gave a luncheon talk attended by the Commissioners and the press where he spoke on current political developments in Indonesia.

A panel discussion was held in the afternoon. The panellists were Puan Mehrun Siraj from SUHAKAM and Ms. Padmaja Padman, an associate editor from The Sun. Several issues were discussed, including the role of the media in raising awareness of human rights and the special responsibility of journalists in covering human rights.

Formal Human Rights Education

The Sub-working Group, which was formed in 2000, continued to work on the human rights curriculum for Police Officers-in-training. In 2001, a second Sub-working Group was appointed to design a curriculum for schools.

Human Rights Education for Police Officers

At the second dialogue held between SUHAKAM and the Police on 15 May 2001, the human rights curriculum for the Police designed by SUHAKAM was discussed. At their suggestion, four members were appointed as Police representatives to the Sub-working Group. These members represent the Public Relations Office, Senior Officer College (two representatives-one from the Study Materials and Curriculum Development Unit), and the Complaints and Law Division of the Criminal Investigation Department.

The Police have accepted the curriculum in principle, but have requested two types of syllabus-one for the Police course and the other for higher learning institutions and professionals. Details for the inclusion of human rights education in the existing training curriculum for officers will be worked out in 2002. In addition, modules will be produced.



**Meeting with the Inspector General of Police,
Tan Sri Norian Mai**

SUHAKAM has also agreed to provide training for the lecturers at the police training colleges. The Sub-working Group on Human Rights Curriculum for the police has agreed to commence this training with a seminar-cum-workshop to discuss issues of human rights education for the police and brainstorm the proposed curriculum. This seminar is scheduled for June 2002.

Human Rights Education for Schools

Human rights education for school children was discussed at an informal dialogue with the Deputy Minister of Education, Datuk Abdul Aziz Shamsuddin and representatives from the Ministry of Education on 15 October 2001. The integration of human rights into existing school subjects was proposed by SUHAKAM.

Since this proposal was viewed positively by the Deputy Minister of Education and Ministry representatives, a Sub-working Group on Human Rights Education for Schools was formed. Furthermore, since the human rights curriculum for the police was in its final stage of development, the Education Working Group was ready to undertake this task.

The Sub-working Group on Human Rights Curriculum for Schools had its first meeting on 24 November 2001. The members included representatives from the Schools Division, Curriculum Development Centre, Teacher Education Department, and Planning and Education Policy Research Division, as well as academics from institutions of higher learning.

The objectives for human rights education in schools are:

- To enable students to become responsible citizens through knowing their rights as well as those of others and through their responsibility to

promote social harmony for sustainable growth and peace.

- To integrate good social values and norms in personality development.
- To promote mutual respect and responsibility through putting human rights into daily practice.
- To enhance understanding and practice of human rights towards a just and caring society.

The first task of the Sub-working Group was to map out the syllabuses of all the school subjects at primary and secondary school levels to identify aspects that pertain to human rights or can lend themselves to the incorporation of human rights. From this task, it was discovered that many topics in moral education pertain to human rights. Inclusion of human rights issues in local studies and history will make these subjects more relevant and meaningful to students. Human rights can also be topics for discussion in Malay, English and Literature classes as many current issues such as terrorism, violence (domestic violence, vandalism, bullying and gangsterism), sexual harassment, gender discrimination, migrant workers, and the right to education are pertinent to human rights.

The syllabus for Islamic education is unavailable as it is in the process of revision. Hence, it could not be mapped.

Informal Human Rights Education

The Commissioners participated in various conferences and seminars, gave public talks to various institutions and organizations, appeared on television, and gave interviews to the press to raise public awareness of human rights and the work of SUHAKAM.

Talks and Interviews

- i) Interviews on radio and television. **(Appendix IV).**

- ii) Statements made in the print media. **(Appendix V).**

- iii) Talks and papers presented in conferences, seminars and workshops. **(Appendix VI).**

Summary

The Education Working Group hopes that through its informal and formal education programmes, a human rights culture will eventually emerge in Malaysia. The activities, especially those in educational institutions, are not aimed merely at informing Malaysians of their human rights. They are also targeted towards fostering learning environments that encourage participation and development of a caring personality who upholds the dignity of human beings and values friendship.

Members of the Education Working Group

Professor Chiam Heng Keng
Tan Sri Datuk Seri Panglima Simon Sipaun
Dato' Lee Lam Thye
Professor Dato' Mohd Hamdan Adnan

CHAPTER 6

REPORT OF THE LAW REFORM WORKING GROUP

In 2001, the Law Reform Working Group conducted research and consultation on laws relating to two areas of rights- the right to assemble peacefully and the rights of remand prisoners. It also examined the necessity and relevance of the Banishment Act 1959 (Act 79)



Informal discussion with the Minister in the Prime Minister's Department, Datuk Seri Utama Dr. Rais Yatim

Report on the Freedom of Assembly

The report seeks to consider whether the current legal restrictions imposed on the right to assemble peacefully and/or their implementation are unduly strict, such that they render this right unattainable.

Based on the findings of SUHAKAM, recommendations were made to improve the present law and practice to ensure that both the needs for freedom of assembly and preservation of national security and public

order are met. SUHAKAM recommended several amendments to the Police Act and the Public Order (Preservation) Act 1958 and for Police to establish clear regulations and procedure to govern public assemblies.

A summary of the report is in Chapter 3: Issues in Focus. The full report on Freedom of Assembly may be downloaded from SUHAKAM's website.

Report on the Rights of Remand Prisoners

This report seeks to examine the relevant local laws in relation to the rights of remand prisoners and to record testimonies from individuals about their personal experiences. Summary of the report is in Chapter 3 and the full report may be downloaded from the SUHAKAM website.

Report on the Banishment Act 1959 (Act 79)

This report seeks to review the provisions of the Banishment Act 1959 and to consider whether the Act is still necessary in Malaysia today.

SUHAKAM recommended that the Banishment Act 1959 be repealed based on three grounds:

- The existing Immigration Act provides the authorities with grounds to banish undesirable foreigners;
- The Act has not been used for a long time;
- All those detained under the Act have since been released.

The full report is in Chapter 3: Issues In Focus .

SUHAKAM's Recommendations in its Annual Report 2000

There was mixed response by the relevant authorities to the recommendations made by SUHAKAM in the Report of the Law Reform Working Group contained in SUHAKAM's Annual Report 2000.

Legislative Process

SUHAKAM notes that since the publication of its Annual Report 2000, no action has been taken on its recommendations in relation to the legislative process. As such, SUHAKAM once again reiterates its recommendations which are:

- (i) Major 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 input into Bills that will have a major impact on their lives;
- (ii) The authorities cease the practice of declaring draft legislation as an official secret before it is tabled in the legislative bodies; and
- (iii) Major legislation should be drafted in consultation with public interest groups and with the benefit of a well-informed public debate.

In addition, SUHAKAM recommends that the relevant authorities adopt and adapt Part VII of the "Latimer House Guidelines for the

Commonwealth",¹ the provisions of which relate to the law-making process and are as follows:

"VII The law-making process

- 1 *Women should be involved in the work of national law commissions in the law-making process. Ongoing assessment of legislation is essential so as to create a more gender balanced society. Gender-neutral language should be used in the drafting and use of legislation.*
- 2 *Procedures for the preliminary examination of issues in proposed legislation should be adopted and published so that:*
 - (a) *there is public exposure of issues, papers and consultation on major reforms including, where possible, a draft bill;*
 - (b) *standing orders provide a delay of some days between introduction and debate to enable public comment unless suspended by consent or a significantly high percentage vote of the chamber; and*
 - (c) *major legislation can be referred to a select committee allowing for the detailed examination of such legislation and the taking of evidence from members of the public.*

3 ...

4 ...

¹ The "Latimer House Guidelines For The Commonwealth" are a set of guidelines on good practice governing relations between the executive, parliament and the judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles of the Commonwealth. This set of guidelines was discussed at the Meeting of Commonwealth Law Ministers Port of Spain, Trinidad and Tobago, 3-7 May 1999.

- 5 *Adequate resources to government and non-government back benchers should be provided to improve parliamentary input and should include provision for:*
- (a) *training of new members;*
 - (b) *secretarial, office, library and research facilities;*
 - (c) *drafting assistance including private members bills.*
- 6 ...
- 7 *Appropriate legislation should incorporate international human rights instruments to assist in interpretation and to ensure that ministers certify compliance with such instruments, on introduction of the legislation.*
- 8 ..."

Right to Equality

SUHAKAM commends all relevant authorities on the insertion of the word "gender" in Article 8(2) of the Federal Constitution as a prohibited ground for discrimination through the Constitution (Amendment) (No. 2) Act 2001 (Act A1130), which came into force on 28 September 2001.

In order to further promote gender equality in Malaysia, SUHAKAM urges all relevant authorities to consider adopting the other recommendations that were made in the Report of the Law Reform Working Group contained in the Annual Report 2000, which are as follows:

- (i) Article 8(2) of the Federal Constitution be amended to define discrimination in terms of Article 1 of the Convention on the

Elimination of Discrimination against Women (CEDAW) which recognizes that any action which has the effect (not just the intention) of discriminating on the basis of gender 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;

- (ii) 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; and
- (iii) the Government takes steps to incorporate its international commitments to the CEDAW into domestic law. For example, Australia's obligations under the CEDAW are given effect via its Sex Discrimination Act 1984, which makes gender discrimination unlawful in Australia.

ACTIVITIES FOR THE YEAR 2002

The Group has agreed that the primary work of the Law Reform Working Group for the year 2002 will be:

- to continue to assist SUHAKAM to examine the provisions of the Human Rights Commission of Malaysia Act 1999 (Act 597) *vis-a-vis* the experiences that SUHAKAM has acquired since its inception in 1999 and to make recommendations for amendments, where necessary;

- to review all aspects of preventive detention, which inevitably affects the liberty of the person (Article 5 of the Federal Constitution), and, specifically, to review the related legislation, which includes:
 - (i) the Internal Security Act 1960 (Act 82);
 - (ii) the Prevention of Crime Act 1959 (Act 297);
 - (iii) the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (Act P.U. (A) 187/1969);
 - (iv) the Essential (Security Cases) Regulations 1975 made under section 2 of the Emergency (Essential Powers) Act 1979 (Act 216); and
 - (v) the Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316).

- to continue its review of legislation in relation to all areas of human rights, including the freedom of speech and expression.

Members of the Law Reform Working Group
Puan Mehrun Siraj Cik Zainah Anwar Dato' Mahadev Shankar

CHAPTER 7

REPORT OF THE TREATIES AND INTERNATIONAL INSTRUMENTS WORKING GROUP

The Human Rights track record of a nation is usually measured by the extent to which its domestic legislation has incorporated the International Bill of Human Rights promulgated by the United Nations.

The International Bill of Human Rights is made up of the Universal Declaration of Human Rights, the International Covenant of Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

The Human Rights Commission Act of Malaysia (the Act) incorporated the Universal Declaration of Human Rights into its framework by providing in Section 4(4) that for the purpose of the Act "regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution".

Ratification of Human Rights Treaties

In SUHAKAM's report to Parliament last year the Treaties and International Instruments Working Group (TIIWG) recommended, subject to the necessary reservations, the ratification of:

- (a) International Covenant on Economic, Social and Cultural Rights (CESCR);
- (b) International Covenant on Civil and Political Rights (CCPR); and
- (c) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

These three conventions are part of 12 international human rights treaties where the United Nations (UN) has established committees of experts to monitor their implementation. As of 26 November 2001, Malaysia has ratified only two of these 12 treaties, namely the Convention for the Rights of the Child (CRC) on 17 February 1995 and the Convention against All Forms of Discrimination against Women (CEDAW) on 5 July 1995.

Ratification is a two-stage process, both stages of which require Government action. The first stage is the deposit of the instrument of ratification with the office of the Secretary-General of the United Nations. This should contain the formal acknowledgement of the Government to be bound by the Convention obligations in the international arena. The second and more important stage is the implementation of those obligations in the domestic arena by making the Convention provisions a part of the domestic legislation, so that the rights they confer can be enforced in the municipal courts.

To be able to make a meaningful report on the progress that is being made towards implementation of the instruments which have been deposited, or which have been proposed for ratification, SUHAKAM needs to be kept informed of the follow-up action being taken by the Government agencies involved. SUHAKAM's relationship with these Government agencies and with the Foreign Ministry remains cordial and TIIWG received verbal assurances that periodic meetings have been held by the various Government agencies involved to determine how SUHAKAM's proposals can best be implemented.

However, SUHAKAM has not been privy to the details of these meetings because TIIWG was told that such information could be subject to the Official Secrets Act, and as an independent body which is not part of the Government's internal machinery, SUHAKAM could not have ready access to the information. Nor has SUHAKAM been able to participate in these internal meetings even as observers, presumably for the same reason.

Therefore, TIIWG is unable to report if and when the CESC, CCPR, and the CAT will be ratified. The Multilateral Political Affairs Division of Wisma Putra has, however, supplied TIIWG with voluminous material they have collated on the manner in which nations which ratified these Conventions have been monitored not only by the UN but also by various other interested parties.

A review of this material has made it very apparent that ratification immediately makes a nation vulnerable to an on-going and often acrimonious international debate on two levels—first, as to whether the reservations make the purported ratification internationally unacceptable, and second, where the ratification has been accepted the Government in question becomes obliged to make defensive responses at international fora when breaches are alleged of specific provisions of the Convention.

Thus, after Malaysia ratified the Convention of the Rights of the Child (CRC), objections were filed by 10 European countries to Malaysia's reservations to various articles in the Convention. Thereafter, Malaysia withdrew its reservations to 11 provisions but maintained its reservations with regard to numerous other provisions of the Convention and declared that they shall be applicable only if they are in

conformity with the Constitution, national laws, and the national policies of the Government of Malaysia.

With reference to CEDAW, Malaysia withdrew several of its reservations in February 1998 as a result of consultations with women's groups. Nevertheless, France contended that the remaining reservations on two articles were incompatible with the object and purpose of the Convention and consequently it could be a moot point as to whether the Convention has been truly ratified. On the problematic issue of provisions conflicting with the Syariah laws, TIIWG has noted that other than Malaysia, there are about 44 OIC member states which have ratified or acceded to CEDAW and 26 of these have ratified and/or acceded without making any reservations.

SUHAKAM recommends that the Government examines this with the objective of eventually removing all of Malaysia's reservations to CEDAW.

Malaysia has amended Article 8 of the Federal Constitution to prohibit gender discrimination (see Constitution (Amendment) (No.2) Act 2001 which came into force on 28 September 2001). Even though the specific provisions of CEDAW have not been transposed into domestic legislation, the fact remains that many of the convention safeguards are scattered in different sections of local laws e.g. the Domestic Violence Act (Act 521), the Women and Girls Protection Act 1973 (Act 106), and the Penal Code.

There is an obvious overlap here and therefore a need to correlate the domestic provisions with the Convention provisions to demonstrate that Malaysia's reservations in many cases are more apparent than real. A detailed study is

now in progress to correlate the domestic legislation with the Treaty provisions which SUHAKAM hopes will substantially narrow the scope of Malaysian reservations to the treaties that have been ratified. SUHAKAM also hopes in this way to overcome our inhibitions against ratification of the other major human rights instruments.

In the SUHAKAM 2000 Annual Report it was reported that of the 25 major Human Rights Instruments listed in the United Nations table, Malaysia has only ratified the five Conventions specified. This figure remains unchanged. TIIWG is unable to understand why Malaysia has still not ratified the International Convention against Apartheid in Sports which Malaysia signed as long ago as 16 May 1986. SUHAKAM recommends that Malaysia does so as soon as possible.

SUHAKAM also recommends that Malaysia should ratify the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography which will come into force on 18 January 2002, and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts which will come into force on 13 February 2002.

SUHAKAM also remains convinced that the CESC, the CCPR, and especially the CAT should be ratified as soon as possible.

Review of Human Rights Treaties in the International Arena

International human rights jurisprudence has become a highly specialized subject in terms of both content and procedure and there is an urgent need for the country to remedy this lack of expertise, especially in the international arena.

SUHAKAM recommends that:

- (a) Suitable courses in International Law with a human rights dimension should be made readily available in the local universities.
- (b) Courses in human rights law should be made mandatory for all concerned in law enforcement, including the judiciary.
- (c) Follow-up action be taken in relation to commitments made in the international arena.

The Commissioners gained valuable insights and experience in both the prospects and the problems relating to human rights in the international conferences which they attended in the year 2001. These are listed in Appendix vii.

Members of the Treaties and International Instruments Working Group

Dato' Mahadev Shanker
Dato' Dr. Salleh Mohd Nor
Dr. Mohammad Hirman Ritom

CHAPTER 8

REPORT OF THE COMPLAINTS AND INQUIRIES WORKING GROUP

SUHAKAM was inundated by complaints in 2001, but most of them were a result of international lobbying campaigns. We registered 5,006 complaints in 2001 compared to only 490 in the year 2000. However, 4,687 of these were from overseas, received via mail, facsimile transmission and e-mail. They were "campaign complaints" involving the following issues:

- (i) Repeal the Internal Security Act (ISA) and free all ISA detainees-2,895 complaints
- (ii) Repeal the University and University Colleges Act-308 complaints
- (iii) Revoke the death sentence passed on Mona Fendi, Affendi and Juraimi-333 complaints
- (iv) Free former Deputy Prime Minister,

Datuk Seri Anwar Ibrahim-196 complaints

- (v) Revoke the death sentence passed on Chu Tak Fai-248 complaints
- (vi) Conduct an Inquiry into the Kampung Medan Incident-211 complaints
- (vii) The medical treatment of Datuk Seri Anwar Ibrahim-157 complaints
- (viii) Police brutality in dispersing an assembly at the Kesas Highway-164 complaints
- (ix) Free Dr. Munawar Anees-153 complaints
- (x) Others-22 complaints

Only 319 of the complaints were local, from either individuals or groups, regarding alleged violations of human rights by staff of Government departments or agencies or complaints against private sector organizations and individuals. Some were merely statements copied to SUHAKAM. The number of local complaints received increased by 104 per cent compared to 152 in 2000. See Table A below.

Table A

Year	2000	2001
Local complaints	152	319
Overseas campaign complaints	338	4,687
TOTAL	490	5,006

The subject matter of local complaints was as follows:

Table B

Nature of Complaint	Number of Complaints
Against Government departments and agencies	174
Against private sector companies	46
Against individuals	72
Statements	27
TOTAL	319

SUHAKAM also received 6,119 postcards from Malaysians as part of a campaign relating to the medical treatment of Datuk Seri Anwar Ibrahim.

Action taken with regard to local complaints:

- (i) conduct investigations
- (ii) refer the matter to the relevant Government department or agency (this is done in cases which are within the jurisdiction of the Government department concerned and beyond the jurisdiction of SUHAKAM)
- (iii) no further action (this applies to matters beyond the jurisdiction and powers of SUHAKAM, statements and copies of letters sent to other persons)

Up to December 2001, 21 complaints were resolved, 101 were for no further action and 197 are still being processed. Including the unresolved complaints from the year 2000, the total number brought forward to 2002 is 271.

Table C

Year	2000	2001
Resolved	15	21
No further action	63	101
Still being processed	74	197

The Complaints Resolution Flow Chart

From January 2002, the group will implement the complaints resolution flow chart in stages to improve its management of cases. This process will ensure that every complaint received will be examined and appropriate action taken within a specified time period. See Appendix viii for the flow chart.

Memoranda

In the year 2001, SUHAKAM received 24 memoranda covering 12 separate matters. Issues raised in the memoranda and the action taken by SUHAKAM were:

- (i) Arrests and detentions under the Internal Security Act (ISA).
Action: Detainees were interviewed and a press statement was issued by SUHAKAM (see **Appendix III**).

- (ii) The treatment of ISA detainees at the Kamunting Detention Centre.
Action: Two visits were made to Kamunting to determine the conditions of detainees. A report of the visit, with recommendations from SUHAKAM, has been submitted to the authorities.
- (iii) The right to medical treatment-the case of Datuk Seri Anwar Ibrahim.
Action: Dialogue sessions were held with the private doctors who had treated him as well as with the Government specialists. Several commissioners then visited Datuk Seri Anwar at Sungai Buloh Prison, and finally a statement was issued with regard to his right to medical treatment (**Appendix IX**).

- (iv) The suspension of university students charged with involvement in an unlawful assembly.
Action: SUHAKAM held a dialogue with Deputy Vice-Chancellors and other representatives of public universities. For students from Universiti Teknologi MARA, two other meetings were held, one with the Assistant Vice-Chancellor (Legal Affairs) and the other with a deputy Registrar (Student Affairs).
- (v) Disciplinary action against students of Universiti Sains Malaysia, members of the Chinese Language Society, charged with attending a debate competition in Singapore without the permission of the Deputy Vice-Chancellor.
Action: The matter was raised with representatives of vice-chancellors of public universities at a dialogue session with SUHAKAM.
- (vi) Police refusal to grant licences for gatherings.
Action: The information was considered and included in the Report on the Freedom of Assembly.
- (vii) The exploitation of foreign workers by their employers.
Action: A discussion with the authorities was arranged and a visit was made to the detention centre for foreigners.
- (viii) The housing problem of squatters in the Federal Territory and Selangor.
Action: Dialogue sessions were held with Dewan Bandaraya Kuala Lumpur and the Local Councils in Selangor.
- (ix) The concerns of the indigenous people regarding the Bakun Hydroelectric Project, Sarawak.
Action: Visits to the affected areas were made and a dialogue was held with Government agencies involved.

- (x) No protection given by the Police to Indian residents of Kg. Medan.
Action: Investigation has begun and a report will be issued in 2002.
- (xi) Abuse of children at the Mercy Welfare Home.
Action: Investigation in progress.
- (xii) Objections to the decision of the Legal Profession Qualifying Board to nullify the Certificate of Legal Practice examination results.
Action: A letter was written to the Chairman of the Board.

The Kesas Highway Inquiry

SUHAKAM held its first public inquiry into the incident that occurred at the Kesas Highway on 5 November 2000 when the Police prevented a rally from taking place. The Inquiry on its own motion was held to determine whether any violation of human rights had occurred during the incident. The decision to hold the Inquiry was taken because SUHAKAM was concerned by media reports of the number of people arrested, some of whom were seriously injured. The full report of this Inquiry can be downloaded from the SUHAKAM website. A summary of the main findings and recommendations can be found in the Issues in Focus chapter.

The Bakun Dam and the Native Customary Land Rights of the Indigenous People of Sarawak

SUHAKAM received several complaints from individuals and groups expressing dissatisfaction with the Bakun Hydroelectric project. Among the concerns raised were:

- (i) the compensation paid was not commensurate with the loss suffered;
- (ii) the resettlement of residents of Sungai Asap, Belaga was not satisfactory;

- (iii) no recognition by the state Government of native customary land. The indigenous people complained that logging companies or oil palm estate developers had trespassed their customary land, without any compensation being paid to those who suffered losses.

SUHAKAM organized a fact-finding mission to the affected areas to obtain detailed information from the parties concerned as well as to determine for themselves the problems faced. SUHAKAM also held dialogue sessions with the Attorney-General of Sarawak, various Government agencies involved in development projects in Sarawak and with the Sarawak Timber Association to get a clearer picture of the logging activities in Sarawak. SUHAKAM

will have a meeting with the State Government in early 2002, after which it will issue a final report on the matter. Please refer to the interim report in Chapter 3: Issues in Focus.

Visitation Sub-Working Group

The Visitation Sub-working Group was established in 2001 to undertake SUHAKAM's responsibility to visit places of detention. In 2001, the group visited ten detention centres and prepared reports with recommendations on various issues such as the failure to apply the rights of persons in detention as well as suggestions for improving conditions in the centres.

SUHAKAM appreciates the co-operation given by Prison officers and Police personnel in charge of lock-ups.

Places visited by SUHAKAM:

Table D

DATE	PLACES VISITED
18 - 04 - 2001	Penjara Johor Bahru, Johor
18 - 06 - 2001	Balai Polis Tun H.S. Lee, Jalan Stadium, Kuala Lumpur
03 - 07 - 2001	Tempat Tahanan Perlindungan Kamunting, Taiping, Perak
23 - 07 - 2001	Balai Polis Kapar, Kapar, Selangor
09 - 08 - 2001	Penjara Sg. Buloh, Selangor
10 - 10 - 2001	Penjara Wanita Kajang, Selangor
05 - 11 - 2001	Sekolah Henry Gurney, Teluk Mas, Melaka
08 - 11 - 2001	Pusat Pemulihan Akhlak Wanita, Batu Gajah
26 - 11 - 2001	Tempat Perlindungan Tahanan Kamunting, Taiping, Perak
14 - 12 - 2001	Penjara Pusat Miri, Miri, Sarawak

Since this was the first time that a national human rights institution was visiting these places of detention, procedure and regulations governing the visits remain unclear. Some of the problems SUHAKAM faced include:

(a) Notice of Visits: Apparently, SUHAKAM is expected to seek permission or give ample notice of its intention to visit a place of detention. Since the visit is to look into the conditions of detention, giving advance notice to the authorities would defeat this purpose. The authorities could improve upon existing conditions of detention prior to SUHAKAM's visits, giving SUHAKAM the impression that all is well. It is important that authorities appreciate the role and the function of SUHAKAM in making these visits and understand that the element of surprise is vital. SUHAKAM should be able to visit "any place, at any time" without prior authorization in order to make a true assessment of conditions of detention.

(b) Communication with Detainees/Prisoners: During all visits made, officials were present at all times. SUHAKAM members could only interact and speak with detainees and/or prisoners within sight and sound of officials. During the visits to Tun H. S. Lee Police Station in Kuala Lumpur, the SUHAKAM delegation was informed that there were instructions issued to the officer-in-charge that SUHAKAM members were not allowed to interview the prisoners.

SUHAKAM recommends that its Commissioners and officers be given the authority to communicate freely and in full confidentiality with detainees or prisoners at places of detention within sight, but not sound, of the authorities.

In this regard, SUHAKAM would like to draw the attention of the authorities to Principle 29 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (as adopted by the General Assembly resolution 43/173 of 9 December 1988) which provides that:

- (i) In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority in charge of the administration of the place of detention or imprisonment.
- (ii) A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

(c) Restriction on female members of SUHAKAM: During both visits to Kamunting, the female member of the SUHAKAM delegation was disallowed from visiting the main areas of Kamunting to avoid offending anyone's sensibilities. During the visit to Tun H. S. Lee Police Station, the SUHAKAM delegation was informed by the officer-in-charge that instructions were given to him not to allow female members of the delegation to visit the lock-up cells.

Female prison officers do take charge of places of detention for male detainees/prisoners and female members of SUHAKAM have previously visited other prison sites. As such, there was no credible reason for disallowing any female member from visiting any areas of a place of detention.

Further, Regulations 5(4) of the Prison Regulations states that "a male prison officer shall not enter a prison or part of a prison appropriated for the use of the women prisoners except on duty or in the company of a women prison officer". By the same principle, a female SUHAKAM member could have been allowed to visit the main areas of Kamunting, so long as a male prison officer accompanied her.

Places of detention that are accessible to female officers of the detaining authority should be made available to female members of SUHAKAM, subject to reasonable conditions, to ensure security and good order in such places.

Modalities of Visits

SUHAKAM recommends that the Government adopts the modalities of visits provided for in the Geneva Conventions of 1949-Article 126 of the Third Geneva Convention and Article 143 of the Fourth Geneva Convention. These modalities are that:

- i) The visiting mechanism shall have access to all places of detention, and have access to all premises in which detainees may be held;
- ii) The visiting mechanism shall be able to interview detainees without witness, either personally or through the mechanism's own interpreter;
- iii) The visiting mechanism shall have liberty to select places they wish to visit; and
- iv) The duration and frequency of visits shall not be restricted.

The Regulations Sub-Working Group

The sub-working group which was formed to draft regulations for the application of the Human Rights Commission of Malaysia Act, particularly in relation to the complaints and inquiries process, has completed its draft and SUHAKAM will submit it to the Minister of Foreign Affairs for his consideration before the end of SUHAKAM's first term. The regulations will have to be made by the Minister in exercise of his powers under section 22 of the Act. Although the lack of regulations will in no way hamper the discharge of SUHAKAM's functions, their existence will make for easy reference by the public and, consequently, a better understanding of the procedures involved.

CONCLUSION

The group has achieved a small measure of success and this is encouraging despite the large number of cases that have yet to be resolved. SUHAKAM plans to hire more officers in 2002 to expedite the handling of complaints.

Members of the Complaints And Inquiries Working Group

Table E

Group	Members	Scope of Work
Sub-group 1	Tan Sri Dato' Harun Mahmud Hashim Prof. Dato' Mohd Hamdan Adnan	Matters involving Government department, professional negligence, violations of employment rights.
Sub-group 2	Tan Sri Dato' Hj. Anuar bin Dato' Hj. Zainal Abidin Puan Mehrun Siraj	Abuse of powers by police and other agencies
Sub-group 3	Dato' Mahadev Shankar Dato' Dr. Salleh Mohd Nor Dr. Mohammad Hirman Ritom Abdullah	Matters relating to land, property, immigration and refugees
Visitation sub-working group	Prof. Dato' Mohd Hamdan Adnan Tan Sri Datuk Seri Panglima Simon Sipaon	To visit places of detention.

CHAPTER 9

MANAGEMENT AND FINANCE

In the year 2001, SUHAKAM was able to resolve most of the problems relating to management and finance noted in the first annual report. The steps taken have strengthened the SUHAKAM secretariat, enabling it to discharge its duties more efficiently.

SUHAKAM set up an Establishment Committee, which was later changed into the Management Committee, and a Finance Committee to oversee the management and finances of the organization. The Management Committee has the responsibility of developing the administration and staff policies as well as interviewing new staff and overseeing staff matters. The two committees are now in the process of preparing manuals on management and financial procedures for SUHAKAM.

Staff

The total approved establishment of SUHAKAM for the year 2001 is 20 posts comprising seven senior management posts and 13 support posts. In 2001, SUHAKAM appointed 18 persons on two-year contracts, which were considered necessary for SUHAKAM to function effectively. These include legal, investigation and research officers, library, computer and accounts assistants, office boys and a driver. A memorandum was also submitted to the Public Services Department (PSD) to increase the establishment with permanent posts, in line with the increasing responsibilities of the organization. However, the PSD has yet to respond to the memorandum.

As at 31 December 2001, SUHAKAM has 38 personnel including staff seconded by the Public Services Commission. The secondment period of the staff "on loan" is coming to an end and SUHAKAM has given them the option of returning to their previous posts or of applying for the positions they held in SUHAKAM in an open interview process. Whether or not they choose to stay in SUHAKAM, SUHAKAM would like to record its appreciation of all seconded staff for their invaluable contribution to SUHAKAM, particularly in the early difficult days.

Although the increase in secretariat staff has gone a long way towards improving the output of SUHAKAM, there is still a need for more investigation officers to expedite the processing of complaints of human rights violations. There is also a need for either more part-time commissioners or a few full-time commissioners to conduct inquiries into allegations of violations of human rights. The Complaints and Inquiries Division needs to be strengthened if it hopes to fulfil its obligations as set out in the flow chart for the entire process. (See Chapter 8, Report of the Complaints and Inquiries Working Group.)

SUHAKAM Branches in Sabah and Sarawak

In October 2001, SUHAKAM began preparations for opening branches in Kota Kinabalu and Kuching. The premises for the two branch offices were ready in December 2001. An officer and a support staff were appointed for each office. The staff will be supervised by the Commissioner from that state. All expenses for these offices will come from the SUHAKAM budget.

Finance

SUHAKAM was provided an allocation of RM5,440,500 for the year 2001. All funds were managed by the Ministry of Foreign Affairs until 31 August 2001, when RM2 million was transferred to SUHAKAM to manage on its own. This amount is for payments for rental of premises, staff salaries, allowances of commissioners and expenses for all SUHAKAM activities.

One advantage of managing its own funds is that unspent monies can be retained and used in the following year. For example, some consultations scheduled for 2001 were postponed to 2002 and many publications intended for printing in 2001 were delayed. The funds allocated for them can be used in 2002 without affecting the budget for activities planned for 2002.

As at 31 December 2001, the balance brought forward to 2002 is RM1,106,142.91. A further RM585,954 and RM4,221.00 are expected to be transferred to SUHAKAM by the end of February 2002. These resources will be needed for funding branch office activities in Sabah and Sarawak and perhaps for the opening of other regional offices, one in the north, one on the east coast and one in the south of peninsular Malaysia, as well as training of staff in human rights issues, an area that has hitherto been neglected.

The substantial savings in the 2001 budget were mainly due to the unspent allocation for cars for SUHAKAM Commissioners. The appointment letters included a provision for

every Commissioner to be provided with a car, and an allocation was made in the 2001 budget. However, the Commissioners unanimously decided against accepting the car, but suggested instead that they be paid a monthly allowance in lieu. This option would be cheaper if one considers the cost of maintenance and the depreciation of the cars. This proposal was submitted to the authorities, but no decision has been made yet.

With the appointment of an Assistant Accountant, all financial matters of SUHAKAM are now managed by SUHAKAM. We would like to record our appreciation to the Ministry of Foreign Affairs for the management of our finances from the formation of SUHAKAM until 31 August 2001. An Audited Account of SUHAKAM's finances for the period 1 September 31 December 2001 is given in **Appendix X**.

CHAPTER 10

CONCLUSION

This is the second annual report of the first Commission, whose term of office comes to an end in April 2002. For a body so young and whose birth was met with much scepticism, SUHAKAM has achieved a measure of success in fulfilling its functions and powers, as can be seen from the reports in the various chapters. Apart from its educational function, SUHAKAM's role in the protection and promotion of human rights is mainly advisory. SUHAKAM has discharged its advisory function by making recommendations and statements aimed at improving the human rights situation in the country. The major recommendations have been set out in Chapter 3, entitled Issues in Focus, and SUHAKAM press statements are in various appendices.

The test of whether SUHAKAM has fulfilled its advisory function is in whether the recommendations and statements SUHAKAM has made are in conformity with universal standards of human rights and the laws of Malaysia. Acceptance and implementation depend on the political will of the Government. Civil society, political parties and the media also have a role to play in using the SUHAKAM reports and recommendations as an instrument to lobby the Government to bring necessary reform to improve the human rights situation in the country.

Although SUHAKAM has only completed its first full year of existence, SUHAKAM feels gratified that there is now a greater awareness and respect for human rights by society at large and the Government as a whole. SUHAKAM has made its mark on the

Malaysian public and the authorities, and its acronym has become a household word in the country. SUHAKAM continues to receive numerous invitations from Government departments, agencies, various groups and organizations to present talks and papers on human rights. The greater awareness and concern have manifested themselves through the large number of presentations to SUHAKAM and the many positive responses by Government with respect to human rights concerns raised by SUHAKAM. These include:

- Amendment to Article 8(2) of the Federal Constitution to include "gender" as a prohibited ground for discrimination.
- The positive response of the police with respect to human rights education, including awareness-raising talks and human rights curriculum for police training.
- Continuing steps taken to address the rights of disadvantaged groups in society.
- Improved conditions at detention centres and separation of juvenile prisoners from adult prisoners.
- Increased financial allocation to improve conditions of police lock-ups, and
- Improved treatment of ISA detainees.

It is the fervent hope of SUHAKAM that these are only the first steps towards the development of a human rights culture in the country.

SUHAKAM feels that given Malaysia's achievements in so many areas of socio-economic development, the time is right for the Government to pay more attention to the need to strengthen the democratic institutions of governance and take steps to improve measures to protect and promote human rights in Malaysia.

APPENDIX

Appendix I

SUHAKAM DIALOGUE SESSIONS

NO	DATE	DIALOGUE
1	8 Jan. 2001	Dialogue with Ministry/ Department in SABAH (morning)
2	8 Jan. 2001	Dialogue with NGOs in SABAH (afternoon) Sabah - Nature Club SABATA - Persatuan Mencegah Batuk Kering Sabah Sabah FPA - Family Planning Association FSM - Sabah Federation Manufacturing EMPA - East Malaysia Planter's Association Environmental Action Committee Sabah Law Association Pacos Trust Borneo Eco Tours NST - New Straits Times Borneo Millennium Club Sabah Com. Union MIA Sabah BR - Malaysian Institute of Architects SHDA - Sabah Housing Development Association MICCI - Malaysia International Chamber of Commerce and Industry PDM Sabah Branch Sabah Society for the Blind Sabah Housing Dev. Association SPAEU - Sabah Port Authority Employees Union SEPA - Sabah Environmental Protection Association CASH - Consumers' Association of Sabah and Labuan F.T STIA - Sabah Timber Association Sabah Journalist Association New Sabah Times SJA - Sabah Journalists Association Senior Citizens ST. John Ambulance
3	5 Feb. 2001	Senator Dato' Zainal Rampak and Leaders of MTUC
4	10 May 2001	Dialogue Session with NGOs representing (Disadvantaged Groups) Malaysian Paralimpik Council National Autistic Society Persatuan Kanak-Kanak Cacat Akal Selangor/WP Kiwanis Down Syndrome Foundation Malaysia Parkinson's Disease Association National Council For The Blind Malaysia Persatuan Orang-Orang Cacat Anggota Malaysia Persatuan Permulihan Orang-Orang Cacat Society For The Deaf, Selangor/WP Community Support Network Selangor Persatuan Untuk Orang-Orang Pekak Selangor/WP

5	17 May 2001	Dialogue with Inspector General of Police, Tan Sri Norian Mai & PDRM Senior Officers
6	10 May 2001	Dialogue with NGOs with links to Ministry of National Unity & Social Development : Malaysia Aids Council Gerontological Association of Malaysia Persatuan Orang Asli All Women Action Society (AWAM) Badan Kebajikan Orang Asli Malaysia (BOKAIS) Majlis Kebajikan & Pembangunan Masyarakat Pertubuhan Orang Kerdil Malaysia Women's Aid Organization PINTAS Centre For Orang Asli Concerns Majlis Perundingan Malaysia Buddha, Kristian, Hindu, & Sikh Majlis Kebajikan Kanak-Kanak Malaysia
7	11 June 2001	Dialogue with Youth NGOs Gerakan Belia Bersatu Malaysia Persatuan Pemuda Kristian Pergerakan Puteri Islam Malaysia Persaudaraan Belia Methodist Malaysia Persatuan Belia Sikh Malaysia Persatuan Belia Buddhist Malaysia Persatuan Pergerakan Belia India Muslim Malaysia Majlis Belia Hindu Malaysia
8	13 August. 2001	Dialogue with Institut Kefahaman Islam Malaysia (IKIM) and Jabatan Kemajuan Islam Malaysia (JAKIM)
9	15 Oct. 2001	Dialogue with Vice Chancellor & Deputy Vice Chancellor (Student Affairs) of Local Universities: Universiti Malaya Universiti Putra Malaysia Universiti Sains Malaysia Universiti Utara Malaysia Universiti Malaysia Sabah Universiti Teknologi MARA Universiti Malaysia Sarawak Universiti Teknologi Malaysia Universiti Kebangsaan Malaysia International Islamic University

DIALOGUE WITH MINISTERS

DATE	MINISTER
5 Mac. 2001	Datuk Seri Syed Hamid Albar, Minister of Foreign Affair
9 April 2001	Datuk Seri Utama Dr. Rais Yatim, Minister in Prime Minister Department
10 May 2001	Dato' Dr. Siti Zaharah Sulaiman, Minister of National Unity and Social Development
11 June 2001	Datuk Hishamuddin Tun Hussien, Minister of Youth and Sport
15 Oct. 2001	Dato' Abdul Aziz Shamsuddin, Deputy Minister of Education

Appendix II**SUHAKAM "ROAD SHOW" IN VARIOUS STATE**

NO	DATE	DIALOGUE
1	8 Jan. 2001	Kota Kinabalu, Sabah
2	12-13 March 2001	Alor Setar, Kedah
3	16-17 March 2001	Johor Bharu, Johor
4	5 June 2001	Kuantan, Pahang

Appendix III

ISA PRESS STATEMENT



SURUHANJAYA HAK ASASI MANUSIA MALAYSIA HUMAN RIGHTS COMMISSION OF MALAYSIA

For immediate release

PRESS STATEMENT ON ISA ARRESTS

SUHAKAM, at its special meeting today, expresses its concern over the arrest of seven persons under the Internal Security Act (ISA) as reported today.

Since its inception and its first meeting on the 24th April 2000, SUHAKAM has been encouraged by signals perceived by us to indicate that the Government is slowly but surely being sensitized to human rights issues and is taking concrete steps to ensure that its concern for human rights is translated into action. The formation of SUHAKAM itself is proof of this trend.

It is against this backdrop that SUHAKAM expresses its deep regrets on the use of the ISA to detain the seven political activists. Detention without trial constitutes a fundamental human rights violation.

SUHAKAM calls on the authorities to release the seven detainees immediately. If they have committed any offence, they should be charged and tried in an open court.

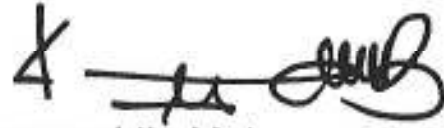
While SUHAKAM recognizes that the Government has, over the years, released many of those detained under the ISA, the present crackdown is cause for concern.

We strongly urge the authorities to allow families, lawyers and doctors immediate access to the detainees.

As a national human rights institution, SUHAKAM in accordance with section 4(2) (c) and (d) of the Human Rights Commission of Malaysia Act, 1999, will seek access to the detainees in order to monitor their mental, physical and general well-being.

In its current exercise of reviewing Malaysian laws that constitute infringements of human rights, in accordance with section 4(1)(b) of the same Act, SUHAKAM will make recommendations to the Government on the necessity of amending or repealing the Internal Security Act.

By authority of SUHAKAM



Kamaruddin Mohamed Baria
Secretary

Kuala Lumpur
11 April 2001



SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
HUMAN RIGHTS COMMISSION OF MALAYSIA

PRESS STATEMENT ON VISIT OF ISA DETAINEES

SUHAKAM, today, visited the 10 Internal Security Act (ISA) detainees at the Kuala Lumpur Police Contingent Headquarters. This visit was made following a letter dated 13 April 2001 from SUHAKAM to the Police informing the latter of SUHAKAM's intention to visit the ISA detainees. SUHAKAM is empowered to visit places of detention under section 4(2)(d) of the Human Rights Commission of Malaysia Act 1999.

The delegation from SUHAKAM comprised of Commissioners Tan Sri Dato' Haji Anuar Dato' Haji Zainal Abidin, Professor Mohd. Hamdan Adnan, Dr. Mohammad Hirman Ritom Abdullah, Puan Mehrun Siraj and SUHAKAM's Secretary, Encik Kamaruddin Mohamed Baria.

SUHAKAM met with the detainees in a room where each detainee was brought in one by one. SUHAKAM had requested for the meeting with the detainees to be without the presence of any police officers but this request was turned down due to security reasons. At all times during SUHAKAM's meeting with the individual detainees, the Deputy Director 1 of the Special Branch, Dato' Haji Abdul Razak Sulaiman and another police officer, either an interrogating officer or the coordinating officer, were present.

SUHAKAM raised questions with the detainees in relation to their treatment by the Police. In particular, SUHAKAM asked about the conditions of the cells, manner of interrogation, provision of basic daily, medical and dietary needs, and incidence of abuse. While the general response given by the detainees was that they were given civil treatment, SUHAKAM noted that there was disparity of varying degrees in respect of the treatment between the different detainees.

SUHAKAM was informed that for most detainees, they were detained at two different places, the first place of detention being less comfortable than the second. The period in which the detainees stayed at the first place of detention varied from 15 days to more than 30 days. The conditions of the cells also differed, ranging from a sparse one measuring 8 feet by 9 feet with poor ventilation to another one that has air-conditioning,

television and refrigerator. One detainee described the conditions of his cell similar to that of a 3-star hotel.

SUHAKAM also found out that while all of them were given blankets, only some had mattresses and pillows. All were given adequate clothing although one detainee was kept only in his underwear for more than a day at the Police lock-up.

Access to reading materials was also varied amongst the prisoners, some receiving novels while some only religious books. Reading materials were provided only after the 30th day and after repeated requests. One detainee's request for pen and paper was denied.

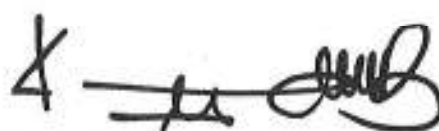
SUHAKAM noted that all the detainees were satisfied with the medical attention given. However, not all were happy with their meals. The type of food served also varied, ranging from Kentucky Fried Chicken for some detainees to nasi bungkus everyday for others.

The hours of interrogation appeared to be reasonable from about 9 a.m. until about 5 p.m. with lunch and prayer breaks in between. The manner of interrogation differed between the detainees. One alleged the environment was one of fear, intimidation and uncertainty of what may happen to him next while another claimed that the interrogation was carried out in a professional and intellectual manner. One detainee felt that being detained has been a learning experience for him, giving him the opportunity to appreciate more the Police's point of view.

No use of physical force was alleged by the detainees except for one detainee who claimed to have been pushed down from his chair. He further alleged that his request to file a police report related to that incident was denied. As far as the detainees' appearances were concerned, they all looked healthy and fit except for one who appeared to have lost a lot of weight. Through observations and limited physical contact by the Commissioners, there were apparent signs of anxiety on the part of the detainees.

All detainees have had access to their families.

By authority of SUHAKAM



KAMARUDDIN MOHAMED BARIA
Secretary

Kuala Lumpur
29 May 2001

SUHAKAM COMMISSIONERS ON TV AND RADIO

NO.	NAME	PROGRAM	TITLE	DATE
1	Cik Zainah Anwar	Moving On 2 - RTM 2	Human Rights In Malaysia	3 Feb. 2001
2	Tan Sri Dato' Musa Hitam	Time Highway Radio	Telefon Interview	15 April 2001
3	Tan Sri Dato' Musa Hitam	Moving On 2 - RTM 2	Suhakam Day	20 April 2001
4	Dato' Lee Lam Thye	Radio 4	Human Rights	18 May 2001
5	Tan Sri Dato' Harun Mahmud Hashim	Malaysia Hari Ini - TV3	Reaction of Suhakam On War in Afghan And The Problem of Refugees	23 Oct. 2001
6	Prof. Chiam Heng Keng	Radio 4	Human Rights and Suhakam	3 Dec. 2001
7	Prof. Dato' Mohd. Hamdan Adnan	Radio 1	Human Rights and Suhakam	3 Dec. 2001
8	Prof. Chiam Heng Keng	Moving On 2 - RTM 2	Human Rights In Malaysia	7 Dec. 2001
9	Prof. Dato' Mohd. Hamdan Adnan	Moving On 2 - RTM 2	World Human Rights Day	9 Dec. 2001
10	Puan Mehrun Siraj	Malaysia Hari Ini - TV3	World Human Rights Day	10 Dec. 2001

Appendix IV

Appendix V

SUHAKAM PRESS STATEMENTS



SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
HUMAN RIGHTS COMMISSION OF MALAYSIA

PRESS STATEMENT
BY CHAIRMAN OF SUHAKAM

I am concerned that the gathering planned by a group calling itself the Jawatankuasa Rakyat 14 April at the SUHAKAM Office on April 14 might lead to violent confrontation.

I would like to reiterate that as far as SUHAKAM is concerned, we received an official request from the group to deliver a memorandum on human rights at our office on April 14. SUHAKAM has agreed to accept the memorandum and specified that it should be handed over by a delegation of ten. We have assigned three Commissioners to receive the memorandum. SUHAKAM in its official response also advised the organisers to exercise control over its supporters and to ensure that no untoward incident would occur on that day.

Events have since moved to a new level. Seven activists have been detained under the ISA, including a few members of the organising committee. The government leadership has made statements to explain its action.

Immediately after the arrests, SUHAKAM convened a special meeting chaired by me and had lengthy and very careful deliberations on the arrests. Greatly aware of its responsibilities and duties as clearly defined in the Human Rights Commission of Malaysia Act 1999, SUHAKAM issued a statement signed by its Secretary. This was not the statement of SUHAKAM's Secretary. This was the statement of SUHAKAM.

SUHAKAM was fully aware that its statement on the ISA arrests would attract serious attention, pro and contra. This is to be welcomed. The debate on the statement itself, coming from whichever quarter, is equally welcomed. All SUHAKAM needs to reiterate here is simply that in dispensing with its responsibilities, it acts in accordance with the provisions of the Act. In arriving at its decisions, all laws relevant or having any possible implication to other existing laws of the country are taken into account. Thanks to the government's own decision, that is why presumably, SUHAKAM's membership does consist of personalities with strong enough reputation on the administration of the laws of Malaysia.

In view of current developments, and the declared intention by the organisers to now turn tomorrow's hand-over event into a gathering at the SUHAKAM office, I would like to:

1. express SUHAKAM's readiness to still accept the memorandum to be handed over now by a delegation of six MPs and four NGO representatives instead of the original delegation;
2. urge the organisers not to turn this event into an illegal assembly;
3. urge those accompanying the delegation to disperse peacefully immediately after the hand-over event; and
4. urge the police to exercise restraint in maintaining peace and public order.

Indeed I fully appreciate it is the Police and not SUHAKAM that is in charge of maintaining law and order. However, I would like to assure all that as SUHAKAM has been entrusted with responsibilities clearly spelled out in the Act, it will continue to express its views and opinions whenever it feels fit. It will do so without being pro or against any individual or party.

Kuala Lumpur
13 April 2001.



MUSA BIN HITAM
(TAN SRI, DATO')



SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
HUMAN RIGHTS COMMISSION OF MALAYSIA

PRESS STATEMENT

SUHAKAM FREEDOM OF ASSEMBLY REPORT

1. In the protection and promotion of human rights in Malaysia, Section 4 (1) (b) of the Human Rights Commission of Malaysia Act, 1999, Act 597, states that one of the functions of SUHAKAM shall be "to advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken". The Law Reform working group was set up by SUHAKAM to undertake this function.
2. The Law Reform working group chose to focus its first report on freedom of assembly in response to the many complaints received from NGOs and political parties which felt that their right to assemble peacefully had been unduly restricted or denied by the authorities. There were also complaints of disproportionate use of force by the police against participants of peaceful assemblies.
3. We held consultations with NGOs, political parties, the Bar Council, and individuals who had been involved in these assemblies (see Appendix 2). They were also invited to submit documentary evidence to support their complaints. Several did so and some of the cases are incorporated in our report.
4. We held discussions with the Police on this matter and sent them a questionnaire (see Appendix 1) on their procedure in governing public assemblies. Their response has also been included in our report.
5. We also researched the laws and procedures governing public assemblies in other countries (see summary in Appendix 4).
6. Based on all the information we received, and guided by human rights principles, we came out with the recommendations contained in this report.
7. It is SUHAKAM's stand that freedom of assembly is the right of every individual in a democratic country as it is one means of public participation in the democratic process.

8. Our recommendations are based on the firm belief that peaceful assemblies are possible in present day Malaysia. We have suggested measures that could be taken to ensure that assemblies are peaceful. For example, organizers of assemblies are responsible in ensuring the good behaviour of the participants, marshals are to be appointed to control the crowd and the police are to exercise restraint in crowd and traffic control and in the dispersal of assemblies.
9. If all parties adhere to the guidelines as recommended, Malaysians can progress towards establishing a democratic tradition of peaceful assembly.
10. SUHAKAM reiterates that we do not condone any form of violence, be it domestic violence, street violence or institutional violence.
11. We acknowledge that in any democratic country, freedom of assembly can be restricted on the grounds of national security and public order. However, we urge the Government to be transparent and to provide evidence to justify the use of these restrictions in denying the public their right to freedom of assembly.

By authority of SUHAKAM



KAMARUDDIN MOHAMED BARIA
Secretary

SUHAKAM
Kuala Lumpur
3 August 2001



SURUHANJAYA HAK ASASI MANUSIA MALAYSIA HUMAN RIGHTS COMMISSION OF MALAYSIA

PRESS STATEMENT

SUHAKAM VISITORIAL REPORTS

1. In the protection and promotion of human rights in Malaysia, SUHAKAM is given the power "to visit places of detention in accordance with procedures as prescribed by the laws relating to the places of detention and to make necessary recommendations" under section 4(2)(e) of the Human Rights Commission of Malaysia Act 1999. The Visitation Sub-Working Group was set up under the Complaints and Inquiries Working Group by SUHAKAM to undertake this function.
2. The Visitation Sub-Working Group was formally established by SUHAKAM on 24 July 2001 and is chaired by Professor Datuk Mohd. Hamdan Adnan. Prior to that, visits had been made by SUHAKAM to several places of detention where Professor Datuk Mohd. Hamdan Adnan was a member of the delegation at each visit.
3. In view of its formal establishment, the Visitation Sub-Working Group has decided to issue visitorial reports for purposes of forwarding to relevant authorities recommendations made based on visits made. The reports and recommendations made are based on information obtained through memoranda received by the Complaints and Inquiries Working Group, observations, discussions, briefings and question and answer sessions with police and prison officers, and relevant law and human rights principles.
4. The first report is on the visit to Tun H. S. Lee Station at Jalan Stadium, Kuala Lumpur on 18 June 2001 and the second report is on the visit to Tempat Tahanan Perlindungan Kamunting, Taiping, Perak on 3 July 2001. **These visitorial reports have been sent to the relevant authorities for their consideration and further action.**
5. In respect of the visit to Tun H. S. Lee Station at Jalan Stadium, Kuala Lumpur, some of the issues and related recommendations made were to the following aspects of the treatment of prisoners:
 - a. Overcrowding of Lock-Up (see pages 3, 7 of related report);

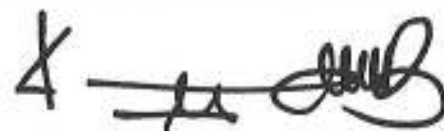
- b. Clothing (see pages 4, 7 of related report);
 - c. Conditions of Cells (see pages 4, 5, 8 of related report); and
 - d. Access to Legal Counsel (see page 6, 8 of related report).

6. In respect of the visit to Tempat Tahanan Perlindungan Kamunting, Taiping, Perak, some of the issues and related recommendations made were to the following aspects of the detention of persons under the Internal Security Act 1960:
 - a. Uncertainty of Grounds for Detention (see pages 3, 7 of related report);
 - b. Uncertainty of Detention Duration (see pages 3, 7 of related report);
 - c. Right to Practise Religious Belief (see pages 3, 7 of related report);
 - d. Separation of Reformasi Activists (see pages 4, 8 of related report);
 - e. Legal Professional Privilege – Communication between Legal Counsel and Client (see pages 4, 8 of related report);
 - f. Visits (see pages 4, 8 of related report); and
 - g. Foreign Detainees (see pages 5, 8 of related report).

7. It is SUHAKAM's stand that all detained persons and prisoners have a right to be treated with respect due to their inherent dignity and value as human beings and that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

8. SUHAKAM reiterates that detention without trial is an infringement of human rights.

By authority of SUHAKAM



KAMARUDDIN MOHAMED BARIA
Secretary

Kuala Lumpur
22 November 2001

Appendix VI

TALKS, SEMINARS, CONFERENCE - LOCAL

NO	DATE	TALK, SEMINAR, CONFERENCE	ORGANIZER	PARTICIPANTS / PAPER PRESENTED
1	10 Jan. 2001	Human Rights - Role as Citizens	Institute Kemajuan Desa	Tan Sri Dato' Harun Mahmud Hashim
2	17 Jan. 2001	Briefing On SUHAKAM To The Department Of Information	Department Of Information, Malaysia	Tan Sri Dato' Musa Hitam
3	20 Jan. 2001	International Seminar "Enhancing Malaysia- South Pacific Understanding"	School Of Social Development, University Utara Malaysia	Tan Sri Dato' Musa Hitam Keynote Address
4	13 Feb. 2001	Panelist In Wacana Intelektual	Faculty Of Language And Communication, University Putra Malaysia	Tan Sri Dato' Musa Hitam
5	20 Feb. 2001	Session " Intan Executive Talk" 2001	Institut Tadbiran Awam Negara (INTAN)	Tan Sri Dato' Musa Hitam
6	22 Feb. 2001	Debate on SUHAKAM	Maktab Pegawai Kanan PDRM, Cheras	Tan Sri Dato' Musa Hitam
7	23 Feb. 2001	International Forum on Human Rights	Kelab Rotary Diraja, Kuala Lumpur	Tan Sri Dato' Musa Hitam Keynote Address
8	24 Feb. 2001	Report Card Forum On Human Rights: Red Or Blue	The Management Services Division Of The International Islamic University, Kuala Lumpur	Tan Sri Dato' Harun Mahmud Hashim
9	15 March 2001	Talk On Human Rights For Police Officers	Maktab Pegawai Kanan PDRM, Cheras	Dato' Lee Lam Thye
10	2 April 2001	Talk on Human Rights For Police Officer	Sekolah Latihan Pegawai PDRM, Kuala Lumpur	Puan Mehrun Siraj

NO	DATE	TALK, SEMINAR, CONFERENCE	ORGANIZER	PARTICIPANTS / PAPER PRESENTED
11	3 April 2001	Talk On Human Rights For Staffs Of Kolej Angkatan Tentera Malaysia	Ministry Of Defense	Dato' Lee Lam Thye
12	4 April 2001	Talk For Civil Servants	Institut Tadbiran Awam Negara (INTAN)	Tan Sri Dato' Harun Mahmud Hashim
13	10 April 2001	Seminar On Human Rights Awareness	Jabatan Penjara Malaysia	Dato' Lee Lam Thye
14	19 April 2001	Workshop On Human Rights, Global Law And Islam	Institut Kefahaman Islam Malaysia	Tan Sri Dato' Harun Mahmud Hashim
15	23 April 2001	Workshop On Corporate Administration	The Malaysian Association Of The Institute Of Chartered Secretaries And Administrators	Tan Sri Dato' Harun Mahmud Hashim
16	2 May 2001	Seminar By National Union Of Journalist : Freedom Of Press	National Union Of Journalists Malaysia	Tan Sri Dato' Musa Hitam
17	3 May 2001	Seminar On World Press Freedom Day	Persatuan Ulama Malaysia	Tan Sri Dato' Harun Mahmud Hashim Puan Mehrun Siraj
18	4 May 2001	" National Forum On SUHAKAM After 1 Year : Has The State Of Human Rights Improved In Malaysia"	ERA Consumer	Tan Sri Dato' Harun Mahmud Hashim
19	6 May 2001	Talk On Malaysia - Australia Business Council	Malaysia Australian Business Council	Tan Sri Dato' Musa Hitam
20	9 May 2001	Briefing For Members Of National Student Council	Prime Minister's Department	Tan Sri Dato' Musa Hitam
21	12 May 2001	Women's Institute Of Management's National Unity Roundtable	Women's Institute Of Management (WIM)	Tan Sri Dato' Musa Hitam

NO	DATE	TALK, SEMINAR, CONFERENCE	ORGANIZER	PARTICIPANTS / PAPER PRESENTED
22	12 May 2001	Report Card Forum On Human Rights: Red or Blue	University Sains Malaysia, Penang	Tan Sri Dato' Harun Mahmud Hashim
23	18 May 2001	Human Rights And Society	International Islamic University, Kuala Lumpur	Tan Sri Dato' Harun Mahmud Hashim
24	29 May 2001	Human Rights And CUEPACS	CUEPACS	Tan Sri Dato' Harun Mahmud Hashim
25	13 June 2001	Report Card Forum On Human Rights : Red Or Blue	University Kebangsaan Malaysia, Bangi	Tan Sri Dato' Harun Mahmud Hashim
26	14 June 2001	Seminar On Role Of Men In Domestic Violence	Women's Institute Of Management (WIM)	Tan Sri Dato' Hj. Annuar Dato' Hj. Zainal Abidin
27	24 June 2001	Talk On Suhakam	Persatuan Ulama Malaysia	Tan Sri Dato' Harun Mahmud Hashim
28	25 June 2001	National Seminar On Dakwah & Etika Politik	Faculty Of Islamic Studies, University Kebangsaan Malaysia, Bangi	Tan Sri Dato' Harun Mahmud Hashim Keynote Address
29	27 June 2001	Talk To Civil Servants	Institut Tadbiran Awam Malaysia (INTAN)	Tan Sri Dato' Harun Mahmud Hashim
30	9 July 2001	Forum On Freedom Of Press	National Union of Journalist	Tan Sri Dato' Harun Mahmud Hashim
31	14 July 2001	Human Rights Talk For Police	Maktab Pegawai Kanan PDRM, Cheras	Dato' Lee Lam Thye
32	27 July 2001	Forum On Academic Freedom And Human Rights	International Islamic University, Kuala Lumpur	Tan Sri Dato' Harun Mahmud Hashim
33	28 July 2001	Human Rights And MTUC	Malaysia Trade Union Congress (MTUC)	Tan Sri Dato' Harun Mahmud Hashim

NO	DATE	TALK, SEMINAR, CONFERENCE	ORGANIZER	PARTICIPANTS / PAPER PRESENTED
34	6 August 2001	Talk on SUHAKAM	University Kebangsaan Malaysia, Bangi.	Tan Sri Dato' Harun Mahmud Hashim
35	6 August 2001	Talk On SUHAKAM For ASEAN Senior Police Officers	International Institute Of Public Policy And Management (INPUMA)	Tan Sri Dato' Harun Mahmud Hashim
36	7 August 2001	International Institute Of Public Policy & Management (INPUMA) Public Lecture Series	Faculty of Law, University Malaysia	Tan Sri Dato' Musa Hitam
37	10 August 2001	Talk For New Administrative And Diplomatic Officers (PTD) On Human Rights	Institut Tadbiran Awam Malaysia (INTAN)	Tan Sri Dato' Harun Mahmud Hashim
38	27 August 2001	Human Rights In Education	Faculty Of Education, University Malaysia	Tan Sri Dato' Harun Mahmud Hashim
39	4 Sept. 2001	Seminar On The System Of Judiciary	Faculty of Law, University Malaysia	Tan Sri Dato' Harun Mahmud Hashim
40	5 Oct. 2001	Talk To Civil Servants	Institut Tadbiran Awam Malaysia (INTAN)	Tan Sri Dato' Harun Mahmud Hashim
41	8-10 Oct. 2001	Seminar On Education Development 2001-2010	Ministry of Education	Prof. Chiam Heng Keng
42	10 Oct. 2001	Annual Conference For Officers Of Legal Aid Centre Malaysia	Legal Aid Centre, Kuala Lumpur	Tan Sri Dato' Harun Mahmud Hashim
43	1-4 Nov. 2001	Human Rights Training Program For Members Of Bar Council	Bar Council of Malaysia	Cik Zainah Anwar Paper: The Role Of Suhakam
44	8 Nov. 2001	11th Malaysian Law Conference	Bar Council of Malaysia	Tan Sri Dato' Harun Mahmud Hashim

NO	DATE	TALK, SEMINAR, CONFERENCE	ORGANIZER	PARTICIPANTS / PAPER PRESENTED
45	8 Nov. 2001	Forum For Human Rights In Islamic Perspective	Pusat Islam, Kuala Lumpur	Puan MehrunSiraj
46	13 Nov. 2001	Speech for ASEAN Youth Secretariat On Islam	ASEAN Youth Secretariat	Tan Sri Dato' Harun Mahmud Hashim Keynote Address
47	3 Dec. 2001	Forum On Understanding Islam And Global View	International Islamic Unversity, Kuala Lumpur	Tan Sri Dato' Harun Mahmud Hashim
48	10 Dec. 2001	SUHAKAM And Human Rights In Malaysia	Bar Council of Negri Sembilan	Prof. Dato' Mohd. Hamdan Adnan

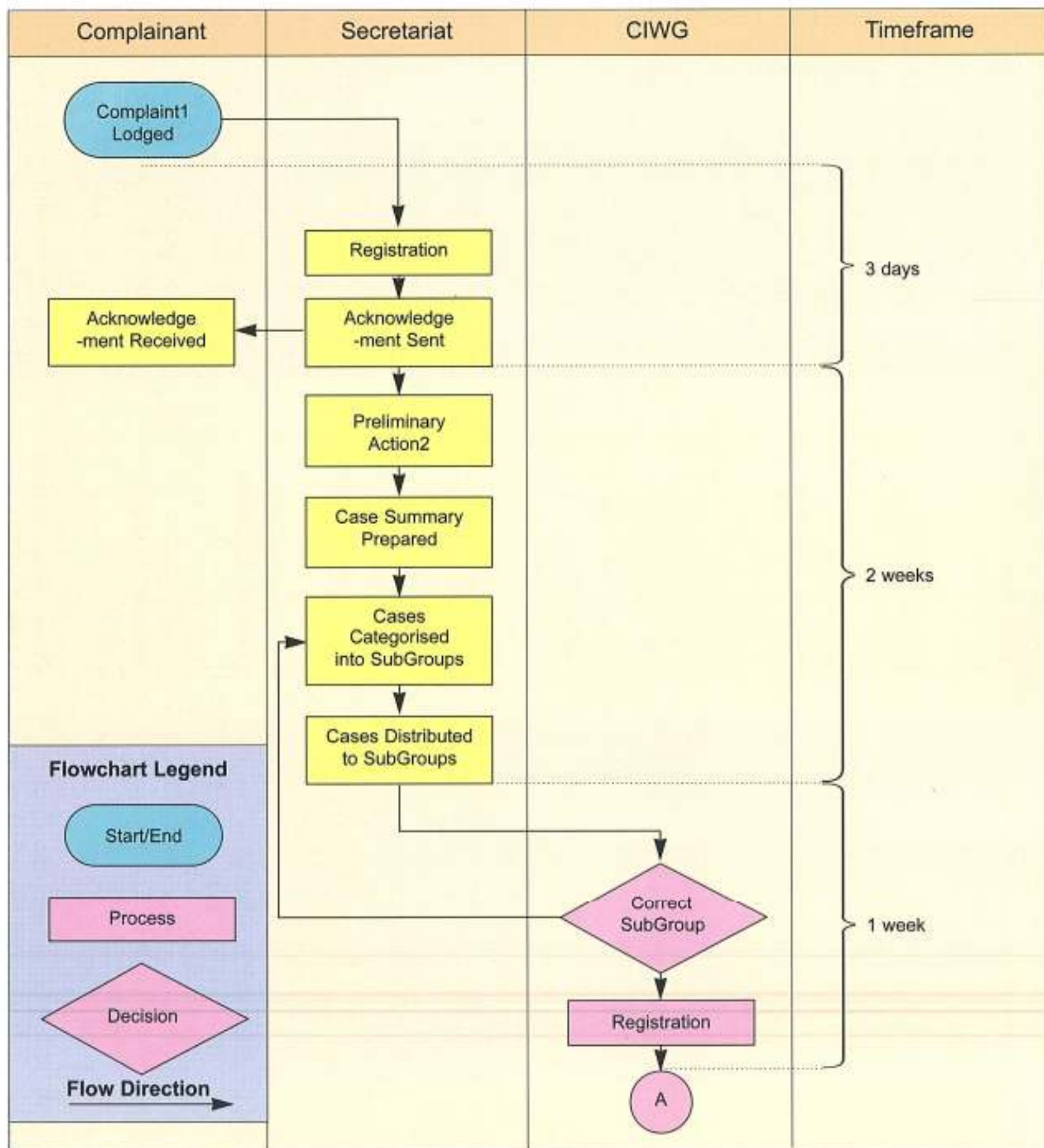
Appendix VII

TALKS, SEMINARS, CONFERENCE - INTERNATIONAL

NO	DATE	TALK, SEMINARS, CONFERENCE	VENUE	PARTICIPANTS / PAPER PRESENTED
1	19-21 Feb. 2001	World Conference Against Racism	Tehran, Iran	Dato' Dr. Salleh Mohd. Nor
2	28 Feb.- 2 March 2001	9TH Asia Pacific Regional Workshop in Promoting Human Rights	Bangkok, Thailand	Dr. Mohammad Hirman Ritom Abdullah Puan Mehrun Siraj
3	17 March- 27 April 2001	57th Session of United Nations Commission on Human Rights	Geneva, Switzerland	Tan Sri Dato' Harun Mahmud Hashim Tan Sri Datuk Seri Panglima Simon Sipaun Dato' Mahadev Shanker En. Choo Eng Hong En. Sigamoney
4	5-6 July 2001	Regional Workshop on Asean Mechanism for Human Rights	Jakarta, Indonesia	Tan Sri Dato' Harun Mahmud Hashim En. Kamaruddin Mohamed Baria
5	11-13 July 2001	Regional Workshop on The Role of National Human Rights Institution	Hong Kong	Prof. Chiam Heng Keng
6	12-13 July 2001	4TH Seminar on Human Rights	Denpasar, Indonesia	Tan Sri Dato' Hj. Anuar Bin. Hj. Dato' Zainal Abidin
7	26-28 Aug. 2001	Pre-Conference for National Institution	Johannesburg, South Africa	Dato' Dr. Salleh Mohd. Nor
8	31 Aug.- 7 Sept. 2001	World Conference Against Racism and Racial Discrimination	Durban, South Africa	Dato' Dr. Salleh Mohd. Nor
9	24-27 Sept. 2001	6TH Annual Meeting for Asia Pacific Forum on Human Rights Institution	Colombo, Sri Lanka	Dato' Mahadev Shanker
10	2-4 Nov. 2001	Conference on Establishment of National Human Rights Institution	Bangkok, Thailand	Tan Sri Dato' Harun Mahmud Hashim
11	3-4 Dec. 2001	5TH Parliament Sitting and World Human Rights	Policy : Asia - Europe Manila, Filipina	Tan Sri Datuk Seri Panglima Simon Sipaun

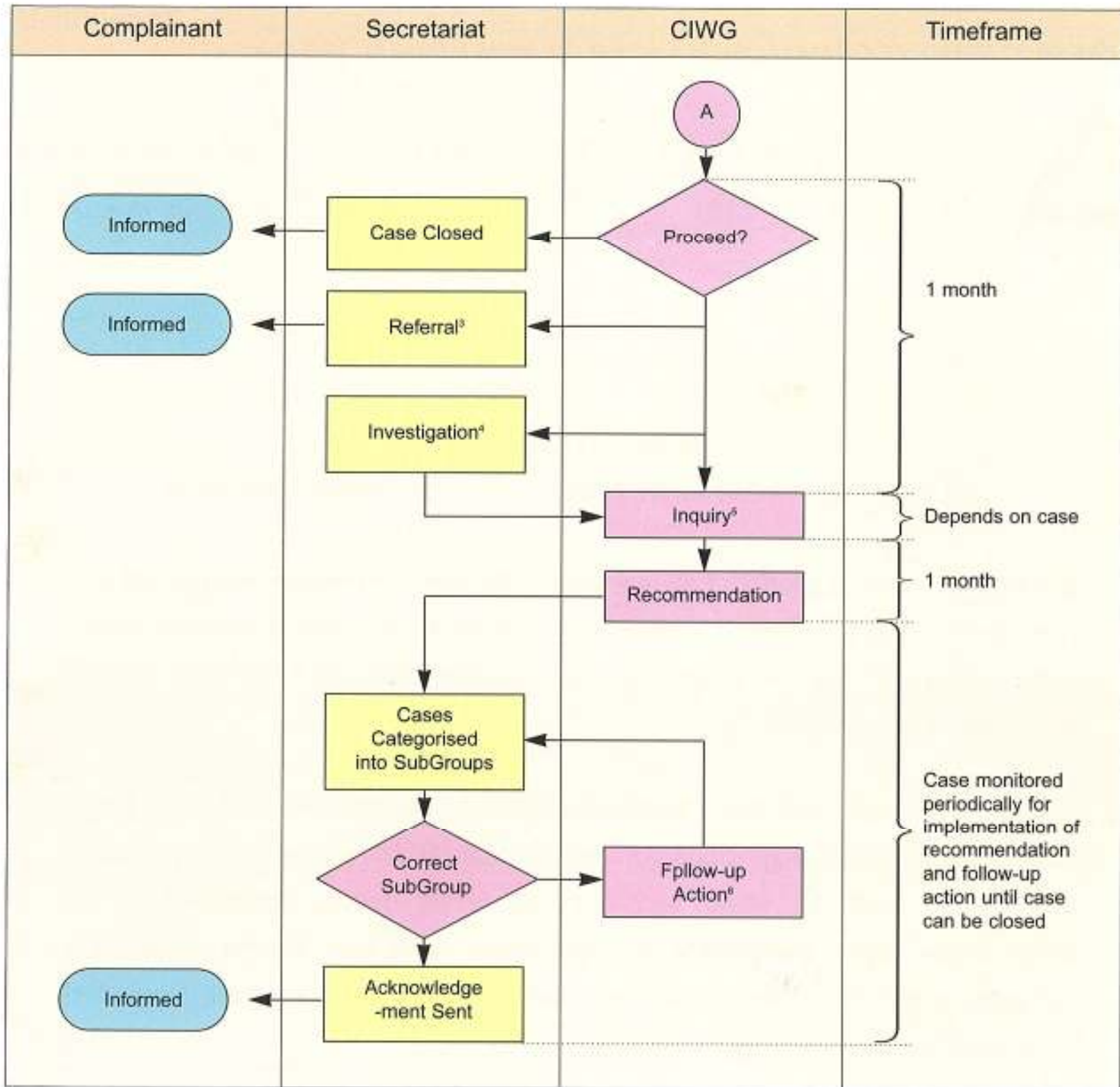
Appendix VIII

COMPLAINTS & INQUIRIES WORKING GROUP (CIWG)
Complaints Resolution Flowchart



Notes:

- 1 Complaints include written and verbal. Written complaints include memoranda.
- 2 Preliminary action may include initial information/document gathering or minimal assistance provided to complainant by Secretariat.



Notes:

- 3 Matters are referred to the party more appropriate to handle complaint.
- 4 Investigation carried out by Secretariat as may be advised/instructed by Commissioner of related SubGroup.
- 5 Inquiry (where Commissioners are actively and visibly involved) may be open or close, as decided by CIWG on recommendation/suggestion of SubGroup(s).
- 6 Follow-up action may include issuing reminders to relevant authorities, issuing press statements or disclosing matter in SUHAKAM Annual Report.
- 7 Throughout the process:
 - a. Resolution through mediation should be encouraged; and
 - b. Complainant to be informed of case status periodically.

Appendix IX

PRESS STATEMENT ON DATO' SERI ANWAR IBRAHIM MEDICAL TREATMENT

SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
HUMAN RIGHTS COMMISSION OF MALAYSIA

PRESS STATEMENT

ON MEDICAL TREATMENT FOR DATO' SERI ANWAR IBRAHIM

SUHAKAM received a letter of appeal from Datin Seri Wan Azizah Wan Ismail and more than 6,000 memoranda, letters and postcards from political parties, NGOs and members of the public regarding Dato' Seri Anwar Ibrahim's choice of medical treatment for his spinal injury.

SUHAKAM has met with Dato' Seri Anwar Ibrahim, his personal doctors and also his attending doctors from Kuala Lumpur Hospital ("KLH") to gather relevant facts and figures, and the views and opinions of all parties concerned. In its deliberations today, SUHAKAM weighed these facts and figures, views and opinions, and further considered their implications from the medical, legal, and most importantly, human rights aspects.

During SUHAKAM's meeting with Dato' Seri Anwar Ibrahim ("DSAI"), it was made clear to us that DSAI is well aware of all the available surgical procedures open to him in addressing his medical ailment. Through the briefings made by both the personal doctors of DSAI and the panel doctors of KLH, it has also been impressed upon SUHAKAM that DSAI is also aware of all the risks involved in the different procedures, including the risk of taking a long flight to Germany. It is clear to SUHAKAM that at this point DSAI remains with his decision to opt for the endoscopic microsurgery procedure.

SUHAKAM recognises that a patient has a right to his or her informed choice of medical treatment.

SUHAKAM notes that under ordinary circumstances, a person charged with the offences that DSAI had been charged with could have been granted bail pending trial and appeal. Under such circumstances therefore, a person under bail could have travelled abroad for the medical treatment of his or her own choice.

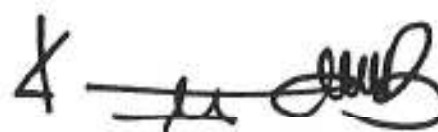
Since DSAI has been denied bail and is now in prison, SUHAKAM considered the relevant provisions of the Prison Act 1995. Section 37 of the Prison Act provides that where there are inadequate facilities for the treatment of a prisoner, an order may be made for the removal of the prisoner to a government hospital. Section 43 allows the Director General of Prison to release a prisoner serving a concurrent or consecutive term of imprisonment of not less than 4 years on licence and on such conditions as may be specified in the licence. Section 42 provides for the removal of a prisoner out of Malaysia by sea or by air.

In view of the above, SUHAKAM observes that there are no prohibitions in law for Dato' Seri Anwar Ibrahim to be sent abroad for medical treatment. Further, it is accepted medical practice to respect the patient's choice of treatment even if it is against the advice of his or her attending physicians.

In addressing the concerns of the authorities, DSAI has assured SUHAKAM that he is willing to bear all risks and expenses should he be allowed to pursue his personal choice of medical treatment overseas. DSAI has also intimated that he is willing to abide by any conditions imposed by the Government including those restricting him from taking any actions of a political nature.

SUHAKAM notes that DSAI has been provided with the best of medical care at KLH and the Sg. Buloh Prison and this was acknowledged by DSAI during SUHAKAM's visit. However, SUHAKAM reiterates that from the medical, legal and human rights perspectives, DSAI should be allowed to exercise his right of choice of medical treatment.

By authority of SUHAKAM



KAMARUDDIN MOHAMED BARIA
Secretary.

Kuala Lumpur
31 May 2001.

SUHAKAM AUDITED ACCOUNTS

**SIJIL KETUA AUDIT NEGARA MENGENAI
AKAUN SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
BAGI TEMPOH 1 SEPTEMBER HINGGA 31 DISEMBER 2001**

Saya telah mengaudit Lembaran Imbangan Suruhanjaya Hak Asasi Manusia Malaysia seperti pada 31 Disember 2001, penyata pendapatan dan perbelanjaan, penyata perubahan dalam ekuiti serta penyata aliran tunai bagi tahun tersebut. Pihak pengurusan Suruhanjaya Hak Asasi Manusia Malaysia bertanggungjawab terhadap penyata kewangan ini. Tanggungjawab saya adalah untuk memberi pendapat terhadap penyata kewangan tersebut berdasarkan kepada pengauditan yang dijalankan.

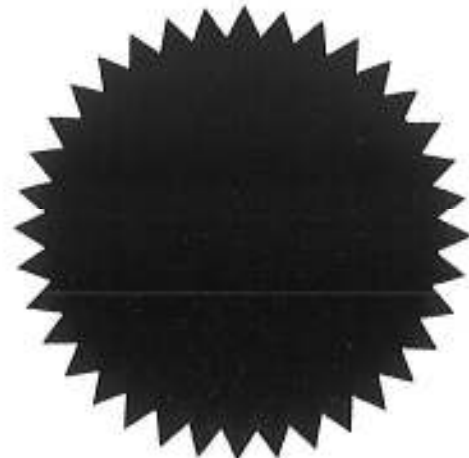
2. Pengauditan telah dilaksanakan mengikut Akta Audit 1957 dan berpandukan Piawaian Pengauditan Antarabangsa. Piawaian-piawaian tersebut mengkehendaki pengauditan dirancang dan dilaksanakan untuk mendapat kepastian yang munasabah sama ada penyata kewangan Suruhanjaya Hak Asasi Manusia Malaysia adalah bebas daripada kesilapan atau ketinggalan yang ketara. Pengauditan itu termasuk memeriksa rekod-rekod secara semak uji, menyemak bukti-bukti yang menyokong angka-angka dan memastikan penzahiran yang mencukupi dalam penyata kewangan. Penilaian juga dibuat terhadap prinsip-prinsip perakaunan yang digunakan dan penyampaian penyata kewangan secara keseluruhan.

3. Pada pendapat saya, penyata kewangan ini memberi gambaran yang benar dan saksama terhadap kedudukan kewangan Suruhanjaya Hak Asasi Manusia Malaysia pada 31 Disember 2001, hasil operasi serta aliran tunainya untuk tahun tersebut.



(Febriana Ika Sari bt. Mohd Jaafar)
b.p. KETUA AUDIT NEGARA

PUTRAJAYA
12 April 2002



PENYATA OLEH AHLI SURUHANJAYA HAK ASASI MANUSIA MALAYSIA

Kami **Tan Sri Dato' Musa Bin Hitam** dan **Tan Sri Datuk Seri Panglima Simon Sipaun** yang merupakan Pengerusi dan seorang Ahli **Suruhanjaya Hak Asasi Manusia Malaysia** dengan ini menyatakan bahawa pada pendapat SUHAKAM, Kunci Kira-Kira SUHAKAM pada 31 Disember, 2001 dan Penyata Pendapatan dan Perbelanjaan Mengurus SUHAKAM dalam kedudukan kewangan yang berikut ini beserta dengan nota-nota di dalamnya ada disediakan untuk menunjukkan pandangan yang benar dan saksama berkenaan kedudukan **Suruhanjaya Hak Asasi Manusia Malaysia** pada **31 Disember 2001** dan hasil kendaliannya dan perubahan kedudukan kewangannya bagi tahun berakhir pada tarikh tersebut.

Bagi pihak Suruhanjaya,



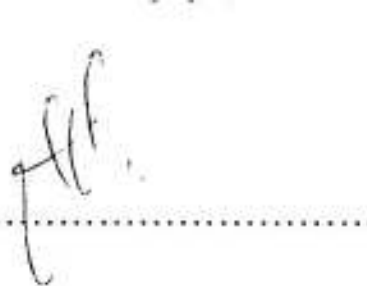
NAMA : **Tan Sri Dato' Musa Bin Hitam**

GELARAN : **Pengerusi**

Tarikh : 11.3.2002

Tempat : **Kuala Lumpur**

Bagi pihak Suruhanjaya,



NAMA : **Tan Sri Datuk Seri
Panglima Simon Sipaun**

GELARAN : **Ahli Suruhanjaya**

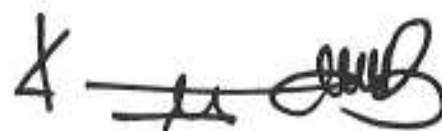
Tarikh : 11.3.2002

Tempat : **Kuala Lumpur**

PENGAKUAN OLEH PEGAWAI YANG BERTANGGUNGJAWAB KE ATAS PENGURUSAN KEWANGAN SUHAKAM

Saya **Kamaruddin Bin Mohamed Baria** pegawai utama yang bertanggungjawab ke atas pengurusan kewangan **Suruhanjaya Hak Asasi Manusia Malaysia** dengan ikhlasnya mengakui bahawa Lembaran Imbangan pada 31 Disember 2001 dan Penyata Pendapatan dan Perbelanjaan dan Perubahan Ekuiti dan Aliran Tunai dalam kedudukan kewangan yang berikut ini berserta dengan nota-nota di dalamnya, mengikut sebaik-baik pengetahuan dan kepercayaan saya, adalah betul dan saya membuat ikrar ini dengan sebenarnya mempercayai bahawa ianya itu adalah benar dan atas kehendak-kehendak Akta Akuan Berkanun, 1960.

Sebenarnya dan sesungguhnya)
Diakui oleh penama di atas)
di Kuala Lumpur)
pada 11. 3. 2002)



Tuanku Dato' Nissem PKNS
Jalan Duta Lant, Peti Surat 38,
50651 KUALA LUMPUR
TEL: 4663218

SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
LEMBARAN IMBANGAN SEPERTI PADA
31 DISEMBER 2001

		RM
ASET		
Aset Tetap	3	268,829
ASET SEMASA		
Penghutang	4	590,175
Pelbagai Penghutang dan Deposit	5	34,587
Wang Dalam Tangan dan Baki Bank	6	1,111,143
Jumlah Aset Semasa		1,735,905
LIABILITI SEMASA		
Pemiutang Perniagaan		63,921
Perbelanjaan Terakru		7,920
Jumlah Liabiliti Semasa		71,841
ASET SEMASA BERSIH		1,932,893
DIBIAYAI OLEH :		
Geran (Waran Peruntukan)		2,590,175
Lebihan/Terkurang Berkumpul		(657,282)
		1,932,893

**SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
PENYATA PENDAPATAN DAN PERBELANJAAN
BAGI TEMPOH 1 SEPTEMBER HINGGA 31 DISEMBER 2001**

RM

PENDAPATAN

Faedah	9,064
Jumlah Pendapatan	9,064

PERBELANJAAN

BEKALAN DAN PERKHIDMATAN

Belanja Perjalanan dan Sara hidup	(69,988)
Perhubungan Dan Utiliti	(29,186)
Sewaan	(258,904)
Bekalan Makanan dan Minuman	(1,271)
Alat Ganti Pembaikan	(50)
Bekalan dan Bahan-Bahan Lain	(33,569)
Penyelenggaraan dan Pembaikan Kecil	(18,057)
Perkhidmatan Ikhtisas dan Hospitaliti	(253,755)
Susutnilai / Pelunasan	(1,473)
Perbelanjaan Lain	(93)
Jumlah Perbelanjaan	(666,346)
Lebihan / (Kurangan) Pendapatan	(657,282)
Lebihan / (Kurangan) Terkumpul Dibawa Hadapan	-
Lebihan Boleh Diagihkan	-
Lebihan/(Kurangan) Terkumpul Dihantar Ke hadapan	(657,282)

NOTA KEPADA PENYATA KEWANGAN YANG BERAKHIR PADA 31 DISEMBER 2001

1. SUHAKAM

1.1 Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM) ditubuhkan oleh Parlimen di bawah Akta Suruhanjaya hak Asasi Manusia Malaysia 1999(Akta 597). Akta tersebut telah diwartakan pada 9 September 1999.

1.2 Kegiatan utama Suruhanjaya adalah untuk membantu melindungi dan memajukan hak asasi manusia di Malaysia iaitu:

- 1.2.1 Untuk memupuk kesedaran dan menyediakan pendidikan yang berhubungan dengan hak asasi manusia;
- 1.2.2 Menasihati dan membantu Kerajaan dalam merumuskan perundangan, arahan, tatacara dan mengesyorkan langkah yang perlu diambil;
- 1.2.3 Mengesyorkan kepada Kerajaan berkenaan dengan penandatanganan atau penyertaan dalam triti dan surat cara antarabangsa yang lain dalam bidang hak asasi manusia; dan
- 1.2.4 Menyiasat aduan berkenaan dengan pelanggaran hak asasi manusia.

1.3 Peruntukan (Dana)

1.3.1 Bagi tahun Kewangan semasa (tahun 2001) Kerajaan memperuntukkan sejumlah RM5,440,500.00 bagi belanja mengurus SUHAKAM melalui Kementerian Luar Negeri. Pengurusan Kewangan bagi SUHAKAM berada dibawah kendalian Kementerian Luar Negeri sehingga 31 Ogos 2001.

1.3.2 SUHAKAM mula mengawal dan menguruskan dananya mulai 1 September 2001 apabila baki peruntukan sebanyak RM2,000,000.00 disalurkan kepada SUHAKAM pada 30 Ogos 2001. Setelah mengambilkira semua baki perbelanjaan yang telah dikendalikan oleh Kementerian Luar Negeri dari bulan September 2001 hingga Disember 2001, sejumlah RM585,954.00 telah dipindahkan ke SUHAKAM pada 6 Februari 2002. Sementara itu, baki terakhir yang berjumlah RM4,221.00 akan dipindahkan sebelum akhir bulan Februari 2002.

- 1.3.3 Jumlah peruntukan yang diuruskan oleh SUHAKAM dengan mengambilkira ketiga-tiga pemindahan peruntukan seperti dipara 1.3.2 ialah berjumlah RM2,590,175.10.

2. DASAR PERAKAUNAN

a) **Asas perakaunan**

Akaun-akaun telah disediakan mengikut kelaziman kos sejarah dan mematuhi Piawaian Perakaunan yang diluluskan.

b) **Kumpulan Wang Mengurus**

Kumpulan Wang Mengurus adalah peruntukan yang diterima dari Kementerian Luar Negeri untuk menjalankan aktiviti dan operasi SUHAKAM bagi mencapai objektif dan matlamat penubuhan SUHAKAM.

c) **Susutnilai**

Susutnilai untuk aset-aset tetap diperuntukan mengikut kaedah garis lurus yang berasaskan anggaran usianiaga aset tetap tersebut.

Peraturan susutnilai tahunan adalah seperti berikut:

Alat Kelengkapan Pejabat	20%
Perkakas dan Kelengkapan	20%
Komputer	20%
Pengubahsuaian Pejabat	20%

d) **Perbelanjaan Permulaan**

Perbelanjaan Permulaan bagi SUHAKAM adalah berkaitan dengan perkhidmatan serta bekalan dan pembelian aset.

3. ASET TETAP

Aset-aset SUHAKAM adalah terdiri daripada aset-aset yang dibiayai dari peruntukan Kumpulan Wang Mengurus.

KOS

	Peralatan Pejabat	Perkakas & Kelengkapan	Komputer	Pengubahsuaian Pejabat	Jumlah Kos
Baki pada 1/1/2000	-	-	-	-	-
Tambahan Belian	39,973	84,371	21,158	124,800	270,302
Baki pada 31/12/2001	39,973	84,371	21,158	124,800	270,302

SUSUTNILAI

	Peralatan Pejabat	Perkakas & Kelengkapan	Komputer	Pengubahsuaian Pejabat	Jumlah Susutnilai
Baki pada 1/1/2000	-	-	-	-	-
Susutnilai Semasa	1,066	362	44	-	1,472
Baki pada 31/12/2001	1,066	362	44	-	1,472
Nilai Bersih Aset pada 31/12/2001	38,907	84,009	21,114	124,800	268,830

4. Penghutang sebanyak RM 590,175 adalah baki waran peruntukan 2001 yang belum diterima dari Kementerian Luar Negeri.

5. PELBAGAI PENGHUTANG DAN DEPOSIT

Bil	BUTIR-BUTIR	JUMLAH (RM)
1.	Penghutang	0.00
2.	Wang pendahuluan untuk Kakitangan	550.00
3.	Deposit sewa pejabat-Sabah, Sarawak	34,037.65
	JUMLAH KESELURUHAN	34,587.65

6. WANG DALAM TANGAN DAN BAKI DI BANK

BUTIR-BUTIR	JUMLAH (RM)
Wang Dalam Tangan	5,000.00
Wang Di Bank	1,106,142.91
JUMLAH KESELURUHAN	1,111,142.91

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