

Executive Summary

Human rights especially on an election year continued to deteriorate in Malaysia, especially on the government's actions on freedom of peaceful assembly and expression.

The government continues to restrict significantly the freedom of association, of civil servants, academics and students.

The U.N. Special Rapporteur on freedom of expression reported to the U.N. Commission of Human Rights in March 1999 of grave concerns on freedom of expression in Malaysia.

The Government passed legislation to form a National Human Rights Commission in 1999. Human rights non-governmental organisations (NGOs) remained skeptical of its effectiveness and independence.

Exjudicial killings by the police still occurred but the number of reported deaths, were lower than previous years.

The former chief of police admitted in a Royal Commission of Inquiry to have assaulted former Deputy Prime Minister Anwar Ibrahim in September of 1998.

The political trial of Anwar Ibrahim accompanied several questionable rulings by the judge, also dominated news in Malaysia. He was convicted in April 1999 for corrupt practices. Within a few months, he was convicted alongside his adopted brother on a charge of sodomy for another nine years of imprisonment. He was denied bail on both charges.

A Canadian journalist from Far Eastern Economic Review was jailed after losing an appeal of a 1997 conviction for contempt of court stemming from an article that raised questions on judicial favoritism.

The Attorney General practiced politically motivated, selective prosecution and NGOs continued to rally for the independence and impartiality of the judiciary.

Foreword

10 Years of Human Rights Struggle

In the last ten years, human rights awareness has become more widespread among Malaysians. 'Operation Lallang' has ensured that Opposition political parties, trade unionists, educationists, religious groups, social organisations and others are now more committed in their opposition to the ISA – that Indefensible Suppression Apparatus - and other undemocratic laws.

Suaram has played a significant role in helping to bring about this awareness. Suaram had also initiated, coordinated and led campaigns against two of the country's most destructive projects, the Bakun and Selangor dams. We view the collective rights of indigenous peoples, of women, workers, urban settlers, minorities and other oppressed groups as part and parcel of their civil and political rights.

Until the recent economic crisis, the last ten years of Mahathir rule appeared to mark the triumph of economic liberalism even as it rode roughshod over the victims of this rapacious economic policy. The rapid economic growth pursued in the last ten years has been accompanied by greater authoritarianism while also significantly marked by corruption, cronyism and wasteful investments. The power of the mass media, owned and controlled by the ruling elite, has systematically replaced the role of elected parliaments. We are regularly fed news and comment to justify the actions of the Executive. Personalities have replaced issues as the central feature of political debates.

Human rights work, unlike party politics, is rather unglamorous work. It involves commitment which does not attract "YB wannabes". The usual farcical squabbles over candidature at every general elections has produced the cynical observation that democracy in many political parties is equivalent to "Dia Mahu Kerusi" (He wants a seat)! Thus, the fact that Suaram has managed to sustain itself these ten years with its committed activists, volunteers and supporters is a huge achievement in itself.

We believe that to make democracy work we have to actively step up the demands from outside Putrajaya, Parliament and the Powers-that-be; to empower citizens through the process of participation, realising our rights through direct action and solidarity with other progressive organisations.

We believe that true democracy involves more than just releasing press statements and electioneering. It is about rebuilding society by developing basic values of autonomy, solidarity and responsibility for life and for future generations. We believe that our commitment to sustainable development must go beyond pious hopes that greedy developers and the State will initiate mitigative measures to unsustainable projects as can be seen at Bukit Sg Putih Forest Reserve and the Sungai Selangor dam. The practice of real democracy must involve full citizens' participation, including mobilising opposition to all forms of environmental destruction.

The human rights book we take great pleasure in launching this year is Koh Swee Yong's recent publication in Chinese, *40 Years of the ISA*, which is being translated into Malay and English. It is the fruition of a project commissioned by Suaram when the organisation first began.

This is a valuable documentation of ISA detainees throughout the infamous career of this obnoxious Act. The third book we are launching tonight is the new edition of Kua Kia Soong's *445 Days Under Operation Lalang* which was published in the same year that Suaram was founded, in 1989. This can be seen as a Survival Handbook for potential ISA detainees or as a tourist guide to Malaysia's world famous Kamunting Detention camp

Suaram's mission is to fight for a government that would guarantee human rights, protect the rights of nature and future generations without sacrificing the right of all living humans to a decent life. In all these areas, Suaram has attempted to defend and pursue human rights not only for Malaysians but also East Timorese, Achehnese, Burmese, Kurdish, Palestinians and other oppressed peoples of this earth.

With your continued support, we will endeavour to reclaim our rights, to strengthen all these areas of human rights work, to broaden human rights education among Malaysians and to meet the challenges of rapidly changing political and economic developments.

Dr. Kua Kia Soong

Chairperson, SUARAM

Millenium Message

The coming of the New Year should fill our hearts and minds with hope of better things to come, especially one that has been heralded as the "Millenium Celebration". While there are indeed many things that the Malaysian people deserve to be joyous and proud, we will end this year with another dismal track record in human rights and public accountability.

In the coming millenium, we remain shackled to the chains of the Internal Security Act. Other legislations which allow for detention without trial such as the Emergency Ordinance, recently used on 10 men in Gopeng, Perak, still exist. The former Inspector General of Police who physically assaulted Anwar Ibrahim still walks freely with impunity. The police force declines responsibility for the indiscriminate killings in the past years, including that of a physician, Dr. Tai. Our right to peaceful assembly and freedom of expression remain curtailed.

Our right of diverse information continues to be restricted with the recent attacks on one of the best-selling newspaper, Harakah. The mainstream press, cowed by executive orders, ministers and ministries, are now viewed as propaganda mouthpieces and peddlers of untruths. It is no wonder why Harakah, in the past year, has become the preferred paper in this country; the internet and foreign media as venues for 'alternative news'.

Yet, with every new day and every new year, we remain optimistic that justice will prevail. Among the numerous concerns for the coming millenium, SUARAM will once again call on the government and all Malaysians to work for:

1. The abolition of the Internal Security Act and all other legislation goes against the basic freedoms of Freedom of Expression, Assembly and Association;
2. The stopping of the Bakun Hydroelectric Project and the Sungai Selangor Dam;
3. The due recognition and land rights for all indigenous peoples in Malaysia;
4. The release of all political prisoners in Malaysia;
5. The prevention of abuse of police powers and especially police brutality;

6. An open society which has freedom of expression, freedom of information and press freedom;
7. A transparent, accountable and corrupt-free administration;
8. Progressive and genuinely peaceful solutions in our region of South East Asia, especially in the troubled region of Aceh, military-occupied Burma and newly independent East Timor.

Next year will see the establishment of the National Human Rights Commission. We would hope that the Commission and the newly-appointed Commissioners will act for the rights of the people without favour or fear, solace and justice be at last be given to victims of human rights abuses in these many years.

Lastly, in our collective millenium revelry, we hope that Malaysians will also think of those ISA detainees who remain incarcerated in Kamunting Detention Camp, political prisoners such as Anwar Ibrahim and their families.

Wishing all Malaysians a very Happy and Just New Year.

Right to Freedom of Expression

The Federal Constitution provides for freedom of expression. Nonetheless, this freedom is clearly illusory; legislations exist to restrict freedom of speech and expression. The Sedition Act, which prohibits the raising of 'sensitive' issues; the Officials Secrets Act, which prohibits the public release of certain information; and the notorious Printing Presses and Publications Act, which governs printed matter such as newspapers and books, have been instituted for this very purpose.

In March 1999 the Prime Minister said there were alleged slanderous statements which had allegedly advocated assassination and violence, had become a "security problem". However, no one has been found or charged to date for making those alleged statements.

In March 1999 UMNO announced their party's legal panel to monitor slanderous and libelous statements and to take legal action against them.

Deputy Minister in the Prime Minister's Department Datuk Ibrahim Ali, the chairman of the panel, warned that those who made allegations against the Government or the ruling party will face prosecution for criminal defamation. In May 1999, Datuk Ibrahim Ali said that between 40 to 50 persons from the opposition and academia had been identified.

In August 1999 Deputy Prime Minister Datuk Seri Abdullah Badawi warned that political parties who raise sensitive issues and cause an "undesirable situation" would be charged under the Sedition Act. However, critics said that this is only applicable to those belonging to the opposition fold, as ruling parties leaders continue to comment on 'sensitive' issues with impunity.

In September 1999, the ruling party, United Malays National Organization (UMNO) lodged a police report charging the chief minister of the opposition-controlled state of Kelantan with sedition for allegedly saying that the royal family in that state was no longer held in high regard.

In another development, government officials, opposition figures, and personalities, attached to both ends of the political spectrum, continued to file multimillion-dollar lawsuits for libel and slander. This increasing

trend had caused considerable worry on its impact on freedom of expression. The Bar Council stated that the proliferation of multimillion-dollar libel and slander lawsuits "would end up stifling freedom of speech." (*see Box: "A surfeit of defamation cases in Malaysian courts threatens free expression"*)

Even the internet had not been spared. Throughout the year, government leaders attacked pro-opposition websites for allegedly spreading propaganda against the government. However, the government clung on to their promise that the internet would not be censored in Malaysia. There has been no incident of internet censorship to date.

Police had also earlier detained four persons under the ISA back in 1998 for "cyber rumor-mongering" – the four persons had passed on information on a rumour that riots had occurred in the capital city, Kuala Lumpur. The four were later charged under the Penal Code. To date, their hearing continues.

What troubled internet users with regards to this case, was the fact that it was revealed, for the first time to the public, that the internet service providers have the ability to monitor and extract relevant information to pass on to the government.

In 1999, the government stated that it would not publicly disclose the readings of an air pollution index, for fear of 'driving away tourists'. Since 1997 the government had banned local academics from making public statements on Malaysia's air pollution crisis. The ban remains until today.

In February 1999, a ban was issued for all state health departments from commenting on the outbreak of a deadly virus which resulted in more than 100 deaths in the country. The government also restricted reporters' access to sites of the outbreak.

The Official Secrets Act (OSA) was used in August 1999, to attack opposition National Justice Party youth leader, Mohd. Ezam Mohd. Nor, after he publicly revealed that he had access to documents which corroborated charges of corruption against senior government leaders. Police followed up with an investigation, to ascertain if Mohd Ezam had violated the OSA. However, no charges were filed to date and the Anti Corruption Agency (ACA) remained mum on Mohd Ezam's allegations.

The Printing Presses and Publications Act places limitations to press freedom. Under the act, domestic and foreign publications must apply annually to the Government for a permit, which is reviewed regularly. The government exercises extraordinary powers over press licensing and critics say that it sets an atmosphere of self-censorship and pro-government reporting amongst the print media. The act amended in 1987 to make the publication of "malicious news" a punishable offense, and to prevent court challenges to suspension and cancellation of publication permits.

The opposition party, PAS, which publishes a twice-a-week tabloid newspaper, Harakah, saw its popularity soar to rival and beat some of the mainstream newspapers. It was reported that Harakah now commands a readership of more than 300,000 nationwide, to the chagrin of government leaders. Expectedly, Harakah came under several attacks by government ministers. In December 1999, the Home Ministry issued a show cause letter to Harakah, ordering them to explain why Harakah should not be banned, as its circulation was supposedly only for PAS members. The ministry also crackdowned on news stands which allegedly sold Harakah to non-members and confiscated copies. At the end of the year, Harakah was no longer visibly available to the public.

NGOs have also complained that their viewpoints especially those pertaining to civil and political issues of the country have been largely ignored by the press, save the Chinese press on occasion. For example, human rights group, Aliran, who used to get regular coverage for their human rights opinions, saw their public statements relegated to alternative publications and the internet.

In May 1999, during World Press Freedom Day, a petition endorsed by 581 journalists from 11 newspapers urged the Government to repeal the Printing Presses and Publications Act. The petitioners also stated that government controls on the press had resulted in self-censorship and diminished the credibility of the mainstream press through existing laws regulating the press. The petitioners called for the formation of an independent media council to regulate the press. Deputy Prime Minister and Home Minister Datuk Seri Abdullah Badawi replied that the Government would study the proposal for a media council but stopped short of allowing for a more liberal environment for journalists.

Malaysia's longest trial in history – the trial of Tenaganita director, Ms. Irene Fernandez, continued throughout the year, with no end in sight.

Ms. Fernandez was charged under the Printing Presses and Publications Act for publishing a memorandum detailing the mistreatment of migrant workers detained in detention centres.

In September 1999, Far Eastern Economic Review correspondent and Canadian national, Murray Hiebert, lost his appeal of a 1997 conviction for contempt of court. The charge was based on an article published in 1997, in which Hiebert alluded to a case in which the wife of Justice Gopal Sri Ram, had received preferential treatment in court. The Court of Appeals upheld the conviction. Hiebert served his 6-week sentence, which was later reduced to 4 weeks on the account for 'good behavior'. His case was the first in Malaysia, in which a journalist had been sentenced to jail for contempt in the ordinary course of his duties.

The electronic media has not been spared from government control. In July 1999, Deputy Information Minister said that government television and radio channels would not broadcast the views of opposition parties. During the 10th General Elections, it was clear that the ruling coalition had full control of electoral advertisements and news aired on television stations.

Even in places of worship, freedom of expression is curtailed. The government had issued a ban on certain Muslim leaders from delivering sermons, especially those were allegedly unsympathetic to the government. Time and time again, the government alleged that the opposition uses the mosques to spread "lies" about the government.

The government continued to clampdown critics on campuses, especially after the Anwar Ibrahim saga, where it was evident that the political prisoner was highly popular amongst the student population. Government leaders would seize every opportunity to issue warnings to students not to be involved in politics, although when it came to events involving the ruling party, this warning was ignored. For example, the government organised a seminar on 'understanding of national policies' in May 1999, which witnessed the participation of about 33,870 students. Those who spoke out against the government could face disciplinary actions, which include suspension or expulsion.

On another note, an Amnesty International's prisoner of conscience and opposition leader, Lim Guan Eng was released after completing his sentence. Lim was earlier convicted on charges under the Sedition and Printing Presses and Publications Acts, which involved former Melaka Chief Minister, Rahim Tamby Chik who allegedly committed statutory

rape on an underage girl. Lim was given a hero's welcome by more than a thousand supporters but was barred from politics for the next five years.

A surfeit of defamation cases in Malaysian courts threatens free expression

RAJA AZIZ ADDRUSE

In some countries journalists have to keep their heads down to avoid bullets. In Malaysia the dangers are different, but just as real. Increasingly, what would be considered a normal exercise of their craft in other democracies can land reporters with a multi-million dollar defamation suit or--as in the case of Murray Hiebert of the Far Eastern Economic Review--in jail. A Canadian national, Hiebert wrote an article in January 1997 about a legal dispute involving the son of a Court of Appeal judge. The reporter was charged with contempt of court and deprived of his passport as a condition of bail. Some two years later, on Sept. 11, the Court of Appeal upheld his conviction, while reducing his sentence from three months to six weeks. He is appealing to the Federal Court but has elected to serve his term so he can get his passport back. Hiebert is now in Kuala Lumpur's Sungai Buloh prison because of something he wrote.

Malaysia's judiciary finds itself, once again, under close international scrutiny. Hiebert is the first journalist to be imprisoned in Malaysia in the line of duty. Recent advances in information technology mean that it is no longer only law professors, lawyers and judges who consider whether an utterance is offensive. Thanks to the communications revolution, the general public can now examine allegedly scandalous statements, in their full context, and reach its own informed judgment on what they mean and whether their author should be punished. Although Malaysia no longer uses a jury system (findings of fact are made by judges), ordinary members of the public are still drawing their own conclusions.

And the public attaches importance to the rights of freedom of speech and expression. The judgment against Hiebert has much in common with a string of other recent decisions, including the cases of Lim Guan Eng (an opposition MP jailed for 18 months for "maliciously publishing" a pamphlet), Param Cumaraswamy (a United Nations special rapporteur on the independence of judges and lawyers who has been denied immunity from legal process in relation to a quotation published in a British legal periodical) and M.G.G. Pillai (in which an individual journalist was ordered to pay \$800,000 for making defamatory statements against a businessman). Defamation suits against journalists are becoming a common feature of the Malaysian scene. Damages sought in the cases currently pending run into the tens of millions of dollars. The danger is that, in such a climate of great apprehension and fear, the media cannot fulfill their duty to critically report on events.

Of course, the right to freedom of speech is not absolute. There must be some restrictions in order to protect citizens and the judiciary from scurrilous attacks. But at the same time, the courts must weigh the two competing rights carefully, to ensure that the right to free speech is not obliterated.

The courts' increasingly frequent and wide use of the law of contempt is cause for grave concern--not only to journalists, politicians and ordinary

citizens, but also to the legal profession itself. In the past few months, several Malaysian lawyers have been committed for contempt for discharging their duties as advocates and solicitors. In the first trial of former Deputy Prime Minister Anwar Ibrahim, for example, the judge frequently threatened to commit defense counsel for representations made to the court in their professional capacity. One member of the defense team, attorney Zainur Zakaria, was committed and sentenced to three months' imprisonment for filing an affidavit on behalf of his client. (He has been released on bail awaiting his appeal.)

Litigants, too, have been summoned to show cause why they should not be committed for contempt for expressing what they believed to be legitimate complaints of unfairness in the administration of justice.

In the classic 1900 British case of *R v. Gray*, the court made clear that the law of contempt was subject to an important qualification: "Judges and Courts alike are open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of court. The law ought not to be astute in such cases to criticize adversely what under such circumstances and with such an object is published; but it is to be remembered in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen."

It is in accordance with that statement of principle that the courts must reach decisions in contempt cases. And the public will measure their decisions against that principle.

Raja Aziz Addruse is a member of the Malaysian Bar Council. He was chairman of the council in 1976-78, 1988 and 1992. He is also a leading human rights advocate with the National Human Rights Society (HAKAM).

Right to Freedom of Assembly

The Constitution provides for freedom of peaceful assembly. However, once again, it is merely illusory. Significant restrictions are legislated such as through the Police Act 1967 which requires a police permit 14 days before any public assembly is held.

In terms of a definition of an 'assembly', the Penal Code provides that any assembly of five persons or more will be considered an assembly. Failure to disperse is a criminal offence with a minimum mandatory fine of RM 2000 for the first offence.

The Police Act was further amended in 1989, to allow the police to close down gatherings on private premises, if the police were of the opinion that the gathering constituted a threat to public order or a breach of peace.

The decision to grant a permit theoretically rests with the district police chief; however, critics and human rights NGOs say that the granting of permits is highly discretionary and political.

Although there is no outright ban on opposition gatherings, the police have a clear policy to prevent any "reformasi" gatherings and street demonstrations, which may be sympathetic to the plight of Anwar Ibrahim. Again, this is said to prevent any 'threat to public order'.

On 14th April 1999, thousands peacefully protested the conviction of Anwar Ibrahim in front of the Kuala Lumpur High Court. Riot police used truncheons, tear gas and water cannons to disperse the crowd and arrested a number of these demonstrators. Chua Tian Chang @ Tian Chua, the Vice-President of the National Justice Party, was one of many who was filmed and photographed with blood on his forehead. In September where demonstrations were held to commemorate the anniversary of the sacking and detention of Anwar Ibrahim, supporters peacefully demonstrated en masse throughout the country.

In Kuala Lumpur, more than 10,000 demonstrators gathered at the national mosque, calling for the establishment of a Royal Commission of Inquiry to investigate allegations that former Deputy Prime Minister Anwar Ibrahim was poisoned in custody.

Police fired tear gas canisters and chemical-laced water into areas surrounding the mosque when the leaders attempted to march on the streets towards the King's Palace to deliver a memorandum. Police also charged with batons when demonstrators started to disperse peacefully, following a two hour stand-off.

Police arrested a number of opposition and NGO leaders who were later charged in court. They are Hishamudin Rais, Mohammad. Azmin Ali, Sivarasah Rasiah, Dr. Mohammad Hatta bin Ramli, Mohammad Ezam Mohammad Nor, Wing Helmi bin Muhammad, Saidin bin Nayan and four others.

All eight are reported to have received hospital treatment, either as a result of injuries sustained, or for the after effects of the chemicals used by water cannon to disperse demonstrators. Helmi bin Muhammad is reported to have received serious injuries to his head, back, eyes and neck.

Also arrested were a 14-year-old school boy who was said to be videoing the demonstration, and another juvenile. Both have now been released on bail. All the remaining detainees have been remanded in custody for eight days with the exception of Saidin bin Nayan who has been remanded for four days.

Sivarasah Rasiah, Hishamudin Rais, Dr. Hatta and Azmin Ali, all prominent figures of the political opposition, were arrested on 20 September. Hishamudin Rais and Azmin Ali were charged with illegal assembly under Section 27 of the Police Act and Section 147 of the Penal Code, for causing a riot.

Since the detention of Anwar Ibrahim in September 1998, street protests in support of the reform movement in Malaysia have taken place, the majority of which have been peaceful.

Police have repeatedly broken up these demonstrations using water cannon and tear gas.

Peaceful protestors have been beaten by police and reportedly by men in civilian clothes wearing red armbands, believed to be plainclothes policemen. Hundreds of protesters have been detained amid reports of ill-treatment during and immediately after arrest, and in police lockups.

They have had their access to legal counsel restricted or denied before remand hearings.

Hundreds have so far been brought to trial for taking part in demonstrations, under charges including 'illegal assembly' and 'failure to disperse'.

The government has also stated that at least 12 students who took part in protests would be expelled or suspended from their educational establishments. Under Malaysia's Universities and University Colleges Act, students are prohibited from involvement in opposition political activities.

There were other pro-Anwar Ibrahim demonstrations throughout 1999 with several arrests made. Among those arrested were opposition party leaders whose cases are still pending in court. Both the Police Act and Penal Code were used to charge them for allegedly participating in illegal assemblies and the Penal Code for allegedly causing riots.

More than a hundred demonstrators who were arrested and charged in court in 1998, were acquitted. Those who were found guilty await their appeal.

In July 1999, six social activists who were members of the protem Malaysian Socialist Party (PSM) and Ms. Irene Fernandez of Tenaganita were arrested and charged for illegal assembly when they tried to prevent police from demolishing a squatter settlement in Kampung Sungai Nipah. The case is still pending.

Other demonstrations of differing issues occurred but without the haste and brutality as those meted to pro-Anwar Ibrahim demonstrations by the police. These include protests outside embassies, demonstrations on environmental and workers issues.

Statement From the Court (handwritten)

We consider our arrest and detention as an act of oppression intended to attempt to intimidate us from our struggle for justice in Malaysia. Our detention seems to be an act of punishment for our political struggle and our acts of peaceful political dissent.

Our detention should only strengthen the resolve of every one of us who are fighting for justice in Malaysia.

Let the oppressor see that for every one who is jailed ten more will rise to take his/her place.

Date: 21 September 1999 (5.00 p.m.)

By:

(signed) Dr. Hatta Ramli (PAS)

(signed) Hishamuddin Rais (aktivis sosial, pengarah filem)

(signed) Mohamed Azmin Ali (PKN)

(signed) Sivarasa Rasiah (SUARAM)

Arbitrary Detention

Detention without Trial

Laws that allow the Government overwhelming powers to indefinitely detain without trial and without judicial review, continue to exist in Malaysia, with no review or change in sight.

They are the 1960 Internal Security Act (ISA), the 1969 Emergency (Public Order and Prevention of Crime) Ordinance, the 1933 Restricted Residence Act, and the 1985 Dangerous Drugs Act (Special Preventive Measures).

Suaram, a Malaysian human rights centre received names for 219 persons detained under the ISA in the Kamunting detention camp in late 1998. Most of those detained were in for cases such as alleged forgery of passports and national identity cards and for allegedly facilitating entry of Indonesian migrants without work visas into the country.

Suaram also received a request to act on behalf of thirty ISA detainees in Kamunting who allegedly reported that they were tortured by police officers and guards. While organising lawyers to represent the thirty detainees and amidst requesting the Home Ministry for legal access to those plaintiffs, the Home Minister in early 1999 informed Suaram that the all 219 persons had already been released.

Despite the government's assertion that the ISA is used only for cases of 'national security', human rights NGOs argued that the use of ISA has been on political dissidents and suspects when the burden of proof becomes too taxing for the police and the Home Ministry.

Human rights NGOs and opposition parties continue to call on the government to repeal the ISA and all other legislation which allow for detention without trial. In the run-up to the 1999 General Elections, SUARAM, together with over 50 NGOs and more than 2000 former ISA detainees called upon all electoral candidates to commit to a 'repeal the ISA' in their election platform.

This call was also taken up by a number of citizen's groups including the 'People Are the Bosses' campaign and the Malaysian Election Appeal Committee (SuQiu) which was endorsed by more than 2000 Chinese associations, guilds and NGOs nationwide. The Barisan Alternative or

Alternative Front which comprised the four main opposition political parties promised to repeal the ISA in their 1999 election manifesto.

In September 1999, 10 people were detained under the Emergency Ordinance in the state of Perak over a mysterious death of two men, burnt to death. No other information has been forthcoming.

In December 1999, four Achehnese were reported to have been detained under the ISA for alleged arms smuggling to the troubled province of Aceh. Their whereabouts remain unknown to date.

Other forms of detention without trial

Under the Federal Constitution Article 5(4), a suspect who has been arrested must be brought to a magistrate within 24 hours. This constitutional right has been reaffirmed such as in the case of eight NGO activists who were detained for a demonstration in May 1997 and subsequently released because the deadline had exceeded 24 hours.

However, pertaining to the arrests of alleged demonstrators connected to 'Reformasi', judges from the Magistrates courts, together with the Attorney-General's office and the police have thrown out this constitutional right. Many of those arrested were detained beyond 24 hours, some more than 48 hours before being brought to the magistrates. Lawyers from the Kuala Lumpur Legal Aid Council had protested against this form of detention without trial, but to no avail.

Police have also routinely denied immediate legal counsel to suspects. Often, those kept in police lockups have no access to lawyers until the day they are brought to court for further remand. Even so, police have asserted that legal counsel before remand hearings may "interfere with police investigations"; some have even suggested that legal conference during a remand hearing where it may well be the first occasion in which a suspect is receiving legal advice, is tantamount to interference.

The Right to Legal Representation

Charles Hector

"31. With regards to the section 117 CPC (Criminal Procedure Code), the case of law is clear that the detainee has the right to be represented by a legal practitioner of his choice during the remand proceedings. However many a person detained without the knowledge of family and friends find this right denied.

32. Even when the family and friend are aware of the arrest and detention, and do retain a lawyer to represent the detainee, problems have cropped up recently in that the courts have attempted to deny the access of his lawyer on the group that the lawyer has not been retained by the detainee himself. Suddenly the wordings of Article 5(3) are referred to where it says "a legal practitioner of his choice," and there a lawyer appointed by the family or friends can sometimes have a hard time getting access to the detainee. Some Magistrates of late, when aware that a lawyer has put himself on record as acting for the detainee, has taken the step to ask the detainee whether he has a lawyer – of course, in most cases, the detainee who is unaware of the fact that his family and/or friends have retained a lawyers for him, will answer in the negative. One judge even went so far as saying that if we allow family members and/or friend to retain lawyers for the detainee, we might end up in a situation where there are many lawyers, appointed by different family members/friends turning up. In Malaysia, there is now a beginning of a dialogue between the judiciary, the Bar and the Attorney General's Chambers to resolve these difficulties.

33. When a lawyer is retained, and puts himself on record with the police and the courts, the lawyer is many a times not given the information as to before which Magistrate that the detainee will be produced and when exactly will he be produced. That means that the lawyers will sometimes just hang around, sometimes the whole day, monitoring the movement of the Magistrate (applicable when there is only one Magistrate) to find out when the said detainee is brought before the Magistrate for an extension of remand. When there are more Magistrates, then a whole elaborate wait and follow exercise involving many family members/friends will need to be organised. Someone may just be hanging around the gates of the police station to follow the police car of the said detainee to find out before which Magistrate, the said detainee is brought before.

34. After all this hassle, and when finally the said detainee is brought to the Magistrate, the police generally do not allow the lawyer access to his client to get instructions. The lawyer will then have to apply to the Magistrate for time to get instructions from his client.

35. Now if the detainee is not represented, many a time this whole remand application becomes administrative with the police getting the number of days that they apply. The saving grace is that there are some Magistrates who actually take the time to scrutinize the Investigation

Diary and consider judiciously the validity of police application for more days.”

Charles Hector is a member of the Kuala Lumpur Legal Aid Centre, involved in arrests cases of 'Reformasi' demonstrators. The excerpt above was first published in a book, 'Decline of Fair Trial in Asia' by the Asian Human Rights Commission.

The period of remand, which under the Criminal Procedure Code Section 117, allows the police to detain a suspect for investigation, for as long as 14 days. During this time, legal counsel is seldom permitted and a suspect can expect to spend time in a police lockup and possibly subjected to rigorous rounds of interrogation outside the usual cautioned statement recorded from the detainee. These extra 'statements' are known as 'intelligence statements' which the law to date, does not provide for.

Emergency Provisions in the Constitutions

Article 150 of the Federal Constitution permits the declaration of an emergency to prevent threatened or actual danger to the security of Malaysia. This effectively means the suspension of the Parliament and rule by executive decree issued in the name of the King, upon the advice of the Prime Minister.

To date, Article 150 was invoked on four separate occasions by the government and has yet to be revoked. The continued existence of these emergency laws, and by extension, emergency legislation such as the 1969 Emergency Ordinance, has allowed the government to use of draconian legislations which violate international human rights and legal standards, which in fact only recognises certain restrictions of fundamental liberties in time of grave and immediate national danger.

Cruel and Unusual Punishment

Police and Extrajudicial Killings

In 1999, the number of reported cases by the mass media of police killings have dropped significantly from the previous years. In 1998, there were more than 50 cases of persons killed by the police where in 1999, only 10 were reported.

In May 1999, the government informed the public that 635 people were killed by the police in the last 10 years; 355 were locals and 280 were foreigners. In October 1999, the government stated that 387 people were killed between 1994 and October 1999.

In May 1999, the government reported that between 1997 and May 1999, 293 persons died in detention. Thirty-six deaths or 12 per cent died in prison and the rest died in hospitals.

Until today, police procedures involving investigation of persons killed remain unknown and results of police investigation are rarely disclosed unless there was some element of public outrage and disbelief. Since public accountability has not registered high with the police force, there is little avenue for further investigation and action, for the public to be truly satisfied. It is common for the police to issue a standard reply, stating that police actions were justified and the police were satisfied with their investigation, to queries on cases of police shooting.

In January, a bank teller was killed in a police shoot-out. In March, a suspected kidnapper fell to his death under mysterious circumstances at a Selangor state police station.

In August, two police officers were detained after the death of an alleged drug trafficker arrested by them in Sabah. The police had claimed that the trafficker died after falling and hitting his head on a stone.

In September, a 29 year-old doctor was shot in his car, parked outside a train station. The police officers involved said that the man had attempted to run them over. One of the two police officers involved in this shooting was charged in court. Hearing is still ongoing.

In October 1999, a 22 year-old, T. Suresh Kumar died under unusual circumstances in the Sungai Buloh prison and his father had claimed

that his son had been subjected to police brutality with head, rib and arm injuries. Police response was that the detainee was found unconscious and had died of a heart disease in a hospital emergency room. In October too, 21 year old Francis Nathan died in the hospital after being detained by the police for an alleged drug offence. The deceased's father also claimed that his son was assaulted while in detention. In November, the wife of a man found dead while under police custody around the time of the 10th General Elections, claimed that he was tortured because of his support for the opposition party.

NGOs have been demanding for greater accountability and the formation of a Royal Commission of Investigation into deaths of persons shot by police. The Bar Council in January, called on the police to implement a standard procedure to investigation each case of police shooting. A year earlier, the president of the National Human Rights Society (HAKAM), Raja Aziz Addruse, had publicly questioned the shootings by the police which resulted frontpage news and subsequent condemnation by prominent politicians, including the Prime Minister himself. The general attitude of the government and the police has been so far, to vigorously attack critics defend the action of the police under any circumstances, as oppose to answering to questions of public interests.

Police and Torture in Detention

Police brutality while under police custody were further exposed by the actions of the former Inspector-General of Police, Rahim Noor, who according to rumours circulating by late 1998, had beaten former Deputy Prime Minister, Anwar Ibrahim, on the first night of his detention under the Internal Security Act.

A Royal Commission of Inquiry was formed after almost four months of police investigation. The Attorney General, Mohtar Abdullah, stated that the investigation established that the police were responsible for the assault on Anwar Ibrahim, but fell short of naming police officers involved.

In February, the former Inspector-General of Police who had since resigned, admitted before the Royal Commission that he had personally beaten Anwar, which resulted in the now-famous 'black eye', amongst other injuries of relative seriousness. The Commission found Rahim Noor culpable in the beating of Anwar but no other members of the

police were found to be complicit, despite the fact that several senior police officers were present in the room during the beating and none had come forward. The Prime Minister, who also holding the position of Home Minister at the time, was also found to be non-culpable by the Commission, even though the police force was under his charge.

The police charged Rahim Noor with attempted assault and his trial was set for March 2000. However, he was immediately released on bail and is presently free.

Relating to this case, in February 1999, fashion designer Mior Abdul Razak bin Yahya released an affidavit stating that he was threatened and abused while in police custody in 1998, which resulted in him falsely confessing to having sexual relations with Anwar Ibrahim. Abdul Malek Hussein also filed police reports and released an affidavit stating that he was tortured physically, including beating him unconscious and forcing him to drink their urine, while detained under the Internal Security Act in 1998. Abdul Malek has since filed a civil suit against the police.

Throughout the year, police had forcibly dispersed peaceful 'reformasi' demonstrators in the city of Kuala Lumpur with water cannons laced with chemicals, tear gas and truncheons. Among those beaten in demonstrations include several opposition politicians such as Tian Chua (Vice-President of the National Justice Party) and Youth Chief of the Malaysian People's Party (PRM), Faizal Sanusi.

Independence of the Judiciary

Since 1988 after the sacking of former Lord President, Tun Salleh Abas and two other Federal Court judges, and the various constitutional amendments, legislation restricting judicial review, have seen a steady erosion in public confidence in the independence of the judiciary and at the very least, a public perception that the executive continues its stranglehold on the judiciary.

While it is doubtful and highly unnecessary for the executive to have a direct line to each and every judge, there is widespread perception that the judiciary is leaned on, directly or indirectly by the executive, when decisions involving business and political interests are at stake.

Cynicism abound, one can expect a positive outcome for cases of political and economic interest to the government, and a less than favourable verdict for government opponents, be it cases of public interest such as in the Bakun Hydroelectric Dam case in 1995, the sedition case of Lim Guan Eng, former Member of Parliament from the opposition Democratic Action Party, who received a concurrent jail term of 18 months; and most recently the former Deputy Prime Minister Anwar Ibrahim corruption trial.

Members of the Malaysian Bar Council and human rights NGOs have continued to express serious grievances with this erosion of public confidence. In September 1999, NGOs released a joint press statement highlighting several grievances relating to the judiciary (see box). This has also resulted in a fact-finding mission in 1999 by the International Bar Association and the International Commission of Jurists to Malaysia.

NGOs have also questioned the credibility of current Attorney General, Mokhtar Abdullah and his chambers practice of alleged selective prosecution. In May, the Attorney General countered his critics by threatening that those who had accused the government of selective prosecution would be charged with criminal defamation and sedition. In the month of April, Prime Minister Mahathir Mohammad also came out in defense of the Attorney-General and later in September, during wide-spread protests for Anwar Ibrahim, the Prime Minister repeated his assertion that the government did not influence nor practice selective prosecution.

Malaysian Judiciary in Question

Recent events are underscoring the continuing political crisis in the country and the continued loss of confidence in the key political institutions of our country. We, the undersigned organisations, wish to draw attention to three such recent events in the last few days, and urge immediate action with regard to them.

Allegations of corruption in the judiciary

The first of these events is the recent expose' in the High Court in the *Insas Berhad v. Raphael Pura* case that, in an earlier case before another High Court in December 1994, the judgement delivered by YA Justice Dato' Mokhtar Sidin (now sitting as a judge of the Court of Appeal) in that case awarding a total of damages of RM10 million to the plaintiff Tan Sri Vincent Tan for libel was written in part by counsel for the plaintiff Dato V.K. Lingam. The Defendant was a well-known journalist M.G.G. Pillai. The proposed amended defence of Raphael Pura said the judgement was typed in the lawyer's office, corrected by him and the final draft forwarded to the judge concerned on floppy disk. The proposed amendments also said that a copy of the draft judgment bearing amendments in the lawyer's handwriting would be provided to the court. These statements in Raphael Pura's defence were made to raise a defence to a claim of libel by Insas Berhad with regard to a published statement that "Malaysian justice was up for bid".

The proposed amendments also included allegations that " the same lawyer Dato VK Lingam cultivated inappropriately close relations with the Honourable Chief Justice of Malaysia Tun Eusoff Chin whom he has placed in his debt notoriously, inter alia, by getting the said Honourable Chief Justice and his family on a New Zealand holiday together with his family from 22.12.94 – 30.12.94. The amendments also spoke of photographs of both families during this holiday at expensive ski and fishing resorts in New Zealand.

The amendments were unfortunately refused by the High Court last week. This means that for the moment these issues cannot be investigated at a trial.

It is our view that these are very serious allegations involving corruption which warrant an immediate and public inquiry into the conduct of both Dato Mokhtar Sidin and Tun Eusoff Chin. Regrettably no such inquiry has been commenced either by the judiciary or the government to date. The allegations have and will continue to cause public concern with regard to the independence and integrity of the judiciary in Malaysia and warrant a detailed fact-finding exercise conducted with full transparency.

Since the sacking of Tun Salleh Abas, the former Lord President and highest judge of the country, the independence of our judiciary has been questionable. In recent years, a number of cases including the Vincent Tan suit against M.G.G. Pillai, the Ayer Molek Rubber Company case, the

selective prosecution and subsequent conviction of Lim Guan Eng, the politically motivated prosecution and conviction of Anwar Ibrahim have demonstrated the lack of independence on the part of the judiciary.

We call for an immediate Royal Commission of Inquiry to be set up to investigate these recent allegations involving Dato Mokhtar Sidin and Tun Eusoff Chin and to also propose suitable measures to restore public confidence in the judiciary.

Jailing of Murray Hiebert

The second event is the jailing of the journalist Murray Hiebert for contempt of court for his article on the case of Datin Chandra Sri Ram, wife of Court of Appeal Judge Datuk G. Sri Ram, against the International School of Kuala Lumpur for dropping her son from its debating team. Hiebert's article entitled "See you in court" was treated as scandalising the judiciary and lowering the integrity of the judiciary earning him a six week jail sentence, reduced on appeal from the original three month sentence imposed by the High Court.

We express our utmost concern with this jail sentence which is a blow against freedom of expression in Malaysia. The written analysis of Hiebert would appear to be well within the purview of permitted criticism and comment on the judiciary. The comments by him appear almost mundane when compared with the kind of trenchant criticism leveled against the judiciary in many democratic countries and accepted in the spirit of democratic expression.

We would urge the Malaysian judiciary to note that as an institution it is not above criticism and ought to be able to tolerate a degree of criticism. We are of the view especially in the wake of the Anwar trial, that public confidence in the judiciary is waning and its integrity under question. A reaction of this nature to public criticism can only worsen the public image of the judiciary.

The alleged poisoning of Anwar Ibrahim

Last week on Friday, it was disclosed in the High Court in the trial of Dato Seri Anwar Ibrahim, the former Deputy Prime Minister, that medical tests showed his body to have very high levels of arsenic measured as 230 microgrammes per gram creatinine compared to the usual levels in adults of 3 – 17 microgrammes. He immediately alleged a politically motivated attempt to poison him.

The allegations raised by Dato Seri Anwar Ibrahim and his lawyers with regard to his poisoning again raise huge questions with regard to the integrity and independence of key institutions such as the police and prisons. The guarantee of his physical security, as well as of any prisoner in the custody of the police and prisons, is a fundamental human right. In the case of Anwar Ibrahim, who is treated by Amnesty International and local human rights groups as a political prisoner, his physical security

is also directly connected with the integrity of the conduct of political affairs of this country.

Whilst the Home Minister Datuk Abdullah Badawi may have ordered an immediate investigation, it is unclear who will handle this investigation – the police, prisons or both. Our earlier experience with the inability of the police to conduct an effective investigation into the assault on Anwar Ibrahim necessitating the setting up of a judicial commission of inquiry leaves us with little confidence in the outcome of the Minister's instructions.

We believe that a Royal Commission of Inquiry made up of selected members of the judiciary who **have** a reputation of independence will be required to ascertain the truth. In the meantime we are dismayed that there is no serious attempt to be completely transparent about the state of Anwar's health or the treatment he is undergoing for the high levels of arsenic found in his body. We call for full and immediate transparency by the government.

(This joint statement was endorsed by 20 non-governmental organisations and released on 15th September 1999.)

In April 1999, the International Court of Justice in The Hague ruled that the United Nations Special Rapporteur on the Independence of the Judges and Lawyers, Dato' Param Cumaraswamy had immunity from multi-million dollar libel suit (Dato' Param Cumaraswamy vs MBf Capital Bhd 1997) which had stemmed from an interview given to a magazine, The International Commercial Litigation in an article by David Samuels entitled, "Malaysia Justice on Trial". The International Court of Justice found the Malaysian government to be in violation of its international obligations because it failed to inform its domestic courts of the assertion of the United Nations Secretary General that Dato' Param was immune from legal process.

In that article, Dato' Param had alleged preferential treatment in courts for selected plaintiffs and lawyers, for example, in the case known as Malaysia Borneo Finance Holdings and East Asiatic Company, as case decided after the infamous Ayer Molek case. However, the Malaysian courts were adamant in rejecting Param's claim of immunity and his case is still pending.

In November 1999, the Malaysian Bar Council was prevented from calling an extraordinary meeting to discuss the decline in public confidence in the Malaysian judiciary. The courts granted an injunction

to the plaintiff, a lawyer, as the holding of the meeting was said to constitute contempt of court and was seditious in nature.

In 1999, Anwar Ibrahim's lawyer, Zainur Zakaria's charge of contempt of court for raising a legal issue on behalf of his client back in 1998 was still pending. His case, along with several other contempt of court cases involving lawyers, resulted in a proposal by the Malaysian Bar Council for a Contempt of Court Act, in order to outline in detail what would constitute an act of contempt. However Chief Justice Eusoff Chin said it was not necessary as the courts would not abuse their powers.

Anwar Ibrahim, the former Deputy Prime Minister's trial had also invited nationwide criticism and disbelief in the proceedings, processes and verdict. Anwar was tried and convicted on April 14th 1999, on four counts of corruption. In June 1999, Anwar was back in court for a new charge of sodomy, tried together with his adopted brother.

Throughout Anwar's corruption trial, the judge, Justice August Paul was said to have made several questionable rulings which limited Anwar's ability and scope to defend himself.

The judge had, firstly, limited the scope of Anwar's defence by not taking into account, Anwar's claims that they were trumped up charges against him and that there was a political conspiracy to oust him. Anwar was also denied of his right to rebut allegations of sexual misconduct when at the end, those sexual allegations were expunged, after the prosecutors amended their charges.

At the close of the prosecution evidence on 12 January 1999, the prosecution unexpectedly applied to the court to amend the four charges, thus did not require the prosecution team to prove beyond reasonable doubt, the allegations of sexual misconduct.

The judge allowed the amendments and stated that,

“ ... [I] am of the view that apart from terminology, there is no substantive change. The elements are still the same and the major change, if any, refers to the commission of the sexual misconduct and sodomy, which on the reading of the old charges is not really a substantive element to be proved. I rule that the amendments do not cause any prejudice to the accused and would allow the amendment.”

The judge also ruled that the relevance of any witness to be called from now onwards must be shown before the witness is allowed to be asked to take the stand. After this ruling, the defence sought five witnesses, all of whom the judge held that their evidence was irrelevant and refused to allow them to give evidence.

On 16 March 1999, Anwar Ibrahim filed an application to disqualify Justice Augustine Paul from continuing hearing the case. The basis of this application was that Anwar had not received a fair trial and there were grave concerns that the judge might not bring an unprejudiced and impartial mind to the issues when deciding on the case. This assertions based itself on the judge's rulings in the course of the trial, which, Anwar alleged had pre-judged the issues, precluded the defence from presenting Anwar's case in full, expunged evidence in favour of the defence and applied different standards to the prosecution and defence when admitting evidence during the trial.

On 23 March 1999, submission was sought by the judge, in which the defence refused to do so until the application to dismiss the judge was dealt with. However the judge insisted that the case continued and when the defence continued to refuse, the judge held the entire team to be in contempt of court.

Nonetheless, the case was heard a few days later on 27 March 1999, in which the judge dismissed the application.

On 14th April 1999, the judge gave his verdict and found Anwar guilty of all amended charges. A 394-page judgement was issued.

Anwar was sentenced to six years' imprisonment on each charge, to run concurrently starting from the date of conviction. This was considered unusual as throughout his trial, Anwar's application for bail was refused. Justice Augustine Paul refused to backdate the sentence. The defence applied for stay of execution and bail pending a hearing in the Court of Appeal. Again, this was dismissed by Justice Augustine.

It was an unusual case, with the prosecution team consisting of extremely high-placed prosecutors, including the Attorney-General and the Solicitor-General joining the prosecution team, during the course of the trial. The decision to allow the Attorney-General stands out too as he was implicated personally as well as in his public position in the government by the defence allegations of political conspiracy.

Furthermore, despite a ruling by the judge to disallow public comment on the case, the Prime Minister was able to comment freely during the course of the trial, without being held in contempt.

Amnesty International has categorised Anwar Ibrahim as Amnesty's prisoner of conscience, putting him in the same league as former political prisoners, Nelson Mandela and Xanana Guamao.

In June 1999, Anwar was once again charged with a single count of sodomy, together with his adopted brother, Sukma Dermawan. Again, concerns were raised as to whether this would be a fair trial.

The trial started with prosecutors changing the dates of the alleged acts of sodomy when it was known to the public that the apartment where the sodomy allegedly took place had not been completed .

Sukma Dermawan claimed that his confession was extracted under severe duress, like several other detainees who were arrested, including Dr. Munawar Anees. Yet in July 1999, the judge, Justice Ariffin Jaka, ruled that the prosecution had proven beyond a reasonable doubt that his confession had been voluntary.

In August 1999, the lead police investigator materially contradicted his testimony (in order to make it consistent with the amended dates of the alleged offense) yet the judge ruled that the policeman did not perjured.

The sodomy trial stopped abruptly prior to the General Elections unlike other cases in court. Observers saw that as preventing the opposition from gaining sympathy votes during the elections by way of keeping Anwar Ibrahim from the public eye.

The trial continues in year 2000.

National Human Rights Commission Act 1999

The Commission's functions include promoting awareness of human rights to the public; helping the government in drafting laws concerning human rights and advising the government on acceding human rights treaties. The Commission also has powers of investigation into human rights violations and inspection of places of detention.

However, NGOs remained sceptical about the effectiveness of the Commission existing under restrictive laws, which are clearly not in congruence with international human rights standards.

NGOs also questioned the sincerity of the government in forming the Commission, which was first announced in late March 1999 by the Foreign Minister, Syed Hamid Albar.

Many believed that the decision to pronounce its formation was in reaction to international condemnation of Malaysia human rights records, which has also been brought to attention at the United Nations Commission of Human Rights. While this UN body sits for six weeks from late March until early May annually in Geneva, many believed too that a National Human Rights Commission in Malaysia would be conveniently used to fend off any further attempts to expose human rights violations in the country, especially in Geneva.

Some of the concerns raised by NGOs on the National Human Rights Commission include the narrow definition of human rights. The National Human Rights Act 1999 defines 'human rights' as fundamental liberties described and defined under Part II of the Federal Constitution.

Notwithstanding, national legislations exist that clearly contravene even the United Nations Declaration of Human Rights (UDHR). These laws govern freedom of expression, assembly and association, while allowing for indefinite detention without trial, such as the Internal Security Act 1960. The UDHR is restrictively applied to provisions that are consistent only with the Federal Constitution.

NGOs called for the immediate ratification of major human rights covenants and conventions, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic,

Social and Cultural Rights. NGOs also called for four emergencies invoked between 1969 and 1970, and still legally operational to date, to be immediately revoked.

Another section in the National Human Rights Commission Act is Section 12, which warrants grave concern. Essentially, it would mean that the Commission has no jurisdiction to investigate cases of human rights violations, once they appear in court.

While NGOs do not seek to overturn court verdicts, their concerns are that cases where one seeks to exercise freedom of expression and assembly have been dealt with as criminal cases. Examples include people arrested during peaceful demonstrations, which are legitimate forms of expression.

If the National Human Rights Commission can have no powers of investigation or comment, then cases where basic civil and political rights are exercised will continue to be criminalised.

Other concerns include the independence of the Commission members; length of service; funding and remuneration .

Commission members are appointed by the King, under advisement from the Prime Minister. NGOs commented that this would not induce any form of independence; in fact this allows for abuses by any ruling party, now and in the future. Furthermore, Commission members do not have to be experienced in human rights, only that they are outstanding citizens in the country.

The length of service for NGOs was only for 2 years. Any extension of service is subject to advisement of the Prime Minister again. NGOs believe that the length of service is too short for any Commission to adequately render their services and see through their work. Furthermore, NGOs fear that if there were any Commission members who may irk the government, his or her services may not be extended.

Adequate funding and remuneration is essential to the success of any work by the Commission. NGOs are concerned that there is no provision in the National Human Rights Commission Act which stipulates a minimum budget for the Commission's work. In addition, NGOs insist that the Commissioners must be employed and work on a full-time basis, as oppose to part-time or consultancy basis, in order to ensure that sufficient time is spent on human rights work. Yet in the act,

there was no indication that the Commissioners would be working full time.

The NGOs said that they would support the formation of an independent human rights commission in principle and would render whatever documentation and services necessary for the Commission to successfully tackle human rights violations in Malaysia. However, NGOs also warned that they would not hesitate to criticise the Commission if it was found to be justifying the government's human rights records. In the next two years, the NGOs would be monitoring the performance of the Commission.

Act 597

HUMAN RIGHTS COMMISSION OF MALAYSIA ACT 1999

Date of Royal Assent 27 August 1999

Date of publication in the
Gazette 09 September 1999

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An Act to provide for the establishment of the Human Rights Commission of Malaysia; to set out the powers and functions of such commission for the protection and promotion of human rights in Malaysia; and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament of Malaysia as follows:

**Part I
PRELIMINARY**

Short title and commencement

1. (1) This Act may be cited as the Human Rights Commission of Malaysia Act 1999.

(2) This Act shall come into operation on a date to be appointed by the Minister by notification published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires-

"Government" means the Government of Malaysia;

"human rights" refers to fundamental liberties as enshrined in Part II of the Federal Constitution;

"Minister" means the Minister charged with the responsibility for human rights.

**Part II
ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION OF MALAYSIA**

Establishment of the Commission

3. (1) There is hereby established a Commission which shall be known as the Human Rights Commission of Malaysia (the "Commission").

(2) The Commission shall be a body corporate having perpetual succession and a common seal, which may sue and be sued in its name and, subject to and for the purpose of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Commission upon such terms as it deems fit.

(3) The Commission shall have a common seal which shall bear such device as the Commission shall approve and such seal may be broken, changed, altered or made anew as the Commission thinks fit.

(4) The common seal shall be kept in the custody of the Secretary to the Commission or such other person as may be authorized by the Commission and shall be authenticated by the Secretary or such authorized person or by any officer authorized by the Secretary or such authorized person in writing.

(5) All deeds, documents and other instruments purporting to be sealed with the common seal, authenticated as specified in subsection (4) shall until the contrary is proved, be deemed to have been validly executed.

(6) The common seal of the Commission shall be officially and judicially noticed.

Functions and powers of the Commission

4. (1) In furtherance of the protection and promotion of human rights in Malaysia, the functions of the Commission shall be –

(a) to promote awareness of the provide education in relation to human rights;

(b) to advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken;

(c) to recommend to the Government with regard to the subscription or accession of treaties and other international instruments in the field of human rights; and

(d) to inquire into complaints regarding infringements of human rights referred to in section 12.

(2) For the purpose of discharging its functions, the Commission may exercise any or all of the following powers:

- (a) to promote awareness of human rights and to undertake research by conducting programmes, seminars and workshops and to disseminate and distribute the results of such research;
- (b) to advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken;
- (c) to study and verify any infringement of human rights in accordance with the provisions of this Act;
- (d) to visit places of detention in accordance with procedures as prescribed by the laws relating to the places of detention and to make necessary recommendations;
- (e) to issue public statement on human rights as and when necessary; and
- (f) to undertake any other appropriate activities as are necessary in accordance with the written laws in force, if any, in relation to such activities.

(3) The visit by the Commission to any place of detention under paragraph (2)(d) shall not be refused by the person in charge of such place of detention if the procedures provided in the laws regulating such places of detention are complied with.

(4) For the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution.

Members of the Commission and term of office

5. (1) The Commission shall consist of not more than twenty members.

(2) Members of the Commission shall be appointed by the Yang di-Pertuan Agong, on the recommendation of the Prime Minister.

(3) Members of the Commission shall be appointed from amongst prominent personalities including those from various religious and racial backgrounds.

(4) Every member shall hold office for a period of two years and is eligible for reappointment.

Chairman and Vice-Chairman

6. (1) The Yang di-Pertuan Agong shall designate one of the members appointed under section 5 to be the Chairman of the Commission.

(2) The Chairman's term of office shall be his period of membership on the Commission.

(3) A Vice-Chairman shall be elected by the members of the Commission from amongst themselves.

(4) Where the Chairman of the Commission is for any reason unable to perform the function of the Chairman, or during any period of vacancy in the office of the Chairman, the Vice-Chairman shall perform the function of the Chairman.

Meeting of the Commission

7. (1) The Chairman of the Commission shall preside at all meetings of the Commission.

(2) If the Chairman is absent from any meeting, the Vice-Chairman of the Commission shall preside at such meeting.

(3) The quorum at all meeting shall be two thirds of the number of the members of the Commission.

(4) The members of the Commission shall use their best endeavours to arrive at all decisions of the meeting by consensus failing which the decision by a two-thirds majority of the members present shall be required.

(5) The Commission shall determine the conduct of its own proceedings.

Remuneration

8. (1) The Chairman of the Commission shall be paid such remuneration and allowances as the Yang di-Pertuan Agong may determine.

(2) Every member of the Commission shall be paid allowances at such rates as the Yang di-Pertuan Agong may determine.

Vacation of office

9. The office of a member of the Commission shall become vacant –

- (a) upon the death of the member;
- (b) upon the member resigning from such office by the letter addressed to the Yang di-Pertuan Agong;
- (c) upon the expiration of his term of office; or
- (d) upon the member being removed from office on any of the grounds specified in section 10.

Disqualification

10. A member of the Commission may be removed from office by the Yang di-Pertuan Agong if –

- (a) the member is adjudged insolvent by a court of competent jurisdiction;
- (b) the Yang di-Pertuan Agong, after consulting a medical officer or a registered medical practitioner, is of the opinion that the member is physically or mentally incapable of continuing his office;
- (c) the member absents himself from three consecutive meeting of the Commission without obtaining leave of the Commission or, in the case of the Chairman, without leave of the Minister;
- (d) the Yang di-Pertuan Agong, on the recommendation of the Prime Minister, is of the opinion that the member-
- (i) has engaged in any paid office or employment which conflicts with his duties as a member of the Commission;
- (ii) has misbehaved or has conducted himself in such a manner as to bring disrepute to the Commission; or
- (iii) has acted in contravention of this Act and in conflict with his duties as a member of the Commission.

Resignation

11. A member of the Commission may at any time resign his office by a letter addressed to the Yang di-Pertuan Agong.

Part III

POWERS OF INQUIRY OF THE COMMISSION

Commission may inquire on own motion or on complaint

12. (1) The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into allegation of the infringement of the human rights of such person or group of persons.

(2) The Commission shall not inquire into any complaint relating to any allegation of the infringement of human rights which -

- (a) is the subject matter of any proceedings pending in any court, including any appeals; or
- (b) has been finally determined by any court.

(3) If the Commission inquires into an allegation under subsection 12(1) and during the pendency of such inquiry the allegation becomes the subject matter of any proceedings in any court, the Commission shall immediately cease to do the inquiry.

Procedure where infringement is not disclosed or is disclosed

13. (1) Where an inquiry conducted by the Commission under section 12 does not disclose the infringement of human rights, the Commission shall record that finding and shall forthwith inform the person making the complaint.

(2) Where an inquiry conducted by the Commission under section 12 discloses the infringement of human rights, the Commission shall have the power to refer the matter, where appropriate, to the relevant authority or person with the necessary recommendations.

Powers relating to inquiries

14. (1) The Commission shall, for the purposes of an inquiry under this Act, have the power-

- (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine;
- (b) to require that the evidence, whether written or oral, of any witness be given on oath or affirmation, such oath or affirmation being that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorized in that behalf by the Commission an oath or affirmation to every such witness;
- (c) to summon any person residing in Malaysia to attend any meeting of 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;
- (d) to admit notwithstanding any of the provisions of the Evidence Act 1950 [Act 56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings; and
- (e) to admit or exclude the public from such inquiry or any part thereof.

(2) Notwithstanding paragraph (1)(e), where a person summoned is a person under detention under any other written law, such summons shall be issued in accordance with the laws applicable in relation to the place of detention.

Evidence before the Commission

15. (1) A person who gives evidence before the Commission shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such court.

(2) No person shall, in respect of any evidence written or oral given by that person to or before the Commission, be liable to any action or proceeding, civil or criminal in any court except when the person is charged with giving or fabricating false evidence.

Part IV STAFF OF THE COMMISSION

Appointment of Secretary and the staff

16. (1) The Commission shall appoint a Secretary to the Commission.
(2) The Commission may appoint such other officers and servants as may be necessary to assist the Commission in the discharge of its functions under this Act.

Delegation of powers

17. The Commission may delegate to any officer referred to in subsection 16(2) any of its powers, and the officer to whom such powers are delegated may exercise those powers subject to the direction of the Commission.

Protection of members, officers and servants of the Commission

18. (1) No action, suit, prosecution or proceeding shall be instituted in any court against the Commission or against any member, officer, or servant of the Commission in respect of any act, neglect or default done or committed by him in such capacity provided that he at the time had carried out his functions in good faith.

(2) Any member, officer or servant of the Commission shall be required to produce in any court, any document received by, or to disclose to any court, any matter or thing coming to the notice of the Commission in the course of any inquiry conducted by the Commission under this act.

(3) No action or proceeding, civil or criminal shall be instituted in any court against any member of the Commission in respect of any report made by the Commission under this Act or against any other person in respect of the publication by such person of a substantially true account of such report.

(4) Chapters IX and X of the Penal Code [Act 574] shall apply to members, officers and servants of the Commission as if references to "public servant" had been replaced with "member, officer or servant of the Commission".

Part V GENERAL

Funds

19. (1) The Government shall provide the Commission with adequate funds annually to enable the Commission to discharge its function under this Act.

(2) The Commission shall not receive any foreign fund.

(3) Notwithstanding subsection (2), the Commission may receive funds without any conditions from any individual or organization only for the purpose of promoting awareness of and providing education in relation to human rights as many be approved by the Commission.

(4) The Commission shall cause proper audited accounts to be kept of its income and expenditure, and assets and liabilities.

(5) The financial year of the Commission shall be the calendar year.

(6) Any expenses incurred by the Commission in any action or proceeding, civil or criminal, brought by or against the Commission before any court shall be paid out of the funds of the Commission and any costs paid to, or recovered by, the Commission in any such action or proceeding, civil or criminal, shall be credited to the funds of the Commission.

(7) Any expenses incurred by any member, officer or servant of the Commission, in any civil action or proceeding, brought against him in any court in respect of any act which is done or purported to be done by him under this Act or on the direction of the Commission shall be paid out of the funds of the Commission unless such expenses are recovered by him in such civil action or proceeding.

Application of Act 240

20. The Statutory Bodies (Accounts and Annual Reports) Act 1980 [Act 240] shall apply to the Commission.

Annual Report

21. (1) The Commission shall not later than the first meeting of Parliament of the following year, submit an annual report to Parliament of all its activities during the year to which the report relates.

(2) The report shall contain a list of all matters referred to it, and the action taken in respect of them together with the recommendations of the Commission in respect of each matter.

(3) The Commission may, whenever it considers it necessary to do so, submit special reports to Parliament in respect of any particular matter or matters referred to it, and the action taken in respect thereof.

Regulations

22. The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act, including for prescribing the procedure to be followed in the conduct of inquiries under this Act.

Power to make disciplinary regulations

23. (1) The Commission may, with the approval of the Minister, make such regulations as it thinks necessary or expedient to provide for the discipline of the officers and servants of the Commission.

(2) Where any disciplinary regulations are made under this section, the Commission shall cause notice of the effect of those regulations to be given in such manner as it thinks necessary for bringing it to the notice of all officers and servants of the Commission who are affected by those regulations and those regulations shall, notwithstanding sections 19 and 20 of the Interpretation Acts 1948 and 1967 [Act 388], have effect as soon as the notice has been given without publications in *Gazette*.

Right to Free and Fair Elections

Malaysia is a federation of 13 states and 2 federal territories which practices the Westminster-style parliamentary democracy with a constitutional monarchy in place.

General elections are called once every five years and has been held since 1957. The head of the political party which wins the most seats in parliament would be appointed Prime Minister and the political party or parties with the dominate seats in parliament would be government. The United Malays National Organisation (UMNO) has dominated the government, in coalition with other ethnic-based parties, since Independence.

In the context of Malaysia's restricted 'democracy', it is not surprising that the ruling coalition has had in place, an institutionalized and in-built system which gives them an unfair and formidable advantage over the electoral process by way of usage and control over public funds and media coverage. The inherent control over civil and political activities in various functionings of the government, its institutions and policies has a natural spill-over effect in the conduct of elections as well as in the Election Commission which is placed in charge of elections.

One glaring example is the unfair constituency delineation or 'gerry-mandering' which mocks the one-person one-vote democratic system. For the one-person one-vote system to function, the disparity in numbers of voters between constituencies, for both state and parliamentary levels, must be controlled.

The original 1957 Federal Constitution had in fact provided this control, stating that the disparity shall not exceed 15%. However, this was removed over time through constitutional amendments. Today, opposition-supporting constituency can have up to 100,000 voters, whilst smaller constituencies where the ruling party is dominant, may have a mere 25,000 voters!

Gerry-mandering means that opposition parties may command the support of a substantial portion of the electorate but will only obtain a small number of seats in either at the state assembly or in the parliament. For example, the 1990 elections saw opposition parties securing some 48% of total votes in the country but only obtained 20% of parliamentary seats.

Other complaints in past elections include: phantom voters and vote-buying or bribery; and the blatant denial of national development funds to opposition constituencies.

The ruling parties would make promises of development funds for their constituencies and use government and state funds to grant development projects prior to elections. It is not uncommon for ruling parties to announce various types of projects and fund allocation, which would be carried extensively by the press.

Government agencies, civil servants and use of government facilities such as vehicles, are also readily available for use by the ruling parties. Since there is no practice in the past of which, when an election is called, the ruling government would be dissolved and the Election Commission would appoint a caretaker government until a new government is elected by the citizens, this leaves much room for abuse of power and government facilities to the existing ruling parties.

Secrecy of the ballot is another area of concern. As all voters are pre-registered, they are allocated the ballot paper with serial numbers which can be traced back to the individual, even though the voting is done in a voting booth. 'Postal votes', a method of voting for the military, police officers and their spouses, the marking of the ballots is not allowed to be scrutinized. This method is applied to these officers, regardless of whether they are on tour-of-duty abroad, in security zones or in camps. Concern parties have said that there is no justification for continuing this practice of postal voting and that most should be allowed to vote in an open and transparent manner, as other voters in the country.

It must be reiterated here that democracy is not merely the ritual casting of ballots once every five years.

Thus, for any opposition party, it is a daunting task to obtain seats during any election.

Sabah State Election 1999

The Sabah state election was called on 1st July 1999. Due to concerns expressed by various groups in Sabah on whether the elections would be free and fair, married with claims of phantom voters, money politics and fake identity cards, a small team of NGO observers was dispatched to monitor the election. This election was of particular interest as it was seen as an important indicator for the conduct of the upcoming General Elections.

The team, known as “Permerhati Sabah” consisted of representatives from human rights group, Suaram; a representative from the Centre for Orang Asli Concerns; PACOS, a Sabah-based NGO’ and an observer from the National Democratic Institute. The team concentrated in four areas in the western region of the state and spent six days monitoring and interviewing the populace and politicians of various persuasions.

Areas of concern uncovered by the team were as follows:

- The politicization of development at all levels, from the local community to the state and federal level;
- The re-delineation of electoral constituencies and its negative impact on the principle of equal representation, plus its long-term consequence of heightening religious and ethnic identification;
- Weaknesses in the registration process;
- The effects of the importation of political practices of the ruling coalition (BN) from the peninsula to the state of Sabah; and
- The use of state machinery by the caretaker government, including the state media and military equipment.

The team stated that the electoral process was further hampered by a low level of voter awareness due in large part to insufficient voter education and a lack of vigilance over issues affecting the electoral process and the absence of any comprehensive and independent local monitoring effort.

A more comprehensive analysis can be concluded based on the two different phases of elections: (1) Pre-election; (2) Campaign period and polling day.

(1) Pre-election concerns

a) Re-delineation of electoral constituencies

The last re-delineation exercise substantially altered the balance among electoral constituencies in terms of size and ethnic composition, and created confusion among voters being shifted to new constituencies. The largest constituency in the number of votes was 4 times larger than the smallest. The ethnic and religious composition of constituencies were changed to a new ratio favouring so-called “muslim bumiputras” as opposed to “non-Muslim bumiputras” (or indigenous peoples), “Chinese” and “others”. The exercise also resulted in voters’ being transferred involuntarily from constituencies or polling stations in which

they voted previously and the Election Commission has done little to inform voters of these changes.

b) Voter disenfranchisement through negligence or fraud

Large numbers of voters were effectively disenfranchised, losing their right to participate in the elections due to discrepancies in the Election Commission electoral rolls. At the same time, charges of non-citizens' voting or identity cards given to non-citizens in order for them to cast their votes, were hardly addressed and allegations were rife throughout the campaign period. Such weaknesses in the electoral process undermine public confidence and doubt on the Election Commission's ability to safeguard the rights of voters, which may also suggest an attempt to distort the democratic process.

Unauthorised transfers to far-off constituencies meant that significant numbers of voters effectively lost their right to vote – anecdotal evidence suggests that the problem is serious enough to warrant investigation by the Election Commission. The Election Commission's designated "claims and objection" period is insufficiently advertised and procedures for redress of grievances are inadequate. Voters' names were also found to be missing from the electoral rolls or did not tally with the appropriate identity card numbers.

c) Money politics or voter inducement

Complaints of money and goods being given as inducements to vote for a particular candidate came from all political parties. This method has been proven to be a powerful way of making the voter obliged to the candidate dispensing cash or goods.

The team witnessed the blatant distribution of water tanks and received reports of the distribution of zinc, plywood, gas stoves and fishing nets. Cash was reportedly given, some in the form of "tambang" or "reimbursement" for travel. Complaints were also received by the team where money was distributed, such as in Kota Belud and Tamparuli, where voters claimed they have been given RM 50 each by BN representatives. Voters who found themselves transferred to a far-off constituency were thus the target of parties eager to entice voters and secure their support in exchange for money. It was also reported that completion of development projects – from the University Malaysia Sabah (it was suggested by the Federal Education Minister Najib Tun Razak that the completion of the second phase of the university would depend on a BN victory) to village-level projects – was held hostage to voters' choosing the party that has access to Federal funds.

d) Intimidation

Pressure tactics were employed by party representatives and inadequate information about electoral procedures made many voters uncomfortable. For example, the “kepala sepuluh” (ten persons) system was introduced by UMNO as a method to mobilizing and maintaining support. This system puts a person in charge of ten persons – often members of their own family – for who he or she is responsible. The person is asked to report on the responsiveness of these ten persons to the party. This level of surveillance, especially in close-knit communities, can be seen as tantamount to fear tactics.

e) Media

The structures of ownership and control of print and electronic media disadvantaged independent or opposition media. This is especially clear during the election period where the mainstream local media was strongly and evidently biased towards the incumbent ruling coalition. Independent or opposition candidates have limited access to these media.

(2) Campaign period and polling day*a) Campaign finance*

Although campaign spending is technically limited, the Election Commission takes the unacceptable attitude that it cannot act unless a complaint is filed. It was clear from the conduct of the polls that candidates more often than not, breach spending limits and it was obviously difficult for anyone, other than the Election Commission, to access information on amounts spent in order to lodge a complaint.

b) Use of state resources

There was blatant use of state resources, such as school halls and community centers by the incumbent parties. The Election Commission officer interviewed by the monitoring team suggested that those of ministerial rank were entitled to the use of such resources.

c) Postal votes

Complaints were received regarding the legitimacy of the postal votes and these votes reportedly played a significant role in determining the results in some constituencies. The team also received complaints alleging that the postal votes of members of the army and the police not

being able to vote in secret and also that these voters were subject to vote-buying and intimidation.

d) Voter fraud

Reports were received on multiple casting of votes; i.e. an individual voting more than once.

Recommendations

The “Permerhati Sabah” monitoring team made several recommendations which should be seen as a first step towards addressing problems with the conduct of free and fair elections.

1. Delineation of Constituencies

The delineation of electoral constituencies should not be the sole prerogative of the state government of the day or of any politically biased process. Rather, delineation should be conducted by a non-partisan body, based on a specific set of binding criteria. Some of these criteria may be: size of the constituency; effective representation of constituents; that no one ethnic or religious group comprises more than a certain percentage of the electorate; or that ethnic composition of constituencies not diverge too much from the ethnic composition of the state.

2. Voter Fraud

Many of the problems with electoral roll fraud can be traced to the unnecessary practice of registering voters in separate annual registration exercises. Currently, the onus is placed on citizens to register to vote rather than the right being automatically granted by virtue of citizenship.

Automatic registration of voters, together with increasing availability of information technology and advances in security documentation, should preclude the most of the confusion and voter fraud. “Double-voting” can be avoided if the practice of inking the voter’s finger with indelible ink is introduced.

3. Powers of Election Commission and Caretaker Government

Once the state assembly has been dissolved, the former government should act only as a caretaker government with no authority to transact new business on behalf of the state. This has not been the case. Development projects have been launched and financial

allocations and promises made during this caretaker period, without any higher authority's overseeing the government's caretaker role. Similarly, public facilities and government machinery, including the mass media, are used for campaigning, with the inaccurate justification given that the candidate are still government leaders on official duties. Even military equipment (including vehicles, generators, aircraft and personnel) were reportedly used on behalf of the candidates of the incumbent government.

The Election Commission should be given powers to act in an independent capacity to ensure that incumbent candidates do not exceed their caretaker functions. The use of state funds and personnel by candidates should be made an illegal act, punishable by disqualification from the election. All parties should have equal access to state facilities (e.g. community halls, stadiums, amenities) provided they adhere to the usual procedures and fee schedules.

4. Use and Control of State Media

Among the public facilities most abused by the incumbent government is the local mass media, especially television. No airtime was given to the opposition parties on the state-run television station (RTM1 and RTM2) while TV3 and NTV7, which are privately owned, have only limited airtime to opposition candidates. The Election Commission should be vested with authority to address this abuse of public resources and facilities, with such misuse of powers made illegal, punishable by disqualification.

5. Campaign spending

The legal limit for campaign expenditure per candidate for the state assembly is RM 30,000. However it was evident that there were candidates who went beyond this limit in the Sabah elections, judging by media advertisements, billboards and other signage, leaflets, allowances given etc.. Since expenditure limits are aimed at reducing the possibility of vote-buying and to level the playing field for all candidates, non-adherence to this law encourages the entrenchment of money politics in the election process.

Thus, candidates' statement of campaign expenditure should be made public in order to allow for objections. The Election Commission should treat such statements as an important check on the fair conduct of the polls and have their own independent auditors examine the returns.

6. Postal Votes

Complaints and reservations about the postal vote system need to be addressed. All voting in such cases should be subject to normal voting procedures – including the right of polling agents to be present at the marking and sealing of the ballots.

7. Threats and Intimidation

The incumbent government often uses the carrot of development to woo voters, while threatening to withdraw development funds should a particular constituency elect an opposition candidate. Such pronouncements should be treated as illegal threats or vote-buying, to be treated as offences under the election laws. Furthermore, the introduction of intensive ‘big brother’ strategies (as in the “kepala sepuluh” tactic to intimidate and pressure voters to support a particular party) creates an atmosphere of fear and intimidation among the voters. Such campaign strategies deny voters the right to make a free and informed choice on polling day, and should therefore be considered illegal.

8. Other recommendations

In a state where allegations of hijacking of ballot boxes and ballot-stuffing are not uncommon, all parties favoured the practice of counting of votes at the polling station. Allowing members of the public, and not just polling agents, to watch the counting and tallying of the votes would further enhance transparency in the counting process.

Vote-buying, money politics and voter fraud can greatly reduce if elections are monitored by an independent monitoring team, whether local, international or both. The presence of such a monitoring team should not be seen as an affront to the sovereignty of the country; rather it should be appreciated as an additional measure to ensure the common aim of conducting free and fair elections.

The prevalence of money politics and the low level of voter awareness arose, in large part, from insufficient voter education. The responsibility of the SPR to educate the voters should go beyond mere polling day procedures. Voter education, which ideally should begin in schools, should stress the importance of adherence to democratic principles and institutions, the practice of which is not limited to citizens’ merely exercising their right to vote one every five years.

Conclusion of the 1999 Sabah state elections

The conduct of the 1999 Sabah state elections exposed several weaknesses in the electoral and political system, weaknesses that resulted in an election that was far from being free, fair and democratic. If such failings are not addressed immediately, the conduct of future elections in Malaysia will remain clouded by suspicion and misgivings.

Many of the shortcomings can be easily rectified by administrative fiat or legal reform. It remains for the current government to show its sincere commitment to truly democratic principles and for the citizens to reassert their right to basic democratic processes.

10th General Elections

The 10th Malaysian General Election was held on 29th November 1999 in which the ruling coalition, National Front or Barisan Nasional (BN) led by UMNO captured more than two-thirds majority. However, the overall votes for the opposition increased substantially, as compared to past elections.

It was during this election where there were grave and very public concerns on the aspect of free and fair elections. The Prime Minister, Dr. Mahathir Mohammad even stated that it would be the 'dirtiest' elections ever.

As recorded in the 1998 Electoral Roll produced by the Election Commission, there were 9,694,156 citizens eligible to vote. In April/May 1999, the annual registration of new voters by the Election Commission saw 680,000 citizens registering. This was said to be one of the largest turn-out in many years.

Forty-two NGOs in Malaysia came together in May 1999 and formed an independent Malaysian Citizens' Election Watch (PEMANTAU) in anticipation of an early election. PEMANTAU received unprecedented public support and was able to galvanize large numbers of volunteers to run a nation-wide monitoring exercise during the general elections. However when a formal request was made by PEMANTAU to be given official status by the Election Commission in order to monitor the elections, it was denied. Similarly with other independent foreign observers who had attempted to seek accreditation to monitor the elections.

Parliament was dissolved on 16th November and Nomination Day was held in five days after the dissolution on 21st November 1999. Polling day was held 29th November, allowing only nine days for campaigning.

Concerns surrounding the General Elections

Denial of the right to vote

More than 600 000 citizens registered in April/May 1999 to vote in the coming general elections. However when elections were called in November 1999, these registered voters were not allowed to vote, on the grounds that the Election Commission needed 9 months to complete the process of registration. In spite of this, there were cases of names of these newly registered voters appearing on the Electoral Roll and their actually being allowed to vote.

This constitutes a serious violation of a citizen's right to vote and is in fact unconstitutional, as per Article 119(4) of the Malaysian Constitution on "Qualification of electors" which reads:

" In this article 'qualifying date' means the date by reference to which the electoral rolls are prepared or revised."

Under Article 119(1), any citizen who has attained the age of 21 years on the "qualifying date" is entitled to vote in any election unless disqualified. The "qualifying date" is "the date by reference to which the electoral rolls are prepared and revised". The rolls were prepared and revised in April and May 1999, i.e. when the Election Commission invited applications for registration of new voters or revision of the old ones.

The Constitution does not speak of "completion of the preparation or revision". The "qualifying date" must therefore be the date when the preparation or revision of the rolls commences. The Constitution does NOT define the qualifying date as the date of the completion of the registration or revision.

Hence, the Election Commission's claim that the exercise of the voting rights of the new voters depends upon the completion of the preparation and revision of the electoral rolls amounts to an unconstitutional denial of the right to vote.

There has never been a previous occasion in the past nine general elections since 1959 when new voters who had registered were disenfranchised supposedly because the new electoral roll was not ready.

Professor Jomo K. Sundram from University Malaya filed a lawsuit to delay the General Elections until a time when the 680,000 disenfranchised voters were able to vote. However, his suit was set aside for hearing only after the elections were held.

Media Coverage

Access to the media remained a major problem for the opposition. The four local television stations could be said to be completely biased in favour of the ruling coalition. In addition to that, there was a continuous stream of advertisements broadcasted on television stations

which called for the support of the ruling coalition only, depicting violence and chaos in the country, should the opposition wins. There was even a television broadcast at prime time on the eve of the polling day by the President of UMNO and acting head of the caretaker government, calling upon all Malaysians to vote for his party and the ruling coalition. No opposition party leader was given a similar opportunity.

The main national and regional radio stations exhibited the same tendencies as television stations; likewise was the case with the print media. Mainstream television, radio and newspapers regularly mock opposition leaders, extols the achievements of the ruling coalition while denying opposition parties meaningful access.

The print media had also allowed pro-ruling party advertisements depicting chaos and violence, alleging that the opposition would invite such situations. The five black and white full-page print advertisements, depicting scenes of violence under the headings "Don't Let Hatred Win", "Don't Let Violence Triumph", "Don't Let Anarchy Rule", "No To Violence" and "Don't Let Mob Rule Lead Us" followed by the tagline "Vote for Peace and Stability. Vote Barisan Nasional", drew harsh criticism from other political parties and peoples' groups for their misrepresentation of the current political climate. Observers said this was a scare tactic used especially on the middle-class voters and those of Chinese background to frighten them into voting for the ruling parties. For instance, the head of caretaker government and incumbent Prime Minister, Mahathir Mohammad invoked imageries of riots on a number of occasions throughout the campaign.

Local print media refused to accept and run opposition advertisements, including those which were made in response to the allegations. Among those which rejected the opposition advertisements were The New Straits Times, The Sun, Berita Harian and Utusan Malaysia. According to opposition leaders, it was on the mere basis that the advertisements were for the opposition front.

The Star newspaper rejected an opposition advertisement which had a photo of sacked deputy prime minister Anwar Ibrahim spotting a black eye and demanded amendments to two other advertisements before agreeing to run them.

However, several Chinese dailies namely Nanyang Siang Pau and Sin Chew Jit Poh did run several opposition advertisements.

A Chinese-language newspaper, Sin Chew Jit Poh, was discovered to have 'doctored' an existing photograph where the image of sacked deputy Prime Minister Anwar Ibrahim, was replaced with current Deputy Prime Minister Abdullah Ahmad Badawi. According to Sin Chew Forum editor Ooi Chun Lin, the photo was changed to portray the unity of Barisan Nasional. The newspaper later apologized to readers.

Non-governmental organizations released a joint media statement, which demanded that the media and government stopped the 'politics of fear'.

Campaign Period

Candidates were given no more than nine days for campaigning. In this situation, the ruling parties gained the greatest advantage from the short campaigning period; their machinery and network well organized prior to the campaigning period, use of state and government resources and the almost complete monopoly over the mainstream media.

Electoral Roll

The reliability and accuracy of the Electoral Register, gazetted on January 7th, 1999 was open to questions. It contained many irregularities and discrepancies which should have never been allowed to occur and which must be amended, rectified and regazetted prior to being used for any future election.

Findings by PEMANTAU found problems which included: the presence of duplicate identity card number (i.e. two or more voters names have the same identity card numbers); fictitious names or names spelt with numbers instead of alphabets; names of dead persons; names registered at addresses which do not exist and names of persons at addresses they do not belong to.

PEMANTAU found some 135,000 names of persons deceased on the electoral rolls and there was no attempt by the Election Commission to prevent the names from being used by unscrupulous individuals.

It was discovered that ALL these irregularities and discrepancies have one thing in common on the register – they do not have any record of their dates of birth. A total of 51.2% of the names on the register are without any record of their date of birth.

There were also large numbers of voters, including those entitled to postal voting, had had their names listed at polling localities different from those which they had originally registered to vote at. There were instances where Army personnel who have long since retired, are still found to have their names on the postal voters' list.

Use of state resources

There was rampant use of state resources, such as school halls and community centers, government transportation, etc. by the incumbent parties. The incumbents also used their caretaker activities, such as officiating functions to rally for their own support.

Voter inducement

Promises of development projects, including completion of existing projects were used by the incumbents to induce voters to their folds. Also during the campaign period, the incumbents disbursed large amounts of state funds for various projects and activities directly to the people. The latter is of particular concern, as it should be seen as another form of bribery, thus punishable by election laws.

Postal Votes

Despite several organizations asking the Election Commission to allow observation and monitoring at the distribution center of the postal votes for Army personnel, this was refused.

Secrecy of the ballot

There was a real concern regarding the secrecy of the ballot. The serial numbers printed on ballot papers meant there was no guarantee that the votes cast by citizens would not be used unscrupulously. There were complaints that there were people who were subtly threatened by being told that there were means to discover which candidate they had voted for.

Intimidation

Save the very evident threats by way of media advertising by the ruling coalition, the election was conducted under relatively violent-free circumstances. However one particular constituency, Sungai Siput, Perak, stood out as a constituency in which there was violence.

The candidates running for the Sungai Siput constituency were Dr. Kumar Devaraj, a local doctor and a member of the protem Socialist Party of Malaysia, and Samy Vellu, the incumbent and the Minister of Works. Campaign workers for Dr. Devaraj claimed that they were

threatened by 'gangsters' and party workers of Vellu. One incident, in which a member of a non-government organization, was assaulted and had his video camera smashed by party workers of Vellu, while attempting to document a dispute between party workers of both sides. A police report was lodged, but until today, there was no indication whether police investigation was carried out.

Conclusion of the 10th General Elections

A regional non-governmental election monitor, Asia Network for Free Elections (Anfrel), which observed the elections in nine different states in Malaysia, including Sabah and Sarawak, concluded that the 10th General Elections were "far from being free and fair".

Some of their observations included: multiple identification cards with differing names and numbers but bearing the same photographs and the media coverage was often biased, unbalanced and at times misleading. The Election Commission was especially singled out for criticism for failing to ensure a credible poll as it did not take any measures to stop the biased media coverage. It also expressed concern that the voter registration system had deprived 680,000 newly registered voters of their rights to vote.

The PEMANTAU monitoring exercise highlighted on several weaknesses: that a substantial number of the adult citizens eligible to vote were denied the right to vote; the administration of the postal vote was highly questionable; certain groups were denied the opportunity to form political parties by the Registrar of Societies; opposition parties were not given reasonable opportunities to carry out their campaign; The local broadcasting and print media were one-sided and blatantly biased towards the ruling coalition; and the secrecy and freedom to cast votes especially among the armed forces and police was highly questionable.

The Election Commission's Response

Election Commission chose to reject reports that there were serious shortcomings in the elections.

According to a report in The Star, the response of the Commission's Secretary was primarily that the NGOs involved in producing the report were influenced by foreign groups with vested interests.

The other responses were that releasing the report threatened local democracy and tarnished the image of the country internationally; parties outside the country were not qualified to judge the democratic system practiced in Malaysia; the 'minor weaknesses' observed in the general elections did not prevent the election process from being free, fair and democratic; and the general election was successful as there were very few election petitions filed.

This knee-jerk response of the Election Commission further cast doubts on the 'independence' of the Election Commission in the minds of many Malaysians, following the decision not to allow more than 680,000 registered voters the chance to exercise their basic right.

However, the Election Commission did acknowledge that there was a lot of confusion which took place at the commission's voters' registration counters in many polling stations through the country due to the weaknesses of the electoral roll.

After the election results were announced, 22 election petitions were filed, 16 (7 parliamentary and 9 state seats) in Peninsular Malaysia and 6 (state seats) in Sabah. The majority of the petitions in the Peninsula were in areas where the opposition have won, whereas in Sabah the majority of the petitions were in areas where the BN has won.

The petitions filed cited concerns which were raised by the PEMANTAU which included allegations of the abuse of electoral rolls (including registration of phantom voters and inclusion of dead voters); allegations of importing of voters into constituencies to bolster votes; and allegations misuse of monies (bribery).