
HUMAN RIGHTS COMMISSION OF MALAYSIA ANNUAL REPORT 2006

CONTENTS

CHAPTER 1	KEY ISSUES	9
CHAPTER 2	MALAYSIAN HUMAN RIGHTS DAY 2006	25
CHAPTER 3	PUBLIC INQUIRIES	41
CHAPTER 4	ILLEGAL IMMIGRANTS AND CITIZENSHIP ISSUES IN SABAH	53
CHAPTER 5	REPORTS OF WORKING GROUPS:	
	(i) HUMAN RIGHTS EDUCATION AND PROMOTION WORKING GROUP	63
	(ii) COMPLAINTS AND INQUIRIES WORKING GROUP	75
	(iii) ECONOMIC, SOCIAL AND CULTURAL RIGHTS WORKING GROUP	86
	(iv) LAW REFORM AND INTERNATIONAL TREATIES WORKING GROUP	99
CHAPTER 6	REPORTS FROM SUHAKAM OFFICES IN SABAH AND SARAWAK:	
	(i) ACTIVITIES OF SUHAKAM IN SABAH	121
	(ii) ACTIVITIES OF SUHAKAM IN SARAWAK	130

APPENDICES

APPENDIX I	Activities of SUHAKAM	149
APPENDIX II	Talks, Seminars and Conferences – National	166
APPENDIX III	Talks, Seminars and Conferences – International	174
APPENDIX IV	Visitors to SUHAKAM	176
APPENDIX V	Monthly Meetings – Commissioners’ Attendance	178
APPENDIX VI	SUHAKAM Audited Accounts	189

SUHAKAM COMMISSIONERS 2006



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KEY ISSUES

The development of 'rights consciousness' in Malaysian society over the year under review augured well for human rights. The print and electronic media, non-governmental organizations (NGOs) and individuals all focused on the issue of entitlement to basic human rights as a way of life.

This was reflected in the wide range of human rights issues that emerged. The voices of minority groups were increasingly louder, a further testimony of human rights awareness that SUHAKAM has endeavoured to espouse. Perusal of the complaints and memoranda received has allowed the Commission to assess human rights strengths and weaknesses.

SUHAKAM continued with efforts to promote economic, social and cultural rights. For example, cultural rights were highlighted in a seminar themed, 'Human Rights and Culture', held on Sept 9.¹

One of the main concerns of the year revolved around issues of religious freedom, in terms of both individual rights and the demolition of places of worship. Malaysia is a multi-racial, multi-religious and multi-cultural country. This highly sensitive issue requires a well-balanced and rational approach from all parties for a satisfactory and acceptable solution for the future.

SUHAKAM was also concerned with the issue of deaths in Police custody. Numerous complaints and memoranda were received from individuals and NGOs in respect of unlawful detention, Police brutality, deaths in Police custody, freedom of expression and freedom of religion. Other issues impinged on the rights of vulnerable groups, comprising migrants, persons with disabilities, women, children and the hardcore poor.

1. DETENTION WITHOUT TRIAL

The Universal Declaration of Human Rights 1948 (UDHR) emphasizes the right to life, liberty and security of the person.² It also says no one shall be subjected to arbitrary arrest, detention or exile³,

¹ Refer to Chapter 2 on Malaysian Human Rights Day 2006

² Refer to Article 3 of UDHR

³ Refer to Article 9 of UDHR

and that every individual has the right to a fair and public hearing by an independent and impartial tribunal.⁴ However, the Federal Constitution has provisions⁵ which allow for the enactment of public order and emergency laws that currently provide for detention without trial – these include the Internal Security Act 1960 (ISA) and the Emergency (Public Order and Prevention of Crime) Ordinance No.5, 1969 (EO).

Early in the year, the Kuala Lumpur High Court ruled against a group of 22 ISA detainees who had sued the Election Commission for violating their right to vote during the 2004 general election.⁶ In deciding against the application, the High Court held that “ISA detainees lose their constitutional rights during detention, and that the deprivation of such rights is conferred by the constitution itself”.

Subsequently in September, the High Court began to hear the suit of eight former ISA detainees who were suing former Inspector-General of Police Norian Mai, the Home Minister and the Government for damages over unlawful arrest, detention in breach of constitutional rights and defamation.⁷ The case is scheduled to be heard in January 2007 and SUHAKAM will monitor its progress.

SUHAKAM remains concerned with the use of detention without trial to resolve serious crimes and recommends that the ISA, EO and the Dangerous Drugs Act be repealed.

2. LAW ENFORCEMENT

(a) Police

The Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police was made public in 2005 following a year-long review that involved public consultations.⁸ The recommendations of the Royal Commission are progressively being implemented by the Government.

The Government in December 2005 established a Commission of Inquiry into the Standard Operating Procedure, Approaches or Regulations in the Handling of Body Searches in Connection with Arrest and Detention by the Police. The Inquiry was held following the public circulation of a mobile-phone video clip of a woman being forced to strip and perform ‘ear-squats’ in front of a

⁴ Refer to Article 10 of UDHR

⁵ Refer to Article 149, 150 and 151 of Federal Constitution

⁶ Refer *Malaysiakini* report, Feb 23, 2006, ‘Right to Vote: ISA detainees lose case.’ http://www.suaram.net/display_article.asp?ID=460

⁷ Refer *Malaysiakini* report, March 11, 2006, ‘Hearing of ISA detainees’ suit against the government starts’. http://www.suaram.net/display_article.asp?ID=592

⁸ Refer to SUHAKAM Annual Report 2005, page 11.”

female Police officer. While affirming the legitimacy of properly performed body searches in January 2006, the Commission of Inquiry unequivocally condemned the practice of forcing suspects to perform 'ear-squats' while being strip-searched. Calling on the Police to increase their awareness of human rights principles, the Inquiry panel took the initiative to prepare a detailed manual on permissible practices and procedures for body searches, to assist the Police with formulating procedures which are more in conformity with human rights.

After the Commission of Inquiry released its report, the Minister in charge of law in the Prime Minister's Department, announced the establishment of a Parliamentary Committee to review and propose amendments to the Penal Code and the Criminal Procedure Code (CPC), in order to identify new provisions on the conduct of strip-searches, so as to ensure that such searches are performed without compromising the dignity of detainees.⁹

The Government took a positive step by amending the CPC and the Penal Code.¹⁰ These amendments include the elimination of cautioned statements, specifying procedures for body searches, requiring public prosecutors to provide trial documents before trial to defence counsel, requiring remand periods to be in accordance with the severity of the crime, and requiring the Police to inform detainees of the grounds of their arrest within 24 hours. SUHAKAM welcomes the announcement that the amended CPC and the Penal Code will come into force on Jan 1, 2007.

YAB Prime Minister Dato' Seri Abdullah Ahmad Badawi announced in March that the Attorney-General's Chambers had been requested to study the proposal to establish an Independent Police Complaints and Misconduct Commission (IPCMC), which is one of the 125 proposals made by the Special Commission to Enhance the Operation and Management of the Royal Malaysia Police.¹¹ SUHAKAM reiterates its call for the establishment of this mechanism.

In order to create awareness among Police officers on human rights, SUHAKAM conducted human rights training for District Crime Investigations Officers in August. It was the second in the series of human rights training planned for senior investigation officers.

(b) Other Enforcement Agencies

SUHAKAM received complaints from NGOs, Office of the UNHCR and individuals alleging the excessive use of force against migrant workers by personnel of the Peoples' Volunteer Corps (RELA).

⁹ *Bernama*, Jan 24, 2006, 'Amendments in CPC and Penal Code Regarding Strip Search'. http://www.suaram.net/display_article.asp?ID=438

¹⁰ *New Straits Times*, July 29, 2006, 'Changes for better criminal justice system, police image'. http://www.suaram.net/display_article.asp?ID=533

¹¹ *Bernama*, March 14, 2006, 'Police Commission Proposal under Consideration: Says PM'. http://www.suaram.net/display_article.asp?ID=469

One memorandum stated that the NGOs had documented several instances where migrant workers were allegedly assaulted and humiliated by RELA officials. This included an incident on Feb 11, covered by the British Broadcasting Corporation, involving the death of five migrant workers who were allegedly killed while trying to flee from RELA officials. The NGOs alleged that the Government had failed to conduct any investigation or inquiry into the incident. SUHAKAM was informed that the bodies of three of the migrants were found in a nearby pond, with the post-mortem report revealing that they were already dead before the raids by RELA. In a news report on March 7, *The Malay Mail* reported the alleged assault by RELA officials of 61 migrants outside the Indian High Commission, Kuala Lumpur. SUHAKAM could not investigate this further because the alleged victims were deported back to India.

In view of the numerous complaints on the abuse of power by RELA, SUHAKAM held a pilot human rights training course for RELA officials in January with the aim of creating greater awareness of human rights principles. SUHAKAM hopes to continue with such joint training, not only with RELA but also with other enforcement agencies.

3. ADMINISTRATION OF JUSTICE

SUHAKAM had proposed the setting up of an Independent Judicial Commission (IJC) in July 2005 to enhance public confidence and transparency in the appointment of judges. SUHAKAM recommended the proposal and this was subsequently recognized by the Chief Justice when he announced that Magistrates should come under the judicial service.

In January, the Chief Justice said the Judiciary was studying the possibility of disallowing the use of technicalities in dismissing civil cases or granting acquittals in criminal cases.¹² He further commented that the aim of these reforms is for justice to be done, rather than for cases to be won or lost on technicalities. It was reported in the media that certain members of the legal profession expressed their concern about the impact that such reforms would have on *habeas corpus* cases, since the majority of successful *habeas corpus* applications had been grounded in so-called technicalities.

Other worrying and negative developments were also noted during the year. In particular, legislative Bills were proposed preventing litigants from seeking legal remedy (ouster clauses), thereby adding

¹² Refer to *New Straits Times*, Jan 23, 2006, 'The question of justice in criminal and civil cases'.

to the list of legislation containing such clauses. These judicial ouster clauses pose serious concerns to the course of justice by denying any avenue for appeal of administrative decisions. Section 56 of the Water Services Industry Bill 2006 (D.R.5/2006) provides the Minister with powers to impose various restrictions on the use, quality and supply of water during times of emergency. Under paragraph 5 of Section 56, the decision, order or direction of the Minister shall be final and shall not be challenged, appealed against, reviewed, quashed or questioned in any Court. Similarly, the Legal Profession Amendment Bill 2006 (Section 33) prevents any judicial review of decisions of the Bar Council Disciplinary Board. These two Bills have yet to be passed by Parliament at the time of writing.

To cite a Court ruling in 1979: “Every legal power must have legal limits and every use of discretion cannot be free from legal restraint. Where wrongly exercised, it is the duty of the Courts to interfere”.¹³ SUHAKAM is of the view that, in accordance with human rights principles, every citizen should be given the right to seek legal remedy through the judicial process. This is the most important safeguard for the ordinary citizen in view of wide powers of the Executive under such laws.

4. FREEDOM OF EXPRESSION AND INFORMATION

Freedom of expression is enshrined in the UDHR and is granted formal recognition by the laws of most nations. In Malaysia, certain laws still restrict freedom of expression and information such as the ISA, Official Secrets Act 1972 (OSA) and the Printing Presses and Publications Act 1984.

In May, the Government banned a locally produced movie, *Lelaki Komunis Terakhir*, which chronicled the life of Chin Peng of the former Communist Party of Malaya. The Government defended its ban on grounds that many Malaysians are still hurt by the harm inflicted by the communist movement.¹⁴ The decision was heavily criticized by segments of the public and the entertainment industry. The issue of freedom of expression by artists in the performing arts was also among the main concerns of participants at the ‘Human Rights and Culture’ Conference held on Malaysian Human Rights Day. The time is right to review this ban in light of the development in Government’s policies towards transparency as well as the changes in technology.

In its 2005 Annual Report, SUHAKAM stated that freedom of speech and the right to information are essential to the elimination of corrupt practices. In its Report on ‘Freedom of the Media’ in

¹³ *Pengarah Tanah dan Galian Wilayah Persekutuan vs Seri Lempah Enterprise Sdn Bhd* [1979] 135

¹⁴ *The Star*, May 9, 2006, ‘Zam: Government right to ban film on Chin Peng’. http://www.suaram.net/display_article.asp?ID=501

2002, SUHAKAM had pointed out the restrictions the OSA places on freedom of information. However, in 2006, the Government reportedly defended the continued need for the OSA, and denied that the Act could be an impediment in elimination of corruption.¹⁵

5. FREEDOM OF ASSEMBLY

The right to freedom of assembly is an intrinsic part of the right to freedom of expression as enshrined in Article 19 and 20 of the UDHR and in Article 10 of the Federal Constitution.

In March, SUHAKAM received a memorandum from the Malaysian Trades Union Congress (MTUC) and several NGOs and political parties, on the increase in petrol prices as a result of subsidy reduction by the Government. Public protests were staged by the NGOs in front of the Kuala Lumpur City Centre (KLCC) building on March 3 and 10. The NGOs estimated that approximately 2,000 persons attended these peaceful protests, which the print media did not cover.¹⁶

The MTUC, NGOs and opposition parties staged another protest in front of KLCC on March 26. This was halted allegedly due to interference from the Police and Federal Reserve Unit (FRU). Water cannon were allegedly used against the crowd.

On May 28, the fourth protest in front of KLCC was halted by alleged actions of the Police and FRU to disperse the crowd. Several persons were hurt as a result of the incident, and claimed that the law enforcement officers who were dispersing the crowd had inflicted their injuries. SUHAKAM conducted a Public Inquiry into this incident, commencing Oct 5.

A coalition of 13 groups that called itself Article 11 organized a series of forums on 'Federal Constitution: Protection for All'. Its forum on May 14 in Penang was forced to an abrupt end after a protest by about 500 people comprising various religious groups and organizations. Due to continuous pressure and opposition, the coalition's subsequent activities were disrupted as well.

Article 10 of the Federal Constitution guarantees freedom of speech, assembly and association. Every application for a licence or permit to hold any assembly or forum to discuss any issue should be considered consistent with Article 10, provided such assembly or forum does not lead to public disorder or raise tension among various races.

¹⁵ Refer to *Malaysiakini*, Sept 19, 2006, 'Pergaduhan di Penjara Simpang Renggam: Salahguna Kuasa oleh Warden Penjara'.
http://www.suaram.net/display_article.asp?ID=659

¹⁶ (1A) The Courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

SUHAKAM recommends that the Government reviews the matter on the right to hold peaceful assemblies, as guaranteed in Article 10 of the Federal Constitution, in a transparent manner.

6. FREEDOM OF RELIGION

Religious freedom is universally acknowledged. Article 11 of the Federal Constitution reflects the spirit of Article 18 of the UDHR.

The application of Article 121 (1A)¹⁷ of the Federal Constitution has been criticized by many sectors as evident in the cases of Lina Joy, Shamala Sathiaselvan, Nyonya Tahir, M Moorthy and Rayappan Anthony. The case of Lina Joy is still pending in Court. In view of its importance, sensitivity and general public interest, SUHAKAM would like to recommend the Court delivers its judgment as soon as possible to enable the Government to examine the procedure and mechanism related to the issues.

SUHAKAM received complaints alleging the excessive use of force by local Government authorities when demolishing places of worship that were built without proper permits. SUHAKAM recommends that there be clear guidelines and procedures in place for the construction or demolition of places of worship.

7. RIGHTS OF VULNERABLE GROUPS

(a) Orang Asli and Orang Asal

SUHAKAM noted a growing concern of the Orang Asli community with regard to their customary rights. Individual native communities in Peninsular Malaysia as well as in the states of Sarawak and Sabah raised complaints on issues of encroachment into and destruction of native land; inadequate educational, housing and medical amenities; and religious discrimination.

In 2006, SUHAKAM focused its efforts on improving the Orang Asli community's access to education. This was done by motivating youth through human rights camps, dialogues, visits to settlements and collaborating with relevant agencies that are working on the same issues. The Government, especially the Ministry of Education, has put in place various strategies and mechanisms to tackle the issue of school dropouts among Orang Asli children.

¹⁷ Refer to *Berama*, Aug 29, 2006, 'Malaysia Groups Protest Over US Trade Talks'. http://www.suaram.net/display_article.asp?ID=590

The Special Education Department, for example, has collaborated with the State Education Department of Pahang to organize an outreach programme for rural schools as a move to better understand the Orang Asli problems in relation to education. In addition, the Teacher Training Division has introduced a school adoption programme where teacher-training institutes around the country have adopted three Orang Asli schools and are working closely with them to improve the quality of education. The State Education Department of Pahang has built special schools for Orang Asli that cater for their cultural and academic needs. SUHAKAM would like to recommend that other States take similar action when dealing with such issues.

(b) Migrant Workers

Deputy Prime Minister YAB Dato' Seri Najib Abdul Razak confirmed that between 300,000-500,000 illegal migrants remain in Malaysia, and that RELA has been entrusted with the primary mandate of 'flushing them out'.

SUHAKAM has also received numerous complaints from the Rohingya community in Malaysia. The Government's decision to issuing the IMM13 form to the Rohingya is a positive step to enable them to work and obtain education legally in Malaysia. However, issuance of the document was stopped temporarily due to involvement of agents in obtaining the forms. SUHAKAM has made fresh recommendations to the Government for a new mechanism in issuing this form.

In August, the Home Minister reportedly confirmed that the Government would be drafting new legislation against human trafficking and migrant smuggling.¹⁸ The Minister of Women, Family and Community Development reiterated the need to circumvent problems associated with the trafficking of women and children. The same month, several NGOs criticized the Government's policy of using outsourcing companies to recruit migrant workers, claiming that this violates basic labour standards and the rights of the affected migrant workers.¹⁹ The NGOs also claimed that the policy would only exacerbate and encourage human trafficking and bonded labour. As a response, SUHAKAM organized a Roundtable Discussion on 'The Development of Anti-Trafficking Plan of Action for Malaysia' in December. SUHAKAM would like to recommend that the relevant parties work closely to improve the status of migrant workers.

SUHAKAM has prepared a paper on 'Migrant Workers and Undocumented Persons' which will be presented at the Third Meeting of the ASEAN National Human Rights Institutions Consultation

¹⁸ Refer to *The Daily Star*, Aug 30, 2006, 'Malaysian government's policy of outsourcing may violate labour rights'.
http://www.suaram.net/display_article.asp?ID=589

¹⁹ Refer to SUHAKAM's Press Statement, June 30, 2006, 'More Needs to be Done in Halting and Reversing the Spread of HIV/AIDS'.

Mechanism in Bali, Indonesia, scheduled in the first quarter of 2007. SUHAKAM believes that the problem of migrant workers cannot be addressed in isolation. A concerted effort by all relevant groups including ASEAN governments is essential in combating this problem.

The setting up of the dedicated Sessions Court at the Semenyih Immigration Detention Depot to hear related cases is a welcome move as the Court will help clear the backlog of cases and action due against illegal immigrants. SUHAKAM welcomes the Government's announcement to establish 14 more dedicated Sessions Courts which will expedite disposal of cases.

(c) Persons with Disabilities

Disabled people are entitled to fundamental human rights and civil rights, including the right to enjoy as full a life as possible, as well as equal participation and opportunities. However, there still are people with disabilities who go unnoticed in society.

Throughout the year, SUHAKAM has been actively involved in promoting public awareness of the rights of persons with disabilities, with full participation and co-operation from the Ministries involved and disability-related associations. The Commission seeks to increase awareness of gains from the integration of persons with disabilities in every aspect of political, social, economic and cultural life. Among the efforts are the launching of a report, *Laporan Hak Orang Kurang Upaya*, and involvement in dialogues and Roundtable Discussions. SUHAKAM's inclusion in the drafting committee of the Policy on People with Disabilities spearheaded by the Ministry of Women, Family and Community Development will allow the Commission to be further involved in this area.

(d) Women and Children

The development of women's rights in Malaysia showed positive achievement. In May, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee discussed Malaysia's country report for the first time. This was indeed a great move in enhancing support services to women, in line with the principles of CEDAW. SUHAKAM organized two discussions in May and July respectively to examine the principal areas of concern and recommendations by the UN CEDAW Committee.

In terms of protecting children's rights, SUHAKAM has emphasized the promotion of the provisions enshrined in the Convention on the Rights of the Child (CRC) which safeguard the best interests of the child for survival and development, discourage discrimination, and provide the right to express opinions freely. To achieve this, SUHAKAM continues to disseminate information on the CRC. Two human rights camps for school children were organized; the first was for the school children from Petaling District held from Feb 25-26, and the second was for Orang Asli youth from April 21-23.

SUHAKAM has continued to conduct CRC workshops for adults. SUHAKAM organized a central training programme from Aug 18-20 in Kuala Lumpur targeting participants who had been trained in previous years. A total of 27 short-listed trainers from various organizations were invited to upgrade their knowledge of the CRC.

8. HUMAN RIGHTS AND UNIVERSITIES

Following protests against the Government in the 1960s and 1970s, the Universities and University Colleges Act 1971 (UUCA) was introduced. The UUCA *inter alia* imposes prohibitions against university student bodies and organizations in exercising their freedom of expression, assembly and association. The UUCA has been criticized for curbing academic freedom and independent thinking in Malaysian campuses.

Due to numerous complaints received from university students, SUHAKAM held a meeting with the Higher Education Minister which was also attended by Vice-Chancellors of all the public universities. SUHAKAM made several recommendations on matters related to students.

SUHAKAM recommends that the Government, particularly the Higher Education Ministry, should review the UUCA to ascertain its relevance in the context of the need to develop human capital in the face of global challenges.

9. HUMAN RIGHTS AND MILLENNIUM DEVELOPMENT GOALS

Despite major progress towards achieving the United Nations' Millennium Development Goals (MDGs), Malaysia faces a number of development challenges. These include the existence of pockets of rural poverty, especially among indigenous communities, women's political empowerment, and halting and reversing the spread of HIV/AIDS. While Malaysia has achieved most of the MDGs, an area of concern lies in halting and reversing the spread of HIV/AIDS. Reports indicate that there has been a rise in the number of HIV/AIDS cases, not merely among drug abusers but among women as well.

SUHAKAM strongly recommends that resources be scaled up to address this, including the introduction of a comprehensive National Plan of Action on HIV/AIDS.²⁰

There is considerable apprehension over the new National Health Financing Mechanism (NHFM) proposed by the Government to address various aspects of the health care system. SUHAKAM organized a series of meetings and dialogues on 'Right to Health – The NHFM', during which several concerns were raised such as insufficient health care facilities and services. The Government is studying the consultation project on NHFM and has invited SUHAKAM to be a member of the NHFM Technical Working Committee.

Field visits were made to various places to gauge the level of attainment of basic rights. During a field visit to Belaga, Sarawak, several issues were raised such as recognition on the existence of the Penan community, loss of claim to land, negative effects on livelihood, lack of access to education, health and health care services. In Sabah, SUHAKAM visited immigrant communities in Kinarut, Sri Tanjung and Telipok, where the right to citizenship was brought up.

10. FUTURE TRENDS

SUHAKAM is mandated to play an active role in promoting human rights awareness not only domestically, but also at the regional and international levels. SUHAKAM is of the view that the establishment of a regional human rights mechanism would represent a significant progress in ASEAN for the development of a human rights culture. The ASEAN region remains one of the few without a regional mechanism on human rights.

²⁰ Refer to Keynote Address by Dato' Seri Syed Hamid Albar, Minister of Foreign Affairs, Malaysia, June 29, 2006, at the Fifth Workshop on an ASEAN Regional Mechanism on Human Rights.

The Minister of Foreign Affairs, Malaysia, in his opening statement at the Fifth Annual Workshop on an ASEAN Regional Mechanism on Human Rights, June 29-30, reiterated the Government's support for an ASEAN regional mechanism on human rights. He expressed hope that "the mechanism could be an avenue for developing and establishing programmes within ASEAN for mutual support and assistance in the development of a strategy for strengthening the rule of law, judiciary systems and legal infrastructure, contributing to effective and efficient civil services and good governance in public and private sectors".

He further acknowledged that "the presence of SUHAKAM ... indicates that Malaysia's own national human rights commission is now ready to join the team of other actors working to see the realization of an ASEAN Human Rights Mechanism".

SUHAKAM hopes that the ASEAN Human Rights Mechanism will lay the foundation for a new spirit of regional co-operation to address violations of human rights with decisiveness and in accordance with the rule of law.

Human rights are now an integral part of ASEAN's overall objectives and priorities. The clearest expression of this is seen in the Vientiane Action Programme, and SUHAKAM is currently looking into various areas of human rights concerns.

At the international level, on May 9, Malaysia was among 47 nations elected by the United Nations General Assembly to the new UN Human Rights Council. SUHAKAM is a member of the Asia-Pacific Forum of National Human Rights Institutions, and has participated in several human rights activities held by the Commonwealth Secretariat and the Office of the United Nations Commissioner for Human Rights.

SUHAKAM will continue to participate at both regional and international events to pursue greater respect for, and adherence to, human rights goals and their underlying principles.

11. CONCLUSION

Since the establishment of SUHAKAM under the Human Rights Commission of Malaysia Act 1999 (Act 597), there has been growing awareness of human rights among Malaysians. In carrying out its mandate, SUHAKAM has encountered various challenges. Despite this, SUHAKAM continues

to advocate the protection of human rights and has focused attention on every complaint of violation. SUHAKAM will continue to carry out visits and organize seminars, forums and workshops to educate the public and promote human rights.

It is clear that certain areas of human rights remain a concern. In promoting and enhancing public awareness of human rights, SUHAKAM will continue to work with all stakeholders including the Government and civil society groups in order to fulfil its mandate.

SUHAKAM's recommendations, made through its Annual Report, should be given more weight by Parliamentarians, the Government and policy makers. In keeping with the trends of other national human rights institutions in the region and referring to the announcement on Dec 19 by the Minister in the Prime Minister's Department that the Government will not create an Ombudsman, SUHAKAM suggests that it is time that the Government reviews Act 597 in accordance with the Paris Principles. SUHAKAM hopes that the Government will seriously examine and consider this recommendation.

MALAYSIAN HUMAN RIGHTS DAY 2006

SUHAKAM celebrated the sixth annual Malaysian Human Rights Day by hosting a one-day Conference on 'Human Rights and Culture'. The main objective was to discuss the universality of human rights particularly from the aspect of religion and cultural practices.

SUHAKAM invited five distinguished speakers who have expertise and vast experience in dealing with different aspects of human rights and culture. The first panel on 'Human Rights and Religion' had Professor Mohamad Hashim Kamali and Datuk Zaid Ibrahim as speakers. Professor Dato' Dr Shamsul Amri Baharuddin, Mr Kee Thuan Chye and Mr Richard Engelhardt were the speakers for the second panel, 'Culture and Freedom of Expression'.

YB Datuk Seri Utama Dr Rais Yatim, the Minister of Culture, Arts and Heritage, officiated at the opening ceremony and delivered the keynote address on behalf of the Deputy Prime Minister, YAB Dato' Seri Najib Abdul Razak.

Participants comprised representatives of Ministries and Government departments, foreign missions, the Attorney-General's Chambers, Malaysian Bar Council, non-governmental organizations (NGOs), corporate sector, tertiary institutions and the media, as well as students and individuals.



YB Datuk Seri Utama Dr Rais Yatim, the Minister of Culture, Arts and Heritage (centre) with SUHAKAM Chairman Y Bhg Tan Sri Abu Talib Othman (left) and Commissioner Dr Chiam Heng Keng (right)



Participants were from a cross-section of society

1. PRESENTATIONS AND ISSUES

(a) Keynote Address on Human Rights and Culture

Dato' Seri Najib's address, entitled 'Human Rights and Culture', reasoned that while the right to culture is universal, the meaning and interpretation of culture is not. The diversity of traditional and religious practices shows that the interpretation of culture is not universal. Therefore, one should not expect universality in cultural and religious practices. As Malaysia is a multi-ethnic and multi-religious country, citizens should respect one another's beliefs and practices, and uphold the rights of others when exercising their own rights. Malaysians should celebrate cultural diversity, instead of letting it hinder national unity, economic advancement and security.

Dato' Seri Najib also pointed out that some cultural practices violate human rights, such as the inferior status accorded to women which is tantamount to discrimination. He noted that the Government does not subscribe to this view as shown by its accession to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The Deputy Prime Minister said Malaysia's education system should be commended for promoting understanding of the cultural differences of the people. He, however, conceded that much more needs to be done to enable students to internalize respect for cultural differences and for them to promote racial integration and national unity. He suggested that more effort be

invested in preserving and developing the indigenous cultures of Malaysia, especially those of Sabah and Sarawak.

Datuk Seri Utama Dr Rais said Malaysia is working hard for more sites to be accorded 'World Heritage Site' status by the United Nations Education, Scientific and Cultural Organization (UNESCO). However, he felt that the criteria used to evaluate the heritage sites in the West are not appropriate for those in Asia. A different set of criteria should be used. Asia should therefore develop its own cultural and scientific standards.

(b) Panel Session I: Human Rights and Religion

(i) Human rights and Islam

Professor Mohamad Hashim Kamali of the International Islamic University, Malaysia, presented a paper on 'Human Rights from an Islamic Perspective'. This provided a philosophical overview of the Syariah doctrines and their relevance to human rights and culture. He began his discussion with quotations on themes such as human dignity (*karamah*), justice (*'adl*), equality (*musawah*) and freedom (*hurriyyah*).

He explained general principles and doctrines of Islamic jurisprudence, such as the goals and objectives (*maqasid*) of Syariah, considerations of public interest (*maslaha*), general custom (*'urf*), Syariah rules on trade and transactions (*mu'amalat*), and Syariah-oriented policy (*siyasah shar'iyyah*). All of these can be called upon to support the broader spectrum of human rights from an Islamic perspective.

He said Muslim scholars in recent decades have generally adopted an affirmative stance on human rights. Continuing efforts to support human rights instruments are manifested in discussions at international forums and conferences, and in the declarations of institutions of higher learning.

In concluding, he briefly addressed *Islam Hadhari* (Civilizational Islam) which is a policy programme of the administration of Prime Minister YAB Dato' Seri Abdullah Ahmad Badawi. It aims to introduce Islamic values in modern governance.

(ii) Freedom of religion and the Federal Constitution

Datuk Zaid Ibrahim, the Member of Parliament for Kota Bahru, was passionate on matters of religious freedom. He was of the view that religious freedom, freedom of conscience and the right of every man/woman to believe or not to believe are all facets of the recognition of human dignity. He emphasized that religious freedom is universally acknowledged and that Article 11 of the Federal Constitution reflects the spirit of Article 18 of the Universal Declaration of Human Rights (UDHR).

He outlined several cases to highlight the fact that religious politics have recently taken centre stage in Malaysia:

- The Lina Joy and Shamala Sathiaselvan cases have become a cause of contention between Muslims and non-Muslims when, in fact, both cases require the Courts to make judgment according to the law.
- In 2005, Ayah Pin (founder of the now-dismantled 'Sky Kingdom') and his followers were considered deviants according to JAKIM's definition.
- In 1996, the case of Kamariah Ali and three others was decided solely on a legalistic approach to the exclusion of Islamic understanding and persuasion.

He concluded by indicating preferred directions in linking freedom of religion and the law:

- The existence of so-called deviant beliefs is inevitable if religious freedom is allowed. This is not to say that deviant beliefs are encouraged but there will always be a few who will not comply with the established order.
- There are no definite answers as to whether or not it is appropriate to criminalize apostasy in law.
- Muslims need to do more to show the world that they are capable of dealing with differences in matters of faith in a civilized and cordial manner.

He summarized his presentation by suggesting that:

- (i) In promoting *Islam Hadhari*, it is vital to change the values of the people in accordance with the highest principles and essence of Islam.
- (ii) The people must realize that it is for the Courts to decide religious conflicts in accordance with the Federal Constitution; they must trust the Courts to give cognizance to the principles of Islam.

(c) Panel Session II: Culture and Freedom of Expression

- (i) Culture and Freedom of Expression: A Malaysian Anthropologist's Viewpoint

Professor Dato' Dr Shamsul Amri Baharuddin, the Director of the Institute of the Malay World and Civilization and Institute of Occidental Studies, Universiti Kebangsaan Malaysia, discussed aspects of culture and freedom of expression from a Malaysian anthropologist's viewpoint. He divided his discussion into two parts.

In the first part, he discussed ideas on culture and freedom of expression and their location in past and present society. He outlined two key issues:

- There is a need to be very clear that, when it comes to culture and freedom of expression in this present day and age, these are for all purposes defined by and in the context of the structural-institutional features of the modern nation-state.
- The struggle of the various cultures within a nation-state, especially in a multi-cultural society like Malaysia, is unending. The process shapes the nature of the freedom, including freedom of speech.

In the second part, he discussed culture and freedom of expression in the Malaysian context, specifically the sociological significance of *merdeka*. He said:

- It is not the various cultures in Malaysia that restrain freedom; it is the culture of the modern nation-state that is built on three pillars – territoriality, rule of law and citizenship – that moulds it.
- The confusion between 'independence' and 'freedom' has led to a confusion of perspectives among some.

He concluded that the struggle for freedom has to carry on with the conviction that this will bring about better conditions for everyone.

(ii) Cultural Liberty and Freedom of Expression: Lessons from Asian Experience

Mr Richard A Engelhardt, who is UNESCO's Regional Advisor of Culture in Asia and the Pacific, emphasized cultural diversity as a cornerstone of heritage and humanity. He reaffirmed the importance of culture, diversity and freedom of expression within a framework of democracy, tolerance and social justice.

The discussion was on the linkage between cultural rights and cultural diversity as the pre-condition for sustainable human development in an Asian context. According to him, this begins from the basics of five pillars:

- Human rights and responsibilities;
- Democracy and the elements of civil society;
- Protection of minorities;
- Commitment to peaceful conflict resolution and fair negotiation; and
- Intergeneration equity.

He mapped out five ways to protect the diversity of cultural expressions, which is the defining characteristic of human diversity:

- Recognize the importance of the vitality of cultures, including minority cultures, and respect the freedom to create, disseminate and distribute traditional cultural expressions;
- Promote the plurality and uniqueness of the identities and cultural expressions of the people and societies;
- Incorporate culture as a strategic element in national and international development policies, as well as in international development co-operation;
- Provide an environment that respects and encourages freedom of expression and collective creativity, and subsequently protects and promotes diversity;
- Enable interaction and creativity, which nurture and renew cultural expressions, and further enhance the role played by those involved in the development of culture for the progress of society at large; and
- Protect intellectual property rights.

(iii) Freedom of Expression and Culture in Malaysia: Telling You What You Already Know

Mr Kee Thuan Chye, a playwright and actor, delivered his paper in a humorous and light manner but nonetheless conveyed a powerful message. He spoke on the freedom of expression, specifically in relation to the performing arts in Malaysia. According to him, censorship is a main constraint in the performing arts. He cited several interesting examples:

- *Lelaki Komunis Terakhir*, written and directed by independent film-maker Amir Muhammad, was banned on the basis of calls by certain pressure groups. The film does not glorify former Communist leader Chin Peng as purported by the pressure groups. It merely road-maps the small town where Chin Peng lived and fought against the British during the years of Emergency rule.
- A few hours before the opening of the play, 'The Coffin is Too Big for the Hole', the organizers were informed that the performance was not approved, thus causing them financial loss and inconvenience.
- The KakiKino Film Club, which screened foreign art films at the Malaysian National Film Development Corporation (FINAS), was dismantled because of public complaints that pornography was being shown.
- The critically acclaimed feminist play 'The Vagina Monologues' by American playwright Eve Ensler speaks out on issues important to women such as rape and violence. However, the most recent performance was banned in Kuala Lumpur allegedly because of excessive violence. Ironically, it had been staged in the city a few years ago.
- The performance of 'Madame Mao's Memories', a play about prominent Chinese leader Jiang Qing and not about communism, did not receive approval.
- 'Election Day' by Huzir Sulaiman was rejected in 2004 by the authorities because it used the names of some famous local personalities.

In this respect, Mr Kee re-emphasized that changing the mindset of Malaysians should to be extended to decisions dealing with culture and arts.



Participants browsing through SUHAKAM publications during a break

2. ISSUES AND PARTICIPANTS' RECOMMENDATIONS

Participants took an active part when both panel sessions were opened for questions, comments and recommendations. Although ample time was allocated, it was still insufficient to accommodate everyone.

(a) Issues discussed

(i) Panel 1: Human Rights and Religion

A participant enquired about the definition of 'Islamic State'. Both speakers agreed that the values the Government holds are most important, not the adoption of a 'label' for the country.

Interfaith issues were another concern. A participant asked whether it is possible to achieve interfaith agreement and whether it can be encouraged in accordance with the Quran. Prof Mohamad Hashim explained that there is common ground among all religions, while splits and problems exist even within each religion. He said citizens should not worry about the differences because the interfaith issue does not transgress any religion. To a query as to whether a non-Muslim is in a position to speak about Islamic issues, he said this is all right if the person has good intentions.

Another participant sought the speakers' view on how to determine the rules and jurisdiction applicable to the Civil and Syariah Court respectively. Prof Mohamad Hashim was of the opinion that the actual division of Courts is of secondary importance and that commitment to justice should be the primary focus. Datuk Zaid said citizens must understand that some issues are constitutional in nature, while others involve interpretation of the Federal Constitution.

(ii) Panel 2: Culture and Freedom of Expression

A participant opined that a culture of fear exists in Malaysian society and that artists lack courage to resist oppression. Mr Kee agreed that a culture of fear exists, but disagreed that the artists' community is cowed. He said artists have displayed great courage, but unfortunately do not have the final say in decisions made.

Another participant commented on the confusion in the identity of Malaysians. Prof Dato' Shamsul explained that this confusion is not because of multi-racial and multi-cultural diversity, but due to rapid changes in trends and use of language, including slang.

Another issue raised was the lack of space for cultural expression. Mr Engelhardt acknowledged that there is a limitation of cultural space, saying this needs to be opened up to a much greater degree. He quoted a Mexican anthropologist to support his view that to protect one's culture, one has to protect the cultural space which is the space of expression.

To the question of who holds the intellectual property of indigenous culture, whether it is the individual or the community, Mr Engelhardt explained that intellectual property refers to the right to have and express ideas and not the right to own things. He went on to say that the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expression 2005 specifically addresses the protection of collective and communal property rights. It is up to the Government to ratify this Convention and modify national legislation to protect these rights, he added.

(b) Participants' Recommendations

There were several notable recommendations. One was for the Ministry of Culture, Arts and Heritage to recognize the traditions of the *nyonya* and *baba* as a cultural heritage; for human rights awareness to be extended to all politicians as the knowledge is essential for them; and for education in human rights and law to be provided to citizens, so that they understand the Federal Constitution and workings of the Government.

3. SUHAKAM'S RECOMMENDATIONS

SUHAKAM makes the following recommendations:

(i) Role of the Ministry of Culture, Arts and Heritage

In accordance with the conference theme, 'Human Rights and Culture', SUHAKAM urges the Ministry of Culture, Arts and Heritage to play a more active and significant role in promoting diversity in cultural practices and respect for all cultures, especially as Malaysia is a multi-racial and multi-religious nation, and to utilize this respect to integrate the peoples. To play this role, it is suggested that the Ministry, among others:

- Urges FINAS to update itself, to meet changing trends and challenges to promote the local film and performing arts industry and to respect people's right to information and choice; and
- Preserves, promotes and develops further the cultures of the various indigenous peoples in Malaysia, especially in Sabah and Sarawak, since these are richly varied and fascinating. SUHAKAM recommends that serious and immediate steps be taken to preserve, promote and develop the dances, songs, textiles, and arts and crafts of these peoples. Setting up an indigenous culture museum and including these cultures in the school curricula and textbooks are other measures to achieve the objective. Folklore and its history that has been handed down from one generation to another should be recorded. Working with the Ministry of Higher Learning to establish departments or even faculties of indigenous studies is another way to preserve, promote and develop these cultures.

(ii) Freedom of Expression for Artists

The public should be given the freedom to determine what movies, plays and stage shows are culturally appropriate for them. Hence, it is recommended that artists be allowed to stage plays or make films as long as they do not incite racial and religious tensions. There should be a standard procedure for obtaining permits, while the grounds for approval should be clearly stated in writing to reduce the possibility of arbitrary decisions being made. If the permit is not issued, the applicant should be given the right to appeal. Artists should have the right to defend their work before a panel of informed members.

(iii) Establishing a Ministry of Religious Affairs

The Federal Constitution clearly states that Islam is the official religion; at the same time, it guarantees the freedom of worship and accords Malaysians the right to practise their religion. In spite of the constitutional guarantee, there are citizens who feel they have been deprived of this right. Thus, certain groups have called for more open dialogue on matters pertaining to religion in the context of the Federal Constitution and human rights.

Since the proposal to form an Interfaith Commission has not found favour with the Government, it is recommended that a Ministry of Religious Affairs be established. Its main function should be to look into matters pertinent to religion and related matters that the people of various religious beliefs cannot by themselves resolve, or problems which cannot be managed within their own religious circle. SUHAKAM is also of the view that religion is a question of one's belief and right, and should not be viewed as a legal issue.¹

(iv) Freedom of Expression

SUHAKAM is deeply concerned about issues of freedom of expression. The Commission acknowledges that everyone has the right to freedom of expression and the freedom of assembly to express concerns in certain matters. However, the Commission also upholds the view that the rights of the individual must be balanced by those of the community. Without the obligation of the community and individuals to respect each other's rights – and if the rights of the community as a whole are subverted – then instability could result.

It is therefore recommended that discussion of any issue confronting society should be allowed, so long as it is through peaceful and rational discourse. While citizens should have the freedom of assembly, it is also recognized that the Police, in the wider public interest, are obliged to safeguard public order. In this context, they may refuse permission for any gathering that might cause public disorder and insecurity, as is enshrined in Article 29(2) of the Universal Declaration of Human Rights.

(v) Unfettered Power

Malaysia operates on a system of constitutional monarchy and Parliamentary democracy. It has adopted the doctrine of separation of powers between the Executive, Judiciary and Legislature. As the blending between the Executive and Legislature is a fundamental characteristic of the Malaysian system of Parliamentary government, each organ requires checks and balances to ensure that their powers are subject to law.

¹ Refer to Y Bhg Tan Sri Abu Talib Othman's welcoming remarks

In a previous public lecture, Sultan Azlan Shah adverted to an aspect of human rights when he referred to his observation as a judge in the *Seri Lempah* case:

Every legal power must have legal limits, otherwise there is dictatorship ... every discretion cannot be free from legal restraint: where it is wrongly exercised it becomes the duty of the Courts to interfere.

In this context, SUHAKAM is perturbed about certain laws which contain such provisions as:

Any decision of the Minister ... shall be final and shall not be called in question by any Court on any ground whatsoever.

On grounds of human rights, it is only appropriate and just for the Government to repeal any provision of law which limits the right of a person to seek legal recourse. SUHAKAM recommends that the Parliament sets up a committee to review all laws which purport to oust the jurisdiction of the Court and to make access to justice a reality.

(vi) Role of the Ministry of Education

The right to culture is enshrined in Article 27 of the UDHR; this right can also be found in Article 15 of the International Covenant on Economic, Social and Cultural Rights. Article 30 of the Convention on the Rights of the Child emphasizes that children of minorities and indigenous populations have the right to enjoy their culture, to profess and to practise their language and religion.

As Malaysia is a multi-ethnic and multi-religious country, it is essential to nurture in children a respect for one another's beliefs and practices and observance of the rights of others when exercising their own rights. This is to ensure that they truly manifest racial integration and national unity.

SUHAKAM recommends that the Ministry of Education:

- Develops a national plan for human rights education; in addition to strategies for implementation, it should include monitoring, evaluation and review (of implementation); and
- Improves strategies for teachers to assist students to value cultural diversity and appreciate the relevance of inter-cultural values in a multi-cultural society.

(vii) Enhancing Prevention of Discrimination against Women

The ratification of CEDAW on July 5, 1995 and the signing of the Putrajaya Declaration during the 2005 Non-Aligned Movement Ministerial Meeting on the Advancement of Women show the Government's commitment to eliminating discrimination against women and to negating the inferior status of women in traditional practices in society. However there are still a number of practices that explicitly or implicitly discriminate against women.

SUHAKAM views this matter with great concern and recommends that:

- A nationwide study be conducted to investigate whether women are fully protected, particularly those in rural areas as stipulated in CEDAW; and
- Measures be taken and policies formulated to respond to the plight of women, especially single mothers.

(viii) Incorporating Science and Technology into Cultures

Alongside with the tension and conflicts that can exist among the various cultures, traditions and beliefs in Malaysia, agitation also frequently arises between traditional and modern practices.

It is therefore recommended that the Ministry of Culture, Arts and Heritage and the Ministry of Science, Technology and Innovation collaborate to inform citizens that cultural values and modern ideas and their advancement, which includes human rights, are not mutually exclusive but are, in fact, related. This is because science and technological advancement are vital to the nation's development, as well as to its economic growth, in order for citizens to enjoy human rights such as the right to education, shelter, health care and development.

4. CONCLUSION

Human rights are the birthright of every person. Non-discrimination is a fundamental principle of human rights instruments. Thus depriving a person of human rights on grounds of cultural distinction is considered discriminatory.

The fundamental rights of the freedom of thought, conscience and religion, and the freedom to express one's beliefs are the foundations of human culture. The ability of all Malaysians to respect one another's religious beliefs, religious practices and cultural practices is the cornerstone of national unity, harmony and integration.