

Malaysian Human Rights Report

civil and political rights in 2000



Suara Rakyat Malaysia (SUARAM)

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Chapter 1

DETENTION WITHOUT TRIAL

“Everyone has the right to live in peace and free from fear of arbitrary arrest and detention without fair public trial”. This is declared in Article 12 of the Malaysian Charter on Human Rights.

Yet, the Malaysian government continues to violate basic rights of the individual by using draconian laws such as the Internal Security Act (1960), Emergency Ordinance (1969), Restricted Residence Act (1933) and Dangerous Drugs Act (Special Preventive Measures), 1985.

Around 1,051 people of all races, religions and walks of life have been detained under the draconian laws, which allow for detention without trial for an indefinite period. The total number of documented victims of detention without trial for 2000 is shown in the Table 1.1.

1.1 INTERNAL SECURITY ACT, 1960

ISA was enacted in 1960. This Act violates fundamental rights and provides for ‘preventative detention’ without trial for an indefinite period. It violates the right of the individual to defend himself and is constantly used against people who criticize the government and defend human rights. The ISA allows the Minister of Home Affairs to order indefinitely detention without charge of trial of any person suspected of “threatening national security” in Malaysia. The police can detain any person without warrant for an investigation period of up to 60 days. The Home Minister may issue a detention order up to two years, renewable indefinitely. In recent times, ISA has been used on several occasions. Table 1.2 contains the documented cases monitored by SUARAM.

Suaram, heightened its campaign against the ISA in year 2000, a year which marked the fortieth year of the draconian act. The campaign, which was initiated in 1988 following a mass detention without trial which the authorities referred to as ‘Operation Lallang’, is a long on-going struggle to abolish the ISA.

In the year 2000, the campaign was endorsed and supported by 71 civil society groups and political parties, the largest number of groups opposed to the ISA thus far. SUARAM organised a series of campaigns and activities to lobby against the Act. This included a Day of Express-

sion, which was held on August 1st and attended by around 200 people, a gathering at Parliament House on 19th October which brought together around 300 people, and the climax of the campaign that year, the mass gathering at the gates of the Kamunting Detention Camp on the 29 October 2000, which was followed by a public forum and exhibi-

Table: 1.1 Total number of documented victims of detention without trial for 2000

No.	Draconian Law	Number of People Detained	Remarks
1.	Internal Security Act(until November 31, 2000)	76 (1)	* 16 (5) of them were subsequently sent to Kamunting Detention Camp.Up to 30 December 2000, statistical disclosure by government shows that there were 40 people being held in Kamunting Detention Camp at that time. (5)
2.	Dangerous Drugs Act (Special Preventive Measures) 1985(until June, 2000)	836 (2)	
3.	Emergency Ordinance (EO)(until August 31, 2000)	111 (3)	*418 detainees currently held at Simpang Renggam Prison under EO. Number of people banished to remote area under EO not known.
4.	Restricted Residence Act 1933(until end of October, 2000)	7 (4)	* It was disclosed in Parliament on 17 October that 2,312 people had been banished to another state or had had their movements restricted either under the Restricted Residence Act or the EO between 1995 to September 2000.
	Total Documented Victims for Year 2000	1,051	* The exact figure is believed to be even bigger.

- (1) SUARAM database
- (2) Derived from National Agency Statistics, NST Oct 16
- (3) Statistics from India people arrested under EO. Criminal Investigation Department deputy Datuk Ramli Yusuff, NST Sept 10
- (4) Cases documented by SUARAM up to Oct 2000. The exact figure is believed to be bigger.
- (5) SUHAKAM 2000 report

tion at a venue not far from the detention camp. Around 3000 people from various walks of life turned up to this protest compared to a mere hundred people three years previously who had attended a similar function at the same location.

These 71 NGOs also collectively forwarded a memorandum for the repeal of the ISA to parliamentarians at the Dewan Rakyat (House of Representatives). The number of people opposed to the ISA is a clear message to the government to abide by Article 5 of Federal Constitution, which provides against arbitrary arrest and detention without trial.

It is evident that ISA has been used when the authorities cannot furnish sufficient proof. The detention of the Shiah and Al-Maunah members are two classic examples how the ISA has been used when the Government has no evidence to charge them in court.

1.1.1 AL-MAUNAH

Al-Maunah is believed to be a silat (Malay traditional self-defence art) group or movement in existence since 1998. In one of the Al-Maunah web site, the organisation has called themselves "Persaudaraan Ilmu

Table: 1.2 ISA arrests 2000

Date	Details	Number of victim
March 2000	3 men were detained under ISA for alleged arms dealing in Sarawak.	3
6 Jul - 13 Aug 2000	A religion-based, silat (Malay martial arts) group called Al-Ma'unah was targeted by the government using ISA following the alleged Sauk arms heist incident. 65 Muslim men were detained under the ISA for allegedly attempting to overthrow the government. 23 of them were subsequently sent to Kamunting Detention Centre.	65
September 2000	3 Achehnese previously detained to help police investigations into a murder case were later detained under the ISA. Two of them were released in early October while the other was sent to Kamunting Detention Centre for 2 years.	3
13 October 2000	4 members of the Shia faith were detained under ISA with no reasons given at all.	4
5 November 2000	Another Shia' Islamic faith were detained under ISA. Again no reason was given.	1

Dalam Al-Ma'unah Malaysia" o "B othe hood of Al-Maunah". It was established under the Association Act, 1966. It is involved in the teaching of martial arts particularly the development of one's inner power and the practice of Islamic traditional medicine. The web site also reports that Al-Maunah began its activities in Malaysia in September 1998 and is headed by Syekh Mohd. Amin Mohd. Razali, a silat master. The main objective of the group is to instill a sense of devotion and total submission to Allah among Muslims in general.

Between 6 July to 13 August 2000, the government used ISA to crack down on the Al-Ma'unah group following the alleged Sauk arms heist incident in the early hours of July 2.

According to the Star newspaper report, on July 2nd at 3 am, a group of 15 men was reported to have overpowered Sg. Rui outpost at Banding, 30km from Grik, taking 17 M16s, 6000 bullets, among other items. They then reached the 304th Infantry Battalion Camp in Grik, taking more than 80 M16s. The gang reportedly stole around 114 to 118 weapons from 2 camps. It was reported that the men wore army camouflage uniforms and berets and talked their way past nine guards in one of the camps. According to Tan Sri Norian Mai, Inspector General of Police, the gang is believed to be a religious deviationist group which practices ilmu silat. Subsequently they were all found to be members of the Al-Maunah group. Sources say that there are around 800 Al-Maunah group members but only about 27 were involved in the Sauk arm heist incident.

The police has refused to reveal the identities of the ISA detainees. This clearly raises doubts and gives rise to speculation that either the Al-Ma'unah members had instead been 'kidnapped' by the police or that there is some discrepancy on the reports surrounding this incident. Human Rights groups were totally outraged with the attitude of the police in intimidating the 800 members of Al-Maunah with ISA.

An independent NGO Fact Finding Mission (FFM) was also formed to shed further light on the Sauk arms heist and subsequent stand-off, hostage taking and killings at Bukit Jenalik between July 2 to 6, 2000. The group of 23 NGOs who decided to establish a FFM maintain that one of the rationale for the mission was that the remand and detention of 27 Al-Ma'unah members under the ISA had denied them access to their families or lawyers, and their eventual charge under Essential "Security Cases" Regulations 1975 (ESCAR). This has hindered any further disclosure of information on the incident.

During their course of verifying information, they found that ISA

was initially used on 29 Al-Ma'unah members before they were charged under Section 121 Penal Code. The report also revealed that the 27 accused out of the 29 who surrendered at Bukit Jenalek were initially remanded for 14 days under Section 117 and 302 of the Penal Code but towards the end of second 14-day remand order, they were detained under the ISA. During the remand period none of the family members of the 27 were informed by the police of the remand or allowed to visit the accused.

The report also stated that between 5th July to 13th August 2000, approximately 65 persons had been held under ISA. 23 persons are believed to be having sent to Kamunting Detention Camp while others were released before the first 60 days period.

During the FFM, the groups concluded that there has been lack of transparency and public disclosure during and after the incident and the media was not allowed to cover events at site or invited to view evidence, namely the stolen weapons. As such, the NGO groups have demanded that the state should prove beyond doubt that all the charges brought against the 29 defendants are true.

1.1.2 SHIA FOLLOWERS

The SUARAM ISA Watch team has gathered information on the arrest of 6 members of the Shia faith since October 2000 under the ISA. The actual reason for their arrest was not made known. Family members who were in the dark were led to believe that their loved ones are detained for the mere fact that they are followers of the Shia teachings. To date, 2 of the detainees have been released but the other 4 are still under detention in Kamunting Detention Camp.

Muslims like other religious groupings are divided into several mazhabs (sects). The two main mazhabs in the world are Sunni, who are the majority, followed by the Shia, who amount to one third of Muslims in the worlds. The Shias are concentrated in countries like Pakistan, India, Bangladesh and also Iran. Shia manifestation as a school of thought dates back to the early history of Islam just after the passing away of Prophet Muhammad S.A.W.

Most Muslims in Malaysia and Indonesia belong to Sunni mazhabs. Shias in Malaysia only amount to around two to three thousand people. The crackdown on the Shia community is not the first one. In November 1997, 10 people were arrested under the ISA for allegedly practic-

ing Shia Islam. Those who were released earlier in 1997 were told to renounce their faith and revert to the Sunni sect as a precondition of their release from ISA. The reason for arrest according to the police then was for “activities prejudicial to national security and Muslim unity”.

Though Article 11 of the Federal Constitution provides that “every person the right to profess and practice his religion”, obviously the government of the day has failed to respect the constitution and is still detaining the 4 detainees purely on the grounds of their faith.

Some of the actions taken by NGO coalitions to assist the detainees have included sending appeal letters to the Home Minister, Malaysian Human Rights Commission and UN High Commission for Human Rights. The urgent appeals also calls on the government to put a stop to all kinds of harassment against the Shia community in Malaysia and to repeal the ISA. The appeal has also demanded the immediate release of the 4 persons detained without conditions or to charge them in an open court for any alleged offences.

The Shia mazhab has never been declared illegal nor its teaching branded deviationist in Malaysia. If it was deemed that their teachings are deviant, then they should be tried in the Syariah court (Islamic court) and not the ISA.

1.2 OTHER FORMS OF DETENTION WITHOUT TRIAL

The Emergency Ordinance (Public Order and Prevention of Crime) Ordinance 1969, also known as POPO, gives the Home Minister powers to issue:

- a detention order for up to two years against a person if the Minister deems it necessary to protect public order or to suppress violence or prevent crimes of violence.
- a restriction order controlling the suspect’s freedom of movement and place of residence.

The police however have used this Ordinance routinely to detain persons suspected of criminal activities. Under a 1989 amendment, all forms of judicial review of the discretionary powers of the minister were denied, except those related to the procedural requirements Ordinances.

The Restricted Residence Act, 1933 allows the authorities to issue a ‘banishment’ order for alleged criminal suspects, forcing them to live

in remote areas away from their homes for up to two years at a time, without any judicial review of administrative hearings. The banished person is required to restrict his movements within a small police district unless permission is obtained to allow him or her to go beyond the restricted zone.

The authorities justify the use of the act as a necessary tool mainly for offences involving vice or gambling.

However, other laws such as 1969 Emergency Ordinance and 1999 Criminal Preventive Act 1999 already provides the authorities with the power to issue a 'banishment' order for alleged criminal suspects without going through any due process.

According to the latest statistics released in Parliament, 2,312 people have been banished from 1995 to Sept 2000, which suggest that approximately 33 people are banished each month or 396 people per year by the Home Minister without going through any due process and trial.

Table: 1.3 Statistics indicate that the number of persons detained under this Act.

Year	Latest Figures on Arrest under EO	Latest Figures of persons remained detained under EO* Statistics do not include those who are not held in prison but banished under restriction order.
July 1993		93(1)
1995		447(2)
1996	69(3)	56(2)
1997	130(3a)	
1998	162(3a)	
1999	179(3a)	
Aug 31, 2000	111(3a)	418(3b)

* Statistics for those banished under restriction order have never been publicized.

- (1) Reply to parliamentary Question no. by MP for Petaling Jaya, Dr Kua Kia Soong, 1993
- (2) US State Department Country Report 1996
- (3) Criminal Investigation Department Deputy I Datuk Ramli Yusuff, NST Sept 10 2000. Of the total 651 persons arrested:
 - (3a) Statistics for Indians total 651 persons. Out of it, 269 persons were allegedly involved in robbery, 57 persons in murder case and the remaining were caught for serious crimes such as kidnapping and extortion.
 - (3b) Statistics for total numbers of detainees held at Simpang Renggam Prison under EO: Indian (186 persons), Chinese (162 persons), Malays (60) and other races (10)

Out of these 2,321 people banished for restricted residence:-

- 1,060 people banished under the 1969 EO
- 807 people banished under the 1933 Restricted Residence Act
- 445 people banished under the 1999 Criminal Preventive Act.

Table 1.4 Areas currently used by the government to banish people

Place Name	State
Kuala Muda	Kedah
Kulim	Kedah
Baling	Kedah
Kuala Selangor	Selangor
Mersing	Johor
Kuala Terengganu	Terengganu
Kuala Pilah	Perak
Kuala Lipis	Perak

1.3 CURRENT SITUATION

The areas currently used by the government to banish people are shown in the table 1.4:-

According to Deputy Home Minister Chor Chee Heung in Parliament (Star, October 18,2000), there are around eight to 17 criminals in one area at any one time, who are all put under the police observation.

Dangerous Drugs Act (Special Preventive Measures) 1985 allows for the power of preventive detention (which equip any police officer, without warrant, arrest and detain without an order of detention for a period of 60 days) for the purpose of investigation. This main intention of the measures was apparently to curb drug trafficking activities and to arrest and detain without trial suspected drug traffickers. As at June 2000, around 836(*) persons were detained under DDA (special preventive measures) 1985. * Derived from National Agency Statistics, NST Oct 16, 2000

This 'measure', however, has done little to arrest the rising numbers of persons reported to be involved in drug abuse. Statistics released by the National Narcotics Agency's show that the number of reported drug addicts has in fact increased from 7,154 in 1980 to 15,839 in the year 2000, with the highest number recorded in any one year

being 1999, where 24,585 (*) persons were registered. (*) Statistic by Home Ministry, Sin Chew 23th Nov 2000

In addition to the fact that the DDA has been ineffective in addressing the rising numbers of drug abusers in the country, it is also yet another form of detention without trial. If indeed the persons detained are involved in drug-related crime offences, then the alleged criminals should be brought to open court with sufficient evidence to prove their offence for a person is presumed innocent until proven guilty. As with any other democratic legal system, the burden of proof lies with the prosecution. However, in Malaysia, not only are the alleged offenders punished before they are proven guilty, even the freedom to defend oneself is also violated.

Chapter 2

FREEDOM OF EXPRESSION

“Every citizen has the right to freedom of speech and expression; all citizens have the right to assemble peaceably and without arms; all citizens have the right to form associations”. (Article 10 (1) of Fundamental Liberties in the Federal Constitution). Article 5 further guarantees that “No person shall be deprived of his life or personal liberty save in accordance with law” .

Unfortunately, both Articles 10 (1) and 5 on Fundamental Liberties in the Federal Constitution have been “invalidated”. National Security has always been the reason for the state to restrict and suppress the freedom of expression. But major events over the last year have raised doubt.

2.1 MEDIA CRACK DOWN

The year 2000 saw some significant suppression on the freedom of media. This resulted in significant erosion to the space of freedom of expression and belief in Malaysia. The episode that led to the media crackdown was the victory of the opposition which had scored significant gains in the November 1999 general election. The ruling party (Barisan Nasional) seemed convinced that the loss of two states to the opposition and reduced majority in every seat it stood was the work of the opposition media.

In December 1999, the Prime Minister Dr. Mahathir gave a hint that a national media crackdown was on its way. This was stated in his article to a Japanese Press, Mainichi Shimbun. He accused the victory of the opposition who scored the significant gains against the ruling coalition especially in the Malay vote in the November 1999 general election as the work of “lying, malignancy and money politics”. (Mkini Nov 27)

The year 2000 saw further suppression of the press, resulting in further erosion to freedom of expression and belief in Malaysia. In fact, Malaysia was once again in the world news when Prime Minister, Dr. Mahathir Mohamad was listed one of the Ten Worst Enemies of the Press in 2000 by the Committee to Protect Journalists (CPJ), in con-

junction of the World Press Media Freedom Declaration.

Thus one of the steps taken immediately after the 1999 election was to crackdown on opposition or alternative newspapers which had become more influential and popular compared to the mainstream media controlled by the ruling party as documented in Table 1.5.

Table: 1.5 Crackdown on alternative media

Media	Year 2000	Events of Violation
DETIK	January-March	Two weeks after the November 1999 General Elections, the popular pro-opposition fortnightly magazine, Detik, had its permit withdrawn by the Home Ministry although approval had been given several days prior to that. The privately financed magazine was officially banned by the Home Ministry on March 21, 2000.
HARAKAH	January Jan 13 End of February	Harakah newsstand sales banned Editor and printer charged under Sedition Act on January 13, 2000 Harakah's twice a week production reduced to twice per month. Background: Since the September 1998 arrest and prosecution of former Deputy Prime Minister Anwar Ibrahim, Harakah's circulation had been on the increase and at one point hit a circulation figure of 350,000. Following the 1999 General Elections, in which the Pan-Malaysian Islamic Party (PAS) scored significant gains against the ruling coalition, the government banned newsstand sales of Harakah, the PAS party organ. Harakah editor Zulkifli Sulong and its printer, Chea Lim They, were arrested and charged under the Section 4(1)(c) of Sedition Act 1948 over an article in the PAS official organ, in August, last year. Permit was initially not renewed until it agreed to the new permit conditions where has its frequency slashed from eight per month to two.
Tamadun	April	Tamadun, a monthly Malay-language magazine, was given a warning letter by the Home Ministry on October 28, 2000 for publishing material that "could cause hatred among the people towards the government". The Home Ministry's strict requirement under the new permit order made it impossible for this magazine to continue operating.
Eksklusif	April 15	The weekly tabloid, which had been the second most popular tabloid after Harakah, had chalked up a circulation of tens of thousands, hitting 100,000 at its peak. For some time, Eksklusif was a key alternative weekly

	September 9	<p>tabloid, until it was forced to shut down after the Home Ministry did not renew their permit, which ended on 15th of April, 2000.</p> <p>The Home Ministry Head of Publication Unit, Tengku Mahmood Tengku Ismail commented that the ban was imposed "due to its imbalance reporting and non-compliance with publication rules and regulations despite being warned several times".</p>
Haraki	May	<p>The Home Ministry raided the Haraki office in Gombak, a publication company of Ahmad Lutfi Othman (which had also been the publication office for the previously banned Detik magazine). Over 500 copies of the Haraki were seized.</p> <p>For weeks after that, the Shah Alam police harassed and intimidated the Haraki printing company.</p>
Al-Wasilah	August 30	<p>The Home Ministry revoked and refused to renew the permit for Al-Wasilah, a youth-oriented monthly magazine, published also by former Detik editor Ahmad Lutfi Othman. Wasilah was forced to close down.</p>
Al-Islah	Nov 10	<p>The Home Ministry raided the office of Penerbitan Pemuda publishing company in Gombak and seized over 600 copies of Al-Islah tabloid.</p>

Aliran, a Malaysian-based reform movement with Economic and Social Council of the United Nations status, which also puts out a monthly magazine, in their media statement dated 7 September 2000 stated that,

“The Home Ministry’s banning of the weekly Malay tabloid ‘Eksklusif’ along with the non-renewal of other publication permits, has reinforced public perception that the government is determined to clamp down on publications that are seen to be critical, investigative and independent”.

Groups such as like the People’s Manifesto Initiative (PMI), a coalition comprising 12 non-governmental organisations and concerned citizens, issued a press statement on 12 September 2000 strongly condemning the government for misusing its political power for its own convenience and to its own advantage.

The statement added that the Printing Presses and Publications Act 1984 (Amendment 1987) which states that “the minister’s decision cannot be challenged in the court”, clearly shows that the government is running away from its responsibility and is abusing its power. PMI further asserted that the act itself is ultra vires, i.e. against the freedom of expression granted in the Federal Constitution.

On September 27, 2000, a group of 14 independent editors, report-

es, writers and cartoonists sent a petition to the National Human Rights Commission (Suhakam), seeking the promotion of a free press environment in Malaysia. Spokesperson for the group, Ahmad Lutfi Othman pointed out that,

“the media is an important bulwark of democracy and there is a need to strengthen professional journalism for the future of Malaysia, but there are also obstacles to writing and publishing which are becoming more prevalent in this country.....there exist authoritarian laws such as Printing Presses and Publication Act, the Official Secrets Act, the Sedition Act and the Internal Security Act which should be repealed”

Then on 11 November 2000, Ahmad Lutfi Othman led a six-member delegation of journalists to discuss with the de facto law minister Dr. Rais Yatim on legislation affecting media freedom in the country. On 23 August, the minister had strongly pointed out that the restrictive 1984 Printing Presses and Publications Act would not be repealed even if a National Press Council is established to regulate the media.

On 22 November the same year, seven persons were arrested and accused under the Printing Presses and Publications Act 1984 (latest amendment was at Jan 1995) in Kuala Lumpur for selling Reformasi

Table: 1.6 Publications confiscated by Home Ministry

Year 2000
Actions taken by Home Minister of Malaysia up to Oct 2000 77 publishers nationwide have had action taken against them for contravening the Printing Presses and Publications Act 1984 Eight book titles have been banned 32,869 publications had been seized by Home Minister's Publication Control Unit during raids at the premises of publishers, printers and distributors. A total of 104,009 of the 82,840,264 publications brought into the country until August this year were held by the Ministry. Official sources say that all publications that were held contained 'negative elements', including pornography and violence. According to SUARAM sources, 20% of the seized materials are publications of different public opinion, point of views etc. The rest are pornographic related materials.
Year 1999
A total of 149,000 of 58,286,494 imported publications, involving 652,934 titles, brought in at 6 entry points in the country were held.
Between 1998 to August 2000
Home Minister banned a total of 881 publications nationwide.

publications, stickers, VCDs and opposition parties audio tapes. Five men were detained for less than 24 hours while two women were released eight hours after being arrested. The police accused them of violating the Printing Press and Publication Act 1984.

However, the award for 'most suppressed publisher' of the year must go to Ahmad Lutfi Othman. Two of his publications, *Wasilah* and *Detik* were banned in 2000. Then the government took Penerbitan Pemuda Company to court for publishing the *Haraki* magazine without a permit. Ahmad Lutfi's case was fixed for hearing on 22 November 2000. In addition, Lutfi is also facing a defamation suit of RM30 million filed by State Perlis MB, Datuk Seri Shahidam Kassim, for one of his articles in the ADIL tabloid.

2.2 INTERNET

The suppression of the media was also extended to the Internet, though Malaysian officials claimed that Internet would not be censored. Internet freedom is in fact one of the guarantees that Malaysia gives to foreign companies wanting to set up shop in the Multimedia Super Corridor. However, this conflicts with the statement made by the Minister in the Prime Minister's Department, Dr. Rais Yatim when he said that, "anything that is illegal in print, including statement that are seditious and defamatory, is also illegal on the internet and one is subject to libel under Defamation Act or even the Sedition Act". (Mkini Sept 21, 2000)

The Malaysian news agency, Bernama, reported in an article dated 26 July 2000 that those found "to have misused the Internet to spread lies or threatened others could be prosecuted under Section 233 of the Communication and Multimedia Act 1998. The article added that offenders could face a fine of up to RM50,000 or imprisonment of up to a year, or both. Once again, the Malaysian government clearly used its two-thirds majority in Parliament to enact and pass laws to suppress freedom of expression and access to information without any due discussion or debate.

Reuters reported on 12 December 2000 that Malaysia would prosecute Muslim net surfers who insult Islam over the Internet. Minister in the Prime Minister's Department Abdul Halim Othman was reported as saying individuals had ridiculed Islam by posting their own religious interpretations on the Internet and they are subject to fines up to RM5,000 or three years prison under the Malaysia's Syaria Law.

2.3 ACCESS TO INFORMATION

As the right to expression is restricted, so too is the right to information. Access to public information or information of public interest issues is severely restricted by the Official Secrets Act 1972, which was amended extensively in 1983. Under this Act, departmental heads have broad powers to classify all their documents as 'secret' and therefore inaccessible to the public. This classification is not subject to any independent scrutiny.

Parti Keadilan Nasional (PKN) Youth Chief, Ezam Mohamad Nor, was charged under Section 8(1)(i) of the Official Secrets Act for allegedly disclosing two classified Anti Corruption Agency (ACA) reports with regards to two political leaders. The reports were disclosed during a press conference on November 6 last year, which was held at the Keadilan headquarters. Ezam reportedly revealed ACA investigation reports on the International Trade & Industry minister, Datuk Rafidah Aziz and Tan Sri Abdul Rahim Tamby Chik, the former Chief Minister of Malacca. Ezam is still on trial and if convicted, he could be sentenced up to seven years in prison.

2.4 THE SILENCING OF OPPONENTS AND CRITICS OF GOVERNMENT

2.4.1 USE OF SEDITION ACT

The year 2000 saw several opposition leaders being charged for sedition. The Sedition Act 1969 contains very broad definitions of 'seditious acts'. These include acts that 'bring hatred or contempt or excite 'disaffection' against any Ruler, the government or the administration of justice'. In addition, it includes acts that raise discontent or disaffection amongst the inhabitants of the country. Sedition is also defined as the promotion of feelings of ill will and hostility between different races or classes of the population of Malaysia. The Sedition Act also prevents the questioning of the special position of Malays and citizenship rights of the non-Malays, provided under the Federal Constitution.

Former PKN Vice-President, Marina Yusuff was put on trial for allegedly uttering seditious words at a public speech at Chang Hua Kor Moral Uplifting Society Hall in Jalan Tanah Liat, Bukit Mertajam on

September 29, 1999.

On 26 October 2000, PKN Youth Chief, Ezam Mohamad Nor came under fire for apparently having said, at a public event jointly organised by PAS and PKN in Kedah, that he had travelled abroad to discredit the Prime Minister. Prime Minister Dr. Mahathir Mohamad also lambasted Mohamad Ezam for highlighting the erosion of democracy and human rights in Malaysia and Dr. Mahathir was quoted by APF as saying that Malaysians who criticise their leader while overseas are 'guilty of treason'.

Another victim of the Sedition Act was lawyer Karpal Singh, former Member of Parliament. He was charged for making a 'seditious' statement in his capacity as lead counsel for former Deputy Prime Minister Anwar Ibrahim at the latter's sodomy trial. He was charged for implicating someone in a high position with the poisoning of the former Prime Minister. Karpal had asked for an inquiry to be held to investigate the high level of arsenic in Anwar's body. He was arrested on Jan 12 this year and was charged two days later under Section 4(1) of the Sedition Act 1948, an offence punishable by a jail term of up to three years.

International bodies like the International Human Rights Arm of the English Bar heavily condemned Karpal's arrest; the Welsh Bar also expressed their concern over the Malaysian sedition case. They asserted that the prosecution of lawyers for sedition with respect to matters said or done in the defense of their clients would undermine the ability of lawyers to act freely and without intimidation.

The Bar Council Human Rights Committee in Malaysia also expressed concern with the use of sedition charges as a weapon against opponents and critics of government. Malaysia apparently 'achieved' another first as according to the co-author of the Opinion, Micheal Birnbaum QC: "As far as we know, this the first case anywhere in the world in which a lawyer has been accused of sedition for words spoken in the defense of his client".

Another on-going sedition trial is that of Irene Fernandez who is being charged with 'maliciously publishing false news' in a memorandum released at a press conference in August, 1995, regarding the torture and deaths within migrant detention camps. The trial, which began in June 1996, is the longest ongoing trial in the legal history of the country. She too, if convicted, can be imprisoned for up to three years.

2.4.2 DEFAMATION

The infamous M.G.G.Pillai defamation suit is another example of suppression of the freedom of expression in Malaysia. On July 12, 2000 the Federal Court dismissed an appeal by M.G.G. Pillai, a freelance journalist, and two others in a defamation suit filed against them by businessman Vincent Tan who claimed to be defamed in four articles in the Malaysian Industry magazine. The court also upheld the quantum of damages awarded to Tan by the High Court in 1994. The Federal Court who upheld the award amounting to RM10 million had disagreed that libel damages should not exceed those in accident cases.

The court said, "with regards to the appellants submission that a large quantum of damages awarded would have a chilling effect on the freedom of speech and expression guaranteed by Article 10 of the federal constitution, the court was of the view that freedom of speech is not an absolute right".

The award has become a tool for stifling and shutting off criticism. In the wake of the RM10 million awarded to tycoon Vincent Tan following his defamation against several defendants, several other multi-million ringgit defamation suits have been filed by several businessmen and politicians. Datuk Rais Yatim, Minister in the Prime Minister's Department said that the government would review the law of defamation in response to the public concern over big libel awards.

Param Cumaraswamy, former President of Bar Council and current UN Special Rapporteur on Independence of Judges and Lawyers said, "capping civil awards given for defamation suits does not require changes in the legislation. The courts must apply the proper standards and always maintain a balance between the weight of a right of free speech and a right of privacy".

Professor Hamdan Adnan, in his capacity of President of the Federation of Malaysia Consumers Association (Fomca) said, "the review is important because people are afraid to even say something innocent as the big businessmen and other powerful people might sue them for millions of ringgit".

2.4.3 RELIGIOUS VENUES AND FREEDOM OF EXPRESSION

The use of mosques as an arena to spread propaganda has been a hotly debated issue. Both the Government and the parties in the opposition

have accused each other of using mosques for non-religious activities, for example political speeches. In what seemed like an attempt to control speeches made by opposition figures, the state has placed various restrictions on activities that can be carried out at the mosques.

On October 18, 2000, officials of a local surau (small mosque) near Klang were sacked for allowing the Kelantan Menteri Besar, Datuk Nik Aziz Nik Mat to deliver a talk. This apparently represented a violation of the directive that had been issued by the Selangor Islamic Affairs Department (JAIS). Although no action was taken against the Member of Parliament, a warning was issued that if he were found to be delivering speeches in any surau or mosque in Selangor, he would have to bear the 'consequences'.

In Kuching, Sarawak, the government announced that it was closely monitoring 'mind-poisoning' activities which were deemed to be 'security threats' and instructed all mosques and surau committees to verify names of individuals who claimed to be ulamak (religious teachers) before allowing them to preach in the mosques.

Wanita UMNO chief Datuk Seri Rafidah Aziz stated that mosques and surau's should display a code of conduct to prevent the places being misused for political mileage, adding that the code of conduct could be made into a legislation in order to make it a criminal offence.

2.4.4 SUPPRESSION OF STUDENT ACTIVISM

The government has always been watchful and wary of the involvement of university and college students in politics or in the issues affecting the masses. In the early 60's and 70's, students' movements in Malaysia played a crucial role in highlighting the plight of marginalised communities such as farmers and urban settlers (squatters). The state responded by arresting students en masse, and jailing student leaders and activists plus lecturers; some of the more vocal and prominent leaders were detained under the draconian ISA. Aware and somewhat fearful of the force and influence that could be exerted by the student movement, the government immediately enacted a Universities and University and College Act in 1974 to restrict their activities.

On 21 July 2000, disciplinary action was taken against six students from University Malaya for their involvement in a gathering to protest against concerts performed by pop-group Vengaboys and Bollywood artistes. About 100 undergraduates attended the one-hour protest. The university authorities accused the students of participating in an illegal

gathering, the act of damaging the good name of the university and disturbing public order. Had they been found guilty, the students could have been expelled from the university, but on November 2, they were all freed as the university had failed to prove the charges.

In September 2000, about 300 students demonstrated for 20 minutes, bearing lanterns that had the message 'Freedom of Activities - Happy Lantern Festival' affixed to them. The multi-racial group that attended this gathering was unhappy with the Students Affairs Department of Universiti Malaya who has rejected an application by the students to hold the Lantern Festival.

According to the student representatives, one of the reasons given to them was that the university did not wish to see too many lantern festivals on campus, hinting that the matter was 'sensitive' and could incite racial disharmony. The university further restricted the use of the University's Literature Square auditorium for a lantern exhibition. In addition to this, in February this year, University Teknologi Malaysia (UTM) also banned its students from holding a cultural exhibition to celebrate Chinese New Year.

In another incident, final year accountancy student, 23-year-old Mohd Rizal Mohd @ Anan, was suspended for three semesters on the ground that he had "brought disrepute to the good name of students and the university" following a comment he had made in a public forum organised by University Utara Malaysia's (UUM) on February 11, 2000.

In another incident, final year accountancy student, Mohd. Rizal Mohd, was suspended for three semesters on the ground that he had "brought disrepute to the good name of students and the university" following a comment he had made in a public forum organised by University Utara Malaysia's (UUM) on February 11, 2000.

Student Representative Council member, Mohd. Rizal filed a case at the High Court on March 14, 2000, claiming that he had been unfairly suspended and that he had merely exercised his right to free speech when he spoke at the forum at UUM. About 200 students gathered peacefully outside the court on 24 October 2000, in support of Mohd. Rizal, distributing pamphlets and leaflets criticising the Universities and University Colleges Act. The police seized the leaflets and two students were detained.

In another development, a student activist from University Technology Mara (UiTM) had requested for a minister and chief minister to be his witness in his disciplinary hearing on 15 November 2000. Mohd. Farizan Abdul Razak Presiden Persatuan Amalan dan Sosial Islam

(Adasi), with two others, namely Khai ul Rizal and Abu Husin Mamat were indicted for protesting against the university's decision to drop the word "Islam" from the students' association. The students were also accused of criticising the university and the government's education policy besides writing a letter to Selangor Chief Minister and Youth and Sports Minister seeking help on the issues. In addition they were also accused of being involved in students' associations, which was not recognized by the university. Therefore Mohd Farizan has requested both the ministers to be his witness for the charges against him. According to the Malaysiakini report on November 15, 2000 both Khairul Rizal and Abu Husin was convicted and released with fines amounting to RM100 to RM200.

Students who demonstrate against the Prime Minister abroad should be labeled as "traitors". Such was the comment from UMNO youth leader Datuk Hishammuddin Tun Hussein to the press on October 9th.2000, on the demonstrations that were organised by several groups against Datuk Seri Dr. Mahathir at venues where he was invited to visit and speak during his visit to Britain.

In another case, fourth year UTM student Lee Khai Loon was issued a show-cause letter for inviting the Education Minister to a debate on the controversial Vision School project. The Education Minister's parliamentary-secretary, Mahadzir Mohd. Khir warned the students that although they had the freedom to voice their views, action would be taken against those involved in partisan politics. To which, a second-year student Tan Bee Lan, asked Mahadzir, "how students could avoid being under the thumb of politics when the HEP (Students Affairs Department) itself was controlled through politics?" (Mkini Dec 19,2000)

Education Minister, Tan Sri Musa Mohamad, had been constantly accusing the students of neglecting their studies and being involved in the hate politics propagated by PAS.

2.4.5 CIVIL SERVANTS UNDER ATTACK

Civil servants too have not been spared. They were severally attacked by the state for openly supporting the opposition as though being a civil servant automatically restricts one from supporting opposition.

Deputy Prime Minister, Datuk Seri Abdullah Badawi, in November 2000, was reported to have said that, "those who are not supportive of the government should resign". He threatened that, "civil servants

who openly showed their hatred for the government would be asked to leave the service or be expelled", but hastened to add that on the whole, the civil service is still "solidly behind the government of the day".

In December the same year, Parliamentary Secretary in the Prime Minister's Department, Noh Omar said, "civil servants who are pro-opposition should resign rather than be traitors to the government" and claimed that civil servants in Terengganu under PAS government have been warned that they will be transferred out if they support the federal government.

Schoolteachers have not been spared the dire warnings; the parliament secretary warned schoolteachers against taking part in politics. A schoolteacher was investigated under the Sedition Act for apparently setting an essay topic on the erosion of confidence in the judiciary. Two teachers, one in Kedah and the other in Terengganu, were accused of setting "politically-inclined" questions in examination papers.

The Education Minister, Musa Mohamad, on September 2000 added said that the Ministry would be monitoring the state of Terengganu to investigate claims that some teachers were airing political views during class. According to the Chair of the State Education Committee, Datuk Long, ten teachers had been issued warning letters and transferred to other districts for allegedly breaching their professional code of ethics, including being actively involved in politics. The Ministry said that disciplinary action, which included sacking and suspension, would be taken against teachers accused of bringing politics to school.

Chapter 3

FREEDOM OF ASSEMBLY AND ASSOCIATION

“Everyone is entitled to organise or participate in meetings, forums, gatherings, discussions and other peaceful activities without having to obtain the prior permission of any state body. Everyone has the right to join or form any organisation including political organisations of their choice and conduct peaceful activities.” (Malaysian Charter of Human Rights, Article 13).

In Malaysia, each time the state uses its might to disperse peaceful gatherings and deny the right to form associations, Article 10 of the Federal Constitution is violated. Article 10 (1)(b) guarantees every citizen the right to assemble peacefully and without arms. The year 2000 brought little respite from these violations, with no ‘improvement’ in the part of the state to uphold this basic right enshrined in the Constitution. The many bitter incidents in the past year reflect just how this freedom has been denied to the people of Malaysia.

3.1 OPPOSITION & REFORMASI GATHERINGS

The year 2000 saw the right to assembly repeatedly violated, either with threats or with overt aggression shown towards those who were peacefully gathered. In addition, the treatment of those detained during gatherings are clearly in breach of existing police and court procedures, apparently designed and executed to send a message that exercising the right to assembly in the Malaysian democratic system will come at a high cost. These violations, as will be seen below, appear to be selectively perpetrated, namely against opposition and reformasi gatherings.

In the following cases, it is also obvious that in most circumstances the police were not co-operative. Family members of those who were detained could not have access to the detainees. Family members are not informed where their loved one are kept and whether they would be charged or they need to prepare bail and the most vital of all is that there have been cases where the detainees are denied right to legal representation and medical representation. In those situations, the Bar Coun-

cil Legal Aid Centre (Kuala Lumpur), Urgent Assistance Team which is a combination of various NGOs and concerned individuals have come to the aid of the detainees and their family members in providing legal assistance and family support.

3.1.1 RESTRICTIONS AND THREATS PRIOR TO PEACEFUL ASSEMBLIES

The Police Act 1967 requires a police permit 14 days before any public assemblies are held. Application for a permit, however, is no guarantee of actually acquiring one. On 9 August, Parti Reformasi Insan Malaysia (PRIM) applied to hold a candlelight vigil in front of the Kuala Lumpur Federal Court for nine consecutive days from 9-15 August as a show of support for jailed former Deputy Prime Minister Anwar Ibrahim who on 8 August, was sentenced to jail for nine years. Their application to hold the vigil was rejected by the police. On 10 Aug, PRIM tried again but this time for a one-day event; their application was rejected once again.

The PKN also applied for a permit to hold a 100,000 people assembly in Bukit Jalil Stadium to commemorate the second year of the arrest of Anwar Ibrahim. The party applied twice, on Sept 6 and October 7, respectively. The organisers said they wanted to prove that reformasi gatherings could be held peacefully were it not for the intervention and provocation by instigators. Both applications were rejected.

In addition, prior to the gatherings, dire warnings were issued by the state and police; the Selangor Chief of Police, for example, warned that the police would come down hard and would use 'whatever means possible' to disperse any illegal gatherings. These warnings were punctuated with allegations the gatherings were going to turn violent.

The Home Minister and Deputy Home Minister claimed that the police action was to ensure peace because their police intelligence report revealed that the people had been asked to bring flags, sticks and canes to the assembly. In a statement issued on 13 April, the PMI stated that any responsible democratic Government would respect the right of assembly and refrain from threatening and confusing the public. In view of the allegations that there was going to be violence at the gatherings, the PMI also urged the authorities to call upon all those who made the statements to provide evidence to ascertain the validity of the alle-

gations. No investigations, however, were conducted.

Several groups were critical of the double standards and selective prosecution practiced by the police. Contrast the above two events with the following two events. On the 18 August, approximately 200 people, led by UMNO youth gathered outside the Selangor Chinese Assembly Hall demanding that Malaysian Chinese Organisations' Election Appeals Committee (Suqiu) retract its 17-point election appeals, alleging that the demands questioned Malay special rights. In addition, a gathering in support of the Prime Minister Dr Mahathir Mohamad at his residence in Putrajaya also was allowed to proceed. Neither the Putrajaya gathering nor the event led by the UMNO youth deputy chief had been issued permits. While the strict requirement of application for permits is applied to NGOs, reformasi and opposition gatherings, gatherings held by the ruling coalition or groups closely allied to the ruling coalition are allowed to proceed unencumbered.

3.1.2 STATE RESPONSE TO PEACEFUL ASSEMBLIES

The Police Act 1967 does not specify any particular number of persons as 'an assembly' but the Penal Code section 141 provides that any grouping of five or more as an 'illegal' assembly. Failure to disperse is as a criminal offence. The Police Act 1967 was further amended in 1989 to allow the police to break up large gatherings on private premises, if the police were of the opinion that there was a threat to public order or a breach of the peace could be occasioned.

On 25 Jan, 11 people were brutally arrested by the police and were dragged away during a demonstration in front of the K.L. High Court. All eleven was charged with illegal assembly. Among those who were arrested was National Justice Party Youth Wing Assistant Secretary, N. Gobalakrishnan, ex-ISA detainee Abdul Malek Hussein, including two women and a teenager.

Then on 14 March, 3 days after the gathering at Masjid Negara, Kuala Lumpur on 11 March, seven people including lawyer R.Sivarasa and a freelance cartoonist were held for participating in the gathering. The gathering was held in protest of the restrictions placed against a popular newspaper, "Harakah" which publishes pro-reform articles and the harassment of the establishment, which publishes the paper. All seven were later charged for alleged involvement in an illegal assembly.

3.1.2.1 BLACK 14th

A reformasi gathering commemorating the first year of Anwar Ibrahim's imprisonment, popularly known as Black 14, was held on 14 April. A day before the gathering, however, the police had started picking up opposition leaders whom the police claimed were responsible for the gathering. Between 14 to 17 April 2000, Ruslan Kassim, Ezam Mohd Nor, Abdul Malek Hussein, Tian Chua, Sanusi Abdullah and Zahid Maarif were arrested and remanded for charges of 'inciting rioting'. Despite this 'preventative action', the supporters proceeded with the peaceful assembly, which led to a further arrest of 48 persons.

"No sign of violence or provocation from those who assembled near the Kuala Lumpur High Court. Furthermore their number was very small. They were obedient to police instruction". This is how the People's Manifesto Initiative or PMI (a coalition of 12 non-governmental organisations) described August 4th gathering as they were monitoring the whole gathering along with members of the BAR Council Legal Aid Centre KL. Despite this fact, 7 people were arrested including 2 women when they participated in a peacefully gathering at the Kuala Lumpur High Court attended by some 300 people to give moral support and to hear the verdict on Anwar Ibrahim's sodomy trial.

Due to the high amount of attention generated by the case, the handing down of the judgement was postponed to 8 August 2000. The day the verdict on Anwar Ibrahim's sodomy trial was to be handed down also witnessed a similar 'preventative detention' of Tian Chua and Malek Hussein. A crowd totalling a thousand people gathered at the site to show moral support. Commissioners from National Human Rights Commission, observers from Bar Council and NGO-Pemantau were also present at the site to help monitor the situation. Nevertheless when the police and FRU moved in to disperse the crowd another six people were arrested for illegal assembly.

At the countdown celebrations on the eve of the National Day, 20 PKN supporters were detained in Seremban. Their offence was apparently that they had displayed posters of Anwar Ibrahim. On 29 September, the day the Prime Minister was to officiate a one-day seminar on Islamic leadership at the International Islamic University, five reformasi supporters stood along the road leading to IIU bearing a banner that read "Undur Mahathir Undur" ('Step down, Mahathir, Step Down') on it. Police escorts detained the five supporters for seven hours before releasing them on police bail.

Public rallies during election campaigns have been banned since 1978, placing severe restrictions on political freedom. Opposition party members end up being 'criminals' for organising gatherings. The by-election in Lunas, Kedah, where the ruling coalition was dealt a blow when the opposition candidate scored a victory, saw the arrest of opposition supporters for 'holding illegal assemblies'. The attempts of several members of the opposition to block five busloads of suspected phantom voters from heading for the BN office at Taman Sri Seladang, Lunas, Kulim, landed them in jail on the charge of 'taking part in an illegal assembly with the intention of rioting' and preventing the 'voters' from casting their ballots. The fact that no investigations were conducted on the allegations by the opposition on phantom voters in Lunas raises skepticism on the electoral processes and police conduct.

3.1.2.2 KESAS HIGHWAY 'GATHERING'

One of the more glaring incidents of denial of the right to assemble was the November 5th '100,000 People Rally'. A day before the event, which was due to take place at Jalan Kebun, Shah Alam, six persons were arrested, while on the day itself, which witnessed a traffic standstill several kilometres long, saw 120 people detained.

The unrestrained employment of water cannons, tear gas and truncheons in a show of force and violence by the police and the FRU (Federal Reserve Unit) resulted in 26 of the people detained suffering injuries from broken ribs, deep lacerations, head trauma, bleeding and swelling while another 40 detainees suffered trauma to the eyes and respiratory tract due to the tear gas. Detainees reported that while they were cramped in the Black Maria for three hours, several officers sprayed tear gas several times directly at the detainees, causing intense pain.

All 126 detainees were represented by members of the Bar Council Legal Aid Centre (Kuala Lumpur) and were remanded for five days. On 17 November, the police published in the mainstream papers the names and photos of people who attended the gathering, instructing them to turn themselves in at the nearest police station! The 'hardcore criminal' treatment was clearly meant to create fear among the public and serve as a preventative warning for any future exercise of the right to assemble.

Another issue was the issuance of permits and impartiality involved in issuing permits. PRIM sought explanation from Kuala Lumpur Chief

Police Office when the police were practicing double standards and selective prosecution against participants at gatherings and demonstrations. They were referring to a demonstration led by UMNO youth deputy chief with 200 members, on Aug 18, outside the Chinese Assembly Hall, demanding that Malaysian Chinese Organisations' Election Appeals Committee (Suqiu) retracted its 17-point election appeals, alleging that the demands questioned Malay special rights. Though the demonstration was described as "unruly, abusive and gangsterish" by observers, the police evidently failed to live up to their claims of 'upholding the law'. Suqiu secretary Ser Choon Ing told Malaysiakini on August 18, 2000 that the demonstrators were abusive and unruly.

The other gathering allowed was one in support of the Prime Minister Dr Mahathir Mohamad at his residence in Putrajaya during the same period. Both gatherings did not have any permits and the police took no action against them.

3.1.3 TREATMENT WHILE IN DETENTION FOR 'ILLEGAL ASSEMBLY'

Bar Council Legal Aid Centre (Kuala Lumpur) released a press statement reporting on the excessive use of force leading to injuries suffered by several of the alleged demonstrators who were arrested on 15 April 2000. According to their report one of the victims, Azlee Bin Johar alleged that several policemen hit him on his head, neck and thighs. The Council, which represented all 48 of the alleged demonstrators also pointed out that the police failed to take the trouble to inform family members or the Legal Aid Centre of the detainees' whereabouts. Lawyers from the Legal Aid Centre and the family members who tried to obtain the information also received no co-operation from the police.

The Council quoted an incident at a court premises on 17th April 2000 where a pregnant woman was seen crying hysterically because she was unable to locate her husband. Besides that, Bar Council Legal Aid Centre (Kuala Lumpur) also urged the Government to improve the inhumane conditions in the police lock-ups and ensure that basic facilities and religious rights are respected. During the remand hearing on 17 April 2000, the detainees had reported to the Magistrate that their cells were grossly overcrowded and detainees had to sit squeezed up against each other. They were only given cold tea in the morning and no other

liquid for the emainde of the da despite pleas fo d inking wate . They were also not allowed change of clean clothes.

Meanwhile, one of the detainees, Tian Chua, reported being denied the right of legal representation as guaranteed by Article 5 of the Federal Constitution although his counsel Mr. Cheah Kah Peng was present with him at the Petaling Jaya District Headquarters on 16 April. In addition, Cheah reported that he had been physically and verbally abused by the officer resulting in him sustaining bruises and cuts. He was then taken to an overcrowded cell and instructed to strip. After some 25 minutes he was released on police bail and later charged under Section 186 of the Penal Code for “obstructing public officers from discharging their duties”! The Black 14th arrests also saw all 48 detainees detained for two days before they were brought to the court, representing a breach of Article 5 of the Federal Constitution which requires a person who has been arrested to be produced in court within 24 hours.

The Bar Council Legal Aid Centre (Kuala Lumpur) also released another press statement on the injuries sustained by persons arrested at a public assembly on 5th November 2000. The report contains allegations of abuse or ill-treatment made to the Court. Norazimah bte Mohamad alleged that she was stripped naked by police officers and forced to squat and stand up repeatedly. Abdul Rahman @ Abd Aziz bin Abbas alleged that he was held in a closed truck with 41 others for 6 hours and he claimed that police sprayed an irritant into the truck on 3 occasions. The Council also reported that the family members were generally refused information about their relatives who had been arrested. The Council were very unhappy with the conduct of police at the remand hearing because flimsy reasons were advanced by the police in requesting for a remand order. Among the reasons advanced is that they needed time to send the injured detainees for treatment and that they had not completed their documentation.

In another incident, Member of Parliament and PAS Youth Chief, Mahfuz Omar, when given the option of a jail sentence or a fine RM1500 on charges of participating in an ‘illegal’ gathering protesting the entry of an Israeli cricket team into Kuala Lumpur three years ago, said, “.... I do not trust the judiciary and I refuse to contribute to Dr. Mahathir’s coffers”. He and three of his colleagues spent three months in prison.

Reports by detainees, family members and legal counsels indicate a severe lack of professionalism and due process during detention. Accounts by families from the various rounds of arrests found that family members and lawyers were kept in the dark on where the detainees

we e being held and who the investigating office s we e. In spite of the bad injuries sustained by the detainees, the Magistrate at the remand hearing refused them medical treatment.

3.2 TRADE UNIONS

In addition to the opposition parties and reformasi groups, workers and unions were also denied the right to gather peacefully. The Railwaymen's Union of Malaya (RUM) had planned a picket for three consecutive Saturdays beginning 23 September, after their demands for an 11% pay rise was rejected. They were, however, instructed by the Government to refrain from picketing, stating that since the employers were making losses, the union should not ask for a pay rise.

The Malaysian Trade Union Congress (MTUC) faced similar situation when it proposed a picket protesting the anti-union attitudes among employers. According to the MTUC, although section 9 of the Industrial Relations Act stipulates that union recognition claims must be settled within 21 days, in practice, however, it can take as long as 12 to 18 months. Employers openly defy the labour laws and often refuse to cooperate with the Industrial Relations Department.

In response to the MTUC's planned action, the Human Resource Minister immediately warned the public that the proposed picket in front of the Ministry premises would be considered unlawful as MTUC, being a registered society and not a trade union, had no right to picket. He said that union members taking part in the picket would be prosecuted under section 40(3) of the Industrial Relations Act 1967. In spite of the threat, 800 MTUC members gathered outside the Human Resource Ministry on October 11, submitted their memorandum and picketed for 20 minutes before being dispersed by the police.

3.3 NON-GOVERNMENTAL ORGANISATIONS (NGOs)

NGOs and community-based groups were also targeted by the state. On March 20, police arrested three persons from Save Our Selves (SOS) when they gathered to protest the government repeal of the Rent Control Act 1966. The SOS represented about 10,000 middle and low income tenants in George Town (state capital of Penang) who were facing threats of forced eviction owing to the repeal of the Act early 2000.

When appeals to the Chief Minister to intervene yielded no response, several members of the organisation dragged a long banner in front of the Chief Minister's, leading to the arrest of the three people.

A performance by the Tok Ampoo theatre group, which was scheduled to be staged on 6 October at Hotel Vistana in the eastern state of Pahang, was cancelled at the last minute. The hotel management had apparently received 'pressure from someone at the top' to disallow the event. Tok Ampoo is a group of young artists who use popular theatre forms to perform political satire in Bahasa Malaysia and had begun to have an avid following.

On 29 October, in conjunction with the 40th anniversary of the Internal Security Act (ISA), a peaceful demonstration had been organised by SUARAM and several other groups calling for the abolition of the ISA. The event, which was held in front of the gates of the Kamunting Detention Camp, drew some 3,000 people from various parts of the country. The police, however, refused to grant a permit for a forum that was to be held at the nearby Kampung Pasir. In spite of this, those who had gathered at the gates of the camp marched 200 meters to Kampung Pasir to listen to speeches by the leaders of opposition parties and ex-ISA detainees. After the event, the police threatened to take action against leaders who gave their speeches that day. The police also took statements from the organisers and several other people after the event.

Table 3.1 Documented Cases of Crackdown on Peaceful Assembly, 2000

YEAR 2000 Date of Arrest	Event	Number of Detainees	Status
Jan 24	Demonstration in front of the High Court Kuala Lumpur. People were alleged being brutally arrested by the police.	11 people including 2 women and one 17 year old teenager	Dismissed not amounting to acquittal (Sec. 27 of Police Act)
Mar 14	A protest was held in front of National Mosque, Kuala Lumpur on March 11 on the issue of PAS tabloid's permit being slashed from 8 times to 2 times a month. Nobody was arrested on the day. On March 14, 9 people were summoned to the IPK (State Police HQ), Kuala Lumpur to assist with police investigation. The police arrested 7 of them for alleged involvement in an illegal assembly on the 11th March at	9 people	7 charged in court (Sec. 27 of Police Act) 2 released under police bail

	Masjid Negara. 7 of them were charged in court on the 18th of March for illegal assembly.		
Mach 17 -20	The (Save Our Selves) in Penang had sought the Penang Chief Minister, Tan Sri Dr. Koh Tsu Koon's intervention in the issue of threat of forced eviction of 10,000 tenants after the Control of Rent Act 1966 was repealed early 2000. SOS were forced to encounter Koh Tsu Koon twice in seven days in order to present a memorandum to him. During the encounter on 17th March, organizers dragged a long banner in front of Koh's car. This action prompted their arrest on 17th March and 20th March respectively.	3 people	3 released under police bail
April 14 Black 14 14th -17th April	The Reformasi supporters planned a mass gathering in Kuala Lumpur to commemorate the 1st year anniversary of Anwar's imprisonment on the 15th of April. The police arrested several key Reformasi leaders before and after the event. Between 14th to 17th April, 6 reformasi leaders were arrested in various places in Malaysia.	6 people	(*) Out of this total 54 people: 44 released under police bail 10 tried (Sec. 27 of Police Act)
April 15	Despite the preventive measurement taken by the police a day before which lead to the arrest of three of its key leaders, the reformasi supporters went on with its mass gathering planning in various of places in Kuala Lumpur such as around Masjid Negara, Merdeka Square, SOGO etc.	48 person (including 4 student and 2 women)	* KL LAC (Legal Aid Centre) statistics

April 17 to August 4	Several demonstrations had been organized by Reformasi within this period which led to a total of 14 people being arrested.	14 people	(*) 13 released under police bail 1 put on trial (Sec. 27 of Police Act) * KL LAC (Legal Aid Centre) statistics
August 8	Hundreds of people had been gathering in front of High Court KL to give moral support to ex-deputy prime minister Anwar Ibrahim and to hear the verdict on his sodomy trial.	8 people	2 released under police bail 6 put on trial (Sec. 27 of Police Act)
August 30	Party KeADILan supporters in Seremban, Pahang who tried to celebrate National Day on the eve by displaying posters of Anwar Ibrahim were arrested by police.	20 people	20 released
Nov 5	100,000 people Mass Gathering on Jalan Kebun, Kesas Highway, Shah Alam to display people power.	126 people Many allegations of police brutality during the arrest and the inhumane and degrading treatment by police in custody.	122 released 4 put on trial (Sec. 27 of Police Act)
Nov 22	A reformasi gathering in Kuala Lumpur.	* 7 people * KL LAC (Legal Aid Centre) statistics	7 released under police bail
Total		252 people	211 people released 40 charged 11 discharged not amounting to acquittal

Chapter 4

FREEDOM OF ASSOCIATION

While the right to freedom of association is guaranteed in Article 10(1) of the Federal Constitution, the Malaysian government prefers to defer to sub-clauses 10(2), 10(3), 10(4) and Article 11(4) of the Constitution. These sub-clauses, invoked apparently to maintain national security and public order, in effect restrict and suppress the freedom to association. In addition to these sub-clauses, the Societies Act 1966 and Trade Unions Act 1959 are also invoked to restrict the right to form associations.

Deputy Home Minister Datuk Zainal Abidin Zin, in a press release on 20 August 2000 said that there were 1,500 bodies registered with the Registrar of Societies when it was first set up in 1949. Currently there are approximately 31,000 societies registered with a total of 89,000 branches. However, the Registrar of Societies deregistered 1,208 societies and its 1,158 branches in 1999 alone, citing reasons ranging from societies failing to submit annual reports, violating the Societies Act and 'no longer in existence'. The Societies Act 1966 requires that any association comprising seven or more members must register as a society.

4.1 POLITICAL PARTIES

On 26 October 1999, Party Socialist Malaysia (PSM) applied to the Kuala Lumpur High Court to set aside the written decision of the Home Minister in rejecting PSM's appeal against the decision of the Ministry and the Registrar of Societies (ROS) to not register the party on grounds of national security. PSM became the first party to challenge the Home Ministry's decision in court for not registering them on the grounds of freedom of association.

PSM also applied for an order of mandamus, directing the Home Minister to register PSM as a society and political party. The party asserted that the minister had acted ultra vires and in breach of the Federal Constitution. The trial is still pending.

4.2 NON-GOVERNMENTAL ORGANIZATIONS

Nor are already registered organizations completely independent. They are monitored and harassment is not uncommon. For example, in January 1997 officers of the Registrar of Companies raided the offices of Tenaganita, the NGO that exposed the inhuman conditions in immigrant detention centers, and confiscated documents. Tenaganita and two directors were subsequently charged for late filing of audited financial statements. Since the registrar had already accepted payment of fine, the charges against them were withdrawn but in September 1997 they were once again charged on minor technicalities although these too were withdrawn in November 1997.

Similarly, in November 2000, the Immigration Department ambushed and raided the Women's Aid Organisation's premises for providing temporary shelter for three Indonesian women. WAO executive secretary Ivy Josiah said that the three women who were victims of rape and abuse by their agent and employers were provided shelter on the request of the police. The Immigration Department warned that, "providing shelter to illegal immigrants, even if they are rape or abuse victims, is still against the law".

The Government also has the power to revoke the registration of an existing society for violations of the act on the grounds of not fulfilling minor requirement. This is evident in the following examples. In year 2000, three service-based organisations were deregistered by the Registrar of Societies (ROS) - the three-year old National Parkinson Foundation Malaysia, Children Heart Association and Persatuan Jantung Hatiku Kuala Lumpur dan Selangor - on the grounds that the foundations had contravened the rules in their constitutions. In the example of the National Parkinson Foundation Malaysia, the ROS said that the Foundation had changed its address without prior approval from the registrar, failed to elect 10 ordinary committee members and had elected an adviser although there was no provision to do so in its constitution.

The alleged involvement of the AI-Maunah in the arms heist of July 2 in Sauk appears to have been used to further legitimise tighter control on the freedom of association. Minister in the Prime Minister Department Dr Rais Yatim said that the law committee in the Prime Minister's department would, among others, propose that the Societies Act 1996 be amended, to quash 'religious deviants' and that laws such as the Criminal Procedures Code, Penal Code and Societies Act be amended to make the 'abuse of religion for political purposes' a fed-

election.

In addition, deputy minister in the Prime Minister's Department Abdul Halim Othman said, the police will no longer be required to wait for reports from the State Religious Departments before they can act against any group suspected of 'subscribing to inaccurate teachings of Islam'. According to Deputy Home Minister Datuk Zainal Abidin Zin, to date, two societies (Al- Arqam and Al-Maunah) have been deregistered because their activities were 'a threat to national security'.

Non-governmental organisations, especially human rights groups are constantly attacked in the media by the government with accusations of 'conspiring with foreign countries to humiliate the government' or of 'having a hidden agenda'. On September 9, Perak State Chief Deputy Commissioner of Police Syed Abdul Rahman Syed Abdul Kadir claimed that the police were in the process of summoning and taking court action against some 11 groups, including non-governmental organisations, who were suspected of 'inciting hatred and violence against the government'. But, when the president of the Parti Rakyat Malaysia (PRM), Dr Syed Husin Ali, demanded accountability for the statement, the DCP said that his statement was not meant to restrain freedom of speech, but was merely a reminder!

4.3 UNIVERSITY AND UNIVERSITY COLLEGES ACT, 1971

On 22 September, the Youth Section of Gerakan, a member party of the ruling coalition passed a resolution calling for a review of the University and University Colleges Act, 1971 which limits the freedom of students to conduct cultural, religious and political activities. The Act violates freedom of expression of both university students and academics in universities. The Prime Minister, however, maintained that it was not the right time to review the act. He added that given that the universities were within the purview of the government and that 90% of the expenses were borne by the government, it would be a waste of public funds if students spend time on 'other activities'.

4.4 TRADE UNION

A report released in October 2000 by the International Confederation of Free Trade Unions (ICFTU) observed that, "workers in Malaysia

continue to be denied their right to join a trade union of their choice and to freely organise and bargain collectively because of government policies, restrictive legislation and bureaucratic practices. There continues to be many obstacles to establish trade unions, such as legislative obstacles, dismissals of union officials and cumbersome recognition process and legal obstacles by using industrial action to obtain recognition”.

Chapter 5

INDEPENDENCE OF THE JUDICIARY

“ An independent judiciary is essential to a working democracy, without which confidence in the government itself is undermined”

Roy Rajasingham, Vice-President of the Bar Council

Since the sacking of former Lord President, Tun Salleh Abas, and two other Federal Court judges in 1988, the various constitutional amendments and legislations restricting judicial review have seen a steady erosion of public confidence in the independence of the judiciary. Events during the year served to confirm public perception that the executive continues to have a strong hold over the judiciary.

5.1 THE ANWAR TRIAL

The trial of the former Deputy Prime Minister, Anwar Ibrahim, on charges of corruption, sodomy and perjury drew disbelief, scepticism and criticism not only from within the country but also from the international community.

On April 14, 1999, Justice Augustine Paul sentenced Anwar to six years imprisonment on four counts of corruption. He was found guilty of abusing the powers of his office by asking the police to get a retraction of a police report from two persons – Azizan Abu Bakar and Ummi Hafilda Ali – who had accused him of sexual misconduct.

On April 29, 2000, the Court of Appeal dismissed Anwar's appeal to overturn the verdict. Anwar filed a petition of appeal to the Federal Court on June 5, 2000, claiming, inter alia, that the Court of Appeal had failed to exercise its discretion judiciously and that it had misdirected itself in law in holding that his prosecution was not an abuse of process. He also said that the Court of Appeal had neither considered the relevant grounds of his appeal, the excessive sentences imposed on him, nor the fact that the offences he was alleged to have committed were technical in nature.

The Federal Court, comprising Malayan Chief Judge Adnan Wan Ismail, Sabah and Sarawak Chief Judge Steve Shim and then Federal

Court Judge Dzaidin Mohamad Abdullah postponed the corruption trial indefinitely in view of Anwar's hospitalisation for a slipped disc.

Meanwhile, an interesting chapter in Anwar's sodomy trial was his application to have the then Chief Justice Eusoff Chin disqualify himself from hearing his appeal against a ruling that the Prime Minister need not testify as his witness.

"There still persists in me great apprehension and fear of bias under the circumstances. I am left with no choice and am compelled not to participate in the proceedings since I have no confidence in Your Lordship (Eusoff)," Anwar, representing himself, said from the dock.

The Chief Justice refused to disqualify himself and struck out the appeal.

On August 9th 2000, Anwar was convicted and sentenced to nine years' jail on charges of sodomy, an outcome that shocked the nation. His sentence is to run consecutively with the earlier six-year jail sentence for corruption. This means that Anwar will be in prison up until 2014. Anwar's counsels described the sentences as "very stiff, grossly excessive, shocking and mind-boggling" and also pointed out that it was highly unusual for sentences to be added on to an existing sentence. Anwar has filed a notice of appeal against the conviction.

High Court Judge Arifin Jaka, in his summary judgement, outlined three elements of proof to convict Anwar under section 377B of the Penal Code. The elements are that the accused sodomised the victim voluntarily and that penetration occurred. It appears, therefore, that these three criteria were 'met' based entirely on the statements of one person – Azizan Abu Bakar, the purported victim.

The initial charge against Anwar was that he committed the offence on one night in 1994. Then the charge was amended to one night in September 1992. And finally, before the trial began, it was amended to one night between January and March 1993. Though the Judge said that he was convinced of Azizan's credibility, the Bar Council vice-president Roy Rajasingham said,

"The unsatisfactory evidence of Azizan as to the date of commission of the alleged offence raises doubts as to whether the alleged offence has been proved beyond reasonable doubt."

Suaram also initiated an international protest against the Malaysian Government on 20 September 2000, in conjunction with the second anniversary of Anwar Ibrahim's detention. Suaram sought support from the international community to protest against the abuse of judicial

powe .

In spite of the gaping holes in the trial, the verdict was defended by the Foreign Minister Datuk Syed Hamid Albar. In response to foreign governments' reactions to the verdict, he said that "Anwar Ibrahim's trial was conducted according to due process of law and allegations that it was flawed are utterly unwarranted and unjustified." He further emphasized that the Malaysian judiciary is an independent body and operates separately from the executive and legislative branches of government.

The Prime Minister also tried to convince the foreign media that the trial was fair by saying, "... the trial lasted one year and was conducted in English... Anwar was defended by nine of the country's best lawyers... and yet they say there is no due process... I do not understand the due process (which they mean)."

A further defence came from the Minister in the Prime Minister's Department, Datuk Dr Rais Yatim, who reminded critics that under the International Recognition of Judicial Process, foreign leaders must refrain from criticising the judicial system of other nations, adding that he was confident that with due public feedback, the judicial system in the country would continue to improve.

5.2 MISCONDUCT OF THE CHIEF JUSTICE

Confidence in the judiciary was dealt a further blow in 2000 when a UK-based private investigation agency, Bowman Investigations, revealed that the then Chief Justice Eusoff Chin and prominent lawyer V.K. Lingam had gone on holiday together six years previously (Malaysiakini, 14 Jun 2000). At that time, Lingam was representing business tycoon, Vincent Tan, in a lawsuit against veteran journalist M.G.G. Pillai, whose appeal in the Federal Court was before a panel headed by Eusoff.

According to the investigation report, Eusoff and Lingam flew together to New Zealand with their families for their Christmas holidays and explored Queenstown together in 1994. This finding contradicted Eusoff's claim that he coincidentally 'bumped' into Lingam while holidaying in New Zealand. Photos of the two families on their 'coincidental' holiday were exposed and posted on the internet. Also travelling with the two families was ex-police sergeant Tan Chong Paw, believed to be the bodyguard of Vincent Tan.

Managing director of Bowman Investigations, D. McCarthy, said

the obtained a copy of Lingam's cheque for RM24,912 paid to Holiday Tours and Travels in Kuala Lumpur. They also found that the Anti-Corruption Agency had made similar enquiries. At a press conference, however, Eusoff said he paid for the New Zealand holiday himself and vowed to sue anyone alleging his trip was paid for by a third party. He also admitted that he had been investigated by the Anti-Corruption Agency, but said he was cleared of any wrongdoing.

The compelling evidence prompted the Minister in the Prime Minister's Department, Dr Rais Yatim, in a radio interview in Australia, to say that it was "improper behaviour" for a judge to go on holiday with a lawyer who is appearing in court cases before him.

However, the Prime Minister said that an investigation into the matter was not necessary. In addition, on 11 July 2000, the Dewan Rakyat turned down oral questions from the opposition to the Prime Minister with regard to the justification for the six-month extension of the then Chief Justice Eusoff Chin's tenure when his term had in fact ended on June 20, 2000.

5.3 COURT VERDICT ON BAR COUNCIL'S PLANNED EGM

"Article 10 of the Federal Constitution guarantees the freedom of speech, and that definitely allows any person to discuss the conduct of the judiciary"

Raja Aziz Addruse, Former President of the Bar Council

In spite of what Article 10 of the Federal Constitution guarantees, a court verdict that appeared in 2000 in connection with the above scandal, appeared to send the message that the judiciary is "above the law" and questioning its conduct amounts to an unconstitutional act.

The events that unfolded following the alleged misconduct of the Chief Justice is as follows. In response to the reports, the Bar Council prepared to move a resolution at an Extraordinary General Meeting (EGM), calling for Eusoff's suspension pending an independent investigation. The EGM also intended to discuss allegations pertaining to the judiciary as contained in an affidavit filed by Asian Wall Street Journal (AWSJ) correspondent Raphael Pura in a defamation suit against him by two companies. Apparently, in the M.G.G. Pillai case, lawyer V.K. Lingam had written the judgement for Judge Mokhtar Sidin and had his secretaries send the judgement in final form to the judge, who then introduced it as entirely his own work. Pura had filed a statutory

declaration to this effect and Lingam sued him for defamation.

A lawyer, K. Raja Segaran, filed a suit against the Bar Council, seeking a permanent injunction restraining the council from holding the EGM or any further meetings, claiming that it constituted contempt of court.

Raja Segaran also claimed that the proposed Bar Council resolution attacked the integrity, independence and competence of the judiciary, expressed no confidence in the judiciary, alleged judicial improprieties and called for a Royal Commission – “all of which constitute contempt”. The Prime Minister also opined that the EGM was “politically motivated.”

During the trial, the Attorney-General’s office held a watching brief, citing ‘public interest’ for their presence as well as the fact that the Council was being investigated by the police under the Sedition Act as a result of a police report lodged against the Council.

Although during an interview with Radio Australia, Rais Yatim had said that it was “improper behaviour” for a judge to go on holidays with a lawyer who appears in court cases before him, Judge R.K. Nathan’s decision to grant the injunction was on the basis that the Council had failed to confirm Rais Yatim’s statement.

The High Court granted the injunction in favor of K. Raja Segaran to call off the EGM. The appeal was also dismissed with cost on 29 November 2000. In addition, the Court of Appeal also pronounced that members of the public or any individual organisations were not to discuss the conduct of the judiciary openly as it would be unconstitutional.

5.4 CONTEMPT OF COURT CASES

Sulaiman Abdullah, President of the Bar Council had commented that the current trend in the increasing use of contempt of court, especially against lawyers, is not due to an escalation in misconduct of the lawyers but due to the judges’ perceptions as to what amounts to a contemptuous act.

On 5 September 2000, the Court of Appeal upheld lawyer Zainur Zakaria’s three-month jail sentence for contempt of court. Zainur was found to be in contempt for failing to apologise to the court for filing an alleged ‘slandorous’ pleading on behalf of his client. The pleading was made for the removal of two prosecuting officers, Abdul Gani Patail and Azahar Mohamed, for allegedly being involved in a move to fabricate evidence of sexual offences against Anwar Ibrahim. The plead-

ing included the statutory declaration of lawyer Manjeet Singh Dhillon in the related case of S. Nallakaruppan, who declared that the prosecution had offered to reduce the charges of Nallakaruppan if he would testify against Anwar Ibrahim. Judge Augustine Paul issued a warrant of arrest for Manjeet Singh Dhillon, which was later withdrawn after he apologised for allowing the statutory declaration to be used.

This again raises the question of how it could be contempt of court when the lawyer was acting under the instruction of his or her client. Contempt of Court Committee chairman Mah Weng Kwai said that lawyers were being cited for even minor things, eg. judges threatening contempt for lawyers who write letters directly to a judge and not through his secretary, for those who do not switch off their hand phones and for filing 'frivolous' matters.

Sulaiman said that it was the rampant use of contempt of court by the judges that prompted the Bar to submit a draft Contempt of Court Act to the relevant authorities for their consideration and further action. The draft of the Act defines contempt, lays out the ambit and power to punish for contempt, the precise procedure to be followed as well as the necessary safeguards to maintain the balance between the due administration of justice and the freedom of speech and expression.

It was reported that a lawyer, S. Muthu, who was unhappy with the Bar's stand in the above matter, lodged a police report against Malaysian Bar President Sulaiman Abdullah and Vice-President Roy Rajasingam over statements they had made, allegedly for attacking and scandalizing the integrity of the Malaysian judiciary. The Attorney-General's chambers also issued a show cause letter to Roy Rajasingam asking why contempt proceedings should not be taken against him over the press statement released by the Bar on the contempt of court cases.

Such reaction from the AG's Chambers reaffirms the Bar Council's concern that Malaysian judiciary lacks balance between the due administration of justice and the freedom of speech and expression.

Sulaiman also stressed that the use of contempt freely to punish litigants and lawyers is detrimental to the administration of justice.

5.5 RIGHTS OF REMAND PRISONERS

The Minister in the Prime Minister's Department, Datuk Dr Rais Yatim, revealed the shocking fact that a remanded detainee had been jailed for 8 years and 11 months waiting for his judgement in court. The news which was carried by Berita Minggu on 9 April 2000 also quoted Rais

as saying that the incident was just one of 6,695 remand cases pending judgement in court due to the backlog in the judicial system. Such a huge backlog points to the inefficiency of the courts, which indirectly violates the right of a person to be presumed innocent until proven guilty.

Though the court grants bail, it only confirms the reality that freedom and justice is only for those who can afford it. Such discrimination leads a person to be remanded for a longer period than the sentence passed on him. The worst circumstances are when accused persons are found not guilty at the end of their trial, after they have spent months or years behind bars.

5.6 RIGHT TO A FAIR TRIAL

The right to a fair trial is a basic human right enshrined in the Universal Declaration of Human Rights 1948.

Param Cumarasamy, United Nations Special Rapporteur on the Independence of Judges and Lawyers, in a press statement dated 8 November 2000, pointed out as follows:

“Right to due process is the right to a fair trial and not measured just by the length of the trial and number of lawyers, however eminent, who defended the accused and the language in which the trial was conducted. The right to fair trial under international law, and indeed Malaysian law, involves other procedural essentials. The most essential is that the trial court must be independent and impartial and must be perceived to be so. Another essential ingredient is the right of the accused to call and obtain the attendance of and examine witnesses on his or her behalf under the same conditions as the prosecutor.”

He cited former Deputy Prime Minister Anwar Ibrahim’s trial and questioned whether those important essentials of a fair trial were met. Param Cumarasamy is not the only one who is concerned and suspicious of the trials’ impartiality; international law bodies also urged the Malaysian government to recognize the constitutional position of the judiciary.

A report from the International Bar Association, the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists, the Commonwealth Lawyer’s Association and the Union Internationale des Avocats entitled “Justice in Jeopardy: Malaysia in 2000”, was released in Geneva on April 5, 2000. The fact-finding mission, who made a visit to Kuala Lumpur from April 17-27 in 1999, met

a wide variety of persons concerned with the administration of justice in the country. Among others interviewed included the Chief Justice, President of the Court of Appeal, Deputy Minister in the Prime minister's Department Ibrahim Ali, officers of the Bar Council, former Lord Presidents Tun Mohamed Suffian Hashim and Tun Mohamed Salleh Abas and NGO representatives.

The 121-page report concluded that there has been an increased threat by the government to the institutional autonomy of the Bar Council and that the relationship between the Bar and judiciary has become strained.

The four international legal groups also said that the extremely powerful executive in Malaysia has not acted with due regard for the essential elements of a free and democratic society based on the rule of law.

The report highlighted a series of court cases which reveal that the legal system was being manipulated for political ends, including the defamation proceedings against Cumarasamy, and the judgement in the case of former Kota Melaka MP Lim Guan Eng.

Meanwhile, in a survey done by Hong Kong-based Political and Economic Risk Consultancy, which produces risk reports on the business environment in the region, gave the Malaysian legal system a score of 7.43 out of 10 (10 is the worst possible score and zero the best).

5.7 AL-MAUNAH MEMBERS CHARGED UNDER ESCAR: A THREAT TO FAIR TRIAL

The decision made by the Attorney-General Tan Sri Mokhtar Abdullah to charge the twenty-nine members of the Al-Ma'unah movement using the Essential (Security Cases) Regulations, 1975 (Escar), is another example of a denial of fair trial.

The 29 accused led by Mohd. Amin Mohamed Abdullah were charged for the offence of "waging or attempting to wage or abetting the waging of war against the Yang di-Pertuan Agong."

On 12 September 2000, in a joint press statement reported by Malaysiakini, 23 NGO's stated that there could be no fair, impartial and independent trial under Escar as the accused person is already presumed guilty even before the trial starts. The group also pointed out that Section 19 of Escar is in complete breach of open and fair court trial because it denies the fundamental right of the defendant's legal counsel to directly cross-examine any witness produced by the prosecution. Besides that, the NGO's also stated that the normal standards

fo the admissibilit of evidence unde the Evidence Act will be e-
 moved under section 21 of the special provisions relating to evidence
 in a security case under Escar, which makes the prosecution's job much
 easier in obtaining a conviction.

The first "treason" trial being conducted in the country carries a
 death sentence by hanging or life imprisonment on conviction. The
 defense counsels, including Karpal Singh and Kamarul Hisham, raised
 several objections to the use of Escar in the trial. Kamarul's objection
 was based on the grounds that Escar should only be used if there was de
 facto emergency in the country.

Whereas Karpal Singh said that Escar should not be used, as it has
 not been amended since 1975, thus it still upholds the old law and it
 gives a right of appeal straight to the Federal Court and the Privy Coun-
 cil. This right of appeal has been repealed since 1984 when with the
 introduction of the newly structured Court of Appeal, the Federal Court
 has become the final court of appeal.

On the question of Escar, the High Court ruled on October 3rd that
 the 29 members of the Al-Ma'unah charged with treason can proceed
 under Escar as it was valid. The court also decided that the defendants
 could appeal to the Federal Court as it was the equivalent to the then
 Supreme Court.

This is yet another blow to the judicial system and the AG's Cham-
 bers seems to be using Escar conveniently to their advantage.

Another question in contention was the demonstration organised
 by Defence Ministry on August 16 2000 to show that it was possible
 for 15 men to cart away the large cache of weapons and ammunition
 from two army installations in three four-wheel-drive vehicles. This act
 is prejudicial in nature but the High Court Judge Zulkefli Ahmad
 Makinudin said that the Defense Ministry was not wrong in organizing
 the demonstration.

The judiciary's lack of efficiency was exposed when the numbers
 of detained juveniles in prison was revealed. On September 29, 2000,
 Rais Yatim disclosed that there were 743 juveniles ranging from 13 to
 20 years old in remand in prison all around the country. The juveniles
 should have been sent to a custodial home run by the Welfare Depart-
 ment as stated in the Juvenile Act. Although the Bar Council Legal Aid
 Centre (Kuala Lumpur) highlighted the issue more than a year ago, due
 attention was only given recently.

Public pressure has led the Cabinet to issue a directive for the for-
 mation of a special committee to solve the problem. Upon the direc-
 tive, most of the juveniles were transferred to custodial homes under

the Welfare Department. For many reasons, the executive has downplayed the issue and its inefficiency has led hundred of juveniles to suffer.

5.8 THE EXECUTIVE

The Malaysian system ensures efficiency but permits executive dominance, writes Professor Dr Shad Faruqi in the 16th article of the series, Facets of Our Constitution. He further wrote,

“In Malaysia, Article 43(2) requires the Prime Minister to belong to Dewan Rakyat and other Cabinet ministers to belong to either House. The motive force of the Constitution is a conjunction and not a separation between the executive and the legislature. In parliamentary systems, the Prime minister is Head of Government but not Head of State. The existence of a ‘split executive’ is a potential safeguard against abuse of power by the political executive. But it is also a source of conflict. In our system, legislative cooperation between the executive and the legislature is assured. This ensures strong and effective government. There is a darker side. In parliamentary systems, the executive dominates fiscal and legislative matters to such an extent that many commentators suggest that Parliament merely legitimates; it does not legislate. Law-making power has effectively shifted to the bureaucracy. The great flaw of this system is that the executive tends to ‘capture’ the legislative process. Though debates and motions allow MPs to have their say, in the end the executive has its way.”

The issue of oil royalty to the PAS-led state of Terengganu illustrates the executive dominance as described by Professor Dr. Shad Faruqi. The people of Terengganu, under the Barisan Nasional government, have been receiving oil royalties since 1975. After the November 1999 general election, the people of Terengganu gave their mandate to PAS. Suddenly on 6 September 2000, the Finance Ministry announced that the Federal Government’s special payments to Terengganu through Petronas would be changed from cash to development-related projects. According to the Ministry, Terengganu is no more the poorest state following development programmes brought by the Barisan Nasional Government. The Finance ministry also added that the Federal Government is less confident in the PAS state government’s ability to co-operate in assuring prosperity and the welfare of the people in the state. Prime Minister Dr Mahathir Mohamad said, “Terengganu has no right

to receive oil on land under the law as the oil is not from Terengganu... it is off-shore oil and as such, it belongs to the federal government."

The drastic action taken by the Federal Government using its executive power to intervene in the state matter indicates a serious flaw in the system. The Federal Government should have consulted the Terengganu State Government before making any decision on the five-percent oil royalty. The Federal Government has not only violated the country's democratic principles but has misused its executive power to promote partisan interests of the ruling party.

Under the new Special Payment Funding Scheme, the Federal Government would decide what kind of projects it would fund and implement. Though the federal committee headed by the treasury secretary general announced that they would ensure the poor would benefit from the projects, doubts remain.

The withdrawal of oil royalties is also a breach of the agreement made between Terengganu and Petronas. The 1975 agreement clearly shows that Petronas is obliged to pay Terengganu royalty of 5 percent from oil drilled off its shores yearly. Under the agreement, the Federal Government is also paid 5 percent royalty by Petronas. Tun Salleh Abas, a former Lord President, in an interview with *Malaysiakini* also said that, "in order for the payment to be smoothly channeled, another agreement was signed between Petronas and Terengganu in 1987 in which the word 'royalty' was added, and not 'goodwill' as claimed by Mahathir".

Again this shows that the Barisan Nasional government wants the PAS led government to feel the 'pinch' because without the royalty, Terengganu loses 75 to 80% of its yearly income. Indirectly it would affect developmental programmes planned by PAS for the people of Terengganu. Meanwhile, the Federal Government has violated the Federal Constitution by intervening in the state government's affairs and acting like a 'second state government' in Terengganu without concern for the people.

5.9 THE LEGISLATIVE

The law-making power in Malaysia is vested in the federal legislature, which is the Federal Parliament, and the state legislatures, which are the State Legislative Assemblies.

Parliament, being the law-making body, consists of the Yang diPertuan Agung, the Senate (*Dewan Negara*) and the House of Repre-

sentatives (Dewan Rakyat). The Dewan Rakyat comprises 192 members elected to represent their constituents. There are 147 Barisan Nasional MPs and 46 opposition MPs. The ruling party, Barisan Nasional being the executive body, dominates legislative matters.

The government is expected to review certain laws pertaining to sedition and the regulation of societies (including the Penal Code) to counter those who misuse religion. According to the Minister in the Prime Minister's Department, Datuk Dr Rais Yatim, he would be presenting his views on the matters in a paper named "Problems of Misusing Religion in Political Organisations" to the cabinet.

Meanwhile, The Sun reported on 25 August 2000 that the Syariah Court would consider increasing the maximum fine for incest from RM5,000 to RM10,000 in a bid to deter such cases. According to Federal Territory Syariah Court Chief Registrar Abu Zaky Mohammad, a higher fine, together with the existing maximum jail term of 3 years and six strokes of whipping for this offence, will hopefully serve as a deterrent.

Bernama's report on 16 September 2000 quoted the Parliamentary Secretary in the Prime Minister's Department, Noh Omar, as saying that an Islamic Aqidah Bill 2000 was being finalized and would be sent to the Attorney-General's Chambers before adoption by Parliament to be enforced in the Federal Territories. Immediately, various Islam human rights groups disclosed their disapproval of the government's intention to table in Parliament the Restoration of Faith Bill.

On September 25 2000, a 29-member delegation sent a petition to the Human Rights Commission (Suhakam), registering their dissatisfaction over the Bill. According to a Malaysiakini report, the contents of the Bill include provisions to empower the religious authorities to detain those Muslims involved in deviant teachings and practices for up to a year at faith rehabilitation centres. Another provision is to empower the religious authorities to check incidences of apostasy among Muslims in the country.

The delegation strongly stated that "the proposed Restoration Bill, should it become law, would constitute an infringement of their constitutional right, as enshrined within the terms of Article 11(1) of the Federal Constitution."

Salbiah Ahmad, a lawyer, in her article "Keeping Faith in a Freedom of Religion Bill" published by Malaysiakini on 26 September 2000 wrote that "the Perlis state law passed in June this year empowers the state (through the State Syariah High Court) to determine the faith of the citizen through a criminal investigation based upon sufficient evi-

dence of reasonable suspicion." She further added that the State of Kelantan had very much earlier passed its Kelantan Syariah Criminal Bill (II) in November 1993. This state law prescribes the death penalty for apostasy in section 23.

On September 29 2000, The Star published a statement from Sisters in Islam (SIS), who also stated their disagreement with any effort to legislate on faith "because the Quran is explicit and consistent in its recognition of freedom of religion." Its president Zainah Anwar cited that "Islam itself means submission to the will of God; and the willing submission of the self to faith and belief must be attained through conviction and reason, not through coercion and duress."

It was also reported that PAS had also planned to table a Bill in Parliament two years ago to make apostasy a capital offence.

Zainah maintained that the proposed Bill violates Article 11, which guarantees freedom of religion.

On 28 September 2000, the Malaysian Consultative of Buddhism, Christianity, Hinduism and Sikhism also voiced its objections to the Bill. On the same day, Minister in the Prime Minister Department Datuk Dr Rais Yatim said the proposed bill would be thoroughly studied to ensure it does not infringe the constitutional provisions on the right to worship.

The Star report on 30 September 2000, quoted Prime Minister Datuk Seri Dr Mahathir as saying that the government had to study the Bill first to find out its effect.

In letters to The Star's Editor, Sisters in Islam once again questioned whether Malaysia should have a law to punish Muslims who leave the religion. They further pointed out that such a law in a multi-racial society where mixed marriage is a common practice would lead to many complications. For example would a Chinese woman who converted to Islam because of marriage to a Muslim man be sent to a rehabilitation centre for compulsory detention for one year in order to restore her faith which has been broken by the breakdown of her marriage? They further inquired whether women activists who advocate equality between men and women, who believe that polygamy is not an unconditional right in Islam, that men don't have right to beat their wives, be charged for "attempting to change aqidah" because the conservatives who will sit in judgement decide such positions are against the teachings of Islam.

On October 2, 2000, another state government Negeri Sembilan declared its support for the move to standardise such regulations with other states. It was reported that the Negeri Sembilan government had

approved laws governing apostasy more than five years ago. Menteri Besar Tan Sri Mohamed Isa Abdul Samad said, "Negri Sembilan and Malacca passed such laws several years ago." He further said that laws governing apostasy should be standardized with other states to allow for uniformity.

In the end, several contradicting statements from the State and Federal Government were observed. On October 6, 2000, it was reported that the proposed Restoration of Faith Bill had been put on hold pending further studies, according to Minister in the Prime Minister's Department Datuk Dr Abdul Hamid Othman.

On October 16, 2000, Deputy Prime Minister Datuk Seri Abdullah Ahmad Badawi said Malaysia could not follow other Islamic states because of its diverse and religious background. On October 24, 2000, Prime Minister Datuk Seri Dr Mahathir announced that the government would not implement the apostasy law because it would be a disadvantage to non-Muslims to convert to Islam. It was also reported that Dr Mahathir had reiterated that those who subscribed to unhealthy teachings in Islam should not be dealt too harshly. He further urged the modern Muslim jurists to review old interpretations of Islam, in particular those relating to justice.

Unfortunately, Kangar PAS deputy commissioner Zulkarnain Abidin said the Bill, which was passed in the Perlis state assembly had not been scrapped but had merely been set aside for the time being. Then on 21 November 2000, Datuk Dr Abdul Hamid Othman said the issue of leaving Islam was not a simple matter, the punishment for it according to any fatwa (religious edict) in a Muslim country is the death penalty.

Chapter 6

CAPITAL AND CORPORAL PUNISHMENT

“No person shall be tortured or subjected to cruel or degrading treatment or punishment by individuals, police, military or any other state agency.” (Article 12 (2) of the Malaysian Human Rights Charter). Article 5 of the Universal Declaration of Human Right pronounces that the death penalty is an inhuman form of punishment.

6.1 CAPITAL PUNISHMENT

A number of laws in Malaysia provide for mandatory death sentence for various offences. This includes murder (Section 302 of the Penal Code), possession of fire arm or part of a firearm (Section 57 of the Internal Security Act 1960) and possession of proscribed drugs above a certain specified quantity (Section 39B (2) of the Dangerous Drugs Act 1952). The death penalty is also provided for under section 121 of the Penal Code for the offence of treason and for the possession of firearms under the Firearms (Increased Penalties) Act 1971. The state of Kelantan, had very much earlier passed its Kelantan Syariah Criminal Bill (II) in November 1993. This state law prescribes the death penalty for apostasy (irtidad/riddah) in s.23.

The latest report by the National Anti-Narcotics Agency reveals that 349 people were hanged between 1970 and 1996 for various offences as shown in Table 5.1. The report also stated that from January to June 2000, 698 people were detained under Section 39B, Dangerous Drugs Act, 1952 which carries a mandatory death sentence upon conviction.

Though there is no information on the number of persons on death row in the year 2000, from year 1970 to 1996, the figure of people hanged has increased tremendously from 25 to 349. In July 1996, 245 persons were awaiting execution by hanging. Similarly, around 20 members of Al-Ma’ unah movement who were charged under section 121 of the Penal Code for the offence of ‘waging or attempting to wage or abetting the waging of war against the Yang di-Pertuan Agong’ and

TABLE 5.1: Statistics on Death Sentence, 1970 - 96

Period of Time	Number of people hanged. * Hanged for various offences under Firearms Act 71, DDA, Section 30 under the Penal Code, Kidnapping Act 1951
1970-1980	25
1981-1989	185
1990-1996(22/3/96)	139
Total	349

*The latest report by the National Anti Narcotic Agency (Source: *Sin Chew* Nov 1,2000)

being prosecuted under Essential (Security Cases) Regulations, 1975. If found guilty, they are also punishable by death.

On Aug 10, 2000 the Cabinet agreed to review the Dangerous Drugs Act 1952 to provide for harsher penalties for drug related offences. Health Minister, Datuk Chua Jui Meng, announced that a committee was to be set up to review provisions of the DDA with the possibility of imposing death sentence for possession, retailing and trafficking amounts less than 50gm of ecstasy and Syabu pills.

SUARAM's documentation shows that 13 people had been sentenced to death by courts in 2000 for various crimes ranging from murder (8 people) to drug trafficking (5 people). Table 5.2 shows some of the documented cases by SUARAM:

6.2 CORPORAL PUNISHMENT

Caning or whipping is a supplementary form of punishment for some 40 crimes including drug offences, rape and attempted rape, kidnapping, firearm offences, attempted murder, child abuse, robbery and theft.

The State opinion is that caning/whipping has a deterrent effect on criminals. During the nineties, the authorities at various times suggested canning/whipping for white-collar crimes, illegal racing, undocumented workers and employers found harbouring undocumented workers, pimps as well as for domestic violence and juvenile delinquency. In December 1994, caning for embezzlement, tax fraud and bribery was introduced and in 1996, the Immigration Act was amended to make caning a mandatory part of the sentences for those convicted of using forged passports and other immigration offences.

However, the extent to which such harsh penalties are effective in curbing the problems of drugs, sexual assault, violence and others is

TABLE 5.2: Documented Case Studies-Death Sentence

2000	Source		Cases	
Sep 27	STAR	Murder	Ipoh- High Court sentenced to death four out of the five youths convicted for murdering estate worker A. Balaraman, 50, at Ladang Nova Scotia in Teluk Intan on July 26, 1998. The fifth person was a juvenile at the time of the murder in 1998, he was ordered to be put "under the Ruler's pleasure". The 4 persons to be hanged are: S. Sivakumar, 21 -Factory worker V. Muruga, 24 - unemployed S. Vijayan,24 - odd-job worker N. Ravindram,23 -odd-job worker	Sentenced to death 4 persons
Aug 25	SUN, STAR Aug 25	Murder	Taiping- A former Taiping police office boy, O. Peria Karuppiyah, 48, was sentenced to death by High Court for the murder of a former soldier on Oct 19, 1996.	Sentenced to Death 1 person
July 4	NSTS Sin Chew	Drug Trafficking	Penang- A British male nurse, David Anthony Chell, 56 from Stoke-on-Trent, England was found guilty of trafficking in 189.86gm of heroin at the Bayan Lepas International Airport, Penang at 3.50pm on Oct 7 1999. He was arrested at the departure checkpoint after he had checked in for a Perth-bound transit flight via Singapore. According to Sin Chew, he is the first person to sentenced to death in 2000.	Sentenced to death British citizen
Jun 14	Berita Harian	Murder	KUALA LUMPUR- 3 Nigerian citizens were found guilty by High Court for the crime of murdering a family of three men in Jalan Tuanku Abdul Rahman in 1997. Judge Datuk K C Vohrah sentenced Erivesto Anderson, 29, Michael Philip, 29 dan Lawrence Osayi Irabor, 42 to death.	Sentenced to death 3 Nigerian citizens
May 15	Harian Metro Jun 6	Drug trafficking	KL - 2 youth were found guilty by the High Court of trafficking 1,031.9 gram cannabis in 1998. Muhammad Safarudin Baba, 21, and Mohd Ashraf Endut, 20, were both sentenced to death.	Sentenced to death 2 persons
Jun 1	NST	Drug trafficking	KUANTAN - A lorry driver was sentenced to death by the High Court	Sentenced to death

		ng	today after he was found guilty of trafficking in 45,565gm of ganja in a car in 1999. Mohd Zaiham Mislan, 25, from Johor Baru, was alleged to have committed the offence at Km14, Jalan Pekan-Nenasi, in Pekan about 8.10am on April 22, last year.	1 person
May 17	NST	Drug trafficki- ng	KUALA LUMPUR- The Federal Court dismissed an appeal by a jobless man who was convicted of dadah possession by the Johor Baru High Court on Sept 21, 1998. The Chief Justice of the Federal Court Tun Mohd Eusoff Chin, who sat with judges Datuk Abdul Malek Ahmad and Datuk Gopal Sri Ram, rejected Ang Chai Seng's appeal after hearing submissions by his counsel and the Deputy Public Prosecutor.	Appeal rejected, Sentenced to death 1 person

highly dubious because statistics show that, in spite of these penalties, the number of offenders remains high.

From January to October 2000, 53 people had been ordered to be whipped and given jail terms by the courts for various crimes ranging from rape, sexual abuse, drug possession, armed robbery, possession of arms, physical violence, cheating, repeat offenders, misappropriation, visa and travel document forgery to impersonating government officers.

Meanwhile, the Child Bill 2000, which is expected to be passed by the Dewan Rakyat, will see stiffer punishment, including mandatory caning and jail terms, for those who sell or hire a child for prostitution, either within or outside the country. Those who commit the offence are liable to a maximum jail sentence of 15 years, a RM50, 000 fine and mandatory six strokes of the cane (rotan).

It was also reported that the Perak Syariah (Islamic) Law Department is planning to impose whipping as the best way to curb illicit sex (maksiat). The enactment has been approved and pending enforcement. If enforced, it would affect all Muslims in the State of Perak.

DEATHS AND PHYSICAL ABUSE IN POLICE CUSTODY

According to statistics revealed by the former Deputy Home Minister Abdul Kadir Sheikh Fadzir, 355 local and 280 foreign nationals have been killed by the police in the last 10 years. A report by Malaysiakini in October 17, 2000 stated that between 1994 and October 1999, 387 people had been killed by the police while in the first 9 months of 2000, 25 people were shot dead by the police (Sun, Nov.17: Answer from Parliament).

The current Deputy Home Minister, Datuk Zainal Abidin Zin, reported in March 2000 that in 1994 Sabah marine police had killed ten pirates. In 1996, the figure was 20, while in 1999 this dropped sharply to one.

According to the Chief Police Officer of Kuala Lumpur, Datuk Kamaruddin Md. Ali, disciplinary action had been taken against 213 police officers from Kuala Lumpur Police Headquarter for various offences. Thirty of them had been arrested and were being investigated by the Anti Corruption Agency. The statement carried by Utusan Malaysia on October 20th also revealed that in the year 2000 alone, 60 policemen faced disciplinary action while the Anti-Corruption Agency (ACA) was investigating nine of them.

Meanwhile in Perak, the State Police Headquarters disclosed that between January to September 30th. 2000, 116 police personnel faced disciplinary action. According to another report carried by Sin Chew on October 3rd, the offences of the police can be divided into two - officer level offences and non-officer level offences. Officer level offences include: refusing to follow orders (6 persons), being irresponsible (1 person), bringing shame to the reputation of the force and incompetence (1 person). Non-officer level offences include: refusal to follow orders (58 persons), wrong execution of orders (22 persons), being irresponsible (37 person), bringing shame to the force (25 person), being dishonest (8 person) and being violent (2 person).

In Kedah, State ACA revealed through a report in Utusan Malaysia on July 25 that between the year 1995 to 2000, 20 policemen had been arrested by the Anti-Corruption Agency (ACA) for their involve-

ment in co-rupt practices.

No statistics are available on the number of suspects or detainees who were physically abused or killed by the police force. However the following are some documented cases from the media that took place in the year 2000.

7.1 ARBITRARY SHOOTING BY POLICE

On March 2000, two 18-year olds were shot by the police in Slim River; one of them sustained injury on his right shoulder while the other teenager was hit by a .38 bullet on a finger on his right hand. The police justified their action by stating that they were shooting at an empty shack, which they believed was being used for illegal gambling.

7.2 EXTRA JUDICIAL KILLING BY POLICE

The reports of shoot-outs resulting in several deaths of suspects during 2000 have a similar thread, whereby the police were in pursuit of suspects, the suspects resisted arrest and in the ensuing shoot-out, the suspects were shot dead.

On January 26 at the Butterworth Air Force base in Penang, a civilian who was allegedly running away from the police was shot dead by a lance corporal. On April 4, an ex-convict was shot dead in Sandakan when he allegedly lunged at the police with a dagger while on April 11, two Indonesian nationals who were allegedly high on the wanted list for robbery and house break-ins, were shot dead during a shoot-out in Taman Putra, Kepong. According to the police, the suspects, who were being trailed by five policemen, opened fire when they realised that they were being followed.

A similar incident took place in Jalan Sandakan-Telupid, Kota Kinabalu on July 7, when two Indonesian nationals suspected of committing several robberies, were shot dead in a shoot-out in. According to the police, the suspects refused to stop the car and open fired at the police.

Police also shot dead an Indonesian construction worker when the worker attacked them after being caught in a break-in at the Masing Industrial Area in Kampung Subang, Petaling Jaya. The New Straits Times July 12 reported that the suspect had one bullet wound in the head and two in the chest. The police reported that the accused had

been involved in several other cases.

Three suspected robbers, posing as policemen, were shot dead in a shootout in Kota Kinabalu, Sabah on August 2. The police claimed that the gang had opened fire at them first. On August 23, two suspects, believed to be members of the SUISSE and STEYR gangs and under suspicion for being involved in six bank robberies and several murder cases, were shot dead in a shootout in Batang Berjuntai, Selangor.

On September 6, the Sun reported that a leader and a member of "Rambo" Gang were killed in a shootout by the police at Kampung Meluas, Sandakan, Sabah. On August 30, the Sin Chew Jit Poh reported that an Indonesian national had been shot dead by the Sandakan Police at the similar location, for refusing to surrender and instead lunging at them with a small knife.

On October 10, a mental patient Thevarajah Suppiah armed with a penknife was shot dead in Kluang, Johor. The victim was shot to death in full view of hundreds of people who saw him trying to run away after the police had rescued a 10-year old who had been held hostage for four hours in the compound of a school by the man.

On October 6, two Indonesians were shot dead following a crash involving their vehicle and a patrol car in Subang, Selangor while on December 14, one of the top BMX flatland riders in the country, Mohd. Sholehuddin Muslim aged 18, was shot for failing to stop at a police check point. Apparently he had tried to run a policeman down during a 4-km chase. He was shot in the head and died without regaining consciousness at a private hospital. The police said that he was driving with a friend and refused to stop and sped off. The police claimed that after the shooting, police found 50 air bullets, a knife, stick, iron rod, three car number plates which were believed to be fake, two torchlights and carpentry tools in the car. The family of the victim is taking legal action against the police and the government.

A day later, police shot dead a member of the Bolos gang, Murali Maniam who was otherwise known as Kilat (Lightning). He was killed during a shootout with police less than 24 hours after his daring escape from the hospital. The two policemen who were assigned to guard him at the hospital have been suspended as initial investigations showed that they might have been negligent in carrying out their duties.

Another four armed men, including two from the Aliboy gang were killed during a shootout with police shortly after they robbed an insurance office in Jalan Kapar on 18 December. According to State police chief Deputy Commissioner Datuk Nik Ismail Nik Yusof, "the suspects, upon seeing the police party, opened fire resulting in a shoot-out

where the suspects broke up and fled in various directions”.

7.3 POLICE BRUTALITY AND THREATS

Most police officers who brutalized protestors and alleged criminals got away unpunished. One of these cases of police brutality was that of How Soon Hock.

The robbery suspect was shot during his remand interrogation. In an interview with Malaysiakini on October 17th, he claimed that a policeman, who identified himself as Yap, beat the soles of his feet with a rubber hose and ordered him to jump for 10 to 20 minutes. Then using an electric prod, he was subjected to electric shock treatment. How also said that throughout the ordeal, he was handcuffed with his hands behind his back. How described the pain from the electric shock as “so intense that it pierced my bones”. He said that Yap accused him of committing a crime, and the beating was to serve as a warning.

DAP chairman Lim Kit Siang claimed that How Soon Hock was shot in his right eye following a deadly game of Russian roulette allegedly carried out during police interrogation. On October 23, Lim also urged the Parliament to censure Deputy Prime Minister Abdullah Ahmad Badawi and Inspector General of Police Norian Mai for their silence on the Russian roulette-style shooting which caused the victim to go blind in one eye.

Suaram, a human rights group demanded that the officer be suspended and charged in court immediately. The organisation has also called on the Human Rights Commission to investigate and propose new laws that will guarantee the safety of people while in police custody.

Utusan Malaysia on October 13 reported that a police officer had allegedly pointed his handgun at 24-year old robbery suspect Haw Soon Hock, who had been detained under section 117 of the Criminal Procedure Code. The gun apparently went off, blinding Haw in the right eye. The report added that the officer involved was being investigated under section 37 of the Firearms Act, under which offenders are liable to a fine of RM5, 000 or two years’ imprisonment or both.

According to the article, the police had asked the victim not to tell the truth about what had happened but instead tell the doctor that he had been involved in a motorcycle accident.

Bernama, however, had a different version on the shooting, quoting the Petaling Jaya Ex-OCPD (Officer in charge of Police District),

current Deputy CPO (Chief Police Officer) for Kuala Lumpur, Delli Akbar Khan, as saying that How's shooting happened when a policeman "was returning his pistol to its holster when it suddenly exploded and hit the man". The incident, according to him, had been classified as a case of negligence.

7.3.1 KEADILAN VICE PRESIDENT ASSAULTED

On Aug 9th Tian Chua, vice president of Keadilan filed a police report, saying that he had been beaten and punched by several policemen during his detention at the police headquarters in Jalan Hang Tuah. Tian was detained with 7 other people in a peaceful gathering during the Anwar verdict on August 8th. According to Malaysiakini report, a medical report issued by Hospital University Kebangsaan Malaysia revealed that he had fractured two of his lumbar vertebrae as a result of a severe kick which left boot marks below his left kidney. Human rights group, Aliran has described the assault as "dastardly". Meanwhile SUARAM and HAKAM representatives were summoned by the IGP in Bukit Aman after separate protest letters were sent to the IGP with regards to the assault against Tian.

7.3.2 EXTENDED REMAND AS PUNISHMENT FOR HIRING LAWYER

M. Irulandy Pillai @ Ravi had been detained by the police on suspicion of purchasing a stolen heavy vehicle. Although the police sought a 14-day remand period, the magistrate only granted seven days. At the end of the remand, i.e on Sept 30, the police sought an extension of another seven days, but the Magistrate only allowed for another two days. The police had informed Ravi that he was not released because his family had engaged a lawyer who had questioned the efficiency of the police in handling the matter. Malaysiakini on October 3rd, 2000 reported the incident under the title, "Call a lawyer to defend you and your remand period will be extended as punishment".

In the letter written by non-governmental organisation Suaram to Inspector General of Police Norian Mai, Suaram sought an explanation as to why Ravi was being further detained when his remand order had expired on September 30. "He was brought to the magistrate's court at about 11.45am on that day but was taken back to the police headquar-

te s without being charged or released," the letter said. When family members inquired about it, they were told that Ravi was being detained in connection with another case. Suaram voiced their concern about the actions of police, especially in the illegal detention of Ravi since September 30th as well as what looks like an act of revenge over the family's act of engaging a lawyer. Ravi's lawyer P Uthayakumar has also written a letter to the IGP, complaining the police abuse of power in this case.

7.4 CASES FILED ON POLICE SHOOTINGS, POLICE BRUTALITY AND DEATHS IN CUSTODY

7.4.1 ALAMELOO MANGAI AND KEERTHANA VS FEDERAL GOVERNMENT

On 2 October 1998, a police team armed with an assortment of weapons raided a house in Taman Sungai Besi Indah and shot dead three men and two women; one of the women, Selvamalar, was 8 months pregnant at the time she was gunned down. The shootings were linked to the alleged kidnapping of the son of former Selangor Menteri Besar Tan Sri Muhammad Taib. The boy, then 10, had apparently been held captive for four days before RM3 million ransom was paid.

Selvamalar had two other children, Alameloo Mangai aged 10 and Keerthana aged 7. The grandmother of the two children filed a negligence suit on behalf of the children, naming the former Inspector General of Police Tan Sri Rahim Noor, Selangor Police Chief Datuk Kamaruddin Hamzah, CID Chief SAC (II) Johar Che Din and the government as defendants.

In the suit, the plaintiffs claimed that their mother's death had been caused by an unlawful act, breach of statutory duties and gross negligence. They claimed that the police had failed to ascertain the identities of those in the house. Second, the police had failed to warn and allow them to surrender before firing. Third, the police should have investigated the case professionally before assuming that Selvamalar was a suspect when in fact she was not involved in any offence. They also claimed that the police had opened fire at Selvamalar although she was in an advanced stage of pregnancy and that the police were in gross disregard for life by leaving her unattended after she was shot and not seeking treatment to save her unborn child.

In the defence filed on October 16, the police (defendants) relied

on statutory defence under Section 5 of the Emergency (Essential Powers) Act, which indemnifies public officers and certain other persons from legal proceedings. They contended that the officers did not know Selvamalar had been killed in the incident and that after the shooting ended, she was found dead on the kitchen floor.

Section 5 does not allow legal proceedings against a public officer for an act done during an Emergency period for the purpose of maintaining public security, provided 'he did it in a good faith and believed it was necessary'. The indemnity, twisted as it may appear, is technically admissible because, Malaysia is actually still a state under emergency. The 1969 declaration of Emergency has not been lifted though the Emergency ended in 1970!

7.4.2 INQUIRY ON POLICE SHOOTING OF SIX PEOPLE ALLEGEDLY INVOLVED IN FIREARMS SMUGGLING

A day after Selvamalar and four others were shot dead in 1998, six Malaysian Indian RELA members travelling in a van were brutally and ruthlessly killed by the police in Tumpat, Kelantan. The inquiry into this shooting was held only after the Bar Council had sent a memorandum to Prime Minister Datuk Seri Dr Mahathir Mohammad, who was then the Home Minister.

The inquiry continued in 2000. The coroner's report of 4 July 2000 revealed that the victims had apparently been shot from all directions, with most the fatal shots being aimed at the head. The six were Ramachandran Sitaraman aged 37, Subramaniam Kanapareddy aged 38, Ravi Suppayah aged 33, Ganesan Sinasamy aged 21 and S.P. Rajendran Subramaniam aged 37.

7.4.3 POLICEMAN CHARGED WITH KILLING A DOCTOR

The trial of Tony anak Beliang, a police officer attached to the Sungai Besi police station who was charged with causing the death of 29-year old Dr Tai Eng Teck, concluded with the officer being sentenced to eight years in prison.

The officer was charged under Section 304 (A) of the Penal Code, which carries a maximum 20 years jail term and a fine upon conviction, for shooting at Dr Tai who had parked outside an LRT station in Cheras on September 20, 1999. During the trial, Tony admitted he heard his

pa tne Abdul Muin shouting out to him not to point the gun o shoot. He said that he had not initially intended to open fire but did so because the car was driving towards him.

On December 18, 2000, Sessions Court judge Ahmad Asnawi said in his judgement that based on several inconsistencies, the officer could not claim self defence as his life was never at risk throughout the incident.

He added that the inference is based on two points. Firstly, the front mirrors of the car were not broken. Secondly, the injuries sustained by the deceased revealed that the person who fired the shots was standing on the right side of the car. Tony was sentenced to eight years in prison with the court allowing for a stay of execution pending appeal.

7.4.4 POLICE OFFICER CHARGED WITH KILLING HIS COLLEAGUE

The hearing of the allegedly accidental shooting of Constabel Masrul Anizam Bachuk by his colleague Mohamad Wahab Utusan Malaysia continued in 2000. The Kuala Lumpur High Court ordered both the prosecution and the defendant to debate further on the negligence of a police officer.

7.4.5 WOMAN WINS SUIT AGAINST POLICE OFFICER WHO SHOT HER HUSBAND

Sepiah Shaari, 47, whose husband was shot dead by police inspector during a khalwat raid in 1995 won her suit on September 13, 2000.

The police inspector, Halim Din, who was formerly with the Kota Setar Anti Secret Societies Branch, had been caught in the act of escaping through the roof of a house during the raid. Sepiah's husband, Muhiyalludin Judin, a mosque committee official, had apparently tried to apprehend the police inspector and was shot at while trying to detain the officer. He passed away at the Sungai Petani Hospital, 41 days after he was shot on November 16, 1995.

Sepiah named the inspector and the government as the first and second defendants, respectively and sued for special, general, aggravated and exemplary damages, interests, costs and other relief deemed fit by the court.

The defence claimed that Muhi alludin's death was wholly or partly caused by the negligence of the hospital in allowing less experienced doctors to carry out multiple surgeries and that the inspector was acting in self-defence when he fired a warning shot. The defence, however, lost the case.

7.4.6 DEATH OF 15-YEAR WOO BOON LENG WHILE IN POLICE CUSTODY

Four police officers, including one chief inspector, were found guilty of withholding the actual reasons for the death of 15-year old on 30 March 1995 who died while in custody. The presiding magistrate, Muhamad Redzuan Abdullah noted that the various versions given by the police officers as to the cause of death provided concrete evidence that the police were trying to hide the real reasons. The police have also disobeyed certain rules such as arresting the boy outside their jurisdiction and police report was not made on the arrest. The Chief Inspector was also found to have been protecting the other three officers and had told them to file a suit on the case and advised them to report the incident.

7.4.7 DEATH OF MOHD ANUAR WHILE IN POLICE CUSTODY

On December 14, Suzana Md Aris filed a civil suit over the death of her husband, Mohd Anuar Sharip, when he was in the police custody in August 1999. She named the Inspector General of Police Norian Mai, the Gombak OCPD, Massari Hashim, Gombak Crime Division Chief Ishak Hussain and the government as the defendants in the suit. In her statement of claim, Suzana said that the police took Mohd Anuar away on August 10. Eight days later, he was found dead. The post mortem found "multiple lacerations and lesions over the neck, chest, abdomen and back regions". It added that the blue black bruise on his stomach was consistent with being kicked or punched. Suzana stated she was only informed of Mohd. Anuar's arrest the next day although the police contend that they had left a note at her mother's house on August 18 asking the family to contact the Rawang police.

7.4.8 THE INFAMOUS 'BLACK EYE' INCIDENT

Former Inspector General of Police Abdul Rahim Noor's appeal to the High Court against the two month-jail sentence for assaulting former deputy prime minister Anwar Ibrahim was postponed several times this year as Rahim had been reported to be unwell. While the prosecution argued that the offence committed was very serious one and had tarnished the image of the police force, the defence pleaded that Rahim had not admitted to the assault sooner as he "did not want to give politicians further mileage to discredit the government and Prime minister Dr Mahathir Mohamad".

Sessions Court judge Akhtar Tahir on March 15 also fined Rahim RM2, 000 which he paid on the same day. Rahim pleaded guilty to a reduced charge of assault, under which he could have been jailed for up to a year. It was reported that on December 15, the Kuala Lumpur High Court dismissed Rahim's appeal and upheld the Sessions Court order to impose the two-month jail sentence. However the fine imposed was quashed. Justice Zulkefli allowed Rahim's application for a stay of execution pending appeal.

In his 22-page judgement, Zulkefli said the two months custodial sentence was an appropriate one based on public interest and the gravity of the injury caused to Anwar. "We must realize that police brutality on those under detention is unacceptable. Such acts will bring the country and its police force into disrepute and discredit", said Zulkefli. The Sessions judge Zulkefli rightly described Rahim's actions as cruel and ruthless, adding that the sentencing was to act as a deterrent to the police to refrain from abusing their powers.

Chapter 8

NATIONAL HUMAN RIGHTS COMMISSION (SUHAKAM)

The turn of the millennium held promise for human rights in Malaysia when the Human Rights Commission of Malaysia Act was enacted in 1999. Despite serious shortcomings in the legislation, many felt it was a matter of time before the Malaysian Government would have to follow the trend in the rest of the region by setting up a SUHAKAM of its own.

There was disappointment when the commissioners were appointed in April 2000. Not only were there no representatives from existing human rights activist organisations, but also most of the Commissioners had little or no experience in the field of human rights. The Commission was headed by a former deputy Prime Minister, Tan Sri Musa Hitam, who had little credentials on human rights issues except for a short stint at the UN Human Rights Commission.

The three main human rights organizations in Malaysia, Suaram, HAKAM and Aliran met with the Commission in May 2000 and handed over a memorandum on what they viewed to be the major shortcomings of SUHAKAM and offered assistance wherever possible. The three organisations also informed the Commission that they would be monitoring its performance.

For much of its first year in operation, SUHAKAM had not been able to make any headway in the vital areas of human rights. In particular, human rights organisations demanded that the Commission should come out publicly to condemn the violations of fundamental liberties, the use of detention without trial and police brutality. However, the Commission appeared reluctant to respond positively.

One example of this was during the public spat between Minister in the Prime Minister's Department Datuk Dr Rais Yatim and Chief Justice of the Federal Court Tan Sri Mohd. Eusoff Chin. The Chair of SUHAKAM offered a non-committal, "SUHAKAM was not prepared to be involved in the controversy involving the judiciary and but was merely presenting its views".

Commenting on police shooting and brutality, with reference to the case of How Soon Hock who was shot during police interrogation and

Pheva ajah Suppiah who was killed by police after he held a schoolboy hostage, Commissioner Mahadev Shankar said, "I cannot endorse your view that in all cases where shots have been fired that is ipso facto evidence of police 'brutality'. This is a loaded word and its indiscriminate use is an unwarranted slur on the police force".

On 23 October, Commissioner Mahadev, when responding to the 'Abolish the Internal Security Act' memorandum sent to Parliament on 9 October by 71 non-governmental organisations said that, "SUHAKAM must respect the laws of the nation and as long as the ISA is on the statute books we have to take cognisance of it". However, there was an advance on this opinion on 3 November when Tan Sri Musa Hitam said that SUHAKAM had had discussions with the NGOs and agreed that the ISA must be reviewed.

When the issue of juveniles incarcerated in adult prisons came to light, the Commission, after their visit to a detention center at Sg. Buloh Prison, commented that they were satisfied with the living conditions of those 290 juveniles remanded at the site. Such a statement from a Human Rights Commission is uncalled for when there was a huge public outcry over the issue of juveniles subjected to remand in prison and lock-ups.

On 16 September 2000, The Sun newspaper highlighted the plight of young children on remand in the Sungai Buloh prison waiting for the cases against them to be heard. According to the newspaper's report, there were 200 juveniles remanded in the prison. The issue has raised public concern, with non-governmental organisations, political parties and lawyers expressing shock and disappointment over the matter. Malaysian Bar Council president, Sulaiman Abdullah in a press statement dated 20 September 2000, said that no matter how serious the offence is, the over-riding consideration should always be the welfare of the juvenile and in no circumstances should the juvenile be subjected to conditions which would surely have adverse effects in the long term.

Similarly, during a visit to the Semenyih detention camp for undocumented migrant workers, the Commission merely commented on the living conditions in relation to space for detainees, hygiene and the lack of water in the camp. However, Tenaganita an NGO that is fighting for the rights of the migrant workers in Malaysia, in response to the Human Rights Commission's statement, released a press statement on 8 November 2000. They highlighted an incident whereby two of the Human Rights Commissioners, Tan Sri Annuar Zainal Abidin and Datuk Lee Lam Thye had to whisper questions on sexual torture and abuse to

the detainees who reported no such problem of such abuse. Tenaganita claims that the whispering itself reveals an atmosphere of fear and since the Commissioners were not in a position to offer protection to those who had come forward to speak the truth while being detained, an honest answer could not have been forthcoming.

The Human Rights Watch World Report 2001 reported that refugees and migrants in Malaysia face harsh conditions in immigration detention camps, and that Malaysia continues to deport refugees back to countries where they face persecution. The report further added that the appointment of the Malaysian Human Rights Commission signals greater promise of government attention to human rights, but the extent of the Commission's power and effectiveness remains in question.

More recently in November 2000, the credibility and role of the Commission took another knock when the police refused to oblige the Commission's request for assistance in its inquiry into the complaints of police brutality during the November 5 gathering in Shah Alam.

Foreign Affairs Minister, Syed Hamid Syed Jaafar Albar said in a Parliament session that SUHAKAM had received 268 complaints since it was established on issues pertaining to abuse of the Internal Security Act, freedom of expression, assembly and association, court verdicts and immigration problems between April and October 2000 (Malaysiakini, October, 24). However, decisions or recommendations by SUHAKAM have yet to emerge.

Deputy Chairman of SUHAKAM Dato' Harun Mahmud Hashim said that SUHAKAM would not touch cases that have gone to court or those pending trial. Many of the cases presented however have yet to be brought to court. However, he added that the Commission would look into the cases to locate where human rights have been abused and denied, and prepare a report to suggest the best ways to deal with them.

Among the complaints filed with the Commission are the following:

- September 11, NGO Pemantau, an activity carried out by the PMI, a coalition of 12 NGOs, raised the biased attitude of the police against different groups involved in public assemblies. SUHAKAM promised to advise the government on subjects such as review of laws, in particularly Article 10, which relates to illegal assembly.
- On 25 September, a 29-member delegation sent in a petition registering their dissatisfaction with the government's reported intention to table the Restoration of Faith Bill in Parliament.

- Part Refo masi Insan Mala sia highlighted cases of police brutality and listed 638 cases of police killings over the past 10 years. On November 2, the Commission promised to study the allegations before making any report as most cases involve those still in police custody.
- On November 3rd, 7 representatives from the Penan community lodged a report to probe into the encroachment on their land by logging companies.
- On November 7, 2000, another complaint was filed by a group of Penans alleging that its land rights had been violated by logging activities in the remote interior of Miri Division by the state government and by logging companies.
- Complaints via e-mail and faxes concerning police brutality at the 100,000 People's Gathering in Shah Alam on November 5th. SUHAKAM decided to conduct a full inquiry into the rally by a special committee under the chairmanship of Tan Sri Anuar Zainal Abidin.
- On December 11, the Barisan National Youth lodged complaint over the alleged mistreatment of its supporters at the hands of the Opposition at the Lunas by-election on November 29.

To its credit, the Commission said it would be supportive of any move by the government to be a signatory to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or punishment 1984.

In addition, SUHAKAM also made a surprise visit to the Kepayan state prison in Kota Kinabalu on 29 November, even in the absence of any formal complaints. SUHAKAM reported that it was happy with the general conditions of the prison and dismissed claims that foreign inmates had been ill-treated. Nevertheless, they noted the problem of overcrowding. SUHAKAM also requested that the Pardons Board meet more often to review cases involving prisoners on death row. Professor Hamdan of SUHAKAM cited an example of local inmate who had been sentenced to death about eight years ago but was still waiting for his appeal to be heard by the Board.

EQUALITY AND NON-DISCRIMINATION

Article 8(1) of the Malaysian Constitution clearly spells out the principle of equality of all Malaysians while Article 12 (1) allows no discrimination against any citizens on the grounds of religion, race, descent or place of birth. Article 8 of the Malaysian Charter on Human Rights asserts that

'All persons are born free and equal in dignity and rights. There shall be no discrimination in the rights and privileges of persons based on their ethnic origin, class, social status, age, sex, mental and physical being, language, religious belief, sexual identity or political conviction. There shall be a more just distribution of wealth, power and opportunities without distinctions based on ethnic origin, age, sex, mental and physical being, language, religious belief, sexual identity or political conviction. The government and private sector should formulate and implement policies to achieve this end'.

Nevertheless, in the name of "restructuring the racial imbalance of wealth holding" and social justice, the Malaysian Government has been practising racial politics and implementing racially discriminatory policies. The government still uses the spectre of the 13 May 1969 racial riots, which they attribute to the Non-Malay dominance of the economy, as a weapon to institute discriminatory measures in favor of 'Bumiputeras' against Non-Bumiputeras' via New Economic Policy and the National Cultural Policy. This has been seen in a whole array of public policy from preferential granting of permits, licenses, share offers to housing, financing, education, property assessment rates, cultural development and job opportunities and promotional prospects in the civil service and armed forces.

9.1 THE SUQIU CONTROVERSY

In the run-up to the 10th Malaysian General Elections in 1999, various groups and networks had put forward their election demands. One of

these groups was the Malaysian Chinese Election Appeals Committee otherwise known as Suqiu. Suqiu, in its election appeals had laid out a 17-point appeals. This included a call to promote national unity, to advance democracy, uphold human rights and justice, curb corruption, to forge a fair equitable policy, to draft an enlightened, liberal and progressive, liberal and progressive education policy, and to allow a multi ethnic culture to flourish. It also called for protection of the environment, development for new villages, housing for all, protection of women's rights and justice, a fair media, measures to restore confidence in the police force, to upgrade social services, respect for workers' rights and provision for indigenous people.

Suqiu's election manifesto was endorsed by 2095 Chinese organisations. What was interesting to note is that in addition to receiving the endorsement of the opposition parties, parties in the ruling coalition, including MCA and Gerakan, also agreed in principle with these appeals during the elections.

However, the apparent acknowledgement of Suqiu's concerns and demands did not last long. On 18 August 2000, the UMNO Youth submitted a memorandum of protest to Suqiu, demanding an apology from them for questioning Bumiputera and Malay rights and its privileges. This was followed by a rowdy demonstration of about 200 people led by the UMNO Youth at the Selangor Chinese Assembly Hall. According to a Malaysiakini report on 24 August, eyewitnesses reported that the demonstrators carried placards with provocative messages and shouted anti-Chinese slogans. It was also reported that there was at least one case of violence against a photographer and Suqiu officials were threatened that their building would be burnt down if they did not apologise within one week.

In addition, in his 2000 National Day speech, the Prime Minister referred to Suqiu as 'communists' and 'extremists' and compared them with the AI-Maunah group which had allegedly robbed two army camps of guns and ammunitions. The Prime Minister justified the label on the grounds that Suqiu had called for the abolition of the 'Bumiputera/Non-Bumiputera' dichotomy which is used to discriminate in favour of Bumiputeras in various fields.

Director of Suaram, Dr Kua Kia Soong, in a press statement dated 30 September 2000 asked, "The commanding heights of the Malaysian economy have fallen into the hands of Malay capitalists forty three years after Independence; is it wrong to appeal for a new consensus based on social sector and need instead of race?"

Kua said that the very fact that controversies keep arising over the question of Malay special privileges, and UMNO's threats of challenges to 'Malay Dominance' in Malaysian politics gives cause for us to examine the issues of Malay special privileges, the quota system and how they reconcile with the principle of equality. He further added that this is an issue that Malaysians have to settle not only for the sake of our future, but also to withstand scrutiny by the world community at the World Conference Against Racism in South Africa in 2001.

Parti Rakyat Malaysia president, Dr Syed Husin Ali, commented that there is a need to review the nature and implementation of Bumiputera special privileges to encompass the poor and disadvantaged from other ethnic groups.

Kelantan Menteri Besar Nik Abdul Aziz Nik Mat added that, "Rights or no rights, the whole issue is about poverty. Islam looks at people according to their economic status not race. A poor Chinese is the same as a poor Malay. Thus, the problem is not because someone is Malay, but rather, the problem is because he is poor".

The chair of Suqiu, Quek Suan Hiang said in a statement published in *The Star* on September 1 that the 17-point demand represented a long-term view for the betterment of the people and nation and reiterated that the appeals had been accepted by the Cabinet in principle.

A coalition of twelve NGO's, People's Manifesto Initiative, also criticized Dr Mahathir for comparing the appeals of Suqiu to that of the communist demands in his National Day speech as 'totally baseless allegations'. They further added, "we reject this type of crude racist, chauvinistic politics that is being used to garner political support".

Finally on December 12, the Prime Minister apologised to the Chinese community if they felt offended by his labelling. He said that the "social contract" made among the races would have come undone if all 17 points in Suqiu's memorandum were to be accepted by the Government. Bowing to Suqiu's requests would have also meant that the Constitution would have to be set aside, he said.

However, pressure was mounted on Suqiu to refrain from voicing their concerns when Deputy Minister Datuk Zainal Abidin Zin's gave the 'assurance' on December 19 that, "The Home Ministry and police will monitor the actions of Suqiu and other bodies which are out to make unreasonable claims".

The Federation of Peninsular Malay Students (GPMS) produced a 100-point counter-demands with the GPMS President, Shuhaimi Ibrahim, claiming that they would be released to the public should Suqiu

not to act its demands. (Dec 18 2000 Mala siakini)

Keadilan vice-president, Tian Chua, raised his doubts that GPMS was actually serious in its counter-demands adding that he felt they were out to create racial tension. Meanwhile, four Chinese organisations were critical of the GPMS for making incitement-loaded remarks and threatening to organise a gathering of 100,000 members at the Bukit Jalil stadium if Suqiu did not retract parts of its appeal that are deemed sensitive to other communities.

Joining the fracas were eight ostensibly pro-reform, pro-reformasi web sites. These eight webmasters from Laman Reformasi, Pemantau, Komentar, Jiwa Merdeka, Reformasi Rakyat, Reform Black14, Mahakejam, and Anti-Zalim, had on December 21 demanded that Suqiu withdrew its appeals, saying that Suqiu had failed to take into consideration the sensitivity of the Malay community in questioning their rights which are enshrined in the Constitution.

Another group of reformasi activists immediately lambasted these eight pro-reformasi websites for calling on Chinese lobby group Suqiu to withdraw sections of its 17-point election appeal which allegedly questioned Malay special rights.

The 12 activists including key reformists Abdul Malek Hussin and Lokman Noor Adam, Malaysiakini columnist Hishamuddin Rais, Harakah cartoonist Zulkifli SM Anuar @ Zunar, FreeAnwar Campaign director Raja Petra Kamarudin and Keadilan's 100,000 People's Gathering organiser Saari Sungib, said that the joint statement posted on the front page of the websites yesterday did not represent the reformasi spirit and struggle being fought for by the leaders of (former deputy prime minister) Anwar Ibrahim's reform movement.

The activists further affirmed that they supported Suqiu's appeal on the whole as it reflected the reformasi movement's struggle to unite the people of different races based on noble principles and not on "expediency politics or the interests of those who have wealth and power".

On 25 September, evidently due to the intense pressure and threats by elements within the ruling party, the Suqiu committee released a statement stating that they supported the special position of the Malays and the continuation of the Government's affirmative action programme.

Election demands are a legitimate avenue for the people to voice their aspirations. However, the Suqiu experience has reminded Malaysians that their legitimate democratic demands are still liable to be manipulated by racist elements using fascist methods. At the same time, it exposed the weakness of the Suqiu leadership who succumbed to the

fascist threat.

9.2 VISION SCHOOL

The Vision School concept was another major controversy during 2000. The government claimed that Vision Schools would promote integration among the different ethnic groups and ultimately, strengthen national unity by placing vernacular and national primary schools within the same complex, with the pupils sharing the same curriculum and common facilities.

The Education Minister gave the assurance that the identity of national type Chinese and Tamil schools would not be affected. He also added that the government had introduced the concept in 1987 and these schools had been successfully built in several states such as Johor and Pahang. Furthermore the Ministry claimed it would not force the national-type Chinese and Tamil schools to move into Vision Schools if the board of directors of the school involved objected to it.

The Malaysian Indian Congress (MIC), a component party of the ruling coalition also welcomed and supported the Vision School concept in the hope that it would help to upgrade the Tamil schools.

However, several groups were unhappy with the way in which the vision schools were being implemented. Firstly, the process of consultation had been less than transparent and consultative, and secondly, the concept was seen as an attempt to close down vernacular schools in the long run.

The National Union of the Teaching Profession, for example, while supporting the Government's Vision School concept, expressed unhappiness that the government had failed to discuss with the union the draft of the Vision School guidelines. According to its secretary general, the guidelines had been distributed to political parties but not the union.

A Malaysiakini report revealed that a number of Tamil groups or education groups who are working on the advancement of Tamil schools were not invited to take part in the Vision School dialogues. In fact, the MIC's enthusiasm regarding the much hoped for support for the Tamil schools fell was quickly doused when the Education Ministry on 1 October said that the government would not be able to fully assist Tamil schools as most of them were on private land such as estates.

The article also reported that out of 525 Tamil primary schools, about 200 of them were in danger of being closed down as develop-

ment projects have led to the impending closure of plantations.

They also expressed fear that the identity of Tamil schools would be lost under the Vision School concept. C. Manyam, editor of *Semparathi*, a Tamil monthly magazine told *Malaysiakini*, "Our worries are based on the various education acts since Independence. The government's guidelines on the Vision School are not law, and history shows that the long term policy of the government is to have a single medium of instruction in all schools".

The government's intensive efforts to promote Vision Schools were most vociferously opposed by the Chinese educationist movement, *Dong Jiao Zong* (DJZ) who rejected the concept, citing fears that Chinese schools would lose their identity.

Prime Minister Dr Mahathir Mohamad and UMNO youth reacted strongly to this resistance. On 6 November 2000, *Bernama* reported the Prime Minister as saying, "What *Dong Jiao Zong* wants is education as in China, everything must be Chinese....".

According to *Suaram* director, Dr Kua Kia Soong, the statement itself reflects a hidden agenda of negating the existence of Chinese (and Tamil) schools in this country. He further added that UMNO's "ultimate objective", which is to render all schools in the country into Malay mono-lingual schools, has already been realised in the new Education Act 1996.

Dr Kua in a further press article titled 'Who Is Blurring The Vision Schools' claimed that in 1986 DJZ had held consultations with the Education Ministry and agreed to the 'Programme to Integrate Pupils Toward Unity', which involved various activities to promote interaction. DJZ stated that it did not believe that putting pupils of different language streams under one roof necessarily led to unity.

He added that DJZ upholds the right to defend mother tongue education system because, "we believe that our respective ethnic languages (our roots) must be promoted for the propagation of Malaysian cultures". He also reminded the government that Chinese medium schools do not discriminate on the basis of race and that there are currently more than 65,000 Non-Chinese pupils in Chinese primary schools.

He further added that the Government should first address several incongruities in the Malaysian system by highlighting three points:

- That UMNO, MCA, MIC and other mono-ethnic political parties have no credibility to talk about national integration until they disband and reform in a "Vision Party";
- That there is no justification for new towns which encourage

habitation by one race;

- That there are educational institutions such as UTM, Residential Schools and other schools, which are reserved for "Bumiputeras only".

Resistance also came from the students. A group of students from University Malaya, University Putra Malaysia, University Sains Malaysia and New Era College formed the 'Gagasan Anti-Sekolah Wawasan IPT Semenanjung' and conducted a signature campaign to protest the government proposal to set up Vision Schools.

Ang Hiok Gai, deputy secretary-general of Party Rakyat Malaysia, also pointed out in a press statement that the right to mother tongue education is guaranteed under the Malaysian Constitution. Nevertheless, DJZ is suspicious of the Vision School project because presently, the education minister is vested with so much power that it can easily close down primary vernacular schools without. He further added that the issue of the Chinese community being denied the right to mother tongue education is not an isolated one. "We have seen the rights of the Orang Asal (the indigenous peoples) constantly violated in the name of development, national unity and national integration. The political trend in this country has been such that the Executive and Administrative have been accorded so much power that the people's rights have been grossly encroached and denied without any redress", he said.

Party Gerakan, a component party of the ruling coalition, acknowledged that these groups had legitimate fears about the Vision School. Vice president of Gerakan, Dr. S. Vijayarajam, in a press statement on 5 December said, "Having followed certain problems pertaining to vision schools, and the frustrations encountered in dealing with government departments, I can understand the reluctance of the Chinese educationists to succumb to the Vision Schools concept without clear guarantees".

In spite of the sustained resistance, the plans were pushed through with the building of two Vision Schools in Subang Jaya and Johor Jaya. Media reports also show that some seven Vision Schools were already half-completed.

On December 19, Malaysiakini reported that Bock Tai Hee, chief executive officer of Dong Zong, one of the two components of Dong Jiao Zong had received a telephone call threatening to assassinate him and his family if he insisted on going to Sarawak to speak against the Vision School.

Bock, who had previously had his teaching permit withdrawn, and

had also been arrested under the Internal Security Act in 1975 for two months and restricted to Port Dickson from 1975 to 1980, said, "the political parties are unable to answer the questions posed by Dong Jiao Zong, and they are afraid that the disagreement with Dong Jiao Zong will eventually cause them to lose the support of the Chinese community."