



THE OBSERVATORY

For the Protection
of Human Rights Defenders



International Federation
Human Rights



World Organisation
Against Torture

International Mission of Investigation

MALAYSIA

“The Boa Constrictor”: Silencing Human Rights Defenders

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The Observatory would like to thank all the persons involved for their time and efforts in helping to explain the intricacies of the situation in Malaysia. The Observatory is particularly grateful to Sharaad Kuttan, Sumit Mandal and Kean Wong.

Preliminary remark:

In March 2002 the FIDH and the OMCT, in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, conducted a mission in Malaysia to evaluate the situation of the groups and individuals involved in the protection and the promotion of human rights in the country. The Observatory had been prompted by the growing concerns of Malaysian civil society about the Government's relentless efforts to stifle all forms of dissent in the country.

The delegation held meetings with a wide range of relevant actors: human rights organisations and other non-governmental organisations, journalists, trade unionists, academics, lawyers, families of ISA detainees, political activists, officials from the Bar Council and the National Human Rights Commission. The delegation also met with the Attorney General of Malaysia.

This report, published by the FIDH and the OMCT in the framework of the programme of the Observatory and by Suaram, the leading human rights organisation in Malaysia, exposes the findings, conclusions and recommendations of the mission. It explains the obstacles, be they legal or in practice, faced by human rights defenders in the course of their activities. It is therefore not intended as a report on the general situation of human rights in Malaysia, and should not be understood as such, even though the link between human rights violations and the impediments faced by human rights defenders is self-evident.

The Observatory and Suaram use the term 'human rights defenders' in its broad understanding: it comprises the individuals who individually or collectively act in favour of the application of the *Universal Declaration of Human Rights* and other international human rights instruments, and in conformity with these instruments. Hence, the term encompasses more than traditional human rights organisations. However, political parties are not included in the definition, even though (and especially in Malaysia), the frontier between human rights organisations and opposition political parties appears porous, and the parties might face the same type of repression as human rights defenders.

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Introduction

Malaysia came to the forefront of world news with the spectacular dismissal, arrest and subsequent trial on charges of corruption and sodomy of former Deputy Prime Minister Anwar Ibrahim in late 1998. His arrest triggered a nation-wide movement of protests against the Government - the *Reformasi* movement, which many observers paralleled to the movement that led Indonesian ruler Suharto to resign in 1998 after 32 years in power. A similar scenario was expected in Malaysia. However, this was not to be, and the ruling coalition, led by Dr Mahathir's UMNO (United Malays National Organisation), went on to win the 1999 elections. The Government's clampdown on any form of political dissent in the lead up to as well as in the wake of the elections is well documented; the 'parody of justice', in the words of a prominent Malaysian lawyer, meted out at Anwar Ibrahim's trial did not do much to reassure independent observers of the situation in Malaysia. The constant harassment of dissenters, fueled by a strong anti-Western rhetoric, has not abated since. It is not merely a recent phenomenon, however, and the roots of such repression go a long way back: it can be traced back to the very structure of power in Malaysia, which traditionally gives a strong role to the Executive, and to Dr Mahathir's long reign, during which he progressively eliminated all possible checks and balances to his power (though he has announced he will withdraw at the end of 2003).

It appears that the repression (which encompasses not only opposition parties but also movements within civil society that promote a more democratic agenda and the realization of human rights in the country) takes on a dual form: on the one hand, the purposeful use of a wide array of draconian legislation - first and foremost the *Internal Security Act* (ISA) - to arrest targeted individuals perceived as imperilling the authorities; on the other hand, the inculcation of a culture of fear through various means of pressure, intimidation and coercion, which in turn has led to widespread self-censorship. Dr Mahathir thus uses the strategy of a boa constrictor, through a slow strangulation of all spaces of free and critical discourse: the danger of such a system is that the asphyxiation is never sudden, nor is it immediately visible - hence its efficiency. The authorities have thus over the years created an atmosphere, both within the political arena and within civil society, in which fundamental freedoms are considered as privileges and not rights, and in which the possibilities to advocate for human rights are severely curtailed. Such a dual form of repression has been made possible by the long history of domination of the ruling coalition, led by UMNO - which as a matter of fact has held

power ever since Malaysia's independence in 1957. UMNO has since established its power over practically all aspects of Malaysian institutional, economic, political and judicial life.

The Observatory and Suaram are also concerned about the rise of attacks on human rights defenders by non-state entities, and in particular by some religious groups who, in a context of the radicalisation of Islam, tend to act so as to restrict freedom of expression and freedom of religion as guaranteed by the Constitution of Malaysia as well as by international human rights instruments, in particular the *Universal Declaration of Human Rights*.

I - Stifling dissent

A. Historical background

1. An ever-growing power of the Executive

A former British colony, the 'Federation of Malaya' became independent in 1957. The new nation was immediately engulfed in various political upheavals. A Communist insurgency, which had begun in 1948 under British rule was fiercely repressed and finally quelled in 1960 - though its impact was to be long-lasting, if only because it laid the ground for the still-existing array of extremely repressive legislation. The years 1963-65 witnessed the expansion of the nation's territory, with Singapore joining Malaya then seceding, and the states of Sarawak and Sabah on the island of Borneo merging with the Federation - all while the new nation faced down the Indonesian government's policy of Konfrontasi ('Confrontation') between 1963 and 1966.

The Federation, which by then had become the Federation of Malaysia, took its present form - 14 states, operating with a strong principle of federal supremacy (federal legislation takes precedence over state legislation). It should be noted that Malaysia has had only four Prime Ministers since its independence: Tuanku Abdul Rahman (1957-70), Tun Abdul Razak (1970-76), Tun Hussein Onn (1976-81) - and Dr Mahathir, who has been in power since 1981. He announced in the spring of 2002 his decision to resign at the end of 2003.

The issue of 'ethnicity' plays a crucial role in Malaysian politics. Although the very concept of 'ethnic groups' is subject to discussion, in Malaysia there is little doubt that they have been construed as a political issue which the authorities have used most skilfully over the years. The 'ethnic groups' today represent a political instrument as much as - and probably more than - an objective entity. It is the basis of Malaysia's 'racialised politics', grounded in the division of the population into three main groups: "ethnic Malays", or *Bumiputras* ('sons of the soil'), who represent nearly 60% of the population, and who dominate the political sphere; Malaysians of Chinese descent (approximately 30%), who dominate the economy, and Malaysians of Indian descent (7%). To date, political parties have de facto been divided along ethnic lines: UMNO and PAS (Parti Islam se-Malaysia) have a Malay base, the DAP (Democratic Action Party) and the MCA (Malaysian Chinese Association) have a constituency mainly of Chinese origin, while the MIC's (Malaysian Indian Congress) constituency is essentially made of Malaysians of Indian origin. UMNO, MCA and MIC, together

with smaller parties, constitute the Barisan Nasional (National Front), the coalition that has been in power ever since independence.

Malay rights and privileges are encoded in the Constitution, forged under the 'Bargain' of 1957, which represented an explicit compromise aimed at recognising the special position of Malays in exchange for concessions on citizenship for non-Malays and on the protection of non-Malay economic interests. The 'ethnic riots' of May 1969, which confronted 'Chinese' and Malays, have left a deep imprint on Malaysian politics. They have been used over the years as a tool to prevent dissent, with the repression of organisations promoting a more democratic agenda under the pretext of inciting ethnic tensions. In the wake of the 1969 confrontations, a constitutional amendment was adopted that outlawed criticism and questioning of Malay rights and prohibited any act, speech or publication that produced 'feelings of ill-will and enmity between different races'. The Government further decided to substantially increase its presence in the economy in order to redress the perceived imbalance between ethnic groups, and adopted the New Economic Policy (NEP). Its aim was to improve the economic welfare of the *Bumiputras* through what would today be called 'affirmative action' - ethnic preference in employment, education, corporate ownership and business activities.

According to Sheila Nair, *'the failure of opposition parties, non-governmental groups and other independent organisations to organise a counter-hegemonic political movement in Malaysia attests not only to the coercive capabilities of the state, but also to the dominance of state officials' and leading political elites' construction of the 'national' and the 'nation'. The state's interventions in civil society in Malaysia can be traced to the early emergence of a political coalition claiming to represent the interests of the various ethnic groups in the country*¹.

An important factor in Malaysia is the strength of the Executive - and the correlative weakness of other institutions. Though based on the Westminster model, the usual democratic counter-powers that would normally accompany it do not exist in Malaysia - or have been in practice made ineffective. *'The inevitable conclusion is that there has been a growth of overweening Executive powers at the expense of, in particular, the judiciary and the hereditary Rulers'*, in the words of H.P. Lee². Malaysian scholars and observers concur to say that the Executive's power has been greatly enhanced since Dr Mahathir

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came to power in 1981, as he has in effect progressively undermined all the organs and institutions that could have limited it.

State rulers or governors enjoy mostly ceremonial powers, limited essentially to the laws affecting their rights and privileges. The rulers and governors elect a King, the Yang Di-Pertuan Agong, every fifth year, and meet several times a year in a Conference of Rulers. The Agong's seal of consent is theoretically required for any parliamentary bill to become law. In effect, this provision was emptied of its substance after a constitutional move orchestrated by Dr Mahathir in 1984, which annulled this requirement by enabling a bill to automatically become law 60 days after presentation to the Agong. Though greatly diminished, the power of the hereditary Rulers is not totally insignificant, as was demonstrated by the process by which Mohamed Zaidin Abdullah was appointed Chief Justice in March 2001 [see below, section IB4].

The federal bicameral legislature is the primary legislative authority, with the House of Representatives (Dewan Rakyat) holding more power than the Senate (Dewan Negara), which has a power of delay but not of veto over bills. The majority voting system ("first past the post") that presides over elections has contributed towards Barisan's disproportionate representation at the Dewan Rakyat. Barisan's usual large majority of seats (and its firm party discipline) translates into a rather weak Parliament: government-introduced bills pass automatically, while others are seldom successful. The potential sources of the strength of the Executive then lie *'first and foremost [... in] the generally solid support that majoritarian parliamentary systems typically vest in the Executive (...). The Executive in Malaysia is also strengthened by the pre-eminence of the Prime Minister's Department in policy-making'*³.

The situation became even more grossly unbalanced after Dr Mahathir led a movement against the judiciary in 1988, by far the most devastating attack against Malaysia's fragile system of checks and balances. Following a string of judicial rulings against the Government in 1987-88, including one that declared UMNO's very existence illegal, the Government moved to strip the judiciary of its power of judicial review. This power of judicial review was embedded in the Constitution, and made the primary duty of the judiciary to act as a sentinel for the Constitution, and to protect it from legislative and Executive encroachments. It was also embedded in one of the five pillars of the national ideology, the Rukunegara: *'The rule of law is ensured by the existence of an independent judiciary with powers to pronounce on the constitutionality and legality of otherwise of Executive acts'*.

The move to quell the independence of the judiciary came in several steps. First, the number of 'finality clauses' (which exclude the supervisory powers of the courts) attached to legislation was greatly increased. The Parliament then passed the Federal Constitution (Amendment) Act 1988, which conferred judicial powers through parliamentary statutes instead of through the Constitution. The Act also stripped the High Courts of the power of judicial review previously granted by the Constitution. The judiciary became further subordinated to the Executive through new powers granted to the Attorney General⁴, who assumed control over judicial assignments and transfers, along with the power to instruct the courts on what cases to hear and which courts to use. The dismissal of the Lord President of the Supreme Court, Tun Salleh Abbas, under most disputable circumstances, and the suspension of five other Supreme Court judges dealt a final blow to the independence of the judiciary, which from then on became reined-in and very seldom dared to assert its power, as was once again demonstrated during the Anwar Ibrahim trials.

The beheading of the judiciary followed a vast operation of repression, dubbed 'Operation Lallang' (lallang means weed in Malay), which in particular saw 107 opponents (political and NGO) arrested under the Internal Security Act within a few weeks, a move which decapitated the opposition movement. By the end of the 1980s, Dr Mahathir had a firm hold over all levers of power.

Dr Mahathir's reign has over the years demonstrated a near total disregard for the system of power checks and balances in place in Malaysia, with regard to the role of the Constitution, and has progressively but determinedly reinforced the role of the Executive to what now clearly amounts to authoritarianism.

2. The situation since Anwar Ibrahim's dismissal - the Reformasi movement

Anwar Ibrahim was a 'rising star' within the Malaysian political sphere, Deputy Prime Minister, Finance Minister and Deputy President of UMNO, until his sudden dismissal in early September 1998. A former leader of ABIM, the Malaysian Islamic Youth Movement, and a vocal opponent of Dr Mahathir's politics at the time, he had been brought into government in 1982 and progressively rose through the ranks to become the number 2 of both party and government. On 20 September 1998 he was arrested and charged a few days later on 10 charges - five charges for the offence of corruption under the Emergency (Essential Powers) Ordinance 1970, and five charges of sodomy under section 377B of the Penal Code.

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This trial on four charges of corruption (the six others were held in abeyance) started in November 1998 and ended on 14 April 1999 with a sentence of 6 years imprisonment. Anwar Ibrahim was convicted on 9 August 2000 to a further 9 years' imprisonment on charges of sodomy. The two sentences were ordered to run consecutively (and not concurrently, as is usual). Many independent observers have raised doubts as to the fairness of Anwar Ibrahim's trial, in view of the apparent partiality of the trial judge, Augustine Paul, and the weight of the intrusion of the Executive in the process. Given the circumstances and the consideration of the case, The Observatory for the Protection of Human Rights Defenders and Suaram fully share the view of the joint ICJ/IBA report on the independence of the judiciary in Malaysia, which states that *'the concerns raised in Malaysia and by the international community [as to the fairness of Anwar Ibrahim's trial] are fully justified'*⁵.

Anwar Ibrahim's arrest, trial and subsequent conviction triggered massive street protests, demanding justice for him. Weekly demonstrations and protests occurred across the country, albeit centred mainly in the capital, Kuala Lumpur. The movement, called Reformasi ('reform'), was led by opposition political parties, notably the new-established Parti Keadilan Nasional (National Justice Party), led by Anwar Ibrahim's wife, Dr Wan Azizah Wan Ismail, NGOs and students' movements. Within a short space of time, *Reformasi* came to stand for broader democratic reforms in Malaysia and the rejection of Dr Mahathir's authoritarian hold on power, as well as of institutions perceived to be too acquiescent: the police, the Attorney General's Office and the official media. This translated in particular into a massive increase of the circulation of opposition newspapers: for example, the circulation of Harakah, the official newspaper of PAS, the Islamic Party of Malaysia, reportedly swelled from 20,000 to 360,000.

The Government reacted harshly. Around 300 people were detained in the three months following the incarceration of Anwar Ibrahim, usually under charges such as 'illegal assembly' and 'failure to disperse'. During the demonstrations, the police used truncheons, tear gas and chemical-laced water cannons to disperse the crowds. Peaceful protestors were beaten by police; hundreds of cases of ill-treatment during arrests and detentions have been reported to and recorded by various human rights groups⁶. Though most of the arrested demonstrators were later acquitted, the movement led to a drastic restriction of the right of assembly. From 1999 onwards, the authorisations for public assemblies given by the police under the Police Act 1967 were dramatically reduced for opposition, NGO or Reformasi demonstrations, while generously handed out to pro-government demonstrations.

Dr Mahathir called on early elections, which were held in November 1999. Opposition parties (Keadilan, DAP, PAS and PRM) united in a Barisan Alternatif (Alternative Front). Severe restrictions were imposed on the right to assemble and a heavy bias in favour of the ruling coalition emerged in the official media. Freedom of expression was severely curtailed. All national and international observers agreed that the electoral campaign could therefore not be said to have been free and fair. Barisan Nasional, the ruling coalition, was returned to power with another two-thirds majority in Parliament (151 seats out of 193), in spite of BA's winning close to 40% of the popular vote. Dr Mahathir named Abdullah Badawi as Deputy Prime Minister. The Reformasi movement progressively fizzled out, further weakened by arrests, notably under the ISA, of key opposition and reform leaders, such as Tian Chua, Ezam Mohd Nor and Hishamuddin Rais on 10 April 2001. Since the elections, Dr Mahathir has reasserted his hold on power, further undermined the independent institutions of Malaysia and progressively closed all spaces for free public and political debate.

3. The changes born of September 11

The attacks in New York City and Washington on 11 September 2001 had a ripple effect throughout the world. In particular, it gave governments the opportunity - or the pretext - to reinforce their anti-terrorist legislation and measures. Often, such anti-terrorist legislation has served internal purposes, notably that of silencing voices of the opposition, rather than effectively aiming at eradicating terrorist groups. This is the case in Malaysia. While it is not our purpose here to discuss the reality of the Islamic fundamentalist threat in Malaysia, or the use of Malaysia as a 'base' for terrorist groups, as was at one point alleged, it is nevertheless beyond doubt that the Dr Mahathir government has skilfully instrumentalised the 'fight against terrorism' to consolidate its efforts to curtail political opposition (particularly PAS), notably through an increased use of the ISA. More generally, September 11 has strengthened Dr Mahathir's stature around the world, since he capably appeared at the forefront of the global fight against terrorism, as a moderate voice of Islam. The United States, until then rather critical of his authoritarian stance and the violations of human rights in Malaysia, have now shifted their position and made Dr Mahathir one of their strongest allies in the region. The United States' own dangerous compromises against the fundamental right to due process and their newly adopted martial courts have considerably weakened critics of the ISA. Dr Mahathir now explains that the ISA has become an international blueprint to weed out terrorism, since even Western governments are turning to similar types of legislation.

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Paradoxically, and sadly enough, post-September 11, which could have served to promote human rights and further democratic agendas around the world, has thus on the contrary reinforced authoritarian regimes, depending on the United States' geopolitical interests.

Since September 11, Dr Mahathir has thus appeared at the height of his power, nationally and internationally, as all danger of the weak and divided opposition's taking power seems remote. 'Dr Mahathir has never held such a strong hand', says a former judge. His deliberate positioning as a moderate Muslim leader and a rampart against fundamentalist Islam has further heightened his national and international stature. Such considerable power has not, however, softened his stance in domestic affairs, where the tightest grip remains the rule. The 20 January 2003 raid by the Malaysian police on the office of Malayasiakini, one of the few independent news organisations in Malaysia, is a sign thereof.

Coupled with the Executive holding a structural and considerable leverage over all political, economic and social life in Malaysia, and the usual democratic safeguards having been effectively silenced or tamed, the particular circumstances of post-September 11 have freed Dr Mahathir's hand even further, leading to an unmistakably unfavourable context for human rights defenders.

B. Sophisticated methods of silencing human rights defenders

1. Outright repression - draconian legislation

The authorities have at their disposal a vast array of very stringent legislation used to stifle peaceful political dissent, among which the 'draconian and anachronistic'⁷ Internal Security Act (ISA) stands prominently⁸. It is noteworthy that many of these laws 'overlap', so that for the same act a person might be charged under different Acts. Furthermore, some 'legitimate' laws have been diverted from their original aim and are occasionally being used against human rights defenders.

a) The Internal Security Act

(i) History

The Internal Security Act (ISA) is a preventive detention law originally enacted in 1960 as a substitute for the 1948 Emergency regulations used to fight the Communist insurrection. While the Emergency regulations were extraordinary measures, which lapsed on an annual basis, the ISA is a permanent law,

even though the Government at first said it was intended to be merely temporary, to 'finish off' the insurgency. Though this argument became progressively weaker throughout the years, the ISA was never repealed - and has been systematically used for internal political purposes. For example, in 1987 there was a massive crackdown on opposition and civil society leaders codenamed 'Operation Lallang' with the use of the ISA. At the time of Anwar Ibrahim's dismissal, it got used again against the Reformasi movement. After September 11 it has been used against individuals portrayed as Muslim extremists linked to international terrorism. It is important to stress that through successive amendments, the judicial safeguards that were designed to protect citizens against any abuse committed by the use of this law have been gradually lifted, increasing the powers of the Executive and also the risk of arbitrariness. By now the ISA gives absolute power to the Minister of Home Affairs to arbitrarily detain anyone, without reference to the courts.

Under the ISA any person can be detained by the police for up to 60 days without trial for an act of allegedly prejudicing the security of the State. After that period, the person can be detained for a further period of two years, which is renewable if deemed necessary by the Minister of Home Affairs. The Act is based on article 149 of the Federal Constitution, which allows a law to be passed by Parliament notwithstanding that it is inconsistent with articles of the Constitution on personal liberties and guarantees of freedom of speech, assembly, movement and association⁹.

The Observatory and Suaram agree with Amnesty International: 'The ISA remains the core of the permanent, arbitrary powers to detain without trial available to the Executive (...). The broad terms of the ISA fail to provide any precise definition or criteria for determining which individuals pose a danger to state par rapport public security (...). Beyond the violation of basic rights experienced by particular individuals, the ISA has had a wider, intimidating effect on civil society, and a marked influence on the nature of political participation and accountability in Malaysia. The ISA has been used to suppress peaceful political, academic and social activities, and legitimate criticism by NGOs and other social pressure groups. It limits the political space for important debates on issues of economic policy, corruption, and other social challenges'¹⁰.

The ISA violates the detainee's rights to access to legal counsel, family visits and an open trial and is often used to suppress the person's rights of expression and to demonstration. Detainees under the ISA are reportedly often subjected to various forms of torture, including physical assault, sleep deprivation, round-the-clock interrogation, threats of bodily harm to family members,

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including detainees' children, which are allegedly often used to extract false signed confessions from them. Furthermore, ISA detainees are often held in secret locations.

Parliamentary statistics, mentioned in Suaram's 2001 report, reveal that a total of 30 ISA operations have been conducted since its inception and that the number of ISA detainees held in Kamunting Detention Camp¹¹ numbers 4218 persons since 1960.

(ii) Relevant provisions

Under the terms of section 8 (1) of the ISA, the Minister of Home Affairs has the right to have any person detained if he 'is satisfied that the detention of any person is necessary with a view to *preventing him from acting in any manner prejudicial to the security of Malaysia* or any part thereof or to the maintenance of essential services therein or the economic life thereof' (underline ours)

The person can be detained 'for any period not exceeding two years'. According to section 8(7) of the ISA, the detention order can be 'extended for such period, not exceeding two years (...) and thereafter for such further periods (...), either (a) on the same grounds as those on which the order was originally made; (b) on grounds different from those on which the order was originally made; or (c) partly on the same grounds and partly on different grounds'.

Section 73(1) of the Act allows the police to arrest 'without warrant, arrest and detain pending enquiries any person in respect of whom he has reason to believe (a) that there are grounds which would justify his detention under section 8; and (b) that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to maintenance of essential services therein or to the economic life thereof.' These powers of arrest can be lawfully exercised by any police officer.

Section 8(5) further allows for 'restriction orders', i.e. imposing restrictions on a person's freedom of movement, freedom of association and freedom of expression if the Minister is satisfied that such restrictions are necessary for the above-mentioned purposes.

(iii) New amendments to the ISA: further lifting judicial guarantees

The safeguards are weak and ineffective. In effect, the writ of habeas corpus is the only way for an ISA detainee to challenge the legality of his/her detention by the Home Minister. Various legislative amendments and judicial rulings have over the years

emptied the habeas corpus application of its substance. In 1989 for instance, Parliament passed amendments to the ISA preventing actions of the Minister taken under the ISA to be brought into question by the courts.

In a recent development, the Government has proposed new amendments to the ISA, aimed at barring detainees held under the Act from divulging sensitive details in court documents and sparing the police from having to defend the detention by releasing information about any ongoing investigation. This move appears as a reaction by the Government to the Federal Court ruling of 6 September 2002, according to which the first 60 days of detention of five Reformasi leaders under the ISA in April 2001 by the police was unlawful, and the detentions had been made in bad faith (*mala fide*).

The second proposal of sparing the police from having to defend the detention is to strike out any judicial challenge and review on the grounds for the ISA detention. By not having to disclose, explain and defend the investigation, the police will be spared from judicial scrutiny on whether the detention has been done on valid grounds.

With the proposed amendments, the detainees will be further deprived of their right to a fair trial in a *habeas corpus* application while the police will no longer be made accountable or answerable to the public or to the courts.

(iv) ISA used against Reformasi leaders

2001 marked a particularly strong crackdown on opposition, in an apparent attempt to break the back of the *Reformasi* movement. The number of people detained under the ISA for their political and religious beliefs went from four in 2000 to 25 persons in 2001, and hundreds were arrested in connection with peaceful assemblies.

At the time of its visit, the mission held several meetings with persons linked to the *Reformasi* movement detainees¹². In April 2001, a few days before the commemoration of the second anniversary of the conviction of Anwar Ibrahim (14 April), several key leaders from Parti Keadilan Nasional (National Justice Party) and the Reformasi movement were detained for alleged attempts to overthrow the Government through 'street demonstrations and militant means'. Six were sent to Kamunting Detention Camp, two were freed unconditionally while the courts freed the remaining two. In May the ISA was used again to detain two leaders of the student movement who were campaigning against the use of the ISA. They were both released prior to the end of the first 60 days period.

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The six sent to Kamunting are:

- Mohamad Ezam Mohd Nor, Keadilan Youth Chief (since then convicted to a two year jail term for offence under the Official Secrets Act),
- Hishamuddin Rais, Malaysiakini columnist-cum-film-maker
- Tian Chua Chang, Keadilan Vice-president and labour activist
- Lokman Noor Adam, youth wing member of Keadilan
- Dr. Badrulamin Bahron, Keadilan party leader
- Saari Sungib, Keadilan party leader.

Detainees serving their detention have complained of food quality, inadequate medical needs and intolerable living conditions. There is allegedly strict curtailment and censorship of reading material and letters and the Muslim detainees are denied congregational Friday prayers.

On 10 April 2002, all six above-named individuals launched a hunger strike, calling for their immediate and unconditional freedom or their day in court. On 15 April 2002, Suhakam, the National Human Rights Commission, released a press statement on the conditions of detention of the six Reformasi activists after a visit led by Commissioner Hamdan bin Adnan to Kamunting Detention Centre on 13 April 2002. It reaffirmed that the right of the detainees to have access to doctors and lawyers should not be restricted.

On 6 September 2002, the Federal Court¹³ ruled that the first 60 days detention of five Reformasi leaders, namely Tian Chua, Mohamad Ezam Mohd Nor, Hishamuddin Rais, Saari Sungib and Raja Petra under the ISA by the police was unlawful and unanimously agreed that the detentions in April 2001 by the police were made in bad faith.

In his judgement, the Chief Justice Tun Mohamad Dzaiddin Abdullah ruled that *'their arrest and detention was not for the dominant purpose of section 73 to enable the police to conduct further investigation regarding the appellants acts and conduct which are prejudicial to the security of Malaysia, but merely for intelligence gathering which is unconnected with national security.'*

However, as the habeas corpus application was filed against the detention made by the police under section 73 of the ISA, which empowers the police to arrest up to 60 days those suspected of committing activities prejudicial to national security, the Federal Court ruled that its judgement would not affect the two-year detention orders signed by the Deputy Prime Minister Abdullah Ahmad Badawi under section 8(1) of the ISA. The Federal Court advised the lawyers of the political prisoners to file a new habeas corpus application to challenge the two-year detention.

(v) Recent waves of ISA arrests

Several waves of ISA arrests were conducted on suspected Muslim militants connected to the Malaysian Mujahideen Group (KMM - Kumpulan Militan/Mujahiddin Malaysia), allegedly part of a regional network aiming to overthrow South East Asian governments through violence and convert their respective countries into Islamic States. The Malaysian authorities have now arrested a total of 74 people since 2001, including 42 in 2002. Of these 74 only two are known to have been released. The police claim to have found maps and notes on survival training in the homes of the 14 detainees and that certain members of the KMM have undergone training in Afghanistan. The Deputy Prime Minister and Home Affairs Minister Abdullah Ahmad Badawi has described the arrests under the ISA as a 'preventive measure to avoid any form of violence'.

(vi) Mobilisation against ISA

In 2000, the Coalition formed against the ISA was endorsed and supported by 71 civil society groups and political groups. Through meetings, badges, letters to the authorities, international presence and a website containing all needed information, the campaign joined by groups of different mandates and interests (women's groups, cultural movements, minority rights groups, trade unions) has managed to mobilise a very large public outcry against the ISA. It is now the common denominator of all groups asking for a more democratic functioning of the institutions in Malaysia. The movement was officially launched following the arrests of reform leaders in April of 2001; now named the Abolish ISA Movement (AIM), it comprises 83 groups and houses its secretariat in the offices of Suaram. However and despite this mobilisation, the repeal of the law has never been on top of the Government's agenda. The events of September 11 and the launching of the international campaign against terrorism have given a new justification for the law and for a new wave of arrests of individuals allegedly linked to fundamentalists groups.

International mobilisation against the ISA has also been very large, with reports made by Human Rights Watch, Amnesty International and other international organisations as well as calls for the repeal of the ISA made by the United Nations Mechanisms and also by European institutions.

On 13 June 2001, the European Parliament called upon Malaysia to repeal its Internal Security Act (ISA), saying it was being used to crush political dissent. *'The human rights situation in Malaysia continues to deteriorate rapidly, largely because of Prime Minister Dr Mahathir Mohamad's determination to*

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crush his political rivals,' it said in a resolution citing reports from the Malaysian Human Rights Commission (Suhakam) and other groups that more than 40 people were being held without charge or trial under the ISA.

A meeting called on 1 October 2002 by the Abolish ISA Movement to launch the Mala Fide campaign and to protest against the decision by the Deputy Prime Minister Abdullah Ahmad Badawi not to release the activists after the 6 September ruling (on the grounds that the Government had ordered their detention based on valid national security concerns) was violently dispersed by the police [see below, section IIC].

b) Other restrictive laws

Besides the ISA, there are a large number of laws in Malaysia which impose restrictions on individual rights and freedoms and which have been criticised within Malaysia and abroad. This pressure of restrictive legislation has a very strong impact on the functioning of institutions and on the work of human rights defenders as it acts as a constant threat and deterrent from action.

The Societies Act 1966, the Universities and University Colleges Act 1971, and the Trade Unions Act 1959, which are of particular relevance to human rights defenders and which are systematically used by the authorities to restrict freedom of association, are treated separately [section IIB].

The restrictive laws include:

(i) The Sedition Act 1948, revised 1969

The Sedition Act imposes severe restrictions on freedom of expression, especially on sensitive political issues. It contains a very broad and very vague definition of seditious acts - which means that it is essentially left to the subjective interpretation of the Executive. For instance, under section 4(1) of the Act, any person who 'a) *does or attempts to do, or makes any preparation to do any act which has or which would, if done, have a seditious tendency (underline ours) b) utters seditious words (...) shall be guilty of an offence*'. Section 3(1) gives a rather wide definition of 'seditious tendency', including 'a) *to bring hatred or contempt or excite disaffection against any Ruler or the Government (...)* e) *to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia*'. It also prevents the questioning of the special position of Malays and citizenship rights of the non-Malays. A violation of the Act is punishable by up to three years in prison.

The Bar Council Human Rights Committee in Malaysia has expressed concern that the *Sedition Act* is used as a weapon

against opponents and critics of the Government. For instance, it was considered that it would contravene the *Sedition Act* if the Bar held a special meeting on the independence of the judiciary, as it would supposedly attack the institution and erode public confidence in it.

On 23 July 2002, five DAP leaders including party leader Lim Kit Siang were arrested for distributing leaflets allegedly containing seditious statements regarding Prime Minister Dr Mahathir Mohamad's declaration that Malaysia was an Islamic state. The *Sedition Act* had already been used against a DAP leader, Lim Guan Eng, in 1995, in a well-known rape case involving a minor¹⁴. Mohamad Ezam Mohd Nor was also charged under the *Sedition Act* for uttering words in support of anti government demonstrations. His case has now been set aside, following his arrest for another offence under the Official Secrets Act (OSA).

The *Sedition Act* had also been used against Anwar Ibrahim, who was investigated under the *Sedition Act* in 1998 for his public comments alleging a high-level political conspiracy against him. His wife, Dr Wan Azizah, was called in for police interrogation under the same Act for her public statements about her fears for her husband's well-being in police custody. Though sedition charges were not pursued, it is clear that the threat of prosecution for sedition works as a powerful deterrent to free speech.

Anwar's defence counsel, Karpal Singh, was charged under the *Sedition Act* on 12 January 2000 in the course of defending his client. He was charged for having stated in court that '*it could well be that someone out there wants to get rid of him... even to the extent of murder*'.

On 20 January 2003, the police raided the office of the independent internet news site, Malaysiakini, confiscating 15 computers and 4 servers, effectively preventing the site's publication for some time. The raid came following a complaint by UMNO's youth wing, alleging that a reader's letter published on the site violated the *Sedition Act*.

Part of the complaint reportedly refers to the letter's questioning of affirmative action for Malays. The raid demonstrated how the *Sedition Act* is routinely used to curtail freedom of expression.

The application of this law contravenes article 19 of the *Universal Declaration of Human Rights* which states that 'everyone has the right to freedom of expression, including the freedom to hold opinion without interference and to seek, receive and impart information and ideas', and article 10 of the Federal Constitution, according to which 'every citizen has the right to freedom of expression and speech'.

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(ii) The Emergency (Public Order and Prevention of Crime) Ordinance 1969

It gives the Home Minister powers to issue a detention order for up to two years against any person if the Minister deems it necessary to protect public order or to 'suppress violence or prevent crimes involving violence'. The Minister can also issue a restriction order controlling the suspect's freedom of movement and place of residence. Under a 1989 amendment all forms of judicial review of the discretionary powers of the Minister were denied, except those related to the ordinance's procedural requirements.

The Emergency Ordinance has not been limited to action necessary to restore public order. According to Amnesty International, *'it has become an extraordinary law to deal with categories of suspected criminals who are regarded as difficult to bring to justice by the ordinary process of law'*.¹⁵

The Emergency Ordinance recently registered an increased use on Indian gangster groups and criminals, where a crackdown codenamed 'Operation Copperhead' resulted in hundreds of youths being detained without trial.

According to Suhakam Commissioner Zainah Anwar in August 2002, after her visit to a detention camp in Simpang Renggam, there were approximately 400 persons being detained under the Emergency Ordinance.

(iii) The Officials Secret Act 1972 (OSA)

Based on the British OSA of 1911, the Malaysian OSA was originally intended to stop the flow of information to foreign agents that might harm national security. It carries a maximum penalty of life imprisonment, as well as lesser penalties for the actions associated with the wrongful collection, possession or communication of official information. Any public officer can declare any material an official secret - a certification that cannot be questioned in court. The act allows for arrest and detention without a warrant, and substantially reverses the burden of proof (see. section 16). It states that 'until the contrary is proven', any of the activities proscribed under the Act will be presumed to have been undertaken 'for a purpose prejudicial to the safety or interests of Malaysia'. This Act is very largely used to impose restrictions on the right to freedom of expression, and on the examination and discussion of public interest issues by the political opposition and the press. New bills or amendments are often classified as Official Secrets, making it very difficult for members of civil society to be informed about them, thus leaving little space for debate to occur.

On 7 October 2002 Mohamad Ezam Mohd Nor, youth leader of the opposition Keadilan Party was found guilty of contravening the Official Secrets Act for reading out at a press conference in 1999 investigation documents sent by the Anti-Corruption Agency (ACA) to the Attorney General's Chambers. The documents alleged corruption investigations of the International Trade and Industry Minister Rafidah Aziz and former Malacca Chief Minister Abdul Rahim Thamby Chik. He is now serving a two-year prison term, on top of his detention under the ISA.

(iv) The Printing Presses and Publications Act 1984 (PPPA)

The Act tightens the restrictions imposed by previous printing laws, and requires all publications to obtain an annual press license to operate, which can be withdrawn without judicial review; it is systematically used to force the media to conform to government-approved views [see below, section IIA1a].

Under section 7 of the Act, the Government may at its discretion ban the publication, import and circulation of any manuscript or publication deemed prejudicial to 'public order, morality, security, the relationship with any foreign country or government, or which is likely to alarm public opinion, or which is (...) otherwise prejudicial to public interest or national interest'.

The PPPA further provides in its section 8A(1) for a jail term and/or heavy penalties for editors, journalists, publishers and printers if found guilty of 'maliciously publishing false news', defined as 'not taking reasonable measures to verify the news'¹⁶. This provision can be used against activists, as was the case with Lim Guan Eng, deputy leader of the DAP, who had publicly questioned the handling of a rape case involving a senior government official, and who was convicted under the provision of the PPPA to a one-year jail term and the loss of his eligibility.

The case of Irene Fernandez, which is still pending, is a prime example of such a use of the PPPA. Ms Irene Fernandez is the director of an NGO called Tenaganita, which works on female migrant issues. In 1995 Tenaganita published a report entitled 'Memorandum on Abuse, Torture and Dehumanised Treatment of Migrant Workers at Detention Camps', detailing the allegations of mistreatments in the detention camps. Over 300 migrant workers had been interviewed by Tenaganita staff for the report.

Ms Fernandez was then charged with an offence under section 8A of the PPPA 1984, which makes it an offence to 'maliciously publish false news'. Her trial began in the Magistrates' Court in Kuala Lumpur in June 1996 and is still pending to this day - making it the longest running trial in Malaysian legal history.

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During the course of the investigation the police asked Ms Fernandez for the names of those who had given information and evidence in the course of the research. Ms Fernandez was told that unless she did so, she would be considered as obstructing justice. A similar request was handed to her lawyers, accompanied by a similar threat. Both Ms Fernandez and her lawyers refused to honour the requests.

Added to the multiple obstacles that Ms Fernandez and her legal team have faced during the course of the trial, it should be noted that several migrant workers whom her team had summoned as witnesses for the defence were deported before they could testify in court. Furthermore, when the defence applied to the magistrate to obtain the report of an internal investigation on the situation in the detention camps made by the Ministry of Home Affairs, as well as the post-mortem reports of those who had died in the camps, the application was refused as being 'premature'. When renewed at the end of the prosecution case, the magistrate ruled that it was for the prosecution to decide what information to produce and not for Ms Fernandez to call for information. The Observatory and Suaram agree with the ICJ report when it states: *'It is deeply disturbing that instead of enquiring into and responding to the allegations in the memorandum, the authorities reacted by prosecuting Ms Fernandez, and chose to do so under section 8A of the Printing Presses and Publications Act'*¹⁷.

(v) The Restricted Residence Act 1933, revised 1989

It allows the authorities to issue a 'banishment' order for alleged criminal suspects without any judicial review or administrative hearings. The banished person is required to restrict his/her movements within a small police district. Once restricted, the person is subject to police supervision and may not *'without the permission of the Chief Police officer (...) make any public speech or address any meeting, or publish (...) any (...) document which, in the opinion of the Chief Police Officer, has a seditious tendency, or contains any incitement to violence or is likely to lead to a breach of peace'* (section 2A). The Act is hence used to send suspected individuals to remote locations in Malaysia, and limit their freedoms of expression and movement. Human rights observers denounce a broad and politicised use of this Act to limit freedom of movement of activists and members of political parties.

c) Other laws used against human rights defenders

Other laws have over the years been diverted from their original regulative purpose to, in effect, further limit avenues of action of human rights defenders and dissenters.

(i) The Election Act 1958

On 9 April 2002 a set of amendments to elections laws was passed in Parliament, almost without consultation. One of the amendments states that any questioning of the electoral rolls is to be denied. Once the rolls have been gazetted they become 'final and shall not be questioned or appealed against or reviewed, quashed or set aside by any Court'. This appears to be a reaction to several high-profile cases in which elections were annulled in Court after reviewing the electoral roll; phantom voters had in effect been registered, which swayed the elections. This affected essentially BN elected officials. The case of Sabah in 2001¹⁸ is deemed by observers as having been particularly crucial in this respect.

Furthermore, the deposit required from contesting candidates is to rise from RM5,000 to RM 20,000. This amendment penalises smaller parties and independent candidates, and disproportionately advantages the ruling coalition. The Observatory and Suaram hold the view that the new amendments skew the electoral process and further undermine the rule of democracy in Malaysia.

The aim of amendments to the Election Offences Act 1954 is similar. The new section 4A makes it an offence to *'act or to make any statement with a view or with a tendency to promote feelings of ill-will, discontent or hostility between persons of the same race or different races or of the same class or different classes of the population of Malaysia in order to induce any elector or voter to vote or refrain from voting at an election or to procure or endeavour to procure the election of any person'*. In practice, with this new section, all non-partisan NGOs or members of the opposition could be criminalised for criticising the Government and focusing the debate on sensitive issues.

(ii) The Legal Profession Act 1976

The Legal Profession Act regulates the activities of all practising jurists, and regulates in particular the Bar Council. As an independent and respected body, the relationship between the Bar Council and the authorities are strained every time the Bar Council is too critical of the Government. Already in 1978, an amendment (section 46A) disqualified officers of trade unions, political parties or any other political organisations, inside or outside Malaysia, from becoming members of the Bar Council. This amendment has been criticised by the Bar Council as putting a strain on its independence.

The project of an Academy of Law, a new body designed by the Government to regulate the legal profession, including discipline

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and advertising, which would encompass all practising jurists, has alarmed several human rights activists as an undercover attempt to control independent lawyers, in particular to limit the Malaysian Bar's freedom of expression.

2. A culture of fear - the "boa constrictor" strategy

The Malaysian government has for many years used a two-pronged weapon against dissenters: on the one hand, the Damocles' sword of the ISA and other stringent legislation, and on the other, a much more subtle instillation of a climate of fear, which over time has led to a massive self-censorship among journalists, NGOs, lawyers and judges, political opponents, and trade unionists. Such a climate of fear is itself subtly maintained by the relentless threat of police incarceration, but more generally by the fear of retaliation against personal interests - economic, professional, or other. It is a process of slow strangulation, whereby the Government progressively tightens its grip on all critical institutions in Malaysia, to the point of stifling them and rendering them useless and toothless. 'the Government is extremely authoritarian, but it does not spill blood', explains an activist. This is made possible by UMNO's substantial leverage on all policy-making institutions in the country, be they political, economic, financial or social. When a space of freedom or debate emerges, it is progressively asphyxiated, so as to finally be made meaningless, while allowing the Government to maintain the facade of tolerating dissent. The independence manifested by the National Human Rights Commission (Suhakam) in its first years of existence is thus progressively being reined in, through the appointment of Commissioners who are less critical of the Government and less forceful in their investigations of human rights violations. the Government's efforts to appear as a voice of moderate Islam (when, ironically enough, it initiated a policy of 'Islamisation' in the last decades) and the sole safeguard of Malaysia's 'racial' harmony further tend to silence critics, who are swiftly presented as 'divisive' elements which threaten Malaysia's cultural, national or religious unity.

the Government uses all means at its disposal, from political intimidation to economic coercion and administrative pressure, and all organs under its control, to discourage groups and individuals from actively advocating reforms and promoting human rights. Among the measures used by the authorities, which the Observatory and Suaram in particular identified:

- (i) Economic retaliation and control (particularly through a corporate take-over of media organs)
- (ii) Administrative harassment and licensing control
- (iii) Personal threats and intimidation, professional retaliation
- (iv) The initiation of criminal proceedings for politically motivated

reasons and, in

particular, the use of contempt power against lawyers

(v) Public attacks in the official media

(vi) The use of dismissals and transfers, and conversely, the power of patronage

(vii) The use of co-optation - 'from foe to friend'

(viii) 'Salami politics' - progressively restraining freedoms.

The skillful use of these oblique means allows the Government to deny any wrongdoing and to hide behind a facade of legality, as dismissals, transfers, fiscal controls, for instance, are all legal and 'part of the normal process of a democracy', in the words of a cabinet aide. The ambiguity of such measures makes it impossible to effectively attribute any particular one of these actions to an avowed will to harass the individual or the group, 'and this is the beauty of [Dr Mahathir's] system,' says an opponent, 'for how can you denounce in any effective manner the transfer of a judge, a tax inspection, the "restructuring" exercise of a newspaper or the need for an NGO to register with certain conditions? All these small strings just add up to form a web that ultimately prevents you from doing anything - and that's what he wants'. Adds another: 'Dr Mahathir's authoritarianism is very smart: it does not seek to imprison you, but to demoralise you, to debilitate you in the most sophisticated way'. One aim of such a strategy is to divert NGOs from political advocacy, to maintain them in the framework of service providers, with the view of de-politicising them. Says the director of a women's group: 'We are supposed to take up issues that do not threaten the authorities as such: non-governmental groups should merely provide services, and not do advocacy - that's the message'.

All these elements conspire to shrink the space for an active and creative civil society. The very porous frontier between civil society and political parties, where NGO activists switch to political activism and vice-versa, also contributes to the lack of a precise definition of the respective areas of activity of NGOs and of political parties. Furthermore, Dr Mahathir's relentless and persistent attacks on supposedly 'Western influences' that include human rights, and his defence of so-called Asian values, following Singapore's Lee Kuan Yew, are designed to deny legitimacy to human rights defenders and to portray them as Western 'stooges'. In May 1999, for instance, Domestic Trade and Consumer Affairs Minister Megat Junid Megat Ayob stated: "We can't think of the rights of individuals like western countries. We are Eastern and value the rights of society as a whole more than that of the individual".

The Observatory and Suaram strongly denounce such statements against the universality of human rights. Cultural, historical and religious differences, however significant, do not

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contradict the concept of fundamental human rights. Furthermore, it is obvious that the notion of the essential dignity of every human being is not a Western invention, but is present in every body of culture in the world. The Observatory and Suaram call to mind the preamble of the Universal Declaration of Human Rights, which proclaims '*this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations*'.

a) Economic retaliation and control

UMNO's involvement in economic policies has over the years led to a close, even incestuous, proximity between the political parties in power and the economic powers, notably the large public or private companies. It is the root of Malaysian 'crony capitalism'. There are two aspects to this economic and political incest:

- (i) The dependency of major firms on the Government for contracts and
- (ii) Direct ownership by the main political parties of companies investing in key public domains, such as the media.

The former aspect was fuelled by a wave of privatisations initiated by Dr Mahathir in 1983. Privatisations were then perceived as a major vehicle for achieving the goals of the New Economic Policy (NEP), in particular that of at least 30% *Bumiputra* capital ownership. It appears that contracts were allocated to Malays favoured by the Government; such preferential treatment has actually gone beyond privatisation transactions. The Government has thus generated close relationships with private or semi-public firms, which are beholden to the Government and dependent upon it to get new contracts awarded. Furthermore, UMNO has by now become a business entity as such. UMNO's first important business venture was Fleet Holdings, which, under UMNO's former treasurer, Razaleigh Hamzah, took over a substantial share of Malaysia's biggest media company, the New Straits Times Press Berhad. The group's assets included the Malay and English-language paper *Berita Harian* and the Kuala Lumpur edition of the Singapore-based *Straits Times*. The holdings were later extended and passed on to Dr Mahathir's Finance Minister and friend, Tun Daim Zainuddin. Daim then substantially developed UMNO's corporate activities, extending into television, property, manufacturing, etc... By 1990 the value of UMNO's corporate holdings was estimated at US\$ 0.8 bn. UMNO's properties extended to divisional level, as by 1995 there were, according to Milne and Mauzy, about 16,000 companies set up by UMNO divisions, branches, and individuals¹⁹.

Other parties in the ruling coalition have also entered into

business, notably the MCA, which has recently bought over several Chinese-language newspapers, *Nanyang Siang Pau* and *Nanyang Press*. Economists have argued that through such corporate control, Dr Mahathir's Government, although professing to be free-market, de facto does not practise free-market policies. This is not, however, our concern here. What it attests to, though, is the considerable leverage the Government holds over economic actors, which allows it in turn to use them for political purposes.

Such economic leverage has been consistently and systematically used against political opponents, or against individuals perceived as in some way threatening the ruling elite in Malaysia. The Government thus ensures that a high price is paid for dissent. This was notably the case with Anwar Ibrahim's legal defence team. All the lawyers interviewed stated having been subject to harassment since taking up the case - in effect, it has been rather efficient, since of the original 20-member team, only nine lawyers now remain. Such harassment involves not only personal threats, thefts, office break-ins [see below], but also 'professional retaliation', in particular through the cancellation of all contracts with Government companies. A lawyer reported seeing all his contracts with major newspapers cancelled, another saw all his partnerships with banks annulled. '*All of Anwar's lawyers have seen a major loss of income,*' states one of them, while another estimates the loss of his corporate work - his major source of income - at 60%. He has since had to turn to criminal law and land disputes. The cancellation of such contracts hurts the Malay lawyers most, explains one of them, because '*Chinese businesses do not need Malay lawyers, and there are very few Malay businesses - the ones that would actually go to a Malay lawyer - and they are all dependent in some way on the Government*'. Some other companies, though not public-owned, also cancelled their contracts with these lawyers. According to the lawyers interviewed, officials from these companies would privately tell them that they had been warned that their own businesses would 'suffer' if they kept the counsel's services. '*The companies either are instructed to stop hiring us as legal counsels, or they are scared - or made to be scared,*' says one.

The use of this economic and professional weapon is widespread. A political activist, member of an opposition party, explains that '*the hazards linked with being in the opposition are increasing. The punishment is economic, legal, personal and political*'. He says that numerous cases have been reported of (even mild) dissenters being removed from the Board of Directors of banks, universities or other firms as soon as they expressed some form of discontent with the Government. He reports that the opposition party he belongs to receives funding

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from companies, *'but discreetly, because if it were known that they are providing funds to an opposition party, they would lose contracts - even bank loans'*. The wife of an ISA detainee, who has relentlessly fought against the ISA and the Government's repression of political activism, was suddenly transferred to a different branch of the state-owned firm she works for - much further away from her home, thus making it much more difficult for her to pursue her political activity unhindered while keeping her family life.

The economic tool is also used in a different way. The decision in April 2002 to raise the entry fee of the eligibility roll from RM 5,000 (US\$ 1316) to RM 20,000 (US\$ 5263) is clearly designed to discourage independent parties and contestants from fielding candidates, or at least to make them pay the highest price for it and thus deprive them of precious financial resources for other electoral and political activities. Meanwhile, the divisional sections of the parties in power have set up 'Development and Security Committees' (CKKK), especially in rural areas, to act as village committees; generously funded, they finance development projects in the name of BN, thus further skewing the electoral process. Another method used by the authorities is to counter independent organisations by immediately setting up a rival organisation, better funded and with wider political coverage and possibilities.

Economic retaliation also takes the form of 'mega defamation suits'. Though the Malaysian authorities have not used this in as systematic and extensive a manner as the Singaporean authorities (the trend has lessened since the appointment of Mohamed Dzaiddin Abdullah as Chief Justice in 2001), it has nonetheless been widely used to discourage individuals from criticising the Government. *"The mega defamation suits and wielding of the power to punish for contempt in recent years has been perceived by the public as a mean to stifle fair comment and free speech,"* writes the Kuala Lumpur Bar Committee in a January 2001 memorandum on the administration of justice in Malaysia²⁰.

The economic weapon has, however, been used with most potency to stifle independent media voices. Here again, the control can take various forms: either by a direct take-over of newspapers by party-owned companies, or by indirectly stifling the media by instructing companies not to place advertisements in the paper. This has been the case with Malaysiakini, which has seen firms precipitously cancelling orders for advertisement-space after it appeared too harsh on the Government; the number of advertisements placed in the media has gone down by 80%, according to Malaysiakini editor-in-chief, Steven Gan. Some cases of 'restructuring' exercises, for instance that of The Sun in early 2002, are ambiguous, and observers diverge

on whether to interpret it as a political move or a mere financial operation. The Sun is mostly owned by Vincent Tan, a Malaysian tycoon whose group, the Berjaya Group, has interests in various key domains such as telecommunications, transportation, stock brokerages... In late December 2001 The Sun published a story on an alleged plot to kill Dr Mahathir, which reportedly angered him to the extreme. A few weeks later, several editors were suspended and close to 200 employees, including approximately 80 journalists, sacked.

We will look at the issue of press freedom in more detail later. Suffice it to say here that corporate ownership is one of the major instruments at the Government's disposal for controlling the media. The parties directly or indirectly own the media - either by direct ownership, or via cronies. *'The independence [of the media] as an institution has largely disappeared in the past two decades of legislative and licensing control. Mixed in with this has been the corporate manoeuvring of media assets and management, further consolidating this control,'* writes Kean Wong²¹.

b) Administrative harassment and licensing control

Using the administration as a political weapon against perceived opponents is a classic method of Dr Mahathir's 'soft authoritarianism'. Administrative measures are routinely taken to harass and discourage groups and individuals who in some way challenge the authorities. The use of financial audits and tax inspections is a classic: several of Anwar Ibrahim's defence lawyers, besides seeing contracts with state-owned companies cancelled, reported a sudden increase of fiscal inspections since they took up Anwar's case.

As previously mentioned, Irene Fernandez, President of Tenaganita, an NGO specialised in migrant workers' rights, has been involved in an important court case against the State for six years now. Her NGO, founded in 1991, is registered as a company, and as such has to submit its accounts yearly. Due to initial organisational problems, Tenaganita did not submit its accounts for the first two years (1991 to 1993); they regularised the situation in 1994. But the authorities nonetheless pursued them when the trial started, and the NGO then witnessed regular inspections of its accounts. In particular, the inspectors found four vouchers that had not been placed in the logbook within 30 days, as required by law, and Tenaganita was fined. Similarly, all payments made by the organisation are closely examined and, adds Irene Fernandez, *'if, say, the Provident Funds have not been paid within the week, the officers stand by our door. They have already fined us for delayed payments. Everything, every tiny account book, is being scrutinised'*

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Other administrative measures used to put pressure on human rights advocates include the multiplication of administrative obstacles to setting up and registering NGOs. The Government recently announced its decision to reassess the procedure of NGO registration, with a view to clarifying the difference between companies and non-profit organisations: most NGOs are as of now registered as companies. The goal seems commendable, but most independent observers view this project as an underlying attempt to further consolidate the control over NGOs through the registration procedure, and to make it increasingly difficult for them to work independently [see below, section IIB1].

NGOs also face delays and resistances in obtaining authorisations to organise meetings. The director of a human rights organisation explains how when they attempted to book a room to organise a conference, the owners asked for the police authorisation allowing the assembly to take place under the Police Act. When the NGO officials then turned to the Police to get the authorisation, they were told that they could only get it if they had the booking of the room confirmed. Similarly, Artis Pro Activ, an association of artists promoting freedom of expression, artistic and democratic freedom, organised an arts festival in October-November 1998; during the second week of the festival, the police forced them to close the event on technical grounds, such as the non-conformity of the stereo system to technical regulations.

Similarly, the project to establish an Academy of Law, a new body along Singaporean lines designed by the Government to regulate the legal profession, including discipline and advertising, and to encompass all practising jurists, has alarmed several human rights activists as an undercover attempt to control independent lawyers, in particular to limit the Malaysian Bar's freedom of expression, and in the words of a Bar Council official, to 'water down the Council'. The Bar Council will retain authority over legal aid and education, but its role could be significantly diminished. Government lawyers and academics will be permitted to vote in the Academy of Law, as well as private practitioners, which could lead to a very different future for legal practice in Malaysia. The Bar publicly expressed its dissatisfaction about not having been consulted on a matter which will affect all its members, as membership will be mandatory for all lawyers and government legal officers. The Academy of Law is planned to be set up in the coming months, as the Cabinet approved the Bill on 6 March 2002²².

The Bar Council has traditionally been an outspoken and independent institution which has not hesitated to condemn the Government forcefully on several occasions when the independence of the judiciary or civil liberties were under threat. It has repeatedly called for the repeal of the ISA.

An identical process of control through licensing procedures applies to the media [see below, section IIA1]. The PPPA holds further provisions which seriously hamper free and critical reporting, such as the possibility for the Home Minister to suspend or revoke publishing and printing permits, with no possibility of judicial review. As we will see, the authorities use other bureaucratic means to further restrict freedom of expression and especially to limit the circulation of opposition newspapers.

Administrative requirements are also in force when it comes to exercising control over the foreign media. A foreign correspondent in Malaysia is required to renew his or her permit every other week. The procedure and the documents required are '*such a hassle - you wouldn't believe the number of official documents they demand*' says one of them. This signifies that in effect, most foreign correspondents do not comply with the law, and do not renew their permit every 15 days. But this means that they are then at the mercy of the authorities if they are perceived as being too critical of the Government: '*then they just call you in, and tell you 'oh well, it seems you have not regularised your situation, and your permit has expired. You might have to leave the country, we are so sorry'...*' explains a foreign journalist based in Kuala Lumpur.

As for civil servants, the loyalty pledge demanded of all civil servants is also a matter of concern. The oath of loyalty to 'King, country and government' is now also required of academics and undergraduate students. The pledge, Akujanji, is an oath of good conduct: signatories are to heed all existing and future government directives and orders, as '*an officer who goes against or criticises a government policy will undermine the integrity and stability of the civil service as a whole*', according to a note in the pledge. The Observatory and Suaram are concerned that the pledge is intended to require obedience of civil servants, contain political activity among academics and students, and further restrict academic freedom and freedom of expression. Dr Mahathir has publicly stated that the aim of the pledge is to contain the 'poisoning of the minds' of the students, so that they 'stick to the original purpose of entering universities to gain knowledge and not to indulge in anti-government activities'. The Observatory and Suaram share the view of Rosli Omar, an academic, that '*an oath of loyalty will violate the academic freedom of pursuing knowledge in a free, non-partisan way*²³.

Such administrative pressures can also be directed at individuals. The children of human rights advocates or political activists might be denied scholarships or book loans, or the family might see its application for a housing scheme rejected.

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Authorities might also decide to withdraw the passports of activists, officially on administrative grounds, as was the case with members of Sahabat Alam Malaysia (Friends of the Earth - Malaysia), an NGO specialised in environmental issues, who denounced the Government's Bakun dam project in Sarawak. They also withdrew the passport of Cecil Rajendra, the president of the Bar Council's Human Rights Committee following his work in 1998 on illegal logging in rainforests.

c) Personal threats and intimidation

One of the most common means of pressure on human rights advocates is the use of personal attacks and intimidation. Most of the human rights defenders interviewed, whatever their field of activity, testified to being either constantly or intermittently followed by the police or the SB (Special Branch - the secret police), and having their phones, professional or private, tapped. One lawyer, a member of Anwar Ibrahim's defence team, explained about having two SB officers posted on a permanent basis right outside his office during and after the trial: *'They did not even hide it - we actually almost became friends, eventually'* he says. The aim is not to secretly follow the individual in question - it is to intimidate him or her and possibly dissuade that person from undertaking his/her activities. *'They put pressure by letting you know that you are being watched day and night,'* says one of them.

Several persons interviewed stated that they received phone calls from individuals identifying themselves as SB officers, instructing them to cease their activities, or risk being arrested under the ISA. Several lawyers, members of the Anwar Ibrahim team, reported having their offices or their cars broken into, sometimes twice; documents and computers were also stolen. They reported the break-ins and thefts to the police, but no action was taken and several months or years later, no arrest has been made in connection with these events.

Numerous human rights defenders interviewed stated having their family and relatives intimidated, threatened or sanctioned professionally, in an apparent attempt to force them to cease all human rights related activity.

On 8 June 2001, High Court Justice Muhammad Kamil Awang ordered former Sabah Chief Minister Yong Teck Lee to vacate his State Assembly seat on the basis that he was elected in 1999 with the help of phantom voters. Justice Muhammad had exposed a massive infusion of illegal immigrants into the electoral roll for the Likas constituency in the Sabah State Assembly by the ruling parties. The judge revealed that he had been pressured by a superior to reject the complaints filed by

two defeated candidates. He publicly denounced the treatment meted out to his children after his ruling: neither his son, who had applied for a temporary work permit, nor his daughter, who had applied for a scholarship, ever received an answer from the authorities. Dr Mahathir went on to criticise Justice Muhammad publicly: *'It was obvious the judge harboured ill feelings when he commented that his son did not get good treatment from the Government. Other similar election petitions in Sabah have been dismissed by other courts, except this Likas case. The judge was obviously not happy with the way he was treated in Sabah'.*

The use of intimidation might also be directed against a whole organisation. Two non-governmental organisations - Sisters in Islam and Suqiu - reported having their offices broken into - twice in the case of Sisters in Islam, in late 2000 and early to mid-2001. In all three cases office equipment (essentially computers and hard disks) was removed. Though there is no proof that these break-ins were committed by governmental agents, a person close to Sisters in Islam claimed that they had evidence that at least one of the break-ins had been instigated by UMNO.

Apart from regular visits by SB officers (approximately once a month, according to Suqiu officers) and threats of arrest under the ISA, Suqiu also experienced a demonstration by UMNO youth, organised right in front of its office building in central Kuala Lumpur on 18 August 2000. Suqiu, which prior to the elections had organised a petition on behalf of the Malaysian Chinese community, was presented as endangering 'racial harmony' in Malaysia. The posters in the demonstrations had slogans such as 'Malays are Malaysia', 'Suqiu, don't challenge us', and 'We don't question you, don't question us'.

d) The initiation of criminal proceedings for politically motivated reasons and, in particular, the use of contempt power against lawyers

the Government has systematically used legal instruments to silence perceived opponents. The use of sedition laws and other laws, notably the PPPA and the Official Secrets Act, has been seen as an attempt to silence anybody who criticises the Government, as was demonstrated by the case against Lim Guan Eng in 1998, the case against Karpal Singh, a lead defence counsel for Anwar Ibrahim, in 2000, and more strikingly the still-pending case against Irene Fernandez.

Several human rights defenders stated that the police would very often immediately file a report against anyone who denounced the police or any law-enforcement agency. This has been the case with Toni Kasim, who publicly denounced the lack of

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police action for violence against women - the police immediately counter filed a report investigating her statement. Such practices tend to discourage actions and public denunciations by human rights defenders.

Until the appointment of Mohamed Dzaiddin Abdullah as Chief Justice in March 2001, the use or threat to use contempt power increased, and gave rise to concerns about the independence of the judiciary and the ability of lawyers to provide their services freely and without fear. It led the Bar Council in March 1999 to submit a memorandum on contempt of court that included its own proposals on contempt laws. These proposals were never discussed, according to the president of the Bar Council, reportedly because the use of contempt power then started decreasing, and the authorities felt that there was no longer a need for a precision of contempt laws.

The case of contempt that initiated the trend by the Malaysian authorities to attempt to stifle the Bar Council's freedom of expression and of action was that against Manjeet Singh Dhillon in 1991. This was followed by the Tommy Thomas case in 1999²⁴. The Observatory and Suaram share the view that contempt power has been increasingly used to intimidate lawyers and the Bar Council, and to prevent them from rendering their services freely.

The Zainur Zakaria case is significant in this respect. Zainur Zakaria, a former President of the Malaysian Bar, was one of the lawyers defending Anwar Ibrahim; on 28 November 1998, less than a month after Anwar Ibrahim's trial had started, Mr Zakaria made an application to the court on behalf of Anwar Ibrahim to remove two of the prosecutors from the case, on the grounds that they had fabricated evidence against his client. In support of the application Mr Zakaria produced a Statutory Declaration made by a senior lawyer, alleging that these very prosecutors had attempted to have his client, a colleague of Anwar Ibrahim, give information on Anwar Ibrahim in exchange for dropping a capital charge against him in favour of a lesser charge. The trial judge refused to consider the application on its merits. He further ruled that it was misconceived and that it amounted to an abuse of process that interfered with the due administration of justice. He then cited Zainur Zakaria for contempt of court and swiftly sentenced him to three months' imprisonment. The judge refused an application for a stay of execution. An interim stay was, however, granted by the President of the Court of Appeal upon an urgent oral application made the same morning²⁵. Zainur Zakaria was later released on bail, and appealed to the Federal Court. The Federal Court set aside the order of committal made by the High Court and ruled, *inter alia*, that Mr. Zakaria had acted properly in filing the application,

that there had been a blatant disregard of rules of procedure, and that the High Court judge had behaved as though he was acting as the lawyer for the two prosecutors.

However, this type of proceedings is likely to make it more difficult for lawyers to exercise their profession 'without fear or favour', and it raises the stakes as regards defending high-profile cases. It also comes into a broader scheme whereby independent individuals and groups whose activities in some way collide with the Government's interests are hampered and increasingly made to take personal risks for their activities.

e) Public attacks in the official media

Not only does the media not play its critical role as a counterpower to the Government, it actually behaves as its mouthpiece. Hence, government officials, and Dr Mahathir first and foremost, do not hesitate to publicly attack perceived 'foes' in the media. The fact that these individuals are sometimes undergoing judicial procedure, and that such public attacks thus fly in the face of the presumption of innocence and jeopardise the independence of the judiciary, does not appear to restrain government officials in any way. The most blatant case in this respect is Anwar Ibrahim, relentlessly accused by government office holders and by Dr Mahathir himself, before or during his trial. For instance, on 22 September 1998 Dr Mahathir issued a press statement in which he is reported to have said: *'I had concrete proof that it [the allegations of sodomy] was true (...). I actually interviewed the people who were sodomised, the women whom he had sex with, the driver who brought the women to the place (...). The fact is that the man had been masquerading as a religious person and yet had been committing these things not today, not yesterday, but for years. (...) We also have proof of his corruption. But I am not interested in that. I cannot accept a sodomist to be a leader of this country.'*

Suhakam officers report a stream of highly negative reports appearing in the mainstream media, including several on a supposed 'hidden agenda' of theirs, after Sukaham published its report on the Kesas highway shooting, which condemned the abuse of power by police officers. Similarly, in reference to Justice Hishamudin granting habeas corpus to two ISA detainees in 2001, Dr Mahathir was reported in The Star, 31 July 2001, as saying that judges who have their own stand on a particular issue and disagree with certain laws passed by Parliament should disqualify themselves from hearing cases involving such laws.

Such occurrences are unfortunately not isolated. The official media repeatedly raises the risk of racial riots or the threat to

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Malaysian 'national unity' to silence groups which question the 'affirmative action' foundation of Malaysian policies in favour of Malays; this was in particular the case with Suqiu. Several groups and/or individuals interviewed by the Observatory state having been more or less subject to violent media campaigns after taking position against government policies.

f) The use of dismissals and transfers - the pressure on civil servants; conversely, the power of patronage

The practice of dismissals and transfers has been interpreted as a means of 'punishment' of non-compliant individuals, and conversely as a reward for 'obedient' ones. UMNO has by now such control over all state institutions that it seems to confuse State and Government, and expects of civil servants the kind of loyalty usually demonstrated by party members. In December 2000, the Parliamentary Secretary of the Prime's Minister Department Noh Omar said that civil servants who are pro-opposition should resign rather than be traitors to the Government. The power to appoint or promote individuals to key positions of political, administrative, judiciary, and economic power is systematically used to ensure their compliance. This applies in particular to judges and magistrates.

One example is that of Shah Alam High Court Justice Mohamed Hishamudin Yunus. On 30 May 2001, he ruled that the detention of two Keadilan leaders, N. Gobalakrishnan and A. Ghani Harun under the ISA was unlawful and mala fide. He ordered the police to free them immediately. Among the grounds cited by Justice Hishamudin for granting habeas corpus to the two applicants were: abuse of power by the detaining authorities, failure by arresting officers to justify the arrest, premature decision by the IGP (Inspector General of Police) and the Director of the Special Branch in detaining the two applicants for more than 30 days and wrongful denial of access by lawyers and family members. He was then transferred to the commercial division of Kuala Lumpur's High Court at the end of the year. Though the authorities, through the voice of the Attorney General in particular, deny any underlying intention behind this transfer, claimed to be 'part of the normal rotation of magistrates', Justice Hishamudin's transfer does nonetheless appear to observers as a demotion. Conversely, independent observers have interpreted Ghani Patail's appointment as Attorney General as a 'reward' for his diligence in favour of the Executive in Anwar Ibrahim's trial. Some have suspected a 'deal' behind the rejection of Anwar Ibrahim's appeal in Federal Court on 10 July 2002: the deal reportedly included a six-month followed by a two-year extension of service for Chief Justice Dzaiddin Abdullah (one of the three judges on the ruling panel), and his elevation to Tun ship, the highest honour in the country.

Similarly, the non-renewal of the appointment of several commissioners of the National Human Rights Commission, Suhakam, in April 2002, has been understood as a punishment for their outspokenness on human rights issues. Commissioners who had been most active and most forceful, Mr Zainal Abidin, Ms. Mehrun Siraj and Dr Salleh Mohamed Nor, were not renewed. Both Mehrun Siraj and Zainal Abidin had been at the forefront of the investigation on the Kesas highway shooting, which resulted in a clear condemnation of the police's abuse of power. More generally, all human rights advocates agree that they were both the most forceful in their denunciations of the human rights violations committed by the Malaysian authorities. There is little doubt in the observers' (and in the commissioners') minds that their failure to be re-appointed (a non-renewal which had been widely expected) is linked to the Government's dissatisfaction with their work, perceived as too independent and too critical of the authorities.

Civil servants are therefore always at risk of being punished through such administrative measures if they are too open in their criticism of the Government. As noted above, the newly edicted demand for all civil servants, including academics and undergraduate students, to sign a loyalty pledge can potentially be used as an instrument to limit their freedom of expression. Officials of opposition parties reported to the delegation that some members of their parties who were teachers had been transferred to schools far away from their homes, in what was perceived to be a clear retaliation to their membership of the opposition.

Likewise Dr Chandra Muzaffar, ex-deputy president of Keadilan, President of JUST, an NGO specialising in social justice issues, and an outspoken critic of the Government, was denied the renewal of his contract as professor of political sciences and Director of the Centre of Civilisational Dialogue at the University of Malaya in February 1999, contrary to usual practice in Malaysian universities. Dr Muzaffar sought compensation through the legal system and on 9 February 2002 won his case on the basis that his 'legitimate expectation' had not been fulfilled. The non-renewal of his contract appears to be directly linked to his political activities.

According to Human Rights Watch, in October 2001, 61 university lecturers alleged to be engaged in anti-government activities were warned, transferred or fired.

g) The use of co-optation - 'from foe to friend'

Over the years the Malaysian authorities have proven to be remarkably skillful at neutralising critics by bringing them into their fold. *'Every area of criticism is co-opted or invaded by the Government,'* says a Kuala Lumpur human rights advocate.

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Anwar Ibrahim's entry into the Government in 1982 can be understood as a move to placate him: he was at the time the president of ABIM, the Malaysian Islamic Youth Movement, and a vocal critic of Dr Mahathir's politics. Bringing him into the Government thus served two purposes: giving the Government credence on the Islamic front, and neutralising an opponent. There is a long-standing tradition within UMNO of such practices. *'The authorities are remarkably good at infiltrating every bastion of opposition or dissent, and, once inside, turning them over,'* adds a human rights observer.

More recently, the decision to name as senator the president of the Malaysian Trade Union Congress (MTUC), Zainal Rampak, at the time of Anwar Ibrahim's trial, can be interpreted in a similar way. Mr Zainal Rampak used to be close to Anwar Ibrahim. The MTUC did not join the *Reformasi* movement, nor has it taken up a public stance to condemn either the use of the ISA or more generally the systematic violations of civil and political rights in Malaysia.

The non-governmental organisation Suqiu explains that in 1999 an identical method was used to water down their demands before the general elections. Suqiu had presented a petition stemming mainly from the Malaysian Chinese community, signed by 2097 organisations, and promoting a need-based, rather than an ethnic-based approach to social rights. The authorities initially started by attacking them in the media, but then switched tactics: three components of the Barisan Nasional endorsed the petition, albeit without acting on it. 'But that way they managed to keep us silent for the remaining months before the elections: *'You see, the problem is solved, they would say. And indeed, what could we do? They were officially in favour of our proposal, even if they did not do anything about it,'* explains a Suqiu official.

h) 'Salami politics' - progressively restraining freedoms

'Salami politics' is the expression used by the leader of a community organisation to describe the manner in which the Government progressively restricts civil liberties. *'It happens slice after slice - the Government doesn't crush dissent, it manages it and divides it.'* The changes are incremental - no single modification is in and of itself unacceptable, though the aggregation finally becomes a significant curtailment of freedoms.

One example was given by Dr Kam Weng, director of the Kairos Research Centre, which works on cultural and religious rights in Malaysia: the obligation imposed on all students to take an examination in Islamic studies. In the 1970s, the Government

made it compulsory for all university students to attend a course in Islamic education. The Malaysian Consultative Council on Buddhism, Christianity, Hinduism and Sikhism (MCCBCHS) protested. The Government then said that non-Muslim students just needed to attend the course, but not to sit for the examination. It then said that all students had to sit for the examination, but non-Muslim students did not need to pass. The final move was to make it compulsory for all university students, even non-Muslims, to pass the examination. The imposition of such an obligation contravenes article 11 of the Constitution of Malaysia and article 18 of the UDHR, which both guarantee freedom of religion.

3. The lack of independence of the judiciary

The Observatory, since its mandate was limited to investigating the situation of human rights defenders, has broached the issue of the independence of the judiciary only insofar as the lack of such independence has affected human rights defenders in the country. For a complete report on the issue, we refer to the above-mentioned report: *Justice in Jeopardy: Malaysia 2000* by the International Bar Association, the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists, the Commonwealth Lawyers' Association, and the Union Internationale des Avocats.

The limitations and pressures imposed on Malaysian human rights defenders are further aggravated by the lack of judicial remedies and a general lack of confidence in the possibilities of legal recourse. *'The administration of justice in Malaysia is in its darkest hour since independence,'* wrote the Kuala Lumpur Bar Committee²⁶ in 2001.

Ever since the attack on the judiciary in 1988, the judiciary has repeatedly failed to uphold the rule of law and to rule in independence of all powers, notably the Executive. Suaram noted in its 2000 report that there has been a *'steady erosion of public confidence in the independence of the judiciary. [Recent] events served to confirm public perception that the Executive continues to have a strong hold over the judiciary.'*²⁷ Says a senior Kuala Lumpur lawyer: *'The judiciary in Malaysia can generally be said to be independent - except in high profile cases or in politically sensitive cases.'* This begs the question as to whether a judiciary solely independent in politically insignificant cases can be said to be independent at all.

All independent observers, both national and international, concur to affirm that Anwar Ibrahim's trial cannot be said to have been free and fair, and that it has at every step shown a docile judiciary, seemingly under the stranglehold of the Executive. The

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10 July 2002 decision by the Federal Court to reject Anwar Ibrahim's final appeal further confirms the view that he had been denied a fair procedure throughout the whole proceedings. Among the preoccupying elements, one notes the refusal of bail, the change of amendments at a late stage, the expunging of evidence, the obligation required of the defence to provide a summary of witnesses' evidence in advance and the ruling on their relevancy, the disallowing of witnesses from testifying, the prohibition of the defences' arguing on the basis of political conspiracy.

Structural issues affecting the independence of the judiciary in Malaysia include the discretionary power of the Attorney General and the appointment of judges in lower courts, i.e. Sessions and Magistrates Courts. Sessions Courts judges and magistrates are part of the Judicial and Legal Service, and are thus part of the same civil service body as officers of the Attorney General's Chambers. The issue of independence arises in particular when senior prosecutors prosecute in front of their junior colleagues who are Magistrates or Sessions Court judges. It is believed that the hierarchy within the civil service could jeopardise the independence of the judges. In effect, this happened during Irene Fernandez' trial, with Judge Juliana. The Attorney General, during an interview with the Observatory's delegation, acknowledged that 'indeed, this could be a problem'.

The use of sedition laws and other laws, notably the PPPA, is seen as an attempt to silence not just the Bar, but anybody who criticises the legal system, as was demonstrated by the case against Lim Guan Eng in 1998, the case against Karpal Singh, a lead defence counsel for Anwar Ibrahim in 2000, or the case against Irene Fernandez. The Observatory and Suaram agree with the IBA/CIJ statement that the impression is that of '*an Executive, through its various branches, seeking to stifle criticism, however justified and however much in the public interest, from those whom it considers to be its opponents. Moreover, if any such criticism is made, those who make it are subjected to prolonged and continuous harassment*'.¹

A further worrying element regarding the independence of the judiciary is the pressure placed on lawyers and on the Bar. We mentioned the use of contempt power against lawyers, or defamation suits for millions of ringgits. A prominent Kuala Lumpur lawyer stated that 'perceived 'human rights' lawyers are being indirectly punished for their activities as *other clients are being pressured not to hire us*'. One should also note that on 29 September 2000, a court verdict prohibited the Bar Council's planned Extraordinary General Meeting to discuss the conduct of judges, following serious allegations of acts of impropriety made by the then Chief Justice Eusoff Chin. Justice Ahmad Fairuz Sheikh ruled, on the basis of article 127 of the

Constitution of Malaysia, that no person, body or institution, save for Parliament or a tribunal empanelled for the purpose of looking into the conduct of a judge, was permitted to discuss the conduct of judges. This ruling contravenes the right to freedom of expression as guaranteed by the Constitution and by international human rights instruments, most notably the UDHR. The Bar's application for leave to appeal to the Federal Court was subsequently dismissed as 'having no merits'.

More generally, the Kuala Lumpur Bar Committee has listed the elements which in recent years have further undermined public confidence in the Malaysian judiciary and in the possibility of legal redress²⁸:

- Large defamation suits
- A spate of contempt court cases with custodial sentences against lawyers, journalists and litigants
- Injunctions against the Bar holding its own general meetings
- Unprecedented awards of costs with a distinctive punitive element
- Cases being contested or dealt with on mere technicalities (for instance, courts rejecting documents not complying strictly with the rule requiring a one-inch margin)
- Unusual court orders and proceedings
- The controversial exercise by the Attorney-General of discretion in prosecution and conduct of criminal proceedings
- Cases perceived as having been given undue priority
- Backlog of appeals in the courts
- Appeals cases disposed of without grounds of decision
- Lack of mutual respect between bench and bar
- Uncertainty and unpredictability in the law
- Administrative delays in court
- Declining standards of advocacy

4. Signs of hope?

In this rather dark picture for human rights defenders in Malaysia, some signs of hope have emerged. Unfortunately, they appear linked to ad-hoc circumstances or due to the courage of individuals, rather than manifesting signs of openness of a system as a whole. For example, the changes in the judiciary in the last two years seem to have been driven by the former Chief Justice, Mohamed Dzaiddin Abdullah, who publicly expressed his will to restore public confidence in the judiciary - a confidence which had seriously been eroded in the last decade and a half. Indeed, during his appointment, there was a noticeable drop in prosecutions for contempt of court and a significant decrease in the sums of damages demanded in defamation lawsuits. This does not, however, mean that the Government as a whole endorsed this view. The circumstances surrounding Mr Dzaiddin's appointment show that he was not

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the Government's 'first choice'; as a matter of fact, he was appointed through an infrequent procedure used by the Sultan of Perak, who is the current Yang Dipertuan Agung; the denial of extension of his term, contrary to what is customary in Malaysia, further gives the impression that his liberty of speech and his refusal to comply with the Executive was a source of discontent within governmental spheres. One can therefore only express the highest measure of caution as to the 'shreds of light' that emerged with his appointment.

Other positive signs, though, include some positive and courageous rulings made by judges around the country. Shah Alam High Court Justice Hishamudin Yunus' May 2001 decision to free two Keadilan leaders detained under the ISA on a writ of *habeas corpus* has already been mentioned. Among the grounds cited by Justice Hishamudin for granting *habeas corpus* to the two applicants were: abuse of power by the detaining authorities, failure by arresting officers to justify the arrest, premature decision by the IGP (Inspector General of Police) and the Director of the Special Branch in detaining the two applicants for more than 30 days, and wrongful denial of access to lawyers and family members. In an interesting development, the judge also questioned the relevance of the ISA today: *'With the greatest of humility, perhaps it is high time for Parliament to consider whether the ISA, which was originally to counter Communist terrorism in the early years of independence, is really relevant to the present-day situation of this nation of ours. Or, if at all it is to be retained, at least whether its provisions need to be thoroughly reviewed to prevent or minimise the abuses which I have highlighted in this judgement.'*

On 8 June 2001 High Court Justice Muhammad Kamil Awang ordered former Sabah Chief Minister Yong Teck Lee to vacate his state assembly seat on the basis that he won it in 1999 with the help of phantom voters. The judge ruled that the electoral roll for the Likas constituency in the Sabah State Assembly was illegal.

On 13 June 2001 three defamation suits totalling RM220 million (US\$58.4million) filed notably by the tycoon Vincent Tan against UN Special Rapporteur on the Independence of Judges and Lawyers, Param Cumaraswamy, were dropped. The judgement upheld the ruling of the International Court of Justice that P. Cumaraswamy's immunity was binding. The suits had been based on an alleged defamatory article published in the November 1995 edition of the *International Commercial Litigation magazine*, which quoted Mr. Cumaraswamy.

On 27 June 2001 the Federal Court freed Zainur Zakaria, who had been charged with contempt of court in a case involving Anwar Ibrahim [see above]. The Federal Court set aside the order

of committal made by the High Court and ruled, *inter alia*, that Mr Zakaria had acted properly in filing the application, that there had been a blatant disregard of rules of procedure, and that the High Court judge had behaved as though he was acting as the lawyer for the two prosecutors.

One can further be encouraged by the work done by the National Human Rights Commission (Suhakam), in spite of intrinsic limitations to its mandate. Most observers commend Suhakam's courage and perseverance in its first years of existence, and agree that *'it has gone beyond expectations'*. Unfortunately, the non-renewal in April 2002 of some key Commissioners who had been most active in investigating human rights violations, notably Anuar Zainal Abidin and Mehrun Siraj, here again sends a negative warning signal to other Commissioners and to the public at large. The Government seemingly does not approve of the independence manifested by Suhakam: the appointment of the former Attorney General Abu Talib as chairperson has been understood as a move to rein the Commission in. The lack of respect on the part of the Government regarding Suhakam's recommendations is another worrying element. Such factors led a coalition of 32 NGOs to disengage in 2002 from dialogue with Suhakam for a period of 100 days. Though this period has ended, the concerns and reservations remain.

Another positive sign lies in the activities of civil society, which has been growing, becoming more structured and vocal in the last decade. A significant event was the coming together of some 50 NGOs in 1993, representing human rights organisations, trade unions, consumer associations, women's groups, environmental organisations, academic bodies and organisations of people with disabilities, to endorse a Malaysian Human Rights Charter based on international instruments.

C. Restrictions imposed on human rights defenders by non-federal entities

The Observatory and Suaram call to mind article 2 of the Declaration on Human Rights Defenders²⁹. Under that provision, states are responsible for ensuring that the activities of human rights defenders are unhindered, and that non-state groups do not hamper such activities.

1. By state (regional) authorities

The Observatory and Suaram are preoccupied by the various restrictions imposed on NGOs or associations by local authorities, in particular in Kelantan and Terengganu. In 1990 the state authorities of Kelantan, led by PAS, banned pre-Islamic forms of the arts, such as ritual puppet theatre (*Wayang Kulit*).

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Traditional music and Rama competitions were also banned.

This ban is in violation of article 19 of the UDHR, and of article 10 of the Constitution of Malaysia, which guarantee freedom of expression.

The Kelantan authorities have furthermore been instrumental in detaining members of 'deviationist' religious groups, such as Shi'a Muslims, under the ISA.

2. By non-governmental groups and parties

Associations involved in religious issues have been submitted to increasing attacks from religious groups, such as the Muslim

Scholars' Association (PUM), and religious-based parties, notably PAS. These attacks most often take the form of public denunciations of the association's stance, but they can also take more aggressive forms, such as attempts to disrupt peaceful meetings, as was reportedly the case with the 'anti-hadith' group Forum Iqra' on 1 March 2002. Both *Forum Iqra'* and Sisters in Islam have received anonymous threats, including death threats. The PUM recently filed a petition against these groups, among others, for 'insult to Islam' [see below, section IIA3].

The Observatory and Suaram express their concern about such actions, which are aimed at restricting these groups' freedom of expression and freedom of peaceful assembly.

1. S. Nair, 'Constructing civil society in Malaysia: Nationalism, hegemony and resistance', in *Rethinking Malaysia*, ed. Jomo K.S., Hong Kong 1999, p. 85.
2. H.P. Lee, *Constitutional Conflicts in contemporary Malaysia*, Oxford Univ. Press, 1995, p. xi.
3. Fiona Yap, 'Malaysia', in *Southeast Asia Handbok*, Regional Handbooks of Economic Development, Fitzroy Dearborn Publishers, 2001, p. 58.
4. article 145 of the Constitution of Malaysia states that 'The Yang di-Pertuan Agung shall, on the advice of the Prime Minister, appoint a person who is qualified to be a judge of the Supreme Court to be the Attorney General for the Federation. (...) The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial.'
5. International Bar Association (IBA), Centre for the Independence of judges and Lawyers of the International Commission of Jurists (CIJL), the Commonwealth Lawyers' Association (CLA), Union Internationale des Avocats (UIA), *Justice in Jeopardy: Malaysia 2000*, Report on the Independence of the Judiciary in Malaysia, p. 47.
6. See e.g. Suaram, *Malaysian Human Rights Report 1999*, p. 21 sq.
7. In the terms of Human Rights Watch.
8. For an extensive study of the array of repressive laws in Malaysia, cf. Amnesty International, *'Malaysia: human rights unermind: restrictive laws in a parliamentary democracy'*, Sept. 1999.
9. Art. 149 (1) of the Constitution : If an act of parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation -
 - (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or
 - (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or
 - (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
 - (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
 - (e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or
 - (f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of article 5, 9, 10 or 13, or would apart from this article be outside the legislative power of Parliament; and article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.
10. *Idem*, p. 14.
11. A holding centre for detainees who have had their detention orders extended after the initial 60-day investigation period.
12. It also held a joint meeting with a former ISA detainee during the Human Rights Commission 57th session in Geneva on 17 April 2002.
13. Composed by Chief Justice Mohamed Dzaiddin Abdullah, Chief Judge of the High Courts of Sabah and Sarawak Steve Shim, Justice Siti Norma Yaakob and Justice Abdul Malek Ahmad.
14. See Amnesty International, *op. cit.* p. 37 sq. and *Justice in jeopardy*, *op. cit.* p. 31 sq.
15. Amnesty International, *op. cit.*, p. 32.
16. section 8A(1) reads as follows: 'Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding 20,000 ringgits or to both'.
17. *Justice in jeopardy*, p. 51.
18. On 8 June 2001 High Court Justice Muhammad Kamil Awang ordered former Sabah Chief Minister Yong Teck Lee to vacate his state assembly seat, on the basis that he was elected in 1999 with the help of phantom voters. The judge ruled that the electoral roll for the Likas constituency in the Sabah State Assembly was illegal.
19. R.S. Milne and D. K. Mauzy, *Malaysian Politics under Dr Mahathir*, Routledge 1999, p. 50 sq.
20. *The Administration of Justice in Malaysia*, a Memorandum from the Kuala Lumpur Bar Committee, January 2001, p. 4. See also The Sun, 26 December 2001 'Mega libel suits dominate'.
21. Kean Wong, 'In the grip of the Government', in *Losing control - Freedom of the Press in Asia*, Asia Pacific Press, 2000, p. 118.
22. See *New Straits Times*, 23 March 2002 and 24 March 2002.
23. In 'An Anti-democratic pledge', *Aliran Monthly*, June 2002.
24. For details on these cases, see IBA / CLA / CIJL / UIA, *Justice in Jeopardy*, *op. cit.*, p. 21 sq.
25. For details on the case, see *Aliran Monthly*, n° 21(6), 'Will the real judiciary please stand up?', p. 7 sq.: The Zainur Zakaria story.
26. *The Administration of Justice in Malaysia*, *op. cit.*, p. 10.
27. Suaram, *Malaysian Human Rights Report*, 2000, p. 39.
28. *The Administration of Justice in Malaysia*, *op. cit.*, pp. 3-4.
29. 'Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary (...) as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually or in association with others, are able to enjoy all those rights and freedoms in practice; each state shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed'.

II - Freedoms at risk

Such a dual method of silencing critics (combination of draconian legislation and of a culture of fear) has seriously undermined fundamental liberties in Malaysia. We will now turn to a more specific analysis of the liberties at the core of the activities of human rights defenders - freedom of expression, freedom of association, and freedom of assembly.

A. Freedom of expression

1. Press freedom

An independent and free press is an essential element of a democracy. Over the years the Malaysian media has become tame and subservient, submitted to the Government and more of a mouthpiece for its views than a true instrument of democratic freedoms. *'The media is compliant and the independent ones are mosquitoes,'* says Param Cumaraswamy. Press freedom is restricted both by a draconian legislation, first and foremost the *Printing Presses and Publications Act 1984* and by an economic ownership of most media organs by government parties and allies. The pressure put on critical journalists has hence led to a massive self-censorship and a general lowering of professional standards of reporting. The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr Abid Hussain, wrote in his 1999 report on Malaysia: *'Freedom of the media in Malaysia has been often hindered by exerting political and legal pressure on journalists, which has led to widespread self-censorship in their daily work. The Special Rapporteur considers the dependence of the mass media on the State through State ownership or economic control by the ruling party to be undesirable.'*³⁰ The direct accountability of editors-in-chief of mainstream media to the Government, the opaque procedure by which they are appointed or dismissed, according to the Government's will, have made media organisations kowtow to the authorities even further³¹. Social elements also come into play, as journalism has become a well-paid and well-respected profession: the social status enjoyed by journalists, and their regular hefty bonuses, make them more reluctant to endanger their position by taking 'risks' in criticising the authorities. The personal attacks that some of them have been subjected to in official press organs when denouncing government policies further act as a deterrent to criticism of the regime.

a) The Printing Presses and Publications Act and other legislation

The PPPA, which requires all publications to obtain an annual press license to operate, which can be withdrawn without judicial review, is systematically used to force media to conform to government-approved views. Such a short term of registration obviously limits the media's freedom of expression drastically, as it puts constant pressure on the media to 'say the right thing' in order to ensure that the license will be renewed. Through what appears like a minor requirement, the authorities are thus in effect able to control most media, which all live under the threat of having to close down. The threat is not an empty one, as demonstrated by the revocation of the permits of four newspapers, including *The Star* and the Chinese-language *Sin Chew Jit Poh* in 1987.

Under section 7 of the Act, the Government may at its discretion ban the publication, import and circulation of any manuscript or publication deemed prejudicial to 'public order, morality, security, the relationship with any foreign country or government, or which is likely to alarm public opinion, or which is (...) otherwise prejudicial to public interest or national interest'.

The PPPA further provides in its section 8A(1) for a jail term and/or heavy penalties for editors, journalists, publishers and printers if found guilty of 'maliciously publishing false news', defined as 'not taking reasonable measures to verify the news'. This provision can be used against activists, as was the case with Lim Guan Eng, deputy leader of the DAP, who had publicly questioned the handling of a rape case involving a senior government official, and who was convicted under the provision of the PPPA to a one-year jail term and the loss of his eligibility. This provision has also been used against Irene Fernandez following the release by her non-governmental organisation of a report on the conditions of living and the abuse in detention centres for illegal migrants.

The PPPA also applies to printers: the Government can hence also prevent publications 'upstream', by putting pressure on the printers. This has been the case with an independent-minded printer, Ahmad Lufti Othman, whose office and publishing house were raided in 2001.

As for radio and television, the *Broadcasting Act 1988* requires licensing of all stations. The Minister of Information holds near

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total control as to what is being aired. *The 1967 Bernama Act*, which established the Government-controlled news agency, Bernama, was amended in June 1990 in order to give Bernama exclusive rights to distribute news photographs, economic and financial data and other material.

Such restrictions apply to foreign publications as well, through *the Control of Imported Publications Act 1959*. The Government has absolute discretion to ban any foreign publication deemed prejudicial to public order, morality or the security of Malaysia. A special office in the Home Affairs Ministry censors all foreign publications and has repeatedly delayed licenses for publications deemed too critical of the Government. A Canadian journalist working for the *Far Eastern Economic Review*, Murray Hiebert, was sentenced to 12 weeks' imprisonment (reduced on appeal to six weeks) for 'scandalising the Court', following a 1997 article about the Malaysian judicial process. Several foreign publications have been forced to retract stories or publish public apologies after publishing articles deemed too critical of the Government. The Malaysian authorities have thus imposed a culture of fear and intimidation in all local or foreign media, condemning it to compliance and obedience. The Government's proposal to create a Malaysian Media Council as an umbrella body, the mandate of which is not entirely defined as yet, appears as one more step to exercise control over the Malaysian media.

Other legislation used to rein in the media includes the ISA, defamation laws, and the *Official Secrets Act 1972*. The OSA allows the authorities to restrict unauthorised publication of any information held by the Government, whether or not it already is in the public domain. It has been used on several occasions against journalists.

b) Direct censorship of the media and other publications

The Malaysian authorities have not hesitated to censor news reports and publications deemed detrimental to the country's image. At the height of the demonstrations in support of Anwar Ibrahim throughout 1999, reports on Malaysia on the American global channels CNN and CNBC were censored. Satellite feeds of programmes by the BBC, ABC and TVNZ were reportedly jammed. Foreign reporters based in Kuala Lumpur have told the delegation of being prevented from airing their news reports on Malaysia, which forced them to secretly fly out the recorded tapes to Singapore.

The Government routinely threatens to use oppressive laws against dissenting voices. Information Ministry Parliamentary Secretary Zainuddin Maidin reportedly told Parliament in

October 2002 that opposition parties will not be given air and radio time in state owned television and radio stations because Malaysia is 'undeveloped'.

More generally, the Malaysian Government has not hesitated to ban publications. Several books on religious or cultural issues have been censored in Malaysia, including eight on Islamic law, such as Karen Armstrong's *The History of God, or Prayers for the Soul*, a classical Sufi text. The Malay versions of these texts were banned, though not the English ones. Theatre performances can also be banned or partially censored by Federal or state authorities.

c) Licensing control on political publications

The mainstream media, tightly controlled by the Government, has lost credibility with the public. This was particularly noticeable at the height of the *Reformasi* movement, which marked a significant decline in the mainstream papers' readership. The clearly pro-Dr Mahathir views of the New Straits Times, for instance, were explicitly defended by the editor-in-chief of the NSTP group, Abdul Kadir Jasin, in 1998, at a Commonwealth Press Union Conference: *'The three main media organisations (...) want to continue supporting the Government. The Government may not be too perfect, but it is not too bad either.'* The lack of critical distance conversely translated into a massive increase of the circulation of opposition newspapers: for example, the circulation of *Harakah*, the biweekly paper of PAS, the Islamic Party of Malaysia, reportedly skyrocketed from 20,000 to 360,000. The Government swiftly acted to limit its influence, strictly enforcing the rules regulating political publications, which allow sales only to party members. The sale of all political publications is prohibited through normal public commercial channels. The Government has further denied Keadilan a licence for its magazine.

The authorities further cracked down on *Harakah*, reducing its publishing licence from biweekly to bimonthly. Both the PRM and the DAP have a bimonthly publication, submitted to the same restrictions as *Harakah*.

Other publications critical of the Government face significant hurdles. *Aliran Monthly*, founded in 1977, and known for its outspokenness and open criticism of government policies, is a case in point, as obstacles are constantly set up to prevent its regular release. In early 2002 *Aliran* published a poem by Cecil Rajendra which was perceived to be a metaphor for the political repression in Malaysia; to be criticising the Malaysian government, both the author and the magazine got questioned by the police after the publication. The printers (who, under the

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PPPA, are also required to get obtain a licence) have been pressured into refusing to print *Aliran*, the regular publication of which has become a hurdle-race every month. Hakam, a human rights organisation, applied for a publication licence over 5 years ago - they have had no official reply.

d) Economic control of the media

Corporate ownership is one of the major instruments at the Government's disposal for controlling the media. The parties directly or indirectly own the media - either by direct ownership or via cronies. Most media groups in Malaysia now have a majority of shares owned by the Government, or by party-owned companies.

The news agency, Bernama, is state-owned, as is Radio Televisyen Malaysia (RTM), which comprises two channels and six radio channels, and which has so far been a most faithful mouthpiece for the Government. In June 1999, five months before the general elections, the Minister of Information and UMNO's secretary general, Khalil Yaacob, explained that RTM's airwaves were reserved for the Government, and this was why the broadcaster would not be featuring any opposition voices in its news or other programmes. System Televisyen Malaysia Berhad (STMB), which is the parent company of TV3, has been privatised - with the contract handed to interests close to UMNO. Similarly, the young NTV7 is owned by Effendi Norwawi, a tycoon with sprawling economic and financial interests - who is close to Dr Mahathir.

As for the press, the ruling parties own all major newspapers: the *New Straits Times Press Berhad*, which owns the *New Straits Times*, *Berita Harian* and several tabloids, is controlled by UMNO via Fleet Holdings. The top-selling Malay-language newspaper *Utusan Malaysia* is owned by *Utusan Melayu Berhad*, the majority stake of which is held by UMNO³². The best-selling English-language newspaper in Malaysia, *The Star*, is part of the *Star Publications Berhad* group, itself indirectly owned by the MCA. Though the Chinese press used to be slightly freer, this space too is closing, since in early 2001, the MCA further bought over two Chinese-language papers, *Nanyang Siang Pau* and *Nanyang Press*, leaving only one independent Chinese-language paper, *Sin Chew Jit Poh*.

e) A weak and subservient trade union for journalists

To make matters worse, the official journalists' union, the National Union of Journalists, has throughout the years demonstrated a near total subservience to the Malaysian authorities. Its potential role in defending journalists and in

upholding high standards of professionalism has thus never been effectual.

The NUJ suffers from structural flaws that limit the possibility of internal democracy. Union officials are not elected by direct elections but through media chapters, which elect a committee. A central meeting then elects the union leader. There is no General Assembly. Such an indirect method of choosing representatives has ensured that the organisational structure of the union remains tightly controlled. The Central Committee has discretionary power to approve the formation of union chapters. In 1994 a group of journalists from *The Sun* gathered to form a NUJ chapter within the paper: they submitted an application and paid the required fee, US\$50. The NUJ replied that they had to consult with both owners and managers of the paper - a procedure most surprising for a trade union. The chapter was rejected, although it was approved a few years later - coincidentally after a political streamlining of the paper. Serious questions remain about the role of the union in securing trade union rights in leading newspapers and media organisations around the country.

All journalists interviewed regretted the absence of a vigorous union capable of defending their interests and rights, especially at a time when independent journalism has increasingly come under fire from the authorities.

f) Spaces of freedom - the Internet and journalist activism

The internet-based media have benefited from a loophole in legislation as the Government launched its project for a MultiMedia Super Corridor. Aimed at creating an Asian Silicon Valley, the MultiMedia Super Corridor is one of Dr Mahathir's pet projects. In order to attract foreign investors he pledged in section 3 of the Communications and Multimedia Act complete freedom of information on the Internet. The online news daily *Malaysiakini.com* has thus not been subject to the same restrictions as its paper and televised counterparts. It has come under increasing fire from the authorities, though. Publicly vilified for its supposedly defamatory articles on Malaysia, its journalists are further submitted to discrimination, e.g. an unofficial 'ban' on interviews with all government officials, which is not strictly enforced. *Malaysiakini.com* journalists acknowledge the difficulty in recruiting journalists when the site first opened, as journalists were too scared to work for what was perceived as a subversive media. Throughout 2001 government officials have repeatedly threatened to prosecute the website's officials if its reporting 'endangered national security'. This threat seems unfortunately to have come true with the 20 January 2003, raid on *Malaysiakini*'s office, in which the police

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seized all 19 computers and servers, thus effectively preventing the site's publication. The raid came following a complaint alleging that a reader's letter published on the site violated the *Sedition Act*. The complaint had been made by the youth wing of UMNO.

Malaysiakini.com had come under intense pressure for allegedly having accepted funds from US financier, and Dr Mahathir's *bête noire*, G. Soros. Malaysiakini's officials denied the charge. Many independent entities in Malaysia however, have to resort to foreign funding as the closeness between Malaysian authorities and private firms makes it extremely difficult for local funds to be found. For Malaysiakini, the financing of its site, even through advertisements, became an uphill challenge. The announcement in 2001 that laws would be prepared to require online journalists to follow the same rules and regulations as other journalists is expected to be acted upon in the near future.

As shown by the recent events, the Government's restraint with regard to the Internet seems to have ended.

Another media, *radiqradio*, has managed to circumvent the strict legislation concerning the media in Malaysia and has provided free and independent reporting, though on a small scale. It too started as a website, *saksi.com*, launched in 1998. The group then got funding from Indonesia, and the radio transmitters from which it emits are actually located in Indonesia which limits the remit of the radio. *Radiqradio* journalists state being subjected to some minor harassment in the course of their work. The media is currently suffering from financial problems, which might curtail its activities in the future.

There might also be room for hope, as some journalists are attempting to lift the lid of media restrictions. World Press Freedom Day on 3 May 1999 saw 581 Malaysian journalists sign a memorandum calling for the repeal of the PPPA and hand it over to Home Minister Abdullah Badawi - not to much effect, though. A boycott of mainstream media (NST, TV3 and UTUSAN) was also organised in 2000 by the opposition parties. Similarly, some journalists, with the support of *Aliran Monthly*, launched a 'citizens' initiative', named Charter 2000, calling for freedom of expression to be respected and higher standards of professionalism in media reporting.

2. Cultural groups

Groups and organisations involved in defending culture or cultural rights are not spared either from government scrutiny, or from attacks from non-state entities. In particular, cultural events which either tend to question the accepted norms of culture in Malaysia or question the religious authorities' understanding of

Islam are subjected to pressure, intimidation, and are actively discouraged. Artis Pro Activ, an association of artists promoting freedom of expression, artistic and democratic freedom, organised an arts festival in October-November 1998; during the second week of the festival, the police forced them to close the event on technical grounds, such as the non-conformity of the stereo system to technical regulations.

Ironically, culture was one pillar of the construction of a Malaysian and a Malay identity in the decades that followed independence. The elaboration of such a culture was an eminently political process. A general conference on culture was organised in 1971, which resulted in a national cultural policy based on three points:

- (i) the national culture should be based on the culture of the indigenous people of the region
- (ii) the cultural practices of migrants could be integrated in the national culture when 'suitable'
- (iii) Islam is an important element of the national culture

The national cultural policy has seriously limited the avenues of expression of other cultural forms; for e.g., the very narrow interpretation of its tenets in the 1970s and the 1980s led to the ban of traditional Chinese lion dances. It also forms the basis for the 1990 ban by the state authorities of Kelantan, led by PAS, on pre-Islamic forms of the arts, such as ritual puppet theatre (*Wayang Kulit*). Traditional music and Rama competitions were also banned. Such limitations contravene article 19 of the UDHR and article 10 of the Constitution of Malaysia, which guarantee freedom of expression.

A controversy erupted in 2002 with the performance of the Malaysian version of Eve Ensler's *Vagina Monologues*. The show started in Kedah - soon after, the Muslim Scholars' Association (PUM) of Kedah district filed a report with the local council (responsible for handing out authorisations for theatre performances). The local council revoked the permit for the first production, reportedly on the grounds that the Malaysian additions to the text were unacceptable. The local section of Amnesty International organised a closed performance, which had to be moved at the last minute from Help College, the university where the performance was originally scheduled, to the Selangor Chinese Assembly Hall. The producers of the play explain the sudden change as caused by pressure put on Help College officials. Organisers of the event report having evidence that instructions to stop the performance were given at a higher level than the local council.

On 13 March 2002 the Government also censored the production of Paula Vogel's *The Baltimore Waltz*.

3. Religious groups

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The issue of religion and freedom of religion is extremely sensitive in Malaysia. Though freedom of religion is guaranteed in article 11 of the Federal Constitution, article 3 states that Islam is the official religion of Malaysia. Ever since its inception, there has thus been a tension between the two articles: should priority be given to Islam as the dominant religion in Malaysia, or to the freedom to choose one's religion, including the right to convert? The question also arises as to what interpretation of Islam can be accepted, and what body has the legitimacy to provide such an interpretation³³. The issue is also a legal one, as Malays (who are Muslims) are submitted to Syariah (Sharia'h) courts for civil matters, and not to civil courts.

'Deviationist' groups, such as Shi'a and Sufi movements, are not allowed in Malaysia, and several members of these groups have been arrested under the ISA or placed under rehabilitation. Parliamentary Secretary to the Prime Minister's Department Noh Omar said in Parliament in the April 2002 session that the Government had identified 24 such deviationist groups, with an estimated 7,210 members. Several books on religious or cultural issues have been censored in Malaysia [see above section IIA1b].

Religious non-Muslim groups denounce a discrimination against non-Muslims that has increased during the Dr Mahathir years. Both non-Muslim and moderate Muslim groups denounce the efforts by the authorities to appear as the ultimate rampart against fundamentalist Islamic groups, while being the one that has instituted a progressive Islamisation of the Malaysian state over the years, imposing an increasingly Muslim agenda, notably through a progressive extension of the jurisdiction of Shariah Law, and further alienating non-Muslim Malaysians.

Meanwhile, the freedom of expression and right to peaceful assembly of associations involved in religious issues has been subjected to restrictions in recent years. In April 2002 the Governmental agency JAKIM (National Islamic Development Department) disclosed that they planned to vet the credentials of freelance Islamic writers and columnists in order to prevent writers who had a 'shallow' understanding of Islam from presenting their views to Muslims in the country. It was reported that the department would soon brief newspaper editors on the move and that it had set up a task force to evaluate the qualifications of such writers and columnists.

Freedom of religion suffers from restrictions in Malaysia, be it by federal or by state authorities (notably in Kelantan and Terengganu, cf. above). Organisations involved in the promotion of freedom of religion report the increasing difficulty in getting authorisations to establish non-Muslim places of worship, or to obtain burial grounds. Non-Muslim religious organisations have

long complained about the need for the State Islamic Council in each state to approve construction of non-Islamic religious institutions. In July 1999 the Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism (MCCBCHS), a non-governmental organisation representing minority religions, protested the planned implementation of Ministry of Housing and Local Government guidelines governing new non-Muslim places of worship. The MCCBCHS specifically complained that the guidelines required an area to have at least 2,000 adherents of a particular non-Muslim faith for a new non-Muslim place of worship to be approved (no such requirement exists for Muslim places of worship). In August 2000 these minimum population guidelines were relaxed somewhat.

Associations involved in religious and Muslim issues have been submitted to increasing attacks from religious groups, such as the Muslim Scholars' Association (Persatuan Ullama Malaysia - PUM), and religious-based parties, notably PAS. These attacks most often take the form of public denunciations of an association's stance, but they can also take more aggressive forms, such as attempts to disrupt peaceful meetings, as was reportedly the case with the 'anti-hadith' group Forum Iqra' on 1 March 2002. *Forum Iqra'*, founded in 1985 as the Koranic Society of Malaysia, has suffered from discrimination since its inception, to the point where one of its works, *Hadiths - a re-evaluation*, was banned in 1986. PAS has repeatedly condemned *Forum Iqra'* and asked the authorities to ban the organisation and its writings. Both *Forum Iqra'* and Sisters in Islam have received anonymous threats, including death threats.

This most important debate has taken a new form after the Muslim Scholars Association, the PUM, filed on 4 February 2002 a memorandum with the Council of Rulers (which has jurisdiction on issues of religion) on groups and individuals deemed to have 'insulted Islam'. Along with six other Islamic organisations, the PUM argued in its memorandum that the individuals cited had disparaged the faith and the institution of the Ullama. The PUM called for the 'offenders' to be punished under criminal law. The issue concerns the accepted interpretation of Islam and the authority to deliver that interpretation; the PUM holds the view that it has the sole authority in Malaysia to deliver the correct interpretation of Islamic law and teachings. The PUM was set up in the 1970s as a scholars' body on Islam. Their memorandum followed a series of articles and events which they perceived as questioning their primacy in interpreting the Koran, and is aimed at denying certain individuals the right to express and publish differing interpretations of the text.

The individuals cited in the memorandum are:
- *Zainah Anwar*, Sisters in Islam's Executive director; Sisters in

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Islam is a group of Muslim women who have produced several essays and documents regarding the role of women in Islam and questioning traditional understandings of this role

- *Kassim Hamad*, Forum Iqra's president
- *Patricia Martinez*, Universiti Malaya lecturer, author and essayist who has written several texts on Islam (the basis for the PUM's ban on her is that a Christian author does not have the legitimacy to write on Islam)
- *Farish Noor*, an academic and essayist, specialist of Islam, columnist for Malaysiakini
- *Akbar Ali*, columnist, *The Sun*
- *Malik Imtiaz Sarwar*, lawyer

The first four of the above-named submitted a counter report to the Council of Rulers in late March 2002, explaining their position. The Council of Rulers had neither taken a position nor put it on its agenda at the time this report went to press.

The PUM had also earlier brought the Bar Council into the controversy by asserting that the Council has no right to interfere in the affairs of the Islamic religion, on the basis of the Syariah (Sharia'h) Criminal Offence Enactment. It attacked Cecil Rajendra, lawyer, chairperson of the Bar Council's Human Rights Sub-Committee and writer. The statement followed the Bar Council's sponsorship of the Festival of Rights in December 2001, which had involved the question of murtad (apostasy) in Islam. In the PUM's press statement of 28 February 2002, it was asserted that '*Cecil has alleged that there is a violation of the spirit of article 11 of the Federal Constitution and the Declaration of Human Rights if Muslims are prevented from committing apostasy*'. The PUM invoked the argument that the Council has overstepped its jurisdiction by touching on article 11 and the clause on freedom of religion.

However, this accusation had already been refuted in the 25 February statement of the Bar Council President. Despite this the PUM reiterated its stance that the Bar Council has no right to interfere in the affairs of Islam.

B. Freedom of association

According to article 5b of the Declaration on Human Rights Defenders: 'For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually or in association with others, at the national and international levels to form, join and participate in non-governmental organisations, associations or groups...'

Freedom of association is at the heart of the work of NGOs and their contribution to an active civil society. In her report to the

Human Rights Commission, the Special Representative of the UN Secretary General on Human Rights Defenders, Mrs Hina Jilani, recognised that '*national laws in many countries do not provide a suitable legal framework for the protection of activity for the defence of human rights ... Laws restricting the freedom of association, or placing undue restrictions on NGOs for receiving or utilising financial resources to conduct human rights activities, have been used to intimidate and harass human rights defenders. Such laws serve no useful purpose nor are they relevant to any legitimate concerns of the State*'.³⁴ This is particularly the case in Malaysia.

In Malaysia freedom of association is restricted, among others, by provisions in the *Societies Act 1966*, the *Trade Unions Act 1957* and *Universities and University College Act 1971*, respectively affecting the right to organise for NGOs, trade unions and student movements.

1. NGOs

Malaysian NGOs face numerous obstacles, either legal or in practice, to operate. The authorities have set up an elaborate framework to deny them the space to function unhindered, through a series of administrative requirements, legal obstacles, and, more fundamentally, through the construction of a political discourse that tends to de-legitimise non-governmental activity: NGOs are thus relentlessly accused either of causing ethnic tensions or of kow-towing to supposedly 'Western' values. For instance, Domestic Trade and Consumer Affairs Minister Megat Junid Megat Ayob publicly accused NGOs in May 1999 of having taken '*part in street demonstrations and stirred up anti-government feelings and there is a possibility that the activities are foreign-funded*'. In the words of Sheila Nair, '*The ruling elite's claims of legitimacy are currently rooted in the state's provision of inter-ethnic harmony; this goal may be accomplished, according to this elite, only if civil society consents to the larger programmatic mission of the state-representing-the-nation*'.³⁵

Among the restrictions to NGO activity, the Societies Act stands prominently. It requires every club, organisation, society or political party of more than 6 members to secure a licence, thereby providing the Executive with the means to block or impede the formation of any organisation which it considers undesirable. The Registrar of Societies may refuse registration if it is 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*'. In effect, it means that the Executive, through a decision that is administrative only in appearance, exerts control over NGOs and their activities. The paradox is that of a power which holds

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sway over the counter-powers in society. The difficulties faced by NGOs and civil society initiatives in Malaysia in obtaining registration under the Societies Act has brought many of them to register as businesses under *the Business Act 1956* or as companies under *the Companies Act 1965*³⁶. Registering under either one of these Acts entails problems of their own: for instance, an NGO registered under the Business Act is prohibited from having members. The provisions of the Societies Act can thus be said to have had a negative impact on the development of an independent civil society, especially as additional limitations and specific requirements can be imposed by the Registrar's Office when accepting the registration of a particular NGO. The non-governmental human rights organisation Hakam, for example, saw its registration accepted as an NGO when it was founded in 1991, but garnished with the extra provision of being prohibited to open local branches.

The registration of the Malaysian section of Amnesty International is a case in point. It initially submitted its application to register as a Society in 1991; it was turned down a year and a half later. The issue was raised in Parliament; the Prime Minister's representative then replied that Amnesty International had not fulfilled some technical requirements - but AI officials never got to know which ones. In 1995 AI renewed its attempt - here again, only to be turned down a year later. AI appealed in court, but the Registrar's decision was upheld. Interviewed Malaysian AI officials stated that the Registrar's official whom they met repeatedly told them that there was 'no need' for an AI section in Malaysia, since other human rights organisations already existed. Amnesty International re-applied in August 2001, for the third time. The case is pending.

On 19 July 2001 several amendments were made to the Registration of Business Act with the aim of further restricting NGO activity. On 25 July 2001, Deputy Home Minister Chor Chee Heung instructed societies to show all sources of their funds, including those obtained from overseas, in their annual financial statements.

2. Student groups

The Government has always been watchful of the involvement of university and college students in politics or in general-interest issues. In the early 60s and 70s students movements played a crucial role in publicly raising the issue of the situation of marginalised communities such as farmers and urban settlers. The Government responded by arresting students and jailing student leaders and lecturers. As a result of the influence that could be exerted by the student movement, the *Universities and University Colleges Act 1971* (UUCA) was enacted to restrict their

activities. In 1975 the Government introduced amendments to the UUCA to clamp down on political activism on the campus. Students were not allowed to hold posts in political parties or trade unions and were barred from expressing support, sympathy or opposition to any of these groups. The UUCA became an important tool for the Government during the *Reformasi* movement, which witnessed an important mobilisation of students. In September 1998 Education Minister Najib Tun Razak threatened disciplinary action under the UUCA for participation in the *Reformasi* movement, or incitation to do so.

Under section 15(1) of the Act, 'no person, while he is a student of the University, shall be a member of, or shall in any manner associate with any society, political party, trade union or any other organisation, body or group of persons whatsoever, whether or not it is established under any law, whether it is in Malaysia or outside Malaysia, except as may be provided by or under the Constitution, or except as may be approved in advance by the Vice-Chancellor'. The UUCA controls the content of statement that can be issued and the kinds of activities (meetings, demonstrations, etc.) that may be conducted on campuses by requiring prior approval of campus authorities.

An observer writes: '*Perhaps the most retrograde legislation from a freedom of association perspective is the Universities and University College Act that severely impacts upon academic freedom and the autonomy of institutions of higher learning. The all-embracing nature of the Act is such that if university students wish to organise a disco or a debate, they can only do so after securing the prior consent of their Vice-Chancellor. The raison d'être of universities is to promote learning; intellectual freedom should be encouraged, nurtured and cultivated. If one does not allow university students the freedom to think, reflect and express themselves, what hope is there for a thinking and reflecting intelligentsia?*'³⁷

The Government added *Discipline of Staff Rules* under the powers of the UUCA in 1979, which limit the possibility for university staff to engage in political activity.

Besides the UUCA, the authorities have not hesitated to use other legislation (notably the ISA) to clamp down on student movements. All the students interviewed by the delegation denounced a stronger repression since the 1999 elections, an increase in charges brought under the UUCA, and the growing infiltration of intelligence officers within universities, especially in the capital. The Malaysian Student Council, formed early 1999, has thus had to dissolve. Activities such as seminars on human rights have had to cease due to increased surveillance by university officials. It has to be noted that the enforcement of the UUCA varies to some extent, depending

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on the university. An observer of Malaysian student movements noted that repression tends to be fiercer in public universities, while private ones show a better tolerance of student activism: this might merely mirror the stronger student mobilisation in public universities, though. Generally, *'students are now afraid. Student unions are allowed, but only to do social work, such as tuition programmes for poor urban children, for instance. Anything remotely political is immediately denounced and the students involved, sanctioned'*, notes a student activist.

According to student activists, there are nonetheless several student groups operating in spite of the UUCA. These groups, among which UBU, GAMIS (an Islam-based group, close to PAS), the PKPIM, close to Anwar Ibrahim, Karisma, UPP, DEMA, JKM (Indian-based, close to the PSM), tend to reproduce the wider political spectrum of ethnic-based groups. All of the above-named are unofficial, due to the restrictions imposed by the UUCA. Several of these groups formed a coalition 'Student Movement to Abolish ISA' in May 2001, which holds a monthly meeting.

For many of these groups a turning point was marked on 8 June 2001, when a peaceful demonstration was held outside the National Mosque in Malaysia's capital, Kuala Lumpur. The demonstration was in support of the repeal or reform of the ISA. The demonstration was followed by numerous arrests of alleged student activists in various Kuala Lumpur universities.

The case of University Bangsar Utama (UBU), where a student organisation was formed in 2000 illustrates the situation. Political unrest following Anwar Ibrahim's arrest served as the catalyst for the formation of UBU, which is not officially authorised. It has taken a strong political stance on several issues and in particular strongly criticises the UUCA. It is also active on the artistic scene and has organised several performances of a play with a strong political element. On 5 July 2001 Malaysian security forces arrested 24 year-old student Khairul Anuar Ahmad Zainuddin, an electrical engineering student at the Institut Kemahiran Mara (IKM) in Kuala Lumpur and a leader of UBU. He was arrested for his alleged participation in the 8 June demonstration, after IKM authorities informed him and six other students that they had to go to the police station to answer questions about their suspected involvement in workshops that were characterised by the security forces as an effort to encourage reformists to 'overthrow the Government via street demonstrations.' After being questioned, authorities accompanied Zainuddin to his home, seized some personal papers and his computer, and arrested him. He was released after 24 days in detention, during which he was subjected to ill treatment. Prior to his arrest, the IGP

(Inspector General of Police) had reportedly sent a letter to the Chancellor of his university; the letter is said to contain allegations according to which Zainuddin was to be considered a 'threat to national security', and to have asked the Chancellor to take the necessary measures. His relatives had also been pressurised into making Zainuddin resign from UBU. In April 2002 Zainuddin was banned from travelling overseas to go to the Human Rights Commission for having tarnished Malaysia's image on previous trips. It was made clear that he would not obtain his degree if he travelled to Geneva. Several other UBU members have been sanctioned for their activities; the sanctions range from expulsion from the university to arrest and trial under either the UUCA or other acts.

On 6 July 2001 Mohamad Fuad Mohd Ikhwan, 24, president of the Student Representative Council of the Universiti Malaya, was arrested in Kuala Lumpur. The police told Ikhwan's family that he had been arrested under section 73(1) of the ISA, which allows the police to detain anyone 'acting or about to act in any manner prejudicial to the security of Malaysia.' Other students were either expelled, suspended or fined for charges ranging from illegal assembly to 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.

Suaram reported that the Education Ministry has informed private educational institutions that they should refuse to accept students who have been expelled from state universities for their alleged political activities.

In 2001 seven students belonging to a group named DEMA were suspended from Penang University. The reason for the suspension is not clear; it seems that, although officially the students were suspended for having gone to a meeting in Singapore without authorisation from the Vice-Chancellor of the university, the true reason lay in the sale of anti-ISA badges. The seven were later reinstated, after an intervention from the National Human Rights Commission.

The last reported incident has been the prohibition of the Annual General Meeting (AGM) of the Chinese Language Society by the University Science Malaysia (USM) authority, which has stalled their legal operation on campus since December 2001. The society and its leaders and members are accused of various charges, ranging from releasing press statements and giving interviews to the media without prior approval from the USM authority, defaming the name of the university and leafleting in campus to participating in 'illegal assemblies'. This has led to the suspension for one semester of four students

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for illegal assembly. Another two students were fined RM150 (approx. US\$ 40) for leafleting on the university campus. The sentences were handed down by the Disciplinary Committee of the Student Affairs Department of USM on 30 January 2002.

The four suspended students were:

- *Lee Yen Ting*, President of the Chinese Language Society, on charges of a) participating in an allegedly illegal assembly to protest against the Vision School project; b) participating in an assembly in support of 4 students during a disciplinary hearing; c) refusing to meet with the security officer of the university. Lee was also fined RM200
- *Choo Chon Kai*, Secretary of the Society, on charges of a) selling anti-*Internal Security Act* (ISA) badges in the university; b) allowing an 'abolish ISA' poster to be put up in the office of the Chinese Language Society; c) being in possession of anti-ISA badges
- *Loke Chee Hoo*, on charges of participating in an illegal assembly to protest against the Vision School project
- *Fatin Nor Suhana*, on charges of participating in an illegal assembly to protest against the Vision School project

The two students fined were:

- *Yap Jih Chyuan*, on charges of possessing documents 'detrimental to the campus stability'
- *Ng Hui Yee*, on similar charges

According to the USM authority, they have breached the rules and regulations of the USM and the University and University Colleges Act. The Chinese Language Society is one of the most active and critical student organisations on the USM campus. On 13 March 2002 MP Chow Kuan Yew from the opposition party raised the issue in Parliament to the Education Minister and the Minister answered that the society will be allowed to have their AGM in the course of the new academic year. However, on 9 April 2002 the USM authority imposed 10 conditions on the society before allowing the AGM. The 10 conditions were the following:

- Not to entertain any uninvited reporter in any of the activities organised by the Chinese Language Society
- Not to make any press statement without approval from the University and informing the public relations department of the university
- Not to incite and assemble members for illegal gatherings to support any activities that are against the regulations of the university and the policy of the nation
- To abide by the order of the Security Department and cooperate in dealing with related problems
- The Executive committee and the members of the society will not breach its agreement with the university authority
- Not to disseminate leaflets or printed materials on the

dissatisfactions of students

- Not to solicit support and sympathy from ruling and opposition political parties, NGOs such as Dong Jiao Zong, or alumni organisations in the matters of students
- Not to release statements to websites such as Malaysiakini.com on a particular issue without approval from the Student Affairs Department
- Not to organise any activities that are against the University and University Colleges Act 1996, the *University Regulations 1997* and the policy of the nation
- Always respect and abide by the Constitution, guidelines and the *University and University Colleges Act 1977*

The Chinese Language Society refused to sign the 10 conditions. Since then, the society has not been able to hold its AGM nor to pursue its activities: in effect, they are banned from operating on campus.

3. Trade Unions

Trade unions in Malaysia, like NGOs, face numerous difficulties in operating freely. The legal obstacles to organise and to obtain recognition as a trade union are enshrined in the *Trade Unions Act 1959* and the *Industrial Relations Act 1967*, and the successive amendments introduced to these texts. Local civil groups and the Malaysian Trade Union Congress (MTUC) have long expressed their concern over the *Trade Unions Act*, which is said to have weakened the trade union movement, but their demands have always been portrayed as unreasonable by the authorities. It is believed that less than 20 % of employees in the country are unionised, and this number is further split among more than 400 unions.

It is to be emphasised that trade unions in Malaysia have also been made to suffer from the previously noted 'strangulation strategy' of the authorities. This means that the Malaysian trade union movement has not engaged in the broader public debate on freedoms in Malaysia. '*Trade unions are good at what they do, but they have not dared broaden their mandate,*' notes an observer. The MTUC official interviewed by the delegation explained that the MTUC General Council (comprising 230 members) had held a debate at the height of the Reformasi movement to decide whether or not it should take a public stance in the debate on freedom and democracy in Malaysia - and eventually decided not to. '*The MTUC as a body is very tame,*' notes an observer, '*it concentrates on its constituency and does not want to anger the authorities in any way.*' A trade union official interviewed noted that out of the 560 unions operating in Malaysia, none got involved as such in Reformasi. He explains: '*The authorities waved the possibility of de-*

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registration - how could any responsible union official take the risk of seeing his union de-registered?'

According to the MTUC there are approximately 760,000 members of trade unions in Malaysia, out of a working population of 8.2 million. Malaysia has not ratified the ILO Convention 87 on Freedom of Association and Protection of the Right to Organise and there are many restrictions to the right to strike, which conspire to make the labour movement very weak. The MTUC has campaigned for the ratification of this instrument, so far without success.

a) Restrictions on the right to organise and the right of collective bargaining

According to all national and international observers, workers in Malaysia continue to be denied the right to join a trade union of their choice and to freely organise and bargain collectively because of government policies, restrictive legislation and bureaucratic practices. There continues to be many obstacles to establishing trade unions such as legislative obstacles or dismissals of union officials.

As stated, the right to organise is regulated by the Trade Unions Act, which pertains though only to certain sectors of activity, such as trade and industry. According to this Act, the powers relating to the registration, supervision and inspection of trade unions are assigned to the Director General of Trade Unions³⁸. He can refuse to register a trade union without explaining his decision. He also has the power to withdraw registration, thus making the trade union illegal, and his approval is required for a union to join an international organisation.

According to the union officials interviewed by the delegation, the authorities tend to delay the registration of unions and to push for community-based (i.e. In-house) rather than sector-based unions, as they are perceived to be more politically 'dangerous'. The union officials further denounced the common practice of terminating the contracts of the union organisers within a company, 'usually on completely futile charges', thus further weakening the labour movement.

It should be noted that the *Industrial Relations Act* excludes hiring and firing, transfer and promotion, dismissal and reinstatement from the scope of collective bargaining.

A particularly sensitive issue is that of the electronics sector, which accounts for approximately 160,000 workers, according to the MTUC. The electronics sector has long been denied the right to form a national union: so far only in-house unions are

allowed, estimated to cover merely 5% of the country's electronics workers. The *Industrial Relations Act* further limits collective bargaining in 'pioneer' companies, and the electronics industry among others still has this status. Since 1994, the Government has claimed that measures were taken to repeal this provision, but nothing has been done so far. The last application to form a national union, in 1988, was rejected by the DGTU on 15 August 1989. The basis for this decision was that "*the formation of the proposed union is in conflict with the definition of 'trade union' as provided in the Trade Union Act 1959, as the members are drawn from workers employed in the electrical industry and also the electronic industry, which are not similar*". On 14 September 1989 an appeal was lodged against this decision with the Minister of Labour. The DGTU's decision was upheld, on the grounds that the DGTU had discretionary power over the registration of trade unions and that the court had no jurisdiction. It is clear that the economic importance of the electronics sector, one of the fastest growing industries in the country, has played a role in the decision not to allow an industry-wide union. Malaysia is currently the world's third largest producer and one of the largest exporters of semiconductors and electronic products. In 2001, between June and December, the MTUC-affiliated Metal Industry Employees' Union was directed to remove close to 2000 members from six metal products manufacturing companies, on the basis that these were electronics workers and not metalworkers.

The authorities have in the past also used other legislation against trade unionist and labour activists, first and foremost the ISA. Tian Chua (Chua Tian Chang), a Reformasi leader arrested in April 2001 (see above), was also a labour activist; he was very active in organising workers in Malaysia and was the organiser of the Labour Resource Centre.

b) Right to demonstrate

Attempts by workers to demonstrate have been curtailed. On 1 May 2002 the police violently dispersed a peaceful May Day March gathering of about 150 people at Kuala Lumpur City Centre, and arrested 18 people.³⁹ After the demonstrators had walked for approximately 1.5 km, a group of police officers from the Dang Wangi district attacked the assembled crowd without warning or provocation. The police reportedly attempted to prevent workers from getting into buses parked nearby when the attack began. An hour later the buses were allowed to drive the demonstrators away, but negotiators were arrested as they helped people into the vehicles. Eighteen people were arrested in several areas of Medan Dang Wangi and Central Kuala Lumpur, among them an 8-year old boy.

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C. Freedom of assembly

According to article 5a of the Declaration on Human Rights Defenders, 'For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually or in association with others, at the national and international levels to meet or assemble peacefully'.

In Malaysia the right to assemble peacefully and without arms is provided for by the Federal Constitution (article 10(1)b) subject to restrictions imposed by laws which Parliament deems necessary or expedient in the interest of national security or public order (article 10 (2) b). This right is in fact regulated by the Police Act 1967 and the *Public Order Preservation Act 1958*.

According to the *Police Act*, it is the police's task to regulate assemblies and meetings in public places; it may prohibit such assemblies, and/or prescribe the time at which such meetings should be held. Persons intending to convene an assembly must apply for a licence 14 days before any public meeting is held; the licence will be granted if the assembly is estimated not likely to be prejudicial to the interest of the security of Malaysia or to excite a disturbance of the peace. The licence issued may be cancelled at any time on the same grounds for which a licence may be refused. section 141 of the Penal Code provides that any grouping of five or more is an illegal assembly if there has not been previous authorisation. In 1988 section 27 (2A) was added to impose a requirement that applications for a licence must be made by an organisation or jointly by three individuals. section 27 (2D) provides that no licence will be issued to an organisation that is not registered or recognised under any law in force in Malaysia. This is evidently to be seen in the light of the severe registration restrictions of organisations, be they non-governmental or political.

Applicants are entitled to appeal against a refusal; the appeal is made to the State Chief Police Officer or Commissioner, whose decision is final. In practice, this means that a refusal is very seldom overturned. In principle, activities that take place on private property do not require a licence. However, the police can stop activities on private property, for instance when it attracts 20 or more persons outside the property.

The Police may stop an assembly if no licence has been issued for that assembly or if the licence was subsequently cancelled, or if the assembly contravenes any of the conditions of the licence issued. In stopping the assembly, the Police may order the persons comprising the assembly to disperse (section 27(3) of the Police Act).

Furthermore, in July 2001, the Government issued a blanket ban on all political gatherings, once again on grounds of national security. The Observatory and Suaram strongly denounce the ban, which not only severely affects the normal process of democracy in Malaysia, but given the very broad understanding of 'political gatherings' also seriously restricts the activities of human rights defenders. The threat to charge individuals involved in unlawful assemblies under the Sedition Act, a threat publicly repeated by government officials, further serves as a deterrent for NGOs and other groups to organise public events.

In its 8 October 2000 report on freedom of assembly, the National Human Rights Commission, Suhakam, denounced an arbitrary and improper enforcement of the Police Act. Among the problems cited by the Suhakam report:

- The Police have in some cases imposed *improper conditions* on the assemblies, such as ones restricting freedom of speech; e.g. restricting the number of speakers at an assembly or restricting the subject matter of the speeches
- The Police have in some cases given *improper grounds*, or sometimes *no grounds at all*, for refusing to issue a permit. For instance, between May 2000 and February 2001 the PAS party was refused a licence 13 times, each time on the grounds that the place was unsuitable - no matter where the talk was scheduled.
- The Police regularly proceed to a *last minute cancellation of the permit* - sometimes on the eve of the event
- As for dispersal of assembly, Suhakam denounced a customary practice of allowing *insufficient time for dispersal*, as well as an *improper or excessive use of force*.

All the evidence gathered by the mission points towards a selective and politicised application of the *Police Act*, used to stifle political opposition and to constrict peaceful NGO activity.

On 1 October 2002 a meeting was called at the Selangor Chinese Assembly Hall in Kuala Lumpur to launch the ISA Mala Fide campaign initiated by the Abolish ISA Movement; the campaign was directed at the police and the Home Ministry for the continued unlawful detention of the *Reformasi* activists charged under the ISA. About 100 police officers and around 30 members of the Federal Reserve Unit sealed off the venue, leading to a stand-off with some 300 campaigners. About 10 people sustained minor injuries in the clash.

It is clear, though, that the restrictions to the right of assembly affect the opposition parties disproportionately. All the opposition officials, from Keadilan, DAP, PRM or PAS, interviewed by the mission concurred to denounce the impediments to democratic political activity in Malaysia. The ban on political gatherings is

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strictly enforced, even in private venues, and the police have not hesitated to disperse gatherings even in private halls. The aim of such a ban is two-fold: to prevent the opposition parties from disseminating their political message, and to strangle them financially, since political rallies are traditionally an important source of funding for parties. A PRM official says that *'we have applied about two dozens times for permits for gatherings since 2000, and except for two, none were allowed*

to proceed'. Opposition parties state having three times sent a written request to the Chief Police Officer to clarify the conditions in which they may be allowed to gather. They have yet to get a reply.

30. Report of the Special Rapporteur on the Promotion, Protection of the Right to Freedom of Opinion and Expression, on Malaysia, E/CN.4/1999/64/Add.1, p. 9.
31. For a full and comprehensive understanding of the problems faced by the media in Malaysia, we refer to the already-mentioned article by Kean Wong, In the grip of the Government, in *Losing control - Freedom of the Press in Asia*, Asia Pacific Press, 2000, pp. 115-137.
32. For further details, see Kean Wong, *op. cit.*
33. See Lee Min Chon, *Freedom of Religion in Malaysia*, Kairos research Centre, 1999.
34. Report submitted by Ms Hina Jilani, Special Representative of the Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61 to the 57th Commission, E/CN.4/2002/106, 27 February 2002.
35. S. Nair, *op. cit.*, p. 93.
36. Tommy Thomas, Human Rights in 21st Century Malaysia, *Insaf*, the journal of the Malaysian Par, XXX, n°2, June 2001..
37. Tommy Thomas, *op.cit.*, part 3.
38. On these issues, see the 2002 Annual Survey of Violations of Trade Union Rights, published by the International Confederation of Trade Unions, Brussels, 2002, pp. 159-163.
39. OMCT Case MYS 030502/030502.1/ Attack on peaceful demonstrators/Arbitrary arrests/Incommunicado detention.

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Recommendations

In view of the findings and conclusions of its mission in Malaysia, the Observatory and Suaram address the following recommendations to the Malaysian authorities:

- to ratify as soon as possible the following international instruments: *the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural rights, the Convention Against Torture* and its article 22, and the ILO Convention 87 on Freedom of Association and Protection of the Right to Organise 1948
- to abolish the *Internal Security Act (ISA)*, as repeatedly requested by local civil society and human rights groups
- to amend national legislation which is in contradiction with international human rights standards and fundamental freedoms, in particular the *Printing Presses and Publications Act 1984 and the Sedition Act 1948* in order to ensure their full conformity with article 10.1 of the Malaysian Constitution, article 19 of the UDHR (freedom of expression) and the UN Declaration on Human Rights Defenders so that due process, including the right to be given reasons, to be legally represented and to be brought before a court, should be introduced into laws invoking arrest and detention
- to ensure the implementation of the provisions of the Declaration on Human Rights Defenders adopted by the United Nations General Assembly in December 1998, in particular article 1 which provides that 'every person has the right, individually or in association with others, to promote the protection and fulfilment of human rights and fundamental freedoms at both national and international levels' as well as article 12, which refers to the obligation of the state to protect human rights defenders, and to guarantee that human rights defenders do not face obstacles in carrying out their legitimate work with special attention to the issues of freedom of association, registration of NGOs and the right to assembly
- to respond positively to the request of the Special Representative of the UN Secretary- General on human rights defenders to visit Malaysia
- to uphold the recommendations made by Suhakam, the National Human Rights Commission, and raise the mandate of the commissioners to 4 years
- where national institutions for the protection of human rights have been established, their political and financial independence must be ensured. The capacity of these institutions must be enhanced so that they are able to respond adequately and effectively to complaints of human rights violations. The role of human rights defenders as a conduit of information to these institutions and in aiding action for redress of violations should be institutionalised. This could improve access to national human rights institutions and add to the legitimacy of human rights defenders. Protection of human rights defenders must be explicitly included in the mandate of these institutions
- to follow the resolution taken by the European Parliament on 13 June 2002, which urged the European Commission and the 15 EU member states to link the development of relations with Malaysia to 'Malaysia's willingness to pay urgent attention to the observation of universal human rights within its borders'.

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Annex 1 - Persons met by the mission

The mission met a large number of civil society representatives, the National Human Rights Commission of Malaysia (Suhakam) and the Attorney General of Malaysia. The mission regrets that some authorities did not honour requests for audiences, and that the request to see ISA detainees was denied.

Non-governmental organisations and research groups:

Human Rights:

Suaram (Suara Rakyat Malaysia):

Cynthia Gabriel, Executive Director

Elizabeth Wong, Secretary general

Yap Swee Seng, International Coordinator

Sam Hui, Programme Coordinator

S. Arutchelvan, Coordinator

Amnesty International Malaysia:

Joseph M. Paul, Director;

Joseph Roy, Coordinator

Aliran: Anil Netto, Executive Coordinator

Hakam: Raja Azziz Adruce, President

Women's groups:

Women's Aid Organisation (WAO): Ivy Josiah, Executive Director

Women's Crisis Centre (WCC): Loh Cheng Kooi, Executive Director

Women's Candidacy Initiative (WCI): Toni Kasim

Minority Rights:

Group of Concerned Citizens: Charles Santiago, Director

The Selangor Chinese Assembly Hall: Tan Yoke Suan, Vice-Executive Secretary

Malaysian Chinese Election Appeals Committee (Suqiu): Wong Chin Huat

Cultural Rights:

Artis Pro-Activ: Kathy Rowland

Eddin Khoo, artist

Religious groups:

Sisters in Islam: Zainah Anwar, Executive Director

Forum Iqra': Kassim Ahmad, President

Social Justice and Environmental issues:

International Movement for a Just world (JUST): Dr. Chandra Muzaffar, President

Consumers Association of Penang (CAP): Meenakshi Raman,

Legal Advisor

Sahabat Alam Malaysia (Friends of the Earth - Malaysia): S.M. Mohamed Idris, President

Homosexual groups:

Pink Triangle Foundation: Sharmini Letchumanan, manager

Refugee and migrant workers rights:

Tenaganita: Dr Irene Fernandez, Director

Migrant Workers Association, Penang:

Jun Acosta

Ophel Ilagan Low

Student groups:

Universiti Bangsar Utama (UBU):

Jonea, Coordinator

Ijan, Coordinator

Dahud, Coordinator

Rafzan, Coordinator

Hakim, Coordinator

Trade Unions:

Malaysian Trade Union Congress (MTUC): Mr Rajasekaram, Secretary-General

Academics:

Kairos Research Centre: Dr Ng Kam Weng, Research Director

Sumit Mandal, historian, Universiti Kebangsaan Malaysia

Lawyers:

Members of Anwar Ibrahim's legal Defence Team:

Pawancheek Marican

Sivarasa Rasiah

Sankara Nair

Christopher Fernando

Zulkifli Noordin

Kamar Ainiyah Kamaruzaman

Members of the Malaysian Bar Council:

Mah Weng Kwai, President

Cecil Rajendra, president, Human Rights Committee

Sharon Kaur, Executive Secretary, Human Rights Committee

Members of Irene Fernandez' legal Defence Team:

Puravalen

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Others:

Param Cumaraswamy, UN Special Rapporteur on the Independence of Lawyers and judges

Media - journalists:

MGG Pillai, journalist

The Star:

S.S. Yoga, journalist

Masjaliza Hamzah, Sub-editor

Malaysiakini:

Steven Gan, Editor-in-Chief

Leong Kar Yen, journalist

Radiogrado:

Sharaad Kuttan, Chief Editor

Sonia Randhawa, journalist

Foreign correspondents :

Kean Wong, BBC World Correspondent

Florence de Changy, Le Monde correspondent

Former ISA detainees and families of detainees:

Ismail Badaruddin, former ISA detainee

Marina Ibrahim

Bahirah Tajul Aris

Raja Ahmad

Human Rights Commission of Malaysia (Suhakam):

Dr Kamaruddin Baria, officer

Raja Nor Azwa Raja Alang Petra, Head of Legal Division

Anuar Zainal Abidin, Commissioner

Mehrun Siraj, Commissioner

Political activists:

Free Anwar campaign: Raja Petra Kamarudin, Director

Partai Keadilan Nasional (National Justice Party):

Dr Dr Wan Azizah Wan Ismail, President, MP

Khalid Jaafar, Executive Director

DAP:

Ms Teresa Kok Suh Sim, MP

Ms Chong Eng, MP

PRM: Syed Husein Ali, President

PAS: Y.B. Nasaruddin, Secretary General

Authorities:

Ghani Patail, Attorney General

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Annex 2 - Acronyms

| | |
|---------|--|
| ABIM | Angkatan Belia Islam Malaysia - Malaysian Islamic Youth Movement |
| ACA | Anti-Corruption Agency |
| AG | Attorney General |
| AIM | Abolish ISA Movement |
| BA | Barisan Alternatif, coalition of opposition parties, composed of Keadilan, PAS, and the PRM |
| BN | Barisan Nasional, ruling coalition since independence |
| DAP | Democratic Action Party, Opposition party, mainly Chinese constituency |
| DGTU | Director General of Trade Unions |
| IGP | Inspector General of Police |
| ISA | Internal Security Act |
| MCA | Malaysian Chinese Association, member of BN |
| MCCBCHS | Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism |
| MIC | Malaysian Indian Congress, party member of the ruling coalition, with a mainly "Indian" constituency |
| MTUC | Malaysian Trade Union Congress |
| NGO | Non-governmental organisation |
| NUJ | National Union of Journalists |
| OSA | Official Secrets Act |
| PAS | Partai Islam se-Malaysia - Islamic Party of Malaysia, main opposition party. |
| PPPA | Printing Presses and Publications Act |
| PRM | Parti Rakyat Malaysia - Opposition party |
| PUM | Persatuan Ullama Malaysia - Muslim Scholars Association, group of Muslim scholars |
| SB | Special Branch - the secret police |
| SUHAKAM | Suruhanjaya Hak Asasi Manusia Malaysia - National Human Rights Commission |
| UBU | University Bangsar Utama, students group |
| UDHR | Universal Declaration of Human Rights |
| UMNO | United Malays National Organisation, largest party within the BN |
| UUCA | Universities and University Colleges Act |

THE OBSERVATORY

For the Protection of Human Rights Defenders

L'Observatoire

pour la protection
des Défenseurs des Droits de l'Homme

El Observatorio

para la Protección
de los Defensores de los Derechos Humanos

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Activities of Suaram

Suara Rakyat Malaysia (SUARAM) is a non-governmental Malaysian human rights organisation working for a free, equal, just and sustainable society. Through fighting for civil liberties that are enshrined in the Malaysian Human Rights Charter and the Universal Declaration of Human Rights to enable peoples' participation and the fruition of a civil society in Malaysia.

SUARAM monitors, documents, exposes and opposes violations of human rights by Malaysian authorities. SUARAM also works to empower the Malaysian people to build a mass movement for human rights.

SUARAM actively intervenes and supports people who have been detained arbitrarily or without trial, evicted from their homes, abused by the police etc. You are always welcome to support our work.

Activities of the Observatory

The Observatory is an action programme, based on the conviction that strengthened co-operation and solidarity among defenders and their organisations, will contribute to break the isolation of the victims of violations. It is also based on the necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

- a) a system of systematic alert on violations of rights and freedoms of human rights defenders, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) personalised and direct assistance, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- d) the preparation, publication and diffusion at a world-wide level of reports on violations of human rights and of individuals, or their organisations, that work for human rights around the world;
- e) sustained lobby with different regional and international intergovernmental institutions, particularly the United Nations, the Organisation of American States, the Organisation of African Unity, the Council of Europe and the European Union.

An FIDH and OMCT venture - Un programme de la FIDH et de l'OMCT - Un programa de la FIDH y de la OMCT

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