ANNUAL REPORT 2004

HUMAN RIGHTS COMMISSION OF MALAYSIA

LAPORAN TAHUNAN 2004

SURUHANJAYA HAK ASASI MANUSIA MALAYSIA

www.suhakam.org.my

Cetakan Pertama / *First Printing*, 2005

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SURUHANJAYA HAK ASASI MANUSIA MALAYSIA/
HUMAN RIGHTS COMMISSION OF MALAYSIA
Tingkat 29, Menara Tun Razak,
Jalan Raja Laut, 50350 Kuala Lumpur,
E-mel: humanrights@suhakam.org.my
URL: http://www.suhakam.org.my

Dicetak di Malaysia oleh / *Printed in Malaysia by*

PERCETAKAN HAJI JANTAN SDN. BHD.
No. 12, Jalan 4/118C, Desa Tun Razak, Cheras,
56000 Kuala Lumpur, MALAYSIA

Perpustakaan Negara Malaysia

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

ISSN: 1675-1159

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SUHAKAM COMMISSIONERS

Standing from left : Tunku Datuk Nazihah Tunku Mohamed Rus, Datuk Dr. Raj Abdul Karim, Dr. Mohammad Hirman Ritom Abdullah, Dato' Dr. Abdul Monir Yaacob, Dato' Siva Subramaniam A/L Nagaratnam, Dato' Choo Siew Kioh, Dato' Ranita Mohd. Hussein, Prof. Dato' Dr. Khoo Kay Kim, Dato' Dr. Sharifah Hapsah Syed Hasan Shahabudin and Dr. Chiam Heng Keng

Sitting from left : Tuan Haji Abu Hassan Said (Acting Secretary of SUHAKAM), Dato' Karam Chand Vohrah, Tan Sri Datuk Seri Panglima Simon Sipaun, Tan Sri Abu Talib Othman, Prof. Dato' Hj. Mohd. Hamdan Adnan, Dato' Asiah Abu Samah and Tan Sri Dato' Ramon Navaratnam

Not in the picture : Dato' Muhammad Shafee Abdullah

CHAPTER 1

COMPOSITION

CHAPTER 1

COMPOSITION

The Yang di-Pertuan Agong on the recommendation of the Prime Minister re-appointed all members of the Commission for a further period of two years with effect from April 24, 2004, except for Cik Zainah Anwar who requested not to be considered. Tan Sri Abu Talib Othman was re-appointed Chairman, and Tan Sri Datuk Seri Panglima Simon Sipaun was re-elected Vice-Chairman, a post he has held since the end of 2003.

In 2004, six additional members were appointed by the Yang di-Pertuan Agong, on the recommendation of the Prime Minister, for a period of two years. This brought the total to 17. The new Commissioners are Dato' Choo Siew Kioh (from April 30), Dato' Dr Sharifah Hapsah Syed Hasan Shahabudin (from May 17), Tunku Datuk Nazihah Tunku Mohamed Rus (from June 1), Professor Dato' Dr Khoo Kay Kim (from July 20), Dato' Muhammad Shafee Abdullah (from July 20), and Dato' Siva Subramaniam a/l Nagaratnam (from July 20). The new Commissioners are professionals in various fields.

There were also changes to the Secretariat. The Secretary, Encik Kamaruddin Mohamed Baria, was recalled by the Government and reported back to his parent service towards the end of 2004. SUHAKAM records its appreciation for his tireless efforts in overseeing the administration. Tuan Haji Ahmad Yusuf Haji Ngah was appointed Secretary with effect from Dec 1.

On July 5, the Commission decided to separate the Law Reform and International Treaties Working Group and the Economic, Social and Cultural Rights Working Group, from the Policy and Research Division.

The Economic, Social and Cultural Rights Working Group promotes greater awareness of socio-economic human rights issues. Chaired by Tan Sri Dato' Ramon V Navaratnam, the group comprises Dr Mohd Hirman Ritom Abdullah and Datuk Dr Raj Abdul Karim.

The Law Reform and International Treaties Working Group pursues efforts to promote accession to international human rights treaties, and encourage uniformity between domestic laws and human rights obligations. Dato' KC Vohrah remains the Chairperson.

The new Policy and Research Division began operations in September 2004. Its focus is the development of mechanisms to increase SUHAKAM's research capabilities, as well as the preparation of reports and policy papers on human rights issues. In addition, it acts as the primary focal point for SUHAKAM's liaison with regional and international organisations. It is staffed by newly-appointed officers and headed by Dato' Ranita Mohd Hussein.

Steps were also taken to improve the administration of the Secretariat. The Management and Finance Committee was reinstated towards the end of August. Tan Sri Datuk Seri Panglima Simon Sipaun chairs the Committee, which also comprises Professor Dato' Haji Mohd Hamdan Adnan, Tunku Datuk Nazihah Tunku Mohd Rus and Dato' Siva Subramaniam a/l Nagaratnam.

CHAPTER 2

THE STATE OF HUMAN RIGHTS

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THE STATE OF HUMAN RIGHTS

1. DETENTION WITHOUT TRIAL

The Universal Declaration of Human Rights 1948 (UDHR) contains a number of provisions which attest to the overall incongruity between human rights and detention without trial, including Article 3,[1] Article 9,[2] and Article 10.[3] The right to personal liberty is also guaranteed under Malaysian law by Article 5 of the Federal Constitution, which contains a number of judicial and procedural guarantees to ensure the fulfilment of this right.[4]

However, the Federal Constitution also contains provisions which provide for the enactment of emergency and public order laws allowing for detention without trial, or also called preventive detention. Preventive detention laws include the Internal Security Act 1960 (ISA), and the Emergency (Public Order and Prevention of Crime) Ordinance 1969. Since its inception in 1999, SUHAKAM has received many complaints and memoranda from the public and non-governmental organisations (NGOs) on issues arising from the use of such preventive detention laws.

On Nov 17, the human rights NGO Suara Rakyat Malaysia submitted a memorandum on a hunger-strike by detainees at the Simpang Renggam Correctional Detention Centre. Most of the detainees were being held without trial under the Emergency (Public Order and Prevention of Crime) Ordinance 1969, or the Dangerous Drugs (Special Preventive Measures) Act 1985. SUHAKAM visited Simpang Renggam Detention Centre on Nov 23, by which time only one detainee was continuing with the hunger-strike. He ended his protest shortly after SUHAKAM's intervention.

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[1] Article 3 affirms the 'right to life, liberty and security of the person'.

[2] Article 9 stipulates that no one shall be subjected to arbitrary arrest, detention or exile.

[3] Article 10 guarantees the right to a fair and public hearing by an independent and impartial tribunal, in determination of his rights and obligations, and of any criminal charge against him.

[4] Such safeguards include the right to be informed of the grounds of arrest, the right to be defended by a legal practitioner of his choice, and for a detainee to appear before a Magistrate within 24 hours.

On Dec 11, SUHAKAM visited KEMTA in Kamunting, the holding centre in Perak for persons detained under section 8 of the ISA. This visit was prompted in response to scuffles that reportedly broke out between prison guards and alleged members of Jemaah Islamiah between Dec 8 and 10. The police investigated the alleged incidents, but SUHAKAM is continuing to monitor the situation.

2. LAW ENFORCEMENT

SUHAKAM continued to receive complaints against the police over the year in review. These were mainly in relation to delays in investigations, allegations of abuse of power, excessive use of force and shoddy investigations.[5] SUHAKAM acted upon these complaints in different ways.

In most instances, the cases were resolved without recourse to a Public Inquiry. However, in situations involving allegations of severe human rights violations or abuse of power, SUHAKAM decided to avail itself of its powers to conduct Public Inquiries, as provided for under section 12(1) of the Human Rights Commission of Malaysia Act 1999. The Commission made such a decision in response to a memorandum received in February, alleging cruel and inhuman treatment by the police of a group of 18 persons while being held in remand in Kundasang, Sabah.[6]

Despite the persistence of complaints against the police, SUHAKAM notes the progress made by the Special Commission to Enhance the Operations and Management of the Royal Malaysian Police, which completed its preliminary report in August.[7] SUHAKAM would like to recommend that the Government makes the report public.

[5] See Chapter 6 for details.
[6] See Chapter 3(iii) for details.
[7] See Chapter 3(x) for details.

3. ADMINISTRATION OF JUSTICE

The notion of justice is inextricably related to the effective enjoyment of human rights. The UDHR has a number of provisions relevant to the notion of justice, including Article 8,[8] Article 10,[9] and Article 11.[10] Furthermore, the Federal Constitution contains provisions which provide procedural trial guarantees to ensure that justice is met, including Article 5,[11] Article 7,[12] and Article 8.[13]

Despite the Constitutional guarantees and other applicable laws, SUHAKAM continued to receive complaints against the Judiciary. These related to alleged delays in the disposal of cases by the Courts, threats pertaining to the use of contempt of court procedures against critics of the Judiciary, and the issuance of repeated remand orders under section 117 of the Criminal Procedure Code.

However, SUHAKAM welcomes the initiative of the Courts to establish a self-evaluation mechanism in 2004, with the aim of improving the performance of the Courts.

4. FREEDOM OF THE MEDIA

Article 19 of the UDHR enshrines the right to freedom of opinion and expression, including the freedom to receive and impart information and ideas through any media regardless of frontiers. Under Malaysian law, freedom of information is guaranteed under Article 10 of the Federal Constitution, which accords every citizen the right to freedom of speech and expression. However, the Constitution also enables the enactment of laws which derogate the full exercise of freedom of expression in certain situations, through implementation of the Printing Presses and Publications Act 1984 (PPPA) and the Official Secrets Act 1972 (OSA).

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[8] Article 8 guarantees the right to an effective remedy by the competent national tribunals for acts violating fundamental rights granted by the Constitution, or by operation of the law.

[9] Article 10 enshrines the right in full equality to a fair and public hearing, by an independent and impartial tribunal.

[10] Article 11 safeguards the basic presumption of innocence until proven guilty before a public trial, the right to a defence, protection against convictions resulting from acts or omission which did not constitute an offence at the time of commission, and also protection from the imposition of heavier penalties than that applicable at the time of the commission of the offence.

[11] See footnote 4.

[12] Article 7 provides protection against retrospective criminal laws and repeated trials.

[13] Article 8 guarantees equality before the law, and equal protection before the law.

SUHAKAM is of the view that transparency and accountability are the hallmarks of a truly democratic society. Freedom of information is necessary for such accountability to be guaranteed. However, the right to freedom of information must also be balanced by the right to privacy, which is guaranteed under Article 12 of the UDHR. In the past, SUHAKAM had received many complaints from media professionals about the impact of such laws as the PPPA and the OSA on their work. In 2004, however, SUHAKAM was made aware of the allegedly unethical conduct of certain quarters within the media industry.

As a result, SUHAKAM initiated a Media Complaints Committee, which will also act as a catalyst for the eventual formation of a Media Council. The primary purpose of the Committee is to investigate and act upon complaints of unethical media practices that lead to violations of the right to privacy and other human rights. However, SUHAKAM will only act as mediator between the complainant and media organisation.

5. RIGHTS OF VULNERABLE GROUPS

(a) Women

In 2004, SUHAKAM devoted much attention to issues relating to women, including human trafficking, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and violence against women.

The Commission organised two events devoted to the issue of trafficking in women and children.[14] The first was a 'Forum on Trafficking of Women and Children – A Cross Border and Regional Perspective', held in April. The second was a 'Workshop on a National Plan of Action to Combat Trafficking' in October.

Malaysia's obligations under CEDAW were covered under two forums organised by SUHAKAM.[15] Malaysia had acceded to the Convention in 1995, albeit with a number of reservations mainly relating to areas of purported incompatibility with *Syariah* law. As such, SUHAKAM also initiated research on these reservations.

[14] See Chapter 7 for details.
[15] See Chapter 3(ix) for details.

In relation to the issue of violence against women, several sectors of civil society supported the criminalisation of marital rape. In response, SUHAKAM issued a statement in August, expressing support for the criminalisation of sexual violence within marriage.

(b) Children

SUHAKAM proceeded with on-going work to disseminate information on the Convention on the Rights of the Child (CRC) through training-of-trainer workshops. These sessions have now covered a sizeable proportion of agencies involved with children and have been successful in instilling knowledge and consciousness of children's rights. However, it has come to SUHAKAM's attention that action by some enforcement agencies still falls short of the basic articles of the CRC, particularly in the area of child protection. An example of such negligence was observed in cases involving children of foreign immigrants.

During visits to the immigration detention facility in Menggatal, Sabah, on Sept 15, a SUHAKAM delegation discovered the presence of 43 foreign children of uncertain status and national origin. They were being detained together with adults, almost none of whom were their relatives or guardians. The children had been removed from the streets, where they had been seeking means of survival without the comfort and protection to which most Malaysian children have grown accustomed. These children, ranging in age from 4 to 15 years, were separated from the adults, following swift intervention from Sabah Chief Minister Dato' Seri Musa Aman. Eventually many of the children were reunited with their parents.

It should be noted that as a State Party to the CRC, Malaysia is required under Article 2(1) to ensure the rights of all children within its jurisdiction without discrimination of any kind. Furthermore, under Article 22, Malaysia is required to provide child asylum seekers with all the additional protection guaranteed to them under international refugee law, at least until proper procedures have been instituted to verify and determine their status.

(c) Immigrants and asylum seekers

Detainees at the Semenyih immigration detention camp mounted a hunger-strike in early September. This was reportedly motivated by conditions of detention, as well as delays in resettlement of United Nations High Commissioner for Refugees (UNHCR) certified refugees to third countries. The hunger-strike was eventually halted upon the intervention of various parties, including SUHAKAM, which visited the camp on Sept 7.

On Dec 10, the Minister in the Prime Minister's Department, Dato' Seri Mohd Nazri Abdul Aziz reportedly announced the government's intention to provide protection for the Rohingya community in Malaysia. Such protection will go a long way towards alleviating the situation of the *de facto* stateless Rohingya, many of whom have been residing illegally in the country for over 20 years.

SUHAKAM organised a Roundtable Dialogue with government officials, NGOs and the UNHCR from Dec 14-15, with a view to discussing the issue of asylum seekers in Malaysia.[16]

[16] See Chapter 3(vi) for details.

CHAPTER 2a

GOVERNMENT RESPONSE TO SUHAKAM'S ANNUAL REPORT 2003

NOTE: The Government's response was received on Jan 17,2005 after the final draft of SUHAKAM's Annual Report 2004 was completed. Comments on the Government's response will be incoporated into SUHAKAM's Annual Report 2005.

For full text, please refer to **Appendix XII**

CHAPTER 3

ISSUES IN FOCUS

CHAPTER 3

ISSUES IN FOCUS

(i) RIGHTS OF THE CHILD

1. CRC TRAINING WORKSHOP

(a) Methodology

The training workshop on the Convention on the Rights of the Child (CRC) has been developed within an adult education framework that emphasises participatory learning, also known as learner-centred learning. It requires the active participation of trainees/ learners who reflect upon and re-examine personal experiences.

Discussions, debates, role-play and other creative methods are used to enrich the learning process. Since this is an introductory course, the discussions focus on the four main themes of the CRC – survival, protection, development and participation.

The workshop builds awareness and understanding of the CRC to enable trainees to integrate understanding of the principles in their work. It also teaches them the skills required to conduct training courses, including the use of 'energizers' to sustain the attention span after periods of intense discussion.

A summary of the sessions follows.

(b) Introductory session

Trainees are introduced to the principles under the four main themes of the CRC. They are required to identify problems faced by children and categorise these under the themes. The trainees then conduct a brainstorming session to suggest solutions.

This activity is followed by a special session focusing on the CRC principles and a discussion of relevant issues. A debate between trainees on the rights of the child, as stipulated in the Convention, brings the session to a close.

(c) Session on the theme of survival

Trainees are exposed to possible solutions in assisting children who face conflicts/problems that affect their rights to survival. Cases of street children, children with disabilities, child labourers and neglected children are discussed. Trainees study Article 6 and Article 24 of the Convention which elaborate on rights to survival.

They are then divided into five groups, with each assigned to do a presentation that addresses two questions:

- Who are the children whose lives/chances of survival are at risk?
- How have their lives been affected?

Children at risk are usually identified as abused children, children living with HIV/AIDS, children with disabilities, indigenous children, children from broken families and children who are victims of war.

The root causes of violation of the rights to survival are most frequently traced to:

- Emotional conflict
- Physical injuries
- Lack of love and care from family
- Lack of self-management
- Isolation from society
- Lack of facilities to accommodate the child's growth process

(d) Session on the theme of protection

Each group is given a real-life case to study before they present a sketch on the problems identified. The exercise gives participants a 'feel' of human rights issues. Materials for case studies can be obtained from newspaper articles or reports.

The case is usually discussed in groups. Members make observations, raise questions, and offer contingency 'solutions' to problems. The group leader helps them realise the implications of proposed solutions, and reinforces the notion that there is never a single 'right' answer for all situations.

There are several advantages to making use of case studies:

(i) It is effective in bridging the gap between theory and reality.

(ii) It requires trainees to discover solutions by learning how to deal with different types of problems, and not depend on pre-determined answers.

(iii) It teaches skills to avoid giving 'right' answers and, instead, to encourage diverse opinions and self-discovery.

(e) Session on the theme of development

Trainees learn skills to educate and nurture children during their growth process. Each group is assigned to draw pictures of children at different levels of development – as a newborn, toddler, young child or teenager – and to determine needs at each phase. The group discusses the needs and, based on the drawings, brainstorms to compile a list of ideas that define development. Each group presents its findings and compares answers with other groups.

At the end of the session, the facilitator explains CRC provisions on the rights to development. Since development implies growth, these rights can be pictorially represented as a 'development tree'. *[See diagram]*

(f) Session on the theme of participation

The objective is to help trainees to think of activities that could encourage children's participation in school. About 20-25 students are invited to the session to enable trainees to experience interaction and co-operation. One aim is to facilitate attitude change in trainees, so that they are willing to promote full participation of the child in the community and in making decisions that affect his/her life.

The students are divided among the groups of trainees. Before introducing the children to the trainees, the facilitator explains the training programme and its objectives. Two important aspects are highlighted:

- The students are free to talk and give their views on current issues that they consider important.
- They have an opportunity to talk to participants about the training programme.

Each group conducts an activity together with the students. This enables trainees to observe and understand problems faced by children especially in participating in a programme involving adults.

2. ROUNDTABLE DISCUSSION ON CRC

SUHAKAM initiated a Roundtable Discussion on the Convention on the Rights of the Child (CRC) from Jan 19-20. The participants were from Government ministries/agencies, non-governmental organisations (NGOs) and the legal profession, as well as educators, parents, teenagers and experts. The objectives were to provide a broad based forum to discuss challenges relating to the rights of children; to chart the way forward; to improve consistency between the CRC and the Child Act 2001 and other domestic laws; and to recommend to the Government the withdrawal of reservations to the CRC.

Several issues surfaced during the discussion, leading to recommendations for action on behalf of children.

(a) Right to survival

The rights to health and housing were among the issues raised. It was recommended that the Government should review regulations and/or laws to reduce red tape in applying for Government funds for private medical services in areas where such services are not provided by public hospitals, or in exceptional circumstances. Current policies and legislation should be reviewed to ensure access to medical treatment for all children without discrimination, including those of migrants and undocumented persons. Such access should also include services for psychological well-being.

Although public hospitals allow undocumented children to seek treatment, they usually notify the relevant Government authorities of their presence. This deters such persons from seeking treatment, for fear of being deported. Participants therefore urged the Government to look into this grey area.

In relation to adequate housing, it was recommended that all types of housing should have at least three rooms, while adequate playground space is required for leisure activities[17], especially in high density areas. Schools should provide – and allow the use of – facilities that are safe for the development of children.

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[17] See SUHAKAM's 'Report on Adequate Housing: A Human Right' for details on the right to adequate housing (available on: www.suhakam.org.my).

The rights of indigenous children were also given some thought. It was proposed that the Government ensures access to clean water, to resettle without loss of livelihood, to progressively integrate them into city living and to carry out an economic programme that will allow them better means to support themselves. There was a plea for the Ministry of Education to prioritise access to education for these children, to incorporate and develop aspects of their cultures into the curriculum and to study alternative ways of providing education to this group.

(b) Right to education

As education is an integral part of child development, several issues were discussed at length. These included the inflexibility of the education system especially in catering for children with disabilities; the aims and policies of education; and the quality of educators. It was proposed that the aims and policies of the educational system be re-examined to identify improvements to access for all children, as intended by Articles 28 and 29 of the CRC. Holistic education throughout life, emphasising the importance of the family unit within the community, should be encouraged. The Government was urged to continue upgrading the teacher-training system to ensure quality.

Particular attention was sought for the needs of children with disabilities. The education system and assessment methods should be flexible in catering for different types of students with varying degrees of physical and mental capability, and to ensure better access to educational facilities for those residing outside metropolitan areas. The division of responsibility between the Ministry of Education and Ministry of National Unity and Social Development (as it was known then) in handling children with disabilities would also require review.

(c) Right to protection

Among issues discussed was the responsibility of the media to protect children from abuse, as well as the protection of children without families. The participants felt that the media should be more responsible in publishing news about children in line with Article 17 of the CRC and that the Government should ensure that programmes run through the media are educational and non-violent in nature. Social programmes for the prevention of abuse of children, such as in-depth research on sex offenders, should be developed.

As for children without families, it was suggested that institutions that shelter children without families take into account the best interests of the child, in line with Article 20 of the CRC. Rumah Tunas Harapan was cited as a model in promoting foster homes and protection of children without families. There is a need to provide adequate training and skills for staff and workers of such homes and to accelerate and simplify the adoption process.

In Malaysia, fostering is still a problematic process. It was therefore recommended that the Government should implement the proposal to establish a National Co-ordinator of Foster Families, as stated in the National Plan of Action for Children.

The Ministry of Women, Community and Family Development should be encouraged to invite NGOs and SUHAKAM to be involved in the monitoring committee on effective implementation of the National Plan of Action for Children.

(d) Right to participation

Emphasis was given to the right of children to express themselves. Young participants pointed out that children are always not allowed to do so. There were suggestions to allow children to state their opinions, and for adults to evaluate these objectively. One example was taken from the *Syariah* principle that allows children to express opinions which the Court can consider in deciding custody matters.

There was some concern about the lack of awareness of the CRC among parents and teachers, although SUHAKAM has done much work in this area. One answer could be to intensify training programmes on rights of children for all levels of society, in particular for teachers and parents.[18] Resource centres all over the country and schools, through clubs and libraries, should be better equipped with information on CRC. Children's programmes on television and radio should include information on the Convention.

[18] See section on CRC Training Workshop Methodology at the beginning of this chapter.

(e) Domestic laws

Several areas of concerns were raised over domestic laws relating to children. These included the need to reform certain laws relating to children in order to give meaning to the CRC; for the Government to withdraw the reservations to the CRC; and for ratification of the Optional Protocols to the CRC.

One problem is that Malaysia lacks a standard definition and cut-off age to denote a 'child' in legislation. It was recommended that standard cut-off age, definition and usage of words indicating a 'child' should be inserted in all relevant legislation, consistent with the Child Act 2001. It was further recommended that situations or cases relating to children who do not fall under the ambit of the Child Act 2001 should be covered. For example, when a child is charged together with an adult, the Child Act does not apply.

The recent amendment to the Education Act in 2002 provides[19] for compulsory primary education. In this regard, it would be helpful for the Government to assist parents who are unable to send their children to school. In addition, the Government should also consider making admission to all schools accessible to children from all levels of society.

It was recommended that the Government reviews all reservations to the CRC with a view to withdrawing these. The Government should also study both Optional Protocols to the CRC[20] to ratify them as soon as possible.

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[19] Section 29A of the Education (Amendment) Act 2002 states that, (1) The Minister may, by order published in the *Gazette*, prescribe primary education to be compulsory education, (2) Every parent who is a Malaysian citizen residing in Malaysia shall ensure that if his child has attained the age of six years on the first day of January of the current school year that child is enrolled as a pupil in a primary school in that year and remains a pupil in a primary school for the duration of the compulsory education.
(3) The Minister may, if he considers it desirable and in the interest of the pupils or the public to do so, by order published in the *Gazette*, exempt any pupil or any class of pupils from the requirement to attend compulsory education, either absolutely or subject to such conditions as he may think fit to impose, and may at any time in his discretion revoke the exemption or revoke or alter or add to such conditions.
4) A parent who contravenes subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.
(5) The Minister may make regulations for the carrying into effect of the provisions of this section.

[20] Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and Optional Protocol on the Convention on the Rights of the Child on the involvement of children in armed conflicts.

(f) Court procedures

The main issues related to the criminal justice system or Court procedures (pre- and post-trial) involving children. Participants said these must be in conformity with Articles 37 and 40 of the CRC. They also discussed the possibility of adopting the CRC principles and other domestic laws in resolving issues involving *Syariah* cases.

To ease staff shortages within the Judiciary, the Government should consider re-employing retired Magistrates to serve in Courts for children. It was recommended that voluntary probation officers be appointed to widen community involvement in the management of the criminal justice system, prevent crimes and rehabilitate child offenders. This is provided for in the National Plan of Action for Children. The Government should also consider giving priority to all cases involving children.

Participants said imprisonment should be used only as a last resort for child offenders. In this regard, research should be carried out to study the various means of effective sentencing policies involving children, while probation services should be upgraded by increasing the number of trained personnel.

Ms Gaye Phillips, UNICEF Country Representative

(ii) NATIVE CUSTOMARY LAND RIGHTS IN PENINSULAR MALAYSIA

The preservation of Native Customary Land Rights is crucial to the Orang Asli identity and development of their economic life. If separated from their traditional habitat, they are likely to lose the environmental elements that shape their distinct customs and support their lifestyle.

1. CONFERENCE ON LAND RIGHTS

On Dec 6-7, SUHAKAM organised a 'Conference on Native Customary Land Rights in Peninsular Malaysia' in Kuala Lumpur. This was a continuation of the Commission's efforts to resolve complaints and problems raised during three workshops in 2002, reports on which were published in 2003. Since then, more complaints and memoranda have been received. The conference was therefore aimed at finding ways to bridge discrepancies between Native Customary Land Rights and other laws governing land matters.

Sixty participants comprising senior civil servants and non-governmental organisations (NGOs) attended, including representatives of the Department of Orang Asli Affairs, the Orang Asli community and their advocacy groups from various parts of the peninsula.

The presentations focused on two themes – *Undang-Undang Tanah di Malaysia: Penyelesaian Masalah Tanah Orang Asli*; and *Hak Tanah Dari Segi Undang-Undang Adat Orang Asli*.

Speakers for the first session were Tuan Haji Ab. Aziz Ismail of the National Land Institute and Mr Zainal Abidin Ali of the Department of Orang Asli Affairs.

The second session featured Associate Professor Dr Juli Edo of Universiti Malaya, as well as Mr Anthony Williams-Hunt and Mr Majid Suhut from the Persatuan Orang Asli Semenanjung Malaysia (POASM).

2. DISCUSSION AND RECOMMENDATIONS

A summary of the salient issues and recommendations follows.

(a) Overlapping jurisdiction

Both the Federal and State Governments have control over Orang Asli land matters. According to the Federal List under the Ninth Schedule of the Federal Constitution, the Federal Government is responsible for the welfare of the Orang Asli (which must include matters pertaining to reservation of lands for Orang Asli). The State List says the State Government has jurisdiction over land matters, which include Malay reservations in the Peninsula and, in Sabah and Sarawak, native reservations. According to the speaker from the National Land Institute, this has created a dilemma for both Federal and State Governments in resolving matters affecting the Orang Asli's right to land, as well as side-stepped the indigenous community's interests.

It was suggested that the Federal Constitution be amended in order to streamline jurisdiction. The proposal was to place the Orang Asli's welfare under the concurrent list so that the Federal and State Governments will have shared jurisdiction and responsibility for Orang Asli land matters.

It was also proposed that the Department of Orang Asli Affairs mediates in conflicts over jurisdiction or when decisions are required on land matters.

(b) Registration procedures

There is an urgent need for the Orang Asli to register native lands in order to avoid trespass, intrusion or exploitation by parties outside their community. In addition, legitimate ownership would enable them to put land to economic use. However, the Orang Asli currently face difficulty in registering native lands, as their settlements are not marked on the 'lito sheet'. It was therefore proposed that settlements should be identified and marked accordingly.

It was also suggested that Land Administrators must follow procedures under Articles 3 and 5 of the Land Administration Book in processing applications for land titles from

external parties. These state that Land Administrators shall check the area in question before approving the application. If Orang Asli settlements, as defined under The Aboriginal Peoples Act 1954 (Act 134), exist in that particular area, the application must be rejected. Other procedural recommendations were that:

- State Governments should comply with the circular on Guideline No.6/1999 dated Jan 17, 1999 issued by the Federal Land and Mineral Department.
- Orang Asli need not register their land titles and their lands should be recognised as *de facto* legitimate land.
- The Department of Orang Asli Affairs should support and assist native settlers' applications for land titles by forwarding the documents to District or Land Office.
- The registration system should be upgraded to safeguard Orang Asli land by gazetting Orang Asli reserves; and by ensuring that applicants for land registration must be Orang Asli.
- Every State Government should have a policy regarding applications for land titles by Orang Asli.

(c) Land ownership

Prevailing laws only serve as a temporary measure of protection in terms of Orang Asli land ownership. Land grants available for ownership will lapse after 99 years and the holder will thereafter have to renew the grant every 99 years. This will involve time and money.

Orang Asli representatives at the conference felt that the 99-year leasehold title denies their status as the earliest settlers of the land. It was suggested that the Orang Asli's right to land should be considered a perpetual right. However, there will be a need to study the Federal Constitution and State laws to formulate such recognition.

It was proposed that Orang Asli land ownership be modelled along the lines of gazetted Orang Asli reserves, as provided under Article 86(6) of the Federal Constitution. In addition, the nature of the Orang Asli reserves should be modelled after the Malay Reserves Enactment. It was further recommended that Orang Asli areas be gazetted under Section 6 of the Aboriginal Peoples Act 1954.

The general view was that the assistance of the Prime Minister's Department would be needed to ensure that State Governments process Orang Asli land matters expeditiously.

3. GENERAL VIEWS AND PROPOSALS

The participants had general views and proposals on a number of other issues:

a) Orang Asli commission

A special commission for Orang Asli affairs should be established, with 80% of its membership coming from the community.

b) Involvement in development plans

Orang Asli representatives or village committees should be consulted and involved in development plans that affect their land.

c) Information on land matters

The Government should routinely inform the Orang Asli community of any matters pertaining to their land.

d) Special representation

A special representative appointed by the Department of Orang Asli Affairs should be stationed at district level to monitor problems concerning land rights.

e) Awareness programmes

The Orang Asli should be advised of the role and functions of relevant government departments and agencies – including the Police and Judiciary – that can provide assistance over claims or protection of their land rights.

4. CONCLUSION

Despite a growing effort to recognise the community's rights to land by the Government and international community, the Orang Asli's plight remains unresolved. This was evident during the conference, which showed up the overlap in jurisdiction, *lacunae* in laws that govern land matters, and lack of political will to tackle the situation in holistic manner.

The conference encouraged government agencies and the Orang Asli themselves to address the root causes of the problem. Participants felt this could help protect and promote the community's land rights throughout Malaysia.

This positive attitude would also correspond to the international community's moves to promote the rights of indigenous peoples as manifested in the United Nations Draft Declaration on the Rights of the Indigenous Peoples. It is hoped that the conference has facilitated government agencies and the Orang Asli in constructing an agenda that harmonises the nation's development needs with the community's fundamental right to preserve its customary lands.

Orang Asli participants at the seminar

Paper presentation on Native Customary Land Rights

(iii) KUNDASANG PUBLIC INQUIRY (SABAH)

1. MEMORANDUM FROM VILLAGERS

On June 17, 2003, SUHAKAM's Sabah Office had received a memorandum ('the Memorandum') from 18 persons in Kundasang, alleging human rights violations by Desa Highlands Sdn Bhd and by the police.

The same day, the office wrote to the Police Commissioner of Sabah, but there was no reply. On July 14, 2003, a letter relating the allegations was sent to the Inspector-General of Police.

On Sept 30, 2003 the Commission's Sabah office received a letter signed by one ASP Goh from the State Police Headquarters. SUHAKAM did not consider the contents to be an adequate response and consequently decided to carry out preliminary investigations into the alleged human rights violations.

The preliminary investigations touched on incidents alleged to have occurred on May 27, 2003. The Memorandum claimed that the 18 persons were villagers who had been occupying a piece of land in Kg. Desa Monteki in Kundasang since 1985. It consisted of an area of 29.6ha of agricultural land and the occupation had been with the approval of the village chief. It was claimed that these villagers had cultivated and worked on the land without objection from any party for five years.

In 1989, the villagers submitted an application to the Lands and Surveys Departments in Kota Kinabalu and Kundasang for alienation of the land. It was contended that their application complied with State Land requirements. There was a claim that 'State Customary Practices' (*Amalan Adat Negeri*) entitled these villagers to the land after three years of occupation and cultivation if no objections were raised. The villagers assumed that the land belonged to them and were only awaiting government approval. Their application was subsequently rejected.

It was claimed that in 1992, Desa Highlands Sdn Bhd ('the Company') made an application to the Land Office for alienation for the land. The villagers objected to the application through a letter to the Land Office. However, the application was approved.

On May 22, 2003, representatives from the Company accompanied by about 10 police officers and three bailiffs came "to chase the villagers away from the land". On May 27, 2003 the same workers from the Company came into the land with chainsaws and heavy machinery to destroy the properties of the villagers. The villagers claimed that they reacted by objecting to the demolition. That night, 18 villagers were arrested at about 11.30pm. On May 28, 2003, a remand order was granted by a District Officer (acting as Second Class Magistrate) for the villagers to be remanded for 14 days.

2. FINDINGS OF PUBLIC INQUIRY

SUHAKAM, at a meeting on Dec 8, 2003, appointed a panel of three Commissioners to hold a Public Inquiry on the allegations contained in the Memorandum. The three were Dato' KC Vohrah, Tan Sri Dato' (Dr) Ramon Navaratnam and Datuk Dr Monir Yaacob.

The Inquiry was conducted over a period of seven days, from Feb 11-14, 2004 and March 4-6, 2004. The Panel issued a report with findings and recommendations on April 23, 2004.

The Panel found it had no remit in law to deal with certain allegations.

- On the allegation that land was improperly alienated to the Company, the Panel was satisfied that the State of Sabah had alienated the land under powers vested in the State under the relevant land law. As such, the Panel was neither the proper forum nor did it have competence to go behind the exercise of such power.

- On the dispute over the validity of the order of possession by the High Court of Kota Kinabalu to the Company, the Panel had to accept that the order was valid unless set aside by the Court of Appeal.

- On the implicit complaint that the District Officer (acting as Second Class Magistrate) – who had given a remand order of 14 days in respect of 18 villagers who had been arrested (and subsequently charged with rioting and causing mischief by fire) – was acting outside the powers conferred under section 117 of the Criminal Procedure Code, the Panel found it could not go behind the order to question its validity; this could only be done in the High Court.

Site visit by the SUHAKAM team

3. FINDINGS ON SPECIFIC COMPLAINTS

In regard to the other allegations, the Inquiry made the following findings and recommendations.

Allegation 1: That there was improper force used on Milah Bangaloi by ASP Mohd Izaan

Allegation 2: That ASP Mohd Izaan had pointed a pistol at Milah Bangaloi

A villager, Milah Bangaloi, had alleged that ASP Mohd Izaan had manhandled her and that he had pulled out his pistol and threatened her.

On Allegation 1, the Panel found that Milah was not dragged along the ground by ASP Mohd Izaan as alleged but that he had pulled her away from a rock by her left arm and that at some stage, she could have been in a squatting position. It was also the finding of the Panel that she resisted being pulled away before being handed over to another policeman some 6-9 metres away.

The Panel concluded that although ASP Mohd Izaan had to use force to pull Milah away because she was resisting, disproportionate force was used.

- **Recommendations**

The Panel recommended that the police should take steps not to give the perception through future actions that they are partial, however misconceived the perceptions may be. The police, led by ASP Mohd Izaan, walking in the company of the Company's Manager (Mr Lam) and the Company's entourage of lawyers and workers from Mr Lam's house, did not give the appearance of impartiality. The Panel stated that the police should have remained detached while the bailiff explained the effect of the Writ of Possession, and that a brooding police presence is far better than one characterised by zeal of action or conduct that is misguided, however well intentioned it may be.

The Panel also recommended that in all cases where police assistance is requested by the Court, women police personnel should be included to render assistance where it is anticipated that those who will evicted will include women.

In regard to Allegation 2 that ASP Mohd Izaan took out a pistol and pointed it at Milah, the Panel found the allegation was not made out.

Allegation 3: That villagers were prevented from making a police report

It was alleged that some police personnel and ASP Mohd Izaan had tried to prevent some of the villagers from making a police report relating to hurt caused to them (Allegations 1 and 2).

The Panel found as a fact that the first time a villager went to the Ranau Police Station on the evening of May 22, 2003, the officer in charge of the Inquiry Office refused to take down the police report. This was in contravention of section 107(1) of the Criminal Procedure Code which states that:

> Every information relating to the commission of an offence, if given orally to an officer of a police station, shall be reduced to writing by him or under his direction and be read over to the informant.

The Panel also found that ASP Mohd Izaan in using himself as a filter before the report could be lodged by the villager, and for persuading or preventing him from making the said report, was interfering with the right of the person to make the police report.

- **Recommendation**

The Panel stated that the right to make a report on the commission of an offence is given by law and cannot be refused by any police officer in any police station nor can the right be whittled down by the informant being persuaded or otherwise not make the report. It recommended that any police officer who refuses to allow an informant to make a report should be disciplined.

Allegation 4: Complaints relating to the remand and the conditions of detention in the lock-ups

The remaining allegations in the Memorandum related to the villagers' detention in the Ranau police lock-up during their remand. These were:

(i) Denial of access to family members.
(ii) Denial to access to medication/medical officer.
(iii) Detention of a 70-year-old man who could not speak Malay.
(iv) Detention in an overcrowded cell.
(v) Allegations that they were made to sleep on the bare cement floor and were not given any blankets while under remand.
(vi) Alleged denial of the right to pray.
(vii) Allegations that the toilets in the lock-up were extremely dirty and malodorous.
(viii) Allegations of improper interrogation while under remand.
(ix) Allegations that their clothes and spectacles had to be taken off.
(x) Allegations of insufficient food and drinking water.
(xi) Allegations of lack of exercise.

The Panel also considered other issues which were not raised in the Memorandum but highlighted by the villagers during the Inquiry:

(i) Not providing a woman with sanitary towels although she was menstruating.
(ii) Toilets which were clogged and where human excrement had to be manually cleared from that in the women's cell.
(iii) Not providing those remanded with soap or other toiletries.
(iv) Denying prayer attire to Muslim women.

Although not every allegation fell within purview of the Inquiry, the Panel found that most of the allegations were made out.

It was revealed that two cells were used to detain the villagers and there was overcrowding in one of them. The Panel acknowledged that the physical condition of the cells may have been beyond the control of the Officer-in-Charge of the Ranau Police District. However, the fact that the detainees were denied basic amenities by the police was well within the purview of the relevant police personnel. Although there was a general denial of the complaints by the police, the Panel found this improbable. There was also persistent denial from the police officers about any request from the detainees for blankets, food, water, *telekung*, *sejadah* and medication, which the Panel had difficulty believing.

The Panel found that most of the provisions in the Lock-Up Rules 1953, which governs lock-up conditions and the welfare of the detainees, were not complied with. It was also found that the police were not familiar with basic principles governing the humane treatment of prisoners contained in instruments such as the Standard Minimum Rules on the Treatment of Prisoners.

The Panel found it fair to infer that complaints by the villagers were not communicated to superior officers except in obvious matters that could be found out, such as the clogged toilets. There appeared to have been a mechanical attitude among police personnel in relation to performance of their duties. Furthermore, it was found that there was little concern or knowledge of the human rights of the detainees.

- **Recommendations**

The Panel made the following recommendations :

(i) Police personnel should be made aware of the Lock-up Rules 1953 and various international instruments providing for humane treatment of detainees.

(ii) Preferably, there should be a course of instruction for all personnel involved in the Inquiry Office and on security duty at lock-ups.

(iii) A re-examination of procedures is necessary at the highest level to correct defects in management.

(iv) Adequate training should be provided to prevent personnel from becoming indifferent and uncaring.

(v) Policewomen should be available to attend to women detainees and their needs.

Allegation 5: Abuse of the remand procedure by the police

In their memorandum, the villagers had questioned the maximum period of their remand (14 days) although their case was comparatively less serious than many others, such as murder.

Here, 18 villagers were investigated for the offence of causing mischief by fire under section 435 of the Penal Code ('PC') and of the offence of rioting under section 147 of the PC. The Panel was of the view that bail should have been allowed. In regard to the non-bailable offence of rioting, it is the discretion of the police whether or not to grant police bail.

- **Recommendations**

The Panel stated that it recognises the wide powers of police over a person detained under a remand order but also noted that such powers could be abused. The Panel referred to a circular issued in 2003 by then Chief Justice Tun Mohamed Dzaiddin Abdullah who issued it to Magistrates pertaining to section 117 of the Criminal Procedure Code.

The Panel recommended that:

(i) Short remand periods are to be set at any one time.

(ii) Police officers should be supplied with the Chief Justice's Circular.

(iii) Police personnel should undergo courses which highlight their powers in regard to detained persons.

(iv) The police must be informed that their powers are not to be used for collateral purposes.

(v) Cases on remand should be supplied to all police investigations and officers in charge of police districts.

SUHAKAM Commissioners hear out complainants

(iv) NATIVE CUSTOMARY LAND RIGHTS (SABAH)

1. COMPLAINTS RECEIVED

The Commission's Sabah Office continued to receive complaints and grievances in relation to Native Customary Land Rights:

(i) Mr Mardin Bungkok, the head of Kampung Talibo, claimed that he had raised objections 10 times against a plantation company through the Lands and Surveys Department in Sandakan over the opening up of an oil palm plantation on customary land, but that no action was taken.

(ii) Kuamut Assemblyman Datuk Abdul Malik Chua cited a case in Bukit Garam, claiming that a land application made in 1987 had not been entertained. The plot was later alienated to a businessman who allegedly paid some money to facilitate the application.

(iii) A company's application for thousands of hectares of land in Kampung Sungai Lokan was approved, but the villagers' application for 24ha of land was rejected.

(iv) Some villagers in Entilibon, Maliau-Minusah, Namukon and the surrounding villages were arrested and locked up by the police when they resorted to physically blocking workers of Corak Nakhoda Sdn Bhd from opening up land that they believed to be their customary land.

(v) On June 17, 2003, SUHAKAM received a Memorandum from 18 villagers in Kundasang, Sabah alleging human rights violation by a developer. The villagers claimed that they had been occupying a piece of land in Kampung Kg. Desa Monteki, Kundasang since 1985 with the approval of the village chief. *[See Chapter 3(iii)]*

2. FORUM ON LAND RIGHTS

On Aug 16, a one-day forum on Native Customary Land Rights was held in Kota Kinabalu, Sabah. This was organised as a follow-up action over complaints associated with land matters.

The objective was to bring together the relevant authorities dealing with land matters and complainants to enable both parties to understand and appreciate their respective positions. SUHAKAM also hoped that the exchange of views would help identify satisfactory solutions.

The 500 participants comprised senior civil servants, community leaders, heads and representatives of non-governmental organisations and interested individuals.

There were four working papers:

- 'Customary Land Rights in Sabah' by Datuk Abdul Rahim Sidek, Secretary of Natural Resources, Chief Minister's Department
- 'Administration and Procedure of Customary Land Rights' by Datuk Mohamad Haji Jafry, Director of Lands and Surveys Department, Sabah
- 'Native Customary Land Rights' by Datuk Dr Herman Luping
- 'Sharing of Concerns and Experiences Faced by the Natives' by Datuk Dr Markus Makin Mojigoh

3. DISCUSSION OF ISSUES

The main issues raised by participants covered a wide range of experiences.

(a) Loggers and plantation developers often treat the natives like squatters on their own land because the villagers have not been able to obtain official recognition of their property.

(b) Villagers often do not know that their land is being logged until bulldozers and chainsaws are within earshot.

(c) Water-catchment areas frequently became contaminated due to development activities in the vicinity.

(d) Villagers sometimes find it difficult to understand how land is acquired or alienated.

(e) Although Native Customary Land Rights are provided for in the Sabah Land Ordinance, their implementation leaves much to be desired.

(f) Section 13 of the Sabah Land Ordinance provides that the Notice of any acquisition of land must be displayed on the Notice Board. However, in practice this is seldom done, causing much dissatisfaction among natives who do not know what is going on.

(g) More often than not the natives are unable to obtain the services of a solicitor because they cannot afford to pay the legal fees.

(h) There are different rates of valuation for native titles and non-native titles even though the plots are adjacent to one another.

(i) The procedures and attitude of staff of the relevant agencies have given cause for concern.

(j) Indiscriminate land reclamation by developers cause irrigation drains to be blocked, resulting in much inconvenience to natives.

4. RECOMMENDATIONS

The following recommendations were made:

(i) That the authorities must seek alternative ways to expedite the issuance of land titles, including native titles.

(ii) Approval for land applications should be given fairly and without discrimination.

(iii) A task force should be established to look into Native Customary Land Rights issues.

(iv) The native communities should be consulted whenever development projects are planned and implemented on Native Customary Lands.

(v) The standard of living of the people should be raised by making land ownership a priority.

(vi) Protection of customary lands must be accompanied by strong political will.

(vii) The relevant authorities should ensure that all water-catchment areas in the State are preserved and protected by law.

(viii) The media should play a meaningful role in highlighting efforts to protect Native Customary Land Rights.

5. IMMEDIATE OUTCOMES

(a) On Aug 25, the Chief Minister of Sabah, Dato' Seri Musa Aman, announced the formation of a task force to monitor and examine government land application procedures with a view to addressing weaknesses that have led to delays in approval.

(b) The Chief Minister reminded officers and staff of government agencies to pay more attention to complaints on land matters and act promptly by taking remedial measures.

(c) He requested the Director of the Lands and Surveys Department, Datuk Mohamad Haji Jafry, to hold consultations with professional bodies such as the Sabah Law Association to obtain input.

SUHAKAM hopes that other State Governments will emulate the example set by the Sabah Chief Minister.

(v) UNDERSTANDING OF HUMAN RIGHTS FOR ENFORCEMENT AGENCIES

Between 2003 and 2004, the Complaints and Inquiries Working Group of SUHAKAM conducted six workshops aimed at exposing the Police, Prisons and other enforcement officers to human rights requirements when handling and processing detainees and/or prisoners. These day-long workshops were held with the co-operation of the Legal Aid Bureau, which offered advice as well as logistical and personnel support.

Representatives of the Immigration, Prisons, Customs, and Social Welfare departments, the Religious Affairs Department, the Department of Orang Asli Affairs, and local councils participated in the workshops. These were held in six cities representing a different geographical zone. For example, the Kuala Terengganu workshop (Eastern Zone) grouped representatives from Pahang, Terengganu and Kelantan.

In keeping with the Human Rights Commission of Malaysia Act 1999, the workshops were conducted as a response to complaints on alleged infringements of human rights in places of detention. The aim was to create awareness among enforcement officers that they are obliged to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Feedback from the workshops also made it possible for SUHAKAM to observe and verify the level of awareness of officers when confronted with situations of human rights violations.

1. VENUES

The workshops were held between March 2003 and December 2004.

HUMAN RIGHTS WORKSHOPS

NO.	DATE	LOCATION	ZONE
1.	March 2003	Melaka	Southern
2.	May 2003	Kuala Terengganu	Eastern
3.	June 2003	Kuching	Sarawak
4.	September 2003	Kangar	Northern
5.	December 2003	Taiping	Central
6.	June 2004	Kota Kinabalu	Sabah

Workshop in Kota Kinabalu, Sabah

2. DISCUSSION OF ISSUES

Several issues surfaced during the discussions.

(a) Overcrowding

Participants felt they could not be held wholly responsible if detainees or prisoners experience discomfort or are placed in unforeseen or certain danger while in their charge. Many Prisons and Immigration detention camps have been upgraded to ease congestion and improve the facilities.

(b) Insufficient personnel

Participants said the shortage of personnel has contributed to some of the problems, especially in Immigration detention centres. This situation is slowly changing with management of security being handed over to the Prisons Department nationwide.

(c) Illegal immigrants in prisons and detention centres

SUHAKAM was informed that officers have experienced problems repatriating foreign detainees. Documentation is a laborious process, compounding the acute overcrowding. After illegal immigrants serve their prison sentences, they are transferred to Immigration detention centres, which exacerbate overcrowding. These detainees (also called *Banduan Dagang*) often refuse to divulge personal information, as many fear that deportation would mean having to serve another prison sentence in their country of origin. This has delayed efforts by Immigration officials to repatriate them.

(d) Presence of children with adults

The situation of children (juveniles) being held together with adult illegal immigrants in overcrowded Immigration detentions camps was discussed. Many expressed sympathy for the children but said they are not adequately trained to handle such situations. Participants felt this role should not be the sole purview of the Social Welfare Department, and requested standard guidelines on dealing with children. They expressed appreciation of the work of charity and religious bodies in supplying milk, nappies and clothing.

(e) Community service

There were suggestions that certain categories of prisoners convicted for minor crimes should be made to perform community service instead of serving prison terms. However, they agreed that the idea would need further study, in tandem with mindset change on concepts of rehabilitation. A Government announcement was seen as a step in the right direction in preventing overcrowding in prisons.

(f) Sanitary and security concerns

SUHAKAM found that the participants were aware that detention facilities must meet the requirements of the United Nations Standard Minimum Rules on the Treatment of Prisoners. Prisoners and detainees, including expectant mothers, should have access to doctors and nurses stationed in the prison complexes. Those who are ill must be treated quickly.

3. RECOMMENDATIONS

(a) Improved conditions

The takeover of management of Immigration detention centres by the Prisons Department, as well as Police action to improve lock-ups were welcomed as signs of progress. These changes are consistent with the need to improve conditions at gazetted facilities.

(b) Overcrowding

Suggestions were made to introduce specialised facilities to hold mothers with children. In addition, illegal immigrants caught in raids should be repatriated quickly to ease congestion in lock-ups, prisons and detention centres.

(c) Co-operation from all relevant parties

The Immigration Department was applauded for its efforts to return foreign detainees quickly to their respective countries, and for ensuring better treatment and care of those involved. The Police were commended for promoting a culture of expeditious and efficient investigations. Such moves could be complemented by sending 'non-criminal offenders' to Compulsory Attendance Centres as an alternative to serving time in prison. This would create a better management scenario in prisons, with non-violent criminals being made to report for duty at the centres, while performing community service in their respective neighbourhoods.

(d) Security and sanitation

The health of prisoners and detainees, as well as that of enforcement officers, are of great concern. This makes it imperative that periodic health checks be conducted for both groups. As there have been cases of illegal immigrants being diagnosed with contagious diseases, it is particularly important to monitor the health status of detainees and officials to avoid outbreaks of dangerous diseases.

4. CONCLUSION

Overcrowding and staff shortage have been a recurrent problem in prisons and detention facilities. The participants expressed hope that the relevant parties would examine these problems quickly and impartially in order to find effective solutions. While willing to accommodate human rights concerns in performing their duties, the participants from enforcement agencies also stressed the need for workshop proposals to be given serious consideration by the authorities.

In this regard, SUHAKAM would like to urge the Government to first consider whether there is enough room in prisons before amending any law to provide for increase and/or mandatory jail sentence in respect of any offence.

Participants at the workshop

(vi) DISCUSSION ON ASYLUM SEEKERS IN MALAYSIA

In December, the Complaints and Inquiries Working Group conducted a Roundtable Discussion on Asylum Seekers in Malaysia, whose human rights situation is different from that of illegal immigrants. It brought together participants from the relevant ministries and departments, non-governmental organisations (NGOs) and representatives of the local Aceh, Moro and Rohingya communities.

THE ROUNDTABLE DISCUSSION

Separate sessions were held over two days.

Discussion between Government officials and SUHAKAM

(a) Session 1: Discussion among officials

On Dec 14, officials from the Ministries of Home, Internal Security and Foreign Affairs were involved in a closed-door discussion chaired by SUHAKAM Commissioner Prof Dato' Mohd Hamdan Adnan. Also present were officials from the Prime Minister's Department, and the Police, Prisons, Immigration, Labour, National Registration and Education departments.

Their perspectives on, and responses to, the issue of illegal immigrants seeking refugee or asylum status in Malaysia were clear indication of the absence of a common definition of an 'asylum seeker' (or refugee) and the appropriate treatment to be accorded to such a person, as opposed to the standard response meted out to an illegal immigrant. There is therefore a need to establish a mechanism such as the National Security Council (which responded during the 1970s and 1980s to the arrival of 'boat people' from Vietnam) to identify *bona fide* refugees. Enforcement personnel will require adequate training to handle and process such persons.

Among Malaysian enforcement agencies, there remains the perception that the international community is not doing enough to persuade Third Countries to accept migrants claiming refugee status.

(b) Session 2: Discussion between government officials, UNHCR and NGOs

On Dec 15, the government officials held a dialogue with representatives of the United Nations High Commissioner for Refugees (UNHCR) and three NGOs – Angkatan Belia Islam Malaysia (ABIM), Suara Rakyat Malaysia and PEMBELA. Malaysia-based individuals representing asylum seekers from the Rohingya and Chin communities of Myanmar, Moro Malays of southern Philippines and displaced persons from Aceh, Indonesia, also participated. UNHCR head Mr Volker Turk presented an introduction on refugees, which was followed by a frank exchange of views on issues affecting asylum seekers in Malaysia.

The UNHCR reiterated its call for Malaysia to consider recognising persons who carry UNHCR-issued refugee cards and/or papers indicating their status as 'refugees', as well as their rights to health care, employment and education as provided under the 1951 Convention relating to the Status of Refugees.

There was a general view among the government officials that all asylum seekers (*bona fide* refugees) deserved due and proper consideration in light of expiry of an amnesty period on Dec 31 and the planned start of full enforcement operations against all illegal immigrants from Jan 1, 2005. They, however, called upon the UNHCR and NGOs to understand Malaysia's position, as the large number of illegal immigrants (and asylum seekers among them) has become a security concern for the Government.

The NGOs argued that illegal immigrants are a source of cheap labour for unscrupulous Malaysian employers, although to a large extent, the wages are being remitted to home countries. They said the Foreign Affairs Ministry must play a leading role in concert with other agencies to come up with an acceptable definition of 'refugee' in the near future. This would indicate greater commitment to resolving the issue of protection for asylum seekers and refugees, although the national concern is to flush out and deport all illegal immigrants. The participants welcomed any Malaysian initiative on common standards on training and screening with regard to Refugee Status Determination (RSD). The government officials, on their part, welcomed any measure that would assist them to differentiate asylum seekers from illegal or economic immigrants. Very few personnel from the Immigration Department have received training in RSD techniques to date.

The third group of participants represented the Rohingya, Chin, Acehnese and Moro communities. The plight of the Rohingya received the most attention during the discussion, as their nationality is not accepted by the Myanmar government. The Rohingya representatives pointed out that the Acehnese and Moro are considered nationals by their respective governments. The Rohingya, unlike the Chin, are not recognised as Myanmar nationals. As stateless persons, their chances of gaining acceptance as asylum seekers by Third Countries in Europe, North America and Australia/New Zealand are further diminished.

Tan Sri Datuk Seri Panglima Simon Sipaun thanks UNHCR Representative, Mr Volker Turk

They regarded their appeal to be accorded protection as only a means to facilitate temporary stay in Malaysia until the situation in Myanmar improves. The Rohingya, said to number around 10,000 in Malaysia by some estimates, are not a cohesive community. While a large number have accepted assistance from ABIM, others have organised themselves into various charitable, service and human rights advocacy groups. The big question not addressed by Rohingya representatives during the discussion was whether they could find a common platform on issues affecting their community. This includes whether the youth among them would be willing to return to an unfamiliar Myanmar, as and when conditions prove favourable.

(vii) ADEQUATE HOUSING – A HUMAN RIGHT

Adequate housing is universally viewed as a basic human need. The right to adequate housing is enshrined in both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights.

Article 25(1) of the UDHR states:

> Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The United Nations Centre for Human Settlements has estimated that over 1 billion people worldwide live in inadequate housing. More than 100 million people live in conditions classified as homelessness.

1. ENTITLEMENT TO HOUSING RIGHTS

SUHAKAM organised a day-long seminar on Jan 15 on 'Adequate Housing – A Human Right' to identify whether the current rights to adequate housing in Malaysia fall within the ambit of the definition set by the United Nations Committee on Economic, Social and Cultural Rights ('the Covenant') and to derive solutions for inadequate housing. The definition set by the Covenant stipulates that adequate housing must meet the following criteria:

(a) Security of tenure

That all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Immediate measures should be taken by Governments in conferring legal security of tenure upon those households currently lacking such protection. Such steps should be taken in genuine consultation with affected persons and groups.

(b) Accessibility to essential services

All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources; clean drinking water; energy for cooking, heating and lighting; sanitation and washing facilities; refuse disposal; site drainage; and emergency services.

(c) Affordability

Personal or household costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Subsidies should be available for those unable to obtain affordable housing and tenants should be protected from unreasonable rent levels or rent increases.

(d) Habitable housing

Adequate housing must be habitable. It must provide the inhabitants with adequate space and protect them from cold, heat, damp, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of occupants must be the prime consideration.

(e) Accessibility to all, including persons with disabilities

Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, survivors of natural disasters, people living in disaster-prone areas and other vulnerable groups should be ensured some degree of priority in terms of housing. Both housing law and policy should take fully into account the special needs of these groups.

(f) Location

housing must be in a location which allows access to employment options, health care services, schools, child-care centres and other social facilities. Housing should not be built on polluted sites or in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

(g) Cultural adequacy

The way housing is constructed, the building materials used and the policies underlying these must appropriately enable the expression of cultural identity and diversity. Activities

geared towards development or modernisation should ensure that the cultural dimensions of housing are not sacrificed.

2. RIGHTS TO ADEQUATE HOUSING IN MALAYSIA

The existence of squatter settlements reflects the need to provide adequate housing for the lower-income groups in urban areas. For example, in the Klang Valley, 20% of the population lives in squatter settlements.

At the seminar, a number of issues were raised and recommendations were made.

(a) Simplify laws, policies and guidelines

It was highlighted that Malaysia's housing policy is highly regulated. Some of the laws, policies and guidelines have unnecessarily increased costs, thereby leaving an adverse impact on affordable housing.

- **Recommendation**

The Government, through consultation with stakeholders (including housing developers, NGOs, workers in the industry and house buyers), should study the need to simplify these laws, guidelines and policies, while ensuring that matters such as occupational safety of workers and the rights of buyers are effectively protected by law.

(b) Supervise implementation of housing laws

It was highlighted that house buyers face numerous problems including shoddy workmanship, the failure to rectify defects by errant developers, and abandoning of housing projects. It was suggested that there is a need for the Government to be more pro-active in ensuring that industry players comply with housing laws.

- **Recommendation**

There needs to be effective supervision of projects and enforcement of laws to ensure that rights of house buyers are protected. This includes considering the need to increase the number of enforcement officers in the Monitoring and Enforcement Division of the Ministry of Housing and Local Government.

It was also suggested that the Government and civil society should consider stepping up awareness campaigns to educate the public, in particular those in lower income groups, on their rights as house buyers.

(c) Update lists of buyers eligible for low-cost housing

Feedback indicated that the lists of eligible buyers of low-cost housing, which are managed by State authorities, are outdated and have led to inefficiencies in the distribution of such units.

- **Recommendation**

The relevant State authorities should consider increasing the frequency of updating lists of eligible buyers of low-cost houses.

The Government (both Federal and State) and civil society should also consider intensifying awareness campaigns to educate the public, in particular the poor, on procedures and criteria for the purchase of low-cost housing.

(d) Reduce cost of labour, materials and infrastructure

Labour, materials and infrastructure account for more than 60% of the cost of building a house. Any increase in cost of these components would have an adverse impact on affordable housing. Keeping these costs low appears to be a key challenge for the housing industry.

- **Recommendation**

To supplement its efforts to "continue to provide the necessary support policies and programmes to ensure adequate, affordable and quality housing", the Government, through consultation with stakeholders, should consider extending research and development to seek out ways to keep building costs as low as possible without compromising on the quality of housing. This could form part of the programme of the Malaysian Human Settlement and Urbanisation Research Institute (MAHSURI).

(e) Hold dialogues on resettlement of squatters

Concerns relating to the plight of squatters were raised during the seminar. There was

some anxiety that the objective to make Malaysia squatter free would involve widespread eviction exercises.

- **Recommendation**

In order to facilitate feedback and exchange, the Government should consider holding more dialogues with stakeholders to discuss the findings of the National Study on the Control and Resettlement of Squatters and the appropriate policies and guidelines that have been or will be formulated based on the study.

(f) Formulate National Housing Policy

It was highlighted that there is a need for a comprehensive National Housing Policy.

- **Recommendation**

To supplement on-going efforts, the Government should consider holding further consultations with all stakeholders to obtain views and suggestions pertaining to the formulation of a comprehensive National Housing Policy. This could again form part of the programme of MAHSURI.

(g) Instil awareness of healthy environment

It was highlighted that there appears to be a lack of public awareness of Agenda 21.

Agenda 21 provides an action plan towards global sustainable development in the new millennium and was endorsed by more than 178 heads of state and ministers at the United Nations Conference on Environment and Development, popularly known as the Earth Summit. (The figure 21 refers to the 21st Century.)

Local Agenda 21 (LA21) is Agenda 21 at the local level. This aims at "promoting participation of local authorities, municipalities and all stakeholders at the local community level in the planning and implementation of sustainable development".

- **Recommendation**

In line with the Malaysian launch of the LA21 programme in 1999, both the Government and civil society should consider intensifying efforts to create public awareness of the need for a healthy environment in general, and of LA21 in particular.

As adequate housing is a basic right and a need, SUHAKAM further recommends that the relevant authorities pay due attention to the grievances and complaints aired by the public.

3. CONCLUSION

In addressing the issue of adequate housing, SUHAKAM reminds the authorities to bear in mind that adequate housing should encompass security of tenure, accessibility to essential services, affordability, habitability, accessibility to all including persons with disabilities, location and cultural adequacy.

(viii) HUMAN RIGHTS AND THE MILLENNIUM DEVELOPMENT GOALS

The Millennium Development Goals (MDGs), adopted by the United Nations General Assembly, are excerpted from the Millennium Declaration of September 2000. These encompass the values of freedom, equality, solidarity, tolerance, respect for nature and shared responsibility.

The goals are inter-related in that progress towards one will promote advancement in others. For instance, education (Goal 2) improves the individual's chances of obtaining a secure job. With income, it is conceivable that a person will have access to housing (Goal 4) and health care services (Goal 5), as well as the means to avoid diseases (Goal 6). In addition, income enables the individual to escape poverty (Goal 1).

As the MDGs are located within a human rights framework, SUHAKAM organised a seminar on 'Human Rights and the MDGs' in Kuching from Oct 12-13. Representatives of Government agencies, non-governmental organisations and academia were invited as speakers, alongside experts. The topics were selected to reinforce key themes of the MDGs.

1. EXTREME POVERTY AND HUNGER

The first goal, to eradicate the number of poor people, over-arches all other MDGs.[21] The incidence of poverty in Malaysia is determined by using the Poverty Line Income (PLI). By definition, the PLI is an income sufficient to purchase a minimum basket of foods to maintain household members in good nutritional health, as well as to have access to other basic needs such as clothing and footwear, housing, fuel and energy, transport and communications, health care, education and recreation. Households below the PLI are categorised as 'poor' while households with less then half the PLI are categorised as 'hardcore poor'.

In 2002, the PLI for Peninsular Malaysia was RM529[22] per household per month, while the PLI for Sabah and Sarawak was RM690[23] and RM600[24] per household per month

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21 See details on UNDP website (available at: *http://www.undp.lk/transition/mdgs.html*)
22 See 'Malaysian Quality of Life 2002', p.15; 'Mid-Term Review of the Eighth Malaysian Plan, 2001-2005' p.61.
23 *Ibid.*
24 *Ibid.*

respectively. Article 25 (1) of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to an adequate standard of living. Extreme poverty leads to deprivation of the right to adequate food, adequate housing, education, health care and other basic needs.

- **Issues**

Highlights of the presentations:

(a) Inadequate social and economic facilities, which discourage proper employment;
(b) Severe malnutrition among children below the age of five;
(c) Lack of awareness of the importance of health among the Sarawak community;
(d) The outdated definition of PLI; and
(e) Deprivation of rights of natives in respect of customary land, which exacerbates poverty.

2. UNIVERSAL PRIMARY EDUCATION

The second goal relates to the attainment of primary education. Article 26 of the UDHR, Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Article 28 of the Convention on the Rights of the Child (CRC) all provide for the right to adequate education.

In Malaysia, the primary school enrolment rate is encouraging. It rose from 93.3%[25] in 1999 to 98.2%[26] in 2002. In addition, the literacy rate increased from 85.0%[27] in 1990 to 94.0%[28] in 2002.

However, the student dropout also increased from 9.7%[29] in 1997 to 15.3%[30] in 2003. There were more male dropouts compared to female students, particularly at secondary

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[25] See 'The Malaysian Economy in Figures 2002'
[26] See 'Social Statistic Bulletin 2002'
[27] See 'The Malaysian Economy in Figures 2002'
[28] See 'Mid-Term Review of the Eighth Malaysian Plan 2001-2005'
[29] Ministry of Education
[30] *Ibid.*

and tertiary level. At the primary level, the female student dropout rate rose from 5,670[31] in 1995 to 9,865[32] in 2003, while the rate for male students increased from 7,326[33] in 1995 to 10,695[34] in 2003.

- **Issues**

Highlights of the presentations:

(a) The higher dropout rate among male students;

(b) Lack of awareness among most rural residents of the importance of education; and

(c) Poverty among families living in interior regions, which is a deterrent to sending children to school.

3. GENDER EQUALITY AND WOMEN'S EMPOWERMENT

Goal 3 is for equal opportunities between men and women in various fields such as education and employment. Article 7 of the UDHR is dedicated to promoting and protecting women's rights, as is CEDAW.

- **Issues**

Highlights of the presentations:

(a) Women make up of 70% of the world's poor;

(b) Men and women are disadvantaged by the persistence of stereotyped roles;

(c) Absence of an enabling environment discourages women from utilising opportunities for advancement;

(d) Rural women face problems in owning land, and obtaining compensation and access to information; and

(e) Urban women face difficulties due to lack of training in marketable skills and access to affordable child-care services.

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[31] Ministry of Education
[32] *Ibid.*
[33] *Ibid.*
[34] *Ibid.*

4. CHILD MORTALITY AND MATERNAL HEALTH

Goals 4 and 5 are concerned with primary health care, in particular the reduction of child mortality and improvement of maternal health. Article 25 (2) of the UDHR, Articles 10(2) and 12 of the ICESCR, Article 12(2) of CEDAW and Article 24 of CRC provides for every child's and mother's right to life and health care.

- **Issues**

Highlights of the presentations:

(a) High maternal and child mortality rates , especially among the *Orang Asal*;
(b) Inadequate health care services in interior locations; and
(c) Inadequate care and nutrition for mothers and children.

5. COMMUNICABLE DISEASES

Goal 6 is concerned with curbing the spread of diseases, in particular HIV/AIDS, malaria and tuberculosis. This builds on the right to life, health and health care services as provided in Article 3 of the UDHR.

- **Issues**

Highlights of the presentations:

(a) The rise in the number of intravenous drug users;
(b) Prejudice and discrimination towards people living with HIV/AIDS;
(c) Avoidance of reporting HIV/AIDS cases, thereby affecting accurate knowledge of incidence;
(d) High incidence of malaria in rural areas;
(e) Influx of workers into agriculture areas, which is associated with malarial infection;
(f) Late diagnosis of malaria and tuberculosis in rural areas; and
(g) Lack of access to affordable health care facilities.

6. ENVIRONMENTAL SUSTAINABILITY

Goal 7 is to ensure environmental sustainability. The relationship between the environment and human rights was affirmed through a judgment delivered by the Malaysian Court of Appeal on Jan 22 1996.

In the case of *Tan Tek Seng vs. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261, the Court held, *per curiam*, that the term 'life' appearing in Article 5(1) of the Federal Constitution incorporates all those facets that are integral to life and those matters which go to form the quality of life. Thus, the life includes the right to live in a healthy and pollution-free environment.

- **Issues**

Highlights of the presentations:

(a) There is no explicit provision in the Federal Constitution on the rights to a safe and clean environment;
(b) Use of dangerous toxic chemicals by industries; and
(c) Opening-up of land for development, which could adversely affect the ecological system.

7. GLOBAL PARTNERSHIP FOR DEVELOPMENT

Goal 8 relates to the importance of international relationships in development. The Millennium Declaration repeatedly affirms the twin principle of global equity and shared responsibility[35] in that those who benefit least deserve help from those who benefit most.

Under Article 2 of the ICESCR, State Parties should take steps – individually and through international assistance and co-operation – to optimise use of resources. This is with a view to achieving progressive realisation of the rights recognised by the ICESCR.

- **Issues**

Highlights of the presentations:

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[35] See para. 213 of the Draft Guidelines: Human Rights Approach to Poverty Reduction Strategies. Draft Guidelines (available at: *http://www.unhchr.ch/development/povertyfinal.html*)

(a) Issues from the 1994 International Conference on Population and Development in Cairo, on conditions imposed by donating countries, in particular on sexual and reproductive rights of women such as abortion; and

(b) Implications of withdrawal of Japan's technical assistance to Malaysia.

(ix) WOMEN'S HUMAN RIGHTS

In line with its mandate to protect and promote women's human rights, SUHAKAM organised three events over the year. Two forums focused on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These were held in Kuching, Sarawak, on March 30 and in Kota Kinabalu, Sabah, on April 2.

Their objectives were to promote understanding of CEDAW, increase awareness of women's rights, identify concerns of women in Sabah and Sarawak, and facilitate exchange of views, experiences and knowledge among participants.

Conscious of the fact that gender equality necessitates awareness and protection of rights by both men and women, SUHAKAM requested that at least one of the two representatives invited from each Government agency and non-governmental organisation (NGO) should be male. While the response was encouraging, it is hoped that more men can be persuaded to participate in future discussions of women's rights.

The third event, the 'Forum on Violence against Women – Focus on Rape' (the 'VAW Forum'), was prompted by requests from a number of NGOs and agencies that were alarmed by an increase in cases of rape and violence against women in Sabah. Held on July 26 in Kota Kinabalu, its aims were to address the issue of sexual violence against women; how relevant agencies and interested parties can collaborate to prevent rape and eliminate violence against women; and to promote knowledge of women's human rights.

1. FORUMS ON CEDAW

Each forum began with an overview of CEDAW, presented by Ms Maria Graterol of the International Women's Rights Action Watch, followed by an outline of steps taken by the Government to implement CEDAW at State level and the NGO perspective of CEDAW. The event culminated in a plenary session with a three-member panel comprising speakers from the Government and NGOs. The panel included Mrs Margaret Ho, Under-Secretary of the Ministry of Women, Family and Community Development.

A. PRESENTATIONS

At the Kuching Forum, Puan Norjanah Haji Razali, Director of the Women's Bureau, elaborated on the Sarawak Women's Development Action Plan 2003. Envisioned to promote and protect gender equality, the Plan focuses on seven areas - family, health, religion, culture and art, sports, education and training, the economy and employment, and women and the law. The role and functions of the Majlis Wanita Sarawak and the Women's Bureau were also explained.

Ms Margaret Bedus of the Sarawak Women for Women Society (SWWS) outlined the group's activities in providing support to victims of sexual violence and rape. Programmes are based on the six objectives of equal opportunities, equal rights, non-exploitation of women, freedom from violence, self-development and self-reliance. SWWS also operates a drop-in centre, crisis phone line, public awareness programmes, HIV/AIDS programmes and keep-safe kits for children.

The forum in Kuching, Sarawak

Close attention from participants

At the Kota Kinabalu Forum, Datuk Noni Said of the Majlis Penasihat Wanita Sabah explained the functions of the Department of Women's Affairs. She further briefed participants on Sabah's Outline Perspective Plan (1995-2015), which sets parameters for the promotion and implementation of gender equality at State level.

Ms Mary Lee of the Sabah Women's Action Resource Group (SAWO) highlighted areas of concern, including poor implementation of laws such as the Domestic Violence Act 1994 and the Child Act 2001. She spoke on laws that discriminate against women such as those against trafficking and prostitution, section 66(2) of the Immigration Act 1959/63 on the 'Special Provision for East Malaysia', and Regulation 10 of the Immigration Regulations 1963. Certain features of native laws may also be of disadvantage to women. In addition, she pointed out that there are insufficient shelters for survivors of rape and domestic violence.

Her proposals included a request for financial allocations to enhance the collection and accessibility of gender disaggregated data; additional programmes to promote awareness of CEDAW; review of laws and policies to ensure women's rights are protected; and the creation of Native Courts, Special Family Courts and a legal aid system.

B. ISSUES

While it was evident that efforts in Sabah and Sarawak have helped advance women's human rights, the discussions at both forums drew out areas of concern. It was observed that generally, women in Sarawak share common problems with their counterparts in Sabah.

(a) Unfriendly working environment

There is an emerging trend of female graduates giving up their career for family life. To some extent, this pattern can be attributed to a working environment that is not family-friendly, and to insufficient maternity leave and inflexible working hours. The situation is worsened by an insecure working environment for women posted to rural areas.

(b) Insufficient awareness of CEDAW

Generally, there is a lack of awareness of CEDAW and women's rights. This has, to some extent, led to scepticism on the usefulness of CEDAW and to absence of sensitisation on women's rights.

(c) Low levels of participation

The low level of participation of women at the decision making level and in senior positions was also discussed. For example, while women make up 52% of voters, the last general election saw less than 10% of women candidates being nominated. Female representation in the legislative assembly is at a dismal 6%. Participants suggested that a 30% quota be implemented, and to introduce the concept of a 'quota within a quota' for fairer representation of women from different ethnic groups.

(d) Inadequate institutional support

There are insufficient shelters for survivors of domestic violence. It was observed that domestic abuse cases have been on the rise and that abused women do not know where to seek refuge. Although hospitals provide immediate temporary shelter, the women are only allowed to stay for a short period. Furthermore, hospitals are not appropriate places for shelter as victims of abuse usually have their children with them. Utilising hospitals as temporary shelters also compounds the shortage of beds.

(d) Improved data collation system

While it is encouraging that the Ministry of Women, Family and Community Development is spearheading the collection, analysis and dissemination of gender disaggregated data, it is observed that a similar effort is lacking at State level. It is recommended that the Government upgrades efforts to develop a more comprehensive system for the collation of gender disaggregated data at the State level, particularly in Sabah and Sarawak.

(e) Conducive working environment

Low participation of women in the labour market can be partly attributed to the unfriendly working environment and lack of appreciation of the principle that men and women should equally shoulder family responsibilities. In order to increase female participation, there is a need to update employment legislation and policies, in order that laws and policies are aimed at reconciling family life and careers. It is recommended that the Government and the private sector introduce and implement parental leave in addition to maternity leave, flexible working arrangements/hours, affordable and accessible child-care centres, and family-friendly benefits and entitlements.

2. FORUM ON VIOLENCE AGAINST WOMEN

The VAW Forum saw four papers presented by representatives of the Police, Sabah Lawyers Association and United Sabah Chinese Women's Association, as well as a gynaecologist from Queen Elizabeth Hospital.

Making a point at the VAW Forum in Kota Kinabalu, Sabah

A. ISSUES

A number of issues were raised and discussed during the forum.

(a) Physical and psychological effects of rape

Rape is a crime that is a gross violation of human rights and dignity of a person. It causes not only bodily harm and injury but also affects the survivor's psychological and mental health. In Sabah, the One-stop Crisis Centre (OSCC) offers counselling, clinical and psychological services. The team on duty consists of medical personnel, social welfare workers, representatives from related NGOs and religious groups. Where children are involved, the Suspected Child Abuse and Neglect (SCAN) team is called in for assistance. In addition, the OSCC provides medical care to prevent sexual transmitted disease (STD) and pregnancies resulting from rape.

(b) Increasing incidence of rape

The Borneo Post reported that Sabah has the fifth-highest number of rape reports in the country, with an incident occurring about once every three days. In 2001, 89 cases were reported. The number went up to 117 in 2002 and dropped marginally to 111 in 2003. Of the cases registered in 2003, 81 involved minors; 12 were between 16 and 20 years of age; and 18 were above the age of 20.

(c) Education and prevention

It is the responsibility of both men and women to increase awareness, educate the public and play an active role in addressing and preventing rape. In this regard, the participants urged the Government to play a more active role in preventing and promoting awareness of the issue.

(d) Widespread potential for rape

As there is no 'typical' profile, it is difficult to identify either the potential rapist or the target of rape. Perpetrators have included friends, neighbours, strangers and even family members. The heinous crime does not distinguish between age, ethnicity, socio-economic standing, culture or religion – rape can happen to anyone.

(e) Difficulties encountered by the Police

The Police highlighted difficulties faced in investigating reports of rape. Victims are usually traumatised and afraid, which contribute to inconsistent testimony. The investigating officer is responsible for obtaining all evidence such as DNA samples for analysis. As rape cases need to be handled in sensitive manner, it was suggested that women officers are best suited to handle investigations. Currently, however, there are not enough women police officers to attend to all rape cases reported.

(f) Impact of the practice of *songit*

Sometimes, rape cases are not reported because the family of the survivor or victim receives *songit* (compensation) from the perpetrator. *Songit* is widely practised among the indigenous peoples of Sabah.

(g) Contributory factors

Alcohol abuse and easy access to pornographic materials are said to have contributed to the rising number of rape cases.

B. SUHAKAM'S RECOMMENDATIONS

(a) Multi-disciplinary team

SUHAKAM recommends the establishment of a multi-disciplinary team comprising representatives of the Police, social welfare and health departments, as well as NGOs and experts. It is envisaged that this team would handle all matters relating to rape cases such as the collection of evidence, counselling, treatment of physical injuries, social and psychological trauma, and provision of protection and support to rape survivors. Since there is only one OSCC in Sabah (at the Queen Elizabeth Hospital), SUHAKAM recommends that an OSCC be set up in every district hospital to provide long-term care and support to survivors.

(b) Awareness campaigns

SUHAKAM recommends that the Government, with the support of NGOs, should initiate awareness campaigns to prevent violence against women, focusing on rape. A comprehensive campaign could begin in schools, with emphasis on the seriousness of the

crime and the long-term effects on the survivor. Such a campaign should emphasis the deterrent aspects, while inculcating respect for women and their rights.

(c) Care and support for rape survivors

A large number of rape cases go unreported because of the social stigma attached. This has also prevented survivors from seeking treatment in hospitals. Hence, it is recommended that treatment and investigative procedures be developed which emphasise humane treatment, respect and dignity.

(d) Pre-emptive monitoring

Those who exhibit signs of abnormal and aggressive sexual behaviour, especially during adolescence, should be monitored, as part of the prevention system.

(e) Amendment of relevant laws

SUHAKAM recommends that the Penal Code and other relevant legislation be amended to:

- Enhance protection for minors by making it an offence for the parent/guardian not to report the rape of a minor in their care, unless with good reason;
- Increase the penalty for incest so as to reflect the gravity of the crime;
- Amend provisions that are gender-biased and that discriminate against women;
- Make sexual abuse and violence within marriage an offence *[See Chapter 3(xi)];* and
- Provide support to ease the financial burden of the survivor during the period of recovery and rehabilitation.

(x) MEMORANDUM TO THE SPECIAL COMMISSION TO ENHANCE THE OPERATIONS AND MANAGEMENT OF THE ROYAL MALAYSIAN POLICE

The appointment of a Special Commission to Enhance the Operations and Management of the Royal Malaysian Police (the 'Royal Commission') in February answered a need raised by SUHAKAM and civil society groups. It came at a time when the Police force was under heavy criticism and scrutiny for alleged corruption, use of excessive force and shoddy investigative procedures.[36]

In discharging their duty to maintain law and order, the Police have to exercise various powers, but with accountability and oversight. They are also obliged to respect and protect the dignity and human rights of all persons at all times. SUHAKAM, however, has been receiving complaints alleging alleged deaths in Police custody and as a result of shooting; brutality and inhuman or degrading treatment of persons in custody; and abuse of power and inaction on reports lodged.

In June, therefore, SUHAKAM submitted a memorandum to the Royal Commission ('the Memorandum'). A summary of the areas of concern and the recommendations follows.

1. DEATHS IN CUSTODY AND FROM SHOOTING

Based on complaints lodged since 2003, SUHAKAM has observed that victims of custodial deaths have generally been young men, whose family members had attested to the victim's good health prior to or at the time of detention. Where there were deaths by shooting, the typical Police response has been that it was an act of self-defence or that the victims were dangerous criminals. Deaths from excessive use of force and indiscriminate discharge of firearms by Police personnel violate the right to life, the most basic human right.

Therefore, SUHAKAM recommended to the Royal Commission that:

(a) Police officers at every level and seniority be trained to ensure understanding of legal powers and limitations, to respect human rights and to treat accused persons and/or detainees with the utmost dignity and respect;

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[36] 'Ex-CJ to head Police royal commission'; *malaysiakini*, Feb 4, 2004 (available at: *http://www.malaysiakini.com)*

(b) An amendment be made to the Criminal Procedure Code (CPC) to make it mandatory for Magistrates to hold an inquiry into every case of death in custody or as a result of Police shooting unless a person has been charged for an offence in respect of the death; and

(c) The Police be made aware that the degree of force used must be in direct proportion and only to the extent required for the legitimate ends of law enforcement and for maintaining public order.

2. BRUTALITY, TORTURE AND INHUMAN OR DEGRADING TREATMENT

Complaints to date have included allegations of assault, being punched, kicked or slapped, being forced to confess, being forced to watch pornographic materials or to perform sexual acts, and the denial of medication or medical attention. Treatment of detainees and others with whom the Police come in contact must adhere to basic standards which recognise the inherent dignity, worth and value of human beings.

As these recurring complaints show a pattern of behaviour which is completely unacceptable and must be prohibited, SUHAKAM recommended the following measures:

(a) Rules, instructions, methods, guidelines and practices regulating arrest, interrogation and treatment of persons in Police custody be issued in consonance with international human rights standards and a periodic review be carried out to ensure that the most stringent standards are sustained;

(b) A programme of education and training be conducted for Police officers, particularly those involved in custody, interrogation and treatment of detainees and that the programme includes instructions on international standards prohibiting torture; and

(c) Inculcating in Police officers the need to respect the inherent dignity, worth and value of detainees at all times.

3. ABUSE OF REMAND PROCEDURE

Another area of concern has been misuse of section 117 of the CPC. By taking detainees to Magistrate's Courts in different districts to obtain consecutive remand orders, detainees are held for excessively long periods, some as long as 143 days. This is further compounded by allegations of the disregard of basic rights such as the right to inform family members of their whereabouts and the date of the remand application, the right to a lawyer and the right to be informed of the grounds of arrest. The abuse of remand procedures is a violation of a person's right to liberty and freedom from arbitrary arrest guaranteed in Article 5(1) of the Federal Constitution.

SUHAKAM's recommendations to the Royal Commission included the following:

(a) Persons arrested are to be brought before a Magistrate within 24 hours of arrest within the meaning of Article 5(4) of the Federal Constitution and sections 28 and 117 of the CPC;

(b) If the Police are unable to complete investigations within 24 hours of arrest and if the provision of section 117 of the CPC is not invoked, Police bail pursuant to sections 387(1) and 388(1) of the CPC should be employed;

(c) There must be strict compliance with section 117 of the CPC, i.e. that a remand order can only be granted if "investigation cannot be completed within 24 hours" and there are "grounds for believing that the accusation or information is well founded";

(d) Section 117 of the CPC should be amended to ensure that the Magistrate who makes a remand order must be satisfied that, upon material produced by the Police, there is sufficient justification linking the detainee to the offence being investigated;

(e) That detainees be allowed to contact their family members or friends immediately upon arrest and while in custody; and

(f) The right to counsel and to receive legal advice on all matters relating to the detention should be afforded to the arrested person immediately upon arrest, with the CPC being amended to clearly reflect the unfettered and immediate right to legal counsel.

It is gratifying to note that the Royal Commission has called for a review of Police powers to remand suspects to ensure that detention orders are only given in cases where there is sufficient evidence.[37]

4. RIGHTS AND TREATMENT OF CHILDREN WHO ARE ARRESTED AND DETAINED

One especially disturbing category of complaints received by SUHAKAM is the disregard of rights and treatment of children who are arrested and detained. Children, too, appear to have been on the receiving end of Police brutality and abuse of remand procedures. SUHAKAM stresses that respect for fundamental human rights assumes even a greater role in the protection of children who come into conflict with the law.

Based upon the conviction that children who come into contact with the criminal justice system should be afforded all rights and freedoms and that the best interest of the child should be of paramount importance, SUHAKAM recommended that:

(a) Young detainees should be given police bail;

(b) Pre-trial detention should not be longer than necessary and shall be administered humanely and with respect for the inherent dignity of the child;

(c) The rights to life and to be presumed innocent; the prohibition of arbitrary deprivation of liberty, and of torture and ill-treatment; the avoidance of harsh language; and the rights to maintain contact with their family, to prompt access to legal assistance, to be detained separately from adult detainees, and to challenge the legality of detention should be respected at all times;

(d) Lengthy remand and Police brutality should be checked and addressed immediately;

(e) Parents or guardians of the child arrested must be notified immediately; and

(f) Specialised Police officials and units should be designated or established to handle children who come into conflict with the law.

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[37] Yoon SM, 'Police commission wants remand powers reviewed'; *malaysiakini*, May 17, 2004 (available at: *http://www.malaysiakini.com)*

5. ABUSE OF POWERS AND PROCEDURES

Common grievances have been about inaction and intimidation to dissuade the complainant from lodging Police reports. As to the first allegation, the Inspector-General of Police acknowledged that in 2004, the Police had only investigated 310,000 – a mere 17.22% - of the 1.8 million complaints received.[38] From 2000-2003, SUHAKAM received numerous complaints with regard to Police inaction. Police reports lodged on incidents of assault, illegal search and seizure and threats remain unheeded. Implicit within the duties of the Police are the enforcement of the rule of law and the expeditious exercise of the duty to investigate a crime. Any inaction by the Police in discharging their duties and responsibilities compromises the right of the ordinary citizen to equal protection of the law enshrined in Article 8 of the Federal Constitution and Article 7 of the Universal Declaration of Human Rights.

With regard to intimidation to discourage persons from lodging a Police report, the Royal Commission expressed surprise that despite its scrutiny, such incidents persist.[39]

SUHAKAM recommended that:

(a) Police powers with regard to arrest, search and seizure that are clearly set out in sections 15, 17, 19, 20, 22 and 23 of the CPC be strictly adhered to;

(b) Police officers should not dissuade/intimidate any person from lodging/withdrawing a Police report or arrest anyone without any grounds while he/she is lodging a Police report as the right to make a report on the commission of any offence is provided in section 107(1) of the CPC. Any Police officer who refuses to accept any Police report should be disciplined, through a provision in the Police Act 1967 to make it an offence to refuse to accept a report;

(c) Provisions be made in the appropriate law imposing a mandatory duty upon the Police to investigate or commence investigations, as soon as practicable, into every report lodged in respect of serious cases; and

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[38] Yoon SM, 'Commission needs more time to tackle Police corruption, custodial deaths'; *malaysiakini*, May 21, 2004 (available at: *http://www.malaysiakini.com)*

[39] Yoon SM, 'Police commission wants remand powers reviewed'; *malaysiakini*, May 17, 2004 (available at: *http://www.malaysiakini.com)*

(d) Provisions be made requiring the Police to submit investigation papers within 60 days to the Public Prosecutor, and obliging the Police to inform the complainant of the outcome of the investigations.

6. RIGHT TO FREEDOM OF ASSEMBLY

SUHAKAM notes with regret that its recommendations in its 'Report on Freedom of Assembly' have not been heeded by the Police force. This is evident in the recurrence of excessive use of force in dispersal of peaceful assembly and the lack of co-operation by the Police in issuing permits for peaceful assembly. The assembly at Bukit Aman on Feb 28 and the inability of women's groups to hold the 'Citizens Against Rape' public gathering at the Mid-Valley Exhibition Centre in July 2003 are examples.

SUHAKAM reiterates its recommendations that:

(a) There should be restraint on the part of the Police in the use of canes, batons, tear gas, water cannons and chemical irritants;

(b) Orders to disperse should be clear and audible and be given at least three times at 10-minute intervals, with sufficient time for the crowd to disperse – the Police should not chase and arrest those moving away or those who have moved away;

(c) Use of force should be in accordance with the principles of necessity and proportionality;

(d) Speeches and shouting do not render a gathering not peaceful;

(e) Any presence of the Police and riot Police should be discreet.

7. CODE OF PRACTICE/ETHICS

SUHAKAM also recommended that a professional and ethical standard be infused into the Police force by way of a code of practice or a code of ethics that is in conformity with international human rights standards and principles and the rule of law. SUHAKAM recommended that the subject of human rights be included as an integral part of Police training and at every level of the Police force.

8. INDEPENDENT TRIBUNAL

Currently, disciplinary action can be taken against a member of the Police force under the procedure in Article 140 of the Federal Constitution and the laws made consonant with this. Such complaints are addressed through the Police Force Commission. Alternatively, a complainant can resort to the judicial system, although the procedures are costly, time-consuming and usually out of the reach of the ordinary citizen.

SUHAKAM therefore recommended the establishment of an independent tribunal, to receive, investigate and make recommendations on complaints of misconduct and neglect of duty by the Police or on any practice or procedure of the Police. An independent system dealing with complaints ensures accountability and transparency. The independent tribunal could have the following characteristics:

(a) Power to initiate investigations on its own motion;

(b) Investigations of complaints may be carried out by either by the independent tribunal or the Police themselves or a Police investigation supervised by the independent tribunal. While it is recognised that the involvement of the Police in the recording and investigations of complaints may deter complainants from coming forward, the rationale of having the Police directly involved is so that they can hear and respond to the concerns of the public. To allay fears, however, a provision may be included to ensure that the independent authority ultimately decides the form of an investigation;

(c) The mandatory obligation to inform the complainant of its decision not to take action and the reasons thereof;

(d) An obligation to carry out investigations expeditiously;

(e) An obligation upon the independent tribunal to inform the complainant and any other related person of the progress and outcome of the investigations;

(f) Proceedings of investigation may resemble Court proceedings with modification of the rules of evidence and admissibility to suit the powers and functions of the independent tribunal. For example, the New Zealand Police Complaints Authority is empowered to compel any person to give information or produce any document

or thing notwithstanding the existence of an obligation of secrecy or non-disclosure imposed on that person by or under any enactment;

(g) The tribunal must be empowered to issue guidance, make recommendations, determinations and opinions, supported by reasons;

(h) It should have powers to monitor the implementation of its recommendations and opinions. There should be a mandatory obligation for the Police to inform the tribunal of action taken to give effect to its recommendations. For example, a comprehensive provision enables the New Zealand Police Complaints Authority to send a copy of its opinion and recommendations to the Attorney-General and the Minister of Police and where it considers appropriate, transmit this to the Attorney-General for tabling in the House of Representatives, in instances where no action has been taken by the Police within a reasonable time.

CONCLUSION

It cannot be emphasised enough that all these concerns should be addressed with urgency. It is only by seeing a transparent and efficient Police force that respects human rights and fundamental freedoms - and which subscribes to the highest standards of fairness, humanity and professionalism – that public confidence will be restored.

It is time that the Police discarded the misconception that the promotion and protection of human rights is unrelated to Police work. As protectors of society, their respect for human rights must run parallel with their duties to preserve peace and security. The true test of Police work is to enforce and uphold human rights at all times.

It is equally important to ensure that the Royal Commission, which is tasked with modernising and restoring the credibility of the Police force, is transparent in its own work. It started on a promising footing by pledging, among other aspects, to withhold the identity of those who wish to provide information in secret;[40] to act against serious

[40] Yoon SM, 'Open, transparent proceedings for police commission'; *malaysiakini*, Feb 11, 2004 (available at: *http://www.malaysiakini.com)*

complaints immediately;[41] and even objecting to the presence of Special Branch personnel at its meetings with organisations.[42]

It is also commendable that the Royal Commission has been able to identify problems, such as corruption and disciplinary problems involving Police personnel[43] and the excessive use of force against those arrested.[44]

Perhaps one of the foremost undertakings of the Royal Commission has been its commitment to be open and transparent.[45] Subsequently, however, the sole member of the public present at its meeting was asked to leave and reporters were not allowed in.[46] Furthermore, the Royal Commission's preliminary report has not been made public since it was completed in August. The Royal Commission described it as a secret document[47] and said any decision to release it lies with the Government.[48] The Government, in turn, stated that the report is not meant to be released.[49]

SUHAKAM is concerned that the Royal Commission and the Government have taken the stand not to release the preliminary report, particularly when the recommendations and findings relate to matters of public concern and where principles of transparency and accountability call for its release.[50]

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[41] Yoon SM, 'Immediate probe into urgent cases, says police commission'; *malaysiakini,* April 15, 2004, (available at: *http://www.malaysiakini.com)*

[42] C. Theophilus, 'SB's presence irks police commission chief'; *malaysiakini,* May 20, 2004, (available at: *http://www.malaysiakini.com*)

[43] 'Probe finds corruption rampant in police force'; *malaysiakini,* Aug 10, 2004 (available at: *http://www.malaysiakini.com)*

[44] 'Probe finds corruption rampant in police force'; *malaysiakini,* Aug 10, 2004 (available at: *http://www.malaysiakini.com)*

[45] Yoon SM, 'Open, transparent proceedings for police commission'; *malaysiakini,* Feb 11, 2004 (available at: *http://www.malaysiakini.com)*

[46] B Lian, 'Bad start to royal police commission meeting with NGOs'; *malaysiakini,* March 4, 2004 (available at: *http://www.malaysiakini.com*)

[47] 'Police commission to present first report on Friday'; *malaysiakini,* Aug 3, 2004 (available at: *http://www.malaysiakini.com)*

[48] 'Make your report public, police commission told'; *malaysiakini,* Aug 6, 2004, (available at: *http://www.malaysiakini.com)*

[49] Beh LY, 'Noh: Police commission's report not for public consumption'; *malaysiakini,* Sept 1, 2004, (available at: *http://www.malaysiakini.com)*

[50] See also 'Make your report public, police commission told'; *malaysiakini,* Aug 6, 2004 (available at: *http://www.malaysiakini.com)*

It is hoped that the Royal Commission takes into consideration the views of SUHAKAM, as well as human rights standards and principles in its deliberations, strategic options and recommendations. SUHAKAM further recommends that the Government makes public the final report of the Royal Commission and implements all recommendations to enhance the protection of human rights.

(xi) SUBMISSION TO THE SELECT COMMITTEE ON THE PENAL CODE (AMENDMENT) BILL 2004 AND THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL 2004

When the Government established a Select Committee in July to study the proposed amendments to the Penal Code (Amendment) Bill 2004 ('PC Bill 2004') and the Criminal Procedure Code (Amendment) Bill 2004 the ('CPC Bill 2004'), the decision was very much welcomed, particularly by SUHAKAM which has, since its inception, called for greater public consultation in the legislative process.

The establishment of the Select Committee is the third of its kind. The first was set up in the 1970s to study the amendments pertaining to the law of marriage and divorce and the second, in 1985 to study the Dangerous Drugs (Special Preventive Measures) Bill 1984.

On Aug 20, SUHAKAM made a submission to the Select Committee on the proposed amendments to the PC Bill 2004 and the CPC Bill 2004 (the 'Submission'). Commenting on the Bills from a human rights perspective, SUHAKAM called for the law to be fair, non-discriminatory and to leave no room for doubt in its interpretation or definition. A summary of the issues follows.

A. PENAL CODE (AMENDMENT) BILL 2004

1. Components of the offence in the proposed section 377CA

While SUHAKAM supports the criminalisation of the offence of 'sexual connection by object' in the proposed section 377CA of the PC Bill 2004, the language used to describe the components of the offence is ambiguous. The three main concerns are:

(a) The lack of legal definition of the term 'vagina' in the Penal Code;
(b) The use of the term 'sexual connection' as a component of the proposed offence; and
(c) The absence of the element of consent.

As the proposed section 377CA is an offence-creating section intended to criminalise the various forms of sexual violence against women and girls, it is important that the law is

clear and precise. Gender-based violence is a violation of women's human rights and fundamental freedoms. As such, SUHAKAM recommended that:

(a) The law provides for a definition of 'vagina'. In this regard, SUHAKAM sought guidance from the UK Sexual Offences Act 2003;

(b) Because of the convoluted consequence of proving 'sexual connection' in the said offence, it was recommended that the term 'sexual connection' be removed or explained;

(c) To clearly state whether the offence is committed, with or without consent; and

(d) Although the term 'sexual connection' may exclude doctors conducting medical examination from liability, it would be clearer if the element of consent is added and to explicitly exclude medical examination.

2. Sexual abuse and violence within marriage

In addition to recommendations on the proposed section 377CA, SUHAKAM took the opportunity to raise the issue of sexual abuse and violence within marriage, as such acts are a form of gender-based violence. Grounded in human rights principles, principally the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Malaysia is a party, SUHAKAM recommended that the PC Bill 2004 provides for an offence of sexual abuse and violence within marriage.

B. CRIMINAL PROCEDURE CODE (AMENDMENT) BILL 2004

1. Imprecise definition of 'terrorism offence'

In relation to proposed amendments to the Criminal Procedure Code (CPC), SUHAKAM is concerned that the term 'terrorism offence' defined as a 'terrorist act or terrorism financing offence' in the proposed section 106A of the CPC Bill 2004 may be vague. Although not expressly stated, it appears that the definition is in reference to Chapter VIA of the Penal Code (which has yet to come into effect as law). In this regard, the effect of the words

'terrorist act' and 'terrorism financing offence' as they appear in the Penal Code is too wide[51] and the absence of precision may have an unfavourable impact on the proposed section 106B.

2. Diminished right to privacy

The proposed section 106 A-C seeks to confer on the Police and the Public Prosecutor wide powers with regard to the installation of wiretaps, trace devices, the subpoenaing of communications service providers and the retention of communications data. While SUHAKAM recognises that law enforcement tools must develop in tandem with evolving communications technology, a provision allowing interception and retention of communication without any reasonable and genuine link to the aim of the proposed section violates the individual's right to privacy contrary to Article 12 of the Universal Declaration of Human Rights (UDHR), Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 8 of the European Convention on Human Rights. Thus, SUHAKAM recommended several amendments to the wording of the proposed section 106 A-C so as to allow interception only when information cannot be reasonably acquired by any other means and that a time limit be placed on the retention of data and installation of wiretaps.

3. Mandatory obligation to submit status reports

One proposed amendment in the CPC Bill 2004 is the mandatory requirement for the Police to submit status reports and the proposed section 110(4) imposes criminal liability on any police officer who fails to submit a report to the Public Prosecutor under subsection (1), or fails to state the reasons as required under subsection (2). Save for the proposed section 107A(3), which effectively negates the obligation to submit status reports, SUHAKAM supports this amendment. A large proportion of the complaints lodged with SUHAKAM relates to the inability to obtain information on the status of reports lodged and about Police inaction. Having said that, it was felt that the offence in the proposed section 110(4) is a strict liability offence where intention is irrelevant and the offence is committed notwithstanding that the Police officer may have good reasons for his/her failure,

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[51] See SUHAKAM's Media Statement on the Penal Code Amendments – Chapter on Offences Relating to Terrorism, Dec 9, 2003, Annual Report 2003, Appendix XIII.

for example illness. It should therefore be reviewed in order to avoid any adverse effects on the morale, spirit and effectiveness of the police force.

In this regard, SUHAKAM felt that it would not be fair and reasonable to impose criminal sanctions for the failure to submit status reports. This would be more appropriately dealt with through disciplinary action. In any event, should these be enforced, SUHAKAM is of the opinion that the obligation to submit status reports and the criminal sanction it attracts ought to be extended to all persons and agencies vested with powers to investigate and/or prosecute, such as Immigration officers, Custom officers, officers of the Anti-Corruption Agency and the Public Prosecutor and his officers. This would be in line with the principles of consistency, transparency and accountability.

4. Evidence via video or television link

The proposed section 272B allows a person, other than an accused, to give video or 'live' evidence via 'live' video or television link. Mindful of the need to balance the interest of the right of the accused not to be prejudiced and the right to a fair trial and on the other hand, the rights of witnesses and victims who are called upon to testify, SUHAKAM recommended that the proposed section 272B should only be invoked in exceptional circumstances and under strict conditions. Concerned that the general language of the proposed section 272B is too vague, the Submission cited instances where a vulnerable witness may be allowed to rely on the proposed section 272B and the strict and exact conditions whereby a person may give evidence via video or 'live' evidence via 'live' video or television link.

5. Extension of whipping as a penalty

SUHAKAM took this opportunity to comment on the sentence of whipping in general, although the proposal relates to extending the penalty for certain offences to males over the age of 50. Alluding to the UDHR, the ICCPR, the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, the General Comment on Article 7 of the ICCPR and statements by the UN Special Rapporteur on Torture and the UN Human Rights Committee, there is overwhelming affirmation that whipping as a form of lawful punishment may be considered as cruel, inhuman or degrading

treatment or punishment and even torture. As such, SUHAKAM takes the view that whipping is cruel, inhuman or degrading treatment or punishment and that it could amount to torture and should not be encouraged.

6. Alternative non-custodial sentencing

This will particularly affect youthful offenders. The proposed amendment to section 294 of the CPC extends the type of orders that a Court can direct, to include a bond, with or without sureties in lieu of a sentence of imprisonment. SUHAKAM welcomed the amendment as it will provide another alternative to custodial sentences for youthful offenders. Non-custodial sentences for minor and non-violent offences committed by children should not only include bonds but also other alternative sentences such as performing community service, participating in certain residential or non-residential programmes such as intensive probation, electronic home detention, workender[52] and work release.

7. Police supervision

For offences in sections 376, 377C and 377E of the PC, the proposed section 295(1A) makes it mandatory for the Courts to order Police supervision after an accused has served his sentence of imprisonment. Although mandatory Police supervision may be justified considering that it is limited to serious crimes, SUHAKAM is of the view that in any particular case, the Courts should be given the discretion whether or not to impose Police supervision.

CONCLUSION

SUHAKAM's Submission, in particular the proposal to criminalise sexual abuse and violence within marriage, had engendered much interest and comment from members of the public and religious authorities. Its recommendation was supported by number of non-governmental organisations like the Women's Aid Organisation (WAO), the Joint Action Group against Violence Against Women, the All Women's Action Society and Sisters in Islam.

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[52] Workender is a free programme conducted in the US where supervised groups perform large projects for non-profit organisations and work is performed on the weekends.

However, SUHAKAM was criticised by others. These are some comments against its stance on marital rape (later clarified as sexual abuse and violence within marriage):

- That it is "against *Syariah* law because of one of the reasons of marriage is to legitimise sexual relations" *(Persatuan Guaman Syarie Malaysia and Siti Nor Bahayah Mahmud)*;
- That it "will confuse the institution of marriage and the Islamic people" and that "a wife can only have the right to refuse to have sex with her husband if the husband has AIDS or is a drug addict" (*Datuk Mohd Zaidi Zain*);
- That "it will be disadvantageous and will cause a divide between the husband and wife" (*Prof Datuk Mahmud Zuhdi*);
- That "the recommendation is a step backward for Islam as it denies the right of the husband to sexual intercourse with the wife to whom he is legally married" (*Md Daud Che' Ngah*);
- That "a husband has the right to be intimate with his wife and his wife must obey. If the wife refuses, the rule of *nusyus* (recalcitrant) can be applied and the husband will no longer be responsible for his wife";
- That it is against God's laws and that the proposal came about as a result of Western influences – "Western society felt guilty over the way its men had treated women in the past and that was why it strives to give women additional rights now" (Perak Mufti *Datuk Seri Dr Harussani Zakaria*); and
- That "marital rape is only relevant to non-Muslims as Islamic family law is adequate to check abuses by a husband against his wife. A Muslim wife can turn to the *Syariah* Court if she is dissatisfied or treated with cruelty, and demand a divorce under a procedure called *fasakh*" (*Tan Sri Abdul Hamid Othman*, Religious Adviser to the Prime Minister).

SUHAKAM recommended to the Select Committee that an offence of sexual abuse and violence within marriage should be provided for in the PC Bill 2004. Any form of violence and abuse perpetrated by a spouse within the confines of the domestic household violates and impairs human rights and fundamental freedoms. The problem is of increasing concern today, as statistics of the WAO illustrate that approximately 70 wives have complained that their husbands have raped them.

This issue aside, SUHAKAM hopes that its Submission and those of other members of civil society will be taken into consideration. While the inclusion of civil society in the legislative process is encouraged, it should not be mere tokenism. SUHAKAM looks forward to further public consultation in the legislative process and to the report of the Select Committee in July 2005.

(xii) RIGHTS OF PERSONS WITH DISABILITIES

With the rights of persons with disabilities currently found in various pieces of legislation, the Government's intention to enact legislation that specifically addresses the rights of persons with disabilities ('the proposed legislation') is a positive development. SUHAKAM welcomes the effort to consolidate all rights of persons with disabilities, as comprehensive legislation would enable the development of disability-inclusive infrastructure and processes.[53]

RECOMMENDATIONS

To contribute to the development of the proposed legislation, SUHAKAM has submitted the following recommendations to the relevant Government agencies.

1. General principles

As the proposed legislation is an explicit statement of the rights of persons with disabilities, it is important that it includes the full range of human rights – civil, political, economic, social and cultural rights. It is equally pertinent that it sets out basic principles for interpretation and application. As such, SUHAKAM recommended that the overall aims and the substantive provisions of the proposed legislation should be guided by the principles of dignity, autonomy and independence; equality, reasonable accommodation and full participation; inclusion of persons with disabilities; and a barrier-free society.

2. Definition of disability

It is crucial that the ambit of the definition includes various types of disabilities. SUHAKAM recommended that the definition of 'disabilities' should be broad enough to cover physical, sensory, intellectual, psychiatric disabilities; multiple disabilities; permanent, temporary, episodic and perceived disabilities; and people 'having or regarded as having'[54] a record of a disability.

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[53] Bangkok Recommendations on the Elaboration of a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities; June 4, 2003, Economic and Social Commission for Asia and the Pacific, E/ESCAP/EGM-PWD/Rep.

[54] See section 3 of the Americans with Disabilities Act 1990 which defines "disability" as an individual who has "a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment".

The definition should reflect a paradigm shift to human rights and not be confined to the medical model. The social model of disability, based on the concept of 'equal opportunities' is a more progressive concept that would tackle deep-rooted attitudes of disability, while viewing persons with disabilities as holders of rights. It would include interaction between societal conditions and expectations and the abilities of the individual.[55]

3. Education

With the right to education embodied in various international instruments,[56] particularly Article 23 of the Convention on the Rights of the Child,[57] the importance of providing education to children with disabilities cannot be over-emphasised. Denial of access to education could perpetuate a vicious cycle. This would diminish opportunities for development, access to vocational training, employment, income generation and business development, and the economic and social independence of persons with disabilities.[58]

SUHAKAM recommended that primary, secondary and tertiary education be provided within an integrated setting. Provisions should address training of teachers; availability of necessary and updated equipment and support in the classroom;[59] an obligation for educational institutions to modify physical barriers, adopt new teaching methods and environments, and alternative and augmentative communication modes; and the right of a hearing-impaired child to receive education in Sign Language and alternative learning strategies. Exceptions to the integrated education should only be made on a case-by-case basis, and provided that education in a special school or establishment can be shown to meet the needs of the child.[60] The education system should also provide education for youth and adults with disabilities.[61]

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[55] UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, *loc. cit, infra* n. 17.
[56] Article 26 of the UDHR, Article 13 of the ICESCR, Article 10 of CEDAW, Article 28 of CRC, UNESCO Convention against Discrimination in Education.
[57] Article 23 of the CRC explicitly places an obligation on State Parties to "ensure dignity, promote self-reliance and facilitate the (disabled) child's active participation in the community". This includes the disabled child's "effective access to and receipt of education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a mannner conducive to the child's achieving the fullest social integration and individual development, including his or her cultural and spiritual development".
[58] Biwako Millenium Framework for Action: Towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific, Para. 25; O'Reilly, A, 'The right to decent work of persons with disabilities' (2003), Working Paper No. 14, International Labour Office, Geneva.
[59] General Comment 5, Committee on the Economic, Social and Cultural Rights, *loc. cit. supra*, n. 33, at para. 35.
[60] Biwako Millenium Framework for Action: Towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific, at para. 27.
[61] UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, *loc. cit, infra* n. 17, Rule 5.

4. Participation in political and public life

SUHAKAM recommended that the proposed legislation explicitly guarantees persons with disabilities the right to vote and to stand for elections on equal basis with other citizens. There must be accessible and easily understood voting procedures and facilities, secrecy of the ballot, assistance during the voting process, equal opportunity to participate in activities and administration of political parties and in civil society, and the right to form, join and participate in political organisations.[62]

5. Employment of persons with disabilities

It is time that society realises the ability of persons with disabilities to contribute to the development of a nation. SUHAKAM recommended that the proposed legislation includes the right to *decent* work[63] (emphasis added) and promotion of equal opportunities in employment. SUHAKAM recommended that three main elements be covered.

(a) Equality of opportunities including promotion in employment

To ensure equal opportunities in the labour market,[64] SUHAKAM recommended that the proposed legislation should:

(i) Prohibit direct and indirect discrimination in the employment sphere[65] including discrimination in the form of qualification standards, tests, selection criteria or methods of administration;[66]

(ii) Prohibit dismissal on grounds of disability, in both the public and private sphere;

(iii) Include affirmative actions aimed at 'effective equality of opportunity and treatment' between persons with disabilities and other workers, in the areas of hiring, placement and advancement process;[67] and

(iv) Ensure retention, continued employment and promotion of persons with disabilities.

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[62] Submission by the Asia Pacific Forum of National Human Rights Institutions to the 4th Session of the Ad Hoc Committee (August-September 2004), at para. 173.

[63] Article 23(1) of the UDHR, Biwako Millenium Framework for Action: Towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific, at para. 32.

[64] See also General Comment 5, Committee on the Economic, Social and Cultural Rights, *loc. cit. infra*, n. 33

[65] This includes the right to equal pay enshrined in Article 23(2) of the UDHR.

[66] Disability Discrimination Act 1995 – An enabling act or a discriminating law, (available at: *http:freespace.virgin.net/steven.jacklin/ddacivr.html*); See also Article 2 of the International Covenant on Civil and Political Rights which prohibits discrimination, Rule 7 of the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, *loc. cit. infra*, n. 17.

[67] Sections 793 and 791, 29 United States Code (USC).

(b) Vocational and rehabilitation

SUHAKAM recommended that provisions be included on vocational rehabilitation, vocational guidance, vocational training, placement, employment and other related services to ensure that persons with disabilities are able to secure and retain their employment and advance in their careers.[68]

(c) Reasonable adaptations

The proposed legislation should place a legal obligation on employers, including private entities, to make reasonable adjustments and adaptations to workplaces, jobs, designs, tools, machinery and work organisations to facilitate the employment and training of persons with disabilities.[69]

6. Built environments and public transportation

Central to the concept of inclusiveness is a barrier-free society for persons with disabilities. Studies have shown that discrimination is often the result of physical barriers that exist in the transportation system, housing and in the workplace.[70] These prevent persons with disabilities from realising realistic job opportunities.[71]

As such, SUHAKAM recommended that the proposed legislation takes a holistic approach to remove all physical barriers in every area of life such as in architectural structures, public accommodations (goods, services and facilities), public transportation services, streets and other outdoor environments[72] including inns, hotels, restaurants, bars, theatres, cinemas, concert halls, bakeries, grocery stores, shopping malls, hypermarkets, travel services, offices of lawyers, doctors, clinics, libraries, nurseries and gymnasiums.[73] This is to guarantee full and equal enjoyment of goods, services, facilities, privileges and accommodations.[74] This obligation should include any person (Government or private entity) who owns or leases or leases to or operates such places.[75]

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[68] Articles 3 and 7 of the International Labour Organisation Convention 159 – Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons).
[69] O'Reilly, A, 'The right to decent work of persons with disabilities', *op. cit., supra,* n. 6, Rule 7 of the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, UN General Assembly Resolution 48/96, Dec 20, 1993.
[70] General Comment 5, Committee on the Economic, Social and Cultural Rights, *loc. cit. infra*, n. 33.
[71] *Ibid*
[72] UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, *loc. cit, supra* n. 17, Rule 5.
[73] Section 12312 42 USC.
[74] *Ibid.*
[75] *Ibid.*

7. Information and communication

Access to information and communication is a basic human right. As such, provisions in the proposed legislation should ensure that information in every form should be accessible to persons with disabilities, including access to visual and auditory communication.[76] The scope covers the right to use language suitable to the particular characteristic of each disability, the right to special assistance, right to use one's own form of communication, and right to receive knowledge, information and services in alternative communication codes including Braille and Sign Language.[77] SUHAKAM also recommends the standardisation of Sign Language, Braille, finger Braille and tactile sign language in Malaysia.

8. Health and rehabilitation

SUHAKAM suggested that the right to health and the right to rehabilitation should be dealt with in separate provisions as the aims and services of health and rehabilitation are different. Also, independent provisions with regard to health and rehabilitation would be in consonance with a rights-based approach, focused on empowering the individual and of the 'primacy of the person against the power of the expert over the process'.[78]

(a) Health care

SUHAKAM recommended that the proposed legislation should unequivocally state the right of everyone to the enjoyment of the highest attainable standard of physical and mental health[79] and provide for the equal provision and allocation of resources and treatment of health care.[80] More importantly, health care services must respect human rights, dignity, autonomy and privacy of persons with disabilities,[81] including confidentiality of medical records and any health information of persons with disabilities.

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[76] Article 6(iii)(f) of the Council of Europe Recommendation 1185 (1992) on rehabilitation policies for the disabled (available at: *http://assembly.coe.int*)

[77] Quinn, G., & Jimenez, R., 'What rights should the treaty contain?'; Bangkok meeting

[78] Comments by Rehabilitation International at the Third Session the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (available at: *http://www.un.org/esa/socdev/enable/rights/adhoccom.htm)*

[79] Article 12(1) of the ICESCR.

[80] The right to health care should also include medical, oral, psycho-social, mental and reproductive healthcare - Submission by the Asia Pacific Forum of National Human Rights Institutions to the 4th Session of the Ad Hoc Committee, *op. cit, supra* n. 10,at para.180.

[81] Submission by the Asia Pacific Forum of National Human Rights Institutions to the 4th Session of the Ad Hoc Committee, *op. cit, supra* n. 10, at para.181.

(b) Rehabilitation

SUHAKAM recommended that the definition of 'rehabilitation' be based on that in the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, which refers to this as a "process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functions, thus providing them with the tools to change their lives towards a higher level of independence".[82] Distinction should be drawn between rehabilitation and habilitation; the former concerns persons who acquire a disability and the latter refers to those born with a disability. This is to ensure that rehabilitation and habilitation services are tailored to individual needs.

(c) Prevention, early detection and early intervention

SUHAKAM recommended that related provisions should include primary prevention (of physical, intellectual, psychiatric or sensory impairments) and secondary prevention (of impairments leading to permanent functional limitation or disability).[83]

SUHAKAM also recommended that provisions be included for early detection and identification of disabilities, and for intervention, from birth to four years of age.[84] This would enhance a child's education opportunities.

9. Equality and non-discrimination

The principle of equality embodies a wider concept that acknowledges that simply being different could place persons with disabilities in a less equal position. Since discrimination can occur in direct and indirect ways, including through "segregation and isolation",[85] it is important that the proposed legislation makes it an offence to discriminate on the basis of a person's disability/disabilities. SUHAKAM recommendations included:

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[82] UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, *loc. cit, supra* n. 17.

[83] *Ibid.*

[84] Biwako Millenium Framework for Action: Towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific, at para. 26.

[85] General Comment No. 5, Committee on Economic, Social and Cultural Rights (1994), 11th session (available at: *http://www.unhchr.ch*) at para. 15-18.

(a) Definition of 'discrimination on grounds of disability'

The proposed legislation should be progressive and sufficiently flexible to encompass all types of discrimination, with failure to provide reasonable accommodation being regarded as discrimination on the ground of disability;[86]

(b) A provision that explicitly prohibits indirect discrimination

(c) Special measures and reasonable accommodation

Special measures are required to give meaning and effect to the concept of equal opportunities. For example, equal opportunities that are premised on the notion of reasonable accommodation would necessitate a requirement to desist from implementing measures that would have a negative impact on persons with disabilities, while imposing the obligation to put in place special measures to modify and eliminate social, attitudinal and structural disadvantages faced by persons with disabilities.[87] It is through these special measures that the full and equal participation of persons with disabilities as active members of society can be achieved.[88]

(d) Examination of competing needs

SUHAKAM called on relevant authorities to pay special attention to the issue of competing needs of people with different disabilities.[89] For example, the provision of tactile ground indicators, which assist the blind and the visually impaired may present a barrier to a person in a wheelchair.[90] Additional and progressive provision of needs for persons with disabilities should also be addressed. This would allow the authorities to reasonably prioritise the needs of those with various disabilities[91] and prevent a situation where they may be held responsible for discriminating between different types of disabilities.[92]

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[86] General Comment No. 5, Committee on Economic, Social and Cultural Rights (1994), 11th session states that "for the purposes of the Covenant, "disability-based discrimination" may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect if nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights"; See also section 102(5)(A) of the Americans with Disabilities Act 1990.

[87] General Comment No. 5, Committee on Economic, Social and Cultural Rights, *loc. cit. supra*, n. 33, at para. 9 - 12.

[88] *Ibid.*

[89] Submission by the Asia Pacific Forum of National Human Rights Institutions to the 4th Session of the Ad Hoc Committee, *op. cit, supra* n. 10, at para. 103.

[90] *Ibid.*

[91] *Ibid.*

[92] *Ibid*

(e) Multiple discrimination

SUHAKAM also recommended that the proposed legislation explicitly recognises the multiple discrimination faced by certain groups, They include women, children or elderly persons with disabilities, persons with severe or multiple disabilities, people with disability from racial, ethnic, linguistic minorities, indigenous persons with disabilities and persons with disabilities who live in poverty. Specific recognition would ensure that the substantive rights of such persons are safeguarded.

10. Enforcement and monitoring mechanisms

One of the most important features of any legislation is its enforcement mechanism. While it may be beneficial to identify a particular Government agency as a co-ordinating body, a situation must be avoided where the implementation of the legal provisions becomes the responsibility of a single agency. Effective implementation must involve multi-sectoral collaboration. The proposed legislation must formulate clear, specific and enforceable obligations and standards so that authorities are able to take identifiable and verifiable steps to give effect to the rights recognised.

An examination of disability legislation in various countries shows that a Commission is usually established to oversee implementation. The Disability Discrimination Act 1992 of Australia is administered by the Human Rights and Equal Opportunities Commission; in New Zealand, the enforcement agency for disability discrimination is the Human Rights Commission; and implementation of the Americans with Disabilities Act 1990 falls within the jurisdiction of the Department of Justice (Services/Accommodations), the Equal Employment Opportunity Consortium, the Department of Transport and the Federal Communications Commission.

To ensure effective enforcement of rights for persons with disabilities, SUHAKAM recommended that the proposed legislation should establish an independent Commission – with its members to include persons with disabilities – to monitor implementation. This should be tasked to monitor the coherence, comprehensiveness and effectiveness of measures set out in the legislation, with powers to conduct inquiries into breach of rights of persons with disabilities.

11. Exemptions

Exemptions to obligations may be necessary but "should be kept to the minimum necessary to avoid undermining the principle itself".[93] In addition, exemptions should only be granted for a temporary period.

CONCLUSION

Studies have indicated that the numbers of persons with disabilities will rise in the 21st century.[94] Persons born with disabilities will be more likely than before to survive, while high levels of stress and accidents generated by modern lifestyles could result in disabilities. An ageing population and survivors of war and conflict will add to the numbers.[95] As such, the need for legislation that espouses equality and full participation of persons with disabilities assumes greater importance.

SUHAKAM has urged the Government to ensure that the process of drawing up the proposed legislation is transparent and participatory, and to hold dialogues with persons with disabilities and organisations of – and for – persons with disabilities. SUHAKAM looks forward to greater consultation in the formulation of the Persons with Disabilities Bill.

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[93] Hansard 22/5/95 in Disability Discrimination Act 1995 – An enabling act or a discriminating law (available at: *http:freespace.virgin.net/steven.jacklin/ddacivr.html)*

[94] *Working Towards Social Integration in the ESCAP Region* (2001), Social Policy Paper No. 3, United Nations Economic and Social Commission for Asia and the Pacific.

[95] *Ibid.*

CHAPTER 4

MALAYSIAN HUMAN RIGHTS DAY

CHAPTER 4

MALAYSIAN HUMAN RIGHTS DAY

SUHAKAM selected the theme 'Human Rights & Good Governance' for the Fourth Malaysian Human Rights Day Conference. The choice was made in view of alleged rampant corruption and the Government's call for greater transparency and accountability, and for civil society to participate actively in promoting good governance in both the public and private sectors. The objective of the conference was to examine the relationship between human rights and good governance in order to:

- Better promote human rights within good governance;
- Integrate principles of human rights into good governance; and
- Establish a role for human rights in the enhancement of a harmonious society.

The run-up to the conference was marked by an unprecedented demand for places, resulting in it being widened from the intended 250 participants to 400. The conference was held on Sept 9 and 10 in Prince Hotel and Residence, Kuala Lumpur.

Dato' Mohd Radzi Sheikh Ahmad, Minister in the Prime Minister's Department, officiated at the opening on behalf of the Deputy Prime Minister, Dato' Sri Mohd Najib Tun Abdul Razak, who was attending to an urgent State matter.

His opening address pointed out that good governance must not be analysed in a vacuum, but that each country's socio-political background must be taken into consideration in determining the relationship between human rights and good governance. The primary aim of good governance should include the improvement of the quality of life and overall standard of living of citizens. The only viable way of attaining this aim is through a system of administration that is transparent, responsible, accountable, participatory and responsive to the needs of the people.

The Deputy Prime Minister also noted that a democratic government is the hallmark of good governance. The current model of governance of the Government in Malaysia is based on consensual decision making, which provides equal opportunities for all ethnic groups to assume an active role in the political and economic arena.

He remarked that, on the global front, human rights seem to be an exclusive instrument for the use of a few powerful nations. Therefore, he advocated changes to the United Nations structure to ensure equal representation and sharing of power among member-nations.

1. PRESENTATIONS

The first keynote address, entitled 'Incorporation of Human Rights Principles in Governance' was presented by Datuk Maximus @ Johnity Ongkili, Minister in the Prime Minister's Department. He gave a comprehensive appraisal of the Government's efforts to instil good governance into the administrative structure. The Government is aware that without good governance it will be difficult for Malaysia to compete for foreign investments. Corruption which increases costs and lowers quality of products will hinder Malaysia's competitiveness.

An efficient delivery system would provide another cutting edge, hence the Government's insistence on an efficient public service. The Government has set up the Integrity Institute of Malaysia and formed a National Integrity Plan to create the framework for good governance. The speaker pointed out that the Government is also putting emphasis on education because an educated and informed citizenry will demand greater accountability and will be able to make informed decisions.

In the second keynote address, Mr Lim Kit Siang of the Democratic Action Party spoke on 'Accountability and Transparency for Good Governance in the Private and Public Sectors'. He provided an account of the Government's shortcomings in its efforts to achieve an efficient, accountable and transparent administrative system.

2. SYMPOSIUMS

Two symposiums followed the opening session. Symposium I was on 'Human Rights, Good Governance and a Better and Harmonious Society'. The first presenter, Prof Dato' Dzulkifli Abdul Razak, Vice-Chancellor of Universiti Sains Malaysia, provided a detailed account of the symbiotic relationship between human rights and education. He said a

harmonious society contributes to societal development and the nation's well being. Education paves the way to a harmonious society, since "knowledge values" are instilled.

He said universal education must be adopted at all levels. However, tertiary education has become a tradable commodity, thereby undermining a rights-based approach to education. This poses the danger of leaving behind the poor, and leading to the creation of two distinct classes of people. A liberalised education sector would allow the rich to dictate the agenda to serve their own interests, and the quality of education may be compromised for short-term gains.

The second speaker, Datin Dr Saradha Ramaswamy Iyer, examined the social and economic dimensions of human rights and good governance within a wider context of global governance, globalisation and terrorism.

She said there is a need to re-evaluate approaches and accountability of the World Bank and International Monetary Fund because of the flaws in democracy in those institutions. The heads of these institutions are chosen by US and Europe, while their economic advice is based on free market and their accountability is confined to their largest shareholder. As a result, the concept of a free market and financial liberalisation becomes a power tool that is used to dominate other countries, thereby amounting to a 'might is right' approach to governance.

The third speaker, Mr. Malik Imtiaz Sarwar examined the root causes of poor governance. He said that, as social harmony does not exist in vacuum, one must begin by understanding the character of society.

While Malaysia is a multi-racial country, he noted that there are many instances where the freedom of religion only exists superficially. He attributed current deficiencies to the influence of self-serving individuals utilising the might-is-right dimension, and narrowed down the root cause to the absence of good governance. He dismissed the twin notions that the contemporary human rights movement is 'Western' in its orientation and that it has no place in Asian societies.

The second symposium was on the theme 'The Role of Civil Society in Good Governance'. Professor Datuk Dr Ismail Md Salleh, Vice-Chancellor of the International University College

of Technology Twintech, proposed that civil society and the Government should work together instead of being adversaries. Civil society organisations or non-governmental organisations possess many attractive qualities such as mobility, flexibility and grassroots experience, which enable them to monitor the Government effectively. In contrast, the Government is held to rules and procedures.

He said the Government should remember that it has been elected by the people and that it should be the servant, rather than the master of the people. In practice, though, governments have a tendency to dominate the electorate in order to stay in power. The speaker recommended the philosophy of equality where government and civil society must have mutual respect, tolerance and empathy for each other's views and interests.

Narandran Jody Kollapen, Chairperson of the South African Human Rights Commission, explained the struggles faced by his country. He said governance is in essence about citizens participating in the decision-making process that will, in due course, have an impact on their aspirations. Civil society is the most effective means of exerting control over the power of the State, supplementing the role of political parties in stimulating political participation and increasing political efficacy.

He cited two pre-conditions to obtain the goals of good governance. Firstly, the constitutional and legal framework must embrace the principles of good governance and seek to design the democratic landscape in a manner that gives effect to those principles. Secondly, Parliament should create mechanisms to ensure that draft legislation is made broadly available for public comment, encourage citizens' participation in making submissions and give serious attention to these submissions. Where appropriate, Parliament should conduct public hearings on important pieces of legislation. The challenge of good governance is to build an efficient and democratic culture within the machinery of government; one which respects human rights and is accountable to the civic culture in society at large.

3. SUHAKAM'S RECOMMENDATIONS

Based on the presentations and discussions that followed, SUHAKAM would like to recommend the following measures.

(a) Public consultation

- The Government should encourage public forums on key draft laws to enable citizens' participation and submissions; serious attention should be given to the submissions received.

- The Government should provide legislative mechanisms and implementation activities to ensure public participation is achieved in decision making on important matters.

(b) Freedom of Information

- The Government should enact Freedom of Information[96] legislation aimed at recognition of the right to information which includes the right to seek, receive and impart information.

(c) Convention of Ministerial Responsibility

- The accountability of ministers to Parliament should be strengthened by ensuring that ministers accept responsibility for policy errors or failure of policies.

- A Code of Ethics should be drawn up for all Members of Parliament and of State Legislative Assemblies, which should maintain a record of their declaration of financial interests and assets. These should be deemed as public documents that are open to scrutiny.

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[96] See UN General Assembly adopted Resolution 59(1), Dec 14, 1946: *Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated'*; Article 19 of the Universal Declaration of Human Rights: *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and* ***to seek, receive and impart information*** *and ideas through any media and regardless of frontiers.* (emphasis added); and Article 19 of the International Covenant on Civil and Political Rights:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   a. For respect of the rights or reputation of others;
   b. For the protection of national security or of public order (*ordre public*), or of public health or morals.

- Leaders and civil servants at the highest level should adhere closely to the practice of periodically making a public declaration of their assets.

(d) Equality

- The Government should ratify the International Convention on the Elimination of all Forms of Racial Discrimination[97], as previously recommended by SUHAKAM in its annual reports, as well as the Convention against Discrimination in Education.[98]

(e) The National Integrity Plan

- Malaysia should ratify the United Nations Convention Against Corruption 2003.[99]

- A Parliamentary Committee on National Integrity should be created for oversight of the national campaign against corruption.

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[97] Article 25 of the International Covenant on Civil and Political Rights (1996)and as clarified in the general comment to Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and
(c) To have access, on general terms of equality, to public service in his country.
See also CCPR General Comment 25, at para 7:
'Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws that are in accordance with paragraph (b). Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1'.

[98] Adopted by the General Conference at its 11th session, Paris, Dec 14 , 1960.

[99] Oct 31, 2003, the United Nations General Assembly adopted the UN Convention Against Corruption (UNCAC). The purposes of the Convention are to:
- promote and strengthen measures to prevent and combat corruption more efficiently and effectively
- promote, facilitate and support international cooperation and technical assistance
- promote integrity, accountability and proper management of public affairs and public property

(f) Anti-Corruption Agency

- This should be converted into an independent Commission, and made accountable to an independent authority rather than to the Prime Minister.

(g) Judiciary

- Legislation should be introduced to set up a Judicial Council to consider complaints against judges who are in violation of the Judges' Code of Ethics 1994.[100]

- The Judiciary should adopt and adhere to the Bangalore Principle of Judicial Conduct[101] and Beijing Principles.[102]

(h) Non-governmental organisations

- These groups should work with the Government in complementary manner – for instance, to provide constructive criticism in resolving problems – rather than take an adversarial stance.

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[100] The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.

[101] The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, Nov 25-26, 2002.

[102] Article 10 of the Beijing Principles:
(i) To ensure that all persons are able to live securely under the Rule of Law
(ii) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights within its own society; and
(iii) To administer the law impartially between citizen and citizen and between citizen and State.

CHAPTER 5

REPORT OF THE HUMAN RIGHTS EDUCATION AND PROMOTION WORKING GROUP

CHAPTER 5

REPORT OF THE HUMAN RIGHTS EDUCATION AND PROMOTION WORKING GROUP

The Human Rights Education and Promotion Working Group (EWG) continued to lead in inculcating awareness and better understanding of the values and principles of human rights in society. By focusing on human rights education and promotion of inherent values, EWG hopes to empower Malaysians to uphold and protect not only their rights, but also the rights of others. The activities and programmes conducted in 2004 were aimed at reaching out to the widest possible cross-section of society, including children, civil society organisations, law enforcers and decision makers in the Government.

1. HUMAN RIGHTS EDUCATION IN SCHOOLS

SUHAKAM is committed to educating young people on human rights through pro-active ways. The Commission is aware of the importance of instilling human rights learning in the formal setting and has therefore promoted evolvement of a human rights culture in schools and other education institutions.

To achieve this objective, SUHAKAM has employed two main strategies:

- To work with the Ministry of Education to integrate human rights into the education system by rectifying misconceptions of human rights among educators and decision makers, and building their understanding of the Convention on the Rights of the Child (CRC); and

- To use art as a medium to promote understanding of human rights among children and young people.

(a) Conference on Human Rights Education in Schools

SUHAKAM organised this national conference from March 1-2. The objectives were to increase awareness and understanding of the CRC, and to dispel misconceptions of human rights, especially among teachers and decision makers in the Ministry of Education.

Tan Sri Abdul Rafie Mahat, the Director-General of Education, officiated at the conference. It attracted 165 participants from various departments in the Ministry of Education, State Education Departments, teacher-training colleges, universities and schools. Among the speakers was Dr Eric Tan AM, Chancellor of Curtin University of Technology in Perth, Western Australia.

(b) Resources for new subject

SUHAKAM has been looking into the possibility of co-operating with the Ministry of Education to provide resource materials for a new subject, 'Civics and Citizenship', to be implemented in schools in 2005. SUHAKAM hopes these materials will complement the textbooks in use. The Commission also hopes to participate in the ministry's training scheme on the new curriculum.

(c) Poster art competition

SUHAKAM organised a Poster Art Competition with the theme 'Education for All' in continuation of efforts to promote human rights through art. Entries were sought in four categories – Primary, Lower Secondary, Upper Secondary, and College and Universities. Although there were fewer entries compared to a similar competition held in 2003, the quality was of a high standard. These clearly conveyed the message of Article 28 of the CRC, which aims to make primary education compulsory, available and free to all. The prize-giving ceremony was held on April 20 at the Sheraton Imperial Hotel in Kuala Lumpur. An exhibition of the winning entries was held at the National Library from Oct 5-20.

2. INDIGENOUS PEOPLES

In July, the Department of Orang Asli Affairs submitted feedback on issues raised in SUHAKAM's report on 'Hak Asasi Orang Asal', published in 2003. The Government had directed the department to compile the views of various agencies in Peninsular Malaysia on relevant issues in the report. *[See Appendix IX]*

SUHAKAM, while welcoming the responses, was also of the view that the Government's responses could have been more precise as this would assist the Commission in its action plans on the rights of indigenous peoples. The Government could also make a bigger effort to address issues affecting indigenous peoples, as revealed by the Orang Asal and endorsed by SUHAKAM.

As a response to various memoranda and complaints received, and to issues raised at dialogues with indigenous peoples, SUHAKAM placed special focus on Native Customary and Land Rights during the year. *[See Chapter 3(ii)]*

3. RIGHTS OF THE CHILD

To increase public understanding of the provisions of the CRC, five more training-of-trainers workshops were conducted, covering five zones. Participants were from Government agencies and non-governmental organisations (NGOs) that are directly involved in child development.

The first workshop, conducted in Sarawak from March 1-3, was officiated by Datuk Sharifah Mordiah, the State Minister for Welfare and Women's Affairs. The second was held in Penang from May 24-26, for participants from Penang, Kedah and Perlis. The eastern zone workshop was held from July 25-27 in Kuala Terengganu, for participants from Pahang, Terengganu and Kelantan.

The southern region workshop was held from Sept 20-22 in Johor Bahru, for those from Johor, Melaka and Negri Sembilan. The final session was held in Kuala Lumpur from Dec 20-22 for participants from the 'central zone' comprising Kuala Lumpur, Selangor and Perak.

The CRC training manual was translated into Bahasa Melayu and published in October. *[See Chapter 3(i)]*

4. PERSONS WITH DISABILITIES

SUHAKAM organised two Roundtable Discussions in co-operation with the Ministry of Education. The first was held on March 29 with the theme, 'Development of Children with Disabilities through Collaboration'. It was attended by representatives of the Special Education Department in the Ministry of Education, other government agencies, parents with disabled children and NGOs that work with children with disabilities. The objective was to provide a platform for the ministry, NGOs and parents to exchange views and to work collectively towards improving and enhancing special education.

The second was held on Oct 19 to seek collaboration between government agencies and parents, for the development of children with disabilities. Most of the participants were parents of disabled children and representatives of NGOs such as Parents Support Groups. Government agencies such as Social Welfare Department, Economic Planning Unit and Department of Human Resources also sent officers to the discussion.

5. SUHAKAM LIBRARY

By December, the library had a total 3,305 books and reference materials in keeping with a target to turn this into the country's premier human rights resource centre. The target is a comprehensive collection of reference materials to assist Commissioners, officers and staff in research and daily work, as well as meet public needs for information. The collection comprises books on human rights, conference and seminar papers, Malaysian and international law publications, Government publications, an audio-visual collection and newsletters of human rights organisations. All the titles can be accessed via the Library Online Public Access Catalogue.

MEMBERS OF HUMAN RIGHTS EDUCATION AND PROMOTION WORKING GROUP
(up to April 2004)

Dr Chiam Heng Keng (Chairperson)
Tan Sri Datuk Seri Panglima Simon Sipaun
Prof Dato' Mohd Hamdan Adnan
Dato' Asiah Abu Samah

MEMBERS OF HUMAN RIGHTS EDUCATION AND PROMOTION WORKING GROUP
(from May 2004)

Dato' Asiah Abu Samah (Chairperson)
Tan Sri Datuk Seri Panglima Simon Sipaun
Dr Chiam Heng Keng
Prof Dato' Mohd Hamdan Adnan
Dato' Dr Sharifah Hapsah Syed Hassan
Prof Emeritus Dato' Khoo Kay Kim
Dato' Siva Subramaniam

CHAPTER 6

REPORT OF THE COMPLAINTS AND INQUIRIES WORKING GROUP

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REPORT OF THE COMPLAINTS AND INQUIRIES WORKING GROUP

SUHAKAM received 614 complaints, reflecting a 128% increase over 269 cases in 2003. The classification of complaints is shown in Table 1.

The Commission also accepted 66 memoranda, of which 35 were received at the headquarters in Kuala Lumpur. *[See Appendix I]*

1. ANALYSIS OF COMPLAINTS

The complaints mainly comprised allegations of violation of human rights by law enforcement officers or abuse of power by Government officials, and on land-related issues.

SUHAKAM Commissioners visit a remote area in Sabah

Site visit during the Public Inquiry held in Kundasang, Sabah

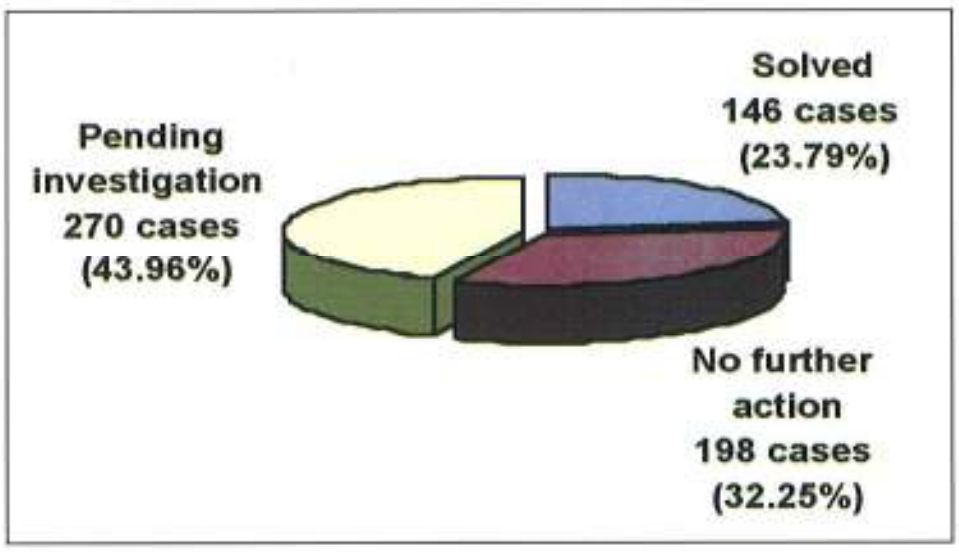
Table 1: Nature of Complaints, 2004

NO.	COMPLAINTS	TOTAL
1.	**Government Agencies**	
	(i) Police Force	
	• Allegations of abuse of power	23
	• Police inaction	23
	• Police violence	16
	• Grounds of arrest/family not informed	8
	• Delays in investigation	8
	• Section 117 CPC/Emergency Ordinance	6
	• Dissatisfaction with superior officers	6
	• Deaths in custody	3
	• Allegations of carelessness	2
	• Deaths by police shooting	1
	• Applications for permits/ assembly	1
	• Work procedures	1
	(ii) National Registration Department	20
	(iii) Anti-Corruption Agency	7
	(iv) Election Commission	5
	(v) Immigration Department	3
	(vi) Customs Department	2
	(vii) Prisons Department	2
	(viii) Perak Religious Affairs Department	1
	(ix) Road Transport Department	1
2.	**Local Authorities**	
	(i) Ampang Jaya Municipal Council	3
	(ii) Kuala Lumpur City Hall	2
	(iii) Bentong District Council	1
	(iv) Tanjung Malim District Council	1
	(v) Ipoh City Council	1
	(vi) Shah Alam Municipal Council	1
	(vii) Selayang Municipal Council	1
	(viii) East Johor Bahru District Council	1
3.	**Land**	**163**
4.	**Employment**	**58**
5.	**Professional negligence**	**28**
6.	**Housing**	**19**
7.	**Education**	**15**
8.	**SOCSO and EPF**	**14**
9.	**Banking**	**10**
10.	**Internal Security Act**	**8**
11.	**Judiciary**	**3**
12.	**Others**	**146**
	TOTAL	**614**

2. RESOLUTION OF COMPLAINTS

A total of 146 cases (23.79 %) were settled, while 270 cases (43.96 %) are still pending resolution. The remaining 198 cases (32.25%) were not cases of violation of human rights and have been classified as 'not requiring any further action' (NFA). Some cases in the NFA category were referred to the relevant government agencies for action. Over the year, 344 complaints files were closed, including solved cases and cases marked NFA. *[See Chart]*

Chart: Resolution of Complaints



3. ACTION ON COMPLAINTS

The Complaints and Inquiries Working Group (CIWG) acted on the complaints in several ways:

(a) Getting explanations

This was done by way of visiting, writing or calling up the parties who alleged human rights violations.

(b) Holding dialogues

Closed-door dialogues were held with enforcement agencies and related bodies on:

(i) Deaths in custody

(ii) Allegations of violation of the human rights of workers in the hypermarket sector *[See Appendix II]*

(iii) Issues of workers rights *[See Appendix III]*

(iv) Issues of illegal immigrants and asylum seekers in Malaysia *[See Chapter 3 (vi)]*

(c) Conducting visits

Visits were conducted in line with section 4 (2)(d) of the Human Rights Commission of Malaysia Act 1999, to detention camps, Police lock-ups, and Prisons and Immigration detention depots.

(d) Issuing Press statements

In total, SUHAKAM issued 26 media statements on various areas of concern.

(e) Organising workshops

Workshops or discussions were held in relation to:

(i) Law enforcement

These highlighted complaints against law enforcement officers with the aim of helping them understand the need to protect and respect human rights in the course of duty. *[See Chapter 3 (v)]* In addition, a Public Inquiry was held into allegations of human rights violations by the police over a land matter in Sabah. *[See Chapter 3 (iii)]*

(ii) Native Customary Rights land/Orang Asli Reserve land

The bulk of complaints were received in Sabah and Sarawak, leading to a forum being organised on July 26. *[See Chapter 3 (iv)]*

3. EXAMPLES OF CASES RESOLVED

These are two of the cases which saw results through SUHAKAM's intervention.

Case 1 – Right to education
Article 12 Federal Constitution
Article 26 Universal Declaration of Human Rights

A father sought SUHAKAM's assistance over his son's expulsion from school, along with nine others, with effect from April 5. The students were said to have been involved in a fight on March 26. The complainant disputed the claim, countering that the boy had only been trying to stop the fight. He asked SUHAKAM to help reinstate his son's place in the school. SUHAKAM contacted the Ministry of Education to express concern as the students concerned would be sitting for the SPM examination at the end of the year. The Commission asked the ministry to consider their appeals to be re-admitted. On April 27, the complainant contacted SUHAKAM to say that the Director of Technical and Vocational Division had allowed six of the students to return to the school, while the rest were sent to other schools in Kuala Lumpur and Selangor.

Case 2 – Right to Life
Article 5 Federal Constitution
Article 3 and 5 Universal Declaration of Human Rights

On April 26, SUHAKAM received a memorandum alleging the death in custody of Francis Udayapan a/l Govindasamy, 24, while detained at the Brickfields Police lock-up for investigation of a robbery. A 'sudden death' report lodged by the Police after he went missing stated that he had attempted to escape during questioning, by jumping into the Klang River behind the station. His family said they believed that he was killed by the Police and that his body was thrown into the river. Weeks later, a body was found, but DNA results did not match samples from the parents of Francis Udayapan. SUHAKAM requested the Attorney-General and Inspector-General of Police to hold an inquest into the cause of death, and for Francis Udayapan's family to be given access to the autopsy report as well as permission to conduct an independent DNA test. The Police responded and an inquest is being held at the Ampang Magistrate's Court.

4. VISITS TO PLACES OF DETENTION

CIWG conducted 28 visits to detention centres after obtaining approval from the relevant authorities. *[See Table 2]*

Table 2: Visits to Places of Detention, 2004

DATE	PLACES OF DETENTION
Jan 29	ISA detainees at Bukit Aman, Kuala Lumpur
March 9	Kamunting Detention Camp, Taiping, Perak
March 15	Princess Anne Home, Kota Kinabalu, Sabah
March 17	Henry Gurney School, Keningau, Sabah
March 18	Henry Gurney School (Women), Kepayan, Sabah
March 18	Lock-up, District Police Headquarters, Karamunsing, Sabah
March 18	Lock-up, Central Police Station, Kota Kinabalu, Sabah
March 18	Kepayan Prison, Kota Kinabalu, Sabah
March 19	Immigration Detention Depot, Menggatal, Sabah
April 21	Sri Aman Prison, Sarawak
April 22	Kuching Prison, Sarawak
May 19	Immigration Detention Depot, Simunjan, Sarawak
May 21	Lock-up, Central Police Station, Kuching, Sarawak
May 21	Lock-up, Satok Police Station, Kuching, Sarawak
May 31	ISA detainees at Bukit Aman, Kuala Lumpur
June 9	Kamunting Detention Camp, Taiping, Perak
June 16	Immigration Detention Depot, Semenyih, Selangor
July 4	Kamunting Detention Camp, Taiping, Perak
July 15	Police Remand Centre, Kuala Lumpur
July 15	Lock-up, Bukit Aman, Kuala Lumpur
Aug 5	Muar Rehabilitation Centre, Johor
Aug 6	Simpang Renggam Rehabilitation Centre, Johor
Aug 25	Police Remand Centre, Kuala Lumpur
Sept 7	Immigration Detention Depot, Semenyih, Selangor
Sept 15	Immigration Detention Depot, Menggatal, Sabah
Sept 27	Penor Prison, Pahang
Oct 25	Sungai Buloh Prison, Selangor
Nov 23	Simpang Renggam Rehabilitation Centre, Johor

Generally, there was no major improvement in conditions at the detention camps. Overcrowding is still a problem at the Prisons and Immigration depots.

SUHAKAM also visited certain prisons to ensure provision of a place for worship, for example, a *surau* to enable Muslim prisoners and detainees to perform Friday prayers.

During the visits, however, it was found that some prisons authorities allow detainees and prisoners to perform Friday prayers, while others do not. The situation was traced to contradictory opinions of the Majlis Fatwa of the relevant States. Muslim detainees and prisoners are free, however, to fulfil other obligations such as daily prayers and fasting.

In 2004, all matters concerning Immigration detention depots nationwide were transferred to the jurisdiction of the Prisons Department. The Immigration Department remains involved in matters relating to documentation of the detainees before they are sent back to their home country or to a Third Country.

These steps represent an attempt to synchronise the administration and operation of all detention depots, prisons and rehabilitation centres. The process is being implemented gradually, given such constraints as shortage of personnel and the need to repair and renovate detention depots.

MEMBERS OF COMPLAINT AND INQUIRIES WORKING GROUP
(up to April 2004)

Prof Dato' Mohd Hamdan Adnan (Chairperson)
Tan Sri Datuk Seri Panglima Simon Sipaun
Dato' Asiah Abu Samah
Datuk Dr Raj Abdul Karim
Dato' KC Vohrah
Dato' Dr Abdul Monir Yaacob
Dr Mohammad Hirman Ritom Abdullah
Cik Zainah Anwar

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Dato' KC Vohrah
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Dr Mohammad Hirman Ritom Abdullah
Dato' Siva Subramaniam

CHAPTER 7

REPORT OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS WORKING GROUP

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The Economic Social and Cultural Rights (ECOSOC) Working Group, which is responsible for promoting higher standards of living, economic and social progress and identifying solutions to national cultural and social co-operation, continued engaging itself in emerging issues.

1. MEETINGS AND CONSULTATIONS

Seminars, forums, dialogues and workshops were held during the year in review. In particular, ECOSOC developed a strategic platform for collective action to combat trafficking of persons, and to promote the human rights dimensions of the United Nations Millennium Development Goals (MDGs).

This helped enhance co-operation between ECOSOC and government agencies, NGOs, UN Development Programme, diplomatic community, Asia Pacific Forum (APF), International Organisation for Migration (IOM), End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), and other stakeholders in economic and social development.

A. SEMINAR ON RIGHT TO ADEQUATE HOUSING

A day-long seminar with the theme 'Adequate Housing – a Human Right' was held on Jan 15, in recognition of adequate housing as a basic right. It aimed at identifying components of the right to adequate housing; issues in relation to adequate housing, including problems faced by vulnerable groups in Malaysia; and solutions to these. *[See Chapter 3 (vii)]*

Based on its own research, SUHAKAM had earlier published a comprehensive report on 'Adequate Housing – A Human Right', with a number of observations and recommendations. The report has been circulated to the relevant Government agencies in

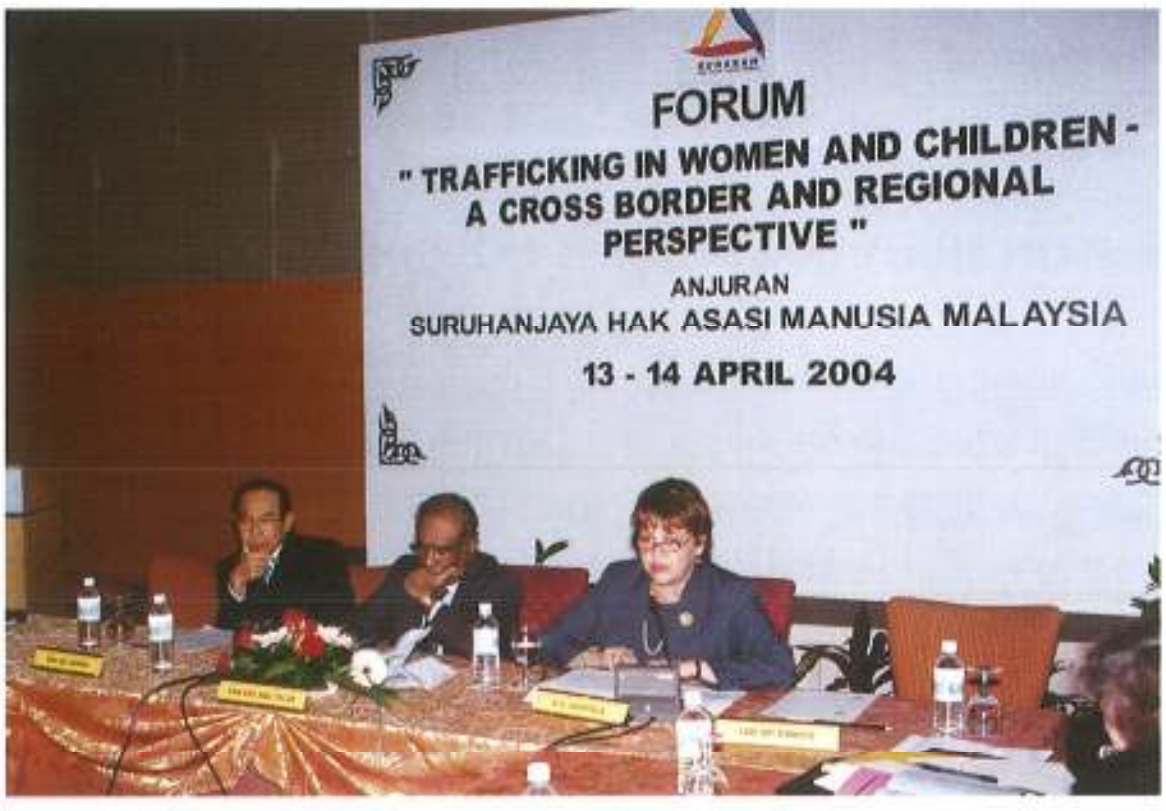
the hope that policy makers will act to implement basic principles and rights among the most vulnerable groups, at very least.

B. FORUM ON TRAFFICKING OF WOMEN AND CHILDREN

ECOSOC continued its work begun in January 2003, on steps to combat trafficking of women and children. Dialogues were held with enforcement agencies – in particular the Police – relevant diplomatic missions and NGOs throughout the year.

The first was an informal meeting with high-ranking personnel from the Police Anti-Vice Unit. This initiated inter-institutional co-operation that paved the way for successful outcomes at the forum on 'Trafficking of Women and Children – A Cross-Border and Regional Perspective', held in Kuala Lumpur from April 13-14.

Police, Immigration and Prisons personnel and officials of the Ministry of Foreign Affairs, Welfare Ministry and Women, Family and Community Development Ministry attended the forum, as did human rights practitioners and representatives of NGOs, Bar Council, academia and diplomatic missions of the United States, Russia, Thailand, Cambodia and the Philippines.



Speakers at the forum on trafficking of women and children

It allowed for exchange of information and ideas, with the central aim of facilitating discussion on steps taken/required at national and regional level. The dialogue also took into account the standards set in the UN Protocol and regional initiatives against trafficking.

The forum sought to identify best practice from Government and NGO actors involved in various aspects of trafficking such as migration, criminal justice, gender and human rights. Another objective was to establish a network of persons concerned with the issue of trafficking in women and children in the Asian region.

There were stimulating discussions, but the lack of statistical data on the issue and inadequacy of national legal provisions in some countries were pointed out as shortcomings.

2. REPORT ON TRAFFICKING OF WOMEN AND CHILDREN

Based on ECOSOC's research on the trafficking of women and children, interviews with 29 trafficked women, and various dialogues that culminated in the forum, SUHAKAM published a report in Jan 27, 2005 on 'Trafficking of Women and Children'. The Commission believes the report will pave the way for action and collaboration in restoring the rights and dignity of the children and women affected and prevent the escalation of this heinous crime.

A. RECOMMENDATIONS

SUHAKAM made these main recommendations in its report.

(a) A Regional 'Trafficking in Persons' Information Centre should be set up to serve as a repository on bilateral agreements, national action plans, co-operative efforts between government agencies and NGOs. A Memorandum of Understanding could be signed between Malaysia and Thailand as a start, to reduce the flow of trafficked young girls into Malaysia.

(b) Embassies of ASEAN, African and European countries should advise their nationals to use the services of only registered and reliable employment agencies; and ensure that nationals – before leaving their country – are aware of their right to engage only in the mutually-agreed occupation.

(c) Inter-agency and multi-sectoral collaboration and support should be found for a comprehensive programme to prevent and control trafficking, and to protect and repatriate victims. This would require a National Programme of Action and a National Task Force on Trafficking, to draw up measures for a trafficking-free environment.

(d) Governments should ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (especially women and children), 2000. Ratification would enable development of a comprehensive plan of action and strategy that involves government agencies, NGOs, the corporate sector and civil society.

(e) Law enforcement agencies should play a key role in shutting down trafficking syndicates, and acting to prosecute, convict and punish traffickers.

(f) NGOs that have developed relevant programmes should co-ordinate their work to assist in the repatriation and/or reintegration of trafficked persons.

(g) The tourism and labour sectors should be vigilant and recognise situations where children and young women are trafficked for sexual purposes. The sectors should respect the rights of women and children, bearing in mind that hospitality does not call for their sexual exploitation.

(h) Action should be taken to ensure the safe return of the trafficked women and children to their home and communities. There needs to be a voluntary repatriation programme, while those rescued should be treated as victims of crime and not as criminals.

(i) Mindful of their pivotal influence in curbing sexual exploitation, local authorities and municipal councils should adopt stringent measures when issuing licences to entertainment outlets.

B. REVIEW OF LAWS

There is also a need to examine legal provisions in Malaysia that are routinely applied to persons who are victims of trafficking, thereby putting them at further disadvantage.

(a) **Punishment for those who receive services**

Currently there is no law that stipulates punishment for those who receive services from prostitutes. SUHAKAM is concerned that only victims are being penalised, mainly for not possessing valid documents to stay in the country.

There should be penalties for procurement of services from trafficked women and for crimes by organised groups. SUHAKAM strongly recommended that traffickers and their agents, as well as owners or employers of entertainment establishments, be prosecuted as well.

(b) **Legal stay for victims of trafficking**

Suitable laws providing for such legal stay for the victims should be considered.

(c) **Provision for victim protection/legal protection**

It was highlighted that foreign victims of trafficking often hesitate to approach officials, for fear they will be deported. It was therefore suggested that the Government provides victims with legal alternatives and ensures that victims are not penalised for unlawful acts that occur as a direct result of their being trafficked.

(d) **Strict liability of employers**

SUHAKAM recommended that employers and principals should be held strictly liable for trafficking carried out by their employees, unless they can prove that they have taken reasonable steps to prevent trafficking, and appropriate action as and when they receive such complaints.

(e) **Victimisation of complainant**

There should be prohibition of victimisation and, instead, emphasis on confidentiality, which is designed to protect complainants and those who assist them. Currently, criminal prosecution does not provide any form of redress for the complainant for injured feelings, humiliation and loss of dignity, in addition to tangible losses.

(f) **Liability of alleged traffickers**

There ought to be a provision stating that the alleged trafficker must make redress for any loss or injury suffered by the victim and caused by the alleged trafficker.

C. NEED FOR ANTI-TRAFFICKING ACT

No comprehensive law exists in Malaysia that penalises the range of offences involved in trafficking. Anti-trafficking legislation would provide a comprehensive approach in eliminating the offence through a three-pronged strategy: prevention of trafficking, prosecution of traffickers, and protection of victims.

D. AWARENESS RAISING

SUHAKAM recommended that local vigilance or watch groups be set up to assist authorities in rescuing young women and children and nabbing traffickers or their agents. Religious and community leaders could help educate children and women and their families about the threat of trafficking. In this regard, a nationwide public awareness campaign on this issue is suggested.

E. STRONG POLITICAL WILL

The commitment to combat trafficking must come from the highest level of Government. To tackle trafficking at its root causes, political and social will are necessary. For a start, the Government should set up a task force to look into anti-trafficking measures.

3. NATIONAL PLAN OF ACTION AGAINST TRAFFICKING

As a follow-up to the forum in April and in line with the recommendation for a National Plan of Action to Combat Trafficking of Persons and training of enforcement personnel, SUHAKAM held a workshop entitled, 'Trafficking in Women and Children – Developing a National Plan of Action'. ECOSOC worked closely with IOM and ECPAT to organise the two-day session from Oct 4.

Experts were invited to address a range of topics during the panel discussions:

- Mr Robert A Pollard, the Charge d'Affaires of the US Embassy in Malaysia, spoke on his government's initiatives to combat trafficking in persons

- Datuk Musa Hassan, then Director of Criminal Investigation of the Royal Malaysian Police, provided an overview of trafficking in Malaysia
- Ms Irena Vojackova-Sollorano, the IOM Chief of Mission and Representative of Southeast Asia, outlined the trafficking dynamics in Southeast Asia
- Her Excellency Ms San Arun, the Under-Secretary of State of the Ministry of Women's Affairs, Cambodia, presented a paper on victim assistance
- Mr Anslem Charles Fernandis, Deputy Public Prosecutor, Attorney-General's Chambers, spoke on Malaysia's national policy on trafficking and related legislation
- Mr Guy Thompstone, Project Director of ECPAT, addressed issues of international commitments
- Mr Frank Weicks, Director of Investigations, Justice Mission, US, presented a paper on law enforcement efforts and gaining the victim as a witness
- Mr Lance Bonneau, Senior Programme Development Officer, IOM, touched on the Bali Process
- Ms Pusa Srivilas of the Department of Social and Welfare, Thailand, provided details of her country's National Plan of Action

SUHAKAM is gratified to note that the Government signed the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children on Nov 29.

In line with SUHAKAM's recommendation, the Government has gazetted five women's shelters in Selangor, Melaka, Sabah, Pahang and Kelantan to accommodate abused women. The shelter in Selangor is to be used mainly as a shelter for foreign women, especially victims of human trafficking and who have been forced into the sex trade.

Workshop on national action plan against trafficking

4. CONFERENCE ON MILLENNIUM DEVELOPMENT GOALS

There is a connection between human rights and the Millennium Development Goals (MDGs) adopted by the United Nations General Assembly as part of the Millennium declaration of September 2000. The MDG concepts of shared responsibility, indivisibility, non-discrimination, equality and accountability correspond with human rights concepts.

As such, ECOSOC organised a conference on 'Human Rights and the Millennium Development Goals' in Kuching, Sarawak from Oct 12-13 to seek out ways to give effect to both the MDGs and the human rights therein. *[See Chapter 3 (viii)]*

In examining the eight goals, the conference speakers made these points:

- The targets of human rights and Millennium Development Goals are complementary in nature.
- MDGs provide an overall framework for action, but the focus must move on to implementation of a comprehensive approach to development.
- Government and civil society should work in co-operation to attain targets.
- Improved co-ordination would release more resources for poverty eradication schemes.

In moving the need to study the MDGs, SUHAKAM was encouraged by the address of the Prime Minister, Y.A.B Datuk Seri Abdullah Ahmad Badawi, at the general debate of the 59th Session of the United Nations General Assembly in New York on Sept 28. He advocated that the meeting accords high priority to ensuring that the UN regains its central role in social, economic and development issues.

The Prime Minister said: "The UN, in particular through an enhanced ECOSOC, should provide the impetus in the creation of an international economic system which better promotes the interests of developing countries. The UN must do more to realise all internationally agreed targets, particularly the Millennium Development Goals."

5. BRIEFINGS FOR SUHAKAM OFFICERS

During the year, ECOSOC continued to invite prominent individuals to speak to SUHAKAM officers on issues relating to economic, social and cultural rights.

These briefings are designed to:

(i) Expose officers to issues linked to such rights in Malaysia;

(ii) Facilitate interaction with the speakers;

(iii) Enable speakers to recommend steps that SUHAKAM can take in dealing with economic, social and cultural rights; and

(iv) Facilitate collaboration between SUHAKAM and governmental and non-governmental organisations to address related issues.

MEMBERS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS WORKING GROUP
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Datuk Dr Raj Abdul Karim
Dato' Ranita Mohd Hussein

MEMBERS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS WORKING GROUP
(from May 2004)

Tan Sri Dato' Ramon Navaratnam (Chairperson)
Dr Mohammad Hirman Ritom Abdullah
Datuk Dr Raj Abdul Karim
Tunku Datuk Nazihah Tunku Mohamed Rus
Dato' Choo Siew Kioh
Dato' Dr Sharifah Hapsah Syed Hasan Shahabudin

CHAPTER 8

REPORT OF THE LAW REFORM AND INTERNATIONAL TREATIES WORKING GROUP

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REPORT OF THE LAW REFORM AND INTERNATIONAL TREATIES WORKING GROUP

In discharging its function relating to domestic legislation and administrative directives and procedures, the Law Reform and International Treaties Working Group (LRITWG) completed SUHAKAM's review on the proposed 'Persons with Disabilities' legislation; the submission to the Select Committee on the Penal Code (Amendment) Bill 2004 and the Criminal Procedure Code (Amendment) Bill 2004; and Memorandum to the Royal Commission to Enhance the Operations and Management of the Royal Malaysian Police.

With regard to the LRITWG's function pertaining to international treaties in the field of human rights, the Working Group organised SUHAKAM's Roundtable Discussion on the Convention on the Rights of the Child (CRC) and two Forums on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The LRITWG took follow-up action on SUHAKAM's previous recommendations relating to the reform of the law, administrative directives and procedures as contained in SUHAKAM's Annual Reports of 2000-2003 and specific reports in these areas.

1. DOMESTIC LAWS, DIRECTIVES AND PROCEDURES

(a) Submission on the proposed 'Persons with Disabilities' legislation

The submission comments on the proposed 'Persons with Disabilities' legislation ('proposed legislation') that is currently being formulated by the Government. The objective of the submission is to advise that the provisions of the proposed legislation are in conformity with international human rights principles.

The submission focused on particular areas such as general principles, the definition of disability, education, employment of persons with disabilities, health and rehabilitation, accessibility to the built environment, accessibility to information and communication, participation in public and political life, equality and non-discrimination, enforcement and monitoring mechanisms and exemptions. *[See Chapter 3(xii)]*

(b) Submission to the Select Committee on the Penal Code (Amendment) Bill 2004 and the Criminal Procedure Code (Amendment) Bill 2004

On July 20, the Dewan Rakyat agreed to the establishment of a Select Committee to deliberate on the Penal Code (Amendment) Bill 2004 and the Criminal Procedure Code (Amendment) Bill 2004. Civil society, including SUHAKAM and non-governmental organisations (NGOs), was invited to present views on the two amending Acts.

SUHAKAM expressed its concern over several provisions in the Penal Code (Amendment) Bill 2004 and the Criminal Procedure Code (Amendment) Bill 2004. *[See Chapter 3(xi)]*

(c) Memorandum to the Royal Commission to Enhance the Operations and Management of the Royal Malaysian Police

The maintenance of law and order in accordance with human rights principles is most crucial in laying the foundation for a harmonious society. Therefore, since its establishment in 2000, SUHAKAM has continuously focused on issues relating to alleged violations of human rights by law enforcement agencies, including the Police. These issues include the method of crowd dispersal in peaceful assemblies, alleged violations of the rights of remand prisoners, the conditions of detention in Police lock-ups and alleged Police inaction.

In June 2004, SUHAKAM submitted a memorandum May 28 to the Royal Commission to Enhance the Operations and Management of the Royal Malaysian Police. *[See Chapter 3 (x)]*

2. GLOBAL HUMAN RIGHTS INSTRUMENTS

(a) Roundtable Discussion on the CRC

Malaysia became a party to the CRC on Feb 17, 1995. As at December 2004, reservations are still maintained on Articles 1, 2, 7, 13, 14, 15, 28(1)(a) and 37. Malaysia is not yet a party to the two optional protocols to the CRC, namely the Optional Protocol to the CRC on the involvement of children in armed conflict and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

As part of its monitoring process of the implementation of the CRC in Malaysia, SUHAKAM

organised a Roundtable Discussion on the CRC in Kuala Lumpur from Jan 19-20. *[See Chapter 3(i)]*

The objectives were to:

(i) Ascertain the level of implementation of the CRC;

(ii) Discuss ways to facilitate the implementation of the CRC, especially from the perspective of the rights of the child;

(ii) Ascertain ways to improve the compatibility of the CRC and the Child Act 2001 and other domestic laws (including *Syariah* Law);

(iv) Ascertain the necessity of the reservations that have been made to the CRC; and

(v) Ascertain whether Malaysia ought to be a party to the two Optional Protocols to the CRC.

(b) Forums on CEDAW

Malaysia became a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on July 5, 1995. As at December 2004, reservations are still maintained on Articles 5(a), 7(b), 9(2), and 16(1)(a), (c),(f) and (g) and 16(2).

On March 17, 2003, SUHAKAM organised a Roundtable Discussion on CEDAW in Kuala Lumpur. One of the recommendations made at the Roundtable Discussion was for SUHAKAM to organise Roundtable Discussions on CEDAW annually. Such discussions are said to provide an opportunity for interested parties to engage in a comprehensive discourse on women's rights and raise awareness of equal treatment.

In 2004, SUHAKAM implemented the recommendation by organising two Forums on CEDAW. The first was held on March 30 in Kuching, Sarawak and the second on April 2 in Kota Kinabalu, Sabah. The objectives were to:

(i) Provide a forum for experts, representatives from the Government and the NGOs to discuss the implementation of CEDAW;

(ii) Inform and raise awareness of the development of women's rights at the local level; and

(ii) Continue efforts towards the promotion of women's rights.

The Forums brought forth both achievements and areas of concern that need to be addressed

in Sabah and Sarawak, in particular, and among Malaysian women in general. *[See Chapter 3(ix)]*

3. ACTION ON PREVIOUS RECOMMENDATIONS

(a) Gender equality

Since its establishment, one of SUHAKAM's main areas of focus has been gender equality. For instance, in its Annual Report 2000 (and reiterated in Annual Report 2001), the Commission recommended that steps be taken to:

(i) Incorporate the Federal Constitution principle of equality and non-discrimination into specific laws and for other appropriate mechanisms to enable women to truly benefit from this; and

(ii) Incorporate international commitments to the CEDAW into domestic law. For example, Australia's obligations under the CEDAW are given effect via its Sex Discrimination Act 1984, which prohibits discrimination based on gender.

SUHAKAM has continued efforts begun in 2002 to focus on the implementation of CEDAW. In this regard, SUHAKAM views the Government's announcement in August to allocate 30% of all decision making positions in the civil service to qualified women as a positive step towards gender equality and in meeting Malaysia's obligations pursuant to international instruments such as CEDAW.

Furthermore, SUHAKAM is encouraged by the establishment of a Cabinet Committee on Gender Equality announced in August. The task of the Committee, to be chaired by the Prime Minister, Y.A.B Datuk Seri Abdullah Ahmad Badawi, is to set the direction, lay down policy guidelines, monitor and co-ordinate the implementation of programmes and projects related to gender equality.

These two positive developments augur well for the incorporation of the principle of gender equality into practice, as enshrined in Article 8(2) of the Federal Constitution. Although Malaysian women have made tremendous progress in attaining gender equality in the workplace over the past few decades, they are still under-represented in the upper echelons of the public sector. For instance, although women make up approximately

36% of employed persons in Malaysia (as at 2002), they constitute only approximately 9% of the current Ministers in the Cabinet, 11% of members in the *Dewan Rakyat* and 14% of judges and judicial commissioners of the Federal Court, Court of Appeal and High Court (as at Dec 22).

SUHAKAM notes that, in announcing the establishment of the Committee, the Prime Minister was reported to have said that civil society views on gender issues would be heard. SUHAKAM therefore looks forward to working with the Committee.

(b) Legislative process

In its Annual Report 2000, SUHAKAM recommended that major bills should be referred to a Select Committee of Parliament and State Assemblies after the first reading. This will provide experts, public interest groups and other concerned individuals an opportunity to give input into bills that will have a direct impact on their lives. This is also in line with the right to participate in the decision-making process. The recommendation was reiterated in SUHAKAM's subsequent Annual Reports.

SUHAKAM thus welcomes the establishment of the Select Committee to deliberate on the Criminal Procedure Code (Amendment) Bill 2004 and the Penal Code (Amendment) Bill 2004. The establishment of the Select Committee in July was a concrete step towards the implementation of SUHAKAM's recommendation in relation to the legislative process. It is also clearly in line with the apparent growing trend towards public debate in this process that was noted by SUHAKAM in 2002 and 2003.

(c) Review of the Internal Security Act 1960

Numerous developments, negative and positive, took place in relation to the Internal Security Act 1960 (ISA) over the year.

On the negative side, on Dec 15, 113 people were detained under the ISA. There is thus an increase in the number of persons being detained under the Act compared to 97 the previous year (up to Dec 31, 2003). In addition, there were new cases of persons being detained under the ISA on suspicion of forging documents. These cases appear to fall within the ambit of cases that could be administered under the normal penal system and not using the extraordinary preventive detention powers of the ISA. Furthermore, 36 detention orders were renewed and only three detainees were released. These developments

are thus in contrast with the apparent greater restraint in the use of the ISA that was noted by SUHAKAM in 2003.

In addition, 2004 also saw the United Nations Working Group on Arbitrary Detention issuing an opinion [Opinion No. 10/2004 (Malaysia)] that the deprivations faced by five persons detained under the ISA to be in contravention with Articles 9, 10 and 11 of the Universal Declaration of Human Rights in. They are Muhammad Radzi Abdul Razak, Mohd Akil Abdul Raof, Eddy Erman Shahime, Abi Dazar Jaafar and Mohd Ikhwan Abdullah.[103]

Furthermore, it was brought to the attention of SUHAKAM and alleged through a memorandum by the Abolish ISA Movement that eight detainees were transferred from the Kamunting Detention Centre (KEMTA) to an unknown Police Remand Centre (PRC) in Kuala Lumpur pursuant to section 18 of the ISA one day prior to the expiry date of their detention orders. The detainees were transferred allegedly for the purpose of being 'turned over' and brainwashed. In addition, the detainees were allegedly neither told of the reasons for their transfer nor the place where they would be transferred. Such transfers pursuant to section 18 of the ISA were also apparently unusual.

On the positive side, the Government reiterated in September that intermittent amendments would be made to the ISA to make it "friendlier" and more "transparent". It is hoped that the amendments will take into account the interim recommendations that were made by SUHAKAM in its 'Review of the ISA' report and will come to fruition soon.

SUHAKAM views the debate on 'ISA – Yes or No?' between Dato' Seri Mohamed Nazri Abdul Aziz, Minister in the Prime Minister's Department, and Mr Lim Kit Siang, the Parliamentary Opposition Leader that was held on July 26 as a positive development, except for the difficulty that the organisers faced in obtaining a Police permit for the event. This was an unprecedented open discussion of arguably the most controversial piece of domestic legislation in terms of human rights.

Detention without trial is an extreme form of detention. It denies a person the right to personal liberty, the right to a fair and public trial and the right to be presumed innocent until proven guilty. It also leads to the danger of violations of the right of a person not to be

[103] Document obtained from Suara Rakyat Malaysia (SUARAM).

subjected to arbitrary arrest and detention and the right of a person not to be subjected to torture or to cruel, inhuman or degrading treatment particularly if the person is being held incommunicado. SUHAKAM therefore reiterates its recommendations for the repeal of the ISA and for a new comprehensive legislation be enacted that will take a tough stand on threats to national security (including terrorism), but which is also in line with human rights principles.

MEMBERS OF LAW REFORM AND INTERNATIONAL TREATIES WORKING GROUP
(up to April 2004)

Dato' KC Vohrah (Chairperson)
Dato' Ranita Mohd Hussein (Co-Chairperson)
Dr Mohammad Hirman Ritom Abdullah
Cik Zainah Anwar
Datuk Dr Raj Abdul Karim

MEMBERS OF LAW REFORM AND INTERNATIONAL TREATIES WORKING GROUP
(from May 2004)

Dato' KC Vohrah (Chairperson)
Tan Sri Datuk Seri Panglima Simon Sipaun
Dr Chiam Heng Keng
Datuk Dr Raj Abdul Karim
Dato' Dr Abdul Monir Yaacob
Dato' Ranita Mohd Hussein
Dato' Choo Siew Kioh
Tunku Datuk Nazihah Tunku Mohamed Rus
Dato' Muhammad Shafee Abdullah

CHAPTER

9

REPORTS FROM SUHAKAM OFFICES IN SABAH AND SARAWAK

CHAPTER 9

REPORTS FROM SUHAKAM OFFICES IN SABAH AND SARAWAK

(i) ACTIVITIES OF SUHAKAM IN SABAH

SUHAKAM's Sabah office, located in Kota Kinabalu, added to efforts to empower the public to recognise and claim human rights. This is in line with the Commissions' central role to promote awareness of, and provide education on, human rights.

The Resident Commissioner, Tan Sri Datuk Seri Panglima Simon Sipaun, who is also the Vice-Chairperson of SUHAKAM, had oversight of the activities. There was a change of personnel, when the Administrative Officer, Encik Japiril Suhaimin, resigned on March 12. He was replaced by Encik Jasmih Slamat, who reported for duty on May 25.

Having regard to the prevailing conditions and circumstances in Sabah, it was felt that priority should be given to improving the human rights situation of vulnerable and minority groups. Generally, such groups are marginalised, discriminated against, voiceless, and unseen victims of human rights violations.

In Sabah, they include the indigenous peoples, the poor, persons with disabilities, women and children. Improving the position of marginalised and vulnerable groups typically involves close consultation with them in order to identify patterns of human rights violations, and where laws, policies and resource allocations can help overcome problems. The programmes planned and implemented over the year took this into consideration. *[See Appendix IV]*

1. PUBLIC INQUIRY

It is important to ascertain if law enforcement agencies, the civil service and Government institutions discriminate against these groups. Those who are most marginalised and vulnerable in society are usually the ones least likely to lodge complaints. This is because their literacy standard is low, and they may not have confidence that the system will protect them.

Complaints received by SUHAKAM's Sabah office have mainly been associated with land matters. A common complaint is that those submitting applications to the relevant authorities do not receive a prompt response. If there is response, it is usually to reject their application, without giving reasons or failing to be clear about the reasons. The applicants perceive the rejections as unfair, especially if similar applications are subsequently approved.

A case in point is that of 18 villagers in Kg. Desa Monteki, Kundasang, in the district of Ranau. SUHAKAM, which was asked to intervene, held a Public Inquiry from Feb 11-14 and from March 3-6. This was only the third such Inquiry conducted by the Commission since its inception, and it received widespread coverage in the main Sabah newspapers. SUHAKAM's action was well received and appreciated by the people. *[See Chapter 3(iii)]*

2. ACTIVITIES

(a) Road-show session

The 11th general election which was concluded on March 21 and the resignation of the Administrative Officer interrupted the series of road-shows that have been held at district level since 2002. However, one such session was organised in the district of Penampang on July 24.

This 'Dialogue on Human Rights Awareness' attracted about 1,200 people from all walks of life including civil servants, community and political leaders, representatives of non-governmental organisations, district and native chiefs, village heads, teachers, students and influential personalities. Such dialogues have proved to be a good forum for participants to air their complaints and grievances, and have enabled SUHAKAM to gauge their understanding and perception of the Commission and of human rights.

b) Forum on Native Customary Land Rights

As follow-up action on land-related complaints, the forum was held in Kota Kinabalu on Aug 16. This was to facilitate interaction among policy and decision makers, officials of implementing agencies, complainants or their representatives, and other interested parties.

Encik Donald Peter Mojuntin, the Member of Parliament for Penampang, at the dialogue

Participants at the 'Dialogue on Human Rights Awareness' in Penampang

The goal was to arrive at understanding of situations discussed, by tracing the source of problems and arriving at solutions. *[See Chapter 3(iv)]*

During preparations for the event, it was anticipated that between 40 and 60 participants would be involved. As it turned out, the forum attracted more than 500 enthusiastic participants. This also reflected the gravity of land-related problems in Sabah.

Immediately after the forum, the Chief Minister, Datuk Seri Musa Aman, announced the formation of a task force to look into land application procedures. The members include the Secretary of Natural Resources and the Director of Lands and Surveys, both of whom had presented papers during the forum. SUHAKAM's Sabah office places on record its gratitude and appreciation to the Chief Minister for his prompt response.

(c) Forums on CEDAW

A forum on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was held on April 2 in Kota Kinabalu. This enabled participants to learn about CEDAW and how it is being implemented in Malaysia in general and Sabah in particular. *[See Chapter 3(ix)]*

Another forum on 'Violence against Women and Children – Focus on Rape' was held on July 26, also in Kota Kinabalu *[See Chapter 3(ix)]*. This was held at a time when women's groups, especially those in Kota Kinabalu, were protesting a statement attributed to a local politician, a member of the ruling coalition, who allegedly made an insensitive remark about victims of rape.

(d) Workshop for law enforcement officers

A workshop on 'Law Enforcement and Human Rights' was held on June 21 in Kota Kinabalu, in response to several complaints alleging that enforcement officers had violated human rights. The workshop was for enforcement officers in and around Kota Kinabalu including those from the Police, Prisons, Road Transport, Customs, Immigration and National Registration departments, and the Kota Kinabalu City Council. *[See Chapter 3(v)]*

Enforcement officers study materials during the workshop

(e) School-based programmes

Exposure to human rights education for the young is best implemented through campaigns in schools. An exhibition and competition on conveying the human rights message through art was held at the Sabah Art Gallery from Jan 31 to Feb 12. A talk on SUHAKAM and human rights was delivered to secondary students on July 29.

3. VISIT TO DETENTION CENTRE

SUHAKAM's Sabah office received a complaint from the Indonesian Consulate in Kota Kinabalu, alleging that several Indonesian nationals were being detained in the Menggatal Detention Centre for longer than appropriate. In response, a SUHAKAM delegation visited the Centre on Sept 15. It was found that some detainees had served their sentence in prison and had been transferred to the Centre pending deportation. It was alleged that they were being detained longer than the period spent in prison.

During the visit SUHAKAM noticed the presence of about 43 children, who were being detained together with the adults. Some of the children were as young as four years old. As a result of SUHAKAM's intervention, relevant agencies including the Federal Task Force, and Immigration and National Registration departments took immediate action. The children were separated from the adults at the detention centre and many were reunited with their parents.

The visit was prominently reported in most of the major Sabah newspapers for about two weeks from Sept 16. This generated much public interest, both in the issue and the work of SUHAKAM, and led the relevant authorities taking prompt action. For a week from Sept 15, two newspapers also invited readers to provide views and suggestions on resolving the situation of 'street kids'. In appreciation, SUHAKAM hosted Sabah media representatives to lunch on Aug 17.

4. ACTION ON COMPLAINTS

SUHAKAM's Sabah office has frequently become a place of last resort for complainants who have exhausted all other avenues. This has provided the motivation to render assistance in order to make a difference. Letters of appreciation have been received for the role played by SUHAKAM.

During the year, the office received 228 complaints, compared to 50 in 2003. *[See Table]*

Table: Complaints Received by Sabah Office

No.	Category	No. of Complaints
1.	Land issues	107
2.	Identity cards/birth certificates	22
3.	Police brutality	13
4.	Housing	12
5.	Discrimination in the workplace	12
6.	Domestic violence	5
7.	Banking	7
8.	Bird's nest inheritance	4
9.	EPF claims	4
10.	Personal disturbance	3
11.	Political matters	3
12.	Religious matters	3
13.	Pension claims	3
14.	Education	2
15.	Police inaction	2
16.	SOCSO claim	1
17.	Personal effects of detainees	1
18.	Others	34
	TOTAL	**238**

In some cases, it was possible to resolve problems immediately by inviting the relevant parties to meet face to face. A case in point involved victims of a fire in Kampung Likas, who complained that the Kota Kinabalu City Council was evicting them from their temporary shelter at a community hall. SUHAKAM called in all the relevant agencies, together with an Assistant Minister, and facilitated an amicable settlement.

Not all complaints were strictly related to human rights violations. However, the very fact that complainants chose to approach SUHAKAM was indicative of awareness of the existence and work of the Sabah office. It also showed an understanding of the protection conferred by human rights provisions.

(ii) ACTIVITIES OF SUHAKAM IN SARAWAK

SUHAKAM's Sarawak office, located in Kuching, sustained its human rights education programme by continuing a series of road-shows to promote dialogue. Of special note was the co-operation extended by State Government agencies during these events.

1. ACTIVITIES

(a) Dialogues

SUHAKAM's Sarawak office, with the assistance of relevant District or Resident offices, conducted seven dialogues over the year. These were held in Sarikei, Betong, Sri Aman, Simunjan, Kuching, Kota Samarahan and Tatau. Three SUHAKAM Commissioners and a District Officer or Resident made up the panel of speakers at each event. Participation was invited from government departments, semi-government bodies, private enterprises, political parties and non-governmental organisations (NGOs). Community leaders and students were also included.

These sessions were generally well attended. Participants were briefed on the nature of human rights and SUHAKAM's role in protecting and promoting human rights. Participants were given the opportunity to raise issues, as well as specific complaints. A mini-exhibition on the Commission's activities was also held at each venue.

(b) Training workshop on CRC

The three-day workshop was held from March 1 in Kuching. It targeted representatives of NGOs, who were trained on extending knowledge of the human rights of children to their respective organisations and the community at large. *[See Chapter 3(i)]*

(c) Roundtable Discussion on CEDAW

This mainly discussed issues of violence against women and gender balance. One presentation was devoted to the Women's Development Action Plan for Sarawak, which targets goals in the spheres of family, health, religion, culture, sports, training, labour and legal issues. *[See Chapter 3(ix)]*

(d) Seminar on MDGs

The seminar on Millennium Development Goals was held in Kuching from Oct 12-13. It noted that, while Malaysia's achievement of targets is good, there is need to look at the needs of specific groups residing in rural areas. *[See Chapter 3(viii)]*

(e) Art exhibition

A display of 80 paintings was held at the Dewan Tun Razak of the Sarawak Museums Department for a month from Feb 18. The exhibition was opened by the Sarawak Tourism Minister, Dato' Sri Abang Hj. Abdul Rahman Zohari bin Tun Abang Hj. Openg. Representatives of government agencies and NGOs, academicians, students and members of the public visited the exhibition.

(f) Dialogue with NGOs

A dialogue was organised on Oct 10 in Kuching, but drew poor attendance by those invited from NGOs and relevant government agencies. The objective was to brief them on SUHAKAM's functions and role in human rights advocacy, and to highlight trade union issues.

2. ACTION ON COMPLAINTS

SUHAKAM's Sarawak office received 28 complaints from individuals and groups over the year. Of these, three filed have been closed, while nine were found to be unrelated to human rights violations.

[See Table]

Table: Complaints Received by Sarawak Office

No.	Category	No. of Cases
1.	Native Customary Land Rights	16
2.	Wages	4
3.	Police	2
4.	Labour	2
5.	Identification documents	2
6.	Squatters	1
7.	Graft	1
	TOTAL	**28**

Several issues of concern were identified from the complaints:

(a) Native Customary Rights Land

Development of forested land has, in certain cases, has resulted in conflict between indigenous peoples and private companies or semi-Government agencies entrusted with development of forest areas or harvest of resources. These conflicts have arisen mainly because there is no official demarcation as to what constitutes Native Customary Rights (NCR) land and State land. In addition, the failure of some private enterprises to keep out of NCR land is compounded by inadequate enforcement action.

Other frequent complaints are that:

- Enforcement authorities do not take grievances seriously and, instead, threaten complainants with legal action.
- The quantum of compensation is inadequate for land or crops destroyed when sites are acquired for development.
- Meaningful local participation is absent in decision making, as is involvement in the economic spin-offs.

(b) Education

The remoteness of the interior regions and difficult terrain act as barriers to improving infrastructure and human resource needs of rural schools. One outcome is that students do not perform as well as their urban and suburban counterparts. This will have an adverse long-term impact on the rural population in terms of empowerment.

(c) Poor infrastructure

Basic infrastructure and utility supplies will have to be improved in the remote areas of the State. The needs include roads, water and electricity supply, and health care services.

(d) Identification documents

A small percentage of the rural population is still without personal identification documents. This affects admission to public facilities such as schools and hospitals.

(e) Squatter problems

Rural-urban migration has led to squatter settlements being created in urban centres like

MEMORANDUM 2004

NO.	COMPLAINANT	TITLE
1.	AJK Bertindak Penduduk Setinggan Kg. Indian Settlement, Batu Caves, Selangor.	MEMORANDUM MENGENAI MASALAH YANG DIHADAPI OLEH PENDUDUK SETINGGAN KG INDIAN SETTLEMENT, BATU CAVES (FASA II) DALAM PROJEK PENEMPATAN SEMULA OLEH MAJLIS PERBANDARAN SELAYANG (MPS)
2.	Partners of Community Organisation (PACOS).	TUNTUTAN TANAH HAK ASASI (NATIVE CUSTOMARY LAND RIGHT-NCR)
3.	Jawatan kuasa Mempertahankan Sekolah Asal & Memohon Sekolah Ke 2 SJMC Damansara.	PENCABULAN HAK ASASI MANUSIA - ISU PENUTUPAN SEKOLAH JENIS KEBANGSAAN CINA DAMANSARA ASAL
4.	Gerakan Mansuhkan ISA (GMI)	TAMAT TEMPOH PENAHANAN 15 TAHANAN ISA
5.	MTUC	MEMORANDUM TO YAB DATUK SERI ABDULLAH AHMAD BADAWI ON SERIOUS PROBLEMS FACING TRADE UNION & WORKERS.
6.	Gerakan Anwar Bebas	MEMORANDUM GERAKAN ANWAR BEBAS - PENAFIAN HAK-HAK IKAT JAMIN DAN RAWATAN KESIHATAN ANWAR.
7.	Gerakan Mansuhkan ISA (GMI)	MOGOK LAPAR BERAMAI-RAMAI 16 TAHANAN ISA
8.	Badan Bertindak Selamatkan Balai Polis Taman Seri Muda.	TAPAK BALAI POLIS BERTUKAR MENJADI TEMPAT JUALAN KERETA TERPAKAI.
9.	Badan Bertindak Pekebun Kecik Koyah	MEMORANDUM PEKEBUN KECIL KOYAH BERSATU
10.	Persatuan Orang-Orang Cacat Malaysia	MEMORANDUM PELAJAR CACAT ANGGOTA DAN KEPERLUAN KHAS DARI PESATUAN ORANG-ORANG CACAT MALAYSIA
11.	Parti Islam SeMalaysia (PAS)	BANTAHAN RASMI AWAL KEPADA SPR TERHADAP PROSES PERJALANAN PILIHANRAYA DAN PENGUNDIAN PADA 21 MAC 2004
12.	Parti KeADILan Nasional	BANTAHAN RASMI TERHADAP PENAFIAN HAK RAKYAT UNTUK MEMILIH & MENGUNDI DALAM PILIHANRAYA UMUM KE 11
13.	Sri Maha Chandi Bathra Kaali Ambiga Sametha	KUIL ARULTHIRU SRI GANGGATHARA & KUIL ARULMIGU SRI MAHA KARUPAYYAH

NO.	COMPLAINANT	TITLE
14.	Gerakan Mansuhkan ISA (GMI)	PENGAKUAN AHLI "JEMAAH ISLAMIAH" DI TV 3
15.	Parti Keadilan Nasional	MEMORANDUM KEMATIAN G.FRANCIS UDAYAPAN.
16.	Gerakan Mansuhkan ISA (GMI)	TAHANAN KMM DIHUKUM SETELAH MOGOK LAPAR
17.	Gerakan mansuhkan ISA (GMI)	LET SUHAKAM & MEDIA VISIT SECRET DETENTION CELLS UNDER ISA TOO.
18.	Syahrir bin Mahmood	ADUAN TERHADAP TINDAKAN AGRESIF PIHAK POLIS.
19.	Minn Kyaw @ Azman Ali Adam	ACCOUNT AT ABDUCTION, CRIMINAL, INTIMIDATION, ASSAULT AND TORTURE OF BURMESE HUMAN RIGHT ACTIVIST/ JOUNALIST.
20.	Angkatan MUDA Keadilan Parti Rakyat Malaysia.	MEMORANDUM INI MENGENAI KEMATIAN S.HARIRAJ A/L SELVARAJU DISEBABKAN OLEH KECUAIAN DAN SALAH CARA MERAWAT SERTA DIPERGUNAKAN SEBAGAI MODEL LATIHAN OLEH PIHAK HOSPITAL SELAYANG DAN HOSPITAL UNIVERSITI KEBANGSAAN MALAYSIA (HUKM) SERTA PIHAK POLIS DIRAJA MALAYSIA GAGAL UNTUK MELAKUKAN SIASATAN TERHADAP KES INI.
21.	Gerakan Mansuhkan ISA (GMI)	ABUSE OF SECTION 18 OF ISA IN TURNING OVER DETAINEES
22.	Gabungan 8 NGO	PROTEST ON THE DEATH OF MAGESWARAN A/L RAMASAMY IN POLICE ON 17TH JUNE 2004.
23.	Desa Kiara Action Committee	ADVERSE IMPACTS ON THE DESA KIARA COMMUNITY FOLLOWING THE DESTRUTION OF THE ADJACENT FORESTED AREA & THE PROPOSAL BY THE AUTHORITIES TO ESTABLISH A CEMETERY IN IT'S PLACE
24.	Junaiha bt. Ali	MEMORANDUM PERMOHONAN TANAH KERAJAAN PT 2000094101-4110 & 5481 DI SUNGAI PIN, KINABATANGAN, SABAH.
25.	Solidariti Mahasiswa Malaysia (SMM)	MAHASISWA MENUNTUT PILIHANRAYA KAMPUS YANG BEBAS & ADIL.
26.	Majlis Perwakilan Mahasiswa Universiti Malaya (MPMUM)	UGUTAN YANG SERIUS KEPADA PARA MAHASISWA DAN SIKAP BERPIHAK PEGAWAI-PEGAWAI HAL EHWAL PELAJAR (HEP), PENGETUA & PENYELIA KOLEJ KEDIAMAN MENJELANG PEMILIHAN MAJLIS PERWAKILAN MAHASISWA UNIVERSITI MALAYSIA.

NO.	COMPLAINANT	TITLE
27.	Gerakan Mansuhkan ISA (GMI)	DETENTION OF FOREINERS UNDER ISA AT KAMUNTING DETENTION CAMP.
28.	Dewan Pemuda PAS Johor	MEMORANDUM ISU RASUAH DUN PASIR RAJA, JOHOR BAHRU.
29.	Persatuan Jurupandu Usahawan (PJPU) Limosin Lapangan Terbang Antarabangsa Kuala Lumpur (KLIA)	PERMASALAHAN PERKHIDMATAN TEKSI/LIMOSIN DI KLIA.
30.	Jawatan kuasa Bertindak Pengusaha Bas, Teksi dan Penjaja Medan Kidd, Ipoh Perak.	ADUAN BERKAITAN PENCABULAN HAK ASASI KE ATAS PENGUSAHA BAS, AGEN BAS, TEKSI, PENJAJA MEDAN KIDD IPOH & MASYARAKAT PENGGUNA BAS.
31.	Jawatankuasa Bertindak Penduduk Kampung Saujana	PENCABULAN HAK EKONOMI, SOSIAL & KEBUDAYAAN PENDUDUK KG SAUJANA SHAH ALAM SELANGOR.
32.	Badan Bertindak Kampung Wira Damai.	BANTAHAN PENDUDUK KG MELAYU WIRA DAMAI, TAMAN PINGGIRAN BATU CAVES, KG BAHTERA & TAMAN GOMBAK PERMAI TERHADAP SYARIKAT SUREMAN PROPERTIES SDN. BHD. & MAJLIS PERBANDARAN SELAYANG MENGENAI PROJEK PERUMAHAN & PEMBINAAN 22 LOT 3 TINGKAT KEDAI YANG MENGAMCAM KESELAMATAN PENDUDUK DAN KESELESAAN AWAM.
33.	Gerakan Mansuhkan ISA (GMI)	DETAINEES WERE TRATED CRUELLY IN KAMUNTING DETENTION CAMP.
34.	Solidarity Mahasiswa Malaysia (SSM)	SOLIDARITY MAHASISWA MALAYSIA (SSM) KEPADA SUHAKAM BERHUBUNG KES-KES TATATERTIB DI BAWAH AUKU SEPANJANG TAHUN 2004
35.	Dr. Chong Eng Leong	INFRINGMENT OF RIGHT ON MALAYSIAN CITIZEN IN SABAH BY THE PRESENT OF LARGE NUMBER OF TRANSIENT POPULATION.
36.	Pembela	PENCABULAN HAK PEKERJA-PEKERJA EXPRESS NASIONAL BERHAD & TRANSNASIONAL EXPRESS SDN. BHD. OLEH NADI CORPORATION SDN. BHD.

APPENDIX II

DIALOGUE ON THE ISSUE OF HYPERMARKET EMPLOYEES

INTRODUCTION

The dialogue was held to discuss issues pertaining to problems faced by employees of hypermarkets. This dialogue was attended by representatives of both employees and employers as well as officials from the Ministry of Human Resource and Labour Department. SUHAKAM hoped that by holding this dialogue, issues raised could be amicably discussed by the parties involved.

ISSUES RAISED AT THE DIALOGUE

1. **Refusal of employers to grant leave.**
   The employee representatives of employees alleged that employers often refuse togrant leave on the ground that they do not have sufficient employees working in that particular period. Employers representatives admitted that employers do refuse leave to employees but this is due to the prolonged leave applied by the employees. If the employees follow the procedures as laid by the employers, employers would usually grant them the leave applied.

2. **The wearing of head cover**
   The employees representative alleged that Muslim women were not allowed to wear head cover at their place of work although Article 11 of the Federal Constitution guaranties the freedom of religion. The employers representative denied that they are obstructing Muslim women from fulfilling their obligation of wearing head cover, in fact there are some employers who provide head cover as part of their staff uniforms.

3. **Salary increment**
   The employees representative alleged that the employers intentionally delay the salary increment and allowances.

The employers representative explained that increment of salary and allowances is not automatic. It is based on several factors including work performance and productivity. Usually the employers will inform the employees about the criteria for increment of salary and allowances when they start work.

4. Laying off of employees without valid reasons

The representative of employees explained that there were workers laid off even for the menial reasons and they think that it is unfair to the workers.

It was explained by the employers representative that what constitute 'valid reasons' are subjective and it is done in accordance with the policies of the respective companies. Usually the companies have stringent procedures before laying off the workers. Several reasons were cited as to why the workers are laid off including disciplinary problems or misconduct.

The representative from the Ministry of Human Resource urged the employees if they think they were laid off without valid reason they should lodge complain with the Ministry.

5. Unfair treatment

It was alleged that the workers had to endure hardships such as pay cut, little or zero medical benefits and some workers had to stand for long hours at the check-out lines.

The representative of the employers explained that every hypermarkets have their own panel clinics but the employees refused to go there because the panel clinics are stringent in giving sick leave. As to the allegation that the workers have to stand continuously for long hours, the employers stressed that most of the hypermarkets do provide chairs but for those who do not provide chairs they have a system where the workers will rotate in order to give them adequate rest.

The representative from the Human Resource Ministry proposed that a system be introduced where the workers do not have to stand continuously for a long period of time.

6. Uniform

The representative of the employees complained that they have to buy their own uniforms and the cost of uniforms were cut from their salary.

The representative of employers clarified that most of the hypermarkets asked for deposits for the uniforms. Accordingly, the deposits would be returned to them when the employees resigned. Another representative of hypermarket made it compulsory for its staff to buy their own uniforms, priced at RM100. In this case, the hypermarket had given their assurance to reassess this rule.

7. Transfer

The employees complained that they were asked to work at other branches without consulting them. It creates problems because they also have other considerations and obligations. Representatives of the employers explained that the option to transfer workers to other branches is incorporated in the contract of employment and normally the employer will hold a discussion with the workers before a transfer is to be done.

8. Salary

The issue of non-payment of double pay to employees if they have to work during festive holidays was also raised. The employees also complained that the employer will cut their pay if they took emergency leave without prior approval.

It is clearly stated in the statute that any employee who is working during the festive holidays has to be paid double. If the employer refused to pay them accordingly, the employer could make a complaint to the Labour Department. Representatives of the employers were also aware of the law governing this issue. The representative from Labour Department also asked for some clarification regarding the issue of extension of working hours until late night during the mega sale carnivals. The representative of the employers explained that any workers that have to work until late night during the carnival were paid overtime salary and in fact some of the supermarket provided transportation to these workers.

In relation to the issue of emergency leave, the workers have to give their reasons along with supporting evidences before any leave could be given to them. This is to ensure that the leave that is applied for is indeed a legitimate one. The representative of the employers also emphasized that any emergency leave taken without prior approval will cause their salary to be cut. They also voiced out their concern regarding the attitude of certain employees who are forging their medical certificates in order to get leave.

APPENDIX III

DIALOGUES ON THE ISSUES OF EMPLOYEES

INTRODUCTION

A memorandum outlining the resolutions adopted by Malaysian Trade Union Congress (MTUC) was handed to SUHAKAM on 19 January 2004. To discuss the memorandum, SUHAKAM had arranged a dialogue session with MTUC and the Congress of Union of Employees in the Public and Civil Services (CEUPACS).

The dialogue sessions provided an avenue for trade union leaders to air their views in the hope that they will be better heard. Among the issues discussed aired at this dialogue relate to human and trade union rights.

The highlight of the discussions are:

i) Delivery system in the Public Service
ii) Negotiation rights and Bargaining System for Public Sector employees in accordance with the ILO Conventions 87,98 and 151
iii) New pension rates
iv) Privatisation/Corporatisation of public utilities
v) National Joint Councils and Departmental

Following the discussion with the representatives of the trade unions it was decided that the matters raised should be best brought to the attention of the Human Resource Ministry. A dialogue was held between SUHAKAM and officials from the Ministry of Human Resource on 5 November 2005 at Putrajaya. The issues raised in the memorandum was discussed and clarified by the officials of the Ministry of Human Resource.

ISSUES RAISED IN THE MEMORANDUM

1. Recognition of Trade Union

MTUC expressed its concern in the delay of recognition of Trade Unions by the Human Resource Ministry.

The Director General of the Industrial Relation Department explained that recently there has been sharp increase in number of Trade Unions applying to be registered but the employers have yet to give recognition for the proposed Trade Unions. This is the main cause of the delay.

2. Delay on settlement of dismissal cases

According to MTUC the time taken for dismissal cases to be heard in the Industrial Court is too long and has created a massive backlog in the Industrial Court.

The Director General of the Industrial Department explained that the department is experiencing a shortage of officers in handling these cases. However with the increase in the number of officers, it is hoped the backlog of cases will be quickly cleared.

3. Denial of freedom of association

MTUC alleged that workers are denied the right to association. SUHAKAM expressed its concern because the right to freedom of association is enshrined under Article 10 of the Federal Constitution. MTUC urged the Ministry to make sure the policies made are in line with the rights granted under Article 10.

The Ministry replied that they do not condone such acts which is contrary to Article 10 and that the best interest of the nation as a whole is the main priority in formulating the policies.

4. Social Security Organisation (SOCSO)

MTUC is concerned that the introduction of the SOCSO - appointed Medical Board has resulted in drastic rise in the rejection of claims made to SOCSO. SOCSO denies the allegation saying the introduction of the Medical Board has seen, the number of approved claims rising by 70%. SOCSO has also introduced several benefits such as haemodialysis for its members. The fund for study loan has been increased from 30 million to 60 million.

SUHAKAM recommended that in order to speed up the process, SOCSO should be more organised and their computer system be updated. With the proper system in place, the process would be more efficient.

5. Contract workers

According to MTUC, most of the contract workers have no security of tenure or social protection. It was further allege that the employers do not adhere to the law.

The Director of Labour Department acknowledged the fact that the infringement of law with regards to contract worker exist but they have not received any complaint on this matter.

6. Abuse of Voluntary Separation Scheme (VSS)

It was claimed by MTUC that a number of employers abused VSS. These employers intimidated employees to accept VSS but at the same time recruit foreign workers because of their lower wage.

The Director of Labour Department replied that the VSS scheme is governed by the Code of Conduct of Industrial Harmony. The Labour Department is in charge of overseeing this scheme and so far they have not received any complaint on VSS.

7. Foreign workers

MTUC urged the government to impose a limit on the recruitment of foreign workers so as not to deny local workers employment. MTUC also urged the government to give priority to local workers.

The Ministry of Human Resource reiterates that the government policy is to give priority to local workers but it is the attitude and inflexibility of local workers which caused preference of employment to be given to foreign workers.

SUHAKAM recommended that the Ministry play an active role in changing the mind set of local workers so that they will be more competitive in the employment sector.

8. The appointment of Mr. Rajasegaran a/l V.N. Rajah as Chairman of Industrial Court.

MTUC alleged that the appointment of En. Rajasegaran contravene section 23A of the Industrial Relation Act 1967.

9. Gender discrimination

Even though the Federal Constitution guaranteed the equality of women but in practise, women are still being discriminated.

The Ministry reiterates their commitment in ensuring the equality of women in the employment sector. The Ministry supports the concept of 'family friendly working environment' and the government is prepared to contribute to set up day care centres for children at the work place.

10. National Labour Advisory Council (NLAC)

MTUC is concerned that the setting up of NLAC is merely a window dressing by the government. This is due to the fact that the NLAC is not active. MTUC suggests that a tripartite technical committee be formed within NLAC to oversee cases concerning the workers.

11. Code of conduct for industrial harmony

MTUC is concerned that a large number of employers ignored the Code of Conduct for Industrial Harmony.

The Ministry is aware of this and a discussion was held but it was done before the handing of memorandum. The Ministry promised to take into consideration the recommendation from MTUC.

12. Minimum wages

MTUC recommends that a minimum wage scheme be implemented. This in turn will help workers achieve a better quality of life.

The Ministry informed MTUC and SUHAKAM that the government has no plan in the near future to implement a minimum wage scheme.

13. National retrenchment scheme

MTUC had proposed a National Retrenchment Scheme (NRS) and was agreed by the then Prime Minister but it was not carried out. The employers claimed that this exercise if carried out would render them less competitive in the market.

The Ministry informed that they will discuss this matter thoroughly before making any recommendation to the government.

APPENDIX IV

LIST OF ACTIVITIES OF SUHAKAM SABAH BRANCH IN 2004

1.	31 January – 12 February	-	Exibition and Human Rights Message through Art Competition at the Sabah Art Gallery.
2.	11-14 February and 3-6 March	-	Open inquiry on alleged violation of human rights by the Ranau Police personnel on villagers of Kg. Desa Monteki, Kundasang,Ranau.
3.	5 February	-	Official opening of exhibition of winners of human rights through art competition by Y.B. Datuk Karim Hj. Bujang.
4.	17 March	-	Visit to Henry Gurney School, Keningau.
5.	18 March	-	Meeting with the Commissioner of Police Datuk Elyas Ibrahim. Visit to Kepayan Prison, Tanjung Aru Police Station lock-up, Karamunsing Police Station lock-up and KK Police Station lock-up
6.	19 March	-	Visit to Menggatal Detention Centre
7.	2 April	-	Forum on CEDAW at the Shangri-La's Tanjung Aru Resort
8.	21 June	-	Workshop on "Law Enforcement and Human Rights" at the Shangri-La's Tanjung Aru Resort.
9.	26 July	-	Forum on "Violence Against Women and Children – Focus on Rape", at the Shangri-La's Tanjung Aru Resort.
10.	29 July	-	Talk on "SUHAKAM and Human Rights" to Form 1 – V students of Seri Insan School.

11. 16 August	-	Forum on "Native Customary Rights"
12. 17 August	-	Lunch with the media
13. 20 August	-	Officiated International Day for Indigenous Peoples.
14. 15 September	-	Visit to Menggatal Detention Centre
15. 29 September	-	Meeting with the following officers :- i) New Sabah Commissioner of Police ii) OCPD Kota Kinabalu iii) Deacon, Social Science, University Malaysia Sabah iv) Director, National Registration Department v) Director, Immigration Department vi) YAB Sabah Chief Minister
16. 1 October	-	Meeting with Director of Welfare Services Department
17. 8 October	-	Talk on "Human Rights and SUHAKAM" to the Sabah Society.

TALKS, SEMINARS AND CONFERENCES - NATIONAL

NO.	DATE	TALKS, SEMINAR AND CONFERENCES	VENUE	REPRESENTATIVE
1.	22 Mar	Talk on "Violence Against Children From The Psychological Perspective" by the Academic Staff Association of Universiti Kebangsaan Malaysia (PKAUKM).	Selangor	Dr. Chiam Heng Keng, SUHAKAM Commissioner
2.	6 May	Talk on "Bullying Among School Children" at the Bukit Nenas Convent High School.	Kuala Lumpur	Dr. Chiam Heng Keng, SUHAKAM Commissioner
3.	24 – 25 May	Talk on "Civil Society in Fight Against Corruption: The Education Perspective" at the 'Seminar on Fighting Corruption Effectively: A Multi-Prolonged Approach' by the Asia Institute for Development Communication.	Kuala Lumpur	Dr. Chiam Heng Keng, SUHAKAM Commissioner
4.	4 June	Forum with the Ministry of Education, Malaysia.	Selangor	Dato' Asiah Abu Samah, SUHAKAM Commissioner
5.	11 June	The Independence of the Judiciary: Its Principles Within the Ambit of the Universal Declaration of Human Rights organised by Institut Kefahaman Islam Malaysia (IKIM)	Kuala Lumpur	Dato' K.C. Vohrah, SUHAKAM Commissioner Ms. Emy Hadida Mohd Noor, Officer
6.	21 – 23 June	Second East Asia Congress (ASLI)	Kuala Lumpur	Dato' Siva Subramaniam, SUHAKAM Commissioner

NO.	DATE	TALKS, SEMINAR AND CONFERENCES	VENUE	REPRESENTATIVE
7.	12 July	Round Table Discussion: Societys' Role in Overcoming the Problem of Snatch Theft by the Ministry of Internal Security and Pertubuhan Alumni Kelab-Kelab UMNO Luar Negara	Kuala Lumpur	Mr. Jamaluddin Othman, Officer
8.	20 – 23 July	Regional Roundtable on ICPD+ 10 - International Planned Parenthood Federation, East & South East Asia & Oceania Region	Kuala Lumpur	Ms. Long Seh Lih, Officer Ms. Emy Hadida Mohd Noor, Officer Ms. Leena Ghosh, Officer Mrs. Shahrina Ahmad Sharkawi, Officer Ms. Rafidah Yahya, Officer
9.	21 – 22 July	Talk on "Children's Right and Juvenile Justice" at the National Symposium on Child Welfare organized by Department of Social Work, Universiti Utara Malaysia.	Penang	Dr. Chiam Heng Keng, SUHAKAM Commissioner
10.	24 July	Talk on "Overview of SUHAKAM's Annual Report" at the 'National Consultation on SUHAKAM After 4 Years of Changing the Human Rights Perspective' organized by ERA Consumer Malaysia.	Kuala Lumpur	Dr. Chiam Heng Keng, SUHAKAM Commissioner Tan Sri Dato' (Dr.) Ramon Navaratnam, SUHAKAM Commissioner Ms. Elaine Zarina Zainur, Officer Ms. Sharmila Sharma, Officer Ms. Leena Ghosh, Officer Mrs. Shahrina Ahmad Sharkawi, Officer Mr. Simon K., Officer Mr. Wan Mazlan, Officer

NO.	DATE	TALKS, SEMINAR AND CONFERENCES	VENUE	REPRESENTATIVE
11.	26 July	Debate between YB. Dato' Mohd. Nazri Tan Sri Aziz and YB Lim Kit Siang on the 'Internal Security Act – ISA'	Kuala Lumpur	Dato' Muhammad Shafee Abdullah, SUHAKAM Commissioner Dato' Siva Subramaniam, SUHAKAM Commissioner
12	29 July	Talk on "SUHAKAM and Human Rights" at the Seri Insan School	Sabah	Tan Sri Datuk Seri Panglima Simon Sipaun, SUHAKAM Commissioner
13.	12 Aug	Seminar on Tackling Juvenile Delinquency, Selangor State Level	Selangor	Dato' Siva Subramaniam, SUHAKAM Commissioner
14.	14 Aug	Dialog with Students at the 9th National Graduate Leadership Camp.	Port Dickson	Dato' Choo Siew Kioh, SUHAKAM Commissioner
15.	24 Aug	2nd Women's Summit – Ministry of Women, Family and Community Development	Kuala Lumpur	Ms. Long Seh Lih, Officer
16.	4 – 5 Oct	Keynote address on "Violence, violence...more violence. Why?" at the 'Third Psychology and Social National Conference' organized by the Centre of Psychological and Human Development Studies, Universiti Kebangsaan Malaysia.	Selangor	Dr. Chiam Heng Keng, SUHAKAM Commissioner
17.	11 Oct	Public Consultation on Violence Against Women by ERA Consumer Malaysia	Selangor	Ms. Long Seh Lih, Officer
18.	11 Oct	The 21st Dialogue Between the Government and the Malaysian Environmental NGOs (MENGO)	Kuala Lumpur	Mr. Jamaluddin Othman, Officer

NO.	DATE	TALKS, SEMINAR AND CONFERENCES	VENUE	REPRESENTATIVE
19.	1 Nov	Talk on "Snatch Theft and Other Related Criminal Activities: Right to Safety" at the 'Forum on Campaign Against Snatch Theft and Other Related Criminal Activities' organized by EDMAT-27, University of Malaya (27th Engineering Development, Motivation and Awareness Training Project).	Selangor	Dr. Chiam Heng Keng, SUHAKAM Commissioner
20.	11 Dec	'Festival of Rights' by the Malaysian Bar Council and HAKAM	Penang	Ms. Emy Hadida Mohd. Noor, Officer
21.	14 Dec	21st ASEAN Council of Teachers' (ACT) Convention	Langkawi	Dato' Asiah Abu Samah, SUHAKAM Commissioner
22.	14 - 15 Dec	Talk on "Educational Initiatives to Overcome Juvenile Delinquency" at the 'National Conference on Juvenile' organized by the Malaysian Crime Prevention Foundation.	Kuala Lumpur	Dr. Chiam Heng Keng, SUHAKAM Commissioner
23.	15 Dec	Roundtable Discussion on Refugees	Kuala Lumpur	Ms. Long Seh Lih, Officer
24.	17 Dec	Talk on "Rights of Students and Teachers: Implication on Management of the School" at the 'Graduates' Seminar' organized by Institut Pengajian Kepengetuan.	Kuala Lumpur	Dr. Chiam Heng Keng, SUHAKAM Commissioner

SEMINARS, WORKSHOP AND CONFERENCES - INTERNATIONAL

NO.	DATE	SEMINARS AND CONFERENCES	VENUE	REPRESENTATIVE
1.	4 - 5 Feb	The Sub-Regional Workshop On Disseminating The First Regional Millenium Development Goals	Manila, Philippines	Tan Sri Dato' Ramon Navaratnam, SUHAKAM Commissioner. Ms. Rafidah Yahya, Officer
2.	29 Feb – 6 Mar	XII Annual Workshop On Regional Cooperation For The Promotion & Protection Of Human Rights In The Asia Pacific Region	Doha, Qatar	Datuk Dr. Raj Abdul Karim, SUHAKAM Commissioner Ms. Elaine Zarina Zainur, Officer
3.	4 – 9 Apr	60th Session Of The Commission On Human Rights (CHR)	Geneva, Switzerland	Tan Sri Abu Talib Othman, SUHAKAM Chairman Ms. Sharmila Sharma, Officer
4.	4 – 17 Apr	60th Session Of The Commission On Human Rights (CHR)	Geneva, Switzerland	Dato' K.C.Vohrah, SUHAKAM Commissioner Mrs. Nurul Hasanah Ahamed Hassain Malim, Officer
5.	1 – 5 June	30th San Reno Refugee Law Course, International Institute of Humanitarian Law	San Remo, Italy	Ms. Long Seh Lih, Officer
6.	17 – 18 June	Fourth Workshop On The Asean Regional Mechanism On Human Rights	Jakarta, Indonesia	Tunku Datuk Nazihah Tunku Mohamed Rus, SUHAKAM Commissioner
7.	9 – 15 July	Living & Learning Together	Auckland, New Zealand	Dr. Chiam Heng Keng, SUHAKAM Commissioner
8.	13 – 17 Sept	i) 9th Annual General Meeting Of The Asia Pacific Forum ii) 7th International Conference For National Human Rights Institutions	Seoul, Korea	Dato' Ranita Mohd Hussein, SUHAKAM Commissioner

NO.	DATE	SEMINARS AND CONFERENCES	VENUE	REPRESENTATIVE
9.	15 – 21 Sept	International Migration and Human Rights (6th Informal ASEM Meeting)	Shanghai, China	Dr. Mohd. Hirman Ritom Abdullah, SUHAKAM Commissioner Ms. Emy Hadida Mohd. Noor, Officer
10.	9 – 31 Oct	8th Annual Training & Studies Session on Human Rights	Bangkok, Thailand	Ms. Azlina Aziz, Officer
11.	19 Oct	First Consultation Meeting of the National Human Rights Commissions in Southeast Asia	Bangkok, Thailand	Dato' Ranita Mohd. Hussein, SUHAKAM Commissioner
12.	20 - 22 Oct	Inter-sessional Expert Meeting on National Human Rights Action Plans and Human Rights Education	Bangkok, Thailand	Dato' Ranita Mohd. Hussein, SUHAKAM Commissioner
13.	3 – 6 Nov	Judges and Lawyers On The Justiciability Of Economic, Social and Cultural Rights	Mandaluyong City, Philippines	Dato' Abdul Monir Yaacob, SUHAKAM Commissioner
14.	20 – 25 Nov	International Workshop on "National Human Rights Institutions and Non-Governmental Organisations – An Agenda for Cooperation".	Nepal	Mrs. Shahrina Ahmad Sharkawi, Officer
15.	1 – 10 Dec	Regional Training Programme in Human Rights for Representatives from NHRIs in the Asia Pacific	Bangkok, Thailand	Ms. Rozaliana Zakaria, Officer Ms. Su Azizah Hamdan, Officer

APPENDIX VII

VISITORS TO SUHAKAM

NO.	ORGANISATION	DATE
1.	Mr. Stephane Jaquemet, UNCHR Representative based in Jakarta and Mr. Shinji Kubo, UNCHR Proctection Officer in Kuala Lumpur	21 January 2004
2.	Malaysian International Visitors Programme	19 February 2004
3.	Malaysia International Visitors Programme	17 March 2004
4.	Dr. Volker Turk, UNCHR Representative in Kuala Lumpur	25 May 2004
5.	Malaysian International Visitors Programme	10 June 2004
6.	YB Mr. Lim Kit Siang and DAP MPs	11 June 2004
7.	H.E. Mr. Melvyb L Mac Donald, High Commissioner for Canada	16 June 2004
8.	Malaysian International Visitors Programme	15 July 2004
9.	Malaysian International Visitors Programme	5 August 2004
10.	Dr. Volker Turk, UNCHR Representative in Kuala Lumpur	20 August 2004
11.	Mr. Khoo Jin Kiat, Reporter from China Press	2 September 2004
12.	H.E. Mr. Lauri Korpinen, Ambassador of Finland	7 September 2004
13.	Chairman Human Rights Commission of South Africa	11 September 2004
14.	Mr. Luc Schilling, Deputy Head of Mission, Royal Netherland Embassy	14 September 2004
15.	Malaysian International Visitors Programme	22 September 2004
16.	President of JCI Malaysia	12 November 2004
17.	High Commissioner for New Zealand	25 November 2004

APPENDIX VIII

Telegram: "CHIEFMIN KOTA KINABALU"

Bil. JKM.100-0/5/2

PEJABAT KETUA MENTERI
Tingkat 17 & 18
Wisma Innoprise
Jalan Sulaman
88817 Kota Kinabalu

29 November 2004

Setiausaha
Suruhanjaya Hak Asasi Manusia Malaysia
Suite E 1, Tingkat 8
CPS Tower, No.1
Jalan Centre Point
88000 KOTA KINABALU
(u/p: Encik Jasmih bin Slamat)

Tuan,

LAPORAN SUHAKAM SEMPENA SEMINAR TENTANG PENDEDAHAN KEPADA KEPERLUAN ASAS - Adequate Housing : A Human Right

Dengan hormatnya sukacita saya merujuk surat tuan rujukan SHM(SBH)004/4/5(07) bertarikh 18 November 2004 berhubung perkara di atas.

2. Sukacita dimaklumkan bahawa pejabat ini telah pun menerima **'Adequate Housing : A Human Rights'** dan telah disampaikan kepada YAB. Datuk Ketua Menteri.

3. YAB. Datuk Ketua Menteri merakamkan penghargaan atas segala inisiatif serta hasil usaha cemerlang pihak tuan.

Sekian dan terima kasih.

'BERKHIDMAT UNTUK NEGARA DENGAN BERSIH, CEKAP DAN AMANAH'

Saya yang menurut perintah,

[ABD. HALIM HJ. NAYAN]
Setiausaha Sulit Kanan
kepada Ketua Menteri

APPENDIX IX

GOVERNMENT RESPONSE TO THE INDIGENOUS PEOPLES REPORT 2003 *(LAPORAN HAK ASASI ORANG ASAL 2003)* PUBLISHED BY SUHAKAM

MAKLUMBALAS DARIPADA KERAJAAN TERHADAP LAPORAN HAK ASASI MANUSIA ORANG ASAL YANG DITERBITKAN OLEH SUHAKAM

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
1	Tanah dan Sumber Hutan	1. Bergantung kepada tanah dan sumber hutan. 2. Hak menduduki tanah. 3. Hak memiliki. 4. Pengeksplotasian hasil hutan.	1. Hak milik atau geran tanah rengrik harus diberi kepada komuniti Orang Asli untuk tempoh selama-lamanya. Terpulang kepada mereka sendiri untuk membahagi-bahagikan antara mereka mengikut adat masing-masing.	- P(EIS) JHEOA - KPTG	Kawasan Hutan Simpanan Kekal (HSK) yang diwujudkan di bawah Akta Perhutanan Negara 1984 adalah bebas daripada tuntutan oleh mana-mana pihak termasuk peruntukan-peruntukan di bawah Akta Orang Asli 1954. Walau bagaimanapun, hak kaum Orang Asli untuk masuk ke dalam kawasan HSK adalah dihormati. Sebagai contoh, di bawah Seksyen 47, Akta Perhutanan Negara 1984, tiada seorang pun dibenarkan masuk ke dalam hutan simpan kecuali dengan sesuatu permit masuk yang dikeluarkan oleh Pengarah Perhutanan Negeri. Walaupun sedemikian, secara tidak langsung, kaum Orang Asli dibenarkan masuk ke dalam hutan simpan untuk meneruskan aktiviti tradisinya tanpa permit masuk. Walau bagaimanapun perkara ini masih dalam kajian JKPTG.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			2. Pindaan yang sewajarnya perlu dibuat di dalam Akta Orang Asli 1954 (Akta 134) dan Kanun Tanah Negara untuk menjamin status berkekalan tanah Rizab Orang Asli. Peruntukan dalam enakmen Rizab Melayu hendaklah digunapakai dalam membuat pindaan tersebut. 3. Sempadan nengrik Orang Asli perlu ditunda dalam pelan daerah. Kaedah pemetaan komuniti harus diterima sebagai kaedah yang sah. 4. Nengrik Orang Asli bukan hanya perlu dikenalpasti, dilindungi dan diiktif malah mereka perlu diberi kebebasan untuk meneruskan aktiviti tradisi masing-masing di atas nengrik tersebut.	P(PP) JHEOA - Pengarah Negara JHEOA - KPTG - KPTG - Jabatan Perhutanan - Jabatan Margastua - Pengarah JHEOA Negeri	Jabatan kini sedang dalam proses membuat pindaan Akta 134. Antara pindaan yang dibuat ialah berkaitan :- i) Hak membangunkan tanah Orang Asli. ii) Definasi Orang Asli. iii) Pendidikan wajib. iv) Dan lain-lain. Kerajaan sedang dalam usaha menanda sempadan tanah Orang Asli kini kerja ukur sedang giat dilaksana berperingkat mengikut keupayaan peruntukan Jabatan. i) Seksyen 52, Akta Perlindungan Hidupan Liar 1972, Akta 76 dicadangkan dipinda atau dimansuhkan untuk tidak lagi membenarkan orang luar menjadikan masyarakat Orang Asli sebagai pembekal spesies hidupan liar untuk tujuan komersil. Jika kegiatan ini dibiarkan berterusan dengan berselindung

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					disebalik kelonggaran seksyen tersebut, spesies hidupan liar negara (terutama spesies yang diancam bahaya kepupusan) akan pupus. Kawasan-kawasan perlindungan yang begitu terhad keluasannya yang akan menjadi tempat perlindungan terakhir kehidupan pelbagai spesies hidupan liar tidak lagi selamat. ii) Masyarakat Orang Asli yang tinggal di dalam kawasan Taman Negara masih terus dibenarkan menjalankan aktiviti-aktiviti tradisional seharian mereka.
			5. Hak tanah Orang Asli dibincangkan bersama majlis Tanah Negara, Kerajaan Negeri, Kerajaan Persekutuan dan dibentangkan dalam Parlimen.	- Ketua Pengarah JHEOA - P(EIS) JHEOA	
			6. Perbincangan diadakan dengan KPLB dan Kerajaan Negeri untuk membentuk satu dasar mengenai hak milik tanah Orang Asli.	- KKLBW - KPTG - Pengarah JHEOA Negeri	Jabatan dan agensi terlibat kini dalam proses menyediakan garis panduan pemilikan tanah Orang Asli dan perbincangan akan diadakan dari masa ke semasa.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
2	Pembangunan	1. Hak Pembangunan dinafikan. 2. Tidak dibawa berbincang. 3. Tidak dimaklumkan projek yang akan dilaksanakan. 4. Tidak dilibatkan dalam pentadbiran pembangunan. 5. Laporan EIA tidak mengambilkira pandangan Orang Asli. 6. Pembangunan mega menjejaskan tanah adat. 7. Hak menentukan jenis pembangunan dinafikan. 8. Hak bekerja di atas rancangan. 9. Penentangan pembangunan ke atas tanah adat.	1. Penglibatan Orang Asli dalam perancangan sesuatu projek pembangunan yang akan dilakukan perlu dipertingkatkan dan diwajibkan melalui perbincangan. Rundingan hendaklah diadakan di antara pihak yang terlibat dalam usaha mencapai keputusan (sama ada untuk menerima atau menolak) mengenai apa jua projek. 2. Perbincangan atau rundingan yang dijalankan harus mengambilkira pendapat masyarakat Orang Asal di peringkat akar umbi dan tidak terhad kepada ketua kampung sahaja. Rundingan ini harus diadakan bersama mereka sebelum pembangunan dibuat.	- P(PP) JHEOA - P(EIS) JHEOA - EPU - P(PP) JHEOA - P(EIS) JHEOA - KPLB - EPU	Rancangan Pembangunan Tanah untuk Orang Asal (Asli) yang dilaksanakan di negeri-negeri seperti Projek di Penyusunan Semula Kampung (PSK) dan Rancangkan Pengumpulan Semula (RPS) adalah telah mendapat persetujuan penduduk setempat barulah projek tersebut dilaksanakan dan ianya selaras dengan dasar tanah yang diluluskan oleh Kerajaan Negeri untuk Orang Asal. Malahan permintaan semakin tinggi daripada Orang Asli agar melaksanakannya di kampung mereka. Perbincang sering dibuat dari masa ke semasa mengikut keperluan dan isu yang timbul atau perlu di atasi.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			3. Rancangan pembangunan tanah Orang Asal hendaklah berasaskan kehendak, keperluan dan aspirasi mereka serta mengambilkira kesesuaian lokasi tanah, daya maju projek dan pulangan maksima kepada Orang Asal.	- P(PP) JHEOA - P(EIS) JHEOA - Pengarah JHEOA Negeri	Memang menjadi hasrat Jabatan untuk memastikan Orang Asal mendapat faedah yang secukupnya daripada sesuatu projek. Walau bagaimanapun kadang-kadang keputusan projek mega dibuat oleh pihak yang lebih berkuasa dan tidak mengambilkira pandangan masyarakat setempat dan Jabatan.
			4. Pihak berkuasa diharap lebih telus dalam penyediaan laporan EIA.	Jabatan Alam Sekitar	Penilaian Kesan Kepada Alam Sekeliling (EIA) telah mula dikuatkuasakan kepada projek-projek yang tertakluk kepada Perintah Kualiti Alam Sekeliling (Aktiviti Yang Ditetapkan) (Penilaian Kesan Kepada Alam Sekeliling) semenjak 1 April 1988. Prosedur menjalankan EIA yang diamalkan oleh Jabatan Alam Sekitar adalah telus dan jelas di mana prosedur menyedia dan memproses laporan EIA terperinci (DEIA) memerlukan input daripada orang awam. Bidang rujukan (TOR) dan laporan DEIA dikehendaki dipameran di tempat-tempat tertentu

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					khususnya di kawasan cadangan projek terlibat untuk mendapat maklumbalas, Jabatan Alam Sekitar akan mengambilkira semua ulasan dan pandangan orang awam yang diberi termasuk daripada Orang Asal.
			5. Pihak yang berkenaan harus mewujudkan garis panduan untuk menilai impak sosial, budaya dan alam sekitar bagi setiap projek pembangunan di kawasan Orang Asal dan menghentikan segera aktiviti pembangunan yang memusnahkan alam sekitar.	Jabatan Alam Sekitar	Jabatan Alam Sekitar telah menyediakan satu garis panduan EIA umum dan dua puluh tiga (23) garis panduan spesifik EIA mengikut aktiviti bertujuan untuk mewujudkan satu prosedur penyediaan dan penilaian yang telus dan mantap supaya laporan EIA yang disediakan oleh pihak perunding EIA mengcukupi semua aspek penilaian. Penilaian laporan EIA yang di jalankan oleh Jabatan Alam Sekitar merangkumi pelbagai aspek penilaian termasuk sosioekonomi, sosial, budaya dan impak kepada alam sekitar. Jabatan Alam Sekitar hanya meluluskan laporan EIA yang memenuhi kriteria penilaian yang ditetapkan, manakala laporan EIA yang

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			6. Orang Asal diberi latihan dan kemahiran supaya dapat melibatkan diri dalam projek pembangunan. Orang Asal harus diberi keutamaan peluang pekerjaan terutamanya dalam projek yang di jalannya di kawasan mereka sendiri.	P(M) JHEOA	tidak memenuhi kriteria penilaian tidak diluluskan oleh Jabatan. Jabatan memang menyediakan peluang-peluang kepada Orang Asal untuk mendapat kemudahan latihan kemahiran seperti kursus automotif, mengecat, binaan, binaan, kemahiran menguna mesin back-hoe loader, kelas jahit dan juga ICT.
			7. Pembangunan hendaklah menyeluruh meliputi jalan raya, sekolah, pusat kesihatan, pusat-pusat keselamatan dan sebagainya.	- KKLBW - P(EIS) JHEOA	Jabatan kini sudah dan sedang menyedia kemudahan infra struktur di petempatan Orang Asli. Ini bergantung kepada peruntukan yang diluluskan. Ini masih dalam kajian JKPTG.
			8. Tindakan mempertahankan tanah adat dengan mendirikan benteng secara aman seharusnya tidak dilihat sebagai membantah pembangunan dan Orang Asal yang terlibat tidak dikenakan hukuman.	KPTG	
			9. Kerjasama di antara Kerajaan dan Orang Asal mesti dipertingkatkanselaras dengan pengistiharaan dekad warga	P(EIS) JHEOA	Jabatan sentiasa bersedia bekerjasama dalam apa jua bidang demi kebaikan kumpulan sasar.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			Peribumi oleh Pertubuhan Bangsa-Bangsa Bersatu bertemakan *Partnership in Action*.		
3	Penempatan Semula	1.Penempatan Semula sering dijalankan. 2.Memberi kesan kepada cara hidup harian. 3.Kualiti tanah tidak ada nilai pasaran. 4.Pampasan tidak adil.	1.Sebelum penempatan semula dilakukan, rundingan harus diadakan dengan Orang Asal. 2.Tanah di penempatan semula hendaklah sama atau lebih baik dari segi kuantiti (keluasan) mahupun kualitinya. Ia juga perlu memenuhi keperluan dan mengekalkan budaya hidup Orang Asal seperti memburu dan bertani. 3.Pampasan yang adil mengikut nilai pasaran dan potensi hartanah harus dibayar sepenuhnya kepada Orang Asal. 4.Orang Asal harus di tempatkan semula dengan asas ekonomi yang lebih kukuh dan kemudahan asas yang lebih baik kualitinya seperti rumah, bekalan air, elektrik, jalanraya, sekolah, pusat kesihatan dan keperluan komuniti lain.	-P(EIS) JHEOA -Pengarah JHEOA Negeri -P(EIS) JHEOA -Pengarah JHEOA Negeri - P(EIS) JHEOA -Jabatan Penilaian -P(EIS) JHEOA -Pengarah JHEOA Negeri	Jabatan sentiasa memastikan rundingan dengan Orang Asli dibuat sebelum sesuatu projek dijalankan. Dalam masa yang sama kemudahan-kemudahan asas memang menjadi tanggungjawab Jabatan untuk menyediakan dan memastikan Orang Asli mendapat nikmat tersebut. Apa-apa jua perkara yang melibatkan Penempatan Semula Orang Asli adalah melalui proses perundingan dan persetujuan masyarakat setempat dengan mengambilkira kebajikan dan kesejahteraan Orang Asli diutamakan terlebih dahulu seperti :- i) Sumber/punca ekonomi ii)Gantian tanah selaras dengan dasar tanah Kerajaan Negeri untuk Orang Asli. iii) Kemudahan asas dan infrastruktur. iv) Kawasan rayau. v) Surat persetujuan juga diperolehi daripada mereka.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
4	Adat Resam/ Jatidiri Orang Asal (Asli	1.Identiti	1.Orang Asli hendaklah bebas memilih dan mempraktikkan agama masing-masing.	- JHEOA - JAKIM	JAKIM tidak pernah memaksa Orang Asli memeluk Agama Islam. Aktiviti yang dilaksanakan oleh JAKIM adalah berbentuk kemasyarakatan seperti mengadakan aktiviti sukaneka, mengadakan program kesihatan dengan kerjasama Kementerian Kesihatan. Di samping itu ceramah-ceramah keselamatan diadakan bagi masyarakat orang-orang Asli dengan kerjasama Bahagian Keselamatan Dalam Negeri dari masa ke semasa. Orang-orang Asli memeluk Agama Islam adalah sercara sukarela setelah mereka memahami ajaran dan kebaikan Agama Islam itu sendiri hasil daripada pergaulan mereka dengan orang-orang Islam.
			2.Memperakui dan mengiktiraf kebudayaan Orang Asli sebagai sebahagian dari kebudayaan kebangsaan.	JHEOA	Jabatan tiada halangan kepada Orang Asli untuk mengamalkan adat resam dan kebudayaan mereka hanya setakat ini belum ada tindakan untuk mengiktiraf kerana masih dalam peringkat perbincangan awal.
			3.Kodifikasi Adat Resam Orang Asli hendaklah mengikut proses yang betul dan berteraskan adat resam Orang Asli sendiri.	JHEOA	

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
5	Kesihatan	1. Kekurangan perkhidmatan kesihatan dan terdedah kepada ancaman penyakit yang merbahaya. 2. Menggunakan perkhidmatan dukun/ bomoh yang tidak effisen. 3. Penyakit malaria, batuk kering, kolera, wabak kepialu dan kusta ancaman kepada Orang Asli. 4. Kadar kematihan ibu semasa melahirkan anak adalah tinggi. 5. Tekanan psikologi, emosi serta ekonomi kerana telah lama tinggal di hospital untuk mendapatkan rawatan. 6. Menghadapi masalah malnutrition.	1. Pihak Kementerian Kesihatan perlu meningkatkan usaha bagi mewujudkan kesedaran kepada masyarakat Orang Asal peri pentingnya penjagaan kesihatan termasuk kaedah dan cara perlaksanaannya. 2. Perkhidmatan dan kemudahan kesihatan di kawasan luar bandar juga perlu diperbanyak-kan. Ia bukan sahaja dari segi peralatan dan ubatan,malahan juga merangkumi program pemakanan berkhasiat. 3. Para sukarelawan di antara orang Asal juga perlu diambil dan dilatih untuk membantu pihak Kementerian Kesihatan. Pengamal perubatan tradisional dan bidan kampung hendaklah diberi pendedahan dan latihan sewajarnya bagi membolehkan mereka diiktiraf dan ditauliahkan.	- TKP II (JHEOA) - KKM - TKP III (JHEOA) - KKM - TKP II (JHEOA)	Pihak Jabatan dan Kementerian Kesihatan sentiasa meningkatkan usaha mewujudkan kesedaran tentang kesihatan kepada Orang Asli melalui ceramah, pameran dan aktiviti masyarakat seperti gotong-royong membersih kampung dari masa ke semasa. Bagi meningkatkan perkhidmatan kesihatan Jabatan telah memeberi balai rawatan bagi menyediakan kemudahan Orang Asli mendapat rawatan bagi kampung penduduknya kecil, tetapi bagi kampung yang ramai penduduk Jabatan menyediaan klinik desa yang lengkap dengan kemudahan perubatan dan kakitangan. Jabatan sedar masyarakat Orang Asli 46% tinggal di kawasan pendalaman. Masyarakat ini juga sama memerlukan perkhidmatan kesihatan seperti masyarakat yang tinggal di bandar. Disebabkan keadaan infrastruktur, logistik, kebudayaan dan kepercayaan perkhidmatan penjagaan kesihatan ibu semasa hamil, bersalin, dan selepas bersalin masih diterajui oleh Tok Halak dan bidan tradisional.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					Amalan Bidan Tradisional dan Tok Halak ini ada yang mendatangkan mudarat dan ada juga yang memberi kebaikan. Yang membawa kepada kebaikan kita memberi galakkan kepada mereka supaya meneruskan tabiat yang baik ini. Sementara untuk meningkatkan pengetahuan mereka kepada perawatan moden beberapa kursus telah di jalankan. Selain memberi kursus kepada Bidan Tradisional dan Tok Halak ini. Jabatan juga ada mewujudkan sukarelawan kesihatan dari kalangan Orang Asli di kampung-kampung. Pihak Kementerian Kesihatan juga tidak ketinggalan mengambil bahagian dalam 'Integrated Approach for the reduction of maternal deaths in Malaysia'. Pihak KKM mendapatkan sumbangan daripada UNICEF. Dengan sumbangan itu Jabatan juga menganjurkan kursus untuk Bidan Tradisional dan Tok Halak dan memberi beberapa peralatan untuk keperluan Perkhidmatan Kesihatan Keluarga.
			4. Penswastaan perkhidmatan kesihatan yang tidak membawa manafaat kepada Orang Asal tidak perlu diteruskan.	- JHEOA - TKP II (JHEOA) - KKM	Buat masa ini perkhidmatan pengswastaan perlu diteruskan.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			5. Bagi masalah ibu yang bakal bersalin, langkah mengenalpasti rasional tinggal lama di hospital sebelum bersalin perlu dikaji dengan lebih teliti oleh pihak berkenaan.	TKP II (JHEOA)	Pada hakikatnya kesemua pesakit yang disenaraikan dan pesakit-pesakit yang berada di dalam wad tidak mengalami tekanan sebaliknya rasa gembira tinggal di dalam wad kerana mendapat rawatan, makanan dan penjagaan yang sempurna, sakit mereka sembuh, berat badan naik dan sihat. Semasa pulang ke kampung pesakit dan keluarga mereka akan dibekalkan dengan barang-barang makanan anggaran untuk seminggu sementara pesakit dapat mencari rezeki lain. **Sebab-sebab mengapa pesakit dan keluarga tinggal lama di wad** 1.Keadaan kesihatan pesakit yang menyebabkan pesakit terpaksa tinggal lama di wad. Ada pesakit yang terpaksa dirujuk ke hospital lain dan tarikh berjumpa Doktor di hospital ini juga mengambil masa yang lama dan pesakit terpaksa menunggu sehingga ke tarikh yang ditetapkan. Jika pesakit dibenarkan pulang, masalah kenderaan untuk datang semula dan ada kalanya pesakit terlepas tarikh temujanji. 2.Kelewatan kenderaan untuk menghantar pesakit dan keluarga

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					balik ke kampung. 3.Ada juga terdapat pesakit-pesakit setelah dirujuk terus dimasukkan ke wad-wad di hospital berkenaan dan keluarga yang tinggal terpaksa menunggu pesakit sehingga discaj untuk sama- sama dihantar balik ke kampung. 4 Pesakit-pesakit dan pengiring yang terpaksa balik dengan helicopter juga menghadapi masalah kerana jadual penerbangan hanya sekali sebulan dan jika mereka terlepas jadual penerbangan hanya sekali sebulan dan jika mereka terlepas jadual penerbangan untuk bulan ini mereka terpaksa menunggu sehingga bulan depan.
6	Pendidikan	1. Kemudahan asas pendidikan di luar bandar tidak lengkap. 2. Kurang kesedaran tentang pentingnya pendidikan. 3. Ketidak hadiran ke sekolah berlanjutan	1. Bilangan sekolah1 perlu ditambah di kawasan luar bandar. Sekolah yang sedia ada perlu dinaiktaraf. Guru-guru yang berpengalaman dan berwibawa perlu bersedia untuk ditugaskan ke kawasan-kawasan pedalaman ini. Pemberian insentif juga mungkin boleh menjadi pendorong	- P(M) JHEOA - Kementerian Pendidikan Malaysia	**A. Perspektif Kementerian Pendidikan** 1. Sejak pengambilalihan pentadbiran sekolah- sekolah Orang Asli, Kementerian Pelajaran sentiasa berusaha untuk meningkatkan tahap pendidikan khususnya pembangunan fizikal (bilik darjah, asrama dan rumah guru) di sekolah-sekolah Orang Asli secara berperingkat-peringkat. Usaha ini akan dilaksanakan secara

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			kepada tenaga pengajar untuk berkhidmat di kawasan-kawasan pedalaman. 2. Pihak berkuasa pendidikan harus mengambil tindakan terhadap guru yang tidak menunaikan tanggungjawab dan tugas mereka.	KPM	berterusan supaya tahap pendidikan sekolah-sekolah Orang Asli setanding dengan sekolah-sekolah luar bandar yang lain. Sekolah-sekolah sedia ada juga turut dinaik taraf melalui projek ubahsuai. 2. Pada masa ini terdapat seramai 1081 orang guru di tempatkan di sekolah Orang Asli. 73 orang daripadanya adalah guru keturunan Orang Asli. Kementerian Pelajaran sentiasa memastikan supaya guru-guru berpengalaman dapat di tempatkan di kawasan terlibat. Berdasarkan amalan sedia ada, guru-guru perlu berkhidmat sekurang-kurangnya 3 tahun di sekolah Orang Asli bagi melayakkan mereka mohon untuk berpindah. Untuk jangka panjang, Kementerian Pelajaran telah mengambil dan melatih calon-calon guru dari keturunan Orang Asli supaya mereka dapat di tempatkan di kawasan masing-masing bagi tempoh yang lebih lama. 3. Kementerian Pelajaran peka terhadap kebajikan guru dan sentiasa memantau untuk memastikan mereka melaksanakan tugas yang

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					kepada yang bertugas di kawasan pedalaman. JHEOA menyediakan biasiswa kepada pelajar Orang Asli yang berjaya ke IPTA. Bantuan asas seperti ini turut dibekalkan termasuk pakaian seragam, kasut sekolah, beg, alat tulis, manakala KPM turut memberi bantuan 'one-off' sebanyak RM120.00 bagi setiap pelajar. Asrama baru yang dibina oleh KPM tetap mematuhi piawaian yang di paka.
			5. Kelonggaran terutamanya dari segi peruntukan biasiswa dan pinjaman perlu diberi kepada pelajar-pelajar yang layak untuk memasuki Institusi Pengajian Tinggi. 6. Kuota untuk memasuki Institusi Pengajian Tinggi dinaikkan untuk Orang Asal yang berkelayakan. 7.Bagi memastikan budaya dan adat resam Orang Asal	- KPM - TPNM Kementerian Pengajian Tinggi P(PP) JHEOA	1. Syarat-syarat yang ditetapkan oleh PTPTN untuk melayakkan pinjaman adalah minima dan setakat ini dapat dipenuhi oleh pelajar-pelajar Orang Asli. Syarat-syarat tersebut ialah :- a) Warganegara Malaysia b) Lulus SPM dengan 3 kepujian c) Telah mendaftar untuk mengikuti kursus peringkat Diploma atau Ijazah. d) Bagi pelajar IPTS, pelajar hendaklah memenuhi syarat kelayakan masuk

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			terpelihara, perancangan pendidikan jangka panjang bagi Orang Asal perlu diselaraskan dengan pengetahuan, pembangunan dan program ekonomi yang bersesuaian dengan budaya serta cara hidup Orang Asal.		kursus sebagaimana yang ditetapkan oleh Jabatan Pendidikan Swasta (JPS), Kementerian Pengajian Tinggi. e) Tiada penaja lain. f) Sekiranya telah pernah mendapat pinjaman PTPTN yang pengajian terdahulu, tetapi gagal atau berhenti daripada menamatkan pengajian, pelajar hanya boleh memohon pinjaman kali kedua setelah menyelesaikan hutang yang terdahulu. 2. Bagi membantu pelajar daripada keluarga yang kurang berkemampuan, PTPTN menyediakan Wang Pendahuluan Pinjaman (WPP) yang diedarkan kepada pelajar yang ditawarkan ke IPTA seminggu sebelum pendaftaran. 3. Kementerian Pengajian Tinggi amat prihatin mengenai pengurusan permohonan kemasukan Pelajar ke IPTA bagi lepasan SPM dan STPM/ Setaraf dari kalangan Orang Asli dan diselaraskan melalui Jabatan Hal Ehwal Orang Asli.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					4.Permohonan dari kalangan Orang Asli yang mempunyai kelayakan minimum akan diberi pertimbangan khas untuk mengikuti Program Pra-Diploma, Diploma bagi Lepasan SPM dan Ijazah Pertama bagi Lepasan STPM/Setaraf di IPTA.
7	Ekonomi Tradisi dan Kemiskinana	1.Kaedah sara hidup secara tradisi terabai. 2.Pendapatan perkapital masih rendah majoriti di bawah paras garis kemiskinan. 3.Penafian hak mendapat tanah adat. 4.Masalah ekonomi, pendidikan, kemudahan kesihatan menyumbang ke arah kemiskinan.	1. Pihak berkuasa hendaklah mengiktiraf aktiviti tradisi seperti bercucuk tanam, menangkap ikan dan memburu. Ini kerana bagi kebanyakan komuniti Orang Asal, cara hidup tradisi ini merupakan sumber kehidupan mereka. Jadi hak mereka untuk terus mengamalkan aktiviti seumpama ini hendaklah dihormati. 2. Manakala bagi komuniti yang bergantung kepada aktiviti pertanian, bantuan seperti peralatan moden perlu disediakan bagi meningkatkan lagi keupayaan penghasilan sumber kehidupan ini.		Bagi bantuan-bantuan untuk Orang Asli JHEOA Negeri akan salurkan melalui aktiviti Pembangunan Usahawan dan peluang-peluang perniagaan selaras dengan dasar JHEOA dan pasaran semasa serta berdaya maju. 1. Memang jelas bahawa Akta Perhutanan Negara 1984 tidak menghalang kaum Orang Asli menjalankan aktiviti tradisinya. Dalam konteks ini, di bawah Seksyen 62(b), Akta Perhutanan Negara 1984, kaum Orang Asli dibenar mengeluarkan apa-apa hasil hutan yang diambil dari mana-mana tanah Kerajaan atau tanah bermilik oleh mana-mana Orang Asli tanpa membayar royalti untuk kegunaan sendiri bagi ;- i) Pembinaan dan pembaikan pondok-pondok sementara atas mana-mana tanah yang diduduki secara sah oleh Orang Asli itu.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			3. Hak dan penggunaan sumber asli di kawasan perlindungan seperti hutan simpan, taman dan santuari tidak dikenakan sekatan untuk tujuan kehidupan seharian. 4. Pembangunan yang akan dilaksanakan mestilah bersifat participatory development, di mana Orang Asal terlibat secara langsung dalam proses perancangan, pelaksanaan dan penerimaan hasil pembangunan. 5. Dari sudut kepentingan ekonomi, cara hidup tradisi Orang Asal yang unit juga boleh dikomersilkan dengan syarat ia memberi manafaat kepada mereka. Aktiviti luar bandar yang mampu menambah pendapatan sampingan seperti hasil kraftangan dan eko-pelancongan juga perlu dipergiatkan.		ii) Penyenggaraan kelong-kelong menangkap ikan dan tempat mendarat. iii) Kayu api atau maksud-maksud domestik lain. iv) Pembinaan ataupenyenggaraan apa-apa kerja bagi faedah bersama Orang-orang Asli 2. Di samping itu, bagi memenuhi kehendak-kehendak yang terkandung dalam Kriteria Dan Petunjuk Bagi Pengurusan Hutan Secara Berkekalan Malaysia [Malaysian Criteria and Indicators for Sustainable Forest Management (MC&I)] untuk pensijilan pengurusan hutan yang dilaksanakan oleh penilai bebas, pegawai hutan dikehendaki berdialog dengan kaum Orang Asli yang tinggal berhampiran dengan kawasan pembalakan bagi mendapat 'feedback' daripada mereka berkenaan aktiviti perhutanan yang akan di jalankan. Komen dan pandangan mereka akan direkodkan dan tindakan ambil untuk mengatasi kerisauan yang dibangkitkan. Dengan tindakan sebegini, hak kaum Orang Asli sentiasa dihormati.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			6.Selain pembangunan ekonomi, peningkatan dari sudut kesihatan dan pendidikan adalah amat penting kepada pembangunan masyarakat Orang Asal. Keperluan yang berkaitan perlu disediakan secukupnya. Selainitu, mereka juga perlu diberi peluang mengikuti program-program kemahiran yang dapat membantu mereka meningkatkan taraf hidup.		3.Di bawah Seksyen 47, Akta Perhutanan Negara 1984, tiada seorangpun dibenarkan masuk ke dalam hutan simpan kecuali dengan sesuatu permit masuk yang dikeluarkan oleh Pengarah Perhutanan negeri. Walaupun sedemikian, secara tidak langsung, kaum Orang Asli dibenarkan masuk ke dalam hutan simpan untuk meneruskan aktiviti tradisinya. Dalam Seksyen 62(b), Akta Perhutanan Negara 1984 pula, kaum Orang Asli dibenar mengeluarkan apa-apa hasil hutan tanpa membayar royalti untuk kegunaan sendiri. 4.Penempatan semula mungkin perlu dibuat sekiranya kawasan hutan diperlukan untuk dijadikan kolam takungan apabila empangan dibina. JPS bersedia memberikan segala bantuan yang wajar kepada pihak yang terbabit. 5.Mengenal dengan kepentingan ekonomi dan cara hidup tradisi Orang Asli tetap akan dikekalkan melalui hasil-hasil kraftangan, ukiran dan industri pelancongan seperti yang sedang dilaksanakan di kawasan Tasik Chini, Tasik Bera, Banun, Kemar dan lain-lain tempat yang difikirkansesuai.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					6. Jabatan memang mengambil perhatian serius terhadap syor ini. Pelbagai bantuan telah diberi bagi memastikan produk-produk Orang Asli dapat dikomersialkan dan dipasarkan ke peringkat antarabangsa. Bantuan-bantuan seperti mesin-mesin, alat pertukangan dan bengkel diberikan kepada Orang Asli yang berminat dan berkebolehan.
8	Dokumen Pengenalan Rasmi	1 Keistimewaan kewarganegaraan. 2. Ketiadaan surat beranak. 3. Ketiadaan kad pengenalan. 4. Tiada sijil nikah. 5. Tiada pendaftaran kelahiran.	1.Masyarakat Orang Asal harus diberi kesedaran mengenai kepentingan dokumen pengenalan diri yang sah seperti surat beranak, kad pengenalan dan surat nikah.		Berhubung masalah keistimewaan kewarganegaraan, penentuan taraf kewarganegaraan bagi mana-mana orang termasuk Orang Asli adalah tertakluk kepada Perlembagaan seperti berikut :- a) Bagi mereka yang lahir sebelum Hari Merdeka, mereka mendapat taraf kewarganegaraan secara berkuatkuasa undang-undang berdasarkan Seksyen 4(c) enakmen Kerakyatan Negeri 1952 yang memerlukan dokumen seperti sijil kelahiran atau sijil akuan pengesahan dari JHEOA. b) Bagi mereka yang lahir selepas Hari Malaysia (16.9.1963), taraf kewarganegaraan adalah tertakluk di bawah Perkara 14(1)(b), Seksyen 1(a),

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					Bahagian II, Jadual Kedua Perlembagaan iaitu ibu bapa semasa kanak-kanak dilahirkan adalah warganegara atau penduduk tetap dan perkahwinan adalah teratur. Dokumen bukti ialah Sijil Kelahiran kanak-kanak dan kad pengenalan ibu bapa. Walau bagaimanapun jika didapati di dalam sijil kelahiran kanak-kanak, nombor kad pengenalan atau taraf penduduk ibu bapa tiada, Jabatan ini akan mendapatkan pengesahan daripada JHEOA bahawa kanak-kanak itu adalah Orang Asli. Setelah mendapat pengesahan daripada JHEOA, kanak-kanak tersebut akan diberi taraf kewarganegaraan Malaysia secara kuatkuasa undang-undang di bawah Perkara 14(1)(b), Seksyen 1(a), Bahagian II, Jadual Kedua Perlembagaan. 1. Bagi memberi kesedaran kepada masyarakat Orang Asli mengenai kepentingan memiliki dokumen-dokumen pengenalan diri seperti surat beranak, kad pengenalan dan surat nikah memerlukan kerjasama dan penglibatan agensi serta NGO yang ada hubungkait secara langsung dengan masyarakat Orang Asli.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					Agensi Kerajaan yang utama ialah JHEOA sementara Persatuan Orang Asli Semenanjung Malaysia adalah di antara agensi-agensi yang boleh memainkan peranan penting bagi menyedarkan masyarakat Orang Asli. Sehubungan ini JPN bersedia memberikan kerjasama dalam melaksanakan program kesedaran ini.
			2. Jabatan Pendaftaran perlulah masuk ke perkampungan Orang Asal bagi membuat pendaftaran secara menyeluruh. Pihak-pihak Kementerian Kesihatan dan Jabatan Pendaftaran haruslah bekerjasama dengan agensi lain misalnya dengan JHEOA di Semenanjung Malaysia untuk mendapat pengesahan. Denda terhadap pendaftaran lewat perlu dikecualikan.	- Jabatan Pendaftaran Negara - JHEOA	2.1 Dari semasa ke semasa, JPN Negeri ada mengaturkan program khas masuk ke kawasan pedalaman Orang Asli untuk mendaftarkan kelahiran kelahiran dan kad pengenalan. Di Sabah dan Sarawak pula telah diwujudkan Unit Mobile yang kekal khusus untuk masuk ke kawasan-kawasan pedalaman untuk mendaftarkan kelahiran dan kad pengenalan. JPN bersedia untuk mengaturkan program lawatan ke kawasan pedalaman dengan kerjasama JHEOA dan agensi-agensi lain yang berkaitan. 2.2 Untuk tujuan mendaftarkan kelahiran, JPN menerima pengesahan kelahiran yang dibuat oleh bidan-bidan di perkampungan atau penempatan masyarakat Orang

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					Asli untuk mengeluarkan Sijil Kelahiran. Dalam hal ini, biasanya Jabatan Hal Ehwal Orang Asli (JHEOA) memainkan peranan yang penting sebagai pemaklum (informant) atau pihak yang menguruskan kehadiran pemaklum yang terdiri daripada kalangan Orang Asli yang menyaksikan atau mengetahui tentang peristiwa sesuatu kelahiran itu. 2.3 Secara keseluruhannya tiada masalah yang timbul dalam urusan pendaftaran (late registration) mungkin berlaku di kalangan beberapa Orang Asli disebabkan kedaifan, terlupa untuk mendaftar, masalah hubungan dan sebagainya. Namun perkara ini tidaklah menjadi masalah besar kerana JPN dan JHEOA Telah menjalin kerjasama yang baik dan rapat untuk menangani masalah seperti ini. Surat pengesahan daripada JHEOA seperti di Lampiran A adalah diterima oleh JPN untuk mendaftarkan kelahiran bagi kes pendaftaran lewat Orang Asli yang terlibat.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					2.4 Mengenai cadangan pengecualian denda terhadap pendaftaran lewat, JPN kepada memberi pengecualian sekiranya permohonan berkenaan disokong oleh Jabatan Kebajikan Masyarakat. Jika surat dari Jabatan Kebajikan Masyarakat tidak diperolehi, JPN sedia mengurangkan denda jika ada surat sokongan dari JHEOA. Denda maksimum yang dibenarkan di bawah undang-undang ialah RM50.00. 2.5 Sepanjang pengetahuan JPN, tiada masalah timbul bagi pengeluaran kad pengenalan kepada Orang Asli. Kad Pengenalan dikeluarkan kepada semua Orang Asli yang mempunyai Sijil Kelahiran. Bagi mereka yang tidak mempunyai Sijil Kelahiran, Kad Pengenalan dikeluarkan berasaskan surat sumpahan atau Surat Pengesahan/Akuan dari JHEOA.
			3. Bagi pelajar yang menghadapi masalah pendaftaran sekolah akibat ketiadaan surat beranak, adalah diharap kerjasama yang lebih erat dapat dijalin di antara Kementerian Pendidikan		3.1 Masalah pendaftaran sekolah akibat ketiadaan surat beranak tidak berbangkit kerana JPN bersedia mengeluarkan Sijil Kelahiran atau Kad Pengenalan kepada pelajar berkenaan berasaskan dokumen sokongan dari JHEOA seperti yang dinyatakan di para 2.5 di atas.

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
			dengan Kementerian Kesihatan dan Jabatan Pendaftaran untuk menyelesaikan kes ini dengan segera.		
			4.Tiada sijil nikah.		4.1 Masalah ini dicadangkan dirujuk kepada Jabatan Agama Islam jika melibatkan pasangan Orang Asli yang beragama Islam. JPN mendaftarkan perkahwinan bagi orang-orang bukan Islam sahaja. 4.2 Orang Asli yang bukan beragama Islam di Semenanjung Malaysia adalah dikecualikan daripada mendaftarkan perkahwinan di bawah seksyen 3(4) Akta membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 [Akta 164] yang berbunyi seperti berikut :- "Akta ini tidak boleh dipakai agi seseorang bumiputra abah dan Sarawak atau seseorang Orang Asli Malaysia Barat yang perkahwinan dan perceraiannya dikawal oleh undang-undang, adat istiadat bumiputra atau adat istiadat Orang Asli melainkan jika :-

BIL	ISU	MASALAH	SYOR SUHAKAM	TINDAKAN	ULASAN
					(a) ia memilih untuk berkahwinan di bawah Akta ini; (b) ia berkahwin di bawah Ordinan Perkahwinan Kristian; atau (c) ia berkahwin di bawah Ordinan Perkahwinan Sivil dan di Gereja". 4.3 Orang Asli boleh berkahwin mengikut adat istiadat mereka dan kemudian boleh memilih mendaftarkan perkahwinan adat mereka di bawah Ordinan Pendaftaran Perkahwinan 1952 secara sukarela. 4.4 Mereka juga boleh memilih berkahwin di bawah Akta 164 sebagaimana diperuntukan di bawah seksyen 3(4)(a). Bagi menguruskan perkahwinan Orang Asli di bawah Akta 164, JPN memerlukan dokumen pengenalan diri seperti kad pengenalan dan surat pengesahan agama daripada Tok Batin/JHEOA. 4.5 Daftar/sijil perkahwinan akan dikeluarkan kepada pasangan selepas pengupacaraan perkahwinan selesai.

MONTHLY MEETINGS 2004 COMMISSIONERS' ATTENDANCE

Serial No.	Serial No. of Meeting	Date of Meeting	Commissioners Present	Commissioners Absent	With Apology	Without Apology
1.	47th Meeting	12 Jan. 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Cik Zainah Anwar** **Tan Sri Dato' Ramon Navaratnam** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein**			
2.	48th Meeting	9 Feb. 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Cik Zainah Anwar** **Tan Sri Dato' Ramon Navaratnam** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein**	**Prof. Dato' Mohd Hamdan Adnan**	✔	
3.	49th Meeting	8 March. 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Tan Sri Dato' Ramon Navaratnam**	**Cik Zainah Anwar**	✔	

Serial No.	Serial No. of Meeting	Date of Meeting	Commissioners Present	Commissioners Absent	With Apology	Without Apology
			Datuk Dr. Raj Abdul Karim **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein**			
4.	50th Meeting	12 April 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Cik Zainah Anwar** **Tan Sri Dato' Ramon Navaratnam** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Ranita Mohd. Hussein**	**Dato' Karam Chand Vohrah**	✔	
5.	51st Meeting	17 May 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Choo Siew Kioh** **Dato' Sharifah Hapsah Syed Hasan Shahabudin**	**Tan Sri Dato' Ramon Navaratnam** **Dato' Ranita Mohd. Hussein** **Tunku Datuk Nazihah** **Tunku Mohamed Rus**	✔	

Serial No.	Serial No. of Meeting	Date of Meeting	Commissioners Present	Commissioners Absent	With Apology	Without Apology
6.	52nd Meeting	14 June 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Tan Sri Dato' Ramon Navaratnam** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein** **Dato' Choo Siew Kioh** **Dato' Sharifah Hapsah Syed Hasan Shahabudin** **Tunku Datuk Nazihah Tunku Mohamed Rus**			
7.	53rd Meeting	12 July 2004 (Monday)	**Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Dr. Mohammad Hirman Ritom Abdullah** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein** **Dato' Choo Siew Kioh** **Tunku Datuk Nazihah Tunku Mohamed Rus**	**Prof. Dato' Mohd Hamdan Adnan** **Dato' Dr. Abdul Monir Yaacob** **Tan Sri Abu Talib Othman** **Tan Sri Dato' Ramon Navaratnam** **Prof. Dr. Chiam Heng Keng** **Dato' Sharifah Hapsah Syed Hasan Shahabudin**	✔	
8.	54th Meeting	9 August 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Tan Sri Dato' Ramon Navaratnam** **Datuk Dr. Raj Abdul Karim**			

Serial No.	Serial No. of Meeting	Date of Meeting	Commissioners Present	Commissioners Absent	With Apology	Without Apology
			Dato' Asiah Abu Samah **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein** **Dato' Choo Siew Kioh** **Dato' Sharifah Hapsah Syed Hasan Shahabudin** **Tunku Datuk Nazihah Tunku Mohamed Rus** **Dato' Muhammad Shafee Abdullah** **Dato' Siva Subramaniam a/l Nagaratnam** **Prof. Dato' Dr. Khoo Kay Kim**			
9.	55th Meeting	13 Sept. 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Tan Sri Dato' Ramon Navaratnam** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Choo Siew Kioh** **Dato' Sharifah Hapsah Syed Hasan Shahabudin** **Tunku Datuk Nazihah Tunku Mohamed Rus** **Dato' Muhammad Shafee Abdullah** **Dato' Siva Subramaniam a/l Nagaratnam**	**Dato' Ranita Mohd. Hussein** **Prof. Dato' Dr. Khoo Kay Kim**	✔	
10.	56th Meeting	11 Oct. 2004 (Monday) - in Kuching	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah**	**Dato' Muhammad Shafee Abdullah**	✔	

Serial No.	Serial No. of Meeting	Date of Meeting	Commissioners Present	Commissioners Absent	With Apology	Without Apology
			Tan Sri Dato' Ramon Navaratnam **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein** **Dato' Choo Siew Kioh** **Dato' Sharifah Hapsah Syed Hasan Shahabudin** **Tunku Datuk Nazihah Tunku Mohamed Rus** **Dato' Siva Subramaniam a/l Nagaratnam** **Prof. Dato' Dr. Khoo Kay Kim**			
11.	57th Meeting	8 November 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan** **Prof. Dr. Chiam Heng Keng** **Dr. Mohammad Hirman Ritom Abdullah** **Tan Sri Dato' Ramon Navaratnam** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein** **Dato' Choo Siew Kioh** **Dato' Sharifah Hapsah Syed Hasan Shahabudin** **Tunku Datuk Nazihah Tunku Mohamed Rus** **Dato' Siva Subramaniam a/l Nagaratnam** **Prof. Dato' Dr. Khoo Kay Kim**	**Dato' Muhammad Shafee Abdullah**	✔	
12.	58th Meeting	13 December 2004 (Monday)	**Tan Sri Abu Talib Othman** **Tan Sri Datuk Seri Panglima Simon Sipaun** **Prof. Dato' Mohd Hamdan Adnan**			

Serial No.	Serial No. of Meeting	Date of Meeting	Commissioners Present	Commissioners Absent	With Apology	Without Apology
			Prof. Dr. Chiam Heng Keng **Dr. Mohammad Hirman Ritom Abdullah** **Tan Sri Dato' Ramon Navaratnam** **Datuk Dr. Raj Abdul Karim** **Dato' Asiah Abu Samah** **Dato' Dr. Abdul Monir Yaacob** **Dato' Karam Chand Vohrah** **Dato' Ranita Mohd. Hussein** **Dato' Choo Siew Kioh** **Dato' Sharifah Hapsah Syed Hasan Shahabudin** **Tunku Datuk Nazihah Tunku Mohamed Rus** **Dato' Muhammad Shafee Abdullah** **Dato' Siva Subramaniam a/l Nagaratnam** **Prof. Dato' Dr. Khoo Kay Kim**			

APPENDIX XI

CERTIFICATE OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF HUMAN RIGHTS COMMISSION OF MALAYSIA FOR THE YEAR ENDED 31 DECEMBER 2004

CERTIFICATE OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE HUMAN RIGHTS COMMISSION OF MALAYSIA FOR THE YEAR ENDED 31 DECEMBER 2004

The financial statements of The Human Rights Commission of Malaysia for the year ended 31 December 2004, has been audited by my representative. The management of The Human Rights Commission of Malaysia is responsible for the financial statements. My responsibility is to audit and express an opinion on these financial statements.

2. The audit has been conducted in accordance with the Audit Act 1957 and approved auditing standards. These Standards require that an audit be planned and performed to obtain reasonable assurance about whether the financial statements of The 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 statements 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 2004 and of the results of its operations and cash flows for the year then ended based on approved accounting standards.

(FATIMAH BINTI MAMAT)
for AUDITOR GENERAL OF
MALAYSIA

PUTRAJAYA
25 February 2005

HUMAN RIGHTS COMMISSION OF MALAYSIA

STATEMENT BY THE COMMISSION

We, TAN SRI ABU TALIB BIN OTHMAN and TAN SRI DATUK SERI PANGLIMA SIMON SIPAUN, being the Chairman and Vice Chairman, 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 2004, 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 2004 and its income and expenditure, changes in fund and cash flow for the year then ended.

On behalf of the Commission

TAN SRI ABU TALIB BIN OTHMAN

Chairman

Kuala Lumpur

Dated: 28 JAN 2005

On behalf of the Commission

TAN SRI DATUK SERI PANGLIMA SIMON SIPAUN

Vice Chairman

Kuala Lumpur

Dated: 28 JAN 2005

HUMAN RIGHTS COMMISSION OF MALAYSIA

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

I, HAJI AHMAD YUSUF BIN HAJI NGAH, 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 2004, 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, HAJI AHMAD YUSUF)
BIN HAJI NGAH at Kuala Lumpur)
on 28 JAN 2005)

Before me,

PESURUHJAYA SUMPAH
No. W 181
MAISHARAH BINTI
ABU HASAN
MALAYSIA

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 2004

	Note	2004 RM	2003 RM
PLANT AND EQUIPMENT	3	2,359,140	2,417,388
CURRENT ASSETS			
Sundry receivables, deposits and prepayments	4	96,322	79,714
Fixed deposits	5	2,000,000	3,000,000
Cash and bank balances	6	371,585	634,768
		2,467,907	3,714,482
CURRENT LIABILITIES			
Sundry payables and accruals	7	245,445	98,364
		245,445	98,364
NET CURRENT ASSETS		2,222,462	3,616,118
		4,581,602	6,033,506
Financed by:			
ACCUMULATED FUND		4,551,602	6,033,506
TRUST FUND	8	30,000	-
		4,581,602	6,033,506

The accompanying notes form an integral part of these financial statements.

HUMAN RIGHTS COMMISSION OF MALAYSIA

INCOME STATEMENT
FOR THE YEAR ENDED 31 DECEMBER 2004

	Note	2004 RM	2003 RM
INCOME			
Grant		6,820,600	6,822,600
OTHER INCOME			
Interest		6,466	27,246
Interest on fixed deposits		123,672	108,347
Gain from disposal of plant and equipment		-	9,596
Mudharabah-Insurance		1,717	2,913
		6,952,455	6,970,702
EXPENDITURE			
Emolument		1,692,682	987,432
Travelling		750,782	590,132
Transportation		1,247	2,002
Utilities and communication		226,899	187,568
Rentals		1,081,645	924,461
Refreshments		5,529	5,391
Upkeep and maintenance		100,655	75,306
Supplies		239,747	236,670
Servicing and minor works		235,111	169,122
Professional fees and hospitality		3,344,495	3,222,465
Depreciation		672,468	587,930
Rewards		79,585	17,989
Other expenses		3,514	2,000
		8,434,359	7,008,468
Deficit for the year	9	(1,481,904)	(37,766)

The accompanying notes form an integral part of these financial statements.

HUMAN RIGHTS COMMISSION OF MALAYSIA

STATEMENT OF CHANGES IN ACCUMULATED FUND FOR THE YEAR ENDED 31 DECEMBER 2004

	Note	Accumulated fund RM
At 1 January 2003		6,051,963
Prior year adjustment	10	19,309
Deficit for the year		(37,766)
At 31 December 2003/ 1 January 2004		6,033,506
Deficit for the year		(1,481,904)
At 31 December 2004		4,551,602

The accompanying notes form an integral part of these financial statements.

HUMAN RIGHTS COMMISSION OF MALAYSIA

CASH FLOW STATEMENT
FOR THE YEAR ENDED 31 DECEMBER 2004

	2004 RM	2003 RM
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts	6,820,600	6,862,996
Payments for expenditure	(7,618,838)	(6,527,054)
Net cash (used in)/generated from operating activities	(798,238)	335,942
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest	6,466	27,246
Interest received from fixed deposits	123,672	108,347
Mudharabah	1,717	-
Purchase of plant and equipment	(626,800)	(336,458)
Proceed from disposal of plant and equipment	-	95,000
Net cash (used in)/generated from investing activities	(494,945)	(105,865)
CASH FLOWS FROM FINANCING ACTIVITIES		
Trust fund	30,000	-
Net cash generated from financing activities	30,000	-
Net (decrease)/increase in cash and cash equivalents	(1,263,183)	230,077
Cash and cash equivalents brought forward	3,634,768	3,404,691
Cash and cash equivalents carried forward	2,371,585	3,634,768
ANALYSIS OF CASH AND CASH EQUIVALENTS		
Fixed deposit	2,000,000	3,000,000
Cash and bank balances	371,585	634,768
	2,371,585	3,634,768

The accompanying notes form an integral part of these financial statements.

HUMAN RIGHTS COMMISSION OF MALAYSIA

NOTES TO THE FINANCIAL STATEMENTS - 31 DECEMBER 2004

1: PRINCIPAL OBJECTS/ACTIVITIES

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 gazette 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.

2: SIGNIFICANT ACCOUNTING POLICIES

2.1 Basis of Accounting

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

2.2 Plant and Equipment and Depreciation

Plant and equipment are stated at cost less accumulated depreciation.

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 20%.

(Contd.)

2.3 Sundry receivables

Sundry receivables are stated at cost less provision for doubtful debts.

2.4 Cash and Cash Equivalents

Cash comprises cash in hand and at bank and deposits. Cash equivalents comprise highly liquid investments, which are readily convertible to known amount of cash, which are subject to an insignificant risk of change in value. The Commission has adopted the direct method of Cash Flow Statement presentation.

2.5 Employees Benefits

Short Term Benefits

Wages, salaries and bonuses are recognized as an expense in the year in which, the associated services are rendered by the employees of the Commission.

Defined Contribution Plans

The Commission makes contributions to the Employees Provident Fund ('EPF'). Such contributions are recognized as an expense in the Income Statement as incurred. Once the contributions have been paid, the Institute has no further payment obligations.

2.6 Trust Account

Amount received from third party for specific purposes is taken up under Trust Account. Expenses related for this purpose is directly charge to this account.

2.7 Provisions

Provisions are made when the Commission has a present legal or constructive obligation as a result of past events, when it is probable that an outflow of resources will be required to settle the obligation, and when a reliable estimate of the amount can be made.

(Contd.)

3: **PLANT AND EQUIPMENT**

2004	Books, euipment and fittings	Computer	Motor vehicles	Renovation	Total
	RM	**RM**	**RM**	**RM**	**RM**
Cost					
At 1 January	493,396	140,403	2,163,106	379,022	3,175,927
Additions	114,798	47,395	447,859	16,748	626,800
Disposal	-	-	-	(12,580)	(12,580)
At 31 December	608,194	187,798	2,610,965	383,190	3,790,147
Accumulated Depreciation					
At 1 January	128,888	14,269	512,486	102,896	758,539
Charge for the year	107,287	30,818	460,663	73,700	672,468
At 31 December	236,175	45,087	973,149	176,596	1,431,007
Net Book Value					
At 31 December	372,019	142,711	1,637,816	206,594	2,359,140

2003	Books, equipment and fittings	Computer	Motor vehicles	Renovation	Total
	RM	**RM**	**RM**	**RM**	**RM**
Cost					
At 1 January	357,176	37,048	2,163,071	324,012	2,881,307
Additions	114,207	103,355	100,416	55,010	372,988
Disposal	-	-	(100,381)	-	(100,381)
Adjustment	22,013	-	-	-	22,013
At 31 December	493,396	140,403	2,163,106	379,022	3,175,927
Accumulated Depreciation					
At 1 January	46,572	5,421	92,335	38,554	182,882
Charge for the year	79,612	8,848	435,128	64,342	587,930
Disposal	-	-	(14,977)	-	(14,977)
Adjustment	2,704	-	-	-	2,704
At 31 December	128,888	14,269	512,486	102,896	758,539
Net Book Value					
At 31 December	364,508	126,134	1,650,620	276,126	2,417,388

(Contd.)

4. SUNDRY RECEIVABLES, DEPOSITS AND PREPAYMENTS

	2004 RM	2003 RM
Sundry receivables	26,795	27,532
Deposits	49,748	46365
Prepayments	19,779	5,817
	96,322	79,714

5: FIXED DEPOSITS

Fixed deposits with licensed bank have not been pledged for any purpose.

The effective interest rate receivable is between 2.75% to 3.7% (2003: 2.7% to 4.25%) per annum. The maturity of the fixed deposits is between 30 days to 1 year.

6: CASH AND BANK BALANCES

	2004 RM	2003 RM
Cash in hand	2,779	4,730
Cash at bank	368,806	630,038
	371,585	634,768

7: SUNDRY PAYABLES AND ACCRUALS

	2004 RM	2003 RM
Sundry payables	120,243	36,530
Accruals	125,202	61,834
	245,445	98,364

(Contd.)

8: TRUST ACOUNT

Trust Account represents fund received from the United Nations Children's Func (UNICEF) for the expenses of Children Human Rights Convention.

9: DEFICIT FOR THE YEAR

Deficit on income for the current year was finance by prior year cash balances.

10: PRIOR YEAR ADJUSTMENT

The prior year adjustment comprise:

	2004 RM	2003 RM
Adjustment:		
Reinstatement of fixed assets previously expensed off	-	22,013
Depreciation underprovision	-	(2,704)
	-	19,309

11: STAFF INFORMATION

Number of employees of SUHAKAM at the end of the year was 63 (2003: 56).

12: FINANCIAL INSTRUMENTS

Financial Risk Management Objectives and Policies

The Commission's financial risk management policies seek to ensure that adequate financial resources are available for the smooth implementation of its operations.

(a) Liquidity Risk

The Commission practices prudent liquidity management to minimize the mismatch of financial assets and liabilities to maintain sufficient level of cash and cash equivalents to meets its working capital requirement.

(Contd.)

(b) Fair Values

The carrying amounts of cash and cash equivalents, sundry and other receivables, sundry and other payables approximate their fair values due to the relatively short-term nature of these financial instruments.

13: COMPARATIVE FIGURES

Certain comparative figures have been reclassified to be consistent with the current year's presentation.

APPENDIX XII

GOVERNMENT RESPONSE TO SUHAKAM's ANNUAL REPORT 2003

MAKLUM BALAS KERAJAAN TERHADAP
LAPORAN TAHUNAN 2003 SUHAKAM

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	BAB PERTAMA:CABARAN-CABARAN		Kementerian Luar Negeri:
1	**Mengendalikan Persepsi Negatif** --- **Pemerhatian:** SUHAKAM adalah institusi yang dipertanggungjawabkan untuk mempromosi dan melindungi hak asasi manusia di peringkat kebangsaan. Sehubungan ini SUHAKAM menyatakan kebimbangan mengenai kurangnya respons yang positif terhadap saranan-saranannya untuk menyemak undang-undang dan dasar seperti yang telah diutarakan di dalam laporan-laporan mengenai kepentingan awam termasuk Kebebasan Berhimpun, Penyiasatan Lebuhraya Kesas dan Cadangan Meratifikasi Triti-Triti Hak Asasi Manusia.	Kementerian Keselamatan Dalam Negeri / Kementerian Luar Negeri	Kementerian Luar Negeri telah memaklumkan SUHAKAM dalam Maklum Balas Kerajaan kepada Laporan Tahunan SUHAKAM 2002 bahawa instrumen hak asasi manusia yang dicadangkan oleh SUHAKAM sedang dalam pertimbangan Kerajaan. Setiap instrumen antarabangsa yang disertai oleh Malaysia memerlukan pelbagai langkah pentadbiran dan perundangan dilaksanakan. Oleh itu, kajian yang mendalam berhubung instrumen-instrumen hak asasi manusia ini telah diadakan di peringkat Jawatankuasa Penyelaras mengenai Hak Asasi Manusia yang dipengerusikan oleh Kementerian Luar Negeri. Selain daripada itu, Kementerian ini juga telah mengadakan perbincangan secara terperinci dengan SUHAKAM pada 19 Julai 2004 mengenai setiap instrumen hak asasi manusia yang telah dicadangkan oleh SUHAKAM. Ini menunjukkan komitmen dari pihak Kerajaan dalam perkara ini dan perlu diambil perhatian oleh SUHAKAM. Sehingga 21 September 2004, Kerajaan masih menunggu maklum balas dari SUHAKAM hasil mesyuarat 19 Julai tersebut.
2	**Institusionalisasikan Hak Asasi Manusia** --- **Pemerhatian:** Salah satu fungsi SUHAKAM di bawah seksyen 4(1) adalah untuk menasihati dan membantu Kerajaan dalam merangka undang-undang, arahan-arahan dan prosedur-prosedur pentadbiran serta mengesyorkan langkah-langkah perlu bagi melindungi dan mempromosikan hak asasi manusia. SUHAKAM juga bersedia membantu serta menyumbang dalam merangka draf undang-undang apabila diminta bagi memastikan undang-undang yang baru mengambil kira hak asasi manusia dan undang-undang yang sedia ada pula mematuhi standard antarabangsa. Walau bagaimanapun draf	Jabatan Peguam Negara	Jabatan Peguam Negara: Berhubung pemerhatian SUHAKAM bahawa draf Rang Undang-Undang tidak pernah dirujuk kepada SUHAKAM untuk mendapatkan pandangannya, Jabatan ini memaklumkan bahawa Bahagian Gubalan, Jabatan Peguam Negara menggubal draf Rang Undang-Undang berdasarkan arahan penggubalan yang diterima daripada Kementerian, Jabatan atau Agensi yang berkenaan. Arahan penggubalan itu akan diteliti untuk menentukan, antara lain, keselarasannya dengan Perlembagaan Persekutuan dan undang-undang lain serta obligasi negara di peringkat antarabangsa dan sama ada pihak-pihak yang perlu sudah dirunding oleh Kementerian, Jabatan atau Agensi itu. Kementerian, Jabatan dan Agensi terlibat bebas berunding dengan atau mendapatkan pandangan daripada mana-mana pihak yang perlu dirunding olehnya termasuk SUHAKAM sebelum draf Rang Undang-Undang dikemukakan kepada Jabatan Peguam Negara atau pada bila-

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	undang-undang yang disediakan tidak pernah dirujuk kepada SUHAKAM untuk pandangan. Di samping itu, Kerajaan tidak pernah memberikan respons kepada syor-syor SUHAKAM pada tahun 2000 supaya Rang Undang-Undang yang dirujuk kepada Jawatankuasa Pilihan (*Select Committee*) selepas Bacaan Kali Yang Pertama di Parlimen tidak wajar diberikan taraf 'Rahsia Rasmi'. Sebaliknya Rang Undang-Undang perlu dibuka untuk perbahasan dan penelitian awam sebelum dibawa ke Badan Perundangan.	Pejabat Setiausaha Parlimen Malaysia / Jabatan Peguam Negara	bila masa sebelum draf itu dimuktamadkan oleh Jabatan ini. Berhubung dengan syor pengkelasan Rang Undang-Undang yang dirujukkan kepada Jawatankuasa Pilihan (*Select Committee*) sebelum Bacaan Kali Yang Kedua, menurut Peraturan Tetap 54 Peraturan-Peraturan Tetap Majlis Mesyuarat Dewan Rakyat ("Peraturan-Peraturan Tetap"), Rang Undang-Undang yang telah diedarkan untuk Bacaan Kali Yang Pertama bukan lagi merupakan dokumen terperingkat dan bagi maksud Jawatankuasa Pilihan, Rang Undang-Undang itu adalah dokumen yang orang awam mempunyai akses kepadanya. Jawatankuasa Pilihan sekarang sedang mengkaji Rang Undang-Undang Kanun Keseksaan (Pindaan) 2004 dan Rang Undang-Undang Kanun Tatacara Jenayah (Pindaan) 2004. Melalui Jawatankuasa Pilihan ini semua golongan masyarakat diberi peluang untuk mengambil bahagian yang aktif dengan memberikan pandangan, cadangan dan syor mengenai Rang Undang-Undang yang berkenaan. Cadangan juga boleh dikemukakan secara bertulis melalui memorandum dan surat kepada Jawatankuasa Pilihan tersebut. Mengenai syor supaya Rang Undang-Undang dibuka untuk perbahasan dan penelitian awam sebelum dibawa ke badan perundangan, perkara ini melibatkan hal dasar yang adalah di luar bidang tugas Jabatan Peguam Negara.
	Pemerhatian: SUHAKAM memerhatikan bahawa terdapat keperluan untuk dibuat kajian berkaitan dengan pelarian-pelarian dan terdapat keperluan respons yang diselaraskan di antara Agensi-agensi Kerajaan seperti Kementerian Hal Ehwal Dalam Negeri, PDRM, Jabatan Imigresen, Kementerian Pembangunan Wanita dan Keluarga dan UNHCR. SUHAKAM menyedari kebimbangan Kerajaan terhadap kebanjiran pendatang-pendatang yang memohon untuk mendapatkan status pelarian di Malaysia walhal mereka sebenarnya merupakan 'migran ekonomi'. Terdapat kes-kes yang dilaporkan bahawa pendatang dari kategori ini telah ditangkap, ditahan di pusat tahanan dan dihantar pulang	Kementerian Keselamatan Dalam Negeri / Kementerian Hal Ehwal Dalam Negeri / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> [seperti maklum balas di para 13 , m.s. 51]

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	meskipun arahan/perintah perlindungan sementara telah diberikan oleh UNHCR. **Syor:** SUHAKAM menegaskan bahawa dasar, garis panduan dan prosedur yang jelas akan mengurangkan kemarahan dan ketidaktentuan di kalangan pendatang-pendatang. Ia juga boleh mencegah pencabulan hak asasi manusia.		
3	**BAB KEDUA: KEADAAN HAK ASASI MANUSIA** **Kebebasan Berhimpun** --- **Pemerhatian:** SUHAKAM mendakwa bahawa NGO masih lagi menghadapi kesukaran dalam mengecapi hak kebebasan mereka untuk berhimpun secara aman bagi membincangkan isu-isu utama dan melibatkan kepentingan awam. Kejadian-kejadian seperti keengganan polis pada awalnya untuk memberikan permit pada bulan Julai 2003 kepada *All Women's Action Society (AWAM)* untuk mengadakan perhimpunan di Bangsar bagi mengutarakan isu rogol dan kezaliman terhadap wanita dan kesukaran NGO untuk mengadakan perhimpunan di Mid Valley Megamall bagi membincangkan perkara yang sama sehingga menyebabkan penangguhannya perlu diberikan perhatian yang serius. Ini memandangkan isu rogol dan kezaliman terhadap wanita merupakan isu penting dan melibatkan kepentingan awam.	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> All Women's Action Society (AWAM) telah mengemukakan permohonan untuk mengadakan perhimpunan di hadapan Restoran Chilis, Bangsar Shopping Centre, Jalan Maarof, Bangsar, Kuala Lumpur. Setelah dirujuk kepada Cawangan Khas, Ibu Pejabat Polis Bukit Aman, Ketua Polis Daerah (KPD) Brickfields telah dinasihatkan supaya menolak permohonan perhimpunan tersebut. Walau bagaimanapun, dicadangkan supaya perhimpunan tersebut dibuat secara tertutup atas alasan berikut: • tempat perhimpunan tidak sesuai kerana ianya merupakan tempat tumpuan awam yang boleh menyebabkan berlakunya kesesakan lalulintas dan gangguan kepada ketenteraman awam; dan • kemungkinan perhimpunan tidak dapat dikawal oleh penganjur dan akan mendatangkan kemudaratan kepada peniaga-peniaga di Bangsar Shopping Centre. KPD Brickfields telah menasihatkan AWAM supaya mengadakan perhimpunan di tempat tertutup. Walau bagaimanapun, AWAM hanya bersetuju dengan cadangan tersebut sekiranya Ketua Polis turut hadir dalam perhimpunan tersebut. Syarat tersebut telah ditolak oleh KPD Brickfields. Walaupun tanpa memperolehi permit Polis, AWAM terus mengadakan perhimpunan tersebut pada 20 Julai 2003 lebih kurang jam 2.00 petang. Turut hadir ialah lebih kurang seramai 20 orang ahli pertubuhan tersebut di Restoran Chilis, Bangsar. Mereka berpakaian t-shirt berwarna putih dengan memaparkan perkataan *'citizen against rape'* dan berkumpul di laluan pejalan kaki di hadapan restoran tersebut. Mereka turut membawa kain rentang berukuran 20' x 30' yang bertulis "warga anti rogol, ke arah komuniti tanpa keganasan". Pada jam 3.00

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			petang KPD Brickfields telah mengarahkan mereka bersurai dan menurunkan kain rentang dengan serta merta kerana perhimpunan tersebut diadakan secara haram. Mereka kemudiannya bersurai lebih kurang jam 3.05 petang. Dalam kes ini, pihak Polis telah menggunakan budi bicara dengan membenarkan mereka mengadakan perhimpunan tersebut untuk masa lebih kurang satu jam sebelum diarahkan bersurai. Ini menunjukkan pihak Polis telah bertolak ansur dengan NGO's dalam hal-hal sedemikian. Perhimpunan yang sepatutnya diadakan di Mid Valley oleh pihak penganjur yang sama terpaksa dibatalkan kerana mereka gagal memperolehi kebenaran daripada pihak pengurusan Mid Valley Megamall dan tidak mendapat permit Polis. Penolakan permohonan untuk mengadakan perhimpunan "Kesedaran Terhadap Jenayah Rogol" anjuran AWAM oleh KPD Brickfields adalah berasaskan kepada keselamatan dan ketenteraman awam setelah mengkaji persekitaran tempat perhimpunan tersebut.
4	**Kemudahcapaian Kepada Keperluan Asas** --- **Pemerhatian:** Berdasarkan Kajian Separuh Penggal Rancangan Malaysia Ke-8, SUHAKAM melihat bahawa kadar termiskin di kalangan isi rumah dari golongan-golongan yang lemah seperti warga emas, ibu tunggal dan orang asli lebih tinggi. Sebagai contoh dalam tahun 2002, peratus kumpulan keluarga termiskin yang diketuai oleh warga tua adalah ialah 4.9% manakala peratus keluarga termiskin yang diketuai oleh ibu tunggal ialah 9.4%. Peratus keluarga termiskin di kalangan orang asli dalam tahun 1999 ialah 15.4%.	Unit Perancang Ekonomi / Kementerian Perumahan dan Kerajaan Tempatan / Kementerian Pembangunan Luar Bandar dan Wilayah / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Unit Perancang Ekonomi:</u> Selaras dengan matlamat mewujudkan masyarakat penyayang, program-program pembasmian kemiskinan diberi keutamaan oleh Kerajaan melalui Kementerian yang berkaitan seperti Kementerian Pembangunan Wanita, Keluarga dan Masyarakat serta Kementerian Luar Bandar dan Wilayah. Dalam tempoh Rangka Rancangan Jangka Panjang Ketiga dan Rancangan Malaysia Kelapan, pelaksanaan program-program Pembasmian Kemiskinan diorientasikan ke arah kumpulan sasar yang khusus bagi menangani kemiskinan di kalangan kelompok-kelompok miskin dan miskin tegar terutamanya di kawasan pendalaman dan kumpulan-kumpulan yang masih belum menerima faedah daripada pembangunan negara. Di antara kumpulan tersebut ialah masyarakat orang asli dan minoriti Bumiputera di Sabah dan Sarawak, golongan ibu tunggal, warga emas dan golongan kurang upaya. Kerajaan juga telah menetapkan bahawa kemiskinan tegar akan dihapuskan sepenuhnya dalam tempoh lima tahun yang akan datang. Dalam strategi membasmi kemiskinan peringkat negeri, Kerajaan-kerajaan Negeri juga terlibat dalam pelaksanaan Skim Pembangunan

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	Syor: SUHAKAM berpendapat bahawa program-program pembasmian kemiskinan mestilah diutamakan bagi golongan-golongan di atas.		Kesejahteraan Rakyat (SPKR) yang memberi penekanan kepada program-program pembasmian kemiskinan dan termiskin di kalangan golongan-golongan yang disebut oleh SUHAKAM. Kadar kemiskinan di kesemua negeri telah dapat dikurangkan pada tahun 2002. Kerajaan mengambil maklum akan isu kadar kemiskinan yang tinggi di kalangan golongan-golongan tersebut. Oleh itu, usaha dan program pembasmian kemiskinan telah ditumpukan bagi mengatasi masalah ini. Dalam Kajian Separuh Penggal RMKe-8, Kerajaan telah menambah peruntukan Jabatan Hal Ehwal Orang Asli (JHEOA) daripada RM160 juta kepada RM257.5 juta yang merangkumi tiga program utama iaitu sosial, ekonomi dan penempatan tersusun. Pembangunan ekonomi yang menumpukan kepada usaha pembasmian kemiskinan telah ditambah peruntukannya daripada RM33.6 juta kepada RM70.8 juta. Antara projek utama yang dilaksanakan ialah projek pembangunan tanah, temakan dan pembangunan usahawan di kalangan masyarakat Orang Asli. <u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Sebagai Kementerian yang dipertanggungjawabkan untuk membasmi kemiskinan bandar, antara usaha yang dijalankan oleh Kementerian ialah mengukuhkan kapasiti menyelaras dan sebagai tumpuan utama Program Kemiskinan Bandar. Satu Rancangan Strategik dan Pelan Tindakan (RSPT) KPKT telah dirangka untuk: • menyediakan persekitaran hidup yang lebih sejahtera, sihat dan selamat kepada kumpulan sasar menerusi peluang meningkatkan pendapatan dan pekerjaan serta peningkatan aksesibiliti kepada pendidikan, kesihatan dan kemudahan asas dan awam; dan • memupuk semangat berdikari dan daya tahan kumpulan sasar melalui program pembinaan dan pengukuhan kapasiti. Sebagai tindakan awal, pihak KPKT telah mengatur beberapa strategi secara menyeluruh meliputi semua ahli isi rumah miskin mengikut kategori umur yang ditujukan kepada kumpulan-kumpulan sasar termasuk golongan-golongan yang disebut iaitu ibu tunggal, warga emas dan lain-lain yang berkenaan.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Melalui program pembasmian kemiskinan, Jabatan Kebajikan Masyarakat (JKM) menyediakan skim bantuan kewangan, iaitu Skim Bantuan Orang Tua dengan kadar RM135 sebulan kepada warga tua daif yang berumur melebihi 60 tahun di mana 12,935 penerima yang melibatkan perbelanjaan RM19,716,358 (tahun 2003). Bagi warga tua yang tidak mempunyai tempat tinggal dan penjaga, JKM menyediakan 9 buah Rumah Seri Kenangan untuk menempatkan mereka di mana seramai 1,829 orang diberi penjagaan dan perlindungan (tahun 2003). Manakala kepada ibu tunggal yang miskin, Skim Bantuan Kanak-Kanak dipertimbangkan dengan kadar di antara RM80 hingga RM350 sebulan di mana 14,234 penerima yang melibatkan perbelanjaan RM38,770.700 (tahun 2003). Kementerian Pembangunan Wanita, Keluarga dan Masyarakat telah melaksanakan pelbagai program untuk meningkatkan taraf sosio-ekonomi ibu tunggal, antaranya ialah: • mengadakan kerjasama dengan sektor swasta untuk menambah sumber pendapatan ibu tunggal melalui program-program perniagaan dan keusahawanan; • bekerjasama dengan badan bukan Kerajaan (NGO) untuk melaksanakan program pembangunan kapasiti wanita termasuk ibu tunggal dalam bentuk latihan dan seminar/kursus bidang keusahawanan, teknologi maklumat dan komunikasi, kursus-kursus kemahiran dalam bidang kraf tangan, jahitan dan masakan, literasi undang-undang, kesihatan dan pembangunan kerohanian; • mengadakan kerjasama dengan Jabatan/Agensi Kerajaan untuk mengadakan program wanita dan ibu tunggal seperti kursus keusahawanan dan koperasi, program Kumpulan Pengembangan Wanita oleh Kementerian Pertanian dan Industri Asas Tani, program Perumahan Rakyat Termiskin oleh Kementerian Kemajuan Luar Bandar dan Wilayah dan Program ASB Sejahtera dengan Amanah Ikhtiar Malaysia khusus untuk membantu ketua isi rumah wanita/ibu tunggal yang miskin; • bekerjasama dengan sektor swasta untuk menubuhkan dana khas

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			bagi membantu wanita/ibu tunggal yang menghadapi masalah kewangan mendesak seperti Yayasan Nur Karangkraf (dengan kerjasama Kumpulan Karangkraf Sdn. Bhd.), Baituimal dan Pusat Zakat; dan • pemberian keutamaaan kepada ibu tunggal yang berpendapatan rendah untuk memiliki rumah kos rendah dalam semua skim perumahan awam dan swasta. Buat masa ini, Kementerian bekerjasama dengan Syarikat Perumahan Negara Berhad (SPNB) untuk ibu tunggal memiliki rumah melalui Skim Rumah Harapan dan Skim Mesra Rakyat. Di samping meneruskan program tersebut, Kementerian Pembangunan Wanita, Keluarga dan Masyarakat akan memberi tumpuan kepada usaha berikut: • membantu Majlis Pertubuhan Ibu Tunggal Malaysia (MPITM) untuk mengadakan perbincangan dengan Kementerian Sumber Manusia bagi memberikan peluang pekerjaan kepada ibu tunggal serta menggalakkan menyediakan waktu bekerja 'anjal' untuk mereka; dan • membantu MPITM menambah tabungan mereka untuk mengadakan program dan aktiviti bagi manfaat ahli-ahlinya seperti kutipan derma, mendapatkan tajaan syarikat-syarikat korporat, *grocery sales* dan sebagainya. Kementerian ini memang memandang berat masalah kemiskinan di kalangan warga emas dan juga ibu tunggal. Bantuan Kanak-Kanak disediakan kepada keluarga miskin yang berpendapatan di bawah RM400 sebulan. Sementara itu ibu tunggal juga diberi kemudahan latihan oleh Kementerian melalui kerjasama badan bukan Kerajaan dan kerjasama Agensi-agensi Kerajaan yang lain. Sebagaimana dimaklumi, wanita termasuk ibu tunggal juga menerima faedah daripada Skim Kredit Desa dan Skim Pinjaman Mikro yang disediakan oleh Bank Simpanan Nasional dan Bank Pertanian selain pinjaman daripada MARA, Tabung Usahawan, TEKUN dan sebagainya.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	Satu seminar bertajuk "Accesibility to Basic Needs' telah dianjurkan oleh SUHAKAM pada bulan Julai 2003. Pemerhatian: Secara keseluruhannya, tahap kemudahcapaian kepada keperluan asas di Malaysia adalah menggalakkan berikutan perkembangan ekonomi yang pesat semenjak merdeka. Walau bagaimanapun dirasakan bahawa kemudahcapaian kepada keperluan asas untuk golongan yang lemah/kurang upaya seperti Orang Asli, warga miskin, warga tua, pesakit mental boleh dipertingkatkan lagi. [Pemerhatian dan syor penuh adalah seperti di Bab Ketiga, para 11, m.s. 18]		
5	**Penahanan Tanpa Pertuduhan/Bicara** **Pemerhatian:** Aduan-aduan diterima daripada tahanan-tahanan ISA di Pusat Tahanan Kamunting yang menyatakan bahawa mereka diancam oleh pegawai-pegawai pusat berkenaan dengan pelbagai cara yang tidak munasabah termasuk: (i) tidak membenarkan para tahanan berekreasi dan mengadakan riadah yang bersesuaian;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Adalah ditegaskan tiada sebarang ancaman dan sekatan yang dikenakan terhadap tahanan. Pengurusan tahanan ISA oleh Tempat Tahanan Perlindungan Taiping adalah berasaskan kepada Peraturan ISA (Orang Tahanan) 1960 yang menetapkan tatacara pengurusan, peraturan dan disiplin yang diperlukan bagi kepentingan kawalan, keselamatan dan pemulihan tahanan. Kemudahan berekreasi adalah diberikan untuk semua tahanan. Malah Tempat Tahanan Perlindungan Taiping mempunyai jadual aktiviti harian tahanan termasuklah rekreasi. Walau bagaimanapun tempat tahanan berkenaan tidak boleh menyediakan kesemua kemudahan untuk berekreasi berdasarkan keperluan dan kesesuaian setiap individu tahanan yang berlainan serta boleh berubah pada setiap masa. Tempat tahanan berkenaan juga berusaha dari semasa ke semasa mempertingkatkan kemudahan untuk aktiviti harian tahanan termasuklah rekreasi.

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	(ii) kelewatan memberikan rawatan perubatan pakar kepada tahanan;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Hak untuk mendapatkan kemudahan rawatan kesihatan termasuk rawatan pakar untuk tahanan yang memerlukannya adalah tidak dihalang. Rawatan kesihatan akan segera diberikan kepada setiap tahanan yang memerlukannya. Dalam keadaan biasa di mana pembantu perubatan berada di tempat tahanan, seseorang tahanan yang sakit akan diperiksa dan dirawat terlebih dahulu oleh pembantu perubatan berkenaan. Jika didapati tahanan memerlukan rawatan lanjut di hospital, mereka akan segera dibawa ke hospital berkenaan. Manakala dalam keadaan kecemasan atau semasa ketiadaan pembantu perubatan, tahanan yang sakit akan segera dirujukkan ke hospital untuk rawatan lanjut. Arahan berkaitan menyegerakan rawatan untuk seseorang tahanan yang memerlukannya telah lama dikeluarkan oleh Ibu Pejabat Penjara Malaysia dan telah menjadi prosedur yang perlu dipatuhi. Seterusnya dari pakar perubatan adalah berdasarkan pertimbangan rujukan temu janji yang ditetapkan sendiri oleh pegawai perubatan yang memeriksa tahanan dan bukannya oleh pihak tempat tahanan. Rawatan dan rujukan seseorang tahanan kepada pakar perubatan bergantung kepada temu janji yang telah diletapkan oleh pakar berkenaan atau pihak hospital sendiri. Pihak pengurusan tempat tahanan tidak boleh terus merujuk seseorang pesakit dalam tahanan untuk rawatan oleh pakar tanpa syor dari pihak hospital. Kepentingan kesihatan seseorang tahanan sentiasa diutamakan. Oleh itu seseorang tahanan yang baru diterima untuk menjalani penahanan akan terus dibuat pemeriksaan kesihatan. Tujuannya untuk mengetahui status kesihatan tahanan berkenaan adalah untuk menjaga kesihatan setiap orang dalam tahanan.
	(iii) halangan-halangan yang tidak munasabah ke atas para tahanan untuk menemui peguam mereka;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Ketetapan yang membolehkan seseorang tahanan menemui peguam serta peraturan-peraturan yang perlu dipatuhi adalah terkandung dalam Peraturan ISA (Orang-orang Tahanan) 1960. Di antara lain peraturan yang sama menetapkan pemeriksaan keselamatan perlu dilakukan terhadap banduan dan pelawat. Pemeriksaan sedemikian juga dilakukan terhadap kakitangan yang bertugas di tempat tahanan berkenaan. Oleh itu pemeriksaan yang dilakukan terhadap peguam bukanlah merupakan halangan yang dengan sengaja diwujudkan untuk menghalang perjumpaan antara peguam dan tahanan atau sebaliknya. Perjumpaan seperti yang dimaksudkan tetap dapat dilaksanakan dengan baik

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			walaupun selepas pemeriksaan dilakukan terhadap peguam dan juga tahanan. Pemeriksaan yang dilakukan semata-mata melaksanakan arahan yang ditetapkan oleh peraturan demi untuk keselamatan tempat tahanan, peguam dan juga tahanan sendiri. Bagi melicinkan lagi urusan perjumpaan berkenaan peguam perlu membuat permohonan awal secara bertulis untuk menetapkan tarikh dan masa perjumpaan yang sesuai. Permohonan ini juga secara tidak langsung dapat memastikan tahanan yang hendak ditemui berada di tempat tahanan semasa perjumpaan diperlukan dan bukannya lain-lain tempat yang diarahkan/diluluskan di luar tempat tahanan (contoh: di hospital, mahkamah atau melawat keluarga). Permohonan awal tersebut juga membolehkan penyelarasan perjumpaan antara peguam-peguam dan tahanan-tahanan yang ramai bilangan dalam satu-satu masa dilulus serta dilaksanakan dengan lebih teratur.
	(iv) pemegangan buku akaun simpanan dan kad ATM para tahanan oleh polis sehingga menyebabkan anggota keluarga tahanan menghadapi masalah kewangan;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Berhubung perkara ini pengurusan tempat tahanan perlindungan akan terus menulis kepada pihak Polis sebaik ianya dimaklumkan oleh tahanan berkaitan bagi membolehkan tahanan berkenaan memperolehi semua buku akaun simpanan dan kad ATM berkenaan.
	(v) tidak membenarkan ahli keluarga tahanan yang datang dari jauh untuk menziarahi tahanan;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Peraturan ISA (Orang-orang Tahanan) 1980 menetapkan keluarga boleh dibenarkan berjumpa dengan tahanan sekali seminggu dengan tempoh 30 minit setiap kali perjumpaan. Walaupun begitu setelah mempertimbangkan faedah perjumpaan tersebut kepada tahanan dan keluarga, tempoh masa perjumpaan telah ditambah kepada 45 minit. Berdasarkan ketetapan sama ada dari jauh atau dekat telah dihalang dari berjumpa dengan tahanan. Dalam kes-kes tertentu yang melibatkan keperluan yang dianggap mustahak serta perlu disegerakan, tahanan juga boleh dipertimbangkan perjumpaan lebih masa atau tambahan bilangan perjumpaan di luar dari jadual yang ditetapkan oleh peraturan. Bagi maksud ini keluarga tahanan berkenaan perlu membuat permohonan serta menyatakan alasan mengapa perjumpaan tambahan tersebut diperlukan.
	(vi) tempoh masa menunggu yang agak panjang oleh anggota keluarga tahanan sebelum dibenarkan menemui para tahanan; dan	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Perjumpaan tahanan dengan keluarga adalah tertumpu dan amat tinggi bilangannya pada cuti hujung minggu atau cuti am. Bilangan keluarga

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	(vii)harga makanan di kantin pusat tahanan yang tidak munasabah. Walaupun anggota keluarga tahanan dibenarkan makan bersama tahanan, hanya makanan yang dibeli di kantin pusat tahanan sahaja yang dibenarkan.	Kementerian Keselamatan Dalam Negeri	yang ramai yang datang secara serentak menyebabkan ruang tempat jumpa yang terhad tidak dapat menampung keperluan. Keadaan ini akan menyebabkan tempoh menunggu menjadi lebih lama. Berhubung perkara ini usaha untuk meningkatkan kemudahan ruang tempat jumpa akan dilaksanakan.
6	**Penguatkuasaan Undang-Undang** **Pemerhatian:** SUHAKAM menyebut bahawa Suruhanjaya tersebut masih lagi menerima aduan-aduan mengenai pencabulan hak asasi manusia yang dilakukan oleh agensi penguatkuasa undang-undang terutamanya polis. Aduan-aduan mengenai pencabulan hak asasi manusia tersebut adalah seperti berikut: **(a) Kegagalan Polis Bertindak** SUHAKAM menyatakan bahawa dalam tahun 2003 terdapat peningkatan aduan kepada SUHAKAM mengenai kegagalan polis untuk bertindak atau pelaksanaan penyiasatan oleh polis yang agak perlahan. SUHAKAM berpandangan bahawa jenayah bunuh, rogol dan kecurian merupakan pelanggaran terhadap hak asasi manusia untuk hidup dan keselamatan individu seperti termaktub di dalam Artikel 5 Perlembagaan Persekutuan dan Artikel 3 *Universal Declaration of Human Rights*. Sehubungan itu, dakwaan bahawa polis gagal bertindak perlulah diberikan perhatian yang sewajarnya. [Pemerhatian dan syor penuh adalah seperti di Bab Keempat, m.s. 75]	Kementerian Keselamatan Dalam Negeri	Kementerian Keselamatan Dalam Negeri: [seperti maklum balas di para (e), m.s. 81]

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	(b) Perintah Reman Yang Berterusan SUHAKAM sekali lagi menyatakan kebimbangannya mengenai kekerapan polis untuk memohon perintah tahanan reman yang berterusan ke atas tahanan. Permohonan tersebut dibenarkan kerana Mahkamah tidak memainkan peranan yang berkesan ketika mempertimbangkan permohonan untuk mendapatkan perintah reman berkenaan. SUHAKAM telah mengemukakan syornya di dalam Laporan Tahunan 2002 dan isu ini juga telah turut dibincangkan semasa Persidangan Hak Asasi Manusia dan Pentadbiran Undang-Undang pada 9 dan 10 September 2003. [Pemerhatian dan syor penuh adalah seperti di Bab Keempat, m.s. 75]	Kementerian Keselamatan Dalam Negeri / Pejabat Ketua Pendaftar Mahkamah Persekutuan	<u>Kementerian Keselamatan Dalam Negeri:</u> [seperti maklum balas di para (c)(ii), m.s. 62 dan (c)(2), m.s. 80] <u>Pejabat Ketua Pendaftar Mahkamah Persekutuan:</u> [seperti maklum balas di para (c)(ii), m.s. 62 dan (c)(2), m.s. 79]
	(c) Kematian Semasa Dalam Tahanan Berdasarkan laporan yang diperolehi di Parlimen, SUHAKAM melahirkan kebimbangannya terhadap peningkatan jumlah kematian tahanan semasa dalam tahanan. Dilaporkan bahawa dalam bulan Oktober seramai 425 orang banduan telah mati sekitar tahun 2002 dan Julai 2003 (237 mati dalam tahun 2002 manakala 188 mati dalam tempoh tujuh bulan pertama tahun 2003). Turut dilaporkan terdapat seramai 23 tahanan mati di lokap polis antara tahun 2002 dan Julai 2003 (16 kes dalam tahun 2002 manakala 7 kes dalam tujuh bulan pertama tahun 2003). SUHAKAM menyatakan bahawa berdasarkan aduan-aduan yang diterima daripada ahli keluarga tahanan yang mati dan kumpulan-kumpulan NGO, kematian-kematian berkemungkinan disebabkan oleh penggunaan kuasa yang melampaui batas oleh anggota-anggota penguatkuasa.	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Pada tahun 2002 dan 2003, sejumlah 38 kes kematian dalam tahanan Polis telah dilaporkan. Dari jumlah tersebut, kematian disebabkan penyakit adalah 29 kes, kematian kerana bunuh diri 4 kes, kematian kerana bergaduh sesama tahanan 2 kes dan kematian semasa melarikan diri sebanyak 3 kes. Ini menunjukkan tidak terdapat sebarang kematian yang dikaitkan dengan pihak Polis.

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7	**Pentadbiran Undang-Undang** --- **Pemerhatian:** Isu kelewatan menyelesaikan kes-kes sivil dan jenayah di mahkamah adalah perkara yang amat dibimbangkan. Ia juga telah dibincangkan semasa Persidangan Hak Asasi Manusia dan Pentadbiran Undang-Undang. SUHAKAM berpandangan bahawa kelewatan menyelesaikan kes di mahkamah akan meninggalkan kesan kepada kehidupan atau sumber pendapatan pihak-pihak yang terlibat. Ia juga boleh meningkatkan kos litigasi, pudarnya ingatan para saksi, kerisauan yang berpanjangan dan kemungkinan perlanggaran hak asasi si tertuduh untuk hidup bebas berikutan penahanannya di penjara tanpa jaminan, yang akhirnya beliau dibebaskan selepas dibicarakan. [Pemerhatian dan syor penuh adalah seperti di Bab Keempat, m.s. 75]	Pejabat Ketua Pendaftar Mahkamah Persekutuan	<u>Pejabat Ketua Pendaftar Mahkamah Persekutuan:</u> Isu kelewatan menyelesaikan kes-kes sivil dan jenayah di mahkamah adalah disebabkan beberapa faktor. Antara faktor-faktor yang menyumbang kepada kelewatan tersebut adalah penangguhan yang dipohon oleh pihak peguam bela atau pendakwa raya. Terdapat beberapa sebab penangguhan diberikan, antaranya ialah kerana siasatan belum selesai atau peguam pihak pembela mempunyai kes di mahkamah lain yang mana usia kes tersebut lebih lama, saksi tidak dapat hadir kerana sakit, memberi keutamaan kepada kes yang melibatkan anggota Kerajaan, kes di dalam penyelesaian, menunggu keizinan daripada timbalan pendakwa raya, majistret bertukar, bercuti atau pergi berkursus, jurubahasa sakit dan ketiadaan jurubahasa asing yang berkenaan. Pihak mahkamah amat menitikberatkan isu kelewatan penyelesaian kes. Sehubungan dengan itu, Y.A.A. Ketua Hakim Negara melalui Arahan Amalan Bil.1/2004 telah memberikan garis panduan mengenai bagaimana mahkamah patut menggunakan budi bicaranya dalam menimbang sesuatu permohonan untuk menangguhkan kes. Y.A.A. Ketua Hakim Negara juga menitikberatkan kepada semua hakim dan majistret supaya menyelesaikan kes secepat mungkin dan pemantauan juga dibuat oleh Pejabat Ketua Pendaftar Mahkamah Persekutuan.
8	**Kebebasan Akhbar** --- **Pemerhatian:** SUHAKAM menyatakan bahawa isu kebebasan akhbar terus diperdebatkan dalam tahun 2003. Pada bulan Januari tahun berkenaan, syarikat penyampai berita Internet *Malaysiakini.com* telah digeledah oleh anggota polis berikutan tersiarnya petikan *Similarities between New America and Bumiputera'* dalam website syarikat berkenaan. Ia dikatakan mengandungi unsur hasutan. Pada bulan Mei 2003 pula, isu kebebasan akhbar sekali lagi mendapat liputan berikutan laporan *Raporters Sans Frontieres (Reporters without Borders)* yang menempatkan Malaysia di kedudukan ke-110 dalam indeks kebebasan akhbar. Beberapa pihak melahirkan	Kementerian Keselamatan Dalam Negeri / Kementerian Penerangan	<u>Kementerian Keselamatan Dalam Negeri:</u> Berdasarkan peruntukan Akta Mesin Cetak dan Penerbitan 1984 (Pindaan) 1987, Kementerian Keselamatan Dalam Negeri bertanggungjawab mengawal selia aktiviti penerbitan dan percetakan serta perkara-perkara yang berkaitan dengannya di negara ini. Kementerian tidak mempunyai kuasa untuk mengawal atau menentukan agenda atau hala tuju syarikat akhbar asing, yang bebas memuatkan laporannya bagi menetapkan kedudukan indeks kebebasan akhbar di Malaysia di dalam akhbar mereka. Namun demikian, Kementerian sentiasa memantau dan berusaha untuk memastikan perkembangan industri penerbitan selaras dengan peruntukan Akta, dapat menyumbang kepada pembangunan masyarakat dan negara. <u>Kementerian Penerangan:</u> Kebebasan media memang menjadi isu di kalangan para jurnalis di mana-mana negara yang mengamalkan demokrasi pada dewasa ini.

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	kebimbangan Malaysia yang berada pada kedudukan tersebut berbanding dengan negara-negara lain seperti Indonesia (57), Thailand (65) dan Filipina (89). Pada bulan yang sama, isu mengenai cadangan untuk menubuhkan Majlis Media Malaysia bagi mempromosikan etika dan profesionalisme kewartawanan timbul semula. Ia berikutan kenyataan Timbalan Menteri Penerangan yang menyebut Kerajaan tidak akan mengenakan paksaan Majlis berkenaan ke atas wartawan sekiranya mereka tidak memerlukan Majlis tersebut. Walau bagaimanapun beliau berpandangan supaya diadakan kajian mengenai keperluan terhadap Majlis berkenaan dan menimbang penambahan kuasa-kuasa SUHAKAM bagi membolehkan badan berkenaan menyusun tatacara untuk media bagi mencapai matlamat berkenaan. **Syor:** SUHAKAM menawarkan diri dan bersedia untuk berbincang dan berkonsultasi dengan para jurnalis, pemilik akhbar dan editor serta masyarakat awam mengenai penubuhan Majlis Media yang bebas dan tidak berpihak. Selain itu membincangkan mengenai kod etika bagi memperbaiki standard profesion kewartawanan. Ia juga bagi memastikan pengamal-pengamal media dapat mengawal profesionalisme profesion berkenaan.	Kementerian Penerangan Kementerian Penerangan	Malaysia tidak dikecualikan daripada polemik ini. Kerajaan Malaysia tidak pernah membendung kebebasan akhbar di Malaysia, malah menggalakkan para jurnalis menubuhkan Majlis Media untuk menentukan kod etika untuk meningkatkan profesionalisme mereka. Kerajaan juga sedar bahawa para jurnalis secara amnya dan editor secara khususnya amat bertanggungjawab terhadap bahan penulisan atau laporan yang mereka sajikan kepada pembaca supaya ianya tidak menjejaskan perpaduan kaum dan keselamatan negara. Tanggungjawab menjaga perpaduan, keamanan dan keselamatan negara adalah tanggungjawab bersama, Kerajaan dan media. Dalam konteks kebebasan akhbar, tidak dinafikan bahawa orang ramai disalurkan pelbagai pendapat, kritikan dan teguran oleh parti-parti pembangkang melalui penerbitan buletin parti masing-masing. Contohnya, buletin 'Rocket' dan 'Harakah' bebas dicetak dan diedarkan. Malah pihak-pihak aktivis politik dan sosial juga bebas mengeluarkan pendapat, kritikan dan komen mereka melalui penerbitan-penerbitan cetak seperti 'ALIRAN' dan media *on-line* "MalaysiaKini'. Kita juga saban hari dihujani dengan pelbagai maklumat kritis daripada pelbagai media cetak dan elektronik tanpa sebarang sekatan asalkan kandungannya tidak menjejaskan keselamatan negara. Namun begitu, masih terdapat suara bahawa tidak terdapat kebebasan akhbar di Malaysia. Kebebasan akhbar adalah satu perkara relatif. Tidak ada satu negara di dunia ini yang mengamal kebebasan akhbar yang total (*absolute freedom*), termasuk negara maju seperti Amerika Syarikat (USA), United Kingdom (UK), Australia, New Zealand dan bilangan besar negara-negara maju dan sedang maju. <u>Kementerian Penerangan:</u> Kementerian Penerangan menyokong syor SUHAKAM terhadap perkara tersebut. Kerajaan akan bekerjasama dan menyokong segala usaha SUHAKAM dalam menubuhkan Majlis Media serta mempromosikan etika dan profesionalisme di kalangan jurnalis, pemilik akhbar dan editor.

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9	**Hak Asasi Kumpulan-Kumpulan Kurang Upaya** --- **(a) Orang-Orang Kurang Upaya** **Pemerhatian:** SUHAKAM menerima aduan bahawa hak-hak asasi orang kurang upaya tidak begitu dipromosi dan dilindungi berikutan sebab-sebab tertentu. Ia termasuklah hak untuk mendapatkan pendidikan berikutan kurangnya perkhidmatan sokongan di sekolah-sekolah, kekurangan guru-guru terlatih, hak untuk bergerak berikutan struktur bangunan dan perkhidmatan awam yang tidak mesra untuk golongan seperti mereka dan hak untuk mendapatkan pekerjaan berikutan kesukaran untuk mendapatkan pekerjaan. [Pemerhatian dan syor penuh adalah seperti di Bab Ketiga, para 12, m.s. 36]	Kementerian Pelajaran / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat / Kementerian Pengangkutan/ Kementerian Kerja Raya / Kementerian Sumber Manusia	<u>Kementerian Sumber Manusia:</u> Kementerian ini melalui Jabatan Tenaga Kerja telah mengadakan Pendaftaran dan Penempatan Orang Kurang Upaya (OKU) ke dalam pekerjaan bidang-bidang tertentu di sektor swasta melalui aktiviti promosi. Pada tahun 1990 Kementerian telah menubuhkan Jawatankuasa Kebangsaan Penggalakan Orang Kurang Upaya Di Sektor Swasta yang dipengerusikan oleh Y.B. Menteri Sumber Manusia untuk menggesa majikan di sektor swasta memberi peluang pekerjaan kepada OKU. Pada 2 Ogos 2001, Kementerian ini telah menggubal satu Kod Amalan Penggajian Orang Kurang Upaya Di Sektor Swasta. Dalam usaha untuk mempromosikan OKU dalam arus perdana pasaran buruh, Kementerian telah mengadakan program "*Sure* Kerja" pada 5-6 Oktober 2004 bagi memberi peluang dan menggalakkan kepada OKU supaya mendaftar dengan JTK dalam usaha untuk menempatkan mereka dalam pasaran pekerjaan. Program ini akan berterusan selama setahun untuk menarik seramai mungkin golongan OKU. Di samping itu, Kementerian ini melalui Jabatan Keselamatan dan Kesihatan Pekerjaan (JKKP) telah mengambil langkah-langkah tertentu dalam memastikan majikan-majikan menyediakan persekitaran tempat kerja yang selamat. JKKP telah mengadakan seminar, dialog dan perjumpaan dengan majikan dan sentiasa mempromosikan hak pekerja (tanpa mengira keupayaan) terhadap keselamatan dan kesihatan pekerjaan semasa bekerja. <u>Kementerian Pelajaran:</u> Kementerian Pelajaran Malaysia telah pun mengambil inisiatif untuk menyebarkan maklumat melalui program *outreach* seperti: • buku maklumat Pendidikan Khas • Seminar Pendidikan Khas yang dijalankan setiap tahun • Bulan Bersama Pelanggan • risalah-risalah berkenaan dengan peluang Pendidikan Khas yang disebarkan melalui seminar-seminar • Jabatan Pendidikan Negeri bersama dengan Jabatan Kebajikan Masyarakat dan Kementerian Kesihatan telah menyebarkan maklumat ini di peringkat negeri Selain itu kerjasama dengan lain-lain agensi telah dilaksanakan melalui aktiviti seperti:

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			aktiviti seperti: • satu siri Persidangan Meja Bulat bersama SUHAKAM • Program *Outreach* dengan kerjasama lain-lain Kementerian seperti Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, NGO dan pertubuhan-pertubuhan sukarela lain (contoh: Majlis Pemulihan Kebangsaan) Untuk menjadikan bangunan yang sedia ada lebih *disabled friendly*, Kementerian Pelajaran Malaysia telah mengubahsuai sekolah-sekolah tertentu yang mempunyai murid-murid buta dan cacat anggota dengan membina *ramp, railings*, laluan khusus untuk kegunaan pelajar buta serta pengubahsuaian struktur tertentu bangunan seperti tandas dan bilik darjah. Untuk mengatasi kekurangan guru terlatih dalam bidang pendidikan khas yang tertentu seperti *autism* dan ADHD, pihak Kementerian Pelajaran Malaysia melalui Bahagian Pendidikan Guru sentiasa berusaha melatih guru-guru pendidikan khas. Jabatan Pendidikan Khas juga mengadakan Kursus-kursus Peningkatan Profesional bagi meningkatkan kemahiran guru-guru pendidikan khas dalam bidang-bidang tertentu seperti *brain gym*. Selain dari itu pendedahan tentang elemen pendidikan khas juga telah diberikan kepada guru-guru di peringkat kursus asas. Bahagian Pendidikan Guru memainkan peranan penting dalam mencapai tujuan tersebut. Untuk menyediakan murid berkeperluan khas dengan kemahiran tertentu sebagai persediaan menceburi bidang pekerjaan selepas tamat sekolah, Kementerian Pelajaran Malaysia telah menyediakan dua aliran pelajaran untuk murid berkeperluan iaitu aliran akademik bagi mereka yang ingin menguasai kemahiran-kemahiran tertentu mengikut kesesuaian tahap keperluan kebolehan pelajar. <u>Kementerian Pembangunan Wanita, Keluarga Dan Masyarakat:</u> Sempena sambutan Hari Orang Kurang Upaya (HOKU) Peringkat Kebangsaan/Negeri setiap tahun, berbagai program kesedaran diadakan bagi mempromosikan hak-hak asasi bagi OKU. Kerajaan juga menerimapakai instrumen-instrumen antarabangsa seperti *The Asian and Pacific Decade of Disabled Persons 1993 – 2002: the Agenda for Action dan Biwako Millennium Framework for Action: Towards an*

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			Action dan Biwako Millennium Framework for Action: Towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific 2003 – 2012 sebagai garis panduan untuk merangka program dan aktiviti bagi mencapai sasaran-sasaran yang ditetapkan. Kerajaan juga telah menubuhkan Majlis Penasihat dan Perundingan Kebangsaan Bagi Orang Kurang Upaya pada bulan Februari 1998 yang bertindak bagi menyelaraskan dasar dan program yang berkaitan dengan OKU melalui pendekatan *"multi-sectoral"*.
	(b) Wanita Dan Kanak-Kanak **Pemerhatian:** Semasa lawatan ke Penjara Wanita di Kajang, SUHAKAM melihat bahawa kebanyakan gadis yang direman dan ditahan adalah disebabkan oleh penangkapan yang dilakukan oleh anggota penguatkuasa ke atas pusat-pusat hiburan. Hasil penyiasatan dan temuduga yang dilakukan oleh SUHAKAM ke atas gadis-gadis di pusat-pusat tahanan mendedahkan bahawa gadis-gadis ini telah diseludup masuk ke negara ini untuk dijadikan sebagai pelayan dan dipaksa mengadakan hubungan seks dengan majikan mereka. Mereka pada asalnya telah diperdaya dengan gaji yang lumayan sekiranya bekerja di negara ini. [Pemerhatian dan syor penuh adalah seperti di Bab Ketiga, para 13, m.s. 51]	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> [seperti maklum balas di para 13, m.s. 51]
10	**Respons Daripada Kerajaan** --- **Pemerhatian:** SUHAKAM mengalu-alukan beberapa agensi Kerajaan yang telah memberikan respons terhadap syor-syor SUHAKAM. Sebahagian respons yang diterima daripada Agensi Kerajaan adalah lebih tertumpu (spesifik) dan teliti seperti Kementerian Pendidikan, Jabatan Penjara dan Kehakiman. Yang lain pula dilihat cenderung untuk menyenaraikan undang-undang bagi memberikan respons terhadap sesuatu isu seperti sekatan	Untuk Makluman Semua Agensi Kerajaan	<u>Kementerian Pelajaran:</u> Kementerian Pendidikan Malaysia membuka pintu untuk perbincangan dengan pelbagai pihak bagi mencari jalan penyelesaian kepada setiap persoalan berkaitan pelajar berkeperluan khas, namun begitu setiap usaha memerlukan masa, tenaga dan kepakaran. Antara agensi yang aktif memberi kerjasama kepada Kementerian Pelajaran Malaysia termasuklah lain-lain Kementerian, SUHAKAM dan NGO. <u>Suruhanjaya Perkhidmatan Awam:</u> Pihak SPA mengambil maklum akan syor ini.

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	terhadap hak kebebasan berhimpun dan kebebasan akhbar. **Syor:** SUHAKAM berharap agar agensi-agensi Kerajaan lebih peka terhadap isu hak asasi manusia seiring dengan pentadbiran baru yang bercorak terbuka, berakauntabiliti dan telus. SUHAKAM juga berharap agar respons yang diterima dari agensi-agensi Kerajaan lebih spesifik dan tertumpu kepada jalan penyelesaian kepada masalah-masalah yang berpanjangan. SUHAKAM bersedia bekerjasama dengan agensi-agensi Kerajaan supaya pegawai-pegawainya lebih peka terhadap isu hak asasi manusia.		Jabatan Peguam Negara: Jabatan ini mengambil maklum pemerhatian dan syor SUHAKAM.
11	**BAB KETIGA** **Kemudahcapaian Kepada Kemudahan Asas** --- SUHAKAM telah membangkitkan beberapa isu di bawah tajuk Kemudahcapaian Kepada Keperluan Asas (*Accessibility to Basic Needs)* dan membuat pemerhatian dan syor kepada Kerajaan dalam usaha melindungi dan seterusnya meningkatkan hak-hak asasi manusia di Malaysia. **(a) Hak Asasi Penjagaan Kesihatan** **(i) Kemampuan Perubatan Untuk Semua** **Pemerhatian:**		
	Terdapat kebimbangan mengenai implikasi negatif penswastaan hospital Kerajaan dan cadangan penubuhan Dana Keselamatan Kesihatan Nasional ke atas kemampuan perubatan untuk semua, terutama di kalangan golongan miskin dan pesakit mental.	Kementerian Kesihatan	Kementerian Kesihatan: Kerajaan sedang mengkaji pelbagai elemen dalam menentukan pembiayaan kesihatan kebangsaan yang terbaik untuk dilaksanakan bagi memastikan bahawa kesamarataan dan keadilan dalam memberikan penjagaan kesihatan. Perkara ini juga adalah di bawah bidang kuasa Unit Perancang Ekonomi. Kementerian Kesihatan dan Unit Perancang Ekonomi sentiasa mengalu-alukan pandangan dari semua pihak yang terlibat dalam perkara ini.

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	Syor: SUHAKAM mengesyorkan supaya Kerajaan mengadakan perbincangan lanjut dengan semua pihak (termasuk syarikat insurans, pembekal penjagaan kesihatan swasta, badan-badan bukan kerajaan, wakil dari golongan terbabit, para akademik serta doktor dan jururawat persendirian) bagi meningkatkan sistem kewangan penjagaan kesihatan swasta dan Kerajaan.		Sungguhpun Kerajaan mengakui bahawa tiada mekanisma pembiayaan kesihatan yang sempurna, namun Kerajaan bersikap selektif dan berhati-hati dalam menerima pakai mana-mana skim. Perlaksanaan mekanisma pembiayaan kesihatan yang baru akan dibuat secara berperingkat, bagi memastikan ia diperkenalkan secara teratur. Pengenalan mekanisma pembiayaan kesihatan kebangsaan akan menguntungkan semua pihak yang terlibat dengan kesihatan, termasuk pembekal penjagaan kesihatan, Kerajaan, pembeli dan pengguna sendiri. Ia akan mengurangkan ketidakadilan dengan meningkatkan capaian kepada perkhidmatan kesihatan bagi rakyat, termasuklah perkhidmatan yang disediakan oleh sektor swasta.
	(ii) Kawalan Terhadap Jangkitan Penyakit-penyakit Yang Berpunca Dari Air Di Kawasan Orang Asli **Pemerhatian:** Lebih kurang 50% perkampungan orang asli di Malaysia tidak mempunyai kemudahan air yang sewajarnya. Ketidaksempurnaan bekalan air ini telah menyebabkan penduduk kampung menghidapi penyakit-penyakit yang berpunca dari masalah perbekalan air. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan membuat siasatan lanjut di peringkat nasional mengenai status kemudahan air di perkampungan orang asli. Ini adalah bagi menentukan perlunya kemudahan bekalan air dipertingkatkan di perkampungan-perkampungan ini. Siasatan ini juga boleh digabungkan sebagai sebahagian dari Program Pemantauan Air Minuman Nasional dan Program Bekalan Air dan Kebersihan Alam Sekitar (BAKAS).	Kementerian Kemajuan Luar Bandar dan Wilayah/ Kementerian Kesihatan	<u>Kementerian Kemajuan Luar Bandar dan Wilayah:</u> Jabatan Hal Ehwal Orang Asli (JHEOA) telah mengambil tindakan sewajarnya untuk menyediakan bekalan air yang sempurna ke kampung Orang Asli di Semenanjung Malaysia. Program ini diteruskan pada tahun 2004, di mana JHEOA bercadang untuk membekalkan air bersih kepada 13 lagi kampung Orang Asli, air *gravity feet* kepada 3 kampung dan air Pa Bah Tanah kepada 1 kampung. Usaha ini akan diteruskan sehingga semua kampung Orang Asli mendapat bekalan air bersih. <u>Kementerian Kesihatan:</u> Sebagai sebahagian dari program kebersihan dan kesihatan persekitarannya, usaha telah dijalankan untuk memastikan terdapatnya bekalan air, terutama sekali di kawasan luar bandar. Sebanyak 293 projek telah dilaksanakan di bawah Sistem Bekalan Air Alternatif Luar Bandar (BALM) bagi memenuhi keperluan air yang semakin meningkat di kawasan luar bandar. Sebanyak RM12 juta telah dibelanjakan di bawah BALM, termasuklah bagi pembinaan 141 *gravity flow*, 140 lubang telaga dan 12 projek tadahan air. Sumber air bawah tanah diberikan perhatian sebagai alternatif kepada bekalan air di permukaan tanah. Program alternatif bekalan air luar

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			bandar akan dikembangkan lagi dengan tumpuan kepada bekalan air yang murah, kecil-kecilan dan didorong oleh masyarakat termasuklah tadahan hujan, pembangunan bekalan air tanah serta teknologi pembersihan air cetek. Bekalan air yang selamat telah disalurkan kepada 94.1% daripada rumah sementara 98.5% diperuntukkan dengan bilik air. Kajian Sumber Air Tanah Kebangsaan yang dijalankan akan dikekalkan. Tumpuan diberikan kepada promosi kesihatan dan pencegahan penyakit melalui hubungkait persektoran antara kesihatan dan sektor-sektor lain dalam masyarakat. Di kawasan luar bandar, Kerajaan telah memulakan program pembangunan masyarakat yang bertujuan meningkatkan status sosio-ekonomi masyarakat luar bandar termasuk masyarakat Orang Asli.
	(iii) Keperluan Penjagaan Kesihatan Untuk Penduduk Yang Semakin Tua (*Aging Population*) **Pemerhatian:** Salah satu cabaran bagi sistem penjagaan kesihatan di Malaysia adalah untuk memenuhi keperluan rakyat Malaysia yang semakin tua. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan membuat penyelidikan lanjut dengan semua yang terlibat (termasuk pembekal penjagaan kesihatan swasta, badan-badan bukan Kerajaan, golongan tua, para akademik dan doktor dan jururawat individu) mengenai perubahan yang boleh dilakukan kepada sistem penjagaan kesihatan bagi golongan tua. Penyelidikan tersebut juga boleh mencari jalan bagi keluarga yang memerlukan bantuan perubatan di rumah selepas pesakit tua keluar dari hospital. Kemudahan-kemudahan seperti ini boleh membantu usaha Kerajaan meningkatkan penjagaan golongan tua dan uzur di rumah.	Kementerian Kesihatan / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Kesihatan:</u> Institut Gerontologi, Universiti Putra Malaysia, bersama-sama dengan Kementerian Kesihatan dan universiti-universiti lain sedang menjalankan kajian bertajuk "Kualiti Kehidupan Golongan Tua Malaysia". Kajian tersebut telah dipecahkan kepada beberapa topik kecil, iaitu: • Aspek Ekonomi Dan Kewangan Warga Tua; • Kualiti Hidup Warga Tua Dari Segi Kesihatan; • Hubungan Psaikososial Dan Antara Generasi Warga Tua; • Persekitaran Mesra Perumahan Bagi Warga Tua; dan • Tabiat Pengguna Di Kalangan Warga Tua Di Malaysia Kajian ini dibuat di bawah projek IRPA dan dijangka akan siap pada tahun 2005. LPPKN juga akan menjalankan kajian pada tahun 2004 bertajuk "Kajian Penduduk dan Keluarga Malaysia ke Empat". Beberapa aspek warga tua juga akan diliputi seperti hubungan kekeluargaan, tahap kesihatan, penggunaan kemudahan kesihatan dan status ekonomi warga tua.

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			UKM (di bawah Unit Dietetiks), juga sedang menjalankan kajian bertajuk "*A Community-based Intervention Study of Promotion of Healthy Ageing: Identification, Prevention and Management of Malnutrition Among Rural Malays Elderly*". Projek ini juga di bawah IRPA dan bertujuan untuk merangka satu "*National Intervention Package For Healthy Ageing*" selepas kajian dilaksanakan. Menyedari bahawa struktur populasi Malaysia akan menunjukkan peningkatan dalam komposisi golongan tua dari 4.7% (1.3 juta) dalam tahun 2010 kepada 6.2% (2.0 juta) dalam tahun 2020, Kementerian Kesihatan telah memperkembangkan lagi Perkhidmatan Kesihatan Keluarganya sejak dari Rancangan Malaysia Ke-7 untuk meliputi penjagaan bagi golongan tua. Buat masa ini, sebanyak 513 klinik-klinik kesihatan di seluruh negara mampu menawarkan perkhidmatan kesihatan bagi golongan tua. <u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat</u> : Kementerian Pembangunan Wanita, Keluarga dan Masyarakat (KPWKM) menyokong cadangan yang dibuat oleh SUHAKAM. Walau bagaimanapun, cadangan ini lebih wajar dijawab oleh Kementerian Kesihatan kerana ia melibatkan sistem kesihatan.
	(iv) Kemudahan Perubatan Di Hospital Dan Klinik Estet **Pemerhatian:** Kebanyakan hospital dan klinik estet tidak mempunyai kemudahan perubatan yang sewajarnya. Hospital dan klinik tersebut dikendalikan oleh syarikat perladangan sebagai memenuhi Akta Tahap Minima Perumahan dan Kemudahan Pekerja 1990. **Syor SUHAKAM:** SUHAKAM mengesyorkan supaya Kerajaan membuat penyelidikan bersama dengan syarikat-syarikat perladangan mengenai kemudahan yang terdapat di hospital dan klinik estet. Ini adalah selaras dengan usaha Kerajaan untuk	Kementerian Kesihatan	<u>Kementerian Kesihatan</u>: Sungguhpun perkhidmatan penjagaan asas bagi penduduk estet ditawarkan oleh klinik estet dan terletak di bawah bidang kuasa pentadbiran estet, seperti yang termaktub dalam Akta Tahap Minima Pekerja untuk Kemudahan dan Perumahan 1990 (Akta 446), Kementerian Kesihatan sentiasa peka kepada masalah kesihatan yang dihadapi oleh penduduk estet dan sentiasa berusaha bagi memastikan penduduk-penduduk tersebut mendapat tahap penjagaan yang sama dengan penduduk-penduduk lain. Perkhidmatan penjagaan asas yang ditawarkan untuk penduduk estet termasuklah pencegahan, perubatan dan penjagaan pemulihan. Perkhidmatan-perkhidmatan ini dikendalikan oleh sama ada pembantu hospital-hospital estet, doktor-doktor yang

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	meningkatkan kerjasama di antara pembekal perkhidmatan penjagaan kesihatan Kerajaan dan swasta. Penyelidikan bersama tersebut bertujuan untuk mengenal pasti langkah-langkah bagi meningkatkan tahap keselamatan di tempat kerja dan kesihatan pekerja ladang serta dapat membentuk sebahagian daripada usaha Kerajaan dalam bidang ini.		dipilih atau Pegawai Perubatan Sementara. Kementerian Kesihatan menawarkan perkhidmatan penjagaan kesihatan kepada penduduk estet melalui kemudahan kesihatan Kerajaan yang berhampiran seperti klinik-klinik kesihatan atau Klinik Penjagaan Bayi dan Ibu-ibu dan Klinik Pesakit Luar bergerak. Selain daripada memberi perkhidmatan yang diperlukan, klinik-klinik kesihatan juga mengendalikan kes-kes yang telah dirujuk oleh klinik-klinik estet. Bagi meningkatkan lagi kualiti penjagaan kesihatan di klinik estet, Kementerian Kesihatan telah menyediakan Garispanduan bagi Tahap Minima untuk Klinik-klinik Estet dan juga memberi bantuan kewangan untuk ubat-ubatan, peralatan perubatan dan latihan bagi pembantu-pembantu klinik estet. Kementerian Kesihatan juga menjalankan aktiviti dan lawatan pemantauan ke estet-estet dari semasa ke semasa bagi mendapatkan maklumat yang diperlukan dari segi data dan juga bagi mengkaji semula tahap kesihatan penduduk-penduduk estet.
	(v) Pendidikan Untuk Wanita Mengenai Isu-isu Kesihatan **Pemerhatian:** Wanita memainkan peranan penting dalam meningkatkan status kesihatan dan pemakanan kanak-kanak. Kaum wanita juga merupakan penentu dalam penyediaan makanan dan penjagaan ahli keluarga yang sakit. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan merangka lebih banyak program yang mendidik wanita, terutama sekali di kawasan luar bandar, mengenai pentingnya penjagaan kesihatan dan pemakanan keluarga pada amnya dan kanak-kanak khususnya. Program ini dicadangkan dirangka bersama-sama pembekal perkhidmatan penjagaan kesihatan swasta dan masyarakat madani.	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat/ Kementerian Kesihatan	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Pada keseluruhannya, Kementerian Pembangunan Wanita, Keluarga dan Masyarakat menyokong saranan SUHAKAM supaya pihak Kerajaan, klinik/hospital swasta dan masyarakat madani mengadakan lebih banyak program untuk mendidik wanita, terutamanya dari kawasan luar bandar mengenai kepentingan penjagaan kesihatan dan pemakanan untuk keluarga dan anak-anak mereka. Di bawah program reproduksi manusia, selain memberikan perkhidmatan klinik kesihatan reproduktif, Kementerian Pembangunan Wanita, Keluarga dan Masyarakat melalui Lembaga Penduduk dan Pembangunan Keluarga Negara (LPPKN) juga menjalankan program advokasi dan promosi iaitu Program Nur Sejahtera yang menjurus kepada meningkatkan tahap kesedaran kesihatan reproduktif wanita dan keluarga. Program ini dijalankan dengan kerjasama pelbagai badan bukan kerajaan yang lain. Aktiviti dijalankan di peringkat akar umbi meliputi ceramah, pameran, pemeriksaan kesihatan dan kaunseling. Klinik LPPKN di ibu pejabat telah memulakan Klinik Nur Sejahtera (*Wellness Clinic*) untuk lelaki dan wanita yang berkonsepkan pencegahan dengan objektif menggalakkan wanita dan lelaki

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			mendapatkan khidmat nasihat serta menjalankan pemeriksaan dan saringan kesihatan. Klinik ini juga menyediakan pakej pengurusan berat badan selamat di mana nasihat pemakanan dan panduan pengurusan berat badan diberikan. Selain daripada itu, sebuah pusat informasi kesihatan wanita juga ditubuhkan untuk memperkasakan wanita dan keluarga mengenai kesihatan wanita. Risalah-risalah berkaitan disediakan untuk edaran dan rujukan kepada orang awam. <u>Kementerian Kesihatan</u>: Program-program yang dijalankan untuk wanita termasuklah: • Penyaringan kanser servik (Pap Smear) Perkhidmatan ini terbuka kepada semua wanita berusia antara 20 hingga 65 tahun. Ia diberikan secara percuma di semua klinik kesihatan Kerajaan Kementerian Kesihatan Malaysia (KKM). Pemeriksaan juga dijalankan oleh agensi lain seperti LPPKN, Hospital Universiti, badan bukan Kerajaan dan klinik/hospital swasta. • Penyaringan kanser payudara Perkhidmatan ini disediakan untuk semua wanita seawal remaja hingga warga tua. Promosi pemeriksaan sendiri payudara atau PSP disediakan di semua klinik kesihatan yang mana anggota kesihatan terlatih akan mengajar cara melakukan PSP dan pendidikan kesihatan berkaitan kanser tersebut. • Penyaringan HIV/AIDS/STI ibu hamil Penyaringan ini bertujuan mencegah transmisi HIV secara vertikal dari ibu ke bayi dalam kandungan. Setiap ibu yang disahkan positif dan anak yang bakal dilahirkan akan menerima rawatan sewajarnya. • Perkhidmatan perancang keluarga Perkhidmatan ini disediakan di semua kemudahan kesihatan di seluruh Malaysia. Antara aktiviti yang dijalankan termasuk

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			seluruh Malaysia. Antara aktiviti yang dijalankan termasuk pengrekrutan penerima baru, pemeriksaan fizikal, pendidikan kesihatan dan kaunseling, pembekalan bahan kontraseptif, ujian saringan Pap Smear, pemeriksaan payudara dan ujian kehamilan. • Penjagaan antenatal, semasa bersalin dan selepas bersalin Ini adalah bertujuan menyediakan perkhidmatan penjagaan ibu hamil yang berkualiti agar setiap ibu berada pada tahap kesihatan yang optima dan melahirkan anak yang sihat dalam suasana selamat. • Pusat krisis setempat di semua hospital Kerajaan Perkhidmatan ini disediakan untuk mengendalikan kes mangsa rogol dan penderaan secara bersepadu di satu tempat serta '*client-centred*'. Perkhidmatan ini terdapat di semua hospital besar di seluruh Malaysia. Selain daripada itu, pendidikan pemakanan telah lama menjadi program di bawah Kementerian Kesihatan bagi mempromosikan kesihatan masyarakat. Aktiviti-aktiviti ini disalurkan melalui sistem perkhidmatan kesihatan di negara ini dan juga melalui pembabitan agensi-agensi lain dengan media massa. Pendidikan pemakanan disampaikan dengan empat pendekatan, iaitu melalui aktiviti-aktiviti di klinik-klinik ibu dan bayi, melalui program pemakanan sihat kampung di kampung-kampung yang mempunyai penyertaan dari masyarakat setempat, penubuhan kumpulan sokongan para ibu dalam promosi penyusuan bayi dan di hospital-hospital melalui program Inisiatif Hospital Mesra Bayi. Pendidikan pemakanan sihat melalui kesihatan ibu dan bayi adalah bertujuan untuk mengelak kekurangan zat dalam golongan tertentu, umpamanya wanita mengandung dan sedang menyusu, kanak-kanak dan bayi. Pendidikan pemakanan sihat sedang diperkembangkan ke golongan umur seperti remaja dan warga tua di bawah liputan program kesihatan keluarga. Di kawasan pedalaman Sarawak, program kesihatan sukarela berasaskan masyarakat yang dikenali sebagai Program Wakil Kesihatan

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			berasaskan masyarakat yang dikenali sebagai Program Wakil Kesihatan Kampung telah diperkenalkan semenjak tahun 1990an. Wakil-wakil kampung akan dilatih dalam pemakanan sihat yang asas bagi membolehkan mereka menyampaikan nasihat pemakanan sihat dalam penjagaan kanak-kanak dan ibu-ibu di kampung-kampung mereka. Pelbagai bantuan pendidikan dan modul-modul telah dirangka untuk membantu pendidikan pemakanan sihat dan aktiviti-aktiviti latihan. Di samping itu, dua edisi Buku Resipi Pemakanan Sihat juga telah diterbitkan di bawah Program Pemakanan Sihat. Program Kesejahteraan Fizikal, di mana zat memainkan peranan utama, juga menyumbang ke arah pengimbangan berat badan yang sesuai untuk wanita dalam pekerjaan.
	(vi) Kesedaran Awam Mengenai Isu-Isu Kesihatan **Pemerhatian:** Seminar tersebut mendapati bahawa Kerajaan mengadakan program kesedaran awam bagi menggalakkan lebih ramai individu mengambil berat mengenai kesihatan mereka sendiri dan berpegang kepada pendapat bahawa pencegahan lebih baik daripada rawatan. **Syor:** SUHAKAM mengesyorkan supaya pembekal perkhidmatan penjagaan kesihatan swasta dan masyarakat madani membantu usaha Kerajaan untuk meningkatkan kesedaran awam mengenai kesihatan yang baik.	Kementerian Kesihatan	<u>Kementerian Kesihatan:</u> Sejak tahun 1984, Bahagian Farmasi, Kementerian Kesihatan telah menjalankan satu program pendaftaran di mana semua produk farmaseutikal termasuk ubat tradisional dinilai dari segi keselamatan, kualiti dan keberkesanan. Nombor pendaftaran diberikan sekiranya produk-produk tersebut memenuhi kriteria-kriteria yang ditetapkan. Salah satu daripada aspek pendidikan kesihatan adalah untuk memastikan orang ramai hanya membeli dan menggunakan ubat-ubat yang sudah didaftar oleh Kementerian Kesihatan Malaysia. Untuk mencapai objektif ini, Bahagian Farmasi tiap-tiap negeri telah menyediakan poster dan risalah untuk dipamerkan dan diedarkan di tempat-tempat yang relevan seperti hospital, pejabat kesihatan dan sebagainya. Selain daripada itu, kempen ini juga dijalankan dari semasa ke semasa melalui pameran kesihatan di hospital-hospital dan tempat-tempat yang berkenaan. Pegawai penguatkuasa tiap-tiap negeri juga mengambil bahagian dalam '*talk show*' di stesyen radio kawasan untuk membawa mesej bahawa hanya ubat-ubat yang didaftar selamat untuk dimakan dan pengambilan ubat yang tidak didaftar boleh menjejaskan kesihatan.

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	(b) Hak Asasi Pendidikan Dan Penerimaan Maklumat **(i) Program Latihan dan Pembangunan Guru** **Pemerhatian:** Walaupun terdapat kesedaran awam mengenai kewujudan sekolah, namun institusi pendidikan perguruan jarang diberi perhatian. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan meneruskan dialog bersama semua yang terlibat (termasuk guru, ibubapa, para pelajar, badan-badan bukan kerajaan dan para akademik) bagi bertukar-tukar fikiran mengenai cara merangka program tersebut untuk membolehkan para guru menghadapi cabaran masa kini dengan generasi baru yang mempunyai cara pemikiran berbeza.	Kementerian Pelajaran	<u>Kementerian Pelajaran:</u> Kementerian Pelajaran Malaysia (KPM) sentiasa meningkatkan program pembangunan dan latihan guru. Maklumat mengenai program latihan dan pembangunan guru boleh didapati melalui KPMNET, intranet yang direka bentuk bagi memudahkan komunikasi dengan pelbagai Jabatan dan Bahagian di Kementerian Pelajaran serta dengan negeri-negeri, daerah-daerah dan sekolah-sekolah. Capaian kepada KPMNET boleh dibuat melalui laman web Kementerian Pendidikan http://www.emoe.gov.my/. Berdasarkan maklumat dari rangkaian tersebut, permintaan untuk tempat di institusi latihan perguruan melebihi jumlah tempat yang disediakan. Ini menunjukkan terdapatnya maklumat mengenai latihan dan pembangunan perguruan kepada orang ramai. Dari segi pembangunan perguruan pula, beberapa strategi diambil untuk meningkatkan kualiti pendidikan. Ini termasuklah mengkaji semula penempatan guru dan memastikan 50% dari guru-guru sekolah rendah dan 100% dari guru-guru sekolah menengah adalah siswazah menjelang tahun 2010. Beberapa program yang dijalankan adalah seperti berikut: • Program Khas Guru Siswazah Program ini memberi peluang kepada guru-guru sekolah rendah untuk melanjutkan pelajaran. Mereka diberi cuti belajar separa gaji atau diberi biasiswa bagi meningkatkan pengetahuan dan kepakaran mereka dalam bidang yang diceburi. • Program Pembelajaran Jarak Jauh Satu lagi strategi yang diambil bagi memastikan guru-guru yang berkualiti adalah dengan melaksanakan Program Pembelajaran Jarak Jauh. Program ini dilakukan di kebanyakan universiti untuk ijazah profesional dan teknikal dan merupakan satu usaha bagi mengatasi masalah kekurangan guru dalam matapelajaran-matapelajaran penting seperti Bahasa Inggeris, Sains dan Matematik.

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			• Program *Computer Literacy* Sebagai salah satu kursus dalam perkhidmatan, Program Celik Komputer (*Computer Literacy)* bertujuan meningkatkan profesion perguruan dan memperkukuhkan kebolehan guru-guru dalam menggunakan *hardware* dan *software* komputer, terutama sekali dalam pendidikan Matematik dan Sains dalam Bahasa Inggeris. • Penubuhan Guru-Guru Simpanan Kebangsaan (*National Reserve of Teachers)* Guru-guru yang berdaftar di bawah program ini akan menggantikan guru-guru yang sedang cuti belajar, cuti tanpa gaji atau cuti bersalin. Mereka lazimnya mempunyai opsyen yang sama atau hampir serupa. Dimulakan pada tahun 2002, program ini masih dalam peringkat permulaan dan pendaftaran guru-guru yang baru bersara masih dijalankan. • Sekolah-sekolah Pendidikan dalam Kolej Pendidikan Perguruan Di bawah program ini, sekolah-sekolah akan ditubuhkan bersebelahan atau berhampiran dengan Kolej Pendidikan Perguruan bagi membolehkan guru-guru pelatih menjalankan latihan praktikal dan pendidikan mikro mereka. • Program Contoh: Projek '*Pensiangan-Salinatan*' Projek ini dijalankan di kawasan pedalaman Sabah dengan tujuan membantu masyarakat dan pelajar di kawasan pedalaman Pensiangan. Kolej Pendidikan Perguruan di Sabah mengenal pasti sekolah-sekolah terpencil di mana bantuan boleh diberikan dari aspek melaksanakan projek pendidikan dan latihan dalam perkhidmatan untuk guru-guru. • Program Latihan dalam Perkhidmatan KPM juga menjalankan program Latihan dalam Perkhidmatan (LDP) melalui Bahagian Sekolah-Sekolah, Bahagian Perancangan dan

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			melalui Bahagian Sekolah-Sekolah, Bahagian Perancangan dan Penyelidikan Dasar Pendidikan, Bahagian Dasar dan Pengurusan Korporat, Bahagian Teknologi Maklumat dan Komunikasi, Bahagian Teknologi Pendidikan dan Bahagian Sumber Manusia. Program-program ini adalah bertujuan untuk meningkatkan pengetahuan dan kepakaran guru-guru dalam menggunakan teknologi komunikasi dan maklumat dalam proses pembelajaran dan pengajaran, bahasa Inggeris dan Melayu, sains dan matematik. Guru-guru juga didedahkan kepada kebolehan berfikir secara kreatif dan kritikal dalam pembelajaran. • Latihan Perguruan Berasaskan Sekolah bagi Guru-guru Tidak Terlatih Sebagai satu lagi langkah untuk mengatasi kekurangan tenaga pengajar di sekolah-sekolah rendah, KPM juga memberi peluang kepada guru-guru tidak terlatih untuk turut serta dalam Latihan Perguruan Berasaskan Sekolah (LPBS). Guru-guru yang dimasukkan dalam program LPBS tidak lagi akan dikenali sebagai 'Guru Sandaran Tidak Terlatih' (GSTT), tetapi akan digolongkan sebagai 'Guru Dalam Latihan' (GDL). Kementerian Pelajaran juga sering mengadakan seminar penyelidikan di mana dialog akan diadakan bersama semua yang terlibat, termasuklah guru besar, guru-guru, para pelajar dan para akademik. Mereka akan bertukar-tukar fikiran mengenai cara untuk mengukuhkan program latihan perguruan bagi membolehkan guru-guru menghadapi cabaran masa kini dengan generasi baru yang mempunyai cara pemikiran berbeza. Ahli-ahli Badan Penasihat Pendidikan Guru-guru, yang mewakili pelbagai organisasi perguruan, turut memberi pandangan dan nasihat dalam meningkatkan kualiti pendidikan perguruan.
	(ii) Sekolah Luar Bandar Sebagai Pusat Capaian ICT **Pemerhatian SUHAKAM:** Seminar mencadangkan supaya sekolah-sekolah digunakan sebagai pangkalan ICT untuk masyarakat luar bandar dengan membenarkan orang ramai ke sekolah pada waktu malam untuk menggunakan komputer.	Kementerian Tenaga, Air dan Komunikasi / Kementerian Pelajaran	<u>Kementerian Tenaga, Air dan Komunikasi:</u> Kementerian Tenaga, Air dan Komunikasi (KTAK) menyokong segala usaha untuk merapatkan jurang digital di kalangan rakyat Malaysia termasuk menggunakan premis sekolah untuk menjadi '*access point*'

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	Syor SUHAKAM: SUHAKAM mencadangkan supaya Kerajaan menimbang menggunakan sekolah-sekolah luar bandar sebagai pusat pangkalan ICT masyarakat setempat. Rundingan lanjut perlu dibuat bersama-sama ibubapa, guru, pelajar dan masyarakat berkenaan bagi meningkatkan penggunaan ICT di kawasan luar bandar. Langkah ini boleh membentuk sebahagian dari program Infodesa dan Internet Desa Kerajaan.		termasuk menggunakan premis sekolah untuk menjadi '*access point*' masyarakat awam kepada kemudahan komputer dan Internet. KTAK percaya perkara ini sememangnya telah dijalankan oleh sekolah-sekolah. <u>Kementerian Pelajaran:</u> Cadangan supaya sekolah digunakan sebagai pusat pangkalan ICT dalam usaha untuk menggalakkan masyarakat luar bandar berhampiran sekolah untuk menjadi celik komputer, di samping meningkatkan penggunaan ICT di kawasan luar bandar adalah cadangan yang baik. Langkah sedemikian bermakna masyarakat luar bandar boleh ke sekolah pada waktu malam atau hujung minggu untuk menggunakan komputer. Walau bagaimanapun, sekolah dan masyarakat setempat yang diwakili oleh PIBG sepatutnya memulakan perbincangan dengan pihak Kerajaan dan mereka yang terlibat (termasuklah ibu bapa, guru-guru, para pelajar dan masyarakat setempat) mengenai penyelenggaraan sistem komputer dari segi teknikal dan kewangan, sistem sekuriti serta jadual penggunaan komputer dan sebagainya. Prosedur-prosedur tertentu perlu digubal sebelum masyarakat tersebut boleh menggunakan kemudahan pembelajaran di sekolah-sekolah.
	(iii) Laman Web dan Mengemaskini Laman Web **Pemerhatian:** Seminar mendapati bahawa kebanyakan dari Pihak Berkuasa Tempatan tidak mempunyai laman web atau tidak mengemaskini laman web sedia ada. **Syor:** SUHAKAM mengesyorkan supaya, selaras dengan pelancaran Agenda IT Nasional (NITA), Pihak Berkuasa Tempatan yang tidak mempunyai laman web atau tidak mengemaskinikan laman web mereka berbuat demikian bagi membolehkan orang awam mengetahui khidmat yang disediakan oleh Pihak Berkuasa Tempatan tersebut.	MAMPU / Kementerian Perumahan dan Kerajaan Tempatan	<u>Unit Pemodenan Tadbiran Awam Negara, Jabatan Perdana Menteri:</u> Unit Pemodenan Tadbiran Awam Negara, Jabatan Perdana Menteri (MAMPU), telah menggubal Pelan Strategik ICT Sektor Awam *atau ICT Strategic Plan (ISP).* Ianya adalah *blueprint* yang menjelaskan visi, halatuju strategik dan rangka kerja penggunaan ICT di sektor awam. Di bawah pelan ini MAMPU telah menggariskan Dasar dan Garis Panduan Pembangunan Portal Sektor Awam bagi memandu Jabatan dan Agensi membangunkan serta mengemaskini laman web masing-masing. <u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Kementerian Perumahan dan Kerajaan Tempatan (KPKT), dengan kerjasama MIMOS, telah memperkenalkan Kerajaan Tempatan Pintar – Agenda Urus Tadbir. Objektif program ini adalah untuk menjana dan membentuk Pihak Berkuasa Tempatan supaya lebih prihatin kepada rakyat, lebih efisien, responsif dan telus melalui teknologi komunikasi

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	(iv) Penggunaan Bahasa Malaysia di dalam Internet **Pemerhatian:** Seminar mendapati bahawa penggunaan Bahasa Malaysia di dalam Internet adalah terhad. Ini menyebabkan kurangnya bahan rujukan di Internet bagi kegunaan tempatan. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan mengadakan perbincangan dengan semua pihak yang terlibat (termasuk beberapa entiti swasta dan badan-badan bukan kerajaan) untuk menimbangkan usaha menggalakkan orang ramai dan sektor swasta memuatkan maklumat dalam Bahasa Malaysia.	Kementerian Tenaga, Air dan Komunikasi / Kementerian Kesihatan	maklumat. Program tersebut akan dilaksanakan secara berperingkat bagi mencapai objektifnya. Menjelang penghujung 2004, semua Pihak Berkuasa Tempatan seharusnya mempunyai sekurang-kurangnya laman web yang mengandungi maklumat mengenai perkhidmatannya, borang-borang muat turun dan kebolehan berkomunikasi melalui e-mail dengan orang awam. KPKT akan memantau perkembangan ini. <u>Kementerian Tenaga, Air dan Komunikasi:</u> Kerajaan menyedari akan kekurangan bahan-bahan kandungan tempatan dalam Bahasa Melayu bukan sahaja dalam Internet, tetapi juga dalam media penyiaran. Kementerian Tenaga, Air dan Komunikasi telah mengadakan seminar dan bengkel yang dihadiri oleh pihak industri, individu dan NGO dalam usaha untuk meningkatkan pengeluaran kandungan tempatan, terutamanya kandungan bahasa Melayu. Perundingan seumpama ini akan diteruskan dari semasa ke semasa. <u>Kementerian Kesihatan:</u> Bahagian Perkhidmatan Farmasi telah menyediakan 96 artikel mengenai *"Self Care Guides"* yang boleh digunakan oleh orang awam melalui laman web <u>www.pharmacy.gov.my</u>. Bahagian ini akan menterjemahkan *"Self Care Guides"* ini ke dalam Bahasa Malaysia bagi memudahkan orang awam memperolehi maklumat lanjut mengenai penjagaan kesihatan. Ini bertujuan untuk menggalakkan individu bertanggungjawab terhadap kesihatan mereka sendiri melalui penjagaan kendiri (*self care*).
	(v) Keupayaan Sektor Awam Mengendali Maklum Balas Dari Orang Ramai **Pemerhatian:** Seminar berpendapat bahawa keupayaan mengendalikan maklum balas (sama ada maklum balas positif atau negatif) adalah penting bagi sesuatu masyarakat maju. Oleh itu, perkhidmatan awam boleh dipertingkatkan lagi dengan memberi penekanan kepada pengendalian maklum balas, terutama sekali maklum balas negatif, dari orang ramai.	Jabatan Perkhidmatan Awam	<u>Jabatan Perkhidmatan Awam:</u> Jabatan Perkhidmatan Awam (JPA) sentiasa memastikan pegawai-pegawai dalam Perkhidmatan Awam mendapat peluang mengikuti kursus-kursus yang khusus berkaitan dengan tugas dan tanggungjawab pegawai tersebut. Melalui Pekeliling Perkhidmatan Bilangan 1 Tahun 1997, kuasa meluluskan cuti belajar bagi kursus-kursus jangka pendek

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	Syor: SUHAKAM mengesyorkan supaya Kerajaan mengadakan lebih banyak program latihan untuk penjawat awam mengendalikan maklum balas yang diterima dari orang ramai. Program ini boleh membentuk sebahagian dari usaha Kerajaan untuk memupuk budaya kerja yang baik di sektor perkhidmatan awam. Program-program ini boleh dijayakan bersama dengan pihak yang terlibat di sektor swasta dan masyarakat madani bagi meningkatkan pemahaman antara sektor awam dan pelanggan mengenai khidmat yang disediakan oleh sektor awam. Program-program ini juga boleh membentuk sebahagian daripada sistem pengendalian aduan awam Kerajaan. **(c) Hak Perumahan Yang Wajar Dan Persekitaran Yang Sihat** **(i) Undang-undang, Polisi dan Garis panduan Mengawalselia Industri Perumahan** **Pemerhatian:** Seminar mendapati bahawa industri perumahan Malaysia mempunyai peraturan yang amat ketat. Terdapat dakwaan bahawa undang-undang, polisi dan garis panduan ini telah menyebabkan peningkatan kos dan menjejaskan harga rumah yang mampu dimiliki. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan mengadakan perbincangan dengan semua pihak yang terlibat (termasuk pengusaha perumahan, badan-badan bukan Kerajaan, pekerja-pekerja dalam industri perumahan dan pembeli rumah) bagi menimbang untuk mengadakan penyelidikan lanjut mengenai perlunya memudahkan perundangan, garis panduan dan polisi industri perumahan dalam pada yang	Kementerian Perumahan dan Kerajaan Tempatan	(tempohnya tiga bulan atau kurang) telah diturunkan kepada Ketua Setiausaha Kementerian/Ketua Jabatan. Dengan demikian, Kementerian dan Jabatan adalah bertanggungjawab dalam perancangan dan pengendalian kursus-kursus jangka pendek, berdasarkan kepada keperluan Kementerian dan Jabatan masing-masing. <u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Kementerian Perumahan dan Kerajaan Tempatan (KPKT) sering mengadakan perbincangan dengan pihak-pihak utama dalam sektor perumahan bagi mengenal pasti aspek untuk penambahbaikan. Kementerian telah menubuhkan *One-Stop Centre* dalam pentadbiran Pihak Berkuasa Tempatan dan Negeri-negeri bagi mempercepatkan kelulusan pelan-pelan pembangunan.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	sama memastikan keselamatan pekerja di tempat kerja dan hak pembeli rumah terjamin. **(ii) Pengawalseliaan Pelaksanaan Undang-Undang Perumahan** **Pemerhatian:** Seminar mendapati bahawa pembeli rumah menghadapi pelbagai masalah, termasuk kerja yang tidak kemas, kegagalan pengusaha tidak bertanggungjawab untuk memperbetulkan kerosakan dan projek perumahan yang terbengkalai. Seminar mencadangkan perlunya Kerajaan lebih proaktif dalam memastikan pihak industri mematuhi undang-undang perumahan yang sedia ada. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan, melalui perbincangan dengan semua pihak terlibat (termasuk pengusaha perumahan, badan-badan bukan kerajaan, pekerja-pekerja sektor perumahan dan pembeli rumah) menimbangkan keperluan untuk lebih proaktif dalam mengawalselia projek dan penguatkuasaan undang-undang perumahan sedia ada bagi memastikan hak pembeli rumah terjamin. Ini termasuklah menimbangkan untuk meningkatkan bilangan pegawai penguatkuasa yang bertugas di Bahagian Pemantuan dan Penguatkuasaan Kementerian Perumahan dan Kerajaan Tempatan. Kerajaan dan masyarakat madani perlu menimbang untuk mempertingkatkan kempen kesedaran bagi orang ramai, terutamanya golongan berpendapatan rendah, mengenai hak mereka sebagai pembeli.	Kementerian Perumahan dan Kerajaan Tempatan	<u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Akta Pemaju Perumahan 1966 dan Peraturan-peraturan serta Perjanjian Jual Beli telah dipinda bagi memberi lebih perlindungan kepada pembeli. Tribunal untuk pembeli rumah juga telah ditubuhkan untuk menimbang tuntutan tidak melebihi RM25,000. Bahagian Penguatkuasa Kementerian Perumahan dan Kerajaan Tempatan telah dirombak dan diperkuatkan dengan penambahan kakitangan. Kini terdapat lebih ramai pegawai dan kakitangan yang bertanggungjawab menguatkuasakan Akta Pemaju Perumahan 1966. KPKT juga telah mengeluarkan Garis Panduan Pembelian Rumah yang diedarkan kepada orang ramai dalam bentuk makalah. Kementerian juga menganjurkan 'Hari Terbuka' pada Sabtu keempat setiap bulan di mana pegawai-pegawai Kementerian akan melayan aduan dan pertanyaan dari orang ramai. Selain daripada itu, laman web Kementerian juga mempunyai seksyen soal-jawab lazim (FAQs) mengenai perumahan.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	(iii) Senarai Pembeli Rumah Kos Rendah Yang Berkelayakan **Pemerhatian:** Seminar mendapati bahawa maklum balas menunjukkan bahawa senarai pembeli rumah kos rendah sedia ada yang diuruskan oleh Pihak Berkuasa Negeri, adalah lapuk dan telah menyebabkan ketidakcekapan dalam pengagihan perumahan. **Syor:** SUHAKAM mengesyorkan supaya: Pihak Berkuasa Negeri yang berkenaan menimbang untuk meningkatkan kekerapan dalam mengemaskinikan senarai pembeli rumah kos rendah yang berkelayakan. Kerajaan (Negeri dan Persekutuan) serta masyarakat madani menimbang untuk meningkatkan kempen kesedaran bagi orang ramai, terutamanya golongan berpendapatan rendah, mengenai prosedur dan peraturan yang perlu diikuti untuk mendapat rumah kos rendah. Langkah-langkah ini boleh membantu usaha Kerajaan Persekutuan untuk "mengukuhkan sistem pemilihan dan prosedur bagi memastikan pengagihan rumah kos rendah kepada golongan yang berkenaan." **(iv) Peningkatan Harga Buruh, Bahan Mentah dan Infrastruktur** **Pemerhatian:** Seminar mendapati bahawa kos buruh, bahan mentah dan infrastruktur membentuk lebih 60% daripada kos pembangunan rumah. Sebarang peningkatan harga ketiga-tiga perkara ini akan memudaratkan sektor perumahan yang	Kementerian Perumahan dan Kerajaan Tempatan Kementerian Perumahan dan Kerajaan Tempatan	<u>Kementerian Perumahan dan Kerajaan Tempatan:</u> KPKT telah memperkenalkan Sistem Pendaftaran Komputer Terbuka (*Open Computerised Registration System)* untuk diguna pakai oleh semua negeri. Kerajaan-kerajaan Negeri dikehendaki mengisi dan mengemaskinikan senarai pembeli rumah setiap bulan. Kerajaan Negeri telah menempatkan iklan-iklan dalam surat khabar tempatan yang menerangkan mengenai prosedur dan syarat-syarat membeli/menyewa rumah kos rendah. Sesetengah Negeri memaparkan maklumat ini di papan kenyataan atau laman web mereka. Semua pembeli rumah kos rendah dikehendaki mendaftar dengan Sistem Pendaftaran Komputer Terbuka. <u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Institut Penyelidikan Perumahan Malaysia (MAHSURI), dengan kerjasama Lembaga Kemajuan Industri Pembinaan (*Construction*

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	mampu. Walau bagaimanapun, usaha menetapkan kos-kos tersebut pada tahap yang rendah adalah cabaran berat bagi industri perumahan. **Syor:** SUHAKAM mengesyorkan supaya dalam usaha untuk "terus memberi polisi dan program sokongan yang berpatutan bagi memastikan perumahan yang wajar, mampu dimiliki dan berkualiti", Kerajaan, melalui proses rundingan dengan semua pihak (termasuk pengusaha perumahan, pembekal bahan mentah dalam sektor perumahan, jurutera, arkitek dan badan-badan bukan Kerajaan) menimbang untuk mengadakan penyelidikan dan pembangunan lanjut bagi mencari jalan untuk menetapkan kos perumahan pada tahap yang rendah tanpa menjejaskan kualiti rumah. Ini boleh sebahagian dari program Institut Penyelidikan Perumahan Malaysia (MAHSURI). **(v) Penghuni Rumah Setinggan Dan Program Perumahan** **Pemerhatian:** Masalah penghuni rumah setinggan turut mendapat perhatian di Seminar tersebut. Terdapat pendapat yang mengatakan bahawa pengusiran beramai-ramai adalah disebabkan oleh objektif negara untuk mencapai setinggan sifar. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan menimbangkan keperluan untuk mengadakan dialog lanjutan dengan semua pihak (termasuk pengusaha perumahan, badan-badan bukan Kerajaan dan penghuni rumah setinggan) bagi membincangkan penemuan Penyelidikan Mengenai Kawalan dan Pemindahan Setinggan Nasional serta polisi dan garis panduan yang sesuai dirangka hasil dari penemuan tersebut.	Kementerian Perumahan dan Kerajaan Tempatan	*Industry Development Board – CIDB)* sedang mempromosi penggunaan *Industrialised Building Systems and Modular Coordination* dalam sektor pembinaan bagi mengurangkan pembaziran dan kos. <u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Penghuni-penghuni rumah setinggan akan dipindahkan ke rumah kos rendah yang dibina oleh Kerajaan. Rumah-rumah ini akan dilengkapkan dengan infrastruktur asas bagi meningkatkan kualiti hidup mereka. Pengusiran besar-besaran tidak akan dilakukan. Kawasan yang telah dikosongkan oleh penghuni-penghuni rumah setinggan akan digunakan untuk projek perumahan atau projek pembangunan yang lain. Lagipun, penghuni-penghuni rumah setinggan diberi RM1,000 bagi membantu perpindahan mereka.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	(vi) Polisi Perumahan Nasional **Pemerhatian:** Seminar mendapati keperluan untuk mewujudkan satu Polisi Perumahan Nasional yang komprehensif. **Syor:** SUHAKAM mengesyorkan supaya Kerajaan menimbangkan keperluan untuk perbincangan lanjut bersama pihak yang terlibat (termasuk pengusaha perumahan, pembeli rumah, pembekal barangan mentah perumahan serta badan-badan bukan Kerajaan) bagi mendapat pandangan dan cadangan mengenai penggubalan Polisi Perumahan Nasional yang komprehensif. Langkah ini boleh membentuk sebahagian dari program MAHSURI.	Kementerian Perumahan dan Kerajaan Tempatan	<u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Kerajaan sedang dalam usaha untuk mengkaji semula situasi perumahan di Malaysia bagi menggubal Polisi Perumahan Nasional yang komprehensif.
	(vii) Kesedaran Awam Mengenai Persekitaran Sihat **Pemerhatian:** Seminar mendapati bahawa terdapat kurangnya kesedaran mengenai persekitaran yang sihat di kalangan masyarakat Malaysia. **Syor:** SUHAKAM mengesyorkan supaya, selaras dengan pelancaran Agenda 21 Negara (LA21) Kerajaan pada tahun 1999, Kerajaan dan masyarakat madani menimbangkan keperluan untuk ditingkatkan usaha-usaha bagi mencetuskan kesedaran awam mengenai persekitaran sihat dan usaha-usaha berkaitan dengan LA21 amnya.	Kementerian Perumahan dan Kerajaan Tempatan / Kementerian Kesihatan	<u>Kementerian Perumahan dan Kerajaan Tempatan:</u> KPKT telah mengadakan aktiviti-aktiviti kesedaran awam, iaitu seminar, bengkel, pengedaran makalah-makalah dan poster-poster LA21. Minat dan pembabitan orang ramai adalah penting dalam memastikan program ini bergerak maju. Walau bagaimanapun, terdapat beberapa projek yang dilaksanakan oleh Pihak Berkuasa Tempatan di bawah program ini. KPKT akan memantau kemajuan program ini. <u>Kementerian Kesihatan:</u> Kementerian Kesihatan telah meneruskan usaha memberi penekanan kepada gaya hidup sihat seperti pemakanan sihat, senaman, kesihatan mental yang sihat serta mengelak dari tabiat merokok dan mengambil dadah. Dalam tahun 2002, kempen tersebut memberi penekanan kepada Promosi Persekitaran yang Sihat.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			RMK-7 dan RMK-8 telah menekankan mengenai paradigma kesejahteraan termasuklah promosi inisiatif kesihatan. Penawaran perkhidmatan kesihatan akan memberi tumpuan kepada individu dengan penekanan kepada kesejahteraan dan bukan sahaja kepada penyakit. Ini termasuklah pengenalan kesihatan dalam pelbagai aktiviti dan arena seperti tempat kerja yang sihat, sekolah sihat, pasar sihat dan bandar sihat. Kementerian Kesihatan juga memperkenalkan Program Sekolah Integrasi Sihat di semua sekolah-sekolah melalui perangkaan garis panduan dan implementasi program latihan yang serata untuk guru-guru dan mereka yang terlibat dalam sektor kesihatan. Ini termasuklah pemeriksaan perubatan berjadual, pendidikan pemakanan kesihatan, promosi rekreasi, sukan dan kebersihan asas.
12	**Hak Asasi Manusia dan Orang-Orang Kurang Upaya** SUHAKAM telah menganjurkan Persidangan Mengenai Hak Asasi Orang-Orang Kurang Upaya *(Conference on the Rights of the Disadvantaged)* sempena Hari Hak Asasi Manusia Malaysia pada 9 September 2003. Dialog juga telah diadakan bersama-sama dengan golongan kurang upaya, jabatan-jabatan Kerajaan, NGO yang mengendalikan golongan kurang upaya pada 22 Februari 2003 bertujuan untuk mendengar pandangan dan cadangan daripada orang-orang kurang upaya serta mendapat maklumat mengenai dasar dan program yang dikendalikan oleh jabatan-jabatan Kerajaan dan agensi-agensinya terhadap orang-orang kurang upaya. Kebanyakan isu yang disentuh adalah meliputi perkara-perkara yang melanggar hak asasi orang-orang kurang upaya seperti berikut:	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Semua kanak-kanak OKU berpeluang mengikuti pelbagai program pemulihan dan pembelajaran khas yang disediakan. Kanak-kanak yang tidak diterima belajar di bawah program pendidikan khas kelolaan Kementerian Pendidikan boleh mengikuti program pembelajaran khas yang disediakan di Pusat-pusat Pemulihan Dalam Komuniti (PDK) dan Sekolah Khas kelolaan NGO. Setakat ini seramai 6,214 kanak-kanak ditempatkan di 294 Pusat PDK di seluruh negara.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	(a) Pendidikan **(i) Penggunaan Istilah 'Yang Boleh Dididik' Dan 'Tidak Boleh Dididik'** **Pemerhatian:** SUHAKAM mendakwa bahawa penggunaan istilah tersebut telah mengganggu emosi ibubapa yang mempunyai anak kurang upaya fizikal atau yang mempunyai masalah mental. Menurut mereka, ibubapa dan penyokong mereka menyatakan bahawa penggunaan istilah 'yang tidak boleh dididik' boleh menyebabkan stigma kepada kanak-kanak yang ditempatkan di dalam program khas dan menafikan hak mereka untuk mengecapi suasana kurang kekangan. Menurut SUHAKAM lagi, pencapaian kanak-kanak di sekolah khas adalah rendah kerana mereka tidak dapat mengecapi suasana normal serta tidak didedahkan dengan contoh ikutan biasa. Istilah 'boleh didik' dan 'tidak boleh dididik' seperti yang diperuntukkan di dalam seksyen 3(1) Peraturan-Peraturan Pendidikan (Pendidikan Khas) 1997 tidak selari dengan *UN Declaration on the Rights of the Disabled*. Kaedah untuk menilai kanak-kanak untuk menentukan sama ada mereka boleh dididik atau tidak boleh dididik adalah dipertikaikan. Melainkan sekiranya perkara ini dikaji oleh pakar-pakar dalam pelbagai bidang kecacatan, kanak-kanak tersebut berkemungkinan akan ditentukan dan dikaji secara salah. Ia akan menyebabkan kanak-kanak tersebut ditempatkan dalam program-program yang tidak bersesuaian. **Syor:** Kerajaan seharusnya tidak menggunakan istilah 'yang boleh dididik' dan 'tidak boleh dididik' kerana ia boleh menimbulkan stigma dan salah konsep bahawa kanak-kanak kurang upaya	Kementerian Pelajaran / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat Kementerian Pelajaran / Kementerian	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Jabatan Kebajikan Masyarakat Malaysia (JKMM), Kementerian Pembangunan Wanita, Keluarga dan Masyarakat tidak menggunakan istilah 'tidak boleh dididik' tetapi menggunakan istilah 'masalah pembelajaran'. <u>Pembangunan Wanita, Keluarga dan Masyarakat:</u> [seperti maklum balas di para (a)(i) di atas]

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	tidak boleh diajar. Ini juga boleh menghalang peluang kanak-kanak tersebut untuk menjadi bebas dan rakyat yang berguna. **(ii) Isu-Isu Pendidikan Yang Menyeluruh *(Inclusive Education)*** **Pemerhatian:**	Pembangunan Wanita, Keluarga dan Masyarakat	
	SUHAKAM mendakwa, kecuali pelajar yang menghadapi masalah penglihatan, pelajar-pelajar kurang upaya yang lain tidak mendapat kemudahan sokongan di sekolah-sekolah biasa. Sebagai contoh pelajar-pelajar cacat pendengaran tidak dapat dibantu melalui bahasa isyarat memandangkan guru-guru dan kawan-kawan tidak berkemahiran menggunakan bahasa tersebut. Akibatnya, mereka menghadapi kesukaran untuk memahami apa yang diajar di dalam bilik darjah disebabkan oleh halangan berkomunikasi. Kurangnya kemudahan-kemudahan seperti komputer turut menjadi batu penghalang kepada pelajar-pelajar ini untuk mengambil nota atau melengkapkan tugasan yang diberikan kepada mereka.	Kementerian Pelajaran	<u>Kementerian Pelajaran:</u> Program Pendidikan Inklusif belum dilaksanakan secara mutlak. Sebahagian besar guru-guru biasa yang mengajar di aliran perdana tidak berkemahiran dalam bahasa isyarat atau Braille. Dengan itu mereka tidak mampu untuk menangani keperluan pembelajaran murid-murid tersebut jika diinklusifkan sepenuh masa. Kementerian Pelajaran Malaysia sedang berusaha memaksimumkan pendidikan inklusif di kalangan murid berkeperluan khas.
	Syor:		
	Memandangkan Kerajaan telah menyertai Konvensyen Mengenai Hak-Hak Kanak-Kanak pada tahun 1995, pendidikan rendah hendaklah diwajibkan kepada semua kanak-kanak, termasuk kanak-kanak kurang upaya. Semua halangan yang mereka hadapi hendaklah dihindari dan khidmat sokongan perlu dihulurkan kepada mereka.	Kementerian Pelajaran	<u>Kementerian Pelajaran:</u> Pendidikan wajib bagi kanak-kanak di peringkat sekolah rendah telah diwartakan dan dilaksanakan pada tahun 2002 dan murid pendidikan khas tidak terkecuali. Walau bagaimanapun ibu bapa murid berkeperluan khas boleh memohon pengecualian daripada pendidikan wajib melalui Menteri Pelajaran.
	(iii) Kekurangan Guru-Guru Terlatih **Pemerhatian:**		
	SUHAKAM mendakwa bilangan guru yang terlatih dalam pelbagai bidang yang diceburi oleh golongan kurang upaya ini adalah kurang. Ini berikutan pemindahan guru-guru terlatih	Kementerian Pelajaran	<u>Kementerian Pelajaran:</u> Masalah guru-guru terlatih dalam pendidikan khas dinaikkan pangkat dan dipindahkan ke aliran biasa adalah satu perkara yang tidak dapat

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	dari satu sekolah ke sekolah yang lain disebabkan oleh tawaran kenaikan pangkat dan sebagainya. Selain itu, masalah yang dihadapi ialah kurangnya pengambilan guru-guru terlatih dari golongan kurang upaya untuk melatih pelajar-pelajar kurang upaya. Guru-guru terlatih kurang upaya lebih memahami pelajar-pelajar kurang upaya. **Syor:** Walaupun konsep pendidikan yang menyeluruh adalah baik, Kementerian Pelajaran, pakar-pakar di dalam bidang pendidikan pelajar-pelajar kurang upaya, NGO, dan ibubapa hendaklah meneliti konsep berkenaan dengan berhati-hati khususnya dalam keadaan semasa yang tidak mempunyai khidmat sokongan yang mencukupi dan kekurangan kakitangan-kakitangan terlatih. Latihan kepada guru-guru dan pemindahan mereka perlulah dipantau dengan berhati-hati. Latihan yang mencukupi, guru-guru yang berkesan dan pemanfaatan kemahiran mereka yang terlatih adalah penting untuk memajukan kanak-kanak kurang upaya.	Kementerian Pelajaran / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	dielakkan bagi menjamin keadilan dan masa depan profesionalisme guru tersebut. <u>Kementerian Pelajaran</u>: Kementerian Pelajaran Malaysia sedang berusaha untuk mengenal pasti bidang-bidang pendidikan khas yang memerlukan kepakaran. Ini merangkumi kerjasama yang erat di antara pelbagai agensi kerajaan yang terlibat secara langsung dengan pendidikan seperti Bahagian Pendidikan Guru, EPRD dan Biasiswa. Sehingga kini kita telah pun memilih dua daripada calon-calon pelajar cemerlang untuk mengikuti pengajian dalam aliran berkaitan pendidikan khas. Selain itu Kementerian Pelajaran Malaysia telah juga mengenal pasti dan menghantar beberapa calon untuk mengikuti kursus pendidikan khas di peringkat ijazah lanjutan di dalam dan luar negara. Kementerian Pelajaran Malaysia seboleh-bolehnya akan menempatkan guru-guru pendidikan khas mengikut bidang kepakaran masing-masing. Walau bagaimanapun, berasaskan alasan humanisme, Kementerian Pelajaran Malaysia terpaksa menempat guru pendidikan khas di program yang berlainan bidang pengkhususannya kerana tempat guru bertugas tiada murid-murid pengkhususan. <u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> JKMM menentukan guru-guru yang berkhidmat di Pusat PDK mendapat latihan yang secukupnya. Antara inisiatif yang dijalankan ialah:- • menyediakan program latihan asas; • menyediakan Garis Panduan Latihan Pemulihan OKU Dalam Komuniti yang menjadi panduan latihan bagi guru-guru PDK, ibubapa dan ahli komuniti; • menjalankan latihan "Training of Trainers" untuk menyediakan Jurulatih Utama bagi tujuan latihan lanjutan;

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			• mengadakan kerjasama dengan Japanese International Cooperation Agency (JICA) untuk program latihan khusus bagi pekerja PDK di Jepun selama 3 minggu; dan • membuka peluang bagi guru-guru PDK untuk meningkatkan pengetahuan dan kemahiran lain melalui program latihan yang dijalankan oleh pihak-pihak lain.
	(iv) Ketidakmampuan Untuk Mencapai Pendidikan **Pemerhatian:** Sistem pendidikan bukanlah mesra bagi orang-orang kurang upaya. Ini berdasarkan perkara-perkara berikut:		
	(1) bangunan-bangunan sekolah amat jarang sekali bercorak mesra kepada orang-orang kurang upaya;	Kementerian Pelajaran	<u>Kementerian Pelajaran:</u> [seperti maklum balas di para 9(a), m.s. 15-16]
	(2) kanak-kanak yang mempunyai masalah intelektual pula tidak dibantu melalui kelas-kelas pemulihan. Manakala masa yang diperuntukkan untuk mereka menjawab soalan-soalan peperiksaan pula tidak mencukupi. Dalam sesetengah kes, terdapat sekolah yang telah menolak pendaftaran kemasukan mereka.	Kementerian Pelajaran	<u>Kementerian Pelajaran:</u> Tiap-tiap sekolah rendah di Malaysia kecuali Sekolah Kurang Murid mempunyai kelas pemulihan dengan seorang guru yang dilantik secara 'one and above'. Kelas pemulihan khas ini bertujuan untuk mengatasi masalah intelektual di kalangan murid di sekolah normal. Buat masa ini tiada masa tambahan yang diperuntukkan kepada murid pemulihan. Masa untuk menjawab peperiksaan adalah sama dengan murid normal.
	(3) kanak-kanak yang menghadapi ketidakupayaan belajar seperti *autism*, *hyperactivity* dan masalah penumpuan tidak mempunyai guru yang pakar untuk mengajar mereka;	Kementerian Pelajaran / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Pelajaran:</u> Kementerian Pelajaran Malaysia melalui Jabatan Pendidikan Khas telah menjalankan kursus-kursus pendedahan kepada guru-guru khas dalam membantu mereka memahami dan menangani murid-murid bermasalah autism dan hyperaktif. Kursus yang berkenaan telah dijalankan pada tahun 2002 dan 2003. <u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> JKKM menggalakkan penubuhan pertubuhan sukarela kebajikan yang menyediakan perkhidmatan khusus untuk kategori OKU tertentu seperti Persatuan Autisme, Persatuan Terencat Akal dan sebagainya. Langkah ini membolehkan perancangan program dan aktiviti pemulihan dan pembelajaran khas, termasuk latihan untuk guru-guru, ditumpukan

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	(4) sesetengah kelas khas hanyalah setakat tingkatan 3 dan pelajar-pelajar berkenaan terpaksa menyambung pelajaran di sekolah yang lain;	Kementerian Pelajaran	pembelajaran khas, termasuk latihan untuk guru-guru, ditumpukan kepada kategori berkenaan mengikut kesesuaian dan keperluan kategori berkenaan. <u>Kementerian Pelajaran:</u> Hanya sebilangan kecil sahaja murid keperluan khas yang mampu melanjutkan pelajaran dalam bidang akademik ke tahap menengah atas. Secara umum pencapaian murid khas di dalam akademik adalah seperti berikut: • masalah penglihatan: menengah atas hingga peringkat universiti • masalah pendengaran: program integrasi hingga tingkatan 3 – boleh memilih untuk kekal dalam aliran akademik di program integrasi atau ke program vokasional bila memasuki peringkat menengah atas • bermasalah pembelajaran: mengikuti persekolahan di program integrasi hingga mencapai umur 19++. Ada sebahagian murid-murid bermasalah pembelajaran yang mengikuti kemahiran vokasional di Sekolah Indah Pura (program serupa akan diperluaskan dalam program Rancangan Malaysia Ke-9).
	(5) Kerajaan tidak menyediakan pendidikan pra-persekolahan kepada kanak-kanak kurang upaya. Oleh yang demikian ibubapa terpaksa menghantar mereka ke pusat-pusat taman asuhan kanak-kanak yang diterajui oleh NGO dan swasta.	Kementerian Pelajaran / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Pelajaran:</u> Kementerian Pelajaran Malaysia telah pun membuka program prasekolah bagi murid berkeperluan khas di 28 buah sekolah khas pada tahun 2004 dan perluasan program sebanyak 32 buah di program khas integrasi bagi murid bermasalah pembelajaran pada tahun 2005. <u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> JKMM yang bertanggungjawab kepada pengiktirafan program latihan bagi Kursus Asas Asuhan Kanak-Kanak yang diwajibkan bagi pengasuh-pengasuh semua TASKA yang ingin berdaftar, telah mengambilkira keperluan pendidikan pra-sekolah bagi kanak-kanak OKU. Bidang pengasuhan kanak-kanak OKU telah dimasukkan dalam kurikulum latihan Kursus Asas Asuhan Kanak-Kanak supaya TASKA swasta berkeupayaan untuk memberi asuhan dan bimbingan yang sewajarnya kepada kanak-kanak OKU.
	(b) Kebolehcapaian Kepada Bangunan-Bangunan **Pemerhatian:** SUHAKAM mendakwa walaupun *Uniform Building By-laws 1984* di bawah Akta Jalan, Parit dan Bangunan 1974 telah	Kementerian Perumahan dan Kerajaan Tempatan / Kementerian Kerja	<u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Keperluan kemudahan-kemudahan Orang Kurang Upaya di tempat awam sedia termaktub dalam Undang-Undang Kecil Bangunan Seragam

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	dipinda untuk memastikan kebolehcapaian terhadap persekitaran yang dibina, kelulusan masih diberikan terhadap pembinaan bangunan yang tidak mematuhi peruntukan-peruntukan di dalam undang-undang kecil tersebut. Ketidak patuhan ini boleh dilihat di bangunan-bangunan awam dan bangunan-bangunan persendirian. Ini mendatangkan kesusahan dan kesukaran kepada persekitaran pekerjaan, pendidikan dan aktiviti sosial golongan yang kurang upaya. Mereka sukar mendapatkan kemudahan kesihatan dan melaksanakan aktiviti-aktiviti penting seperti permohonan kad pengenalan, pasport, lesen memandu dan membayar bil-bil serta denda. **Syor:** Semua pihak berkuasa tempatan hendaklah memastikan pelaksanaan undang-undang kecil tersebut dipatuhi. Ia hendaklah menyeluruh dan merangkumi bangunan-bangunan yang dibina sebelum pindaan dilakukan ke atas undang-undang kecil tersebut. Semua pihak berkuasa tempatan hendaklah memastikan pelaksanaan undang-undang kecil tersebut dipatuhi. Ia hendaklah menyeluruh dan merangkumi bangunan-bangunan yang dibina sebelum pindaan dilakukan ke atas undang-undang kecil tersebut. **(c) Pengangkutan Awam** **Pemerhatian:** SUHAKAM menyebut bahawa orang-orang kurang upaya wajar diberikan peluang menggunakan kemudahan pengangkutan awam. Ketika ini pengangkutan awam tidak mesra kepada orang-orang kurang upaya. Ketiadaan ini menyebabkan mereka terhalang untuk mengecapi hak peluang sama rata dan ia menyisihkan mereka daripada masyarakat yang lain. Jabatan Pengangkutan Jalan sepatutnya lebih peka dengan	Raya / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat Kementerian Perumahan dan Kerajaan Tempatan / Kementerian Kerja Raya Kementerian Pengangkutan/ Kementerian Pembangunan Usahawan dan Koperasi Kementerian	awam sedia termaktub dalam Undang-Undang Kecil Bangunan Seragam 1984. Mengikut maklum balas dari Pihak Berkuasa Tempatan (PBT), kebanyakan bangunan baru telah mematuhi keperluan tersebut. KPKT juga telah mengeluarkan garispanduan bertajuk *"Guidelines On Building Requirements For Disable Persons"* untuk membantu Perunding dan PBT dalam mematuhi keperluan tersebut. <u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Bagi menggalakkan penyediaan kemudahan mesra OKU oleh pemilik bangunan, JKMM mengadakan Anugerah Pengiktirafan Bangunan Dengan Kemudahan Akses bagi kategori hotel, kompleks membeli belah dan bangunan pejabat setiap tahun sempena sambutan HOKU. Sebuah Jawatankuasa Kerja Teknikal Kemudahan Akses di bawah Majlis Penasihat juga ditubuhkan bagi mengkaji dan mengesyorkan cadangan kepada Kerajaan bagi meningkatkan aspek kebolehcapaian atau kemudahan akses kepada bangunan. <u>Kementerian Perumahan dan Kerajaan Tempatan:</u> PBT akan diperingatkan supaya memastikan bangunan-bangunan baru dan lama disediakan dengan kemudahan akses OKU sepertimana yang diperuntukkan dalam Undang-Undang Kecil Bangunan Seragam 1984. <u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Penguatkuasaan untuk memastikan kawasan meletak kenderaan OKU digunakan khas oleh mereka terletak di bawah tanggungjawab pihak pengurusan yang menguruskan kawasan tempat letak kenderaan yang berkenaan.

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	keperluan orang kurang upaya. Mereka memerlukan pengajar memandu yang terlatih di sekolah-sekolah memandu untuk mengajar mereka cara memandu. Mereka juga memerlukan kereta-kereta yang bersesuaian ketika latihan.	Pengangkutan	
	Kawasan meletak kenderaan orang kurang upaya pula hendaklah disediakan dan dikhaskan untuk mereka dan pihak berkuasa perlulah memastikan ianya dikuatkuasakan.	Kementerian Perumahan dan Kerajaan Tempatan	<u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Peraturan-peraturan bagi menyediakan tempat letak kereta khas untuk OKU telah dikuatkuasakan oleh PBT melalui Undang-Undang Kecil Bangunan Seragam. Sehubungan dengan ini, minda *'sivik'* harus disemai kepada orang awam supaya menghormati keistimewaan OKU agar kemudahan mereka tidak dicerobohi.
	Syor:		
	Kerajaan sepatutnya menyediakan pengangkutan awam yang selamat dan boleh dicapai oleh golongan kurang upaya. Ini termasuk menyediakan latihan kepekaan golongan kurang upaya kepada kakitangan syarikat berkenaan. Ini bertujuan untuk membantu golongan kurang upaya.	Kementerian Pengangkutan	
	Langkah segera perlulah diambil untuk menguatkuasakan peraturan-peraturan dan mendidik masyarakat menghormati tempat-tempat meletak kenderaan orang kurang upaya.	Kementerian Perumahan dan Kerajaan Tempatan	<u>Kementerian Perumahan dan Kerajaan Tempatan:</u> [seperti maklum balas di atas]
	(d) Penjagaan Kesihatan		
	Pemerhatian:		
	OKU menghadapi pelbagai halangan ketika mendapatkan kemudahan rawatan perubatan di klinik-klinik dan hospital-hospital Kerajaan. Samada dari aspek fizikal (seperti layanan kasar) atau sikap (seperti sikap tidak acuh dan tidak peduli). Contoh sikap tidak acuh ini adalah seperti kakitangan perubatan menjerit memanggil nama pesakit tanpa mengetahui pesakit adalah orang kurang upaya yang cacat pendengaran. Begitu juga orang kurang upaya yang cacat penglihatan dan tidak dapat melihat nombor giliran yang bercahaya pada skrin elektronik. Terdapat juga kes kesihatan serius yang melibatkan orang kurang upaya tetapi nama beliau diletakkan terkebawah dalam senarai pesakit yang	Kementerian Kesihatan	<u>Kementerian Kesihatan:</u> Demi menangani masalah yang telah disenaraikan, Kementerian Kesihatan Malaysia (KKM) meminta supaya pihak SUHAKAM memberi maklumat terperinci bagi membolehkan penyiasatan dibuat. KMK melalui Unit yang menjaga kesihatan Orang Kurang Upaya (OKU) juga sentiasa mengambil langkah meningkatkan kesedaran anggota kesihatannya berkaitan hak asasi OKU semasa menjalankan tugas masing-masing. Semenjak 1996, KKM telah memulakan perkhidmatan pemulihan di klinik-klinik kesihatan secara berperingkat bagi golongan kanak-kanak keperluan khas, warga tua dan pesakit mental.

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	akan dibedah. Memandangkan kos di hospital swasta lebih tinggi, orang-orang miskin dan kurang berpendidikan kebiasaannya mendapatkan perubatan di Hospital Kerajaan. Disebabkan kemiskinan dan kekurangan upaya inilah mereka selalu berhadapan dengan keadaan di mana maruah mereka seringkali dijatuhkan. **Syor:** Penjagaan kesihatan dan khidmat pemulihan yang boleh dikecapi dan mampu ditanggung oleh orang-orang kurang upaya hendaklah disediakan. Memandangkan pengesanan awal sangat perlu, kemudahan untuk menguji dan mendiagnosis hendaklah disediakan sekurang-kurangnya di semua hospital jika tidak di klinik-klinik. Kursus penjagaan kesihatan yang profesional perlu menitikberatkan hak asasi orang kurang upaya untuk mendapatkan penjagaan kesihatan yang mencukupi dan khidmat rawatan yang lebih peka kepada orang kurang upaya.	Kementerian Kesihatan	<u>Kementerian Kesihatan:</u> Sehingga kini, KMK mempunyai 229 klinik kesihatan yang menjalankan pemulihan bagi warga tua, 104 bagi kanak-kanak keperluan khas dan 18 bagi pemulihan psikososial. Proses pengesanan awal dijalankan melalui klinik kesihatan semasa penilaian perkembangan kanak-kanak secara berkala. Dengan adanya Pakar Perubatan Keluarga di klinik kesihatan, lebih banyak kes dapat disahkan di peringkat klinik kesihatan sahaja. Hanya kes yang memerlukan perkhidmatan kepakaran khas di rujuk ke hospital seperti kepakaran perkhidmatan psikologi, audiologi dan lain-lain.
	(e) Pekerjaan **Pemerhatian:** SUHAKAM menyatakan bahawa majoriti orang kurang upaya berhadapan dengan masalah untuk mendapatkan pekerjaan. Walaupun Kerajaan telah membuka 1% peluang pekerjaan di sektor awam untuk orang kurang upaya, kadar peratusan ini jarang dipatuhi. **Syor:** Majikan dan masyarakat perlulah dididik untuk menghargai kebolehan orang kurang upaya dan memahami bahawa	Kementerian Sumber Manusia / Suruhanjaya Perkhidmatan Awam / Jabatan Perkhidmatan Awam Kementerian Sumber Manusia /	<u>Suruhanjaya Perkhidmatan Awam:</u> Suruhanjaya maklum akan dasar Kerajaan berhubung dengan pengambilan calon dari kalangan orang kurang upaya sebanyak 1%. Pertimbangan akan dibuat berdasarkan kepada keadaan kecacatan yang dialami oleh calon dan kesesuaiannya dengan jawatan yang mereka pohon. Namun demikian Suruhanjaya ini berpendapat Kerajaan perlu memberikan garis panduan yang lebih jelas berhubung dengan perkara ini. Misalnya, apakah yang dimaksudkan dengan kadar 1% itu, iaitu sama ada berdasarkan kepada jumlah keseluruhan perkhidmatan awam

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	sekiranya orang kurang upaya ini diberikan peluang, mereka akan menjadi insan yang berdikari dan akhirnya ia boleh mengurangkan bebanan kewangan Kerajaan dan masyarakat. Orang kurang upaya perlu dididik agar menyedari dan menghargai kebolehan mereka sendiri dan dengan ini akan menghapuskan sindrom bergantungan antara satu sama lain.	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	yang berada di bawah tanggungjawab Suruhanjaya ini (kira-kira sebanyak 350,000 jawatan) ataupun pada setiap kali urusan pengambilan dijalankan. <u>Jabatan Perkhidmatan Awam:</u> Dasar mengenai pengambilan orang kurang upaya dalam perkhidmatan awam adalah sebagaimana yang digariskan dalam Pekeliling Perkhidmatan Bil. 10 Tahun 1998 yang memperuntukkan 1% peluang pekerjaan di sektor awam kepada orang kurang upaya. Dalam hal ini Jabatan Perkhidmatan Awam sentiasa memberi pertimbangan khas kepada permohonan daripada orang kurang upaya. <u>Kementerian Sumber Manusia:</u> Kementerian ini sentiasa memberi pertimbangan khas dalam urusan pengambilan kakitangan sekiranya terdapat permohonan di kalangan orang kurang upaya. Pada masa kini, terdapat 5 orang kurang upaya yang sedang berkhidmat di Kementerian ini. Kementerian ini juga sentiasa membantu rakyat Malaysia termasuk Orang Kurang Upaya (OKU) untuk mendapatkan pekerjaan terutamanya di sektor swasta melalui aktiviti pendaftaran dan penempatan yang dijalankan oleh Jabatan Tenaga Kerja. Menyedari hakikat bahawa OKU merupakan aset tenaga penting yang boleh menyumbang ke arah pembangunan ekonomi negara, Kementerian ini pada tahun 1990, telah menubuhkan Jawatankuasa Kebangsaan Penggalakan Penggajian Orang Kurang Upaya di sektor swasta yang berperanan untuk menggalakkan majikan di sektor swasta memberi peluang yang sama kepada OKU bagi memperolehi peluang bekerja dan memastikan OKU mendapat peluang yang sama dalam bidang sosial dan ekonomi negara. Kementerian juga telah memperkenalkan *Electronic Labour Exchange (ELX)* untuk membantu pencari kerja melalui *Job Clearing System (JCS).* Ini merupakan sistem penjodohan kerja di antara pencari kerja di antara majikan. Di samping itu, program "*Sure* Kerja" yang secara langsung memberi penekanan pekerjaan kepada OKU juga mempunyai objektif utamanya iaitu untuk memastikan setiap rakyat Malaysia tanpa mengira keadaan dan latar belakang mempunyai peluang untuk mendapatkan pekerjaan. Kementerian ini juga telah menyediakan tiga buah Institut Latihan Perindustrian sebagai percubaan untuk mengambil OKU mengikuti latihan.

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			Kementerian Pembangunan Wanita, Keluarga dan Masyarakat: JKMM juga menyediakan kemudahan latihan kemahiran kepada OKU di Pusat Latihan Perindustrian dan Pemulihan Bangi. Bagi kategori masalah pembelajaran mereka dilatih kemahiran asas di Pusat Pemulihan Dalam Komuniti (PDK) dan di Taman Sinar Harapan. Di samping itu terdapat 2 buah Bengkel Terlindung Kerajaan dan 16 Bengkel Terlindung kelolaan NGO yang disediakan bagi mereka yang tidak dapat bekerja di pasaran terbuka disebabkan masalah mobiliti. Setiap OKU yang bekerja dan berpendapatan di bawah RM750 sebulan, JKM akan menimbangkan Elaun Pekerja Cacat sebanyak RM200 sebulan sebagai insentif. Manakala bagi mereka yang ingin menjalankan perniagaan sendiri, JKM boleh menimbangkan Geran Pelancaran maksima RM2,700 sekaligus untuk modal permulaan
	(f) Kewangan **Pemerhatian:** Beberapa aspek kewangan dilihat secara langsung atau tidak langsung telah melanggar hak asasi orang-orang kurang upaya seperti berikut:		
	(i) bank-bank perdagangan tidak membenarkan orang cacat penglihatan untuk membuka akaun di atas nama mereka atau untuk mendapatkan kemudahan-kemudahan bank yang lain kerana mereka tidak boleh membaca perjanjian;	Kementerian Kewangan	Kementerian Kewangan: Institusi perbankan pada lazimnya membenarkan golongan cacat penglihatan untuk membuka serta mengendalikan akaun deposit di institusi perbankan. Namun demikian, sesetengah institusi perbankan mungkin mengenakan syarat bahawa orang cacat penglihatan perlu ditemani oleh pihak ketiga atau waris terdekat mereka. Selain itu, syarat-syarat dan peraturan-peraturan akan dibacakan kepada orang cacat penglihatan bagi memastikan mereka memahami syarat dan peraturan yang ditetapkan oleh institusi perbankan. Semua transaksi akaun deposit tersebut perlu dilakukan dengan menggunakan cap jari orang cacat penglihatan berkenaan sebagai menggantikan tandatangan. Syarat-syarat ini dikenakan oleh institusi perbankan demi memelihara kepentingan para pelanggan.
	(ii) permohonan pinjaman oleh orang kurang upaya untuk menceburi sesuatu perniagaan biasanya akan ditolak atas alasan ketidakupayaan mereka, tidak stabil, tidak berpendapatan tetap dan di atas kepercayaan bahawa perniagaan yang diceburi adalah berisiko tinggi dan mungkin gagal. Sedemikian, orang kurang upaya telah didiskriminasikan ketika mencari peluang pekerjaan dan ketika berusaha untuk bekerja sendiri;	Kementerian Kewangan	
	(iii) orang kurang upaya bermasalah apabila ingin membeli polisi insurans kerana mereka dikategorikan sebagai	Kementerian Kewangan	Di samping itu, bagi kemudahan perbankan yang lain pula, kriteria

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	berisiko tinggi. Akibatnya mereka tidak dapat membeli rumah apatah lagi jika ingin melabur dalam pelaburan hartanah. Dalam membeli hartanah, seseorang perlu mempunyai *Mortgage Reducing Term Assurance (MRTA)* yang melindungi pembeli apabila berlaku kematian dan kecacatan kekal. MRTA tidak terpakai ke atas orang kurang upaya kerana ia cuma boleh menginsurankan ke atas kematian mereka sahaja.		kelayakan yang digunakan dalam membuat penilaian kredit bagi golongan cacat penglihatan adalah sama seperti yang digunakan ke atas golongan celik. MRTA adalah polisi insurans yang memberi perlindungan kepada orang yang meminjam terhadap kematian serta kecacatan kekal. Pada lazimnya, syarikat insurans tidak mendiskriminasi terhadap golongan kurang upaya atau menghalang golongan ini daripada mendapatkan perlindungan polisi insurans MRTA. Golongan ini seperti orang lain perlu menjalani proses pengunderitan untuk menentukan sama ada mereka adalah berisiko biasa atau berisiko lebih tinggi. Berdasarkan prinsip insurans yang mana risiko disatukan (*pooling of risk*), orang yang berisiko tinggi tertakluk kepada pembayaran premium tambahan dan kecacatan yang sedia ada tidak akan terkandung dalam senarai manfaat polisi. Syarikat insurans tidak akan terus menolak sesuatu cadangan polisi insurans apabila mendapati pencadang adalah seorang kurang upaya. Sebaliknya, pihak insurans akan menilai tahap ketidakupayaan mereka agar mereka mendapat perlindungan yang selaras dengan keadaan mereka pada kadar premium tambahan yang sesuai.
(iv)	memandangkan pendapatan orang kurang upaya tidak menentu, mereka sukar mendapatkan pinjaman perumahan. Untuk membantu mereka, Kerajaan Persekutuan, Kerajaan Negeri dan Kerajaan Tempatan boleh menyediakan pilihan dan peluang perumahan yang fleksibel dan kos efektif umpamanya memberikan diskaun 50% dalam taksiran cukai.	Kementerian Kewangan / Kementerian Perumahan dan Kerajaan Tempatan / Pejabat SUK Negeri-negeri	<u>Kementerian Perumahan dan Kerajaan Tempatan:</u> Di bawah Program Perumahan Rakyat terdapat dua program iaitu PPR (Dimiliki) dan PPR (Disewa). Untuk mereka yang mampu memiliki rumah, Kerajaan menyediakan rumah PPR kepada mereka yang layak dengan harga jualan RM35,000 seunit. Bagi yang tidak mampu memiliki, Kerajaan menyediakan PPR (Disewa). Kadar sewa yang dikenakan adalah dalam lingkungan RM124 sebulan. Terdapat skim di Kementerian Perumahan dan Kerajaan Tempatan iaitu Skim Pinjaman Perumahan Kepada Golongan Berpendapatan Rendah yang memberi keutamaan kepada orang kurang upaya yang pendapatan di antara RM500 hingga RM1,200 sebulan. <u>Pejabat SUK Negeri Kelantan:</u> Kementerian Perumahan dan Kerajaan Tempatan perlu merangka garis panduan untuk diterima pakai oleh Negeri-negeri. Ini perlu bagi memastikan pelaksanaannya adalah seragam di kalangan semua negeri. <u>Pejabat SUK Negeri Melaka:</u> Kerajaan Negeri melalui agensi-agensinya seperti Lembaga Perumahan

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			Melaka, Pembela, Unit Pembangunan Desa dan Majlis Agama Islam Melaka menyediakan kemudahan perumahan kepada masyarakat yang kurang upaya untuk memiliki rumah. Bagi mengatasi masalah MRTA Kerajaan menyediakan panel peguam, panel bank (institusi kewangan) dan panel insurans yang dapat memberi bantuan kepada golongan masyarakat kurang upaya untuk memiliki rumah/hartanah. Semua bayaran cukai tanah dan cukai taksiran bagi rumah awam kos rendah adalah paling rendah iaitu cukai tanah RM20 setahun dan cukai taksiran RM100 setahun. Pembeli diberi peluang untuk membayar secara ansuran dua (2) kali sebulan. <u>Pejabat SUK Negeri Johor:</u> Pihak Setiausaha Kerajaan Johor Cawangan Perumahan hanya bertanggungjawab mengeluarkan Sijil Layak memiliki rumah bagi rumah kos rendah dan rumah kos sederhana rendah jika mereka yang berkenaan menepati syarat kelayakan yang ditetapkan oleh Kerajaan. Mereka yang layak perlulah menguruskan sendiri pinjaman perumahan melalui institusi kewangan/pinjaman kerajaan. <u>Pejabat SUK Negeri Sembilan:</u> Kerajaan Negeri menyediakan kemudahan perumahan kepada Orang Kurang Upaya (OKU) dengan menempatkan di unit-unit yang memudahkan pergerakan mereka. Sebahagian projek perumahan untuk disewa kepada golongan ini dibina khas reka bentuknya mengikut keperluan OKU. Pada masa ini tiada peruntukan khusus di bawah Akta Kerajaan Tempatan 1976 bagi pengurangan cukai taksiran keapda golongan OKU. <u>Pejabat SUK Negeri Pahang:</u> Kerajaan Negeri menyokong kepada cadangan tersebut dengan mengambilkira kesusahan yang ditanggung oleh orang-orang kurang upaya. Pihak Berkuasa Tempatan Negeri Pahang akan memberi pengecualian dalam membayar cukai taksiran kepada orang kurang upaya yang mendapat bantuan daripada Jabatan Kebajikan Masyarakat. Mereka perlu memohon diskaun atau pengecualian terus dengan Pihak Berkuasa Tempatan yang disebutkan. Ini adalah kerana Pihak Berkuasa Tempatan perlu mendapatkan persetujuan daripada Majlis Penuh Pihak Berkuasa Tempatan untuk sebarang pengecualian cukai atau pun pemberian diskaun.

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			Pejabat SUK Negeri Terengganu: Kerajaan Negeri telah memberi keutamaan kepada golongan ini dalam pengagihan rumah kos rendah. Golongan ini juga dikenakan cukai taksiran khas oleh PBT.
	(v) orang kurang upaya di Sabah dan Sarawak menyatakan terdapat ketidaksamaan peruntukan kewangan dan manfaat yang diberikan kepada mereka berbanding dengan orang kurang upaya di Semenanjung yang menerima bantuan kewangan yang lebih tinggi daripada mereka.	Kementerian Kewangan / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat / Pejabat SUK Sabah / Pejabat SUK Sarawak	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat: Elaun Pekerja Cacat dengan kadar RM200 kepada OKU yang bekerja dan berpendapatan di bawah RM750 sebulan termasuk lain-lain skim bantuan Persekutuan tidak diperluaskan ke Sabah dan Sarawak atas keputusan dasar Negeri-negeri yang berkenaan.
	Syor: Bank Negara patut menyemak polisi perbankan yang berkaitan dengan orang kurang upaya untuk memastikan tidak terdapat unsur diskriminasi ke atas mereka. Bank Negara sepatutnya menyemak polisi mengenai perlindungan insurans orang kurang upaya.	Kementerian Kewangan	
	(g) Kategori Orang-Orang Kurang Upaya **Pemerhatian:** Kategori yang diwujudkan untuk orang kurang upaya telah mencetuskan beberapa masalah dan ketidakadilan. Contohnya orang kurang upaya yang menghidap *autism, down syndrome* dan *cerebral palsy* dianggap sebagai terencat akal walhal pada hakikatnya ada di kalangan mereka berpendidikan tinggi. Penggunaan istilah 'upaya' dan 'kurang upaya' juga perlu disemak kerana terdapat pelbagai bentuk dan keseriusan kecacatan.	Kementerian Kesihatan / Kementerian Pelajaran / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	Kementerian Pelajaran: Murid berkeperluan khas adalah unik dan pelbagai. Sebahagian daripada mereka mempunyai lebih daripada satu masalah (*multiple*) contohnya murid *down syndrome, autism* dan *celebral palsy* mempunyai *co-morbidity* atau kecacatan sampingan seperti ketidakupayaan mental. Bagi golongan ketidakupayaan mental yang ringan, mereka boleh mengikuti kurikulum kebangsaan dalam *setting* inklusif. Dengan kata lain, murid daripada golongan ini diberi peluang setanding dengan kebolehan masing-masing. Kementerian Pelajaran Malaysia tidak menggunakan

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	Syor: Kerajaan khususnya Kementerian Kesihatan dan Kementerian Pelajaran hendaklah mengumpulkan panel ahli-ahli pakar dalam menentukan bentuk baru klasifikasi kurang upaya.	Kementerian Kesihatan / Kementerian Pelajaran	istilah 'kurang upaya' tetapi sebaliknya menggunakan 'murid berkeperluan khas'. Mengikut borang pendaftaran baru yang dikeluarkan oleh Kementerian Kesihatan, murid bermasalah pembelajaran dikategorikan mengikut permasalahan khusus seperti *autism, down syndrome* dan sebagainya. Justeru murid dikategorikan mengikut ketetapan dalam klasifikasi yang ditetapkan oleh Kementerian Kesihatan. <u>Kementerian Kesihatan:</u> KKM, Kementerian Pelajaran dan Jabatan Kebajikan Masyarakat telah pun bersetuju dengan klasifikasi baru bagi kurang upaya semasa membentuk Borang Pendaftaran dan Cadangan Penempatan Kanak-Kanak Keperluan Khas. Klasifikasi baru adalah seperti berikut: • Kurang Upaya Pendengaran • Kurang Upaya Penglihatan • Kurang Upaya Fizikal • *Cerebral Palsy* • Masalah Pembelajaran (contoh:merangkumi masalah autisma, hyperaktif, *down syndrome* dan lain-lain) <u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Sejak pertengahan tahun 2003, kategori OKU telah diperluaskan kepada 5 kategori iaitu kurang upaya penglihatan, kurang upaya pendengaran, kurang upaya fizikal, *cerebral palsy* dan masalah pembelajaran. Orang kurang upaya yang mengidap Autisma, *Down's Syndrome, Attention Deficit Hyperactive Disorder*, Terencat Akal dan Masalah Pembelajaran Spesifik didaftarkan di bawah kategori 'Masalah Pembelajaran'. Kategori 'Terencat Akal' tidak lagi digunakan. JKMM juga sedang mendapat pandangan dari semua pihak bagi menggantikan istilah 'Orang Kurang Upaya' kepada istilah yang lebih sesuai.
	(h) Kepekaan Terhadap Hak Asasi Orang-Orang Kurang Upaya **Syor:** Adalah dicadangkan supaya Kerajaan bekerjasama dengan NGO bagi mewujudkan program dan kempen untuk meningkatkan kepekaan masyarakat terhadap hak asasi orang kurang upaya.	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Kerajaan sentiasa bekerjasama dengan semua pihak termasuk NGO dalam memperjuangkan nasib golongan OKU melalui program-program

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			dalam memperjuangkan nasib golongan OKU melalui program-program kesedaran seperti Sambutan Hari Orang Kurang Upaya (OKU) pada bulan Disember setiap tahun. Sebagai contoh, pada tahun 2003 JKMM menyalurkan bantuan kewangan/geran kepada 52 buah pertubuhan sukarela OKU dengan peruntukan sebanyak RM2,209,310 dan Geran Per Kapita sebanyak RM710,471 kepada 43 buah pertubuhan OKU untuk pembiayaan program dan aktiviti.
13	**Penyeludupan Wanita dan Kanak-Kanak** **Pemerhatian:** Hasil lawatan SUHAKAM ke Pusat-Pusat Tahanan dan Penjara, didapati kebanyakan wanita-wanita asing yang masih muda yang ditahan telah diseludup masuk ke negara ini secara haram. Ada di kalangan mereka telah ditipu dan dipaksa oleh ejen untuk bekerja di tempat-tempat maksiat dan di pusat-pusat hiburan. SUHAKAM telah mengadakan siri perbincangan meja bulat pada 26 Ogos 2003 dan 24 September 2003. Ia dihadiri oleh pegawai-pegawai Imigresen, anggota Polis Bukit Aman, Selangor, Melaka dan Johor, wakil Jabatan Kebajikan Masyarakat, Jabatan Penjara dan Kementerian Kebudayaan, Kesenian dan Pelancongan (ketika itu). Berdasarkan perbincangan tersebut, didapati Polis menguatkuasakan dasar 'tidak bertoleransi' terhadap jenayah penyeludupan manusia. Penyeludupan ini bukan hanya terhad kepada wanita bahkan kepada lelaki untuk bekerja sebagai buruh murahan di restoran-restoran, di sektor pertanian dan pembinaan.	Kementerian Keselamatan Dalam Negeri / Kementerian Hal Ehwal Dalam Negeri / Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Kementerian telah mengadakan mesyuarat melibatkan beberapa agensi Kerajaan seperti Kementerian Hal Ehwal Dalam Negeri, Kementerian Keselamatan Dalam Negeri, Kementerian Luar Negeri, Jabatan Imigresen dan Polis Diraja Malaysia untuk mengkaji isu wanita dalam bahawa moral (*'flesh trade'*) termasuk wanita yang menjadi mangsa *'trafficking'*. Beberapa cadangan telah dikemukakan iaitu: (i) untuk menimbangkan kemungkinan menempatkan mangsa di rumah perlindungan Jabatan Kebajikan Masyarakat; (ii) untuk menimbangkan tawaran yang dikemukakan oleh pihak Amerika Syarikat bagi mengadakan program latihan bersama untuk pihak penguat kuasa seperti Polis dan Imigresen dengan tujuan mendapatkan kemahiran tentang cara-cara mengenal pasti mangsa *'trafficking'*; dan (iii) untuk memperketatkan pemeriksaan di pintu masuk oleh pihak Imigresen Berkenaan dengan cadangan (iii), Kementerian Pembangunan Wanita, Keluarga dan Masyarakat akan memperolehi maklumat lanjut daripada Jabatan Imigresen. <u>Kementerian Keselamatan Dalam Negeri:</u> Pihak Polis memang memandang serius kes-kes penyeludupan wanita yang masih muda ke negara ini khususnya yang digunakan untuk tujuan pelacuran. Pada tahun 2002 sehingga 2004, pihak Polis telah berjaya

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			menangkap seramai 16,425 orang wanita-wanita negara asing. Mereka yang memiliki dokumen yang sah untuk memasuki ke negara ini telah dihantar balik ke negara asal mereka. Pihak Polis sentiasa membuat serbuan ke pusat-pusat hiburan yang disyaki menggunakan wanita-wanita asing sebagai pelacur dari masa ke semasa. <u>Kementerian Hal Ehwal Dalam Negeri:</u> Undang-undang yang mengawal pergerakan keluar masuk orang di negara ini ialah Akta Imigresen 1959/63. Bagi meningkatkan keberkesanan menangani masalah pendatang tanpa izin (PTI) dan penyeludupan manusia, Akta tersebut telah dipinda pada tahun 2002 dengan mengenakan hukuman yang berat terhadap kesalahan memasuki negara ini secara tidak sah, menggaji dan melindungi PTI. Kerajaan sedar bahawa terdapat juga di kalangan PTI di negara ini yang menjadi mangsa penyeludupan. Penentuan sama ada seseorang itu 'mangsa' dibuat mengikut kes. Mereka yang dikategorikan sebagai mangsa tidak akan dikenakan tindakan undang-undang, sebaliknya mereka akan dihantar pulang ke negara asal setelah urusan dokumentasi dengan pihak kedutaan yang berkenaan selesai.
	Syor: (i) SUHAKAM mengesyorkan supaya Kerajaan mengkaji keperluan menandatangani Protokol Palermo untuk membanteras aktiviti penyeludupan manusia dan bekerjasama dengan pertubuhan-pertubuhan antarabangsa dan serantau bagi membanteras jenayah ini;	Kementerian Keselamatan Dalam Negeri / Kementerian Luar Negeri	<u>Kementerian Luar Negeri:</u> Kerajaan Malaysia sememangnya memahami akan keperluan untuk menandatangani Protokol berkenaan. Buat masa ini, Kementerian Keselamatan Dalam Negeri sedang melaksanakan kajian yang sewajarnya bagi memastikan peruntukan perundangan dan pentadbiran di bawah Protokol tersebut dapat dipenuhi sebelum Malaysia menandatanganinya.
	(ii) Dicadangkan supaya pencegahan melalui pendekatan undang-undang yang lebih efisien dapat digunakan. Pihak Berkuasa Tempatan yang mengeluarkan lesen bagi pusat-pusat hiburan perlu memainkan peranan yang efektif dalam penguatkuasaan bagi membanteras gejala ini dan mengenal pasti halangan-halangan yang dihadapi oleh pihak berkuasa menahan;	Kementerian Perumahan dan Kerajaan Tempatan	
	(iii) Disyorkan supaya bantuan didapatkan dari pihak kedutaan untuk menyekat kes penyeludupan ini dari	Kementerian Keselamatan Dalam	<u>Kementerian Luar Negeri:</u> Bahagian Konsular, Kementerian Luar Negeri sememangnya mempunyai

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	berpanjangan dan untuk membantu gadis-gadis yang menjadi mangsa kembali ke negara asal mereka;	Negeri / Kementerian Luar Negeri	saluran kerjasama erat dengan Kedutaan-kedutaan Asing di Malaysia dalam memberi bantuan kepada kes-kes dan mangsa-mangsa penyeludupan tersebut. Namun demikian, keberkesanan kerjasama tersebut adalah bergantung kepada kesediaan pihak Kedutaan-kedutaan Asing untuk menerima pengesahan bahawa gadis-gadis yang menjadi mangsa adalah warganegara mereka dan memberi bantuan yang sewajarnya.
	(iv) Disyorkan supaya diadakan latihan kepada anggota penguat kuasa supaya mereka lebih peka dengan keperluan kumpulan wanita yang lemah dan masyarakat yang terlibat di dalam situasi ini;	Kementerian Keselamatan Dalam Negeri / Kementerian Perumahan dan Kerajaan Tempatan	
	(v) Perlu meminda undang-undang negara, undang-undang mengadaptasi protokol-protokol PBB serta standard-standard antarabangsa. Perlu diwujudkan kerjasama transnasional untuk mendakwa penjenayah. Perlu diwujudkan peruntukan undang-undang untuk merampas aset-aset penyeludup bagi membantu atau membayar gantirugi kepada mangsa. Perlu diwujudkan peruntukan undang-undang untuk memelihara identiti mangsa dan saksi bagi memelihara keselamatan mereka sepanjang prosiding perundangan;	Jabatan Peguam Negara/ Kementerian Luar Negeri / Kementerian Keselamatan Dalam Negeri / Kementerian Keselamatan Dalam Negeri /	<u>Kementerian Luar Negeri:</u> Cadangan-cadangan tindakan perundangan yang berkenaan sedang dilaksanakan secara aktif oleh pihak Jabatan Peguam Negara dan Kementerian Keselamatan Dalam Negeri. <u>Jabatan Peguam Negara:</u> Jabatan ini berpandangan bahawa isu penyeludupan manusia merupakan satu jenayah berat yang perlu dibanteras dengan tegas. Jabatan ini juga ingin menegaskan komitmen negara Malaysia untuk menghapuskan jenayah penyeludupan manusia bukan sahaja di dalam negara, malah juga di peringkat antarabangsa selaras dengan peruntukan Piagam Bangsa-Bangsa Bersatu serta undang-undang antarabangsa. Menyedari kepentingan mewujudkan kerjasama transnasional untuk membendung jenayah terancang, pada 26 September 2002, Malaysia telah menandatangani '*Convention Against Transnational Organised Crimes*' dan telah meratifikasi konvensyen tersebut pada 24 September 2004. Dua protokol berkaitan konvensyen tersebut iaitu "*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*" dan "*Protocol Against the Smuggling of Migrants by Land, Sea and Air*" pula sedang dikaji. Jabatan ini mengambil maklum bahawa definisi terma "penyeludupan manusia" (*trafficking in persons*) di dalam "*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*" telah diterimapakai sebagai taraf ukuran yang lazim bagi terma tersebut.

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			Walaupun Jabatan ini dapat menerima definisi tersebut tertakluk kepada undang-undang dan polisi dalam negeri, Jabatan ini tidak bersetuju dengan generalisasi bahawa semua orang yang diseludup dengan cara yang didefinisikan adalah mangsa yang kebal daripada tindakan undang-undang atau pendakwaan untuk kesalahan seperti pelacuran. Jabatan ini menegaskan bahawa perbezaan harus dibuat bagi mangsa yang benar-benar diseludup secara paksa dengan mereka yang membenarkan diri mereka diseludup bagi tujuan mendapat imbuhan yang lumayan di negara destinasi. Dari segi peruntukan undang-undang domestik, Kerajaan Malaysia juga telah meluluskan Akta Bantuan Bersama Dalam Perkara Jenayah 2002 (Akta 621) [*Mutual Assistance in Criminal Matters Act 2002 (Act 621)*] yang diwujudkan untuk meningkatkan kerjasama transnasional dalam perkara-perkara jenayah. Kerjasama yang dimaksudkan merangkumi siasatan, pengumpulan keterangan dan proses pendakwaan. Walaupun undang-undang Malaysia tidak mempunyai peruntukan khas untuk jenayah penyeludupan manusia seperti yang didefinisikan di dalam *'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,'* Jabatan ini berpandangan bahawa peruntukan undang-undang Malaysia sedia ada dapat digunakan untuk melarang serta mengawal semua komponen dan juga perkara-perkara yang berkaitan dengan penyeludupan manusia. Peruntukan undang-undang yang boleh digunapakai ini termasuklah: Akta Imigresen 1959/63 (Akta 155) (seksyen 55A, 55B, 55D dan 56(1)(d), Kanun Keseksaan (Akta 574) (seksyen 339, 340, 341, 342,343, 360, 361, 362, 370, 371, 372, 372A, 372B, 373 dan 374) dan Akta Kanak-Kanak 2001 (Akta 611) (seksyen 48(1), 48(2), 49 dan 52). Akta-akta ini memberi kuasa kepada pihak penguatkuasa terbabit seperti polis dan imigresen untuk bertindak membanteras kegiatan penyeludupan manusia mengikut batas undang-undang. Selanjutnya, pada tahun 2002, Akta Imigresen 1959/63 telah dipinda bagi meningkatkan lagi usaha membanteras kegiatan penyeludupan manusia ini. Peruntukan-peruntukan baru seperti seksyen 55A dan 55D

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			Akta tersebut membawa hukuman yang tinggi yang boleh dikenakan kepada penjenayah jika sabit kesalahan. Ini menunjukkan bahawa Malaysia sentiasa berusaha untuk membendung masalah ini melalui tindakan undang-undang. Selain itu, Malaysia juga mempunyai undang-undang untuk merampas aset-aset penjenayah. Peruntukan-peruntukan berkaitan terkandung di dalam Akta Pencegahan Pengubahan Wang Haram (Akta 613) [*Anti-Money Laundering Act 2001* (AMLA 2001)]. AMLA 2001 memperuntukkan rangka undang-undang bagi pencegahan, siasatan dan pendakwaan suatu kesalahan pengubahan wang haram yang mana kesalahan berjadual yang terbabit turut merangkumi kesalahan-kesalahan perhambaan, buruh paksa, eksploitasi seksual dan sebagainya. Melalui AMLA 2001 ini juga harta yang terlibat dalam kegiatan jenayah terbabit boleh disita kepada Kerajaan. Akta Melarikan Orang dan Menakutkan Saksi Secara Jenayah 1947 merupakan peruntukan undang-undang yang memelihara keselamatan mangsa dan saksi-saksi. Sekiranya seseorang mangsa atau saksi yang terlibat adalah warga asing pula, kebiasaannya mereka akan ditahan menurut peruntukan di bawah Akta Imigresen 1959/63. Mengenai pemeliharaan identiti dan keselamatan mangsa dan saksi, Jabatan ini berpandangan bahawa pihak polis dan pihak-pihak lain yang terbabit telah melaksanakan tugas secara profesional dan efisien untuk melindungi mangsa dan saksi sepanjang prosiding perbicaraan. Selanjutnya, Kerajaan bercadang untuk mewujudkan Rang Undang-Undang Perlindungan Saksi bagi memantapkan lagi perundangan yang sedia ada berkenaan dengan perlindungan saksi. Syor SUHAKAM seperti disebut di dalam bilangan 13(ii) boleh dilaksanakan melalui peruntukan undang-undang yang sedia ada dan/atau melalui pindaan-pindaan tertentu kepada undang-undang yang berkaitan.
	(vi) Perlu diwujudkan garis panduan untuk mengenal pasti pendatang haram yang menjadi mangsa kepada jenayah penyeludupan ini. Perlu juga diberikan perhatian terhadap keperluan kanak-kanak yang diseludup.	Kementerian Hal Ehwal Dalam Negeri / Kementerian Keselamatan Dalam	<u>Kementerian Keselamatan Dalam Negeri:</u> Bagi kes penyeludupan bayi ke negara ini, dari tahun 2002 hingga 2003, didapati sebanyak 20 kes dengan melibatkan 41 kes telah diseludup ke negara ini. Bayi-bayi tersebut adalah daripada negara China, Indonesia

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	SUHAKAM mendapati kebanyakan bayi yang diseludup kerap kali dijual beli di pekan-pekan yang berhampiran dengan sempadan. Mereka dijual kepada pasangan yang tidak memiliki cahaya mata; dan	Negeri	dan Thailand. Bagi menangani kes-kes seumpama ini, satu mesyuarat diadakan di antara Jabatan PDRM dengan Jabatan Imigresen, Jabatan Pendaftaran Negara, Jabatan Kesihatan dan Jabatan Kebajikan Masyarakat diadakan. Hasil perbincangan ini agensi-agensi yang terlibat telah bersepakat memperketatkan pengawasan di sempadan. Kerjasama semua pihak termasuk orang awam amat mustahak untuk membantu membasmi kegiatan menyalahi undang-undang. Orang awam seharusnya sedar tentang proses pengambilan anak angkat dan kemudahan-kemudahan yang disediakan oleh pihak Kerajaan supaya mengamalkan cara yang halal untuk mendapatkan anak angkat. Kerjasama dan hubungan rapat antara agensi adalah mustahak dalam menangani masalah ini.
	(vii) SUHAKAM juga mengesyorkan supaya diwujudkan undang-undang penguatkuasaan yang lebih agresif memandangkan jenayah ini semakin meningkat. Pihak penguat kuasa pula perlu memahami hak-hak mangsa. Langkah-langkah penguatkuasaan yang akan diambil juga perlu mengambil kira hak asasi mangsa terutamanya yang berhubung dengan kesihatan dan keselamatan diri.	Kementerian Keselamatan Dalam Negeri / Kementerian Hal Ehwal Dalam Negeri / Jabatan Peguam Negara	<u>Jabatan Peguam Negara:</u> [seperti maklum balas di para (v), m.s. 53-55]
14	**Pusat Tahanan** **(a) Lawatan Ke Pusat Tahanan Imigresen** **Pemerhatian:** Hasil lawatan SUHAKAM ke pusat tahanan pendatang mendapati : (i) pusat tahanan penuh sesak terutamanya di Semenyih, Lenggeng dan Machap Umboo;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Sejumlah 10 daripada 11 depot Imigresen telah diambil alih pengurusannya oleh Jabatan Penjara dari Jabatan Imigresen secara berperingkat mulai pertengahan tahun 2002 sehingga 12 Ogos 2004. Hanya depot PATI Kemayan, Pahang yang masih belum diambil alih kerana masalah berkaitan kekurangan kakitangan. Pada ketika ini muatan di depot berkenaan agak stabil kecuali di depot Semenyih dan

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			Tanah Merah yang masih melebihi kapasiti sebenar. Usaha mempercepatkan proses pengusiran bersama Jabatan Imigresen akan diteruskan.
	(ii) nisbah bilangan anggota keselamatan dengan bilangan pendatang yang ditahan adalah tidak memadai;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Jabatan Penjara Malaysia hanya diluluskan sejumlah 800 jawatan untuk menguruskan 11 buah depot berkenaan. Jabatan Penjara pada asalnya telah memohon lebih dari seribu perjawatan bagi maksud tersebut. Walau bagaimanapun bagi keperluan sebenar kawalan keselamatan dan pengurusan keseluruhan, Jabatan Penjara telah membuat penambahan jumlah kakitangan terhadap depot tertentu dengan menggunakan kakitangan penjara yang sedia ada.
	(iii) masalah untuk mengenal pasti identiti pendatang memandangkan mereka bersikap mengelak. Ini menyebabkan kesukaran kepada pihak berkuasa untuk menghantar mereka pulang ke negara asal;	Kementerian Hal Ehwal Dalam Negeri/ Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Bagi maksud menyenangkan pengecaman dan pengurusan selanjutnya, Jabatan Penjara Malaysia setelah mengambil alih depot berkenaan telah menggunakan sistem perekodan maklumat yang lengkap seperti mana yang diamalkan di institusi penjara. Bagi mempercepatkan proses pengusiran terhadap tahanan yang tidak mempunyai sebarang dokumen pengenalan diri dan negara, Jabatan Penjara akan memberikan kerjasama sepenuhnya kepada Jabatan Imigresen dan juga kedutaan/konsul asing yang berkaitan. <u>Kementerian Hal Ehwal Dalam Negeri:</u> Jabatan Imigresen Malaysia (JIM) sentiasa menjalinkan hubungan baik dengan kedutaan-kedutaan asing di negara ini. Mengikut maklumat yang diterima, kelewatan mengenalpasti negara asal PTI adalah disebabkan PTI tersebut memberikan maklumat palsu mengenai negara asal dengan tujuan untuk mengelakkan mereka dihantar pulang.
	(iv) kehadiran kanak-kanak mendatangkan masalah kepada pengawal-pengawal di pusat tahanan. Ini memandangkan mereka tidak terlatih dan tidak dilengkapkan dengan kemudahan kanak-kanak; dan	Kementerian Hal Ehwal Dalam Negeri/ Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Jabatan Penjara akan melaksanakan penempatan secara berasingan antara tahanan muda dan kanak-kanak dari tahanan dewasa jika kemampuan blok penempatan mengizinkan tindakan sedemikian diambil. Berhubung dengan kanak-kanak kerjasama juga boleh dibuat dengan kedutaan asing yang berkaitan agar mereka tidak perlu ditahan di depot berkenaan.
	(v) keadaan tidak begitu bersih memandangkan keadaan di	Kementerian Hal	<u>Kementerian Keselamatan Dalam Negeri:</u>

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	pusat tahanan yang penuh sesak dengan kebanjiran tahanan.	Ehwal Dalam Negeri/ Kementerian Keselamatan Dalam Negeri	Selelah mengambil alih pengurusan depot berkenaan dari Jabatan Imigresen, Jabatan Penjara telah berusaha untuk meningkatkan beberapa aspek termasuklah kebersihan blok penempatan dan persekitaran depot. Tindakan ini akan diteruskan dari semasa ke semasa bagi memastikan keadaan depot tersebut terutamanya kebersihan akan terus meningkat. Berdasarkan maklum balas yang diberikan oleh beberapa wartawan akhbar tempatan dalam lawatan mengejut bersama Timbalan Menteri Keselamatan Dalam pada bulan September 2004 ke depot Semenyih, mereka memaklumkan kebersihan depot berkenaan telah jauh meningkat berbanding sebelum ini.
	Syor: SUHAKAM mencadangkan:		
	(i) pihak pengurusan pusat tahanan mencari jalan untuk menghantar pulang segera pendatang yang ditahan bagi mengelakkan kesesakan.	Kementerian Hal Ehwal Dalam Negeri / Kementerian Luar Negeri	
	(ii) bilangan anggota pengawal keselamatan yang optimum perlulah disediakan.	Kementerian Hal Ehwal Dalam Negeri / Kementerian Keselamatan Dalam Negeri	
	(iii) kakitangan di pusat tahanan perlulah peka terhadap kesukaran-kesukaran yang dihadapi oleh pendatang-pendatang yang ditahan seperti makanan yang tidak mencukupi dan rawatan kesihatan. Ini memandangkan ada kanak-kanak di pusat berkenaan.	Kementerian Hal Ehwal Dalam Negeri/ Kementerian Keselamatan Dalam Negeri	
	(iv) tahap kebersihan perlulah dijaga.	Kementerian Hal Ehwal Dalam Negeri/ Kementerian Keselamatan Dalam Negeri	
	(v) usaha dan kerjasama dengan pihak kedutaan asing melalui Kementerian Luar Negeri untuk mengenal pasti identiti tahanan-tahanan perlulah diadakan. Ini bertujuan	Kementerian Hal Ehwal Dalam Negeri/ Kementerian	<u>Kementerian Hal Ehwal Dalam Negeri:</u> [seperti maklum balas di para (a)(iii), m.s. 57]

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	bagi menghantar mereka pulang ke negara asal dengan segera.	Keselamatan Dalam Negeri/ Kementerian Luar Negeri	<u>Kementerian Luar Negeri:</u> Artikel 36 *Vienna Convention on Consular Relations 1963* memperuntukkan bahawa Pejabat Konsular sesuatu negara perlu dimaklumkan sekiranya terdapat warganegaranya yang ditahan oleh pihak berkuasa tempatan. Malaysia sentiasa akur kepada prosedur ini dan memastikan bahawa Kedutaan Besar, Suruhanjaya Tinggi atau Pejabat Konsular di Kuala Lumpur dimaklumkan mengenai penahanan warganegara mereka. Walau bagaimanapun, Kementerian Luar Negeri difahamkan bahawa agensi-agensi penguat kuasa menghadapi kesulitan dalam menentukan kewarganegaraan orang yang ditahan terutama sekali apabila individu tersebut tidak mempunyai dokumen pengenalan diri yang sah. Dalam kes sedemikian, adalah tidak wajar untuk menjemput semua kedutaan asing yang difikirkan terlibat semata-mata hanya untuk memastikan kewarganegaraan sesuatu individu. Tambahan pula, ada kalanya individu tersebut tidak mahu mengenal pasti oleh negaranya sendiri atas sebab-sebab peribadi. Cadangan SUHAKAM tersebut perlu diutarakan kepada agensi-agensi penguat kuasa yang berkenaan bagi mendapatkan pandangan dan maklum balas mereka.
	(vi) dicadangkan supaya Jabatan Imigresen menyerahkan pengurusan pusat tahanan kepada Jabatan Penjara memandangkan Jabatan Penjara mempunyai pengalaman yang mencukupi dan anggota yang terlatih.	Kementerian Hal Ehwal Dalam Negeri	<u>Kementerian Hal Ehwal Dalam Negeri:</u> Urusan kawalan depot tahanan imigresen adalah di bawah Jabatan Penjara (Kementerian Keselamatan Dalam Negeri).
	(b) Lawatan Ke Hospital Wad Forensik **Pemerhatian:** Pemerhatian SUHAKAM ke atas lawatan yang telah dilakukan ke hospital-hospital wad forensik adalah seperti berikut:		
	(i) kekurangan kakitangan terutamanya di Wad Forensik Perempuan.	Kementerian Kesihatan	<u>Kementerian Kesihatan:</u> Wad Forensik adalah wad yang menempatkan pesakit di bawah perintah Mahkamah seperti kes bunuh, merompak, rogol dan sebagainya. Semua institusi mental KKM mempunyai wad forensik.

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			Hospital Bahagia: Mulai Ogos 2004, semua pesakit kes forensik perempuan ditempatkan di wad berasingan yang dianggotai oleh kakitangan 5 jururawat terlatih dan 12 atendan. Hospital Permai: Pesakit-peskit kes forensik perempuan diletakkan bersama pesakit tahanan sivil. Satu kompleks forensik dicadangkan dibina di bawah Rancangan Malaysia Ke-9 agar pesakit dapat diasingkan.
	(ii) pesakit-pesakit tidak dituntut oleh kaum keluarganya kerana kejahilan terhadap prosedur yang terpakai untuk menuntut pesakit.	Kementerian Kesihatan	<u>Kementerian Kesihatan:</u> Pesakit-pesakit di wad forensik adalah kes-kes yang dihantar oleh Mahkamah. Proses untuk mengeluarkan pesakit ditentukan oleh Lembaga Pelawat Hospital. Keluarga pesakit perlu mendapat kelulusan daripada Setiausaha Kerajaan Negeri atau Menteri Besar dalam bentuk bon.
	(iii) Pesakit-pesakit yang ditahan di Hospital Bahagia yang di bawah Perintah Mahkamah perlu mendapatkan pengawalan polis sekiranya mereka memerlukan rawatan kecemasan di hospital. Prosedur ini menimbulkan kesukaran kepada pentadbir-pentadbir hospital, terutamanya dalam kes-kes yang memerlukan tindakan perubatan yang segera.	Kementerian Keselamatan Dalam Negeri/ Kementerian Kesihatan	<u>Kementerian Kesihatan:</u> Oleh kerana pesakit-pesakit ini adalah di bawah Perintah Mahkamah, kelulusan daripada pihak polis diperlukan untuk menghantar pesakit daripada Hospital Bahagia ke Hospital Ipoh bagi kes-kes kecemasan. Setakat ini kerjasama di antara pihak hospital dan Polis adalah baik. <u>Kementerian Keselamatan Dalam Negeri:</u> Pihak Hospital Bahagia boleh mendapatkan bantuan Polis untuk mengawal pesakit yang ditahan atas perintah Mahkamah yang memerlukan rawatan kecemasan. Bantuan kawalan keselamatan akan dapat diberikan dengan cepat sekiranya permohonan awal dibuat oleh pihak hospital. Walau bagaimanapun dalam kes-kes tertentu di mana bantuan segera diperlukan, kadangkala pihak Polis terpaksa memanggil balik anggota yang sedang bertugas di tempat lain untuk memenuhi permintaan segera ini disebabkan kekurangan anggota. Pihak Hospital Bahagia akan mengemukakan permohonan kepada IPD Ipoh bagi mendapatkan eskot Polis untuk membawa tahanan berjumpa dengan pegawai perubatan. Bagi kes-kes untuk tindakan segera, biasanya pihak Hospital Bahagia membuat permohonan melalui telefon dan pihak Polis juga tidak ada masalah untuk menyediakan eskot melalui cara tersebut.

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	Syor:		
	SUHAKAM mengesyorkan ditambah bilangan kakitangan bagi mengurus pesakit dengan lebih baik. Selain itu, ia adalah untuk mempertingkatkan kebajikan para kakitangan.	Kementerian Kesihatan	<u>Kementerian Kesihatan:</u> KKM akan berusaha menambahkan kakitangan khususnya di bahagian-bahagian yang memerlukan. Mengenai kebajikan kakitangan pula KKM sentiasa mengkaji semula kemudahan dan pemberian elaun kepada kakitangan terbabit dari semasa ke semasa.
	SUHAKAM mengesyorkan supaya pentadbir-pentadbir di hospital memainkan peranan yang lebih aktif untuk memaklumkan ahli keluarga pesakit bahawa pesakit-pesakit bersedia dan dibenarkan untuk dibebaskan bersama masyarakat.	Kementerian Kesihatan	Mengikut amalan biasa, pihak hospital akan mengambil langkah-langkah untuk mengeluarkan pesakit daripada wad forensik perempuan bagi kes di bawah Kanun Prosedur Jenayah 348 yang berlandaskan kepada permohonan pihak keluarga yang ingin pesakit dibebaskan. Di dalam keadaan tertentu sekiranya ada pesakit yang telah dipulihkan atau stabil dalam jangka masa yang lama di hospital, pihak hospital akan menjelaskan kepada anggota keluarga mengenai prosedur untuk menuntut pesakit. Ini dilakukan bagi mengelak salah faham atau untuk memastikan pesakit dikeluarkan daripada hospital setelah mendapat kerjasama dan persetujuan sepenuhnya dari anggota keluarga.
	SUHAKAM mengesyorkan supaya pihak hospital dan polis dapat mengatur langkah dengan lebih awal bagi mengelak sebarang kecemasan.	Kementerian Kesihatan/ Kementerian Keselamatan Dalam Negeri	
	(c) Lawatan Ke Penjara-Penjara		
	Pemerhatian:		
	Pemerhatian SUHAKAM ke atas penjara-penjara adalah seperti berikut:		
	i) masalah kesesakan di penjara. Penjara-penjara di Pulau Pinang, Alor Setar dan Ipoh didapati mempunyai bilangan banduan yang melebihi jumlah yang diwartakan dalam Warta Kerajaan.	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Berdasarkan statistik yang berakhir pada 30 September 2004 didapati 20 dari jumlah keseluruhan 28 buah institusi penjara yang mengalami keadaan di mana bilangan penghuninya melebihi kapasiti. Secara keseluruhan jumlah kapasiti ialah 24,850 sahaja berbanding muatan sebenar ialah 34,698. Ini menunjukkan berlaku lebihan kira-kira 39.6% (9,848). Selain dari langkah jangka pendek seperti pemindahan banduan, pengubahsuaian penjara serta pembinaan penjara baru, Jabatan Penjara juga sedang merangka beberapa langkah yang boleh dijadikan sebagai alternatif pemenjaraan. Di antara langkah-langkah

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			tersebut ialah Sistem Parol, *Compulsory Attendance Centre* (CAC) dan *Community Service* (CS). Sistem parol yang ketika ini berada di peringkat penyediaan undang-undang sebenarnya untuk kebaikan pemulihan banduan walau bagaimanapun ia secara tidak langsung dapat menyumbang ke arah pengurangan jumlah banduan di penjara. Manakala CAC dan CS akan membolehkan banduan tidak perlu menjalani hukuman di penjara. Penggunaan sistem *electronic tagging* pada ketika ini sedang dalam kajian oleh Jabatan Penjara. Sistem tersebut pada dasarnya dipertimbangkan oleh Jabatan untuk digunakan terhadap banduan yang terpilih dibebaskan secara parol dan juga banduan pra bebas yang bekerja di luar penjara. Ia bertujuan mengurangkan penggunaan bilangan kakitangan yang tinggi bagi kawalan. Walau bagaimanapun sistem tersebut memerlukan kajian yang terperinci kerana ia dijangka akan melibatkan kos yang tinggi.
	(ii) kesesakan di penjara berikutan bilangan tahanan reman yang terlalu ramai. SUHAKAM mendapati ada di kalangan mereka yang ditahan telah melangkaui tempoh tahanan selama 2, 3 hingga 5 tahun. Selain itu, SUHAKAM mendapati walaupun terdapat kes-kes yang dibenarkan oleh mahkamah untuk diikat jamin, namun dengan kadar yang terlalu tinggi, ahli keluarga tahanan tidak dapat menebus para tahanan daripada dipenjarakan.	Kementerian Keselamatan Dalam Negeri / Pejabat Ketua Pendaftar Mahkamah Persekutuan	<u>Pejabat Ketua Pendaftar Mahkamah Persekutuan:</u> Isu pesalah yang ditahan reman di dalam penjara di mana ada yang menjangkau 2 hingga 5 tahun yang dikatakan disebabkan kadar jaminan yang tinggi yang ditetapkan oleh mahkamah. Hakim-hakim dan majistret-majistret membuat pertimbangan yang seadil-adilnya sebelum menentukan pesalah yang diberi peluang untuk membuat rayuan ke atas jumlah amaun jaminan yang ditetapkan. Amaun jaminan akan ditentukan selepas mahkamah mendengar rayuan pesalah dan hujahan balas pihak pendakwa mengenai amaun jaminan. Berkenaan kadar jaminan yang munasabah, ia adalah berkaitan tugas-tugas kehakiman yang mana keputusan yang dibuat oleh mahkamah adalah bergantung kepada fakta dan keadaan sesuatu kes serta hujahan pihak berkenaan. Mengenai syor supaya kes-kes reman dikendalikan lebih cepat oleh mahkamah, Arahan Amalan Bil.2 Tahun 2004 telahpun dikeluarkan oleh Y.A.A. Ketua Hakim Negara kepada semua hakim dan majistret mengenai kes remandan diminta memberi keutamaan perbicaraan. Tujuannya ialah supaya kes-kes reman boleh dilupuskan dengan kadar yang segera supaya hak-hak pesalah di bawah reman tidak dicabuli. Mengenai syor SUHAKAM agar proses dan keputusan rayuan di mahkamah dipercepatkan, arahan-arahan pentadbiran dikeluarkan oleh Y.A.A. Ketua Hakim Negara dari semasa ke semasa untuk memantau penetapan dan pelupusan kes-kes rayuan. <u>Kementerian Keselamatan Dalam Negeri:</u>

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			Berdasarkan statistik yang berakhir pada 30 September 2004 terdapat seramai 11,355 orang. Daripada jumlah tersebut seramai 148 orang telah ditahan dalam tempoh tiga tahun dan ke atas. Berdasarkan semakan Jabatan Penjara, ia melibatkan kes-kes serius yang membawa hukuman berat di bawah Akta Dadah Berbahaya, Kanun Keseksaan dan Akta Senjatapi. Bagi mempercepatkan perbicaraan mereka, Jabatan Penjara telah mengambil beberapa langkah. Antaranya adalah: • mengemukakan statistik reman bulanan kepada Peguam Negara untuk tindakan berhubung dengan mahkamah di seluruh negara; • memberikan bantuan kepada reman dengan mengemukakan senarai nama reman yang memerlukan peguam dari Biro Bantuan Guaman; dan • mengadakan mesyuarat dan perbincangan bersama pihak mahkamah dan Peguam Negara dari masa ke semasa berkaitan pengendalian dan permasalahan perbicaraan kes reman. Berhubung dengan cadangan kadar jaminan, kemungkinan kadar jaminan yang lebih fleksibel boleh diperkenalkan oleh pihak mahkamah.
	(iii) selain itu, SUHAKAM berpandangan bahawa punca yang menyebabkan kesesakan di penjara juga adalah disebabkan oleh kelewatan menghantar pendatang haram pulang ke negara asal mereka setelah menjalani tempoh hukuman. Tempoh Perintah Tahanan yang dikeluarkan oleh Jabatan Imigresen kadang kala berpanjangan sehingga melebihi satu bulan.	Kementerian Hal Ehwal Dalam Negeri / Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Pada ketika ini dalam tempoh yang singkat sebaik sahaja banduan warga asing selesai menjalani hukuman, mereka akan terus dihantar ke depot Imigresen bagi tujuan proses pengusiran selanjutnya. <u>Kementerian Hal Ehwal Dalam Negeri:</u> Banduan asing yang telah tamat menjalani hukuman di penjara akan ditempatkan di depot-depot tahanan imigresen sementara menantikan mereka dihantar pulang ke negara asal. Oleh itu, tidak timbul lagi isu yang mengatakan bahawa banduan asing yang telah menjalani hukuman masih berada di penjara. Mereka akan segera dihantar pulang ke negara asal sebaik sahaja urusan dokumentasi dengan pihak kedutaan selesai.
	(iv) walaupun pesalah telah melengkapkan hukuman pemenjaraan, kelewatan mengenakan hukuman rotan dan penangguhannya disebabkan menunggu keputusan dan proses rayuan juga merupakan faktor kesesakan di penjara.	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Berdasarkan rekod Jabatan Penjara didapati hanya bilangan yang amat kecil (kurang dari 5 kes) dalam tempoh satu tahun di mana banduan yang layak dibebaskan telah tidak dapat dilaksanakan pembebasannya kerana masih ada rayuan. Ia seterusnya menyebabkan hukuman sebat rotan tidak dapat dilaksanakan terhadap banduan berkenaan. Walau

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			rotan tidak dapat dilaksanakan terhadap banduan berkenaan. Walau bagaimanapun banduan-banduan tersebut seterusnya telah dapat dibebaskan dalam tempoh yang singkat iaitu sebaik sahaja segala urusan berkaitan rayuan dan hukuman dapat diselesaikan oleh Jabatan Penjara bersama pihak Mahkamah.
	(v) kelewatan Lembaga Pengampunan bersidang dan membuat keputusan terutamanya terhadap kes-kes hukuman mati perlu diberikan perhatian yang serius. Ini mengakibatkan penahanan banduan dalam satu tempoh yang tidak dapat dijangkakan. Sebagai contoh, SUHAKAM pernah menemui seorang banduan akhir yang telah menunggu melebihi 5 tahun untuk hukuman mati dijatuhkan ke atasnya.	Jabatan Peguam Negara/ Kementerian Keselamatan Dalam Negeri / Pejabat SUK Negeri-negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Berdasarkan rekod Jabatan Penjara Malaysia berhubung pelaksanaan hukuman mati dalam tempoh 1980 sehingga September 2004 didapati ada 46 kes yang mana melibatkan tempoh masa menunggunya tiga tahun ke atas. Sebanyak 149 kes masa menunggunya adalah kurang dari dua tahun. Tempoh menunggu pelaksanaan hukuman mati diambilkira dari tempoh sebaik sahaja perbicaraan dan rayuan di mahkamah dan banduan telah membuat rayuan (petisyen) kepada Jemaah Pengampunan Negeri sehinggalah perintah pelaksanaan hukuman dikeluarkan oleh Jemaah Pengampunan Negeri. Jabatan Penjara melalui unit khas yang terlibat dalam proses petisyen tersebut telah mengambil langkah-langkah berikut berhubung perkara ini: • memaklumkan kepada banduan hukuman mati tentang hak mereka membuat petisyen kepada Jemaah Pengampunan Negeri sebaik sahaja semua proses rayuan di mahkamah telah ditolak; • mengemukakan dengan kadar segera kepada Jemaah Pengampunan Negeri petisyen berkenaan bersama-sama lain-lain laporan serta dokumen sebaik sahaja petisyen tersebut diterima dari banduan, keluarga banduan atau peguam banduan; • mengemukakan pertanyaan/maklumat bertulis kepada Setiausaha Jemaah Pengampunan atau Penasihat Undang-Undang setiap negeri berhubung petisyen yang telah dibuat dalam tempoh tertentu setelah tiada jawapan yang diterima; dan • mengadakan perbincangan dari masa ke semasa dengan Bahagian Pendakwaan, Jabatan Peguam Negara yang mengendalikan sebahagian dari proses petisyen tersebut. <u>Jabatan Peguam Negara:</u> Di bawah Perkara 42 Perlembagaan Persekutuan, kuasa untuk memberi pengampunan terletak kepada Yang di-Pertuan Agong atau Raja atau Yang di-Pertua Negeri. Ini adalah suatu kuasa prerogatif khas yang diberikan oleh Perlembagaan Persekutuan.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			Di bawah perkara 42(4)(b) pula, kuasa di atas hendaklah dijalankan mengikut nasihat Lembaga Pengampunan yang ditubuhkan bagi negeri-negeri berkenaan. Peruntukan mengenai ahli-ahli yang membentuk Lembaga Pengampunan pula terkandung di bawah Perkara 42(5). Dan menurut Perkara 48(8) pula, Lembaga Pengampunan hanya boleh bermesyuarat dengan kehadiran YDPA atau Raja atau Yang di-Pertua Negeri berkenaan hendaklah mempengerusikan mesyuarat Lembaga Pengampunan tersebut. Kebiasaannya, Lembaga Pengampunan bagi setiap negeri akan bermesyuarat sekurang-kurangnya setahun sekali. Namun begitu, Jabatan ini telah dan akan terus mengambil langkah-langkah bagi memastikan Lembaga Pengampunan bermesyuarat dengan lebih kerap. Dengan itu, petisyen oleh seorang banduan akhir akan dapat didengar oleh Lembaga Pengampunan secepat mungkin. Selanjutnya, Jabatan ini juga telah menulis surat kepada Penasihat Undang-Undang di setiap negeri dan meminta mereka menasihatkan DYMM Sultan, Raja atau Yang di-Pertua Negeri agar dapat mengadakan mesyuarat Lembaga Jemaah Pengampunan sekerap yang mungkin bagi menimbangkan permohonan pengampunan. Sehubungan dengan itu, Penasihat Undang-Undang Negeri juga dikehendaki mengemukakan laporan bulanan mengenai status kes yang tertangguh di setiap negeri. Hasil daripada tindakan pro-aktif Jabatan Peguam Negara ini, kebanyakan Lembaga Jemaah Pengampunan Negeri telah mengadakan persidangan yang sewajarnya dan jumlah kes yang tertangguh tidaklah membimbangkan. Jabatan ini selanjutnya ingin merujuk kepada kes *Juraimi Husin v. Pardons Board of State of Pahang & Ors* [2002] 4 CLJ 529 yang mana pihak plaintif, Juraimi Husin telah membuat permohonan kepada Mahkamah Tinggi untuk pengisytiharan bahawa penolakan petisyen beliau untuk pengampunan oleh Lembaga Pengampunan adalah tidak berperlembagaan, batal dan tidak sah atas alasan bahawa terdapatnya kelewatan yang melampau selama hampir dua tahun antara pengemukaan petisyen beliau dan keputusan muktamad Lembaga Pengampunan. Prosiding di hadapan Mahkamah Tinggi telah digantung sementara menantikan rujukan semasa kepada Mahkamah Persekutuan berkenaan soalan perlembagaan yang berbangkit. Mahkamah

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			persekutuan telah memutuskan seperti berikut: *"Kuasa-kuasa prerogatif, seperti prerogatif pengampunan, adalah tidak mudah mendapat kajian kehakiman kerana sifatnya serta hal perkaranya adalah sedemikian rupa hinggakan tidak seharusnya dipinda kepada proses kehakiman. Kuasa pengampunan di bawah per. 42 PP [Perlembagaan Persekutuan] adalah suatu prerogatif pengampunan; perlaksanaannya adalah dengan itu, tidak mudah dipengaruhi atau boleh dipinda kepada kajian semula kehakiman…Proses pengampunan adalah jelas tidak boleh diadili. Menganggapkan proses membuat keputusan Lembaga Pengampunan sebagai boleh diadili akan akhirnya menjadikan keputusan itu sendiri boleh diadli."* Jabatan ini juga ingin merujuk kepada kes *Harbhajan Singh v. Suruhanjaya Pasukan Polis Malaysia & Anor* [2002] 4 CLJ 85 yang mana Mahkamah Rayuan telah mentafsirkan terma 'dengan kepantasan yang patut' sebagai 'dalam masa yang munasabah dengan mengambilkira fakta khusus dan hal keadaan kes'. Mahkamah Rayuan juga memutuskan seperti berikut: *"Dalam kes di sini, hakim perbicaraan telah mengambi kira kepelbagaian dan beban tugas yang dipikul oleh anggota-anggota Suruhanjaya Polis, yang antara lain termasuk Menteri Dalam Negeri, Presiden Mahkamah Rayuan dan Ketua Polis Negara, dan telah memutuskan dengan betul bahawa Suruhanjaya polis telah membuat keputusan dengan kepantasan yang patut."* <u>Pejabat SUK Negeri Johor:</u> Tindakan sedang diambil bagi mendapatkan tarikh baru persidangan Lembaga Pengampunan Negeri setelah perlantikan semula Ahli Lembaga Pengampunan selesai dilangsungkan pada hujung tahun 2003 yang lalu. <u>Pejabat SUK Negeri Pulau Pinang:</u> Bagi kes-kes rayuan Lembaga Pengampunan Negeri Pulau Pinang untuk Perintah melaksanakan hukuman mati yang telah bermesyuarat pada 19 Mac 2003 telah disempurnakan mengikut undang-undang dan tidak melebihi 5 tahun bagi banduan akhir untuk dijatuhkan hukuman mati ke

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			atasnya. Pejabat SUK Negeri Pahang: Setakat ini tiada kes hukum mati bagi kes-kes rayuan di Negeri Pahang. Lembaga Pengampunan Negeri Pahang telah pun mengadakan mesyuaratnya sejak pada 24 Jun 1996. 4 April 2000, 7 November 2001 dan baru-baru ini pada 7 September 2004 telahpun selesai memutuskan 10 kes rayuan banduan. Kes-kes yang tertunggak hanya pada 37 kes sahaja yang berkaitan dengan Seksyen 378 Kanun Keseksaan dan di dalam tindakan Jabatan Peguam Negara sekarang untuk diangkatkan ke Lembaga Pengampunan Negeri Pahang. Tarikh mesyuarat akan diletapkan oleh KDYMM Sultan Pahang. Pejabat SUK Negeri Terengganu: Lembaga Pengampunan Negeri bersidang sebaik sahaja ada kes. Pada masa ini ada enam kes untuk Mesyuarat Jemaah Pengampunan Negeri di mana ianya masih menunggu kes/pendapat dari pihak pengurusan. Pejabat SUK Negeri Pahang: Lembaga Pengampunan Negeri Pahang akan mengambil perhatian sewajarnya syor ini. Pejabat SUK Negeri Kelantan: Lembaga Pengampunan Negeri Kelantan telah bersidang pada 19 Oktober 2002 dan 19 kes telah diselesaikan sehingga sekarang tiada kes tertunggak. Urusetia kepada Lembaga ini akan mengadakan mesyuarat bila ada kes baru. Pejabat SUK Negeri Melaka: Untuk tahun 2003, lapan kes rayuan pengampunan diterima. Kesemua kes ini telah dibawa dalam Mesyuarat Jemaah Pengampunan Negeri pada 1 Julai 2004. Tiada kes tertunggak lagi bagi tahun 2003. Pejabat SUK Negeri Sabah: Kerajaan Negeri Sabah dan Lembaga Pengampunan Negeri akan mengadakan satu mesyuarat Lembaga Pengampunan Negeri secepat mungkin memandangkan teguran yang dibuat oleh SUHAKAM. Untuk makluman, Pejabat Peguam Besar Negeri Sabah telah mengemukakan

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			kebanyakan Buku-Buku Laporan Kajian Hukuman Empat Tahun bagi banduan-banduan ke pejabat Peguam Kanan Persekutuan, Jabatan Peguam Negara, Kota Kinabalu untuk mendapatkan pendapat. Pejabat SUK Negeri Sembilan: Pentadbiran ini akan memanggil dan mengadakan Persidangan Jemaah Pengampunan Negeri sekiranya terdapat mana-mana rayuan pengampunan yang telah mendapat ulasan dan pandangan dari Peguam Negara.
	Syor: i) Penjara hendaklah memperkenalkan semula *Compulsory Attendance Centres (CAC)*. Sistem ini akan mewajibkan pesalah-pesalah kecil menghadiri aktiviti-aktiviti bengkel CAC pada waktu siang dan pulang ke rumah pada waktu petang. Sistem ini akan membantu mengurangkan kesesakan di penjara.	Kementerian Keselamatan Dalam Negeri	
	ii) Penggunaan Sistem Tag Elektronik (*Electronic Tagging System*) boleh dipertimbangkan sebagai alternatif untuk memantau pesalah-pesalah bagi kesalahan kecil di penjara. Banduan-banduan akan diperhatikan melalui sistem komputer yang dipasang di komputer. Sistem tersebut mempunyai profil banduan dan maklumat peribadinya.	Kementerian Keselamatan Dalam Negeri	
	iii) Pihak Kehakiman wajar menetapkan kadar jaminan yang munasabah untuk membolehkan keluarga banduan membayar wang jaminan yang ditetapkan.	Pejabat Ketua Pendaftar Mahkamah Persekutuan	[seperti maklum balas di para (c)(ii), m.s. 62].
	iv) Kes-kes reman wajar dikendalikan dengan lebih cepat oleh Mahkamah.	Pejabat Ketua Pendaftar Mahkamah Persekutuan	[seperti maklum balas di para (c)(ii), m.s. 62 dan para (c)(1), m.s. 79].
	v) Jabatan Imigresen hendaklah mempercepatkan penghantaran pendatang asing ke negara asal mereka selepas mereka menjalani hukuman.	Kementerian Hal Ehwal Dalam Negeri	
	vi) SUHAKAM mengesyorkan supaya dipercepatkan proses dan keputusan rayuan di Mahkamah supaya pesalah dapat dirotan semasa menjalani hukuman dalam penjara dan bukannya selepas ia dibebaskan.	Pejabat Ketua Pendaftar Mahkamah Persekutuan	
	vii) SUHAKAM mengesyorkan supaya Lembaga	Jabatan Peguam	

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	Pengampunan bersidang dengan lebih kerap bagi mendengar rayuan pengampunan banduan.	Negara/ Kementerian Keselamatan Dalam Negeri / Pejabat SUK Negeri-negeri	
15	***Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) / Konvensyen Mengenai Penghapusan Sebarang Bentuk Diskriminasi Terhadap Wanita: Hak-Hak Asasi, Tanggungjawab dan Pelaksanaan** --- Menurut SUHAKAM, sejak 8 tahun Kerajaan meratifikasi CEDAW, undang-undang tempalan tidak pernah dipinda agar seiring dengan Konvensyen tersebut melainkan pindaan terhadap Artikel 8(2) Perlembagaan Persekutuan. SUHAKAM selanjutnya menyebut bahawa sehingga ke hari ini Kerajaan masih belum mengemukakan Laporan Negara kepada Jawatankuasa Pertubuhan Bangsa-Bangsa Bersatu Mengenai Penghapusan Diskriminasi Terhadap Wanita. SUHAKAM telah menganjurkan perbincangan meja bulat yang dihadiri oleh 48 perwakilan dari pihak Kerajaan dan NGO. Laporan mengenai persidangan ini akan dikemukakan pada tahun 2004. Antara perkara yang diperbincangkan adalah perkembangan mengenai perlindungan hak wanita, masalah-masalah yang dihadapi dari aspek perundangan, keperluan untuk mewujudkan kepekaan *gender* terhadap kaum wanita, isu-isu perundangan Islam yang menjejaskan hak-hak wanita dan sebagainya.	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat / Jabatan Peguam Negara	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Laporan Negara telah dikemukakan kepada Perwakilan Tetap Malaysia ke PBB, New York pada 31 Mac 2004. <u>Jabatan Peguam Negara:</u> Pindaan kepada Artikel 8(2) tersebut adalah bersifat gender-neutral yang memberi hak sama rata kepada lelaki dan wanita. Memandangkan Perlembagaan Persekutuan adalah merupakan undang-undang yang tertinggi di Malaysia, mana-mana undang-undang bertulis yang lain yang bertentangan dengan Perlembagaan Persekutuan adalah terbatal setakat mana ianya bertentangan. Berdasarkan peruntukan Artikel 18 CEDAW, setelah menjadi pihak kepada Konvensyen CEDAW pada 5 Julai 1995, Malaysia diwajibkan mengemukakan Laporan Negara kepada Jawatankuasa Penghapusan Diskriminasi Terhadap Wanita bagi melaporkan langkah-langkah yang telah diambil oleh Malaysia dalam memenuhi tanggungjawabnya di bawah Konvensyen tersebut. Jabatan ini ingin memaklumkan bahawa Malaysia telah memenuhi obligasi tersebut di atas di mana Laporan Negara yang pertama dan kedua telah dikemukakan pada 31 Mac 2004 kepada Jawatankuasa Penghapusan Diskriminasi Terhadap Wanita (CEDAW). Laporan Negara tersebut telah disediakan oleh Kementerian Pembangunan Wanita dan Keluarga dengan bantuan agensi-agensi yang berkenaan termasuklah Jabatan Peguam Negara. Laporan tersebut telah disediakan di dalam dua (2) bahagian utama iaitu: • Bahagian I yang mengandungi pengenalan kepada Negara, penduduk, sistem ekonomi dan politik, struktur undang-undang, tahap pendidikan dan pekerjaan dan tindakan yang telah diambil

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	Syor: (1) SUHAKAM mengesyorkan supaya pihak-pihak berkuasa memastikan keseragaman undang-undang Islam di seluruh negeri terpelihara dan menyelidik mana-mana peruntukan dalam undang-undang Islam yang boleh menimbulkan diskriminasi terhadap wanita. SUHAKAM juga mengesyorkan supaya dalam mentafsirkan undang-undang Islam, perlu ada kepastian mengenai pembahagian yang sama rata terhadap hak dan tanggungjawab antara lelaki dan perempuan.	Jabatan Peguam Negara/ Jabatan Kemajuan Islam Malaysia / Jabatan Kehakiman Syariah Malaysia	tahap pendidikan dan pekerjaan dan tindakan yang telah diambil untuk mendidik masyarakat berkenaan hak-hak asasi manusia. • Bahagian II yang mengandungi maklumat-maklumat tertentu berhubung langkah-langkah yang telah diambil oleh Malaysia demi memenuhi obligasi-obligasinya dibawah Perkara 1 sehingga 16 Konvensyen. <u>Jabatan Kemajuan Islam Malaysia</u> Mengenai keseragaman undang-undang Islam, usaha-usaha telah dijalankan untuk memastikan keseragaman undang-undang Islam di seluruh negara. Sehingga kini lima undang-undang Islam seragam telah diterima pakai oleh negeri-negeri iaitu: i. Undang-undang Pentadbiran Agama Islam; ii. Undang-undang Keluarga Islam; iii. Undang-undang Keterangan Mahkamah Syariah; iv. Undang-undang Tatacara Jenayah Syariah; dan v. Undang-undang Tatacara Mahkamah Syariah Setakat ini tidak terdapat mana-mana peruntukan dalam undang-undang Islam ini yang boleh menimbulkan diskriminasi terhadap wanita. Mengenai pembahagian yang sama rata terhadap hak dan tanggungjawab antara lelaki dan perempuan, undang-undang digubal berpandukan al-Quran dan al-Hadith serta pandangan ulama muktabar khususnya dari Mazhab Syafie. <u>Jabatan Kehakiman Syariah Malaysia:</u> Usaha penyeragaman undang-undang syariah telahpun dibuat oleh Kerajaan di mana pada tahun 2000, lima undang-undang syariah telah diperkenankan oleh Majlis Raja-Raja. Undang-undang tersebut ialah Undang-undang Pentadbiran Agama Islam, Undang-undang Keluarga Islam, Undang-undang Tatacara Mal Mahkamah Syariah, Undang-Undang Tatacara Jenayah Syariah, Undang-Undang Keterangan Mahkamah Syariah. Di antara negeri yang telah meluluskan dan seterusnya mewartakan lima undang-undang yang tersebut di atas ialah negeri Kelantan, Terengganu, Selangor, Melaka, Perak, Negeri Sembilan dan Johor. Negeri Pahang hanya meluluskan dua undang-undang iaitu Undang-undang Tatacara Jenayah sahaja. Manakala negeri Sarawak

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			Undang-undang Tatacara Jenayah sahaja. Manakala negeri Sarawak telah meluluskan lima undang-undang tersebut tetapi belum mewartakan pemakaiannya. Kesemua undang-undang yang telah diseragamkan tetapi belum mewartakan pemakaiannya. Berhubung undang-undang yang telah diseragamkan tersebut, kajian terperinci telah dibuat sebelum diluluskan dan tidak timbul lagi permasalahan diskriminasi terhadap kaum wanita. Ia telah memberi hak yang sama rata kepada kaum wanita dan ia boleh dilaksanakan. pihak itu. <u>Jabatan Peguam Negara:</u> Kerajaan Persekutuan telah mengambil inisiatif untuk menyeragamkan undang-undang Islam di seluruh negara. Dalam hubungan ini, 5 Rang Undang-Undang telah digubal dan diperkenankan oleh Majlis Raja-Raja di mana ianya akan dijadikan *"model laws"* yang digunapakai oleh negeri-negeri semasa penggubalan undang-undang Islam mengenai perkara-perkara yang termaktub dalam 5 Rang Undang-Undang tersebut. Proses ini bertujuan untuk memastikan keselarasan dan keseragaman undang-undang Islam di seluruh negara. Rang Undang-Undang tersebut ialah: • Rang Undang-Undang Pentadbiran Agama Islam; • Rang Undang-Undang Keluarga Islam; • Rang Undang-Undang Tatacara Mal; • Rang Undang-Undang Tatacara Prosedur Jenayah Syariah; dan • Rang Undang-Undang Keterangan Syariah. Undang-undang Islam bukan hanya merupakan suatu perundangan semata-mata tetapi adalah merupakan agama yang disyariatkan kepada orang Islam. Oleh itu, perundangan Islam yang membezakan antara lelaki dan perempuan dalam aspek-aspek tertentu yang telah secara nyata dan jelas disyariatkan oleh Hukum Syarak tidak boleh diubah memandangkan ianya termasuk dalam kepercayaan agama yang hanya terpakai kepada mereka yang menganut agama Islam. Ini sejajar dengan Perkara 11 Perlembagaan Persekutuan. "*Equality*" merupakan suatu konsep falsafah yang abstrak yang tidak boleh dan tidak diniatkan untuk disama ertikan dengan *"similarity"*. Kesamarataan tidak bererti 'sama'. *Human Rights Committee* yang

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			Kesamarataan tidak bererti 'sama'. *Human Rights Committee* yang ditubuhkan menurut *International Covenant on Civil and Political Rights (ICCPR)* sendiri menyatakan pendirian sebegini, contohnya dalam perenggan 8 kepada *"General Comment No. 18 to the ICCPR"*. Antara lain perenggan 8 ini menyebut *"The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance"*.
	(2) SUHAKAM mengesyorkan supaya diadakan dialog terbuka bersama-sama agensi Kerajaan, pertubuhan-pertubuhan dan SUHAKAM sendiri bagi melihat alasan mengapa terdapat reservasi terhadap CEDAW. Di samping itu, ia perlu diadakan untuk mengesyorkan supaya ketetapan reservasi tersebut digugurkan.	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> KPWKM memang bercadang untuk mengkaji semula reservasi ke atas beberapa artikel dalam CEDAW. KPWKM akan mengadakan perbincangan dengan pihak berkuasa tertentu dalam masa terdekat.
	(3) SUHAKAM mengesyorkan Kerajaan menerima pakai peruntukan CEDAW untuk dimasukkan ke dalam perundangan negara. SUHAKAM juga mengesyorkan supaya diwujudkan peruntukan undang-undang yang memberikan hak kepada wanita seperti yang termaktub di dalam CEDAW serta menjadikan Kerajaan berakauntabiliti ke arah itu.	Jabatan Peguam Negara	<u>Jabatan Peguam Negara:</u> Perkara 8(1) Perlembagaan Persekutuan telah dipinda bagi memasukkan faktor jantina sebagai faktor yang tidak boleh didiskriminasikan. Ini bertujuan memenuhi tanggungjawab dan obligasi Malaysia terhadap CEDAW. Jabatan ini juga berpandangan bahawa pada umumnya peruntukan CEDAW boleh diterima dan tidak bercanggah dengan Hukum Syarak sebagaimana diamalkan di Malaysia. Peruntukan-peruntukan yang secara nyata bertentangan dengan Hukum Syarak, ajaran agama-agama lain yang dianuti penduduk negara dan undang-undang adat kaum peribumi di Sabah dan Sarawak tidak wajar diterima pakai sebelum implikasinya dikaji dan diteliti secara mendalam. Kedudukan yang diambil ini telahpun dimaklumkan oleh Malaysia sewaktu Kerajaan meratifikasikan CEDAW melalui Deklarasi yang dibuat dalam instrumen ratifikasi.
	(4) Hendaklah diwujudkan penyemakan terhadap mana-mana undang-undang, dasar, mekanisme, sistem perundangan jenayah bagi meneliti sama ada wujudnya diskriminasi terhadap wanita. Undang-undang berbentuk *gender neutral* perlulah diperiksa bagi memastikan kesannya tidak mendiskriminasikan wanita.	Jabatan Peguam Negara	<u>Jabatan Peguam Negara:</u> Pandangan Jabatan ini untuk syor-syor dalam sub-perenggan (1) dan (3) di atas adalah terpakai. Selain itu, Jabatan Peguam Negara ingin memaklumkan bahawa fungsi kajian dan semakan terhadap undang-undang bukan sahaja dibuat terhadap undang-undang yang melibatkan diskriminasi terhadap wanita. Penyemakan undang-undang ini adalah merupakan usaha yang berterusan meliputi pelbagai isu.
	(5) SUHAKAM mencadangkan Kerajaan menerima pakai pendekatan yang lebih menyeluruh dan bersepadu untuk	Kementerian Pembangunan	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u>

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	memasukkan perspektif *gender* ke dalam setiap dasar dan program. Perlu diwujudkan pemeriksaan yang sistematik mengenai kesan-kesannya terhadap lelaki, wanita pada peringkat persediaan, pelaksanaan dan pemantauan polisi dan program yang hendak dijalankan.	Wanita, Keluarga dan Masyarakat	Kerajaan telah mengadakan Dasar Wanita Negara, Pelan Tindakan Pembangunan Wanita, kajian semula perundangan yang melibatkan wanita, kanak-kanak dan keluarga. Semenjak dari Rancangan Malaysia Keenam lagi dasar dan program yang melibatkan wanita telah dirangka atau mengambilkira kepentingan wanita dan dilaksanakan oleh pelbagai agensi. Semenjak penubuhan Kementerian pada tahun 2001, penekanan penglibatan wanita dalam arus perdana (*gender mainstreaming*) amat dititikberatkan melalui program pembangunan kapasiti, advokasi dan literasi undang-undang. Sementara itu pelbagai mekanisma ditubuhkan di peringkat nasional dan negeri untuk mengkaji isu, merangka dasar dan program untuk wanita dan meningkatkan *networking* di antara kerajaan dengan badan bukan kerajaan dan sektor swasta dalam pelaksanaan program dan aktiviti untuk wanita. Kerjasama di peringkat antarabangsa juga diwujudkan dalam mendapatkan kepakaran dan bantuan kewangan bagi merangka perancangan dan pelaksanaan program untuk mencapai kesaksamaan *gender*.
	(6) Agensi Kerajaan juga perlu memasukan perspektif *gender* ke dalam setiap agendanya.	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	Pada masa ini Kementerian sedang menjalankan kerjasama dengan UNDP untuk melaksanakan program *'capacity building on gender mainstreaming'* yang antaranya dengan mengadakan program latihan, menyediakan Pelan Tindakan, pelaksana, pengesanan dan pelaporan bagi CEDAW dan pembangunan indeks *gender*. Kementerian juga sedang berusaha untuk membangunkan data asas *gender* yang boleh dijadikan ukuran dalam pencapaian wanita di setiap sektor. Sementara itu belanjawan *gender* diperkenalkan di beberapa agensi kerajaan sebagai perintis supaya perspektif *gender* boleh diambilkira dalam pelaksanaan projek-projek di agensi berkaitan. Kerajaan telah bersetuju untuk menubuhkan Jawatankuasa Kabinet mengenai Kesaksamaan *gender* yang bertujuan meningkatkan kapasiti wanita dan penglibatan mereka dalam arus perdana pembangunan negara.
	(7) Penglibatan *stakeholder* dalam merangka laporan CEDAW Malaysia. SUHAKAM mengesyorkan supaya Kementerian Pembangunan Wanita, Keluarga dan Masyarakat turut menjemput SUHAKAM, dan beberapa tokoh pertubuhan-pertubuhan masyarakat untuk terlibat secara bersama-sama dalam merangka laporan	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	<u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> Dalam penyediaan Laporan CEDAW yang pertama dan kedua KPWKM telah menjemput wakil badan bukan Kerajaan untuk bersama-sama meneliti draf Laporan yang disediakan oleh KPWKM. Input dan pandangan mereka telah diambilkira dalam proses memuktamadkan

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	berkenaan. **(8)** Perbincangan meja bulat tahunan mengenai CEDAW memberi peluang kepada pihak-pihak yang berminat untuk membincangkan mengenai isu hak-hak wanita dan meningkatkan kepekaan terhadap layanan sama rata. Kesannya boleh menguatkan kerjasama yang berkesan antara SUHAKAM, NGO dan pertubuhan-pertubuhan masyarakat.	Kementerian Pembangunan Wanita, Keluarga dan Masyarakat	Laporan berkenaan. KPWKM akan turut menjemputkan wakil SUHAKAM bagi membincangkan penyediaan Laporan CEDAW yang akan datang. <u>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat:</u> KPWKM mengalu-alukan inisiatif SUHAKAM menganjurkan perbincangan meja bulat tahunan mengenai CEDAW. Sesi ini juga diharap dapat digunakan untuk menyampaikan maklumat mengenai langkah yang telah diambil oleh Kerajaan dalam memenuhi obligasi terhadap CEDAW.
16	**Hak Asasi Manusia Di Sekolah-Sekolah** --- SUHAKAM dengan kerjasama 5 buah IPTA telah melakukan kaji selidik terhadap 40 buah sekolah untuk melihat tahap pengetahuan guru-guru dan pelajar-pelajar terhadap hak asasi manusia. Di samping itu, untuk melihat sejauh mana amalan-amalan di sekolah didapati telah melanggar prinsip hak asasi manusia ini. Kaji selidik ini akhirnya bertujuan membantu SUHAKAM bekerjasama dengan Kementerian Pelajaran untuk mempromosikan hak asasi manusia di sekolah. **Pemerhatian:** Rumusan hasil kaji selidik SUHAKAM adalah seperti berikut: (a) sebanyak 6.2% guru-guru dan 7% pentadbir-pentadbir sekolah menerima maklumat mengenai *The Convention on The Rights Of Children* (CRC). Ini menunjukkan ramai di kalangan guru, pentadbir dan pegawai di Kementerian Pendidikan tidak menyedari CRC sekalipun ia telah giat dikempenkan pada tahun 2001; (b) sebanyak 60% pelajar-pelajar dan 50% guru-guru mendakwa bahawa diskriminasi wujud di sekolah. 12.9% pelajar-pelajar dan 5.7% guru-guru memilih 'selalu' terhadap soalan mengenai kekerapan wujud diskriminasi ini;	Kementerian Pelajaran	<u>Kementerian Pelajaran:</u> Kementerian Pelajaran Malaysia khususnya Jabatan Pendidikan Khas tidak mengamalkan diskriminasi kaum, jantina, agama dan juga jenis kecacatan dalam menyediakan perkhidmatan pendidikan untuk murid-murid berkeperluan khas dengan tidak menjangkau bidang kuasa perkhidmatan yang disediakan oleh Kementerian Pembangunan Wanita, Keluarga dan Masyarakat.

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	(c) 28.8% guru-guru dan 14.1% pentadbir-pentadbir sekolah memilih tidak ada salahnya mencemuh pelajar untuk menggalakkan mereka belajar dengan lebih tekun; (d) 50% pelajar-pelajar memilih rotan sebagai amalan biasa di sekolah bagi menangani masalah disiplin. 80% guru dan 70% pentadbir sekolah bersetuju supaya rotan dijadikan mekanisme untuk menangani masalah disiplin di sekolah. SUHAKAM juga mendapati persepsi Kementerian Pendidikan terhadap hak asasi hanyalah tertakluk kepada melindungi hak kanak-kanak, menghormati hak-hak wanita, menghormati hak pekerja, menghormati hak orang kurang upaya dan melindungi hak pengguna.		
17	**BAB KEEMPAT: HARI HAK ASASI MANUSIA MALAYSIA 2003** --- Sempena sambutan hari Hak Asasi Manusia pada 9 September, SUHAKAM telah menganjurkan persidangan selama dua hari. Persidangan tersebut membawa tema 'Hak Asasi dan Pentadbiran Undang-Undang'. Tujuan mengadakan prosiding adalah untuk mempromosikan kepekaan terhadap hak asasi seperti yang diperuntukkan di dalam Perlembagaan Persekutuan dan Deklarasi Sejagat Mengenai Hak Asasi Manusia dan untuk menyepadukan prinsip hak asasi manusia ke dalam penguatkuasaan undang-undang dan sistem kehakiman. Topik-topik yang telah dibincangkan merangkumi hak asasi manusia dan kehakiman, hak asasi manusia dan penguatkuasaan undang-undang dan pentadbiran keadilan, masa untuk anjakan paradigma. Pemerhatian yang telah dibuat oleh SUHAKAM berdasarkan topik-topik yang dibahaskan sepanjang persidangan adalah seperti berikut:		

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	Pemerhatian: Anjakan paradigma perlu diwujudkan terhadap 4 perkara yang dikenal pasti seperti berikut: (1) Keperluan penguat kuasa undang-undang untuk: (a) melaksanakan undang-undang dan dasar dengan lebih telus dan berkesan; (b) memantapkan dan memperbaiki tanggungjawab yang mereka laksanakan agar mematuhi pada setiap masa prinsip hak asasi manusia. Ia bertujuan bagi mengurangkan kejadian-kejadian seperti kezaliman semasa dalam tahanan, polis tidak bertindak dan rasuah; dan (c) memperbaiki strategi untuk membantu mengurangkan jenayah dan melaksanakan keadilan kepada mangsa, defendan dan masyarakat.	Kementerian Keselamatan Dalam Negeri / Kementerian Hal Ehwal Dalam Negeri / Kementerian Perumahan dan Kerajaan Tempatan	<u>Kementerian Keselamatan Dalam Negeri:</u> Pasukan Polis menyambut baik saranan orang ramai supaya PDRM membuat anjakan paradigma agar lebih telus dan berkesan, memantapkan tanggungjawab sekaligus mengelakkan jenayah rasuah serta mengurangkan kadar jenayah. Sehubungan dengan itu, tindakan berikut sedang/akan diambil: • suspek akan direman hanya jika penyiasatan belum selesai. Tempoh reman yang dipohon juga adalah benar-benar perlu. Usaha mengkoordinasikan aspek penyiasatan dalam kes-kes yang mana suspek terlibat dalam kes-kes di negeri/daerah lain sedang dibuat supaya tempoh reman tidak berpanjangan. Walau bagaimanapun untuk kemudahan orang ramai, ada kalanya suspek juga direman oleh Polis negeri/daerah lain untuk memudahkan saksi yang perlu hadir untuk sesi kawad cam dan sebagainya; • tahanan akan diberitahu sebab penahanannya dan akan dibenarkan berjumpa peguam/keluarga jika sekiranya dalam pertimbangan Polis ia tidak mengganggu/menjejaskan penyiasatan Polis dalam mengumpulkan bukti untuk pendakwaan; • anggota Polis telah diarah mengambil tindakan segera ke atas semua pengaduan orang awam dan mempertingkatkan mutu perkhidmatan kepada orang awam; dan • maklum balas 'delivery system' sedang dibuat dan tindakan susulan untuk membaiki kelemahan sedang dijalankan. Arahan-arahan telah dikeluarkan dari semasa ke semasa bagi memberikan satu garis panduan yang jelas kepada semua pegawai/anggota supaya dapat memberikan perkhidmatan terbaik kepada masyarakat. Pucuk pimpinan PDRM tidak akan bertolak ansur dengan mana-mana pegawai/anggota yang menyalahgunakan kuasa. Pada tahun 2002, seramai 53 pegawai daripada pelbagai pangkat telah ditangkap oleh BPR. Angka ini telah meningkat kepada 78 orang pada tahun 2003. Bagi tahun 2003, seramai 59 pegawai dan anggota telah

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			tahun 2003. Bagi tahun 2003, seramai 59 pegawai dan anggota telah dituduh di Mahkamah mengikut pelbagai kesalahan jenayah.
	(2) Perlunya latihan yang lebih pro-aktif dan berterusan kepada penggubal, penguat kuasa dan pentafsir undang-undang, dalam bidang perundangan yang berubah dengan begitu pesat dan pentadbirannya agar ia mengambil perhatian terhadap hak asasi manusia.	Jabatan Peguam Negara	<u>Jabatan Peguam Negara:</u> Jabatan ini berpandangan bahawa latihan yang pro-aktif dan berterusan seperti mana pemerhatian SUHAKAM sedang dan telah pun dilaksanakan di Jabatan Peguam Negara. Berhubung dengan perkara ini, Jabatan Peguam Negara telah mendapat manfaat secara langsung daripada penubuhan Institut Latihan Kehakiman dan Perundangan (ILKAP) di mana ILKAP telah menyediakan program latihan yang berkualiti selaras dengan hasrat ke arah peningkatan kecekapan, kewibawaan dan perkhidmatan profesionalisma pegawai-pegawai di Jabatan Peguam Negara termasuk dalam perkara-perkara yang melibatkan isu-isu hak asasi manusia. Anggota-anggota Perkhidmatan Perundangan dan Kehakiman sememangnya diberikan latihan dari semasa ke semasa mengenai perkembangan terkini dalam bidang undang-undang yang berhubung dengan hak-hak asasi manusia.
	(3) Perlunya diadakan dan dipertingkatkan semakan dan pembaharuan undang-undang secara berkala melalui proses perbincangan/konsultasi bersama-sama dengan *stakeholders*.	Jabatan Peguam Negara	<u>Jabatan Peguam Negara:</u> Jabatan ini ingin memaklumkan bahawa semakan dan pembaharuan undang-undang adalah sentiasa dipertingkatkan dan diberikan penekanan di Jabatan Peguam Negara. Dalam hal ini, Bahagian Penyemakan dan Pembaharuan Undang-Undang, Jabatan Peguam Negara mempunyai objektif untuk memastikan undang-undang adalah terkini, tepat dan menepati kehendak keperluan semasa. Bahagian ini juga menyediakan naskhah-naskhah sahih semakan dan cetakan semula undang-undang yang terkini dan bertanggungjawab melaksanakan program peluasan undang-undang ke Sabah, Sarawak dan Wilayah Persekutuan Labuan. Selain daripada itu, Bahagian ini juga bertanggungjawab menjalankan kajian yang lengkap dalam memperbaharui undang-undang mengikut Perlembagaan dan undang-undang. Adalah menjadi fungsi Bahagian ini mengkaji dan menangani undang-undang lapuk, mengelakkan pertindihan, menyeragamkan dan memodenkan dan mengharmonikan undang-undang. Semakan dan pembaharuan terhadap semua jenis undang-undang adalah merupakan fungsi dan tugas yang dilaksanakan oleh Bahagian ini secara berterusan. Jawatankuasa Ad Hoc Pembaharuan Undang-Undang juga ditubuhkan bagi melaksanakan proses ini. *Stakeholders* serta semua pihak yang berkaitan dijemput untuk menduduki Jawatankuasa Ad Hoc ini.

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	(4) Perlunya diwujudkan dan diperbaiki secara yang lebih pro aktif strategi-strategi kaedah-kaedah kerja bagi memastikan kepercayaan masyarakat terhadap agensi penguat kuasa undang-undang terpelihara dan bertambah baik. **Syor:**	Kementerian Keselamatan Dalam Negeri	
	(a) SUHAKAM mengesyorkan supaya Badan Kehakiman sentiasa kemas kini terhadap sesuatu bidang yang berubah dengan pesat. Bidang-bidang ini adalah seperti hak asasi manusia, harta intelek, demokrasi, agama dan alam sekitar. Keperluan terhadap bidang-bidang ini mendesak agar diadakan anjakan paradigma supaya ahli-ahli dalam Badan Kehakiman mengikuti latihan dan latihan semula bagi mendapatkan pendedahan baru;	Jabatan Peguam Negara / Pejabat Ketua Pendaftar Mahkamah Persekutuan	<u>Jabatan Peguam Negara:</u> Jabatan ini berpandangan bahawa syor ini melibatkan Badan Kehakiman yang mana ulasan dari Badan tersebut adalah lebih sesuai. Walau bagaimanapun, Jabatan ini mendapati bahawa peranan ini dimainkan khususnya oleh Institut Latihan Kehakiman dan Perundangan (ILKAP) yang juga memberikan latihan serta pendedahan kepada bukan sahaja anggota-anggota Perkhidmatan Kehakiman dan Perundangan malah para Hakim Mahkamah atasan di Malaysia.
	(b) terdapat persepsi yang menyatakan bahawa Peguam Negara berkuasa ke atas Majistret. Ini memandangkan suasana perkhidmatan perundangan dan kehakiman sering memperlihatkan pertukaran dalaman antara pegawai-pegawainya. Sehubungan itu, adalah disyorkan supaya melalui proses konsultasi bersama-sama *stakeholders*, satu cadangan perlulah diteliti untuk memisahkan Suruhanjaya Perkhidmatan Perundangan dan Kehakiman kepada dua badan iaitu Suruhanjaya Perkhidmatan Perundangan dan Suruhanjaya Perkhidmatan Kehakiman;	Jabatan Peguam Negara / Pejabat Ketua Pendaftar Mahkamah Persekutuan	<u>Pejabat Ketua Pendaftar Mahkamah Persekutuan:</u> Persepsi yang menyatakan bahawa Peguam Negara berkuasa ke atas Majistret adalah tidak betul. Secara pentadbiran, yang berkuasa ke atas Majistret adalah Y.A.A. Ketua Hakim Negara, Y.A.A. Hakim-hakim Besar dan Ketua Pendaftar. Pertukaran pegawai-pegawai perundangan dan kehakiman berlaku kerana kedua-duanya adalah berada di bawah suatu Suruhanjaya yang sama. Pertukaran dibuat bagi maksud memberikan pendedahan yang pelbagai kepada pegawai-pegawai dan ini akan menyumbang kepada kemajuan kerjaya mereka. <u>Jabatan Peguam Negara:</u> Persepsi bahawa Peguam Negara berkuasa ke atas Majistret di dalam konteks sebagaimana disebut oleh SUHAKAM adalah suatu persepsi yang tidak mempunyai asas. Persoalan mengenai persepsi sepatutnya tidak perlu dibangkitkan kerana selain ia merupakan satu isu subjektif yang tidak mungkin tamat perbincangannya. Ia juga adalah isu yang tidak wajar diberi pertimbangan berat oleh SUHAKAM sehingga memungkinkan ia dimasukkan ke dalam Laporan Tahunan SUHAKAM. Keringat dan masa yang dihabiskan mengenai isu sebegini lebih wajar

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			disalurkan kepada isu lain yang lebih kritikal dan penting yang tidak disentuh oleh SUHAKAM. Kuasa Peguam Negara ke atas Majistret adalah terhad kepada kuasa-kuasa Peguam Negara di atas kapasiti sebagai Pendakwaraya sepertimana yang diperuntukkan di bawah undang-undang termasuk kuasa-kuasa di bawah peruntukan Seksyen-seksyen 128(i)(c), 135, 339 (i),(ii) dan (iv) Kanun Acara Jenayah. Isu mengenai pertukaran dalaman pegawai-pegawai dalam Perkhidmatan Kehakiman dan Perundangan hendaklah tidak dicampuradukkan dengan isu tugas dan bidangkuasa Majistret (serta Hakim Mahkamah Sesyen). Walaupun Peguam Negara, bersama-sama Hakim Besar Malaya dan Hakim Besar Sabah dan Sarawak terlibat dalam proses pertukaran dalaman pegawai-pegawai Perkhidmatan Kehakiman dan Perundangan, Peguam Negara, Hakim Besar Malaya, Hakim Besar Sabah dan Sarawak serta mana-mana pihak lain tidak terlibat sama sekali tatkala Majistret menjalankan tugas-tugas dan kuasa kehakiman mereka. Suruhanjaya Perkhidmatan Kehakiman dan Perundangan (SPKP) yang ditubuhkan menurut Perkara 138(1), Perlembagaan Persekutuan, seperti suruhanjaya-suruhanjaya yang lain adalah suatu badan yang *"independent"* sungguhpun Peguam Negara menjadi ahli kepada Suruhanjaya itu. Dalam konteks yang sama, SPKP dan isu-isu mengenainya adalah terkeluar dari bidangkuasa Jabatan Peguam Negara. Selain itu juga, cadangan supaya Perkhidmatan Kehakiman dan Perundangan dipisahkan supaya tidak wujud persepsi bahawa Peguam Negara berkuasa ke atas Majistret perlu dibuat kajian yang mendalam kerana ia mempunyai implikasi terhadap seluruh sistem perkhidmatan perundangan dan kehakiman. Pada masa ini, pegawai-pegawai dalam Perkhidmatan Perundangan dan Kehakiman berpeluang untuk didedahkan kepada pengalaman berkhidmat di kedua-dua cabang iaitu perundangan dan kehakiman.
	(c) SUHAKAM mengambil perhatian yang serius mengenai amalan reman secara '*road show*' oleh pihak berkuasa	Pejabat Ketua Pendaftar Mahkamah	<u>Pejabat Ketua Pendaftar Mahkamah Persekutuan:</u> Syor yang dikemukakan oleh SUHAKAM ini sememangnya sedang

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	berikutan kegagalan Mahkamah memainkan peranan secara lebih berkesan dalam mempertimbangkan permohonan untuk mendapatkan perintah tahanan reman di bawah seksyen 117 Kanun Acara Jenayah. Adalah disyorkan supaya: (1) Ketika mendengar permohonan reman, Majistret hendaklah: • menyiasat bilakah seseorang itu mula ditahan dan sama ada dia telah dipindahkan dari satu kawasan ke kawasan yang lain. Yang lebih penting, berapa lama orang yang disyaki telah berada dalam tahanan; • menyiasat kebajikan orang yang ditahan bagi memastikan tiada penindasan telah berlaku; • meneliti dengan penuh berhati-hati setiap permohonan reman dan berpuas hati sepenuhnya bahawa terdapat alasan yang cukup untuk menahan seseorang. Pertimbangan tersebut bukanlah hanya diberikan atas dasar permintaan daripada pegawai penyiasat;	Persekutuan	dilaksanakan oleh majistret-majistret di seluruh negara pada masa ini. Arahan Amalan Y.A.A. Ketua Hakim Negara Bil. 3 Tahun 2003 telah dikeluarkan kepada semua majistret mengenai proses-proses dan langkah-langkah yang harus dilakukan oleh seseorang majistret semasa membenarkan permohonan reman. Arahan tersebut juga merupakan panduan kepada semua majistret pada masa kini. Antara lain arahan tersebut menggariskan prosedur-prosedur yang harus diikuti oleh seorang pegawai polis sebelum membuat permohonan reman. Majistret yang mendengar permohonan tersebut juga dikehendaki mengikut prosedur antaranya menanyakan bila dan berapa lama suspek ditahan dan juga latar belakangnya. Jika suspek ingin diwakili oleh seorang peguam, majistret perlu memberi peluang kepada suspek untuk mendapatkan seorang peguam. Semasa mendengar permohonan, majistret juga dikehendaki meneliti alasan-alasan yang telah diberikan dan kemudian membuat catatan sebab-sebab permohonan telah dibenarkan. Sebagai kesimpulannya, syor yang telah dikemukakan oleh SUHAKAM ke atas permohonan reman ini telah dan sedang dipraktikkan oleh semua majistret yang mendengar permohonan reman.
	(2) pihak polis tidak sepatutnya memohon perintah untuk menahan reman orang yang ditahan melainkan setelah mereka pasti tidak dapat menjalankan siasatan sekiranya seseorang itu tidak berada dalam tahanan. Penyiasatan hendaklah dilaksanakan dengan cepat dan berkesan pada setiap masa. Apabila mustahak dan sesuai, kerjasama antara polis dari kawasan-kawasan yang lain hendaklah dipertingkatkan bagi mengurangkan keperluan kepada reman '*road show*'.	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Kuasa untuk menahan seseorang tahanan lebih daripada 24 jam terletak di bawah Majistret. Seksyen 117 Kanun Prosedur Jenayah adalah mengenai prosedur jika penyiasatan tidak dapat diselesaikan dalam tempoh 24 jam. Pihak Polis telah diberikan kuasa untuk menahan mana-mana orang yang disyaki melakukan apa-apa kesalahan lebih daripada 24 jam dengan cara mengemukakan permohonan reman kepada Majistret. Majistret dengan kuasa yang ada padanya yang diberikan di bawah Seksyen 117(II) Kanun Prosedur Jenayah boleh meluluskan tahanan reman tidak lebih daripada 15 hari. Semasa permohonan dibuat, pihak Polis akan mengemukakan sebab-sebab mengapa seseorang tahanan itu hendak ditahan melebihi 24 jam. Adakalanya pihak Polis memerlukan masa yang panjang bagi menyelesaikan siasatan terhadap kes-kes yang serius. Tahanan dibebaskan serta-merta dengan jamin Polis sebaik sahaja siasatan selesai.

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	(d) Artikel 5(3) Perlembagaan Persekutuan memperuntukkan orang yang ditahan diberikan alasan mengenai penahanannya dan dibenarkan untuk mendapat nasihat dan dibela oleh peguam pilihannya. Adalah disyorkan supaya : • orang yang ditahan dibenarkan menemui peguamnya; • Peraturan-Peraturan Lokap 1953 dipinda bagi mencerminkan cadangan ini;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Pihak PDRM sentiasa akur pada peruntukan Artikel 5(3) Perlembagaan Persekutuan dalam menjalankan tugasnya. Setiap orang yang ditahan akan dimaklumkan sebab penahannya dan mereka mempunyai hak mendapatkan nasihat peguambela. Pihak PDRM juga sedang mengkaji Peraturan Lokap 1953 untuk memantapkan lagi perkhidmatan PDRM serta bersesuaian dengan perkembangan semasa.
	(e) Menurut SUHAKAM aduan melibatkan polis gagal bertindak terhadap kes-kes jenayah seperti bunuh, rogol, kecurian semakin bertambah. SUHAKAM mengesyorkan supaya: • semua anggota polis bertindak segera terhadap laporan-laporan yang dibuat oleh orang awam; • semua anggota polis berusaha memberikan perkhidmatan yang mampu meyakinkan masyarakat terhadap badan berkenaan; • pengadu diberitahu maklum balas hasil siasatan polis dengan seberapa segera;	Kementerian Keselamatan Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> Syor SUHAKAM mengenai aduan yang melibatkan Polis gagal bertindak terhadap kes-kes jenayah seperti bunuh, rogol dan kecurian semakin bertambah adalah amat dialu-alukan. PDRM peka dengan laporan yang dibuat oleh orang awam. Tindakan serta-merta akan diambil apabila menerima laporan daripada orang awam. Bagi memastikan perkhidmatan yang bermutu, PDRM sentiasa berusaha dan memberi tumpuan untuk meningkatkan pengetahuan dan kecekapan para pegawainya dari aspek penyiasatan, pendakwaan dan pencegahan jenayah bagi memastikan kadar jenayah di negara ini terutamanya jenayah bunuh, rogol dan kecurian berada di tahap yang terkawal. Semua Ketua Bahagian Siasatan Jenayah Daerah (KBSJD) Polis telah diminta memberi keutamaan kepada mutu siasatan dan penangkapan/pendakwaan suspek dan seterusnya peningkatan kadar penyelesaian kes. Pihak Polis melalui Makmal Forensik di Cheras, Kuala Lumpur telah memperkenalkan penggunaan *'scientific aid/tools'* bagi tujuan membantu dan menyelesaikan penyiasatan. Selain dari itu, semua Ketua Polis Daerah (KPD) telah diarahkan supaya memastikan semua balai-balai Polis di bawah pengawasan mereka menerima semua repot orang ramai. Amaran tindakan disiplin yang keras sehingga ke peringkat buang kerja terhadap pegawai/anggota Polis yang enggan menerima repot telah dikeluarkan. Berdasarkan kekuatan yang ada, PDRM telah digandingkan dengan

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			memberikan satu hasil yang amat memuaskan. Sebagai contoh, mengikut statistik jenayah bunuh yang dilaporkan, sebanyak 565 kes telah dilaporkan pada tahun 2003 berbanding dengan 516 kes pada tahun 2002. Ini menunjukkan peningkatan sebanyak 49 kes atau 9.5%. Daripada jumlah 565 tersebut, 347 kes telah dapat diselesaikan iaitu sebanyak 61.42% dengan 808 tangkapan. Ini menggambarkan bahawa usaha-usaha dan komitmen yang tinggi pihak Polis telah berjaya menyelesaikan kes-kes bunuh lebih daripada 50% dengan menghasilkan tangkapan yang begitu ramai. Bagi kes rogol pula, sebanyak 1,471 kes telah dilaporkan pada tahun 2003 berbanding dengan 1418 kes bagi tahun 2002. Ini menunjukkan peningkatan sebanyak 33 kes atau 3.74%. Daripada jumlah tersebut, sebanyak 1,309 kes bagi tahun 2003 telah dapat diselesaikan atau 88.99% dengan tangkapan seramai 1,127 orang. Ini menunjukkan pihak Polis telah berjaya menyelesaikan kes-kes lebih daripada 80% kes-kes rogol. Bagi kes-kes kecurian, sebanyak 27,638 kes telah dilaporkan berbanding sebanyak 28,043 kes bagi tahun 2002. Ini menunjukkan penurunan sebanyak 405 kes iaitu 1.44%. Daripada jumlah tersebut, sebanyak 1,409 kes telah berjaya diselesaikan iaitu 50.98% dengan tangkapan seramai 9,615 orang. Ini menunjukkan pihak Polis telah berjaya menurunkan kadar kes-kes kecurian bagi tahun 2002 hingga 2003 lebih daripada 50% dengan menghasilkan sejumlah tangkapan yang besar. Pihak Polis mengalu-alukan masyarakat tampil ke hadapan bagi membantu Pasukan Polis dengan menyalurkan seberapa banyak maklumat yang mungkin untuk mengekang kes-kes jenayah daripada berlaku pada masa akan datang. Mengenai syor-syor SUHAKAM supaya pihak pengadu dimaklumkan bagi keputusan hasil penyiasatan Polis, satu arahan khusus telah dikeluarkan pada tahun 2002 supaya semua pegawai-pegawai penyiasat memaklumkan hasil keputusan siasatan. Di samping itu, arahan-arahan juga telah dikeluarkan supaya mana-mana Polis yang menerima pengaduan orang awam supaya bertindak dengan lebih cekap bagi memberi respons kepada laporan tersebut.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	(f) Kelewatan Mahkamah membuat keputusan kes-kes yang dibicarakan. Sehubungan itu, SUHAKAM mencadangkan: • mewujudkan strategi yang lebih pro-aktif untuk mengurangkan kelewatan menyelesaikan kes-kes di Mahkamah termasuklah: - menggunakan peralatan teknologi secara meluas seperti komputer, dalam prosiding di Mahkamah; - membuat pembaharuan-pembaharuan pada peraturan-peraturan termasuklah menggalakkan penggunaan mekanisme resolusi pertikaian alternatif (*alternative dispute resolution*) di mana perlu; dan - mengadaptasi strategi-strategi yang berjaya untuk mengurangkan lambakan kes dan memastikan perbicaraan pantas;	Pejabat Ketua Pendaftar Mahkamah Persekutuan	<u>Pejabat Ketua Pendaftar Mahkamah Persekutuan:</u> Berkenaan syor SUHAKAM agar peralatan teknologi yang meluas digunakan di mahkamah, adalah dimaklumkan bahawa pada masa kini pihak mahkamah sedang dalam proses ke arah 'e-mahkamah' di mana penggunaan komputer di dalam bilik bicara digunakan untuk menggantikan sistem manual yang lama. Sistem ini akan dilaksanakan di dalam masa terdekat ini dan apabila ia dilaksanakan kelak, ia dapat mempercepatkan perbicaraan sesuatu kes. Sistem merakam percakapan saksi juga sedang dalam peringkat perbincangan dengan pihak tertentu untuk dilaksanakan secepat mungkin. Pihak mahkamah juga dari semasa ke semasa membuat kajian terhadap peraturan-peraturan yang sedia ada untuk memastikan ia tidak ketinggalan dan tidak sesuai pada masa kini. Bagi maksud itu, Jawatankuasa Kaedah yang terdiri daripada ahli-ahlinya sentiasa mengadakan mesyuarat dari semasa ke semasa.
	• perbicaraan sesuatu kes tidak sepatutnya ditangguhkan atau ditunda melainkan dengan alasan yang tertentu. Sekiranya tidak dapat dielakkan, pihak Mahkamah atau peguam hendaklah menjelaskan sebab-sebabnya kepada pihak-pihak yang terlibat.	Jabatan Peguam Negara / Pejabat Ketua Pendaftar Mahkamah Persekutuan	<u>Pejabat Ketua Pendaftar Mahkamah Persekutuan:</u> Sesuatu kes tidak ditangguhkan atau ditunda kecuali atas alasan-alasan yang kukuh. Maklum balas di bil.(7) berkaitan. Setiap hakim dan majistret dikehendaki menyediakan statistik setiap bulan berkaitan sebab-sebab penangguhan sesuatu kes yang dibicarakan. Selain dari itu terdapat juga Arahan Amalan Ketua Hakim Negara Bil.1 Tahun 2003 di mana berkehendakkan setiap hakim dan majistret yang telah selesai mendengar sesuatu kes, memberi keputusan dalam tempoh empat minggu. Setelah selesai memberi keputusan setiap hakim dan majistret juga terikat untuk menyediakan alasan penghakiman dalam tempoh lapan minggu. Arahan ini telah dikeluarkan melalui Pekeliling Ketua Pendaftar Bil.1 Tahun 2002. <u>Jabatan Peguam Negara:</u> Jabatan ini memaklumkan syor ini adalah amalan dan prosedur standard yang terpakai kepada Pegawai-pegawai Jabatan ini yang menghadiri perbicaraan di Mahkamah. Jabatan ini seterusnya memaklumkan bahawa kuasa untuk menangguhkan sesuatu perbicaraan adalah

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			tertakluk kepada budibicara Mahkamah setelah meneliti permohonan dan alasan-alasan untuk penangguhan dan faktor-faktor yang berkaitan dengan sesuatu kes yang terlibat. Penangguhan kes di Mahkamah tidak dibuat dengan sewenang-wenangnya dan Mahkamah sentiasa menekankan prinsip *"justice delayed is justice denied"* dan telah mengambil tindakan tegas dalam memastikan penangguhan tidak dibuat sebagai suatu taktik untuk melengah-lengahkan kes yang dibicarakan. Penangguhan sesuatu kes tidak hanya disebabkan oleh Mahkamah tetapi dipengaruhi oleh pelbagai faktor di luar kawalan Mahkamah seperti permohonan oleh peguambela, ketidakhadiran saksi-saksi, laporan-laporan tertentu tidak siap untuk dikemukakan dan sebagainya. Suatu pendekatan yang holistik perlu diambil oleh semua pihak yang terlibat dan tidak hanya tertumpu kepada satu pihak sahaja.
	(g) Pengecualian/kebebasan semakan kehakiman terhadap keputusan pihak eksekutif dalam beberapa peruntukan undang-undang seperti *Akta Mesin Cetak* dan Penerbitan 1984 dan Akta Keselamatan Dalam Negeri 1960 diperhatikan secara serius oleh SUHAKAM. SUHAKAM menegaskan bahawa perlunya diwujudkan *check and balance* dalam pelaksanaan kuasa oleh pihak eksekutif. Sehubungan itu adalah disyorkan supaya dikaji semula mana-mana peruntukan undang-undang yang dapat mengecualikan/memberikan kebebasan bidang kuasa semakan kehakiman melalui proses konsultasi. Ia bertujuan untuk menghindar penyalahgunaan kuasa oleh Agensi Penguatkuasa Kerajaan.		
	BAB KESEBELAS: LAPORAN PEJABAT SUHAKAM DI SABAH DAN SARAWAK		
18	**Kemudahcapaian Kemudahan Asas (Di Sarawak)** --- **Pemerhatian:**		

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	(i) Murid-murid sekolah rendah di kawasan pedalaman Sarawak terpaksa bersekolah pusat yang jauh dari kampung mereka. Tanpa kemudahan, mereka terpaksa tinggal jauh dari ibu bapa. Ini menyumbang kepada kadar tinggi pembuangan pelajar dan terdapat kanak-kanak tidak didaftarkan memasuki sekolah. Sekolah-sekolah di kawasan pedalaman ini kekurangan kemudahan asas, guru-guru berkelayakan, berdedikasi dan kekurangan dari segi sumber kewangan. Di samping itu, tiada langsung kemudahan pra-persekolahan di kawasan-kawasan terpencil. NGO yang menjalankan pra-persekolahan pula sering menghadapi masalah kekurangan kakitangan dan kemampuan dari segi kewangan yang biasanya akan berakhir dengan penutupan sekolah tersebut.	Kementerian Pelajaran	
	(ii) Penduduk pedalaman di kawasan terpencil di Sarawak menghadapi kesukaran untuk mendapatkan kemudahan perubatan khususnya bagi kes-kes kecemasan dan wanita bersalin. Kesukaran kecapaian kemudahan perubatan telah menjejaskan tahap kesihatan.	Kementerian Kesihatan	<u>Kementerian Kesihatan:</u> Sehingga 31 Disember 2003, terdapat sebanyak 8 hospital bahagian, 11 hospital daerah, 197 klinik kesihatan, 21 klinik desa, dan 24 klinik kesihatan ibu dan anak, 121 klinik bergerak (darat & sungai) dan 173 jumlah lokasi perkhidmatan udara di Sarawak. Lapan puluh peratus (80%) daripada fasiliti kesihatan tersebut terletak di kawasan luar bandar. Selain itu, perkhidmatan MEDEVAC (Medical Evacuation) juga disediakan di negeri Sarawak, di mana kes-kes kecemasan akan diterbangkan dari klinik dengan helikopter ke hospital. Selain daripada perkhidmatan yang disediakan oleh KKM, terdapat juga khidmat sukarela dari komuniti. Wakil Kesihatan Kampung adalah dipilih oleh komuniti untuk memberi khidmat kesihatan khas di kawasan masing-masing. Mereka ini turut diberi latihan dari segi aspek pencegahan, promosi kesihatan dan bantuan kecemasan yang basik. KKM juga sedang mengambil langkah-langkah yang perlu untuk membina lebih banyak klinik-klinik kesihatan di kawasan pedalaman Sarawak dalam Rancangan Malaysia Ke-9. Sebagai contoh, KKM sekarang ini sedang dalam proses untuk membina klinik kesihatan di Belaga.
	(iii) Pengangkutan sungai bergantung kepada keadaan cuaca dan selalunya lebih mahal.	Kementerian Pengangkutan	
	(iv) Kebanyakan kawasan penduduk di pedalaman tiada bekalan elektrik. Sesetengah kawasan dibekalkan dengan	Kementerian Tenaga, Air dan Komunikasi	<u>Kementerian Tenaga, Air dan Komunikasi:</u> Kerajaan memang menyedari bahawa sebahagian besar penduduk di

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	generator. Kekurangan kemudahan elektrik memberi impak negatif terhadap pendidikan, kesihatan dam ekonomi.		kawasan pedalaman Sarawak tidak mempunyai kemudahan bekalan elektrik yang sempurna. Keadaan ini disebabkan oleh pembekalan elektrik ke kawasan berkenaan memerlukan kos yang tinggi berdasarkan faktor-faktor seperti kedudukannya yang berselerak dan terpencil serta jauh daripada stesen-stesen penghantaran elektrik. Namun demikian pelaksanaan projek-projek ini akan diberi perhatian semasa menyediakan Rancangan Malaysia Ke-9 nanti. Dalam pada itu, Kementerian Tenaga, Air dan Komunikasi, bersama dengan Kementerian Kemajuan Luar Bandar dan Wilayah serta Perbadanan Pembekalan Elektrik Sarawak (SESCO) sedang mengkaji rancangan dan tindakan untuk membangunkan sumber-sumber alternatif yang lain yang dapat digunakan bagi tujuan membekalkan elektrik di kawasan pendalaman Sarawak seperti penggunaan sistem solar *hybrid*. Adalah menjadi hasrat Kerajaan supaya seluruh negeri Sarawak memperolehi bekalan elektrik yang sempurna menjelang tahun 2020.
	(v) Sebahagian sektor yang kecil di kalangan penduduk di kawasan pedalaman tidak mempunyai bekalan air yang selamat dan boleh diharapkan (*reliable*). Kelodak / lumpur menyebabkan pencemaran sungai yang secara tradisi menjadi punca bekalan air. Pertambahan penduduk tanpa kemudahan asas seperti sistem pembuangan najis di sungai membahayakan lagi kesihatan.	Kementerian Tenaga, Air dan Komunikasi	<u>Kementerian Tenaga, Air dan Komunikasi:</u> Pada masa sekarang tanggungjawab pembekalan bekalan luar bandar terletak di bawah bidang kuasa Kementerian Pembangunan Luar Bandar dan Wilayah. Sementara itu, aspek pengawalan pencemaran sungai pula adalah di bawah bidang kuasa Jabatan Alam Sekitar, Kementerian Sumber Asli dan Alam Sekitar. Bidang tugas Kementerian Tenaga, Air dan Komunikasi (KTAK) pula adalah terhad kepada pembekalan bekalan air dalam bandar. Pada masa sekarang wujud ketidakseragaman dari aspek kawal selia dan regulatori industri air negara memandangkan hal berkaitan dengan air adalah di bawah bidang kuasa Kerajaan Negeri. Oleh yang demikian, KTAK kini dalam proses untuk mewujudkan sebuah badan kawal selia dan regulatori iaitu Suruhanjaya Perkhidmatan Air Negara (SPAN) sebagai badan regulatori tunggal bagi mengawalselia pembangunan industri air negara pada masa hadapan. SPAN juga akan memberi ruang kepada pelaksanaan penguatuasaan secara bersepadu dijalankan dengan lebih efektif dan menyeluruh.
19	**Kemerosotan Alam Sekitar (Di Sarawak)** --- **Pemerhatian:** (a) Walaupun terdapat garis panduan yang jelas, syarikat	Kementerian Sumber	

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	pembalakan dan pemilik estet di Sarawak masih menjalankan aktiviti secara yang tidak mesra alam. Ini menyebabkan kekurangan dan penghapusan habitat semula jadi sedangkan Kaum Penan bergantung kepada sungai dan hutan sebagai sumber makanan dan pendapatan mereka dan keadaan ini telah menyukarkan kehidupan mereka.	Asli dan Alam Sekitar / Pejabat SUK Sarawak	
	(b) Deforestasi telah mengurangkan kualiti air sungai dan ikan-ikan di dalam sungai. Ini menyebabkan kesukaran untuk mendapatkan sumber air bersih dan sumber makanan sungai. Pencemaran ini adalah disebabkan oleh sikap tidak peduli syarikat pembalakan dan estet terhadap perlindungan kawasan air dan tebing sungai.	Kementerian Sumber Asli dan Alam Sekitar / Pejabat SUK Sarawak	
	(c) Penduduk pedalaman menghadapi kesukaran mendapatkan dokumen pendaftaran kelahiran, perkahwinan dan kematian kerana keadaan kawasan yang sangat terpencil, jauh dan kekurangan pengangkutan yang baik serta kemudahan komunikasi. Ini memberikan impak negatif kepada hak asasi terhadap pendidikan, pekerjaan, kerakyatan dan kelayakan mengundi.	Kementerian Hal Ehwal Dalam Negeri / Kementerian Pengangkutan/ Kementerian Pelajaran / Kementerian Sumber Manusia / Kementerian Tenaga, Air dan Komunikasi / Suruhanjaya Pilihan Raya	<u>Kementerian Hal Ehwal Dalam Negeri:</u> Pihak Kerajaan memang menyedari masalah mendapatkan dokumen sijil kelahiran, kad pengenalan dan dokumen lain seperti sijil kematian dan perkahwinan terutamanya bagi penduduk pendalaman Sabah dan Sarawak. Menyedari hakikat tersebut pihak Kerajaan melalui pihak Jabatan Pendaftaran Negara Negeri Sabah dan Sarawak telah mengambil tindakan seperti berikut: (i) Mengujudkan Unit Khas Bergerak yang berfungsi mengadakan lawatan khas di kawasan pendalaman Negeri Sabah dan Sarawak secara berjadual; (ii) Bagi negeri Sarawak, Unit Khas ini mempunyai 61 orang pegawai dan kakitangan dan bagi negeri Sabah unit ini mempunyai 71 orang pegawai dan kakitangan. Selain daripada itu unit ini dibekalkan juga kenderaan Pacuan Empat Roda dan peralatan-peralatan pengkomputeran dan kamera. Unit ini akan merancang dan menjadualkan lawatan mereka mengikut zon dan kepadatan penduduk yang tidak mempunyai dokumen. (iii) Kemudahan-kemudahan lain juga diberikan kepada penduduk pendalaman negeri Sabah dan Sarawak seperti kelonggaran dokumen bukti dan denda daftar lewat bagi permohonan daftar lewat kelahiran dan kad pengenalan.

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			(iv) Bagi menerapkan kesedaran kepada orang ramai mengenai penting dan perlunya memiliki dokumen pengenalan, pihak Jabatan Pendaftaran Negara kedua-dua negeri juga mengadakan Majlis Penerangan melalui secara langsung atau juga melalui media. Program ini akan lebih berjaya lagi jika disertai bersama-sama oleh pemimpin masyarakat dan politik. Kementerian berpendapat bahawa masalah ketiadaan dokumen sijil kelahiran dan kad pengenalan ini tidak dapat diselesaikan dalam masa yang terdekat ini. Walau bagaimanapun, sekiranya masalah ketiadaan dokumen ini bagi golongan ibu dan bapa kepada sesuatu keluarga tersebut dapat diselesaikan, maka masalah anak-anak mereka menjadi mudah kerana taraf mereka telah diperjelaskan oleh taraf ibu bapa. <u>Suruhanjaya Pilihan Raya:</u> Suruhanjaya Pilihan Raya (SPR) bersetuju bahawa kesukaran mendapatkan dokumen pendaftaran khususnya dokumen-dokumen kad pengenalan dan sijil-sijil kematian disebabkan masalah ketiadaan kemudahan dan kekurangan pengangkutan yang baik boleh merupakan faktor yang memberi kesan negatif kepada rakyat dalam urusan untuk mendaftar sebagai pemilih dalam pilihan raya. Warganegara Malaysia yang tidak berdaftar sebagai pemilih tidak dapat menunaikan hak dan tanggungjawabnya kepada negara untuk mengundi dalam pilihan raya. Oleh yang demikian masalah kemudahan infrastruktur dan perhubungan komunikasi di kawasan pedalaman dan terpencil amat perlu diberi perhatian oleh pihak-pihak yang berkenaan. <u>Kementerian Sumber Manusia:</u> Kementerian prihatin terhadap masalah ini, tetapi memandangkan ia adalah kehendak undang-undang, Kementerian akan memastikan mereka yang berkenaan mendapatkan dokumen tersebut daripada Jabatan Pendaftaran Negara Negeri Sarawak. <u>Kementerian Tenaga, Air dan Komunikasi:</u> Di bawah RMK8, Kementerian Tenaga, Air dan Komunikasi telah melaksanakan projek merapatkan jurang digital antara masyarakat bandar dengan masyarakat luar bandar dan pedalaman.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
			Projek ini dinamakan Pemberian Perkhidmatan Sejagat (*Universal Service Provision* – USP) dan mula dilaksanakan pada tahun 2002 di 110 buah Sekolah Rendah Kebangsaan di Sabah dan 110 buah Sekolah Rendah Kebangsaan di Sarawak. Sekolah-sekolah yang dipilih terletak di kawasan luar bandar dan pedalaman. Setiap sekolah yang dipilih dibekalkan dengan tiga buah unit komputer, talian Internet, 2 unit telefon pejabat, satu pondok telefon awam, alat pencetak, kipas angin berdiri, kerusi dan meja komputer. Talian Internet, telefon pejabat dan telefon awam menggunakan teknologi *Very Small Aperture Terminal (VSAT).* Projek ini diberi secara percuma untuk tempoh selama lima tahun termasuk penyenggaraan. Semua pengguna diberi latihan ICT yang dinamakan *Cyberkids Camp* dengan kerjasama syarikat Maxis Communications. Pada tahun 2003, projek USP ini diperluaskan ke 226 lokasi perpustakaan Desa, Klinik kesihatan dan Klinik Desa di seluruh negara. Bagi negeri Sarawak, lanya dilaksanakan di 11 Klinik Kesihatan dan 20 Perpustakaan Desa. Pada tahun 2004, projek ini diteruskan ke 500 lokasi Perpustakaan Desa, Klinik kesihatan dan Klinik Desa di seluruh negara. Kira-kira 150 lokasi dikenalpasti di negeri Sarawak. Projek dijangka dapat disempurnakan pada akhir Disember 2004. Dengan kemudahan akses Internet dan alat komunikasi yang disediakan, diharap masyarakat di luar bandar dan pedalaman dapat mengakses maklumat yang disediakan melalui pelbagai aplikasi dan saling berhubung antara satu sama lain secara global.
	(d) Hak tanah adat penduduk peribumi sentiasa menjadi isu di negeri ini. Isu berbangkit kerana kurangnya dokumentasi rasmi pemilikan untuk tanah jenis ini. Perkara ini telah dimasukkan dalam Laporan Tahunan SUHAKAM yang terdahulu. Masalah ketiadaan dokumentasi telah menyebabkan ketidakpuashatian penduduk terhadap pihak berkuasa. Ini menimbulkan konflik dengan syarikat pembalakan dan pemaju estet dan memberi kesan terhadap mekanisma pampasan. Isu pemilikan tanah peribumi perlu diteliti secara keseluruhan dengan mengambil kira adat dan tradisi penduduk dan membuat kanun tanah yang 'mesra hak asasi' untuk pengagihan kuasa ekonomi dan kekayaan yang lebih adil. SUHAKAM akan terus berhubung dengan pihak berkuasa dengan kemungkinan bagi mewujudkan satu agensi untuk	Kementerian Sumber Asli dan Alam Sekitar / Jabatan Peguam Negara / Pejabat SUK Sarawak	<u>Jabatan Peguam Negara:</u> Jabatan ini berpandangan bahawa perbincangan melibatkan pihak-pihak berkaitan termasuklah Kementerian Sumber Asli dan Alam Sekitar dan Pihak Berkuasa Negeri berhubung dengan kepentingan untuk mendokumentasikan pemilikan tanah peribumi bolehlah diadakan. Sekiranya perlu, pindaan-pindaan tertentu kepada Kanun Tanah Sarawak (Bab 81) bolehlah dibuat untuk mengatasi masalah ini.

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	meninjau dan membantu usaha tersebut. **(e)** Penduduk di Skim Empangan Bakun yang diminta berpindah di kawasan penempatan semula, walaupun mendapat kemudahan air, elektrik, kesihatan, pengangkutan dsb., tetapi mereka menghadapi kesukaran menyesuaikan diri dengan cara hidup baru. Kekurangan pekerjaan yang sesuai dan kekurangan persediaan oleh penduduk memburukkan lagi keadaan. Ada sebilangan yang enggan berpindah atau kembali ke tempat asal. Mereka kekurangan kemudahan asas dan ada yang dibantu oleh NGO.	Pejabat SUK Sarawak	
20	**Pusat Tahanan/Penjara/Lokap (Di Sarawak)** --- **Pemerhatian:**		
	(a) Kesesakan di pusat tahanan menyebabkan masalah untuk memenuhi standard hak asasi manusia. Penyumbang kepada masalah ini ialah bilangan pendatang asing tanpa izin yang besar, kelewatan dokumentasi pentadbiran, syarat tempoh tahanan selama 30 hari dan kurangnya kerjasama dari negara asal pendatang.	Kementerian Keselamatan Dalam Negeri / Kementerian Hal Ehwal Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> [seperti maklum balas di para (c)(i), m.s. 61 dan (c)(iii), m.s. 63] <u>Kementerian Hal Ehwal Dalam Negeri:</u> [seperti maklum balas di para (c)(iii), m.s. 63]
	(b) Terdapat juga kekurangan bahan bacaan.	Kementerian Keselamatan Dalam Negeri / Kementerian Hal Ehwal Dalam Negeri	
	(c) Tahanan bawah umur (21) masih tidak dipisahkan dari tahanan dewasa.	Kementerian Keselamatan Dalam Negeri / Kementerian Hal Ehwal Dalam Negeri	<u>Kementerian Keselamatan Dalam Negeri:</u> [seperti maklum balas di para (a)(iv), m.s. 57]

BIL	PEMERHATIAN/SYOR SUHAKAM	KEMENTERIAN/ JABATAN/AGENSI	MAKLUM BALAS
	(d) Bengkel kemahiran yang lebih tersusun sepatutnya disediakan untuk melatih tahanan dan menyediakan mereka untuk kehidupan dalam masyarakat luar apabila mereka keluar kelak.	Kementerian Keselamatan Dalam Negeri / Kementerian Hal Ehwal Dalam Negeri	
	(e) Lembaga Pengampunan harus bersidang lebih kerap untuk menimbangkan dan mengkaji semula kes-kes hukuman mati seperti yang dikehendaki oleh undang-undang.	Pejabat SUK Sarawak	
	(f) Lokap polis di Sibu, Kuching Central dan Satok masih tidak memenuhi keperluan minimum dari segi pakaian untuk tahanan. Kesesakan masih menjadi masalah terutama apabila diadakan operasi penguatkuasaan khas.	Kementerian Keselamatan Dalam Negeri	