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ANNUAL REPORT 2002

LAPORAN TAHUNAN 2002

HUMAN RIGHTS COMMISSION OF MALAYSIA
SURUHANJAYA HAK ASASI MANUSIA MALAYSIA

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HUMAN RIGHTS COMMISSION OF MALAYSIA

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LAPORAN TAHUNAN 2002
SURUHANJAYA HAK ASASI MANUSIA MALAYSIA

Dengan segala hormatnya saya dengan ini mengemukakan Laporan Tahunan Suruhanjaya Hak Asasi Manusia Malaysia bagi tahun 2002 untuk dibentangkan di Parlimen sepertimana yang dikehendaki oleh Seksyen 21 (1) Akta Suruhanjaya Hak Asasi Manusia Malaysia 1999. Laporan dalam Bahasa Malaysia akan dikemukakan dalam sedikit masa lagi.

Sekjian. Terima kasih.

"HAK ASASI UNTUK SEMUA"

Saya yang menurut perintah,

(KAMARUDDIN MOHAMED BARIA)
Setiausaha
Suruhanjaya Hak Asasi Manusia Malaysia

Lamp:

HUMAN RIGHTS COMMISSION OF MALAYSIA

ANNUAL REPORT 2002

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SUHAKAM COMMISSIONERS



TAN SRI ABU TALIB OTHMAN - CHAIRMAN

Tan Sri Abu Talib, a Barrister-at-law from Lincoln's Inn, entered the Judicial and Legal service of Malaysia in 1962 where he served in various capacities. He was appointed the Attorney-General (AG) of Malaysia in September 1980. As legal officer and AG, he participated and represented Malaysia in the Law of the Sea Conference, U.N. Conferences on Narcotic Drugs and Refugees, Legal Cooperation, Land Boundaries and Extradition. After retirement as AG in October 1993, he served on the Board of several public and private companies. In 1999, he was appointed a member of the Royal Commission established to conduct a public inquiry into the injuries suffered by former Deputy Prime Minister Datuk Seri Anwar Ibrahim while under police custody. He was appointed Chairman of SUHAKAM in April 2002.



TAN SRI DATO' HARUN MAHMUD HASHIM - VICE CHAIRMAN

Tan Sri Harun began his career in the Government service as an Assistant District Officer in Kelantan in 1948. A Barrister-at-Law from Lincoln's Inn, he served the legal service in various capacities until taking up the post of Director-General of the Anti-Corruption Agency in 1967. In 1971, he was appointed Judge of the High Court and chaired the Royal Commission on Remuneration and Conditions of Service in Statutory Bodies and Local Authorities. He was made judge of the Supreme Court in 1988 and served until retirement in 1994. He is currently a Very Distinguished Academic Fellow of the Ahmad Ibrahim Kulliyah of Laws at the International Islamic University Malaysia. In his second term as Vice-Chairman of SUHAKAM, he lends his vast experience as advisor on civil and syariah matters, as Editor-in-Chief of several scholarly journals and as columnist in the weekly "Benchmark" column in the New Straits Times.



TAN SRI DATUK SERI PANGLIMA SIMON SIPAUN

Tan Sri Simon began his career in the Sabah civil service on 1.1.1962 as a clerk in the General Clerical Service where he rose through the ranks to become State Training Officer, Permanent Secretary in several Sabah Ministries including Local Government, Finance, Communications and Works. He served as Sabah State Secretary from 1988 to 1993. He has also served as a Director and/or Board Member in several private and government-owned companies including the then Malaysian Airlines System, the Employees Provident Fund and Universiti Malaysia Sabah. He is active in many welfare and charitable organisations. He also currently serves as Chairman of the Sabah Public Service Commission.



PROF. DATO' HAMDAN MOHD. ADNAN

Prof. Hamdan is currently a lecturer at the Faculty of Communications and Media Studies, Universiti Teknologi Mara. A graduate of Gaya Teachers Training College in Kota Kinabalu, he later earned a first degree in communications from MARA Institute of Technology, a Masters degree in the same field from the University of Washington and a Master of Science in Public Relations from Boston University. As President of the Federation of Consumer Associations of Malaysia (FOMCA), he is a vocal spokesperson on consumer issues. He is a member of the National Economic Action Council (NEAC), National Information Technology Council (NITC) and National Coordination Council for Agriculture. He is President of Institute of the Public Relations Malaysia as well as the "Love Your Pet Society" and member of the Malaysia Design Council and the Islamic Economic Development Council.

SUHAKAM COMMISSIONERS



PROF. DR. CHIAM HENG KENG

Prof. Chiam is Professor of Social Psychology at the Department of Educational Psychology, Universiti Malaya. She received her first degree in Chemistry from University of Malaya in 1965 and went on to receive her Diploma in Education at the University of Singapore and Master in Education from the University of Sydney before returning to her alma mater to complete her Ph.D. in 1976. A well-known authority on child and adolescent psychology and early childhood education, she has authored several books and numerous articles in her field of specialisation, social issues and education and is a columnist for the *Sunday Star*. She serves on numerous committees including the National Council on the Protection of Children, the National Population and Family Development Board, the Advisory Council of the National Science Centre, the National Children's Council of Advisors and Consultants of the Ministry of National Unity and Social Development, Accreditation Board for Childcare Training Courses of the Social Welfare Department, and the Drug Prevention in Schools Committee.



DR. MOHAMMAD HIRMAN RITOM ABDULLAH

Dr Hirman received his Bachelor of Medicine and Bachelor of Surgery (MBBS) from Universiti Malaya in 1977 and became a Fellow of the Royal College of Surgeons, Edinburgh in 1983. He began his medical career in the Government service in 1977 and served mainly in hospitals in Sarawak. He resigned to enter private practice in 1989 as Consultant General Surgeon and sole proprietor of Klinik Satok. He is currently Adjunct Lecturer at the Medical Faculty of Universiti Malaysia Sarawak. He is also active in organisations such as the Islamic Council of Sarawak, Sarawak State Fatwa Council and Islamic Specialist Doctors Association of Malaysia. He is also an adviser to the Muslim Converts Secretariat in Kuching.



CIK ZAINAH ANWAR

Cik Zainah Anwar is the Executive Director of Sisters in Islam (SIS), a non-governmental organisation working on the rights of Muslim women within the framework of Islam. She was educated at the Fletcher School of Law and Diplomacy, Tufts University, Boston University and the MARA Institute of Technology in the fields of international relations and journalism. She was formerly a Political and Diplomatic Writer with the *New Straits Times*, Senior Analyst of the Institute of Strategic and International Studies (ISIS) and Chief Programme Officer, Political Affairs Division of the Commonwealth Secretariat in London. A vocal spokesperson on women's rights in Islam, she has written articles on the subject and also on the impact of political Islam on democratic governance. Her book *"Islamic Revivalism in Malaysia: Dakwah Among the Students"* has become a standard reference in the study of Islam in Malaysia.



TAN SRI DATO' (DR.) RAMON NAVARATNAM

A graduate in Economics from the University of Malaya and holder of a Master in Public Administration from Harvard University, Tan Sri Ramon joined the civil service in 1959 and was posted to the Ministry of Finance for 27 years where he rose to become Deputy Secretary-General from 1979 - 1996. He was later appointed Secretary-General of the Ministry of Transport until his retirement in 1989. Upon retirement, he was appointed Executive Director/Chief Executive Officer of Bank Beruh Berhad for five years. A well-respected economist, he has authored several books on the Malaysian economy. Currently, he is Group Corporate Adviser of the Sunway Group, Executive Director of Sunway College, and Executive Vice-Chairman of the Asian Strategic and Leadership Institute (ASLI).

SUHAKAM COMMISSIONERS



DATO' ASIAH ABU SAMAH

Dato' Asiah retired as Director-General of Education of the Ministry of Education in 1993 after a long career in the field of education. A graduate of the University of Malaya, Singapore she entered the teaching profession in 1961 and taught in several schools. In 1970, she joined the Ministry of Education where she held several posts including Director of the Curriculum Development Centre and Education Planning and Research Division. Upon her retirement as Director-General, she was appointed Corporate Advisor (Education) Land and General Berhad. She is also a Board member of Lang Education Sdn Bhd, a Distinguished ISIS Fellow and the Chairman of the Management Board of the International Institute of Educational Planning UNESCO, Paris.



DATUK DR. RAJ ABDUL KARIM

Datuk Dr Raj Abdul Karim is currently the Regional Director of the International Planned Parenthood Federation, East and South East Asia and Oceania Region, a position she held since October 1999. From 1992 till then, she was the Director-General of the National Population and Family Development Board, Malaysia and prior to this she was the Director of the Public Health Institute, Ministry of Health. She is the Vice President of Malaysian Council for Child Welfare (MKKM) and Advisor to the Malaysian Association of Maternal and Neonatal Health (MAMANEH) and an EXCO Member of Pan Pacific and South East Asia Women's Association (PPSEAWA). She has served as a consultant and temporary advisor in several WHO, UNFPA, UNICEF and UNESCAP Committees and meetings and was a member of the WHO Expert Committee on Maternal and Child Health in the 1980's and 1990's. She was the Chair of the UN Commission on Population and Development from March 1998 to 1999 and Vice Chair from March 1997 to 1998.



DATO' DR. ABDUL MONIR YAACOB

Dato' Dr Abdul Monir is currently the Director-General of Institute of Islamic Understanding Malaysia (IKIM). He attended Islamic religious schools including Kolej Islam Malaya before continuing his education at the prestigious University al-Azhar in Cairo, Egypt. He then took up law at the Universiti of London where he earned a Diploma in Law and a Master of Philosophy in Law. He joined Universiti Kebangsaan Malaysia as lecturer in the Faculty of Islamic Studies and later served the Faculty of Law. He received his doctorate from the International Islamic University Malaysia in 1991.



DATO' K. C. VOHRAH

Dato' K. C. Vohrah was admitted to the Bar in 1964 and after a short spell in practice, he joined the Judicial and Legal Service of Malaysia. He served variously as Magistrate, President of the Sessions Court and Deputy Public Prosecutor. He became Legal Advisor to the Royal Customs and Excise Department and then Legal Advisor to the Ministry of Primary Industries. Later he served as the Treasury Solicitor, Ministry of Finance and subsequently became Federal Head of Advisory Division, AG's Chambers. For a short while there he was Acting Parliamentary Draftsman. He was appointed as High Court Judge in 1986. He was appointed a Commissioner in August 2002 shortly after his retirement as Court of Appeal Judge. He is presently a Consultant with a legal firm.

SUHAKAM COMMISSIONERS

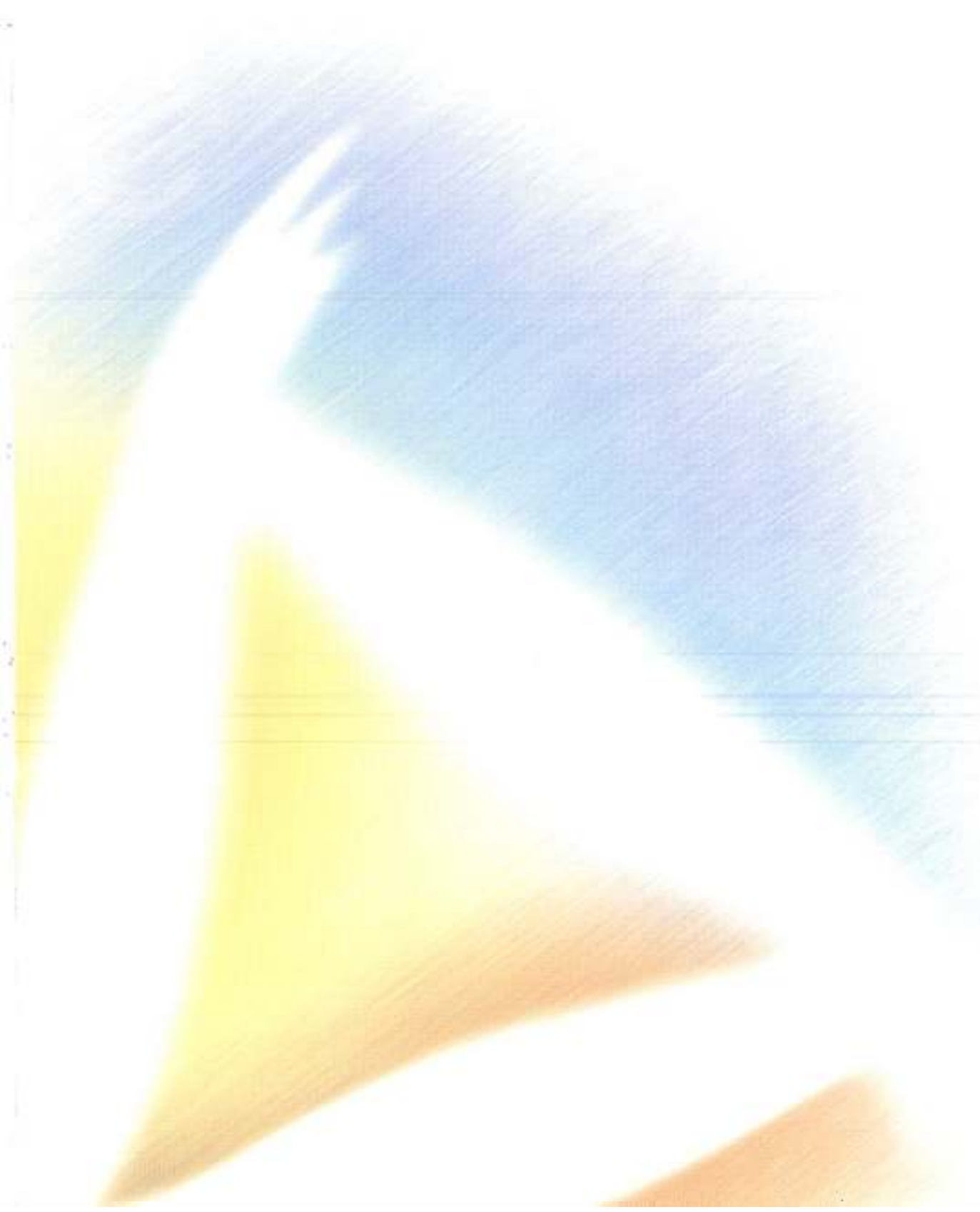


DATO' RANITA MOHD. HUSSEIN

Dato' Ranita, an LLB (Hons) graduate of the University of Singapore, entered the Judicial and Legal Service of Malaysia in 1969 where she held several senior posts including Head, Advisory and International Division in the AG's Chambers and Chief Parliamentary Draftsman. She left the service and joined the Central Bank of Malaysia as advisor (now redesignated as Assistant Governor) until 1994. She then served as Judicial Commissioner of the High Court until 1995 after which she joined the legal firm of Skrine and Co, Advocates and Solicitors as Partner until 1999.

CHAPTER 1

CHALLENGES AND
DIRECTION



CHAPTER 1

CHALLENGES AND DIRECTION

NEW APPOINTMENTS

The year 2002 saw the appointment of Tan Sri Abu Talib Othman as Chairman of SUHAKAM along with six new Commissioners and the reappointment of seven Commissioners for a two-year term. Tan Sri Harun Mahmud Hashim was reelected as Vice Chairman. Naturally, a period of adjustment followed the changeover in members of the Commission in April, but the continuity provided by reappointed members enabled work to proceed with little disruption.

On 31 October 2002, Tan Sri Lee Lam Thye resigned citing time constraints due to heavy commitments in the many organisations that he served in. SUHAKAM would like to record its deepest appreciation to former Chairman Tan Sri Dato' Musa Hitam and outgoing Commissioners Tan Sri Dato' Hj Annuar Zainal Abidin, Dato' Mahadev Shanker, Dato' Dr Salleh Mohd Nor, Puan Mehrun Siraj, and Tan Sri Lee Lam Thye for their active contribution to the deliberations and activities of SUHAKAM and their untiring effort in getting SUHAKAM off the ground in its inaugural two years.

Now in its third year of existence, SUHAKAM continues to face challenges in performing its role as a national human rights institution, the function of which is to protect and promote human rights in Malaysia.

100-DAY BOYCOTT BY NON - GOVERNMENTAL ORGANISATIONS (NGOs)

The newly reconstituted Commission got off on a contentious start when a coalition of 32 NGOs organised a period of "disengagement" with SUHAKAM for 100 days. The boycott was held purportedly to protest the Government's poor response to SUHAKAM's recommendations.

SUHAKAM regrets this course of action as the Commission has always been cooperative in forging dialogues and partnerships with NGOs. From the start, SUHAKAM recognised the fundamental role of NGOs in assisting national human rights institutions and consequently, adopted an open-door policy that welcomes any initiatives, requests for meetings, dialogues and complaints from NGOs. SUHAKAM feels that any disaffection by any group could be dealt with more productively through constructive engagement rather than a boycott.

At the request of the NGOs, a meeting was held on 20 August 2002 at the end of the 100-day boycott. The meeting promoted better understanding between the NGOs and the new Commission and it was agreed that both sides would work closely together for the mutual objective of promoting and protecting human rights in Malaysia.

SLOW GOVERNMENT RESPONSE TO KEY REPORTS AND RECOMMENDATIONS

As SUHAKAM continues into its third year, a major challenge that remains unresolved is the slow Government response to SUHAKAM reports on major issues that touch on fundamental liberties. This includes SUHAKAM's Keras Highway Inquiry report that was submitted to the Government on 2 April 2001, the Freedom of Assembly report that was submitted on 24 July 2002 and the National Human Rights Plan of Action submitted on 25 February 2002. In September, the Government announced the setting up of an inter-agency task force to study the Keras Highway report but as of 31 December 2002, SUHAKAM has yet to receive any feedback from the Government on the recommendations made.

human rights principles to the people in rural areas. (Appendix I). The response has been heartening as participants spoke freely on their areas of concern including on their rights to land, education, health and documents of identity.

A two-day workshop on human rights for senior police officers in Kuala Lumpur brought together 88 top ranking personnel to a dialogue and training on human rights issues of particular relevance to the work of the Police, including the right to a fair criminal process and remedies for human rights violations.

Since the establishment of SUHAKAM, much attention was focused on civil and political rights which received the glare of the media spotlight because of several high profile cases. A significant number of complaints lodged with SUHAKAM relate to detention without trial and the plight of those detained under the Internal Security Act 1960 (ISA). As the views and opinions of various sectors on this issue have been widely publicised, SUHAKAM undertook to hold an open inquiry into conditions of detention under the ISA. The findings and recommendations of the Inquiry have been submitted to the Government. The long awaited review of the ISA was also undertaken in 2002 and subsequently submitted to the Government.

In 2002, too, SUHAKAM intensified its visitation function. Commissioners made 24 visits to prisons, police lockups, drug rehabilitation centres, immigration detention centres, juvenile and welfare homes and mental hospitals. Most of these visits were made on SUHAKAM's initiative, others as a result of complaints from the public or family

members of those detained. The reports and findings of these visits were submitted to the relevant authorities for their action. On a positive note, SUHAKAM was informed by Police officials that RM20 million had been allocated to the Police to improve the conditions of several lockups and a nationwide study would be conducted to evaluate the state of police lockups in the country.

SUHAKAM organised a forum on "Human Rights Post September 11" to mark World Human Rights Day. The panellists were SUHAKAM chairman Tan Sri Abu Talib Othman, ISIS Malaysia Director-General Dato' Mohamad Jawhar Hassan and International Movement for a JUST World (Malaysia) President Dr Chandra Muzaffar. Since the September 11 attack, Governments around the world have enacted laws, such as the USA PATRIOT Act 2001 and the Anti-terrorism Act 2001 in Canada, containing provisions that appear to infringe human rights principles. There is still much debate today as to where the balance lies between protection of the fundamental liberties of citizens and the responsibility of the State to maintain national security.

SUHAKAM recognises that while its high-profile work to date has focused on civil and political rights, emphasis should also be given to economic, social and cultural rights. With the setting up of the Economic, Social and Cultural Rights Working Group, SUHAKAM activities that concern the "non-political" aspect of human rights will be intensified. It is hoped that the media will give emphasis on this part of SUHAKAM's function as well as its handling of civil and political rights issues.

CHAPTER 2

THE STATE OF
HUMAN RIGHTS



CHAPTER 2

THE STATE OF HUMAN RIGHTS

The effects of September 11 and the war against terrorism pose a particular challenge to human rights defenders. As Governments in many parts of the world engage in the war against terrorism, the delicate balance between national security and fundamental liberties has been recalibrated in favour of national security. As a result, human rights standards in many countries have become collateral damage in the larger war against terrorism.

DETENTION WITHOUT TRIAL

In Malaysia, the number of those detained under the ISA in 2002 increased from 78 the previous year to 112 by 28 November. According to official figures released by the Kamunting Detention Centre, 35 of these are alleged members of Jemaah Islamiah (eight are foreign nationals) and 19 are alleged members of *Kumpulan Militan Malaysia* (one is a foreign national). Fifteen *Al-Maaunah* members remain under detention and four others (two are foreign nationals) are detained under the category of "international terrorists organisation". This brings to a total of 73 persons being detained for alleged militant activities that threaten national security.

The 39 others detained in Kamunting include 18 (seven are foreign nationals) for allegedly belonging to a human trafficking syndicate, eight for counterfeiting coins, six *Reformasi* activists, six for falsifying documents, and one belonging to the Free Aceh Movement.

In its report on the Review of the ISA, SUHAKAM takes the position that the authorities should not use the ISA to detain without trial those persons whose alleged acts fall under ordinary criminal law. They should have been arrested and detained using mainstream provisions of the Criminal Procedure Code and charged in a court of law.

Since SUHAKAM's establishment in April 2000, it has received numerous complaints on alleged abuses of human rights under the ISA. SUHAKAM has always taken a principled stand that detention without trial constitutes a violation of human rights. In 2002, SUHAKAM conducted two major activities on the ISA, a Public Inquiry into Conditions of Detention under the ISA and a Review of the ISA. (See Chapter 3: Issues in Focus.)

SUHAKAM urges the Government to deliberate on the findings of the two reports and consider the adoption of the recommendations made to uphold its commitment to promoting and protecting human rights in Malaysia.

JUDICIAL INDEPENDENCE

SUHAKAM welcomes the landmark decision made by the Federal Court in September which clarified the law on judicial review under the ISA. SUHAKAM takes the view that judicial review of the grounds of arrest and detention is a fundamental safeguard to check against arbitrary detention. The Federal Court in a habeas corpus application of five *Reformasi* activists, declared their 60-day detention by the Police under section 73 of the ISA as unlawful [*Mohamad Ezam Mohd Noor v Ketua Polis Negara & Other Appeals*]. The Court decided that while it recognises the Government, as the body responsible for national security, should be the sole judge of what national security requires, it nevertheless will examine whether the Police decision to arrest and detain is in fact based on national security considerations.

In this case, the Federal Court ruled that it would be wrong for the Police to exercise its power for a collateral or ulterior purpose, other than for the avowed purpose of the arrest. This decision serves as a firm reminder to the Police to exercise greater

vigilance in following proper procedure in accordance with the rule of law when using its powers of arrest and detention.

The Court decision however did not directly benefit the *Reformasi* activists as they were already detained for two years by order of the Home Minister under section 8 of the ISA and the matter of detention by such orders was not before the Court. SUHAKAM issued a press statement (**Appendix II**) calling on the Home Minister to review the detention orders of the *Reformasi* activists as the Minister's executive detention under section 8 was made based on the flawed grounds of detention under section 73. The Home Minister, however, said that the detainees would not be released as the *Reformasi* activists were detained based on valid national security concerns.

SUHAKAM is also concerned that in a similar case in the Shah Alam High Court, the ISA detainee was rearrested immediately after his release from Kamunting following the Court's decision that his detention was unlawful [*Nasharuddin Bin Nasir v Kerajaan Malaysia & 2 Ors*² (No.2)].

In its review of the ISA, SUHAKAM has recommended that habeas corpus applications must be disposed off speedily and that time limits be set for the exchange of affidavits. If not, a successful habeas corpus application against the initial 60-day period under police detention remains a moot victory when that person has already been detained under executive order. Justice delayed in this case constitutes a violation of a person's right to liberty.

DEATHS IN POLICE DETENTION

The year 2002 also saw a new area of complaints being submitted to SUHAKAM - deaths in police custody. It was reported in Parliament that up to September 2002, 18 people had died while in police custody, compared to 10 in 2001 and six in 2000. SUHAKAM views with concern the allegations of police brutality and negligence in the complaints received. In one case, a detainee died in a police lockup after allegedly being assaulted by nine

inmates. This raises the issue of lack of security in police lockups and police action against persons while in their custody.

Investigating these complaints, SUHAKAM visited the police lockups concerned, interviewed policemen, visited hospitals where victims were taken and were briefed by doctors. In two cases, the Attorney General ordered that a coroner's inquest be held. SUHAKAM attended these hearings that continued into 2003.

In response to the many complaints received on alleged police abuse, SUHAKAM held a number of dialogue sessions with senior police officers on issues such as death in police custody, police discipline, police inaction, and lockup conditions and rules. As a result, the police set up a Human Rights Desk in the Criminal Investigation Department. SUHAKAM welcomes this move and it hopes that this would sensitise the Police to human rights principles and further improve cooperation between the Police and SUHAKAM.

CONSECUTIVE REMAND ORDERS

The letters of complaint against the Police once again brought to SUHAKAM's attention that detainees were apparently being held in remand for well over the maximum 14 days allowed under the law. It was alleged that the Police circumvented the law by remanding the detainee in different police lockups in different jurisdictions, purportedly to assist investigations in alleged criminal acts committed in the different localities. In one case, a detainee was consecutively remanded for a total of 77 days in police lockups in Kuala Lumpur, Kuantan, Temerloh, Rawang, Ipoh, Kajang and Putrajaya. The detainee died in Putrajaya Hospital where he had been admitted for medical treatment while still under police custody.

SUHAKAM is concerned with this practice which appears colourable. In its report on the Rights of Remand Prisoners in 2001, SUHAKAM recommended that magistrates should inquire when the person was first arrested and whether he has been moved from one district to another and

²[2003] 1 CLJ 353

more importantly how long he has already been in custody. SUHAKAM also recommended that magistrates during remand hearings, inquire about the welfare of the arrested person to ensure that no abuse has taken place.

Sharing this concern, the Judiciary had requested SUHAKAM's help in drawing to its attention instances of such consecutive remand orders being issued to enable it to conduct further investigation. SUHAKAM has asked for the cooperation of the Bar Council for the Commission to investigate with a view to advising relevant authorities as to whether there has been a breach of the law or of human rights principles.

FREEDOM OF ASSEMBLY

In 2001, SUHAKAM submitted its report on

Freedom of Assembly that called for changes in the law and procedure to enable Malaysian citizens to enjoy their right to peaceful assembly, and yet at the same time preserve national security and public order.

SUHAKAM regrets that the Government has not deemed it important to consider and adopt any of the recommendations made in the report and that the blanket ban imposed in July 2001 on political "*ceramahs*" held in open spaces remain in place. **(Appendix III).**

SUHAKAM reiterates the recommendations it made in the "Freedom of Assembly" report and urges the Government to allow peaceful assemblies in closed premises as a general rule and to identify public places to facilitate the holding of open assemblies.

CHAPTER 3

ISSUES IN FOCUS



CHAPTER 3

ISSUES IN FOCUS

(I) REVIEW OF THE INTERNAL SECURITY ACT 1960

The ISA is arguably the most controversial piece of domestic legislation in terms of human rights. SUHAKAM completed its review of the ISA at the end of 2002. This summary highlights the more significant findings and recommendations contained in SUHAKAM's report on the ISA.

1. HISTORY OF THE ISA

In 1948, an Emergency was proclaimed throughout Peninsula Malaysia because of the declared policy of the Communist Party of Malaya (CPM) to wrest political power through armed struggle. Twelve years later, the Government announced its intention to declare the Emergency at an end on 31 July 1960.

In the same year, a Bill titled "an Act to provide for the internal security of the Federation, preventive detention, the prevention of subversion, the suppression of organised violence against persons and property in specified areas of the Federation and for matters incidental thereto" was moved in Parliament. The ISA became law in West Malaysia on 1 August 1960 and East Malaysia on 16 September 1963.

2. THE PURPOSE OF THE ISA

It is clear from the Parliamentary Debates of 21 and 22 June 1960 that the ISA was enacted to combat the Communist terrorist threat. However, despite the fact that in 1989 the CPM officially renounced its policy of armed struggle in Malaysia and signed a pact to that effect with the Government, the ISA continues to be in force today, and it is generally acknowledged that the application and proposed

application of the ISA have not been restricted solely to containing the Communist insurgency.

The preamble to the ISA contemplates the use of the provisions of the legislation only in circumstances where there is a present and imminent danger that a substantial body of persons both inside and outside of Malaysia is seeking to overthrow the lawful Government of Malaysia through unlawful means, which must include instilling fear amongst a substantial number of citizens because they resort to organised violence against persons and property. The ISA should not be used in cases where the commission of such offences can be dealt with under ordinary criminal law using ordinary criminal procedures.

The exceptional nature of the ISA is in fact highlighted in the Malaysian Federal Constitution itself. Unlike any other ordinary law in Malaysia, the Constitution expressly provides for certain additional conditions that must be met before a piece of legislation such as the ISA, may be enacted. These conditions are primarily provided for under Article 149 of the Constitution.

3. THE ISA AND HUMAN RIGHTS

The concerns in relation to the ISA from the human rights perspective may be divided into two categories: First, there is concern in relation to the provisions of the ISA. It is alleged that they infringe the principles of human rights. Second, there is concern in relation to the application of the provisions of the ISA. It is alleged that under the ISA, citizens and non-citizens alike have been subjected to arbitrary detention and inhuman and degrading treatment whilst in detention.

- if the presiding Judge decides that the disclosure of the piece of evidence does in fact go against national interest, the evidence need not be disclosed in Court;
- if the presiding Judge decides that the disclosure of the piece of evidence does not in fact go against national interest, the evidence must be disclosed in Court.

7. CONCLUSION

SUHAKAM's review of the ISA was made pursuant to section 4(1)(b) of the Human Rights Commission of Malaysia Act 1999 which provides that one of the functions of SUHAKAM is to "advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken". SUHAKAM hopes that recommendations made in the report will be considered by the relevant authorities with a view to adopting them.

(ii) PUBLIC INQUIRY INTO CONDITIONS OF DETENTION UNDER THE ISA

SUHAKAM has received numerous complaints and memorandums that allege persons detained under the ISA were subjected to ill-treatment that violated their human rights while under detention. These complaints were made by individuals, organisations from within the country and abroad as well as family members of the detainees. Among the issues raised included allegations of torture, cruel, inhuman and degrading treatment, inadequate access to food and medical treatment, denial of the right to legal representation and the right to appear before a magistrate within 24 hours to challenge the legitimacy of the detention. Last year, the situation reached a critical point when six of the detainees at the Kamunting Detention Centre embarked on a 'hunger strike' to protest their detention under the ISA. (Appendix IV).

In response to a memorandum submitted by the Gerakan Mansuhkan ISA (GMI) and concerned about the health and general well-being of the detainees undertaking the 'hunger strike', SUHAKAM conducted a Public Inquiry under section 12 of the Human Rights Commission of Malaysia Act 1999 to enquire into the conditions of detention under the ISA. The Inquiry Panel, led by SUHAKAM Vice Chairman Tan Sri Harun Mahmud Hashim, also comprised Commissioners Professor Dato' Hamdan Mohd Adnan and Dato' Asiah Abu Samah and assisted by officers from the Secretariat. (Appendix V).

The Inquiry was held in three phases and was carried out over a two-month period with testimonies heard from 16 detainees and one former detainee. The first phase of the Inquiry began at the Kamunting Prison Sports Hall in Taiping from 18 to 19 June 2002 where the SUHAKAM Inquiry Panel also heard testimonies from a medical officer, the Director of the Kamunting Detention Centre and three police officers. The second phase of the Inquiry (on 20 June 2002) was held in the Kamunting Detention Centre to enable members of the Inquiry Panel to assess the living conditions of the detainees and their treatment while under detention. The third

phase of the Inquiry was held at the SUHAKAM office in Kuala Lumpur on 5 August 2002 with police officers testifying on the rules of procedures of arrest and interrogation of detainees under section 73 of the ISA.

The 16 detainees, including alleged operatives of *Kumpulan Militan Malaysia* (KMM), *Al-Maaunah*, *Jemaah Islamiah*, Free Aceh Movement (GAM), and Minsu, volunteered to testify before the Inquiry Panel. However, only one member from the Reformasi Group, an ex-detainee, came forward to testify directly as the others chose to testify through their lawyers. Although the scope of SUHAKAM's Public Inquiry was confined to "conditions of detention" under the ISA, the Panel also allowed detainees to express their views with regard to reasons for their arrest and detention.

A majority of the complaints on the ISA ranged from dissatisfaction and opposition to the existence of this law as well as allegations that ISA detainees were subjected to mental abuse. There were also allegations that detainees were at risk of physical abuse from police officers or security guards assigned to keep watch during the interrogations procedure in the lockup or place of detention. Issues of concern include detainees being forced to "cooperate" with authorities through tactics such as delaying medical treatment to sick detainees; avoiding giving a firm commitment to family members when they officially request to meet with the detainees; and obstructing the detainees from meeting or obtaining the services of their lawyers.

The Inquiry focused on the following:-

- (i) Section 73 of the ISA that allows for a person to be detained for 60 days for the purpose of investigations; and
- (ii) Section 8 of the ISA that allows for the Minister to issue a detention order for a period not exceeding two years, with the aim of separating the detainees from the rest of the community.

Although the Panel of Inquiry did not find any serious physical or psychological maltreatment of the detainees as a whole, there were incidences of violation of basic human rights as summarised below:

1. CONDITIONS OF DETENTION UNDER SECTION 73 OF THE ISA

A. TREATMENT DURING THE 60-DAY DETENTION PERIOD

The detainees claimed that during interrogations, the questions posed tended to revolve around political inclinations and activities of members of opposition political parties, instead of activities relating to threats to national security as alleged in the warrant of arrest.

There were also allegations made by former and present ISA detainees on the ill-treatment meted out during the first 60 days of detention such as:

- (i) Being slapped up to five times while in police custody because the interrogating officers did not believe the answers;
- (ii) A female detainee being forced on two occasions to strip off her clothes by junior male police officers at the lockup;
- (iii) An alleged operative of *Jemaah Islamiah* being stripped and insulted by Special Branch officers during interrogations at the Police Remand Centre;
- (iv) Psychological intimidation during interrogations, for example the police threat to send a detainee's wife and children to welfare homes if he did not cooperate; and
- (v) Interrogations at night, particularly during the first three weeks of detention and, in the case of one detainee at least twice a week.

In the light of the testimonies received, the Inquiry Panel did not find sufficient evidence to justify a finding of torture. However, there appears to be evidence of cruel, inhuman or degrading treatment

of some of the detainees such as slapping, forced stripping for non-medical purposes, intimidation and night interrogations.

RECOMMENDATIONS

- (i) The police should take every care to ensure that the right to liberty, as enshrined in the Constitution and the UDHR, is not violated;
- (ii) Detention under the ISA should be for reasons related to involvement in activities prejudicial to national security;
- (iii) All allegations of 'cruel, inhuman or degrading treatment or punishment' should be investigated and disciplinary action should be taken against the officers involved; and
- (iv) Training should be provided to all law enforcement personnel to raise awareness on their obligation to refrain from torture, cruel, inhuman or degrading treatment or punishment.

B. LIVING CONDITIONS

Several detainees testified about the lack of amenities during the first 60 days of detention, particularly in the lockups, as they were made to sleep on dirty sheets without mattresses or pillows. Another prisoner testified that he was unable to see whether it was night or day. This is contrary to provisions of the Lockup Rules 1953 and the Standard Minimum Rules for the Treatment of Prisoners (SMR),³ applicable to persons arrested or detained without charge. These provisions include guidelines to ensure that all accommodation provided for the use of prisoners, and in particular sleeping accommodation, should meet health standards. Places where prisoners are required to live or work should also have windows large enough to enable the prisoners to read or work by natural light.

RECOMMENDATIONS

- (i) Adequate steps should be taken to ensure that the detainees are provided with sufficient and clean bedding;

³United Nations Resolution 663C (XXIV) 31 July 1957 and 2076 (LXII) 13 May 1977.

- (ii) Adequate ventilation and access to windows should be provided to enable detainees to have adequate awareness of their surroundings; and
- (iii) Adequate funds should be provided to the Police to increase the number of cells in larger lockups of police stations that are frequently overcrowded.

C. ACCESS TO FAMILY MEMBERS

A number of detainees have complained about not being able to have access to their families within the first two weeks of detention. They claimed that even if such visits were allowed, a police officer will be stationed in the visiting room, within "sight and hearing" of the detainees and their families. The Police explained that access to the outside world was withheld to prevent the detainees from passing information to members of their organizations through their families. This was also the reason why an officer was stationed within "sight and hearing" during family visits as allowed under Rule 22(8) of the Lockup Rules 1953.

RECOMMENDATIONS

- (i) Family members of detainees should be informed of the arrest of detainees within 24 hours of the arrest and that they should not be required to wait for two weeks before gaining access to their families;
- (ii) Stationing an officer within "sight and hearing" during visits by relatives is incompatible with Article 12 of the UDHR; and
- (iii) Rule 22(8) of the Lockup Rules 1953 should be reviewed with a view towards making amendments in line with the right to privacy.

D. ACCESS TO LEGAL COUNSEL AND A MAGISTRATE WITHIN 24 HOURS

The Inquiry Panel was informed that ISA detainees were not allowed to consult with lawyers or to exercise their right to appear before a magistrate within 24 hours, until an order of detention had been

served to authorise their detention under section 8 of the ISA. Some detainees were not even aware of their right to legal representation and the right to appear before a magistrate within 24 hours. These are fundamental liberties explicitly protected under Article 5(3) and (4) of the Constitution. The right to seek legal representation is further guaranteed by Rule 23 of the Lockup Rules 1953, which allows detainees to be visited by lawyers and any representatives elected by the lawyers of the detainee in order to enable the detainee to prepare his plea or defence.

RECOMMENDATIONS

- (i) There is no legitimate justification for denying detainees their Constitutional rights to legal representation and to appear before a magistrate;
- (ii) The detainee should be produced before a magistrate within 24 hours of arrest in accordance with Article 5 of the Constitution; and
- (iii) The detainee should be allowed access to counsel during the appearance before the magistrate and be supplied with a copy of the grounds of arrest.

2. CONDITIONS OF DETENTION UNDER SECTION 8 OF THE ISA

Under section 8(1) of the ISA, the Minister of Home Affairs may authorise any person to be detained for a period not exceeding two years if the Minister is satisfied that it is necessary for national security. The sentence may be commuted to a shorter period on the recommendation of the Advisory Board to the *Yang Di-Pertuan Agong*. Detainees under section 8 of the ISA are held at the Kamunting Detention Centre in Taiping, Perak. At the time of the Inquiry, a total of 112 persons were detained at the Kamunting Detention Centre.

A. OPPORTUNITY FOR SELF-IMPROVEMENT

The detainees complained of not being given the opportunity to acquire new skills or any challenging pursuit for the purpose of self-improvement. As an example, they complained the religious instruction received from the *ustaz* sent to Kamunting was not up to the academic level of the detainees many of whom have attained a high level of Islamic education. Under Rule 95 of the SMR activities for the stimulation of the minds of detainees may be considered insofar as they are not in the form of reeducation or rehabilitation. This does not impute a finding of guilt on the part of the detainee. However, the Inquiry Panel finds that facilities currently available to ISA detainees to enable them to spend their time in a constructive and beneficial manner are inadequate.

RECOMMENDATIONS

- (i) Unless justified, detention under section 8 should not exceed more than two years, and greater use should be made to effect their early release where possible;
- (ii) Detainees should be given the opportunity to develop themselves by acquiring new skills and knowledge, to assist their reentry into society;
- (iii) The *ustaz* sent to Kamunting to lecture to the detainees should be of adequate standard to ensure that the detainees are able to benefit from such lectures; and
- (iv) Detainees professing religions other than Islam should be allowed to receive religious instruction about their own faith.

B. FINANCIAL RAMIFICATIONS

A number of detainees spoke to the Inquiry Panel about the severe financial hardship caused by their detention under section 8. Since many of them are the sole breadwinners of the family, the loss of family income caused much hardship for some whose families had been evicted from their homes because they could not pay the rent. As detainees are not convicted criminals, working to earn an income would not only help to overcome their financial hardships but also enable them to spend

their two-year detention in a more productive manner.

RECOMMENDATIONS

- (i) The detainees should be given the right to work in exchange for remuneration and unspent earnings be absorbed into a savings scheme for the detainee's benefit upon reentry into society or for their families.

C. LIVING CONDITIONS IN THE DETENTION BLOCKS

During the visit by the Inquiry Panel, the physical condition in the detention blocks were satisfactory and met the basic minimum requirements for ensuring the well-being of detainees. There were not many complaints by detainees about living conditions except for allegations of a contaminated water supply but this matter was already taken care of by the time of the Inquiry. At the time of visitation, the detainees appeared to be in relatively high spirits as they were watching the World Cup football matches on television.

RECOMMENDATIONS

- (i) Although the detention blocks are equipped with sufficient facilities to create a satisfactory living environment, the blocks are worn out and should be replaced or rebuilt; and
- (ii) The authorities at Kamunting should take immediate steps to correct existing problems with the drainage system.

D. FOOD

A number of detainees who testified complained that the chicken rations allocated to them were insufficient to meet their needs as the portions of chicken were too small, and that chicken was not served often enough. The detainees were also dissatisfied that they were not allowed to consume food brought by their families during visits. The authorities have agreed to look into food rations as a whole.

E. MEDICAL TREATMENT

The Inquiry Panel also heard complaints about the medical and dental care made available to detainees and their dissatisfaction with the absence of a doctor or dentist in the detention camp. The camp Medical Officer explained that detainees would be sent to the hospital for medical check-ups while specialist doctors were available for other forms of treatment. A dentist also visits the detention centre every two weeks. As such, the Inquiry Panel finds that the detainees are being given adequate medical attention to fulfill their needs but recommends that the Medical Officer explain to the detainees the type of medication and the effects of the medication being given to them.

F. FAMILY VISITS

The Inquiry Panel heard a number of complaints relating to family visits, especially with the pain of having to be separated from their families by a wire mesh. Although the wire mesh was meant to prevent papers from being passed to and fro, it proves a barrier to any physical contact between the detainee and family. One detainee resented the fact that his children had to see him from behind a wire mesh as it made him feel like a criminal. The detainees are unhappy that they were only allowed to see their families once a week, for no longer than 45 minutes, despite having traveled great distances to come to Kamunting. The Inquiry Panel finds that

detainees should be allowed to spend more time with their families during visits as detainees were not convicted criminals and should not be treated as such.

RECOMMENDATIONS

- (i) The Government should review Rule 81 of the Internal Security (Detained Persons) Rules 1960, to enable the detainees to spend more time with their families;
- (ii) The detainees should not be physically separated from their families; and
- (iii) The detainees' right to privacy should be upheld and they should be provided with a private meeting room for family visits, and it is not necessary for a prison official to be present in the same room.

CONCLUSION

The completed report on the Public Inquiry Into Conditions of Detention Under the ISA has been sent to the Home Affairs Ministry and the Foreign Affairs Ministry on 12 November 2002 for follow-up action. Up to the writing of this report, SUHAKAM has not received any response from either of the Ministries. The report will be released to the public in early 2003.

(iii) VISITATIONS TO DETENTION CENTRES, WELFARE HOMES AND HOSPITALS

In 2002, Members of SUHAKAM, through its Complaints and Inquiries Working Group (CIWG) visited a number of detention centres,⁴ welfare homes and hospitals. During these visits, SUHAKAM Commissioners received the fullest of cooperation from all relevant authorities thereby indicating an increase in the level of awareness of human rights issues amongst them. A summary of SUHAKAM's findings and recommendations pertaining to these visits are as follows;

1. DETENTION CENTRES

In 2002, in line with its power under section 4(2)(d) of the Human Rights Commission of Malaysia Act 1999, Members of SUHAKAM visited 24 different detention centres. These visits were made either on SUHAKAM's own initiative or in response to complaints lodged with it. The main objective of these visits is to determine whether the conditions in such places of detention comply with the provisions of the relevant domestic rules and regulations governing the relevant places of detention and also the relevant international human rights instruments governing the rights of detainees. The relevant domestic rules and regulations include the Lockup Rules 1953 (which governs police lockups) and the Prisons Regulations (which governs the prisons) whilst the relevant international instrument include the SMR.

In addition to the main objective, the visit to the relevant place of detention is made in order to verify specific allegations of infringements of human rights relating to the place of detention visited.

A. POLICE LOCKUPS

In 2002, SUHAKAM visited a number of police lockups as a result of increasing concerns over the deaths of detainees whilst they were under the custody of the Police.

During these visits, Members of SUHAKAM found that overcrowding was a major problem in several lockups. Further, the conditions of detention in some police lockups did not in fact comply with requirements of the Lockup Rules 1953 and the SMR. For example, in some police lockups:

- (i) male detainees were found to be dressed only in their underwear. This is contrary to Rule 17 of the SMR that requires that every prisoner be allowed to wear his own clothing or be provided with clothes suitable for the climate and adequate to keep him in good health. In addition, such clothing shall in no manner be degrading or humiliating;
- (ii) detainees were not provided with blankets and mattresses. This is contrary to Rule 13

NO.	DATE	POLICE LOCKUP VISITED
1.	10.4.2002	Lockup at the Ampang Police Station
2.	9.7.2002	Remand Prisoners' Ward at Putrajaya Hospital
3.	27.8.2002	Lockup at the Brickfields Police Station
4.	29.8.2002	Lockup at the Putrajaya Police Station
5.	21.11.2002	Lockup at the Klang Police Station
6.	20.12.2002	Lockup at the Karamuning Police Station, Kota Kinabalu
7.	23.12.2002	Lockup at the Kota Kinabalu Police Station
8.	24.12.2002	Women's Lockup at the Tanjung Aru Police Station, Kota Kinabalu.

TABLE 1: Police Lockups Visited

⁴ Detention Centre include police lockups, temporary immigration centres or depots, rehabilitation centres and prisons.

of the Lockup Rules 1953 that requires every prisoner to be supplied with bedding which "shall be changed and washed as often as may be necessary but never less than once a month"; and

- (iii) some detainees were detained for a prolonged period of time as a result of the continuous use of section 117 of the Criminal Procedure Code, culminating with detention under the Emergency (Public Order and Prevention of Crimes) Ordinance 1969, where detainees are locked up until the maximum of 60-days.

SUHAKAM recommends that:

- (i) the Lockup Rules 1953 be strictly complied with or be amended to comply with the SMR and other international human rights instruments relating to the rights of a detainee.
- (ii) the immediate family of a detainee who is receiving treatment in a hospital must be immediately informed of his condition. This will assist the hospital in obtaining more information on the detainee's medical history which in turn would expedite treatment that is being provided to the detainee; and
- (iii) where a detainee is admitted to a hospital, the family must be informed within 24 hours of his or her admission;

B. TEMPORARY IMMIGRATION DETENTION CENTRE OR DEPOT

In 2002, SUHAKAM Commissioners visited four temporary Immigration Detention Centres where illegal immigrants were held prior to their

deportation to their respective home countries. The visits were made because of increasing concerns pertaining to the conditions of detention of persons detained in such centres as a result of the augmented efforts of the relevant authorities to reduce the number of illegal immigrants in Malaysia.

During these visits, Members of SUHAKAM found that, as with the police lockups, overcrowding was a major problem in these centres. SUHAKAM recommends that:

- (i) the authorities should give more attention to the problems of overcrowding. Overcrowding results in detainees having to sleep on bare floors, insufficient blankets for detainees, the lack of proper clothing and oppressive heat in the living quarters during hot weather. Such conditions are contrary to provisions in the SMR;
- (ii) the authorities should ensure that there is sufficient space in the detention centres to accommodate those arrested when conducting operations to round up illegal immigrants. The sudden influx of detainees brought to the detention centres as a result of such operations often cause undue hardships; and
- (iii) the Social Welfare Department should also be kept informed of any operations to round up illegal immigrants because often during such operations there are children and the aged who are also rounded up. The welfare and safety of infants and children detained along with their mothers and the aged need to be looked into.

NO.	DATE	IMMIGRATION DETENTION CENTRES VISITED
1.	21.1.2002	Pekan Nenas Temporary Immigration Detention Centre, Johor
2.	9.9.2002	Menggatal Temporary Immigration Detention Centre, Sabah
3.	10.9.2002	Sandakan Temporary Immigration Detention Centre, Sabah
4.	11.9.2002	Tawau Temporary Immigration Detention Centre, Sabah

TABLE 2 : Immigration Detention Centres Visited

C. REHABILITATION CENTRES

In 2002, SUHAKAM Commissioners visited two rehabilitation centres. The visits were made in order to monitor the conditions of detention of detainees who are detained under the Dangerous Drugs Act (Special Preventive Measures) 1985 and the Emergency (Public Order and Prevention of Crimes) Ordinance 1969.

During these visits, Members of SUHAKAM found that:

- (i) at the time of the visits, there were 1,480 detainees at the Rehabilitation Centres in Simpang Renggam whilst the Centre in Muar, Johor held 117 detainees. The detention of large numbers of detainees in both these centres was unsatisfactory as it lowers the level of effectiveness of the rehabilitation programme administered in these centres;
- (ii) the Simpang Renggam Rehabilitation Centre was overcrowded and not all detainees were able to get the skills training provided in the limited number of workshops. Further, although the Muar Rehabilitation Centre was smaller, the number of detainees was still too large to provide effective skills training; and
- (iii) both centres were not able to accommodate the increasing numbers of detainees interested in vocational courses. Thus, not all were given the opportunity to gain exposure in carpentry, rattan weaving, craftwork and tailoring.

SUHAKAM recommends that:

- (i) more types of vocational skills should be provided to interested detainees; and

- (ii) the authorities intensify efforts to work closely with the private sector to provide adequate skills training for the detainees.

D. PRISONS

In 2002, Members of SUHAKAM visited three prisons for various reasons.

(a) MIRI DIVISIONAL PRISON, MIRI, SARAWAK

Reason for visit

To follow-up on the condition of a prisoner, Mr. Jalen @ Jalan ak Anton, who has been imprisoned because he was convicted of murder. Mr Jalen is 87 years old of age and is suffering from an eye problem.

Finding

Since SUHAKAM's earlier visit, he has been well-treated and given the appropriate medical attention. SUHAKAM is currently monitoring his condition and his lawyer's efforts to secure his release whilst awaiting for his appeal to be heard in the Court of Appeal.

(b) SUNGAI BULOH PRISON, SELANGOR

Reason for visit

To follow up on the conditions of detention of young prisoners whose ages are between 18 to 21 years.

Findings

- (i) At the time of the visit, there were 357 young prisoners under remand and another 28 were serving out their sentences;
- (ii) It is noted that conditions have improved and there were no longer any juveniles (below 18 years)

NO.	DATE	REHABILITATION CENTRE VISITED
1.	10.8.2002	Rehabilitation Centre of the Simpang Renggam Prisons Department in Simpang Renggam, Johor
2.	10.8.2002	Rehabilitation Centre of the Muar Prisons Department in Muar, Johor

TABLE 3 : Rehabilitation Centres Visited

NO.	DATE	PRISON VISITED
1.	13.7.2002	Miri Divisional Prison, Miri, Sarawak
2.	18.11.2002	Sungai Buluh Prison, Selangor.
3.	22.12.2002	Kepayan Prison, Kota Kinabalu, Sabah

TABLE 4 : Prisons Visited

detained in the prison during a second visit in November; and

- (iii) The most pressing problem identified as a result of the visit was the apparent lack of access to counsel among young prisoners.

Recommendation

- (i) The Prisons Department should ensure that prisoners know of their legal rights and are able to have access to legal assistance from the Legal Aid Bureau or the Legal Aid Centre of the Bar Council.

2. WELFARE HOMES

In 2002, Members of SUHAKAM visited a number of welfare homes. The visits were made in response to complaints and requests.

A. RUMAH SERI KENANGAN IN CHERAS, KUALA LUMPUR

Rumah Seri Kenangan, Cheras is an old folks' home. However, during its visit, Members of SUHAKAM found that, due to court orders, vagrants and beggars were also accommodated in this old folks' home. This resulted in an unsatisfactory situation whereby the existing facilities of the home were inevitably stretched and caregivers had to split their attention between the aged residents of the home and the vagrants and beggars. A report on the situation was forwarded to the relevant authorities. As a result the vagrants and beggars were transferred.

B. RUMAH KANAK-KANAK TENGKU BUDRIAH IN CHERAS, KUALA LUMPUR

The visit to Rumah Kanak-Kanak Tengku Budriah was made on 7 May 2002. The purpose of the visit

was to check on two Rohingya children who were temporarily housed there as their parents had been detained by the authorities.

C. RUMAH EHSAN KUALA KUBU BAHRU

The visit to Rumah Ehsan Kuala Kubu Bahru was made on 16 July 2002. This home is an institution that cares for people who are chronically ill. Many of its inhabitants were old although there were younger patients who suffer from diseases such as "Parkinson's Disease". The visit was made to observe the existing conditions of living at the home. SUHAKAM found that the conditions of living at the home may be improved in a number of ways. It therefore recommends that:

- (i) a larger share of the funds received by the home be used for the welfare of the patients:
- (ii) the Health Ministry, the Social Welfare Department and the Selangor Religious Affairs Department be more involved in the management of the institution whereby it is recommended that:
 - the Health Ministry provide the patients with better medical care;
 - the Social Welfare Department provide the patients with the adequate counselling, mental and emotional support; and
 - the Religious Affairs Department provide the patients with religious guidance.

3. HOSPITALS

In 2002, Members of SUHAKAM visited two

hospitals. The visits were made in response to complaints and requests from concerned individuals.

A. HOSPITAL PERMAI, TAMPOI, JOHOR

The visit to Hospital Permai Tampoi, Johor, a psychiatric hospital which also houses forensic patients was made on 11 July 2002. During its visit to the hospital, SUHAKAM found that residents of the hospital, who suffer discrimination and prejudice by members of the society, were not given the adequate specialised medical care and attention they require. Also SUHAKAM recommends that effort be made by the hospital and welfare authorities to persuade families of the mentally ill to

care for them after they have successfully undergone treatment at the hospital.

B. HOSPITAL BUKIT PADANG, KOTA KINABALU, SABAH

The visit to Hospital Bukit Padang in Kota Kinabalu, which is also a psychiatric hospital that houses forensic cases, was made on 26 July 2002. During its visit to the hospital, Members of SUHAKAM found that, the hospital was overcrowded as the mentally ill in Sabah were admitted to this one hospital. There was a shortage of beds in the hospital wards, thereby denying relevant individuals who require hospitalisation from obtaining adequate treatment.

(iv) FREEDOM OF THE MEDIA

Freedom of the media to exercise its role and functions in society has been enshrined as a fundamental human right by way of recognition for the right to freedom of speech, expression and opinion. In Malaysia, the right to freedom of speech and expression is for all citizens and is guaranteed by Article 10(1)(a) of the Constitution. On the international front, Article 19 of the UDHR proclaims that "everyone has the right to freedom of opinion and expression, which includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers."

However, in Malaysia, freedom of speech and expression is not absolute and Article 10(2) and (4) of the Federal Constitution, allows Parliament to impose restrictions on this right. In addition, a number of laws have restrictive effects on the media, in particular the Printing Presses and Publications Act 1984 (PPPA), the Official Secrets Act 1972 (OSA) and the Sedition Act 1948 (SA).

Over the years, SUHAKAM has received a number of complaints and memorandums from aggrieved individuals as well as groups who allege that their right to freedom of expression had been violated. Complaints include use of section 8A (1) of the PPPA against journalists for "malicious publication of false news" as a means to intimidate. However, the most frequently cited violation has been allegations of unjust and unreasonable denial of renewal of publishing permits. Such denials were justified by provisions in the PPPA which only validate licences granted for a maximum of 12 months or less and which disallows any right of appeal or judicial review of any decision made by the Minister in respect to the granting or renewal of permits.

Complaints were also received on restrictions to freedom of the media imposed by the SA, the ISA and the OSA. The use of contempt of court procedures and the awarding of exorbitant damages was also for actions brought against journalists under the Defamation Act 1957 (DA) were also alleged to have censorious effect on the

freedom of the press. In order to address these allegations, issues and the fears expressed by the various groups, SUHAKAM organised a Workshop on "Freedom of the Media" on 1 August 2002. The workshop brought together panellists from both ends of the spectrum, namely, government officials, senior editors and representatives from the independent media. The panellists at the Workshop were Datuk Chor Chee Heung, Deputy Minister of Home Affairs, Senator Datuk Zainudin Maidin Deputy Information Minister (then Parliamentary Secretary of the Ministry), Professor Dr Mohd. Safar Hashim from the Communications Department of Universiti Kebangsaan Malaysia, Mr. Steven Gan, the Editor of Malaysiakini and Encik Ahmad Lutfi Othman, the spokesperson for the Alternative Media Activists Group. Participants were representatives from the Home Ministry, the Attorney General's Chambers, the Police and the media (both mainstream and alternative).

The basic premise of Dato' Chor's presentation was that while Malaysia respected freedom of the press, restrictions on the exercise of this right were necessary to ensure racial harmony and national security. He stated that national security concerns have even compelled countries such as the United States, United Kingdom, Australia and Italy to enact laws that encompass restrictions on the Internet. The Government, he added, had no plans to impose restrictions on the Internet in Malaysia.

On a similar note, Datuk Zainudin Maidin felt that irresponsible journalism has played a role in aggravating some of the worst episodes in Malaysian history, including the May 13, 1969 racial riots and the Indonesian Confrontation. Press laws were seen as necessary to protect national security interests and, in his opinion, it was necessary to broaden press regulations to encompass Internet media. He also proposed that journalism be transformed into a closed profession, like the legal profession, whereby journalists should be required to obtain a 'Certificate of Journalism Practice' and be liable to disciplinary action for unethical behaviour.

(v) REVIEW OF THE HUMAN RIGHTS COMMISSION OF MALAYSIA ACT 1999

A review of the Human Rights Commission of Malaysia Act 1999 (Act 597) was made with the aim of increasing SUHAKAM's effectiveness, clarifying ambiguous sections and bringing the provisions of the Act in line with the Paris Principles.

The recommendations made in this report were based mainly on the experiences of SUHAKAM and members of the public who have had dealings with SUHAKAM throughout its first two years of operation. Guidance was also sought from the Paris Principles, the United Nations Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, relevant domestic legislation including the founding legislation of other statutory bodies and founding legislation of national human rights institutions around the world.

This summary highlights the more significant findings and recommendations contained in SUHAKAM's Report on Act 597

1. INDEPENDENCE

A. APPOINTMENT AND REMOVAL OF COMMISSIONERS

Pursuant to the present section 5(2) of the Act, members of SUHAKAM are appointed by the Yang di-Pertuan Agong, on the recommendation of the Prime Minister.

The Paris Principles require that the appointment procedure must ensure a pluralist representation of social forces (or civilian society) involved in the promotion and protection of human rights.

Therefore, in order to guarantee as far as possible that Commissioners are appointed in a way that ensures the independence and pluralism in the composition of SUHAKAM and also to ensure greater transparency and enhance the consultation process in the appointment of Commissioners, it is recommended that:

- (i) provision be made to reflect that members of the Commission will be appointed by the *Yang di-Pertuan Agong*, on the recommendation of a Committee consisting of the Prime Minister as the Chairperson, the relevant Minister, the leader of the Opposition in the House of Representatives, the Chairman of SUHAKAM and a representative of the NGO community; and
- (ii) provision be made to reflect that this Committee has the equivalent role in the dismissal of a member of SUHAKAM.

B. TERM OF OFFICE

Presently, under section 5(4) of the Act, members of SUHAKAM hold office for a period of two years and are eligible for re-appointment.

SUHAKAM is of the opinion that this two-year term of office should be extended for the following reasons: First, since it takes time for new Commissioners to fully understand their role and play an effective part in the work of the organisation, the longer period would enable Commissioners to acquire the necessary human rights experience to better guide the staff. Second, a survey of the legislative provisions governing the terms of appointment of commissioners of other human rights commissions around the world show that their terms of appointment fall between three and seven years. A survey of the period of appointment of members of other commissions (or similar statutory bodies) in Malaysia also shows that their term of appointment may be for a period of at least three years.

It is, therefore, recommended that the term of office of Commissioners should ideally be for five years or in the alternative, for a minimum period of three years.

2. EFFECTIVENESS

A. POWERS OF VISITATION

Since its inception, SUHAKAM has, in accordance with its powers under the law, made a number of visits to several places of detention - police lockups, prisons, Henry Gurney Schools and immigration detention centres.

SUHAKAM has received co-operation from some authorities, notably the Prisons Department. However, some authorities do not allow or are reluctant to allow SUHAKAM to visit places of detention under their charge. Sometimes permission for a visit is only given after some delay. Such delay denies impromptu visits which are necessary to reveal actual conditions in a place of detention.

This was the case with SUHAKAM's visit to the Semenyih Detention Centre for illegal immigrants. It was noted that the whole place had been washed just prior to the visit and SUHAKAM Commissioners were unable to verify any fact with officers of the Centre as they were away.

Another example was when SUHAKAM was not allowed to visit 10 detainees who were held under the ISA when it tried to do so in April 2001. Permission was given for SUHAKAM to visit and interview the detainees only on 29 May 2001.

An example of when SUHAKAM was refused permission altogether was when the Commissioners wanted to observe remand proceedings in the Kuala Lumpur Magistrates Court in order to verify for itself the merits of the complaints that it had received from remand prisoners and their counsel.

In order to give SUHAKAM unrestricted power to conduct visitations to prisons and other places of detention and hence carry out its functions effectively, it is recommended that the phrases "in accordance with procedures as prescribed by the laws relating to the places of detention" and "if the procedures provided in the laws regulating such

places are complied with" in sections 4(2)(d) and 4(3) of the Act, respectively, be deleted.

B. CO-OPERATION BETWEEN THE EXECUTIVE AND SUHAKAM

There are at least two areas in which the level of co-operation between the Executive and SUHAKAM may be enhanced and they are as follows:

(a) THE FORMULATION OF LEGISLATION AND ADMINISTRATIVE DIRECTIVES

SUHAKAM's role in advising and assisting the Government in formulating legislation and administrative directives and procedures under section 4(1)(b) of the Act, is greatly hampered by it not being provided with the relevant documents.

Consequently, it was impossible for SUHAKAM to render any advice in relation to the first published draft of the relevant Bills or Orders and it has also shortened the time available to SUHAKAM to submit responses to the Bills or Orders.

An example of such an instance was in relation to the Registration of Businesses (Amendment) Bill. SUHAKAM had received a complaint that the proposed amendments to the Registration of Businesses Act 1956 (Act 197) may infringe the freedom of association. However, before SUHAKAM, through its Law Reform Working Group, could begin to investigate the merits of the complaint, it was discovered that the Bill had already been passed by Parliament.

(b) THE SUBSCRIPTION OR ACCESSION OF TREATIES AND OTHER INTERNATIONAL INSTRUMENTS IN THE FIELD OF HUMAN RIGHTS

As stated, in its Annual Report 2000, and re-iterated in its Annual Report 2001, SUHAKAM recommended that the Government accede to three international instruments namely:

- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the International Covenant on Economic, Social and Cultural Rights; and
- the International Covenant on Civil and Political Rights.

SUHAKAM has not been informed of any deliberations of the relevant government agencies in respect of the above mentioned international instruments. It is SUHAKAM's view that the receipt by SUHAKAM of timely information of any concerns or reservations that government agencies might have in respect of the said instruments, would be useful for it to play its role of addressing those concerns and advising the Government.

It is, therefore, recommended that there be inserted in the Act a provision aimed at enhancing the level of co-operation between the Executive and SUHAKAM. The new provision allows SUHAKAM to require all relevant authorities to assist it in discharging its functions. Such assistance includes but is not limited to:

- (i) referring to SUHAKAM the relevant draft legislation and administrative directives and procedures to determine whether they are compatible with human rights as early as practicable; and
- (ii) informing SUHAKAM, when requested, of the progress and status of the subscription or accession of treaties and other international instruments in the field of human rights.

C. RIGHT TO LODGE COMPLAINTS WITH SUHAKAM AND IMMUNITY FOR COMPLAINANTS

It is noted that persons who lodge complaints with SUHAKAM, are generally afraid that they would suffer adverse repercussions for making the complaints.

A case in point occurred in December 2001 when a group of students from *Universiti Teknologi Malaysia* presented a memorandum to SUHAKAM. The students expressed their fear that disciplinary action might be taken against them for lodging their complaint. Subsequently, they received a letter from the university authorities requiring them to show cause as to why disciplinary action should not be taken against them.

It is, therefore, recommended that a new Part IIIA be inserted in the Act. The new PART IIIA contains two sections, the highlights of which are as follows:

- (i) the first section seeks to clarify that any person has the right to lodge a complaint with SUHAKAM in good faith and without fear of any adverse repercussions; and
- (ii) the second section seeks to clarify that those in custody should be entitled to request assistance in making a complaint and to have the complaint and any subsequent correspondence sent unopened and unaltered to SUHAKAM. Correspondence from SUHAKAM to the complainant should also be treated in a similar fashion.

CONCLUSION

SUHAKAM recommends that the Government consider its proposals on these amendments as it can contribute towards a more effective national human rights institution.

(vi) RIGHTS OF INDIGENOUS PEOPLE

During 2001 SUHAKAM received several memorandums from Indigenous communities of Sarawak expressing their disappointment and frustration over what they regarded as the Government's failure to resolve land matters that had adversely affected their livelihood. The minority Indigenous groups are generally referred to as "Orang Asal" and they include the Anak Negeri in Sabah, the Dayaks in Sarawak and the Orang Asli in Peninsular Malaysia. Orang Asal communities in the Peninsula, and Sabah and Sarawak have voiced concern over common problems such as depleting and deteriorating natural resources, non-recognition of and encroachment into their native customary land, poor access to medical services and lack of basic educational facilities.

To address some of these issues SUHAKAM organised a workshop on Indigenous People that was held as a parallel session in conjunction with the First Malaysian Human Rights Day on 9 - 10 September 2001. The workshop helped to identify the most pressing problems faced by the Orang Asal.

As a follow up, other workshops were held in 2002 to provide a platform for the affected Indigenous People to directly express their views and misgivings that would enable SUHAKAM to study the situation and to prioritise the human rights concerns of the Orang Asal. The first workshop was held in Miri, Sarawak on 13 July 2002, followed by a workshop in Kota Kinabalu, Sabah from 11 - 12 October 2002 and the third workshop in Kuala Lumpur from 29 - 30 December 2002.

1. OBJECTIVES

The main objectives of the workshop were:

- (i) to prioritise the rights of the Indigenous People;

- (ii) to explain the role of SUHAKAM in promoting and protecting the rights of the Indigenous People; and

- (iii) to identify "Friends of SUHAKAM" from amongst the participants.

2. AREAS OF CONCERN

Among the issues that were most often raised by the participants during these workshops include:

A. FOREST AND LAND RIGHTS

The area of primary concern for the Orang Asal communities in Peninsular Malaysia, Sabah and Sarawak concern native customary land rights to their traditional or adat lands. These communities perceive that their customary land rights were not given due recognition by the authorities and that they were often sidelined when decisions were made to grant these lands to others. They allege that "outsiders" such as large logging, plantation and mining companies, invariably with connection to people of influence, were better treated and given priority over their claims to Orang Asal traditional lands. These companies were able to obtain leases to exploit natural resources found in these lands, or, in some cases they were given outright title to these lands despite protests from the communities.

They pleaded that there is urgent need to protect their traditional lands by way of declaring such lands as native customary lands or Orang Asal Reserves, much like what has been done in the case of Malay Reservation lands. They are also asking for permanent title to their traditional lands, on a community as well as on an individual basis, and not on the 99-year leasehold arrangement that is being offered to some Orang Asal communities with the further condition that such lands be restricted to only agricultural development.

B. RIGHT TO DEVELOPMENT

The Orang Asal also raised the concern that they were deprived of their right to development as they had not been consulted in the development projects carried out on their land nor were they involved at any stage of the planning, administration and project development. Their traditional lands were often exploited by agencies and corporations that extract the wealth without giving due compensation to the Orang Asal. In some cases, not only were the Orang Asal deprived of the right to decide on the nature of development on their land, they were also deprived of the right to be employed on such development projects on their land.

C. RELOCATION

The Orang Asal were often subjected to relocation of their settlements due to development. Such disruptions have had an immense effect on the lifestyle and structure of their communities and had impeded their progress and advancement. In addition, these relocation and resettlement programmes often resulted in the land allocated at the new settlement to be smaller in size than what they had in their original settlement. Furthermore, compensation for the loss of their land, crops and houses were inadequate and unjust, and not in accordance with the Land Acquisition Act.

D. RIGHT TO EDUCATION

Lack of necessary infrastructure such as schools and basic learning facilities have resulted in Orang Asal children not receiving quality education. The lack of facilities has also caused a lack of interest for teachers to be posted to such schools that are often located deep in the interior. The school dropout rate among the Orang Asal community is very high, more than 60 per cent, and few children gain entry to higher levels of education.

E. RIGHT TO HEALTH

One of the major issues faced by the Orang Asal is the lack of health services in rural areas. Pregnant women in Peninsular Malaysia often get access to health care in transition centres at district hospitals that are often far from their villages and with the

condition that these women have to be admitted to hospital some four to six weeks before their due date. Such separation from their families and homes causes a disruption of family life, worsening the domestic economic situation and much despair and anxiety to the mothers-to-be as they wait out their time in the hospital.

F. POVERTY

Many of the problems faced by the Indigenous community stem from their inherent poverty. A study conducted under the Eighth Malaysia Plan showed that the Orang Asal community has the lowest income in Malaysia, with 80 per cent of the Orang Asal being identified as living below the poverty line. The poverty rate among the native communities in Sabah and Sarawak is also relatively high. Unless the issue of poverty is addressed and ways are found to overcome the causes of poverty, these communities will not be able to help themselves to escape the vicious cycle of poverty. Depriving them of their native customary land without due regard to their source of livelihood and traditional lifestyle results in their gradual slide deeper into poverty. The lack of money, limited access to health facilities and low levels of education lead to further deterioration in their standard of living.

3. FRIENDS OF SUHAKAM

During the workshops SUHAKAM together with the participants identified several representatives known as 'Friends of SUHAKAM' to be liaison persons between the Indigenous community and SUHAKAM. The role of 'Friends of SUHAKAM' include:

- (i) To instill awareness of human rights among the Orang Asal;
- (ii) To conduct training on human rights education;
- (iii) To implement programmes on human rights education among the community at local level; and

- (iv) To communicate with SUHAKAM concerning the planning, implementation and evaluation of programmes that can be organised based on current issues that have been identified during the workshops.

4. SUHAKAM FINDINGS AND ACTION PLAN

Generally, most of the issues and problems raised during the workshops were not different from those identified earlier, and SUHAKAM has already

submitted its recommendation in the Annual Report 2001 that has been tabled in Parliament.

However, as the Annual Report 2001 and issues raised have not been debated, SUHAKAM is planning to submit the issues and recommendations raised during the series of three workshops held in 2002 to the relevant authorities. SUHAKAM is also in the midst of reviewing the action plan on working together with "Friends of SUHAKAM" in order to resolve or at least to alleviate some of the problems raised by the Indigenous community.

(vii) ROHINGYA COMMUNITY IN MALAYSIA

In 2002, the Rohingyas in Malaysia, as individuals and as a group, have approached SUHAKAM to seek assistance in overcoming the problems faced by the community. (The Rohingyas are Muslim minorities originally from the State of Arakan in the northwest region of Myanmar who fled their homeland due to alleged persecution). In response to the problems brought to the attention of SUHAKAM, the Commission organised a meeting on 18 July 2002 with members of the Rohingya community, Ministry of Foreign Affairs, Home Ministry, Immigration Department, Social Welfare Department and a representative from the United Nations High Commissioner for Refugees (UNHCR).

In the briefing by the UNHCR representative, SUHAKAM was informed that in 1999, more than 200,000 Rohingyas in refugee camps in Bangladesh had been repatriated and their numbers had been reduced to 24,000. They now live in Bangladesh on humanitarian grounds, subsisting on aid provided by the host country and the United Nations. The UNHCR estimated that the repatriation exercise would be completed by end of 2004. In Thailand, the Government runs a refugee camp on the border that provides for the needs of various categories of refugees, including the Rohingyas, with funds received from the Thai, Indonesian and Australian Governments.

There are no refugee camps specifically for the Rohingyas in Malaysia, where an estimated 7,000 to 10,000 have entered the country since 1990. The majority of these are bona fide Rohingyas while there are also other Myanmar Muslims who claim to be Rohingyas. They enter Malaysia via Thailand and can be found in nearly all the Malaysian states. An estimated 5,000 Rohingyas have registered with the UNHCR and been given a 'registration letter'. This registration letter carries the bearer's details, his family's biodata and also indicates that he is a member of the Muslim Rohingya ethnic group from Myanmar.

It should be noted that the registration letter is not a legal travel document or endorsement that the bearer is a refugee. SUHAKAM is informed this is merely a document that would be used to register the Rohingyas when they are to be voluntarily repatriated to Myanmar following any future agreement between the Myanmar and Malaysian Governments.

Since 1990, the Rohingyas have continued to resort to the UNHCR office in Kuala Lumpur to seek humanitarian aid and security. Until 2002, more than 2,000 Rohingyas have been interviewed by UNHCR for possible refugee status in accordance with the Convention Relating to the Status of Refugees 1951. Accordingly, about 200 were accorded refugee status and placed in third countries. Although Malaysia is not a party to the above convention (also known as the '1967 Protocol'), customary international law obliges every nation to observe the provision expressed under Article 33 of the Convention:-

No Contracting State shall expel or return (*Refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life of freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

1. PROBLEMS FACED BY THE ROHINGYA COMMUNITY IN MALAYSIA

Among the problems of the Rohingya community brought to the attention of SUHAKAM, the most pressing is that they do not possess valid travel documents as this puts them at risk of the following:-

A. RISK OF BEING CAUGHT BY THE AUTHORITIES

Recent amendments to the Immigration Act has reclassified all foreigners without valid travel documents as illegal immigrants. This effectively

renders all Rohingyas without proper travel documents as illegal immigrants who can be detained, prosecuted in court, jailed and sent back to their country of origin (Myanmar). A Rohingya man claimed that those caught by the authorities were sent to the Malaysia -Thai border where the Thai authorities would try to expel them from Thailand since they were also viewed as illegals in that country. The man claimed that when he was brought to the Thai border, he ran away to escape the Thai authorities and promptly found his way back to Malaysia. He claimed to have repeated this "exercise" four times and was worried that if he was caught again, the Malaysian authorities might not be so lenient and that he would be sentenced to be whipped with the 'rotan' apart from imprisonment as punishment. He has since applied twice to the UNHCR for refugee status and placement in a third country. His second attempt is now under consideration by the UNHCR.

B. UNEMPLOYMENT

The rate of unemployment in the community is high. Few adult Rohingyas have the opportunity to hold regular jobs to support themselves and their families. It is possible that employers were deterred by the fact that many of the Rohingyas are without valid travel and work documents. A representative of the Rohingya claimed that the resulting financial hardships would make it highly likely for criminal elements to infiltrate the community and for the Rohingyas to turn to petty crimes as a means of survival.

C. PROBLEMS OF ROHINGYA CHILDREN

The lack of documentation affects the Rohingya children's access to education and health care. Most Rohingya children born in Malaysia would not be in possession of an official birth certificate as their parents are reluctant to deal with government officials for fear of being detained for not possessing valid documents.

2. ACTION BY SUHAKAM

SUHAKAM had a second meeting with the representatives of the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Social Welfare Department and the Immigration Department.

The discussions resulted in agreement in several areas:-

- (i) SUHAKAM will continue to receive and investigate all complaints lodged by Rohingya individuals and community leaders on cases that may infringe on their human rights; and
- (ii) The relevant government agencies will continue to exert pressure, in discussions with the Myanmar Government, on how to come to a mutually acceptable solution with regards to the Rohingyas now living in Malaysia.

While waiting for the Rohingya in Malaysia issue to be settled by the respective Governments of Malaysia and Myanmar, SUHAKAM recommends that short and long-term measures be initiated to alleviate the suffering of these Rohingyas.

The short term measures suggested are as follows:

- (i) The relevant authorities to come up with a mechanism to register the Rohingyas and to ascertain their actual population figures with input from UNHCR;
- (ii) Employers to be allowed to employ documented Rohingyas' already in Malaysia; and
- (iii) The Malaysian Government to consider giving Rohingya children access to education in Government aided schools.

SUHAKAM hopes that the Governments of Malaysia and Myanmar, together with UNHCR, will find ways to have the Rohingyas who do not qualify for refugee status to be repatriated to Myanmar.

(VIII) RIGHTS OF YOUNG PRISONERS - GOVERNMENT RESPONSE TO SUHAKAM REPORT

The Government's response to SUHAKAM's Report on the Rights of Young Prisoners submitted to the relevant authorities on 16 October 2002 has been most heartening. The Judiciary, the Police and the Prisons Department have been forthcoming in providing feedback and assurances of change to the various problem areas identified at the SUHAKAM Workshop on the Rights of Young Prisoners held in November 2001.

It is SUHAKAM's hope that further steps will be taken to continue to improve the welfare of young prisoners in Malaysia and that the Bar Council, the press and civil society groups will assist SUHAKAM in monitoring the changes made and in reporting any infringements of the rights of young prisoners. As reported by the three government agencies, improvements have been made in these areas:

1. INCREASED CO-ORDINATION AMONG THE RELEVANT AUTHORITIES

SUHAKAM notes the increased co-operation among several relevant authorities in dealing with the rights and welfare of young prisoners. SUHAKAM was informed that:

- (a) discussions on the issue of young prisoners are held periodically between the Ministry of Home Affairs and the relevant authorities in particular, the Prisons Department; and
- (b) the Prime Minister's Department and the Attorney General have paid particular attention to the welfare of young prisoners since the workshop.

2. INCREASED EFFORT TAKEN TO INFORM FAMILY MEMBERS OF THE ARREST AND DETENTION OF YOUNG PRISONERS

SUHAKAM was informed that:

- (a) the Police have issued a departmental order on the requirement to inform family members and

guardians of young prisoners upon their arrests; and

- (b) the Prisons Department, in accordance with the Prison Regulations 2000, provides each prisoner with the necessary writing material to contact their family members via letter. Where, however, a prisoner is unable to contact them through this means of communication, the matter will be handled by a Prison Welfare Officer. There are also plans to introduce video-conferencing in order to further facilitate communication between prisoners and their family members.

3. ASSURANCE BY THE POLICE THAT EFFORTS ARE TAKEN TO INFORM PROBATION OFFICERS OF THE ARREST OF YOUNG PRISONERS UNDER THE AGE OF 18

The Police have assured SUHAKAM that they do take steps to inform probation officers of the arrest of young prisoners in accordance with the section 87 of the Child Act 2001.

4. INCREASED EFFORT TAKEN TO ENSURE THAT YOUNG PRISONERS UNDER THE AGE OF 18 ARE NO LONGER DETAINED WITH ADULT PRISONERS

SUHAKAM notes the following:

- (a) The Police have assured SUHAKAM that the problems of young prisoners under the age of 18 being detained with adult prisoners in police lockups no longer arise. This is because:
 - (i) since 1999, the Police have issued an order that young prisoners must be detained separately from adult prisoners;

- (ii) all Police districts now have specific Police Lockups for the sole purpose of detaining young prisoners; and
- (iii) the Police do abide by the requirements of section 85 of the Child Act which, amongst others, provide arrangements that must be made to prevent a child detained in a police station from associating with an adult who is charged with an offence.

The Police have also assured SUHAKAM that female prisoners are detained separately from male prisoners and that young female prisoners are put under the care of a woman in accordance with the requirements of section 85(b) of the Child Act 2001.

- (b) Specific places within prison institutions throughout the country were gazetted on 13 May 2002 for the sole purpose of detaining young prisoners. Furthermore, except in instances where a young prisoner has been convicted of a serious offence, convicted young prisoners are transferred to the Sungai Petani Prison to undergo their sentences in order to further ensure that adult and young prisoners are detained separately.

5. INCREASED EFFORT TO AVOID CHILDREN BEING DETAINED TOGETHER WITH THEIR PARENT(S) WHO IS SUSPECTED OF COMMITTING AN OFFENCE

SUHAKAM was informed by prison officials that a draft amendment to the Lockup Rules 1953 which is in line with the following United Nations instruments is under consideration:

- (a) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice;
- (b) the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and

- (c) the Standard Minimum Rules for the Treatment of Prisoners.

One of the proposed amendments to the Lockup Rules purports to require the Police to inform the Social Welfare Department whenever the Police is forced to arrest children together with their parent(s) who is suspected of committing an offence.

6. ASSURANCE BY THE POLICE THAT POLICE BRUTALITY AND ABUSE OF POWER IN POLICE LOCKUPS ARE NOT COVERED-UP

The Police have assured SUHAKAM that any instances of police brutality and abuse of powers that occur in police lockups are not covered-up. This can be exemplified by the court having meted out disciplinary action against police officers who have been accused of abusing their powers when dealing with prisoners.

The Police have also urged that reports be lodged against relevant police officers who have unlawfully requested for payment from prisoners or their visitors as it is an offence under the Anti-Corruption Act 1997 and the Penal Code to do so.

7. INCREASED EFFORTS TO UPGRADE THE PHYSICAL CONDITIONS OF POLICE LOCKUPS

SUHAKAM was informed that:

- (a) the Ministry of Home Affairs have set up a Committee on the Management of Police Lockups in order to ensure the effective management of police lockups. The problems will be addressed in stages;
- (b) the Police were recently allocated RM20 million to improve the conditions of several Lockups as soon as possible;
- (c) the Police are currently conducting a study on the conditions of the police lockups throughout the nation.

8. EXPEDITING THE DISPOSAL OF CRIMINAL CASES INVOLVING A YOUNG PRISONER, PARTICULARLY WHERE A YOUNG PRISONER IS UNDER THE AGE OF 18

SUHAKAM was informed that concrete steps are being taken by the relevant authorities to handle this problem and they include the following:

- (a) Police investigations in cases which involve young prisoners are expedited and as far as possible, young prisoners are allowed bail;
- (b) a circular entitled "Children in Remand Custody" dated 26 July 2002 (Chief Registrar's Circular No. 2/2002) was issued by the Judiciary. The Chief Justice ordered that cases involving children in remand be completed as soon as possible and if possible, within three months. Further, through the same circular, magistrates are also required to submit a monthly report, which amongst others, contain information concerning the number of children held in remand, the periods and places of their detention and the ages of the children in question. Reasons must also be given where cases cannot be completed within the stipulated time; and
- (c) the Attorney General has urged Deputy Public Prosecutors to ensure prompt disposal of cases where a child is held in remand.

According to the statistics provided to SUHAKAM by the Judiciary, as of 30 September 2002, there were 145 children being held in remand. This figure indicates that, as a result of the action taken by the authorities, there has been a decrease in the number of children who are held in remand. Further, the remand period of children caught within the penal system has also decreased and it is now between one day and ten months. The Prison Department statistics also showed that there are no children who are held in remand for more than three years since the Workshop. (At the Workshop, the

case of a young prisoner being remanded for approximately three years was cited).

9. IMPROVEMENT OF REHABILITATION PROGRAMMES FOR YOUNG PRISONERS

The Prisons Department has implemented several recommendations of the Workshop to improve the rehabilitation of young prisoners and as of 21 November 2002, they include the following:

- (a) the training of 249 Prisons Department personnel to be counsellors. Of these, 41 hold a Diploma in Counselling whilst the remaining 208 attended Counselling Courses that were organised by the Prison College of Malaysia. Plans are in the pipeline to send prison personnel to local institutions of higher learning to pursue courses in the area of counselling of child offenders, counselling of sex offenders and psychology;
- (b) the implementation of plans to expand the joint venture schemes between the Prisons Department and the private sector which are currently implemented for adult prisoners to young prisoners who are detained in prisons and Henry Gurney Schools. Presently there are 13 joint venture schemes that the Prisons Department implements whereby selected adult prisoners are employed in factories;
- (c) the implementation of plans to introduce more joint vocational courses between the Henry Gurney Schools and relevant institutions of higher learning for the benefit of the inmates. Currently, the Prisons Department is running such a joint venture project in the vocation of sewing, electrical and welding with the Melaka Foundation College (Kolej Yayasan Melaka) for the benefit of inmates of the Henry Gurney School in Teluk Mas, Melaka;

- (d) the implementation of plans to liaise with institutions of higher learning to provide Henry Gurney School inmates who meet the required standards with the opportunity of pursuing their studies in such institutions; and
- (e) the recruiting of retired teachers to teach in Henry Gurney Schools on a contract basis. This is to overcome the problem of shortage of academic teachers at Henry Gurney Schools throughout the nation. Although the Prisons Department was allocated 20 teaching positions for Henry Gurney Schools, only four were filled, despite several discussions with the Ministry of Education. The Prisons Department therefore had to seek the approval of the Public Service Department to recruit retired teachers on contract basis.

NEXT COURSE OF ACTION

The Workshop on the Rights of Young Prisoners and the implementation of some of the recommendations made are but a step forward towards the improvement of the welfare of young prisoners in Malaysia.

Continuing and increasing efforts need to be taken by all relevant authorities to ensure that the promotion and protection of the rights of young prisoners meet the required international standards set out in international human rights instruments governing the situation of children and young people who come in contact with the justice system as a result of being suspected or accused of committing an offence. These international instruments have existed for several decades and they range from legally binding treaties upon ratification or accession by a State to non-legally binding minimum guidelines. They include provisions in the Convention on the Rights of the Child which are binding on Malaysia, and provisions in the United Nations Minimum Rules for the Administration of Juvenile Justice (popularly known as the "Beijing Rules"); United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990; and United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (the "Riyadh Guidelines"). These Rules and Guidelines establish internationally recognised standards that Malaysia should aspire to achieve in its treatment of children and young people who come into contact with the penal system.

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- (i) Educational experiences during the formative years determine the formation of neural pathways. Children who are deprived of appropriate educational experiences may be without these neural pathways needed for their learning, whether the learning is in the academic, social or emotional arena;
- (ii) They do not have access to preschool education, let alone quality preschool education; and
- (iii) Being deprived of the basic foundation of education, the gap in the acquisition of intellectual knowledge and skills between them and the more advantaged widens with age.

2. EDUCATION FOR CHILDREN WITH DISABILITIES

In accordance with Article 23 of CRC and with the United Nations Declaration for the Rights of Disabled Persons, every disabled child is entitled to enjoy a full and decent life and "access to and receive education, training, health care services, rehabilitation services, preparation for employment and recreation ...". However, most disabled children in Malaysia do not get their entitlement in education because:

- (i) Access to education is limited. For instance, most school buildings are not disabled friendly, and those placed in the mainstream education system do not receive support for their special learning needs;
- (ii) The class size in the mainstream is too big and teachers are unable to give sufficient attention to those with special needs;
- (iii) Teachers in the mainstream are not trained to handle disabled children in their class;
- (iv) The curriculum in the mainstream is too exam-oriented and is unsuitable for many

children with special needs, especially the mentally challenged children;

- (v) The term, "non-educable" should be deleted because all children have the potential for development; only the rate and the learning style differ.

3. INDIGENOUS CHILDREN

The failure rate in the UPSR among the Indigenous children in Sabah and Sarawak is high. Consequently, very few of them proceed to secondary schools and even fewer qualify for tertiary education. They cannot be said to have equal access to quality education or equal opportunities for development because:

- (i) Facilities in the schools in the interiors of Sabah and Sarawak are generally poor;
- (ii) Infrastructure facilities, such as hostels for primary school children in the interiors are inadequate and even poor; and
- (iii) Owing to inadequate facilities and infrastructures, teachers are unwilling to teach in these places. Teachers' attitudes affect students' academic performance and attitudes towards learning.

Secondary education makes Indigenous children a misfit in society. Owing to their poor SPM results, they are unable to proceed to tertiary education or get jobs in modern urban sectors. Owing to unemployment, they return to their villages and find themselves as misfits because they have difficulty in adjusting to rural life after spending five years in urban settings.

4. ISSUES INVOLVING TEACHERS

Most teachers have poor understanding or even have misconceptions of human rights as they have not been exposed to the concept. This ignorance has resulted in a number of misrepresentations including;

- (i) Teaching human rights to students will make them more demanding of their rights, flout school rules, create more disciplinary problems and make them more disrespectful of teachers; and
- (ii) Teaching human rights in school will increase teachers' workload, which is already heavy and hence, inclusion of human rights in the school curriculum will burden them further.

Fear of heavier workload, more discipline problems and greater difficulty in controlling students will make teachers less willing and less committed to the teaching of human rights. This negative attitude of teachers toward human rights in school will definitely make this subject vulnerable to failure.

Not only teachers but government officers also harbour fear and even animosity towards human rights education in school.

5. EXAMINATIONS

It cannot be denied that examinations appear to be the most objective means of assessing students' academic ability. Hence, to many educators and even parents, examinations are necessary. However, examinations may not reflect correctly a child's ability. Failure to do well in examinations may be due to several factors, such as lack of basic literacy and numerical skills that cause the child to fall further and further behind in his/her study, animosity towards the teacher who teaches the subject, lack of self-confidence and poor study skills. Moreover, the exam-oriented school system can result in violations of the child's rights. This includes:

- (i) An exam-oriented structure tends to increase parental pressure on children to succeed, resulting in deprivation of their right to total development. This violates Article 29 of CRC which says in paragraph (1)(a) that States Parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

Article 31 of CRC, which pertains to the right of the child to rest and leisure, is also violated if children are made to devote their time to studying at the expense of recreation and leisure.

- (ii) In a highly exam-oriented system, children may, in turn, evaluate their classmates and others solely on their academic performance, thus depriving academically weak students of their dignity and self-worth.

6. INFORMATION, MISINFORMATION AND DISINFORMATION

Everyone has the right to seek, receive and impart information but he/she has to exercise this right responsibly (Article 1 of CRC). Abuse of this right can produce mental harm, conflicts and even disaster.

- (i) Incorrect information and deliberately misleading information brings harm to society especially the young generation. Internet is without boundaries and those who abuse the usage by disseminating viruses, sending hate letters, spreading rumours and providing incorrect information can cause great damage physically and mentally.
- (ii) Pornography, hacking, cyber stalking, and other immoral activities harm children as well as adults. Parental supervision or monitoring of the young is essential when they are surfing the Internet.
- (iii) Advertisers who do not supply the right information intend to deceive and mislead consumers. For instance, many products such as cigarette, alcohol, health products and cosmetics focus on appealing images of lifestyle (which is often ideal and artificial) but do not inform consumers on the harmful side effect of the products.
- (iv) Advertising is mostly targeted to young consumers as they are easily influenced

and do not understand the intent of advertisers. Therefore, they need to be taught on their right to correct and accurate information to enable them to make informed decisions.

RECOMMENDATIONS

(1) CURRICULUM AND PLANNING

- (i) A study should be carried out to investigate if the school curriculum, educational practices, school rules and textbooks which have contravened in anyway the child's rights as stipulated in the CRC and the UDHR. With this information, the school curriculum can be examined to identify areas or topics for infusing human rights into existing subjects;
- (ii) A national strategy for human rights education, not only in schools but also in other institutions, at the workplace, and in government agencies, should be developed either as part of an overall national human rights action plan or separately through a participatory process of consultation with all actors.

Such a plan needs resources to be put together, implemented, monitored, evaluated and reviewed;
- (iii) The school environment should demonstrate care and justice to all, which includes teachers' willingness to listen and concern for the well-being of all children;
- (iv) Assessment of boys' and girls' abilities must be gender neutral so that neither the content nor the method is biased towards one gender;
- (v) There should not be discrimination in education on the basis of gender, socio-economic status, ability, race and religion. For instance, the notion that girls are better in literature and boys in mathematics or

home economics is for girls and carpentry is for boys is tantamount to gender discrimination;

- (vi) Children should not be segregated or judged by categorizing them as educable or non-educable. Education should accommodate the diverse needs of the disabled; and
- (vii) The curriculum should be flexible and provide options for students. For instance, traditional knowledge of the Indigenous People can be incorporated into science, such as medicinal value of plants and behavioural patterns of animals. This provision will be in accordance with Article 30 of the CRC which pertains to the right of children of minority communities and Indigenous population to enjoy their own culture and to practise their own religion and language.

(2) TEACHER TRAINING

Teachers' understanding of human rights is vital to the promotion of human rights not only to young people but also to all sectors of society. Teachers should refer to instructors in school as well to all those in training institutions or programmes, whether they are for basic educational level, tertiary level, in-service training or on-the-job training. Therefore human rights education should be included in:

- (i) Pre-, primary and secondary school curriculum;
- (ii) Courses in colleges and universities, especially courses for careers in which human rights play a central or a very sensitive role such as social work, legal professional, medicine and management; and
- (iii) Pre- or in-service training for public services, especially for those involved in the justice system, the police, prison officials and immigration officers.

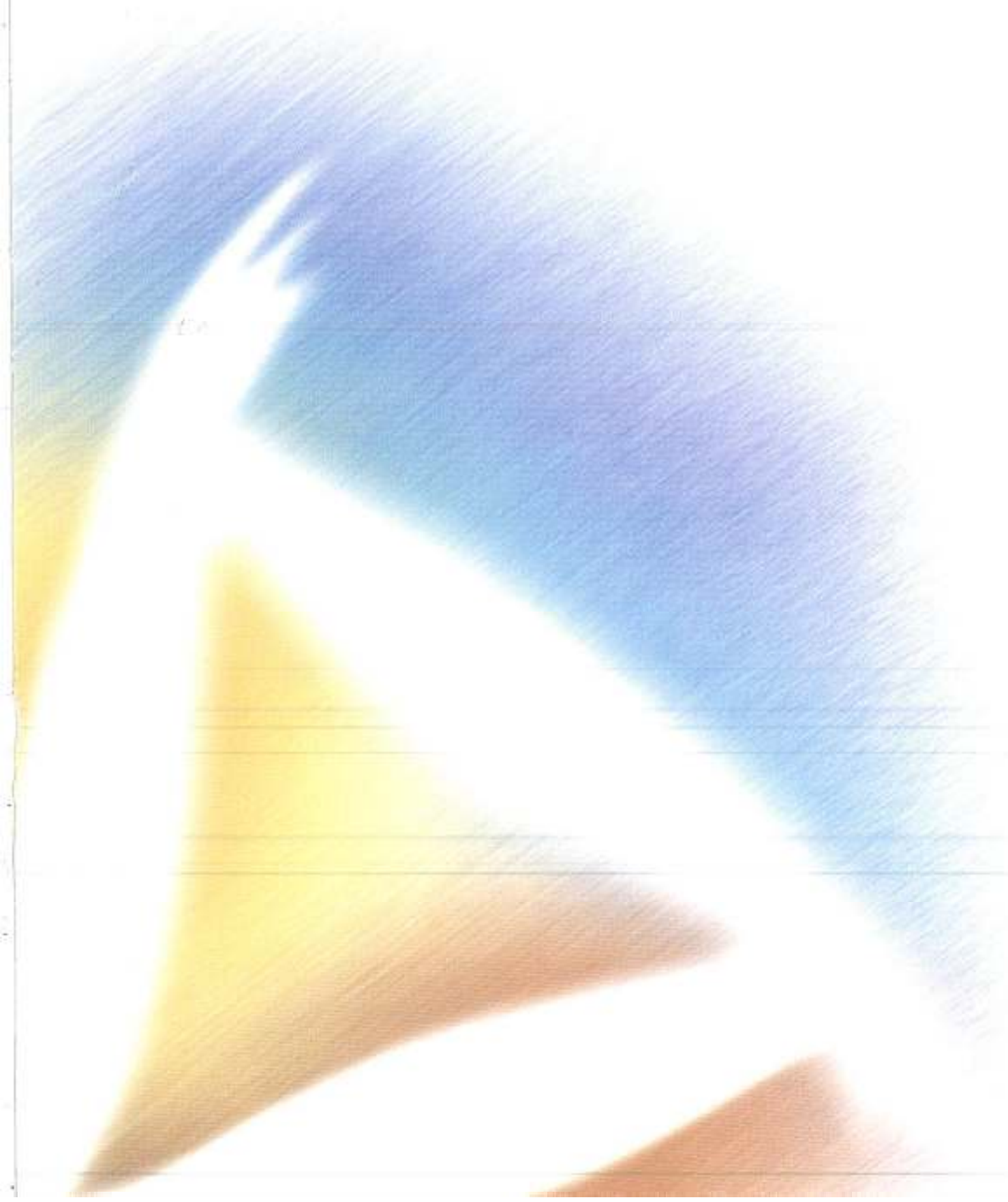
As human right education is a recent development in Malaysia, production of good resource books for the various courses and training programmes is highly essential.

(3) RIGHT TO INFORMATION

Both the supplier and recipient of information must be educated on their rights and responsibilities. Some of the measures to be taken include:

- (i) ICT courses, designed to provide basic ICT skills, - whether they are for children or adults - should include ethics, etiquette and security-related modules;
- (ii) Impressing upon the public the responsibility to report any incident that pertains to security problems to the authorities;
- (iii) Advertisers and advertising agencies should be required to attend courses on the ethics of advertising, and ethical issues of the advertising industry should be discussed through workshops and seminars. Advertisers need to be aware of the harmful consequences to consumers and society on account of deceptive advertising techniques;
- (iv) The education of the public on their right for affirmative action to address ethical concerns of advertising to consumers and society. The relevant government agencies should also be more proactive in taking action on advertisements, advertisers and advertising agents who go beyond legal boundaries as well as advertisements that have harmful consequences to the society's well-being;
- (v) A detailed study or research on the hazards of smoking should be conducted in Malaysia and results be published in the media to create awareness among the Malaysian public, especially school children and the youth; and
- (vi) Reporters should be educated on the ethics of reporting and their responsibilities to provide accurate information so as not to mislead readers. They should be sensitive to issues that can harm people, especially young children. For instance, reporting the name of the father who raped his daughter or publishing his photograph which reveals the identity of the victim which can traumatize further her experience and pain. Furthermore, the report constitutes a permanent record for the public.

CHAPTER 5
REPORTS FROM SUHAKAM
BRANCH OFFICES



CHAPTER 5

REPORTS FROM SUHAKAM BRANCH OFFICES

(i) ACTIVITIES OF SUHAKAM SABAH

The Sabah Branch of SUHAKAM began operations in the year 2001, headed by Commissioner Tan Sri Datuk Panglima Simon Sipaun. It moved to its new office at the CPS Tower, Jalan Centre Point in Kota Kinabalu. The branch office was officially opened by the Commission's first Chairman, Tan Sri Dato' Musa Bin Hitam on 26 March 2002. One officer and one supporting staff were appointed to carry out the necessary duties at the branch office.

SUHAKAM Sabah undertook a number of activities, including road shows, human rights awareness dialogues/talks in a number of districts, a workshop on the rights of Indigenous People in Sabah, visits to temporary detention centres, Henry Gurney School and Bukit Padang Hospital, exhibitions and radio and printed media interviews. During the year, a total of 37 complaints were received from vulnerable groups from around Kota Kinabalu and the interiors of the Districts of Tenom, Sipitang, Sandakan and Tawau.

(a) ROAD SHOWS, HUMAN RIGHTS AWARENESS TALKS/DIALOGUES AT DISTRICT LEVEL

Throughout the year 2002, SUHAKAM Sabah held talks and dialogues in three districts and one sub-district. They were held in the District of Nabawan on 25 July 2002, the sub-district of Tamparuli on 12 September 2002, the District of Papar on 14 September 2002 and the District of Kota Belud on 9 October 2002. The purpose of the talk and dialogue sessions was to inform the people of Sabah of the establishment of the SUHAKAM Sabah branch, to explain the functions and role of SUHAKAM and to promote awareness of human rights at the grass roots level.

The programmes attracted 150 to 400 participants. They included civil servants, community leaders, native chiefs, village heads, members of the Village

Development and Security Committee, local dignitaries and other individuals interested in human rights.

Questions and issues raised during the dialogue sessions included the role of SUHAKAM in handling human rights violations, problems associated with native customary land rights, the protection given to complainants, rights of people with disabilities, identity cards, birth certificates, education and current issues which frequently concern vulnerable groups.

The talk and dialogue programme received encouraging response from individuals from the community. There were even suggestions that similar talks and dialogues should be conducted by SUHAKAM at the village level.

(b) WORKSHOP ON THE RIGHTS OF INDIGENOUS PEOPLE OF SABAH

A Workshop on "Human Rights of Indigenous People" was held on 11 - 12 October 2002 in Kota Kinabalu, Sabah. This Workshop was held as a follow-up to the Forum on "Rights of the Disadvantaged" on 9 - 10 September 2001 in Kuala Lumpur in which rights of Indigenous People were also discussed. The objectives of the workshop were, among others, to identify basic human rights issues that require prioritisation and identifying persons who have been or have the potential of working with the Indigenous people of Sabah as the grassroots level to be "Friends of SUHAKAM". During the Workshop, 11 "Friends of SUHAKAM" were nominated. As a follow-up to the Workshop, a training module for the "Friends of SUHAKAM" will be prepared and a workshop on the "Friends of SUHAKAM" will be held in early 2003. (See Chapter 3: Issues in Focus and Chapter 6: Education Working Group.)

(c) VISIT TO TEMPORARY DETENTION CENTRES

A visitation group, led by Professor Dato' Mohd Hamdan Adnan visited the Menggatal Temporary Immigration Detention Centre on 9 September 2002, the Sandakan Temporary Immigration Detention Centre on 10 September 2002 and Tawau Temporary Immigration Detention Centre on 11 September 2002.

The purpose of the three visits was to observe the conditions of the three temporary immigration detention centres, including examining the basic facilities and the management of these centres. The findings of these visits were to be forwarded to all the relevant authorities especially those authorities dealing with illegal immigrants facing deportation to their own countries.

The temporary detention centres in Menggatal, Sandakan and Tawau are jointly managed by the Federal Special Task Force, the Police, the Sabah Immigration Department and RELA, each within its own area of responsibility.

The condition in the centres at the time of the visit was found to be generally satisfactory. For example: male and female detainees were detained in separate blocks and the conditions for the preparation of food and drinks were considered acceptable. Each centre has a nurse who could provide medical treatment in cases of emergency or minor ailments. Serious cases of illness were referred to the nearest government hospitals. Male and female security officers were stationed in the male and female blocks respectively. There was also an officer-in-charge, his deputy and other officers who assisted to manage and supervise the centres.

(d) VISIT TO HENRY GURNEY SCHOOL II, KENINGAU, SABAH (SHGKS)

Members of SUHAKAM Sabah and Prof. Dato' Hamdan Adnan visited this school, which is a reform school for convicted juveniles, on 25 July 2002. The purpose of this visit was to observe the treatment of the inmates, the condition of basic facilities and the management of the school. The

group was given a briefing followed by a tour around SHGKS by the Director of the school, Mr Peter Govind. The general condition and basic facilities, including security aspects were found to be satisfactory.

During the discussion between the delegation and the Director, the delegation was appraised of the problems that were faced by the inmates during their detention at SHGKS and also after they leave the school. These include the negative perception and attitude of the local community towards the inmates, the lack of co-operation from parents and the difficulties faced by the inmates in finding work after they leave SHGKS. SUHAKAM noted the dwindling school enrolment.

(e) VISIT TO BUKIT PADANG HOSPITAL, KOTA KINABALU

Members of SUHAKAM Sabah visited the Hospital on 26 July 2002. The Bukit Padang Hospital is a psychiatric hospital that also houses forensic patients who have been assigned to the hospital by the courts. The purpose of this visit was to observe the living conditions of the patients and to inspect the management system of the hospital. During this visit, the visitation group was given a briefing by and held a discussion session with Dr. Haji Mohamad Dalip, the Director of the Hospital, together with three other doctors and two staff members. Later, the group was taken around Bukit Padang Hospital.

The Hospital, besides admitting mental patients, also serves as a training centre for trainee nurses from the Nursing Institute. Hospital authorities have also started to conduct research on mental patients. This Hospital has received achievement awards, including the Quality In Health Award, for three years in a row. The hospital is also at the stage of obtaining a MS ISO9002 certificate.

However, the hospital capacity appears to be inadequate to cater for existing demand. There are approximately 30,000 outpatients in the whole of Sabah who have been registered between 1996 and 2000. Most patients are of Chinese and Kadazan descent. The Hospital authorities, however, are unable to admit so many patients due to inadequate number of wards and beds.

(f) EXHIBITIONS

On 25 February 2002, SUHAKAM Sabah took part in an exhibition in Kundasang, Ranau in Sabah that was organised by the Ministry of Information as part of the K3P (Pembaca, Pendengar dan Penonton) community service programme. This exhibition was officiated by Tan Sri Khalil Yacob, the Information Minister of Malaysia. The SUHAKAM booth attracted a sizable crowd who wanted to know more about human rights. The event provided a good opportunity for the public to ask questions and to approach SUHAKAM with requests to hold a dialogue on human rights in their districts.

(g) RADIO, TELEVISION AND PRINTED MEDIA INTERVIEWS

The commissioner and the officer of SUHAKAM Sabah were also involved in radio, television and printed media interviews. The interviews provided SUHAKAM the opportunity to introduce itself and its work and to promote human rights awareness among the Sabah people, as well as to discuss current issues associated with human rights.

(h) CONCLUSION

The establishment of the SUHAKAM branch office in Sabah was well received by the people of Sabah. They expressed many constructive views during the activities organised by SUHAKAM. These were noted and taken into account by SUHAKAM Sabah branch during the planning of its activities and steps will be taken to reduce, if not eliminate, past weaknesses.

In 2002, SUHAKAM Sabah received 37 complaints that involved alleged infringement of human rights. Among others, the complaints touched on matters relating to land, identification card, development, security and education.

SUHAKAM Sabah hopes to continue to play its role to promote awareness of human rights. In this connection, the human rights education programme, especially through road shows will continue in 2003. In addition, follow-up action, where necessary, will be taken in relation to activities that were initiated in 2002.

The objective of the workshop was to create awareness on human rights among senior police personnel. Topics of papers presented included Human Rights, Fundamental Liberties in the Malaysian Constitution, the International Dimension of Human Rights, Right to a Fair Criminal Process, and Remedies for Violations of Human Rights.

In 2003, SUHAKAM will finalise the Human Rights training module for the Police prepared by experts who are part of the sub-working group on Human Rights Education for the Police. A three-day workshop for core trainers from the Police Academy will be held to familiarize them with the contents of this module and also to train them on how to use it. This module will subsequently be used as part of police training in their academy to enhance human rights knowledge for police personnel so that its values can be applied in their daily work.

3. THE INDIGENOUS PEOPLE

Among the six disadvantaged groups identified for the Forum on Human Rights of the Disadvantaged held on 9-10 September 2001, SUHAKAM identified the Indigenous People as the most vulnerable. Hence, the sub-working group on Human Rights of the Indigenous People was the first to be set up following the forum.

Three workshops were held so that the Indigenous People could identify and prioritise their concerns, especially in terms of their rights. The first was held in Sarawak on 13 July 2002 to enable the Indigenous People in Sarawak to discuss their concerns and share them with officers in the relevant government departments such as the Police, Department of Education, Department of Forest, Department of Land and Survey and Department of Health.

The participants were invited to nominate "Sahabat SUHAKAM" or Friends of SUHAKAM, a scheme initiated by the Commission to train a pool of community leaders to represent the Indigenous Peoples interest to SUHAKAM. Training for the Friends of SUHAKAM scheduled for 2003 is to enable them to work within their communities.

SUHAKAM believes that the Indigenous People must be empowered to stand up for their rights.

The second workshop was held in Kota Kinabalu on 12 October 2002 for the Indigenous People in Sabah. The objectives and programme of this workshop were the same as the workshop in Miri. The third workshop, held in Kuala Lumpur on 29-30 December 2002, was for the Indigenous People in Peninsular Malaysia. (See Chapter 3: Issues in Focus.)

4. CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Children are the second group identified by SUHAKAM for follow-up action from the Forum on the Human Rights of the Disadvantaged. It was also decided that the sub-working group would focus on the CRC since this human rights document has been signed and ratified by the Malaysian Government and is also the most comprehensive human rights document for children.

Members of this sub-working group comprise representatives from several non-governmental and governmental agencies, especially those agencies pertaining to children. A one-day workshop was organized by SUHAKAM to expose trainers of early childhood educators, childcare providers, preschool teachers and government officials as well as to assist them in utilizing this knowledge and awareness in the workplace.

The workshop, held on 28 September 2002 in Kuala Lumpur, closed with a plenary session on "Future Plans for the CRC". The long-term plan is to incorporate the CRC into the training of early childhood educators and to integrate relevant elements of the CRC into school curriculum, including preschool.

5. PEOPLE WITH DISABILITIES

The EWG and the Law Reform Working Group are studying the memorandum on Legislation for Education of Individuals with Special Needs

submitted by the Malaysian Bar Council and also the draft of the Disabled Persons law. The two documents are being examined because one of the vulnerable groups that SUHAKAM has identified for its 2003 programme is the disabled. A dialogue with disabled individuals and organizations and relevant authorities is being planned for the beginning of 2003 to obtain views and information for SUHAKAM to plan its activities for the disabled.

6. PUBLIC EDUCATION

SUHAKAM undertakes several programmes as part of its role in educating the public on human rights and also on the workings of SUHAKAM.

- (a) **Road shows** SUHAKAM organised five road shows in 2002, where members of the Commission went to the ground to talk about SUHAKAM and human rights issues and took part in dialogue sessions with the participants. As was the practice, SUHAKAM would meet with all sectors of society, including the State Government, political parties and civil society groups. In Malacca, the Chairman of SUHAKAM and two commissioners met with the Chief Minister, Executive Council Members, the State Secretary, senior State Government officers, NGOs and college students. About 300 people attended.

The newly opened Sabah office of SUHAKAM organized road shows at the district and sub-district level. There was much interest in the work of SUHAKAM and in each location, numerous questions, viewpoints and comments were expressed from the floor, displaying the people's awareness of human rights and their interest in SUHAKAM. (See Chapter 5: Activities of SUHAKAM Sabah.)

- (b) **Exhibitions** SUHAKAM took part in a number of exhibitions in 2002 with a view to create public awareness on the issue of human rights. These included the Human Rights Awareness Day organized by AsiaWorks Leadership Programme in Kuala Lumpur and in Penang and at the Kulliyah of Law in conjunction with

the Convocation Festival of the International Islamic University Malaysian on 2 - 5 July 2002.

- (c) **Malaysian Human Rights Day** A two-day conference on "Human Rights and Education" was held on 9-10 September 2002 at the Putra World Trade Centre. The programme comprised three keynote addresses, one plenary session and 24 symposium papers. The Conference was opened by Dato' Seri Utama Dr. Rais Yatim on behalf of Datuk Seri Dr. Mahathir Mohamad, the Prime Minister. The opening ceremony was attended by more than 520 people while 319 individuals participated in the conference. (See Chapter 4: Human Rights Day Public Forum.)

- (d) **Forum on Human Rights Post-September 11** In conjunction with the World Human Rights Day, SUHAKAM organized a forum, "Human Rights Post-September 11" on 20 December. The objective of the forum, apart from celebrating the World Human Rights Day, was to generate public discussion on the impact of the September 11 on human rights. The forum provided a platform for the public to discuss the violations of human rights resulting from anti-terrorism laws and policies adopted by several governments.

- (e) **Talks, Seminars and Conferences** The Commissioners and the SUHAKAM Secretary gave several talks on SUHAKAM and human rights and participated as speakers in conferences and seminars at the national and international levels. (Appendix VII and Appendix VIII)

At the Seventh Annual Meeting of the Asia Pacific Forum (APF) on Human Rights held in New Delhi, India on 11-13 November 2002, Malaysia was accepted as a member of APF. With this acceptance, SUHAKAM will be working towards strengthening and improving the functioning of National Human Rights Institutions in the region.

- (f) **Dialogues** SUHAKAM believes that communication with government agencies and civil society groups is vital to its effective functioning. In 2002, SUHAKAM had over eight dialogue sessions with a range of agencies and groups, either on their request or on the initiative of SUHAKAM. **(Appendix VIII)**
- (g) **SUHAKAM Website** With the appointment of an assistant officer for ICT, SUHAKAM is able to update its website (www.suhakam.org.my) more regularly. While improvements have been made, SUHAKAM is currently working on a strategy to further improve online communication by setting up a portal for interactive communication.
- (h) **Library** SUHAKAM aims to build up the SUHAKAM library so that it becomes the primary human rights resource centre in this country. Books on human rights, conference/seminar papers, publications and newsletters of human rights institutions and human rights instruments are being collected and housed in the library.

CONCLUSION

SUHAKAM considers education and promotion of human rights as one of its crucial functions in the belief that everyone has the right to be treated with human dignity and are entitled to the rights essential to their well-being. Everyone, especially those who are vulnerable, should be cognizant of his/her rights. With the passing of the Human Rights Commission Act and the appointment of Human Rights Commissioners in 2000, the Government acknowledges that its citizens have the right to human dignity and a certain quality of life. Therefore, it is the task of SUHAKAM to educate Malaysians on their rights as a human being. As it is impossible to educate every citizen on his/her rights, SUHAKAM has to prioritize its tasks. Our priorities are accorded to the most vulnerable groups whose rights are most likely to be violated.

The achievement of a human rights culture in our society cannot be accomplished by SUHAKAM alone; it requires the effort of everyone. A person has already contributed to the education and promotion of human rights by merely upholding human dignity. Everyone, therefore, has the responsibility to promote human rights, especially if he/she believes that God creates every individual and He creates them as equals.

MEMBERS OF THE EDUCATION WORKING GROUP

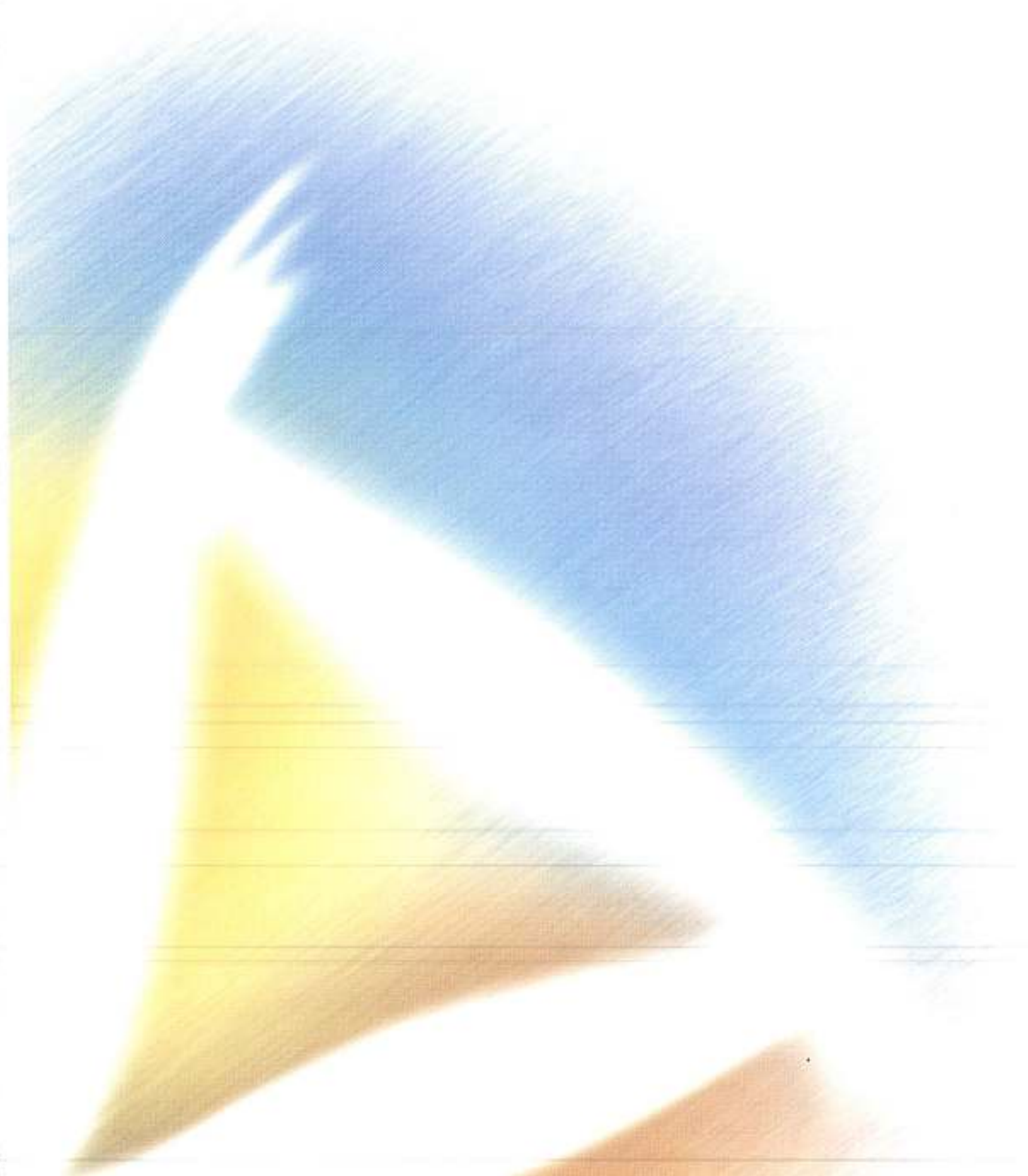
Professor Dr Chiam Heng Keng

Tan Sri Datuk Seri Panglima Simon Sipaun

Professor Dato' Mohd Hamdan Adnan

Dato' Asiah Abu Samah

CHAPTER 7
REPORT OF THE
LAW REFORM
WORKING GROUP



CHAPTER 7

REPORT OF THE LAW REFORM WORKING GROUP

In 2002, the Law Reform Working Group conducted reviews on the Human Rights Commission of Malaysia Act 1999 (Act 597) and the Internal Security Act 1960 (Act 82). It also took several follow-up actions on the recommendations relating to the reform of the law, administrative directives and procedures that were contained in SUHAKAM's Annual Report 2001 and specific reports produced in 2001, namely the reports on Freedom of Assembly, Rights of Remand Prisoners and the Banishment Act 1959 (Act 79).

REPORT ON THE HUMAN RIGHTS COMMISSION OF MALAYSIA ACT 1999 (ACT 597)

The purpose of this Report is to review the adequacy of the current provisions of the Human Rights Commission of Malaysia Act 1999 and their implementation vis-a-vis the effective functioning of SUHAKAM and its impact on members of the public who have had dealings with SUHAKAM since its establishment in April 2000.

There have not been any recommendations made to provide SUHAKAM with enforcement powers. The main recommendations were aimed at increasing SUHAKAM's effectiveness and bringing the provisions of the Act to be more in line with the Paris Principles. Recommendations were also made to clarify ambiguous sections of the Act. (**See Chapter 3: Issues in Focus.**)

REPORT ON THE ISA

This report reviews in particular, the preventive detention provisions contained in the Internal Security Act 1960 - namely sections 8 and 73. This review was initiated in response to the numerous

memoranda and complaints that SUHAKAM had received from many sectors of society, which include non-governmental Organisations (NGOs), representatives of the Malaysian Bar, individuals who had been detained or are currently detained under the Act and the family members of such detainees.

The recommendations aim to strike a fair balance between two very important but, at times, competing public interests - legitimate national security concerns, on the one hand and the fundamental freedoms of an individual, on the other.

The report will be released to the general public in early 2003, following initial distribution to the relevant authorities for their consideration and response. (**See Chapter 3: Issues in Focus.**)

STATUS OF SUHAKAM'S PREVIOUS RECOMMENDATIONS

As with the year 2001, the year 2002 saw mixed response by the relevant authorities to the recommendations made by SUHAKAM relating to reform of the law and administrative directives and procedure. The most positive reaction to SUHAKAM's recommendations in this area came from the Judiciary.

RIGHTS OF REMAND PRISONERS

A fruitful follow-up discussion between SUHAKAM and the Judiciary was held on 27 July 2002 on the recommendations contained in SUHAKAM's Report on the Rights of Remand Prisoners. Amongst others, the Judiciary requested for SUHAKAM's co-operation in tackling the following allegations that are contained in the report:

Some magistrates allow the police request for remand and the number of days sought without questions, without considering whether there is any real need for detention to further investigations, and without considering the views of the detainee or his counsel.

Sometimes, when the maximum period for remand has been obtained from one court, the accused is moved to another district and a fresh application for remand is made. In this way a person can be held in custody, on remand pending investigations, indefinitely. The Police explanation is that the person may have committed offences in different districts and each remand order is for the investigation of a different offence.

Specifically, the Judiciary had requested for SUHAKAM to inform it of actual instances of the allegations above and to name the specific magistrate(s) involved in order for the Judiciary to investigate the matter further which include making spot checks during the times the magistrate is presiding over remand proceedings. If the allegations are found to be true, the Judiciary has assured SUHAKAM that appropriate action would be taken.

SUHAKAM has, in turn, written letters to the Bar Council to request for co-operation from the Malaysian Bar to keep it informed of such actual instances and the name(s) of the specific magistrate(s) in question for its onward transmission to the Judiciary. However, as of December 2002, SUHAKAM has yet to receive any formal response from the Bar Council on the matter.

SUHAKAM also welcomes the Chief Justice's decision to keep magistrates on call on weekends and public holidays to enable the Police to produce suspects before them within 24 hours of their arrests as required by law. Further, SUHAKAM notes that the Chief Justice has since issued a Practice Direction entitled "Detention Orders under section 117 of the Criminal Procedure Code (CPC)" (Chief Justice's Practice Direction No. 3/2003) which sets out detailed procedures that must be followed by magistrates when issuing an order for

detention under section 117 of the CPC. Such procedures include the need for the Police to produce the accused person before the magistrate and for the magistrate to ask the accused person whether he has been given the opportunity to have access to a lawyer and whether he requires legal representation before the start of remand proceedings.

The Chief Justice's decision in response to a proposal submitted by SUHAKAM in its Report on the Rights of Remand Prisoners, in favour of the liberty of an individual over administrative expediency hitherto by the Police, is an important step forward in the promotion and protection of human rights in Malaysia.

All other relevant authorities are urged to respond to the recommendations contained in SUHAKAM's Report on the Rights of Remand Prisoners.

LEGISLATIVE PROCESS

SUHAKAM notes a growing trend towards public debate in the legislative process, examples of which include the debate on a proposal to impose the death sentence on those convicted of raping young girls and a debate on the Hudud Bill in the State of Terengganu. The involvement of civil society through public debates is a positive step towards reinforcing the effectiveness and transparency of the legislative process in Malaysia.

SUHAKAM's recommendations contained in its Annual Report 2001 in relation to the legislative process are reiterated with the hope that the relevant authorities would work towards their adoption.

OTHER RECOMMENDATIONS

As regards the other recommendations relating to the reform of the law, and administrative directives and procedures as contained in SUHAKAM's Annual Report and in the specific reports produced in 2001, SUHAKAM is unaware of any action that may have been taken. These recommendations relate to the right to equality, the freedom of assembly and the Banishment Act 1959.

SUHAKAM has in fact followed-up on the matter with the relevant authorities with several letters and phone calls. However, up to 31 December 2002, SUHAKAM has yet to receive any formal response from them.

ACTIVITIES FOR THE YEAR 2003

The Group has identified the primary work of the Law Reform Working Group for the year 2003 to be as follows:

- to review the necessity or otherwise of the Emergency Proclamations that are still in force in Malaysia;
- to review laws in relation to liberty of a person, in particular the Prevention of Crime Act 1959, the Emergency (Public Order and Prevention of Crime) Ordinance 1969, the Essential (Security Cases) Regulations 1975 and Dangerous Drugs (Special Preventive Measures) Act 1985;
- to review laws in relation to the freedom of the press, in particular the Official Secrets Act 1972 and the Printing Presses and Publications Act 1984; and
- to take follow up action on the recommendations that have been made in the preceding years which relates to the reform of the law, administrative directives and procedures.

MEMBERS OF THE LAW REFORM WORKING GROUP

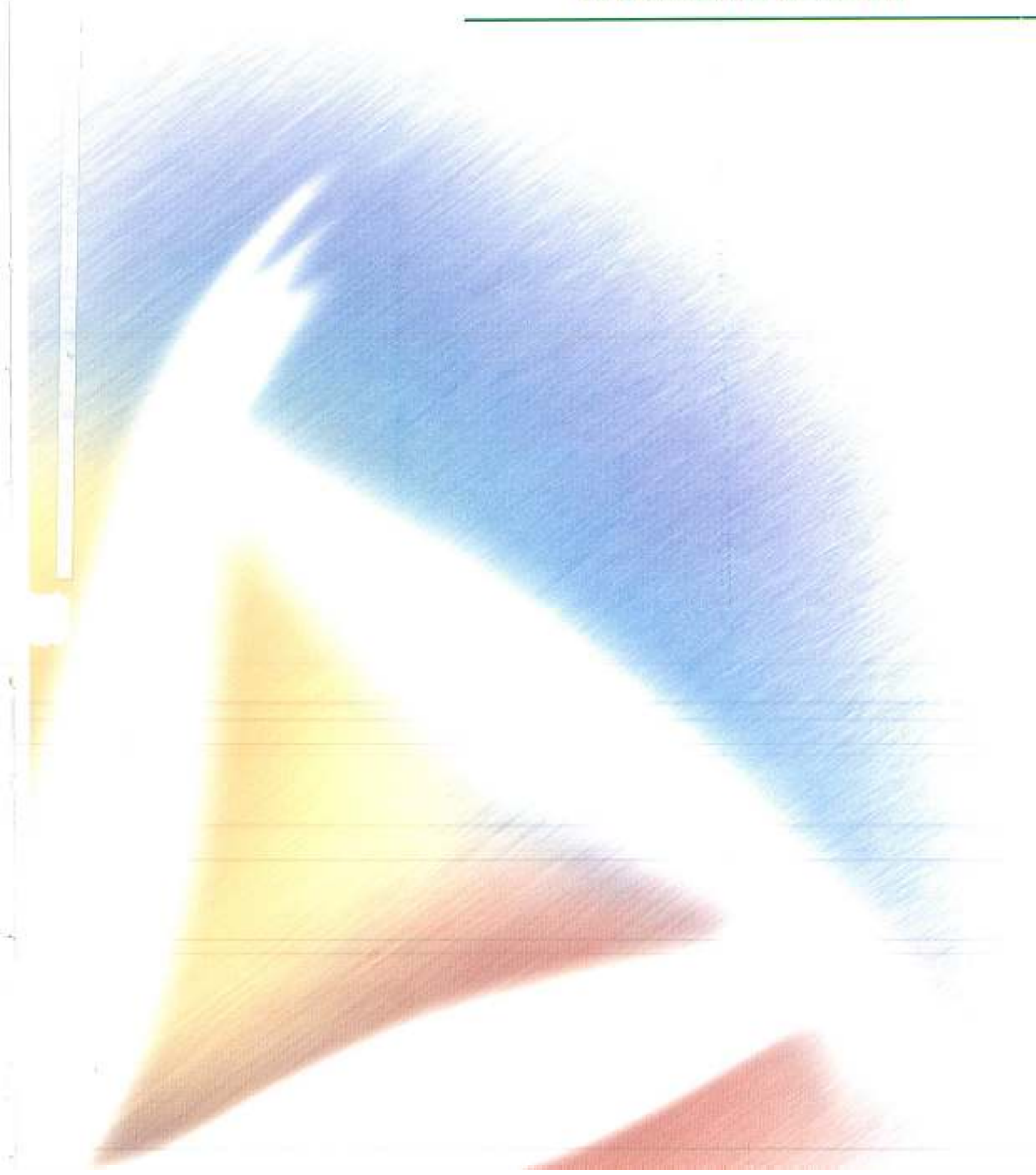
Dato' K.C. Vohrah

Dato' Ranita Mohd Hussein

Cik Zainah Anwar

Dato' Dr Abdul Monir Yaacob

CHAPTER 8
REPORT OF THE
TREATIES AND
INTERNATIONAL INSTRUMENTS
WORKING GROUP



CHAPTER 8

REPORT OF THE TREATIES AND INTERNATIONAL INSTRUMENTS WORKING GROUP

This year the Treaties and International Instruments Working Group (TIIWG) saw a change in chairmanship twice. Dato' Mahadev Shankar carried on as Chairperson from the previous year up until April 2002 when Tan Sri Ramon Navaratnam took over. With the appointment of two additional Commissioners in August 2002 and Tan Sri Navaratnam already chairing the Finance and Management Committee, Dato' Ranita Mohd. Hussein was appointed Chairperson for TIIWG replacing Tan Sri Ramon.

It has become more apparent over time that the scope of work for TIIWG is more extensive than merely making recommendations to the Government for the ratification of the several international human rights instruments. There are four main areas of concern identified for TIIWG, as categorised below:

1. Ratification of new international human rights instruments by Malaysia
2. Implementation of international human rights instruments already ratified or acceded to by Malaysia
3. Withdrawal of reservations to international human rights instruments already ratified or acceded to by Malaysia
4. Role of TIIWG/SUHAKAM in the international arena

1. RATIFICATION OF NEW INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

In SUHAKAM's 2000 Annual Report, TIIWG recommended, subject to the necessary reservations, the ratification of:

- (i) International Covenant on Economic Social and Cultural Rights (ICESCR);

- (ii) International Covenant on Civil and Political Rights (ICCPR); and
- (iii) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In SUHAKAM's 2001 Annual Report, in addition to the above, TIIWG recommended the ratification of:

- (i) International Convention Against Apartheid in Sports (which has been signed by Malaysia but not yet ratified);
- (ii) Optional Protocol to the Convention for the Rights of the Child (CRC) on the Sale of Children, Child Prostitution, and Child Pornography; and
- (iii) Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts.

To date, the Malaysian Government has not ratified any of the above recommended international human rights instruments. However, there has been some progress made in respect of the ICESCR and ICCPR. SUHAKAM was recently informed by the Ministry of Foreign Affairs (MFA) that a Cabinet Paper was being prepared on the two conventions for the consideration of the Cabinet. In respect of CAT, the matter is still under discussion among the relevant ministries, while no information is available regarding the other three instruments recommended for ratification in 2001.

While it is heartening to note that the ratification of ICESCR and ICCPR may soon come to fruition, the reasons for the delay by relevant ministries to deliberate on and submit to Cabinet the results of their deliberations on the conventions thus far recommended for ratification by SUHAKAM remains unclear and should be addressed by the Government.

In light of the time taken for the Government to consider the ratification of an instrument, TIIWG felt the need to take a different approach in the matter. Before recommending a particular additional instrument for ratification, TIIWG has decided to engage in dialogue sessions with relevant government agencies to discover the stand taken and/or possible reservations held by the Government regarding the ratification of that instrument. SUHAKAM hopes to assist these agencies by providing a common platform for dialogues aimed at gathering feedback regarding matters of direct concern to the Government.

A case in point are the ILO (International Labour Organisation) conventions. It was brought to the attention of SUHAKAM through its meetings with NGOs that out of eight fundamental ILO Conventions, Malaysia has only ratified five. From amongst the three not yet ratified, ILO C.87 (Freedom of Association and Protection of the Right to Organise Convention, 1948) was pointed out to be an important instrument related to the right to freedom of association.

In this instance, TIIWG sought first to meet with the relevant NGOs to understand better the needs and concerns of civil society while equipping itself with the necessary information in order to analyse the impact of the ratification of ILO C.87. Once TIIWG has obtained such information from NGOs and other sources, and also made the necessary analysis, the relevant government agency would then be approached on their views regarding the ratification of ILO C.87 (in this instance, relevant departments and/or agencies under the Ministry of Human Resources). The feedback obtained from the NGOs and the impact analysis made would then be passed on to the Government for its consideration and hopefully its eventual deliberation over the ratification of ILO C.87.

It is hoped that the Government would welcome this approach as a means of facilitating the ratification process.

2. IMPLEMENTATION OF RATIFIED INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

An essential step in realising the rights accorded by instruments ratified by Malaysia is the implementation of their provisions through domestic legislation and through Government policies and actions.

It is recalled that Malaysia has ratified or acceded to the following international human rights instruments:

- (i) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;
- (ii) Convention on the Nationality of Married Women;
- (iii) Convention on the Prevention and Punishment of the Crime of Genocide;
- (iv) Convention on the Rights of the Child; and
- (v) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

From a preliminary survey aimed at discovering the extent to which the Government has promulgated laws to give effect to its international obligations, it is encouraging to note that the Child Act 2001 reflecting the provisions of the CRC was brought into effect in August, 2002. Rights accorded to women under CEDAW remain dispersed in various different legislations. After the landmark amendment to the Constitution prohibiting discrimination on the ground of gender, it is timely for the Government to review not only the existing laws but also the practices of its ministries and agencies to ensure that the letter and spirit of this important constitutional amendment are adhered to.

TIIWG further found that no specific legislation has been passed to implement the provisions of the Convention on the Nationality of Married Women and the Convention on the Prevention and Punishment of the Crime of Genocide. This

omission is of concern, considering that Malaysia had ratified the former in 1959 and the latter in 1994. In respect of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Article 6 of the Federal Constitution provides for the prohibition against slavery in absolute terms while the imposition of forced labour is prohibited except for labour imposed pursuant to a sentence of imprisonment.

The study on the implementation of ratified instruments will be pursued in greater depth with the appointment of researchers to reinforce SUHAKAM's human resource. A regular line of communication to facilitate constructive exchange of information between SUHAKAM and NGOs is also expected to be put in place next year.

The study would be consistent with SUHAKAM's intention to participate in the reporting process required by the United Nations Committees overseeing the implementation of major international human rights instruments such as the Committee on the CRC and the Committee on the CEDAW.

3. WITHDRAWAL OF RESERVATIONS TO RATIFIED INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Out of the five instruments already ratified or acceded to by Malaysia, the Government had registered its reservations against certain provisions in three of them. They are the CRC, CEDAW and the Convention on the Prevention and Punishment of the Crime of Genocide. The Government has, however, withdrawn some of those reservations.

Of the remaining reservations, TIIWG will engage with the relevant ministries/agencies to ascertain the rationale behind the reservations with a view to determining whether or not withdrawal thereof should be recommended. In this regard, convention provisions that are the subject of reservations by Malaysia due to their apparent conflict with Syariah laws remain at issue. TIIWG will pursue research

on the practice of OIC countries, which have ratified/acceded to CEDAW without making any reservations. TIIWG will also cause related research to be conducted/collated on the rights of Muslim women under Syariah law.

4. ROLE IN THE INTERNATIONAL ARENA

In recognising the increasing role that TIIWG can play towards encouraging the Government to fulfill its international obligations, TIIWG has become aware of the role of other national human rights institutions in other parts of the world which influences the creation of international human rights norms and obligations. Just as the International Campaign to Ban Landmines (ICBL), a coalition of NGOs, was able to influence the creation of an international treaty banning antipersonnel landmines cooperating with Governments and UN bodies, so too can national institutions be part of the international human rights community shaping the international human rights obligations to come.

Other national institutions have in the past been part of the negotiating process in the creation of several international human instruments and SUHAKAM may soon be able to take part in this process in respect of an international convention related to the rights of persons with disabilities. It has been recognised that there is a need to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities.

At the recent annual meeting of the Asia Pacific Forum in New Delhi at which SUHAKAM was accepted as a member, Forum institutions agreed to respond positively to the invitation of the United Nations Ad Hoc Committee (responsible for considering the said proposals) to participate independently in the development of the possible new convention. In that instance, TIIWG will ensure that SUHAKAM is represented in the negotiating process, either through the APF or by itself or even both.

CONCLUSION

On the national front, TIWIG views the coming year as one for consolidation of efforts made thus far and pooling of resources between the Government, SUHAKAM and civil society to facilitate the ratification of treaties identified and recommended for ratification by SUHAKAM. Active cooperation among the three parties is also required not only to ensure that provisions contained in conventions already ratified by Malaysia are adequately translated into local law, but also to inform and educate the public, including ministries and

agencies of the rights and obligations under the conventions.

On the international front, the role of national human rights commissions as an important link between the Government and civil society is being increasingly recognised by United Nations organisations. As such, SUHAKAM is encouraged to play a more active role in the reporting requirements of UN Committees related to CEDAW and CRC, and to participate in the development of new human rights treaties.

MEMBERS OF THE TREATIES AND INTERNATIONAL INSTRUMENTS WORKING GROUP

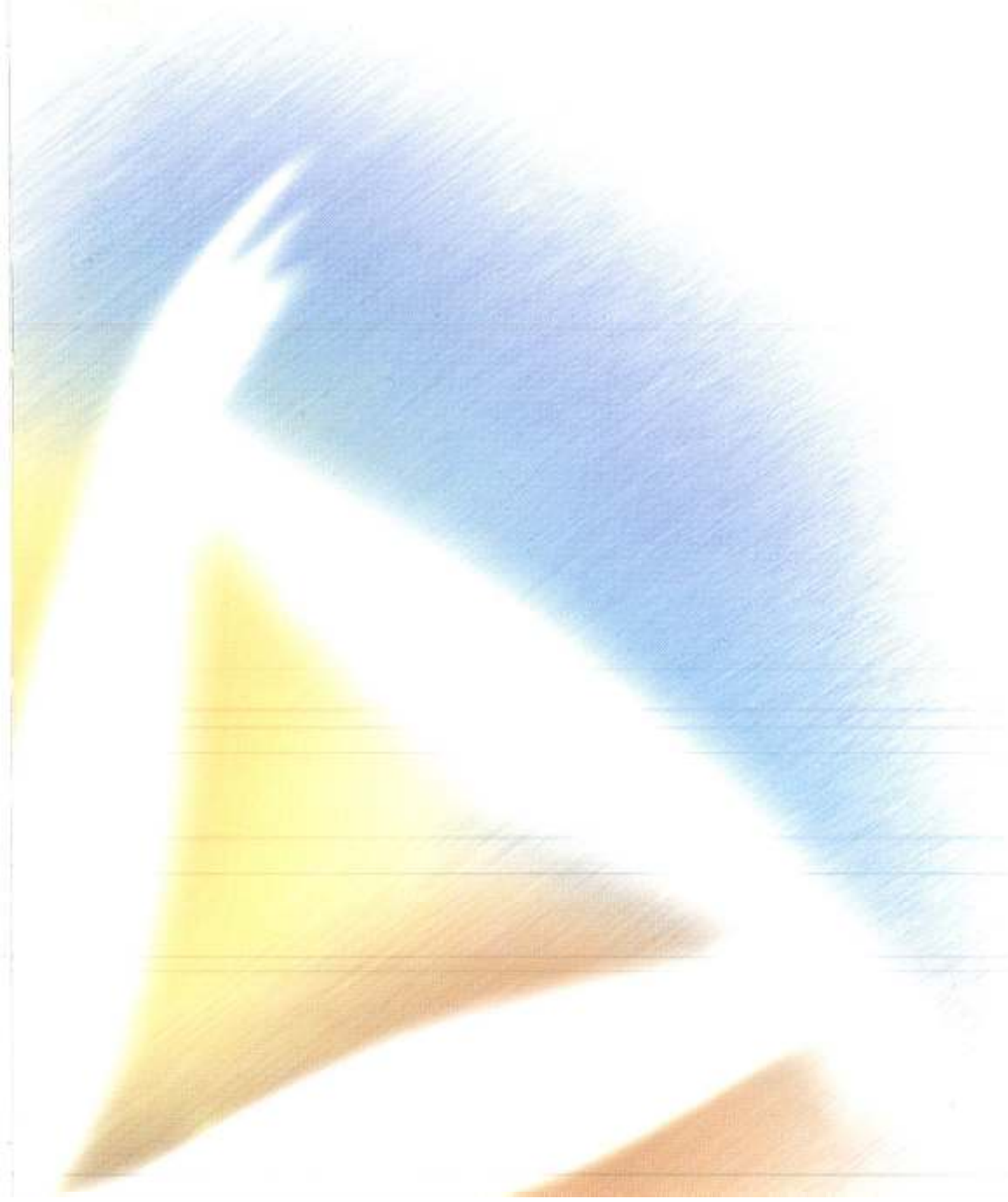
Dato' Ranita Mohd Hussein

Datuk Dr. Raj Karim

Dr. Hirman Ritom Abdullah

Dato' Dr. Abdul Monir Yaacob

CHAPTER 9
REPORT OF THE
COMPLAINTS AND INQUIRIES
WORKING GROUP



CHAPTER 9

REPORT OF THE COMPLAINTS AND INQUIRIES WORKING GROUP

The year 2002 was a busy year for the Complaints and Inquiries Working Group (CIWG). In addition to fulfilling its primary undertakings (the resolution of complaints and memorandums and visitations to places of detention and welfare homes), the CIWG also conducted a public inquiry on the conditions of detention under the ISA and a workshop on Freedom of the Media. Further, the CIWG also held discussions and dialogue sessions with the relevant authorities on various issues.

1. RESOLUTION OF COMPLAINTS

(a) GENERAL OVERVIEW OF COMPLAINTS RECEIVED

In 2002, there was a 13 percent decrease in the number of complaints received by SUHAKAM when compared to the year 2001. This decrease is caused mainly by the marked decline in the number of organised campaigns by civil society when compared to the first two years of SUHAKAM's existence. These organised campaigns have a great influence on the total number of complaints lodged with SUHAKAM as they involve a large number of individuals (both local and foreign nationals) forwarding SUHAKAM standard form letters lobbying for SUHAKAM to adopt a particular stand on the relevant issues raised. Thus, in contrast to the first two years of SUHAKAM's establishment, the complaints received in 2002 have been more specific and touched on issues which raised possible human rights violations. They mainly concern matters relating to the Police, including deaths in police custody, alleged abuse of power by government authorities and issues that impact on native land rights and customary laws.

(b) JURISDICTION

Upon receipt of a complaint, the CIWG first vets it in order to determine whether the complaint falls within the jurisdiction of SUHAKAM. A complaint falls within the jurisdiction of SUHAKAM only if it relates to a possible infringement of human rights. Through this initial vetting process, SUHAKAM found that in 2002, approximately 37 percent of complaints that were lodged with SUHAKAM did not in fact fall within its jurisdiction as:

- (i) 24 complaints that were lodged with SUHAKAM concern alleged administrative inefficiency, including alleged undue delay in the processing of applications for identity cards, passports, compensation and other matters requiring approval. In most of these instances, SUHAKAM forwarded the complaints to the relevant government agencies for their attention and further action;
- (ii) 58 cases were complaints of a criminal nature. These were referred to the Police; and
- (iii) 17 cases were either pending in or have been determined by the courts. No action was taken in respect to these cases by reason of section 12(2) of the Human Rights Commission of Malaysia Act 1999 (Act 597).

(c) NATURE OF COMPLAINTS THAT RELATE TO ALLEGED INFRINGEMENT OF HUMAN RIGHTS

In 2002, SUHAKAM received 221 complaints the breakdown of which (together with comparative figures for the year 2001) are as follows:

SUB-GROUP	NATURE OF COMPLAINT	2001	2002
Sub-group 1	Matters involving government departments, professional negligence, violations of employment rights	144	82
Sub-group 2	Abuse of power by police and other agencies	81	64
Sub-group 3	Land, property, immigration and refugee matters	55	62
	General statements	39	3
Total		319	221

The 82 complaints under Sub-group 1 mainly relate to the failure of the authorities to take action against errant housing developers, late delivery of houses purchased, inadequate retrenchment benefits for employees and exploitation of workers by employers.

The 64 complaints under Sub-group 2 mainly relate to alleged abuse of powers by the Police. Examples of cases that fall under this sub-group include complaints relating to death in police custody, overcrowding in lockups and detention centres, alleged police inaction on police reports lodged, abuse of process under section 117 of the Criminal Procedure Code), (a provision which relate to the remand by the court of persons arrested but not yet charged for offences, dissatisfaction with detentions made under the Dangerous Drugs Act (Special Preventive Measures) Act 1985 and the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and the ISA.

The 62 complaints under Sub-group 3 mainly relate to land matters, particularly in Sabah and Sarawak. They concern land rights of the Indigenous People, illegal felling of logs in tribal lands as well as altercation between estate employees and plantation owners.

(d) ACTION TAKEN

The actions taken by the CIWG on complaints that have been lodged with SUHAKAM varies in accordance with the nature and severity of the

complaint. Thus, the actions taken by the CIWG range from the carrying out of further investigations by the CIWG in order to verify the complaints to the conducting of public hearings. Actions taken include visitations to detention centres, monitoring of the developments of a particular complaint, the holding of dialogue sessions with relevant authorities and the organisation of workshops that are aimed at bringing together complainants and the groups they represent, government agencies and other interested parties.

In addition, the CIWG also worked closely with detaining and enforcement authorities to raise their awareness on issues pertaining to human rights and fundamental liberties. A workshop on the rights of prisoners is planned for the year 2003 for enforcements officers from the Immigration Department, the Prisons Department, the Customs & Excise Department and officers from the respective local councils. This workshop will be held with the cooperation of the Legal Aid Bureau in the Prime Minister's Department.

(e) RESOLUTION OF COMPLAINTS

In 2002, 27 percent of cases (59 cases) were resolved, 11 percent of cases (24 cases) were forwarded to other government agencies. No further action was recommended for 26.6 percent of cases (58 cases) whilst 35.3 percent of cases (77 cases) are still pending investigation. The following table provides the comparative figures for the resolution of complaints in 2001 and 2002:

YEAR	2001	2002
Resolved cases	118	59
Cases forwarded to other government agencies for action	49	24
No Further Action (NFA)	99	58
Pending Investigation	53	77
TOTAL	319	218

Further, the following are examples of cases that have been successfully resolved as a result of action taken by SUHAKAM:

(i) CASE 1: Right to Citizenship

Ref: Part III Article 30 Federal Constitution
(Citizenship) and Article 15 UDHR
(Right to Citizenship)

Sub-group 1

The complainant was the daughter of an ex-communist who was a member of the Communist Party of Malaya who returned to Malaysia in 1992 after the signing of the peace accord between the government and the CPM. She was given a special pass by the police to ease her daily travel and needs. However, she encountered difficulties in 1996 when she applied for an identity card as she had to return the special pass to the police while the card was being processed. As she was left without identification papers she had often been detained by the police and subjected to questioning. SUHAKAM considers that she had a right to citizenship and the frequent detention by police as an infringement of her freedom of movement. She said that SUHAKAM was her last resort. The matter was forwarded to the Home Ministry, the Police and the National Registration Department for their action. SUHAKAM was informed on 27 March 2002 that the authorities have given her the Certificate of Citizenship and the approval letter for her application to get an identity card from the Registration Department. On 20 September 2002, SUHAKAM was informed the complainant has received her identity card.

(ii) CASE 2: Right to Education

Ref: Article 11 Federal Constitution and
Article 26 UDHR

Sub-group 1

The complainant is a FELDA settler who adopted an Indonesian child born on 19 February 1994. On 26 September 2000, he formally applied for an adoption certificate from the National Registration Department, Bandar Muadzam Shah branch, Pahang. This certificate is necessary to enable his adopted daughter to attend a government-aided school. The department advised him to obtain a report from the Welfare Department, Rompin and the Education Department wanted him to obtain a student pass from the Immigration Department. The incessant passing of his application from one department to another drove him to seek SUHAKAM's help in late 2001 that facilitated inquiry on the procedures for him to follow and departments to go to. The complainant has since informed us in 2002 that his adopted daughter has since started school, albeit a year late.

(iii) CASE 3: Right to Equality before the law

Ref: Article 8 Federal Constitution and
Articles 2 and 7 of the UDHR
Sub-group 1

The complainant is an old ex-policeman who served British Malaya. He claimed that with Independence, all ex-policemen were promised a piece of land as a token of gratitude for their service in defending the country against the communists. However, his application for the land was rejected and all attempts for redress have failed before he lodged a complaint with SUHAKAM. SUHAKAM referred the problem to the Social Welfare Department (JKM), District Office and Home Ministry. The complainant has since informed SUHAKAM that the Home Ministry has given him RM1,000.00 while JKM has approved a monthly allowance of RM135.00. The District office is also interviewing him to ascertain if he qualifies for aid under the Housing Project for the Poor (PPRT) as he is divorced and living alone in his hut.

(iv) CASE 4: Right of Citizenship

Ref: Article 8 and Part III
Federal Constitution and Article
15 UDHR
Sub-group 3

A visit to the Temporary Detention Centre in Menggatal was made on 9 September 2002 to monitor the human rights aspects in the deportation process of illegal immigrants. Several detainees claimed they were Malaysians who were unfortunately caught in the exercise. However, they were unable to prove their citizenship because they had no identification papers with them. SUHAKAM initiated action by writing to the Secretary-General of the Home Ministry, drawing his attention to the possibility that Malaysian citizens might be deported along with illegal immigrants in this exercise. Further investigations verified that three were Malaysians and they were thus freed, while another was awaiting release and his family informed of his detention.

2. RESOLUTION OF MEMORANDUMS

In the year 2002, SUHAKAM received 24 memorandums raising many issues. Some of these memorandums were treated separately and investigated as complaints. Further, as with the complaints received by SUHAKAM, some of the memorandums lodged with SUHAKAM were found, on initial vetting, to be outside the jurisdiction of SUHAKAM as they do not relate to possible infringements of human rights. In these instances, the complaints were forwarded to the relevant

authorities for their attention and further action. As an example, SUHAKAM received a memorandum from the Residents Association of Ukays Perdana in Ampang, Kuala Lumpur, who were dissatisfied with the compensation offered by the developers. The matter was also forwarded to the Ministry of Housing and Local Government as well as to the Legal Division of the Prime Minister's Department and the Ampang Jaya MP. In addition, the complainants have also filed an action in court. In this instance, the complainants were advised that as the matters raised in the memorandum do not

fall within the jurisdiction of SUHAKAM, they ought to pursue the matters raised with the relevant authorities.

Memorandums proper that do relate to possible infringement of human rights and the action taken are as follows:

- (i) Memorandum from Gerakan Mansuhkan ISA (GMI) regarding the conditions of detention and treatment of detainees under the Internal Security Act 1960.

Action: A review of the ISA and a public inquiry on the conditions of detention of ISA detainees were conducted by the LRWG and the CIWG, respectively. (See Chapter 3: Issues in Focus.)

- (ii) Memorandum from PAS Lembah Pantai regarding the alleged police harassment at a function held at the home of a PAS supporter in Lembah Pantai.

Action: A discussion with the Police was initiated and SUHAKAM was informed that guidelines for holding any forum or 'ceramah' have been forwarded to the affected party. SUHAKAM will continue to monitor such complaints to ensure that permits to hold such events are not withheld arbitrarily.

- (iii) Memorandum from SUARAM regarding the remand of individuals pursuant to section 117 of the Criminal Procedure Code and the death of such detainees whilst in police custody.

Action: Investigations were conducted and visits were made to the relevant lockups. The Police informed SUHAKAM that it too had conducted investigations pertaining to the deaths of detainees who are being remanded and who are under police custody in order to determine the cause of death. For example, in the case of the death that occurred in the Putrajaya Hospital, the Police recommended that an

inquest by a magistrate be held. This inquest is ongoing. Nevertheless, SUHAKAM will continue to monitor the outcome of the inquest.

- (iv) A memorandum from Inisiatif Wartawan which is entitled "Journalism Under Threat" and lodged with SUHAKAM in conjunction with the World Press Freedom Day urging for the unrestricted right to information.

Action: As the issues raised in the memorandum cannot be resolved immediately, a workshop on the freedom of the media was organised to initiate the dialogue process. (See Chapter 3: Issues in Focus.)

- (v) A memorandum from students of Universiti Teknologi Malaysia (UTM) regarding the alleged unfair disciplinary action taken against them for submitting a complaint to SUHAKAM, alleging abuse of power during a campus election.

Action: A dialogue was held between SUHAKAM and the Vice-Chancellor of UTM on the issue. SUHAKAM was assured that disciplinary action was taken against the students not because they lodged a complaint with SUHAKAM. Instead, the action was taken because the students violated section 15(2) of the University and University Colleges Act. SUHAKAM was later informed by University officials that no action was taken against the students.

- (vi) A memorandum from DAP Perak regarding the arrest of their leaders for distributing leaflets entitled 'No to 929' which protested against the Prime Minister's declaration that Malaysia was an Islamic state.

Action: A meeting was held with the Police. SUHAKAM was informed by the

Police that legitimate investigations were being conducted and that Mr Lim Kit Siang was subsequently released. No charges were brought against Mr Lim Kit Siang.

- (vii) A memorandum from the residents of Rumah Martin Nyuran regarding the felling of trees on their customary lands by Ta Ann Plywood Sdn Bhd which is claimed to be illegal and which has destroyed their arable land.

Action: This issue has been brought to the attention of the Sarawak Land and Survey Department. SUHAKAM's Sarawak office will monitor developments in this case.

- (viii) A memorandum from NGOs urging the government to free ISA detainees still at the Kamunting Detention Centre. This followed the recent decision by the Federal Court which declared the detention under section 73 of four ISA detainees as illegal.

Action: A press statement was issued by SUHAKAM urging the Minister of Home Affairs to review the continued detention of the four under Section 8 of the ISA. (Appendix II).

- (ix) A memorandum protesting against alleged excessive police action and the alleged harassment of opposition party members who gathered at the Selangor Chinese Assembly Hall in order to launch the "Kempen ISA Mala Fide" which took place on 1 October 2002.

Action: A discussion was held with the Police. According to the Police, the gathering constituted a public function and therefore would require a police permit. This explanation was forwarded to the complainants.

3. VISITS TO PLACES OF DETENTION

In 2002, members of the CIWG visited 24 places of detention. Most of these visits were made on SUHAKAM's own initiative whilst others were made in response to specific complaints received in relation to a particular place of detention. These visits to places of detention were carried out in line with section 4(2)(d) of the Human Rights Commission of Malaysia Act 1999 which clothes SUHAKAM with the power to visit places of detention. Where appropriate, suggestions and recommendations were made in relation to the places of detention visited. (See Chapter 3: Issues in Focus.)

4. VISITS TO WELFARE HOMES

In 2002, in addition to visiting places of detention, visits were also made to a number of welfare homes. The visits were made in response to complaints concerning the alleged unsatisfactory living conditions in these homes. (See Chapter 3: Issues in Focus.)

5. PUBLIC INQUIRY ON THE CONDITIONS OF DETENTION UNDER THE ISA

An inquiry was conducted in response to several complaints on conditions of detention under the ISA that included allegations of torture during interrogation, inadequate food and medication, and denial of access to legal counsel. Some complaints questioned the validity of their detention under the ISA because questions asked during investigations had no bearing to the reasons for detention. The full inquiry has been completed and the report will be released to the public in 2003. (See Chapter 3: Issues in Focus.)

6. WORKSHOP ON FREEDOM OF THE MEDIA

A workshop on the Freedom of the Media was organised on 1 August 2002 in response to the various memorandums that were lodged with SUHAKAM with particular reference to Printing Presses and Publications Act 1984, the Official

Secrets Act 1972, the Internal Security Act 1960 and the Sedition Act 1949. A report on the workshop has been sent to the Government. It will be made available to the public in early 2003. (See Chapter 3: Issues in Focus.)

7. DIALOGUE AND DISCUSSION SESSIONS

In 2002, a number of dialogue and discussion sessions were held on various issues between SUHAKAM and the following relevant authorities and organisations:

(a) GOVERNMENT AUTHORITIES

In November 2002, SUHAKAM organised a dialogue session with several government agencies that had been the subject of many complaints. The objective of the dialogue was to familiarise government officers with the work of SUHAKAM and also to gather feedback on issues raised in the complaints received. Representatives from the Home Ministry, the Human Resources Ministry, the Social Welfare Department, the National Registration Department, the Immigration Department, the Police, the Legal Aid Bureau and Kuala Lumpur City Hall attended the meeting.

(b) THE POLICE

A joint-committee between SUHAKAM and the Police was set-up with the aim of addressing human rights issues that concern the Police and their personnel. Two meetings (one in April 2002 and the other in September 2002) were held since its formation. The joint-committee will meet on quarterly intervals to discuss cases involving alleged violations of human rights by the Police.

(c) LEADERS OF VARIOUS RELIGIOUS GROUPS

Since its establishment, SUHAKAM has received complaints on the alleged infringements of the freedom of religion from the Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism. Similar complaints were also lodged with SUHAKAM by several individuals and NGOs at a number of the dialogue sessions with SUHAKAM during its state visits. In response SUHAKAM held a dialogue session with representatives of the various faiths to discuss the issue of freedom of religion. This dialogue was well attended and participants included representatives of JAKIM, the Consultative Council, IKIM and other groups and individuals.

MEMBERS OF THE COMPLAINTS AND INQUIRIES WORKING GROUP

Professor Dato' Mohd Hamdan Adnan
 Tan Sri Datuk Seri Panglima Simon Sipaun
 Datuk Dr. Raj Abdul Karim
 Dato' K. C. Vohrah
 Dato' Asiah Abu Samah
 Dato' Dr. Abdul Monir Yaacob
 Dr. Mohammad Hirman Ritom Abdullah
 Cik Zainah Anwar
 Tan Sri Lee Lam Thye (until 31 October 2002).

CHAPTER 10

REPORT OF THE
MANAGEMENT AND
FINANCE DIVISION



CHAPTER 10

REPORT OF THE MANAGEMENT AND FINANCE DIVISION

The Management and Finance Division is directly entrusted with the responsibility of implementing and managing matters related to planning and development of human resources. This encompasses all matters related to the establishment of posts, recruitment and appointments, providing facilities, terms and conditions of service, welfare of SUHAKAM staff as well as the planning and managing all financial matters efficiently in line with the needs of SUHAKAM.

In carrying out the above duties, the Finance and Administration division is guided by and is directly answerable to the Management and Finance Committee. This committee was formed by the merging of two previous committees, the Finance Committee and the Management Committee that had evolved since the establishment of SUHAKAM. The combined Management and Finance Committee facilitates decision-making as it oversees both the management of SUHAKAM finances as well as the administration and staff policies.

1. STAFF

As of December 2002, the Public Services Department approved the establishment of an additional 21 permanent posts. This brings SUHAKAM total staff strength to 41 with 16 officers and 26 support staff. The expansion is due to the increased workload and specialized nature of work. A total of eight officers and staff left SUHAKAM.

Since December 2002, SUHAKAM's secretariat has been restructured into the following five divisions:

- (i) The Management and Finance Division
- (ii) The Complaints and Inquiries Division
- (iii) The Legal Division

(iv) The Education and Research Division

(v) The Communications Division

SUHAKAM encourages career development of staff. In 2002, SUHAKAM officers were sent for training, attended seminars organized both by local and foreign organizations to improve their skills, efficiency and capabilities and to expose them to current issues in human rights.

In 2002, SUHAKAM started in-house courses for support staff to improve their command of English and organised a three-day motivation course for "Team Building" at Port Dickson, Negeri Sembilan.

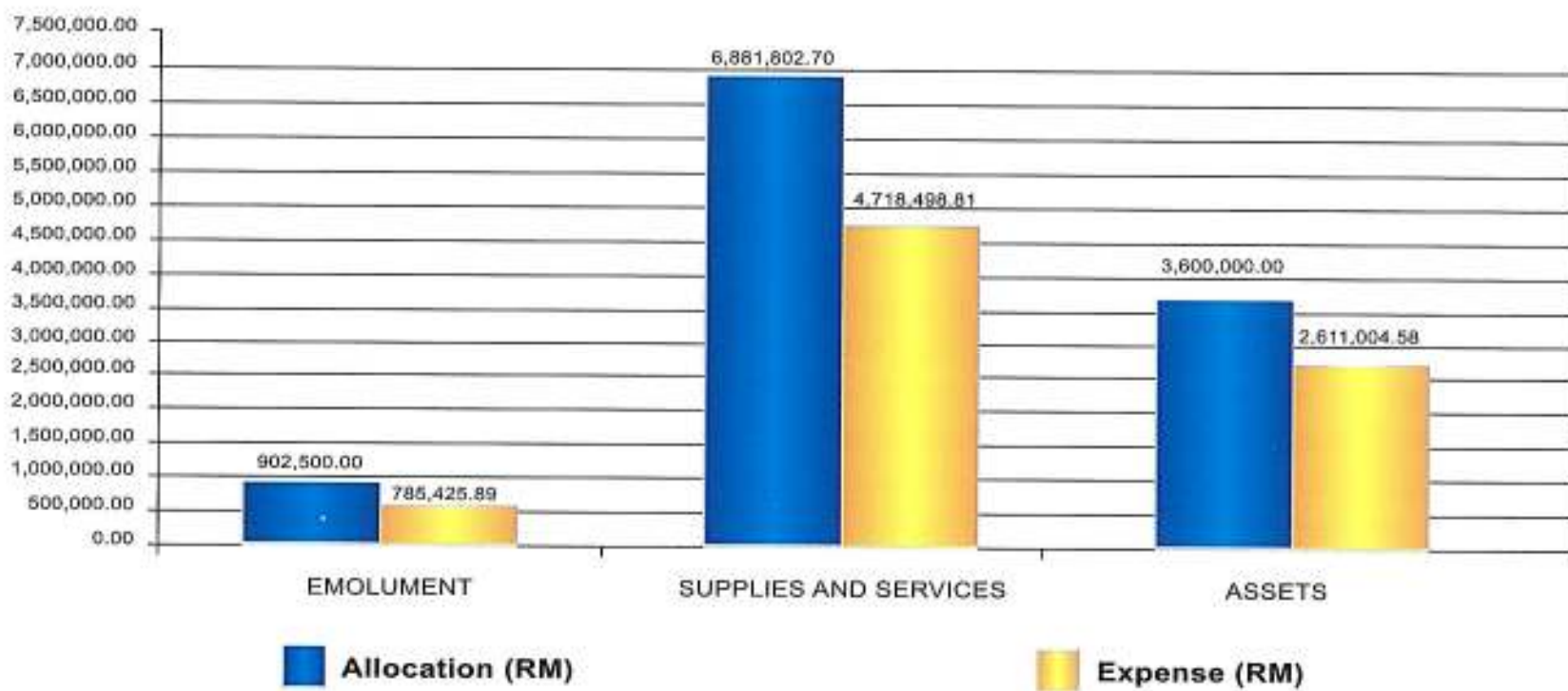
2. PREMISES

SUHAKAM rents the premises on the 29th and 30th Floors of Menara Tun Razak in Jalan Raja Laut. Due to the requirements of a larger office space to accommodate the increased number of staff and activities, SUHAKAM rented additional space on the 28th Floor in 2002.

3. FINANCE

Since 31 August 2001, SUHAKAM has powers to manage its own funds. For the year 2002, SUHAKAM received RM9,695,000.00 from the Government. A sum of RM 6,145,000.00 was allocated under the managerial monetary group. A further RM3,550,000.00, as a one-off allocation, was given for purchasing assets. A balance of RM1,655,000.00 from 2001 was brought forward and the grand total for allocation in 2002 is RM 11,350,000.00.

As at 31 December 2002, SUHAKAM has spent



GRAPH 1: Allocations and Actual Expenditure for the year 2002.

RM5,476,491.70 or 70.69 per cent of the allocation for managerial expenditure and another RM2,611,004.58 or 72.48 per cent of the allocation for purchasing assets.

Allocation and actual expenditure for the year 2002 are shown in Graph 1.

The remaining balance for the year 2002 is RM3,262,503.72 and it will be carried forward to the year 2003. An audited Account of SUHAKAM's finances for the year 2002 is given in **Appendix IX**.

MEMBERS OF THE MANAGEMENT AND FINANCE COMMITTEE

Tan Sri Ramon Navaratnam

Tan Sri Datuk Seri Panglima Simon Sipaun

Professor Dr. Chiam Heng Keng

Dato' Asiah Abu Samah

CHAPTER 11

CONCLUSION



CHAPTER 11

CONCLUSION

The year 2002 saw a period of change in the emphasis of the work of SUHAKAM as it moved into its third year of operations with a new Chairperson and six newly appointed Commissioners, adding to the wealth and breath of experiences and expertise and committed to promote, protect and fulfill human rights. The Commission, undeterred by the 100 day NGO boycott, took up their tasks immediately to follow-up and consolidate the work initiated by the earlier Commission in 2001, to decide on priority issues and activities to be accomplished in 2002 and brainstormed on emerging needs for 2003 and beyond. This line of action enabled SUHAKAM to carry out its operational functions and responsibilities provided for within the act as well as to undertake planning for a strategic and forward looking role for a more proactive and efficient SUHAKAM.

Ranging from public and NGO's responses, queries and complaints received by SUHAKAM, it is evident that expectations of the community, individuals and NGOs towards the Commission is high and that people are more conscious of their rights or rather on wrong doings towards them or reasons to believe they have been unfairly or unjustly treated by authorities. As complainants often lodge complaints or memorandums to SUHAKAM as the final resort after exhausting available channels of communication and as some of these may not directly relate to violation or negligence of human rights, SUHAKAM has a delicate and complex responsibility in balancing the fine line or grey areas in making decisions. Finally SUHAKAM will be judged by its ability to make just and responsible decisions and fair and transparent responses without fear or favour. Towards this end, SUHAKAM's ability to engage in constructive dialogues and meetings and obtain better responses and feedback from authorities such as the police, prisons and detention centres, government departments and the media, while

encouraging, needs to be further improved. The open communication, trust and confidence between SUHAKAM and the authorities will enhance the effectiveness of the work of both parties in achieving the common goal of protecting those whose rights have been violated and facilitating a recourse of action for protection of their rights. The fact that a notable part of SUHAKAM's efforts were geared towards getting into the root of problems of grievances of affected persons and their families in issues of arrest, remand and detention, on the conditions of places of detention and treatment of detainees, reflects the urgency and importance that the Commission has given in responding to issues of immediate and grave concern. However, the acid test of SUHAKAM's effectiveness is the response that will be forthcoming from the Government and whether the recommendations made in its' reports will be debated and acted upon.

Though much of the year's emphasis was on civil and political rights, SUHAKAM continued to play its role in creation of awareness and promotion of Human Rights to specific groups as well as to the public with focus on the rights of children within the framework of the Convention on the Rights of the Child, promotion and protection of rights of Indigenous People and freedom of the media through seminars, dialogues and road shows. While SUHAKAM continues to give attention to the plight of vulnerable groups, the marginalized as well as the disabled and disadvantaged, these efforts will be further explored and recommendations for equitable treatment will be accelerated.

It seems timely for SUHAKAM to place greater focus on economic, social and cultural rights in 2003 which could serve as a catalyst for the Government to consider ratification of the International Covenant on Economic, Social and Cultural Rights. The ratification of this covenant which addresses many of the basic needs issues of

individuals and communities will also give SUHAKAM more leverage to work on the protection and fulfillment of rights of the most vulnerable groups – women, children and the disadvantaged. SUHAKAM intends to step up efforts in these two areas as the effect of international conflict and socio-economic upheavals, on both the local and global front, will be most acutely felt by these groups. As such, the monitoring of the implementation of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and study into the possibility of further withdrawal of reservations deserves to be given greater attention in 2003.

Although there is greater awareness of SUHAKAM's existence as seen by public response of SUHAKAM's reports and media releases of its activities, it is difficult to quantify the level of success achieved so far by the Commission. This needs to be worked on in 2003 for identification of benchmarks and indicators and prioritisation of SUHAKAM's work through its Strategic Plan of Action which will be a useful monitoring tool to measure success as well as overcome existing barriers and constraints. Advocacy on human rights for Parliamentarians and policy makers is an area which requires attention by the Commission as it is only when government authorities and parliamentarians have a better realisation of human rights can they be more willing to accept and implement the Commission's recommendation and

can we expect the Commission's reports to be debated in Parliament.

SUHAKAM will and can continue to play its role as a monitor, protector and advocate of human rights, but the enforcement and implementation of these rights is a responsibility of all - the Government, community and individual. It is also important to remember that it is the actions of a few who are irresponsible, insensitive to human rights, who chose to use excessive force or abuse their power, that lead to mistrust and fear among the public and to violations of human rights. It is therefore the objective of SUHAKAM to continue to promote education on human rights and enhance public awareness and enlightenment on basic human values so that incidences of gross and outright violations can be prevented or curtailed. Perhaps this can be one of the immediate indicators of SUHAKAM's success as other indicators of social, economic and cultural rights as well as law reform measures would need a longer time frame to achieve desired results.

It is the fervent hope of the commission that the year 2003 will bring a more constructive engagement between SUHAKAM, the government, NGO's and public so that we can together promote and protect human rights in Malaysia and enable our people to enjoy their basic and fundamental rights towards the attainment of peace, stability and security.

APPENDICES

APPENDIX I: ROAD SHOWS IN VARIOUS STATES

DATE	STATE
25 July 2002	Daerah Nabawan, Sabah
5 August 2002	Air Keroh, Malacca
12 September 2002	Daerah Kecil Tamparuli, Sabah
14 September 2002	Daerah Papar, Sabah
9 October 2002	Daerah Kota Belud, Sabah

**SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
HUMAN RIGHTS COMMISSION OF MALAYSIA****FOR IMMEDIATE RELEASE****PRESS STATEMENT ON THE FEDERAL COURT DECISION ON THE ISA
ARRESTS**

The Human Rights Commission of Malaysia (SUHAKAM) calls on the Home Minister to review the detention orders of the four persons whose detention by the Police under the 60-day period of the Internal Security Act (ISA) was declared unlawful by the Federal Court.

SUHAKAM also calls on the Home Minister to review other cases of detention that might fall within this same category.

The four persons were originally detained by the Police under Section 73 (1) (a) and (b) of the ISA for a 60-day period, while the two-year detention order was made under Section 8 by the Home Minister.

The Federal Court decision serves as a firm reminder to the Police to exercise greater vigilance in following proper procedure consistent with human rights principles in arresting and detaining persons under the ISA.

SUHAKAM has received complaints of Police investigations under the ISA which proceed on grounds that have little or no bearing to the reasons of arrest. The Federal Court has ruled that it would be wrong for the Police to exercise a power for a collateral or ulterior purpose, other than for the avowed purpose of the arrest.

SUHAKAM stresses that powers of arrest and detention should be exercised in accordance with the rule of law and should be consistent with human rights principles.

SUHAKAM is currently reviewing the ISA's provisions on detention without trial and will closely examine complaints, affidavits and reports submitted in relation to purported human rights infringements.

By authority of SUHAKAM

KAMARUDDIN MOHAMED BARIA
Secretary

17 September 2002



SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
HUMAN RIGHTS COMMISSION OF MALAYSIA

PRESS STATEMENT
BAN ON PUBLIC CERAMAHS

The right to assemble peacefully is a fundamental human right guaranteed by the Constitution of Malaysia.

SUHAKAM is of the view that a general ban on assemblies is a violation of human rights. There is no legal provision for a blanket ban to be imposed on political *ceramahs*. As such, SUHAKAM will seek clarification from the Police on this issue.

Meanwhile, SUHAKAM strongly urges the authorities to reconsider the recommendations in its Freedom of Assembly Report. SUHAKAM firmly believes that if its recommendations were implemented, the current problems arising from public *ceramahs* could have been averted.

SUHAKAM reiterates that it does not condone violence of any form and is of the stand that it is possible to have peaceful assemblies.

By authority of SUHAKAM

KAMARUDDIN MOHAMED BARIA

Secretary

Kuching, Sarawak

18 February 2002

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

SUHAKAM has received several memoranda relating to the conditions of detention of the Reformasi activists detained under the Internal Security Act at Kamunting Detention Centre. The latest memorandum was received on Wednesday 10th April 2002.

SUHAKAM was concerned to learn from the memorandum that the six Reformasi activists had begun a hunger strike in connection with their arrest and continued detention. Consequently, a delegation from SUHAKAM led by Commissioner Professor Datuk Hamdan bin Adnan visited the Kamunting Detention Centre on 13th April 2002.

During the visit, the SUHAKAM delegation was informed of the detainees' concerns, in particular, the medical condition of one of them whom they believed was in need of hospitalization. The delegation witnessed an angry exchange between a detainee and a medical officer from the Taiping Hospital and noted the general tense situation between the detainees and the doctor .

SUHAKAM acknowledges that the detainees are being attended to by government doctors but notes that the detainees have lost confidence in these doctors and wish to be examined by independent doctors.

SUHAKAM is of the view that in the circumstances of the on-going hunger strike, the authorities in charge of the detention center should not restrict access of doctors who have the trust and confidence of the detainees and their families. SUHAKAM is also of the view that lawyers of the detainees should not be denied access to them.

The situation that has arisen falls within the mandate of SUHAKAM as provided under the Human Rights Commission Act. Accordingly, in the exercise of its powers under section 12 of the Act, SUHAKAM will conduct an inquiry into the complaints raised in the memorandum of 10th April 2002 and all previous memoranda submitted in relation to the six Reformasi detainees.

By authority of SUHAKAM

KAMARUDDIN MOHAMED BARIA
Secretary



APPENDIX V

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

PRESS STATEMENT

SUHAKAM is concerned that the Government continues to use the ISA to detain those it deems a threat to national security. SUHAKAM has learnt that 14 persons were arrested on 18 April 2002 in a sweep of alleged Muslim militants.

A report was lodged yesterday with SUHAKAM on the arrest of Sejahtratul Dursina @ Chomel Mohamad, the wife of Yazid Sufaat, the alleged al-Qaeda operative who is now in Kamunting. Sejahtratul's sister, Suri Hanim Mohamad, whose husband is also in Kamunting, said she is worried that detention under the ISA would worsen her sister's fragile health. She also objected to the Police arresting her sister late at night without waiting for an adult family member to arrive at the house to take care of her sister's 4 children aged from 2 to 13 years.

SUHAKAM urges the Police to allow family members and lawyers to visit all 14 detainees and to provide Sejahtratul with appropriate medical attention.

SUHAKAM reiterates its position that detention without trial constitutes a human rights violation and urges the Police to charge those detained in an open court.

For and on behalf of SUHAKAM

**Zainah Anwar
Commissioner
Chairperson, Information & Public Affairs Committee**

**19 April, 2002
Kuala Lumpur**

APPENDIX VI: TALKS, SEMINARS AND CONFERENCES (NATIONAL)

NO.	DATE	TALKS, SEMINARS AND CONFERENCES	VENUE	REPRESENTATIVE
1.	22 January 2002	Talks on Human Rights to Rotary Club of Bangsar	Royal Selangor Club	Tan Sri Harun Mahmud Hashim
2.	26 January 2002	Keynote Address on Public Toward Better Relations through Good Governance	UITM, Shah Alam	Tan Sri Harun Mahmud Hashim
3.	2 February 2002	Talks on Human Rights to SPM National Achievers organised by Yayasan Tun Razak	INFRA, Bangl	Tan Sri Harun Mahmud Hashim
4.	24 February 2002	Training on Human Rights for Community Representative organised by United nations PASCOSTRUST	Penampang, Sabah	Tan Sri Datuk Panglima Simon Sipaun
5.	26 February 2002	Human Rights on Civilization and Terrorism	UITM, Shah Alam	Tan Sri Harun Mahmud Hashim
6.	10 April 2002	Talks on Human Rights to Academic Staff and Student of Medical Faculty of International Islamic University	Kuantan, Pahang	Tan Sri Harun Mahmud Hashim
7.	18 May 2002	Conference on Ethics organised by Malaysian Medical Association	Grand Seasons Hotel, Kuala Lumpur	Dr. Mohammad Hirman Ritom Abdullah
8.	1 June 2002	Conference for St. John Ambulance Officers 2002	Kota Kinabalu, Sabah	Tan Sri Datuk Panglima Simon Sipaun
9.	3 June 2002	Talk on Preventive Laws and Human Rights to officers of Ministry of Home Affairs	Mutiara Pedu Lake, Kedah	Tan Sri Harun Mahmud Hashim
10.	19-21 July 2002	International Forum of Islam and Politics	Sheraton Hotel, Kuala Lumpur	Tan Sri Harun Mahmud Hashim
11.	22-23 July 2002	Seminar on Moral Education: Trends and Directions	University Malaya	Prof. Dr. Chiam Heng Keng
12.	13-14 August 2002	National Seminar on Indigenous Peoples Rights and International Labor Organisation (ILO)	Miri, Sarawak	Dr. Mohammad Hirman Ritom Abdullah
13.	19 August 2002	Ethics & Integrity: The Media's Watchdog Role organised by Asian strategy & Leadership Institute (ASLI)	INTAN, Kuala Lumpur	Tan Sri Harun Mahmud Hashim
14.	24 August 2002	Talk on Human Rights of the Mentally ill in Malaysia organised by Ministry of Health	Hyatt Hotel, Johor Bahru	Tan Sri Harun Mahmud Hashim
15.	27 August 2002	Talk on the Malaysian Experience Towards Integration organised by International Islamic Law Society	International Islamic University	Tan Sri Harun Mahmud Hashim
16.	28 August 2002	Talk on Human Rights and Functions of SUHAKAM to Judicial & Legal Service Officers	ILKAP, Kuala Lumpur	Tan Sri Harun Mahmud Hashim
17.	1 September 2002	Keynote Address on Mission of World Peace to University Students	University Putra Malaysia	Tan Sri Harun Mahmud Hashim
18.	7 September 2002	National Consultation on SUHAKAM After Two Years: How Has the Commission Played A Role in the Promotion and Protection of Human Rights	Ipoh, Perak	Prof. Dr. Chiam Heng Keng

APPENDIX VI: TALKS, SEMINARS AND CONFERENCES (NATIONAL) cont.

NO.	DATE	TALKS, SEMINARS AND CONFERENCES	VENUE	REPRESENTATIVE
19.	18 September 2002	Talk on Human Rights in Relation to Police Professionalism to Senior Police Officers of Perak	Senior Police Officers Mess, Ipoh	Tan Sri Harun Mahmud Hashim
20.	26 September 2002	Workshop on Strategic Thinking and Action organised by International Institute of Public Policy and Management	Bangi, Selangor	Dato' Ranita Hussien
21.	4 October 2002	Police Workshop on Human Rights in Malaysia	Police Training College, Cheras	Tan Sri Harun Mahmud Hashim
22.	9 October 2002	Talk to NST Editors and Reporters	Kuala Lumpur	Tan Sri Abu Talib Othman
23.	27 October 2002	Conference on Urban Poverty organised by ASLI & Yayasan Strategic	Kuala Lumpur	Tan Sri Ramon Navaratnam
24.	30 October 2002	Talk on Role of the Public Service from the Perspective of SUHAKAM to Heads of Department and Seniors Officers of the Public Service Department	Putrajaya	Tan Sri Harun Mahmud Hashim
25.	28 November 2002	Workshop on Human Rights in Malaysia	University Malaysia Sabah	Tan Sri Datuk Panglima Simon Sipaun
26.	29 November 2002	International Affairs Forum on "Is A Clash of Civilisations Inevitable"	Institute of Strategic & International Studies (ISIS)	Tan Sri Harun Mahmud Hashim
27.	18 December 2002	Seminar on Creating Social Awareness of the Disabled organised by Sarawak Development Institute	Kuching, Sarawak	Dr. Mohammad Hirman Ritom Bin Abdullah

APPENDIX VII: TALKS, SEMINARS AND CONFERENCES (INTERNATIONAL)

NO.	DATE	TALKS, SEMINARS AND CONFERENCES	VENUE	REPRESENTATIVE
1.	17-31 March 2002	58 th Session of the UN High Commission on Human Rights	Geneva, Switzerland	Dr. Mohammad Hirman Ritom Abdullah
2.	18-19 March 2002	Meeting on Conditions Against Trafficking of Human Beings	Manila, Philippines	Tan Sri Haun Mahmud Hashim
3.	10-13 April 2002	The Sixth International Conference for Human Rights Institutions	Copenhagen & Lund, Denmark	Prof. Dr. Chiam Heng Keng
4.	13-15 June 2002	Second Workshop on the ASEAN Human Rights Mechanism	Manila, Philippines	Prof. Dr. Chiam Heng Keng
5.	24-28 June 2002	Conference on Human Rights Commission: Criminal Justice Programme	Bangkok, Thailand	Tan Sri Haun Mahmud Hashim
6.	15-16 July 2002	Regional Workshop on National Human Rights Institutions, Human Rights Education, Media and Racism	Sydney, Australia	Dr. Mohammad Hirman Ritom Abdullah
7.	20-22 July 2002	Meeting of Regional Review Team on Human Rights Lesson Plans	Bangkok, Thailand	Prof. Dr. Chiam Heng Keng
8.	6-11 Oct. 2002	Meeting on ASEAN Human Rights Mechanism	Strasbourg, France	Tan Sri Haun Mahmud Hashim
9.	8-12 Oct. 2002	Workshop on Using The United Nation's Mechanism for Protection of Human Rights	Belfast, Northern Ireland	Dato' Ranita Hussien
10.	29-31 Oct. 2002	UNESCO Workshop on Universalizing the Rights to Education of Good Quality: A Rights-based Approach to Achieving Education for All	Manila, Philippines	Prof. Dr. Chiam Heng Keng
11.	29-31 Oct. 2002	International Symposium on Oriental Culture & Human Rights Development	Beijing, China	Dato' K C Yohraah
12.	11-13 Nov. 2002	7th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions	New Delhi, India	Dato' Asiah Abu Samah
13.	9-14 Dec 2002	UN/NGO Partnership for Democratic Governance: Building Capacities for Human Rights and Sustainable Development	Bangkok, Thailand	Tan Sri Datuk Seri Panglima Simon Sipatun

APPENDIX VIII: DIALOGUE SESSIONS

DATE	DIALOGUE
8 April 2002	Inter-Religious Dialoue
20 August 2002	Dialogue with NGOs
23 August	Dialogue with Abolish ISA Movement
26 August	Inter-religious Dialogue
25 September	Dialogue with NGOs on National Plan of Action
26 September	Dialogue with Ministries on National Plan of Action
5 November	"Sesi Bersama SUHAKAM" dialogue
10 December	Dialogue with NGOs-National Consultation on SUHAKAM

APPENDIX IX
SUHAKAM AUDITED
ACCOUNTS



**CERTIFICATE OF THE AUDITOR GENERAL
ON THE FINANCIAL STATEMENTS OF
THE HUMAN RIGHTS COMMISSION OF MALAYSIA
FOR THE YEAR ENDED 31 DECEMBER 2002**

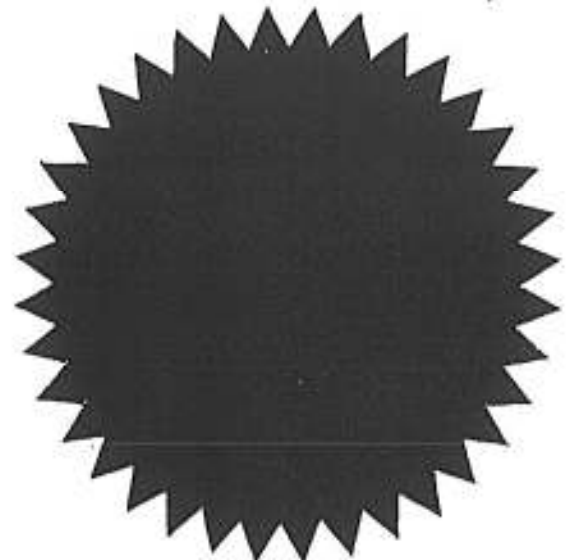
The balance sheet of the Human Rights Commission of Malaysia as at 31 December 2002, income and expenditure statement, statement of changes in fund and cash flow statement for the year then ended have been examined by Messrs Razali Abdul Karim & Co., Chartered Accountants, under my direction. These financial statements are the responsibility of the management of the Human Rights Commission of Malaysia. My responsibility is to express an opinion on these financial statements based on my audit.

2. The audit has been conducted in accordance with the Audit Act 1957 and International Auditing Standards. These Standards require that an audit be planned and performed to obtain reasonable assurance about whether the financial statements of Human Rights Commission of Malaysia are free of material misstatements or omissions. The audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. The audit also includes assessing the accounting principles used and evaluating the overall financial statement presentation.

3. In my opinion, the financial statements give a true and fair view of the financial position of the Human Rights Commission of Malaysia as at 31 December 2002 and of the results of its operations and cash flows for the year then ended.

(FATIMAH BINTI MAMAT)
b.p. KETUA AUDIT NEGARA
MALAYSIA

PUTRAJAYA
20 Mac 2003



HUMAN RIGHTS COMMISSION OF MALAYSIA

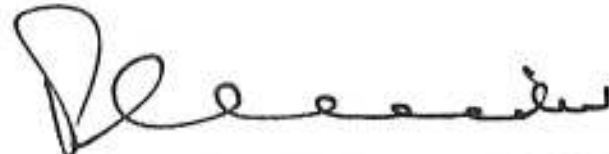
STATEMENT BY THE COMMISSION

We, TAN SRI ABU TALIB BIN OTHMAN and TAN SRI DATO' (DR.) R.V. NAVARATNAM, being the Chairman and Member, respectively, of the HUMAN RIGHTS COMMISSION OF MALAYSIA, do hereby state that, in the opinion of the Commission, the accompanying balance sheet as at 31 December 2002, income and expenditure statement, statement of changes in fund and the cash flow statement for the year then ended, together with the notes thereto, are properly drawn up in accordance with applicable approved accounting standards so as to give a true and fair view of the state of affairs of HUMAN RIGHTS COMMISSION OF MALAYSIA as at 31 December 2002 and its income and expenditure, changes in fund and cash flow for the year then ended.

On behalf of the Commission On behalf of the Commission



TAN SRI ABU TALIB BIN OTHMAN
Chairman
Kuala Lumpur
Dated: 10 MAR 2003



TAN SRI DATO' (DR.) R.V. NAVARATNAM
Member
Kuala Lumpur
Dated: 10 MAR 2003

HUMAN RIGHTS COMMISSION OF MALAYSIA

DECLARATION BY THE OFFICER PRIMARILY RESPONSIBLE FOR THE FINANCIAL MANAGEMENT OF THE SUHAKAM

I, KAMARUDIN BIN MOHAMED BARIA, the officer primarily responsible for the financial management of the HUMAN RIGHTS COMMISSION OF MALAYSIA, do solemnly and sincerely declare that the accompanying balance sheet as at 31 December 2002, income and expenditure statement, statement of changes in fund and the cash flow statement for the year then ended, together with the notes thereto are, to the best of my knowledge and belief correct, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1960.

Subscribed and solemnly declared by
the above named, KAMARUDIN BIN
MOHAMED BARIA at Kuala Lumpur
on

)
)
) 

10 MAR 2003

Before me,



Tingkat bawah Wisma P.K.N.S.
Jalan Raja Laut.
50653 KUALA LUMPUR.
TEL: 03-27323218

HUMAN RIGHTS COMMISSION OF MALAYSIA

BALANCE SHEET AS AT 31 DECEMBER 2002

	<u>Note</u>	<u>2002</u> RM	<u>2001</u> RM
FIXED ASSETS	3	2,698,425	268,829
CURRENT ASSETS			
Sundry debtors, deposits and prepayments	4	117,197	624,762
Fixed deposit	5	3,021,248	-
Cash and bank balances	6	383,443	1,111,143
		<u>3,521,888</u>	<u>1,735,905</u>
CURRENT LIABILITIES			
Sundry creditors and accruals	7	168,350	71,841
		<u>168,350</u>	<u>71,841</u>
NET CURRENT ASSETS		3,353,538	1,664,064
NET ASSETS		<u>6,051,963</u>	<u>1,932,893</u>
Financed by:			
ACCUMULATED FUND		<u>6,051,963</u>	<u>1,932,893</u>

HUMAN RIGHTS COMMISSION OF MALAYSIA

STATEMENT OF INCOME AND EXPENDITURE
FOR THE YEAR ENDED 31 DECEMBER 2002

	1.1.2002 to <u>31.12.2002</u> RM	1.9.2001 to <u>31.12.2001</u> RM
INCOME		
Grant	9,695,000	2,590,175
OTHER INCOME		
Interest	60,722	9,064
Interest on fixed deposit	21,248	-
	<u>9,776,970</u>	<u>2,599,239</u>
EXPENDITURE		
Emolument	785,426	-
Travelling	586,762	69,988
Transportation	2,127	-
Utilities and communication	139,617	29,186
Rentals	971,289	258,904
Refreshments	5,266	1,271
Upkeep and maintenance	40,158	50
Supplies	191,329	33,569
Servicing and minor works	124,822	18,057
Professional fees and hospitality	2,552,817	253,755
Depreciation	181,409	1,473
Rewards	75,000	-
Other expenses	1,878	93
	<u>5,657,900</u>	<u>666,346</u>
Surplus for the year/period	<u><u>4,119,070</u></u>	<u><u>1,932,893</u></u>

HUMAN RIGHTS COMMISSION OF MALAYSIA

STATEMENT OF CHANGES IN ACCUMULATED FUND FOR THE YEAR ENDED 31 DECEMBER 2002

	Accumulated fund RM
Surplus for the period	1,932,893
At 31 December 2001/ 1 January 2002	<u>1,932,893</u>
Surplus for the year	4,119,070
At 31 December 2002	<u><u>6,051,963</u></u>

HUMAN RIGHTS COMMISSION OF MALAYSIA

CASH FLOW STATEMENT
FOR THE YEAR ENDED 31 DECEMBER 2002

	1.1.2002 to <u>31.12.2002</u> RM	1.9.2001 to <u>31.12.2001</u> RM
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts	10,280,954	2,000,000
Payments for expenditure	<u>(5,397,160)</u>	<u>(688,830)</u>
Net cash from operating activities	<u>4,883,794</u>	<u>1,311,170</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest	60,722	9,064
Interest received from fixed deposit	21,248	-
Fixed deposit	<u>(3,021,248)</u>	-
Purchase of fixed assets	<u>(2,672,216)</u>	<u>(209,091)</u>
Net cash used in investing activities	<u>(5,611,494)</u>	<u>(200,027)</u>
Net (decrease)/increase in cash and cash equivalents	(727,700)	1,111,143
Cash and cash equivalents brought forward	<u>1,111,143</u>	-
Cash and cash equivalents carried forward	<u><u>383,443</u></u>	<u><u>1,111,143</u></u>

HUMAN RIGHTS COMMISSION OF MALAYSIA

NOTES TO THE FINANCIAL STATEMENTS - 31 DECEMBER 2002

1: SUHAKAM

1.1 The Human Rights Commission of Malaysia (SUHAKAM) was established by Parliament under the Human Rights Commission of Malaysia Act 1999, (Act 597). The act was gazetted on 9 September 1999.

1.2 The main functions of SUHAKAM are:

- 1.2.1 To promote awareness of and provide education in relation to human rights.
- 1.2.2 To advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken.
- 1.2.3 To recommend to the Government with regards to the subscription or accession of treaties and other international instruments in the field of human rights.
- 1.2.4 To inquire into complaints regarding infringements of human rights.

1.3 SUHAKAM Fund

In 2002, SUHAKAM received an allocation of RM 6,145,000 through Foreign Affairs Ministry for operational expenditure and RM 3,550,000 under "One Offs" allocation for assets purchased.

(Contd.)

2: SIGNIFICANT ACCOUNTING POLICIES

2.1 Basis of Accounting

The financial statements have been prepared under the historical cost convention and comply with applicable approved accounting standards.

2.2 Managerial Monetary Group

Managerial Monetary Group is an allocation received through Foreign Affairs Ministry for activities and operations of SUHAKAM to achieve the objectives and purpose of establishment of SUHAKAM.

2.3 Fixed Assets and Depreciation

Fixed assets are stated at cost less accumulated depreciation.

Fixed assets costing below RM 500 are expensed off to the Statement of Income and Expenditure upon purchase.

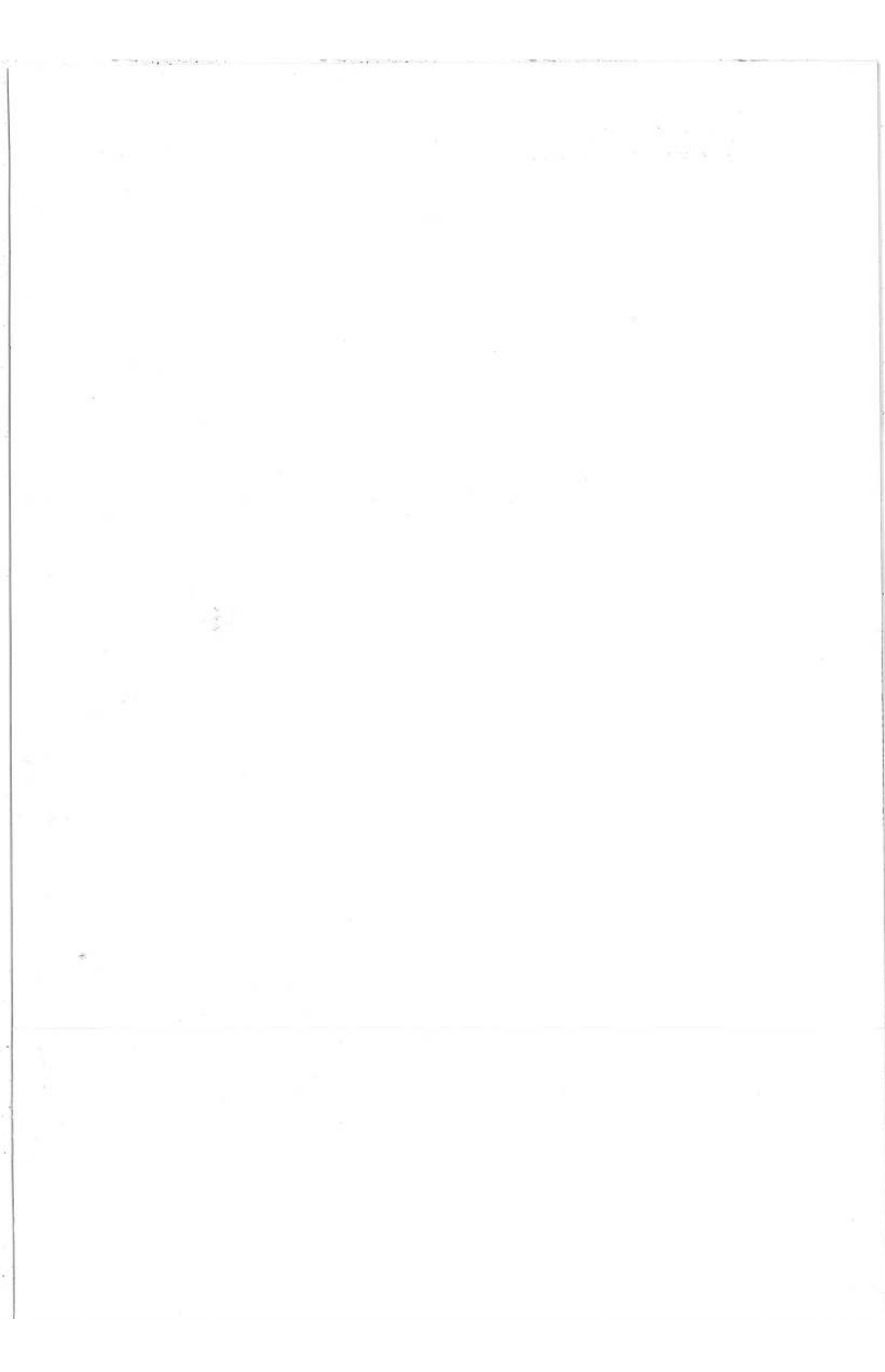
Depreciation is provided on a straight-line basis calculated to write off the cost of each asset over its estimated useful life.

The annual rates used are as follows:

Books, equipment and fittings	20%
Computer	20%
Motor vehicles	20%
Renovations	20%

2.4 Cash and Cash Equivalents

Cash and cash equivalents comprise cash in hand and at bank and fixed deposit that are not pledged for any purpose.



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