

14th Malaysian Law 560 Conference



*Topics include:

- The Judiciary and the Malaysian Constitutional Law
- Iskandar Development Region The Destination
- Islamic Commercial Law
- Latest Amendments to the Malaysian Property Laws
- Criminal Justice System "The Good, The Bad & The Ugly"
- South East Asian Young Lawyers Convention
- Globalisation WTO, FTAs and its implications
- Have the Law Failed the Family Unit?
- Freedom of the Arts
- Freedom of Information Where Are We After 50 Years?
- The Royal Malaysian Police Experience: 200 years of policing and 50 years of independence
- * Topics are subject to change

Aalavsian Law 77 Conterence

29-31 October 2007, Kudla Lumpur Convention Centre

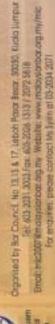
"50 Years of Merdeka"

HRH Sultan Azlan Muhibbuddin Shah Sultan of Perak

Keynote Address by

YAB Dato' Seri Abdullah Ahmad Badawi Prime Minister of Malaysia







PRAXIS

CHRONICLE OF THE MALAYSIAN BAR



BAR COUNCIL OF MALAYSIA

BAR COUNCIL

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Moral courage and obligations of obedience

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Hj Vazeer Alam Mydin Meera Editor

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Recently, during one of my many midnight browse of the internet, I had the good fortune of reading an article written and posted by David Antoon. I must confess that until then I had never heard of the author. David Antoon, I was to learn is a Vietnam veteran - a retired U.S. Air Force Colonel who is now a commercial airline pilot. The title of the article 'Fatherhood, Muhammad Ali and Moral Courage' caught my attention and had me immediately immersed in it.

Muhammad Ali has been the hero of many; not merely for his exploits as a champion boxer and an accomplished sportsman but more so for his strength of conviction in fighting the social injustices of the sixties and seventies, which at times were at the cost of personal freedom and incarceration. When Ali refused to be drafted into the military to fight in Vietnam, he was vilified by the press, prosecuted by the US government as a draft dodger and stripped of his championship title by the boxing authorities. The central theme of David Antoon's article was not Muhammad Ali: rather it was the concern of a father - worried about the kind of world his children and all children will inherit; and of his fatherly duty in inculcating the right values and moral courage in his children to overcome the obligations of obedience. Especially so in the light of the United States' erosion of reputation and credibility due to the hypocritical, immoral and illegal policies supporting military aggression and occupations around the globe.

In writing this piece, I had originally intended to quote excerpts from David Antoon's article, however, after having read and reread the article several times, I think it is best that I reproduce the article in its entirety. Antoon starts by referring to the pronouncement of the Nuremburg War Crime Tribunal where in dismissing the defence put up by some of the defendants that they were merely following superior orders, the Tribunal held that "Individuals have international duties which transcend the national obligations of obedience." Antoon then goes on to write:

"I had never expected to have the opportunity to thank Muhammad Ali, but as I was preparing to pilot a 747 en route to Singapore I heard he was on board. Ali was traveling with his entourage in 2005 to represent New York in its bid for the Olympics. The year before it had been Ali's courage upon which I reflected as I was forced to confront the issues where fatherhood transcends nationalism. Saying thank you to Muhammad Ali was little enough.

Professor Andrew Bacevich, a West Point graduate and Vietnam veteran whose son was killed in Iraq on Mother's Day, has written extensively about "poisonous" U.S. foreign policy. What was true in Vietnam is true today in Iraq. An examination of policy between these two disastrous preemptive empire adventures by Nobel laureate Harold Pinter reveals the same.

Ali's example reaffirmed my decision to speak the truth, a truth that altered my son's life dreams and translated my private concerns into action. In the spring of 2004, after an exemplary academic and athletic career, my son received a coveted appointment to the Air Force Academy, a step in his lifelong goal to be just like his father. A son to make any father proud, but never more than when out of deep conscience and great moral courage he turned down his appointment to my alma mater.

The son of a career military man myself, I had followed my own father's example. Fathers, and the choices we make as fathers, matter.

In 1960 Ali won the Olympic gold medal in the light heavyweight division, crushing all opposition; in 1964 he won the world heavyweight championship. In 1967 Ali refused induction into the Army, arguing that the Vietnam War violated his conscience. Ali, arguably the greatest boxer to ever enter the ring, is today fighting Parkinson's disease.

My time in the Air Force Academy (1966-1970) had coincided with Ali's refusal to be inducted into the military. Ali served prison time because of an issue of conscience. Our government had wanted Ali not only as a soldier but as a highly visible recruiting tool, the Pat Tillman of his era; instead his fight raised the consciousness about what was really happening in Vietnam. My military career—academy graduate, Vietnam combat tours, decades of observation as a

career officer and finally critical analysis—as in the case of Bacevich, was now confronting my responsibilities as a father.

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I went down to first class on the airliner to find the man who had floated like a butterfly and stung like a bee. Ali is still a big man, dwarfing those around him. I knelt so I could look him right in the eye and told him I considered him a hero not for his world championship title fights but for having the moral courage to refuse induction into the Army during Vietnam. Ali's hand shook with tremors as he extended it to me; he nodded. He has a hard time speaking now but I could see he was moved by what I had told him. His battle of conscience has ended; for many of us those battles are still to come.

When I graduated from the Air Force Academy I did not question orders. Later, I chose to believe that our presence in Vietman was necessary for America's "national interest." I was wrong. It did not come to me in one day, but over a period of years—the result of a gut-wrenching look at U.S. military operations during my lifetime.

I was in the Philippines for jungle survival training in 1974 when I bumped into Capt. Don Dawson, a B-52 pilot, on my way to the officer's club. Don and I had been in the same squadron at the academy. Don was always one of the good guys, quiet, laid back and unflappable. He had been at Clark Air Base for nearly a year under house arrest at that point because he refused to continue to do carpet-bombing missions into Cambodia. "I can't do this anymore" was what he told his commander—and what he told me. He was put under house arrest awaiting court-martial for refusing to participate. For Don the final straw had been the annihilation of an entire wedding party.

I attended the Air Force Academy 2004 orientation with my son, a visceral event causing my catharsis. "Leadership" had been replaced with "warriorship." Secular spiritual inclusion had been replaced with aggressive dominionist evangelicalism. Reports of Abu Graib torture, rendition, secret "gulag" prisons around the world, depleted uranium, aerial bombing of urban areas with napalm and cluster bombs and more were surfacing. Iraq déjé vu Vietnam. Added to this is Bush's Praetorian Guard—a private mercenary force with no government accountability. As a father I realized that the truth, all of the truth, was something I owed my son. If a child cannot trust his father, or mother, for honesty and integrity, then whom can he trust?

I realized I had been less than forthcoming with my own son. He had no idea what Vietnam and Iraq were really about or what he would be expected to do. That night we talked late. His only ambition had been to attend the academy and fly Air Force fighters. During those long hours he asked searching questions, transforming both of us through a dialogue on conscience and moral courage that still continues.

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That autumn my son began his freshman year at Ohio State University. Today he is a different man, a man who sees further and deeper than I did at his age.

The common thread of Muhammad Ali's decision to refuse induction, of Don Dawson's refusal to continue carpet-bombing civilians and even my son's decision to decline his coveted appointment to the academy is that moral courage rose above faux nationalism.

Pulitzer Prize-winning author Chris Hedges recently conveyed to my son, Ryan, a message reinforcing moral courage and the necessity to always keep questioning authority—never take for granted what you are told by those in authority. Integrity is your most precious asset.

Every father should speak these words to his children. There can be no greater gift for a father than to know he has instilled in his children these values.

Moral courage is what allowed Muhammad Ali to 'float like a butterfly, sting like a bee'! "

At the conclusion of the first Nuremburg Trial some defendants remained defiant while others offered apologies. Some even wept. One of the defendants, Albert Speer offered a warning. He spoke of the even more destructive weapons being produced and the need to eliminate war once and for all. "This trial must contribute to the prevention of wars in the future," Speer said.

Unfortunately, the trials never contributed to the prevention of wars. The war culture has not ended. After the Second World War, series of wars have been fought all over the globe; some by direct involvement of the major powers and still others by means of proxies. Carpet bombing of entire wedding parties in the name of collateral damage continues. The misery of war is still visiting humanity. The modern day Attilas and their hordes are still plundering the wealth of others. Our only hope for the future is that humanity will produce more Don Dawsons and Muhammad Alis and that their courage of conviction will overcome obligations of obedience.

HRH Sultan Azlan Shah and The Right Honourable Prime Minister Abdullah Badawi to grace the 14th Malaysian Law Conference

by Syirin Junisya Mohd Ali (Executive Officer)

The Sultan of Perak, HRH Sultan Azlan Shah has graciously agreed to officiate the 14th Malaysian Law Conference to be held at the Kuala Lumpur Convention Centre from 29 - 31 October 2007 and deliver the Opening Address, while the Prime



Minister of Malaysia, YAB Dato' Seri Abdullah Ahmad Badawi will provide the Keynote Address. The Conference will be closed by YB Datuk Seri Nazri Aziz, Minister of Law, Malaysia.

The Malaysian Bar is therefore pleased to note that this is perhaps the first time in the 60 years history of the Bar that its event is graced by a Ruler and the Head of the Executive.

Topics to be deliberated throughout the 3 days conference are; Constitutional Law, Trade and Globalisation, Islamic Commercial Law, Local Government, Housing and Land Laws, Intellectual Property Law, Protection of Heritage, Orang Asli and the Constitution, Freedom of the Arts, Freedom of Information, New Developments in Corporate Law, Criminal Justice System, Migrants and Refugees Rights, Family Law, Gender Issues and Freedom of Religion.

Most of the topics are aimed at examining the development of our laws after 50 years of Independence as well as reflecting on Malaysia's achievements, raising present issues and challenges, and generating discussions for the way forward in the next 50 years. There will also be a South East Asian Young Lawyers Convention with the objective to form an alliance of the region's young lawyers. Another interesting session will also see the representatives from the Law Associations of Sabah, Sarawak and Peninsular Malaysia discuss the proposition entitled 'Fusion

of the Three Bars – Where the South China Sea becomes Irrelevant'.

Other prominent features of the Conference include papers to be delivered by eminent local and Commonwealth jurists such as Professor Lee Hoong Phun of Monash University, Australia and Professor Teo Keang Sood of National University of Singapore. The conference also sees the Bar Council collaborating with the Real Estate and Housing Development Association (REHDA) on one session concerning property law where the CEO of Iskandar Regional Development Authority (IRDA), Dato' Ikhmal Hijaz Hashim will address the conference about Iskandar Development Region.

Eminent speakers (both local and foreign) from the Bar, Bench, Attorney-General's Chambers, Judicial & Legal Services, Corporate sectors, local universities, NGOs and foreign Bar Associations have been invited to participate in the Conference.

HRH Sultan Azlan Shah's speech entitled '50 Years of Constitutionalism and the Rule of Law' is a reflection of the Conference's theme; '50 Years of Merdeka' – in addition to celebrating our country's half-century

of independence.

The 79-year-old monarch is also a legal luminary in his own own right, having made his mark as the Lord President in the 1980s before his installation as the Ruler of the State famous for tin mining.

It cannot be gainsaid that the Sultan's has distiguishly contributed to the country's development of law and Constitution in this country, and the law reports are replete with his well-reasoned judgments.

In one of the most high-profile case involving a prince who was charged and convicted of causing hurt to a subject, HRH Sultan Azlan Shah asked what was justice if it was not just and he had this to say:

"Today it's not so much the respondents who are on trial but justice itself. How much justice is justice? If the courts strive to maintain a fair balance between the two scales; the interest of the accused person and the interest of the community, then I must say justice is just.

Cases are never tried in police stations, but in open courts to which the public has access. The rack and torture chamber must not be substituted for the witness stand. That right is enshrined in our Constitution — No person shall be deprived of his life, or personal liberty save in accordance with law. That fundamental right implies that no person is punishable or can be lawfully made to suffer in body except for a distinct breach of law

proved in a court of law. All this reduces to the minimum the possibility of arbitrariness and oppression."

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Turning to the little Napoleons, HRH Sultan Azlan Shah trenchantly said in Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd 1979:

"Every legal power must have legal limits, otherwise there is dictatorship. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law. I would once again emphasize what has often been said before, that 'public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place', (per Danckwerts LJ in Bradbury v London Borough of Enfield (1967) 3 All ER 434 at p 442."

Describing the Constitution as the social contract between the races of this country, he expressed his view further;

"The Constitution was arrived at through an understanding reached by the leaders of the different races, and religions as well as between the Rulers and the people.

There is a need to instil in the younger generation understanding of the background behind the social contract which forms the backbone of the country to avoid misunderstandings."

With respect to the judiciary and law enforcement agencies, HRH Sultan Azlan said that the law would not be effective in dispensing justice unless implementation mechanism was based on procedures that were fair and transparent and administered by judges who were qualified, independent and of high integrity.

In fact, the erosion of public confidence in the judiciary's independence would ultimately lead to instability and it would certainly take a long time and would be an arduous task to restore it.

HRH Sultan Azlan Shah received his early education at the Government English School in Batu Gajah and the Kuala Kangsar Malay College (MCKK). He later furthered his studies at Nottingham University in the field of law and was conferred the Bachelor of Law in 1953. Following his graduation, HRH Sultan Azlan Shah was admitted to the English Bar by the Honourable Society of Lincoln's Inn on 23 November 1954.

Upon his return from the United Kingdom, HRH Sultan Azlan Shah first served as the Assistant State Secretary of Perak. Thereafter, he joined the Judicial and Legal Service of the Federation of Malaya, as First Class Magistrate and President of the Sessions Court respectively. Subsequently, he was appointed to the following offices; Federal Legal Counsel, Deputy Public Prosecutor, Legal Advisor of the State of Pahang and later of Johor, Registrar of the High Court of Malaya and Chief Registrar of the Federal Court of Malaysia.

In 1965, at the age of 37, HRH Sultan Azlan Shah was elevated to the Bench of the High Court of Malaya, hence becoming the youngest judge in the Commonwealth. He was appointed as the Federal Court Judge in 1973, Chief Justice of the High Court in 1979 and Lord President of the Federal Court of Malaysia in 1982.

On 1 July 1983, HRH Sultan Azlan Shah was appointed the Raja Muda of Perak (Crown Prince) and 2 years later, installed as the 34th Sultan of Perak. HRH Sultan Azlan Shah become the ninth Yang di-Pertuan Agong of Malaysia from 26 April 1989 to 25 April 1994.

The higher institutions of learning in Malaysia have also benefited from HRH Sultan Azlan Shah's contributions. Among the many positions entrusted upon him; Pro-Chancellor of Universiti Sains Malaysia (4 October 1971 – February 1984), Chairman of the Higher Education Advisory Council (1 November 1974 - 31 October 1976) and Chancellor of the University of Malaya (since 8 February 1986.)

HRH Sultan Azlan Shah was awarded an Honorary Doctorate in Literature by the University of Malaya in 1979 and an Honorary Doctorate of Law by Universiti Sains Malaysia in 1980.

His outstanding achievements were also recognized by foreign universities; the University of Nottingham conferred on him an Honorary Doctorate of Law in 1986, followed by the "Honorary Bencher" awarded by Lincoln's Inn, London in 1988, Honorary Doctorate of Law by Gajah Mada University, Indonesia, Brunei Darussalam University and University of Chulalongkorn, Thailand all within the year 1990. In 1991, he was awarded an Honorary Fellowship of the Royal College of Surgeons of Edinburgh.

President of the Court of Appeal, Tan Sri Datuk Haji Abdul Malek dies

by Web Reporter

The President of the Court of Appeal, Tan Sri Datuk Haji Abdul Malek bin Haji Ahmad passed away peacefully on 31 May 2007 evening about 11.30pm at the Kuala Lumpur General Hospital, where he was receiving treatment for brain tumour. He was 62.



Ahmad has in his many years on the B e n c h demonstrated the right judicial qualities and temperament. He whibited judicial ence and integrity, and

"Justice Malek

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Tan Sri Datuk Abdul Malek was born in Singapore on 28 July 1944. He had his primary school education at the McNair School and Secondary school education at the Raffles Institution in Singapore. He read law at the Inner Temple, London and was called to the English Bar in November 1965 after passing his Bar Finals before reaching the full age of 21 in May 1965. He obtained his Certificate in Legislative Drafting from the University of Ottawa, Canada in 1973.

He began his career in the Judicial Legal Service as a Magistrate in Kuala Lumpur in February 1966 and from there on he served in various positions.

At 40, he was one of the youngest to be elevated to the High Court Bench on 1 January 1985, having served in Kota Bharu, Ipoh and Kuala Lumpur. On 1 December 1995 he was elevated as Court of Appeal Judge and on 1 May 1999, appointed as the Judge of the Federal Court Malaysia. Appointed President of the Court of Appeal, Malaysia on 12 July 2004, The Bar Council Malaysia in welcoming the appointment said:

has exhibited judicial independence and integrity, and enjoys widespread respect from the Bar and those who are familiar with the functioning of the judiciary in Malaysia. His proven ability, reputation, standing, seniority and experience (all of which are criterias which the Bar consistently advocates to be relevant to judicial appointments and promotions) make him well suited for this important position. It remains for him in the years to come to draw on these qualities in introducing the necessary changes and improvements to the system in a way that will restore public confidence in the judiciary. This appointment augurs well for the future of the judicial system in Malaysia."

In 2005, he made history by being the first and only Malaysian to be appointed the Honorary Overseas Bencher of the Honourable Society of the Inner Temple, London. Hence joining the ranks of distinguished international jurists such as Richard Goldstone of South Africa, Patrick Chan of Hong Kong, Yong Pung How of Singapore and three members of the US Supreme Court; Anthony Kennedy, Stephen Breyer and Antonia Scalia.

Chief Justice Tun Ahmad Fairuz Sheikh Abdul Halim paid tribute to "an old and close friend", and described Tan Sri Malek as a dedicated and hardworking judge whose death has left "an irreplaceable void" in the judiciary. "He was a true gentlemen and his death is a great loss for us," he added.

The Malaysian Bar shares the loss and extends its deepest condolence to Tan Sri Malek's wife Puan Sri Datin Hajah Roziah, his six children and family.



Puan Sri Roziah Sheikh Mohamed sprinkling flowers on the grave of her husband

Kuala Lumpur Young Lawyers 'Open Day' at the new Courts Complex, Jalan Duta

By the Kuala Lumpur Bar -Young Lawyers Committee

he Practice Management Unit of the KL Bar Young Lawyers Committee (KLBAR-YLC) organised an informal 'Open Day' at the new Kuala Lumpur Courts Complex at Jalan Duta on 18 April 2007.

The 'Open Day' was attended by approximately 150 members and pupils in chambers. Also in attendance were the President and Treasurer of the Malaysian Bar, Ambiga Sreenevasan and George Varughese respectively and the Chair of the KL Bar Pupils Welfare Committee, Richard Wee.

Although the open day was an "informal actirity" one organised for the benefit of the KL Bar YLC, many other members took this opportunity to turn up and view the new court complex for themselves.

The objective of the 'Open Day' was to allow members and pupils in chambers to familiarise themselves with the layout of the new court complex and its surroundings areas. The event kicked off at 4pm with the Chair of the KL Bar YLC, H R Dipendra thanking members who were present for the event.

He also outlined the efforts taken by the Bar Council Task Force and the KL Bar Committee on the Court Relocation to ensure the transition process to the new court complex was conducted in a smooth and efficient manner.

Members were also informed of the available parking options and reminded to regularly visit the Malaysian Bar and KL Bar websites for updates and details on how to address any issues of concern.

Afterwords, Members were led to a tour of the new complex beginning on the 5th Floor where the Bar Rooms were located. Members were also able to see the inside of the courtrooms as well as the Judge's chambers.

No doubt, there was a lot of walking to do and despite the air conditioning not being fully functional in certain areas, members took the tour in their stride and in good spirits and all were able to gauge the sheer size of the new court complex.

Naturally, the "tour" ended at the court canteen where no doubt, many a member will, in the coming days, enjoy his or her cup of "teh tarik" and "nasi lemak" after a hard day's work.

It seems that the members and pupil in chambers were pleased at the efforts taken to alleviate any problems that arises due to



the relocation. Nevertheless, a majority of the members expressed their reservations about the adequacy of parking facilities and the smooth efficiency of the overall system.

Some members also expressed concern that they will find it difficult to move from one court to another given the sheer size of the new court complex and the general location of the Magistrates and Sessions Courts.

As for the inadequacy of signage, both inside and outside the courts, the Bar Council Task Force and KL Bar will look into these problems as expeditiously as possible.

Despite the above, members were impressed with the beauty of the new court complex and the 'Open Day' which lasted a little more than one hour was generally well received by the members and pupils in chambers.



Genga - champion of workers' rights

As a practising lawyer, he would stick to the same principles – he only represented trade unions and employees. He had little or no time for employers or their briefs.

Lumpur High Court Judge Justice Datuk K P Gengadharan Nair passed away peacefully about 10 this evening 21 April 2007 after a short illness at the Subang Jaya Medical Centre.

He was 63, and is survived by his wife, Datin Devi Gengadharan and son, Sashikharan Nair.

The cortege will leave 71, Jalan 17/22 PJ at 3.30pm tomorrow for the PJMC crematorium in Kampung Tunku for funeral services at 4pm.

Justice Gengadharan was appointed a judicial commissioner in May 2003, and elevated to be a High Court Judge in January 2005. His first posting was to the High Court at Johor Bahru.

Prior to that, Justice Gengadharan had been at the Bar for more than 32 years, being called to the Inner Temple in July, 1972 and admitted as an Advocate and Solicitor of the High Court of Malaya in June, 1973.

Before embarking on his law studies, Justice Gengadharan was a secondary school teacher in Selangor and Kuala Lumpur from 1965 to 1966, and a part-time teacher in London between 1970 to 1972. He was also a Paul Harris Fellow of Rotary International, and the President of Damansara Rotary Club for 2002/2003.

As a member of the Malaysian Bar, Justice



Gengadharan took an active part in the activities of the Bar. He was for many years up to 2002 a member of the Industrial Court Rules & Practice Committee of the Bar Council. He also sat in the Bar Council's Special Committee on Review of Chambering in 2002.

R. Nadeswaran, the champion of citizen's rights paid a glowing tribute to Justice Gengdaran as the champion of workers' rights when he wrote the following obituary in The Sun.

"I knew him as an industrial law expert and as a member of the Rotary Club of Damansara, where he played an active role for over two decades. His close association with the club came to a premature end when he was elevated to the Bench in Johor Baru in 2003.

Genga was a trained teacher. Having served as an educator, he sought to reform the profession and he did it with passion. The tumultuous days of the confrontation in the late Sixties between the government and what was then the National Union of Teachers (with neither party wanting to give concessions) on pay scales and salaries brought him to the forefront.

That ongoing dispute resulted in teachers boycotting extra-curricular activities in 1968 as a sign of protest that their case was not being viewed seriously.

It was about that time that Genga packed his bags and returned to England, where he was trained as a teacher at Brinsford Lodge.

His English homecoming this time around was to train as a lawyer and then to return home and fight the injustices against the working class.

After being called to the English Bar, he returned to Kuala Lumpur and chambered with D.P. Xavier – a prominent labour lawyer in those days.

With Xavier as mentor, Genga quickly established himself as an expert in industrial law, especially with his trade union background.

As a practising lawyer, he would stick to the same principles – he only represented trade unions and employees. He had little or no time for employers or their briefs.

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To the many who knew him before he donned his robes, Genga continued with the same vigour and principles as a trade unionist, continuing to assert workers' rights, However, this time around, via a different platform – the courts of law.

Genga chose his friends carefully and his social life evolved around this small group. It was through this close-knit group that I first met him and on occasion, sought his views on issues that I was working on.

As usual, his remarks were measured and to the point.

He was a man of few words, though not reserved, and he made his views clear but not loud, and above all, he listened before making his stand.

He took the same approach and applied the same principles when he first sat on the Bench as a Judicial Commissioner in Johor Baru in 2003.

A staunch advocate of the Common Law system, he believed that a good judge should be a good listener and adhered to the maxim "a much-talking judge was like an ill-tuned cymbal".

Lawyers described him as a patient judge, who gave them every opportunity to make their case. Society has lost a man who, till the end, never gave up on his principles – there'll be no compromise on workers' rights.

On the Bench, he continued to be a balancing force, and the many judgments he wrote attest to this attribute. May God bless his soul."

The Malaysian Bar mourns the passing away of a great member turned judge, and extends its deepest condolence to Datin Devi and family.



We rely on your contribution



Praxis depends on you for contributions to make it a valuable resource.

State Bar Committees are also reminded to send in updates of events and regional happenings of the Bar.

Original research, reviews of legislation, case analyses, papers on matters of topical interest to legal practitioners and seminar papers written as articles are all welcome.

Contributions and enquiries should be directed to: articles@malaysianbar.org.my



Malaysia's oldest practising lawyer Sonni Pillai dies

by Biliwi Singh

alaysia's oldest practising lawyer Sonni Pillai passed away on June 18, at aged 85.

PARTY WALLES

Born in a small provincial town outside Rangoon Burma in 1923, he followed his father – a barrister of the Inner Temple to Penang following the Great Depression.

After his Senior Cambridge he went back to Burma and attended Rangoon University where his contemporaries were the likes of Aung San (the father of Aung San Suu Kyi - Nobel Peace Laureate and Myanmar's Democratic Leader)

With the outbreak of the Second World War, he was sent to Ceylon where he came under the tutelage of Sir Ivor Jennings - the great constitutional law scholar.

Immediately after the War, whilst London was still reeling under the impact of Nazi bombings, Sonni entered Gray's Inn to pursue his law studies and passed out in 1950. Upon his return to Malaya he chambered with Thomas Conaghan and after his call to the Bar he joined his father's firm of Pillai and Eng Chiang. One of his closest companion from early practice till towards his end was Supreme Court Judge; Eusoffe Abdoolcader. They had a lot in common especially their love for Latin.

After many years at the Bar, Sonni accepted the offer of Crown Counsel in Hong Kong for two years. Upon his return, he teamed up with Lorrain Osman of the Bank Bumiputra Berhad fame and later left for Penang again to practise with



the firm of Ng Ek Teong & Partners. He then left the firm for a stint with Arab Malaysian Bank Berhad as the head of legal department. He resumed practice in Kuala Lumpur and continued till the end.

One of the sad episodes of his life was when he was declared *persona non grata* by the regime in Myanmar in 1982 which prevented him attending his mother's funeral in Rangoon. He always had a soft spot for Burma and said that if there was one place he would want to be it was there.

Selangor Bar were very fortunate to have interviewed him for our magazine *Ad Rem*. He reluctantly granted the interview mostly due to his failing health. The interview and subsequent joint editing of the script took some time but we managed to conclude it just weeks ahead of his demise. After reading the first draft, his comments to the Editor was that he did not deserve the accolades and he quoted W B Yeats... "an aged man is but a paltry thins, a tattered coat upon a stick."

Well he wasn't paltry and he wasn't tattered. He was the quintessential barrister from a different era.

Skin splits on first stroke!

by Rajen Devaraj (Executive Officer)

s we sat in the room watching the prisoner quiver as he received one stroke after another, it made absolute sense why the resolution calling for the abolishment of corporal punishment was unanimously passed at the recent Bar AGM.

Several weeks ago, the Bar wrote to the prison authorities for permission to view their DVD on how the punishment of whipping was meted on convicts. It was understood that the DVD was being shown at schools by the Prisons Department to deter crime.

Our request was allowed and a delegation from the Bar Council visited the Prisons Head Office in Kajang today. The Bar President, Ambiga Sreenevasan led members of the Bar Council Human Rights Committee and Kuala Lumpur Legal Aid Centre.

We were welcomed by Supri Hashim, Senior Enforcement Officer (Security Department) and other prison officials. Ambiga thanked the authorities for putting the session together. She said that the Malaysian Bar was against the whipping punishment and wanted to see it abolished. However, we understood that this was a matter of government policy and that the prisons were merely doing their job as provided for by law.

The DVD was very graphic indeed. It showed the prisoner being medically examined before being tied firmly to a frame by his hands and legs. He is held down by prison officials. His naked buttocks are exposed. Then, powerfully-built official takes a huge swing of the whip from left to right and then upwards above his shoulders before extending it downwards

onto the rear of the prisoner. Immediately, the skin tears and blood is drawn. In reflex, the buttock muscles of the prisoner strain as an automatic reaction.

Some prisoners shown in the DVD only received a single stoke, but there are those that received up to ten strokes. It was rexing watching the skin break more and more as one stoke after another is delivered. Bit and pieces of flesh can even be seen flying around.

During the whipping session, a medical officer is present to ensure the prisoner is able to continue with the punishment. Under the law, whipping cannot be carried out in instalments and if the prisoner cannot carry on, the whipping stops indefinitely even if all strokes ordered are not meted.

After the screening of the DVD, we had a question and answer session with the prison officials. It was productive to learn about issues surrounding corporal punishment, rehabilitation and in general, prison conditions.

Ambiga inquired if this was the same DVD that was being shown to



schoolchildren and questioned if it was wise to expose schoolchildren of tender age to such gory footages. We were informed that it was the same DVD being screened in schools but only for the students of Form 4 and above. The Ministry of Education approved the initiative. However, it is heartening to note that they would not be screening the DVD any further. We envisage that the numerous complaints by civil society have led to this decision. Instead, the Prisons Department will emphasise their rehabilitation programmes through an educational DVD.

Chairperson of the Human Rights Committee, Edmund Bon asked if there has been any documentation on the longterm side-effects of whipping such as impotence. The officials did not seem to think so as there had been no complaints, but readily admitted that there had not been studies to examine this issue in a comprehensive manner.

Supri disagreed with Edmund that whipping did not have a deterrent effect, citing statistics that the number of repeat offenders entering the prison system is

continued on next page

IBA President impressed with Malaysian Bar's role in society

am impressed", that probably summed up what the President of the International Bar Association (IBA), Fernando Pombo said at the lunch given in his honour by the Bar Council about the role of the Malaysian Bar in our society held on 24 April 2007.

Earlier, Fernando who is here for a one-day visit en route to Singapore called on the Malaysian Bar President Ambiga Sreenevasan. Former President of the Bar, Sulaiman Abdullah was our representative in attendance.

In his short speech, he acknowledged the role of the Malaysian Bar in the Malaysian society to which he considered as very impressive.

He also gave a brief introduction of the IBA as the world's leading organisation of international legal practitioners, bar associations and law societies.

The IBA also has a Human Rights



Lim Chee Wee (Secretary), German Bejarano (Spanish Ambassador to Malaysia), Ambiga, Fernando and Sulaiman

Institute where the principal function of the institute is to promote, protect and defend human rights and the rule of law.

Describing the IBA as a well-organised

international body, Fernando said the IBA has the capacity to handle pro-bono work and conduct educational programmes such as collaborating with a university college in London on a LL.M programme for practitioners who have ceased from practising but interested to join the practice again.

Currently the IBA is also looking into programmes with corporate lawyers as well as determining ways to fight corruption.

Lastly, he invited everyone present and members of the Malaysian Bar to the IBA Conference in Singapore, held on14 to 17 October 2007. The conference anticipates the participation of more than 3,000 lawyers from all over the globe and

will be officiated by Singapore's Minister Mentor, Lee Kuan Yew.

Also present at the lunch was the Spanish Ambassador to Malaysia, German Bejarano.

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reduced. Nevertheless, it was conceded that there are no written guidelines or rules on the manner of carrying out the punishment such as the extent and height of the swinging arm as well as the severity of the swing. The only condition is to ensure that the whip hits the rear of the prisoner.

To my question on the use of different

whips for different crimes, it was clarified that the type of whip used and force exerted to mete the punishment differed in respect of white-collar crimes, juvenile offenders and Syariah offences. Whipping in relation to these three categories were not as severe.

We came away from the discussion and screening of the DVD and the discussion with a much better understanding of what whipping punishment entailed. Having seen with our own eyes the terrible pain and harm inflicted by this form of punishment, we are more convinced now than ever that it is time for whipping to be erased from our statute-books if we are to be regarded as a civilised nation. Statesanctioned violence only breeds more violence in society as our peoples are imbued with a high level of tolerance for aggression in their daily lives.

"I can be convinced, but I want to do it in the proper way", says Nazri

by Web Reporter

e facto Minister of Law; Datuk Seri Mohd Nazri Aziz said today he could be convinced about the setting up of an independent judicial commission on the promotion and appointment of judges, but only he wanted to do it in "the proper way".

\$ 44-44-44 Hall

"The proper way", Nazri said would mean getting the agreement of the judiciary before any amendment to the Constitution could be tabled in Parliament because to do that would be tantamount to the executive interfering with the independence of the judiciary.

Nazri added that the Bar need to engage the judiciary in this matter and that it was not possible for the Chief Justice to work with the Bar Council if the latter would always make negative and sarcastic remarks about the judiciary.

He explained that the current excellent relationship between the Council and the executive is because of engagement between the two parties.

Nazri said this in an uninhibited debate entitled "There is a need, in Malaysia, to establish an independent Judicial Commission in relation to the promotion and appointment of judges" with Member of Parliament for Kota Bharu, lawyer Datuk Zaid Ibrahim at the Bar Council Auditorium. The debate, attended by about 220 people, was moderated by former Court of Appeal judge, Datuk VC George.



Malaysian Bar thanks Nazri

President of the Malaysian Bar, Ambiga Sreenevasan took the opportunity to thank Nazri for making the the amendment to section 46A of the Legal Profession Act, 1976 happen.

Ambiga added that the Bar Council has



always advocated the setting up of the judicial commission, and that following the debate, the Bar Council would be forwarding

memorandum to the Chief Justice and Nazri in this regard.

Ambiga also highlighted; "the Judiciary is an institution of the highest value in every society" as declared in the 1997 Beijing Statement of Principles of Independence of the Judiciary in the LAWASIA Region which was endorsed by former Chief Justice, Tun Eusoff Chin.

Ambiga also thanked Ranjit Singh and Raslan for helping to arrange for the debate.

Zaid speaks for the proposition



In the debate, Zaid who spoke for the proposition started the ball rolling by saying this motion is not a new subject, and that he had

heard it 6 years ago and could be longer with not much success, and that we should continue with it.

He said when he was younger, his favourite band was Dire Straits, and dire straits means a hopeless situation and that is how he would describe the state of our judiciary for the last 20 years.

He said this is because the judiciary which is in dire straits is seen as an extension of the government department. The recruitment of judges, he said, in the last few years is like a government department. More than 80% of the judges are Malays, and it is just like a Malay department, adding that he has no problem with that if selection process is transparent and the criteria for selection are known.

"The Chief Justice clamed he has consulted a lot of people, so he does not need to explain the basis for his decision. But that is what integrity and transparency are all about - to explain and justify. But we do not have that in the judiciary. There is also talk about corruption in judiciary - not among lawyers but also by inside people," said Zaid.

He said Syed Ahmad Idid put it openly. Idid who made serious allegations also named names some 10 years ago. Even the former Attorney General, Tan Sri Abu Talib said in one of his interviews that there was no investigation.

He charged that now we have questionable decisions made even in corporate cases like the *Ayer Molek* case and the conversion cases which have also caused concern among lawyers and the public.

Being mindful of what the Chief Justice said recently that slanderers are worse than murderers, he asked how could that be possible when we lawyers have no ulterior motive, and we say it because we want to see what is good for the people, the government and the judiciary.

"We are concerned because the best people to know about the judges are the lawyers."

Zaid said Nazri could make his mark by persuading the government to have this commission - to select the best among us. The best, are the qualified lawyers, good scholars and those with integrity and courage.

He explained we could do that if we have an independent commission. What is so difficult about the commission? How will it take away anything except to make it more transparent and accountable? "If South Africa, a newer democracy can do it, how come we cannot do it?" he asked.

It is beyond one man to pick the judges. We need a structured organisation. We need people to vet through the applications as even with qualifications we have messed it up, Zaid said, referring to the appointments of Datuk Dr Visu Sinnadurai and Dr Badariah Sahamid.

"If we cannot get the minimum qualifications right, how do we expect to get it right on character?" he asked.

Good judges are good for the government. Good judges are good for the country. He said one may say this is a view of the minority.

But citing examples showing otherwise, Zaid said after the Tun Salleh Abas crisis, Tun Suffian lamented that it would take a generation for the judiciary to recover. In 2001, Tun Dzaiddin said public confidence in judiciary was at its lowest point.

Nothing has happened since 2001. He also quoted what Datuk Shaik Daud had said that it used to be that tinting of judges' cars is for security reason, but now it is to hide their embarrassment.

He also referred to the recent statement by the SUHAKAM Chairman, Tan Sri Abu Talib who said the courts have failed to interpret the constitution. The most damning evidence of the deteriorating state of judiciary, he said, actually came from Nazri himself.

Zaid elaborated that on April 11, Nazri was reported to have said that it is in his opinion that the government requires the

setting up a commission to study the question of conversion so that these conversion cases can be settled in the extralegal manner especially when children are involved.

Replying to Karpal Singh on the *Lina Joy* case, Nazri said the decision is difficult to make as it is very sensitive and we have to consider the consequences. If it is made in the right decree, the acceptance may be difficult. Zaid also quoted Nazri as saying a judge of certain faith will be labelled biased if he makes a decision favouring that faith.

"What does it say? That the government itself is not sure if our courts were to decide according to law, which they are supposed to do, there may not be acceptance? There may be serious consequences?" Zaid asked.

Zaid said one cannot run away from making decisions by constitutional means especially when we have already taken away so many things from the courts.

"If we take these sensitive cases away from the courts too, what is there left for the judges to do?" he asked.

We have to face the hard facts. We are not the only country or society which have difficult cases or issues to deal with. But in all those countries where there is democracy and stability, Zaid said, the courts have that role to play and people accept the difficult decisions made the courts, citing the controversial case of excavating the Babri mosque in India where the decision of courts saved the day for India. In America, Zaid said the Supreme Court did not shield President Nixon when Justice Warren Burger ruled that executive privilege does not protect or hide the president's wrongdoing.

Similarly, the US Supreme Court ruled in Brown v. Board of Education, 347 U.S. 483 (1954) on the constitutionality of segregation laws, saying we have to be equal as we cannot be separately equal.

Judges are therefore a different breed of people. If the public have confidence in them, they can bring stability to the country. In this country, Zaid said, there is an extremely lack of confidence in our judiciary. He alleges that the government has no confidence too and that is why they are keeping a closed eye.

He said, if this government can established a way we select and promote judges and restore the people's confidence in the judiciary, the government will go a long way in fulfilling a part of our promise to the people.

Nazri speaks against the proposition



Nazri pointed out that in dealing with the conversion cases first, Nazri said it is not about people not having confidence in the judges. It is all about

Article 121. He said in this country, whenever one of the parties happens to be a Muslim, the judges have no discretion except to decide that the case has to go to the Syariah Court.

"The problem is with Article 121, and not because people have no faith in the judges", stressed Nazri.

"Why I said the Commission (proposed special commission for religious-sensitive matters) has to be set up to look into this is because matters like this are personal, emotional and controversial and whatever

decision should not be made public", said Nazri.

In the Subashini case, he was of the opinion that the children should be given back to the mother.

"When they got married, they were Hindus and that there was a constructive agreement that any children born in the marriage would be brought up as Hindus. But suddenly he converted to Islam and took away the two sons from the mother and he wanted to convert the sons to Islam too.

"This is not fair. If you take this matter to court just because one of the spouses is a Muslim, the Federal Court has no decision but to say that this is under the jurisdiction of the Syariah.

"That is what I said it should be extra legal. Once it is decided on legal matters, it is a goner for the wife. This is what I meant," said Nazri adding that it is not because he has no confidence in the judges but because he felt for the good of the children.

He said that explains the need for the commission consisting of chief priests of every religion, probably with the Sultan, being the head of the Islamic faith in every state, as the Chairman.

"Let them decide extra legally and there is no need to reveal. Justice can then be done without taking the matter to court. The moment it is taken to court, Article 121 will come into play," said Nazri.

Nazri also emphasised that this is a system we have for a long time since independence. He said there were no complaints during the years after independence in the 60s and 70s. But today we are more vocal, forthright and and not afraid to say our piece. Hence, there is some unhappiness with the appointment of judges. But that is not because of the system, it is because of individuals, "why must we throw away the system when one may not be happy with the choice made by the Chief Justice," Nazri asked.

"Are you telling me that everyone is going to be happy with whatever decision made by the commission? No way. You cannot get 100% approval from the public", charged Nazri.

Nazri said it is a question of choice of the public, but it is not the choice of one person. If one looks at the Constitution, Nazri said appointment can only be made by the king on the advice of the Prime Minister after consulting the Chief Justice and the Conference of Rulers.

He said if one knows the system, one ought to use the system. It is not just one person - the Prime Minister, the king (even though he acts on the advice of the Prime Minister), 9 Malay Rulers and the Chief Justice. So, there are actually 12 important people who are responsible for appointing the judges in the courts.

"If that is an easy thing for the Chief Justice to do, I am asking you why until now the Chief Justice is not able to appoint the successor to Tan Sri Siti Norma Yaakob who retired on 5 January this year as the Chief Judge of Malaya," he asked.

"If it is so easy - if you think that the Prime Minister will just accept any name given by the Chief Justice, if you think the Malay rulers would accept any name given by the Chief Justice, then her successor would have been appointed", said Nazri.

"Why? Why?", Nazri asked, revealing that there are difficulties at the moment. Because there are clever people who don't attack the system. They look at the system, and they went direct.

"Some went to the Prime Minister, some went to see the rulers and gave their opinions. That is why until now the Chief Justice has not been able to appoint because it is not what you say a smooth ride. Because the names given by the Chief Justice - one or two - probably I do not know - not accepted by the Malay rulers. I do not know. May be the Malay rulers asked for more names or may be the Prime Minister wants to see more names, not just one or two which the Chief Justice has given to him," Nazri added.

"The present Prime Minister takes things seriously. He just does not accept any name given by anybody, even from me", said Nazri.

Nazri related that when he had a few appointments to be made to certain boards, the Prime Minister had asked for more names when he gave him the names.

"Here, what I am trying to say is that it is not system. Even if we have the commission, what if the individuals are not up to our expectations?

"As I have said, they can also do things which we may not be happy about. That is why what we are thinking about is not to change the system.

"The system has served us well for many years. You mentioned various names whether they are in the executive or judiciary. Actually, the problem is the individuals. So, you don't like what the individuals did and so you want to change the system to the new system.

"And in the system, there are still things you are not happy with, like things done by the commissioners. So, let us change another system? I am saying here it is not the system. The problem is the various individuals who hold the posts.

"In my opinion, because it is the individuals, we must be smart enough to use the system. As I have said, you can always go and see the Prime Minister or the Sultans and give your opinions. They will listen to you. That is why today after 4 months, the Chief Justice is not able to appoint the CJM, probably because there is a problem with the names of the nominees given by the Chief Justice," Nazri said.

Therefore, Nazri said it is the right of the Bar Council members and lawyers to go and see the Prime Minister.

He went on to say it is not fair to talk about the independence of judiciary and independence of the 3 branches of government if in Parliament, the Leader of the House has the right to appoint anyway he likes and the Prime Minister is given the liberty to appoint the cabinet ministers. Why should similar right not given to the Chief Justice?

"I think we have not been fair to the judiciary. If we allow the Leader of the House and the Prime Minister to do it, and when it comes to the judiciary, we must have the commission, I think it is not fair," said Nazri.

He asked how independent can the commission be when we talk about

constitutional monarchy in this country. They will always be beholden to somebody.

"Where do the judicial commissioners come from? If they say they come from heavens or God has appointed him, then they are independent. But in this country, the king is not an absolute monarch.

"I find it difficult that we can actually have a commission which is really independent, independent in the sense that we all want and understand.

"In my opinion, the system shall remain as it is. What is important here is to convince me is true like what Zaid said. I still need to be convinced. But no problem. Even then it is not important whether I am convinced or not.

"I think the person you should have called to appear here is the Chief Justice. Not me", said Nazri.

Nazri said he hoped when we talk about the independence of the 3 branches of the law, we do not talk with forked tongues.

"In one instance, you will accuse me from the executive interfering with the judiciary the moment we have the commission.

"I do not want people to be hypocrites. If we say we want the judiciary to be independent, we must practise it. And I intend to practise independence of the judiciary from the executive.

"I intend to do it. For as long as I am the Minister, I want to stand up with confidence in Parliament to say that the judiciary is independent.

"But if today I agree with you and I would start the motion to have this - I go back to the cabinet and convince the cabinet members and then we have a bill for this commission - then I think it is the executive interfering with the judiciary', Nazri said this at the end of his speech.

Zaid replies



In reply, Zaid said he had difficulty at the conceptual level.

'Let us talk about independence. Surely, if

you table a bill, Sir, tomorrow in Parliament setting up the commission, how could that be interference?

"Only a couple of months back or last year, we submitted a bill on the retirement age of judges and it comes from the government, how can you construe that as interference?" asked Zaid.

Zaid went on to say: "As the government, you are responsible for a lot of things, including the state of the judiciary. If you find something is not right, it is incumbent upon you to change it. That is not interference in the way that you mentioned. Interference there will be like this: Let us say one Lord President who said we wanted to have 9 judges hearing this case, and you don't like that and you sack him, then that is interference!"

As regards to Nazri's assertion about the appointment of the Chief Judge of Malaya, Zaid asked why is it so difficult. He said it is exactly his point that the process must be clear as the appointment of the Chief Judge is a very important position for the country.

"So for all you know, our present Chief

Justice must have given a name which is not acceptable for a very good reason. That would not happen if we have a transparent system and if we have a proper vetting process.

"What you are asking us to do is to be involved in jockeying for positions which we are not good at. It shouldn't be for jockeying for positions. This is a position of honour.

Zaid said this is the proposal to help the government so that no one would tell you stories because like in England, India and Australia most of the judges were practitioners. Zaid said the Prime Minister is not expected to know all these details and so the Conference of Rulers.

He agreed that of course there is no assurance or guarantee that even this commission would be "independent", but he said he would worry for the country if there is no such thing.

"But this is what is happening. There is this mega superpower in control of everything in our lives and in the organs of government and this is worrying," charged Zaid.

Zaid added that we must strive if we believe in democracy, in freedom and rule of law and that there must be checks and

balances and power and authorities must have limits.

He said Julius Caesar and many rulers and people in power would not agree with this because power is very addictive. It gets better as it gets a lot more. He said that is why the founding fathers of this country have this in the constitution about

fundamental liberties, freedom and that judges must be selected with care because they are guardians of these and nobody else.

He recalled the words of Justice John Marshall in the early years of the American Independence that the greatest scourge the heavens ever inflicted on an ungrateful and sinning people is to give them a judiciary which is corrupt, ignorant and dependent.

"Based on, the Constitution is like that. The Chief Justice refers the list to the Prime Minister, but that is just formality. The actual practice in the democracy is that the real list comes at the level of the judiciary because they know best. Can you imagine if the Prime Minister selects our judges?" asked Zaid.

But we cannot have that, Zaid said because we must have limits to authority. We cannot have a government ruled by law by whatever said by the executive.



That is why, Zaid said, we must believe in independence and separation.

Finally, Zaid said while he understood why Nazri wanted to include some extra judicial means and process and religious teachers in sensitive cases, a grievance is still a grievance.

"An aggrieved party will always come to court because that is the last place.

"So, we can do all those commissions and sub-bodies or whatever you call them, when I said you must have confidence in the judiciary, you must believe that the judges we selected have that capacity, wisdom, knowledge and the understanding of the law to do justice in every case that comes before them."

Zaid concluded by saying, that is why, this process of appointment of judges is so fundamental and crucial.

Nazri responds to Zaid



Nazri said the bill he tabled in Parliament with regard to the remuneration of judges was not interference but only a matter of procedure.

He added that it was agreed by the judges and he was only the postman going to Parliament to comply with procedure.

"The judges are not members of Parliament. They cannot come to Parliament and say they want their salaries to be increased. That is not the way. And because I am the Minister in charge of law, as a humble servant, I did this because of procedure. The remuneration and the quantum were agreed by the judges", said Nazri.

"Of course, if you have the commission, it cannot just happen like that. It has to go through procedure, through Parliament again and humble servant Nazri will do it again. It is just complying with procedure as required by the Constitution", added Nazri.

With regards to Idid, Nazri said he was found to be unfit, not because he pointed out his fellow judges. Idid was found naughty because he wrote the flying letter. He did not come forward to say that he had made the accusation with knowledge of the facts. So, he was discovered, and it is uncalled for a judge to do that to his fellow brothers.

Nazri said it was not only investigated by the Attorney General, but also by the ACA. As the allegations were found not to be true, so Idid had to go.

With regard to the commission and what Zaid said it is not the nature of lawyers to jockey for places, Nazri argued that even if you have the commission, you still have to jockey for positions with the commissioners. Nazri added that there is no law that says you cannot go and see them.

"Jockeying will still be there. As long as there are humans in the commission, there is still going to be jockeying. So what I am going to say here is - to use the system.

"If you are talking about transparency, I would tell you the transparency is only in relation to the commissioners. The commissioners will not be allowed to tell the public what they have done because it will still be official under the Official Secrets Act.

"We have been a peaceful and stable country because of the Constitution. We see countries like Thailand and Burma rewriting constitutions. Why we are still functioning as a country is all because of what we have in the constitution", said Nazri.

Nazri said he does not agree with Zaid's assertion that lawyers are the ones who know the ability of the persons who were elevated to become a judge. It means, Nazri said, that the potential judges must play to the gallery, to be nice to the lawyers otherwise you would not support them.

"I am a very frank person. I am telling you straight in the face.

"If today you don't trust the Prime Minister, at least the Prime Minister before he becomes the Prime Minister, he has got to go through many stages. Zaid knowsmust be a Ketua Bahagian UMNO first, then call a meeting to be mandated as a candidate, have to stand for election and get the electorate to vote you, after that Parliament will elect you as the Leader of the House and then only you become the Prime Minister.



"He has to go through 5 stages, and so how can we say that he hasn't got the mandate to decide. That is the system and I am sure if he abused the system, he will not be there for long", argued Nazri.

"I still feel it is not wrong for the Prime Minister to make some decisions as was given to him by the Constitution because he is duly elected by the people therefore he has got the mandate. And if he does anything wrong, then he will have to face the consequences."

Speakers from the floor

The moderator then invited the floor to give their input. The following spoke:

Datuk Mahadev Shankar, a former Court of Appeal



"I have to declare conflict of interest because I am with Zaid and I support everything he does. The point I want to make is this - the

commission as I see it will not be appointing the judges. All that it will be doing will be to forward the names of their candidates to the authorities for consideration. The names they forward will be open knowledge to everybody. We don't elect our Members of Parliament in secret. They have got to file their papers. I don't see why judges who hold even more important positions should not be known beforehand that they are standing up for appointment."

Imtiaz Malik



"My comments are addressed entirely to the Honourable Minister. I fully support what Datuk Zaid has said today. I think he made a lot

of sense in his usual forthright style. I have to completely disagree with the Honourable Minister's interpretation of Article 121(1A), referred to as providing the barrier between the Syariah courts and civil courts is not a licence for lawlessness nor a licence for unlawfulness. The Minister must keep in mind that the names of Lina Joy, Moorthy, Marimuthu, Revathi and so on are going to be big blots on the reputation of this country, and this problem he refers to is not a recent one.

Article 121(1A) was amended in 88. No problem post 88. The problem started surfacing in 2000. I think the question that the public has in mind is why, and if you follow the comments that have been made post Subashini, there are a lot of complaints about the judiciary. In the analysis of the Honourable Minister, he completely overlooks the fact that justice must not only be done, but it must be seen to be done. And there is massive perception problem with the judiciary. Having said that, I'd like to thank the Minister because everything he said reinforced the need for a commission because all he has done is to show us there are grave doubts as to what is happening in the judiciary; there are uncertainties as to what is happening in so far as the appointments are concerned; and there is a personality cult apparently because the Honourable Minister repeatedly said if we have a problem with the individual then we should be addressing the individual. The problem is the individual concerned could be the Chief Justice or it could be the Prime Minister. We don't know because the way the Constitution formulation is phrased it is the Prime Minister who makes the recommendation - the Agong appoints on the advice of the Prime Minister taking into account the recommendations of the Chief Justice which means the Prime Minister could actually ignore if he saw fit the recommendations of the Chief Justice. Now the proposal for the commission - I would ask the Honourable Minister to consider the various options available. I would ask the Honourable Minister to look at the changes that were brought into play in the UK with the Constitutional Reform Act of 2005. You have the Commission there making recommendations. The Lord Chancellor can say no but if he says no, he has to give

written reasons. Now I accept Datuk Shankar's point that ultimately the appointing authority will be the YDPA. But the Honourable Minister should not be trivialising the need for there to be a restoration of public confidence in the judiciary. No explanation was given to us as to why certain judges have been promoted and certain judges have not. No explanation as to why some of the most junior judges in the judiciary are sitting in the Federal Court. These are questions which go to the heart of the administration of justice. These are questions that need to be answered. The formulation of a commission will allow for transparency -It is trivialising the suggestion. It is facetious to suggest that there will be no independence. In so saying, the Honourable Minister is saying in fact the judges of this country are not independent and that is something I cannot accept as a concept."

Chew Swee Yoke



"I remember Mr Chairman when you and Datuk Zaid and I were in the Bar Council when we were accorded the courtesy of looking at

the list of candidates for judiciary. And comprising of members, representatives all over the country were able to give our views of these candidates within the closed door. Now that was in 1970s, and it worked very well. Yang Berhormat is talking about the system which has existed since Independence. We had individuals in the system since Independence. Now there are 2 things obviously wrong with this country. One, public opinion doesn't seem to be taken into account of. Two, there is no such thing as giving credence to public conception. Now if you have these 2 things, public opinion given some say; public conception being important in the sense that Datuk Zaid has said if the public sees certain things as not being right and they express their opinions and the government takes it into account, then there is this check and balance. Now it is all very well to talk about an independent judicial commission or the system. Obviously you need to have right thinking people to do what they are supposed to do within the system. Going back to the 70s when we had the system where we (talking about the Council) were given a list and we could express our views. As Datuk Zaid has said we are practitioners (Interjection by Chairman: "Ms Chew, you have to wrap it up in 1 minute) and as practitioners we would know what has been happening. So we give you our input. We know who is qualified to be a judge, and by that we mean not just independence, right thinking, fair-mindedness. So there are so many things wrong, with this country at the moment.

Datuk Shaikh Daud



"I think the Honourable Minister is not right in saying that we can lobby the rulers because when the matter is referred to the Conference of

Rulers, it is not for their consent. They don't have to consent. It is just a courtesy to refer to them. Even if they don't consent to an appointment, the appointment can still go. Secondly, if to follow what the Minister says that there is no need for a commission, why is that the lowest rank in the judiciary i.e. the magistrates are being appointed by a commission and not the highest rank. A magistrate cannot be appointed by the Chief Justice. He is

appointed by a commission and the Chief Justice just transfers him to where he wants him to be. So if a commission is not required for judges, why do we need one for magistrates?"

Christopher Leong

\$ 44 44 HOLD



"I was very surprised but very glad to hear for the first time, the view from a serving minister that in the past that there were

individuals who were in position to make decisions that have affected the way the judiciary has run. I think the Honourable Minister and us are on the same page in the sense that - Yes - the present system places too much in the hands of an individual. The fallout from an individual being fallible is a shattering for the judiciary. That is why we are trying to move on from placing too much decisionmaking in an individual because as the Honourable Minister has recognised, they are fallible. We place the decision making process in a body of persons. We are not saying that they are not fallible because likewise they are human beings. But as in appellate benches, we always think that more than one head is better. It decreases the chance. We are not saying that moving to a judicial commission achieves perfection. We are saying it makes better what was not good. So I think we should bear that in mind. Another question posed by the Honourable Minister was; why should we deny the Chief Justice the same privilege of appointing his team when the Prime Minister does so for the executive and the Leader in Parliament does so. I think - 2 differences. One, we accept that members of the executive, politicians elected into Parliament are not independent. They are there serving certain political parties. Judges are expected

to be wholly independent. So when the Prime Minister picks his executive and his cabinet, he picks them on the basis not of independence, but purely ability. For the judiciary, it is not only ability but also independence - independence from the Prime Minister, the Yang di-Pertuan Agong and from the Chief Justice as well. So I think that is the major difference why the Chief Justice ought not to be given the same privilege of appointing his team. The second difference is appointments of judges are a life tenure. Cabinet ministers and politicians serve for a term of maximum of 5 years. So when we place people in the positions that will affect your lives with life tenure, It is paramount that you do have a transparent process in placing them there."

Lim Chee Wee



"YB Minister, for you to appreciate whether the present system is working, you should also consult the last 2 retired CJMs because when it comes to

appointment of High Court judges, the CJ ought to consult the CJM. So, the telling question is was this done between the CJ and last 2 CJMs? I leave that to you to find out."

Andrew Khoo



"In relation to what the Honourable Minister has said of why change the system since it has been working for the last 50 years. Datuk Zaid did mention the

judicial crisis in 1988. If nothing else, the need to restore confidence and integrity and independence of judiciary does necessitate to a certain extent the existence

of a some form of independent judicial commission who will eventually decide candidates to be nominated or to be presented to the executive for consent and approval for appointment to the judiciary. I find it quite interesting that the Honourable Minister mentioned something about in other countries there is a re-writing of constitutions, and do you really want it as well? May I remind the Honourable Minister that our Constitution has been amended several hundreds of times such that it is effectively a re-writing of many aspects of the fundamental provisions of the Constitution which the founding fathers put in place. Many of the fundamental liberties that were given in 1957 were sort of with provisos or now effectively taken away. Even I am surprised, I am quite disappointed, that the Minister seems to have a very fundamentally different view of Article 121 and its amendment there which again in many ways a re-writing of the Constitution. So when the Minister says oh well what do we want - do we actually want a judicial commission - why - because may be a re-writing of constitution but, well, in reality the Constitution has been re-written several hundred times."

Rusila bte Abdul Razak



"I think we all agree here that, not just us lawyers but especially members of the public, how important this issue of appointment of

judges. Can we not consider a referendum? Let the public decide. It is their lives that are at stake. So perhaps with the Minister being here, is it not possible to have a referendum done on this issue?

Ismail Ibrahim (non-lawyer)



"The Honourable Minister is correct in saying that the system we inherited from the **Brits** was constitutional

monarchy. May I correct the Honourable Minister that there is one person or several persons in this country that are totally independent. These are the Muftis. Their bosses are the God. So we are slowly, from my observation, correctly or wrongly, moving away from constitutional monarchy, covertly towards theocracy. We should stop this."

Datuk VC George



"First of I want to all tell the Honourable Minister that nobody is angry with him. I think some of us are a little disappointed. I know that

minister listens to people very carefully and it is hoped that he would have learnt something about what the Bar feels about this whole thing. And there is hope, I mean after the Minister came into power, as far as power vis-à-vis administration of justice, we saw this very refreshing breeze that came through from his ministry and our President has already made a reference to that, almost a standing ovation. We hope that he will take note of what has been said and have a re-look at the whole situation. I don't agree with Datuk Zaid regarding the question of judicial commission first came up about 7 or 8 years ago. It has been coming up from time to time from way back when I was the President of the Bar I talked to both Tun Suffian and to Raja Azlan Shah (as he then was), talking about this and they both boo booed me and I said: "Look how do

you," as you know, Minister, it is the Chief Judge who makes the recommendation to the Prime Minister, and I said, "how would you do know which are the people who should be recommended?" He said, "Well, take you for instance", he told me, probably that is how I talked my way into becoming a judge, I don't know. Anyway, he said, "take you for instance", I said, "Look, Tunku, both of you know the face that I show you. You have no idea what sort of a person I am." "But if you were to," at that time we were not talking about judicial commission, we were talking about a committee of lawyers, I said, "whenever you want to appoint somebody from the Bar, go and talk to this little committee and say who do you people have in mind and we could make the recommendations." If you went on your own, you would make mistakes. Sitting up on the bench, you wouldn't know who are the lawyers that you should even consider. And I was in an unhappy situation to be able to tell both Tun Suffian and Raja Azlan Shah, "I told you so", because of 2 appointments that they made - one appointment they made and one that they were about to make because the one they were about to make, Minister, the name was actually passed on to the PM. Some members of the Johor Bar, Dollah Rahman actually, came and told us, "Look, there is a suit for fraud" against this particular person and neither Tun Suffian nor Raja Azlan Shah knew about it. So we were were able to, I was asked to go and talk to them. I did not want to talk to Raja Azlan Shah and I went to talk to Tun Suffian but to my shock I found Raja Azlan Shah sitting there and saying, "What is a problem?" When we told him, he was appalled and he on the spot had the name withdrawn. Another appointment was made a judicial commissioner and we all know that about sometime before he was made a judicial commissioner, there was already an accusation against him for cheating the firm. I think he was eventually charged. The sort of commission that some of us are thinking about is one where names would be brought in and they would double check on the personalities and that would also go for people from the legal and judicial service because this commission would be manned by people who would be able to assess the people from the legal and judicial service. I shall pass the mike back to the Minister for his last few remarks... But, before the Minister, the President of the Bar. "

Ambiga Sreenevasan



"As I understand it, what you were saying is that if at all there has to be a judicial commission, the idea has to come from the judiciary. Highly

unlikely that would happen simply because it is very difficult for one person who has all the power of appointing to come to the government and say I want to give up that power. So that will never happen. Perhaps I could point the Honourable Minister to the Beijing Statement. That statement was endorsed by our former Chief Justice. Could I invite the Honourable Minister and I would put it in our memorandum to him - that contains the minimum standards required for an independent judiciary. In other words, if you are looking for the idea of a commission to come from the judiciary, that is where it is. It was endorsed by our judiciary, by the former Chief Justice. Those statements contain principles for the minimum requirements for an independent judiciary and clearly provide that there ought to be a system either by

way of a commission; alternatively there must be very clear guidelines and criteria, transparency in the appointment process. So perhaps, that is a starting point. I would put that in the memorandum to the Minister. It is something endorsed by the Malaysian judiciary and I think if we take that as a starting point, we are well on our way to a very transparent appointment process."

Nazri's final say

I am not here to be popular. If I want to be popular, then I will say I agree with you. Then I am sure you will give me a resounding send-off. But I am not here to be popular, and I am not afraid to be unpopular because I came to listen, and I am listening hard. And I still maintain that if you are in my position too, you want to do things properly. That is what I want to do and I intend to do. And doing things properly means that, you know, there shouldn't be any interference on my part as Minister in charge of law to impose on the judiciary to what I think is the best solution to the problem of appointment of judges. I will and cannot do it. As I said, judges are all human beings. Talk to them. Engage with them. Just as you all had problems with the executive 10 years ago. I remembered 10 years ago, I was Deputy Minister in the Prime Minister's Department in charge of law. It was a terrible time, but after that we did engage. And today the relationship between the Bar Council and the executive, is in the excellent position. In other words, you should never give up. You should continue to engage with the judges, the CJ. Don't just discount. He is also human being. If people keep on criticising day in, day out, making some remarks, sarcastic. Now, how do you expect the CJ to come and listen to you? So, if you really feel about this, go. Go and engage with him. You must never give up just like our relationship is now much, much better compared to what we had many years ago. And that is because we engaged. You took the trouble to come and see me. Ambi and Yeo, before this. I also took the trouble to open up my doors to the Bar Council members, to the Bar Committees. Only this afternoon, the Negeri Sembilan and KL Bar Committee members met me, it is all about engaging. I have got no problem with whatever system. I am not going to be a judge. So, I don't have to please the CJ. If I want to be a judge, then probably I will defend this system vehemently because if I can, the Chinese say, kao-tin with the CJ, then I will be elevated. Not just High Court judge. May be terus jadi Court of Appeal. I have got no interest in this. And I want to maintain that if it comes from the judiciary, I have got no problem. I merely comply with the procedures. I will table the bill if it comes from the judiciary because I said I want to do things properly. And because of that, you can give the memorandum. No problem. I can assure you first thing tomorrow morning, it will be in the CJ's office. It will be there because I am not going to tell him that, "Look, you should change". I won't do it. He has to decide for the judiciary. I know it is a problem, but you must not push the problem to me. It is your problem with him. I have got excellent, relationship with the CJ, with AG which we never had before. So, when it comes to this, you have to engage with the CJ. I am sure no matter how hard the person is, as it says, if you keep on, the water, keep on splashing against the stone, it erodes the stone over years. And probably you may discount him and you may engage with the next person. It won't be long and I think he is going to leave next year. Start from now. Use the system. I don't see any problem giving, asking the list from the Bar

Council, but I think it is not happening now because probably we are not engaging with the CJ. So you have to do it. If you believe that there should be a change, you should do your part - the Bar Council. Engage with the judiciary."

Nazri then went on to reply to the comments:

"Datuk Shankar, MPs, we have to be known because we are elected. People have to know whom they are electing. In Padang Rengas it is me. In Kota Bharu it is him. But judges are appointed. They are not elected. If they are elected, then probably, people ought to know also who are going to be their judges. If they are being elected, they got to know. But if they are appointed, you will know after the appointment."

"We are here seriously talking about setting up a commission, and it is important that I am the one whom you are going to convince. It is not important to me whether you are convinced or not with what I said because if I am not convinced with what you said, the system remains."

"Ms Chew, you talked about public opinion. Does public opinion mean the feelings, impressions and of only the legal fraternity? Or public opinion means the public on the ground. Are you saying that one voice of the lawyer equals to one thousand voice of the ordinary people? It is not. So, public opinion means the whole public. And you know the opposition has brought up this matter not in 1 election, 2 elections, but 4 or 5 elections, talking about how they were not happy; they were not happy with the system. And yet every time we stood for election, we were returned with a strong majority. So what is public opinion? Are you saying that it is important what people on the ground, those kampung people, what they think...ah they don't know lah, they just vote? Are you belittling their opinion? You think they don't read papers? They don't read what is written in the papers all this talk about unhappiness with judges? Do you want to say that, you know, they are common folk? When you talk about public opinion, to me, it means the general public. And if they buy your story, if they bought your stories in the past, they would have registered votes against us. So, which public opinion you are talking about? And as I have said, in every elections, they have



raised this. So, to whom do we listen? Is one lawyer's voice equals one thousand common people's voice? So, you talk about public opinion, again it is the general public. And they keep on coming to the courts to register their cases. There has never been a drop in a number of cases registered with the courts - from magistrates' until the higher courts. There has been increase. Of course, you say that, you know, there is no choice. But there is a choice - arbitration or you go settle out the court but people still go to court in spite of the "crooked" judges that we have, said by you. So what I want to say here is that, do not under-rate the general public in voicing their opinion. When you talk about public opinion, it is not just the opinion of lawyers but the opinion of the general public."

"Datuk Shaikh Daud, you said that, you know, the Sultans, consulting them means just informing them. It is not. I am aware, but I am not at liberty to tell you what is happening now. But for you just to think it is such an easy thing to do, to appoint a CJM, it would have been done in January because Sultans do not regard that consulting them means just informing them. And the Prime Minister does not just accept any names given. That is why there is a delay. And we say the Sultan is just a constitutional monarch, but try and go to the ground. The Malays are feudal people. Even though the Sultans are just

> constitutional monarchs, but Sultans have a say. And being feudal, being people who respect their Sultans, it means a lot to them even though these are constitutional monarchs. But in actual fact, we listen to them. It is not easy, Datuk, to deal with the Sultans. This is special system in our country because when it comes to the Sultan, it is different. Even though I am the Menteri Besar, what the Sultan says

does count. So, do not say just because they are constitutional monarchs, we can do simply what we like. In reality, it is not like that. Magistrates and Sessions Court judges, are of course in legal service, and that is why they are appointed not by the Chief Justice. It is not because we don't trust the Chief Justice. It is because they can interchange - they can become DPPs, they can be in the administration, etc. Magistrates and Sessions Court judges are appointed by the AG's Chambers.

"Christopher, you got strong points about what you said about judiciary is not the same as Parliament, legislative or executive. So you should go and engage with the judges, with the judiciary. I agree with you

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Unauthorised Persons - Public Beware!

4-22-44 M. HOLD

by Cindy Chan (Executive Officer)

The Bar Council has, from time to time, received reports regarding individuals, firms and companies who pass themselves off as being authorised to offer legal services to the general public or who masquerade as licensed Malaysian advocates and solicitors.

Pursuant to section 37 of the Legal Profession Act 1976, *inter alia*, any unauthorised person who acts as an advocate and solicitor or an agent for any party to court proceedings or willfully or falsely pretends to be, or uses any name, title or description implying that he is fully qualified or authorised to act as an advocate and solicitor shall be guilty of a criminal offence.

One of the most common e-mail scams today is in the form of an invitation sent out under a "lawyer's" or "legal firm's" name, sometimes completely fictitious or "borrowed" from a registered firm, inviting the potential victim to participate in a scheme whereby they stand to inherit a huge sum of money from deceased clients who bear the same surname of the individual, if the said individual consents to be named as next-of-kin.

Once the potential victim shows interest, official looking "court documents" are forwarded as proof that the deal is legitimate. Prior to release of the funds, the victim will be asked to deposit several thousand dollars as an "administrative fee" payable to the Malaysian Government into a specific bank account.

To illustrate, below is an an e-mail sent by one Frank Lee of M/s Abdul Aziz & Co. and documents used in the scam.

The Bar Council is concerned at the growing number of such reports being received, many from foreign nationals and

advise members of the public to check with the Bar Council's Secretariat at council@malaysianbar.org.my on the status of the lawyer/firm should you receive a similar e-mail or if you are uncertain as to the status of the lawyer/ firm

Listed below are a number of unauthorized persons/firms/companies against whom police reports have been lodged and members of the public should seriously take due notice of the same:

- 1. A M Chiw & Co.
- 2. Abdullah Mustapha of M/s Mustapha and Associates
- 3. Abdullah Said, Aisha Mariams Mohammad and Krishna Subramania of Abdullah & Co.
- 4. Abu Razak of M/s Abu Solicitors
- 5. Ahmad Salim of M/s Ahmad Salim Law Chamber
- 6. Ambi Sheng of M/s Ambi & Associates
- 7. Ari Krishna Raju of Corporate Resource Consultants
- 8. Armanath a/l Subramaniam of M/s G.S. Hullon & Associates
- 9. Bavanee a/p Subramaniam of M/s Bavanee & Associates
- 10. Bernard Lee of M/s Bernard Lee & Co.
- 11. Chew Wong
- 12. Choo Weng of M/s Weng and Associates
- 13. Chung Lee & Associates/Notary Public & Solicitor
- 14. Coulibaly Johnson of M/s Coulibaly & Ahmad Chambers
- 15. Darshan Singh of Kahar Jaswant & Partners
- 16. Edward Williams
- 17. Farisha Arwati bt Ahmad
- 18. FD Management & Services dan Legal-Ink Services
- 19. Foo Cheng Donald of M/s Donald's Law Chamber
- 20. Frank Lee of M/s Abdul Aziz & Co.
- 21. Gazali bin Abd Hamid
- 22. Hardial Singh Sekhon
- 23. HJ Hamdan & Lim, Advocates & Solicitors Co.
- 24. Huang Seng of M/s H S Attorney Law Firm
- 25. Jin Shen Chembers
- 26. Kassim Ahmad of Wong Teong Huat Chamber, KL and Abdullah Said of Abdullah Said Chambers, KL

- 27. Koo Keat Nyen of Ms Khoo Boo Lai & Co.
- 28. Lee Heng Yau
- 29. Lee Kon Yew of M/s K Y Lee & Associates
- 30. Leonard Yan of M/s Yan & Co
- 31. M. Subramaniyar
- 32. Mahamud William Chong/Michel Williams of M/s Mahamud Williams Chambers
- 33. Martin Shah Leong of M/s Leong & Partners
- 34. Michel Lee of M/s Michel Lee
- 35. Mohd Aziz bin Abdullah
- 36. Mohamed Yusuff bin Mahyuddin of M/s M Yusuff &
- 37. Nelson Yeong and Aziz bin Mustafa of Nelson Yeong Law Chambers
- 38. Nizam Jalil
- 39. Noel Tsi of M/s Jen & Associates

- 40. Norhaizan & Partners
- 41. Omar bin Awang of M/s AB. Omar & Co.
- 42. Persons unknown using trademark name "Seabourne" to defraud the public in collusion with Fatima Binti & Associates (Fatima bt Abdullah, Fong Sho Keong)
- 43. Peter Damai Young of M/s Abdullah Damai Chambers
- 44. RBS Comm Centre Sdn Bhd. Advocates & Solictors
- 45. S A Nath of M/s S.A. Nath & Associates
- 46. Shane, Liew & Ragoo
- 47. M/s Tan, Yap & Tang
- 48. Wong Teong Huat, Sithabile Ndebele, Kassim Ahmad of M/s Wong Teong Huat & Co.
- 49. Wong Wee Hueng, Khairulddin Farid bin Mohd Wan Safferi, Lim Jheng Loon of M/s Wong-Farid & Lim
- 50. Yash Recovery
- 51. Yong Lee

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that they have got secured tenure, security of tenure and that is why they are not elected and so that is why they should not be appointing their own team. But again as I have said, it is for us to engage with the judiciary. We are to engage with them, talk to them because this is the system that the chief will appoint his team. Right or wrong it has been the practice for the last 50 years.

"In Thailand, they throw away the whole constitution, and they rewrite the constitution. We are amending, for example, like in the past, we only had 104 Parliamentary seats and now we have 219. So we had to amend the figure from 104 to 219. These are not substantive amendments of the laws. I agree with you that we amend the laws all the time. I am going to table the amendment to

Constitution again, next week, to make sure that, it is about gender equality. To make sure that all the Acts, in the Constitution must comply with gender equality. We amend it again, but it is not substantive. It is not substantive as rewriting so there is difference there. Yes, we amend the Constitution because ours is a living constitution. But the amendments made are just something which we have to change as a result of changes in time like the number of seats in Parliament, the number of seats in the judiciary, before it was certain amount - 56 probably, now 88. These are the amendments which are minor which cannot amount to re-writing the Constitution."

"There is no referendum system allowed in our Constitution. We do not have that system. We only have elections. So, I am afraid that is not possible unless, you know, from the ground, there is a strong demand to have referendum system. But at the moment there is no provision in the Constitution for referendum, and so I am afraid your suggestion is not acceptable because there is none in our Constitution to allow that."

"And muftis are not independent. They do not come from heaven, suddenly appear and become muftis. They are appointed by the Sultans."

Finally, Nazri's parting words: "I can be convinced, but..."

"May be as a glimmer of hope for Zaid and friends, I can be convinced. I can be convinced. No problem. But I want to do it the proper way, that's all."

We still rule the Singapore courts...

5-25-45 to 1000

\$188.45.44 MAN

by Lee Shih

alaysia triumphs! After a keenly-contested Malaysia-Singapore Bench & Bar Games 2007, played in the spirit of friendship and goodwill, the Malaysian contingent was crowned the winners and awarded the Judges' Cup, while the Singapore team took the Lawyers' Mug, not without beating us in the Boat Race - the finale of the Games held here during the Dinner this evening at the Marina Mandarin.

The Games, which were last held here in May 2005 saw Malaysia trailing by 2 points: Malaysia 4 - Singapore 6 after the competitive events over the last 2 days. 3 crucial swing points hung in balance for the competitive sports of golf, cricket, and hockey. The chips were stacked against Malaysia, and we needed to win all 3 events in order to clinch overall victory.

Golf took flight early in the morning at 7am, with the sun still obscured behind gloomy clouds at the Marina Bay Golf Course. Our golfers put in a commanding performance, winning 15-9, and we grabbed a valuable point to close the gap. Malaysia 5 – Singapore 6!

Cricket was up next at 10am, in the grounds of the Singapore Indian Association. The game stretched on far into the afternoon, where the scorching sun was now beating down on the ground. Could we now tie up the series? Our cricketers did not disappoint, and Malaysia won by 24 runs, 129-105 against Singapore! We were now level on points, and everything now came down to our hockey players.

So it now boiled down to the crucial decider match of hockey at 5pm, again played on the Singapore Indian Association grounds. Would the cricket team's victory rub off on the hockey team? The hockey match ended 2-1....in favour of Malaysia! We had done it! Despite being on

foreign soil and being 2 points behind, Malaysia fought back and clinched the series 7-6 against Singapore. The Judges' Cup remained firmly on our side of the causeway for another year, while Singapore would have to make do with the Lawyers' Mug.

We could now look forward to the closing dinner hosted by the Law Society of Singapore in Marina Mandarin. The Malaysian contingent could proudly hold their heads up high and celebrate a well-deserved victory even though a senior counsel for the Singapore team, Chelva Rajah pleaded at the dinner that it was because today is a working day.

Law Society and Bar Council reps meet

Prior to the dinner, a meeting was held between representatives of the Law Society of Singapore and the Bar Council of Malaysia. As acknowledged by the opening message of our Madam President, Ambiga Sreenevasan, this meeting was staged thanks to the initiative of the National Young Lawyer Committee of Malaysia (NYLC). In fact, it was an unprecedented move to allow Malaysian young lawyer representatives to be present



at this meeting between the two law societies.

The Bar Council was also represented by Vice-President, Ragunath Kesavan, Secretary, Lim Chee Wee, Treasurer and Chairman of the Sports Committee, George Varughese, Chairman of the Conveyancing Practice Committee and the 14th Malaysian Law Conference Organising Chairman, Roger Tan, Chairman of GATS Committee, Christopher Leong, Chairman of the Human Rights Committee and the National Young Lawyers' Committee, Edmund Bon and NYLC members, Richard Wee and Lee Shih.

Kicking off the discussion, Richard Wee highlighted the staging of the Malaysian Law Conference at the end of October, and extended an invitation to delegates from Singapore to attend the conference. The third day of the Conference would be exclusively devoted to a Young Lawyers Convention, where it is hoped that a South East Asian Young Lawyer Alliance could be formed. Invitations to young lawyers in Singapore, Sabah, Sarawak, Brunei, Thailand and the Philippines had

already been sent out. The Law Society of Singapore similarly extended an invitation for Malaysians to attend the International Bar Association Conference hosted by Singapore in mid-October.

5-44-45-44 MARK

A 44.44.14 W. W.

Next on the agenda was a discussion on the possibility of an exchange of Continuing Professional Development speakers. This proposal was warmly welcomed by the President of the Law Society, Philip Jeyaratnam S.C. Similarly, on the issue of an exchange programme involving the CEO of the Malaysian Bar Secretariat going down to Singapore to learn from the Law Society Secretariat, this was recognised as an excellent idea to pursue.

The discussion then moved on to the topic of conveyancing practice and scale fees enforcement based on the Singapore perspective. Singapore had abolished scale fees and the no-discount rule. It was acknowledged that even in Singapore, with its relatively smaller size, Singapore had encountered in the past the problem of enforcement of scale fees.

Chee Wee then brought up the topic of the inevitable liberalisation of the Malaysian legal market, and the introduction of the joint law venture framework. With Singapore having adopted a similar joint law venture/formal law alliance mechanism several years ago, the Bar Council would welcome feedback from Singapore on the implementation of the joint law venture structure. It was recognised that Singapore law firms would be interested in tying up with Malaysian firms in order to provide a seamless legal service for clients.

Ambiga then highlighted the Bank Negara initiative to make Malaysia an Islamic Banking hub. Malaysia was keen

to bring in foreign experts on Islamic Banking to assist in this endeavour. The Singapore position was that Islamic Banking was still relatively new, but there was a push from the Singapore state to specialise in this area.

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Next, Lee Shih, from the NYLC, brought up two issues. Firstly, as a follow up from the POLA Conference POLA Conference last August, that the Young Lawyers Committees from Malaysia and Singapore were working together to establish an exchange programme for Malaysian young lawyers to do attachments in Singapore law firms. Second, that the NYLC would be publishing the results and analysis from the Working Conditions Survey in a months' time. The Singapore Young Lawyer Committee would be carrying out a similar survey on working conditions of young lawyers, and information from both the Malaysian and Singaporean survey would be readily available.

Edmund, representing the Human Rights Committee, proposed that the Bar Council and Law Society should work together in ensuring the protection of human rights. Philip agreed that both bodies should work together. Although the Law Society did not have a human rights committee, the Law Society raises issues as a Council together, and engages in direct dialogue with the Minister of Law, and Minister of Home Affairs.

The Bar Council also informed the Law Society that we had issued a public statement expressing its concern on the removal of the Chief Justice of Pakistan, and the Law Society would consider issuing a similar public statement.

Finally, both the Bar Council and Law Society would respectively highlight the Solomon Islands earthquake and tsunami tragedy to their members, and encourage their members to contribute generously.

Singapore team wins the boat race

The meeting then drew to a close, and we then proceeded to enjoy the closing gala dinner. We were honoured to have in attendance, several members of the Malaysian and Singapore judiciary, in particular the Honourable Chief Justice of Singapore, Chan Sek Keong, and the Honourable Federal Court Judge of Malaysia, Datuk Arifin bin Zakaria.

Kicking off the festivities for the night was the final event of the Games, the Boat Race. Having already lost the Games, the Singapore team looked determined to at least secure bragging rights by winning the Boat Race. With each team fielding 4 men and a woman, the Boat Race started with a bang. Singapore very quickly took the lead with a fantastic performance by their lady starter. However, Malaysia very quickly caught up with our 3rd and 4th drinkers, and we enjoyed a slight lead coming to our final drinker. Singapore could boast of a strong anchorman who then clinched victory in the Boat Race!

Having enjoyed a sumptuous meal, we then bore witness to a battle of bands of sorts. Singapore entertained the crowd with their all-lawyer band, but it was pretty clear that the all-lawyer band from Malaysia outshone their performance, judging from the catcalls and cheers from the floor.

It has been a fantastic 3 days of competition and fun, and I in particular had an amazing experience in my maiden outing at the Bench & Bar Games.

A massive thank you to the Law Society of Singapore for organising a spectacular tournament, and we look forward to hosting the Games next year.



Snapshots of the Bench & Bar Games 2007































News

BAR COUNCIL Diary of upcoming events

JULY

11th - 12th July 2007 at Bar Council Auditorium Professional Standards Course Officer in Charge: Ms. Lilian

19th July 2007

at Bar Council Auditorium Joint Seminar SC/Bursa: Ipos & Interest Income in Hong Kong by Low Chee Keong Officer in Charge: Ms. Catherine Eu

26th July 2007

at Bar Council Auditorium Risk Management Training: Getting Started Officer in Charge: Ms. Corrinne

27th July 2007

at Bar Council Auditorium Close Door Dialogue between NYLC, Human Rights Committee and Syariah Committee Officer in Charge: Mr. Rajen/Ms. Chandrika

28th July 2007

at Bar Council Auditorium Risk Management Training: Getting Started Officer in Charge: Ms. Corrinne

AUGUST

10th August 2007 at Bar Council Auditorium Ship Registration and Financing by Fuzet Farid Officer in Charge: Ms. Vino

15th - 16th August 2007

at Bar Council Auditorium Professional Standards Course Officer in Charge: Ms. Lilian

25th - 30th August 2007 at Bar Council Auditorium

Mediation Skills Training Course Officer in Charge: Ms. Marianna

OCTOBER

29th - 31st October 2007 at KL Convention Centre 14th Malaysian Law Conference Officer in Charge: Ms. Syirin/ Ms. Chandrika/Ms. Elizabeth

NOVEMBER

16th November 2007 at Bar Council Auditorium Maritime Arbitration by Ahalya Mahendra, Sitpah Selvaratnam & G Rajasingam Officer in Charge: Ms. Vino

21st - 22nd November 2007

at Tokyo, Japan Sports Law Symposium - Development of Sport Business toward the Beijing 2008 Olympic Games

* For updates/changes, please visit our website at www.malaysianbar.org.my



THE ACCORD GROUP



The Bar Council Malaysia & The Accord Group, Australia present

Mediation Skills Training Course

Date : **25th - 29th August 2007**

Time : 8.30 am - 6.30 pm

Venue: Bar Council Auditorium

1st Floor, Bar Council Secretariat 13, 15 & 17 Leboh Pasar Besar

50050 Kuala Lumpur

Registration Fee

RM2,750 per member RM2,900 per non-member

(inclusive of refreshments, lunch &

workshop materials)

Deadline for submission of registration form and payment **10 August 2007**

Limited seats only 24/27 pax

For registration information, please call 03 - 2031 3003, Ms Marianna ext 148.

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Malacca Bar Committee's Forum: "Towards a Better Local Government"

by Pierre Lim

he Malacca Bar Committee organised a forum entitled, "Towards a Better Local Government" on Friday 11 May 2007 at Legacy Hotel with more then 500 turn-ups.

featured 4 speakers, Dato' Sharir Abdul Samad who is chairman of the Public Accounts Committee and MP for Johor Bahru, R.Nadeswaran of *theSuris* "*Citizen Nades*" column, Lim Guan Eng the Secretary-General of the Democratic Action Party and Lim Teck Ghee, Ex-Asli Director and former Senior Social Scientist with the World Bank.

The moderator of the forum was former Bar Council chairman and senior member of the Bar; R.R.Chelvarajah.

The first speaker, Dato' Sharir Abdul Samad, Chairman of the Public Accounts Committee and MP for Johor Bahru, spoke on the topic of "Elected Representation versus Appointed Representation". He noted the changes in the Malaysian society over time, a "transformation" wherein there is now a well-informed and better educated citizens' group that required the government to adjust accordingly and make "real changes". Greater accountability, transparency, efficiency and tackling corruption could be achieved in more ways than one, and local government

elections may not be the best solution.

The key to change lies in the Malaysian Civil Service which he felt was slowly but surely getting its house right. One idea that he mooted was to make the local government the third layer of government after the federal and state governments, a pilot project could be introduced whereby the finance and administration of local authorities are reformed to put into effect positive values such as integrity, accountability, punishment and reward.

The second speaker, R.Nadeswaran of *The Sun's "Citizen Nades"* column, spoke of the need for serious reforms and lamented the lack of an open tender system for projects from local authorities. Recently-published reports in which local councils gained notoriety for their patronage system, lack of transparency, abuse and lack of accountability were aired.

He spoke of the need for direct elections and said: "Put an honest guy there, just one honest man, plug in the loopholes. It will not happen overnight but after a few years, you can spread it to the other local councils."

The third speaker, Lim Guan Eng, Secretary-General of the Democratic Action Party spoke on the topic of "Local Government, the Malacca Story". He noted the general decline in the quality and

standards of services rendered by the Malacca local council over the years, Citing the Athi Nahappan Royal Commission (1965) Report which recommended the direct election of local councils and asked why Malaysia, unlike its neighbours Indonesia, Philippines, Thailand and Cambodia, did not allow the local elections of Councilors and Mayors.

The fourth speaker, Lim Teck Ghee, Ex-Asli Director and former Senior Social Scientist with the World Bank, spoke on the topic of "Facts, Fallacies and the Public Interest". He said that real change came from facing the facts, however unsavory it may be, and emphasize on the need for direct elections. He also cited the Athi Nahappan and favoured having a Second Royal Commission appointed to study the pros and cons of our local councils today. During the Question and Answer session, when asked what were the "guarantees" in having a Second Royal Commission, he said:

"If we don't put pressure, use our votes, talk to elected representatives, then we deserve the government that we get."

Although the speakers had strong and divergent views on the issues, there was a respectable discourse without descending to any name-calling or personal attacks.



Malacca Bar Committee welcomes new High Court Judge

by Tracy Anne Sta Maria



he Malacca Bar Committee organised a welcome dinner for Yang Arif Tuan Mohtarudin Bin Baki, the newly appointed Malacca High Court Judge on Thursday, 19 April 2007, at the Seri Nyonya Restaurant in the Equatorial Hotel, Malacca.

A crowd of about 90 people consisting of members of the Bench, the Attorney General Chambers and members of the Bar attended this joyous occasion and enjoyed a sumptuous Peranakan cuisine.

Ng Kong Peng, the Chairman of the Malacca Bar Committee, said in his speech that the very diversified career background of Tuan Mohtarudin will be a great asset in the discharge of His Lordship's duties as a High Court Judge.

Justice Mohtarudin read law at the University of Malaya and graduated with a LL.B in 1978. His first posting was as a Magistrate in Alor Star, (1978 – 1981). Thereafter, appointed to the following offices; Senior Assistant Registrar of the High Court at Alor Star (1981 – 1984), Senior Assistant Registrar of the Ipoh High Court (1984 – 1986), Judge Advocate of the Military Court, Ministry of Defence Kuala Lumpur (1986 - 1991), Melaka State Legal Adviser (1991 - 1993), Attorney-General's Chambers - Senior Federal Counsel of the Anti Corruption Agency (1993 - 1996), Sessions Court Judge at Shah Alam (1996 - 2001), Official Assignee based at Putrajaya (2001 - 2003). Justice Mohtarudin was then elerated to the Bench as the Judicial Commissioner of the High Court Kuala Lumpur on 1 May 2003. On 21 December 2004 he attained another milestone as a Judge of the High Court where his 1st posting was to the Shah Alam High Court prior to your his recent transfer to Melaka.

Ng also said that one of the duties of a judge is to make the public feel at ease when attending a court proceeding especially since the court experience for laypersons can be intense and even

traumatic. Sometimes in court, a judge should ensure fair play and discover the truth of the matter. Lawyers do not mind if the judgments given are against their clients as long as the trials were conducted fairly.

Ng also reminded the lawyers not to regard legal practice solely as a probit-making business but as a profession. They must keep abreast with the law and maintain a high level of professional standard. Lawyers must also speak up on issues that concern the well-being of society.

Justice Mohtarudin gave an entertaining and inspiring maiden speech to the members of the Bar, mentioning that the Bench and Bar relationship in Malacca is a cordial one and he has no intention to derail such a good relationship. Even with such strong ties between the Bench and the Bar, naturally there will be hiccups along the way. But, whatever problems that could arise in future he hope it can be effectively resolved through honest and open dialogues. Justice Mohtarudin also said that the respect must be mutual and earned since it's the pillar to any relationship, including the Bench and Bar relationship.

Disciplinary Orders

DISCIPLINARY MATTERS - UPDATES

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1 44 At 14 WHILE

Order under s.103D Legal Profession Act 1976

1 44 44 H ... W. C.

1. Bryan Joseph Shankar, M/s Khalid Chung & Shankar (w.e.f. 21 days from 25 May 2007)

Bodd All All William

- 2. Chung Wai Meng, M/s Khalid Chung & Shankar (w.e.f. 21 days from 25 May 2007)
- 3. Rajoo a/l Arumugam, M/s Rajoo & Co. (w.e.f. 21 days from 26 May 2007)

Negeri Sembilan Bar holds EGM on SRO Suit

by Nicole Tan Lee Koon

In an extraordinary general meeting called today by the Negeri Sembilan Bar Committee pursuant to section 70A(1) of the Legal Profession Act 1976, 58 members of the Negeri Sembilan Bar gathered to discuss the fate of one of Negeri Sembilan Bar's beloved senior lawyers, Seah Choon Chye and the future of Solicitors Remuneration Enforcement Rules 2004 ("SRER").

The House almost unanimously with 3 abstentions resolved that the Chairman of the Negeri Sembilan Bar Committee, Tee Kim Chan, who is also a member of the Bar Council, be permitted to intervene for and on behalf of the members of the Negeri Sembilan Bar in the suit filed by Seah under the Originating Summons

No: 24-569-07 at the High Court here.

In his suit, Seah seeks a declaration that the notice under the SRER is bad in law and unenforceable as it compels him to disclose confidential communication made to him by or on behalf of his clients.

The resolution reads as follows:

"On the 6th day of April 2007, Seah Choon Chye, a member of the State Bar of Negri Sembilan filed an action in the High Court of Malaya at Seremban under Originating Summons No: 24-569-07 against the Malaysian Bar. Under the said suit, the said Seah Choon Chye claims a declaration that the Solicitors' Remuneration

(Enforcement) Rules 2004 is null and void and unenforceable in that, amongst several other reasons given in the said suit, it breaches the Legal Profession Act 1976 and other laws and that it will also cause a breach of confidentiality between a solicitor and his client. The suit also claims an injunction against the Bar Council who has already threatened to take disciplinary proceedings against Seah Choon Chye. The said Originating Summons has been served on the Bar Committee, State of Negri Sembilan, and members may examine a copy of the same at the Bar Committee Secretariat at any time during office hours may make



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a copy of the same by paying the usual photocopy charges

As the matter involves a member of the State Bar, and as several fundamental issues of legal profession are involved, including the question whether client's confidentiality has to be protected in the manner alleged in the suit and as the interest and welfare of one of our members are now in jeopardy, the Bar Committee feels that it should intervene in the suit so that all issues of law, whatever they may be, can be properly put to the Court especially since the order if granted, will affect the other interested party, the Bar Council. In view of the same the Bar Committee is of the opinion that a General Meeting is necessary to deal with this issue.

THEREFORE THIS HOUSE RESOLVES THAT:

That the Chairman of the Bar Committee, Negeri Sembilan for and on behalf of the members of the Negeri Sembilan Bar be and is hereby given permission to intervene into the suit filed by Seah Choon Chye under the Originating Summons No: 24-569-07 at the High Court in Seremban.

Pursuant to a "petition" signed by 61 members, the members also seek to discuss and if approved, to adopt the following resolutions:-

 That the State Bar of Negeri Sembilan do call upon the Bar Council Malaysia to withhold all or any actions whether intended or pending under the Solicitors Remunerations (Enforcement) Rules 2004 against any member of the Malaysian Bar until the final decision of the Superior Court of Malaya in Originating Summons Number 24-5569-07 filed

- in the High Court of Malaya at Seremban by Seah Choon Chye a member of the State Bar Negeri Sembilan.
- That until the final decision of the Superior Court of Malaya in Originating Summons Number 24-5569-07 filed in the High Court of Malaya at Seremban the members of the Negeri Sembilan Bar forthwith cease to co-operate with the Bar Council Malaysia or any appointed officer of the bar Council Malaysia in respect of the Solicitors Remunerations (Enforcement) Rules 2004 where members of the Negeri Sembilan Bar are required to provide access into the premises of any member of the Negeri Sembilan Bar and access to files, documents and details as the same may compromise issues of confidentiality between Solicitors and their clients.

In the meeting, Edmund Ponniah and the NS Bar Chairman, Tee Kim Chan spoke in favour of the motions while former NS Bar Chair, Krishna Dallumah, the current NS Bar Representative Pretam Singh and former Bar Councillor and SRO Enforcement Committee ("SREC") Chair, Tony Woon spoke against the motions. Paul Krishnaraja and Indran Kumaraguru (both State Bar Committee members) too spoke against the motions.

The first motion as proposed by Edmund Ponniah was adopted when 33 members voted for, 10 members voted against and 2 members abstained. Edmund, however, withdrew the second motion.

In the first EGM was convened last month by the State Bar Committee proposing to allow Tee to intervene in the suit filed by Seah. The motion then was unanimously adopted by the State Bar with 3 abstentions.

When contacted, the Chairman of the SREC, Asmadi Awang said the matter was in fact discussed in the last Bar Council meeting, and also in the light of the decision taken at the last AGM of the Malaysian Bar, the SREC will continue to abide by the mandate of the general body to enforce the SRO 2005.

GAN LEE HUAN DECEASED (NRIC NO: 360711-71-5213 / 4071577)

We act for Gan Hui Bing, daughter of the abovenamed deceased who passed away on 25.12.2006 in Johor.

Any firm of solicitors or anyone with knowledge of or is in possession of a Will executed by the deceased in Malaysia. Please contact the following:-

MESSRS TEA, KELVIN KANG & CO

Advocates & Solicitors
Suite 8.1, Level 8, Menara Pelangi
Jalan Kuning, Taman Pelangi
80400 Johor Bahru, Johor
Tel: 05-254 5293, Fax: 05-253 4091
(Ref: GL/500729/WLH/0207/vk)

Bar Council Committees: New Term's Re-constitution & Expectations

by Web Reporter

The Bar Council on 14 April 2007 resolved the followings:

- to appoint Asmadi Awang of Terengganu State Bar, as the new Chairman of the SRO Enforcement Committee, replacing Roger Tan who will now chair the 14th Malaysian Law Conference Organising Committee as well as the Conveyancing Practice Committee.
- to set up 30 Committees and 4 Ad-Hoc Committees, dissolving the IT & Cyberlaws and Gender Issues & Equal Opportunities Committees and the Standing Committees on Eliminating Discrimination and the Promotion of Best Practices by Detaining Authorities. Matters
- relating to information technology will now be handled by the Secretariat whilst issues relating to gender, equal opportunities, eliminating discrimination and promotion of best practices by detaining authorities will be addressed by the Human Rights Committee which will be chaired by Edmund Bon.
- to set up a new Committee known as the Islamic Finance Committee, necessitated by the fact that Malaysia is fast becoming a centre on Islamic financing and it is an area of practice which is growing. Further, as it is an area which foreign lawyers may be eventually allowed to practise here, the promotion and creation of local

- expertise in this area is, therefore, imperative.
- members who were absent from three or four Committee meetings during the 2006-2007 term would be excluded from the relevant Committees.

One similar note, we would like to highlight the "good governance" *expectations* which should apply to a member of a Bar Council Committee. The aim is to ensure maximum output from our members' funds, with the concomitant aim of minimising wastage, for the best of the Bar. Some of it may sound trite, but it is a necessary reminder at this juncture when our Committees have re-constituted

The Chairpersons of the respective Committees are as follows:

Anti Money Laundering	Krishna Dallumah	Malaysian Law Conference	Roger Tan
Arbitration & ADR	Kuthubul Zaman Bukhari	Organising Committee	
Bahasa Melayu	Aziz Bin Haniff	National Legal Aid	Cecil Rajendra
Conveyancing Practice	Roger Tan	National Young Lawyers	Edmund Bon
SRO Enforcement	Asmadi bin Awang	Professional Standards and	Steven Thiruneelakandan
Corporate & Commercial Law	Loh Wann Yuan	Development	
Criminal Law	V. Sithambaram	Professional Indemnity Insurance	Ragunath Kesavan
Executive Committee	Amiga Sreenevasan	Publications	Vazeer Alam Mydin Meera
Family Law	Lalitha Menon	Shipping & Admiralty Law	Yeo Yang Poh
Finance	George Varughese	Sports	George Varughese
GATS	Christopher Leong	Study Loan	Hendon Mohamed
Human Rights	Edmund Bon	Syariah Laws	Mohd Sazali b Abdul Aziz
Industrial Court Practice	Ravindra Kumar	Ad Hoc Committee on the	M. Ramachelvam
Intellectual Property	Ngan Siong Hing	Immigration Act	
Islamic Finance	Sukri bin Haji Mohamed	Ad Hoc Committee on the	Ambiga Sreenevasan
Law Reform & Special Areas	RV Lingam	Judicial Commission	
LawCare, Charity & Welfare	G. Balakrishnan	Ad Hoc Committee on	Jerald Gomez
LawCare Fund Management	Indran Rajalingam	Rules and Regulations	
Legal Profession	Ng Kong Peng	Ad Hoc Committee to	Peter Mooney
Library	Shan a/l Theivanthiran	Review The Legal Profession Act	

^{*} Committee Chairmen will decide on the composition of their respective Committees.

and are embarking on work for the new

Last year, travelling claims for Committee members totalled more RM500,000.00 (i.e. each member of the Bar paid about RM43.00 towards this). Costs of administration such as stationery, printing, faxing and postage were more than RM800,000.00 (i.e. each member of the Bar paid about RM73.00 towards this). We have been in deficit the past few years, and our funds will probably be used up in the next 2 years.

Commitment to the task assigned

A Committee meets no more than 10 times in a year (i.e. about once a month). A month may seem a long time but being. Caught up in our busy practices, the next meeting will usually be up before one realises it. Every Committee member should be ready, willing and able to participate in discussions during meetings and ensuring the implementation of task(s) assigned within the agreed time frame post-meetings. This will obviate the need to adjourn items on the agenda, which results in the waste of precious time

and resources as every meeting has costs implications.

Appreciate the work of others

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Before every meeting, there is a great deal of "unseen" work carried out by the Secretariat, particularly by the Executive Officers of the Committee. In preparation for a meeting, such work includes listening to the tapes of previous meetings, drafting the agenda for the upcoming meeting and minutes of the previous meetings, liaising with various invitees, sourcing for information and following-up on matters carried over. We should appreciate the work of the Executive Officers by investing a similar level of commitment to the implementation of task(s) assigned. Similarly, the time and effort spent by other Committee members should be appreciated in the same vein.

Share the work

The advantage of having a Committee is that the work load is to be shared by all, or at the very least, without imposing an unreasonable burden on a few members. More initiatives may be taken if every member pulled his/her weight in tandem with other assignees to the task(s) as well.

Ideally the tasks according to their forte &

Walk the talk

Instead of complaining, grumbleing and criticising be constructive and after solutions to the problems. One of the main purposes of our Committees is to improve life at the Bar for members and the public in general. Committee members are expected to follow through their discussions at meetings with action (i.e. put the ideas, suggestions and solutions to work via practical schemes). A Committee should not merely be a "talkshop".

Serve with positive enthusiasm

It is an honour to serve the Bar – a statutory body tasked with upholding the cause of justice and an organisation which leads the voice of civil society today. Committees are crucial platforms for improvements: a means for members to channel their energy, passion and ingenuity to achieving a myriad of goals within the framework of the legal profession. Unhealthy cynicism and pessimism reduces a Committee's ability to act as a force of change.

LawCare helps deceased lawyers family

by Azmi Abdullah

he Chairman of the Lawcare Fund Management Committee, Indran Rajalingam on May 31 presented a cheque to the sum of RM10,000.00 to Shamsudin bin Mat Daud in the Bar Room situated at the Kota Bharu Court Complex.

Shamsudin's wife, the late Salmi binti Haji Daud practising as a sole proprietor of the firm Salmi and Associates in Kota Bharu passed away on April 24, 2007.

Salmi, 37, had been battling against breast cancer for the last two years. She leaves behind 3 young children.

It is hoped that the small contribution would help in alleviating the financial difficulties of En Shamsudin and his young children. The firm has been dissolved effective May 16.

The Swelling Hope Amidst the Bitter Truth

by Noor Arianti Binti Osman

Paja Nazrin's Keynote Address on 3
April 2007 at the 1st Young
Malaysians Roundtable Discussion coorganised by the Centre for Public Policy
Studies and the National Young Lawyers
Committee was a sincere speech that left
me feeling void dumbfounded and
hopeful - all at the same time. I believe we
Malaysians of all ages should embrace the
message conveyed therein. Translate it,
abridge it if need be, just let it be known.
When it comes to national unity, our 50
years of history is admittedly not very
appealing. That is reality. Accept it. Bury
the hatchet.

The efforts to continue nation-building must be made by consensus. I believe, in our own ways, we as Malaysians are ready to seriously reflect and earnestly act on the 7 Guidelines expressed by His Highness.

I for one am all for it.

We suspect, see, hear and talk about the improprieties that have taken place - in politics, the economy or both. We blame it on governmental policy and the ruling party. We retaliate in ways we know best and we hit at places we think it hurts most.

The not-so-popular 'truth' is that such improprieties are committed by those in power irrespective of race, but for personal gain. If we were to talk about a sense of belonging to this land by all races, the issue is only relevant to the peoples (i.e. those not in positions of political power) - the ones whose desires are not fulfilled, and the majority in sociology's common theory of social stratification.

It is important to recognise this social stratification.

Firstly, those in political power ("P1"). They are composed of all races. Their desires are mostly fulfilled. If one of them launches a housing development, the rest will not miss the opportunity to attend the VIP launch, have expensive dinner, laugh heartily at each other's jokes and purchase a handful of units for investment. They know the favour will be returned. All this is done despite their differences and competition. They are smart enough to know that if one of them fails, others will consequently fail. To a certain degree, they are truly 'best friends'. This is national unity at its best.

Secondly, the mid-tiered citizens ("P2") who try to become part of the P1 community. They too are composed of all races. They have the brains and energy to get what they want. If it means 'pulling down' those of P1 so that they can fill the empty seats or to step over those of P3 (see below) to rise higher, they will do it - in the name of self-development. The issue of race and religion are favourite ingredients because it has achieved much for those in P1. To them, racism only happens when it works against them. When it works for them, its equal opportunity.

Finally, the 'peoples-down-here' ("P3"). They make their living in honest-to-God ways and they hope for improvement in their lives and for their children's future. Despite humble foundations, those in P3 are most important once every five years when they exercise their voting rights.

Those in P1 and P2 recognise this fact. The difference is that while those in P1 are too far up and too far absorbed to reach down, those in P2 drink with them every other day! Issues such as racism and religion

are emotive plays to garner strong support for those in P1. However, unhappiness and anger are felt among those in P3. This is where national unity is at its worst.

There is yet another category - which includes you and me. Yes, you who is reading this article, and I who wrote it.

We may belong to any one of the aforesaid levels or we may think that we do not; as we pride ourselves as being indifferent to the calamities even though we know that we have the power to fix it. We are in fact no worse than those in P2.

There was this discussion in jurisprudence I remember from university days. You see someone who was about to fall off a cliff and you could have saved him without causing any peril to yourself, but you do not help him. Although your act was not illegal, was it not morally wrong?

I therefore pen my simple thoughts in this article hoping to pass my humble opinion to you, and banking on the 2/10 business principle. If any selected 2 out of 10 readers are willing to undertake the responsibility of fostering nation-building, we are well on our way!

Talk to our P1 friends and families into re-thinking what they are enjoying.

Talk to our P2 friends and families into re-thinking what they are doing.

Talk to our P3 friends and families into re-thinking what they believe in.

Seriously reflect and earnestly act on the 7 Guidelines expressed by His Highness.

It all starts here and now - with you and me.



*Introduction *Preparation of Affidavits

- Affidavits in Judicial Proceedings Contents of Affidavit
- The Jurat The Exhibits Affidavits made outside the

Country •Filing and Service of Affidavits •Defective

Affidavits *Assessment of Affidavit Evidence

- Affidavits In Particular Proceedings
 - Making False Affidavits

AFFIDAVIT EVIDENCE

Author: Andrew Chew Peng Hui

LLB (London), LLM (London), PhD (London) of Lincoln's Inn, Barrister-at-law Advocate of the High Court of Sabah & Sarawak

ffidavits play a major role in dispensing justice and many proceedings, particularly those of an interlocutory nature, are disposed of on affidavit evidence alone. In cases where evidence can be conveniently and completely presented in affidavit form, its use will promote the efficient and more orderly disposal of cases. This important part of litigation practice is now given a clear and comprehensive exposition by the book Affidavit Evidence.

Malaysian lawyers will welcome this book as it presents this subject from the local perspective in succinct language. The detailed discussion is amply supported by copious citation of case law, local as well as foreign, and the applicable statutory provisions. The practical insights provided in the book are indeed valuable and will serve well both the experienced and the newer practitioners.

The content of the book has been systematically organised and this greatly enhances its usefulness. Beginning from the fundamentals of the preparation of affidavits, the book then explores in detail the formal requirements for valid affidavits. The practical aspect of the filing and service of affidavits is discussed before an analysis is made of defective affidavits as well as the available curative provisions and remedial measures. The book then moves on to a hands-on discussion of affidavits in particular proceedings, the assessment of affidavit evidence, including cross-examination on affidavits, and finishes off with a look at the effects of the making of false affidavits.

Affidavit Evidence contains a wealth of knowledge made available by an experienced practitioner of law and is a book that ought to be on the desk of litigators, judges, court officers as well as teachers and students of civil procedure.

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ISA to Remain

Special Interview with Datuk Seri Mohamed Nazri Aziz by Biliwi Singh

1-42-44 W. HALL

\$ 44.45 A MARIN

There are no plans afoot by the government to repeal the Internal Security Act for the moment. Or not at least until we climb out of this callow state despite turning a ripe 50 in August this year. In a sense a commodity such as unfettered freedom of expression or removal of some repressive legislation may still remain a remote blip on the horizon.

In a special interview granted to Ad Rem-Journal of the Selangor Bar at Parliament House recently the Minister in the Prime Minister's department Datuk Seri Mohamed Nazri Aziz said the country was not in the same league with the USA, UK or India to be able to experiment with more liberal democratic expectations. "We are still 49 years old with a long way to go and with a lot of growing up to do. The stability and calm environment in the country can be attributed to the ISA," he said.

The *de facto* Minister of Law pointed out the ISA has been one of the props that has kept a multi-racial society like Malaysia going. He added however that the government would not use it indiscriminately against its opponents but was aimed only at the enemies of the nation.

In a candid disclosure Datuk Seri Mohamed Nazri revealed that he had recently accompanied some opposition MP's on a visit to the Kamunting Detention Centre where they were confronted with a Muslim detainee who refused to engage direct eye contact with the non-Malay MP's.

"His hatred for the non –Malays in the country was so deep rooted and he felt all non-Muslims were his enemies. This chap was counseled by the religious authorities but he was inexorably bent on his beliefs one of which was to set up an Islamic nation. How do you deal with someone

like that?" the Minister posed the query.

Datuk Seri Mohamed Nazri continued, "Should I release him on the streets seething with his ideas to decimate non-Muslims? We had information he was planning something. What do I charge him with? The Minister said to release him would have been akin to letting loose a murderer onto the public and the ultimate responsibility would have been his.

In the Parliamentary sitting of September 19 last year Datuk Seri Mohamed Nazri answered Opposition leader Lim Kiat Siang that there was a lack of freedom and some dictatorial tendencies during the previous administration. He went as far to say that during the administration of Tun Dr. Mahathir Mohamad it was a bit of dictatorship and people were not free to speak up.

Asked by *Ad Rem* whether he stood by this position the Minister replied, "now we have a liberal attitude shown by the Prime Minister to the extend you can even venture to criticise him. But this has been misinterpreted to mean he his losing control."



He said the public was free to express itself and unlike previously things are not swept under the carpet. He compared both administrations under which he had served and was of the view that the Prime Minister did not get involved in the decision making of the judiciary.

1-25-24-24-14-12

Ad Rem then interpolated the interview with a remark made by Kota Bharu MP Zaid Ibrahim at a Human Rights Forum organised by the SUHAKAM, carried by the New Straits Times on 10 September 2006.

Zaid Ibrahim had said when it comes to freedom of religion and the law, many Muslim politicians in the country are ignorant, confused or defensive. He went on to say that Malaysians must urge these issues because most were either reluctant to do so honestly, viewing the topics as sensitive and delicate, or played the defensive card, which was easy to trump up.

In that Forun Zaid also touched on the Lina Joy case and opined that it was just an issue of law.

The New Straits Times quoted him, "Don't get excited, don't burn the country, for God's sake. I think we should show them kindness'.

Zaid also said that he had been criticised for speaking about Article 11 of the Federal Constitution or accused to help non-Muslims, but it was imperative for politcians to "be honest and explain things".

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Datuk Seri Mohamad Nazri's reaction was, 'the MP for Kota Bharu is free express his opinions but I doubt he would have said those things if he was a minister. He has no responsibility to the government. If things turns ugly no one will blame Opposition Leader Lim Kit Siang or the MP for Kota Bharu but we in the government will bear the blame"

He added that the buck stopped with the government and went on to say "the comments were from a legal point of view and the opposite of rational is emotional and to the Muslims religion is emotional'

Ad Rem also broached the topic of the sacking of the then Lord President Tun Salleh Abbas and two other Supreme Court Judges and the debate that has since raged to reopen the investigations.

"I do not agree to a review. This was not a normal hearing where there was an avenue for an appeal. Some quarters have called for a review if there is fresh evidence but there is none and all the issues that have been raised have been dealt with," he said with a note of finality."

At the same Human Rights Forum of 2006 organised by SUHAKAM the former Attorney General Tan Sri Abu Talib Othman had expressed his view in an interview with the New Straits Times (10 September 2006) on ouster clauses that remove the powers of the courts to review a decision by a minister.

Abu Talib who was AG from 1980 to 1993 had said if access to the court is limited by an ouster clause it would render virtually meaningless the principle of the separation of powers.

Datuk Seri Mohamed Nazri came back with this, "I feel a minister's decision is based on many tiers. There are recourses against a decision along the way by means of an appeal to the minister."

\$ 44.44 Apr. 10.00

\$ 64.65 M. W. W. W.

"Let ministers make their decisions in the interests of the public. If a minister has to live under the cloud of running the risk of being charged or prosecuted then he will be reluctant to make decisions and nothing will move. The biggest court is the court of public opinion. If I do something that is contrary I may not be elected again," he stressed.

On the oft recurring theme of the need for the establishment of an independent Commission for Judicial appointments Datuk Seri Mohamed Nazri said that he was all for the protection of the separation of powers between the three branches- the Legislature, the Executive and the Judiciary.

"I support any suggestions to enhance the Judiciary but with a caveat; it must be approved by the Judiciary. To set up a Commission without the approval of the judiciary would be tantamount to interference with the Judiciary," he said.

He exhorted the legal fraternity to convince the Chief Justice of the idea and if it was acceptable he would go along.

"Many former judges have seen me on this matter but I would be seen as interfering if I step in with this idea. You have to convince the Chief Justice and the Judiciary must agree to bring this upon themselves," the Minister emphasised.

On another aspect Datuk Seri Mohamed Nazri disagreed with the suggestion that jury trial should be brought back for the simple reason that it would not work in a multi-national society like ours.

"Can you imagine an Indian man on a charge for killing a Malay and the jury is made up of five Malays. He may be headed for the gallows before the trial commences. It is an excellent idea but not in this country because racial prejudice is still prevalent", he said.

5-24-24-34 MILES

Touching on the recent amendments to the Legal Profession Act which led to a bilious atmosphere and acrimony between members of the Bar and the Bar Council the Minister denied he had not directed the Bar Council not to consult its members.

"If the laws are meant to apply to you why should you not be consulted. From our point as long as unionist and MP's are not in the Bar Council we are open to suggestions," he said.

However on a cautionary note, Nazri went on to add when the proposed amendment has taken the form of White Paper to be tabled before the Parliament, it can no longer be made public and is not subject to discussion or consultation by members of the Bar.

He added that members of the Bar can participate in any proposed laws that interest them through the Bar Council. He indicated the first step would be to notify the Attorney General the areas of legislation that interest the members as it would defy practicality to view all the proposed bills. The Minister also said he was prepared to go the extra mile to inform the AG to allow the Bar Council to involve itself in the selected areas of interest.

*This interview was done by Ad Rem, the Journal of Selangor Bar, during the courtesy call on the Minister by the Selangor Bar Committee.

Admiralty Court: The Need and the Viability

1-44-48 W. William

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By The Hon Mr Justice Dato' Vincent Ng Kim Khoay

\$ 44-44 to Marin

hen I was earlier asked whether I would be presenting a paper at the National Maritime Conference, I decided not to, due to the constraints of time because of the impending court-shift to Jalan Duta and the load of work in my Division. However, I decided otherwise when, a few days before the Conference, a list of 15 questions was posed to me as listed bellow:

Question: Is there a need for an Admiralty Court in Malaysia? and Question: Is there sufficient volume of admiralty matters in Malaysia to necessitate the setting of a separate Admiralty Court? and

Question: Would the Court be fully occupied?

Taking the term "Admiralty Court" to mean a dedicated Admiralty Court (dedicated Admiralty Court) dealing only with admiralty cases, my short answer, under the current circumstances, is: no, for the following reasons. There are only 75 pending admiralty cases in the High Courts in peninsular Malaysia and only 7 such cases in the High Courts of Sabah and Sarawak. Out of those cases, normally only about 200/0 may go to trial and the rest of the writs would simply expire presumably settled. I think the problem which has resulted in a major part of this debate stems from whether we should construe the words 'an Admiralty Court' as a dedicated Admiralty Court. I would construe the term 'Admiralty Court' to mean a specific court designated or appointed to deal with Admiralty cases, besides other species of cases, whereas a 'dedicated Admiralty Court' obviously denote a court that has been assigned to deal exclusively with only Admiralty cases.

Unlike an Admiralty Court which also handles other Commercial cases, as presently exist in my division, a dedicated Admiralty Court would depend, for the justification of its existence, on having a sufficient volume of Admiralty cases filed e.g. in West Malaysia. The above listed cases has shown quite conclusively that the meagre volume of cases filed in West Malaysia clearly cannot justify having a dedicated Admiralty Court. So, quite rightly, the Chief Judge of Malaya has designated Commercial Court No 3 in my division only as an Admiralty Court rather than a dedicated Admiralty Court, as this court also does other Commercial cases save for Bankruptcy cases. Of course whether the judge of this Admiralty Court would in time acquire sufficient experience in Admiralty law to be competent in Admiralty cases would depend on his general competency, amount of exposure to Admiralty law and the length of his tenure in that court. I think it would be of interest to all of you to know that the original judge of Admiralty Court No 3 was promoted to the Court of Appeal, no doubt for very good reasons as he clearly deserved the promotion, and his successor was recently transferred to the Criminal Division. This is where I would have to concede that the appointment of an ad hoc judge for specific term of years from the private sector may be worth considering.

Question: Would the setting up of an Admiralty Court be necessary in view of Malaysia's aim to become a maritime nation?

Yes, we cannot be a maritime nation unless we has a competent arbitral court-venue and facilities for e.g. arrest of ship etc to cater for Admiralty reliefs sought by parties, provided also that such court has the other wherewithal to deal with admiralty matters in a speedy manner. We have to acknowledge that under the present circumstances, it is feasible to have, and we do now have, an Admiralty court. What we do need is a competent judge, who could undergo a short term training 2 to 6 months in England or Hong Kong. And, until we have enough volume of Admiralty cases, this judge could also deal with certain other commercial or intellectual property cases, which would ensure that he would be kept reasonably occupied as a judge. Presently, such Admiralty court in my Commercial Division is High Court No 3, though it would not be correct to name this court a dedicated Admiralty Court.

1-26-26-46 MARCH

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Question: Where should the Court be located, bearing in mind we have 13 States and 2 High Courts in Malaysia? and **Question:** Would it be feasible to have an Admiralty Court in West Malaysia located in Kuala Lumpur and an Admiralty Court in East Malaysia, located say in Kuching? My answer to both questions are that there could be at least one Admiralty Court in Kuala Lumpur and one in Kuching, which could cover Kota Kinabalu. The filing of the Admiralty actions and the arrest of the vessel could be done in situ that is at the High Court nearest to the port of call of the vessel and the relevant file could be later transferred to the Kuala Lumpur or Kuching Admiralty Court for trial if necessary. I say this because quite often a vessel that is intended subject of a court action may lay anchor at the port here on Friday evening or night for replenishment, and leave before 7 am on Monday to avoid an in-rem-arrest.

Question: Would not the location of the Courts inconvenience practitioners and litigants in the other States?

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I think it should not inconvenience law practitioners, since the centralised courts would be involved only if the matter goes to trial. We have to bear in mind that even the Court of Appeal and the Federal Court are centralised at Putrajaya.

Question: Do we have the infrastructure to support an Admiralty Court, for example, experts in maritime matters?

Presently, we do not have the infrastructure coupled with the necessary expertise.

Question: Singapore and England have judges who are experienced in shipping matters as their Admiralty judges. If we have an Admiralty Court, who should deal with such disputes?

A senior judge who has experience in commercial matters and with special training in admiralty law through short courses in England or Hong Kong could be assigned to sit in our Admiralty Court(s).

Question: Should a practitioner be appointed as an ad-hoc judge to hear Admiralty matters?

Yes, a private law practitioner could be appointed as an ad hoc judge to a Dedicated Admiralty Court, with ready supporting personnel, who would be on call all times every day of the week for the urgent purpose of e.g. arrest in-rem of a vessel. Obviously, such ad hoc judge will be appointed purely on a merit basis since he would be from the private sector. He would be required to sit in all admiralty matters that eventually go to the trial. Indeed, because he would be appointed from the private sector, the advantage would be that we could pick the best lawyer in town on Admiralty law, and because it would be on ad hoc basis I am sure he would be keen to accept such

appointment.

\$ 66.44 Apr. 18.10

Question: Would our judges agree to undergo training?

\$ 66.66.14 W. W. W.

I am sure judges appointed as Admiralty judges would be prepared to undergo short term courses or traing of several months overseas from time to time.

Question: Would our supporting staff agree to undergo training?

Not only is it necessary but I think it should be made compulsory for the supporting personnel/staff to go for short training courses.

Question: Does the lack of a specialized Admiralty Court result in our maritime disputes being hijacked either to London or elsewhere?

It is highly probable that we may have lost many Admiralty cases to Hong Kong, Singapore and London due to our lack of specialised Admiralty judges. Due to this, I would recommend that unless we appoint ad hoc judges, experienced and competent judges from our existing pool of judges could be selected to sit in our Admiralty Court(s) for a fixed term of years.

Question: Would it be correct to say that because of inexperience of our judges, that decisions in admiralty matters are delayed?

It is incorrect to say that because of the inexperience of our judges, decisions in Admiralty matters are delayed. I think that if a judge who is appointed to sit in an Admiralty court is interested in the law and generally competent in his approach, he would acquire experience in admiralty law pretty fast. I, myself have dealt with and promptly delivered 2 reported judgments, and the third case (incidentally, argued by the Co-Chair of NMC Organising Committee Ms Sitpah Selvaratnam), namely *Shell Refining Company v Neptune Associated Shipping*

PtdLtd is in the process of publication by the Law Journals. My decisions are:

5-24-24 15 MILLION

- 1) Emmanuel E Okwuosa & Ors v Owners of the Ship 'MV Brihope' [995] 1 MLJ 676. This was an in-rem-arrest Penang matter where I remember having made the comment that I would be quite happy if the matter could not be settled, for in that event I would have a rare opportunity to write a judgment on an Admiralty case.
- 2) Wei Hsing Food (S) Ptd Ltd v The Owners or Demise Vessel 'The Neptune' and Anoraction (2005) 5 MLJ 702.
- 3) Shell Refining Company v Neptune Associated Shipping Pte Ltd (formerly known as Neptune Associated Shipping Lines Pte Ltd). Suit No. 01-22-476-2004.

My brother judge Dato' Zulkefli Makinudin J - who was, until his promotion to the Court of Appeal, a judge of Court No. 3 of the Commercial Division Kuala Lumpur headed by me - had also heard and quite speedily delivered one reported decision namely, *Kawasaki Kisen Kaisha Ltdv Owners of the Ship or Vessel "Able Lieutenant"* [2002] 7 CLJ 478.

I believe that eventually we would be able to have specialised and dedicated Admiralty Courts in Kuala Lumpur and with such courts we would be a truly significant Maritime Nation with an Arbitration hub to resolve maritime disputes. We could give Singapore a good run for its money, because we have in a far greater shoreline, population and natural resources than them. In fact, the subcommittee members of the Bar Council Malaysia have managed to compile the practice directions now known as Practice Direction No 2/2007 Admiralty Actions signed by the former Chief Judge of the High Courts of Malaya Tan Sri Dato' Siti Normah Yaakob. It may be of interest to

Articles

all of you to know that the estimated cost of a ship-arrest ranges from RM15,000 to RM160,000 depending on the duration of the arrest and the size of the ship's crew. All that we need is commitment by the authorities and all sectors involved - armed with the will and not only the words to achieve.

Obviously, the criteria for the appointment of judges to sit in our Admiralty Courts should be wholly based on competency, integrity, industry and a keen interest in this branch of law. I dare say that in our Commercial Division, which has a court (Court No.3) that does Admiralty cases, we do now have competent and courageous judges of integrity with good work ethics.

I have often said that a judge while on the bench, is not Chinese, Indian or Malay or Christian, Hindu, Buddist or Muslim but he is totally different species under the Sun a Judge. It is the trust reposed in the judge that is the only source of the court's power.

\$ 44.45 to 1000

1 44 44 44 William

Let it not be said that all our discussions and proposals during this conference are mere voices in the wilderness if not backed up by human software, financial and material hardware, and most importantly, the will but not mere words to help us achieve the singular and clear purpose of this conference.

POST SCRIPT

\$ 44 44 14 WALL

Perhaps the observations of The Hon Mr Justice Sir Anthony Colman, the current Admiralty judge in the Royal Courts of Justice, London is apposite in the context of the topic of my paper 'Admiralty Court - The Need and The Viability.' At the Interactive Panel Discussions (on the second day of the Conference) his Lordship was asked, as a foreign judge, for his recommendation for a fledgling Maritime Nation such as Malaysia, py the Chairman of the Panel, YBhg Dato'

Mahadev Shankar (Retired Judge, Court of Appeal) who, I must say, had chaired the discussion with much aplomb and a ready sense of humour despite being crimped for time. This was what Mr Justice Sir Anthony Colman had to say: "Whether your Admiralty Courts would in due course succeed and be attractive as a venue for Admiralty litigation would depend upon whether foreign parties will want to use it. And, this would be premised upon whether your Admiralty Courts have the and competency are trusted internationally, otherwise such courts will not succeed." He also recommended that foreign lawyers should be permitted to appear in such courts. His Lordship added that in his jurisdiction, the rules permit him to make ADR orders - with a specific time frame for resolution expressed in the order itself. He has quite often made such orders "and it worked like a charm, as about 90% of Admiralty cases have been settled through mediation, in which event there are no winners or losers as they are settled. It is a very feasible alternative to litigation."

1-25-24-24-16-51

LAWASIA President's letter on the recent military takeover in Fiji

Dear Minister

I write as president of LAWASIA, the Law Association for Asia and the Pacific, an association of lawyers and the legal bodies that represent them in the Asia Pacific region.

We have recently learnt of violent assaults carried out by officers of the Zimbabwe Republic Police on members of the Zimbabwe legal profession as they participated in a peaceful march on 8 May, which sought to highlight valid concerns over ongoing harassment of legal

practitioners whilst undertaking their duties.

Any situation where lawyers are subject to harassment and violence is a cause of considerable concern to the international legal profession and LAWASIA expresses its strongest condemnation of this development.

We urge the Zimbabwe government and you, as Minister, to be active in providing full and immediate protection for lawyers in the execution of their professional duties, as set out in the United National Principles on the Role of Lawyers.

We add the voice of lawyers from the Asia Pacific region to those of other international groups in condemning these violent attacks on members of the profession who had gathered in legal circumstances to express their proper and professional concern about an issue of fundamental importance to all lawyers.

Yours sincerely

Mah Weng Kwai PRESIDENT 14 May 2007

NYLC elects 3 new Deputy Chairpersons and unveils plans for the new term

by Teo Nie Ching

n an immediate move after the Bar Council re-constituted its Committees on 13 April 2007, the National Young Lawyers Committee (NYLC) met for the first time this term. More than 30 members from around the country attended the meeting with many new faces present.

The 3 Deputy Chairpersons for the 2006-07 term, Richard Wee Thiam Seng, Kenny Lai Choe Ken and Wong Fook Meng who were recently elected to their respective State Bar Committees did not seek re-election in order to make way for new young lawyers to assume leadership roles.

In a 4-cornered fight, the Deputy Chairpersons elected today were Dipendra Harshad Rai, Noreen Ahmad Ariff and Desmond Ho. They lead major thematic areas of work, and will each chair 3 meetings of the NYLC this term.

The 2nd segment of the NLYC's flagship event, "Siri Pemikiran Kritis" which follows on the back of the successful 1st segment will once again be held in a series of 4 programmes, fixed for June 6, 13, 20 and 27, 2007 at the Bar Council Auditorium. The theme of this segment is "Re-thinking Malaysia in Commemoration of 50 years of Independence". Areas to be covered include planning law, corruption, accountability, civil society perspectives, the national agenda and new visions for the country. The series will again be co-organised with Youth 4 Change (Y4C).

- The 2nd Malaysian Bar Closed-Door Dialogue on Issues Facing a Multi-Racial Society has been planned for July 27 at the Bar Council Auditorium. Feedback after the 1st Dialogue on March 2 was positive leading to the decision to have this follow-up session. The format of the Dialogue will be reconsidered and tweaked to make the Dialogue more interactive and productive. The Human Rights Committee and the Syariah Law Committee will again be approached to co-organise the same.
 - The Consensus Document culled from the highly-talked about 1st Young Malaysians Roundtable Discussion on National Unity and Development in Malaysia jointly organised with the Centre for Public Policy Studies (CPPS) and officiated by the Crown Prince of Perak on April 3 is to be crystallised for implementation. It will be part of a joint NYLC-CPPS initiative titled "Projek Menjana Integrasi Nasional Dalam Aspirasi Masyarakat Muda (MINDA MUDA)". The Consensus Document has been translated into Bahasa Malaysia, and forwarded to all Members of Parliament. On April 24, NYLC and CPPS will be meeting Datuk Dr. Maximus Ongkili, Minister in the Prime Minister's Department to present the Document officially in his capacity as Head of the Parliamentary Select Committee on National Unity and National Integration and Head of the National

Unity and Social Development Department. Work is underway using the parameters of the Consensus Document to conduct a quantitative survey on the views of young Malaysians in the country on nationbuilding issues and race relations. A report will be thereafter be published with findings of the same.

- The Young Lawyers Convention will be making a comeback after a short hiatus, and is planned to be held in early 2008. Details are being worked out.
- The much-awaited Working Conditions Survey results is being compiled to be released at the end of April, and a Report summarising the NYLC's findings will be published at the end of May.
- The Continuing Professional Development Unit of the NYLC will be discussing the proposed Professional Standards Course which is due to revamp the present Ethics Lectures. A "Walk-in Clinic" for fresh graduates and pupils is also being planned.
- The proposed plan to establish an exchange programme with the Law Society of Singapore's Young Lawyers Committee for the benefit of all members of the Bar will be re-visited.

continued on next page

Ongkili receives 20-Point Consensus Document and promises action

by Centre for Public Policy Studies and National Young Lawyers Committee

Pollowing the excitement of the 1st Young Malaysians' Roundtable on April 3, 2007, the Centre for Public Policy Studies (CPPS) and the National Young Lawyers Committee (NYLC) presented the Roundtable's 20point Consensus Document to Datuk Dr. Maximus Ongkili, Minister in the Prime Minister's Department at Parliament today.

The Document was presented to him in his capacity as Head of the Parliamentary Select Committee on National Unity, and Head of the National Unity & Integration Department.

The Document elaborates recommendations towards improving national unity in Malaysia, and highlights the important roles young Malaysians play in national development.



It calls for greater space to conduct open and constructive dialogue, stressing shared and common values in place of racist ideologies and ethno-religious politics.

Ongkili said that he would study the Document in detail, noting that there were new and fresh perspectives therein, which would be brought up when tabling the Document at the next National Unity Panel meeting.

He encouraged the continuation of similar discussions, saying in particular that young professionals such as those represented at the Roundtable should be applauded for their efforts to forge a young Malaysian identity towards national unity.

He looks forward to the nationwide study which is planned to be conducted jointly by CPPS and NYLC this year, and hopes that views from East Malaysia are also incorporated in all discussions on national unity.

Tricia Yeoh, Max Say, Hasma Rini and Aini Salwa represented CPPS whilst NYLC was represented by Dipendra Harshad Rai, Desmond Ho, Noreen Ariff, Lai Chee Hoe and Edmund Bon.

continued form page 45

 The YL Personality Interviews published every fortnight is to continue as well. In addition, interviews of older members of the Bar to gain insights into the development of the profession and garner lessons for younger lawyers is set to commence on an ad hoc basis.

Please make a note in your diaries in relation to the above.

With numerous proposals from organisations and individuals, the Committee unfortunately had to turn down two requests inviting us to organise certain events, citing the general sentiment of the Committee that 'there is too much on our plate at present'.

Concern was also raised at the meeting about the surprise omission of Young Lawyers Committees (YLC) in at least 2 State Bars despite a resolution by the NYLC (which was adopted by the Bar Council post-repeal of section 46A(1)(a)

Legal Profession Act) reaffirming the continued existence of the YLC structure in all States and at national level. More details are being sought on this for further consideration.

The meeting ended with the NYLC reaffirming efforts to step up collections for the Solomon Islands Earthquake & Tsunami Fund recently launched, and which has received a dismal sum to-date.

This term serves to be another promising year!

YLCs Post-46A Repeal

by the National Young Lawyers Committee

here have been some queries and discussions on the position of the Young Lawyers Committees at State levels (YLCs) after the repeal of the first limb of section 46A of the Legal Profession Act recently. This document serves to summarise the genealogy of YLCs and clarify any doubts.

Pre-s46A repeal

The Bar Council's National Young Lawyers' Committee (NYLC) was formed by a Bar Council resolution on 17 January 1998. This position was further strengthened at the 52nd Annual General Meeting (AGM) of the Malaysian Bar on 21 March 1998 by a resolution unanimously adopted calling for steps to be taken by the Bar Council to enable young lawyers to qualify to be members of the Bar Council or State Bar Committees or of any committee of the Bar Council or a State Bar Committee. In the same AGM, a resolution to oppose and record the Bar's dissatisfaction on the formation of the NYLC was defeated.

On 20 January 2001, the Bar Council approved a NYLC resolution which is in gist states *inter alia*:

- 1. That all State Bar Committees are to establish state level young lawyers' committees as sub-committees of the State Bar Committees by the next State Bars' AGMs in 2001.
- 2. Each committee shall comprise of 5-15 young lawyers depending on the size of the Bar in each State.

At the NYLC's brain-storming meeting on 9-11 June 2006 at Selesa Hills Homes,

Bentung attended by leading young lawyers from around Malaysia, a Plan of Action and Vision known as the "Selesa Conclusions" (see: http:// www.malaysianbar.org.my/content/view/ 3247/133/) was formulated and adopted by consensus. The Plan provides *inter alia*:

- We reaffirm that the NYLC aims to represent, protect and promote the interests of young lawyers of the Bar and to empower them to contribute to social good.
- 2. We recognise the following as the core aspirations of the NYLC:
- 2.1 To profile the NYLC as a platform for young lawyers to voice their views and concerns on issues affecting the Bar such as the administration of the Bar and professional practice, and on issues of public interest such as the administration of and access to justice, and law reform.
- 2.2 To maintain and nurture good working relationships with other Bar Council committees, various governmental agencies, NGOs, other organisations and the media, and to work together with these committees, agencies organisations in rallying issues of concern affecting young lawyers and society in general.
- To establish and/or re-activate Young Lawyers Committees at State levels and to provide opportunities for the effective networking and exchange of information, ideas and opinions among young lawyers of different states.

- 2.4 To collate and study data pertaining to the demographics of practice and working conditions of young lawyers, and to engage employers, the Bar Council and other stakeholders in constructive dialogue with the intention of creating a better and wholesome working environment for young lawyers.
- 2.5 To assist the education and enhance the continuing professional development of young lawyers in maximising their potential in terms of producing quality legal work, achieving a balanced and fulfilling career, and contributing to the Bar and social good.

Flowing from the Selesa Conclusions (particularly paragraph 2.3) and as a matter of re-affirmation of the January 2001 resolution, the Bar Council on 17 June 2006 (at its 4th meeting) adopted a fresh NYLC resolution with regards to the structure of State YLCs.

Post-s46A repeal

In a 4½ hour meeting on 17 November 2006, the NYLC made the following decisions post-repeal (see: http:// www.malaysianbar.org.my/content/view/ 6057/133/):

- UNANIMOUSLY that State Bar YLCs and the NYLC should continue to exist as per the current structure adopted by the Bar Council.
- UNANIMOUSLY re-affirming the aim of representing, protecting and promoting the interest of young lawyers within the Bar and to

Putik Lada

empower them to contribute to social good, and the 5 core aspirations of the NYLC decided in Selesa Hills Homes on 11 June 2006 as *inter alia* providing a platform for young lawyers (YLs) to voice their views and concerns on issues affecting the Bar and assisting in the continuing professional development of young lawyers at the Bar.

- BY A MAJORITY adopting a practical working guide in defining the target group of YLs being those under 40 years in age or 7 years in practice.
- UNANIMOUSLY continuing the practice of inviting all members of the Bar to serve on the NYLC.

On 2 December 2006 (at its 10th meeting), the Bar Council adopted the NYLC's said decision which in gist states as follows:

- The NYLC and State YLCs shall continue to exist as per the current structure adopted by the Bar Council.
- 2. As a practical guide, the target group of young lawyers is defined as members who have been in active practice for 7 years or less and who are 40 years of age and below.
- 3. Membership of the Committees

continues to be open to all members of the Bar.

The aims, objectives and vision of the Committees are as per the "Selesa Conclusions".

Recent concerns

It has come to the attention of the NYLC that some State Bar Committees have decided not to re-constitute their local YLCs this term. Concerns regarding this have been raised with the NYLC. The decisions to discontinue the State YLCs are surprising and unfortunate. Particularly, these 'closures' effectively terminate formal links between the relevant State Bars and the NYLC in respect of initiatives taken by YLCs at other States and also by the NYLC. This will gradually isolate young lawyers in the affected State Bars, and reduce effectiveness of operations at the national level.

The NYLC is of the humble view that the discussion on whether YLCs or the NYLC should continue to subsist is settled. Instead, the Bar should call on YLCs and the NYLC to assist or contribute in whatever way it can to complement efforts to strengthen the Bar further. This is one

of the core aspirations of the YLCs and the NYLC. Contrary to certain (mis-)perceptions, young lawyers do not divide the Bar, but rather seek to unite it. Our work speaks for itself.

Other jurisdictions such as those in the United State of America, Scotland, Australia and the United Kingdom have established their respective Young Lawyers Committees. A 'Google' search will bear this out. Significantly, the International Bar Association has an established Young Lawyers Committee (see: http://www.ibanet.org/publicprofinterest/Young Lawyers.cfm) and conduct specific young lawyers initiatives.

Candidates for office at a recent State Bar AGM have also been heard to support YLCs and the work of the young lawyers. The NYLC is encouraged and edified by the clear illustrations of support by these candidates.

The NYLC strongly urges the relevant State Bar Committees to re-consider their 'closure' decisions (in view of the Bar Council resolution on 2 December 2006) and to re-constitute their YLCs as soon as possible. The NYLC is prepared to provide any assistance possible as requested.

RM Legal Practice Review: We would like to come and see you!

The PII & RM Department is continuing with our Legal Practice Review project this year and we've scheduled July to September 2007 to visit 30 law firms!

Our officers will talk to you about your firm's operational processes, methods and systems. We will cover four (4) main areas: office management, accounts management, general litigation and real estate conveyancing. Each session will take no longer than 3 hours.

Our aim is to

- (a) Provide an objective assessment of your firm's operational processes.
- (b) Make recommendations (if any) to help your firm reduce or eliminate any identified issues that may lead to increased exposure to risk of claims.
- A report of the findings and recommendations will be made available to your firm.
 There will be NO costs involved on your part in this Review!

For more information, call LiChin @ 03 - 2032 4511.



Human Writes

After the inaugural meeting for the new term on 25 April and the second meeting on 11 May 2007, the Human Rights Committee (HRC) unanimously established 6 key components to carry out the human rights work of the Bar:

- Policy & Law Reform Working Group (PLRWG) chaired by Zarizana Bt Abd Aziz
- Advocacy & Public Relations Working Group (APRWG) chaired by Andrew Khoo
- Education & Training Working Group (ETWG) chaired by Zarizana Bt Abd Aziz
- Complaints & Interventions Strike-Force (CISF) chaired by Amer Hamzah Bin Arshad
- Publications Working Group (PWG) chaired by Brendan Navin Siva
- The Orang Asli Project (OAP) chaired by Augustine Anthony

With a record number of more than 30 members in attendance - most of whom are joining the Committee for the first time - there is an encouraging show of renewed interest in the work of the Committee.

There is much work to be done and already, the OAP held its first sub-meeting on 10 May with stake-holders and interested parties, whilst the PLRWG's first sub-meeting was held on 18 May. The CISF held its first sub-meeting on 31 May.

In an unprecedented move, 'A Blueprint for Human Rights' containing the terms of reference and areas of focus for the term has been adopted by the HRC.

Further, a fresh attempt to strengthen the effectiveness of State Bar mechanisms in terms of human rights work is being made. A representative from each State Bar Committee has been invited to serve on the Committee. Their roles are crucial in the ETWG and the CISF.

Whilst the tasks before the Committee are enormous with numerous complaints piling

up at the Council Secretariat, the Committee seeks the support and cooperation of members who wish to assist and serve either on an ad-hoc or permanent basis, particularly with undertaking cases under the CISF and OAP. Please send an email to rezib@malaysianbar.org.my indicating your details and interest as soon as possible.

There will be teething problems as we take time to find our feet, and members are urged to bear with us. Any suggestions may be sent by email to rezib@malaysianbar.org.my for the consideration of the Committee.

The Committee's work is underway with the CISF (together with the Corporate and Commercial Committee) dealing with complaints regarding two banks' requirements for law firms to be on their panel of solicitors, the ETWG hosting a talk by Karina Kirana on "Trafficked Persons and Refugees" on 15 May 2007 and the APRWG (co-organising with Transparency International Malaysia) the worldwide launch of the "Global Corruption Report 2007: Corruption and Judicial Systems" on 24 May 2007.

In collaboration with the Bar Council Publications Committee, the PWG has assumed a more active role in crafting the 'Human Writes' section of PRAXIS. Members are strongly encouraged to contribute articles, views and news on human rights issues for inclusion in this section by sending the same to brendansiva@gmail.com.

Although this term is a 'stock-taking' term, it promises to be an exciting one. Much useful interaction and necessary discussions among members of the Committee has occurred and will continue as we navigate the path forward.

Edmund Bon Chair Human Rights Committee

The Human Rights Blueprint

A Blueprint for Human Rights

Malaysian Bar Human Rights Committee

I. Mission Statement

To uphold, promote and protect human rights in accordance with international human rights norms.

II. Organisational Structure

1. Policy & Law Reform Working Group

1.1 Terms of Reference

- To undertake research related to human rights law and jurisprudence.
- To document, discuss and adopt policy positions on human rights.
- To monitor and review legislation relating to human rights.
- To make recommendations for law reform.
- To be the first 'port-of-call'/'springboard' of the Committee.

1.2 Areas of Focus for 2007-08

- Themes:
 - Domestic adoption and application of international human rights norms.
 - Freedom of thought, conscience and religion.
- Implementation of the Bar resolutions adopted at the 61st Annual General Meeting on 17 March 2007 in terms of research, policy and law reform (if any) – i.e. issues of corporal punishment, destruction of places of worship and the state of emergency in Malaysia.
- Withdrawal of all reservations by the Malaysian Government in relation to the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child (and related Protocols, if any).
- Full implementation through or rectification of domestic legislation (where applicable) by the Malaysian Government in relation to provisions of the Convention on the Elimination of All

- Forms of Discrimination Against Women and the Convention on the Rights of the Child (and related Protocols, if any).
- Ratification by the Malaysian Government of international human rights treaties particularly, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention Relating to the Status of Refugees (and related Protocols, if any).
- Promote gender equality and eliminate gender discrimination:
 - Finalise the Memorandum to Revise Laws in Contravention of Gender Equality.
 - Draft Gender Equality Bill (with the Joint Action Group for Gender Equality).
- 2. Advocacy & Public Relations Working Group

2.1 Terms of Reference

- To advocate and lobby policy positions on human rights with policy-makers, stakeholders and society.
- To generate interaction and discourse between policy-makers, stakeholders and society on human rights norms and issues.
- To organise and provide campaigns, interpretive platforms and law-declaring fora on human rights norms and issues.
- To forge alliances and partnerships, and increase co-operation with expert human rights bodies, non-governmental organisations, national human rights commissions and civil society in the furtherance of human rights advocacy.
- To build working relationships, liaise with

- and lobby the media and other mediums of advocacy on human rights issues.
- To raise funds within the Bar and through external sources to support the work of the Committee.

2.2 Areas of Focus for 2007-08

- Implementation of the Bar resolutions adopted at the 61st Annual General Meeting on 17 March 2007 in terms of advocacy and public relations (if any) i.e. issues of corporal punishment, destruction of places of worship and the state of emergency in Malaysia.
- Follow-up work on the following campaigns:
 - Independent Police Complaints and Misconduct Commission Campaign
 - No Detention Without Trial Video Project
- Follow-up work within/with the following coalitions:
 - Malaysian Coalition for International Criminal Court (MICC)
 - Article 11
 - NGO Coalition on 50 Tahun Merdeka
 - Gerakan Mansuhkan ISA (GMI)
 - Joint Action Group for Gender Equality (JAG)
- Organising the following events:
 - Human Rights Day (10 December)
 - Closed-Door Dialogue on Issues Facing a Multi-Racial Society (with the National Young Lawyers Committee and the Syariah Law Committee)
 - 50^{th} Merdeka Celebrations: 'Remembering the Peoples who Built this Nation' (through the NGO Coalition on 50 Tahun Merdeka)
- Follow-up work with the Human Rights Commission of Malaysia on the following issues:
 - Establishment of an ASEAN Human Rights Mechanism.
 - Capacity-building in relation to the ASEAN Women and Children Commission.

- Implementation of the ASEAN Declaration on the Protection and T Promotion of the Rights of Migrant Workers.
- Ratification of international human rights treaties and withdrawal of reservations in relation to the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.
- Ratification of the Rome Statute on the International Criminal Court.
- Prisons reform.
- 3. Education & Training Working Group

3.1 Terms of Reference

- To institutionalise a culture of human rights and norm acceptance/internalisation through capacity-building.
- To promote human rights through educational activities.
- To train, equip and empower members of the Bar, policy-makers, stakeholders and society on human rights norms, principles and tools for implementation.
- To expand the pool of leaders and roleplayers in human rights work.

3.2 Areas of Focus for 2007-08

- Develop and formulate a standardised human rights training module.
- 'Bringing Human Rights Home' tour of 5 training programmes in 5 States.
- Increase co-operation with the International Committee of the Red Cross and the United Nations High Commissioner for Refugees in human rights education.
- Judicial colloquium co-organised with the Women's Centre for Change and Human Rights Commission of Malaysia.
- Identification of 10 new human rights lawyers able and willing to further the cause.
- Complaints & Interventions Strike—Force 4.

4.1 <u>Terms of Reference</u>

- To receive reports or complaints of human rights abuses and violations.
- To take instructions and interview complainants and victims.
- To provide advice by legal opinions or redress by legal interventions through the justice system.
- To monitor, highlight and make urgent appeals on cases of human rights abuses and violations.
- To build a database of documentation on abuses and violations.
- To build a precedent-bank of legal documentation.

4.2 Areas of Focus for 2007-08

- 'Stock-taking' of all human rights cases the Bar has appeared in before the courts, and to decide further action.
- Monitor custodial deaths through holding watching/amicus briefs.
- Monitor detainees held in Kamunting under the Internal Security Act and in Simpang Renggam under the Emergency Ordinance.
- Monitor the 'fast-track' immigration courts.
- To process pending complaints/cases before the Committee.
- To strengthen redress mechanisms at each State Bar.
- Where necessary, provide advice or take action by filing selected test cases.

5. Publications Working Group

5.1 <u>Terms of Reference</u>

- To create an enhanced interest in and awareness of human rights.
- To document human rights issues and cases.
- To disseminate and channel information, knowledge, learning and ideas regarding human rights.
- To articulate and lead public opinion.
- To make calls for action and mobilise support.

5.2 Areas of Focus for 2007-08

- Publish 2nd edition of the 'Red Book' (with Tindakan ANti-PenyalahGunaan KuasA Polis, TANGKAP)
- Publish the 'Human Writes' section of PRAXIS under the auspices of the Publications Committee.
- Contribute articles for the 'Human Rights and Law' column in 'The Sun' and 'Hak Asasi & Undang-Undang' column in 'Utusan Malaysia' monthly, and for other collaborative initiatives with the media.
- Contribute news reports, events and articles to the Bar website regularly.

6. The Orang Asli Project

6.1 <u>Terms of Reference</u>

- To build and support the Orang Asli communities.
- To monitor and document issues or problems faced by the Orang Asli communities.
- To provide assistance to the Orang Asli communities in education, human rights and legal matters.
- To work with governmental agencies, focus groups, non-governmental organisations and the corporate sector on Orang Asli issues.

6.2 Areas of Focus for 2007-08

- Increase communication and link-up with Orang Asli communities.
- Embark on awareness and education programmes for lawyers and Orang Asli communities.
- Undertake test cases particularly on issues regarding the recognition of Orang Asli rights.
- Lobby the Government to gazette ancestral/native land as Orang Asli reserve land.
- Lobby the Government to pass legislation specifically to recognise and protect Orang Asli rights.
- Commence systematic advocacy efforts with the Department of Orang Asli Affairs.

Promoting and Protecting Human Rights through the Bar

by Edmund Bon

he Bar's Human Rights Committee has been in existence for some time now. By virtue of our profession, members of the Bar are well-equipped to take an active part in the Committee which seeks to uphold, promote and protect human rights as established by international human rights norms. These norms are underpinned by notions of justice, equality and liberty. The law plays a large role in giving effect to the various nuances of these notions.

The considerable resources of the Bar are available for the administration of the work of all Committees set-up by the Bar Council. If utilised efficiently, much work can be done. More importantly, through the Bar, our strengths and skills as lawyers can be channeled to the key areas of action where human rights are concerned undertaking research, drafting policy papers, advocating law reform, monitoring rights abuses, conducting training programmes and litigating cases - to name a few.

With an increasing number of human rights issues being played out in Malaysia on a daily basis, it is crucial at the initial stage that a working organisational structure be put in. The structure should cover the following broad areas:

Law Reform and Policy

To lead human rights advocacy, it is imperative that the Bar conducts research in the field of human rights jurisprudence. The fruits of such research not only enlighten us on the state of human rights in Malaysia but proceeding to the next step, they form the basis of policy papers arguing for, and adopting positions on, human rights issues for dissemination. With the information ready at hand, the Bar would be in a strong position to provide informed recommendations and lobby the

appropriate authorities more persuasively for changes through law reform.

Public Relations and Advocacy

Taking our policy positions a step further, the Bar is well-positioned to organise and provide platforms for discussions on human rights, and avenues for "interaction" between stakeholders on rights issues. This discourse works towards improving understanding, and assists the process of "levelingoff" on various positions taken within the public fora. In tandem with the role of the Bar as facilitator is the need for the Bar to strengthen and extend its network of working contacts, and to form alliances and forge cooperation with other advocates of human rights (e.g. human rights bodies and NGOs) to achieve better leverage for our work (partly by reducing costs through the sharing of resources). Lobbying efforts through considered and structured campaigns are also an important part of advocacy work.

Education and Training

The need for and the importance of, human rights education and training is clear. The "target" groups which the Bar should focus on are its own members, the public and the three arms of government - the legislature, the executive and the judiciary. The main objective of human rights education is to establish a culture of rights in the country such that human rights concepts form part of our belief system. In addition, it should empower role-players in human rights work.

Complaints and Redress Interventions

As lawyers, we have a tremendous capacity to seek legal redress for victims of violations and abuses.

We are trained to cull the facts, analyse the law and work the machinery of the justice system to assist complainants and victims. It is therefore necessary to step up our redress interventions through, example, enhanced documentation of rights abuses, litigation of test cases or negotiations with the appropriate authorities for tangible remedies.

Publications

The dissemination of information and ideas regarding human rights is a cornerstone strategy to create awareness, initiate dialogue and mobilise action. Lawyers are, by training, meant to be fluent in our use of language. Crafting articles, documents or papers for publication is supposedly our forte. More often than not however, tracts on human rights are couched in excessive legalism. Our challenge is to connect with the layperson and draw support for the cause through the use of simple, easy-to-understand language. Further, there is a need to "excite" all and sundry of the prospects for reform through human rights.

What next?

In conclusion, much can be done if we possess the will to walk the extra mile. Nurturing the development of human rights in Malaysia is a longterm project commencing with efforts to hasten the process of normbuilding, internalisation and acceptance of human rights. The Human Rights Committee plays an important part in the process, and is an engine driving the "human rights delivery mechanism" within the Bar and external of it, in society.

Members are strongly urged to be part of this struggle by joining the Committee and actively contributing their time, skills and efforts.

No true "development" without human rights by K Shanmuga

brief commentary on the US State Department's 2007 Investment Climate Statement on Malaysia

"Recently some Asian governments have contended that the standards of human rights laid down in the Universal Declaration of Human Rights are those advocated by the West and cannot be applied to Asia and others parts of the Third World because of differences in culture and differences in social and economic development. I do not share this view and I am convinced that the majority of Asian people do not support this view either, for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal to achieve that. I do not see any contradiction between the need for economic development and the need for respect of human rights. The rich diversity of cultures and religions should help to strengthen the fundamental human rights in all communities. Because underlying this diversity are fundamental principles that bind us all as members of the same human family. Diversity and traditions can never justify the violations of human rights. Thus discrimination of persons from a different race, of women, and of weaker sections of society may be traditional in some regions, but if they are inconsistent with universally recognized human rights, these forms of behavior must change. The universal principles of equality of all human beings must take precedence."

- His Holiness The Dalai Lama delivering a speech on Human Rights and Universal Responsibility at the Non-Governmental Organizations, The United Nations World Conference on Human Rights, Vienna, Austria on 15 June 1993 [http://www.tibet.com/DL/ vienna.html]

Justice, human rights and transparent government are all essentials for a developed economy. Our economy is suffering without a transparent and accountable system for the appointment of Judges, when Parliament enacts laws without properly consulting the rakyat, when the police do not have independent oversight through an Independent Police Complaints and Misconduct Commission and when corruption is allowed to become a way of life without proper enforcement.

This was shown recently by a letter to the editor of Malaysiakini entitled 'Judiciary killing off foreign investment' [http:// www.malaysiakini.com/letters/ 65978], where a "Foreign Investor Advisor" has pointed out that deficiencies in our justice system and endemic corruption in Malaysia is hurting our economy. Citing from the The United States Department of State's 2007 Investment Climate Statement on Malaysia, the writer concludes that "This type of advice is very negative toward Malaysia as it simply implies severe corruption at the heart of Malaysia's legal system and that there is virtually no law in Malaysia to protect US businesses." [http://www.state.gov/e/eeb/ifd/2007/ 82336.htm]

The Statement contains the following

disconcerting comment on the deficiencies of our litigation system:-"Dispute Settlement

"...The domestic legal system is accessible but generally requires any non-Malaysian citizen to make a large deposit before pursuing a case in the Malaysian courts, and can be slow and bureaucratic. The U.S. Embassy is aware of one case where a U.S. investor plaintiff reports that, after 31 months and 17 hearings, the Malaysian court has yet to address the merits of his case. Plaintiff claims to have provided the court with documentation both from Malaysia and from a U.S. court case involving the same company that the company's assets continue to be drained through ongoing fraud. However, the court stayed his petition that the company be put in receivership until the matter is resolved. The court also stayed plaintiff's petition for discovery.

"One local law firm reports that cases involving intellectual property rights generally take five to eight years, with more complex patent infringement cases taking ten to fifteen years.

"Many firms choose to include mandatory arbitration clauses in their contracts. The government has set up the Kuala Lumpur Regional Center Arbitration (http:// www.rcakl.org.my) under the auspices of the Asian-African Legal Consultative Committee offer international arbitration, mediation, and conciliation for trade disputes. The KLRCA is the only recognized center for arbitration in Malaysia. The U.S. Embassy is aware of one contractual dispute with a U.S. company where the Malaysian firm chose not to honor mandatory arbitration clauses as stated in their contract. Resolution of that case is pending."

The State Department's statement on the topic corruption is perhaps even more damning:-

"Corruption

"Malaysia's ranking in Transparency International's Corruption Perception Index worsened, dropping from 39th to 44th place this year.

"The Malaysian government considers bribery a criminal act and does not permit bribes to be deducted from taxes. Nevertheless, corruption remains a serious concern. The Anti-Corruption Agency (ACA) began operations in 1967 under the Prime Minister's department. Since June 1997, senior state-level officials have been required to declare their assets to the ACA upon taking office. Foreign businessmen are asked to report any individuals who ask for payment in return for government services. The ACA is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. ACA investigations are sometimes reported in the newspapers, but are rarely targeted at highranking officials or business representatives with wellconnected companies. Prime Minister Abdullah declared after assuming office that the fight against corruption was one of his priorities, but by 2005 the battle had slowed. There were a few high profile prosecutions in 2004 but little

more since. By the end of 2006
the government has done little
to implement
recommendations from an
April 2005 royal commission
on police reform.

"Malaysia has signed <u>but not</u> <u>yet ratified</u> the UN Convention against Corruption."

[Emphasis my own]

The State Department's comments on the lack of transparency generally and the vagaries of the regulatory system are also extremely troubling. They point out that the Official Secrets Act "denies stakeholders an opportunity for input into the drafting of legislation that affects their interests."

We ourselves have seen this happen when the Attorney General's Chambers refused to allow full, open and transparent discussion of the Legal Profession (Amendment) Act 2006 and instead shackled the hands of the Bar Council from discussing the content of the proposed amendments with its members. Roger Tan, a member of the Bar Council, in the New Straits Times on Thursday, 17th August 2006 said "The authorities have made it clear that if the Bar Council, when consulted, then sets in motion a process of consulting 12,000 lawyers, then consultation with the Bar Council will not take all." place at [http:// www.malaysianbar.org.my/content/ view/4020/2/]

Similarly, Dr A Krishnamoorthy a former President of the Malaysian Medical Association is reported in Malaysiakini on the same day as saying that "I had objected to most of the proposed legislation [which eventually became the Private Healthcare Facilities and Services Act 1998] made by the ministry from the very start but they warned me against discussing the Act with my fellow doctors. They cited the Official Secrets Act when I said I wanted to go back

to my doctors to discuss these clauses. If I cannot go back to my doctors, there's no point for me staying on the committee and so I resigned." [http://www.malaysiakini.com/news/55531]

In a country where the rule of law is supposed to be one of the guiding tenets of our national philosophy as embodied in the *Rukunegara* we find ourselves ruled by policy rather than by law. The Statement paints this devastating picture of governmental bureaucratic idiocy:

"In addition to secrecy laws regarding proposed new legislation, Malaysia maintains a complex network of practices for which no documentation is available. In response to U.S. government requests for a list of laws and regulations pertaining to market access in various sectors, government official responded that ministries and agencies were "not in a position to make available an exhaustive list of the laws and regulations pertaining to their respective sectors," in part because these were "still being streamlined and in some cases being developed," and in part because "a number of market access issues are addressed by way of administrative circulars/ guidelines/polices which not may be stated explicitly in any document."

[Emphasis in original]

Malaysia must improve on its democratic processes, and on its commitment to human rights. It is only by ensuring basic human rights for all Malaysians will we see true development, both in terms of economic success as well as in terms of a united nation competing on the world stage on the basis of our human skills rather than merely with the richness of our natural resources and the cheapness of our labour.

Orang Asli of Kampung Chang Sungai Gepai vehemently object to the proposed National Botanical Garden

by Noreen Ahmad Ariff

You think I'm an ignorant savage And you've been so many places I guess it must be so But still I cannot see If the savage one is me Now can there be so much that you don't know? You don't know ...

You think you own whatever land you land on The Earth is just a dead thing you can claim But I know every rock and tree and creature Has a life, has a spirit, has a name

You think the only people who are people Are the people who look and think like you But if you walk the footsteps of a stranger You'll learn things you never knew you never knew

Have you ever heard the wolf cry to the blue corn moon Or asked the grinning bobcat why he grinned? Can you sing with all the voices of the mountains? Can you paint with all the colors of the wind? Can you paint with all the colors of the wind?

Come run the hidden pine trails of the forest Come taste the sunsweet berries of the Earth Come roll in all the riches all around you And for once, never wonder what they're worth

The rainstorm and the river are my brothers The heron and the otter are my friends And we are all connected to each other In a circle, in a hoop that never ends

How high will the sycamore grow? If you cut it down, then you'll never know And you'll never hear the wolf cry to the blue corn moon

For whether we are white or copper skinned We need to sing with all the voices of the mountains We need to paint with all the colors of the wind

You can own the Earth and still All you'll own is Earth until You can paint with all the colors of the wind

he lyrics of Vanessa William's "Colours of the Wind" never meant much to me until Saturday, 21 April 2007. How true the lyrics are when compared to the lives of the Orang Asli of Kampung Chang Sungai Gepai, Bidor. Their ancestral lands now have to make way for the State Government's National Botanical Garden Project.

Once completed, the Project will occupy an estimated land area of approximately 500 acres where around 200 acres will be used as an arboretum.

The Perak Bar Human Rights Sub-Committee organised a fact-finding mission to the settlement to see how

the Project has and will affect the lives of the Orang Asli. The report on the Malaysian Bar website on 23 March 2007 created a furore with the Perak State Government and since then, there has been substantial media coverage on the issue.

The second fact-finding mission on 21 April 2007 was led by the President of the Bar Council, Ambiga Sreenevasan with the Chairperson of the Perak Bar, Ngan Siong Hin, Chairperson of the Bar Council Human Rights Committee, Edmund



Bon, Chairperson of the Perak Bar Human Rights Sub-Committee, Dara Waheda Mohd Rufin, Chairperson of the Perak Bar Continuing Legal Education Sub-Committee, Rashpal Singh, legal officer of the Perak Bar Legal Aid Centre, M. Gokoolaram Naidu, and myself as Deputy Chairperson of the National Young Lawyers Committee.

The team arrived at Kampung Chang Sg Gepai around 9am in the morning and were welcomed by the spokespersons of the Orang Asli, Tijah Yok Chopil and Rizuan Tempek. Present were also representatives from other neighbouring Orang Asli villages such as Kampung Bukit Terang, Kampar, Kampung Tisung Sungkai, Kampung Sungai Ras RPS Jernang, Kampung Kemoh, Tapah, Kampung Sandin, Bidor, Kampung Kejau, Kampung Ulu Geroh, Gopeng and Kampung Sat, Jernang. They were there to lend their support.

We were then treated to breakfast while listening to Tijah who gave us a brief introduction on the Semai community and their system of administration and governance. The community consists of more than 1000 people where 600 are still living in the settlement. The other 400 are

living either at their husband's or wife's settlements. All of them consult the "Mairakna" (Council of Elders) for advice and guidance on problems and matters which arise and affect their community. Contrary to some news reports, the Project is opposed by the Council.

Tijah, who is one of the co-authors of "Orang Asli Women and the Forest: The Impact of Resources Depletion on Gender Relations among the Semai" with Colin Nicholas and Tiah Sabak, further enlightened us about their system of division of the forest. They divide the forest into 3 categories. The first is the secondary jungle. The secondary jungle is flexible in use. The second category is the "jeres" (virgin) jungle where they leave the jungle in its virgin state and only go there to gather petai, fruits and vegetables. The third category is "tejego" and the most sacred of them all. This is the place they go when they call upon the spirits of their ancestors to aid them in times of need. Each of these divisions have their own identity and as the Project covers a substantial area of the forest, the Orang Asli are afraid that they will lose the area due to commercialism.

66

The Orang Asli community does not seek monetary compensation no matter how large, but wants the State Government to recognise their rights and allow them to develop their lands as they wish. 99

The divisions set out their forms of preservation of the jungle and their culture for the next generation. While explaining to us the workings of her community, Tijah repeatedly said that they were not against development but it must be done after consultation with the Orang Asli and after taking their wishes into account. It should not be executed unilaterally, as is happening now.

Currently, sporadic and intermittent works on the Project continue even though there are reports stating that the Project had been stopped temporarily. No consultation with the Orang Asli was conducted by the authorities.

Whilst the State Government has promised that the Project will bring great benefit to the Orang Asli, this will definitely be at the expense of their ancestral lands and livelihood. It was also said that allowing tourists to roam the settlements to capture pictures of the Orang Asli for a token sum would be a spin-off from the Project. This is ridiculous! Not only is it an invasion of their privacy, it is akin to treating the Orang Asli like animals in a zoo for the viewing pleasure of tourists.

After the preliminary briefing, we went on motorbikes, hiked, walked through muddy grounds, climbed hills and walked across rivers in an attempt to understand the complaints. It was a truly wonderful experience of nature yet to be spoilt - but which will soon be in the name of development for tourists.

The ancestors of the Orang Asli have been here "dari tanah lembik, batu lembik sehingga tanah keras, batu keras", and their souls and spirits guard and watch over the lands. The State Government will be destroying the heritage and identity of the Orang Asli who are specially protected under the Constitution. Right now, not only their lands will be taken away, but their right to livelihood will also be affected. To make matters worse, they are completely kept in the dark about the Project. The purported solution by the State Government to give them other plots of land is unacceptable it is not the same land!

The community does not seek monetary compensation no matter how large, but wants the State Government to recognise their rights and allow them to develop their lands as they wish. How will the Project affect the community? After a tiring hike through the affected areas, here are some answers:

- The burial lands of their ancestors will be destroyed, denigrated and be the subject of trespass by unwelcome tourists.
- Their sacred places to pay reverence to their ancestors will be destroyed. Unlike other religions, these are specific places identified within the forest without the erection of monuments.
- Their commercial crops will be directly affected. They are already instructed to count big trees while the small ones were asked to be uprooted and planted elsewhere.



- As the main area of the Project is at the "mouth" of their customary land, access to the forest would be obstructed.
- They lose their hunting grounds and the collection of forest produce.
- The water at their well-kept streams will be polluted.

The Malaysian Bar urges the Government to halt all the work on the Project until all issues have been resolved. Basic rights to preserve the Orang Asli's customary land should not be ignored. It appears there has been a lack of understanding on the part of the authorities regarding the way of life of the Orang Asli.

Unfortunately, the department set up to assist the Orang Asli has again been silent on the matter and this resonates the well-known complaint that the department is ineffective.

Just as we left, we voiced our support for the Orang Asli communities who gathered, and promised that we would do all we can to assist them in the matter.

We headed back home to Kuala Lumpur while those from Perak returned to Ipoh in the afternoon. It is hoped that the State Government will be more sensitive to the plight of the Orang Asli. They are an independent and capable people whose voices should not be ignored.

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'the Project' allow tourists to capture pictures of the Orang Asli, invasion of their privacy, it is akin to treating the Orang Asli like animals in a zoo for the viewing pleasure of tourists.

The Launch of the SUARAM 2006 Human Rights Report

by Sunil Lopez a/l Ceaser Lopez,

hile most Malaysians were busy going about their affairs at 10.00am this morning, a nonprofit, non-governmental organisation known as Suara Rakyat Malaysia (SUARAM) launched its 10th Human Rights Report entitled "Malaysia, Civil and Political Rights Status Report 2006". The event was held at Cititel Hotel Mid Valley, Kuala Lumpur. The report was officially launched at approximately 10.45 am by the guest speakers - representatives from the Chin Refugee Committee and a member of the Bukit Jelutong community.

SUARAM's Report latest encompasses, among others, issues like detention without trial, abuse of police powers, freedom of speech and expression, freedom of information, freedom of assembly and association, freedom of religion, the law and the Judiciary. The tenor of the Report is one of disappointment on the grounds that promises by the current administration to combat corruption and reform the police force remain largely unfulfilled. The Report also highlights with concern, a growing and unchecked intolerance in matters of religion, the concentration of media ownership in the hands of progovernment businessmen and Barisan Nasional component parties, open displays of racist sentiments and the apparent impotence of the Human Rights Commission of Malaysia (SUHAKAM).

The Internal Security Act, the Emergency Ordinance and the Dangerous Drugs (Special Preventive Measures) Act, according to

SUARAM's report, continue to be a thorn in the flesh of the right to a fair trial. The Report revealed that in 2006, 20 persons were arrested under the ISA and over 700 were detained without trial under the Emergency Ordinance. The Report noted that the lackadaisical attitude of the government in dealing with the issue of detention without trial in Malaysia was perplexing, given that in September 2006, the Prime Minister issued a statement calling for 2 Malaysians detained without trial at Guantanamo Bay to be given a fair trial or be released forthwith.

The Malaysian police were not exempt from criticism in the Report as violent police actions, arbitrary detention of protestors and abuses while in police custody remain as problems. It is almost comical to note that even Tun Dr. Mahathir Mohammad described Malaysia as a 'police state' when he complained that the government used the police to prevent him from speaking at functions. SUARAM revealed that in 2006, there were 9 deaths, including 2 women while in police custody. Police brutality received much publicity when demonstrators against the oil price hike were subjected to beatings. One of the doctors who examined an injured demonstrator said that the force used on the demonstrator could have potentially been a fatal blow.

The growing dissatisfaction and intolerance among citizens in matters of religion is also mentioned in the report. One example that is highlighted are the death threats against constitutional lawyer, Malik

Imtiaz Sarwar, via email and SMS, for his involvement with the Article 11 coalition.

The SUARAM Report did not spare the Malaysian Judiciary from rebuke as it stated that the Subashini case is "another instance illustrating the reluctance of the civil courts to rule on cases where questions of Islam are involved". The report also warns that the "the courts are becoming a politicized arena and that people are losing faith in the Judiciary". Mention is also made of the 1988 judicial crisis and the call for review of the incident which appears to have fallen on deaf ears on the part of the Executive.

SUARAM's 10th Human Rights Report is replete with examples of human rights violations and the government's lack of impetus to satisfactorily address and resolve human rights issues which plague our nation. Our country intends to celebrate its 50th anniversary in grandeur but will it be a meaningful celebration when persecution, abuse, injustice and victimization remain as unresolved national problems?

SUARAM's Report also highlights with concern, a growing and unchecked intolerance in matters of religion, the concentration of media ownership in the hands of pro-government entities, open displays of racist sentiments and the apparent impotence of SUHAKAM.

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Stand Up and Be Counted Interview with Cynthia Gabriel Now more than ever the Bar must recognise that it cannot be compared to the control of the control o

Now more than ever the Bar must recognise that it cannot stand alone in the fight against abuse of power, injustice and impunity. With countless human rights issues to be dealt with on a daily basis, and framed within the backdrop of an information age where technological advances demand speedy interventions as events take place in the blink of an eye, the Human Rights Committee continues to work closely with various activists and non-governmental/ civil society organisations. In particular, the Committee seeks to effectively carry out its work by harnessing the expertise of our partners in the spirit of co-operation to achieve similar goals.

In the new 'Talking Rights' segment, the Human Rights Committee speaks to rights advocates on diverse aspects in relation to the human rights agenda and struggle. The inaugural discussion features Cynthia Gabriel who is the former Executive Director of SUARAM (Suara Rakyat Malaysia: www.suaram.net), and now, the Vice-President of the FIDH (International Federation for Human Rights: www.fidh.org). She is also currently working with CARAM Asia (Coordination of Action Research on AIDS & Mobility: www.caramasia.org), a regional organisation based in Kuala Lumpur, working on migration and health issues.

HRC: Let's talk briefly about your work before **CARAM Asia.**

CG: I have been engaged in human rights work for more than a decade now; and in Malaysia, I spent much of these years with SUARAM, as a staff member working on the Bakun Dam campaign and the anti-ISA campaign from 1994-96. After a 5-year break to pursue my Masters degree and working elsewhere, I returned as SUARAM's first Executive Director, for four years until 2004.

After that, I became involved in regional work, and co-founded FORUM ASIA or the Asian Forum for Human Rights and Development, the most recognised regionwide coalition of organisations working on human rights in Asia. I also worked with the International Commission for Jurists on a research project with them on the Malaysian judiciary, and began playing a more active political role in FIDH.

HRC: You have an interesting background: a graduate in Chemistry and a postgraduate in Philosophy. How did you end up doing human rights work?

CG: A famous question! Looking back, the

early seeds of my activism were sown during my university days, and the corridors of Chemistry had something to do with it. Looking at the activist movement in Malaysia, I could be among the handful of home-grown activists who graduated from a local varsity, after the University and University Colleges Act came into force.

My sense of natural justice and my curiosity to know more contributed to my initial interest in social issues. In my final year, a rape case allegedly by a Chemistry lecturer on a student had exploded in campus, right during the time when I was completing my thesis. External voices mainly among Penang-based NGOs helped add to the pressure and highlighted the need for greater protection of female students, and for the lecturer to be suspended from his post immediately. It was my first introduction to such a scenario, and before I knew it, I was involved in gaining signatures for a petition that was going around at the time to muster support for justice to be carried out without delay. The Catholic society in university at that time helped serve as platform for me get more involved in social work at the time.

At the outset it would appear that my academic qualifications had little to do with human rights. On the contrary, it got me curiously engaged in issues, and I recall the high-profile case of Bukit Merah being one of them. Residents of a village had taken a multinational company to court for spewing radioactive waste and causing the health of people residing within the vicinity of the area

> to visibly deteriorate. It seemed that everyone's interest was mobilised; from doctors, journalists to lawyers. The case helped me realise that my own background in Chemistry had the added value in assisting the understanding of the problem as I volunteered my time with a local consumer organisation working on the issue at the time.

> > I remember telling myself that I would give myself a year to try out the work at an NGO, and then go back to being a chemist after that. It's been 12 years since!!

HRC: We hear quite a bit about SUARAM most notably in leading the coalition 'Abolish ISA Movement' (AIM). You once led the organisation. Looking back, any regrets?

CG: SUARAM was born in the aftermath of the 'Operasi Lalang' crackdown. Friends and family members of the 107 persons detained formed SUARAM with the aim of abolishing the ISA from Malaysia's law books. Starting off as a group of highly dedicated volunteers, SUARAM worked relentlessly to galvanise support for this campaign. Nobody wanted to talk about the ISA. There was so much fear about what the law could do. From a mere 12 groups in support of the abolishment of the Act back in 1987, we now have 83 members in AIM where SUARAM plays the role of Secretariat.

Leading the leading human rights organisation in Malaysia was a tremendous challenge, and there was never a dull or predictable moment. Born through a product of a struggle, and known for its ability to venture into new and controversial areas that had very few takers, SUARAM continues to be known for its relentless and enduring courage in addressing human rights violations in Malaysia. By the time I assumed the post of Executive Director, the organisation had grown from championing a single issue to taking on a myriad of rights issues ranging from indigenous peoples land rights to police brutality issues.

SUARAM held firmly to the principle of collectivism and gained a reputation of being a moderating force and a coalition builder. It successfully convened the coming together of diverse groups in agreeing on universal human rights standards, and the need for greater protection and promotion of human rights in this country. The Malaysian NGO Charter on Human Rights initiative in 1993,

the launch of the first human rights report in 1997 which is now an annual feature, the 'Gagasan Demokrasi Rakyat' in 1998 and the AIM campaign, better known today through its Malay acronym, 'Gerakan Mansuhkan ISA' in 2001 are examples of SUARAM's work in strengthening of the NGO movement in Malaysia.

SUARAM members would dive headlong into an issue with full courage and confidence, despite the evident danger ahead, once we knew it was the right thing to do. One clear example was when the 'Reformasi' situation exploded before us. I remember the night Anwar Ibrahim was arrested, and scores of others were taken in under the ISA - the SUARAM office was a hub of activity and offered a place of solace for those who didn't know where else to go for answers. The arduous task of documenting arrests had also begun, drawing in volunteers by the droves.

I grew to recognise that among its many roles SUARAM had engaged in, it provided the much needed space to fill the gaping void - of the lack of discourse and understanding on rights and justice issues.

HRC: SUARAM also published Kua Kia Soong's controversial book 'May 13: Declassified Documents on the Malaysian Riots of 1969' regarding the May 13 tragedy recently.

CG: Kua's May 13 book is another typical example of the kind of work SUARAM would take on with pride. May 13 is by far the most referred to period of violence in our country's short history, and yet there hasn't been any disclosure on the events that transpired. May 13 is like a ghost in our lives. For those who lived through it, they have been made to believe that its better to let sleeping dogs lie. For those of us who were born after May 13, we have never been provided with answers, apart from 'official

versions', to our questions of what really happened.

With media control and an arsenal of laws at its disposal, the National Alliance government continues to rule with impunity and has strangled whatever room for critical thinking and discourse left in our society.

It is in this context that Kua's efforts at studying the declassified documents is an incredibly important step in opening up the space and discourse on a subject as purportedly 'sensitive' as May 13. SUARAM stepped in to publish the book when the original publishers backed out at the last minute for fear of backlash and governmental pressure.

HRC: Going back to some of your experiences. You once lost a friend while traveling to meet the Penans in the interiors of Sarawak. Did you feel like giving it all up then?

CG: That was back in 1994, when I had just joined SUARAM. We went on a fact-finding mission into the interiors of the Baram river to meet the indigenous Penan people who had complained of abuse by logging companies in their efforts to protect their land.

We were almost reaching our destination when the boat capsized after failing to negotiate the fierce rapids. It was a very dark period in my life. We had all been shaken by the accident, but my heart really sank to learn later that we had lost a teammate and friend to the gushing waters.

Thankfully my reflections didn't go down the negative path. Instead it instilled in me an awareness so deep - on life - and how fragile it really is, and how important it is to live it fully, while you still have it, so to speak. It was a turning point indeed and strengthened my resolve in working

for the cause of justice even more.

I found myself becoming more engaged and led the Bakun dar campaign after that. If the hea wrenching experiences in relations I found myself becoming more engaged and led the Bakun dam campaign after that. If the heart wrenching experiences in relation to Sarawak weren't enough, I found myself on a blacklist of the State Immigration Department. An attempt to enter the state of Sarawak in 2003 resulted in immediate deportation without clear reasons given to me.

HRC: You landed in police lockup in 1996 during the Asia Pacific Coalition on East Timor (APCET) meeting. What happened?

CG: APCET 2 was an international conference held in Malaysia on peace prospects in East Timor. At the time, East Timor was still under Indonesian rule. Just when the conference was starting, we realised the presence of a growing group of noisy protestors outside the hotel, chanting slogans calling us to stop the conference.

Within minutes we heard loud noises and footsteps leading up to the conference hall, and very hurriedly all the conference participants resisted as much as possible the entry of the mob outside. We couldn't hold on for long as the mob broke the hotel doors, and with chairs and sticks ran amok and brought the conference to a forceful stop. Many were injured as a result and the police although present in the vicinity only appeared a good half hour later apparently to put out the scuffle. Instead of arresting the attackers, they arrested all local participants at the conference and deported all the foreigners.

We were all sent to the Wangsa Maju police station that night. For many of us, especially those I shared a lock up with, it was our very first experience being arrested. The incident caused so much publicity both locally and internationally. It certainly caused some embarrassing moments with the Malaysian government. It was another pointed experience in my life as I realised more and more that the unbridled powers of the State really needed to be challenged and how important it was to stand up and be counted.

HRC: You once met Aung San Suu Kyi in 2000. Tell us about this.

CG: This was definitely a highlight. It was a mission that I undertook in 1999 to meet the lady herself and record a few comments from her on various world events including a message for SUARAM's 10th year celebration. It was one of those rare periods that she was not held under house arrest.

We got into Rangoon and met with her special assistant who then confirmed that the meeting would take place at the National League for Democracy (NLD) office in the afternoon. According to the plan, from the meeting we would go straight back to the airport. When we were on our way to the NLD office, I noticed a car following us. When we reached the office, the car stopped across the road. I tried to look confident and walked into the NLD building, knowing fully well that this car will wait for me and probably follow us all the way back to the airport.

After waiting a few minutes, Aung San Suu Kyi appeared! I couldn't believe my eyes. I still remember she wore a yellow traditional Burmese dress and looked so flawless - even more beautiful than the pictures we see in the media all the time. She spoke impeccable English and was so poised and articulate throughout the half hour interview that we had. All I could think of was WOW!

When the interview ended, we left the office and true enough were followed all the way to the airport. At the airport we were harassed and subject to a thorough body search, as

the authorities were looking for the tape where the interview was conducted. They refused to let us go as they could not find the tape and we almost missed our flight as a result.

HRC: You have been elected Vice-President of FIDH. What does FIDH do, and why did you seek election?

CG: SUARAM is a member of the FIDH, and I first came to know of its work when it conducted a fact-finding mission in Malaysia on Human Rights Defenders back in 2002. FIDH is a very well known human rights organisation. It is also one of the oldest organisations, and takes up a range of issues to be advocated and lobbied at the United Nations Human Rights Council and the European Union. Its strength has always been with French speaking countries, but now broadening its influence in Asia and other English speaking countries.

One of most empowering experiences I have had from being a part of the large FIDH family is the power of international solidarity. It's easy to feel alone as a human rights defender as very often we find ourselves swimming against the tide, and are constantly subject to possible threats and harassment from the powers that be.

The FIDH sense of togetherness and solidarity has been really powerful, transcending boundaries and language barriers to demonstrate in a real way that human rights is indeed universal, and the struggle for justice be it in Colombia or in Zimbabwe is just as real as that in my own country.

As my involvement deepened, I was invited to play a more active role politically - to take on the responsibility of developing the Asia program and ensure that FIDH is able to contribute in more relevant ways to the realisation of human rights in Asia. My post will lend strength to meet that goal.

HRC: Can you tell us more about **CARAM Asia?**

CG: CARAM Asia is a regional organisation working on the issue of migration and health. It has been in existence for almost ten years now, but previously existed in Malaysia on a low profile, working with a close group of partners in different countries.

CARAM has since broadened its approach - adopting a new strategic plan, opening up its membership and striving to work through regional responses for the greater protection of migrants and their health rights. I was invited to join CARAM last year to head the regional Secretariat and to execute the new program plan. I have also been tasked to ensure CARAM Asia becomes a leading network of migrant communities and organisations in the region.

We work on several areas. In main is participatory action research where we ensure that migrant voices get reflected in all our campaigns and advocacy work. We focus our work on the most vulnerable of groups and have a big program on domestic workers, and also migrants who are HIV positive as they face added stigma and discrimination.

HRC: After so many years, it seems that you are still highly committed to the cause. What drives you?

CG: The fundamental issue for me is that I am an 'actualised citizen', and will actively participate to exercise that democratic right. The problems lie with Malaysian society really and the lack of spaces for that right to be realised.

That's when advocating for rights can

become very political. We are seen as dissenters when actually all that is being done is to offer another point of view. Advocating rights deals with power relations issues and insists on meeting standards, especially for the marginalised and minority sections of society. I find this to be very challenging.

It's part of life's journey and a part of discovering life - activism isn't just a job, for short-term satisfaction. There is still so much to do and am grateful that I am still able to find inspiration in different things that help me go on.

HRC: How do human rights activists generally view lawyers?

CG: Human rights activists often feel that lawyers don't do enough for the cause of justice. There is only a small group of lawyers that we constantly call upon to work with us on human rights cases and legal representation. There is a wide belief that lawyers should and can do much more to help the cause of human rights.

The legal profession is part of the third pillar of democracy, which is the administration of justice. The Judiciary is the last bastion of hope for individuals to seek justice - an improper and corrupt Judiciary will wipe away efforts at democracy building.

Legal representation for the poor is the most direct way of assistance through legal aid or pro bono work. Teaching and giving para-legal training to nonlawyers could be another. In any case the Bar Council has many committees and programs, and it is hoped that more young lawyers will start taking an interest in human rights issues.

HRC: How can the Bar contribute to human rights?

CG: The Bar Council is an important

organisation to help promote and protect human rights. It has come a long way in being a primary advocate of the human rights. for human rights protection and should continue to actively intervene whenever there are human rights \vec{o} violations. I must add that the recent leadership at the Bar have been very encouraging.

The Bar cannot and should not work alone. It has become really strategic for the Bar to work with other human rights organisations that champion the same causes. Most importantly, it is the responsibility of the Bar to widen its pool of sensitised legal professionals to take on human rights and justice work.

With a 12,000 strong membership, there is every expectation that the Bar will be able to produce able lawyers with a rights perspective. More work should also be done with State Bar Committees.

The Bar could also strengthen its work with the Human Rights Commission of Malaysia (SUHAKAM), the Parliamentary Caucus on Human Rights, and lead the push for the various initiatives such as the implementation of the Independent Police Complaints and Misconduct Commission (ICPMC).

HRC: Some parting thoughts?

CG: Human rights work has taught many of us that life isn't just about myself or my nucleus circle. All of us are connected within a bigger picture, and our individual actions have implications on others. It is an ongoing struggle with lifestyle choices. The legal profession is directly connected to the administration of justice. Lawyers are lucky that their professional work can be used to contribute to the work of justice. There is much which can be done, and it is never too late to get involved.

Outreach seminar of the International Criminal Court and International Criminal Bar, Tokyo

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CALLET WILL

by Mah Weng Kwai, President LAWASIA on 19 May 2007

r. Seigoh Hirayama, President of the Japan Federation of Bar Associations. Hon. Justice Song Sang Hyun, Judge of the Appeal Division of the International Criminal Court (ICC), Honourable Judges Mr Jerone Brouwer Co-president of the International Criminal Bar (ICB), Presidents of Bar Associations, distinguished guest, ladies and gentlemen.

Allow me firstly to thank our hosts JFBA for organising this wonderful and timely seminar and for its very warm hospitality and friendship. LAWASIA is privileged to be a part of this international seminar, especially in support of our Japan member organisation, the Japan Federation of Bar Associations, as the government of its country moves accede to the Rome Statute.

Equally, we welcome the opportunity to offer support for the outreach into our region of the International Criminal Court and International Criminal Bar.

It is my role today to speak on LAWASIA's behalf about the Asia Pacific profession and the International Criminal Court and Bar. To some extent, that is not as easy a task as you might imagine, because the LAWASIA Council, aside from being broadly supportive of the institutions, has no formal policy on or attitude to the ICC and ICB.

As an association of associations, LAWASIA's agenda is driven by input of its member organisations. It is the case that none of our member countries has suggested that, as a regional association, we might develop a policy.

However, that perhaps reflects the current situation where Asian signatories to the Rome Statutes are few, and, in consequence, underlines the importance of meetings like this one. None of us can walk away from our obligations to play an active role in supporting international human rights initiatives, especially as they relate to dealing with monstrous crimes committed in situations of conflict.

At this juncture, I wish to thank the JFBA again for hosting this event and, in doing this, for indicating to LAWASIA that the ICC and ICB should indeed become an important part of our agenda, in support of our <u>own</u> aims and objectives, as well as broader obligations.

We hope, then, that our participation in this meeting may provide a catalyst in building regional support and cooperation for these institutions that offer the strongest of mechanisms for maintaining the rule of law internationally, for delivering international justice where human rights are gravely breached by acts of intolerable atrocity and above all, for acting as a deterrent to the recurrence of such atrocities.

It is perhaps helpful, here, to offer a brief explanation of LAWASIA, as a means of introducing it to delegates who may not be familiar with it and of illustrating why it can playa role.

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LAWASIA was formed over 40 years ago as a coalition of national law societies and bar associations of the Asian and Australasian areas, in response to an understanding that there was and would be in the future, considerable benefit in a regional grouping of professional legal associations.

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Its original "jurisdiction" was the region defined by the United Nations Economic and Social Commission for Asia and the Far East or ESCAFE. As ESCAFE became ESCAP, that is, the Economic and Social Commission for Asia and the Pacific, so LAWASIA broadened its region to include the Pacific nations. In order to accommodate that hange, we became known as LAWASIA, The Law Association for Asia and the Pacific.

Our governing body is the LAWASIA Council, which is comprised of representatives of the peak legal bodies of 24 nations of Asia and the Pacific. Our constitution enshrines *(inter alia)* the following aims and objectives:

- to promote the administration of justice, the protection of human rights and the maintenance of the rule of law within the region.
- to further international understanding and goodwill.
- to foster relations and intercourse between lawyers and associations and

organisations of lawyers within the region.

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- to uphold and advance the status of the legal profession within the region.
- to advance the science of jurisprudence in all its phases and to promote the study and development of international law and of comparative law.
- to assist and co-operate with international, regional, or other organisations having all or any of the abovementioned objects or similar objects.

These will immediately indicate some synergy of purpose between LAWASIA and the ICC and ICB. We are proud, as an organisation, to point to former and current human rights activity on behalf of the bars of the Asia Pacific region and that continues to be a focus, not only of Council but also of many of our individual members.

This meeting in Tokyo serves to support the outreach of the ICC and ICB, and LAWASIA acknowledges this as an extremely important human rights objective, noting the Court's view that:

'external communications, public information and outreach are critical to delivering public and transparent justice, securing necessary support for the Court, and ensuring the effective impact of the Court'. [ICC, Report on the Activities of the Court, ICC-ASP/4/16 (2005) at para 17.]

We are all aware that many countries in the LAWASIA region are yet to sign and ratify the instruments that created the International Criminal Court. We can certainly understand why this would be of concern to the ICC and why it devotes time in support of its outreach into the region.

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I am pleased to note, though, that the imminent accession of Japan and the likely accession of Indonesia are signs that Asian participation is on the increase.

We are all aware of the arguments put forward by various governments throughout the world as justification for not supporting fully the ICC as a mechanism for delivering international justice in severe circumstances where national courts are not effectively able to do so. Time does not allow me to expand on these, other than to say that, as lawyers with an interest in international cooperation and the protection of human rights, this should be a matter of concern to us.

In an address on the Ice and its role, task and performance, His Lordship, the Hon YK Sabharwal, then Chief Justice of India, said:

Such an international system of justice is, at this stage, one of the most important priorities for the human rights movement. Unfortunately, the countries with the worst kinds of atrocities are the ones that hardly have appropriate legal systems to protect such rights.

At a national level, it is a core obligation of lawyers and the bars that represent them to ensure that domestic legal systems remain strong, effective, independent and capable of maintaining the confidence of the community they serve and protect. This is a cornerstone of our duty as a profession. Speaking generally, bar associations and law societies have no

difficulty in seeking to fulfil that duty by providing their views to the legislative arm of governments in domestic affairs, when asked and even when not.

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This duty surely extrapolates into the international arena, especially in, but not limited to, the circumstances succinctly put by Chief Justice Sabharwal. Assisting national governments to understand that domestic interests can be served by giving weight to obligations of international justice is a task to which an increasingly global legal profession is well suited.

In this, I am pleased to point to the leadership of the bar in my home jurisdiction of Malaysia, where the Malaysian Bar, via its now president, Ms Ambiga Sreenevasan, established a Malaysian Coalition for an International Criminal Court in February this year. In addition to inviting other NGOs and political parties to join the Coalition, the Malaysian Bar has offered to provide briefings to potential members of the Coalition as a means of raising awareness of the ICC amongst Malaysia's civil society, so that the Malaysian government can be lobbied effectively on this matter.

The fact of this seminar in Tokyo indicates similar leadership shown by the JFBA that has extended beyond national boundaries to a regional audience.

I note that our member organisation, the Bar Association of India, along with other Indian legal associations, was an active participant and supporter of a workshop arranged by the International Bar Association and the ICC in February 2006. This and similar initiatives in India can work to change the attitude of this influential country in South Asia, and illustrate well the importance of national

Speeches

bars as a catalyst in the process of increasing awareness of the ICC.

A number of national bars, including our Australian member organisation, the Law Council of Australia, have expressed concern over the stance of various US administrations to the accountability that ratification of the Rome Statute implies.

We understand that the new administration in a more democratic Nepal has under serious consideration accession to the Rome Statute and LAWASIA is well aware of the strong role the Nepal Bar Association has played in shaping its new national government. We do not doubt that this has had an impact in raising consciousness in Nepal of the ICC.

These examples, and there are others, indicate the efforts of bars working at a national level to marry local interests with international responsibilities to support an effective rule of law and visible delivery of justice, especially in the extremity of the situations where the ICC is required to investigate and adjudicate.

They must surely be welcomed by the ICC but I am in no doubt that it would like to see them continued, increased and widened considerably if the legal profession and governments in Asia are to meet their international human rights obligations. We must never lose sight of the end result, which is a dominance of justice over atrocity and accountability over inhumane lawlessness. This is something that deserves the support and attention of the legal profession at all levels.

Of course, anyone who understands the role of a court, be it local, state, national or international also understands that the quality of any legal system is underpinned by the quality of the counsel that work within it. A strong, ethical and independent International Criminal Bar is an essential component of the system. Those competent to work in this international arena must emerge from a milieu where the highest integrity and quality of counsel is a given.

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In this, it is incumbent on national bars and associations like LAWASIA to maintain and expect the highest of standards for lawyers. It is equally incumbent on them to provide an environment that teaches and actively encourages an unmitigated necessity to reach those standards.

LAWASIA and the Asia Pacific bars that constitute it can support the ICB by

ensuring that professional excellence and adherence to the strictest of ethical standards are an accepted norm for all lawyers. This is an objective towards which we already work in many spheres and on many levels, but its importance is increased in connection with the International Criminal Bar.

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Ladies and gentlemen, as I suggested at the beginning of my remarks, that speaking about the ICC and the bars on LAWASIA's behalf is not a straightforward task. We have supported this seminar because we felt we had much more to learn as an organisation than we had to impart. That process began yesterday and we look forward to stimulating and productive continuation of deliberations today.

Thank you.

NG CHENG THONG DECEASED (NRIC No. 500927- 07- 5413 / 3929242)

We act for Madam Lim Khoon Ching, widow of the abovenamed deceased who passed away on 17 March 2007 in Kuala Lumpur.

We are instructed to enquire whether any firm of solicitors or anyone has knowledge of or is in possession of a Will executed by the deceased in Malaysia.

Parties with any information are kindly advised to contact:-

ARIFIN & PARTNERS

Advocates & Solicitors Unit A-3-8 Block A Megan Avenue I 189 Jalan Tun Razak, 50400 Kuala Lumpur

Tel: 03-2164 2818 Fax: 03-2162 4358 Ref: 10764/TMH/lmj

Press Statements

All statements were issued by Ambiga Sreenevasan, Chairman, Bar Council 2007/2008 unless stated otherwise Recognise and respect Native Customary Land 25 April 2007

ne month ago the mainstream media reported the development of the National Botanical Garden Project in Kampung Chang, Sungai Gepai, Bidor. This project encroaches upon the *Tanah Adat* (customary land) of the Orang Asli, yet we are given to understand that the Orang Asli were not consulted or informed of the impending project. The Orang Asli, it would appear, have had no real say in a project that affects their lifestyle, their livelihood and their heritage, built up painstakingly over centuries.

The Orang Asli, like every other citizen of this country, enjoy in law, the protection from any arbitrary acts of the State in depriving them of their land or livelihood. The Courts in this country have recognised such protection.

The several statements issued by the authorities in relation to this project provide insufficient information and little comfort to the Orang Asli. Merely offering compensation or an allocation of land in a different area misses the point completely. The Orang Asli's claim is not just about land, it is about their heritage and their right to self-determination.

A trip to the proposed location of this project brings the point home. The *Tanah Adat* concerned has been lovingly nurtured for centuries, and a system of division of the land for various purposes

has been thoughtfully crafted by their ancestors and carried on through the centuries. This has resulted in a well-planned and ecologically well-managed environment that is preserved in its natural beauty. A valuable lesson in ecology and protection of the environment may well be learned by us from the Orang Asli.

Suggestions that the Orang Asli would be "tourist attractions" underscore once again the cavalier manner in which this issue is presently handled. These insensitive and uninformed statements are an assault on the dignity of a proud Semai Community. The clear, unpolluted streams, waterfalls, rock formations, the "footprints" of their nenek moyang, the various plant species used for medicinal purposes and all other minute details of the land which the Orang Asli easily identify are evidence enough of their rightful stake in this land. These beautiful sights and sites are there precisely because of the Orang Asli and their system that has prohibited its abuse.

There is also a startling and unacceptable lack of information as to who is developing the Project, whom the land has been alienated to, and the exact plans for its development.

The threat to the rights of indigenous people, often brought about in the name of development, is one that is recognised worldwide; and the United Nations Declaration on the Rights of Indigenous Peoples recognises their right to the protection of their culture and native land, and the right to determine their futures. As a member of the United Nations Human Rights Council, Malaysia had on 29 June 2006 adopted the Declaration on the Rights of Indigenous Peoples. This is all the more reason why the Government owes a fiduciary duty to the Orang Asli both under our Federal Constitution and international human rights laws, and must comply with its obligations to protect and not destroy their preserved environment and heritage.

The Bar Council calls for an urgent response by the Government to the under-emphasised plight of the Orang Asli, and in the interim for an immediate cessation of all work at the site in question. Any development in the area, as in other similar places, cannot and should not be done without the voluntary consent and collaboration of the Orang Asli.

The Bar Council further calls upon the Government to take a holistic approach to all Orang Asli land rights, and to move in the direction of designating inhabited Orang Asli land as reserved land. It is time we fully recognise that the Orang Asli are a vulnerable but invaluable community whose livelihood, land and culture are deserving of our protection.





Promote gender sensitivity in Parliament 11 May 2007

In 2006, Article 8(2) of the Federal Constitution was amended to prohibit discrimination against anyone on the grounds of gender. Prior to this Malaysia had acceded to the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995.

As Malaysians, we have every reason to be proud that there was recognition by us as a nation that any discrimination on the grounds of gender was unacceptable and now in fact expressly prohibited. These moves were wholly in keeping with international human rights norms.

Against this background, the sexist statements reported to have been made by members of Parliament to the effect that another member of Parliament who is a woman "also leaks once a month" are

most unfortunate. Worse, those who spoke the words apparently saw no fault in them, thus adding insult to injury.

Against this background, the sexist statements reported to have been made by members of Parliament to the effect that another member of Parliament who is a woman "also leaks once a month" are most unfortunate. Worse, those who spoke the words apparently saw no fault in them, thus adding insult to injury.

The remarks made are offensive, distasteful and wholly unbecoming of members of Parliament. Unfortunately it reflects a mindset that remains despite the Government's official position of gender equality. Enacting laws is one way to ensure equality but no amount of legislating can remove deep-rooted prejudices that lie in the hearts and minds of the people.

Gender equality is a responsibility of all Malaysians. It is a responsibility that manifests in many ways. One is to work towards removing gender bias from our laws. Another is to ensure that gender bias does not exist in our conduct and that gender insensitive comments are eradicated from our vocabulary. If made, they should not be tolerated. We expect our Parliamentarians to lead the way in being gender sensitive in accordance with the letter and spirit of the Federal Constitution.

We must seriously pursue our desired objective that women may participate fully in the political, economic, cultural and social life of this country, without having to tolerate discrimination.

In the matter of lawyers involved in Cheating or Criminal Breach of Trust (CBT) cases 28 May 2007

profession and those who are found to have committed acts of dishonesty must face the full force of the law. The Bar Council thus welcomes the recent move by the police to investigate reports of cheating and criminal breach of trust involving lawyers.

The legal profession, like any other

profession or calling, suffers its share of dishonest members. However, unlike other professions, lawyers are frequently entrusted with funds from members of the public especially in relation to property transactions and as such, lawyers owe a high duty of trust and care to the public.

Most transactions that number many thousand in a year are safely and reliably transacted by honest members of the profession. However, a small, albeit not insignificant number, result in losses to the public either due to negligence or dishonesty. As far as we are concerned, one dishonest lawyer is one too many.

The legal profession has recognized its duty to protect the public interest against such lawyers and has put into place several mechanisms including the following:

continued on Library Update

Lina Joy Decision

31 May 2007

he right guaranteed by Article 11 grants every person the freedom to choose, affirm, practise and profess the religion of his/her choice. This freedom of belief is (and must be) an unqualified freedom fully protected by the law. Any law that prevents or in substance curtails the exercise of this freedom must be struck down as being inconsistent with the Federal Constitution, and as being incongruous with such a fundamental freedom. Further, the religion that a person in fact professes must be the religion that that person states he or she professes; since there can be no evidential difficulty in ascertaining this in the case of a living person. Asserting this right, and upholding it, in no way undermines the position of any religion under the Federal Constitution and is consistent with the position of Islam under Article 3.

The Federal Constitution is, and must remain in law, supreme. In the event of any inconsistency or conflict between the provisions of State Enactments and of the Federal Constitution, the latter must prevail. The majority decision in the Lina Joy case pronounced yesterday runs counter to this position. In this decision, the express provisions of the Federal Constitution were made to give way to an interpretation of some form of implied jurisdiction of the Syariah Courts. It further clothed the National Registration Department with powers beyond that which was expressly provided for under the relevant legislation.

The implied jurisdiction approach runs

contrary to the legal position that State law must confer on the Syariah Court express jurisdiction to deal with any matters stated in the State List. The majority decision has implied such jurisdiction in the absence of statutory provisions to that effect, which in any event must accord with the Federal Constitution in order to be valid. In short the majority of the Federal Court has also proceeded to "legislate", (which the Courts are not permitted to do) and in a manner inconsistent with the Federal Constitution.

We support the minority judgment of Justice Dato' Richard Malanjum HMP, who stated that,

"jurisdiction must be express and not implied. The doctrine of implied powers must be limited to those matters that are necessary for the performance of a legal grant. And in the matters of fundamental rights there must be as far as possible be express authorization for curtailment or violation of fundamental freedoms. No court or authority should be easily allowed to have implied powers to curtail rights constitutionally granted." (emphasis ours)

We must further heed the warning of the learned Judge that "... to rely on implied power as a source of jurisdiction would set an unhealthy trend."

The Judgment further noted that it was unreasonable "to expect the Appellant to apply for a certificate of apostasy when to do so would likely expose her to a range of offences under the Islamic law". Little comfort is drawn from cases of those who wish to leave or change religion, who have faced criminal sanctions and most recently the case of Revathi in Malacca who was deprived of her liberty and access to her husband and minor child.

It is important that this minority Judgment be given careful consideration.

We are mindful that issues relating to religion will inevitably draw emotive responses. However in a multi-religious society like ours, Malaysians must be prepared to confront these issues maturely and dispassionately, and within the framework of our Federal Constitution as the supreme law of the land.

Finally, we would commend the approach of the late Tun Mohamed Suffian in such cases where he said.

"In a multi-racial and multi-religious society like yours and mine, while we judges cannot help being Malay or Chinese or Indian; or being Muslim or Buddhist or Hindu or whatever, we strive not to be too identified with any particular race or religion - so that nobody reading our judgment with our name deleted could with confidence identify our race or religion, and so that the various communities, especially minority communities, are assured that we will not allow their rights to be trampled underfoot." (The Constitution of Malaysia - Further Perspectives and Developments).

Library Update

BILLS

- 1. Supplementary Supply (2006) Bill 2007 DR.5/2007

 Tam. No.3

 First Reading:-10.4.2007

 Publication date:-19.4.2007
- 2. Inland Revenue Board of Malaysia (Amendment)
 Bill 2007 –DR. 6/2007
 Tam. No.3
 First Reading:-17.4.2007
 Publication date:-19.4.2007
- 3. Anti-Trafficking in Persons Bill 2007-DR. 7/2007 Tam. No. 4 First Reading: -24.4.2007 Publication date: -10.5.2007
- 4. Criminal Justice (Amendment) Bill 2007 DR.8/2007

 Tam. No.4

 First Reading:-24.4.2007

 Publication date:-10.5.2007
- 5. Merchant Shipping (Amendment and Extension) Bill 2007 –DR.9/2007 *Tam. No. 4 First Reading: -24.4.2007 Publication date: -10.5.2007*
- 6. International Islamic Trade Finance Corporation Bill 2007 –DR. 10/2007 Tam. No.4 First Reading:-7.5.2007 Publication date:-10.5.2007
- 7. Securities Commission (Amendment)
 Bill 2007 DR. 12/2007

 Tam. No. 4

 First Reading:-7.5.2007

 Publication date:-10.5.2007
- 8. Capital Markets and Services Bill 2007 –DR. 11/2007 Tam. No. 5 First Reading:-7.5.2007 Publication date:-10.5.2007

9. Penal Code (Amendment) (Amendment) Bill 2007 –DR. 13/2007 Tam. No.6 First Reading:-9.5.2007 Publication date:-10.5.2007

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10. Criminal Procedure Code (Amendment) (Amendment) Bill 2007 – DR.14/2007 *Tam. No.6* First Reading:-9.5.2007 Publication date:-10.5.2007

AMENDING ACTS 2007

Customs (Amendment) Act 2007 [Act A1282]

Notes:-Amends ss. 2, 22A, 135, 142, 143. Inserts new Part IIA Customs ruling –ss. 10A, 10B, 10C, 10D, 10E, New Part XIVA Customs Appeal Tribunal-141A-141AB. Deletes s. 143A

w.e.f:- 1.4.2007 [PU(B)108/2007] all sections except ss.6, 8, 9, 10(2), 10(3), 10(4)-w.e.f: 1.6.2007 [PU(B) 214/2007]

Excise (Amendment) Act 2007 [Act A1284]

Notes:-Amends ss. 2, 18A, 47, 74, 85. Inserts new Part IIA Customs Ruling- ss. 5A, 5B, 5C, 5D, 5E and Deletes s. 47A. w.e.f:-1.4.2007-all sections except ss. 2(b), 5, 6, 9(2), 9(3), 9(4) w.e.f:-1.6.2007 [PU(B) 110/2007]

Sales Tax (Amendment) Act 2007 [Act A1283]

Notes:-Amends ss. 2, 61, 68. Inserts new Part IVA Customs Ruling – ss. 11A, 11B, 11C, 11D, 11E and s. 12B w.e. f:- 1.4.2007 [PU(B)109/2007] all sections except ss. 2(b), 6, 7(2), 7(3), 7(4)-w.e. f: 1.6.2007 [PU(B)216/2007]

Service Tax (Amendment) Act 2007 [Act A1281]

Notes:-Amends ss. 2, 41 and 50.Inserts new Part IIA Customs Ruling-ss. 6A, 6B, 6C, 6D and s. 7B.
w.e.f.- 1.4.2007 [PU(B)107/2007] all sections except ss. 2(b), 6, 7(2), 7(3), 7(4) – w.e.f. 1.6.2007 [PU(B)217/2007]

INDEX TO SELECTED PU(A) SERIES 2007

Customs Act 1967 [Act235]

Customs (Additional Jurisdiction of Customs Appeal Tribunal) Order 2007 [PU(A)211/2007]

22 12 14 15 15 16

Issued under s.141M(2), Customs Act 1967

Notes:-The Customs Appeal Tribunal shall have the jurisdiction to determine any cost and expenses relating to any matter before the Tribunal.

w.e.f:-1.6.2007

Customs Act 1967 [Act235]

Customs (Appeal Tribunal) Regulations 2007 [PU(A)210/2007] Issued under s.141AB(1), Customs Act 1967 w.e.f.-1.6.2007

Customs Act 1967 [Act 235]

Customs (Customs Ruling) Regulations 2007 [PU(A)149/2007] Issued under s.142, Customs Act 1967 w.e.f.-1.4.2007

Excise Act 1976 [Act 176]

Excise (Customs Ruling) Regulations 2007 [PU(A)150/2007] Issued under s.85(2), Excise Act 1976 w.e.f.-5.4.2007

Legal Profession Act 1976 [Act 166]

Legal Profession (Disciplinary Proceedings) (Appeals) (Amendment) Rules 2007 [PU(A)193/2007] Issued under s.103F(1), Legal Profession Act 1976 Notes:-Amends rule 3, 4, 5, 6, 8, 11 and

Notes:-Amends rule 3, 4, 5, 6, 8, 11 and deletes rule 7 [PU(A) 190/1994] w.e.f:-25.5.2007

Real Property Gains Tax Act 1976 [Act169]

Real Property Gains Tax (Exemption) (No.2) Order 2007 [PU(A)146/2007] Issued under s.9(3), Real Property Gains Tax Act 1976

Notes:-Exempts any person from all provisions of the Act in respect of any disposal of chargeable assets after 31March 2007 w.e.f:-1.4.2007

Sales Tax Act 1972 [Act 64]

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Sales Tax (Customs Ruling) Regulations 2007 [PU(A)151/2007] Issued under s.61, Sales Tax Act 1972 w.e.f:-1.4.2007

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Service Tax Act 1975 [Act 151]

Service Tax (Customs Ruling) Regulations 2007 [PU(A)152/2007] Issued under s.41, Service Tax Act 1975 w.e.f:-5.4.2007

INDEX TO SELECTED PU(B) SERIES 2007

Courts of Judicature Act 1964 [Act91] Courts of Judicature (High Court in Malaya) (Vacations) Rules 1985 [PU(A)326/1985]

Declaration of Vacations of the High Court in Malaya [PU(B)160/2007]

Notes:-The Vacations of the High Court in Malaya for the calendar year 2007 shall be--Monday, 28 May 2007 to Friday, 8 June 2007; and Monday, 17 December 2007 to Monday, 31 December 2007.

w.e.f:-20.4.2007

Customs (Amendment) Act 2007 [Act A1282]

1 24 44 A Marie

Appointment of Date of Coming into Operation [PU(B)214/2007] Notes:-Amends ss. 6, 8, 9, 10(2), 10(3) and 10(4)w.e.f:-1.6.2007

1-24-44-44 HOLDE

Excise (Amendment) Act 2007 [Act A1284]

Appointment of Date of Coming into Operation [PU(B)215/2007] Notes:-Amends ss. 2(b), 5, 6, 9(2), 9(3) and 9(4)w.e.f: 1.6.2007

Sales Tax (Amendment) Act 2007 [Act A1283]

Appointment of Date of Coming into Operation [PU(B)216/2007] Notes:-Amends ss. 2(a), 6, 7(2), 7(3) and 7(4) w.e.f:-1.6.2007

Service Tax (Amendment) Act 2007 [Act A1281]

Appointment of Date of Coming into Operation [PU(B)217/2007] Notes:-Amends ss. 2, 6, 7(2), 7(3) and 7(4) w.e.f:-1.6.2007

NEW BOOKS IN THE LIBRARY

- 1. Navaratnam, Ramon V. Malaysia's Socioeconomic Challenges. Subang Jaya, Selangor: Pelanduk Publication., 2003.
- 2. Navaratnam, Ramon V. Malaysia's Economic Challenges. London: Asean Academic Press, 2003.
- 3. Navaratnam, Ramon V. My Life and Times: a memoir. Subang Jaya, Selangor: Pelanduk Publication., 2005.
- 4. Federal Statute Law Referencer: Index to Federal Laws & Subsidiary Legislation. Petaling Jaya, Selangor: International Law Book Services, 2007.

FOR LATEST LEGISLATION UPDATES PLEASE VISIT OUR

WEBSITE www.malaysianbar.org.my

continued from page 68

Compensation Fund

Every member of the Bar is required to contribute RM100 a year to the Compensation Fund, set up under Section 80 of the Legal Profession Act. The fund is meant to be used to compensate, to some extent, any person who sustains a loss as a consequence of the dishonest act of a lawyer or his employee. From 1978 to 2004 a total of RM9.8 million has been paid out in terms of compensation.

Professional Indemnity Insurance (PII)

The PII Scheme was introduced in 1992. We were the first professional body to initiate such a scheme and till today we remain the only profession in Malaysia in which PII is compulsory.

Under the Legal Profession (Professional

Liability) (Insurance) Rules 1992 every advocate and solicitor is required to be insured under the rules and the insurance policy provides indemnity against professional liability including acts of negligence through error and/or omission by lawyers and/or employees of legal firms. Criminal Breach of Trust is covered only to the extent that innocent partners in a firm will be protected.

Intervention

Provisions in the Legal Profession Act allow for the Bar Council to intervene and take over the practice of a firm if there is evidence of dishonesty. An intervention secretariat has been set up for that purpose.

Further it is precisely in the public interest that many of the recent amendments to the Legal Profession Act were passed which streamlines the proceedings before the Disciplinary Board so that cases involving errant lawyers may be dealt with swiftly. There are provisions that have been included for the restitution of monies to a complainant. However, the recent move by the police to commence criminal investigations will be a further step outside our disciplinary regime that will go a long way towards curbing dishonesty.

Integrity is a value cherished by the legal profession as a whole and we are ever mindful that we have to be vigilant against unscrupulous lawyers.

The public must be in no doubt that we have zero tolerance for dishonest lawyers. We will co-operate fully with the police in bringing these lawyers to book.



A Lawyer and a Gentleman

by George Varughese

Dato' S. Palaniveloo or more popularly known as "S.P. Veloo" or just "SP" among his friends passed away peacefully on 23 May 2007 at the age of 68.

S.P. Veloo who practised under the name and style of S.P Veloo & Co in Klang, Selangor, leaves behind three children, S.P. Muthu Veloo a partner in his firm, Dr S.P. Sakthi Veloo and Dr S.P. Sivaghami. His wife A. Jeyamanie passed away in June 2003.

S.P. Veloo was a teacher for 10 years in La Salle, Brickfields, before he proceeded to read law in Singapore.

Upen his return to Malaysia he did his pupilage in the chambers of Xavier & Vadiveloo and was called to the Bar on October 24, 1973. He then practised in Messrs L.S Tan and Messrs V.P. Nathan & Partners before setting up his own practice in 1990.

A religious man, S.P. Veloo was very active in the activities of the temple and was the Trustee of the Sri Maha Kaliamman and the Sri Raja Rajeswari Temples in Kaula Lumpur.

Being the younger brother of MIC President Datuk Seri S. Samy Veloo, he was naturally an active member of MIC.

In the legal fraternity S.P. Veloo was a friend to all, and long before the abolishment of Section 46A, treated both junior and senior practitioners alike.



His eldest son; Muthu Veloo described his father as a disciplinarian, upright, straight forward and an extremely honest gentleman.

Well liked by all, the Bar has lost a friend in the passing of Dato' S. Palaniveloo.

The Bar Council and the Selangor Bar Committee convey their sincere condolences to his family.

Senior member of Pahang Bar dies

by Web Reporter

Senior lawyer Harbans Singh Bhal passed away peacefully on 1 May 2007 morning at the Kuala Lumpur Hospital, at the age of 69.

Born on June 22, 1938, Harbans, was a barrister from the Lincoln's Inn, and then called to the Malaysian Bar on February 10, 1969. He ran the practice of Messrs. Harbans Singh Wan Salina & SS Gill in Temerloh.

Harbans, who was also fondly called 'the Doyen', will be sadly missed by members of the Malaysian Bar, particularly members of the Pahang Bar.

The Malaysian Bar extends our heartfelt condolences to his bereaved family.



Senior lawyer Manjit Singh dies

by Web Reporter

 \mathbf{S} enior lawyer Manjit Singh s/o Gurcharan Singh passed away on 1 June 2007 at the age of 59.

Manjit, born on 29 March 1948, read his law in Singapore and was called to the Malaysian Bar on 21 February 1973.

A Past President of the Royal Selangor Club, Manjit was also the partner of a Kuala Lumpur based firm, Chin Hin Lam, Anthonysamy & Manjit and in his former firm, Kumar & Partnership (formerly known as Sri Ram & Co.).

He leaves behind his wife, Pragash Kaur, son Harvinderjit Singh and daughter Rayena Kaur.

The Malaysian Bar extends our heartfelt condolences to Madam Pragash Kaur and family.





Bar Council Malaysia The Professional Standards & Development Committee

Islamic Banking

Mohamed Ismail Shariff

Advocate & Solicitor High Court of Malaya

12th July 2007 Thursday 2.30 pm – 6.00 pm	 LEVEL 1: 1st series The fundamentals and concept of Islamic Banking How Islamic Banking differs from conventional banking Law relating to Islamic Banking Q&A session Introductory in nature 	
16 th August 2007 Thursday 2.30 pm – 6.00 pm	 LEVEL 1: 2nd series Islamic Banking: Products & services Recovery actions in Islamic Banking transactions Q&A session Intermediate level 	
6 th Sept 2007 Thursday 2.30 pm – 6.00 pm	LEVEL 1: 3 rd series ◆ Case study: Analysis of 5 decided cases ◆ Q&A session Involve case studies and analysis of financing transactions	

Chairmen: Jal Othman, Advocate & Solicitor Kuala Lumpur
Dato' Tengku Hasmuddin, Advocate & Solicitor Kuala Lumpur (Tbc)

About the Speaker



Mohamed Ismail (LL.B. (Hons) - University of Singapore), (LL.M. - King's College, University of London) is a Fellow of the Chartered Institute of Arbitrators (UK), Fellow of the Malaysian Institute of Arbitrators and Barrister-at-law of Lincoln's Inn. En. Ismail has been associated with Islamic banking since its first introduction in Malaysia in 1983. He was involved in drafting the first Malaysia

Islamic banking documents & served as the Legal Counsel for the US\$600 million Government of Malaysia Sukuk issuance. He was the Director of Bank Muamalat (2001–2005) & currently serves as Director of Kuwait Finance House (M). Serving in the; Bank Negara's Islamic Law Review Working Committee, Sub-Committee to review

the law of Contracts Act 1950 on Syariah compatibility, Securities Commission's Islamic Capital Market Working Group and Labuan IOFC - Steering Committee on the International Islamic Money Market, plus his experience as the External Fellow for the Islamic Banking & Finance Institute Malaysia (IBFIM), External Examiner in Law at UiTM and Visiting Industry Expert for the International Centre for Education in Islamic Finance (INCEIF) has certainly add significant value to his expertise in the field of Islamic banking.

FOCUS AND OBJECTIVE

- Working knowledge of Islamic banking's basic principles
- Fundamental difference of Islamic banking & conventional banking
- Comparison between Islamic financing transaction & conventional lending
- The law relating to Islamic banking
- Justification of incorrect views about Islamic financing
- How major project financing using Islamic financial transactions is just as efficient as conventional loans granting
- Why Islamic banking shouldn't be seen as a variant of conventional banking & as one in which 'interest' is replaced by 'profit'

WHO SHOULD ATTEND?

- Advocates & Solicitors
- Counsel from the Attorney General's Chambers
- In-house Counsel & Legal Advisors
- Bankers, Financial Planners
- Tax and Stamp Duty Officers
- Academic Staff & students
- Anyone interested to learn the reasons & rationale of why Islamic banking is done in the way it is done, hence gaining more confident in managing Islamic banking transactions

Date: July 12, August 16 & Sept 6, Venue: Bar Council Auditorium, 1st Floor, 13 -17 Leboh Pasar Besar, 50050 Kuala

For registration information, please call 03 - 2031 3003 Ms Sivanes ext 174





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