

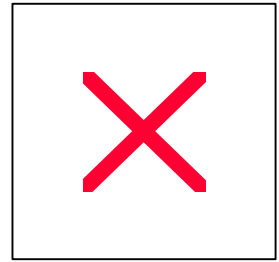
FREEDOM OF ASSEMBLY

A Report

by

Human Rights Commission of Malaysia (SUHAKAM)

24 July 2001



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## INTRODUCTION

Everyone has the right to freedom of peaceful assembly and association.

*Article 20(1)*

*Universal Declaration of Human Rights*

The right of peaceful assembly shall be recognised. No restriction may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

*Article 21*

*International Covenant on Civil and Political Rights*

The basic human right to freedom of peaceful assembly must be given due recognition and can only be restricted by law enacted for the purpose of preserving national security or public order. 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)].

There are various laws in Malaysia providing for the preservation of national security and public order but the Act of Parliament that imposes restrictions on the constitutional right to peaceful assembly is the Police Act 1967, Act 344 (revised 1988).

This report first seeks to consider whether current legal restrictions imposed on the right to assemble peacefully and/or their implementation are unduly strict, such that they render this right unattainable. Upon such findings, recommendations are then made to improve the present law and practice to ensure that both the needs for freedom of assembly, and preservation of national security and public order are met.

## FINDINGS

The following were obtained and/or considered for purposes of this report:

- a. Relevant provisions of the Police Act 1967, Act 344 ("PA 1967") and the Public Order (Preservation) Act 1958, Act 296
- b. Relevant case law
- c. Commentary and observations (via dialogue sessions, response to questionnaire, and written reports) from various groups:
  - Police
  - Non-Governmental Organisations ("NGOs")
  - Political parties
  - Members of the public
  - Individuals giving oral testimony who were present at *Reformasi* gatherings
  - Witnesses who testified at the SUHAKAM Inquiry into the incident on 5 November 2000 at the Keras Highway ("the Keras Highway Inquiry").

(Please refer to Appendix 1 for the sample questionnaire sent to the Police, and Appendix 2 for the list of NGOs and political parties included in this exercise.)

### 1. Grant of Police Permit

The Police have the power to regulate assemblies and meetings in public places and may prescribe the time at which such assemblies and meetings may be held [Section 27(1) PA 1967].<sup>1</sup> Case law provides that the term assembly "be given its ordinary meaning ... the coming together of two persons or things; a gathering of persons."<sup>2</sup> An unlawful assembly occurs when any assembly, meeting or procession takes place without a licence (commonly referred to as "police permit") issued by the Police, or when three or more persons taking part in the assembly neglect or refuse to obey any order given by the Police under specific provisions of the Police Act [Section 27(1)-(3), (5) PA 1967].

Persons intending to convene an assembly must apply for a licence. Only when the Officer-in-Charge of the Police District (in which the assembly is to be held) is satisfied that the

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<sup>1</sup> This section also applies to processions, whether of persons or vehicles. The time and route for such processions may likewise be prescribed.

<sup>2</sup> *Public Prosecutor v. Ismail bin Ishak & 59 others* [1976] 1 MLJ 183, 184

assembly is not likely to be prejudicial to the interest of the security of Malaysia or to excite a disturbance of the peace, will he issue the licence. This licence will specify the name of the licensee and set out the conditions upon which the assembly is permitted. The licence issued may be cancelled at any time on the same grounds for which a licence may be refused. [Section 27(2) PA 1967]

According to the Police,<sup>3</sup> the criteria for issuing permits include a consideration of the following factors:

- a. Prevailing circumstances
- b. Racial composition
- c. Current conditions at the location where it is proposed to hold the assembly
- d. That the assembly should not pose a threat to public order or security of the nation

Criteria a - c refer to facts that could establish whether any threat to public order or security of the nation existed as envisaged by criterion d.

Applications for a licence must be made in triplicate two weeks before the proposed assembly. Applicants are entitled to appeal against a refusal to grant a licence within 48 eight hours of such refusal. The appeal should be made to the state Chief Police Officer or Commissioner, whose decision is final. [Section 27(7) PA 1967]

Activities that take place on private property do not require a licence. However, the Police may stop activities on private property under three circumstances:

- a. When the activity is directed to persons outside the private property;
- b. When it attracts 20 or more persons outside the property; or
- c. When the activity is likely to be prejudicial to the interest of the security of Malaysia or to excite a disturbance of the peace.

Persons refusing to obey orders issued under the enabling provision can be guilty of stated offences. [Section 27A PA 1967]

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<sup>3</sup> The police response stated that they relied on section 27 of the Police Act and the administrative orders made by the Inspector General of Police under section 97 of the same Act.

### **1.1. Improper conditions**

Case law provides that conditions restricting freedom of speech are invalid, and in particular, the Police cannot impose conditions that restrict the number of speakers at an assembly nor can they restrict the subject matter of the speeches.<sup>4</sup> Following that, it can also be concluded that it is not possible to have a condition of no speeches at all.

### **1.2. Improper or lack of grounds for refusal of a permit**

The Police have indicated that their grounds for refusing to issue a licence are the threat to public order and national security and also causing disturbance to the public in a public place. However, there are instances where the facts of the case do not seem to justify the grounds given for refusal and there are other instances where no reasons were given for the refusal of the permit. Further, it was noted that refusals are always finalised a day or two before the scheduled event.

*Case 1* In the case of an application by Parti Islam SeMalaysia ("PAS") Kawasan Muar made on 21 August 2000 to hold a *ceramah* on 15 September 2000 on the occasion of the Prophet Mohamad's Birthday at private premises, the refusal to grant the licence, dated 8 September, stated that it was to preserve public order and national security. In their letter of appeal dated 11 September, PAS requested an explanation as to how a talk could constitute a breach of public order and whether the prevailing conditions in Muar were such a threat to security that no *ceramah* could be held. The appeal also pointed out that the place where the *ceramah* was to be held was far away from the homes of other residents of that area. The reply from the Ketua Polis, Johor, dated 13 September, merely reiterated the reason given earlier by the Ketua Polis, Daerah Muar, without further explanation.

Since it is customary to have talks to celebrate the Birthday of the Prophet, it is difficult to see why such a talk would cause a breach of public order or constitute a threat to national security.

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<sup>4</sup> *Chai Choon Hon v Ketua Polis Daerah, Kampar and Government of Malaysia* [1986] 2 MLJ 203

*Case 2* An application for a licence to hold a *ceramah* by Parti Rakyat Malaysia (“PRM”) was refused by the Police in Melaka on the ground that the owner of the land had not given his permission for the use of the land. The caretaker of the land, who had been authorised to manage the land by the owner who was away in Australia, had in fact given permission. The application for the licence was made on 30 April 1999 and the *ceramah* was scheduled for 15 May 1999. On 11 May, written permission from the caretaker to use the land was sent to the Police but on the 12 May, the Police refusal was received.

In this case, the Police seem to act in an arbitrary manner using the owner’s absence from the country as an excuse to deny the permit even though written permission had been obtained by the organisers from the caretaker.

*Case 3* Between May 2000 and February 2001, PAS Kawasan Senai was refused a licence 13 times and each time the reason given was that the place was unsuitable and the gathering would affect public order. This was the reason given no matter where the talk was scheduled to be held.

*Case 4* On 27 August 1999, PRM applied for a licence to hold a *ceramah* on 13 September at No.17, Lorong Aman, Kampung Melayu Majidee in Johor Bahru. On 9 September, the application for a permit was refused on the ground that the premises was close to the main road (*berhampiran dengan jalan raya*) and could not accommodate 1,000 people. PRM subsequently obtained alternative premises at No. 39 Jalan Utama also at Kampung Melayu Majidee in Johor Bahru. An application was made on 14 September 1999 to hold the *ceramah* on 28 September. The application was rejected on 26 September, without any reasons being given, although section 27 of the Police Act was referred to.

*Case 5* An application was made by Parti KeADILan Nasional (“KeADILan”) on 28 April 2000 for a permit to hold a Debate on “*Memorandum Rakyat*” on 14 May 2000. The application was rejected on 8 May without any reasons being given by the Ketua Polis Daerah Petaling Jaya. An appeal was made on 11 May to the Ketua Polis Selangor, stating, among other things, that the party would provide 300 persons for crowd control and that these persons would

cooperate with the police personnel. The appeal was rejected on 12 May without any reasons being given.

Cases 3, 4 and 5 further support instances of arbitrary action by the Police.

*Case 6* An application by Aliran Kesedaran Negara (“Aliran”) for a permit to hold a forum entitled “Towards Democracy” on 10 July 1999 was rejected on the ground that their application to use the Caring Society Complex had been rejected by the Penang State Secretariat although no copy of the rejection letter dated 28 June had been sent to the Police and Aliran itself had received it only on the 29 June. The refusal letter from the Police, dated 29 June was received on 30 June 1999. Aliran was unable to get alternative premises because some owners wanted them to produce the police permit first and others wanted them to pay the full rental or a hefty deposit neither of which was refundable if no permit was subsequently obtained. The Police, on the other hand, will not issue the permit until a place is secured.

The requirement for organisers to secure suitable premises before a permit is issued and the requirement that a permit be obtained before the premises can be rented or the policy of not refunding the full rental or hefty deposit for the use of the premises (when permits are not obtained) effectively put an absolute restriction to the assembly.

*Case 7* On the 2 November 2000, about 50 residents of Kampung Jalan Kebun staged a demonstration protesting against a rally which KeADILan was proposing to hold on 5 November. This demonstration was not stopped by the Police although no licence had been applied for or granted. Instead, the residents’ objection and their demonstration was offered by the Police as one of the grounds for stopping the KeADILan gathering.

Objections from any group to the holding of a gathering should not be a reason behind the refusal by the Police to grant a permit.

Case 7 is also an example of the selective application of the law in relation to assemblies.

### **1.3. Last minute cancellation of permit**

The Police response to the questionnaire is that licences issued have never been cancelled unless the organisers of the assembly/meeting go against the conditions attached to the licence or the assembly becomes aggressive and threatens public order. In one case however, a licence issued earlier was cancelled the day before the scheduled forum, causing the NGO concerned to suffer financial loss.

*Case 1* The Selangor and Federal Territory Consumers Association had applied for a licence to hold a forum on the water crisis entitled "Krisis Air pada Masa Kini" on 3 June 1998. The Ketua Polis Daerah Cheras issued a licence on 24 May 1998 but through a letter dated 1 June 1998 received on 2 June 1998, the licence was cancelled on the ground of security (keselamatan).

It is not clear how a forum on the water crisis in the state could pose a threat to security.

## **2. Dispersal of Assembly**

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 such assembly to disperse. [Section 27(3) PA 1967]

The Public Order Reserve Unit ("PORU") and the Federal Reserve Unit ("FRU") each has its own standard operating procedure for crowd dispersal.

Each PORU unit has three sections, each section comprising nine men. Sections 1 and 2 are the baton sections and section 3 is the gas gun and rifle section. For the PORU, crowd dispersal begins with a warning to disperse. If the crowd disperses, the crowd dispersal action ends there. If there is a resistance to the order to disperse, then force will be used in a specific order. The lowest category of force is "normal arrest". This is followed by tear smoke. Third is the baton charge but police personnel are to hit demonstrators on the lower part of the body only and never on the face or upper body. Finally, if necessary, the use of rifle fire with live bullets.

The FRU unit is also divided into three sections. All FRU personnel are equipped with shields, canes, batons and smoke grenades but only the personnel in section 3 carry gas-guns to

discharge the tear gas. The tear gas is fired only on the instruction of the commanding officer. The direction in which the guns are discharged will depend on the wind direction. The tear gas should always be fired over the heads of the crowd at an angle of 70 degrees and never directly at the crowd. The FRU may be assisted by the water canon unit. The water used may be plain water or water mixed with chemicals.

Under section 27B of the Police Act, the Police are allowed to use force to disperse assemblies when three conditions are satisfied:

- a. There must be an order to disperse;
- b. There must be a refusal to disperse; and
- c. Only if there is resistance to an order to disperse should force be used and even then it should only be such force as is reasonably necessary to overcome the resistance.

### ***2.1. Insufficient time for dispersal***

Evidence of insufficient time for dispersal was obtained from reports of the NGO Pemantau who were observing two gatherings on the 4 and 8 August 2000 and from oral testimony of individuals who were present at earlier *Reformasi* gatherings. Evidence was also obtained from witnesses who testified at the Kesas Highway Inquiry.

The main complaint was that insufficient time was given to the public to disperse after the order to disperse was given. Police would move in as soon as the order was given and would start hitting people with their canes or batons.

### ***2.2. Improper or excessive use of force***

Another complaint (from the same sources mentioned above) is the use of force on people who were not refusing to disperse. Tear gas and water canons were used even when people were trying to get away from the scene. It was also found that the chemicals in the water and the tear gas caused severe reactions in people. Police chased people who were running away and kicked and beat them when they caught up with them. Police also chased people into shops and restaurants and arrested people at random including innocent bystanders. People sitting in vehicles were forced to get out and were assaulted by police personnel. Some private vehicles were also said to have been damaged by the Police.

### **2.3. Omnipresence of the Police**

On a more general note, it is found that the omnipresence of the Police, FRU trucks, water canons, and the use of dogs at assemblies tend to create a hostile environment. Demonstrators, rightly or wrongly, regard the Police as partial and their omnipresence generates the perception that the Police are ready to strike at the moment an order of dispersal is made.

## **3. 1988 Amendments to the Police Act**

Major amendments were made to the Police Act through the Police (Amendment) Act 1987, Act A685 ("the Amending Act"), which came into force on 8 January 1988. Amendments made to the Police Act by the Amending Act appear to be erring too much on the cautious side against the interests of those exercising their right to peaceful assembly.

### **3.1. Section 27 sub-sections 2A – 2D**

Section 27(2A) was added to impose a requirement that applications for a licence to assemble must be made by an organisation or jointly by three individuals. Section 27(2B) allows the refusal of a licence applied for by three individuals if the police officer is satisfied that the assembly is in fact convened by an organisation. Section 27(2D) further provides that no licence will be issued to an organisation that is not registered or recognised under any law in force in Malaysia. This means individuals who belong to organisations which face difficulty in getting registered (with the Registrar of Societies) may not be granted a permit for any gathering. [See section 3(b) of the Amending Act]

### **3.2. Section 27(5)**

Section 27(5) is the section usually used for prosecuting individuals involved in an unlawful assembly. The section provides, amongst others, "... all persons attending, found at or taking part in such (unlawful) assembly ... shall be guilty of an offence." The words "attending, found at or" were added to the section via section 3(e) of the Amending Act.

Case law previous to the 1988 amendment had shown that to prove a person was "taking part" in an unlawful assembly is difficult.<sup>5</sup> In fact, it was observed then that, "(T)aking part calls for a more active part than mere presence ... that it was not the intention of the legislature that all persons who are merely found at an assembly for which no licence had

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<sup>5</sup> *Public Prosecutor v. Ismail bin Ishak & 59 others* [1976] 1 MLJ 183

been issued under section 27 of the Police Act shall be guilty of an offence (emphasis added)."

With the amendment however, the only proof required for a conviction under section 27(5) is mere presence at an unlawful assembly supported by arrest at the assembly. This means that innocent passers-by could find themselves subject to a prosecution and possible conviction under this section. The situation is made worse by the fact that sometimes people are found at the scene of an unlawful assembly due to a police roadblock or other congestion preventing them from moving on.

Although section 27(5B) was added (via section 3(g) of the Amending Act) to provide a defence "that the presence of the person charged came about through innocent circumstances and that he had no intention to be otherwise associated with the assembly, meeting or procession", it nevertheless means that an innocent person is put through the trauma of being prosecuted and of having to prove his/her innocence. Although the person may be acquitted of the offence, he/she may lose his/her job because of the prosecution.

*Case 1* Encik Rosle Hassan who was arrested for being at the scene of an unlawful assembly was remanded for four days and had no access to anyone during that period. He requested that the Police inform his employer that he would be unable to go to work but apparently they did not do so. When he was released and reported for work, he was informed by his employer that he had been fired for not coming to work during those four days. He was charged and his trial lasted for 45 days, at the end of which he was acquitted and discharged. Encik Rosle Hassan is currently unemployed.

Figures provided by the Bar Council Legal Aid Centre (Kuala Lumpur) shown below indicate that the majority of people arrested were not charged and a majority of those charged for being at an unlawful assembly under section 27 of PA 1967 were either acquitted or discharged not amounting to an acquittal, proving that these people should not have been arrested in the first place.

Year	Arrested	Charged	Convicted	Acquitted/Discharged	Trial/Appeal Pending
1998	439	317	26	280 acquitted	11
1999	120	67	2	16 acquitted 25 discharged	24
2000	228	40	-	11 discharged	29
2001	27	2	-	-	2

### **3.3. Section 27A**

This section added via section 4 of the Amending Act and as noted earlier provides greater jurisdiction to the Police to control activities on private property by allowing them to stop activities on private property under certain circumstances. Persons refusing to obey orders issued by the Police under this section can be guilty of stated offences.

It is noted also that the punishment for offences under this section is a fine of not less than two thousand ringgit and not more than ten thousand ringgit and imprisonment for a term not exceeding one year. This minimum fine is sufficient to disqualify a person who is convicted under this section from becoming or remaining a Member of Parliament.

### **3.4. Other Amendments**

In general, the amendments made via the Amending Act have the effect of broadening the scope of those who may be found guilty of an offence under the PA 1967, particularly in relation to the Police's power to regulate assemblies, meetings and processions. The Amending Act also added provisions that exclude the powers of the Court under sections 173A and 294 of the Criminal Procedure Code to discharge an offender conditionally or unconditionally, or to be lenient towards first offenders. [Sections 3(i), 4 of the Amending Act, sections 27(8A), 27A(7) PA 1967]

## **4. Attitudes of Authorities**

The present mindset of political leaders is that assemblies are intrinsically dangerous and are liable to become a threat to national security or public order. This is seen from statements made by them and reported in the media each time a large gathering is proposed.

## RECOMMENDATIONS

Recommendations are made based on the findings and best practices in other countries, and through discussions with the Police and other interested parties like the political parties and NGOs. Recommendations made are divided between those for the short term and long term. The approach of this report is that while short term goals are set in order to tackle current problems as expeditiously as possible, long-term targets are set to adopt a more holistic undertaking towards the matter at hand. This approach is founded on the belief that current problems faced are only symptoms of the actual malady.

### **1. Short Term Measures**

#### ***1.1. Grant of Police Permit***

- a. Applications for permits to hold static assemblies (as opposed to processions) in premises such as stadiums, halls, and private properties, to be approved as a general rule, without restrictions on freedom of expression.
- b. In addition to 1.1.a above, public places of different sizes and at different locations to be identified by the authorities for the holding of public assemblies (if the organisers so choose to use any of them) to help overcome the difficulty that some organisers have in securing suitable places for their assemblies.
- c. The procedure for applying for permits to be simplified by using a standard form to be issued to organisers to fill in the following details:
  - Name(s) of sponsoring organisations, if any;
  - Name of organiser, his/her identity card number and address;
  - Location where assembly will be held;
  - Date of assembly;
  - Purpose of assembly;
  - Estimated starting and ending times; and
  - Estimate of crowd expected.

- d. In addition to 1.1.c above, the organisers to do the following:
- Have a minimum number of organisers sign a declaration to assume responsibility for the assembly to be peaceful, orderly, and that
  - Identify and appoint “marshals” to ensure orderliness.
- e. In addition to the above, a “Speakers’ Corner” to be designated by the authorities and located at a populous spot in every state capital where individuals may express their views on any matter, provided they do not infringe any laws.

### **1.2. Guideline for Organiser**

A guideline for organisers of public assemblies and processions to be prepared, setting out the responsibilities of organisers, in:

- Ensuring the safety of members of the public;
- Avoiding damage to property;
- Avoiding fear or alarm to the public;
- Avoiding disruption to the local community;
- Appointing marshals to help ensure that the event goes according to plan; and
- The use of banners and public address systems.

### **1.3. Line of Communication between the Police and Organiser**

A line of communication between the Police and organisers of public assemblies and processions should be established and be kept open to enable friendly negotiations to take place, particularly in relation to conditions to be imposed on organisers.

### **1.4. Dispersal of Assembly**

- a. Review methods of crowd dispersal:
- The emphasis should be on restraint, particularly in the use of canes and batons, teargas and water canons.
  - The order to disperse should be given three times at ten-minute intervals. The order to disperse should be clearly audible.
  - Sufficient time must be given to allow people to move. The larger the crowd, the more time will be required to disperse it.
  - If the crowd starts moving away, they should not be chased and arrested and/or assaulted.

- Only if there is clearly a resistance to the order to disperse should force be used and even then it should only be such force as is reasonably necessary to overcome the resistance.
- b. Review procedure for maintaining law and order:
- At assemblies and processions, the Police to maintain a discreet presence, concentrating on minimising disruption to traffic, commercial life and business, and ensuring free movement of other users of public spaces.
  - Riot police (FRU and PORU) may be on standby, if necessary, but should be out of sight.
- c. Establish a monitoring system for ensuring enforcement of set procedures:
- The Police to set up an internal monitoring unit; and/or
  - Official recognition to be given to SUHAKAM, Bar Council and recognised NGOs as observers.

## **2. Long Term Measures**

### **2.1 Attitudes of Authorities**

In the past three years, Malaysian civil society has strengthened and the demand for civil and political rights has become louder. This has meant that Government action that infringes the fundamental rights of its citizens no longer remains unchallenged. It is imperative for the Government to respond to the changing political climate and the changing aspirations of Malaysian civil society.

In order for values of civil society, democracy and the rule of law be understood, internalised, and welcomed by the authorities, the following are recommended:

- a. Dialogue sessions to be held between
- SUHAKAM and top level police officers;
  - SUHAKAM and policy-makers;
  - The Police and NGOs; and
  - The Police and political parties.
- b. Training programmes organised by SUHAKAM and/or NGOs to be attended by the Police, decision-makers and policy-makers of all levels.

## **2.2 Amendments to the Police Act, Rules & Regulation**

- a. To require only notification to the Police on the part of the organisers, rather than application for permit to hold assemblies. As such, all provisions regarding application for permit need to be amended.
  
- b. Amendments under 2.2.a to also provide for following:
  - Organisers of assemblies to notify the Police of the proposed assembly at least 48 hours before the assembly is due to start. This is to enable the police to arrange for traffic and crowd control.
  - Assemblies never to be prohibited but conditions may be imposed on organisers to prevent any public disorder, damage to public property or disruption to community life if there is any real threat. Such conditions may relate to the place at which the assembly may be held, its maximum duration or the maximum number of persons who may constitute it. Conditions should not restrict freedom of expression.
  - If there is opposition to the assembly or a counter-demonstration, the original assembly should not be stopped or prevented from taking place. The opposing assembly or counter-demonstration to be allowed to be present, within sight and sound of the original demonstration, but kept apart to maintain public order.
  - A distinction to be drawn between static assemblies and processions as processions require greater effort in traffic and crowd control and may result in disorder in some neighbourhoods such that the Police may wish to prohibit the procession from passing through that area.
  - Organisers of a procession to notify the Police at least ten days before the procession is scheduled to be held.
  - Similar conditions may be imposed on organisers of processions as for assemblies.
  - Subject to the above provisions being implemented, processions may be prohibited if the police officer-in-charge applies to the district council for an order prohibiting the holding of any procession in that district for a period of up to three months, on the ground that particular circumstances existing in that district may result in serious public disorder.
  
- c. Sections 27A, 27(2A) – 27(2D) will be affected by the proposed amendments mentioned in 2.2.a and 2.2.b and will have to be amended accordingly.

- d. To amend section 27(5) PA 1967 such that being “found at” (as opposed to “taking part in”) an unlawful assembly does not constitute an offence.
- e. To delete sections 27(8A) and 27A(7) so that sections 173A and 294 of the Criminal Procedure Code will apply to offences under the relevant sections of the PA 1967.
- f. Generally, to reverse the restrictive effect of amendments made to the PA 1967 via the Police (Amendment) Act 1987, Act A685 on the right to peaceful assembly.

### **2.3 Establishment of Drafting Committee**

A drafting committee should be set up to prepare the necessary amendments to be tabled in Parliament. The committee should have representatives from the Police, Attorney-General’s Chambers, NGOs and SUHAKAM.

### **2.4 Review of the Public Order (Preservation) Act 1958**

In view of the changed and changing circumstances in Malaysia and the proposed amendments to the Police Act suggested above, the Public Order (Preservation) Act 1958, Act 296, imposes an undue restriction on the right to freedom of assembly. It is proposed therefore that the Drafting Committee proposed above review the Public Order (Preservation) Act 1958 and makes amendments that will bring it in line with the proposed amendments to the Police Act.

## CONCLUSION

The recommendations that have been made in this report are founded on the firm belief that it is definitely possible in present day Malaysia to have peaceful assemblies at which participants voice their views about issues that are a matter of concern for them. This belief is supported by the fact that on several occasions in the recent past, peaceful assemblies and processions have taken place, during which time the police have controlled traffic and have maintained law and order with great restraint.

The most recent incident was on 20 May 2001 at the Central Market, Kuala Lumpur, where a group called the Hunger Strike Committee to Abolish the Internal Security Act organised a programme to raise awareness about the ISA. They were allowed to make speeches, sing songs and distribute leaflets and postcards calling for the abolition of the Act. The one-hour programme ended peacefully with no untoward incident occurring, although at one point the group was questioned by two policemen who then allowed them to proceed on the condition that there were no complaints against them (the organisers).

A day earlier, on 19 May 2001, a two-hour "Peace Walk" from the Bar Council Legal Aid Centre office in Kuala Lumpur to the University of Malaya in Petaling Jaya was organised by a Group to Free Pak Din and Friends and Families of Hishamuddin, two ISA detainees. About 100 people participated in the walk and a number of police cars followed them, with police personnel controlling the traffic along the way. The group walked through the busy shopping areas of Kota Raya, Central Market and Bangsar Utama. No untoward incident occurred during the walk.

On 14 April 2001, *Barisan Alternatif* leaders presented a memorandum to SUHAKAM. Several hundred supporters gathered outside the SUHAKAM premises although they had earlier been warned by the police not to do so. A large number of police personnel were present but at a distance away from the crowd. Police allowed the crowd to wait until their leaders came out to inform them that the memorandum had been received by SUHAKAM. The crowd was asked to disperse by Datin Seri Dr. Wan Azizah, President of KeADILan, and Tan Sri Dato' Haji Anuar, a SUHAKAM Commissioner, and they did so quite peacefully.

On 8 August 2000, when the judgement in Dato' Seri Anwar Ibrahim's case was to be delivered by the High Court, a large crowd had gathered outside the court premises. The police allowed speeches to be made and generally acted with restraint. During the presence of SUHAKAM observers at the gathering outside the court, no untoward incident occurred and SUHAKAM issued a statement commending the police for the way they handled the situation. NGO observers however reported that there were incidents of police brutality after the SUHAKAM observers left. Mention of this was made in the SUHAKAM statement. A copy of the statement is attached as Appendix 5.

There were three other occasions in August 2000 when police allowed members of the public to gather for specific purposes after which they were dispersed peacefully. The point to be taken is that when police personnel exercise restraint in the event of an assembly, whether with or without a permit, no untoward incidents occur and members of the assembly disperse peacefully, with some measure of satisfaction that their concerns have been expressed and may be considered. Peaceful assemblies are a healthy way for members of civil society to express dissatisfaction over matters that affect their lives. In this context, "peaceful" refers to the absence of violence and does not necessarily mean "silent". Speeches and cheering do not render an assembly "not peaceful".

SUHAKAM acknowledges that peace and stability are paramount and public order needs to be maintained at all times. SUHAKAM is also of the view that peaceful assemblies do not disrupt peace and stability and need not cause any public disorder if all persons involved, the public and the authorities alike, conduct themselves with propriety. SUHAKAM believes that the recommendations made will ensure that freedom of assembly and the greater right of freedom of expression can be enjoyed in a peaceful environment.

## SAMPLE QUESTIONNAIRE

(As referred to in FINDINGS)

### **Soal Selidik SUHAKAM Mengenai Kebebasan Berhimpun**

1. Apakah undang-undang dan peraturan yang dipakai oleh PDRM mengenai permit berkenaan perhimpunan?
2. Apakah syarat-syarat yang digunakan untuk mengeluarkan permit?
3. Apakah syarat-syarat ini sama atau berbeza bagi perhimpunan di dalam bangunan (indoor meetings) dan perhimpunan di luar (outdoor assemblies)?
4. Apakah alasan bagi menolak permohonan untuk permit (secara am)?
5. Statistik berkenaan permohonan untuk permit, bilangan yang dikeluarkan, bilangan yang ditolak?
6. Bagi permohonan yang ditolak, sila beri contoh kes dan sebab-sebab penolakan.
7. Apakah benar bahawa permit yang dikeluarkan kadangkala ditarik balik atau perhimpunan yang diberi permit disuraikan? Jika ya, apakah sebab-sebabnya?
8. Maklumat lain yang SUHAKAM perlu tahu.

## LIST OF NON-GOVERNMENTAL ORGANISATIONS & POLITICAL PARTIES

(As referred to in FINDINGS)

### **Non-Governmental Organisations**

ALIRAN (Aliran Kesedaran Negara)

HAKAM (Persatuan Kebangsaan Hak Asasi Manusia)

JIM (Pertubuhan Jamaah Islah Malaysia)

People's Manifesto Initiative, a coalition of:

Bosses Group

ERA Consumer (Education and Research Association for Consumers, Malaysia)

Ex-ISA Detainees Group

Gabungan Rumah Panjang

Group of Concerned Citizens

Jawatankuasa Sokongan Peneroka Bandar

Majlis Graduan Malaysia

Persatuan Masyarakat Selangor dan Wilayah Persekutuan

Persatuan Sahabat Wanita Selangor

Pusat Komunikasi Masyarakat

Women's Candidacy Initiative

SUARAM (Suara Rakyat Malaysia)

### **Political Parties**

#### ***Barisan Nasional***

All component parties, except MCA (Malaysian Chinese Association)

#### ***Barisan Alternatif***

All component parties

## RELATED PROVISIONS OF THE LAW AND CONSTITUTION IN MALAYSIA

### **Federal Constitution**

#### **Article 10** *Freedom Of Speech, Assembly And Association.*

- (1) Subject to Clauses (2), (3) and (4) –
  - (a) ...
  - (b) all citizens have the right to assemble peaceably and without arms;
  - (c) ...
- (2) Parliament may by law impose –
  - (a) ...
  - (b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order;
  - (c) ...
- (3) ...

### **Police Act 1967**

#### **Section 27** *Power to regulate assemblies, meetings and processions.*

- (1) Any Officer in Charge of a Police District or any police officer duly authorised in writing by him may direct, in such manner as he may deem fit, the conduct in public places in such Police District of all assemblies, meetings and processions, whether of persons or of vehicles and may prescribe the route by, and the time at, which such assemblies or meetings may be held or such procession may pass.
- (2) Any person intending to convene or collect any assembly or meeting or to form a procession in any public place aforesaid, shall before convening, collecting or forming such assembly, meeting or procession make to the Officer in Charge of the Police District in which such assembly, meeting or procession is to be held an application for a licence in that behalf, and if such police officer is satisfied that the assembly, meeting or procession is not likely to be prejudicial to the interest of the security of Malaysia or any

part thereof or to excite a disturbance of the peace, he shall issue a licence in such form as may be prescribed specifying the name of the licensee and defining the conditions upon which such assembly, meeting or procession is permitted:

Provided that such police officer may at any time on any ground for which the issue of a licence under this subsection may be refused, cancel such licence.

- (2A) An application for a licence under subsection (2) shall be made by an organisation or jointly by three individuals.
- (2B) Where an application is made jointly by three individuals, the police officer to whom the application is made shall refuse the application if he is satisfied that the assembly, meeting or procession for which a licence is applied is in actual fact intended to be convened, collected or formed by an organisation.
- (2C) Where an application is made jointly by three individuals, the police officer issuing the licence shall specify in the licence the names of those persons as licensees.
- (2D) No licence shall be issued under subsection (2) on the application of an organisation which is not registered or otherwise recognised under any law in force in Malaysia.
- (3) Any police officer may stop any assembly, meeting or procession in respect of which a licence has not been issued or having been issued was subsequently cancelled under subsection (2) or which contravenes any of the conditions of any licence issued in respect thereof under that subsection; and such police officer may order the persons comprising such assembly, meeting or procession to disperse.
- (4) Any person who disobeys any order given under subsection (1) or subsection (3) shall be guilty of an offence.
- (4A) Where any condition of a licence issued under subsection (2) is contravened, the licensees shall be guilty of an offence.
- (5) Any assembly, meeting or procession –
  - (a) which takes place without a licence issued under subsection (2); or
  - (b) in which three or more persons taking part neglect or refuse to obey any order given under subsection (1) or subsection (3),shall be deemed to be an unlawful assembly, and all persons attending, found at or taking part in such assembly, meeting or procession and, in the

case of an assembly, meeting or procession for which no licence has been issued, all persons attending, found at or taking part or concerned in convening, collecting or directing such assembly, meeting or procession, shall be guilty of an offence.

- (5B) In any prosecution for an offence under subsection (5) of attending or being found at an assembly, meeting or procession which is an unlawful assembly, it shall be a defence that the presence of the person charged came about through innocent circumstances and that he had no intention to be otherwise associated with the assembly, meeting or procession.
- (5c) ...
- (6) ...
- (7) Any person aggrieved by the refusal of the Officer in Charge of a Police District to issue a licence under subsection (2) may within forty-eight hours of such refusal appeal in writing to the Commissioner or Chief Police Officer; and the decision of the said Commissioner or Chief Police Officer thereon shall be final.
- (8) ...
- (8A) ...

**Section 27A Power to stop certain activities which take place other than in a public place.**

- (1) Where any activity takes place on or in any land or premises which do not constitute a public place and –
- (a) the activity is directed to, or is intended to be witnessed or heard or participated in by, persons outside the land or premises, or is capable from all the circumstances of being understood as being so directed or intended; or
  - (b) the activity attracts the presence of twenty persons or more outside the land or premises; or
  - (c) the activity is likely to be prejudicial to the interest of the security of Malaysia or any part thereof or to excite a disturbance of the peace,
- any police officer may order the persons involved in the activity to stop the activity and may order all persons found on or in or outside the land or premises to disperse.

- (2) Any person who disobeys any order given under subsection (1) shall be guilty of an offence.
- (3) Where three or more persons neglect or refuse to obey any order given under subsection (1), the activity concerned shall be deemed to be an unlawful activity, and all persons taking part or concerned in the activity, or in organising or directing the activity, shall be guilty of an offence.
- (4) For the purposes of subsection (3), where it appears from all the circumstances relating to an activity that it was organised or directed by or with the involvement, participation, aid, encouragement, support or connivance of an organisation, every member of the governing body of the organisation shall be deemed to have taken part or been concerned in organising or directing the activity unless he proves that he did not know nor had any reason to believe or suspect that the activity was going to take place or, if he knew or had reason to believe or suspect as aforesaid, he had taken all reasonable steps to prevent the activity from taking place or, if it was not reasonably within his power to so prevent, he had publicly objected to or dissociated himself from the organising or directing of the activity.
- (5) Any police officer may, without warrant, arrest any person reasonably suspected of committing any offence under this section.
- (6) Any person who is guilty of an offence under this section shall be liable on conviction to a fine of not less than two thousand ringgit and not more than ten thousand ringgit and imprisonment for a term not exceeding one year.
- (7) Sections 173A and 294 of the Criminal Procedure Code shall not apply in respect of an offence under this section.

***Section 27B Use of Force in Dispersing or Arresting Persons pursuant to Section 27 or 27A.***

If persons are ordered to disperse pursuant to section 27(3) or 27A (1) and do not disperse, any police officer or any other person acting in aid of a police officer may do all things necessary for dispersing them and for arresting them or any of them pursuant to section 27(6) or 27A(5), and, if any person makes resistance, may use such force as is reasonably necessary for overcoming resistance.

**Section 97 Standing Orders.**

The Inspector General may issue administrative orders, to be called "Standing Orders", not inconsistent with this Act or rules or Police Regulations made thereunder, for the general control, direction and information of the Force and of all bodies established or raised for police duties under this Act.

**Criminal Procedure Code****Section 173A Power to discharge conditionally or unconditionally.**

- (1) Notwithstanding anything contained in section 173, the Court shall have the powers contained in this section.
- (2) When any person is charged before the Court with an offence punishable by such Court, and the Court finds that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment or that it is expedient to release the offender on probation, the Court may, without proceeding to record a conviction, make an order either –
  - (a) dismissing the charge or complaint after an admonition or a caution to the offender as to the Court seems fit; or
  - (b) discharge the offender conditionally on his entering into a bond with or without sureties, to be of good behaviour and to appear for the conviction to be recorded and for sentence when called upon at any time during such period, not exceeding three years, as may be specified in the order.
- (3) The Court may, in addition to any such order, order the offender to pay compensation for injury or for loss (not exceeding the sum of fifty ringgit) or to pay the costs of the proceedings as the Court thinks reasonable or to pay both compensation and costs.
- (4) An order under this section shall for the purpose of revesting or restoring stolen property, and of enabling the Court to make such order as to the

- restitution or delivery of property to the owner and as to the payment of money upon or in connection with the restitution or delivery, have the like effect as a conviction for an offence committed in respect of such property.
- (5) If the Court is satisfied by information on oath that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his apprehension.
- (6) Any offender when apprehended on any such warrant shall, if not immediately brought before the Court having power to sentence him, be brought before a Magistrate who may –
- (a) either remand him by warrant until the time at which he is required by his bond to appear for judgment or until the sitting of a Court having power to deal with his original offence whichever shall first happen; or
  - (b) admit him to bail with a sufficient surety conditioned on his appearing for judgment.
- (7) The offender when so remanded may be committed to prison and the warrant of remand shall order that he shall be brought before the Court before which he was bound to appear for judgment or to answer as to his conduct since his release.

**Section 294 First offenders.**

- (1) When any person not being a youthful offender has been convicted of any offence punishable with imprisonment before any Court if it appears to the Court that regard being had to the character, antecedents, age, health or mental condition of the offender or to the trivial nature of the offence or to any extenuating circumstances under which the offence was committed it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties and during such period as the Court may direct to appear and receive judgment if and when called upon and in the meantime to keep the peace and be of good behaviour.

- (2) The Court may, if it thinks fit, direct that the offender shall pay the costs of the prosecution or some portion of the same within that period and by such instalments as may be directed by the Court.  
Section 432 shall be applicable to any direction made under this subsection.
- (3) If a Court having power to deal with the offender in respect of his original offence, or any Court of summary jurisdiction, is satisfied by information on oath that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his apprehension.
- (4) Any offender when apprehended on any such warrant shall, if not immediately brought before the Court having power to sentence him, be brought before a Magistrate, and the Magistrate may either remand him by warrant until the time at which he is required by his bond to appear for judgment or until the sitting of a Court having power to deal with his original offence, or may admit him to bail with a sufficient surety conditioned on his appearing for judgment.
- (5) The offender, when so remanded, may be committed to prison and the warrant of remand shall order that he be brought before the Court before which he was bound to appear for judgment or to answer as to his conduct since his release.

## RELATED PROVISIONS OF THE LAW AND CONSTITUTION IN OTHER COUNTRIES

### **The Law and Practice in England**

In England, the Public Order Act 1986 draws a distinction between public assemblies and public processions. Public assemblies are assemblies of twenty or more persons in a public place which is wholly or partly open to the air. Public procession means a procession in a public place. A public place means any highway or any place to which the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

Organisers of processions are required to give notice of the intended procession six days before it is scheduled to take place [sections 11(1), (5) and (6)]. The notice must specify the date, time, proposed route of the procession and the name of one of the organisers [section 11(3)].

If a senior police officer believes that the proposed procession may result in

- serious public order,
- serious damage to public property,
- serious disruption to the life of the community,

or that the purpose of the persons organising the procession is

- to intimidate others with a view to compelling them not to do an act they have a right to do,
- to do an act they have a right not to do,

he may give directions imposing on the organisers of, or those taking part in, the procession, such conditions as appear to him to be necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions [section 12(1)].

Under this the section the procession will not be prohibited. Prohibition of processions are done in accordance with section 13 which requires an application by the chief police officer to the council of the district for an order prohibiting for a period of three months, the holding of any procession, on the ground that particular circumstances existing in that district may result in serious public order. In the City of London or the metropolitan police

district, the commissioner of Police, with the consent of the Secretary of State, will make the order prohibiting processions for a period of three months. This section will be invoked only if it is not possible to stop serious damage from occurring even with conditions imposed on organisers.

Organisers of public assemblies do not have to notify the police of the proposed assembly. However, if the senior police officer believes that the assembly may result in

- serious public disorder,
- serious damage to property,
- serious disruption to the life of the community,

or that the purpose of the persons organising the assembly is

- to intimidate others with a view to compelling them not to do an act they have a right to do
- to do an act they have a right not to do

he may give directions imposing on the organisers of, or those taking part in, the assembly, such conditions as to the place at which the assembly may be or continue to be held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation [section 14(1)].

Again there is no question of preventing the assembly from taking place. Conditions are imposed to avoid any untoward incident.

### **The Law and Practice in Other Countries**

Like Malaysia, several countries including Canada, Ireland, Italy and USA have a constitutional guarantee of freedom of assembly and, like Malaysia, this constitutional right is limited by concerns for public order, public safety, public health (Italy) and morality (Ireland, Italy) and “other reasonable limits” (Canada). These limits have yet to be addressed by the judiciary in Canada. In USA however, the courts have overturned laws which they consider unduly restrict the constitutional guarantee.

The most common reason for constraining public demonstrations is concern for public order. Public order is clearly an absence of violence but it is not clear as to whether public order also means an absence of disruption of daily life. In Canada, France and the USA, there is concern to minimise the disruption to traffic and free movement of other users of

urban areas. In Canada and the USA, the disruption to commercial life and business is a key factor in the timing or location of a demonstration.

Sometimes the threat of a counter-demonstration or of some protest is sufficient to invoke concerns for public order and prohibit the original event. In Italy, however, the courts have decided that in such a situation, the original demonstration should be permitted and the counter event should be banned or constrained. In the USA, the police accept that a "hostile audience" should be allowed to protest within "sight and sound" of the target of their hostility, but should not be allowed to prevent the other demonstration from taking place. In France and Italy, counter-demonstrations are usually permitted relatively near to the demonstration that they are opposing but are not allowed to interfere with it.

It is widely acknowledged that the right to assemble should be applied equally and without discrimination to all members and sections of society. In some countries, equal rights have been acknowledged in law but denied in practice. In Northern Ireland, for example, Nationalists argue that their right to demonstrate have often been denied.

In an ideal situation, the involvement of police at demonstrations is kept to a minimum level. In many countries, the police do little more than control the traffic and maintain a discreet visible presence. In all countries, there are special riot police units or specific riot training is given to all officers so that the police are always ready to deal with trouble. The riot police however are usually kept in reserve, at a distance or out of sight until or unless they are required.

In situations of serious political or social conflict, the police are often regarded as partial and are identified by demonstrators as an opponent. Police action or even their presence at demonstrations can therefore provoke rather than restrain rioting and other violence. In New York, the police also have lawyers present to ensure that their officers comply with the letter of the law and that the rights of demonstrators are not ignored.

## SUHAKAM PRESS STATEMENT

(As referred to in CONCLUSION)

### **SUHAKAM Statement on August 8, 2000 Gathering 9 August 2000**

SUHAKAM is gratified that the right of citizens to come to the High Court to hear the verdict of the Datuk Seri Anwar Ibrahim trial was respected by the authorities.

SUHAKAM commends the restraint and professionalism displayed by the police in handling the crowd in the High Court vicinity. About 1,000 Malaysians were gathered to hear the Court verdict first hand. Most of them were clustered in three areas, in front of the High Court building, at the junction of Jalan Tun Perak and Jalan Raja Laut and at the Benteng square across the river from the Court.

SUHAKAM observers noticed that the police kept their distance, much of the time standing at the peripheries of the crowds.

The biggest and potentially volatile cluster was at Benteng square. A crowd of a few hundred sat on the floor, surrounded by bystanders to listen to speeches made by Keadilan and Reformasi leaders. Occasionally a police officer walked over to the crowd to tell the leaders of the gathering to stop making political speeches. Even though speeches and shouts of reformasi continued to be made, the police used their discretion to allow some level of freedom of expression. The assembly, while noisy, was peaceful. The leaders maintained discipline over their supporters.

In another incident in front of the High Court, a senior police officer quietly told his subordinate to leave a Reformasi supporter alone when the latter refused to come down from the steps of the court building and started taunting the policeman. A few others had joined him in the taunting and this confrontation could have developed into an ugly scene. But when the policeman walked away, the crowd calmed down.

A Free Anwar Campaign banner was also displayed, first among the crowd, and later it was tied to the railing at the court building. Police did not intervene to remove the banner.

The police exercise of restraint and discretion in handling demonstrations of emotion and provocation helped to make the gathering on August 8 remain a peaceful one. The police were, in general, people friendly and non-confrontational in handling the crowd that had gathered from 6 am. The people's right to peaceful assembly was respected for over six hours.

The police moved in to disperse the big crowd at Benteng square at about 12.30 p.m., after Datuk Seri Anwar's sentencing was announced. A police officer with a loud hailer told the crowd to disperse. Most moved on very fast. A few refused to budge and stayed seated on the floor. SUHAKAM observers noticed plain clothes policemen wearing yellow police vests talking to those seated to persuade them to get up and leave. They eventually did.

SUHAKAM did not observe any display of physical violence during the dispersal of the crowd nor did they receive any report of violence at the scene. A police officer was however seen displaying a rock to a Bar Council monitor which the officer reported was thrown at a policeman by one of those assembled at the Benteng square.

Subsequently, SUHAKAM received a report from the NGO monitoring team that police personnel were later seen chasing members of the public in Leboh Ampang and Jalan Masjid India and it was reported that a few were hit by the police.

Apart from this incident, yesterday's events, on the whole, showed that the ability of political leaders to maintain control and discipline over their supporters, the police exercise of restraint, discretion and professionalism, and the presence of observers from SUHAKAM, the Bar Council and NGOs have gone a long way in ensuring that peace and order were maintained throughout the day.