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MALAYSIA

EMPOWERMENT FROM WITHIN?

By

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INTRODUCTION

The Human Rights Commission of Malaysia (SUHAKAM) was established in 2000 under the Human Rights Commission of Malaysia Act 1999, but its effectiveness remains debatable. Supporters argue that having a Commission is better than not having one. Critics view SUHAKAM as a powerless body appointed for the purpose of window-dressing the government's poor human rights records, deflecting attention from the government's responsibility for rights violations and providing the international community with a sanitised version of the situation in Malaysia.

SUHAKAM's main functions as spelled out in Section 4(1) of the Act are to:

1. Promote awareness and provide education relating to human rights;
2. Advise and assist the government in formulating legislation and procedures and to recommend necessary measures;
3. Recommend to the government the subscription to, or accession of, treaties and other international instruments in the field of human rights; and
4. Inquire into complaints on infringement of human rights.

The Commission's performance under the continuing tenure of its Chairman, Abu Talib Othman, has been as disappointing as in previous years, if not even more dismal. During the period under review, little real progress was seen in terms of protecting human rights issues. SUHAKAM's major deficiencies and setbacks are linked to the lack of transparency and public consultation in the selection of commissioners; its restricted mandate; lack of structural autonomy; the government's disregard of its recommendations and advice; ambiguous human rights position involving issues deemed to be 'sensitive'; and slow response to allegations of violations.

a. Visits to prisons and detention centres

In 2006, the Commission made 22 visits to various prisons and detention centres. On 8 January 2007, it visited the Simpang Renggam detention centre in Johor, in response to allegations that inmates were being abused by wardens. However, the visit was not followed up with a public inquiry despite clear evidence of physical abuse being found.

b. Release of report on the 'Bloody Sunday' incident

In March 2007, SUHAKAM released its report on the public inquiry into alleged violations of human rights during dispersal of a public demonstration against increased fuel prices, held on 28 May 2006 in Kuala Lumpur.¹ This has since been dubbed the 'Bloody Sunday' incident in reference to injuries that some participants sustained.

¹ See SUHAKAM. 2007. *Report of SUHAKAM Public Inquiry into the Incident at KLCC on 28 May 2006*. Kuala Lumpur: SUHAKAM.

The Commission concluded that the police had used excessive force; that they had infringed the rights of some of the participants; and that certain officers could be charged under the Penal Code. To date, though, no legal action has been taken against any of the personnel said to be involved.

c. Custodial deaths and police abuse of powers

The Commission pledged to conduct public inquiry into all cases of death in custody should the police fail to conduct an inquest.² However, only one such inquiry has been held, in February 2006, into the death of S Hendry while in police custody. The Commission released its report in April 2006, concluding that the detainee had committed suicide in the cell and that no foul play was involved. However, the report pointed out that Hendry's death could have been avoided if the warders had conducted their patrols properly every 30 minutes as required; and if the deceased had not been placed alone in a cell.

SUHAKAM failed to probe the circumstances of Hendry's detention under the Emergency Ordinance (EO), which allows for indefinite detention without trial and which could have contributed to his negative mental state. The Commission made 31 recommendations for adoption by detention centres to prevent the recurrence of such incidents. The main proposal was for an initial risk assessment to be conducted at the registration stage for all detainees, particularly young ones.³ The Commission failed to recommend that the EO be abolished.

In June 2007, SUHAKAM submitted a list of 34 cases to the Inspector-General of Police (IGP) asking for speedy action against police personnel over violation of rights in the course of duty, brutality and deaths in custody. So far the police have only responded to 16 cases.

d. Anti-trafficking in persons

In May 2007, the Anti-Trafficking in Persons Bill was passed by Parliament. SUHAKAM has been working toward action against trafficking in persons since 2003. It has engaged various sectors, including government agencies and non-governmental organizations (NGOs) in doing so.

e. Human rights education and promotion

As in previous years, the Commission put much effort into promoting human rights by organising workshops, consultations, forums and conferences. Over the period under review, it collaborated with several government agencies. Discussions were also held with key personnel in ministries and government institutions in the area of human rights education and promotion. While enhancing awareness is important, the Commission has not balanced its activities with similar vigour in the area of human rights protection.

² *New Straits Times*. 14 December 2005. "Custodial Deaths: We'll hold public inquiries."

³ See SUHAKAM. 2006. *Report of SUHAKAM Public Inquiry into the Death of S Hendry 17 & 18 February 2006*. Kuala Lumpur: SUHAKAM.

II. INDEPENDENCE

a. Restricted Mandate

SUHAKAM's most glaring weakness is that it does not have enforcement powers and it has a very limited mandate. This has resulted in the Commission being criticised as being ineffective and labelled as a "public relations tool"⁴ of the government and further, as a "toothless tiger".⁵

According to the Paris Principles⁶ a national human rights institution (NHRI), "shall be given as broad a mandate as possible". However, Section 2 of the Human Rights Commission of Malaysia Act 1999 confines the definition of 'human rights' to such fundamental liberties as enshrined in Part II of the Federal Constitution. This limits SUHAKAM's mandate tremendously.

Although Section 4(4) of the Act states that "regard shall be had to the Universal Declaration of Human Rights [UDHR] 1948 to the extent that it is not inconsistent with the Federal Constitution", there is no provision for incorporation of rights embodied in international conventions to which Malaysia is a party. The definition should be in accordance with the UDHR and other international human rights laws.

It must be pointed out that Part II is not the only section of the Federal Constitution that enshrines human rights. Many critical matters like rights of citizenship, right to universal adult franchise, eligibility to contest a seat in the Lower House of the Parliament, and protection for detainees under preventive detention laws are stated in other parts of the document. Yet, these have been deliberately excluded from the Act. Even the few fundamental liberties in Part II can be easily circumscribed as the Constitution subordinates individual rights to the need for social stability, security and public order. It permits the Executive and Legislature to impose many restrictions on fundamental liberties.

SUHAKAM has powers similar to those of a court of law in the matter of discovery of documents and attendance of witnesses. However, Section 12(2) of the Act bars it from inquiring into any complaint relating to any allegation of infringement of human rights which (a) is the subject matter of any proceedings pending in any court, including any appeal; or (b) has been finally determined by any court. This can be problematic as it may restrain the Commission from investigating if a case involves any other forms of violation apart from the subject matter in the courts. This could possibly give the Commission justification to refrain from investigating cases taken to court, without considering if these involve any other forms of violation. This means that there is a possibility that the Commission would have to refrain from inquiry even

⁴ For instance, Syed Hamid Albar. 1999. Rationale for the Human Rights Commission of Malaysia. In Tikamdas, R & Rachagan, SS (eds.) *Human Rights and the National Commission*. (pp. 103-110) Kuala Lumpur: HAKAM.

⁵ For instance, Hector, C 2004. "BN has no respect for human rights." *Aliran Monthly*. <http://aliran.com/oldsite/monthly/2004a/ef.html> last accessed 18 August 2007.

⁶ Principles Relating to the Status of National Institutions (UN Commission of Human Rights Res. 1992/54 of 3 March 1992; General Assembly Res. 48/134 of 20 December 1993).

when the alleged violator initiates legal action to frustrate an inquiry by the Commission.⁷

Another restriction the Commission faces is with regard to visiting places of detention. While Section 4(2)(d) provides the power, the visits have to be “in accordance with procedures as prescribed by the laws relating to the places of detention...”. In order to inspect conditions of prisons, for example, SUHAKAM must first write to the Prison Department for permission. It is pertinent to stress that such notification only gives time to the authorities to clean up their act, which defeats the basic reason for checks on conditions at prisons and detention camps. SUHAKAM should be given the powers to conduct spot checks in order to get a more realistic view of conditions and to ensure that the level of maintenance and treatment of detainees are on par with stipulated standards at all times.

b. Absence of structural autonomy

Under the Act, the Commission is purely an advisory body and the government is free to accept or reject its recommendations. Most of SUHAKAM’s more substantial recommendations have been ignored by the government. Even though the Commission submits an annual report to Parliament, the government has steadfastly refused to facilitate debate on its contents. As in previous years, the SUHAKAM’s Annual Report 2006 was not debated.

When SUHAKAM was established in 2000, it was placed under the jurisdiction of the Ministry of Foreign Affairs. Jurisdiction was transferred to the Prime Minister’s Department in 2004. Being under the direct supervision of the Prime Minister’s Department has further undermined the Commission’s credibility and dispels claims that it has any semblance of structural autonomy from the Executive branch of the government.

Under Section 5(4) of the Act, commissioners hold office for two years and are eligible for re-appointment. As re-appointments are at the prerogative of the prime minister, there is a real danger that commissioners will practise self-censorship and conduct themselves in such a way that they secure renewal of tenure. The few who do perform without fear or favour end up being marginalized and, when their term is up, face potential exit. This was seen for the second time in May 2006, when Professor Hamdan Adnan, the vocal head of the investigations and complaints committee, was not re-appointed. In 2002, the tenure of two highly competent commissioners, Anuar Zainal Abidin and Mehrun Siraj – who led a probe into police brutality in the ‘Kesas Highway’ incident and produced a report highly critical of the government – was not renewed.⁸

⁷ Tikamdas & Rachagan provided a formulation in that an inquiry would be discontinued only if the complainant initiates an action in the courts, the subject matter of which is identical to the Commission’s inquiry. See Tikamdas, R & Rachagan, SS 1999. *Human Rights Commission of Malaysia Act: a critique*. In Tikamdas, R & Rachagan, SS (eds.). *Human Rights and the National Commission*. Kuala Lumpur: HAKAM. (pp. 194-195).

⁸ In 2001, SUHAKAM conducted an inquiry on police brutality at a gathering of 100,000 people along the busy Kesas highway in November 2000. Its report was critical of the police for violating human rights. In relation to this, former Commissioner Anuar Zainal Abidin revealed in an interview in 2006 that his service was not extended following a disagreement with then premier Dr Mahathir Mohamad, who was vehemently against his decision to publicly announce the findings of the inquiry.

c. Insufficient will in protecting human rights

Although it is widely acknowledged that SUHAKAM's ineffectiveness is largely due to its restricted mandate, the Commission does not seem to have made much effort to circumvent the restrictions. It seems to lack the will to do so, conveniently using the excuse that it has not been given a wide enough mandate to justify its lack of effectiveness in human rights protection.

One instance of its lack of will was seen in June 2006, when civil society groups called for a public inquiry into alleged police brutality in the 'Bloody Sunday' incident. A complaint was lodged with the Commission on 31 May 2006, with photographs and video footage of police beating up demonstrators. The complainants were told that a decision as to whether or not to conduct a public inquiry would only be made at the Commission's monthly meeting on 12 June 2006 and would require the support of two-thirds of the commissioners present.

Upon learning that the Commission was reluctant to conduct the public inquiry, members of civil society organizations staged a sit-in protest at its office while the meeting was in progress. As anticipated, the Chairman announced that the Commission would need to hear the police version of the incident and to obtain more evidence before making a decision. This prompted civil society representatives to stage a walk-out protest after only five minutes into their meeting to press the Commission to hold the inquiry.

The Commission's excuse that it needed evidence was unjustifiable as the photographs and video footage submitted could already form the preliminary basis for inquiry. It was even more appalling that the decision of the Commission would have to rest upon the police version of the incident when the complaint was against police personnel. SUHAKAM's vacillation was reflective of its lack of will and slow response in dealing with blatant human rights violations. The Chairman's excuses further demonstrated that the Commission was evading its mandate to discover the truth.

At its next monthly meeting in July 2006, after civil society groups intensified pressure and the Inspector General of Police (IGP) Mohd Bakri Omar publicly defended the police action, SUHAKAM had no choice but to hold a public inquiry. This was conducted in October and the report of the findings was released in March 2007. However, the inquiry could have had more impact if the Commission had subpoenaed the IGP, especially in light of his vehement defence of his personnel in saying they had applied "minimum force" and that they had a "right to defend themselves".⁹ Power to subpoena is provided in Section 14(1)(c) of the Act, enabling SUHAKAM "to summon any person residing in Malaysia to attend any meeting of

(*Malaysiakini*. 7 July 2006. "Ex-rights Commissioner Anuar slams Suhakam" <http://www.malaysiakini.com/news/53558> last accessed 29 July 2007). See SUHAKAM. 2001. *Inquiry 2/2000: Inquiry on its Own Motion into November 5th Incident at the Kesas Highway*. Kuala Lumpur: SUHAKAM.

⁹ *Malaysiakini*. 31 May 2006. "Bloody Sunday: Police chief justifies action" <http://www.malaysiakini.com/news/51840> last accessed 29 July 2007; *New Straits Times*. 1 June 2006. "Policemen have the right to defend themselves".

the Commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession". However, since this power was not used to full effect in the 'Bloody Sunday' inquiry, SUHAKAM cannot cite its limited mandate as an excuse for its ineffectiveness in this instance.

d. Ambiguous position on contentious issues

The Commission's position on certain issues, especially those related to race and religion, is sometimes evasive and ambiguous, if not problematic.

i. 'Safe' position on freedom of religion

SUHAKAM acknowledges freedom of religion as embodied in the Federal Constitution and the UDHR but, at the same time, has maintained a 'safe' position on related issues. For instance, at a press conference in April 2007, the Chairman said: "Do not ask about SUHAKAM's stand [on] the Interfaith [Commission],¹⁰ it is purely [a] matter for the government to decide."

In response to several controversial cases relating to religious freedom over the past two years – such as that involving Lina Joy¹¹ - the Commission only went as far as to "recommend [that] the court delivers its judgment as soon as possible to enable the government to examine the procedure and mechanism related to the issues".¹² The Commission has also not taken a clear stand on several other cases that have caused contention – that of M Revathi, who was sent to rehabilitative detention by Islamic authorities;¹³ S Kaliammal, whose deceased husband's body was taken away by Islamic authorities who claimed that he had converted to Islam;¹⁴ and R Subashini,

¹⁰ The Interfaith Commission (IFC) was proposed as a statutory body to play an advisory, consultative, and conciliatory role to promote religious harmony and national unity. The proposal was led by the Malaysian Bar and, following a two-day national conference held in February 2005, a draft bill on the proposed Commission was presented to the government. Both the Pan-Malaysian Islamic Party (PAS) and the Allied Co-ordinating Committee of Islamic NGOs (ACCIN), a loose coalition of 13 groups, boycotted the conference. ACCIN urged the government to reject the proposal. It alleged that the initiative was "anti-Islamic"; had a hidden agenda to bypass and usurp the powers of state Islamic bodies and the Syariah (Islamic law) courts; and would ultimately infringe upon Muslims' rights to practise Islam. Bowing to pressure, Prime Minister Abdullah Ahmad Badawi deferred the proposal, saying that implementation of the IFC could be a setback to national unity.

¹¹ A Muslim by birth, she converted to Christianity in 1997. Although she successfully applied the same year to change her name to Lina Joy, she failed to have the entry 'Islam' deleted from her identity card. Her application for review of the decision was rejected by the High Court in April 2001. In April 2006, the Federal Court granted her leave to appeal. In a majority verdict on 30 May 2007, the Federal Court rejected her appeal on the ground that she should go through the Syariah Court on conversion matters. Doing so would expose her to sanctions, for Islamic courts in Malaysia have previously jailed 'apostates'.

¹² SUHAKAM. 2007. *Annual Report 2006*. (p. 15).

¹³ M Revathi was allegedly born a Muslim although she claims to have been raised as a Hindu. She was detained for 180 days by Islamic authorities for trying to officially change her religion to Hinduism. During her detention in an Islamic rehabilitation centre, she was allegedly forced to go through intensive counselling and claims she suffered mental torture. The Islamic authorities also took away her child from her Hindu husband and placed her in the care of Revathi's Muslim mother. See for instance, *Malaysiakini*. 11 July 2007. "Revathi: That's my name, forever" <http://www.malaysiakini.com/news/69818> last accessed 2 August 2007.

¹⁴ S Kaliammal was married to M Moorthy, a national hero who had climbed Mount Everest. When he died in December 2005, the Islamic authorities obtained a Syariah Court order that declared him a

who was denied her right to custody of her elder son whom her husband had converted to Islam.¹⁵

ii. Unacceptable position on RELA

While local and international rights groups have urged the disbanding of the People's Volunteer Corps (RELA), given the alarming number of reports that its untrained personnel have abused their powers,¹⁶ SUHAKAM appears to believe that the corps plays an important role. In May 2007, commissioner N Siva Subramaniam said: "RELA is a big help to us. Over four months this year, they have already arrested 15,000 illegal [immigrants]... up to now, there is no way other than to depend on RELA."

Although the Commission has stressed the need to curb abuse of power by the personnel,¹⁷ its tolerant stance on RELA is unacceptable. The very existence of RELA, which falls under emergency legislation that has long outlived its purpose, and the actions of its personnel clearly go against human rights norms and principles.

e. Questionable appointment of Commissioners

The Paris Principles state that composition of a NHRI and the appointment of its members must "afford all guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights..." It must therefore have representation of various sectors, including NGOs, trade unions, and concerned social and professional organizations; philosophical or religious thought; universities and qualified experts; Parliament; and government departments.

Although the composition of SUHAKAM seems to have fulfilled the criterion of plurality to a certain extent, the competence and independence of some commissioners remain open to question. There is no prescribed manner in which the

Muslim at the time of his death. Kaliaammal tried to reverse this via a civil court, but it refused to hear her application. She has since filed an appeal that is due for hearing in December 2007.

¹⁵ R Subashini got married in 2001 in accordance with civil laws and has two sons. Her husband embraced Islam in May 2006 and sought to dissolve his civil marriage via the Syariah Court and to obtain custody of their three-year-old son, whom he claimed to have converted to Islam as well. In March 2007, the Court of Appeal ruled that Subashini, a non-Muslim, must take her case to the Syariah Court. The Federal Court has granted her leave to appeal the decision. The hearing is set for September 2007.

¹⁶ Many instances of abuse of power by RELA personnel have been documented over the course of the year. See SUARAM. 2007. *Malaysia Human Rights Report 2006: Civil and Political Rights*. Petaling Jaya: SUARAM. (pp. 101-112). Human rights groups have pointed out that RELA should be disbanded not only because of gross human rights violations, but also because it is a product of the Emergency Act during the period of 'Confrontation' between Indonesia and Malaysian in the 1960s. As use of the legislation is no longer justifiable, it should be repealed. See for instance, *The Star*. 3 June 2007. "Government will not disband RELA" <http://thestar.com.my/news/story.asp?file=/2007/6/3/nation/17922076&sec=nation> last accessed 15 August 2007; and *Malaysiakini*. 9 May 2007. "Global rights watchdog: Disband RELA" <http://www.malaysiakini.com/news/67003> last accessed 15 August 2007.

¹⁷ *Malaysiakini*. 17 August 2007. "Suhakam: Check Rela's powers" <http://www.malaysiakini.com/news/71304> last accessed 18 August 2007.

public or public-interest organizations can participate in the selection process. As such, there is no consultation with, or participation of, civil society groups.

Another major problem is that the Act gives the prime minister unfettered discretion in appointing commissioners.¹⁸ Section 5 of the Act states that the King is to appoint the members, based on the prime minister's recommendation. This means that there are no checks and balances to ensure that the appointment process is politically neutral. The Act also does not specify limits on re-appointments.

Section 5(3) of the Act states that commissioners "shall be appointed from amongst prominent personalities including those from various religious backgrounds". The definition of 'prominent personalities' is not specified. Indeed, this criterion is of concern as the meaning of 'prominent personalities' is not synonymous with integrity and competence. More importantly, human rights knowledge/experience is not stated as a criterion in such appointments.

Eighteen commissioners are serving out the 2006-2008 term. Most are either former civil servants or those who have worked closely with the government.¹⁹ Despite being paid a handsome salary and allowances, the commissioners continue to serve on a part-time basis and are not exclusively focused on human rights work.

f. No autonomy over funds

Control over funds is another area by which the Commission's autonomy is measured. Section 19(1) of the Act states, "The Government shall provide the Commission with adequate funds annually...", while Section 19(2) prohibits the use of foreign funding. The ban reflects SUHAKAM's lack of autonomy to determine its finances, although some argue that it also ensures independence from external parties. Still, the fact that SUHAKAM is not even allowed autonomy to decide whether or not to receive a particular external fund is indicative of distrust in its ability to make independent decisions. The Commission's budget from the government for 2006 was RM7.6 million.²⁰

III. EFFECTIVENESS

a. Slow response to human rights violations

SUHAKAM is clearly reactive, not pro-active, when it comes to protecting human rights. Section 12(1) of the Act states that, "[t]he Commission may, on its own motion or on a complaint made to it..." inquire into allegations of human rights infringement. However, in practice, the Commission does not open an inquiry until a complaint is lodged.

¹⁸ In 2002, this perception was substantiated by a controversial change of personnel when former Attorney-General (AG) Abu Talib Othman was appointed as SUHAKAM Chairman. It created a furore among civil society groups as he had served under Dr Mahathir Mohamad, whose 22-year tenure as premier had seen many laws being made more restrictive and oppressive. As AG, Abu Talib had also played a major role in the unprecedented sacking of Lord President Salleh Abas in 1988.

¹⁹ The bio-data of Commissioners are available on the SUHAKAM website:

http://www.suhakam.org.my/bm/ahli_suruhanjaya.asp last accessed 29 July 2007.

²⁰ SUHAKAM, 2007. *Annual Report 2006*. (p. 193).

When the Commission receives complaints of violations, it is often slow in responding or, in many cases, does not respond at all. A common excuse is that commissioners need time to discuss the matter and that their meetings are convened only once a month. Yet, they have not taken the initiative to address even this situation. The commissioners are not exclusively focused on human rights work, and most of the time, are not even in the office. As a result, there is lax follow-up of complaints. As at May 2007, only nine complaints lodged in the first five months of the year had been resolved.²¹ However, the Commission has periodically met with officials in the government departments accused of violations, who only pay lip service to the need to improve the situation.

In 2006, only 417 of the 1,222 complaints SUHAKAM received were deemed to involve violation of human rights.²² Up to May 2007, only 183 of the 457 complaints had been investigated. The rest were not pursued as they were “not related to human rights”.²³

b. Recommendations and advice ignored

Although SUHAKAM is frequently criticized by NGOs for its incompetence, it has – to its credit – come up with considerably good reports and recommendations. However, these initiatives to promote human rights are routinely ignored by the government and its agencies.

For example, SUHAKAM has since its inception been consistent in its position on freedom of assembly. In several comprehensive reports,²⁴ it has made recommendations supporting the right to peaceful assembly in line with international human rights standards. These include professional procedures in situations where crowd dispersal is justifiable; for instance, that an audible order to disperse should be given three times at 10-minute intervals before the police move into action.

SUHAKAM’s report on the ‘Bloody Sunday’ inquiry reiterated recommendations in protecting the right to peaceful assembly, but the authorities have not implemented any of these. Although the police have, to a certain extent, subsequently refrained from using force to the same extent, the government has continuously disregarded and disrespected freedom of assembly. This was seen in several forced eviction operations and during protests against the increase in toll-charge rates after the ‘Bloody Sunday’ inquiry report was released – again, there was clear evidence of excessive force by law-enforcement personnel.

During the period under review, major recommendations were made with regard to preventing deaths in custody, following the suicide of S Hendry. There is, as yet, no evidence of SUHAKAM’s recommendations being adopted.

²¹ *Buletin SUHAKAM*. April 2007-June 2007. (p. 11).

²² SUHAKAM. 2007. *Annual Report 2006*. (p. 76).

²³ *Buletin SUHAKAM*. April 2007-June 2007. (p. 11).

²⁴ See for instance, SUHAKAM. 2001. *Inquiry 2/2000: Inquiry on its Own Motion into November 5th Incident at the Kesas Highway*. Kuala Lumpur: SUHAKAM.

At another level, the ratification of international covenants and treaties is one of the benchmarks of human rights promotion and protection. SUHAKAM's recommendations since 2000 to the government to sign several key international documents have been ignored. Ratification of the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) remains as distant as ever.

c. Ineffective co-operation with the government

According to its 2006 Annual Report, the Commission had collaborated with several government agencies. Discussions were held with key personnel including the Minister of Rural and Regional Development, Minister of Higher Education and the Director-General of Education. The Commission said it had also worked with government agencies, including the Immigration Department, RELA, the police force and Prison Department in the area of human rights awareness and education.²⁵ While such activities are extremely important, their effectiveness is difficult to gauge. For example, RELA personnel are still periodically accused of abusing their power even though SUHAKAM has provided them with training on human rights.

d. Limited outcomes of intervention

SUHAKAM's ability to influence change is seldom visible. It is possible that the government and its agencies have not revealed the changes implemented, for fear of adverse publicity or simply because of a historically poor track-record of official disclosure and accountability.

However, a positive outcome was seen in February 2006 when SUHAKAM announced its decision to hold a public inquiry into the death of A Ravindran while in police custody in Penang. This possibly led to the police expediting an inquest into the long-overdue case.²⁶ District police submitted the case-file to the Public Prosecutor's office on the same day that SUHAKAM issued subpoenas to witnesses, including police officers connected to the case. This resulted in SUHAKAM calling off its intended action.

A positive result was also recorded in the area of trafficking in persons. SUHAKAM's work on this since 2003, in consultation with stakeholders, led to the Anti-Trafficking in Persons Bill being passed in May 2007. However, the Act provides little protection for victims – instead, they can be forced into a shelter by a Magistrate and will be punished if they choose to leave the shelter.

e. Inconsistent image

At the 16th ASEAN Ministerial Meeting held in Singapore in 1993, member-states had declared their willingness to set up a regional human rights mechanism. SUHAKAM pledged its fullest support and willingness to work towards this and reiterated the government's support for the mechanism at the Sixth Workshop on the

²⁵ SUHAKAM. 2007. *Annual Report 2006*. (p. 63).

²⁶ A Ravindran, 41, died at the Northeast District police lock-up in Patani Road, Penang, on 19 November 2005 (*New Straits Times*. 23 February 2006. "Suhakam move 'fires up' police").

ASEAN Regional Mechanism on Human Rights held in Manila, the Philippines, on 16-17 July 2007.

This proved to be a mere show of commitment. When a participant from Singapore asked about SUHAKAM's role in ensuring freedom of religion, commissioner Choo Siew Kioh side-stepped the issue – he said it was irrelevant to the discussion on the role of NHRIs in advancing the regional mechanism. This reinforced SUHAKAM's evasiveness on the issue of freedom of religion.

IV. INTERACTION WITH NGOS

SUHAKAM has generally had a rocky relationship with human rights NGOs since its inception.²⁷ During the period under review, this relationship did not change much, as plainly illustrated by the walk-out by NGO representatives in June 2006 after only five minutes into a meeting to push for a public inquiry on the 'Bloody Sunday' incident.

According to a report published by the Education and Research Association for Consumers Malaysia (ERA Consumer Malaysia), Malaysian NGOs had initiated annual consultations with SUHAKAM in each of the last five years. However, the SUHAKAM Chairman has not attended any of these sessions. Less than 10 percent of the commissioners have turned up, despite personal invitation letters being issued to all of them and reminders being sent.²⁸

Still, many NGOs see the importance of the Commission and continue to co-operate with it. One reason is because SUHAKAM has access to locations – such as places of detention – where human rights violations allegedly occur and which are not easily accessible to civil society groups. However, the level of co-operation between NGOs and SUHAKAM varies from one group to another.

For example, in taking up the issue of trafficking in persons, the Commission visited the Kajang Women's Prison and observed a large number of foreign nationals, mainly young girls, being held on remand. The Commission then set up a sub-committee to study the problem of trafficking in women and children.

At the National Conference, 'Stop Trafficking in Persons: Transborder Crime in the Region' held in Kuala Lumpur in September 2006, a SUHAKAM representative gave a presentation on the Commission's experiences and initiatives. She commented: "NGOs, who operate at the grassroots [...] would be able to provide vital information,

²⁷ In 2002, a coalition of 32 NGOs disengaged with SUHAKAM for a period of 100 days in response to the controversial change of personnel in the Commission, and SUHAKAM's poor record. In response, SUHAKAM expressed disappointment. Commissioner Professor Hamdan Adnan said the boycott was unfair and would only cause a loss to society. He observed that the boycott showed that the NGOs had their own interests at heart and were not sincere in defending human rights. He further said they had not followed-up on key issues over which they had criticized SUHAKAM, and that it was not right to pass all responsibility to a body that was just a year old.

²⁸ Kang, R 2006. Malaysia's commitment to international human rights instruments and mechanisms: A review of SUHAKAM's roles, approaches and impact. In Nagarajan, S (ed.) *SUHAKAM After 5 Years: State of Human Rights in Malaysia*. Petaling Jaya: ERA Consumer. (p. 9).

motivation and support. There needs to be co-ordination between NGOs [...] local community members, groups and agencies should be actively engaged.”²⁹

Indeed, there has been constructive engagement between SUHAKAM and NGOs working on this issue. As a result of a series of dialogues with NGOs, government agencies, individuals and selected embassies, SUHAKAM published two reports, *Trafficking in Women and Children* (2004) and *Reducing Violence Harm and Exploitation of Children* (in collaboration with United Nations Children’s Fund, UNICEF, 2005).

The most recent example of engagement is on the ASEAN Human Rights Mechanism. In March 2006, SUHAKAM hosted the second meeting of the ASEAN National Human Rights Institutions’ Consultation Mechanism. However, the meeting in Kuala Lumpur was organized in a rather exclusive manner, with only limited NGO engagement.³⁰ Subsequent meetings and roundtable discussions were similarly attended by only a handful of NGOs.

V. RECOMMENDATIONS

➤ To the Government:

1. *Definition and mandate*

Amend definition of ‘human rights’ so that SUHAKAM’s jurisdiction can be widened to cover rights relating to life, liberty, equality and dignity of the individual as embodied in the UDHR and other international human rights laws.

2. *Appointment of Commissioners*

Establish an independent search committee comprising members of Parliament from the ruling coalition and opposition parties, civil society groups, trade unions and concerned social and professional groups. The selection process should be transparent, consultative, free and fair. The candidates should be credible, independent and competent in the field of human rights. Commissioners should serve full time and focus exclusively on human rights work. Those who only serve on a part-time basis should not be paid full-time salary.

3. *Adequate resources*

The Commission should be provided with adequate resources in order to function effectively. It should have financial autonomy and be allowed to determine whether or not to receive foreign funding and to co-operate with foreign institutions on human rights promotion and protection. It should be equipped with staff of the right calibre, with the required knowledge, commitment and determination to enhance compliance with human rights.

²⁹ Pillai, K 2007. SUHAKAM’s Experiences and Initiatives. In TENAGANITA. (ed.) *Stop Trafficking in Persons: A Transborder Crime in the Region*. (pp. 45-68). Kuala Lumpur: TENAGANITA.

³⁰ Kang, R 2006. (p. 14).

4. *Security of tenure/autonomy*

Extend the tenure of commissioners to five years and immediately dispense with the practice of re-appointment so as to ensure autonomy.

5. *Powers of inquiry*

Clarify the Commission's powers to prevent Section 12(2) from frustrating its work by the simple means of taking matters to court. Allow SUHAKAM the discretion to conduct the inquiry after disposal of the matter in court. The Commission should also be given powers to conduct spot checks on places of detention.

➤ **To SUHAKAM:**

6. *Empowerment from within*

Make use of even its limited mandate and find ways and strategies to proactively maximize its role as a credible protector of human rights.

7. *Balance human rights promotion with human rights protection*

Direct intervention into alleged violations should be carried out with the same vigour as promotional activities. The Commission must find the will to make a clear human rights stand on fundamental issues, regardless of whether these are deemed sensitive or controversial.

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