

Malaysian Human Rights

Report 2001

Civil and Political Rights

Suara Rakyat Malaysia (SUARAM)

Malaysian Human Rights Report 2001: Civil and Political Rights

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This book is dedicated to all victims of human rights abuses in Malaysia, especially our political prisoners under the I.S.A. and other draconian laws. A special note to those courageous Malaysians for exercising their rights to peaceful assembly and expression.

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Executive Summary 2001

The human rights situation in Malaysia worsened in several ways from the year before. Although several court decisions took the Malaysian public by (pleasant) surprise and the Federal Constitution amended to prohibit sex discrimination, in many other aspects, the human rights situation showed little improvement.

The number of people detained under the Internal Security Act for their political and religious beliefs went from four in the previous year to 25 persons in 2001, and hundreds were arrested in connection with peaceful assemblies. The government also seized on the September 11 incident in the United States to legitimise its uses of force and arbitrary detentions. Malaysians witnessed a massive crackdown on the student movement and on political rallies in the country and further curtailment on an already suppressed media. The by-election in Likas and the Sarawak state elections were stark reminders of the state of elections in the country.

The year also witnessed the "Islamic State" debate raging with greater gusto than ever before. While the Prime Minister's declared that Malaysia is already an Islamic state, the Democratic Action Party asserted that the state remained secular by virtue of the Constitution, while the Parti Agama Se-Malaysia argued that the state was nowhere near the 'ideal Islamic State'. Unable to come to an agreement on this particular issue saw the exit of the DAP from the Alternative Front in response to PAS' reiteration for its vision of an Islamic state.

The responses of the government to the initiatives undertaken by the

National Human Rights Commission during the year not only begged the question of how they perceive Suhakam in the human rights landscape of the country, but also indicated that feathers had been ruffled. In November of this year, the government announced its intention to set up guidelines for Suhakam on its investigation procedures and the conduct of its inquiries.

The Prime Minister, in his keynote address at an International Forum in Dubai on 26 April said that he felt "good" dictators, rather than Western-style democracy, is what some countries in the developing world need to keep up with the challenges of globalisation. If these words are anything to go by, the status of human rights in the country may well be facing gloomier days.

National Human Rights Commission (Suhakam)

Several events during the year witnessed Suhakam being prevented from and reprimanded by the government in discharging their duties. For example, when the first annual report by Suhakam to Parliament on April 20 recommended, among others, a review of oppressive laws in the country and ratification of international instruments of human rights, the government replied that the government was not bound by the recommendations in the report as national security was the responsibility of the Government and the police, not Suhakam.

Similarly, Suhakam's report "Freedom of Assembly", which called for a more conducive environment for peaceful assemblies, were merely brushed off by the Prime Minister as, "They are free to give suggestions but it doesn't mean we have to follow them." Suhakam's comment that jailed politician Anwar Ibrahim had the right to choose his medical treat-

ment for his chronic backache drew a sharp, "You cannot expect us to accept directions from Suhakam. In that case, it is better if they replace the government ... and we hand over everything to them."

Also denounced was Suhakam's first public inquiry report which found that the police had violated human rights in using excessive force during the 5 November 2000 peaceful assembly and against those arrested. Mahathir criticised it as being western-influenced and 'not in the interest of the nation'. The Inspector General of Police, one week later, claimed the report was biased and that the police were not taking it very seriously. In spite of this 'downplay', however, the reports prepared by Suhakam seemed to have made enough of an impact such that on November 7, the Government announced its intention to set up guidelines for Suhakam on its investigation procedures and the conduct of its inquiries.

In April, when Suhakam called for the release of the ISA detainees, Minister in the Prime Minister's Department, Dr Rais Yatim reprimanded them for "behaving a little extraneous and exuberant". In addition, although the Commission is empowered to visit detention centres, it was made to wait for police clearance before finally being allowed to meet with the ISA detainees. Several official requests and seven weeks later, four commissioners were finally allowed to meet with the ten detainees under strict police supervision which clearly could not guarantee a fair investigation.

Equally disturbing was the response of several commissioners. One conceded that their hands were tied where the ISA was concerned, while the vice-chair responded with a defensive, "The public can't expect Suhakam to go to a detention camp, bang on the doors and shout for them to open the door". The comments of the Chair of Suhakam in the

wake of the September 11 attacks in the US, i.e. that in Malaysia it was perhaps reasonable to suspend democracy and human rights, also raised ire and eyebrows though he later claimed to have made the comments in his individual capacity. The Vice-Chair commiserated, "The government has enough problems...we are going to cool down for a little while but we will remind the government quietly of human rights issues."

And 'cool down' they did. Towards the later part of the year, Suhkam focused its work on issues of socio-economic rights, fuelling speculation that this was in response to the unrelenting verbal attacks from the Government upon its civil and political rights work.

Arbitrary Detention

During 2001, 2520 people were documented to have been detained under the various detention without trial laws (see table below).

| Name of Act | Number Detained up to June 31 |
|---|-------------------------------|
| Internal Security Act* | 77 |
| Dangerous Drugs Act (Special Preventive Measures) 1985 | 1,642 |
| Emergency Ordinance *including those held in Simpang Renggam Detention Camp and those under restricted residence. | 309 |
| Restricted Residence Act 1933 | 159 |
| Crime Prevention Act (Restricted Residence) | 333 |
| Total Documented Victims for Year 2001 | 2,520 |

* up to November 15, 2001, Sources: Home Ministry July 25 01; Suaram monitoring

The Internal Security Act (ISA) was used to systematically crackdown on dissent and opposition in year 2001. Malaysians were once again re-

minded of the range of torture that is perpetrated in the name of national security. The ISA allows for a 60 'investigation' period, during which those detained are subjected to physical and psychological torture, questions and insinuations by the interrogators that bear little connection to the alleged charges, coupled with threats of harm to their families. The affidavits of the ISA detainees, testify to this. Humiliation and abuse, in order to extract confessions were also evident in the affidavits.

In April, ten key leaders from Parti Keadilan Nasional (PKN, i.e. the National Justice Party) and the reform movement, were detained without trial for alleged attempts to overthrow the government through "street demonstrations and militant means". Six have been sent to the Kamunting Detention Camp, two were freed unconditionally while the remaining two were freed by the courts. In May, the ISA was again used detain two leaders of the student movement who were campaigning against the use of the ISA. The two were released prior to the first 60 days period.

March 2001 saw another member of the Syia' faith given a two-year detention order and Rais warning that anyone found using the word 'Islam' to propagate 'deviationist' teachings, the definition of which is left unclear, can be prosecuted under the Sedition and Public Order 1959, Emergency Public Order Ordinance 1969 or Internal Security Act.

Religious-based arrests were claimed to be justified on the grounds that they were members of Islamic militant groups with international connections, planning to wage a holy war on Malaysia. At least five were arrested in June, alleged to be propagating militancy and in connection several unsolved crimes in the country while two members of another religious-based group were arrested in Sabah.

Sixteen people closely linked to PAS were arrested, all of whom were

said to be linked to a militant religious group, the Kumpulan Mujahidin Malaysia. Two more were arrested early September, the status of these arrests being still unclear. Mahathir hinted that some of the PAS members had gone for military training overseas and some were allegedly involved with the Taliban in Afghanistan. The terrorist attacks on the US on September 11 provided further fodder for the government to not only arrest arbitrarily but also to justify the use of draconian laws as being in the best interest of the nation.

Right to Freedom of Assembly

The year once again witnessed gross violations of the right to assemble. Up to mid-November this year, Suaram documented at least 400 arrests made by police in connection with peaceful assemblies. In addition, permits for political rallies were frozen nationwide in July of 2001. In fact, on September 9, Malaysia marked its human rights day with a strong reminder to activists that it would not allow public assemblies without police permission to ensure national security.

Right to Freedom of Expression

The government continued to frustrate every channel and/or platform that could provide alternative views. The media, both print and electronic, saw further curtailment and threats. Malaysians witnessed the final nail in the mainstream media coffin when Nanyang Press Sdn Bhd, the publisher of two major Chinese dailies, Nanyang Siang Pau and China Press, was officially sold to the Malaysian Chinese Association (MCA) the second largest political party in the ruling coalition on May 28, in spite of opposition both from within the party and from the Chi-

nese community at large.

On July 5, Minister in the Prime Minister's Department, Rais Yatim said that the government would "unleash another set of missiles" on Internet publications citing the Printing Presses and Publications Act as being inadequate to address the cyberworld. Raids of publishing houses were intensified with many political tabloids like Semasa, Cabaran and Bebas being confiscated. Even the Kelantan state official newspaper Warkah was raided. In August, the blitz against producers and sellers of pirated movies and pornography on video compact discs (VCDs) was also extended to include material with political content. (STAR August 12)

Foreign magazines critical of the Malaysia government or the Prime Minister faced a new form of harassment this year, massive delays in public distribution as a result of delays in release letters by the Home Affairs Ministry.

The sustained squeeze on the freedom of the press resulted in the Prime Minister being listed for the third consecutive year as one of the top 10 'enemies' of the press for 2001 by the Committee to Protect Journalists (CPJ), an international media monitoring body based in New York. CPJ said in statement today Mahathir was "openly contemptuous of press freedom" and had manipulated Malaysian media to "cement his hold on power". (Malaysiakini, Thursday May 3, 2001)

Court trials in 2001 saw the sedition trial against lawyer Karpal Singh over remarks he made in court while defending former deputy prime minister Anwar Ibrahim fixed for January 14, 2002.

Meanwhile, the editor of the opposition newspaper Harakah and two others were found guilty of publishing a 'defamatory' article. On October 28, writer Ahmad Lutfi Othman was taken in for questioning with

regards to 50,000 copies of Lutfi's latest newspaper Memo11 which highlighted alleged corruption practices of Selangor Chief Minister Mohd Khir Toyo.

After several months of intense harassment from the government and government-backed NGOs and mass-media, Suqiu, or the Malaysian Election Appeals lobby group, decided in January to set aside seven contentious points which touched on the Malay affirmative action policies.

Crackdowns and punitive measures taken against university students for speaking up also increased tremendously in 2001. In addition to the two student leaders who were arrested under the ISA, students vocal in their dissent were either expelled, suspended or fined for charges ranging from illegal assembly, speaking to the media, protesting on campus, selling anti-ISA badges, protesting the government-proposed Vision School and managing the website of an unregistered student organisation.

Right to Freedom of Association

On July 19, several amendments were made to the Registration of Business Act (ROB), which Rais openly admitted was aimed at the mushrooming vocal NGOs registered under the Registration of Business Act. Many NGOs and civil society initiatives in Malaysia have been forced to register under the ROB due to the difficulties faced by NGOs in getting their applications approved under Registrar of Societies.

Societies and organisations registered under Societies Act were not spared. On July 25, Deputy Home Minister Chor Chee Heung instructed registered societies to show all sources of their funds, including those obtained from overseas, in their annual financial statements. Deputy Prime

Minister Abdullah Ahmad Badawi on July 26 also accused consumer bodies in Malaysia of turning into anti-establishment groups. Societies suspected of being linked to foreign associations and groups are also apparently being investigated.

Recognizing growing sentiments against the current ruling government on campuses, the government intensified attempts to curtail a budding student movement. The public universities came under severe attack during this period. Mahathir repeatedly warned university students not to meddle in the running of the government. Various claims about the student movement, some so ridiculous that even the Education Ministry had to refute them, emerged in the mainstream media. Students were also accused of burning down a main hall in University Malaya but a leaked report of the Fire Department however concluded that the accident was most likely due to short circuit.

In addition to the disciplinary action taken against students, Universiti Teknologi Malaysia and Universiti Teknologi Mara both dissolved their Islamic-based associations to further silence the student wing of the Islamic Movement (seen as closely associated with PAS). In addition, the Universiti Sains Malaysia (USM) Chinese Language Society was ordered to explain their involvement in "anti-university" activities. Noting the limitations of the Universities and University Colleges Act (UUCA) to control student uprising, the government announced in November of the setting up of a special police committee to monitor campus activities.

Mahathir also warned lecturers that they would get the sack if found to be inciting students against the government. While University Technology Mara (UiTM) claims to have taken disciplinary actions against 47 of its lecturers (one was terminated, three had their scholarships withdrawn, the rest transferred to remote campuses), the Penang state government

were reported to have identified 44 academic staff members from USM who have been "inciting students against the government".

Right to Freedom of Movement

In May, 78 people were reported to have been banned by the Malaysian government from travelling overseas for having tarnished Malaysia's image on previous trips. This list was apparently expanded in August of this year. Approximately 2,2910 foreign nationals have also been black-listed from entering Malaysia, one of them being Mabel Au, fiancée of Keadilan vice-president Tian Chua (who is currently serving a two-year detention order under the ISA). Mabel was barred from entering Malaysia upon her arrival on July 20 and was deported after being held for 13 hours.

The immigration autonomy enjoyed by the state of Sarawak was also used to silent dissent. Tan Seng Hin 61-year old Chinese educationist, critical of state education policy was deported from Sarawak and barred from re-entering. No reason was given by the state.

Capital Punishment

Malaysia continues to mete out the death penalty for various offences ranging from drug trafficking to murder. In 2001, three people were sentenced to death compared to fifteen in 2000, while five others were executed at the Kajang Prison, three of whom were found guilty of murdering a Pahang state assemblyman in 1993. The other two were executed for drug trafficking and murder, respectively. Suhakam reported a total of 159 people currently on death row pending appeal in the Ap-

peals Court or Pardon Board. Perhaps more distressing than this figure is the fact that there are prisoners who have been languishing in jail for more than 10 years after being sentenced to death.

Corporal Punishment

Up to mid-November, thirteen people had been ordered whippings and jail terms by the courts all over the Malaysia for various crimes ranging from rape cases, sexual abuses, drug possession and cheating. The represents a sharp decreased from last year's 53 people.

There was wide support in Parliament, including from the opposition, for an amendment to the Penal Code to make incest a separate crime from rape and also to enhance its punishment.

An estimated 600,000 undocumented workers in the country face will also be subjected to this corporal punishment if an amendment to the Immigration Act for stiffer penalties is passed. Various human rights groups have condemned this proposal as "inhuman and barbaric" in view of the fact that undocumented workers are ignorant of procedures and are themselves victims of deceit.

A Question of Police Professionalism

As with previous years, 2001 also witnessed several cases of police shootings, brutality and negligence, with little recourse for redress for those affected by the actions of the police. Standard responses from the police, claiming that the killings were necessary, justified or that investigations were conclusive often make cases of police shootings and bru-

tality open-and-shut cases.

• **Extrajudicial Killings and Shooting**

The Government informed Parliament in October that up to the end of August this year, the police had shot dead three suspected criminals. Suaram monitoring also documented at least 11 other people shot dead by police in the first 11 months of 2001. Shootouts with the police appear to result in either most, if not all, the suspects being shot dead. The 'shoot now, investigate later' approach of the police came under fire locally as well as regionally.

Even court trials of police officers involved in these shootings did little to build public confidence in police accountability. On October 19 2001, the government agreed to an ex-gratia payment of RM400,000 to the two young children of a 8-month pregnant woman, N. Selvamalar, who along with six others, was brutally shot dead in a controversial police raid three years ago. A police constable who pleaded guilty to having caused the death of his colleague by recklessly firing a gun at him two years ago, was sentenced to prison for four months.

• **Failure to protect**

Following a police report regarding the rape of their eight-year old daughter on July 12, a family in Sentul were subjected to repeated physical abuse and death threats by the alleged perpetrators. The father of the child had apparently made ten police reports regarding the threats, appealing for protection. The police claims of round-the-clock protection failed to explain the next tragedy, the murder of the father of the child on October 24. On top of this, on November 19 the mother of the child was once again attacked, this time leaving her with cuts to her face, arms, and her abdomen dangerously close to her growing baby. On November 23, she filed a lawsuit naming the police as defendants for

their failure to protect her and her family after continuous harassment from gangsters.

• Torture in Custody

The year 2001 also witnessed unabated torture in custody, some leading to death. Many of these cases, however, seem to escape public attention.

Rights of Prisoners

Huge backlogs in the judicial system have resulted in thousands of people being held in overcrowded prisons around the country waiting for their judgement. In 2001, approximately 6,000 prisoners are still languishing in jail, some of whom have already spent more time in jail than what they would have been sentenced to by the court for their offences.

Rights of Migrant Workers and Refugees

To date, the work conditions for migrant workers have shown little improvement. During the year, the Government evidently appeared uneasy with the increasingly empowered migrant workers from particular countries and have begun to 'engineer' the type of workers that are 'acceptable and allowed' in the country. Corporal punishment has been proposed for undocumented workers, an action that been strongly criticised. That migrant workers would now be allowed to join trade unions was cold comfort given that in reality, this is easier said than realised.

To date, the Malaysian Government has not ratified the 1951 International Covenant on the Status of Refugees and its 1967 protocol. Over

the last decade, most of the 5081 asylum seekers who have approached the UNHCR at their Kuala Lumpur Liaison Office have ended up in overcrowded detention camps. In July, the state government of Sabah revoked the refugee status given to 57,179 Filipinos who sought shelter in Sabah in the early 1970s. While the Chief Minister of Sabah indicated that they would still be allowed to remain in the state with conditions, the full effect of this revocation has yet to be seen.

Independence of the Judiciary

The appointment of Chief Justice Mohamed Dzaidin Abdullah and Attorney-General Ainum Mohamed Saaid held out new hope for a more transparent judiciary. However, the cheers were shortlived when Ainum tendered her resignation in November, and the government immediately appointed Abdul Gani Patail, head of the prosecution division in the Attorney General's Chambers, as the country's top legal officer effective Jan 1 next year. This, together with the appointment of Mohtar Abdullah as a Federal Court Judge met with a chorus of disapproval as there are grave concerns regarding the track records of both the men.

The relationship between the judiciary and the Bar Council were also sorely tested in 2001. On May 14, the High Court of Kuala Lumpur, allowed lawyer K. Raja Segaran to discontinue a suit he had filed against the Bar with no rights to re file the matter. The Bar objected on the grounds that it would deprive the defendants of the right to test the principles laid down in the court's earlier judgment.

Court trials during the year brought mixed responses. Some cases eroded public confidence to an all time low. For example, the son of a prominent businessman who was charged for a murder he committed on Janu-

ary 14, was granted a police bail of RM100,000 in spite of the fact that it is non-bailable offence. Further, his bail had apparently been extended seven times under instruction from the Attorney General's Chambers with no clear indication of who had gave the instruction.

While the High Court Judge Augustine Paul, on April 25, rejected the habeas corpus application of five reformasi activists detained under the ISA, Shah Alam High Court Judge Hishamudin Mohd Yunus ruled on May 30 that the detention of N Gobalakrishnan and Abdul Ghani Haroon under the ISA was unlawful and done in bad faith and that Parliament should thoroughly review the ISA. This judgement, which for many was a pleasant surprise, clearly did not sit well with the Prime Minister who berated the judge by saying that judges who do not agree with laws passed by Parliament should excuse themselves from hearing such cases.

June 8 saw the Sabah High Court Judge Muhammad Kamil Awang order Yong Teck Lee to vacate his state assembly seat due to the existence of 'phantom voters'. The judge also revealed that he had been instructed by a 'superior' to strike off two election petitions without a hearing. Once again, Mahathir sharply criticises the judge for "tarnishing the image of the court". Rais immediately announced a proposal to amend the Election Court to allow for appeals.

Several cases related to the Anwar Ibrahim trials also concluded this year. Anwar lost his RM100 million defamation suit against Mahathir and was ordered to pay RM18,486 in court costs, in addition to the RM85,284 slapped on him in April. Two other judgements defied public prediction. Former Inspector-General of Police Abdul Rahim Noor lost his appeal against his two-month jail term and was sent to the Kajang Prison on April 30 while lawyer Zainur Zakaria was cleared of a contempt conviction imposed by Justice S. Augustine Paul in 1998. In their judge-

ments, the judges ruled that Paul had not followed proper procedures in finding Zainur guilty of contempt.

Legislative

The Legislative failed to play a significant "check and balance" role even as the Executive systematically violated human rights. Motions moved by the opposition were repeatedly (and predictably) rejected or declared 'not urgent'. In addition, opposition members of Parliament were denied access to important government briefings such as those pertaining to the bailouts of MAS, UEM and Renong, and not provided the RM500,000 constituency development allocation provided by the government to each of the ruling coalition MPs.

Opposition MP Kerk Kim Hock was suspended for three days from April 17 for protesting against the House Speaker. MP Kerk accused the House Speaker of taking sides when MP Kerk questioned the Deputy Finance Minister as to whether the Barisan Nasional MPs who received RM50,000 allocation for 'non-official purposes' were required to produce receipts for such expenses.

The only positive development in the legislative occurred in August when all 172 MPs present unanimously approved an amendment to Article 8 of the Federal Constitution to prohibit discrimination on the grounds of sex.

Free and Fair Elections

Various amendments to the election laws were either proposed or agreed

upon in principle during 2001. The Election Commission announced in June that the government had in principle agreed that Malaysians who reach 21 years of age will automatically be registered as voters, an announcement that received a mixed response from the public.

However, some of the proposals came under fire. These include proposals to allow voter to vote only in their permanent place of residence as per their identity card, to increase the deposits for election candidates, and measures to prevent legal challenges to the electoral roll. Redelineation of boundaries are also expected. A report in an English daily, quoted a source from Johor State UMNO as saying that Johor, recognised for its strong support for the ruling party coalition, would be among the states that will have the most number of the new constituencies.

The 'co-operation' between the Election Commission and the dominant ruling party UMNO seems no longer a secret. At workshop to conceptualize future research on the election system in Malaysia, a representative from UMNO admitted to local and regional election monitoring groups Electoral Commission work very close with them in analysing the voter behaviours and patterns that will most benefit the ruling coalition!

The year saw a by-election in Likas and state elections in Sarawak. Both elections were plagued by what have sadly become common complaints of elections in Malaysia. That the BN won 60 of the 62 seats in Sarawak came as little surprise to most.

Religious Tolerance and Islamic State Issues

At the national level, the debate on the Islamic State issue saw PAS chal-

lenged both from within the alternative coalition and by UMNO to give details of what they conceptualised as the Islamic state. The heated discussions between PAS who envisage an Islamic State, and DAP demanding that they stick to the Alternative Front Common Manifesto and not bring up the issue of the Islamic state eventually saw DAP leave the front on September 22, five days prior to the Sarawak 8th State Election.

PAS's stand on several issues, especially with regards to women, did little to convince the public of the desirability of their 'version' of an Islamic state. Its response to the September 11 attacks and the US retaliation in Afghanistan, for example giving the go-ahead to its members to fight alongside the Taliban government and burning the US flag, further provided fodder for the ruling coalition in affirming, if not creating, the militant image of PAS.

Mahathir's claims that Malaysia was already an Islamic State did raised anxiety amongst certain quarters. However, the other component parties of the ruling coalition, which had previously condemned PAS' intention to create an Islamic state and berated the DAP for 'colluding' with PAS, did an about face and endorsed the Prime Minister's pronouncement.

PAS finally announced in October that it would prepare a document that would clearly outline the details of an Islamic State. However, the Information Ministry beat PAS to it, and produced a 24-page booklet 'Malaysia Adalah Sebuah Negara Islam' (Malaysia is an Islamic Country). The DAP alleged that the contents were highly disturbing and offensive to non-Muslims, and on December 4, the booklet was withdrawn.

At the state level, PAS-led Terengganu passed the Syariah Criminal Offences (Takzir) Bill on 29 August, which, among others, makes it an offence to label Muslims as infidels. The bill also makes it an offence to

disturb a religious gathering or ceremony.

Ironically, the PAS-led states were among the three states that saw cases involving applications to renounce Islam. The Kota Bharu High Court dismissed the applications of four persons, who claimed to have left Islam while in Terengganu, a man who had been charged in the Besut Lower Syariah Court in Terengganu on one count of insulting Islam, later faced an additional charge of insulting Islam when he was alleged to have made a verbal declaration that he was no longer a Muslim. In Penang, a High Court judge dismissed an application by a Sikh who had sought a declaration that he was still a Sikh and his two deed polls and statutory declaration renouncing Islam were valid.

Detention without Trial

Several major statutes provide for indefinite detention without trial in Malaysia, namely:

- The Internal Security Act (ISA) 1960
- The Emergency (Public Order and Prevention of Crime) Ordinance 1969
- The Dangerous Drugs (Special Prevention Measures) Act 1985
- Crime Prevention Act (Restricted Residence)
- Restricted Residence Act 1933

Suaram documented at least 1,051 people detained under these laws in 2000, while the figure for 2002 was 2,520. The breakdown for detentions in 2002 are as follows.

Table: 1.1 Total number of documented victims of detention without trial for 2001

| No. | Law | Number Detained | Remarks |
|-----|--|-----------------|---|
| 1. | Internal Security Act(until November 15, 2001) | 77 | |
| 2. | Dangerous Drugs Act (Special Preventive Measures) 1985 (until June 31, 2001) | 1,642 | |
| 3. | Emergency Ordinance (EO) (until June 31, 2001) | 309 | * including those held at Simpang Renggam and those under restricted residence. |
| 4. | Restricted Residence Act 1933 (until June 31, 2001) | 159 | |
| 5. | Crime Prevention Act (Restricted Residence) (until June 31, 2001) | 333 | |
| | Total Documented Victims for Year 2001 | 2,520 | |

Sources: Home Ministry July 25,2001;

Internal Security Act (ISA)

The Internal Security Act (ISA), enacted in 1960, and inherited from our colonial past, continues to cast a dark shadow over the lives of Malaysians. The ISA provides the government with essential powers for detention without trial for an indefinite period. Torture goes concurrently with ISA detentions, as persons are kept incommunicado, in solitary confinement, and often subject to long hours of interrogation.

The arbitrary use of the ISA has been constantly justified in the name of national security, and has deep repercussions on the free participation of Malaysians in a democracy. In April 2001, the ISA was used to target key leaders of the National Justice Party and the reform movement, for alleged attempts to overthrow the government through street demonstrations and militant means. The previous crackdown on political activists was in September of 1998, when Anwar Ibrahim, former Deputy Prime Minister, was expelled from government and eventually detained under the ISA.

Parliamentary statistics released in July, reveal that a total of 30 ISA operations have been conducted since its inception in 1960. Currently, 69 persons are being detained at the camp.

The statistics disclosed by Home Ministry on September 5 on ISA arrests since 1960 are shown in the table below:-

Table: Arrests and detentions under the Internal Security Act from 1960 to Sept 5, 2001

| Year | Arrests | Detention Orders | Restricted Orders |
|------|---------|------------------|-------------------|
| 1960 | 30 | 23 | 5 |
| 1961 | 40 | 32 | 20 |

| | | | |
|------|-------|-----|-----|
| 1962 | 37 | 25 | 12 |
| 1963 | 57 | 28 | 23 |
| 1964 | 265 | 228 | 29 |
| 1965 | 408 | 393 | 11 |
| 1966 | 143 | 117 | 20 |
| 1967 | 169 | 122 | 20 |
| 1968 | 278 | 131 | 142 |
| 1969 | 178 | 100 | 69 |
| 1970 | 265 | 72 | 55 |
| 1971 | 431 | 126 | 116 |
| 1972 | 411 | 71 | 128 |
| 1973 | 258 | 38 | 92 |
| 1974 | 635 | 112 | 121 |
| 1975 | 770 | 155 | 166 |
| 1976 | 1,118 | 316 | 187 |
| 1977 | 1,180 | 380 | 212 |
| 1978 | 728 | 307 | 195 |
| 1979 | 532 | 136 | 117 |
| 1980 | 326 | 106 | 101 |
| 1981 | 181 | 87 | 25 |
| 1982 | 76 | 24 | 16 |
| 1983 | 108 | 5 | 27 |
| 1984 | 58 | 11 | 14 |
| 1985 | 47 | 3 | 27 |
| 1986 | 67 | 47 | 31 |
| 1987 | 182 | 65 | 15 |
| 1988 | 214 | 155 | 16 |
| 1989 | 87 | 56 | 8 |
| 1990 | 154 | 118 | 5 |
| 1991 | 57 | 57 | 3 |
| 1992 | 50 | 41 | 5 |

| | | | |
|-------|--------|-------|-------|
| 1993 | 7 | 1 | - |
| 1994 | 52 | 22 | 7 |
| 1995 | 137 | 101 | 4 |
| 1996 | 139 | 118 | 3 |
| 1997 | 250 | 86 | 3 |
| 1998 | 216 | 136 | 1 |
| 1999 | 4 | - | 1 |
| 2000 | 89 | 30 | 3 |
| 2001 | 70 | 40 | 5 |
| Total | 10,504 | 4,218 | 2,061 |

Table: ISA arrests in various decades

| Year | Arrests | Detention Orders | Restricted Orders |
|-----------|---------|------------------|-------------------|
| 1960-1969 | 1,605 | 1,119 | 351 |
| 1970-1979 | 6,328 | 1,713 | 1,389 |
| 1980-1989 | 1,346 | 559 | 280 |
| 1990-1999 | 1,066 | 680 | 32 |
| 2000-2001 | 159 | 70 | 8 |
| Total | 10,504 | 4,218 | 2,061 |

It must be noted that the actual number of persons arrested under the ISA is far more than the official statistics disclosed. It is believed that more than 10,000 people have been detained in total, including those that were detained and subsequently released before the end of the 60-day period

| No. of ISA detainees in Kamunting 2000-2001 | | | |
|---|----------|--------------|-------------|
| Held for alleged involvement in: | End-2000 | 31 July 2001 | 15 Nov 2001 |
| Bringing in illegal immigrants | . | 21 | 21 |
| Al Maunah arms heist | 16 | 15 | 15 |
| Counterfeiting money | 14 | 11 | 11 |

| | | | |
|-------------------------------------|----|----|----|
| Falsifying documents | 3 | 7 | 7 |
| Firearms offences | 3 | 3 | 3 |
| Sub total | 36 | 57 | 57 |
| "Political" detentions: | | | |
| KMM (Kumpulan Mujahiddjin Malaysia) | - | - | 9 |
| 'Militant' reformasi activities | . | 6 | 5 |
| Free Aceh Movement | 4 | 4 | 4 |
| Alleged Jihadi Gang Robbery | - | - | 3 |
| Spreading Shia teachings | . | 3 | 3 |
| Sub total | 4 | 11 | 24 |
| Total | 40 | 70 | 81 |

Sources: Suhakam Report 2000; Home Ministry statistics Sept 5; Suaram monitoring

The ISA 10

Seven people were detained several days before a mammoth gathering at the National Human Rights Commission, SUHAKAM, to commemorate the second anniversary of the conviction of Anwar Ibrahim, former Deputy Prime Minister, on 14 April. On 11 April, Inspector-General of Police (IGP) Norian Mai announced that the arrests were carried out to curb the reform movement from using bombs and grenade launchers to topple the government. Three more reform activists were picked up after 14 April.

Four out of the ten persons detained, have since been released, two by the police, while two others, N. Gopalakrishnan and Abdul Ghani Haron were released by the High Court of Shah Alam. In a historic landmark judgement of a habeas corpus hearing, the court rendered the deten-

tions illegal and conducted in bad faith. The remaining six, namely, Mohd Ezam Mohd Nor, Hishamuddin Rais, Chua Tian Chang, Lokman Nor Adam, Dr. Badrul Amin and Hj. Saari Sungib, had their detention orders extended. The charge sheet of the detainees recorded no evidence of militant actions or activities, no evidence of bombs or grenade launchers. Instead they were accused of having 'secret' meetings and 'inciting' the public to demonstrate, while one detainee was accused of 'ordering' 240 rotan sticks to be used during demonstrations. Subsequent affidavits of the detainees filed at the Federal Court revealed that police questioning hardly touched on militant strategies and activities, rather on political strategies, information, structure and funding of political parties and NGOs, and alternative news web sites. (refer section on judiciary)

During the first sixty days of interrogation, family visits were conducted at the mercy of the authorities and were closely supervised by the police. Family members were also subject to harassment by the police, when inquiring about their loved ones. Detainees had no access to lawyers during this time. The Human Rights Commission of Malaysia, SUHAKAM, despite having the mandate under the Human Rights Commission of Malaysia Act, 1999, to visit persons under detention, were denied access by the police until the end of the 60 day period.

Wife of detainee, Hj Saari Sungib, Aliza Jaafar, was detained overnight on July 15, at a police lockup, when she was arrested together with 40 others outside the detention center, and now faces a charge of illegal assembly. Supporters came in a convoy to show solidarity with family members who had come for their weekly visit. Mabel Au, a Hong Kong citizen, fiancée of Chua Tian Chang, was denied entry into Malaysia on July 20, denied access to a phone call, food and drink, detained overnight at the immigration holding center of the KL International Airport,

and deported the following afternoon.

Defacto Law Minister, Dr. Rais Yatim defended the use of the ISA, saying that it was relevant in maintaining security in Malaysia. Deputy Prime Minister, Abdullah Ahmad Badawi, hit back at the United States for criticizing the Malaysian government for using the ISA to stifle democracy, saying that the arrests were not carried out "for fun". The European Union and the European Commission passed resolutions condemning the use of the ISA. While marking his 20th year in service on July 16, Prime Minister, Dr Mahathir Muhammad said that his Government would not apologize to anyone for the use of the Internal Security Act.

Table: Current Status of ISA 10- Reformasi

| No | Name of Detainee | Age | Position/ Organisation | Date of ISA arrest | Current Status |
|----|------------------------|-----|--|--------------------|--|
| 1 | Tian Chua | 38 | Vice President, keADILan | 10 April | June 2: Sent to Kamunting for 2 years |
| 2 | Mohd Ezam Mohd Noor | 34 | Head, KeADILan Youth | 10 April | June 2: Sent to Kamunting for 2 years |
| 3 | Haji Saari Sungib | 44 | former president, JIM | 10 April | June 2: Sent to Kamunting for 2 years |
| 4 | Hishamuddin Rais | 60 | media columnist and social activist | 10 April | June 2: Sent to Kamunting for 2 years |
| 5 | Raja Petra Kamaruddin | 51 | Director, Free Anwar Campaign | 11 April | June 2: Released by Police |
| 6 | N. Gobalakrishnan | 41 | Secretary General, keADILan Youth | 10 April | May 30: Released by Shah Alam High Court. Police apply to overturn the judgment. Trial still going on. |
| 7 | Abdul Ghani Haroon | 36 | Central Committee member, KeADILan Youth | 11 April | May 30: Released by Shah Alam High Court. Police apply to overturn the judgment. Trial still going on. |
| 8 | Dr Badrul Amin Baharom | 40 | KeADILan Youth leader | 20 April | June 13: Sent to Kamunting for 2 years Nov 3: Released from |

| | | | | | |
|----|-------------------|----|-------------------------------------|----------|---|
| | | | | | Kamunting; put under Restricted residence |
| 9 | Lokman Nor Adam | 28 | Executive Secretary, keADILan Youth | 24 April | June 13: Sent to Kamunting for 2 years |
| 10 | Badaruddin Ismail | 56 | Suaram activist | 26 April | June 5: Released by Police |

ISA on Students

On May 11, several representatives from national level students groups, walked out in protest when handing a Abolish ISA memorandum to IGP, Norian Mai, when he instructed students to remove their anti-ISA badges. On June 8, students organized a protest of 500 people in front of the National Mosque, after Friday prayers. Seven students were arrested, and were released on police bail the following day. The police bail was extended once before they were eventually charged in court for illegal assembly. Following this, several leaders were harassed, their houses raided and show cause letters were sent to their respective universities.

On June 29, a fire razed the Universiti Malaya Tuanku Chansellor Hall. Ruling party politicians accused student activists of being involved in the fire, in order to prevent the Prime Minister from speaking at a scheduled symposium the day after. Student activist Khairul Anuar Ahmad Zainuddin, 24, and Mohamad Fuad Mohd Ikhwan, 22, President of University Malaya student representative council, were eventually detained under the notorious ISA. Both were released before the end of the sixty-day period. A preliminary report from the fire department concluded that faulty wiring and not arson was the probable cause of the blaze.

Alleged Jihadi Gang Robbery

Inspector General of Police Tan Sri Norian Mai announced to the press on June 9 that police had managed to crack down on a local militant group with international terrorists links planning to wage a holy war (jihad) in Malaysia.

On June 9, police detained five men from an alleged local militant group with international terrorists links and accused them of planning to wage a holy war (jihad) in Malaysia. They were also accused of committing a number of unsolved crimes, namely the murder of State Assemblyman, Dr. Joe Fernandez, a foiled bank robbery in Petaling Jaya, the bombing of a church and Hindu temple and the attack of the Guar Chempedak Police Station. Only two men were named, Mohamed Sobri bin Abu Hassan and Zainuri @Din. No information could be obtained on the other three persons. On June 30, Ustaz Mohamat Iqbal B. Abdul Rahman, 44, an Islamic religious speaker and motivator in Selangor was detained under the ISA.

The ISA arrests linked to alleged Jihadi Gang Robbery is shown in the table below:-

| No | Name | Background | Date of ISA arrest | State of arrest | Current Status |
|----|-------------------------------------|-------------------|---|-----------------|--|
| 1 | Mohamed Sobri B. Abu Hassan, 40 yrs | School bus driver | Was initially arrested on May 29 June 10: Rearrested under ISA after released from magistrate court | Selangor | Aug 11: Released unconditionally |
| 2 | Zainuri Kamaruddin, 34 yrs | N/a | Initially arrested on May 23 under Firearm Act 1971. June 18: Move to ISA detention | Selangor | Aug 11: Charged under Firearm Act 1971 |
| 3 | Murad Halimmudin Hassan, 35 yrs | N/a | May-June | N/a | Aug 11: Sent to Kamunting for 2 years |

| | | | | | |
|---|---|-------------------|----------|----------|---------------------------------------|
| 4 | Muhammad Azian Abdul Rahman Nazri, 29 yrs | N/a | May-June | N/a | Aug 11: Sent to Kamunting for 2 years |
| 5 | Ustaz Mohamat Iqbal B. Abdul Rahman, 44 yrs | Religious speaker | June 30 | Selangor | Aug 22: Sent to Kamunting for 2 years |

Habeas Corpus

High Court Judge Augustine Paul, on April 25, rejected the habeas corpus application of five reformasi activists detained under the Internal Security Act (ISA), namely Chua Tian Chang, Ezam Mohd Nor, Hishamuddin Rais, Saari Sungib and Raja Petra Kamaruddin, and dismissed the defence team's argument that the police had acted in bad faith, by not charging those detained in an open court.

However on May 30, in another hearing, the High Court of Shah Alam, ruled that two other reform activists held under the ISA, N. Gopalakrishnan and Abdul Ghani Haron had the constitutional right to be present in court for their applications for habeas corpus. Justice Hishamuddin ordered the detaining authority to make the necessary arrangements to ensure the presence of the two at the hearing. The two were released in a landmark judgement, which declared the detentions under the ISA illegal and mala fide. (For more details, refer to section on judiciary)

Concerned about the ongoing crackdown, NGOs, political parties and trade unions came together to form the Abolish ISA Movement (AIM), the biggest alliance in Malaysian history to campaign for the total repeal of the ISA. The alliance comprises 80 groups, and has its secretariat in the office of human rights group, Suaram.

Until the end of the third quarter, the date for the hearing of the police

appeal filed by Inspector-General of Police Norian Mai last May against the release of two former Internal Security Act (ISA) detainees, Abdul Ghani Haroon and N Gobalakrishnan, has not been fixed yet.

The appeal by the five ISA detainees against Kuala Lumpur High Court judge Augustine Paul's dismissal of their habeas corpus applications on the 25 April continued into October in the Federal Court. Five of them - social activist/columnist Hishammuddin Rais, Keadilan vice-president Tian Chua, party youth chief Mohd Ezam Mohd Nor, supreme council leader Saari Sungib and Freeanwar.com webmaster Raja Petra Kamaruddin, had appealed to the Federal Court against a High Court ruling that had validated their detentions under the ISA.

On August 6, they won the first round of a legal battle against their detention without trial when the Federal Court agreed to admit new evidence in their appeal hearing.

The affidavits contained interviews with the ISA detainees which were previously unavailable as they were not allowed access to lawyers while in police custody. The testimonies of 10 reformasi activists detained under the Internal Security Act in April confirmed that their detentions were politically motivated and had nothing to do with national security. According to the sworn affidavits of the detainees, none of them were questioned about the procurement of weapons or explosive materials and the use of dangerous weapons during street demonstrations. On November 6, Deputy Home Minister Zainal Abidin Mohd Zin admitted in the parliament that the police had asked the ISA detainees a lot of questions that not related to the allegation, including their sex lives, during the first 60 days of solitary confinement. According to the minister, questions relating to family problems, husband and wife relation, could be the core factors that motivate the ISA detainees to be involved in illegal activities that threaten national security.

On October 17, the Federal Court ruled that High Court judge Augustine Paul was not biased in dismissing the habeas corpus applications of five Keadilan and reformasi activists detained under the Internal Security Act. The five reformasi activists detained under the Internal Security Act (ISA) thus lost their appeal against the High Court judge's decision refusing to disqualify himself from hearing their applications for release.

Apparatus of ISA crackdown before September 11 US World Trade Centre bombing

The use of the ISA by the government intensified in the third quarter of the year. This time, the ISA was used to nab mostly PAS (Party Islam Malaysia) members for allegedly waging war to overthrow government through a militancy group called KMM (Kumpulan Mujahiddin Malaysia). 16 people were arrested under the ISA during these three months. The list up to October is seen below:-

To commemorate 100 days of the detention of political and reform activists in April, a gathering was held in front of Kamunting Detention Camp on 15 July 2001, when Police moved in with water cannons, forcing the large crowd gathered outside the Kamunting detention camp to disperse, resulting in 41 persons being arrested. 37 of them were later charged in court, including the wife of ISA detainees, Saari Sungib.

On July 19, Deputy Home Minister Zainal Abidin Zin said that the use of ISA is a symbol of the government's love for its citizens by rehabilitating them. He told the parliament that the purpose of detaining two university students under the Internal Security Act recently was to rehabilitate them.

Family members of ISA victims continued to be harassed by the authori-

ties. Mabel Au, fiancée of detained Vice-President of the National Justice Party, Tian Chua was barred from entering Malaysia on July 20 and was further illegally detained in the airport for 13 hours before being deported back to Hong Kong.

Beginning July 21, the Home Minister ordered the Camp authority to allow only family visits for the ISA detainees from the immediate family. In many incidents, the family members were harassed by the frequent changes of visiting regulations. In several incidents, the camp imposed a maximum limit of 5 people to visit per week for each of the detainees. As a consequence, some of the ISA detainees who have a bigger families were barred from entering the camp.

On August 1, to mark the 41st anniversary of the enactment of the ISA, a delegation of 20 people representing 80 NGOs in Malaysia presented a "Private Members Bill" to abolish ISA to the parliament.

The alleged KMM (Malaysia Mujahidin Group)

As early as June, Information Ministry parliamentary secretary Zainuddin Maidin had told the press that the Government would launch a series of programmes which would highlight the role PAS in several allegedly "treacherous" acts against the country. (June 22 STAR)

On June 23, Prime Minister Dr Mahathir Mohd openly attacked PAS as traitors to the Malays. He said that PAS leaders were willing to trade off anything, even the Malay race and Islam, in order to get into power.(June 24,STAR)

Finally, a systematic ISA crackdown was launched by the government in

early August which resulted in 10 people closely linked to PAS arrested across the 4 states. All of them were said to be linked to a "military" group called KMM (Malaysia Mujahidin Group) which was allegedly trying to wage a holy war in Malaysia. Nine of them were subsequently sent to 2 years detention in Kamunting on August 25 shortly before the initial 60 days detention order ended.

On August 4, Prime Minister Dr Mahathir Mohamad openly attacked younger members of PAS for allegedly advocating violence as the best way to achieve their objectives. He said that while the majority of PAS members believed in the democratic process, some of the younger ones felt that this route was slow and not effective to overthrow the Government; so they opted for violence. He hinted that some of the PAS members had gone for military training overseas and some were allegedly involved with the Taliban in Afghanistan. (STAR August 5)

In another development in August, Singapore Senior Minister Lee Kuan Yew stated his concern over the growing influence of PAS in Malaysia and its implications on the island republic. It was reported that Lee Kuan Yew had said that "If it continues in that way and they can win over some of the Malay and Indian parties, that will present another difficult problem for the region." (August 17, STAR)

On August 19, Deputy Prime Minister Abdullah Ahmad Badawi expressed his worries that Malaysia has been seen as the new centre for Islamic terrorism. On August 25, he claimed that the government was forced to take quick action to nip militancy in the bud, before it got serious enough "to cause calamities".

On August 20, GERAKAN president Dr Lim Keng Yaik accused PAS for taking a 'communist' approach in its party work and expressed his sus-

picion over PAS relations with the alleged militant KMM (Malaysia Mujahiddin Group). PAS lodged a police report and demanded an open apology from Lim. Lim however defended his stand and repeated his statement that PAS is similar to a communist party, saying its organisational and operational methods were identical.

On September 2, Prime Minister Dr Mahathir told the press that the Malaysian Mujahideen Group (KMM) had formed a pact with other groups in Indonesia and Philippines to establish Islamic states in these three countries. However, no substantial evidence was given by Dr Mahathir. (Sep 2 AFP) The government said they would come up with the White Paper but there has been none so far.

Table: ISA arrests on alleged KMM (Malaysia Mujahidin Group)

| No | Name | Age | Background/ Involvement | Date of ISA arrest | State of Arrest | Current Status |
|----|------------------------------|-----|---|-----------------------|--------------------|--|
| 1 | Asfawani Abdullah | 35 | PAS member; religious teacher | 2-Aug | Kedah | Sept 25: Sent to Kamunting for 2 years |
| 2 | Zainun Ismail @ Cikgu Nan | 45 | Ex-PAS member | 2-Aug | Kedah | Sept 25: Sent to Kamunting for 2 years |
| 3 | Solehan B. Abdul Ghafar | 38 | PAS member; religious school registrar | 2-Aug | Terengganu | Sept 25: Sent to Kamunting for 2 years |
| 4 | Alias B. Ngah | 36 | PAS supporter; farmer | 2-Aug | Terengganu | Sept 25: Sent to Kamunting for 2 years |
| 5 | Ahmad Pozi Darman | 32 | PAS supporter | 2-Aug | Johor | Sept 25: Sent to Kamunting for 2 years |
| 6 | Ahmad Tajuddin Abu Bakar | N/a | PAS youth leader for Larut branch | 2-Aug | Perak | Sept 25: Sent to Kamunting for 2 years |
| 7 | Mohd. Lofti B. Arrifin | N/a | PAS state Exco for Kedah; religious teacher | 3-Aug | Kedah | Sept 25: Sent to Kamunting for 2 years |
| 8 | Nik Adli Nik Abdul Aziz | N/a | Son of Kelantan Chief Minister Dato' Nik Aziz Nik Mat; Religious teacher | 4-Aug | Kelantan | Sept 25: Sent to Kamunting for 2 years |
| 9 | Noor Arshid Sakib | 32 | PAS youth leader for Sungai Bemut branch | 2-Aug | Johor | Sept 24: Sent for restricted residence |

Aftermath of September 11

The terrorist attacks on the US have provided an opportunity for the Malaysian government to justify its use of the Internal Security Act (ISA) in cracking down on alleged terrorist and militant actions in Malaysia.

Three days after the US tragedy, Deputy Prime Minister Abdullah Ahmad Badawi told the Malaysian people that the Government had made the right move when it acted against KMM and that the situation was now under control. (STAR Sept 15, 01)

The next day, Abdullah told the press that the Internal Security Act (ISA), which human rights groups denounce as being against human rights, has indeed served its purpose of combatting terrorism.

On September 29, Prime Minister Mahathir declared proudly that countries which had accused Malaysia of being undemocratic and unjust by using the Internal Security Act to combat acts of terror are now learning to do the same thing. Dr Mahathir was further quoted as saying that, "One reason why the ISA was enacted and had not been repealed by the Government was because of its effectiveness in countering terrorism.

Malaysian Islamic Development Department (Jakim) director-general Mohd Shahir Abdullah also announced that a special action committee would be formed to counter the emergence of militant groups and the use of violence among Muslims in the country. (September 14, STAR)

On October 10, six more people, allegedly members of KMM were detained under the ISA, bringing the total of recent ISA arrests in 2001 to 30. On September 29, Prime Minister Dr Mahathir Mohamad warned that there would be more arrests of those involved in militant groups, and

said members of "at least one political party" were veering towards militancy. The allegation was clearly targeted at PAS.

Human Rights Watch in a press statement released in September has identified Malaysian government as one of the countries that has taken the opportunity to increase repression in the name of anti-terrorism.

Table: Second round of ISA arrests on alleged KMM (Malaysia Mujahidin Group)

| No | Name | Age | Background/ Involvement | Date of ISA arrest | State of Arrest | Current Status |
|----|-------------------------------------|-----|---|-----------------------|--------------------|---|
| 1 | Khairuddin Saad | 30 | Alleged link to KMM. A religious teacher at Sek. Men. Agama Sg. Petani, Merbok. | 10-Oct-01 | Kedah | Nov 8: Released from the 60 days period. Sent for restricted residence. |
| 2 | Zulkifli @ Zul Memali Ahmad | 39 | Alleged link to KMM. A religious teacher at Sekolah Islahiah Dinniah, Kg. Memali, Baling. | 10-Oct-01 | Kedah | Nov 8: Released from the 60 days period. Sent for restricted residence. |
| 3 | Mohamad Zulkifli @ Pak Su Md. Isa | 35 | Alleged link to KMM. A religious teacher at Madrasah Islahiah Dinniah, Kg. Memali | 10-Oct-01 | Kedah | Nov 8: Released from the 60 days period. Sent for restricted residence. |
| 4 | Mohd Salleh Said | 30 | Alleged link to KMM. A religious teacher at Sek. Raja Perempuan Ta'ayah, Ipoh. | 10-Oct-01 | Perak | Nov 8: Released from the 60 days period. Sent for restricted residence. |
| 5 | Mohamad Zulkifli Mohamad Zakaria | 32 | Alleged link to KMM. A religious teacher at Pokok Qiam, Manjong. | 10-Oct-01 | Perak | Nov 8: Released from the 60 days period. Sent for restricted residence. |
| 6 | Hazani Ishak | 33 | Alleged link to KMM. A trader in Kota Bharu. | 10-Oct-01 | Kelantan | Nov 8: Released from the 60 days period. Sent for restricted residence. |

Up until November 15, Suaram had yet to verify the status of at least 4

persons arrested under ISA since July and September, ie. whether they had been released; sent to Kamunting or sent for restricted residence upon completing their first 60 days. Suaram has sent several letters to the Bukit Aman Police Headquarter regarding the matter but has not received any response. The details of these 4 people are shown in the table below:-

Table: Status Unclear after the 60 days period (until Nov 15)

| No | Name | Age | Position/ Background | Date of Arrest | State of Arrest | Period of detention |
|----|---------------------|-----|--|-------------------|--------------------|------------------------|
| 1 | Mohd. Rashid Ismail | 35 | Alleged members of "KMM 2" - Jemaah Tabligh Malaysia (JTM) | 26-Jul | Sabah | 117 days |
| 2 | Jaafar Karamah | 42 | Alleged members of "KMM 2" - Jemaah Tabligh Malaysia (JTM) | 26-Jul | Sabah | 117 days |
| 3 | Ariffin Jusoh | 58 | Alleged link to KMM. | 2-Sept-01 | Kedah | 79 days |
| 4 | Maliki Jusoh | 28 | Alleged link to KMM. | 6-Sep-01 | Kedah | 75 days |

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 have used this Ordinance routinely to detain persons sus-

pected of criminal activities. Under a 1989 amendment, all forms of judicial review of the discretionary powers of the minister have been denied, except those related to the procedural requirements of this Ordinance. Under Section 3(1) of the order, any person arrested and detained under this section may be detained for a period not exceeding 60 days.

On May 8, three policemen including a Chief Inspector, arrested early that month for a spate of armed robberies and abduction cases in Selangor, have been detained under the Emergency Ordinance following a magistrate's ruling on May 5 that the three were not to be remanded. Not long after that, another Chief Inspector was also detained under the Emergency Ordinance.

City police chief Deputy Commissioner Meor Chek Hussein Mahayuddin said that the reason for the trio's Emergency Ordinance detention was because of the magistrate's refusal to issue a remand order and due to the nature of their offences, it was to ensure that the three did not intimidate witnesses.

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.

Statistics revealed by Home Ministry on September 15 showed that until the end of June this year, 159 people had been held under this Restricted

Residence Act.

However, other laws such as 1969 Emergency Ordinance and the 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.

On June 19, Peter Lee Khui Hiun, a former civil servant who had been put under restricted residence in Kapit, Sarawak, since March for organising a "Get Rich Quick" scam between 1996 and 1998, failed to get the Kuala Lumpur High Court to nullify the Home Ministry's order. His application was dismissed with cost by the judge.

On August 10, the Acting CID Director Deputy Commissioner Ramly Yussuf of Police Headquarter told the press that seven masterminds involved in the pornography industry had been banished under the Restricted Residence Act and another 10 porn industry "kings" were expected to face the same banishment as police stepped up their war against peddlers of smut. Statistic released by police showed that from January to Aug 7, police had seized 104,176 pornographic VCDs and arrested more than 770 people, with Kuala Lumpur recording the highest number of arrests and seizures.

On November 3, Dr. Badrul Amin Bahron, one of the six pro-reform activists detained under the Internal Security Act (ISA) at the Kamunting Detention Centre, was released with conditions and was held under restricted residence in Gombak, Kuala Lumpur where he is prohibited from leaving the area without police approval. Badrul Amin was also banned from holding party posts.

On November 8, the police released six alleged Islamic militants KMM

members arrested in October 10 from their first 60 days ISA detention order and placed them under restricted residence requiring them to report daily to the police and banning from any political activity.

Documented cases of ISA detainees released and put under the Restricted Residence Act is shown in the table below:

Table: Victims of Restricted Residence

| No | Name | Age | Position/ Background | Date of Arrest | State of Arrest | Date sent for Re- stricted Residence |
|----|---------------------------|-----|--|-------------------|---|---|
| 1 | Mr. Mustafa B. Safar | 28 | Shia follower detained purely on the grounds of their faith; Own business | 13-Oct-00 | Selangor | 12-Dec-00 |
| 2 | Mr. Syed Hassan Al-Attas | 36 | Shia follower detained purely on the grounds of their faith; Self-employed | Jan-01 | N/a | Mar-01 |
| 3 | Nazri Romli | N/a | Alleged link to May 18 Jihadi Gang Robbery | May-Jun-01 | N/a | 11-Aug-01 |
| 4 | Noor Arshid Sakib | 32 | PAS youth leader for Sungai Bemut branch | 2-Aug-01 | Johor | 24-Sept-01 |
| 5 | Dr. Badrul Amin Bahron | 40 | National Youth Exco of National Justice Party | 20-Apr-01 | Kuala Lumpur | 3-Nov-01 |
| 6 | 6 alleged involved in KMM | - | Opposition PAS members; mostly religious teachers | 10-Oct-01 | Various places across Peninsular Malaysia | 8-Nov-01 |

Torture in Custody

Summary

The year 2001 also witnessed unabated torture in custody, some leading to death. Many of these cases, however, seem to escape public attention. The psychological and physical torture that is inflicted upon ISA detainees reminded Malaysians of how to date, the statutes of the country allow for

Torture in Police Custody

Seven university students detained at an anti-ISA demonstration on June 15 were beaten by other detainees in a police lock-up. The police, however, failed to provide any protection or immediate intervention and in spite of reports lodged regarding the incident, no action was taken.

On August 23 two Bangladeshi nationals were jointly charged under Section 302 of the Penal Code allegedly for the murder of seven people from one family in Taman Johor Jaya in July this year.

The two men told the Johor Baru magistrate court that they had been beaten while in police custody and told to confess to the crime. Md Masud Rana Md Mofizuddin and Razaul Karim Md Solehan Ali Fakir claimed that they had been forced to drink urine and eat cockroaches. In addition, Md Masud claimed that on August 5, policemen asked him for RM10,000 to secure his release and enable him return to Bangladesh. He also claimed that the policemen used an electric shock device on his

body. The magistrate ordered the police to transfer the accused to another jail, as a safety measure. The case was fixed for Oct 8 for further mention.

Another case of what appears to be a forced confession was documented in Penang. On September 22 an odd-job labourer Ibrahim Md Nor was arrested on suspicion of murdering a dignitary's wife last year. He told the Penang Sessions Court that he admitted to police that he received stolen jewellery, but only after they started beating him.

Ibrahim said he was asked to wear a pair of goggles before he was beaten with a cable and rubber hose by three policemen during investigations. He claimed he was beaten once every three days during his remand and the beatings lasted from three to six hours. Ibrahim, however, said he did not lodge a police report about the beatings. The hearing before Sessions judge M. Gunalan continues on Oct 29 and 30 this year.

On Nov 2, S Koyilvani lodged a report against a police officer for allegedly beating and abusing her son during his remand period in the Dang Wangi district police station in Kuala Lumpur between 24th October to 2nd November. She reported that her son, son M Ilamaran, suffered terrible pain, had a swollen chest and had been beaten on the soles of his feet with a rubber hose. Ilamaran and two others were subsequently charged with with armed robbery at the Kuala Lumpur Magistrate's Court on Nov 9.

Torture in Custody that led to death

An unidentified victim, in his 40s, who was assaulted in the Setapak police station lock-up, died of head injuries on Friday, June 22, four

days after being admitted to the Kuala Lumpur Hospital. Four people, including a lance corporal and member of the Special Action Force, were brought to the City police headquarters for investigation.

In Kota Kinabalu, Sabah, a Filipino detainee from an immigration detention centre, believed to have suffered head and body injuries, was pronounced dead upon arrival at Queen Elizabeth Hospital. It is believed that he was caught while attempting to escape and was subsequently tortured with canes and planks. Seven policemen from the detention centre, were found responsible for the death and charged on 8 June 2001, under section 304 (b), of the Penal Code, which carries up to 10 years jail upon conviction.

Torture during the first 60 days of ISA

The ten reform activists detained without trial in April, were kept incomunicado, for many weeks during the first 60 days of their detention. N. Gobalakrishnan and Abdul Ghani Haron, for example, were denied access to their family and friends for almost seven weeks. Suhakam commissioners were denied visitation rights until the tail end of the 60-day period, despite having clearly defined powers to visit detainees under the Human Rights Commission of Malaysia Act 1999. Raja Petra Kamaruddin was the first among the 7 to receive family visits after 22 days, following a hunger strike on his part.

Detainees were kept in solitary confinement and had to endure long sessions of interrogation and 'indoctrination'. Family members who visited them complained that they were behaving strangely, and were unlike their usual selves. All family visits were closely monitored. Some detainees even requested the 'cooling off' of campaigns to demand their release.

Family members also endured much duress during this time, and some were reluctant to provide details of their visits, for fear that the police deny them further access. The wife of Raja Petra Kamaruddin, who had visited her husband for the second time on May 22 told online newspaper Malaysiakini only three days later that Raja Petra's hands were trembling and he looked very pale. N. Gopalakrishnan broke down when he first saw his wife and two sons. He behaved strangely according to his wife, after having met him for the first time in 47 days. Gopalakrishnan in an interview, revealed that he was thrown off his chair during one of the long interrogation sessions.

Student, Khairul Anuar, also complained of being beaten in the initial hours following his arrest at Dang Wangi Police Station.

In August, the most comprehensive accounts of torture during the first 60 days of ISA detention were made public by five ISA detainees who were detained in the first round of ISA arrests in April. They had applied to the Federal Court to overturn High Court Judge Augustine Paul's April 25 decision to dismiss their habeas corpus applications. Below are excerpts of affidavits filed by the detainees.

• Lokman Noor bin Adam affidavit in August 2001

"The IOs looked cruel and as if they bore a grudge towards me. They were mad at me because of the Jitra incident and my comments regarding the police. Tuan Johari instructed me to take off my shirt and pants until I was naked and then ordered me to show both my biceps in the style of a 'body-builder', "Oh this is a Malay Warrior, yes". I was forced to do the above.

"The said Sergeant Major Yusof after that then slapped and kicked me in the right side of my back. I was then allowed to wear my pants without

my shirt, and later on, my shirt. They then went out for a while when they were called by one Tuan Adib. I found out from Tuan Adib Singh, the administration officer, that he had called them out and had forbade them from hitting me."

"On the 3rd day, they started to threaten to disturb my family if I did not cooperate with them. I worried about their threats because I knew that my wife would then undergo mental stress. Therefore I had to cooperate with them and obey their wishes. This threat was repeated throughout the whole of my interrogation."

"During that time due to fatigue, mental pressure and emotional pressure and worry I was not able to concentrate on the questions posed by the IO. That was why I recorded many matters in writing in accordance with their wishes. Some of the information was given by the IO, like abuses of the leaders and so on, which was used as my own personal statements. Some were written by myself particularly the facts that were within my knowledge. I desperately wanted to be released."

"My state of mind at that time was tense, anxious, disturbed and confused. The repeated their questions, shouting and pressing me until I gave the answers they wanted."

• **N. Gopalakrishnan, affidavit of August 2001**

"The interrogators want me to confess about having sex with Malay women from Party Keadilan which was totally ridiculous....They said Ezam and Tian Chua already admitted....then they want me to tell how a man can get sex from a women. ..I refused and they started to pressure me to tell them my sex stories with my wife."

"When I kept quiet or refused to answer to their weird allegations, they

got angry and had in several days continuously forcing me to confess my sex affairs with other women. I was beaten up by the interrogators.....Two out of the three interrogators had beaten me. One of them slapped me at my body while another one punched me at my left shoulder. After punching me, the officer put his fist at my face and said that I am a "nobody" ...When I still refused to fulfill their demands, the chair that I was sitting was suddenly kicked by the officer and I felt down. When I fell down, I was lifted and was thrown to the wall by one of the officer and I was pressured to confess to all their allegations."

• **Saari bin Sungib, affidavit of August 2001**

"Throughout my detention, I was depressed both mentally and physically as a result of the treatment given to me with the intention of torturing me physically, mentally and emotionally."

"I was not given a pair of slippers at all throughout my detention although they had forced me to walk across a rocky road which hurt my feet terribly and also when I was forced to walk across a rocky road when it was scorching hot and the road burnt my feet....I had to wear dark glasses when I walked in and out of my cell to the interrogation room with both of my hands cuffed. I was dragged, pushed and ordered with commands such as "left... step right..." by the policemen. Sometimes the orders were not so clear and once it caused me to step into a drain."

"There were times.....I was ordered to walk through the rain although I overheard that my accompanist covered himself with an umbrella."

"In the detention room, the Investigating Officer switched on the air-conditioner and lowered the thermostat to the lowest possible temperature and put the maximum speed on the fan thus causing me to freeze.

In the air-conditioned interrogating room, a few Investigating Officers chain smoked. Since the smoke was very thick, I repeatedly coughed during the interrogation. For the first two weeks I already suffered serious coughing - thus my coughing condition only worsened. When I advised the Investigating Officer, the Head Investigating Officer retorted "Hisap rokok adalah hak asasi saya, you kena hormati hak asasi saya! Kata you berjuang untuk hak asasi?"(Smoking is my fundamental right, you have to respect my fundamental rights! You say you fight for fundamental rights?). And each time I returned to the cell, my clothes, my hair and myself smelled of smoke."

"While I was interrogated, I was surrounded by five or six investigating officers... On the 20th of April, 2001, I was interrogated continuously from 3.30 pm to 6.30 pm on the next day (21st of April 2001). For the first day at the second location, I was questioned continuously for 38 hours without sleep. The police used five to six Investigating Officers taking turns among themselves to interrogate me and did not allow me to lie down, or put my head on the table or stand resting on my back and head on the wall. I was not allowed to perform my 'witr' prayers."

• **Mohd. Ezam Mohd. Nor, affidavit of August 2001**

"The questions were repeated so many times until I suffered mental pressure and could not focus my attention during interrogation by those officers. I was brought to the interrogation room the next day. In the interrogation room, two police officers were already there. They told me sternly that I was transferred to a new place because I did not give the police my co-operation. I denied their allegations. To me, I had answered all the questions openly."

"They threatened that they would have to detain me for two years as long as I did not disclose everything. I told them again that I was never

involved in any violent elements if that was what they wanted, and it was difficult for me to tell or create things which I had never done. After that all five of the interrogating officers were present with two more new interrogating officers and one of them who became the leader for the group of investigators.....Starting from that, I was tortured with continuous interrogation beginning about 8.00 to about 4.00 to 5.00 in the morning for two days running. We would begin again about 10.00 am until 3.00 am the next day. "

• **Hishamuddin Rais, affidavit of August 2001**

"I was then instructed to tell everything about myself to them. I told them that I did not know what they wanted from me. They then responded by shouting vicious, lewd, and abusive words at me and tried to denigrate me and threaten me."

"From the start of the interrogation process, for about four continuous weeks, the questions put to me were a form of mental and emotional torture. I was insulted, shamed and abused with swearing and derogatory words meant to reduce my self-esteem. The worst period of abuse was during the first three weeks of interrogation. Among the vicious abuse hurled at me included:-

- You are a coward;
- You are not a Malay;
- You are a traitor;
- You like sucking on Anwar;
- You suck Anwar's anus;
- You are useless to this country;
- Why did you come back to Malaysia?
- You are a corruptor of the Malays;
- You are a stooge for the Chinese;

- You are a foreign agent;
- You work for the United States;
- You are Al Gore's stooge;
- You aren't a Muslim, you are an infidel, you are damned and you will burn in hell. You will be rejected by the earth when you die.
- You are an adulterer and you are like PAS, a party of the devil;
- You eat pigs, snakes and centipedes;
- You will not be accepted into heaven;
- You have one foot in the grave;
- You will die alone;
- When you die, your body will be thrown away;
- There will be no grave that will accept your body;
- You will be fuel for the hellfire;
- No one will pray for you when you die.

"The interrogating officers also insulted and hurled abuse at me by accusing me of sexual improprieties:-

- a. How many European women had I slept with? Questions like these were put forward to me repeatedly. Among the questions asked of me repeatedly were "Macam mana rasa burit Mat Salleh?" ("How does a Mat Salleh's vagina feel like?") Nevertheless, I refused to answer such questions and informed them that it had nothing to do with national security;
- b. They told me how Tan Sri Samad Ismail, when he was detained under the ISA, had confessed to sleeping with many women. "Kalau dikumpulkan burit itu seluas padang badminton. Kamu berapa banyak burit? Setengah padang badminton?" ("If counted how many vaginas he had, they would have filled a badminton court. How

many did you have? Half a court?") I did not answer these questions."

• **Badrul Amin B. Bahron affidavit in August 2001**

"They became furious when Zumrah, my wife, made a statement in Malaysiakini that I was still high in spirit and had asked friends outside to continue with the 'struggle' and had sent my regards to the reformisi activists. Zumrah also gave a talk at various places including up to Kota Bharu and Terengganu. They accused me of ordering Zumrah to talk and do as the above. They threatened me with changing the interrogation officers or transferring me to another place.

"Because of that, I became worried and agreed to send a letter, addressed to the higher ranking officer in charge of interrogation team. In the letter, I expressed my regrets on Zumrah's actions. I also denied that I had given any orders to Zumrah and suggested that maybe Zumrah was under the pressure from friends or reporters. I also asked to see Zumrah and promised to put a stop to her actions.

"Two weeks later, I met Zumrah and all her activities ended immediately. My excuse to Zumrah was that I was given a guarantee by my IO that I will be released if she cooperated as I did. The IO was very pleased and promised to try to release me."

• **Abdul Ghani Haron affidavit in August 2001**

"I was later ordered to remove my clothes and I was only allowed to wear my under-pants. At about 5.00am on the next day, I was awakened to get ready. My clothes were returned. I was carried, horizontally, upstairs to the holding room."

"I was forced to enter a car. I asked where they intended to take me but

they did not answer me. I was taken around in the car for about 30 minutes. After the journey, I was taken to the lock-up at which time they removed my blind-fold. I then realized the place was the same lock-up as the one on the first day.

"Some of the officers were rough in their manner, spoke in a loud tone and an intimidating voice. I was threatened that if I did not co-operate I would be sent to Kamunting for 2 years. There were others that tried to negotiate with me and there were others that blackmailed me emotionally, using my wife and children to provoke me to talk.

"At one point of time one of the investigating officers tried to scare me with the words "awak diminta memberi kerjasama yang baik ketika kami sedang berbahasa dengan baik, jika tidak.....". The sentence ended there. When making the statement the officer tapped my chest and warned me to answer every question correctly if not something untoward would occur.

"Although I answered their questions they accused me of lying in an intimidating tone of voice. Because they did not agree with my answers, I was asked the same questions every day. At one point I gave them the answer they were looking for and they thanked me, shook my hand and said that if I continued to co-operate they would give me a hand phone for me to call my family."

• **Badaruddin Bin Ismail affidavit in August 2001**

"I was never told the actual grounds or reason for my arrest, detention and interrogation. I was only told that I was a threat to national security which I denied."

"The feature of my interrogation was that at all times, especially when I

did not provide an answer satisfactory to my interrogators, they would threaten me with detaining me under the Internal Security Act for 2 years. This threat was consistently and repeatedly put to me during the interrogation sessions."

• **Chua Tian Chang affidavit in August 2001**

"I was told to cooperate and answer all questions otherwise the team of my interrogators (who were all Chinese) would change to a team of Malay interrogators who would not be as "nice" as the present team of interrogators. I was told that a Malay team would inflict physical harm to me as the Malays did not like me for offending their public sensitivity."

• **Raja Petra Bin Raja Kamarudin affidavit in August 2001**

"Thirty days after my interrogation I had to sign a statement regarding my alleged wrongdoings focusing on my writings and my activities in the international arena for the FAC. I had no choice in this matter other than sign the said statement which was prepared by them and I was instructed to sign the said statement. "

• **Other accounts**

Other accounts of torture during the first 60 days were given by Opposition Leader Fadzil Noor in Parliament on October 11. He said that one of the ISA detainees linked to KMM (Kumpulan Mujahiddin Malaysia) who had been released early with restricted residence in Johor had suffered from mental trauma. Fadzil Noor told the press that Noor Arshid Sakib, 32 yrs old, PAS youth leader for Sungai Bemut Branch failed to recall even his parent or families members. He would automatically associate anyone who came to see him as being a Special Branch officer who had come to torture him and the visitor would be addressed as "Sir".

Torture inside Kamunting Detention Camp

• Poor diet and health facilities

News from Kamunting Detention Camp in July revealed that two of the ISA detainees Mohamad Ezam Mohd Nor and Saari Sungib were experiencing health problems. They had not been given any medical examination from the time they were sent to the detention camp; Ezam had reportedly experienced trembling hands and significant weight and hair loss within two weeks of arriving at Kamunting. Letters of appeal for medical attention have been sent by the family members since July, with no response from the camp commandant. Complaints by the six ISA detainees regarding their food, medical needs and living conditions were not paid any attention. On September 27, Harakahdaily reported that Nik Adli (son of PAS Kelantan State Chief Minister Nik Aziz) accused of leading the KMM and serving a two year sentence in Kamunting appeared very weak, pale with red spots on his skin during his latest family visit.

Reports from the Family Support Group noted that out of 14 meals a week provided at the detention centre, four consisted of salted fish and rice, which seriously affected the health of the detainees. As a result, instead of taking meals provided by the camp, the six sought to survive on fruit brought in by their families every week.

• Heavy confinement and censorship

Unlike other detainees, the six are detained two to a block which is designed to hold 20 persons, with the remaining seventy-one detainees cramped into another three blocks. It transpires that the order for the separation came from the Home Ministry. Protest letters to Home Minister demanding an explanation sent on the 16th September, are to date unanswered.

The six are also banned from mingling with other ISA detainees, save for the morning assemblies to sing the national anthem. According to their lawyer, the five Muslims detainees are not allowed to hold their Friday prayers together. Each detainee is allowed to write one letter per week which is vetted and censored. Most letters not submitted to the censorship board are rejected. Reading materials are subject to the camp's approval while daily news can only be obtained from edited newspaper cuttings. Tian Chua is not allowed to attend Buddhist or Christian prayers conducted at the camp nor allowed to read Chinese newspapers.

Lawyer-client privileges and privacy do not exist with all discussions monitored. Detainees are not permitted to see their lawyers together even though they are facing the same charge. Saari Sungib's affidavit had also been confiscated from his lawyer and retained by the camp for eight days.

On September 11, the detainees began 'non-cooperative action' by refusing to eat food provided by camp authorities, boycotting a number of camp activities including attending religious classes, until camp authorities agreed to meet with them. Press statements released by the ISA family support group revealed that the six detainees had experienced weight loss of two to nine kilograms in a week, and were reported to be suffering from various serious medical conditions. The camp authority failed to provide doctors for the detainees and instead sent only a hospital attendant. The detainees complained the hospital attendant could neither interpret the medical results nor give appropriate advice.

The camp commandant, in order to break the prison-food boycott, then disallowed vitamins and supplements from being brought in by family members. New rules were also enforced whereby families can only bring food to be eaten with the detainees on certain special days like birth-

days of closed related members and this is subject to application by lawyers to the camp commandant.

On October 18, Suaram sent an urgent letter to Suhakam requesting for intervention upon receiving news that Lokman had blood in his urine. However, Suhakam have not taken any concrete intervention.

Cases filed on police torture and neglect

The trial of Suzana Md Aris who filed a civil suit over the death of her husband, Mohd Anuar Sharip, when he was in the police custody in August 1999 continued in 2001. The suit named the Inspector General of Police Norian Mai, the Gombak OCPD, Massari Hashim, Gombak Crime Division Chief Ishak Hussain and the government as defendants.

In her statement of claim, Suzana said that the police took Mohd Anuar away on August 10 1999. 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 police contend that they left a note at her mother's house on August 18 asking the family to contact the Rawang police.

On February 12 2001, in spite of the post mortem reports, the police claimed that Mohd Anuar Sharip had died in custody due to an inflammation in his lungs and not of police brutality as alleged by his widow. The police further alleged that that Mohd Anuar was a drug addict, adding that this was confirmed by a urine check on him, which had traces of morphine. The trial continues.

On August 8, a college student was awarded a total of RM14,989 by a Sessions Court in Penang for being physically and verbally abused by policemen at a roadblock in Farquhar Street in 1994. Judge Tarmizi Abdul Rahman found in favour of Shaun Khoo Boo Yung, 24, and held that the defendants, the George Town traffic police chief and the government, were vicariously liable. In the statement of claim, Khoo said he and his friends were riding their motorcycles when they were stopped at the police roadblock between 3.45pm and 4pm on March 23, 1994. The defendants claimed that Khoo had attempted to escape and was detained after a struggle with the policemen. The Sessions Judge, however, found that Khoo's complaint of assault was consistent with his medical report but not consistent with the defence's version that Khoo fell from his motorcycle.

Revelations of torture in "false news" trial of Tenaganita director Irene Fernandez

Tenaganita director, Irene Fernandez, is on trial charged with "maliciously publishing false news" by releasing a memorandum at a press conference in August 1995 on torture and deaths at illegal immigrant detention camps. The trial began in June 1996 and is the longest criminal trial in the country's legal history, continuing in 2001.

In February 2001, testimonies of detainees revealed inhuman torture at the camps. Defence witness, Abdul Alim, told the court that a policeman gripped his penis and dragged him into his quarters during his detention six years ago. Abdul Alim also said that he had been ordered to strip naked in full view of the other detainees and was searched for money when he arrived at the Machap Uumbu camp in Melaka in February 1995. He was unable to lead congregational prayers following the

incident due to the humiliation experienced. He also told the court that he witnessed the deaths of two fellow inmates, victims of diarrhoea as a result of eating contaminated food.

Corporal Punishment

Corporal punishment, in the form of caning, continues to be meted out for various offences in the country. The table below is a documentation of cases that have involved corporal punishment:

| Date | State | Case | Punishment |
|--------|--------------|--|---|
| Oct 18 | Penang | Factory worker found guilty of raping his former colleague, who was then 20, at their company's flat in Jalan Helang, Sungai Dua, about 9.30am on Nov 7, 1996. | 2 strokes of rotan 5 years jail |
| Feb 9 | Kuala Lumpur | Two men were found guilty for raping, molesting, performing oral rape and wrongfully confining a 24 year old draughtswoman. | First person 3 strokes of rotan 10 years jail. Second person 5 strokes of rotan 10 years jail |
| Feb 27 | Kedah | A quantity surveyor pleaded guilty to an amended charge of possessing 515.2gm of on Jan 5 2000 in Alor Setar High Court. | 10 strokes of rotan 6 ½ years jail |
| May 11 | Kuala Lumpur | A former-clerk found guilty of breach of trust amounting to RM1.67 million last year. | 1 stroke of rotan 14 months jails, fined RM 10,000 or 6 months jail |
| May 22 | Kuala Lumpur | A shipping engineer found guilty for possessing 104.9gms of cannabis. | 10 strokes of the rotan 6 years jail |
| May 29 | Penang | A lorry driver found guilty of cheating by inducing a woman to part with RM27,800 in 1997. | 2 strokes of the rotan 2 years' jail RM10,000 fine |
| Jun 23 | Sabah | Two Filipino labourers found guilty of raping a 22-year-old woman on June | 10 strokes of the rotan |

| | | | |
|---------|--------------|---|---------------------------------------|
| | | 12 at her house in Luyang. | |
| Jun 29 | Malacca | A 49-year-old unemployed man found guilty of raping his 13-year-old step-daughter | 4 strokes of the rotan 14 years' jail |
| Sept 17 | Kuala Lumpur | An Indonesian labourer, was found guilty by a Sessions Court after he pleaded guilty to raping his 12-year-old foster daughter. | 12 strokes of rotan 15 years jail |
| Sept 27 | Johor | A carpenter pleaded guilty to sodomising a 10-year-old girl in Tanjung Gading last May. | 2 strokes of rotan 11 years jail |
| Oct 3 | Selangor | A factory production operator pleaded guilty to raping a fast-food restaurant employee three times. | 2 strokes of rotan 6 years jail |

On August 10, Dr Rais Yatim tabled an amendment that would also seek to increase the sentences for those convicted of incest to a minimum jail term of six years and up to 20 years, with the possibility of caning. (August 10, 2001 *The Star*). The proposal got wide support in the parliament from women MPs, including those from the opposition.

On August 21, Deputy Prime minister Datuk Seri Abdullah Ahmad Badawi announced proposed amendments to the Immigration Act, including whipping, to check the influx of illegal immigrants to the country. Various human rights groups such as Tenaganita and HAKAM condemned the proposed amendments as "inhuman and barbaric", victimising persons who are already victims of cheat and deceit.

Extra-Judicial Killings and the Death Sentence

Summary

As with previous years, 2001 also witnessed several cases of police shootings, brutality and negligence, with little recourse for redress for those affected by the actions of the police. Standard responses from the police, claiming that the killings were necessary, justified or that investigations were conclusive often make cases of police shootings and brutality open-and-shut cases.

There have been no full or open investigations into these killings, despite the existence, in some cases, of evidence that the police story was inaccurate. Court trials that continued during the year in connection with police shootings also reminded Malaysians of the number of lives that have been lost due to lack of professionalism on the part of the police in previous years.

Malaysia maintains mandatory death sentences for drug trafficking and other offences, often applied as a deterrence. In addition, Malaysian police have engaged in several extra-judicial killings. The apparent 'shoot now, investigate later' approach of the police came under fire not only from local rights groups but also from abroad.

General

The Home Ministry informed Parliament in October that over the year 2000, police killed 'eight criminals'. Up to the end of August 2001, the

police had reportedly shot dead three 'criminals'. (Sin Chew Jit Poh, October 31).

However, according to information compiled by Suaram over the year, this appears to be an understatement. For example, in one incident in July, eight people were killed. Several other cases were noted, including:

- On February 2, the Royal Malaysian Navy (RMN) opened fire at an Indonesian fishing boat in Malaysian waters near the northern island of Langkawi, which resulted in the death of 33-year old Nortti, a crew member of the fishing boat. The Indonesian Foreign Ministry released a statement the Malaysian Navy of having used "excessive action". The Malaysian Defence Minister defended the actions as self-defence in response to the aggression displayed by the Indonesian fishing boat. He added that the navy had fired a flare and several warning shots for the Indonesian boat to stop.
- In Shah Alam, Selangor, R. Balakrishnan and two other alleged armed robbers were, according to the police, killed in a shoot-out at Taman Subang Perdana, Selangor on April 30. Balakrishnan was believed to be the leader of the 'Suisse Gang' which had robbed nine banks in the Klang Valley over the last few years.
- On 1 July, the Sunday Star reported that police shot dead eight Indonesians, allegedly members of gangs, for crimes including rape, murder and house burglaries. The newspaper said the eight were killed in shoot-outs with police. Police declined to give any details.
- Police shot dead a 20-year-old suspected drug dealer, on June 18.

After a high-speed chase, the victim was cornered by a policeman who tried to flag him down. The youth was killed by a single shot at the back of his head after allegedly reversing his car and ramming into the policemen. The policeman received out-patient treatment at the Kuala Lumpur Hospital.

- In Kota Kinabalu, Sabah, police shot dead a farmer, alleged to be mentally unstable, who had held 12 people hostage in a van following a five-hour ride on July 27. Amin Kandaung was reported to have been shot twice by police when he tried to stab one of the hostages with a knife. The police claimed they also recovered a homemade shotgun, a parang (a machete), a keris (a Malay dagger), a catapult and two bottles believed to contain acid.
- In Malacca, 23-year-old Tan Ting Kiang was killed by police at a flat in Taman Malim Jaya on August 23. He was believed to have been linked to armed robberies, drug trafficking, illegal VCD production and motorcycle thefts. The police alleged that he pointed a loaded revolver at a policeman who tried to arrest him. The police were reported to have seized a revolver, three bullets, three parangs, utensils used for processing of drugs, motorcycle parts, forged RM10 notes, pornographic VCDs and two motorcycles with altered chassis numbers.
- On November 8, the police shot dead two suspected robbers at the rest stop of a highway in Selangor, after trailing their car for 40 minutes. According to the police, the two men were shot dead after they fired on the police trailing them. The deceased were identified as Gunalan a/l Krishnan, 27 of Kajang and Selvarajoo a/l Subramaniam, 35, of Selayang.

Arbitrary Shooting

Plantation supervisor, M. Manimuthu, claimed that he had been shot by police on May 29, while trying to collect a debt in Selayang and later handcuffed to a bed at Hospital Selayang for several days. Two weeks later, the police however refuted the allegation, saying that Manimuthu had attempted to escape an ambush set up to nab suspected abductors cum extortionists.

A police corporal was detained after firing a shot at a woman, hitting her leg from a short distance inside the compound of a police station in Taman Cempaka, Tampoi. No further information was obtained on why the incident happened.

In Selangor, on July 3, a police constable, Mohamed Wahab, 26, last stationed at Setapak Police Station, was jailed for four months by a magistrate's court after he pleaded guilty to having caused the death of his colleague by recklessly firing a gun on Aug 22, 1999.

On July 19, police shot and injured a man on who allegedly tried to drive off when he was ordered to stop. According to the police, the man and his passenger were spotted in a car heading towards a 'drug haunt' in Seelon, Senai, Johor. Police alleged that the two ignored their orders to stop and instead reversed the car. Police fired a shot at one of the tyres but the car continued to reverse, and police fired a second shot which hit the victim. The police, however, failed to produce any concrete evidence that could link any criminal intent to the victim.

Court Trials

- **Coroner's inquest: Death of six in Tumpat**

On July 4, a coroner's inquest into a police shooting heard that the shots which caused the deaths of six Rela members in Tumpat, Kelantan, were mostly aimed at the head. However the Coroner's Court ruled that there was no criminal element involved. It was ruled that police opened fire in self defence and acted in a reasonable manner. Outraged by the decision, the plaintiff's lawyer said they would refer the coroner's decision to the High Court for review.

- **Alameloo Mangai and Keerthana vs Federal Government**

On 3 March, a police negligence suit continued. The police were being sued for the killing, in 1998, of a woman, eight months pregnant. The court heard that police failed to issue any warning before shooting dead five people, including the pregnant woman. The mother, Selvamalar, died from a gunshot wound to her head. She was killed along with her husband P. Gunasekaran and three others.

In the suit filed on Oct 16, 1998, two of the Selvamalar's daughters, Alameloo and Keerthana claimed that as a result of wrongful acts, neglect or default of the defendants, they were made orphans and had suffered loss and damage, including being deprived of motherly care. They also claimed that the police had caused the death of their mother and had left her unattended without giving her or her unborn child any immediate medical aid.

The suit named the Government, former Inspector-General of Police Rahim Noor, former Selangor police chief Kamaruddin Hamzah and former Selangor CID chief Senior Asst Comm (II) Johar Che Din responsible for the death. On October 19, the government agreed to settle the suit and

to make an ex-gratia payment of RM400,000 to the two daughters.

On October 20, the Chair of the Democratic Action Party, Lim Kit Siang, urged the government to extend an ex-gratia payment to two other innocent civilians who were allegedly killed by police. Both Dr Tai Eng Teck and Mohd Zailani Mohd Salleh were victims of shoot-outs. Dr Tai died of three gun-shot wounds to his head and hand when he was in a car with a companion in Kuala Lumpur in September two years ago. The policeman who fired the shots was later convicted of causing Tai's death.

Mohd Zailani was mistaken for a bank robber and shot dead by police in Kepong, Selangor, in January 1999.

Police failure to provide protection

Following a police report regarding the rape of their eight-year old daughter on July 12, a family in Sentul was subjected to repeated physical abuse and death threats by the alleged perpetrators. The mother of the child, who was five months pregnant at the time, was kicked in her stomach by the gangsters. They were warned that their house would be burnt down, and acid had also apparently been splashed onto the premises. Another child in the family was abducted and assaulted before being released. Traumatized by the experience, the eight-year-old attempted suicide by swallowing pain-killers.

Throughout the period the father of the child had apparently made ten police reports regarding the threats, appealing for police protection. The police claims of round-the-clock protection failed to explain the next tragedy in the family, the murder of the father of the child on October 24.

Parti Reformasi Insan Malaysia (PRIM) pro tem secretary general P.Uthayakumar urged police to conduct a full scale investigation on the matter to restore public confidence.

In a press statement released on October 30, PRIM revealed that when they telephoned the Sentul Police Station on October 26, the Duty Officer Chief Inspector Hambasi informed them that they were short of staff and could not provide round the clock protection for at least two weeks, but would instead send a patrol car on and off.

The police, however, on October 30 refuted allegations of "no police protection". The Kuala Lumpur City CID chief Senior Asst Comm (II) Kamaruddin Mat Desa said that "the police placed detectives in the area where the witness stays," but "[did] not expose our men and neither do we reveal our strategy in providing protection to a witness." He further added that the police "have to be discreet in our work to ensure we achieve results. We have increased our patrols in areas around Kampung Cempedak."

This, however, did not answer Uthayakumar's question of why the rape victim and her family were still persistently harassed, attacked by and injured by the criminals even when they were apparently being provided with 'round the clock' protection.

In addition to this, on November 19 the mother of the child was allegedly attacked again, this time leaving her with cuts to her face, arms, and her abdomen dangerously close to her growing baby. On November 23, she filed a lawsuit naming the police as defendants for their failure to protect her and her family after continuous harassment from gangsters.

Capital Punishment

A total of 159 people are currently on death row pending appeal, as reported by the National Human Rights Commission, Suhakam. There are cases of prisoners being in jail for more than 10 years after being sentenced to death. Minister in the Prime Minister's Department Dr Rais Yatim revealed that the Pardons Board in most of the States has not been meeting regularly, some of them for years, resulting in a backlog of 243 cases, including a number of death row cases.

On May 3, the Pahang Pardons Board agreed to defer the execution of Juraimi Husin who, together with bomoh couple Mona Fandey and Mohd Affandi Abdul Rahman, faced the gallows for murdering a State assemblyman. The death penalties were handed down by the Temerloh High Court on Feb 9, 1995. The Board agreed to defer the execution pending the filing of a declaration on the constitutionality of its (the board's) decision to reject Juraimi's plea that his death sentence be commuted to life imprisonment. The Board had earlier, on April 4, rejected the trio's clemency petitions.

On September 13, the Federal Court ruled that the decision by the Sultan of Pahang not to grant clemency to Juraimi, could not be subject to judicial review. On November 2 Mona, Mohamed Affandi and Juraimi were hanged to death before dawn at the Kajang Prison.

In Kedah, a Ghanaian trader, Emmanuel Yaw Tiekou, 41, of Mungua, Accra was sentenced to death by the High Court on July 24 for, in 1997, trafficking in 515.7gm of heroin contained in 84 capsules.

In Kuala Lumpur, on August 20, the a panel of three judges in the Federal Court upheld the death sentence imposed on a Hong Kong national,

Chu Tak Fa, convicted of trafficking more than 2kg of heroin seven years ago. Chu was sentenced to death by the Alor Star High Court on Oct 11, 1994.

On October 2, an unemployed man, Kofri Mustafar, 26, was sentenced to death by the Kuantan High Court for killing a 36-year-old mother after she turned down his proposal to marry her daughter two years ago.

On October 5, death row prisoner Ah Kow, 59, was executed in the Kajang Prison for drug trafficking after exhausting all legal avenues to appeal the sentence. Ah Kow was arrested on June 21, 1989, for trafficking 194.47gm of heroin. He was sentenced to death on July 30, 1992, by the High Court. His appeal against the sentence was turned down on May 12, 1997.

On the same day, Zainuzzaman Mohd Jasadi, found guilty of murdering a child in 1991, was hanged to death at the Kajang Prison. He had failed in all his legal efforts and appeals.

Freedom of Assembly

Summary

Freedom of assembly was a key target of government repression throughout 2001. Following comparatively successful political gatherings by the opposition, this year saw a widespread ban on public gatherings, with numerous arrests taking place throughout the year. Up to mid-November this year, Suaram documented at least 400 arrests made by police in connection with peaceful assemblies. In addition, permits for political rallies were frozen nationwide in July of 2001.

Even cultural events, fundraising dinners, private functions, candlelight vigils, a signature campaign day, taking part in marathons and walkathons, and a book launch held during the year proved to much of a 'threat' to the state. These events, organised by civil society groups or opposition parties, were threatened, blocked or forcibly stopped altogether with heavy police presence and resulted in a number of arrests as well.

Ironically, human rights day in Malaysia on September 9 was marked with a strong reminder to activists that public assemblies without police permission were banned. The Home Minister said that the government felt that "it was not suitable, under the current socio-political conditions, to hold gatherings without prior police approval".

Arrests at Peaceful Assemblies

The Kuala Lumpur Bar Council Legal Aid Centre's records show that during the period 1998-2000, a total of 787 arrests were made nation-

wide at various gatherings and peaceful assemblies. Around 70% of those charged were found not guilty when brought to court, indicating that police action was often taken without concrete evidence or due process.

'Unlawful assembly' arrests 1998-2000

| Year | Number of arrests | Number of people charged | Convicted | Acquitted | Discharge not amounting to acquittal | Cases on trial |
|-------|-------------------|--------------------------|-----------|-----------|--------------------------------------|----------------|
| 1998 | 439 | 317 | 26 | 280 | - | 11 |
| 1999 | 120 | 67 | 2 | 16 | 25 | 24 |
| 2000 | 228 | 40 | - | - | 11 | 29 |
| Total | 787 | 424 | 28 | 296 | 36 | |

Source: KL LAC 2001

Until November 15 this year, Suaram documented over 400 arrests at peaceful assemblies. The details of the arrests are showed in the tables below:

Number of arrests for 'unlawful assembly' 2001 (Documented cases)

| Year 2001 | No. of assemblies broken up by police | Arrests | Claiming trial |
|-------------|---------------------------------------|---------|----------------|
| 1st Quarter | 6 | 79 | 1 |
| 2nd Quarter | 7 | 84 | 9 |
| 3rd Quarter | 19 | 178 | 121 |
| 4th Quarter | 5 | 59 | - |
| Total | 37 | 400 | 131 |

Source: Suaram monitoring 2001

Forced dispersals and arrests

The first quarter saw a spate of arrests at opposition-led protests, gatherings and public talks.

- Police forcibly dispersed an opposition ceramah in the state of Kedah

with tear gas and water cannon on a crowd of more than 5,000 on 14 February. In the same month, police dispersed yet another opposition ceramah held at a house in Sabak Bernam, Selangor.

- On 17 February, a peaceful rally held in Kuala Lumpur protesting the appointment of former attorney-general Mohtar Abdullah as a Federal judge was attacked by police when the crowd were dispersing. Seven people were arrested and later released on police bail, including opposition leader, Tian Chua.
- Another peaceful protest was held the following day to save a suburban Chinese-language school. Forty-seven people, including a MP Fong Kui Lun (DAP), were arrested and later released.
- On the same day, 500 supporters gathered outside a magistrate's court in Lunas, Kedah were forcibly dispersed with chemical-laced water cannons and tear gas. They were gathered to give support to nine persons who were charged for stopping buses allegedly ferrying 'phantom' voters to a by-election in Kedah. Eight of these supporters, including a youth leader from the Parti Keadilan Nasional (PKN), N. Gobalakrishnan, were arrested and later released.
- On 20 February, Head of the Police Public Order Department, Ishak Kassim, said that the number of baton-equipped, helmeted, Light Strike Force (LSF) officers would be tripled from seven to 24 per unit following an upsurge in demonstrations country-wide and a vow by Keadilan to maintain protests to keep pressure on the government.

In response to police action, 31 non-governmental organisations handed over a joint memorandum to the Inspector General of Police in Kuala Lumpur on 26 February, demanding an end to protest police brutality

and greater professionalism on the part of the police.

A Malay daily reported PKN Youth chief Ezam Mohd Nor as saying that the party was planning to launch 'massive daily street demonstrations to topple the government' prompting the Deputy Inspector General of Police Jamil Johari to announce a full investigation into the report.

Ezam denied the statement but was arrested nonetheless, amidst sharp criticism that the police had not established evidence of the allegation, and was remanded for four days by a magistrate's court. On March 13, Ezam claimed trial to sedition in a Sessions Court in Kuala Lumpur.

Following Ezam's arrest, a peaceful candlelight vigil held outside Dang Wangi police station also saw another nine people arrested, among them Raja Petra Kamaruddin, coordinator of the Free Anwar Campaign, and his spouse. Raja Petra's house was raided and his personal computer, containing work files and documents pertaining to the campaign, was confiscated by police. Another opposition leader, C.T. Diong was also badly beaten before being arrested.

In Johor, three men were arrested on March 4 at a 2000-strong gathering held as part of an anti-corruption campaign in Johor.

Five people, including four opposition members, Party Rakyat Malaysia's vice-president, Abdul Razak Ahmad, Johor DAP publicity secretary Dr Boo Cheng How and Gelang Patah PKN head Zainal Abidin, were arrested on March 10 while leading a group of 40 supporters to present a memorandum to the Central Johor Bahru District Council on the increase in house assessment tax.

Anti-ISA assemblies

Following the ISA arrests in April (see section on Detention without Trial), several public assemblies were held to protest the arrests.

Student rallies opposing the ISA were both verbally and physically attacked. A rally held outside the National Mosque on June 8 and attended by 500 students was, according to eyewitnesses, forcibly and violently dispersed by police. Seven were detained and subsequently charged with unlawful assembly on July 19. One of those detained, Rafzan Ramli, was questioned and expelled by university authorities on 22 June after answering just three questions related to the arrest. On 3 July, Education Minister Musa Muhammad openly urged all private institutions of higher learning to reject expelled students. Rafzan lodged a complaint with Suhakam, supported by several national student bodies. Suhakam intervened and the university reversed its decision, allowing Rafzan to resume his studies.

On 4 July, three Universiti Islam Antarabangsa (UIA) students were fined RM150 for organising an ISA protest on their campus. On July 10, Minister in the Prime Minister's Department Dr Rais Yatim accused the university students of being influenced by Indonesian students to stage street demonstration against the government.

A gathering on June 9 to present Deputy Prime Minister Abdullah Ahmad Badawi with a memorandum was also disrupted when police moved in and gave the crowd three minutes to disperse. Hundreds of police sealed off the road leading to residence in Kuala Lumpur preventing many from attending the gathering and forcing the 500-person crowd to gather in a Chinese cemetery. Initially, the deputy City Police Chief Dell Akbar Khan initially agreed to a 12-person delegation to present the memorandum,

but revoked his decision 10 minutes later.

Peaceful candlelight vigils to give moral support for the ISA detainees attended by groups of 40 people were brutally dispersed by police in two separate events in Kuala Lumpur on the July 8 and 13.

On October 27, 48 people, including a journalist and two cameramen, were arrested during a gathering organised by the Anti-ISA Movement (AIM) outside the gates of the Kamunting Detention Camp. The gathering was held to commemorate the 14th anniversary of the illegal detentions of 1987, which saw the arrest of 107 people and the temporary closure of three newspapers in 1987.

Initially, eleven people were arrested, comprising mainly the organisers. They were picked up as soon as the delegation started walking towards the detention camp to submit a memorandum expressing concern over the welfare and health of the ISA detainees.

The remaining 37 people were apparently picked up by police from a nearby restaurant. Several policemen reportedly marched into the shop, shouted and demanded people surrender their identity cards and later arrested them. Youths who came by with their bicycles and motorcycles to purchase sundries were shouted at and told to "get lost". Spouses and children were prevented from seeing their family members who had been roughly taken away and pushed into police trucks.

All 48 were released with police bail after being detained for nearly 12 hours. All were required to report to the Taiping Police Station, and to date their bail has been extended several times. Up to November 15, no legal action had been taken.

Selective ban on gatherings

In addition to anti-ISA gatherings, gatherings and ceramah, organised by members and leaders of the Parti Islam Se-Malaysia (PAS) were also busted. On June 28, ten PAS Youth members were arrested in Pokok Sena, Kedah for putting up banners and flags in preparation for the Kedah PAS golden jubilee celebrations in July. On June 30, 37 PAS members were held by police for participating in a marathon, without a police permit, also in Kedah. They were released the same night on police bail.

Kuala Kedah MP Mohamad Sabu and two other PAS members were arrested by police for allegedly refusing to disperse and call off an opposition rally in Kampung Chenor, Jelebu. All three were later released on police bail.

At the end of July, police froze the issuing of permits on all ceramah nationwide on the ground that activities that could undermine national security needed to be checked. On August 3, Prime Minister Dr Mahathir Mohamad said that although there was freedom of speech in the country 'there were limits'. The ban on ceramah's were justified, according to him as PAS' politics could 'rock the nation's stability and incite hatred could not be allowed".

However, the ban seemed to be applied selectively, depending on who the organisers were and what the issue was.

For example, an open gathering held by the Selangor State Chief Minister in Ampang in July did not receive any intervention from police. Yet, several weeks later on 8 August, when PAS members held a political speech in the same area, they were 'met' by a hundred police personnel,

road blocks and harassment. The event had to be held inside a private house and the use of a loud-hailer was not allowed. The police sent water cannons and FRU (Federal Reserve Unit) to surround the house. Consequently, only 150 people turned up for the speech. No arrests were made.

The US decision to wage war on Afghanistan saw a spate of gatherings organised by civil-society groups protesting the decision. These gatherings were allowed to continue, albeit under heavy police presence. Yet, a 2500-strong gathering in front of the US Embassy on 12 October comprising mainly PAS supporters was dispersed with chemical-laden water cannons.

On October 18, IGP Norian Mai said the police would no longer allow demonstrations opposing the bombing of Afghanistan, but would not stop any group that from handing over protest memoranda provided it was done in an 'orderly manner and did not involve demonstrations'.

As the protests continued, so did the arrests. On October 19, a demonstration of nearly 1,000 people gathered in front of Al-Irfan Mosque in Alor Setar, Kedah after Friday prayers ended with five people arrested while on October 26, two people were arrested during a peaceful gathering of 500 people at the Sultan Ahmad Shah 1 Mosque, in Kuantan, Pahang, against the continued attacks on Afghanistan.

Arrests at assemblies

Throughout the third and fourth quarter, Suaram documented at least 24 assemblies and gatherings that were dispersed, resulting in at least 237 arrests. The tables below show details of some of the arrests in .

Table: Arrests at political assemblies and ceramah

| Date of Arrest | State | Number arrested | Background | Charge | Status |
|----------------|-----------------|---|---|---|--|
| July 12 | Kedah | 3 | Police fired tear gas at PAS ceramah in in Markas PAS Kampung Tualang Pokok Sena. | | Released |
| July 15 | Perak | 41 | At anti-ISA demonstration outside Kamunting Detention Centre in Taiping, Perak. | | 37 charged. Trial set for next year. |
| July 16 | Negeri Sembilan | 7 (including Kuala Kedah MP Mohamad Sabu) | Allegedly refused to disperse and call off an opposition rally in Kampung Chenor, Jelebu. | All were charged under Section 27(5)(a) of the Police Act, 1967 Mohd. Sabu faces additional charges under Section 27(4) for refusing to disperse. | Hearing fixed for next year. |
| July 19 | Kedah | 18 | Detained in Kubang Pasu for attending PAS ceramah. Massive police forces were present and tear gas was used. | N/A | N/A |
| July 23 | Johor | 8 (including PAS Vice Youth leader Sala-huddin Ayub) | At political ceramah organized by PAS in Batu Pahat. Police reported to have behaved brutally. They were accused of kicking and slashing civilians, including the speakers. | N/A | Trial on 20 August |
| July 29 | Johor | 7 | PAS supporters detained for 'obstructing police from carrying out their duties' at a ceramah at Taman Anjaria in Kulai. | N/A | Released |
| July 29 | Johor | 6 (including PAS Vice Youth leader, Sala-huddin Ayub) | Arrested during a PAS political speech in Markas PAS Parit Ismail, Benut. Police first ordered the speech to be held inside the building compound. The organiser obeyed. Then the police ordered no loudspeaker be used. Again the organiser obeyed. Suddenly the police raided and made arrests. | N/A | Claimed trial at Pontian Magistrate court on 18 August |
| July 31 | Selangor | 2 | Police crackdown on 33 gatherings organised by PAS | N/A | N/A |

| | | | | | |
|--------|----------|--|--|--|---|
| | | | in various parts of Selangor. The two reported arrested were in Sabak Bernam. | | |
| Aug 8 | Kedah | 3 | PAS members arrested in the Pokok Sena constituency for allegedly organising an illegal political speech in Kulim. Over 100 police personnel and FRU reportedly broke into a school compound and stopped the function. The political speech was among 13 political gatherings organised concurrently by PAS throughout Kedah. | N/A | N/A |
| Aug 12 | Selangor | 1 | Convoy of about 200 cars on their way to the Sungai Buloh prison to celebrate jailed ex-deputy prime minister Anwar Ibrahim's 54th birthday were blocked by police. Police vehicles, including water cannons dispersed the crowd. One supporter was dragged into a police truck. Police refused to reveal any details of the arrest and shouted at reporters who tried to enquire. | Sect. 21, Small Offences in the Penal Code | Charged in court the next day. Pled guilty, liable for a fine or not more than RM25 or 14 days. The court only issued warning letter. |
| Aug 19 | Melaka | 9 | Participants of a 'Merdeka Walk' in Melaka organized by PKN to celebrate the upcoming National Day were arrested. Despite the arrests, 50 participants proceeded with the event, a walk of three kilometres. More than 100 police personnel and several Federal Reserve Unit (FRU) trucks and water cannons were stationed along the route. | N/A | N/A |
| Aug 22 | Johor | 22 (including PAS Youth leaders Salahuddin Ayub and Mazlan | At PAS ceramah in Taman Dahlia near Johor Bharu. More than 100 FRU and police personnel were reported to have surrounded the venue. The organiser lodged a | N/A | All claimed trial on 6th September |

| | | | | | |
|--------|--------------|--|--|-----|---|
| | | Allman) | report against the police for entering party premises without a warrant and for failing to give warning before arresting people. | | |
| Aug 25 | Johor | 30 | PAS ceramah in Parit Sem-padan, Batu Pahat | N/A | Charged in court on the 26th of Sept |
| Aug 25 | Johor | 4 | PAS ceramah in Sri Gading, Batu Pahat. | N/A | N/A |
| Aug 25 | Johor | 20 | PAS ceramah in Taman Universiti, Skudai | N/A | N/A |
| Aug 25 | Johor | 7 | PAS ceramah in Taman Muhibbah, Senai. | N/A | N/A |
| Aug 31 | Kuala Lumpur | 2 | Peaceful gathering of hundreds people in Merdeka Square on the National Day. | N/A | N/A |
| Sept 5 | Johor | 6 (including PAS state deputy Youth Chief Zulkifli Ahmad and Keadilan Youth leader Gobalakrishnan) | Political ceramah at Taman Universiti, Johor Bharu organised by PKN and PAS | N/A | Claimed trial in magistrate's court on 13 Sept. |
| Sept 6 | Johor | 4 (including Gobalakrishnan) | Crackdown on political ceramah at Kampung Plentong, Tebrau organised by Keadilan and PAS. | N/A | Charged in magistrate's court on 20 September |
| Total | | 190 arrests | | | |

Arrests at gatherings organised by civil society groups.

In addition to the above arrests, the following were also documented:

- Parti Sosialis Malaysia (PSM) social activist V. Selvam was also arrested in Klang on 20 July while protesting that police had earlier kicked a plantation worker involved in a land dispute. He was eventually charged for uttering abusive words about the police.
- On 3 October, police detained two men after they and several others

tried to defend their homes from being demolishing by Ipoh city council officials.

- On October 16, police detained social activist Ong Boon Keong and house owner, Lee Teik Hock, for gathering in front of the Penang State Assembly hall to highlight housing problems faced by those affected by the repeal of the Rent Control Act. Both were released several hours later.

Police Harassment of Indoor and Cultural Functions

Social gatherings, cultural events and indoor functions also faced harassment - some even had police permits!

- On 2 January, police stopped a Kuala Lumpur book launch and seminar of more than 1,000 former Labour Party members held at a restaurant. The book to be launched was an historical account of the party, disbanded three decades ago. Invited speakers were prevented from speaking.
- A multi-cultural festival on 20 January, organised by the opposition, was inundated by police, even though the event was given a police permit. Political speeches were forcibly prevented and cultural shows such as the beating of welcome drums and a Chinese lion dance were stopped.
- In March, the police stopped a PAS ceramah in Kuching, Sarawak, on the grounds that it did not have a police permit. The organisers, however, accused the police of withdrawing the permit at the last minute.

- On 21 March, police ordered a group of Tunku Abdul Rahman (TAR) College students to stop a signature campaign at a restaurant in Taman Bunga Raya, Setapak, in support of the controversial SJK (C) Damansara school. They managed to garner 200 signatures before police arrived an hour later. Spokesperson for student group TAR College Progressive Movement, Ng Chong Soon, complained that three police officers questioned group members for almost 20 minutes, threatening them and unsuccessfully trying to confiscate their ICs.
- On March 27, four activists (one Burmese) were arrested for gate-crashing a Burmese embassy reception celebrating Myanmar Armed Forces Day, at the Nikko Hotel in Kuala Lumpur. They removed their shirts to reveal t-shirts bearing pictures of Burmese pro-democracy leader, Aung San Suu Kyi. The Malaysians were released the next day while Peter Hee Man, an ethnic Chin, continued to be held by the police and was later sent to a detention camp for illegal immigrants. Various human rights organisations raised concerns over Hee Man's liberty if deported back to Burma and sought UNHCR intervention. Several months later, Hee Man managed to get UNHCR recognition as a refugee and was deported to a third country.
- On August 12, police disturbed and harassed DAP's 35th anniversary dinner in a restaurant in Bukit Beruang, Malacca. Several uniformed and plainclothes police personnel moved into the restaurant, where more than 600 DAP members and supporters had gathered, while its president Lim Kit Siang was addressing the crowd. The police ordered the speech to stop immediately as the permit issued restricted DAP leaders from giving any political speeches. More than 20 police personnel, led by the Melaka Tengah OCPD ACP Mohamed Salim Abbas, continued to be present at the private function, monitoring

the gathering between 7.30pm and 11.30pm when it ended. The Melaka Tengah Police confirmed the next day that DAP was being investigated for organising an illegal assembly.

- An indoor Keadilan function also faced harassment by the police on September 15. The police sealed off the party's premises in Puchong, Selangor prior to its president Dr Wan Azizah Wan Ismail's arrival. Azizah slammed the police for reacting excessively, as no permit was required for a function held inside the party's own premises. When she demanded an explanation from the police for their abrupt action, the Petaling Jaya police chief SAC Sheikh Mustapha Sheikh Ahmad said the crowd at the premises had become too large by the time Azizah arrived and that he feared a 'security hazard'.
- The police also harassed public functions in the run up to the Sarawak 8th State Election. On September 18, the police harassed opposition campaigners and 'frightened' away supporters at a political ceramah in Sarikei, Sarawak, by taking photographs of those attending the ceramah and taking down their names. The campaigners were also told to hold to close all windows and doors. A police officer was reported as saying that Parti Keadilan Nasional was 'new' in Sarawak and any ceramah organised by the party 'may create problems'.

Court Trials

- Six PKN members (including Tian Chua and Mohd Ezam Mohd Noor) and three PAS members were charged in January for stopping buses allegedly ferrying 'phantom' voters to a by-election in Kedah. The trial continued in December 2001.

- PAS member Dzulkefly Ahmad was charged in February for allegedly organising an illegal gathering in Johor in August 2000.
- On February 14, Keadilan vice-president Tian Chua was arrested and released later that evening for failing to turn up in court on January 12. He was jointly charged with two others for participating in an illegal assembly in Kampung Baru, Kuala Lumpur, in December 1998. Tian Chua is facing eight separate charges of 'illegal assembly' and 'rioting' over the past two years.
- On April 13, Kuala Lumpur High Court judge Zulkefli Ahmad Makinudin ordered Keadilan leader, Goh Keat Peng, to be discharged not amounting to acquittal, of illegal assembly, after he found that the charge framed against Goh under Section 27 (5) of the Police Act was not specific enough and therefore "defective and bad in law". Goh had claimed trial at a magistrate's court on October 5, 1999, and was alleged to have been present at an unlawful assembly in the compound of the National Mosque on Sept 19, 1999. This ruling had widespread implications, as previously, the police have charged under Section 27 of the Police Act without specifying the offence committed.
- On the same day also, the same judge discharged not amounting to acquittal five other reformasi activists (Tian Chua, Mohd Ezam, Youth leader Lokman Nor Adam, supreme council member Saari Sungib, party leader Dr Badrul Amin Bahron and film-maker Hishamuddin Rais). Later, on July 18, the Magistrate's Court recharged these activists with the same offence. Their cases were expected to be jointly heard with the 24 others arrested in 1999 protesting over allegations that Anwar Ibrahim had been poisoned with arsenic while in detention, as well as against the new restrictions imposed on PAS organ

Harakah. They were recharged for unlawful assembly on August 20. It was understood that the recharge was to allow prosecutors to make amendments to the original charges, to 'specify the nature of the offences'. Twenty of them were recharged.

- Similarly, the Sessions Court on May 14, discharged not amounting to acquittal Tian Chua and reformasi activist Abdul Malek Hussin of charges of illegal assembly two years ago on the same grounds. Abdul Malek and seven others who were allegedly involved in a reformasi gathering on March 1999, were also discharged not amounting to an acquittal by a magistrate's court in Kuala Lumpur.
- The hearing of Keadilan member Che Bali Mydin for allegedly confining Barisan Nasional supporters in buses during the Lunas by-election was postponed to July 9 by the Kulim Magistrate's court.
- On July 18, the Shah Alam Magistrate Court discharged, not amounting to acquittal, six people charged for illegal assembly while trying to prevent 82 houses in Kampung Sg. Nipah from being demolished in 1999, after the Deputy Public Prosecutor failed to produce the charge sheet specifying the offences. The six were arrested along with 55 others on the 28 June 1999 when they tried to stop 82 families from being forcibly evicted by the State Government in order to facilitate a luxury condominium project belonging to the brother of UMNO Vice President Muhammad Taib.
- On July 19, six university students and an assistant consultant arrested in early June for participating in an anti-ISA demonstration in front of the National Mosque were charged in court. They were charged under the Section 27(5)(a) of the Police Act. Their trial was fixed for Oct 15 this year and was later postponed to December 19. By early

August, all six students had been expelled from their respective universities.

- On July 18, 11 people, including Tian Chua, claimed trial to a charge of being found in an unlawful assembly in the compound of Masjid Negara on March 11, this year. The magistrate's court fixed January 9, 2002 for re-mention of the case.
- On July 20, PSM/ social activist, Selvam was charged under Section 14 of the Police Act in Klang Magistrate Court for uttering the phrase, " Polis Besarkah!" ("Is the police so grand?") at a police officer on 22 June during a land dispute.
- On August 20, State Assemblyman Azmin Ali, Abdul Ghani, cartoonist Zulkiflee Anuar @ Zunar and three others were charged for illegal assembly at Jalan Tun Tan Cheng Lok on Sept 11, 1999.
- On October 3, the trial of 41 people arrested in July for staging an anti-ISA demonstration outside Kamunting Camp was postponed to January 2002.
- On October 9, the Kuala Lumpur magistrates' court discharged, not amounting to an acquittal, Ezam Mohd Nor for allegedly taking part in an unlawful assembly in Kampung Pasir, Lembah Pantai, Kuala Lumpur, on April 10 after police failed to submit the order to produce the defendant in court.

Suhakam Inquiry and Report

In January, Suhakam's inquiry into abuse of police powers at the No-

vember 5, 2000 KESAS Highway 'gathering', heard for the first time from experts that tear gas canisters (560-CS) fired directly at a person would constitute abuse of the weapon as it can cause serious injury or even death. Police also admitted to the use of "liquid gas mixed with water" to disperse demonstrators.

Shaiful Khairy Kamarulzaman, bodyguard for opposition leader, Dr. Wan Azizah, testified in December 2000 that he was hit by a tear gas canister fired directly at him. He subsequently spent two days in the intensive care unit for a fractured skull.

A high-ranking police officer, Karn Kan Peng, also told the Commission inquiry in February that the police task was "total denial and domination" to prevent the opposition-organised '100,000 People's Gathering' from taking place last November. The inquiry asked Karn why no police action was taken to stop an earlier demonstration by the villagers who were against the rally, he replied, "We cannot answer that question."

The Prime Minister criticised Suhakam's report for being influenced by 'Western thinking and not being in the interest of the nation'. Inspector General of Police, Norian Mai gave the police force's first official response and said that the Suhakam report was biased and that the police were not taking it very seriously.

Suhakam Intervention

During the year, Suhakam also released two reports which appeared to irk the government, one of which sparked a new round of debate on the issue of freedom of assembly.

On 3 August, Suhakam released its 32-page report entitled "Freedom of Assembly", calling for amendments to regulations and legislation pertaining to public assemblies. It also stated that freedom of assembly does not necessarily disrupt peace or lead to public disorder and called for greater freedom of expression, including having British-style speakers' corners and a relaxing of police control on rallies.

Immediately, the Prime Minister criticised Suhakam for 'ignoring national security concerns'.

"Suhakam seems to be setting up standards of their own.... It is just one group of people but the majority of the people, their interests have to be taken into consideration. They are free to give suggestions but it doesn't mean we have to follow them," said Dr Mahathir. Three days later, Rais Yatim told Suhakam to "stick to its job and not suggest things already within the law".

Following that, Malaysia marked its human rights day on 9 September with a strong reminder to activists that it will not allow public assemblies without police permission.

In a ceremony organised by Suhakam in Kuala Lumpur, Home Minister Abdullah Ahmad Badawi said the government viewed that it was not suitable, under the current socio-political conditions, to hold gatherings without prior police approval.

"The proposals are based on liberal thinking on basic rights which place the right of the individual over the interest of the majority, and as a responsible government, the interest of the majority must be safeguarded," he was quoted as saying by the Bernama news agency.

Freedom of Expression

Summary

Throughout 2001, the government continued to frustrate every channel and/or platform that could provide alternative views. The media, both print and electronic, local and international, saw further curtailment and threats.

The publisher of two major Chinese dailies was officially sold to the investment arm of Malaysian Chinese Association (MCA), the second largest political party in the ruling coalition. The sale, which went ahead amidst opposition both from within the party and from the Chinese community at large, was viewed by many as the end to the last bastion of what had thus far been a freer press. A month later, Malaysians were once again taken aback by the resignation of the director of Utusan Melayu.

In addition, internet publications received dire warnings and threats that the government would "unleash another set of missiles" to address the 'abuses' in cyberspace, while foreign magazines critical of the Malaysia government or the Prime Minister faced a new form of censure this year - bans and massive delays, attributed to 'bureaucratic delays', in public distribution of selected editions.

Publishing houses were raided with many political tabloids being confiscated, and the blitz against producers and sellers of pirated movies and pornography on video compact discs (VCDs) was also extended to include sale of material with political content.

Voices of dissent and concern also faced various forms of curtailment and reprimand, while crackdowns and punitive measures taken against university students for speaking up increased tremendously in 2001.

The sustained squeeze on the freedom of expression in the country earned Prime Minister Mahathir Mohamad a spot on the 'Top 10 Enemies of the Press' list for the third consecutive year for 2001. The Committee to Protect Journalists (CPJ), an international media monitoring body, said in statement that Mahathir was listed because he was "openly contemptuous of press freedom" and had manipulated Malaysian media to "cement his hold on power".

Mahathir was also identified as one of the 39 "predators of press freedom" in the latest list released by international media watchdog Reporters Sans Frontieres. RSF added his name, along with seven others, on the grounds that he had curbed press freedom by rewriting the Printing Presses and Publications Act (PPPA) as well as using the Internal Security Act (ISA) to bolster his campaign against opposition media.

Freedom of the Press

The press faced various forms of controls and sanctions during the year.

- **Sale of press to political party**

On May 28, Nanyang Press Sdn Bhd, the publisher of two major Chinese dailies, Nanyang Siang Pau and China Press was officially sold, to the Malaysian Chinese Association (MCA), the second largest political party in the ruling coalition. For many, the sale was the final nail for press freedom in the country, as all English and Malay dailies are currently owned by the government or allied businessmen. The MCA also gained

control of more than 17 other Mandarin magazines and publications.

Despite opposition from within the party and the Chinese community at large, the MCA went ahead to purchase Nanyang Press Holdings following an Extraordinary General Meeting (EGM) held on May 24 which voted in favour of the purchase. Four days later, a number of top managers and key editors of Nanyang were ordered to vacate their offices, amongst them the group managing director Wong Ah Lek, editor-in-chief Wong Kam Hor, deputy editor-in-chief Looi Chee Kien, group executive director Kou Yok Liong, managing editor Ng Yen Fah and senior feature writer Chung Bing Jiun.

The fears that the papers would cower to pressure were soon realised when on September 18, pig farmers from Bukit Pelanduk alleged that two major Chinese newspapers - Nanyang Siang Pau and Sin Chew Jit Poh - refused to publish an advertisement highlighting the plight of pig farmers affected by the deadly 1999 Nipah virus outbreak.

On August 20, Malaysiakini reported that the Prime Minister's newly-appointed Chinese aide Matthias Chang had met with top editors of Sin Chew Jit Poh and China Press, and later with Nanyang Siang Pau. He encouraged the Chinese media to resolve issues sensitive to the community 'directly with him instead of highlighting them in their newspapers'.

- **Blanket ban on selected issues**

Parallel to this was the blanket ban ruling on reporting on certain 'controversial' issues, such as the Damansara School issue, and some civil society groups which are critical on these issues.

On October 2, the United Chinese School Committees Association of

Malaysia, also known as Dong Jong, complained that the Chinese print media, since the Nanyang takeover, have apparently been playing down Chinese education issues, in particular the Vision School project. The Chinese media has apparently blocked news regarding the Vision Schools, a government project that has met strong objections from the Chinese community out.

Also in October, the Youth Section for Selangor Chinese Assembly Hall (SCAH) and Malaysian Youth and Students Movement (Dema) who had organised talks and press statements on human rights, education and issues affecting the Chinese community, voiced concern over the declining news coverage on such issues. They claimed their news had been downplayed and "put aside" by Chinese dailies since the Nanyang takeover.

In November, Nanyang removed the opinion columns in its Sunday supplement. The supplement, Nanyang Saloon, was renowned for its in-depth interviews with intellectuals, activists and politicians, including opposition leaders, on a wide range of current issues such as reformasi and Chinese schools in Malaysia.

The statement made by Parit Sulong MP (BN) Ruhanie Ahmad on 31 October must take the cake. The New Straits Times (NST), a paper that is well-known for its support of the government, was accused of becoming a tool of the Opposition. The paper carried an article highlighting the poor attendance of MPs in Parliament, and apparently in his opinion, the NST was a DAP newspaper out to run down BN MPs!

- **Internet controls**

In March, Deputy Inspector-General of Police (IGP) Jamil Johari said police would monitor and investigate websites "instigating the people to take

part in street demonstrations or promoting civil disobedience". The popular internet news portal Malaysiakini.com was warned that 'action against them, if they were found to be spreading lies and provoking racial tension in the country'.

The government also claimed that it would "unleash another set of missiles" on Internet publications which threaten the country's security in view of the mushrooming internet publications which were spreading "hate messages, seditious writings and e-mail advocating religious dissent and others". (July 5, Malaysiakini). Current provisions under the PPPA apparently were not sufficient to cover the Internet.

Minister in the Prime Minister's Department, Rais Yatim, also urged the Attorney General's chambers to update the Penal Code and the Evidence Act to deal with "seditious writing, e-mails inciting racial dissension and matters of internal security and public order over the Net" (Malaysiakini July 6). He added that IT organisations would soon be required to provide law enforcement agencies with information on cyber crimes under an amendment to the Evidence Act 1950. On July 22, Chia Kwang Chye, parliamentary secretary to the Energy, Communications and Multimedia Ministry also informed the public that the government was in the process of formulating a content code to check the 'mushrooming anti-government internet sites'.

In addition to the threats and warnings issued, Malaysiakini also faced other forms of harassment. The government broadcasting station, Radio Televisyen Malaysia (RTM) repeatedly attacked Malaysiakini for allegedly receiving funds from international financier, George Soros. The news items, which also attacked the credibility of the online paper were, however, refuted by Malaysiakini.

To date, web-based news organisations are also unable to obtain press cards. The Sun, a national English daily, quoted Deputy Home Minister Chor Chee Heung as saying that Malaysiakini was barred from attending government press conferences as it was too critical of the government. He later denied making the statement. The Star, another daily, also reported Chor as saying that the journalists did not have proper press accreditations and advising government agencies to ensure that press conferences are attended only by accredited media.

The Coalition of Independent Media Activists (KAMI) said the ban on Malaysiakini journalists was a "backdoor" route to Internet censorship. This follows earlier actions to shut down other independent publications such as the Eksklusif, Detik and Al-Wasilah magazines.

- **Asiaweek issues banned and delayed**

In June, three issues of Asiaweek were held back and not allowed into circulation. The June 15 issue featured an article on Dr Mahathir headlined 'On his own: Daim's departure ends one of Asia's most effective political alliances - and begins an uncertain era for Mahathir'. The double issue of June 8 featured its annual list of 50 most powerful Asians which saw several Malaysians rank ahead of Dr. Mahathir. Among them were PAS deputy president and Terengganu Menteri Besar Abdul Hadi Awang, Malaysiakini founders, business mogul T. Ananda Krishnan, and United Nations special envoy to Burma Razali Ismail.

After more than a month, the Home Ministry finally broke its silence on why the 'punishment' had been meted out to Asiaweek. The delay in circulation was apparently due to 'mistakes' the international weekly magazine had made. No further elaboration was made on the subject.

Asiaweek continued to experience delays in its distribution in the third quarter of the year as the Home Ministry's censors took weeks to clear the magazines. Previously, this would take only a day.

- **Utusan Melayu director resigns**

On June 6, Utusan Melayu director, Raja Ahmad Aminullah Raja Abdullah, resigned from the government-controlled media group in response to pressure to apologise to the Prime Minister. Raja Ahmad had initiated an appeal letter which was signed by 107 high-profile individuals, comprising medical specialists, senior lawyers, artists, academicians, filmmakers, writers, actors and professionals from various fields. The letter essentially pleaded for the "government's goodwill, compassion as well as a humanitarian response towards a citizen [Anwar] who had previously contributed his services to the country" and to allow him to seek medical treatment of his choice.

In his letter of resignation of June 6, Raja Ahmad indicated that he had been pressured to apologise to the prime minister. The chagrined Raja Ahmad stated that he found it strange that a well-meaning appeal letter, could invite such 'anger', and that he would not apologise to the prime minister just so he could retain his position as a director of the company. He added that he was "incapable of continually stomaching the inhuman and inhumane treatment of a senior leader of our country" and that "Between apologisingand having to resign from the board, my answer is clear and unequivocal. I hereby tender my resignation".

Raids

During the year, the number of raids on establishments and vendors intensified, with the targets being primarily material sympathetic to the

opposition parties. Even official state and party organs, as well as other publications with permits, were also targeted.

In February, police detained three vendors and seized hundreds of audio-cassettes and VCDs and from February 14 onwards, all alternative publications were banned from being sold in several shopping complexes and in all state administrative buildings throughout Selangor. The PKNS (Selangor State Development Agency) had issued the order, stating that individuals were "totally banned from selling or distributing any materials and printed publications from opposition". According to the notice, those who violated the regulation would face either a compound fine of RM500, having the materials confiscated or both.

On June 13, more than 1000 political books were confiscated during a raid conducted by the Home Ministry Office in Johor Baru. These books were alleged to contain elements that were 'detrimental to racial harmony'. Independent media workers and NGOs criticised the move and demanded the Home Minister charge the publisher and writers in open court.

On August 5, the Home Minister conducted a massive raid in the city of Kota Bharu, state capital of opposition PAS-ruled Kelantan, confiscating opposition publications from stalls and shops.

Interestingly, political tabloids with legal permits such as Semasa, Cabaran and Bebas were confiscated. Even the official newspaper of the Kelantan State Government, Warkah, was among the confiscated raided items. A PAS public relations officer was harassed and detained for several hours before being released by the police after he tried to defend the stall workers. (Harakah August 6)

The Independent Media Activist Group (KAMI), a media NGO, condemned the operation as 'politically motivated'.

Deputy Home Minister Chor Chee Heung said that the blitz against producers and pedlars of pirated movies and pornography on video compact discs (VCDs) had been extended to materials with political content (The Star, August 12).

Meanwhile, editor of Harakah, Zulkifli Sulong reported that on August 13, twenty officials from the Home Ministry and police conducted a 30-minute search without any search warrant. A Harakah staff member was also harassed and threatened with arrest during the raid over an advertisement in the newspaper of VCDs for sale.

On the same day, in Banting, Selangor, the police arrested and charged two vendors under the PPPA for selling publications without proper permits, which upon conviction, carries the penalty of three years' jail maximum or RM 20,000 fine or both. Apparently, when several people intervened, the officer in charge replied that "all publications that report on Anwar issues are not allowed". In that operation, four publications with legal permits were confiscated, namely Cabaran, Semasa, Bebas and Suara PRM (official organ for opposition party Party Rakyat Malaysia).

On Aug 17, Deputy Home Minister Zainal Abidin Zin said that all producers of VCDs, videotapes and cassettes on political ceramah must send their materials to the Malaysian Film Censorship Board for vetting. Furthermore clearance must be obtained to sell their products to the public which under the Film Act (Censorship) 1952. He warned that VCDs, videotapes and cassettes without a certificate from the board would be seized.

Publication Banned

In another incident, the Home Minister banned a book entitled Pengakuan Paderi Melayu Kristiankan Beribu-ribu Orang Melayu (Malay Priest Confesses To Having Converted Thousands of Malays to Christianity) for 'being detrimental to public order'.

Curtailment of Speech

After several months of intense harassment from the government and government-backed NGOs and mass-media, Suqiu, or the Malaysian Election Appeals lobby group, decided in January 2001 to set aside seven contentious points which touched on the Malay affirmative action policies. Suqiu was formed in 1999 during the last General Elections as a citizen's group advocating human rights, equality and reform. The organisation's appeal was endorsed by more than 2000 associations, guilds and NGOs.

Politicians were also warned that their speeches were being scrutinised for 'elements of sedition and incitement' which could be adduced as evidence in court. Minister in the Prime Minister's Department Dr Rais Yatim also told Parliament on November 6 that there was also a proposal for a Code of Ethics for Politicians to govern their conduct.

Those in the teaching profession were not spared. Professor Dr. Chia Oai Peng, of the Literature and Social Science Faculty, University of Malaya was ordered to provide a show cause letter for e-mail postings on the Damansara Chinese school issue in an internet discussion group. University Vice-Chancellor Professor Dr Anuar Zaini Md Zain alleged that Chia had touched on government policies, hence violating the Statu-

tory Bodies Act 2000 (Disciplinary and Surcharge). The Act stipulates that a university officer cannot make public statements, whether oral or written, that criticise government policies without written approval from the education minister. In addition, an officer cannot make any public statements that can bring embarrassment to the government.

On July 24, Dr Mahathir told the press that religious teachers who support PAS would be given counseling on the need to disseminate proper religious education among students. (The Star, July 25). He accused some teachers of poisoning minds of students and inciting hatred against the government through an exam question.

On August 9, a secondary school teacher, Shamsukamal Abu Bakar was charged with sedition for setting a question for a Bahasa Melayu test for Form Two students with allegedly anti-government content. The prosecution said that the test question, which asked students to prepare a speech on the topic 'Justice is eroding and lacking in the judiciary system of Malaysia', had a tendency to 'spread hatred against the Government's administration and the judiciary'. The Kuala Terengganu Session Court fixed December 4 as the date for reserve judgment. Shamsukamal is liable for a fine of up to RM5,000 or three years' jail, or both, if found guilty.

Harakahdaily also reported on September 4 that a mathematics teacher in Kedah was transferred after he was alleged of inciting hatred against the government through an exam question.

Religion and politics

In June, Home Minister Abdullah Ahmad Badawi commented that dakwah

groups should remain non-partisan. Negeri Sembilan Chief Minister Mohamed Isa Abdul Samad further warned that the state religious department would act against those who talk about partisan politics "while preaching Islamic teachings to the community when sufficient evidence has been collected".

Harakahdaily reported on August 3 that the Selangor State Religious Department (JAIS) had imposed a ban on Terengganu State Chief Minister Abdul Hadi Awang and Kelantan State Chief Minister Nik Aziz, from giving any speeches, praying or religious teaching in all the mosques and 'suraus' in Selangor. It was learned that these two PAS leaders were among ten people in the black list produced by the JAIS department.

Court Trials

During the year, several Parti Keadilan Nasional (PKN) office bearers were charged under the Sedition Act for various alleged offences.

- Former Vice-president of PKN, Marina Yusoff, was fined RM 5,000 by the Penang Sessions Court in February 2002 after being found guilty of 'sedition'. She had apparently said, during one of her public speeches, that ethnic Malays had initiated the killings of Malaysian Chinese in the bloody incident of May 13, 1969.
- In March, Mohd Ezam Mohd Nor, PKN youth chief, was arrested for 8 days and later charged under the Sedition Act over a statement he made, allegedly advocating the toppling of the Government through demonstrations. He was subsequently arrested a month later under the Internal Security Act (refer to section on Detentions Without Trial).

- On May 28, yet another PKN member, Azman Marjohan, Keadilan Youth branch leader, was arrested by the police, remanded for ten days and charged under the Sedition Act for 'uttering seditious words' at a political rally in Taiping.

August 13, High Court Judge Dr R.K. Nathan ordered two Harakah editors, Zulklifi Sulong and Muhamad Abdul Rahman Koya, and its printer Syarikat Prema, to pay freelance writer Abdul Khalid @ Khalid Jafri Bakar Shah RM200,000 in damages for having defamed him in an article published in 1999. Khalid, who wrote the controversial '50 Dalil Mengapa Anwar Tidak Boleh Jadi PM " (50 Reasons Why Anwar Cannot Become Prime Minister), had sued the defendants for defaming him in an article entitled "Malaysia Sweeps 10 Oscars". (August 14, The Star)

The judge, in his 43-page judgment, described the defendants' act as "an act of sensationalism solely motivated by a desire to boost the sale of the newspaper and to live off the ruin of the plaintiff's calling, pursuit and trade and the loss of his reputation."

On October 28, writer Ahmad Lutfi Othman was arrested by police and was taken to a police station in connection with a corruption allegation against the current Selangor State Chief Minister Mohd Khir Toyo. Around 50,000 copies of Lutfi's latest newspaper Memo11 were also confiscated.

The sedition charges against lawyer Karpal Singh over remarks he made in court while defending former deputy prime minister Anwar Ibrahim were heard on October 16. Karpal, who is also deputy chairman of the DAP, was charged in January 2000 after telling the court that traces of arsenic had been found in Anwar's blood and he suspected that "people in high places" may have been trying to poison him. Amnesty International and the Democratic Action Party made last minute pleas for the

Attorney General's (A-G) Chambers to drop the charges and a number of international observers also attended the trial. High Court Judge S. Augustine Paul, however, postponed the trial to January 14 2002.

Freedom of Association

This year saw a general clamping down on freedom of association, with both organisations and individuals feeling the effect of oppressive legislation. Significantly, it saw the first challenge to clauses in the Legal Professions Act which serve to restrict the activities of office holders in the Bar Council and its committees. The court case continued into 2002.

For non-governmental organisations, changes to the Registration of Businesses Act had far-reaching implications. The government passed amendments allowing it to de-register businesses if it finds their activities to be detrimental to the nation. As many NGOs find it difficult to register as a society, this move makes it more difficult for them to register, necessary in order to open bank accounts and for other administrative matters.

Threat of deregistration

On 27 October, Deputy Home Minister Chor Chee Heung warned that about half of the 91,179 societies and associations in Malaysia could be deregistered for failing to submit annual reports from as far back as 1995. Statistics revealed by the Home Minister in October also showed that there was an increase in the number of organisations deregistered by the Registrar of Societies from 2,366 in 1999 to 2,510 in 2000, a total of 4,876 organisations. The number of organisations and societies deregistered in 2001, however, is to date unavailable.

Difficulties in registration

Article 10 of the Federal Constitution guarantees the right of citizens to form associations. However, in practice, this often remains subject to the discretion of the Home Minister.

Parti Sosialis Malaysia

The Parti Sosialis Malaysia (PSM), for example, is still battling to be registered since its application on 30 April 1998 and appeal, seven months later, were rejected. PSM has also initiated a legal suit against the Home Minister for refusing to register it as a political party (refer to section on Judiciary).

Non-Government Organisations

The Registration of Societies Act allows for NGOs to be refused registration if they are to be “used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia”. It also empowers the Home Minister with complete discretion over declaring any society unlawful.

Difficulties in registering under the Societies the have led many NGOs to seek registration as companies or businesses.

This did not go unnoticed as on 19 July, the Registration of Businesses Act (ROB) were passed in Parliament, extending the powers of the Registrar of Businesses. The Registrar can now refuse registration of new businesses and can de-register those who carry out activities deemed

'detrimental to national security'. Businesses will also be required to register within a month of commencement. De facto Law Minister, Dr. Rais Yatim, said that the amendments to the Act were made to prevent NGOs being registered under the ROB.

On 23 July, he was quoted as saying, "If you want to be an NGO, you be an NGO. I believe that an NGO should not be confused to be a business entity, that is the principle behind it. But if you go beyond that, it is just a cumulative effort of saying a stifling effort is being made, which is not true."

The amendments have grave implications for the survival of NGOs and civil society initiatives in Malaysia and were part of a sustained critique against NGOs.

- Environmental groups and NGOs were strongly criticised by Dr Mahathir in June for protesting against the development of hydro-electric power plants in "poor countries which are energy-starved .
- On 24 July, Selangor Chief Minister Dr Mohd Khir Toyo accused NGOs of instigating squatters in Kampung Ampang Campuran against accepting its offer of low-cost homes. They were accused of 'provoking' the squatters to ask the State to provide houses free.
- On 25 July, Deputy Home Minister Chor told registered societies to show all funding sources, including those obtained overseas, in their annual financial statements submitted to the Registrar of Societies (ROS) for record purposes. Chor was reported as saying that the Government did not encourage registered societies, particularly political parties, to obtain money from overseas, even though such action was not against the law.

- Deputy Prime Minister Abdullah Ahmad Badawi, on 26 July, accused consumer bodies in Malaysia being anti-establishment groups, interested in “instigating people to reject government programs”.
- On 12 August, Foreign Minister Syed Hamid Albar warned that the Government was closely monitoring some NGOs which received overseas funding, to ensure they did not conduct “unhealthy activities which could threaten national security.”
- On 29 September, Parliamentary secretary Datuk Seri Abu Zahar Isnin told Parliament that the ROS was checking societies suspected of being linked to foreign associations and groups involved in activities that could be “detrimental to national security and unity”.
- On 8 November, Dr Rais Yatim took to task Malaysian human rights groups for allegedly failing to see the rampant violations against Afghanistan by the United States and its allies. Malaysian human rights groups was told not to focus on domestic matters alone, as there were many international violations.

Harassment of Suhakam

The effectiveness and restrictions on the Malaysian Human Rights Commission (Suhakam) are investigated in another chapter. However, below is a brief summary of particular incidents relating to freedom of association of the Commission.

Foreign Minister Syed Hamid said on 8 November that Suhakam, which falls under his ministry, may have to follow rules and guidelines set by

the government to 'streamline its investigation procedures and reports'. The minister said it was necessary 'to avoid confusion', citing an earlier incident when Suhakam tabled a report in Parliament without the knowledge of his Ministry.

Suaram criticised the proposal which was seen as further interference by the Executive. It was feared that it would further erode the Commission's independent role in protecting and promoting human rights.

Attacks on University students and academics

The freedom of association of students is severely restricted under the Universities and Universities Colleges Act (UUCA). However, this year saw these restrictions tightened and more stringently implemented. Recognising growing sentiments against the current government among younger adults since the 1998 ouster of Anwar Ibrahim, the government intensified attempts to curtail a budding student movement.

- On 6 February, Ministry of Education director-general Dr Abdul Shukor Abdullah, warned that they would not hesitate abolishing societies in schools, if they were deemed to be a threat to "peace, unity and harmony".
- However, the attack on universities was more sustained. Dr Mahathir, on several occasions, warned students to keep politics out of campuses. He accused the students of being involved in undesirable activities.
- Since July, mainstream newspapers have reported the alleged existence of 10 'underground' student groups, involved in anti-Internal

Security Act (ISA) protests. Students were also accused of burning down a main hall in University Malaya, but a Malay Mail report based on a leak at the Fire Department concluded that the accident was most likely due to a short circuit. The official report has not yet been released.

- On Aug 19, Deputy Education Minister Aziz Shamsuddin said some students were involved with the militant Kumpulan Mujahiddin Malaysia (KMM), while on Aug 22, Universiti Utara Malaysia (UUM) vice chancellor Prof Dr Ahmad Fawzi Mohd Basri alleged that an NGO was trying to influence students in the government universities to raise arms and to set up an Islamic State. Ahmad Fawzi further said that they had identified at least one lecturer involved in militant activities.
- In late August, University Technology Mara (UiTM) again took disciplinary action against 47 lecturers for alleged involvement in anti-government activities. One had their contract terminated, three others had their scholarships withdrawn while the remainder were transferred to remote campuses.
- On 3 September, Malay-language Utusan Malaysia alleged that there were around 2,500 students in the country's five main universities involved in militant movements. Due to the absurdly high number allegedly involved, the Education Minister had to refute the allegation.
- Dr Mahathir reiterated on 3 September that the government would sack university lecturers 'caught inciting students to act against the government'.

- On 8 September, Deputy Home Minister Chor warned that the government was in the process of identifying students, lecturers and teachers in secondary schools who allegedly instigated anti-government sentiment.
- On 19 September, Penang Deputy Chief Minister Dr Hilmi Yahya told the press that the state government had identified 44 academic staff members from USM who had been “inciting students against the government”. According to the report in the New Strait Times, thirty-two of those identified were said to be from the main campus in Minden, while 12 others were from a branch campus in Transkrian. In response, Associate Prof Wan Abdul Manan Wan Muda, who is also USM’s Academic and Administrative Staff Association president, said politicians should not make baseless allegations and turn academics into scapegoats to gain political mileage.

Amendment of Universities and University Colleges Act (UUCA)

Ruling party politicians continued their efforts to justify the tightening of UUCA, which were to be tabled in Parliament in October. The Prime Minister, Education Minister, Minister in the Prime Minister Department, the Pahang State Chief Minister and others attacked students and academicians.

Deputy Education Minister Datuk Abdul Aziz Shamsuddin was quoted on 17 July as saying, “This Act is not inadequate but certain sections need tightening so that the universities have more responsibility to control the situation because we want a peaceful and harmonious atmosphere.”

Crackdown on student associations

In May, USM barred students from a Chinese-language inter-varsity debate at Singapore's Nanyang Technological University. The Chair of the Chinese Language Society, Lee Yen Ting, issued a press statement claiming they could not get permission to participate due to 'red tape and discrimination'. Education Minister Musa Muhammad warned that action would be taken against student bodies making racially-motivated statements.

After barring its students from attending the debate, USM continued to harass the students. On 3 July, six students were charged in a disciplinary court for ignoring a gag order. Lee and the secretary general of the language society, Choo Chon Kai were found guilty of speaking to the media to complain about 'unreasonable treatment by the university' and fined RM200. Choo was also found guilty of selling anti-ISA badges on campus grounds and was to be sentenced following his final-year examinations later in the year. The university authorities, however, banned the six from exposing their punishment to anyone including the media.

On 2 August, the university authorities fined the remaining four students - Lin Khoon Phua, Ong Wee Ling, Hoo Kam Fong and Lim Gim Shin - RM150 each for taking part in the debate without prior permission from the university.

In September, USM further increased their level of suppression during the final examinations. On 4 September, two students were found guilty of protesting against a controversial government project, the proposed Vision Schools. No punishment has been fixed.

On 12 September the Chinese Language Society was asked to explain

their involvement in organising “anti-university” activities, being given a week to respond to the show-cause letter. Later that month, Lee was again brought before campus authorities for her alleged involvement in an ‘illegal assembly’ the previous year.

However, Chinese language movements were not the only focus of university scrutiny. To silence student Islamic associations, seen as closely associated with PAS, two universities dissolved Islamic associations with the broadest support on campus.

On 13 July, Universiti Utara Malaysia (UUM) investigated one of its student for alleged involvement in an illegal student organisation, known as ‘Ikatan Ikhwan Utara’.

On 8 September, University Technology of Malaysia (UTM) dissolved its PMI (Islamic Student Association). Likewise, UiTM dissolved its Entrepreneur Club and Student Intellectual Association (which have functions similar to the Islamic Student Association) a week earlier.

To further erode student movements, UTM slashed its campus Student Council Election campaigning period to three days.

Behavior contract (‘Aku Janji’)

In the middle of the year, as a way of controlling students, academics and civil servants, the government announced a behaviour contract, *Aku Janji* (‘I Pledge’). This has implications for the freedom of union activities, association with political parties and involvement in other organisations which may be classified as working ‘to the detriment of national security’.

On 17 July, Dr Mahathir said students and teaching staff in public universities and institutions of higher learning would be compelled to sign the agreement, which allows their expulsion if their performance was found to be unsatisfactory, or if they were involved in political activities. It was reported that he told lecturers to “leave if they are more interested in activities other than teaching.”

In October, the Director for Higher Institutions in the Education Ministry Professor Hassan Said confirmed that the behaviour contract would be compulsory for all students from the 2002/3 session. Dr Mahathir also said that all civil servants, including university lecturers, had to sign the pledge, reiterating that all university students must sign it as well. It is understood that 950,000 civil servants signed the pledge since Cabinet approved its enforcement on 3 October. Dr Rais Yatim was reported as saying that the move was to ensure that civil servants and university students did not get involved in “negative activities.”

Opposition Leader, Fadzil Mohd Noor criticised the move as “politically motivated’. Various quarters, including the usually docile civil servants’ union, Cuepacs, objected to the proposal.

On 13 October, Negeri Sembilan Chief Minister Mohamed Isa Abdul Samad said that all contract religious teachers in the state were now required to sign a ‘good behavior’ agreement. It is understood that all 1,300 contract religious teachers in the state must decide whether to sign the agreement or reject their employment contract. The pledge, according to Dr Rais Yatim would enable disciplinary action to be taken faster against supposedly ‘errant’ officers.

Crackdown on religious personnel, bodies and institutions

In Perak, a senior imam was issued a show-cause letter by the State Religious Affairs and Education Committee over his alleged involvement in politics. The imam, a Category 'A' officer, is believed to have been appointed a state committee member in an opposition political party. The State Religious Affairs and Education Committee chair Malek Hanafiah said that the contracts of 208 religious teachers were not renewed due to their political affiliation.

The Johor Religious Department (JAJ) in July issued an order to ban all Annual General Meeting and Executive Committee elections in mosques throughout Johor for three years in an effort to gain control of the mosques' administration. Following this order, all the posts in Johor mosques will be appointed directly by the State Religious Committee (Majlis Agama Islam Negeri Johor).

Musa Mohamad said on 12 September that the Attorney General is currently working on an existing law to restrict the establishment and operation of private religious schools. Currently all private religious schools are under the supervision of State Governments. It was reported that the amendment would allow the Federal Government to take over that supervisory power.

On 16 October, Dr Mahathir alleged that the educational network set up by PAS were being used to instill "feelings of hatred against the government" and that the government would monitor the activities carried out in these institutions.

On 19 October, he announced in Parliament, while tabling the 2002 National Budget, that allocations for religious schools whose preachings

“run contrary to the true teaching of Islam, such as hatred for other Muslims, rejecting brotherhood of Muslims and branding other Muslims as infidels and spreading slander”, would be terminated.

Others

On 22 August, the Kuala Lumpur High Court dismissed activist-lawyer Sivarasa Rasiah’s application for leave to apply for a declaration allowing him to retain a post in the Malaysian Bar Council, following his election as vice-president of Parti Rakyat Malaysia. The disqualification arose due to Section 46A of the Legal Profession Act 1976 which prevents elected Bar Council or committee members from holding any post in a political party, trade union or other organisations. Sivarasa appealed against the decision and sought to obtain the Appeal Court’s view on the possible violation of his fundamental rights and constitutional freedom. On 30 October, his application for an interim order to defer his disqualification from his council post was rejected (refer to section on Judiciary).

On 29 October, Human Resources Minister Dr Fong Chan Onn rejected the Malaysian Council of International Metal Workers Federation’s call on the Government to approve the setting up of an umbrella union body for more than 150,000 electronics workers. He said the government remains convinced that the time is not right for the setting up of an umbrella union body and that the workers have a good working environment.

Freedom of Movement

Peninsula-born activists banned from entering the East Malaysian state of Sarawak constituted the major violation of human rights in this area. However, continued harassment of the families of those detained under the Internal Security Act (ISA) became a focus when Mabel Au, fiancée of one of the detainees, was barred from entering the country. Mabel had previously been active both within and outside Malaysia in canvassing support for her fiancée's release.

Case of Tan Seng Hin, Chinese educationist expelled from Sarawak

On 6 January, Tan Seng Hin, was deported from Sarawak, with no reason given, and was barred from re-entering the state. Tan is a Chinese educationist who had been vocal in criticising the State Government on its education policy. He had been living in Sarawak with his wife and two children for the past 23 years.

Tan was the Miri Hainan Association representative on the board of a private Chinese school. He was among those fighting a recent push to change the medium of instruction for some subjects in Chinese private secondary schools from Chinese to English. The Chinese-dominated Sarawak United People's Party (SUPP), a member of the ruling coalition, has been advocating the change to enable students to enter the Miri campus of the Curtin University of Western Australia. Few papers carried news of the deportation.

Tan has since been actively seeking intervention to put pressure on the

Sarawak state government. In March, Sarawak Deputy Chief Minister George Chan denied that the deportation was due to political activities, but gave no other reason. On April 12, 30 NGOs and civil society organisations in Peninsular Malaysia released a joint press statement urging the state authorities review the decision. On September 15, Tan complained to the Malaysian Human Rights Commission (Suhakam) and sought their intervention. Suhakam Commissioner Dr Salleh Mohd Nor received Tan's report and promised to submit the report to the commission's Inquiries Investigations Committee. Tan filed an application to nullify the decision to cancel his entry permit in the Kuching High Court on September 26.

On September 23, four days before the Sarawak State Election, Tan was allowed back into the state. Twenty minutes later, immigration tried to intercept and deport him, but failed due to a large numbers of supporters present. Immigration sent a local police team to follow Tan's family, harassing them for the next two days, trying to trace Tan's whereabouts.

An application to stop the director of immigration interfering with his right to vote was dismissed by the Kuching High Court. Tan managed to hide until polling day and succeeded in casting his vote. Many human rights organisations voiced their concern over the threats to deport Tan before polling day, infringing his right as a legitimate voter in Miri.

Tan Seng Hin was again deported to Peninsula Malaysia on 29 September.

Restriction to freedom of movement of activists

Similar abuse of the State's autonomy regarding immigration has been

used on well-known activists and those vocally supporting the rights of indigenous communities and the environment. Sarawakians have either been denied renewal of their passports or their applications have been denied, with no reason given. Those from outside Sarawak have been blacklisted and are unable to enter the state.

NGO activists such as Chee Yoke Lin of Sahabat Alam Malaysia (Friends of the Earth or SAM) and Meenakshi Raman, legal adviser to the Consumer's Association of Penang (CAP) as well as several other NGO personnel from the Peninsula and Sabah are still refused entry into Sarawak.

Since the early 1990s, especially after the Rio Earth Summit, Sarawakian NGO personnel and community leaders such as Thomas Jalong of SAM, Jok Jau Evong of the Rumah Bawang Residential Association, Gara Jalong of the Long Geng Kenyah community, Raymond Abim of the Borneo Resource Institute (Brimas), Wong Meng Chuo of the Institute for Development and Alternative Living (Ideal) and others have all been denied passports.

Thomas Jalong and Jok Jau took the Immigration Department to court, but the High Court ruled that a passport was a privilege rather than a right. This means the state has the right to grant or deny any of citizens their right to travel, without reasons being given.

People barred from leaving the country

On May 28, Deputy Home Minister Zainal Abidin Zin, told Parliament's upper house that 78 people have been banned from traveling overseas as they had "tarnished Malaysia's image during previous trips abroad"

and that their activities "prejudiced national security". No details were given on who is affected by the travel ban. The government also black-listed 2,909 foreign nationals from entering Malaysia.

On August 28, Home Ministry secretary general Aseh Che Mat informed the public that the government is expanding the list of Malaysians barred from leaving the country. However, the list has not been released, as it pertains to "national security".

Fiancée of ISA detainee denied entry

On July 20, Mabel Au, fiancée of Tian Chua who is currently serving a two-year detention order under the ISA, was barred from entering Malaysia upon her arrival at Kuala Lumpur International Airport (KLIA). Immigration said that she had been "blacklisted for security reasons" without further explanation. Mabel, a Hong Kong citizen, came to Malaysia to visit Tian Chua and was illegally detained at the KLIA immigration lock up and deported 13 hours later.

Au claimed that she was denied food and drink and not allowed to contact the family of her fiancé during that time.

Mabel Au's account of her experience received at KLIA airport sent via email on July 22 upon her arrival in Hong Kong

"I need to make a phone call" I said.

"Yes, go ahead"

Then I went to make a phone call. When I called up Tian's sister and the friends who were

waiting for me at the arrival hall, I told them:

"I am not allowed to come in. Please inform Suaram and our lawyer----" Then another officer came and told me to stop my phone call and ordered me to follow her. I said I have not finished my phone call yet. She insisted I have to follow her and I can make the phone call later. Then she brought me to the lock up. I didn't think I had to go into the lock-up as I had not violated any law or regulation. If I had, they should be able to tell me what is that. However, they only tell me it was security reason and failed to indicate what's wrong with my passport. Therefore I should not be detained in a lock-up. It was an illegal detention. Thus it was serious violation of human rights and I have to call my lawyer. But they ignored me and asked me to give my mobile phone to her. I refused. Then she asked me to give her my SIM card. I said I need to make a phone call to my family and lawyer.

She said "You can make a phone at mid night later. I have to take away your SIM card now". Another male officer said "if you want to make a phone call you have to go in first." Then she took away my SIM card without signing any record and receipt.

I have to leave my luggage outside the lock -up then go into it. Basically the lock-up was a freezer. There were two rooms in the female lock-up. People have to sleep in the hard concrete floor. At the most they got some cardboard to sleep on. Then I have no food and not even water to drink. I asked the officers that I want to make a phone call but those people were so good to ignore people as if they were deaf.

Until around two, Tian's sister, one lawyer and one friend from the human rights group come to visit me. However the immigration officer stay near us in order to listen to our conversation. We met for only five minutes then I was told to go back to the lock-up. After that I was sitting in the lock -up until the airline people issued a ticket for me round 1000 in the morning (21/7). I have to paid my own ticket but I can chose to go back to Hong Kong or Bangkok. Finally I chose to go back to HK."

According to Chua Tian See, Tian Chua's sister, and Parti Rakyat Malay-

sia (PRM) Youth secretary Latheefa Koya, who met Mabel at the KLIA, the immigration officers refused to give details of Mabel's deportation nor was she allowed to contact her embassy. Tian See and Latheefa both felt that families of ISA detainees were now being treated like criminals.

A complaint was lodged to Suhakam on July 25 by Tian Chua's family. Suhakam commissioner Professor Mehrun Siraj, who received the complaint, slammed Immigration for its decision. Deputy Prime Minister and Home Affairs Minister Abdullah Ahmad Badawi, however, denied knowledge of the reasons for the deportation, stating that the decision was entirely the responsibility of the Immigration Department. On August 28, Immigration director Jamal Mohd Kamdi defended the ban as a 'prerogative' of the Government as Mabel 'represented a threat to national security'.

Others

On September 20, in a move to apparently curb those involved in allegedly 'militant groups' such as KMM, Perak State Immigration Director Ishak Mohamed told all the private institutions of higher learning in Perak to retain the passports of foreign students until they have completed their studies.

On November 6, Assistant Minister to the Chief Minister Abdul Rahim Ismail warned that illegal loggers from other states would be barred from re-entering Sabah.

Right to Information

Malaysians have no right to government information, and face prosecution under the Official Secrets Act (OSA) if they reveal 'classified' information. This information ranges from details of alleged corruption to information on water supply and demand projections.

- In 1997, the government banned public disclosure of detailed Air Pollution Index (API); several ministers at the time felt that a constantly highlighted negative API reading could affect the tourism industry! To date this ban has not been lifted in spite of the visible blanket of smog resurfacing in early July.

The Department of Environment justified this on the grounds that it 'would not make any difference in helping the public understand the situation as the authorities had already taken steps to keep them informed'. Instead, it released 'qualitative' reports on air conditions at their monitoring stations nationwide. Various health and environmental groups have criticised the directive as denying the public the right to vital information regarding health issues.

- The government has refused to make public the report on the tragedy of Kampung Medan racial attacks, which lasted for four days beginning 8 March. The attacks resulted in six deaths and 52 people injured, almost all of them Indians. The tragedy led to 220 arrests mostly under the 1958 Corrosive and Explosive Substances and Offensive Weapons Act, Police Act and the Penal Code. Some of those arrested are currently on trial. The National Unity and Social Development Ministry in a written reply to DAP MP for Seputeh Teresa

Kok said in Parliament that the government would not reveal the documents as the report was 'classified'.

- On September 21, Keadilan Youth chief Mohamad Ezam Mohd Nor, currently being held under the Internal Security Act (ISA), was ordered by the Kuala Lumpur Session Court to enter his defence under the OSA. Ezam is charged with disclosing details of an Anti-Corruption Agency investigation into International Trade and Industry Minister Rafidah Aziz and former Melaka Chief Minister Abdul Rahim Tamby Chik at a press conference on 6 November, 1999 at the Keadilan headquarters. The hearing on this case continues.

Free and Fair Elections

Free and fair elections are one of the key ingredients for a vital democracy. However, the events that occurred during the Likas by-election and Sarawak state election continue to raise questions and doubts about the electoral process in the country.

Likas by-election

The second quarter saw one by-election held for the state seat of Likas in Sabah, following a decision by High Court judge Justice Muhammad Kamil Awang on June 8, that the electoral roll was illegal due to the existence of phantom voters (refer also to section on Judiciary). The incumbent, former Sabah Chief Minister, Yong Teck Lee, was ordered to vacate his seat in the Sabah State Assembly.

Following the decision, Minister in the Prime Minister's Department, Dr. Rais Yatim announced on June 26 that the government would table an amendment to the in Parliament in December 2001 that would render Election Court decisions no longer final and thus open to appeal.

He added that the laws would be amended to prevent legal challenges to an electoral roll by making the roll definitive once gazetted. Rais was reported as saying that this would indirectly "help eliminate the problem of phantom voters", though he offered no further explanation.

NGOs and opposition parties have strongly protested the proposed amendment, fearing that this will close the door to judicial review of the electoral roll and erode the integrity of the electoral system.

The chair of the Elections Commission (EC), Abdul Rashid Abdul Rahman, said that the 'phantom voter' situation was so serious that the Commission would have to strike off approximately 27,000 names from the electoral roll as they were non-citizens and had registered with the commission over a period spanning more than two decades. No reason was given as to why there had been no action taken over the past two decades.

He also said on June 15 that fake identity cards were sold in the open in Sabah, including at night markets. Some were now being sold for as low as RM30 but at one time were RM700 per piece. Deputy Prime Minister Abdullah Ahmad Badawi ordered National Registration Department (NRD) director-general Azizan Ayob and Deputy Inspector-General of Police Mohd Jamil Johari to give their fullest co-operation to the commission.

On June 25, opposition party Parti Bersatu Sabah (PBS) submitted a total of 130,000 names of alleged phantom voters in the state of Sabah to the EC and urged the Home Ministry to conduct a full investigation. PBS claimed that since they submitted since found about 31,885 questionable names were included in the electoral rolls. About 5,000 dubious voters who have been included in the Likas 1999 electoral rolls despite the PBS objections were also submitted.

On July 3, the EC guaranteed the validity of the Likas electoral roll comprising 26,196 'genuine registered voters' and that it had removed 4,712 questionable names from the Likas roll since 1999.

On July 9, PBS applied for the July 21 by-election to be delayed on the grounds that the Commission had failed to remove even the names of disqualified persons listed in Justice Kamil's judgment. Kota Kinabalu

High Court Justice Sulong Matjarie, however struck out the bid, allowing the by-election to proceed but reserved judgment on the declaration sought by PBS that the Likas electoral rolls were invalid.

In a web-radio interview with Radiq Radio on July 19, Henrynus Amin, head of the PBS information bureau stated that within a decade, the total number of 'voters' in Sabah had doubled. "...the national average of population increase is only about 2 per cent and in Sabah it's 6 per cent annually. So, where did these people come from?" he queried, referring to the issue of phantom voters.

Less than 24 hours to polling, PBS secretary-general Radin Malleh claimed that the EC had still not held any public inquiry to investigate the 4,871 names of dubious voters they had submitted.

Barisan Nasional (BN) candidate Yong Teck Lee won the by-election with a majority of more than 7,500 votes. Dissatisfied with the result, the defeated PBS candidate Dr Chong Eng Leong filed an election petition to declare the July 21 Likas by-election null and void.

The by-election also saw an undocumented migrant, who tried to cast her ballot on a fake identity card, charged under the National Registration Act and sentenced to 21 months' jail by a Kota Kinabalu magistrate's court. The Act provides that upon conviction, the defendant can be jailed for two years or ordered to pay a fine not exceeding RM3,000, or both.

Elections Commission

The Elections Commission had, from the start of the year 2000, begun working on amendments to the election laws in Malaysia. Opposition

parties expressed regret that the EC had not consulted all political parties.

Some amendments would, in principle, facilitate the participation of voters, for example the proposal to automatically register Malaysians as voters as soon as they turn 21 years of age.

However, several other amendments came under fire from civil society groups and opposition parties. For example, the proposal to compel voters to vote only at the place shown on their identity card was criticised by PAS President Fadzil Noor as a restriction to voting. Meanwhile, the proposal to raise election deposits for State and Parliamentary seats, from RM3,000 to RM5,000 and RM5,000 to RM10,000, respectively, was also criticised as it would deny those from lower income groups the opportunity to contest.

New electoral boundaries were expected to be gazetted during the redelineation exercise to be held in March 2001. The last redelineation exercise held in 1994 saw an 8.4 per cent increase in the number of new constituencies. The Federal Constitution provides that reviews and redelineation of election divisions be conducted every eight years.

The move to create 27 additional seats in Johor was viewed with suspicion as the state is a strong hold for the ruling BN coalition.

Interestingly, at a workshop on 25th October, to conceptualise future research on the election system, which was organised by the Institute of Malaysian and International Studies (IKMAS), a representative from UMNO admitted to local and regional election monitoring groups' representatives that the Election Commission staff work very closely with them to analyse voter behavior and patterns to benefit the ruling coali-

tion!

Sarawak State Election - September 27

The 8th Sarawak State Elections saw three more of the 62 states seats in Sarawak go to the ruling coalition, bringing the total of seats won by the ruling coalition to 60. Four of the seats were uncontested. Of the two seats that were won by the opposition, one went to DAP by a narrow margin while the other went to an independent candidate, backed by those unhappy with the choice of the ruling party candidate.

In spite of 5,676 names of non-citizens being taken off the rolls, the EC stated that it could not promise a 100% clean roll but that 'phantom voters' would not affect the integrity of the result.

All opposition parties alleged rampant use of vote-buying, money politics and biased reporting in the media. Some of the general problems noted during the state elections are as follows.

1) Fears played on through the media.

The media was observed as playing up fear along ethnic and Sarawak nationalist lines. The opposition parties were made out to be extremists who condoned violent politics.

One example of this can be found in a paper 'The Sarawak State Election 2001' by Michael Leigh, which was prepared for an IKMAS-organised workshop on the electoral system. Leigh noted that 'matching' certain captions with photographs appeared to be designed to undermine the security of the Chinese community. Poste ibu carried a photograph of a Madurese boy with a slashed head, awaiting evacuation from Sampit in

Central Kalimantan. The caption along the side of the photograph was in Chinese characters and read, "The innocence of Indonesian Children" and "Eyes that are full of hopelessness". Caption at the top read, "Don't let the children of Sarawak suffer" while a line just below the photograph read, "The victory of Barisan Nasional is peace, stability, prosperity and the assurance of development".

The September 11 attacks in the USA were also frequently used to argue that 'familiar leadership is preferable to the dangerous unknown'.

2) "The Others" - the reinforcement of state nationalism

Malaysia Today on September 25 carried an article where the Prime Minister accused PAS and Keadilan as having brought 'wild campaigning tactics to peaceful Sarawak'. He added that these parties had no place amongst a multi-racial population, failing to note that the parties, unlike the component parties of the ruling coalition, are in fact multi-racial. The paper prepared by Michael Leigh also noted a shift in the way in which parties were referred to for example, from 'peninsula-based parties' to 'peninsula-based opposition parties'.

'A vote for BN is a vote for the government' was another theme that was reinforced by the media. The fact that the government is separate from the party becomes blurred and identification of the ruling party and the government is perpetuated. Civil servants were reminded that they are part of the government and therefore must support it.

3) Campaigning difficulties

Some local observers leveled criticism at the opposition parties for their lack of imagination, stratagems and cooperation which resulted in them losing even seats where they stood a good chance. While there may be some truth to this, it is clear that the uneven election playing field in the country poses major difficulties for opposition candidates to get their

message and manifestos across to the constituencies.

The geography and accessibility of many areas in Sarawak presents physical challenges to campaigning, especially for the opposition parties. There were reports of helicopters being used in some areas controlled by the BN thereby giving the candidate an edge, in spite of the fact that this would have undoubtedly pushed the campaigning budget for the constituency over the limit.

In addition, a directive from the EC confining ceramah and political campaigns behind doors also, according to opposition party candidates, hindered their already daunting task of disseminating information to the public.

A nine-day campaign period is by no means sufficient time for campaigning and as posed by one supporter of an opposition candidate, "We thought this was effective but how many doors can you knock in a span of nine days?"

A candidate highlighted a further problem of resources when he said, "We have limited resources and hardly any time to explain our policies to the people. When we go house to house, all we can do is introduce ourselves to the voters".

In addition to the above, some specific complaints were also noted during the election campaign and on the actual polling day.

Monitoring done by the Sarawak Election Monitoring Group

The Sarawak Election Monitoring Group (Sarel), a local non-governmental organisation comprising 65 volunteers and one office assistant,

which relied on minimal funding from individuals and local organisations, noted that although the elections were generally peaceful:

- Media coverage of the election process favoured the ruling coalition. On the eve of election day, for example, the national television network broadcast speeches from the president of the ruling coalition as well as the acting head of the caretaker state government calling Sarawakians to vote for their party.
- Approximately 50 complaints, ranging from complaints about rough behaviour, faulty voter registration list to money politics practised at polling stations, including a significant number regarding aggression, harassment and violence on the day of the election, were reported between nomination day on September 17 to polling day on September 27.
- Several complaints were received alleging that operation centres had had their posters torn down. Workers at the centres had also been harassed.
- Members of opposition parties were also apparently prevented from entering some localities for campaigning and putting up posters. Physical violence was evident in at least one incident.

Sarel stated that it would compile reports from all constituencies and present an interim report to the EC and the Human Rights Commission (Suhakam).

Monitoring done by the Democratic Action Party

The Democratic Action Party (DAP) which nominated 13 candidates al-

leged, via a press statement on September 27 by its secretary general, Kerk Kim Hock, that among others:

- The BN-controlled media exploited the September 11 attacks on the World Trade Center and the Pentagon, which made their win dishonest and dishonourable.
- The BN-component party, Sarawak United People's Party (SUPP), conducted a seditious election campaign and instilled fear amongst the voters by using posters that warned voters of terrorist attacks and jihad (holy war) and insinuating that DAP condoned these attacks.

Monitoring by Party Keadilan Nasional

Party Keadilan Nasional (Keadilan) contested 25 seats, 15 Malay-Melanau majority areas, five Iban, four Chinese and one Orang Ulu. Eleven candidates lost their deposits because they failed to get 1.8 percent of the votes. In total, however, Kedailan managed to garner 17 percent of total votes. A six-page post-mortem conducted by the party alleged that:

- BN attempted to buy votes by distributing cash, hampers, drums of water, food and clothes before elections, and on election day continued to do so while ferrying voters to polling stations.
- On September 26, one of the PKN candidates in Demak Laut, Ahmad Lukman Abang Ibrahim, was attacked and beaten at the party's operation centre by a group of eight youths who wore jackets with BN logos on them. Two of the party's helpers were also assaulted and slashed with parangs by the same group who later escaped in a van and white Proton Wira.

- BN mobilised the Sarawak Silat Group (Malay martial arts) to create chaos in operation centres, surrounding villages and housing estates to prevent helpers from campaigning and to frighten voters.

Monitoring done by Party Islam Se-Malaysia (PAS)

PAS, which contested three seats, alleged in its online party organ, Harakahdaily, that

- That most mosques were sealed off from the public and opposition parties as soon as the Assembly was dissolved. Opposition parties, and in particular PAS, were accused of using the mosques to spread party political propaganda.
- Harakahdaily reported on September 26 that the incumbent government was using the mosques for its own campaign.
- On the polling day, September 27, Harakahdaily reported money politics by BN candidates. Bribes of RM 5 handed out together with 'Yasin verses' were given to Muslim voters in Beladin, Semarang, Pusa and other places.

Monitoring done by other eyewitnesses

Apart from the above, Suaram was also informed of the following:

- On September 18, the police told a Keadilan gathering in Sarikei to hold their talk in a room with all the windows and doors shut. In addition, the police also took photographs and jotted down names

of those attending, which scared the public away. A police officer was also reported as saying that as the party was 'new' in Sarawak, any gathering organised by it 'may create problems'.

- In early September, requests by political parties for open public rallies during the campaign period were turned down by the EC.
- A member of the public, Mr. Tiong Yong Lee@ John Tiong lodged a police report regarding alleged harassment and intimidation on September 22 by the SUPP president, George Chan (current Sarawak deputy Chief Minister) and Lee Kim Shim (SUPP youth leader). Below is an excerpt of the police report that was lodged.

After Lee Kim Shim shook hands with me, George Chan came to me and asked me, "who will you vote for?". I (John Tiong) replied vote anyone also the same.

Then George Chan said, "I find that all of you these young people have a lot of dissatisfied with the government, isn't it? What are the things that you are dissatisfied with? Is it with this your business permit? Should I just give your permit to other people?"

George Chan later said, "Young people don't try to act hero, don't shout anti-government, don't think that is smart." (I kept on nodding my head, to try to please George Chan to stop the argument and leave me alone, because if I kept only arguing, I will lose my business permit)

George Chan kept on pressuring, "Your business permit, I give to other people, OK? Since you don't like the government who gave you this permit, I take it back and give to other people, OK?"

I got scared and ask, "What do you mean by saying like this?"

George Chan said, "I mean; if you do not vote for BN, then I will give your business permit to other people!"

I asked, "Who will you give the permit to then?"

George Chan said, "Of course, to give to the BN supporter! If you don't want this permit, just said it loud now!" By saying that, he banged his fist on my table.

The Executive and The Legislative

Summary

The democratic space in the legislature was restricted and continued shrinking throughout 2001. The legislature has visibly failed to act as a check to executive power in regard to the increasing number of human rights violations, such as detaining people without trial under the Internal Security Act (ISA) and the systematic crackdown on peaceful assemblies.

Parliament had instead become a gallery for ruling party MPs to justify ISA use. For instance, on 2 May, Parliament was told that even another hundred arrests would be justified if they were carried out to safeguard the nation's security and ensure peace. On 19 July, Parliament was told that the detention of two university students under ISA was to rehabilitate them. Again on 24 July, Home Affairs Deputy Minister Zainal Abidin Zin told Parliament that the ISA is needed for the nation's peace and security.

Executive power was exercised in a partisan and unchecked manner. The clearest example of this was the continuing struggle between the Federal Government and the opposition-led State Government in Terengganu over Petronas royalties.

The Legislative

At an early phase of the crackdown on peaceful opposition assemblies, Speaker Tun Zahir Ismail refused an appeal by Opposition Leader Fadzil

Noor for a motion on the banning on all ceramah to be debated in Parliament.

Fadzil Noor argued that the motion was important as it dealt with "injustices imposed on the opposition by the police." However, he was told by the Speaker that the decision was final and there was no provision under the Standing Orders for him to appeal. Fadzil Noor later expressed his disappointment over the decision which did not even allow for an explanation of his motion to Parliament.

Again, on July 24, the Opposition's bid to discuss the bailout of Renong Berhad by Khazanah Nasional Berhad (KNB), the investment arm of the Finance Ministry, was rejected in chambers by the Speaker on the grounds that 'the matter was not urgent'.

It was reported that the government had announced, a day before, its intended takeover of debt-ridden Renong at the cost of about RM4 billion. Renong is Malaysia's most debt-burdened conglomerate. It has around RM13 billion in outstanding group debts.

The existing democratic space in Parliament was reduced by the executive and is now facing further erosion with recent amendments to the Standing Orders.

On August 8, a motion was made to allow the Speaker to edit adjournment speeches by MPs. Under this amendment, MPs will read out edited text. Another amendment requires MPs to limit their adjournment speeches to 400 words. The current ruling stipulates that the speech should not exceed 7.5 minutes.

Minister in the Prime Minister's Department Dr Rais Yatim said that the

editing was for grammar and syntax purposes and to check verbosity. However, there was concern about potential abuse by the government.

On 17 April, the opposition Democratic Action Party (DAP) secretary general and Member of Parliament (MP), Kerk Kim Hock was punished with a three-day suspension after protesting the House Speaker's alleged bias towards a deputy minister. Kerk described his suspension as a "harsh punishment for a justified protest".

In the incident, Kerk posed a question to deputy finance minister, Chan Kong Choy regarding the RM50,000 allocation to ruling Barisan Nasional MPs for 'non-official purposes' and queried whether the MPs are required to produce receipts for such expenses.

When the Speaker responded that the deputy minister had the right not to answer, Kerk kept on insisting on an answer, despite warnings from the Speaker.

On August 9, PAS MP from Kuala Terengganu Dr Syed Azman raised the issue of discrimination against opposition MPs in Parliament. Several concrete examples were raised. For example: Opposition MPs are denied access to all important government briefings, such as issues on the bailout of MAS, UEM and Renong. They only come to know the news later, from the press.

There were also complaints on the discrimination of opposition MPs on their right to visit departments, agencies of Federal Government and even schools inside their constituency.

Furthermore, opposition MPs are denied access to a half a million ringgit provided by the government to every ruling coalition MP. No opposition

MP receives funding for their constituencies' development.

In another development on 1 August, Parliament unanimously approved an amendment to the Federal Constitution to outlaw gender discrimination to enable women to enjoy equal rights as men and ensure they are not discriminated against. All 172 MPs present gave their aye for the amendments during the vote count. Nevertheless, opposition female MPs complain of sexual discrimination in the House, for example, being castigated for not being married.

The Executive

In 2000, the Federal Government, without consulting the Terengganu State Government, withdrew the 5% oil royalties which has been paid by the national oil company Petronas to the State Government since 1975. The PAS-led government lost 75-80% of its yearly income, affecting planned development programmes.

Such action by the Federal Government was seen as violating the Federal Constitution, as it was intervening in state affairs, acting like a 'second state government'. This feeling was amplified as Federal agencies were set up to disburse funds from oil royalties.

This year, the Terengganu government, on March 8, filed a suit against Petronas and the Federal Government in the Kuala Lumpur High Court, claiming its failure to pay oil royalties of RM850mil amounted to a breach of contract. The state is seeking enforcement of a principal agreement dated March 22, 1975 and a supplementary agreement dated September 16, 1987. The agreements state that Petronas should make annual cash payments of 5% of the value of the petroleum extracted in the state and

sold by Petronas, its agents or contractors. The case is expected to be heard next year.

The "Good Behaviour" pledges

Another major controversy is the issue of behavior pledges which the government has made compulsory for all government staff, including those in the teaching profession and newly enrolled government university students. In July 2001, Prime Minister Dr Mahathir Mohamad said the agreement would allow for expulsion if "performance was found to be unsatisfactory", or if they "were involved in political activities". This is examined in greater detail in the chapter on freedom of association.

Rights of Migrants and Refugees

To date, the work conditions for migrant workers have shown little improvement. During the year, the Government evidently appeared uneasy with the increasingly empowered migrant workers from particular countries and have taken steps to 'engineer' the type of workers that are 'acceptable and allowed' in the country. In addition, there has been a proposal to introduce corporal punishment for undocumented workers. The announcement was strongly criticised as an action that would victimise those who are already victims. Another announcement, that migrant workers would now be allowed to join trade unions was met with skepticism by human rights groups who felt that in reality, this would not materialise.

The Malaysian Government has not ratified the 1951 International Covenant on the Status of Refugees and its 1967 protocol. Over the last decade, most of the 5081 asylum seekers who have approached the UNHCR at their Kuala Lumpur Liaison Office ended up in overcrowded detention camps. In July, the state government of Sabah revoked the refugee status given to 57,179 Filipinos who sought shelter in Sabah in the early 1970s. While the Chief Minister of Sabah indicated that they would still be allowed to remain in the state with conditions, the full effect of this revocation has yet to be seen.

Rights of Migrants

In January, the Malaysian government allowed employers in the manufacturing, construction and plantation sectors to recruit workers from Burma and Nepal. Approximately a month later, however, the Home

Ministry secretary-general Aseh Che Mat said that the government had issued a directive to employers to stop recruiting Bangladeshi workers (February 17, The Star).

Tenaganita, a non-governmental organisation working on women and migrant workers' issues criticised the government's decision, claiming it is because Bangladeshis are becoming more aware of their labour rights. Tenaganita claims that under this new policy "ignorant and cheaper labour" from Burma and Nepal would be brought in to replace the increasingly empowered Bangladeshi workers.

Ironically, on February 26, barely a week after the directive to stop recruiting Bangladeshi workers was issued, the Home Ministry approved a license for publishing of a local newspaper for the Bangladeshi workers in Malaysia. The paper was launched by Deputy Home Minister Zainal Abidin Zin who hastened to warn that the authorities had the right to revoke the permit if the publisher "abused the conditions attached".

In May, a report by a Federal Special Taskforce to the Sabah State Assembly said that children of migrant parents are allowed to study at government schools, though they have to comply with various conditions, including having to pay higher fees and obtaining special study passes from the Immigration Department.

On September 11, Agence France Press reported that the Immigration Department aimed to arrest at least 52,000 undocumented migrants (otherwise known as 'illegal migrants') by the end of the year. It was reported that the department has directed each of the country's 13 states to arrest 4,000 undocumented migrants.

In a positive development, the Minister of Human Resources Dr Fong

Chan Onn said on July 10 that foreign workers, estimated to total between 600,000 to 700,000, would now be allowed to join trade unions. Under the Trade Union Act 1959, foreign workers are permitted to join unions but they are not eligible to become elected officials. Human rights groups, however, claim that many employers prevent foreign workers from joining unions by claiming that the immigration authorities impose the prohibition as a condition for the granting of work permits.

On August 17, Deputy Home Minister Chor Chee Heung said that Malaysia would continue to repatriate undocumented migrants from neighbouring countries and not prosecute them, adding that repatriation was actually cheaper than detention. It was reported that the government spends an average of RM4 on a detainee's food per day and that there were 11,000 undocumented migrants being held at immigration detention centres. Of that number, 80% were from Indonesia.

An estimated 600,000 undocumented workers in the country face will also be subjected to corporal punishment if an amendment to the Immigration Act for stiffer penalties is passed. Various human rights groups have condemned this proposal as "inhuman and barbaric" in view of the fact that undocumented workers are ignorant of procedures and are themselves victims of deceit.

Immigration Department of Malaysia sued by migrant workers

On July 6, a group of 36 Indian migrant workers sent a memorandum to the Malaysian Human Rights Commission (Suhakam) claiming to have been deceived by the Immigration Department and appealing for Suhakam's assistance to retrieve their valid work permits.

Their memorandum stated that their rights as workers had been violated by the delay and dishonesty of the Immigration Department, which they alleged issued them with expired work permits. As a result, they had been jobless with some ending up in detention camps.

On December 6 last year, the High Court ordered the Immigration Department to issue temporary work permits to the workers to enable them to work legally for a construction company, Central Generative Sdn Bhd. The workers claimed that the Director-General of Immigration issued back-dated permits on April 19, with 13 of the permits lapsing in January and February, while the rest lapsed on July 8.

On July 18, their application was filed at the High Court. On July 25, the High Court Kuala Lumpur granted them leave to commence contempt proceedings against the Immigration Department and its director-general for allegedly not complying with a consent order. The hearing continues next year.

Rights of Refugees

Until the end of October, the unofficial figures from the United Nation High Commission for Refugees (UNHCR) liaison officer in Kuala Lumpur showed that around 870 asylum seekers came to the UNHCR in Malaysia to apply for refugees status. Out of this number, over 400 are from Myanmar, 200 from Aceh while the remaining 150 are from the Middle East.

Filipino refugees in Sabah

In July, the state government of Sabah revoked the refugee status of 57,179 Filipinos who sought shelter in Sabah in the early 1970s. The Chief Minister Chong Kah Kiat was quoted as saying that the Filipinos allowed to remain in the state on the condition that they have a place to stay and are employed with a annually-issued work passes.

On July 23, news agency Bernama reported that Chong said that Sabah will continue repatriating illegal Filipino immigrants despite the Philippine government's refusal to accept deportees from there without a travel document issued by its embassy in Kuala Lumpur.

Rights of Prisoners

Summary

Huge backlogs in the judicial system have resulted in thousands of people being held in overcrowded prisons around the country waiting for their judgement. In 2001, approximately 6000 prisoners are still languishing in jail, some of whom have already spent more time in jail than what they would have been sentenced to by the court for their offences.

General

Prisons nationwide currently exceed their total capacity of 26,000 by almost 3,000. The overcrowding problem of the detention camps for the illegal migrant is even worse. Of these, 159 prisoners are on death row, 60 serving life sentences and 137 natural life sentences, 22 detained at Rulers' pleasure, 13,967 jailed for six months and above and the remainder imprisoned for less than six months. (March 3, 2001 The Star).

Of the 1377 women prisoners serving their custodial sentences in prisons around the country, almost 68% are foreigners, most of whom are imprisoned for offences under the Immigration Act.

In Malaysia, drug abusers are held in rehabilitation centres. There are currently 11,000 persons held in the 27 drug rehabilitation centres nationwide. Statistics provided by the National Anti-Drug Agency director-general Salleh Mat Som showed that the number of drug addicts in the country had dropped from 35,359 in 1999 to 30,599 last year. (July 6, 2001 The Star).

Backlogs in Judicial System

In April 2000, Minister in the Prime Minister's Department, Dr Rais Yatim, revealed that a remanded detainee had been languishing in jail for 8 years and 11 months waiting for his judgment in court. Rais also said that the incident was just one of the example among 6,695 remand cases waiting for judgement in court due to the backlog in the judicial system.

In year 2001, it was reported that 6,000 of them are still languishing in jail due to the system that appears to have forgotten about them. In fact some of them have already spent more time in jail than what they would have been sentenced by the court for their offences.

Even the Director General of Prisons Datuk Omar Mohamed Dan was sufficiently concerned so as to ask the relevant authorities involved to speed up their cases so that they could be freed. On October 18, the just-retired Prisons Director-General Omar Dan in his interview with Bernama admitted that there is not much could be done by the Prisons Department on the congestion in prison as it had more to do with the powers of the judiciary and the police.

Denial of medical attention

Jailed former deputy prime minister Anwar Ibrahim has repeatedly requested to be allowed to travel to Germany to undergo an endoscopic micro spinal (EMS) surgery, which would cause less pain and had minimal risks compared to the conventional surgical method proposed by the Kuala Lumpur Hospital. Foreign specialist, Dr Thomas Hoogland of Alpha Klinik based in Munich, Germany, who examined Anwar, concluded in his report of March 13, that Anwar should undergo an endo-

scopic spinal surgery within four to six weeks to prevent his condition from deteriorating.

In spite of intervention from organisations both locally and internationally, the Government denied him permission to leave the country. The Prime Minister criticised the 'special treatment' given to Anwar and slammed Anwar for politicising his back problem. Health Minister Chua Jui Meng echoed this and told Parliament that Anwar would have to shoulder the blame in the event of any negative consequences as he had endangered his own health.

On April 27, a briefing was held to inform foreign diplomats on Anwar's condition. Three days later, a group of 107 high-profile individuals, comprising medical specialists, senior lawyers, artists, academicians, film-makers, writers, actors and professionals from various fields, sent an appeal to Prime Minister Dr Mahathir Mohamad, urging the government "to show mercy".

Mahathir again attacked Anwar for 'lying about his medical condition to win political support' and on May 10, Anwar was sent back to the Sungai Buloh Prison from the Hospital Kuala Lumpur (HKL), where he had been hospitalised since November of 2000. On May 24, Mahathir held an unprecedented meeting with the opposition leaders but reiterated his refusal to let Anwar have surgery overseas.

A memorandum sent to Suhakam resulted in a team of five Suhakam commissioners, led by Tan Sri Anuar, visiting Anwar at the Sungai Buloh Prison on May 22. The commissioners told the press that Anwar was visibly in pain and urged the government to allow Anwar to exercise his right to choose his preferred medical treatment for his chronic backache.

Suhakam also noted 'that under ordinary circumstances, a person charged with the offences Anwar had been charged with could have been granted bail pending trial and appeal. Under such circumstances, therefore, a person under bail could have travelled abroad for the medical treatment of his choice'.

Since he had been denied bail and was now in prison, Suhakam added that "...1995 Prison Act provides that where there are inadequate facilities for the treatment of a prisoner, an order may be made for the removal of the prisoner to a government hospital."

Unmoved by the recommendation, Mahathir instead turned on to the Commission by saying, "You cannot expect us to accept directions from Suhakam. In that case, it is better if they replace the government ... and we hand over everything to them."

Anwar is now bed-ridden and only has a physician visiting him once in a while in spite of his worsening health condition. An appeal letter was sent to Home Minister Abdullah Badawi requesting a review of the decision by Prisons Department Director General Omar Muhammad to reject Anwar's application to be temporarily released. Abdullah, however, on July 26, denied having seen the appeal letter although, according to Anwar's counsel, Sankara Nair, the Home Ministry's secretary-general Baharon Talib had acknowledged receiving the letter on July 4.

Meanwhile, the British House of Commons endorsed the Suhakam's position that Anwar be allowed his right to medical treatment of his choice and overseas travel for medical care, as provided for by the United Nations Patient's Charter. The Lower House motion was proposed by Labour Member of Parliament (MP) Jeremy Corbyn on July 20 and was supported by seven other British MPs. They also urged the Malaysian

government to facilitate Anwar's surgery as a matter of urgency.

Anwar is also reported to be suffering from swelling in his joints due to heavy reliance on painkillers, which has made it very difficult for Anwar to walk and even to write. Anwar has been instructed by the physician to stop taking the painkillers, resulting in acute pain in the spine.

Condition of lock-ups and prison environment

Overcrowding in prisons and other detentions centres in Malaysia has been acute for many years. Prisons nationwide exceed their 26,000 people capacity by 3000, while overcrowding in detention camps for undocumented migrants is even worse.

Acknowledging the problem of overcrowding of prisoners, the Eighth Malaysia Plan (8MP) released in year 2001 has allocations for six new prisons. Deputy Home Minister Zainal Abidin Zin also announced plans to approve applications to set up 56 private drug rehabilitation centres.

On July 18, following a visit to the Dang Wangi Police lockup, the Human Rights Commission (Suhakam) found that the lockup, built to house 38 people, sometimes housed more than 100 people. Commissioner Lee Lam Thye was quoted as saying that there was no serious complaint although there was "definitely room for improvement". Legal Aid Centre Chair, K Ragunath, however, disputed the Commission's finding claiming that lockup conditions were in fact 'not acceptable' (June 21, *The Sun*).

Suhakam report on the state of prisons and detention centres

On November 29, 2001 the Human Rights Commission of Malaysia in its report on prisons and detentions center, criticised the authorities over the conditions and the treatment given to the detainees.

Amongst others, the report recommended cleaner cells and more civilised treatment of prisoners. Suhakam found that the lock-ups were overcrowded with cells that are meant to accommodate 38 prisoners having 150 prisoners at one point in time. The report also pointed out that the lack of water supply made the cells smelly and recommended that the approval for purchase of additional water tanks and pumps be expedited.

Suhakam stated that the picture of a prisoner in a lock-up is a person who has not been convicted of any crime or one who may be merely be a traffic offender.

"And this person is allowed to be only in shorts or underwear, expected to sleep and rest on cement slab, and has to endure smelly environment with poor water and toilet facilities. The commission recommended that unconvicted prisoners be allowed to wear their own clothes, or be permitted to be decently clothed'.

Police apparently told the visiting commissioners that prisoners were left in their underwear as per the Lock-up Rules. But Suhakam expressed concern over this interpretation as the rules state that "all clothing, other than one set, shall be removed".

Prisoners were also not provided with clothing and bedding as per required by the 1953 Lock-up Rules, lamented the 16-page report. It highlighted the police's hesitance in providing blankets to prisoners fearing they may attempt suicide. The report stressed that the matter should not arise if the police are monitoring the prisoners round the clock.

It also added the police did not consider access to legal counsel as an important right of the prisoner.

Deaths in custody due to medical conditions and neglect

Between June 6 and 21, five persons from the drug rehabilitation centre inmates in Raub, Pahang were reported to have died under suspicious circumstances. Eighteen others, aged between 21 to 28, the majority of them from another centre, the Sungai Ruan drug rehabilitation centre which housed 193 persons, had been warded in several hospitals since June 10. On June 26, another 27 were warded at Kuantan's Tengku Ampuan Afzan Hospital for further medical examination.

Police dismissed claims that a mysterious disease had killed the men. National Drug Agency director-general Datuk Salleh Mat Som that the five suffered from various illnesses, including myocarditis, i.e. muscular tissue inflammation of the heart. On June 27, Parliamentary Secretary for the Home Ministry, Aseh Che Mat said that lack of funds meant that the centre did not have a resident doctor, which made responses medical emergencies very difficult. Deputy Home Minister Chor Chee Heung later urged the public not to speculate on the cause of the inmates' deaths and promised that a full investigation would be conducted and that steps were being taken to check the situation.

On July 31, Prisons director-general Omar Mohammad Dan said that the overcrowding in Sabah prisons had not compromised overall security, although he acknowledged that the congestion sometimes led to 'unexpected problems', for example fights or illnesses. According to the Prisons Department statistic, 70% of the prisoners currently serving their sentences in Sabah were mainly undocumented immigrants from the Philippines and Indonesia.

Rioting at the detention centres

Over the year, several incidents of rioting occurred in various detention centres.

- On May 17, about 100 inmates at the Kundang Patah Semantan drug rehabilitation centre in Raub, Pahang set fire to a lorry and a three-storey administrative building, damaging two floors. Two other buildings housing new inmates, a counselling office, a visitors' room, a store and five guard posts were also ruined. Thirty-nine were detained. National Drug Agency director-general Salleh Mat Som the rioting could have resulted from the wardens refusing entry to some visitors who were believed to be friends of the inmates.
- On October 14, some 114 inmates escaped from the Tampoi drug rehabilitation centre in Johor, following a riot during which the centre's administrative building was set on fire. Ironically, the centre, which houses a total of 385 inmates, had recently been described as a role model for other drug rehabilitation centres. Sources said the rioting was sparked off by the rearrest of two inmates who had tried to escape.
- On October 17, twelve inmates and a policeman were injured, and a detention camp block was razed at the Machap Umboo detention camp for undocumented migrants in Alor Gajah, Malacca. The camp housed a total of 2,134 inmates. Forty-eight Myanmarese, Indonesian and Bangladeshi nationals were detained for 'causing the riot', which is said to have started after a fight erupted between two groups over the arrival of new inmates into the crowded camp. During the commotion, 11 detainees escaped but three were later recaptured.

Deputy Inspector-General of Police Jamil Johari dismissed claims that the riot was caused by inmates who had not received food, but that the fight broke out because the inmates were not too happy with the arrival of 85 new inmates two days prior to the riots.

In a Radiqradio (a web radio) interview in October 18, migrant workers' rights group Tenaganita director Irene Fernandez commented that, "Detainees who was there are in a very much in controled situation and for a riot to break out means that the detainees have reached a kind of breaking point." She added that riots are not new and that in spite of previous similar incidents and complaints, the authorities have actually closed a blind eye to the inhumane conditions in the camps.

In its press statement released on October 19, Tenaganita also expressed concern detainees suspected of being involved in riots at the Machap Umboo immigration camp in Malacca two days ago may be tortured and abused by the authorities. Fernandez claimed that a detainee who tried to escape from another camp in Johor in May this year was beaten profusely for 15 days. Another incident in March this year saw a detainee kicked, punched and beaten up for almost a month for being caught with a mobile phone. "With a plastic pipe, the police beat him at his groin and later handcuffed him on to a stool where he had kneel on for seven days," she said.

She added that medication meant to be given to detainees, were often sold to them. Detainees who complained of fever were often told to take a cold shower and were only sent to the hospital after they had passed out.

Independence of the Judiciary

There were many changes in the Malaysian judiciary in 2001. The appointment of Chief Justice Mohamed Dzaiddin Abdullah and Attorney-General (AG) Ainum Mohamed Saaid raised some hope for a more independent and transparent judiciary. Yet the position of the AG took a change again when Datuk Seri Ainum tendered her resignation in November. Her resignation was to take effect from the month of January and her successor was selected from the current AG's office.

Malaysia anticipated the appointment of Datuk Abdul Ghani Patail as the new Attorney-General. His appointment created much consternation because Datuk Ghani was the leading prosecutor in the Anwar Ibrahim case. Citing a letter dated Oct 12, 1998, Nallakarrupan's counsel, Manjeet Singh Dhillon, had alleged that Abdul Ghani "was involved in a questionable attempt to elicit evidence against Anwar in a way that could prejudice his (Anwar's) case. It is suggested that Abdul Ghani had wanted Nalla to bear false witness against Anwar."

On November 28, 2001 the Opposition submitted to Parliament an urgent motion to debate the appointment of the AG on the grounds that it was unconstitutional. They questioned de facto law minister Rais's announcement when the cabinet had not yet met to discuss the appointment, and Mahathir had yet to advise the King on the matter.

In rejecting the application, House Speaker Dr Mohamed Zahir Ismail said, Abdul Ghani had yet to be appointed the new AG as the appointment had not been approved by the King. He also dismissed allegations made against Abdul Ghani and said it should not be used as an excuse to invoke an urgent motion.

According to Article 145 (1) of the Constitution, "The Yang di-Pertuan Agong shall, on the advice of the prime minister, appoint a person who is qualified to be a judge of the Federal Court to be the Attorney-General of the federation".

Abdul Ghani was expected to take charge from the month of January year 2002.

Positive developments have been observed in the judiciary since the appointment of new Chief Justice, Mohamad Dzaiddin Abdullah, in December 2001. He replaces the controversial Eusoff Chin. The Kuala Lumpur Bar Committee (KLBC) had said in a memorandum sent to Chief Justice Mohamad Dzaiddin Abdullah on March 1st that the process of restoring confidence in the administration of justice begins with redressing the wrongs of the past.

The KLBC memorandum stressed that the proposed commission should demonstrate "that no one is above the law" and convince the public that "wrongdoings will no longer be allowed to go unpunished". "This will also vindicate, in the eyes of the public, all those involved in the administration of justice, including members of the judiciary who may have been unfairly accused," it added.

The Malaysian Bar has had strained relations with the judiciary since the late 1980s when former Lord President Tun Salleh Abas was forced to relinquish his position and more so recently when former Chief Justice Eusoff Chin was accused of alleged judicial misconduct. "The administration of justice in Malaysia is in its darkest hour since Independence. Never before have the generally conservative population been confronted with such harsh examples of abuse, incompetence and corruption," the KLBC memorandum said.

The memorandum further stated that the judiciary should be free and independent in order to perform its duties properly. "The judiciary must be allowed to perform its function in the correct environment and with adequate support, free from interference by the executive. In particular, there must be removed encroachments on judicial independence such as fear of repercussions," it said. The memorandum also stated that a country afflicted by inefficient, unjust and corrupt enforcement of the law would be unable to realize "its full potential in nation building".

In terms of the present trend in defamation suits' awards, the KLBC memorandum said that the large damages awarded had served to curtail press freedom and the public's freedom of expression. "The mega-defamation suits and the wielding of the power to punish for contempt in recent years has been perceived by the public as means to stifle fair comment and free speech," it said.

Former Attorney-General Mohtar Abdullah was appointed as Federal Court Judge in January this year amidst much controversy. Mohtar was Attorney-General until the beginning of this year and one of his more public tasks was heading the public prosecution team against former Deputy Prime Minister and Amnesty International prisoner of conscience Anwar Ibrahim.

Court trials

- **Freedom of expression**

The former trend in the judiciary awarding mega awards for defamation suits took a turn in 2001. Justice Gopal Sri Ram on July 25 2001 ruled:

'We do not think that it automatically follows as a matter of policy that

the plaintiff in every case should be entitled to receive an award in millions of ringgit. This is to ensure that an action for defamation is not used as an engine of oppression. Otherwise, the constitutional guarantee of freedom of expression will be rendered illusionary," he added.

On July 17, Justice Abdul Hamid and two others--Justices Denis Ong and K.C. Vohrah--unanimously reduced the damages awarded to fireman Abdul Karim Ayob from RM100,000 to RM30,000.

Abdul Karim was granted the damages after he won a libel suit against Kumpulan Karangkrak Sdn Bhd (which publishes *Mingguan Wanita*), Hishamuddin Yaacob, Sri Diah, Anwar Razali, Natrah Mat Jaari and Ultimate Print Sdn Bhd on Aug 24, 1999.

The High Court had found that Abdul Karim had been defamed by the magazine's article entitled "Suami tebar cinta macam menebar jala (Husband spreads love like casting a net)" published in the Aug 26-Sept 2, 1994 issue, and that the article was a "fictitious concoction" of a non-existent interview. Justice Abdul Hamid stated that the trend of granting huge damages only started after the 1990 case of business tycoon Tan Sri Vincent Tan.

Prior to Tan's case, the only awards exceeding RM100,000 were the ones involving former Sabah Chief Minister Datuk Harris Salleh and former Deputy Prime Minister Tan Sri Musa Hitam. "Before Vincent Tan, the amount was RM50,000, RM10,000. In 1984 and 1985, it was mostly around RM15,000.

The pertinence of a comprehensive code governing defamation is vital to withstand all possible erosion of the freedom of expression..

• **The ISA**

On the ISA, High Court Judge Augustine Paul, on April 25, rejected the habeas corpus application of five reformasi activists detained under the Internal Security Act (ISA), namely Chua Tian Chang, Mohd Ezam Mohd Nor, Hishamuddin Rais, Saari Sungib and Raja Petra Kamaruddin. Paul hit out at a press statement issued by Suhakam, denouncing the use of the ISA to detain the five and asking them to be produced before the courts if there was sufficient evidence against them. He said that it was inappropriate for Suhakam to make such a call as it amounted to an "unlawful interference with the lawful exercise of discretion by the police".

The Federal Court on October 17 ruled that High Court judge Augustine Paul did not act in bias when dismissing the habeas corpus applications of five Keadilan and reformasi activists detained under the Internal Security Act. Chief Justice Mohamed Dzaiddin Abdullah said that there was no real likelihood of bias by justice Paul when he had heard the application of the five in April this year.

Then in early May, the High Court of Shah Alam, in a habeas corpus hearing, ruled that two reformasi activists held under the ISA, Abdul Ghani Haron and N. Gobalakrishnan, both Parti Keadilan Nasional leaders, have the constitutional right to be present in court. Justice Hishamudin Mohd Yunus, ordered the detaining authority to make the necessary arrangements to ensure the presence of the two in court. They were eventually released in a landmark judgement, which ruled that their detentions were illegal and was done in bad faith. The police were also ordered not to re-arrest the duo for the next 24 hours on humanitarian grounds, given the heavy police presence outside the courthouse. The appeal of the six detainees has gone to the Federal Court .

The Kota Bahru High Court on October 4 dismissed a habeas corpus application by PAS spiritual leader Nik Aziz Nik Mat's son against his detention under the Internal Security Act (ISA) for his alleged involvement in militant activities. Justice Suriyadi Halim Omar in his judgement stated that Nik Adli's arrest under the ISA on Aug 4 was valid and legal.

"It is my factual finding that the authorities did inform the detainee of the grounds of his arrest," said Suriyadi in a 20-page judgement.

Nik Adli had sought a habeas corpus application on the grounds that his arrest was illegal because he was not informed of the reasons of his arrest. Habeas corpus is a writ ordering prisoners to be brought before a court or a judge to ascertain whether their detention is lawful. The 34-year-old religious school teacher also claimed that the ISA was legislated to stamp out communism and should not have been used against him. Nik Adli and nine others were detained for allegedly being members of the Malaysian Mujahideen Group (KMM), which the police blamed for a spate of crimes including the assassination of a politician, the bombing of a church and temple as well as several bank robberies.

• **The Official Secrets Act**

The issue of the Official Secrets Act took centre stage on September 21 when the Sessions Court ordered Keadilan Youth chief Mohamad Ezam Mohd Nor who is currently being held under the Internal Security Act, to enter his defence against charges of leaking Anti-Corruption Agency investigation papers by two high ranking officials.

Ezam is accused of disclosing at a press conference on Nov 6, 1999 at the Keadilan headquarters, details of an ACA investigation into International Trade and Industry Minister Rafidah Aziz and former Melaka Mentri Besar Abdul Rahim Tamby Chik.

He had alleged that the investigation papers were then sent to the Attorney-General's chambers for further action. However, no action has been taken so far against the two politicians.

The 34-year-old former political secretary of ex-deputy premier Anwar Ibrahim faces a mandatory jail term of not less than one year, and not more than seven years, if convicted.

• **The Death Sentence**

On July 24, a Ghanaian trader who swallowed 84 capsules, which he claimed contained gold dust, was sentenced to death for drug trafficking. Justice Alauddin Mohd Sheriff found Emmanuel Yaw Tiekue, 41, of Accra, guilty of trafficking in 515.7gm of heroin in the form of capsules which were retrieved from his faeces.

On August 20, a Hong Kong national, convicted of trafficking in more than 2kg of heroin seven years ago, failed in his bid to escape the gallows after losing his appeal in the Federal Court yesterday. Chief Justice Mohamed Dzaiddin Abdullah, who sat with Federal Court judges Justices Steve Shim and Haidar Mohd Noor, were in unanimity when rejecting Chu Tak Fai's appeal against a Court of Appeal's decision in 1997. Chu, a hairdresser from Kowloon, was sentenced to death by the Alor Star High Court on Oct 11, 1994, after he was found guilty of trafficking in heroin under Section 39B of the Dangerous Drugs Act 1952.

An unemployed man was sentenced to death by the High Court on October 3 for bludgeoning a 36-year-old mother to death after she turned down his proposal to marry her daughter two years ago. High court judge Datuk Tengku Baharuddin Shah Tengku Mahmud when passing the sentence on Kofri Mustafar, 26, said the court could not accept the argument that the accused was mentally unstable when committing the

murder. Kofri, was found guilty of murdering Jemilah Idris with a pipe at a road leading to Kampung Permatang, Merchong, Rompin, on July 23, 1999 at 9am.

Two Malaysian bomohs, or traditional healers, and their assistant were sentenced to the gallows for the grisly ritual murder of a local politician almost eight years ago, a tribunal decided on April 4, 2001. The Pardons Board in the central state of Pahang rejected appeals against execution from Maznah Ismail, popularly known as Mona Fandey, and Mohamed Affandi Abdul Rahman and their assistant Juraimi Hussin . On September 13, the Federal Court ruled that the decision by the Sultan of Pahang, not to grant clemency to bomoh assistant Juraimi Hussin for the 1993 murder of Batu Talam assemblyman Datuk Mazlan Idris, could not be subjected to judicial review.

Court of Appeal president Justice Wan Adnan Ismail, who headed a five-man panel stated this in a verbal decision. The other four judges on the panel - Chief Judge of Malaya Ahmad Fairuz Sheikh Abdul Halim, Federal Court judges Justices Siti Norma Yaakob and Haidar Mohd Noor and Court of Appeal judge Justice Denis Ong - were in unanimity with Justice Wan Adnan.

Juraimi, 31, had exhausted all legal avenues after his appeal was dismissed by the Federal Court on April 13, 1999. When his application for clemency was rejected by Sultan of Pahang on April 4 this year, he complained that the inordinate delay of 22 months taken by the Sultan to decide on the matter had made the decision unconstitutional. On November 2, Mona Fandey, her husband Mohd Affandi Abdul Rahman and their assistant Juraimi Husin, were hanged at the Kajang Prison .The execution went on despite many effort made to highlight that sentencing must entrench more rehabilitative measures rather than being a deter-

rent.

Their execution closed the final chapter on the gruesome murder of Datuk Mazlan Idris, the former State Assemblyman for Batu Talam in Pahang. On December 28, 2001 the conclusion of the highly intense Al Maunah case saw Mohamed Amin Mohamed Razali, along with two of his followers, Zahit Muslim and Jamaludin Darus being sent to the gallows. The formal charge against the group was of "waging war" against the king.

Juvenile cases.

On July 23, lorry attendant T.L. Veerian, 20, was jailed 13 months by a Sessions Court for causing hurt to Santhana Mary, 53. Veerian had pleaded guilty to a lesser charge of voluntarily hurting the woman using a piece of wood at a house in Jalan Menteri Besar, Pokok Assam 2am on Sept 17, 1999, an offence under Section 324 of the Penal Code.

Judicial Commissioner V.T. Singham said the established principle in Tukiman bin Taib vs Public Prosecutor decided in 1955 should be reviewed in view of prevailing circumstances. He said that there are too many crimes committed by youthful offenders and they cannot be allowed to take shelter or escape since they are youthful offenders or be spared prison sentence.

"The established principle that youthful offenders and first offenders should be spared prison sentences requires a review as it cannot be applied now," he said when dismissing an appeal by lorry attendant T.L. Veerian, 20, who was jailed 13 months by a Sessions Court for causing hurt to Santhana Mary, 53

The current need of societal values behind the laws need to be studied. The causes of such criminal behavior need to be highlighted. The deterrent sentences do not always produce the desired results.

Freedom of Association

On the issue of freedom of association, the courts tended to take the narrow view with regard to the rights guaranteed by the Federal Constitution. Article 10 reads that all citizens have the right to form associations. The discrimination in registration of association and political parties still exists and hampers the practice of democracy in Malaysia.

Party Socialist Malaysia (PSM) was formed in 1998 and until today the party's status is still pro tem. The registration process was delayed and it looks like a deliberate act by the authorities. The PSM pro-tem committee had filed for political party registration under the Societies Act on April 30, 1998 but were informed by the Home Ministry in February 1999 that their application had been rejected. They were not given reasons for the denial.

The party then appealed against the rejection but were informed on Sept 23, 1999 that its appeal against the rejection by the ministry had been dismissed.

In its suit, PSM claims that the home minister had not given any reasons for rejecting the party's appeal and had acted beyond his powers under Article 10 (1) (c) of the Federal Constitution. On July 24, the PSM suit against Home Ministry was postponed again by the court. The matter seems to question the seriousness of the judiciary in conforming to the fundamental rights guaranteed by the Federal Constitution.

In a separate development, lawyer R.Sivarasa took section 46A of The Legal Profession Act 1976 to court seeking a declaration for him to retain his position at the Bar Council. The provision in the act disqualifies lawyers who are office bearers in political parties, trade unions and other political organisations from holding office in the Bar Council.

Sivarasa was disqualified as a Bar Council member after he was appointed a vice-president of Parti Rakyat Malaysia. His application for the right to retain his posts in both the Bar Council and PRM was quashed by the Kuala Lumpur High Court on Aug 22.

Justice Faiza Tamby Chik said Sivarasa had no arguable case to allow the application for judicial review. Sivarasa's appeal, now pending in the Court of Appeal, is against High Court judge Justice Faiza Tamby Chik's refusal on Aug 22 to grant leave to him to apply for declarations that he should not have been disqualified as a Bar Council member by the operation of Section 46A of the Act.

Sivarasa argued that Section 46A of the Legal Profession Act 1976 was invalid because it violates the freedom of association provision in Article 10 of the Federal Constitution.

The case of Zainur Zakaria

The case of Zainur Zakaria poses a serious question on the duty of counsel when representing his client. The threat of being cited for contempt creates a fear and hampers a lawyer's duty to his client.

In February 2001, the contempt of court case of Zainur Zakaria, lawyer for jailed former deputy Prime Minister Anwar Ibrahim and Vice Presi-

dent of Parti Keadilan Nasional, was heard in the Federal Court. Zainur was convicted on November 30th 1998 for filing an application for Anwar Ibrahim for the disqualification of two senior Deputy Public Prosecutors during the corruption trial of Anwar. He was subsequently sentenced to three months jail by Justice Augustine Paul. On September 5th 2000, the Court of Appeal had dismissed Zainur's appeal. The Federal Court, which heard the appeal over two days, reserved its judgment.

In March 2001, the influential Kuala Lumpur Bar Committee (KLBC) called on new Chief Justice Mohamad Dzaiddin Abdullah to begin the process of restoring confidence in the administration of justice. KLBC, which makes up almost half of the Malaysian Bar, called for an independent commission to be set up to investigate all allegations of wrongdoing in the administration of justice in the country.

The Federal Court panel ruled on June 27, to unanimously free lawyer Zainur Zakaria of a contempt conviction imposed by Justice S. Augustine Paul on 30 Nov 1998 during the hearing of Datuk Seri Anwar Ibrahim's corruption trial. In delivering their judgments separately, the judges were of the opinion that High Court judge Augustine Paul had not followed proper procedures in finding Zainur guilty of contempt of court. Justice Abdul Malek also ruled that Paul had acted wrongly in finding Zainur guilty of contempt of court

In a another occasion a three-member Court of Appeal panel on April 23 substituted a six-month jail sentence imposed on lawyer Tommy Thomas for contempt of court with a RM10,000 fine, with one judge giving a dissenting opinion. The decision was made after the court narrowly upheld, by a vote of two against one, Thomas' High Court conviction and subsequently dismissed his appeal against it. Dissenting judge Gopal Sri Ram said the appeal must be allowed as the conviction against the

lawyer "destroys the freedom of thought and speech".

The other two panel members, Justices Denis Ong and Ahmad Fairuz Sheikh Abdul Halim, however ruled otherwise. Thomas had appealed against both his conviction and sentencing by High Court judge RK Nathan, who in December 1998 imposed the six-month jail sentence for contempt.

Nathan found Thomas guilty of contempt for making a public statement in connection with the settlement of defamation suits filed by several large companies, a business tycoon and a prominent lawyer against him and legal firm Skrine & Co. In his High Court decision, Nathan found the statement by Thomas to have been an insult to the court and a repudiation of a settlement agreement in a libel case.

In the statement, Thomas said he had not been consulted adequately by his insurers about the decision to settle and that the settlement was insisted upon by the insurer despite his objections. Thomas immediately retracted the statement, expressed regret, and offered an apology to the court but Nathan sentenced him to six months' imprisonment for contempt of court.

Right to Fair Trial

In January, Wong Teck Choy, a prominent businessman and son of a tycoon in Pahang, was charged under Section 302 of Penal Code for allegedly shooting dead Seow Nam Keong, 27, a car accessories shop worker, over a parking dispute in front of a pub in Taman Thivy Jaya, Rasah, on Jan 14.

The crisis emerged when Wong was granted police bail of RM100,000 at the Magistrates' Court on Jan 27 despite the fact that his murder charge is a non-bailable offence. Under Malaysia law, a murder under the Section 302 of the Penal Code, which carries the death sentence upon conviction, is a non-bailable offence.

What added to the judiciary crisis is that his bail had apparently was extended seven times under the instruction from the Attorney General's Chambers with no clear indication of who had given the order.

Businessman Wong Teck Choy was only officially charged in the Magistrates' Court in Seremban on March 29 and since then he has been sent to Sungai Buloh Prison pending mention of the case in the Seremban High Court.

Minister in the Prime Minister's Department, Rais Yatim announced several times in February that the government had decided to set up an inquest to probe the matter following a public outcry over the perceived special treatment given to a prominent businessman.

Anwar Trial

All five remaining criminal charges against jailed ex-deputy prime minister Anwar Ibrahim were withdrawn by the High Court which convened at the Sungai Buloh Prison on May 12. Under the Criminal Procedure Code of Malaysia the public prosecutor has the power to discontinue or decline to prosecute at any stage of trial.

Justice Augustine Paul acquitted and discharged the charges, four on sodomy and one on corrupt practice, following an application by the

prosecution. The charges had been scheduled for mention on May 12, the prison administration building to facilitate Anwar who was suffering from a chronic slipped disc complaint. He is undergoing a 15-year jail sentence for corruption and sodomy at the prison. Anwar's appeal against the conviction and sentencing for both crimes is yet to be heard by the higher courts.

In a statement issued by his lawyers, Anwar said that the charges were trumped-up and part of a political conspiracy: "So the withdrawal is nothing but a charade. They knew that had they proceeded with the five charges this would have afforded me another forum to expose the conspiracy," Anwar added in his statement.

Anwar has always maintained that the charges leveled at him were a result of a government conspiracy, a charge denied by the government. The prosecution did not give any reason for the move. The remaining corruption charge was in regard to Anwar's alleged involvement to stop an Anti-Corruption Agency (ACA) investigation against his former private secretary Mohd Azmin Ali.

On July 6, jailed former-prime minister Anwar Ibrahim lost his RM100 million defamation suit to Prime Minister Dr Mahathir in the highest Federal Court and was ordered to pay another RM 18,486 in court costs on top of RM 85,284 which the high court had ordered him to pay Mahathir.

In January 1999, Anwar lodged a RM100 million defamation suit over the remarks which he said Mahathir had defamed him while he was in detention and unable to defend himself.

On Aug 30, 1999, the High Court threw out the defamation suit on the

grounds that Anwar's claim was "obviously unsustainable" and that his suit was frivolous, vexatious and an abuse of the court process. Dissatisfied with the judgment, Anwar took the case to the Appeal Court and later to the highest Federal Court, both which upheld the high court's decision.

In another development, the Kuala Lumpur High Court on December 13 ordered judge Augustine Paul to appear in court when the contempt proceeding filed against him was to be heard in January the following year.

Lawyer Christopher Fernando filed a contempt of court motion against Paul for uttering disparaging remarks directed at him during the corruption trial of jailed ex-deputy prime minister Anwar Ibrahim in April 1999.

In his affidavit, Fernando said Paul made the following remarks against him as counsel for Anwar in his absence: "If the way of speaking is like an animal, we can't tolerate it. We should shoot him. He has to change."

Fernando added that although Paul then qualified the remarks by saying he was not comparing him to an animal, "the qualification of the remarks did not remove the sting in the remarks".

However Justice Paul failed to appear in court on December 13 although the High Court judge was served with a notice on Oct 12 informing him of the proceeding.

Counsel for Fernando, Karpal Singh told the court that Paul should be issued with a warrant of arrest as his absence was unbecoming of a judge and disrespectful to the court, and the hearing should also not be further delayed. He argued that Judges must set the example.

He also added that since Paul was in contempt of court, he no longer had the right to give judgment in Anwar's case. "If Paul is found to be in contempt, it will have far-reaching consequences. He loses his right to deliver the judgment," said Karpal.

Judge Hashim then fixed the hearing on Jan 18 and Feb 11 the following year to allow the AG time to file papers to intervene and Paul to be present in court.

On July 25, jailed Anwar Ibrahim filed a 24 points petition of appeal against his High Court conviction for sodomy and nine years' jail sentence.

The petition, among others, stated that Justice Arifin had erred in law by calling Anwar to enter his defence at the end of the prosecution's case when the prosecution had failed to adduce the primary evidence required to support the sodomy charge. Anwar also filed another petition of appeal against Justice Arifin's dismissal of his application to throw out the sodomy charge. The date of the hearing has not been fixed yet.

The effect left by the case of Anwar Ibrahim opens a new horizon and concern over issues pertaining to the fundamental rights to a fair trial.

The wide powers of the Attorney General in drafting charges and selective prosecution is feared to be non transparent and subject to abuse of power. This issue is apparent in the current arrest under ISA, the failure to prosecute erodes further the detainees' right to a fair trial.

In the latest appeal filed by Datuk Seri Anwar Ibrahim on his sodomy conviction, the following issue was put forward by the appellante on 5th of July 2001.

The jailed former Deputy Prime Minister Anwar Ibrahim lodged a formal complaint against High Court judge Arifin Jaka to the Chief Judge of High Court Malaya, Wan Adnan Wan Ismail with regard to Arifin's inordinate delay in giving his notes of proceedings from Anwar's sodomy trial.

"The petition, among others, stated that Justice Arifin had erred in law and in fact in calling Anwar to enter his defence at the end of the prosecution's case when the prosecution had failed to adduce the primary evidence required to support the sodomy charge.

Anwar claimed that the judge erred in law and in fact in holding that Azizan was a credible, reliable and trustworthy witness despite the overwhelming evidence to the contrary.

He also claimed that he was deprived of a fair and reasonable opportunity to further discredit the evidence of the prosecution's witnesses after the judge rejected his application to call Prime Minister Datuk Seri Dr Mahathir Mohamad as a witness in the sodomy trial.

Anwar also filed another petition of appeal against Arifin's dismissal of his application to throw out the sodomy charge.

On the same issue, the Chief Justice has written to two judges asking them to explain why they had been slow in delivering their judgments as well as providing the grounds.

Tan Sri Mohamed Dzaiddin Abdullah said a letter had been sent previously by the Chief Judge of Malaya Tan Sri Wan Adnan Ismail to one of them.

The stated reports are inflicting doubt in the mind of the public and it is feared to effect the credibility of the judiciary as whole. Such development also affects the constitutional guarantee of a fair trial.

The Case of the Former Inspector-General of Police

On April 30, the Appeals Court sent former Inspector-General of Police Tan Sri Abdul Rahim Noor to Kajang Prison to serve a two-month jail term. The judgement came after Rahim Nor had appealed against his sentence. He had admitted to assaulting the handcuffed and blindfolded former Deputy Prime Minister Anwar Ibrahim, while he was held under police custody on 20 September 1998. Describing it as "the worst case of indiscipline of a police officer," Justice Shaik Daud said the two-month jail term affirmed by the High Court, was "too lenient" for the former IGP. The RM 2,000 fine set aside by the High Court, was restored by the Appeals Court.

Native Land Rights

On May 12, the High Court in Kuching ruled that Sarawak Native Customary Rights (NCR) land do not owe their existence to the statutes but have existed long before them. The Kuching High Court has also affirmed the native customary rights (NCR) of a group of Ibans over their traditional farming and hunting lands.

This decision came more than two years after four Ibans from long houses in the Bintulu district took the state government and a paper and pulp company to court, claiming that their NCR land had been included under a provisional lease issued to the company by the government.

The Mohammad Kamil case

On 8 June, Kota Kinabalu High Court Justice Muhammad Kamil Awang, delivered a landmark election petition judgment by ordering former Sabah Chief Minister Yong Teck Lee, a member of a Barisan Nasional component party, to vacate his state assembly seat in Likas on the grounds that the electoral roll for the constituency was illegal, and that it contained high numbers of "phantom voters".

Muhamamad Kamil alluded to the fact that he had received instructions from his superiors to strike out the case. He also disclosed that one of the witnesses he subpoenaed to give evidence in court was later found killed while another witness was kidnapped during lunch break, when the trial was being heard. Prime Minister Mahathir Muhammad later accused the judge for tarnishing the image of the court by dragging the judicial system into public controversy.

(UN) Special Rapporteur Param Cumaraswamy Immunity Issue

On June 11, two years after the International Court of Justice (ICJ) ruled that United Nations (UN) Special Rapporteur Param Cumaraswamy enjoyed immunity from defamation suits, an application to withdraw the last of the four such suits filed against him in Malaysia was made. The last of the suits involved local companies MBF Capital and BF Northern Securities who filed their notice to withdraw their RM60 million suit against Param at the Kuala Lumpur High Court. This was followed by a similar application made by prominent businessman Vincent Tan and his two companies to discontinue their RM100 million suit on May 23 and a notice by lawyer VK Lingam to discontinue his RM60 million suit.

The Keadilan Crackdown

The magistrate's court in Kulim upheld the rights of Mohd Ezam Mohd Noor and Chua Tian Chang, currently arrested under Internal Security Act (ISA), as political prisoners and not criminals, when he ordered the authorities not to keep them in lock-ups everytime they are brought to face trial, for offences they allegedly committed during the Lunas by-election last year.

On May 2, Hulu Klang State Assemblyman Mohamed Azmin Ali was sentenced to 18 months' jail by a Sessions Court in Kuala Lumpur, after he was found guilty of giving false evidence in Datuk Seri Anwar Ibrahim's corruption trial in March 1999. The 36-year-old former private secretary of Anwar was allowed by Judge Akhtar Tahir a stay of execution pending appeal and was released on RM20,000 bail. Under Article 64(1)(e) of the Selangor constitution, Mohamed Azmin stands to lose his state assembly seat if he fails in his appeal.

The High Court on October 9 nullified the order made by the Kulim magistrate court that ISA detainees Mohd Ezam Mohd Noor and Tian Chua Tiang should not be detained in the lock-up when facing trial in Kulim. Justice Muhamed Ideris Muhamad Rapee made the decision after Deputy Public Prosecutor Azman Abdullah applied to the court to nullify the order, saying the magistrate did not have the power to order where the duo should be detained during their trial. Azman had pointed out that only the Home Minister had the power to do so under Section 18(2) of the Internal Security Act (ISA) 1960.

He added that the magistrate also did not give any alternative detention area while making his order. Justice Muhamed Ideris then ordered that Mohd Ezam, 34, and Tian, 39, be given proper treatment according to

the law during the trial. Both are facing trial for offences they allegedly committed during last year's Lunas by-election.

Both Tian, who is Keadilan's vice-president and Mohd Ezam, the party youth chief are being detained under the ISA for two years at the Kamunting detention camp. Both detainees and seven others are alleged to have taken part in an illegal assembly with the intention of rioting and preventing drivers and passengers of five buses from reaching their destination at Taman Mewah Kulim between 6.30am and 9am on Nov 29.

Anwar Ibrahim was denied his day in court to refute all the allegations (four on sodomy and one on corrupt practice) against him, when all five remaining criminal charges against him were withdrawn by the High Court which followed an application from the prosecution but without any reason given. Law Minister, Dr. Rais Yatim said that the five charges were withdrawn as Anwar was already serving a 15-year jail term. However the defence team maintained that Anwar is innocent and there is no evidence to support the charges.

K.Rajasegaran Case

On May 14, the High Court of Kuala Lumpur, allowed lawyer K. Raja Segaran to discontinue a suit he had filed against the Bar and two others in 1999 with no rights to re-file the matter. Justice Dr R.K. Nathan said the suit was academic now that former Chief Justice Tun Mohd Eusoff Chin, who was the subject matter of motions attempted to be discussed by the Bar in two extraordinary general meetings, had retired. The judge had stopped both EGMs following applications by Raja Segaran in 1999 and last year. On April 27, the Bar--through senior counsel Raja Aziz

Addruse had informed the court that it was objecting to the application to discontinue the suit. Raja Aziz submitted that doing so would deprive the defendants of the right to test the principles laid down in the court's earlier judgment on issues raised during the proceedings.

The Karpal Singh Case

A senior lawyer, who is also deputy chairman of the DAP, was charged in January 2001 after telling the court that traces of arsenic had been found in Anwar's blood and he suspected that "people in high places" may have been trying to poison him. The government ridiculed the poisoning claim. An independent medical inquiry later found Anwar was not suffering from acute arsenic poisoning at the time its tests were conducted. Karpal was arrested on Jan 12, 2000 and charged two days later for allegedly making the "seditious" statement. His case will be heard before justice S Augustine Paul, who was also the judge before whom Karpal had made the remarks.

Karpal, who is on bail, has said that there is no precedent in the Commonwealth for such a charge "for the simple reason that all the time there is immunity as far as lawyers are concerned in the discharge of their duties in court". If found guilty, Karpal can be fined RM5,000 or sentenced to a three-year jail term or both.

Lawyer Karpal Singh also filed an application to disqualify High Court judge Augustine Paul from hearing his sedition case due to the possibility of the judge being called as a witness in another case which Karpal is handling. Karpal's application will be heard when his sedition trial begins on Jan 14, 2002. The trial was to have commenced today but was adjourned as Paul had another unfinished case before him.

Human rights watchdog Amnesty International criticized the prosecution of Karpal, saying it will create serious implications for the independence of lawyers in Malaysia and their ability to carry out their duties free of fear of intimidation. "The charges further undermine the already shaky public confidence in the rule of law and the administration of justice," said Amnesty in a statement.

In a later development, thirteen years after being detained under the Internal Security Act (ISA), the High Court declared on November 17, 2001 that although Karpal Singh's detention order was issued according to law, it breached the Constitution as the Advisory Board did not hear the plaintiff's representations in the prescribed time-frame. He also held the defendant (Home Minister and the Government) to be liable for the detention from April 1, 1988, to Jan 25, 1989, which contravened the Constitution; and that the restrictions and conditions (imposed after Karpal Singh's release) between Jan 26, and April 19, 1989, were invalid.

Justice Abdul Hamid also ordered the Home Minister and the Government to pay costs. Although the Constitution was amended to extend the three-month period, he said Parliament did not amend the Eleventh Schedule to the Constitution until 1993 and it was not made retrospective.

The Chronology of Events

Karpal Singh was first arrested on Oct 27, 1987, at the Jalan Bandar police station and then taken to the Sentul police station before he was sent to the police remand centre.

On Dec 19, 1987, Karpal Singh was served with a detention order dated Dec 18, pursuant to Section 8(1) of the ISA

On December 21, 1987, he was taken to detention centre in Kamunting, Perak, where he was held until Dec 23. Due to ill health, he was later warded

On March 8 1988, Karpal Singh was released after the Ipoh High Court allowed his application for habeas corpus. On his way from Taiping to Penang, he was rearrested at a roadblock in Nibong Tebal.

On April 16 ,1988 a detention order was then served on Karpal Singh and he was taken back to Kamunting. The Government had appealed against the release by the Ipoh High Court and won.

On July 26, 1988, The April 16 detention order was cancelled and the Government relied on the order dated Dec 18, 1987, for Karpal Singh's continued detention.

On Dec 31, 1987 Karpal Singh made representations to the Advisory Board against the Dec 18 order pursuant to Rule 3 of the Internal Security (Advisory Board Procedure) Rules 1972,

On March 15, 1988 representations were heard.

On August 2, 1988, the Board heard Karpal Singh's case

On Jan 26, 1989, by an order pursuant to Section 10(1), Karpal Singh was released but with conditions and restrictions imposed on him on the basis of the suspended Dec 18 order. Karpal Singh had pleaded that canceling the Dec 18 order meant the attached restrictions and conditions were cancelled.

On Sept 18, 1990, Karpal Singh had sued the defendants for damages, costs and any further relief the court saw fit.

November 17 2001, the detention of Karpal Singh in 1988 was declared unconstitutional. Assessment for cost has been scheduled for Feb 20, 2002.

Cases of Judgments Overturned by a Higher Court

On July 11, the Penang High Court freed a 19-year-old salesman, Tan See Han, from a drug rehabilitation centre after finding there was a possibility that the traces of morphine in his urine sample were from some cough mixture.

Tan was detained since Feb 22 at the Karak Drug Rehabilitation Centre under the Drug Dependents (Treatment and Rehabilitation) Act 1983.

In allowing the habeas corpus Justice Mohd Noor Abdullah held that on prima facie basis, the magistrate was right in ordering the detention of Tan See Han but the issue that concerned the High Court was whether the morphine detected in Tan's urine sample was because of the cough mixture he consumed a few days before his arrest or the actual drug.

On July 16, a Thai national, Azmi Ibrahim,³⁷ convicted of drug possession was freed Monday after the Court of Appeal allowed his appeal and ruled that he had been wrongfully convicted five years previously.

A three panel Court of Appeal Judges overturned a Kota Baru High Court's decision in June 1996 sentencing Azmi Ibrahim for possessing 5917.3gm of cannabis to 15 years and 11 strokes of the rotan under the Section 39A(2) of the Dangerous Drugs Act 1952. The ruling had stated then that being close to the drugs also meant that the accused was guilty of possessing them.

However, the three-panel Court of Appeal Judges unanimously set aside Azmi's conviction and sentence, and held that proximity was not the same as possession.

Executive Interference

Angered by at least two judgments from the Malaysia High Courts delivered in the middle of the year, Prime Minister Dr Mahathir attacked judges associated with the 2 cases:

1. In May 30, when squashing the detention order of two ISA detainees by the police, the Shah Alam High Court Judge Hishamudin Mohd Yunus ruled that the detention of N Gobalakrishnan and Abdul Ghani Haroon under the Internal Security Act was unlawful and done in bad faith and called upon the Malaysian Parliament to thoroughly review the ISA.
2. In another judgment, Sabah High Court Judge Muhammad Kamil Awang on June 8 ordered the state assembly seat of Likas to be vacated by Yong Teck Lee, a former Sabah Chief Minister. The High Court Judge had held these political party leaders responsible for having "phantom voters" thus abusing their powers and responsibilities in letting non-citizens in the state to acquire blue identity cards, which allows them to register as voters. The judge's remarks towards the end of his judgment had generated public interest when he revealed that he had been instructed by a superior to strike off the election petitions without a hearing.

On July 20, Mahathir said that the judges who do not agree with laws passed by Parliament should excuse themselves when hearing such cases. Mahathir was reported as saying that if judges meted out sentences without using the law as a guide but by following their thinking, feelings or personal stand, there would not be justice done. He further added that if judges felt that they were above the law there would be chaos in the country.

On July 25, Prime Minister Dr Mahathir strongly criticized High Court Judge Datuk Muhammad Kamil Awang for tarnishing the image of the court by dragging the judiciary into public controversy. Following Mahathir attacks, Minister in the Prime Minister Department Dr Rais Yatim immediately announced that the Government is scheduled to amend the

law in December so that Election Court decisions will no longer be final and will then allow appeals.

Conclusion

In a recent development, the public reacted strongly to the exposure of impropriety in the conduct of the Certificate in Legal Practice examination. The exam is the qualifying exam for law graduates in order to practice law. The issue of question papers being available before exams for a sum of money and other improprieties were highlighted. This posed the related question of the extent of such practice and the qualification of previous graduates. The issue is seen to be another blemish on the legal profession of Malaysia.

The Malaysian Human Rights Commission

The Malaysian Human Rights Commission or widely known as Suhakam in its Malay acronym, came into effect in July 1999. Since then the function and the activities of Suhakam have been closely watched by many human rights organizations and other governmental bodies. The Human Rights Commission Act 1999 was gazetted in September 1999, and the commission is being run by a chairman and 12 human rights commission members since their appointment in March 1999.

The first human rights commission has given Malaysia a new dimension in human rights appraisal. The year records an intense period for Suhakam as the public watched Suhakam with great anticipation and hope. The Commission has covered various sectors of human rights violation.

The Commission has completed its first ever inquiry into allegations of abuse of police powers on one particular demonstration in November 5th 2000, where more than one hundred people were arrested and scores injured, including a 30-year old man who was placed in the intensive care unit. Nonetheless the Commission remained silent on a recent spate of peaceful demonstrations organized by opposition parties which were quelled by the police who used high-handed methods in various parts of the country.

Suhakam's attitude is seen to be more proactive in socio-economic issues rather than issues pertaining to civil and political rights. In a student dialogue on March 25, Suhakam chairman Tan Sri Musa Hitam defended Malaysia's human rights record while acknowledging that there was room for improvement all round. He stated that human rights does not concern politics alone, but has to do with economic, social and

cultural rights of the people. On economic development, Musa gave Malaysia "top rating", saying the country had done well to bring prosperity, eradicate poverty and ensure equitable distribution of wealth although weaknesses remained.

He rated the social rights of Malaysians as "good", especially in education and healthcare, but on issues concerning women, children and the disabled for example, "Malaysia still has a long way to go." On cultural rights, which included religious rights, in the context of a multi-racial society, Musa said the record was "fair", adding that "Malaysians have a long way to go before they can achieve a high degree of tolerance."

Suhakam Report To Parliament

On April 20, Suhakam presented their first annual report to Parliament. Among recommendations listed by SUHAKAM were:

- to review several oppressive laws, which infringe the basic human rights of Malaysians.
- to ratify primary international instruments of human rights namely: The International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and Convention Against Torture

The report also urged the government to take steps to draft new legislation to incorporate the provisions of the Conventions into domestic law. Suhakam also upheld the right to freely assemble, and recommended specific public areas to be identified by the authorities for the holding of peaceful assemblies and a standardized procedure for organizers of such

public rallies. As for applications for permits to hold indoor assemblies such as stadiums, halls and private properties, Suhakam recommended that the police should approve such permits as a general rule.

The government however reacted unfavorably to the report. Prime Minister Dr Mahathir Mohamad, said that security is the responsibility of the Government and the police, not Suhakam's, and as such the Government was not bound by Suhakam's views and recommendations. Foreign Minister Syed Hamid Albar questioned the contents of the report which he suggested went beyond the ambit of their mandate. NGOs and civil society initiatives, however welcomed the report as a positive start.

The Anwar Ibrahim Surgery

A memorandum, signed by Anwar's legal counsel Sankara Nair and Anwar's wife Dr Wan Azizah Wan Ismail, was handed to Suhakam staff on May 15 at its headquarters in Menara Tun Razak, Kuala Lumpur. The memorandum dealt with the manner in which the government had dealt with his preferred treatment.

Anwar is seeking to have his endoscopic surgery at Alpha Klinik, Dr Thomas Hoogland's practice in Munich, Germany, but the government has stated that the surgery must be done locally. Last March, the spinal surgeon on the invitation of Anwar's family came to inspect the facilities available locally. He found Hospital Kuala Lumpur (HKL) to be "well equipped except for an appropriate operation table and X-ray equipment" and that "the anesthesiologists do not have experience with spinal procedures under local and intravenous anesthesia". This evoked a backlash from (HKL) director Dr Abdul Razak Kechik and Health Minister Chua Jui Meng with the latter questioning Hoogland's professional

qualifications and expertise.

Anwar is suffering from slipped disc in his spine which was attributed to a fall during a horse-riding session in the mid-1990s. He claims it was further aggravated by former Inspector-General of police Rahim Noor's assault on him during his detention under the Internal Security Act (ISA) in 1998. Rahim served a two-month jail sentence for the offence.

Suhakam commissioner Anuar Zainal Abidin who led a team of five Suhakam commissioners to meet the former deputy premier in his prison cell in Sungai Buloh commented that jailed former deputy prime minister Anwar Ibrahim was visibly in pain and appeared uncomfortable physically. Suhakam's visit on May 22 was in response to the memorandum sent in mid-May, which stated that Anwar had been denied his right under "peculiar medical circumstances".

Suhakam later on May 31 commented that jailed politician Anwar Ibrahim should be allowed to exercise his right to choose his preferred medical treatment for his chronic backache, even if it means he has to go overseas. Suhakam observed that there are no prohibitions in law for Anwar to be sent abroad for medical treatment. Since Anwar has been denied bail and is now in prison, Suhakam considered the relevant provisions of the 1995 Prison Act which provides that where there are inadequate facilities for the treatment of a prisoner, an order may be made for the removal of the prisoner to a government hospital. Suhakam stated that the act also allowed the prison authorities to release a prisoner on license and that the prisoner may be moved out of the country by sea or air.

Dr Mahathir on March 29 said that the Government knew that was one of the reasons why Anwar wanted to seek treatment in Germany instead

of having it in Malaysia. He accused the latter of plotting to escape and not to return from treatment . He commented that Anwar was already being treated with much care and the need to seek treatment overseas did not arise. The Prime Minister also hit out at Datuk Seri Anwar Ibrahim over the former deputy prime minister's manner of politicizing his back pain problem.

"He wants to propagandize everything. Everything is politics, there is nothing about health here," said Datuk Seri Dr Mahathir Mohamad. He accused his imprisoned former deputy Anwar Ibrahim on first of May of lying about his medical condition to win political support. "It's a lie, it's politics, just like the other day when he accused us of giving him poison, it's all lies," he added. On April 17, Health Minister Chua Jui Meng on the other hand told Parliament that Anwar was putting himself in danger by delaying his surgery and must take full responsibility for any negative consequences that arise. "A panel of doctors have repeatedly advised Anwar on the side effects of such a delay."

ISA Cases

In 2001, the government made more arrests of politicians, activists and students. In one occasion, a student activist's family lodged a complaint with Suhakam. Mother and siblings of Khairul Anuar Ahmad Zainuddin had a closed meeting with Suhakam. Student activist Khairul Anuar Ahmad Zainuddin was arrested under the ISA on July 5th. This was in connection with an anti-ISA demonstration in front of the National Mosque on June 8. They were accompanied by members from 'Gerakan Mansuh ISA' (GMI), the Anti-ISA Movement and nearly 90 NGOs and student movements together with representatives from political parties. Tan Sri Anuar Zainal Abidin accepted the complaint on behalf of Suhakam and

promised to look into the matter. The memorandum was handed over on July 6, 2001.

Ten political leaders and human rights activists are under ISA detention since police launched a crackdown on April 10. Following the first seven arrests, police claimed the detainees were planning to topple the government via militant means.

Those detained are Keadilan leaders Tian Chua and Dr Badrul Amin Baharom; party Youth leaders Mohamad Ezam Mohd Nor, Saari Sungib, N Gobalakrishnan, Abdul Ghani Haroon and Lokman Noor Adam, webmaster of Free Anwar Campaign website (Freeanwar.com) Raja Petra Raja Kamaruddin; human rights activist Badaruddin Ismail; and social activist-cum-malaysiakini columnist Hishamuddin Rais.

GMI which is working for the abolition of the Internal Security Act handed a memorandum to Suhakam on October 11, 2001. They listed alleged violations of human rights on six reformist activists at the Kamunting detention camp. The complaints include the detainees being denied legal visitation rights, reading materials and personal letters, rights to perform prayers and improper food for those with medical conditions.

The memorandum was handed over to commissioner Dr Hamdan Adnan, who heads Suhakam's working committee on visitation to detention centers by Zaid Kamaruddin, chairperson of the Abolish ISA Movement (AIM). The Movement sees the issue as urgent and called on the commission to immediately take action for the safety and well being of the said political detainees. The matter has still not been resolved by Suhakam.

Before this, another memorandum was handed over to Suhakam commissioners on May 16 by Aliran Kesedaran Negara (Aliran), Human Rights

Association of Malaysia (Hakam) and Suara Rakyat Malaysia (Suaram). They protested against the recent ISA arrests of reformasi activists. Aliran, Hakam and Suaram were represented by P Ramakrishnan, Raja Aziz Addruse and Dr Kua Kia Soong respectively. The memorandum was directed to Suhakam urging immediate action to probe the ISA arrests. Since the ISA detentions, Suhakam has been repeatedly urged by opposition political parties, Non-Governmental Organizations (NGOs) and concerned citizens to pressure the authorities to allow more access to the detainees or release all those detained.

Those arrested under the ISA are held incommunicado. In the past, detainees held under the ISA during the 60-day "investigation period" have been variously forced to strip, deprived of sleep, food and water, or told that their families would be harmed, and subjected to prolonged aggressive interrogation to coerce them to confess. ISA detainees are usually held in solitary confinement, in a windowless cell where they lose all sense of time. The interrogation procedure is designed to induce a feeling of complete disorientation and dependence on the interrogators as the only point of human contact. The sense of helplessness is exacerbated by their knowledge that no judicial or legal intervention is permitted and that family visits are entirely at the discretion of their interrogators. Several former detainees have suffered mental breakdown as a result of prolonged intense psychological pressure during interrogation. Others have been forced to make false confessions.

When Suhakam released a statement calling for the immediate release of seven reform activists detained under the Internal Security Act (ISA) on April 11, Minister Datuk Dr Rais Yatim termed them as "behaving a little bit extraneous and exuberant". The body was told to understand that its role was to ensure that human rights was not violated and "the action of detaining the seven persons, does not mean that their human rights has

been violated."

Although the commission is empowered under Section 4(2)(d) of the Human Rights Commission of Malaysia Act 1999, to visit places of detention, they were denied access to detainees, and were made to wait for police clearance, as there were various interpretations of the Act. On 26 April, during a meeting with family members of an ISA detainee, a Commissioner conceded that their hands were tied and that they were unable to do much with regard to the current detentions under the ISA. Finally on 29 May, after more than seven weeks, four commissioners were allowed to meet with the 10 detainees, with strict supervision of the Special Branch Deputy Director Abdul Razak Sulaiman and another police officer throughout the visit. The Commission released an immediate press statement after their visit saying that there was no use of physical force on the 10 detainees, with the exception of one who claimed to have been pushed to the ground from his chair and was allegedly denied an opportunity to lodge a police report.

N. Gobalakrishnan, one of the two detainees who were released by a High Court on May 10, revealed that when he met the commissioners, at the Kuala Lumpur police headquarters, he was accompanied by his interrogators who prevented him from speaking to the commissioners about his experiences while in detention. "When I was asked if I had anything to say, my interrogators would tell the commissioners to stop and go on to the next question," he said. "When the commissioners asked me about how I was treated or about my health, my interrogators would say that the question was not relevant".

On May 12, Tan Sri Harun Hashim responded that the public can't expect Suhakam to go to a detention camp, bang on the doors and shout "open the door". About a week after the latest ISA crackdown beginning

April 10, Suhakam made a request to visit the detainees and subsequently wrote a letter to the police seeking access to them.

Later the commissioners, comprising Anuar Zainal Abidin, Mehrun Siraj, Dr Mohammad Hirman Ritom Abdullah and Prof Hamdan Adnan, were allowed access to the detainees on May 29, six weeks after Suhakam had sent a letter dated April 13 requesting for the meeting. The Commission reported that there was no use of physical force on the 10 Internal Security Act detainees, with the exception of one who claimed to have been pushed to the ground from his chair and was allegedly denied an opportunity to lodge a police report. The report stated that prison authorities were present throughout the meeting and this fact had caused the detainees to exclude matters pertaining to their ill treatment.

Suhakam's efforts have shown a lack of urgency and it is feared that Suhakam's hands are tied as far as the ISA is concerned.

Report on Freedom of Assembly

Freedom of assembly is a fundamental right of citizens recognized by The Universal Declaration Of Human Rights .

The Human Rights Commission of Malaysia (Suhakam), in its report called for amendments to the regulations and legislation pertaining to public assemblies to reduce current restrictions. It suggested in the 32-page report entitled "Freedom of Assembly" that the Police Act, Rules and Regulation be amended, and a review of the Public Order (Preservation) Act 1958 be carried out as a long term measure. This report was released on August 4, 2001.

The recommendations are based on the firm belief that peaceful assemblies are possible in present day Malaysia. Suhakam has suggested measures that could be taken to ensure that assemblies are peaceful. Mehrun, head of the commission's Law Reform Working Group which is responsible for the report, expressed her view that the recommendations were based on the firm belief that peaceful assemblies were possible in present day Malaysia.

The report attracted criticism from various groups. On August 4, Prime Minister Dr Mahathir Mohamad criticized a call by the human rights commission (Suhakam) for greater freedom of expression, saying it ignored national security concerns. He alleged that Suhakam seems to be setting up standards of their own and they are not interested in national security. He further alleged that Suhakam is just one group of people but the interests of the majority of the people have to be taken into consideration.

He commented that Suhakam is free to give suggestions but it does not mean the government has to follow them. Mahathir said Malaysia already enjoyed greater freedom of expression than in many countries, benefiting opposition groups such as the PAS and DAP. He stated that this country has more freedom than in many other countries including some of the developed countries.

The other criticism came from Datuk Seri Dr Rais Yatim. He said it is not part of the job of the Human Rights Commission of Malaysia (Suhakam) to suggest things which in its opinion, ought to be the order of the day. He commented that Suhakam should not suggest things which are already within the law.

He said that if a violation had been committed, only then Suhakam

should come in. He added that Suhakam should not suggest that people should be holding assemblies or should be doing things which in its opinion ought to be the order of the day. Dr Rais was responding to Suhakam's recommendations for more lenient procedures for public gatherings and the setting up of "speakers' corners" for people to express their views. He pointed out that for Suhakam to keep suggesting what ought to be done or not ought to be done in view of its basic duties in the law, it could create confusion.

He believed it has other tasks such as, to analyze, assess and give remedies to violation of human rights. He said that under Article 9 and 10 of the Constitution, it was up to the people to congregate indoors and if they wanted it outside, they needed a police permit. He said that Suhakam may want to be catalytic. When an institution is not heard for a long time, it wants to be heard again. Maybe it is the political part of the commission.

Suaram believes that the report is relevant to the present political situation and for the development of human rights in Malaysia and the executive is expected to be more constructive and accommodating to efforts by Suhakam.

The Human Rights Commission's (Suhakam) report on freedom of assembly was later tabled in Parliament on November 7, three months after the report was released to the public. The 31-page report also suggested short and long-term amendments to the current legal restrictions imposed on the right to peaceful assembly. It called for applications for permits to hold static assemblies in premises, such as stadiums, halls and private premises, to be approved as a general rule, without restrictions on freedom of expression. Public places of different sizes and different locations should be identified by the authorities for the holding of

public assemblies to help overcome the difficulty faced by organizers in securing suitable places, the report recommended.

The two-year-old commission set out a guideline for organizers of public assemblies and processions and called for a review of the method of crowd dispersal. Among the long-term measures, Suhakam recommended amendments to the Police Act, rules and regulations relating to assemblies. Also recommended for review was the Public Order (Preservation) Act 1958.

Kesas Highway Report

On August 21, the Human Rights Commission of Malaysia finally released their report on the Kesas Highway mass gathering. This is the second report released by Suhakam that touches on the issue of freedom of assembly. The report points out the findings of the Commissioners headed by Tan Sri Anuar Zainal Abidin. Others in the Suhakam investigation panel which was established last year were Mehrun Siraj and Tan Sri Simon Sipaun.

In the Nov 5 incident, police arrested 116 supporters and members of the opposition after they failed to disperse at the Kesas Highway rally at Jalan Kebun in Shah Alam. The highway was blocked with cars when police refused to allow them to turn into roads leading to the site.

The Human Rights Commission (Suhakam) said police violated several aspects of human rights at this opposition gathering. In the report, Suhakam commissioner Tan Sri Anuar Zainal Abidin points out that the violations included the use of force and damage to private property.

The police also caused injury to persons in detention, and delayed or failed to provide medical treatment to those injured. The report also revealed evidence that the police carried out cruel and inhuman treatment of detainees, and took advantage of their situation for the purpose of forcing them to confess or otherwise incriminate themselves. Suhakam's findings were reached after interviewing 46 witnesses in its inquiry which began in December. Another violation, was the gathering of security intelligence from people detained at the assembly for a specific offence. The agency responsible for human rights is the police. No individual has been identified, apart from the two officers who were named for kicking a car. However, there was no evidence that their action caused damage to the car or injuries to the occupants. The report identified the officers as Deputy Supt Bahwandi Hiralal and Asst Supt Shamsuddin Mat.

According to the report, the violations came about due to the "total denial and domination" action of the police during crowd dispersal, the arrest of people at the scene and their treatment while in detention. This included preventing people from getting to the scene of the gathering. The police had put up roadblocks, which was the main cause of the massive traffic jams on the highway .

Suhakam conceded that the proposed gathering by the opposition was unlawful as no permit was issued for it to be held. The report states that, Lot 7362 does not fall within the definition of a public place but that it in fact falls within private property. The question of applying for a license does not arise. Suhakam noted that organizers of the opposition gatherings had applied for permission to use the Bukit Jalil Stadium but were refused.

The report states that some existing practices and policies of the police

and other authorities had contributed to the violations, including the "selective application of the law relating to assemblies". The findings of the panel is scheduled to be tabled in Parliament as a special report of Suhakam and it would be up to the MPs to "question the Government" on it. The Malaysian Human Rights Commission (Suhakam) stated that laws relating to assemblies should be fair and not discriminate against any party.

This was among the recommendations made by the commission concerning a gathering last November at the Kesas Highway. Suhakam also recommended that opposing groups (in demonstrations) should be allowed to demonstrate "within sight and sound of each other." It said police should be present to ensure that demonstrations and counter-demonstrations were carried out peacefully.

Among other recommendations made are:

- ROADBLOCKS should not be used by the police to prevent assemblies from taking place as they caused traffic congestion;
- POLICE should review the methods of crowd dispersal;
- POLICE should seek remand orders only if there was a real need to investigate a crime;
- MAGISTRATES should exercise discretion when making remand orders, taking into consideration the circumstances of each case, the seriousness of the alleged offence and whether or not, there was a real need for investigation; and
- TRAINING or retraining must be given to police personnel involved

in obtaining remand orders.

The report again however drew criticism from various sectors. The Prime Minister Datuk Seri Dr Mahathir Mohamad said the Malaysian Human Rights Commission's inquiry report on the Kesas Highway-Jalan Kebun illegal gathering last year is very much influenced by western thinking and not in the interest of the nation. He alleged that Suhakam members are not thinking in the interest of Malaysia.

Deputy Prime Minister Datuk Seri Abdullah Ahmad Badawi also voiced his concern over the Human Rights Commission of Malaysia's (Suhakam) report which blamed the police for several human rights violations in last year's illegal gathering in Jalan Kebun, Klang. Home Minister Datuk Seri Abdullah Ahmad Badawi said police personnel assigned to diffuse tense situations or disperse demonstrators faced an extremely difficult and dangerous task. He said that it is never easy to carry out crowd control as police also face abusive language. Abdullah said the police were just carrying out their responsibilities, and he was worried that the report might affect them when enforcing and upholding the law

In another occasion, Parliamentary Secretary in the Prime Minister's Department Noh Omar said the commission should base its findings in relation to the internal security in the country and not use international standards as a benchmark. If the recommendations are based on the latter then "everything we do would be wrong", argued Noh that as a Malaysian he felt sad when reading the commission's findings in the media. Noh, who is Tanjung Karang member of parliament, also criticized the commission for releasing the report to the media before presenting it in Parliament.

The police briefly broke their silence to pour scorn on a top-level report

which found officers guilty of violating human rights in suppressing an opposition demonstration. Inspector General of Police Norian Mai alleged that the report was bias and unrealistic.

Government's Response To Suhakam

The attacks by the government showed their uneasiness with Suhakam. November 7 marked another sad day for the independence of Suhakam. The government was reported as saying that they would consider setting guidelines for the Human Rights Commission (Suhakam) in its investigation procedures and the conduct of its inquiries. Foreign Affairs Deputy Minister Leo Michael Toyad commented in relation to the statutory body's functions and powers. He said the government is empowered to do so under Section 22 of the 1999 Suhakam Act.

According to the act, the minister responsible for Suhakam can prescribe the procedures to be followed in its inquiries. He stated that it is Suhakam's responsibility to preserve the welfare of the country and human rights must be based on the values and culture of a particular country. He was responding to a question by Jamaluddin Jarjis (BN-Rompin) in Parliament, who asked if the ministry would set guidelines for Suhakam on its investigation procedures, reports and announcements.

In response, Suaram criticized the government for the proposal to set guidelines for the Human Rights Commission to streamline its inquiry procedures and reports. The government's proposal appeared to be an attempt "to lord over" the commission. Suaram believes that any further interference by the executive would further result in a serious erosion of the commission's impartial function in protecting and promoting human rights in Malaysia. Suaram maintained that the integrity and indepen-

dence of Suhakam must be preserved at all costs .

On November 29, the Malaysian Human Rights Commission proposed that the government reviewed the prohibition on those detained under the Internal Security Act (ISA) at the detention camp in Kamunting to perform Friday prayers. The proposal was made following a visit by Suhakam's sub working group on visits to detention centres and prisons to the Kamunting detention camp on July 3, 2001 to observe conditions there.

The Human Rights Commission (Suhakam) in a report compiled after visiting the Dang Wangi police headquarters in Kuala Lumpur made a call for cleaner cells and more civilised treatment of prisoners. The commission, which visited the police headquarters on June 18 also found the lock-ups to be overcrowded and plagued with a water shortage.

Prisoners were not provided with clothing and bedding as required by the 1953 Lock-up Rules, lamented the 16-page report. Suhakam recommended that to solve overcrowding, the Pudu Jail be re-opened as soon as possible and be used as a detention centre by the Dang Wangi police. The report also pointed out that the lack of water supply made the cells smelly and recommended that the approval for purchase of additional water tanks and pumps be expedited. The report proposed that prisoners appoint lawyers personally and not leave it to their families to do so.

Suhakam was also critical of the police for not allowing its commissioners to interview the prisoners. This report is Suhakam's fifth since its formation last April.

On the said issue it is clear the government is not taking Suhakam find-

ings seriously. This can be seen from the unsatisfactory response by the government.

The jurisdiction of Suhakam.

Criticism came from many sectors as to the selective approach taken by Suhakam. Party Reformasi Insan Malaysia (PRIM) referred to Suhakam's unsatisfactory treatment of the Kampung Medan Incident. Uthayakumar, Secretary General of PRIM expressed his disappointment that Suhakam had not condemned the violence nor had its members visited Kampung Medan despite receiving 10 letters, two memoranda and after the lodging of 10 police reports by the victims.

He alleged that Suhakam's silence over their demands leaves them with no choice but to go to court to get an inquiry to determine the causes and the persons responsible for the attacks. He added that it was ridiculous for Suhakam to make a decision that there was no violation of human rights without even holding an inquiry. Uthayakumar believes that Suhakam is not interested in the inquiry as it involved only "an oppressed, suppressed and marginalised minority" which had neither political nor economic clout in the country.

On July 2, the Human Rights Commission (Suhakam) responded that it had requested and was still awaiting for a report prepared by the National Unity and Social Development Ministry on the racial clashes in Petaling Jaya Selatan before deciding on the next course of action based on various complaints made to it on the matter. Another Suhakam Commissioner, Prof Hamdan Adnan confirmed that the commission had sent a letter to the National Unity and Social Development Ministry.

He also added that the Commission would soon investigate the clashes which occurred in March and saw the death of six people and scores injured. But they could not confirm if there would be an open inquiry into this matter due to its sensitive nature.

Tan Sri Harun Hashim said that the Commission 'would be doing something soon' with regards to investigating the Petaling Jaya Selatan clashes. However Harun did not specify a date or what action would be taken. Until today the issue is still left in abeyance and no date has been specified on any proposal on the matter. Suhakam deputy chairperson Harun Hashim commented that a letter had already been sent to the minister Siti Zaharah Sulaiman requesting the report. Until today Suhakam is yet to commence inquiry according to Sec 4 of the Human Rights Commission Act 1999.

Regarding the issue of subjudice, this matter pertaining to the actual jurisdiction of the commission needs to be submitted clearly. Such confusion needs to be rectified as this leads to denial and delay of justice and the erosion of public confidence and Suhakam's credibility as a whole.

The Tan Seng Hin Case

On September 15, 2001 a Miri contractor Tan Seng Hin, "deported" from Sarawak to the peninsula for reasons he says the authorities won't reveal, took his predicament to the Human Rights Commission of Malaysia (Suhakam). Tan was deported for an offence stated as involvement in an illegal activity. He was believed to have been vocal in expressing his views on behalf of the Miri Hainan Association regarding the change of teaching medium in the Riam Road Middle School from Mandarin to

English.

The complaint was made in accordance with the powers provided by the Human Rights Commission Act 1999. Matters pertaining to human rights violation are given exclusive attention by various NGO's in expectation of authoritative guidance by the statutory body. Suaram assisted the victim in a consultative function. The deportation was strongly criticized as a violation of human rights and the rights guaranteed by the Federal Constitution. Article 9 provides that every citizen has the right to move freely throughout the Federation and to reside in any part thereof. Suaram and other NGOs took a joint action on the matter and assisted the victim in an effort to reinstate him to his place of residence. The matter is still not resolved and pending response from Suhakam.

Tenaganita's Memorandum

On November 7, 2001, Tenaganita, a non-governmental-organization submitted a memorandum to the Human Rights Commission of Malaysia (Suhakam) seeking justice for foreign workers in the country. Tenaganita's memorandum was handed over by its director Irene Fernandez accompanied by 108 workers, to Suhakam commissioner Datuk Dr Salleh Mohd Nor.

The memorandum said many employers had resorted to terminating foreign workers without giving them notice or retrenchment benefits, after the government announced recently that some 300,000 foreign workers must return to their country when their permits expired this year. Irene claimed that many foreign workers were detained and forcefully sent back to their country.

Later on November 8, Irene Fernandez wrote to Suhakam regarding conditions at the Semenyih Camp. In the letter Tenaganita urged Suhakam to enter into dialogue with groups working with people in detention centers in order to facilitate better representation and repatriation for those detained. The matter is still under study by the Commission

The University Elections 2001

Year 2001 marked the year for uniform elections for all the universities in Malaysia. The results of the elections unleashed many controversies and questions on the process of the said elections. Students cried foul and sought Suhakam's assistance on the matter. Students from Universiti Teknologi Malaysia, aggrieved by the attitude of the university authorities to their complaints of unfair practices in the concluded student elections, submitted a memorandum to the Human Rights Commission (Suhakam). They also wanted Suhakam to conduct an inquiry into the matter.

The UTM students alleged there was mismanagement in the campus elections. The students claimed that ballot boxes were tampered with during the elections. Also, nominations of some candidates were made under questionable circumstances.

The students also highlighted the plight of two former student council members, Mohd Mushriff Abdullah and Ng Tee Neng, who were served with show-cause letters from the university administration. They are being censured for airing their grievances and allegations to the media. The show-cause letter has demanded that the duo explain their reason for giving statements to the press, failing which they will be charged under the Universities and University Colleges Act 1971, at a university tribu-

nal.

On the said issue, Suhakam released a statement saying that it cannot protect them should the university's authority take disciplinary action as the commission was not empowered to do so. Suhakam secretary Kamaruddin Mohamed Baria said the commission can advise but cannot prevent Universiti Teknologi Malaysia's authority from pursuing actions against the students for raising the matter with Suhakam.

"We cannot guarantee that actions will not be taken against you. We have no power [to do so] under the Human Rights Commission Act 1999," he told the students during the dialogue session at the commission's office in Kuala Lumpur.

The students, mostly from UTM's main campus in Johor, fear that they will be slapped with show cause letters when they return. Kamaruddin replied that Suhakam is authorised to compel those involved to cooperate in its investigation. However, he added that he cannot guarantee that retaliative actions will not be taken against the students.

The Human Rights Commission (Suhakam) later stated that they will try to protect the undergraduates who approached the commission for help:

"Anybody who comes to Suhakam should be given immunity (from retaliative actions), and that includes students," Suhakam commissioner Prof Hamdan Adnan said .

Although Hamdan conceded that there was no provision in the Human Rights Commission Act 1999 that can protect complainants from reprisals, he insisted that they should be protected.

"We should protect our complainants, or else, what is the point in having Suhakam?" he said. Since Suhakam commissioners are given legal immunity to carry out their duties under the act, likewise the complainants should have immunity to submit their case, he argued.

Hamdan maintained that Suhakam's stand is clear when it comes to freedom of expression.

He added that a person not only has the right to freedom of expression, but also freedom of peaceful assembly.

The incident poses a serious question to be tried on the effective function of Suhakam in discharging their statutory duties. The issue poses a serious threat to public confidence in seeking Suhakam to address their grievances. Urgent and comprehensive measures must be taken to provide for a better and safer avenue for complainants.

Report Card on Suhakam

Suhakam demonstrated a certain degree of competency in handling issues pertaining to human rights violation. Many press statements released took the bearing of the public's needs generally. Malaysia's Human Rights Commission (Suhakam) has called on schools to provide an avenue for students to practice human rights. Suhakam's Education Working Group chairman Prof Chiam Heng Keng commented that human rights could not be taught based on textbooks alone but must be incorporated into everyday school life. Citing examples, she said students could elect their own prefectorial board and draw up regulations with the school board. She also added that efforts must be made to instill knowledge about human rights, which included the right to basic

amenities for students since they were young. The matter was reported on January 12 and seen as a positive suggestion for the growth of human rights among the youth in Malaysia.

On July 6, Suhakam met with authorities from UITM regarding the expulsion of a student. Electrical engineering student, Rafzan Ramli, was expelled by the university on June 22 after he was found guilty by of being involved in an illegal assembly protesting the Internal Security Act (ISA). The gathering was held in front of the National Mosque on June 8. Rafzan and five others were detained for nearly 24 hours at the Dangi Wangi police station in Kuala Lumpur and were released on police bail. They have yet to be charged in court

On July 5, Suhakam commented on the issue through its Commissioner Prof Hamdan Adnan. He urged the University to reconsider on its decision and called for the reinstatement of the effected students.

Suaram expressed its concern over the matter in a written statement, calling for the Universities and University Colleges Act (UUCA) to be repealed. Sections 7 and 11 of UUCA prohibit students from assembling without prior permission while sections 15(3) and (4) prohibit students and student bodies from stating support or opposition to any political party. The matter is highlighted as a violation of human rights as per article 26 of the Universal Declaration of Human Rights that reads: "everyone has the right to education".

In this area, Suhakam has continued to take steps and made several significant interventions in the interest of justice and human rights. The expulsion of Universiti Teknologi Mara (UiTM) student is a case in point, where the decision to expel the student was immediately reversed after Suhakam commissioners met with university authorities over the matter.

Suhakam commissioners went to meet a crowd of about two thousand people who had gathered outside its premises to present a peoples memorandum to them, on 14 April. The gathering was especially significant, as it took place under a cloud of ISA arrests just several days previously. The police declared the gathering illegal, and warned against public participation. Tan Sri Anuar Zainal Abidin, Vice Chairman of Suhakam, actually took a few minutes to address the crowd, and urged them to disperse peacefully.

Suhakam has also continued to maintain its open policy of meeting with groups or individuals who request a meeting or lodge a complaint.

In May, a national NGO Consultation on Suhakam titled: "SUHAKAM AFTER ONE YEAR: HAS THE STATE OF HUMAN RIGHTS IMPROVED IN MALAYSIA?" was held, to review the role of the commission and its effectiveness in safeguarding and promoting human rights in Malaysia.

Human Rights Commission of Malaysia (Suhakam) vice-chairman Tan Sri Harun Hashim stated on May 6 that printers should not be held liable for publishing potentially subversive or defamatory material because they are mainly conducting business. He stated that holding printers liable will not promote the trade or the printing industry, especially when it's the publisher or the writer who should be responsible. The statement is seen as a positive remark that would assist in efforts to review the oppressive legislation. The Printing Presses and Publications Act is an obstacle to the freedom of expression.

Among other positive efforts, Suhakam Commissioner on June 24 stated that a law allowing civil court jurisdiction over Muslims or Syariah court jurisdiction over non-Muslims is necessary to solve problems that crop up in a marriage where one party has converted to Islam. Mehrun stated

that although Section 121(1A) of the Constitution provided for the distinction of matters coming before the courts, it was not clear and needed to be spelt out, adding that constitutional amendments may be necessary.

At another level, Human Rights Commission (Suhakam) spokesman Prof Hamdan Adnan suggested that HIV-positive prisoners should be detained in regional-type centres so that they could get proper medical treatment. He suggested the matter after visiting the Kamunting Detention Centre on July 4. He said it would be ideal if drug-taking offenders be separated from other prisoners. The matter is seen as a positive suggestion in interest of rights of detainees.

On the minus side, negative comments made by Suhakam commissioners were highly regrettable. These commentaries are seen as inconsistent and not becoming of supposed human rights experts.

Human Rights Commissioner, Lee Lam Thye was quoted widely in March as saying, "street demonstrations could disturb public peace, jeopardize livelihood and inconvenience tourists". This angered human rights advocates for his dismissal of the fundamental rights of Malaysians to gather peaceably.

At another function, Malaysian Human Rights Commission (Suhakam) chairman Tan Sri Musa Hitam on October 29 made a controversial statement regarding the state of human rights in Malaysia. The statement was believed to be the response to the global outcry over the World Trade Center attack. He stated that the worldwide economic and political crisis following the Sept 11 terrorist attacks on the United States (US) has forced nations to put democracy and human rights in the backseat. He further justified this by saying that terrorism had to be tackled first be-

fore anything else.

He said in the Malaysian context, democracy and human rights were not abandoned totally but put aside for the time being to assist the government in carrying out its duties to flush out elements which could bring the downfall of the country through means of terror. He said due to the prevailing circumstances, Suhakam, however, was not "closing shop or taking it easy" but was giving the government the benefit of doubt.

He later defended his controversial statement by saying that he was merely speaking from the perspective of a former deputy prime minister and that it was not the view of Suhakam's.

He also explained that the Sept 11 terrorist attacks on the World Trade Center and Pentagon had also inadvertently affected human rights and democracy around the world.

Suaram deeply regrets the statement of SUHAKAM chairman Tan Sri Musa Hitam, calling for "human rights and democracy issues to take a back seat to allow for the government to deal with security threats in the country". This decision is completely irresponsible and is tantamount to giving a thumbs up to the Barisan Nasional government to continue abusing their powers.

Tan Sri Musa Hitam is right to point out that the events of September 11 have been a setback for democracy and human rights throughout the world. Many governments, especially those with significant Muslim populations such as Malaysia, have unfortunately already seized the opportunity to strengthen their own political positions by stifling further legitimate dissent and opposition against them.

Furthermore, the Human Rights Commission of Malaysia Act 1999, does not give powers to the chairman to reduce its agenda; rather it states clearly under Functions and Powers of the Commission that in the furtherance of the protection and promotion of human rights, it shall advise and assist the government in formulating legislation, to study and verify infringements of human rights, promote awareness and provide education.

Thus it becomes imperative for SUHAKAM as a National Human Rights authority to stand firm as guardians and protectors of human rights of Malaysians, more so in these troubled and complex times.

Suaram urges SUHAKAM not to crumble under pressure by conceding to arguments and justifications that human rights must be traded off in order to safeguard national security. In fact human rights advocates from around the world must stand together to protect the sanctity and universality of human rights and democracy as basic tenets of rebuilding confidence and peace in the aftermath of September 11.

In another occasion, Vice-chairperson of SUHAKAM, Tan Sri Harun Hashim shared similar views with Musa. He was quoted as saying, "The government has enough problems and we do not want to add to them. We are going to cool down for a little while but we will remind the government quietly of human rights issues."

Apart from Suaram, other NGOs also came out to criticize Suhakam over the matter. ALIRAN called for Musa to take a back seat, instead of human rights. The National Human Rights Society (HAKAM) issued a statement, stating that the defense of civil liberties must be upheld especially at a time of crisis.

Conclusion

The criticisms by the Executive make it difficult for Suhakam to execute its statutory duty and the assumed responsibility to assist the governmental sector. Suaram acknowledges the effort and position taken by Suhakam on those particular issues which invited the Executive attacks and is concerned about any possible erosion in Suhakam's effectiveness due to fear of executive disapproval.

Suaram supports the constructive position taken by Suhakam on Socio Economic issues but stresses that other areas of concern especially the civil political rights issues must not to be ignored.

In comparison with other countries, Suhakam lacks strength and power to carry out its function. It is hoped that Suhakam and other NGOs will build a stronger front in taking up human rights issues in Malaysia.