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INFOLINE

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Editorial

Human rights and corporate responsibility

In August, the Sub-Commission on the Promotion and Protection of Human Rights of the United Nations – a sub-commission of the Commission on Human Rights and, ultimately, the Economic and Social Council – will be considering a draft set of norms which, if adopted, mark the commencement of a new era in matters of corporate responsibility.

Currently entitled *The Norms Of Responsibility of Transnational Corporations And Other Business Enterprises With Regard to Human Rights*, the Norms is a comprehensive restatement of principles founded in international human rights law in connection with business enterprises. These include an express requirement that transnational corporations and other business enterprises recognise and respect applicable norms of international law, national laws, the public interest, the development objectives, social, economic and cultural practices. They are further required to contribute to the realisation of the right to development and the right to the highest attainable standard of physical and mental health.

The document may possibly stand as the first concrete example of the recognition by the international community of the need by business enterprises, and in view of the alignment of businesses and politics, governments, to conduct their affairs in a manner consistent with international human rights standards. In this, it is an articulation of the interdependence between matters of human rights. The lack of recognition of this crucial interdependency has for long been one of the foundations of criticism by civil society in the global south against globalisation. Most significantly, it is indicative of the trend in international human rights law towards addressing non-state actors. This however is not to be taken as a basis for derogating from the primary obligations of states to ensure the promotion and respect for human rights.

The norms represent a unique opportunity to us as Malaysians. If ultimately endorsed by the Malaysian government, they allow us to protect ourselves from the onslaught of globalisation in areas which are particularly sensitive. Transnational corporations under the auspices of the General Agreement on Trade in Services (GATS) have moved into areas of health care, education, and other aspects of 'development'. Issues of genome patenting, biological diversity and the adjunct bio-prospecting are all crucially relevant to our lives as Malaysians. The WTO agenda has taken the pace of globalisation and the nature of its impact out of the hands of most governments, ours included. These norms may allow us to slow that process down if not take the reins back entirely.

It is however never that simple. Endorsement of the norms will require on the part of the Malaysian government a recognition of international human rights standards. The government alarmingly has as yet to ratify the two key covenants – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICSECR). Its failure or refusal to do so has in turned fueled the rejection of a host of other relevant instruments, perhaps out of a concern at seeming inconsistent or at acting contradictorily.

Recent events however, including the continued suspension of the seven university students for their involvement in an anti-ISA demonstration suggest a lingering immaturity and a lack of sophistication on the part of the powers that be and in turn indicate that the basis for refusal may be something altogether different.

This is unfortunate. If this attitude towards ratification of international human rights instruments persists, we will be hamstrung, and in effect, offered up in sacrifice. The lowering of barriers is inevitable and the wolves are already howling at the door.

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Infoline is the official newsletter of the Malaysian Bar, published monthly by the Bar Council of Malaysia. Its editor is Mr Malik Imtiaz Sarwar. Members of the Publications Committee are Hj Kuthubul Zaman Bukhari, Mr Yeo Yang Poh, Dato' Mohd Sofian Abd Razak, Mr Ragunath Kesavan, Mr M Mathialagan, Mr S Gunasegaran, Mr Benedict Cheang, Mr Yang Pei Keng, Mr Cecil Rajendra and Mr Jerald Gomez.

The Bar Council welcomes letters, articles, views and news (including photographs) for possible inclusion in the newsletter. However, the Bar Council reserves the right not to publish them or to edit those published as regards content, clarity, style and space considerations.

Articles from individuals that are published contain the personal views of the writers concerned and are not necessarily the views of the Bar Council.

Appointments to the Bench

The Bar Council congratulates two members of the Bar, Haji Mohamed Apandi bin Ali, Treasurer of the Malaysian Bar for the year 2002/3 and K P Gengadharan a/l C R Nair for their appointments to the Bench in May this year. We wish them both a happy and successful tenure of office.

Haji Mohamed Apandi bin Ali

Haji Mohamed Apandi bin Ali, Honorary Treasurer of the Bar Council from 2002 to 2003, was appointed as Judicial Commissioner with effect from 1 May 2003.

Haji Mohamed Apandi qualified as a Barrister-at-Law, Inner Temple, and joined the Judicial and Legal Service in 1973, his first appointment being Magistrate in Kuala Terengganu. In 1975, he became the Director of the Legal Aid Bureau for the State of Kelantan, a post which he held for two years. He was then appointed Deputy Public Prosecutor for the States of Kelantan and Terengganu from 1977 to 1979, afterwhich he became legal adviser to the Ministry of Trade and Industry from 1980 to 1982.

In 1982, Haji Mohamed Apandi entered private legal practice and was practising under his own firm when he was appointed to the Bench. While in practice, he held a series of appointments which included Legal Adviser to LTN from 1984, and UMNO State Legal Adviser from 1990. At the Bar, Haji Mohamed Apandi served as Chairman of the Kelantan Bar and member of the Bar Council from 1995 until March 2003. He became Chairman of the Bar Council Criminal Law Committee in 1996 to 2000 and Chairman of the Bar Council National Legal Aid Committee in 2001 to 2002.

Haji Mohamed Apandi is now attached to the High Court at Kuantan and Temerloh.

K P Gengadharan a/l C R Nair

Mr K P Gengadharan a/l C R Nair was appointed as Judicial Commissioner with effect from 1 May 2003.

Mr Gengadharan qualified as a Barrister-at-Law, Inner Temple in 1972 and was admitted as an Advocate and Solicitor of the High Court, Malaya in 1973. He was in active practice between 1973 and 2003 before being elevated to the Bench, and was a mediator in the Bar Council's Mediation Panel for Firms' Disputes since 1998.

Mr Gengadharan served as a member of several Committees – the LAWASIA Standing Committee on Labour Law since 1990 for several years, the Industrial Court Rules and Practice Committee of the Bar Council for several years up to 2002, and the Bar Council's Special Committee on Review of Chambering in 2002. In addition, he has presented papers and delivered talks on Industrial Law and Employment Law at numerous seminars, courses, workshops and conferences.

Mr Gengadharan Nair is now attached to the High Court at Johor Bahru.

Bar Council Sports Fund

Pursuant to the resolution passed at the 57th Annual General Meeting on 23 March 2003, members are required to pay an **annual subscription of RM10** payable at the time of applying for Sijil Annual/Practising Certificate towards the establishment of the Sports Fund.

Kindly make your cheque payable to the 'Bar Council'. Please add the necessary Bank Commission for outstation cheques. Kindly also ensure that your name and Sijil Annual numbers are clearly written on the reverse of the cheque.

List of Committees of the Bar Council for the year 2003/4

Please be informed that since the publication of the May 2003 issue of *Infoline*, several members have just joined the committees of the Bar Council for the year 2003/4. They are *Collin Sequerah* and *Anand Ponnudurai* for the **Industrial Court Practice Committee**; *Sreekant Pillai* and *Nik Elin Zurina bt Nik Abdul Rashid* for the **Gender Issue Committee**. *Malik Imtiaz Sarwar* is the Deputy Chair of the Gender Issue Committee, not an ordinary member as stated in the May 2003 issue.

Bar Council Human Rights Committee 2nd National Training Programme

The Human Rights Committee of the Bar Council organised its 2nd National Training Programme in Penang, between 22 - 25 May 2003.

It was a difficult task selecting only 100 participants from the numerous applications received. Preference was given to members of the Bar from the Northern Region as the Inaugural Training Programme in November 2001 had given priority to those in the Central and Southern Region. The expenses for this Programme were subsidised substantially by the British Commonwealth and Foreign Office.

It was a tight programme held over four days. Each day saw the participants being exposed to new areas of human rights law and basic requirements for human rights advocacy. The extremely demanding programme, comprising both seminar sessions as well as workshops, had sessions beginning as early as 8:30 am and ending at about 11.00 pm. Even so, the participants were introduced to only the tip of the iceberg of Human Rights as a concept, a subject and law.

The programme was not designed to teach the participants everything about Human Rights law, but more to give the participants a bird's eye view of what Human Rights is and to instil an awareness of it; it was a foundation course upon which the participants are able to further their interest and knowledge in the variety of human rights areas to take up human rights cases.

Both the International Conventions relating to human rights as well as Human Rights in the Malaysian context were covered. Of particular note was the Federal Constitution and its applicability in respect of the Universal Declaration of Human Rights and the Convention on the Elimination of Discrimination Against Women (one of two Human Rights related Conventions ratified by Malaysia).

Most, if not all the participants, were aware of some of the rights and violations thereof vis-à-vis the individual and the State. However, the programme introduced the participants to the concept of Human Rights permeating every layer of society.

Professor Gurdial Singh Nijar, addressed us on genetic engineering and the problems of protecting our environment and how it has affected entire communities. He referred to many International Covenants and explained the dynamics that take place in the United Nations. Ramdas Tikamdas illustrated these International norms and brought them 'home' by highlighting human rights violations in the Malaysian context.

Dato' Dr Cyrus Das spoke on Human Rights cases and the special approach needed in advocating such rights. Human Rights advocates must first be aware of and sensitised to the rights and violations. Manjeet Singh Dhillon and Christopher Fernando enlightened the participants with detailed accounts of the parallel cases of *PP v Dato' Seri Anwar Ibrahim*, *PP v Nallakaruppan* and *PP v Munawir Anees*, thereby giving the participants insights of human rights violations during the trial process and during police remand. Participants could hardly believe what they heard. Manjeet Singh Dhillon also used these cases to show the participants how to identify human rights violations, which may not necessarily be apparent, and how then to advise and deal with the victims/ survivors. Puravalen used a power point presentation to highlight the law and procedure involved in the arrest and detention of persons. He also shared with the participants the actual difficulties detainees and lawyers face when dealing with these types of cases.

Puravalen, Jerald Gomez, Christopher Fernando and Manjeet Singh Dhillon engaging participants in a panel discussion

The participants were also introduced to the various Human Rights organisations in Malaysia. Among the organisations which participated were Suhakam, Centre for Orang Asli Concerns ('COAC'), Suara Rakyat Malaysia ('Suaram'), Malaysiakini, Aliran and Hakam. Added to this were discussions of new areas of human rights pertinent in the Malaysian context, such as Rights to Privacy, Globalisation and its Human Rights Implications. Dato' K C Vohrah shared about what Suhakam does and is doing. Dr Colin Nicholas shared on the plight of the aboriginal people in Malaysia, Sivarasa Rasiah about the role of NGOs, Steven Gan on the freedom of the press, Elizabeth Wong about Hakam. Shanti Dairiam spoke on CEDAW, the Convention on the Elimination Against Women and gave participants an exercise that created lively debate on how men and women perceive 'women's rights'.

The participants were taught and encouraged to pick out the Human Rights issues from a complicated mass of facts and to address those specific issues by elevating them from being issues founded upon basic law into issues within the Human Rights framework. They were encouraged to think 'outside the box'. The Law is there for our well being not the other way around. An Advocate of Human Rights must first identify the Human Right that has been violated and then look to the law and try to canvass an argument using the law. A clear example is the right to life enshrined in Article 5 of our constitution. It has been accepted to mean more than mere physical existence, but to envisage a right to livelihood.

Dato' Das gave the example of squatters. When approached from the normal legalistic view, squatters are deemed as illegal dwellers on land and therefore, are rightfully evicted. Dato' Das went on to say that it can be viewed from a human perspective. One could also consider the human rights violations committed by the evictors. Rajen Deveraj, shared with the participants the plight of the squatters while Ravi Nekoo and Arul gave excellent views on the plight of migrant workers and estate workers respectively.

Haris Fathillah shared on the importance of the freedom of thought belief and conscience. He discussed the law in our country and the impact it had on its citizens. Lim Kit Siang shared his experience in Parliament and talked about the role that it could play

in protecting human rights. Lim Kean Chye shared with the participants the basis and concept of the right to privacy, as well as its limits.

The participants were left with the challenge, to view every situation of interaction from a human rights viewpoint –

Future human rights lawyers engaged in deep discussion at a workshop session

- Who are the players?
- What are the violations?
- Who are the victims?
- Who are the violators?
- What remedies are available?
- What advice would be given to the victims and what action should be taken?

By the end of the programme, the participants had gained a better idea of how expansive – non-exhaustive – the field of Human Rights is.

The speakers gave their all and the feedback from the participants revealed that despite the intensity of the programme, they had enjoyed themselves and received valuable insights into human rights and human rights advocacy. Some have even completely changed their perspective of their career in the law and the future direction they wish to take.

Some expressed the hope that further training programmes would help them keep the interest alive. While there is a proposal to hold a further human rights training programme, it must be remembered that it is our duty to ensure that we get the type of society and government we want. As Lim Kit Siang said, 'If you believe in Human Rights, then you will keep going, despite the adversities. You will not be able to see the violations and victims without doing something about it.' Remembering always that it is only necessary for the good man to remain silent for evil to triumph – (Edward Burke).

Notwithstanding the tight schedule of the programme, between heated discussions and the forming of new friendships and alliances, the participants had an opportunity to 'let their hair down' at the poolside barbeque. The last night of the programme ended in the wee hours of the morning as a number of the participants took to the beach to learn more about human rights in a rather novel way – with a truth or dare game, or sing and dance! The success of the training programme was due to the commitment, co-operation and interest of most of the participants, who participated fully throughout the four days, including during the barbeque!

Prof Gurdial Singh Nijar interacting with the participants at the BBQ night

Special thanks go to Tn Hj Kuthubul Zaman, the Chairman of the Bar Council, for attending and opening the Training Programme, to Yeo Yang Poh, the Vice Chairman for speaking on the role of the Bar Council, Malik Imtiaz, the Treasurer and Cecil Rajendra, the Chairman of the Human Rights Committee, for their contribution in the Panel sessions and support at the training programme, and to Petra Oon, the Chairman of the Penang Bar Committee, for the assistance provided by her and members of the Penang Bar.

We also record our thanks to Dato' K C Vohrah, Dr Colin Nicholas, Ravindran Nekoo, Rajen Deveraj, S Arutchelvam, Sivarasa Rasiah, Puravalen, Christopher Fernando, Manjeet Singh Dhillon, Ramdas Tikamdas, Shanti Dairiam, Christopher Leong, Abdul Rashid Ismail, Honey Tan, Chia Loong Thye, Prof Gurdial Singh Nijar, Haris Fatillah, Steven Gan, Prof Francis Loh, Elizabeth Wong, Dato' Dr Cyrus Das, Toh Kim Woon, Lim Kit Siang, Lim Kean Chye and Rob Godden for taking time out of their busy schedules to impart their knowledge to and encourage the participants. Many of the speakers spent most of the four days attending the seminars and workshops so that the participants would have an opportunity to learn from them.

Rashid Ismail, Sreekant Pillai (far back), Ramdas Tikamdas, Yeo Yang Poh (standing) and Leena Ghosh listening to the speakers at the training session

Finally, mention must be made of members of the organising committee. Special thanks goes to Agatha Foo and Ahmad Munawir who worked tirelessly on the hotel accommodation and logistics; Sreesanthan and Sam Palmer for going through every application, attending to all the calls by applicants and selecting the participants; Sharmila Sekaran, Haris Fathillah, Sreekant Pillai and Leena Ghosh for time and effort in inviting the speakers, preparing and vetting all the case studies, running the workshops, finalising the programme and attending to all the nitty gritty things that needed doing. Much thanks also goes to Lim Ka Ea for her tireless effort in coordinating all that had to be done, getting the materials to the participants on time, printing, transportation of speakers and keeping detailed accounts and receipts of all that was spent. Needless to say without this team of fantastic and committed people, this Training Programme would not have become a reality.

Jerald Gomez
Chairman, Organising Committee, Human Rights Training Programme 2003

Group photo at the end of the 3 1/2 day workshop

On 3 April 2003 the Bar Council issued a press statement recommending adherence to the Bangalore Principles of Judicial Conduct 2002 in the review of the 1994 Judges' Code of Ethics.

The Bangalore Principles of Judicial Conduct 2002

(The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25 - 26 November 2002)

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

***Value 1:* INDEPENDENCE**

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

***Value 2:* IMPARTIALITY**

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3: **INTEGRITY**
Principle:
Integrity is essential to the proper discharge of the judicial office.

Application:
3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4: **PROPRIETY**
Principle:
Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:
4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

4.11 Subject to the proper performance of judicial duties, a judge may:

4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12 A judge shall not practise law whilst the holder of judicial office.

4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5: **EQUALITY**
Principle:
Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:
5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ('irrelevant grounds').

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

***Value 6:* COMPETENCE AND DILIGENCE**

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

Court staff: includes the personal staff of the judge including law clerks.

Judge: means any person exercising judicial power, however designated.

Judge's family: includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

Judge's spouse: includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning:

   (a) the core considerations which recur in such codes; and
   (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

   (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
   (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
   (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
   (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
   (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
   (f) The Idaho Code of Judicial Conduct 1976.
   (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
   (h) The Iowa Code of Judicial Conduct.
   (i) Code of Conduct for Judicial Officers of Kenya, July 1999.
   (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.

(k) The Code of Conduct for Magistrates in Namibia.
(l) Rules Governing Judicial Conduct, New York State, USA.
(m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
(n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
(o) The Code of Judicial Conduct of the Philippines, September 1989.
(p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
(q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
(r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
(s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
(t) The Texas Code of Judicial Conduct.
(u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
(v) The Code of Conduct of the Judicial Conference of the United States.
(w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
(x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
(y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
(z) Draft Principles on the Independence of the Judiciary ('Siracusa Principles'), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
(aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
(bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
(cc) Draft Universal Declaration on the Independence of Justice ('Singhvi Declaration') prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
(dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
(ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
(ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The '**Bangalore Principles** of Judicial Conduct' was the product of this meeting.

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All statements were issued by Haji Kuthubul Zaman Bukhari, Chairman, Bar Council 2003/2004 unless stated otherwise

Recent Allegations of Improper Conduct by Law Enforcement Officers

31 May 2003

A number of recent allegations of improper conduct on the part of the police and other law enforcement officers have renewed the public's concern regarding issues of abuse of power.

It was reported on 22 May 2003 (in *The Star*) that a Magistrate had directed two accused persons to lodge police reports pertaining to injuries allegedly sustained by them during police interrogation. One of them, a female, further alleged that when she refused to admit to the commission of a crime, a police officer tried to force her to perform oral sex on a male inmate. According to her, she had to finally admit to the crime after the policeman told her that he could sleep with her daughter who was being held for questioning in the police station.

Allegations of the above nature require an immediate, thorough, impartial and transparent investigation. Nothing short of that can adequately address the public's legitimate concern over questions of abuse of police powers. The Bar Council calls upon the authorities to immediately conduct such an investigation, which must be carried out in a transparent manner.

On 26 May 2003 it was reported (in *The Star*) that a juvenile, who was looking after his father's video outlet at the time of a visit by the police, was handcuffed, arrested and held together with adult detainees in a lock-up; despite his having informed the police officers that he could call his father to come to the shop.

According to another report in *The Star* on 28 May 2003, the Ipoh city council enforcement officers have recently issued about 30 summonses under the Ipoh Municipal Council Bylaw 1985 for offences of 'indecent behaviour', including one to a young couple holding hands at the Ipoh Padang one night in April at about 10:30 pm. The couple was allegedly told that it was the 'wrong place to hold hands because there were children at the Padang'.

The Bar Council urges the authorities not to be overzealous in carrying out their functions, and law enforcement officers to exercise common sense and reasonable restraint in executing their duties. This is particularly important when it concerns juveniles and young persons, more so when the suspected offence or misbehaviour is not in the nature of a 'serious crime'. Law enforcement will only continue to have the respect of the public if it is carried out with fairness and common sense, free from any excessive use of powers.

Release of detainees under the Internal Security Act

3 June 2003

The Bar Council welcomes the decision of the Home Ministry to free four detainees under the Internal Security Act ('ISA') whose two-year term of detention had recently expired.

The Bar Council calls for all remaining detainees under the ISA to be either forthwith charged in court or be immediately released from detention, without having to wait until the expiry of their respective periods of detention.

The continuing use of the ISA to detain persons without trial defeats the Government's own claim to be subject to the rule of law, and will only add credence to the notion and perception that such persons are indeed detained not for any 'security reasons' but are being unjustly punished for their political or other activities which either do not constitute an offence under the law or in relation to which no offence can be proved or established. In either case the detention would be unfair and unjustified.

The Bar Council renews its call for the Government to repeal the ISA. Pending such repeal, the Act must cease to be used, and all detainees thereunder should be immediately released or charged in court.

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International Criminal Court

4 June 2003

The inauguration of the International Criminal Court (ICC) established under the Rome Statute represents a milestone in the efforts on the part of the international community to secure universal respect for human rights and fundamental freedoms of individuals throughout the world.

Few topics are of greater importance than the fight against impunity and the struggle for peace, justice and human rights in conflict situations in today's world. From as early as 1951, the establishment of an international criminal court was considered essential if there was to be no gap in the enforcement of international law. The International Court of Justice deals with cases between States and not individuals. Without an international criminal court as an enforcement mechanism for dealing with individual responsibility, crimes against humanity, acts of genocide and severe violations of human rights often go unpunished. The Rome Statute and the ICC are well placed to fill that gap. Building on the principles established at Nuremberg in recognition of the fact that crimes against international law are committed by men and not abstract entities, they bring to an end the impunity of leaders or, for that matter, any other individual. In furtherance of this purpose, action can be taken where national criminal justice institutions are unable or unwilling to act. The permanence of the court and the breadth of its mandate distinguish it from ad hoc tribunals such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda. Furthermore, advanced provisions for the protection of victims from retraumatization as well as provisions allowing the ICC to order appropriate reparation will ensure justice and some measure of reconciliation.

The ICC however only has jurisdiction over individuals who are nationals of States that have ratified the Rome Statute. As of May this year, 90 States have ratified it. Regrettably, for reasons which are unclear, Malaysia has not. The Malaysian Bar is of the view that there is no plausible basis for the continued opposition to the ICC that a reluctance to ratify the Rome Statute signifies. Malaysia must not be seen as shirking its obligations as a member of the international community. The events of recent times including the unwarranted attacks on Afghanistan and Iraq have made these obligations even more poignant. Any concerns that the Malaysian Government may have over ratifying the Rome Statute must be explained to the Malaysian people and quickly addressed.

The Bar Council urges the Government to ratify the Rome Statute without further delay.

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Retired Judges in Law Practice

6 June 2003

Public concern has been generated by a recently reported situation of a retired judge joining a law firm soon after retirement from the Bench. The Bar Council has received queries from members of the Bar enquiring about the desirability or otherwise of the same.

There are currently no legislation or code of conduct that regulates the professional or commercial activities of judges after retirement. Previously very few judges would practise law after retirement. In recent years, however, there has been an increase in the number of retired judges desiring to join the Bar. The issue has thus become a pressing one to be addressed by the Bar.

When a judge retires and soon after joins a law firm, an area of serious concern that immediately presents itself is the perception that an offer to do so might have been made to the judge before his retirement, and discussions or negotiations on the same might have started or taken place while the judge was still serving on the Bench; particularly if there is a short time lapse between the judge's retirement and his joining the firm. This in turn gives rise to the question whether the independence of the judge could have in any way been influenced or compromised by the making of such an offer or the holding of such a discussion. Such an adverse perception cannot be ignored, especially if there are other allegations which deserve further inquiry.

However, whether or not in any particular instance there is in fact any truth in the surmises of the nature described above is immaterial to a consideration of the larger principle that, not only must the independence of the judiciary be in fact not compromised, there must also not be any appearance of the possibility that such independence could have been compromised.

In protection of that principle, and after examining the experience of other jurisdictions, the Bar Council is of the view that there ought to be a lapse of a suitable period of time (which is often called a 'cooling off' period) after a judge's retirement before he may be permitted to practise law at the Bar. The Bar Council will be studying the detailed aspects of this issue, with the view of formulating and forwarding a proposal to the Chief Justice and the Government in the near future to introduce a new provision to regulate the professional and commercial activities of retired judges.

Human Writes

Contributions are needed for ***Human Writes***, the *Infoline* pull-out first launched in April's issue. We welcome any material **related to the subject of Human Rights** in the form of articles, letters, comments, reports, recommendations, updates on news or legislation, reports of events, announcements, poems, jokes, cartoons, etc. Contributions should be submitted by the 10th of the month via email to the Editor, *Infoline*, council@malaysianbar.org.my. Alternatively, they can be sent to the Editor, *Infoline*, Nos 13, 15 & 17, Leboh Pasar Besar, 50050 Kuala Lumpur; Fax: 03-2026 1313. Contributions may be declined or edited for reasons of space and clarity.

A Progressive Society Requires Free Speech

There are many things we want to achieve as a nation by the year 2020. One of these is to be 'a society that is progressive'. This objective is stated in the official formulation of Malaysia's Vision 2020.

Vision 2020 also identifies the key challenges that we face as a nation one of which is 'fostering and developing a mature democratic society, practising a form of mature consensual, community oriented Malaysian democracy…'

When presenting the Vision 2020 Working Paper, the Prime Minister made clear that it was not sufficient that Malaysia should only be developed economically. A higher objective had to be realised.

Given that there are only 17 years to 2020, one is inclined to ask how much of this Vision we have achieved and whether we have moved towards that goal in a measurable way?

The notion of 'progressiveness' seems to be central to how we achieve Vision 2020. This is because it requires a change in mindsets and attitudes that would bring about all the other aspirations in the Vision including a mature democracy, ethnic integration, a tolerant society, a confident society, a society that is innovative, forward looking, etc, etc.

However, progressiveness is a state of mind and it cannot be measured by a track record of material achievements alone. So how do we know if we are becoming more progressive?

Progressiveness may be measured by observing the attitudes of public figures and leaders both in government and in representative bodies. They are the change agents and the role models who must possess the right cultural and behavioral traits if other Malaysians are to be expected to behave in the same way. Their behaviour tells us a lot about the value system we are likely to create. Their progressiveness becomes our progressiveness.

We could therefore assess progressiveness by identifying these attitudes and asking questions such as: Are our leaders tolerant? Are they small minded? Are they open to criticism or are they defensive in their reaction to opposing ideas? And so on. The answers we discover should give us an indication of where we stand *vis-à-vis* Vision 2020 and what more needs to be done to get there.

One principle that should be fundamental in a democratic society and essential to our realisation of Vision 2020, is the principle of accountability. This means that people in public office are open to public scrutiny and attack. As such they must accept that they will be criticised and judged, whether rightly or wrongly. It is a hazard that comes with the job. We cannot be a confident society if our leaders are insecure with what people have to say about them. In a democratic society, it is not their prerogative to accept only sanitized comments or to demand that criticism be delivered with kid gloves.

Another corollary of this is that public officers whether they are politicians or office bearers in the Bar Council, serve the public and not the other way around. With their authority comes a duty to respect and entertain the concerns of those they represent. Public officers therefore fail in their duties when they endeavour to discourage criticism or insist that views can only be expressed in certain ways. These are traits of dictators not those of progressive leaders.

Progressive attitudes are closely linked to our tolerance of free expression. Defamation and sedition laws that set high standards of care when it comes to criticising public figures are not progressive as they fail to recognise the importance of free expression in the chemistry of knowledge creation. Change is needed here if we are to achieve Vision 2020.

American Courts have contributed to progressive attitudes by permitting a larger degree of expression where it involves public authorities and public figures. This is an important development that could make us more progressive if we are minded to follow it. In the US Supreme Court decision of *New York Times vs Sullivan* the Supreme Court recognised that 'erroneous statement is inevitable in free debate' and that sufficient 'breathing space' is necessary to enable debate over public issues. In other words, it defeats the objectives of free speech if we insist on factual accuracy all the time. The constitutional right to free expression should allow for greater laxity in a democratic society.

When commentators, especially those holding statutory office, dismiss views on the basis of factual inaccuracy, they also tend to discount the wider issues that should be addressed and the importance of debate in the democratic process. Changing the law must therefore go in tandem with changing attitudes all around, especially amongst those who hold themselves out as guardians of our democracy.

Over attention to factual detail and insistence on precision rather than clarity is dangerous in a democratic environment because it attempts to limit expression to narrow and rigid margins. People who take this approach use factual precision as a bulwark against criticism. They give no leeway for other forms of expression and can be an excuse to avoid discussion of trends or attitudes that are hard to describe precisely.

There is a good reason why a broad-based approach to governance is essential to progressiveness. All members of society have their own unique experiences that give them insights that can help contribute to the long term interest of the nation or important segments of society, such as the legal profession. This diversity creates new ideas and knowledge that achieves the innovative and forward looking society that our Prime Minister described.

This observation is however not new. Thomas Jefferson is credited with the following quotation in 1801:

> '*In every country where man is free to think and to speak, differences of opinion will arise from difference of perception, and the imperfection of reason; but these differences when permitted … to purify themselves by free discussion, are but as passing clouds overspreading our land transiently and leaving our horizon more bright and serene.*'

What is important is that people are permitted to share their experiences and concerns openly. These views may not always coincide with those who may believe that given their official position they are the best arbiters of what is right and wrong. But

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In conjunction with the theme of the Tokyo Conference, LAWASIA is preparing many instructive sessions to focus on the latest developments in the areas of business law, labour law, family law, criminal law and more. The conference will feature many engaging speakers and presenters who will deal with a broad spectrum of subjects. The Crown Prince and Princess of Japan have been invited to officially open the conference and Sadako Ogata, former United Nations High Commissioner for Refugees, will be the keynote speaker at the first plenary session of the conference. In addition, an interesting social programme and excursions have been arranged to enable LAWASIA members and friends to interact and learn more about the customs, culture and life of Japan.

The Bar Council of Malaysia is a proud member of LAWASIA with a representative of its own in the LAWASIA Executive Committee. For further information on the conference, please contact Ms Elison Wong (extension 143) or Ms Josephine Chew (extension 105) at the Bar Council Secretariat to obtain a detailed brochure.

these views together with those of others add to the diversity that gives society and government depth and dynamism. If we discourage this diversity we encourage despotism and parochialism and do not move towards progressiveness.

Public bodies and figures must also accept that in a democratic society public expression will not always be what they want to hear. Views should be expressed on a wide number of issues and in a variety of ways. This is what a vibrant democracy and a progressive society should be about – the broad based expression of ideas in all forms, not just the officially sanctioned views of a few – even if they may happen to be the elected few.

In the final analysis, progressiveness cannot be shown by claiming great personal achievements. This is the domain of the vain, conceited and the power-hungry. These achievements come to naught when leaders are not tolerant of new ideas or criticism. If public figures want to be perceived as progressive, they must take criticism in their stride and be accepting of views not always shared by them. They must encourage and allow debate no matter how unflattering to themselves. Least of all they should be defensive. This is the true measure of progressiveness.

Only with this comes the mature, broad based democracy and progressive society that our Prime Minister spoke of.

Loong Caesar
Advocate & Solicitor

3rd Christian Advocates Asia Conference (*South East Asia region*)

The 3rd Christian Advocates Asia Conference (South East Asia region) will be held on 29th to 31st August 2003 in Kuala Lumpur. The theme of the Conference is "God@Work". If you are interested in attending the Conference, please contact the following members of the Organising Committee:

1. Steven Thiru
   Tel: 03-20311788 ext: 236
   E-mail : stevent@shooklin.com.my
2. Benjamin Dawson
   Tel: 03-2171 1822
   E-mail: ben.dawson@benjamindawson.com
3. Yapp Hock Swee
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   E-mail : yappphua@hotmail.com

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What is a Claim?

***When**, **What** and **Why** does a Practice disclose in a proposal form and to Crawford & Co*

Carolyn Richards
Risk Management Consultant, Willis (Malaysia) Sdn Bhd

It is most common when thinking of making a claim in the context of insurance to think of the situation where an insured person fills in a claim form, sends it to the Insurance company or adjuster and then receives payment for the insured damage or loss. The motor vehicle accident is the simplest example.

Certificate of Insurance issued under
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1. INTERPRETATION

3. DEFINITIONS

That is only one category of claim. It is a claim by an Insured on the Insurer.

The Malaysian Bar Professional Indemnity Insurance Scheme ('The Scheme') is a 'claims made' Scheme. 'Claim' used in this context refers to a claim made by a third party on or against a Firm or a lawyer in the Firm. A third party is anyone who is a third party to the contract of Insurance and is called 'the Client' in this article.

The Contract of Insurance

The insuring Clause 4.1 of the Certificate of Insurance issued by Insurers of the Scheme to all lawyers says relevantly:

> '*4.1… The Insurers shall indemnify the Insured against any **Claim first made** … during the period of Insurance in respect of any civil liability…*'

The entitlement of a Firm to be indemnified arises from and attaches to the Insurers by the action of a Client making a claim against the Firm (this article refers to that situation as a 'Client Claim'). The Firm then must make its own claim against the Insurers (called in this article 'the Firm Claim').

How does a firm make a claim?

Clause 5.3 of the Scheme Certificate of Insurance says that the *only* way for a Firm to make a claim is in writing or by tested facsimile sent to Crawford & Co, adjusters. Crawford & Co are the Insurers' representatives. Some firms send notice to Willis. Willis is the Broker and the Bar Council's representative and the Insureds' representative and notice to Willis does not amount to the Firm making a claim under the certificate of Insurance.

What is a Client Claim?

Websters New World Dictionary defines a claim as:

(i) a demand of a right or a *supposed* right
(ii) calling on another for something due or *supposed to be* due
(iii) a demand for compensation benefits or payment.

The Oxford Dictionary includes a definition:

(iv) an assertion of a right to something.

A Client makes a Claim merely by asserting that a lawyer or a Firm owes the client some compensation, or asserting that the Firm has an obligation to make some payment or give some redress or service for the client's benefit.

When must a firm notify Insurers representatives?

Clause 5.2.1 of the Scheme's Certificate of Insurance requires the '*the Practice*' to give Notice:

> '*5.2.1 … as soon as practicable of any claim made against the Insured which may form the subject of indemnity … or of the receipt of any intimation of an intention to make a claim*'

(Use of the definition 'Practice' means there is a joint and several obligation on every Partner to ensure the notice is given.)

Comment

Lawyers are accustomed to sending letters of demand; of hearing and making oral assertions about a client's rights and intentions to take action to pursue those rights. Often those expressed intentions are not pursued. Because of this overexposure, when an assertion is made against a Firm or a lawyer; there is a tendency to not take it seriously; to consider that the assertion has no basis in fact or law, and to dismiss it if the threat is unmeritorious or unfounded. To follow that inclination and to hold off notifying Insurers because the Client Claim is baseless could result in the firm losing the right to indemnity if the Client proceeds with the claim. A Firm is entitled to have the costs of defending an unjustified claim paid by Insurers (subject to an excess) and a firm could at the very least lose that entitlement.

Why a Firm needs to notify even unfounded Client claims

The insuring clause obliges the Insurer to indemnify a Firm for a claim *first* made during the period of insurance. If in 2003 a mere assertion of a right is made by a client, that claim is *first* made in 2003. If the Firm does not notify Crawford & Co until 2004, the Insurers in 2004 will deny the Firm's Claim because it was *first* made in 2003, and those Insurers agree to indemnify only claims first made in 2004. The 2003 Insurers will not have the right to deny the Firm's Claim even if the Firm waits until 2004 to give them notice of it. After 1 January 2004 however they will have the right to recover whatever they had to pay on the Client Claim from the Firm. The Firm by coming to its own conclusion that the Client Claim was unmeritorious and deciding not to notify it to Crawford & Co becomes, in effect, its own insurer of that potential claim.

If the proposal form does not disclose the Client Claim and the failure to disclose it was other than innocent the Insurers can refuse any payment at all.

Potential Claims

The Scheme Certificate of Insurance also relevantly says in General Condition 5.2.2:

> '*5.2.2 ... Notice shall be given of any matter, event or circumstance of which the Insured becomes aware....which may reasonably be expected to give rise to a claim ...*'

'Claim' in this clause refers to both a Client Claim, as well as a Firm Claim.

In *Joel v Law Union & Crown Insurance* (1908) 2 KB 863 at 864, Moulton J said:

> '*... the obligation to disclose ... necessarily depends on the knowledge you possess. Your opinion of the materiality of that knowledge is of no moment. If a reasonable man would have recognised that it was material to disclose the knowledge in question, it is no excuse that you did not recognise it to be so*'

Section 50 of the Insurance Act 1996 repeats the concept in that dictum.

Firms have an obligation to notify circumstances that come to their knowledge even if there is no Client Claim made. If a judgment in default is entered against a client because the Firm was not at Court, or failed to file a defence in time, the Firm will know about it before the client.

The Proposal Form

There is a direct link in the Scheme between the obligation to notify and the questions asked in the Scheme Proposal for Insurance. Question 6 asks about claims already made against any lawyer in the Firm. *Question 6* is asking about *Client Claims* (not Firm Claims). Even the mere assertion by a Client of a totally unjustified intention to claim from the Firm means that the correct answer to Question 6 is 'Yes'. If the answer given is 'No' the Firm is electing to be self insured for any such Client Claim *first* made earlier than the date on the proposal form.

Question 7 asks about potential Client or Firm claims as discussed above. A further statement of the duty to disclose potential Client Claims or circumstances that might lead to a Claim is that of Mr Justice Atkinson (as he then was) in *Simon v Ors & Beer* (1945) 78 Ll. L R 337 at 355:

> '*The question is: Would a reasonable solicitor of utmost good faith think it right to disclose any facts which were within his knowledge? Again, the mere fact that that a solicitor has been guilty of such act or omission of negligence in the past is not necessarily a material fact to be disclosed; the materiality must depend on the possibility of a claim*'

Section 150 subsection (2) of the Insurance Act specifies that any fact material either to the acceptance of the risk *or* to the amount of the premium must be disclosed.

Comment

Careful consideration of these issues and concepts is warranted by Firms when completing their proposal forms. The execution clause of the proposal form also needs to be borne in mind. That clause is in the following relevant terms

> '*I/We warrant that all of the above statements are true and correct and that written confirmation has been obtained by me from each of the lawyers ...* [in the firm] *Relating to the answers to Questions 6 and 7 ...*'

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Bapu of the Universal Declaration of Human Rights

*Lim Ka Ea**

I am not a writer but my recent trip to India has compelled me to share some of the most inspiring teachings left behind by one the world's most blessed figures, Mahatma Mohandas Karamchand Gandhi.

Before I begin, just a word of caution, India at this time of the year is definitely not a recommended place to visit; especially if it is a trip meant for R&R (rest and relax). Temperatures can rise as high as 48 degrees celcius. During this time I have learnt that more than one thousand Indians have died of heat stroke in the district of Andhra Pradesh and Gujerat.

I was never an avid museum-goer but visiting the Gandhi Smriti Museum in New Delhi proved to be the highlight of my trip to India; something which I will forever remember. I never thought I could learn so much about the true meaning of justice, humanity, compassion and peace within the hour I spent at the museum. To sum it all up – Gandhiji (as fondly referred to by the Indians) is indeed the *bapu* of all the fundamental human rights values we aspire to achieve today.

I have spent several years trying to familiarise myself with human rights work. After awhile, the so many ideals I hold so dearly seem to evaporate slowly but surely against time. It was always difficult to maintain that same level of faith and commitment. I thought my trip to India had turned out to be what I needed most.

One of the things I find most surprising in a very disconcerting way was the fact that throughout the one year of my studies on International Law of Human Rights, I did not remember reading anything about Gandhiji's work. As I stood reading Gandhiji's vision and dream for India, I realise that most of the principles and values on human rights and equality that he had lived and breathed were also enshrined in the Universal Declaration of Human Rights. He had preached the principles of unity, equality, liberty, peace and justice before 1948, the year in which the Declaration was established. Although the United Nations Commission chaired by Eleanor Roosevelt wrote the Declaration as an aftermath of the Second World War, Gandhiji had way in advance tried to pass on those values to his people. Gandhiji united a nation of 300 million people through his humanistic approach and led India to the path of independence from the British. And I thought to myself, how lucky it was for the Indians to have such a revolutionary figure.

Gandhiji is famous for his principles such as the *satyagraha* or truth force whereby unjust laws are opposed with the force of truth and moral consciousness instead of violence. He once said, 'I firmly believe that freedom won through bloodshed or fraud is no freedom.' His display of peaceful resistance during the British colonialism in India is truly laudable and something which the world should seriously reflect on in such a time when we are guarded against acts of terrorism.

He also believed in the principle of equality during a time when India was strongly guided by the caste system. He treated those who were then labelled the *untouchables* with equal respect and compassion. He strongly promoted equal opportunities for women and propagated their rights to education. He wanted a united India where Muslims, Hindus and Sikhs live in harmony and peace. Gandhiji could very well be a theologian, having read and mastered all the Holy Books of all the main religions in the world. He spent most of his remaining life promoting inter-faith values amongst the people of India. Although India and Pakistan are yet to resolve the persisting political conflict in Kashmir, I was delighted to witness the pluralistic community in India. Apart from Malaysia, India has been the most diversified country in terms of religion and culture I have been to. Hence, I think Gandhiji has again accomplished a great deal.

[Gandhi's] teachings should not be confined to India alone, they should be a model and inspiration to all especially for those who believe in the Universal Declaration of Human Rights

We recently had an inter-religious council workshop and I was surprised that nobody quoted Gandhiji's values on inter-faith. If he had been alive today, I personally feel that he would have been the best person to engage in international peace talks. He once said and I quote, 'I believe in fundamental truth of all great religions of the world. I believe that they are all God-given and I believe that they were necessary for the people to whom these religions were revealed. And I believe that, if only we could all of us read the scriptures of the different faiths from the standpoint of the followers of those faiths, we should find that they were at bottom all one and were all helpful to one another.'

When I read this, I looked back and asked myself how many Gandhis does the world have? How often do we come across such man, who not only possessed but lived by the principles he truly believed in? Many people would say that figures such as Martin Luther King Jr and Nelson Mandela came a close second. I have no doubt that they have each in their own personal ways contributed to the betterment of their society. These personalities were Nobel Peace Prize Laureates and if we look further back, many other great figures were awarded the prestigious prize in recognition for their contribution to humanity. Henry Dunant, the founder of the International Commission for the Red Cross, received the first Nobel

* Human Rights Research Officer.

Peace Prize in 1901. Others include Mother Theresa in 1979, Aung San Suu Kyi in 1991 and Yasser Arafat in 1994.

In 2001, the United Nations and Kofi Annan jointly became the recipients for the much-coveted prize for his international peace-building effort as the Secretary General of the United Nations. During that time, I was still serving as a United Nations Volunteer in East Timor. I remember receiving a personal message from Sergio Viera de Mello, the current Chairman of the United Nations Human Rights Commission and the then Under Secretary-General for the United Nations Transitional Administration for East Timor (UNTAET). He congratulated all the peacekeepers and volunteers in East Timor as we were all technically representatives of the United Nations. I remember feeling exhilarated and proud; often joking that I was indirectly a Nobel Peace Price laureate.

Mohandas Gandhi never received the Nobel Peace Prize. One may argue that he was never given what he deserved but I would say that he never needed the prize for anyone to acknowledge and recognise the things he had done for not only India alone but humanity as a whole. For a man who had turned up at the Buckingham Palace before the Royal Family in just his loin cloth, such materialistic recognition would have meant nothing to him. So, perhaps we could all do some serious thinking now and compare how little Kofi Annan has achieved and how much Gandhiji has accomplished and touched the world.

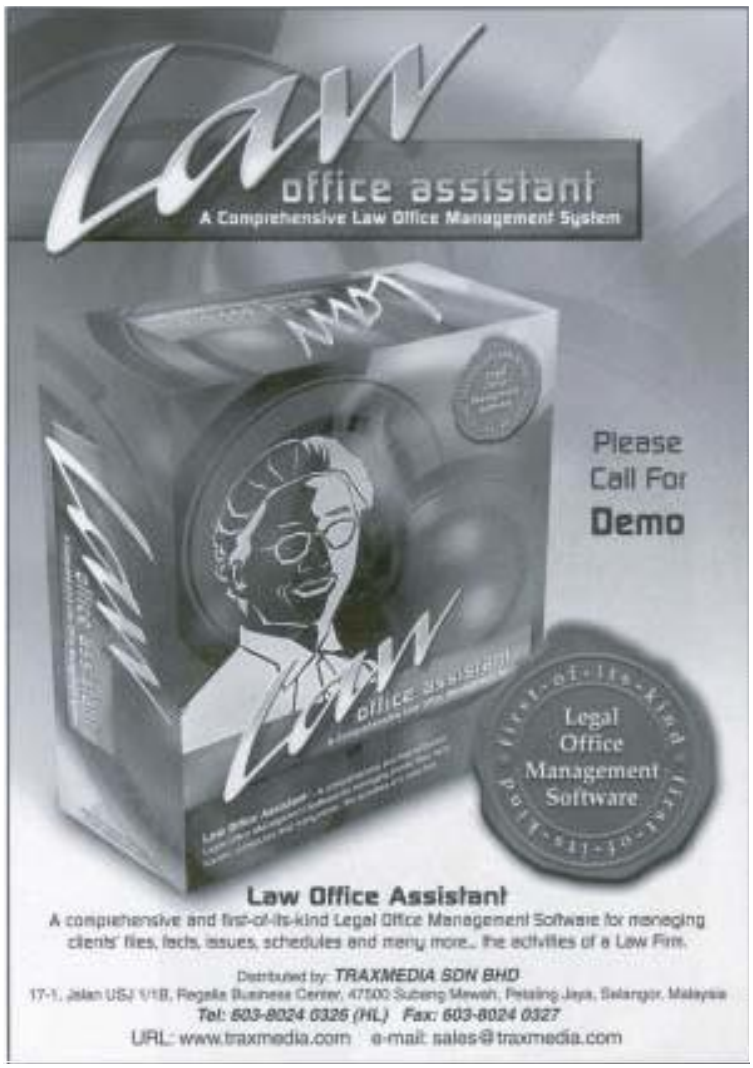
His dream for India was never achieved completely during his lifetime. Poverty, corruption and political conflicts are still rampant in India. Did he die in vain? I hope not for I think his teachings should not be confined to India alone, they should be a model and inspiration to all especially for those who believe in the Universal Declaration of Human Rights. In my heart, Gandhiji is the *bapu* of the UDHR. To me, the UDHR is definitely not a Western concept as so many Asian leaders have claimed. Gandhiji, a true bona fide South Asian man had then exercised his rights to peaceful assembly and demonstration in order to liberate his people and free them from the yoke of slavery, discrimination and ignorance. I believe that his dreams would only be in vain if we no longer believe in the principles of the UDHR.

If my writings have appeared too idealistic, I will not apologise for it. How could one point a finger at another who has been given a huge dose of hope and faith in humanity from the legacy left behind by a blessed soul. If you think that you need that dose, visit the Gandhi Smriti Museum today. After all, it is only five hours away by plane. The sweltering heat may not seem appealing at this time. But if you prefer an easier way, bearing in mind that the effect may not be quite the same, watch Ben Kingsley on video as Gandhi. It may just work. ■

2nd Essay Writing Competition for Young Lawyers and Chambering Students

August - December 2003

This competition seeks to develop young lawyers and chambering students' interest in doing research on **human rights**. Following the success of the first competition carried out last year, the Bar Council encourages more participants to submit their essays this year. The title of the essay and the rules and regulations pertaining to the competition will be announced sometime in August 2003.



Enhancing Democracy – Human Rights Protection and the Common Good*

*Karpal Singh***

Before embarking upon the subject of human rights protection and the common good, it is obviously necessary and pertinent to get at the pith and substance of the subject to consider what is universally accepted as democracy. What is democracy?

Black's Law Dictionary 7th Edition[1] defines democracy as Government by the people, either directly or through representatives.

The Law Lexicon by P Ramanatha Aiyar[2] defines democracy as one of the three forms of Government; that in which the sovereign power is neither lodged in one man, as in a monarchy, nor in the nobles, as in an oligarchy, but in the collective body of the people; Government by the people; state in which a Government prevails; the principle that all citizens have equal political rights.

It is important, therefore, for countries with democracy as its central platform to respect and protect human rights to legitimately lay stake to the moral high ground. Let us not fall foul of the words of Mark Twain ('Following the Equator').

> 'It is by the goodness of God that in our country we have three unspeakably precious things; freedom of speech, freedom of conscience and the prudence never to practise either of them'.

The preamble to the Universal Declaration of Human Rights reads,

> 'It is essential, if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights should be protected by law.'

The concept of human rights invariably conjures in one's mind the United Nations Universal Declaration of Human Rights. It is a codification of human rights evolved through the ages and has received the stamp of approval of many a country although I must be quick to add many developing nations have yet to give essence and spirit to this noble declaration and these, with regret include, Malaysia. Human rights transcend racial and ethnic lines. After the Second World War with the establishment of the United Nations on account of the atrocities which the ravages of war brought about, there was manifested by many nations the need for codification of certain universal rights.

The Universal Declaration of Human Rights was adopted by the United Nations on 10 December 1948. No doubt, when this solemn declaration was adopted, Malaysia was still under the yoke of British colonialism.

Article 55(c) of the United Nations Charter states the United Nations shall promote universal respect for and observance of human rights fundamental for all without distinction as to race, sex or religion. The United Nations General Assembly on 16 December 1966 adopted the natural outflow of the declaration ie.

(1) The International Covenant on Civil and Political Rights;
(2) The International Covenant on Economic Social and Cultural Rights; and
(3) The Optional Protocol.

This time, Malaysia as a sovereign, independent state voted in the General Assembly in favour of these Covenants.

Of these Covenants, the International Covenant on Civil and Political Rights, which sets out fundamental and basic rights, is of considerable moment, consequence and implications. In particular, this Covenant gives the highest premium to life, personal liberty, security and human dignity, the right to a fair trial and freedom from arbitrary arrest and detention, freedom of thought, conscience and religion and freedom of assembly and association, protection against torture or cruel, inhumane or degrading treatment or punishment and preservation of the cultural, religious and linguistic heritage of minorities. The International Covenant on Economic Social and Cultural Rights adverts to social security and adequate standards of living and to freedom from hunger and to health and education.

There is provision of no mean significance for state parties to the Covenant to report to the United Nations Economic and Social Council on the measures taken and progress made towards realisation of these rights.

The Optional Protocol makes provision for the UN Human Rights Committee to receive and consider complaints from victims of violation by a state party to the Covenant on Civil and Political Rights of any of the rights set out in the Covenant.

It is indeed difficult to comprehend why so many countries have yet to accede to or ratify the Covenants, the result of which is that the Covenants do not bind these countries. Accession to these Covenants is necessary as abuses of human rights are peculiar also in developing countries. Even in the US, the world's self-proclaimed policeman and respector of human rights, there have been abuses, particularly of blacks in that country. The US has yet to ratify the UN Convention on the Elimination of All Forms of Discrimination against women – known as CEDAW. This convention urges nations to remove barriers to equality for women in education, employment, marriage and divorce, health care and reproductive services, citizenship and political rights. It has been ratified by 170 countries and the US remains the lone industrialised nation that has yet to do so.

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* Paper delivered at the 13th Commonwealth Law Conference 2003 in Melbourne, Australia on 16 April, 2003.

** Advocate & Solicitor, Malaysia.

[1] Page 444.

[2] Reprint 1992 page 51.

Malaysian Prime Minister, Dr Mahathir Mohamad, considers himself a Nehru, Sukarno and Marshall Tito all rolled into one and has apparently laid stake to being the leader of the third world. In fact, at the NAM conference held in Kuala Lumpur recently, he put on the Nehru tunic. His international high profile and obvious aversion to supremacy of the white man has led to many a clash with Western leaders. It is difficult to accept, under the circumstances, why Malaysia is yet to accede to or ratify these Covenants to prove his bona fides. There is speculation that Tan Sri Razali Ismail, who is the United Nations special envoy to Myanmar, is being touted to be among those to succeed Kofi Annan, the United Nations Secretary-General. With these apparent credentials, one would have thought Malaysia would be among those countries which would have long ago ratified the Covenants.

It is my view, although the United Nations cannot compel its members to ratify the Covenants, it should as its first priority, isolate countries which have yet to accede to or ratify the Covenants as international pariahs. The heavy armoury of the United Nations should be brought to bear upon these countries, not literally, of course, but they should be put to shame for their poor human rights records. This would be, perhaps, the best way towards protection of human rights and the common good. In fact, I am at a loss to understand why the United Nations has since adoption of the Universal Declaration of Human Rights and implementation of it through the adoption of the Covenants in 1966 not been aggressive enough in its efforts to require compliance thereto by its member states.

The sanctity and effectiveness of international pressure is the antidote to human rights abuses by so many countries. These Covenants may not be legally binding but any country worth its name must have the moral fibre to act in accordance with what is ordained in these Covenants.

The Commonwealth through its member states ought to check on human rights abuses. A mechanism has to be devised for the common good. After all, even Swiss pets from 1 April this year will get human rights. They will no longer be regarded by law as 'things' but rather as 'living beings'. As a result of changes to laws in Switzerland governing the treatment of animals, pets caught up in custody battles between their divorcing owners will have the right to have their custody determined by a judge. Or on the death of its owner, and if the pet is mentioned in the will, it will be incumbent on the heir to honour that provision in the will. In February this year, Switzerland's justice ministry said the legislative changes recognise that pets are 'capable of feeling and suffering'. This move by the Swiss Government has a significant message to humans who should strive to protect and enhance human rights.

In life, pet lover Aileen Milligan, would roast pork, feed the crispy skin to her dog and toss the remainder of the meat over a cliff. She left NZ$3 million in a trust to look after cats and dogs in Christchurch according to reports on 24 February this year.

Man is born free and acquires inalienable rights in any democracy. Human rights are, therefore, a birth-right. All Governments in democracies should recognise and respect human rights. However, the reluctance of some Governments to ratify the International Covenant on Civil and Political Rights and, in particular, the Optional Protocol that authorises the Human Rights Committee of the United Nations to take cognisance of complaints by individuals against their Governments for violating their fundamental rights, certainly renders their bona fides and avowed respect for human rights, suspect. Otherwise, why are these Governments reluctant to subject their actions to close scrutiny by the Human Rights Committee of the United Nations to obviate this august world body becoming a toothless lion.

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The United Nations Declaration of Human Rights has been described as a law with no bite. It has been said to be a product of Western cultural and political imperialism. In fact, in 1981 some Muslim countries came up with the Universal Islamic Declaration of Human Rights. In July 1998 Dr Mahathir Mohamad endorsed a suggestion that the Universal Declaration of Human Rights should be reviewed to reflect the values of different countries. If countries are going to quibble over what is universal according to their values, it is difficult to see how consensus can bring about any acceptable compromise. It is impossible to attain this ideal. To me, countries comprising the United Nations should accept the Declaration as promulgated in 1948. Utopia is impossible of attainment having regard to inherent human weaknesses.

After September 11, even the United States has thrown caution to the wind by soiling its commitment to the cause of freedom and respect for human rights by taking Taliban and Al-Qaeda prisoners to Guantanamo Bay curiously its naval base, of all places, in Cuba. These prisoners have been shown on TV channels throughout the world manacled and blind-folded with their heads shaven. The Geneva Convention has been flouted by the US with these prisoners not being given status of prisoners of war. The US labels these prisoners 'unlawful combatants' despite the International Red Cross and the International Commission of Jurists saying they are prisoners of war. The US Government's argument that as these prisoners were not being detained in the US they could not claim rights to life or liberty guaranteed under the Constitution of the United States of America, sounds like a broken cymbal. The Presidential Order issued by President George Bush that those who are not US citizens among those detained in Cuba will be tried before special military commissions instead of the regular courts strikes at the very root of the Rule of Law. The President of the US has under this Order the prerogative to determine who is a terrorist and subject to trial by these Commissions. The Commissions can disregard the ordinary safe-guards of due process. Hearsay evidence is admissible and the accused can be barred on national security grounds from seeing the evidence preferred against them[3]. This reminds me of the Essential Security Cases Regulations promulgated by the King at the behest of the Malaysian Government in 1975. These regulations provided for draconian provisions which made hearsay evidence admissible and the charging of anyone irrespective of age resulting in the prosecution of a 14 year old boy in 1977 for possession of a firearm and ammunition and being consequently sentenced to death. (See *Lim Hang Seoh v Public Prosecutor*)[4]. These regulations are a farce, certainly oppressive and against the Rule of Law. Under these regulations, the message to an accused was virtually, 'You shall be tried and hanged here!' In fact, a British-trained judge told a prosecutor that he should execute the accused without a trial instead of going through motions of one under the regulations.

No doubt, after September 11 and the resurgence of terrorism after that, terrorism has had a negative impact on human rights. However, courts must play their role in ensuring human rights protection. The judiciary should not abdicate its role which is to protect, preserve and defend the Constitution in countries which have constitutions and uphold the law and the cause of human rights in countries which do not have a written constitution like Britain.

The sanctity and effectiveness of international pressure is the antidote to human rights abuses by so many countries. These Covenants may not be legally binding but any country worth its name must have the moral fibre to act in accordance with what is ordained in these Covenants

It should not be forgotten anti-terrorism moves in North America, Europe and Asia since the September 11 attacks undermine the Rule of Law because they discriminate against Muslims and Arabs, a United Nations anti-racism expert disclosed in February this year. Doudou Diene, a former Senegalese diplomat said in his report to the 53-nation United Nations Human Rights Commission that humanitarian organisations all recognise emergency measures may respond to 'very serious threats'[5]. The report, inter alia, states,

> 'But a sustained challenge to the basic principles of the universal legal order, particularly if it is discriminatory in that it deliberately targets certain populations identified above all by their appearance, would undermine the foundations of society.
>
> The threat to the Rule of Law stems from both the legislation adopted and the way it is enforced. In the months after the September 11 attacks on the United States, a number of countries understandably strengthened anti-terrorist legislation and regulations. However, these measures, which were hastily adopted in a climate of indignation and fear, may jeopardise the fundamental rights of citizens. There is no escaping the fact that they systematically single out persons of Arab or Muslim origin and that the use of racial profiling for operational purposes is everyday practice.'

Diene noted, and rightly, that civil rights organisations have expressed concerns about the risk of individual freedoms from laws and regulations adopted by the United States, Canada, Britain, France, Germany, Singapore and South Korea.

A very significant and ominous message emanates from the following passage in the report,

[3] Human Rights and Criminal Justice by Justice K N Goyal 2002 Cri. L. J. 278 at 293.
[4] [1978] 1 MLJ 68.
[5] *New Straits Times*, Malaysia, 20 February, 2003 at page B20.

[T]he reluctance of some Governments to ratify ... the Optional Protocol that authorises the Human Rights Committee of the United Nations to take cognisance of complaints by individuals against their Governments for violating their fundamental rights, certainly renders their bona fides and avowed respect for human rights, suspect

'If similar changes to legislation and regulations were to be made around the world, there would be considerable decline in the Rule of Law at the international level. For example, administrative detention for long periods was in clear violation of a basic treaty guaranteeing any arrested person to have the right to a prompt appearance before a Judge and to speedy trial'.

The report noted that US President, George W Bush, and other leaders have opposed discrimination against Arabs and Muslims. But, the statements did not have the desired effect. Muslims worldwide suffered, particularly from all kinds of stereotyping as well as verbal and physical harassment.

We should not go overboard following the aftermath of the September 11 attacks on the United States. No doubt, extraordinary situations demand extraordinary measures but protection of human rights should still be given substantial premium. Even in times of emergency, residuary human rights have to be respected although it must be conceded full implementation of human rights has to take a back seat until the duration of the emergency.

There is provision in the International Covenant on Civil and Political Rights for such an eventuality:

'In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.

The world faces Abraham Lincoln's dilemma, 'Must a Government be too strong for the liberty of such people or too weak to maintain its existence'.

No doubt, terrorism has to be fought with a determined will for its eradication. It is the greatest crime against humanity and an obstacle of great magnitude to human rights. However, that fight must be subject to the caveat very well captured in the following words of Kofi Annan, UN Secretary-General, on 18 November 1999,

'We are all determined to fight terrorism and do our utmost to banish it from the face of the earth. But the force we use to fight it should always be proportional and focused on the actual terrorists. We cannot, and must not, fight them by using their own methods – by inflicting indiscriminate violence and terror on innocent civilians, including children.'

Human rights records of some Commonwealth countries are shocking and certainly are an affront to the conscience of mankind.

Australia's Human Rights Commission released a 689-page report in 1997 accusing past and successive Australian Governments of 'genocide'. This term in international law is defined to include forcibly transferring children to a different cultural group with intent to destroy in whole or in part the group. The Report by former High Court judge, Sir Ronald Wilson, was in reference to the practice for six decades, starting in 1910, when tens of thousands of aboriginal children were stolen and integrated into white Australia. Not one indigenous family has escaped the effects of forcible removal, says the Report which calls for official apologies and financial compensation. But Prime Minister, John Howard, remonstrates,

'This is asking for one generation to accept legal responsibility for the acts of earlier generations'.

Surely, these reservations cannot obliterate the plight of those affected. *Newsweek* in its 9 June 1997 edition has commented that the policy worked; aborigines now make up less than 1% of the population … so nobody is taking responsibility for the stolen generation.

What has happened amounts to ethnic cleansing and Australia has to live down this blot on its human rights record. In early March this year, Neila Penny, an aboriginal woman, taken to Britain as a child 30 years ago was reunited with her family she never knew in Perth. It is gratifying that Penny is the first of the 'stolen generation' to be reintroduced to the family she never knew under a new Government-sponsored programme which certainly mitigates to an extent the injustice.

The Australian Government should be pragmatic and circumspect. Past Australian Governments responsible for this genocide obviously had the backing of the Australian people. To my mind, the present Australian Government should take responsibility for the seriousness of the mistakes of its predecessors, and not make excuses by disavowing culpability. Otherwise, it would be no different from the founder of its One Nation Party, Pauline Hanson, who inflamed racist sentiment in Australia in the late 1990s and inflicted untold damage to Australia's standing, particularly in Asia when, as an independent in the national

Parliament, she said Australia was in danger of being 'swamped by Asians'. She had gone on to form One Nation, which managed to secure one million votes in the 1998 national election. Fortunately, for the Australian national interest, Hanson lost her seat but the one million votes her party secured is more than cause for alarm.

The Australian Government would come out well in the eyes of the international world if it, at least, apologises officially over the genocide which stands proven to the hilt. It is the responsibility of Governments to ensure their human rights records can stand close scrutiny even before challenges are made in a court of law.

If human rights are birth-rights, then eradication of discrimination by gender should be given first priority.

It has recently been reported[6] that up to five million girls are aborted or poisoned every year in India where daughters are seen as economic burdens. The preference of Indians, who make up the world's largest democracy, for sons over daughters leads to millions of baby girls being killed each year, either in their infancy or in the womb. According to official estimates, two million abortions are conducted every year in India. Some doctors put the figure around five million.

It is reported what is even more shocking are gruesome reports of how thousands of baby girls are killed each year by milk-laced with poison. Such cases of infanticide have been well documented in Tamil Naidu where the Government has started a 'cradle' scheme. Unwanted babies can be left in cradles kept outside orphanages and the state would take care of them. Infanticide is reported to be prevalent in other states. There are even reports of villages in the northern state of Rajasthan not seeing the birth of girls in decades. The Indian Government's campaign that 'a happy girl is the future of our country' has apparently failed to reach the masses. In a country where women play a prominent role in every walk of life, there are people who still see daughters as an economic burden. This is because, traditionally, parents have to stock up on gold ornaments and cash for their daughters' dowries and weddings. A son is the preferred choice in India's male-dominated society as he is entitled to his wife's dowry and expected to look after his parents in their old age. The daughter, on the other hand, has to live with her husband and look after her in-laws after marriage.

It is reported the advent of new technology, normally welcomed as a boon, has added to the problem. Pre-natal scans that monitor the health of the foetus are being used to identify the child's gender so that parents can decide whether to have an abortion. According to the 2001 census, the national census held every 10 years – the child sex ratio dropped to 927 girls for every 1,000 boys born between 1991 and 2001. In the decade covered by the 1991 census, the ratio was 945 girls for every 1,000 boys. This drop is seen as a clear indicator that female foeticide and infanticide have become increasingly widespread.

In the more developed Punjab State in the north, only 793 girls were born for every 1,000 boys, a drastic drop from 875 girls in 1991.

In New Delhi, too, the child sex ratio dropped from 915 girls for every 1,000 boys in 1991 to 865 in 2001.

Tamil Nadu's child sex ratio which was 948 girls per 1,000 boys a decade ago, dropped to 939 in 2001. This is despite the various safeguards against female foeticide and infanticide put in place by the Federal Government. Among them are laws that forbid the abortion of female foetuses and provide stringent punishment for the crime. There is, for instance, the Pre-Natal Diagnostic Tests (Regulation and Prevention of Misuse) Act to prevent even identification of a baby's sex before birth. Former Supreme Court judge, V R Krishna Iyer, rightly said an unborn child had the same rights as a child that has been born.

However, the authorities are facing tremendous difficulties in the enforcement of the laws at the state level. This is because there is money to be made for each illicit ultrasound scan and more to be pocketed with each illegal abortion. V K Ragunathan, the writer of this article, to which I have referred 'Death to baby girls in India' rightly concludes, 'Unless the mindset of parents changes, there will be no end to the millions of unlawful abortions carried out in private clinics and even hospitals in India every year.'

According to the Global Health Council there are notable gender inequalities in many countries: China has 118 boys per 100 girls under age five, South Korea has 110 to 100.

Of course, the fairer sex should not be discriminated against. On the other hand, after all, Indonesian President, Megawati Sukarnoputri, could well be right when she recently criticised a new electoral law passed by Parliament in February this year requiring at least 30% of the parliamentary candidates in elections to be female as demeaning saying,

> 'I don't agree, as such a quota can give rise to the notion that women can only exist in politics because of charity.'

I fully agree with the President when she said women should be elected into parliament on their own merit. The common good and democracy would certainly be enhanced with women striving towards competing on equal footing with men who have hitherto been placed on a somewhat higher pedestal. ■

[6] V K Ragunathan, 'Death to baby girls in India' *New Straits Times*, Malaysia, 20 February, 2003 at page 6.

LAW AWARENESS WEEK

15 - 21 September 2003

A nationwide event jointly organised by the Bar Council National Legal Aid Committee and the Bar Council State Legal Aid Centres.
During this week, legal aid and law awareness programmes will be held throughout the nation at various locations. Members are urged to volunteer your services to make this event a success. *Watch out for more details.*

RULES MADE UNDER SECTION 57(a) OF THE LEGAL PROFESSION ACT

On the recommendation of the Legal Profession Committee, the Bar Council makes the following Rule(s) pursuant to Section 57(a) of the Legal Profession Act 1976:

BCR 01/2003: Calling solicitor for another party as a witness (w.e.f. 1.3.2003)

When an advocate and solicitor for one party in a proceeding intends to call the advocate and solicitor for another party in the same proceeding as a witness in that proceeding, that advocate and solicitor shall as soon as possible give written notice of such his intention to the other advocate and solicitor. The advocate and solicitor shall state in his written notice the reason(s) or purpose for calling the other advocate and solicitor as a witness.

BCR 02/2003: Advocate and solicitor acting for a party who had previously filed a notice to act in person (w.e.f. 1.6.2003)

Where an advocate and solicitor ('first named Solicitor') had previously acted for a party immediately before that party filed in Court a notice to act in person, no other advocate and solicitor shall knowingly agree to appear or act for such party in such matter or proceeding unless he obtains the consent of the first named Solicitor or he is satisfied that the proper professional remuneration of that first named Solicitor has been paid.

Explanatory Notes

A. Headings of Rules are for convenience of reference only, and shall not affect their interpretation.

B. Any Rule or Ruling previously made by the Bar Council which is inconsistent with any of the above Rule(s) shall be treated as having been superseded or replaced by the above Rule(s) to the extent of such inconsistency, as from the latter's stipulated effective date(s).

Change in Working Hours of the Companies Commission of Malaysia

The working hours of all employees of the Companies Commission of Malaysia and the counter services hours are as stated in the following schedule, which will take effect from 1 April 2003.

For CCM Headquarters and states where Sunday is the weekly holiday:

DAY	WORKING HOURS	REST HOURS
Monday – Thursday	8.15am – 4.45pm	1.00pm – 2.00pm
Friday	8.15am – 4.45pm	12.15pm – 2.45pm*
Saturday	8.15am – 1.05pm	-

DAY	COUNTER SERVICES HOURS	REST HOURS
Monday – Thursday	8.15am – 4.00pm	
Friday	8.15am – 4.00pm	12.15pm – 2.45pm*
Saturday	8.15am – 12.20pm	-

(Note: * The rest hours for Sabah and Sarawak on Fridays are from 11.30 am – 2.00 pm.)

For CCM offices in states where Friday is the weekly holiday:

First and third weeks (where Saturday is a holiday)

DAY	WORKING HOURS	REST HOURS
Sunday – Thursday	8.15am – 4.30pm	1.00pm – 2.00pm

DAY	COUNTER SERVICES HOURS	REST HOURS
Sunday – Thursday	8.15am – 3.45pm	-

Second and fourth weeks

DAY	WORKING HOURS	REST HOURS
Saturday – Wednesday	8.15am – 4.30pm	1.00pm – 2.00pm
Thursday	8.15am – 12.40pm	-

DAY	COUNTER SERVICES HOURS	REST HOURS
Saturday – Wednesday	8.15am – 3.45pm	-
Thursday	8.15am – 11.55am	-

Pekeliling Ketua Pendaftar Bil 1/2003

Proceedings Under The Mutual Assistance In Criminal Matters Act 2002

Saya telah diarahkan oleh YAA Ketua Hakim Negara untuk memaklumkan kepada YA Datuk/Datuk Wira/Dato'/Tuan/Puan, bahawa suatu Akta baru bertajuk Akta Bantuan Bersama Dalam Perkara Jenayah 2002 (Akta 621) akan berkuatkuasa pada 1 Mei 2003.

Akta tersebut bertujuan memperuntukkan bantuan bersama dalam perkara jenayah antara Malaysia dan negara-negara lain dan bagi perkara-perkara berkaitan dengannya.

Terdapat beberapa peruntukan di dalam Akta tersebut yang memerlukan permohonan dibuat kepada Mahkamah (iaitu Mahkamah Tinggi, Mahkamah Sesyen dan Mahkamah Majistret) untuk mendapatkan perintah-perintah tertentu.

Memandangkan permohonan-permohonan tersebut akan melibatkan negara-negara asing dan selaras dengan permintaan daripada pihak Jabatan Peguam Negara, maka saya telah diarahkan oleh YAA Ketua Hakim Negara untuk memaklumkan bahawa di bawah Akta Bantuan Bersama Dalam Perkara Jenayah 2002, penggunaan Bahasa Inggeris dibenarkan dalam segala prosiding, termasuk pemberian keterangan oleh seseorang saksi.

Pekeliling ini berkuatkuasa dari 1 Mei 2003 dengan pemakaian Akta ini.

DATO' ABDUL WAHAB B SAID AHMAD
Ketua Pendaftar
Mahkamah Persekutuan Malaysia
Kuala Lumpur

MR KOH PENG HAI, DECEASED
SINGAPORE IDENTITY CARD NO: S0372266Z

We act for Mr Koh Seow Hong, the son of the late Mr Koh Peng Hai who had passed away on the 27/12/2002 in the Republic of China.

Anyone having knowledge of or is in possession of a will executed by the late Mr Koh Peng Hai in Malaysia, please contact :

MESSRS LEE & LEE
Advocates & Solicitors
5 Shenton Way, #19-00 UIC Building
Singapore 068808
Tel: 02 -6557 4725
Fax: 02- 62248505
Contact Person: Ms Sharon Tay

MR KANDASAMY A/L THANDAVAN, DECEASED
NRIC NO: 271123-10-5107 / 3587312

We act for the family of Mr Kandasamy a/l Thandavan who passed away on 23/4/2003.

Any firm of solicitors who has been instructed by the family/friends/relatives of the abovenamed deceased to apply for the Letters of Administration and/or of anyone having knowledge of or is in possession of a Will executed by the late Mr Kandasamy a/l Thandavan in Malaysia, please contact :

MESSRS T RAJAGOPALU & CO
Advocates & Solicitors
Suite 10-4, Arab Malaysian Business Centre (Opposition Pasar Besar) Jalan Pasar
70000 Seremban
Negeri Sembilan

Pekeliling Pendaftar Bil 1/2003

Teste Kepada Writ (Pindaan)

Adalah saya diarah untuk memaklumkan bahawa mulai 7 Jun 2003 pengakusaksian untuk writ of Summons yang difailkan dalam Mahkamah Tinggi Malaya hendaklah dikeluarkan atas nama YAA Hakim Besar Malaya seperti berikut:

> 'YANG AMAT ARIF TAN SRI HAIDAR BIN MOHD NOOR, P.S.M., D.M.P.N., J.S.M., D.J.N., HAKIM BESAR MALAYA ATAS NAMA DAN BAGI PIHAK SERI PADUKA BAGINDA YANG DI-PERTUAN AGONG'.

Dengan ini Pekeliling Pendaftar Bil 3/2002 adalah dibatalkan.

MOHAMAD ZABIDIN B MOHD DIAH
Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

Pekeliling Pendaftar Bil 2/2003

Teste Kepada Writ (Pindaan)

Adalah saya diarah untuk memaklumkan bahawa mulai 7 Jun 2003 pengakusaksian untuk writ of Summons yang difailkan dalam Mahkamah Tinggi Malaya hendaklah dikeluarkan atas nama YAA Hakim Besar Malaya seperti berikut:

> 'YANG AMAT ARIF TAN SRI HAIDAR BIN MOHAMED NOOR, P.S.M., D.M.P.N., J.S.M., D.J.N., HAKIM BESAR MALAYA ATAS NAMA DAN BAGI PIHAK SERI PADUKA BAGINDA YANG DI-PERTUAN AGONG'.

Dengan ini Pekeliling Pendaftar Bil 1/2003 adalah dibatalkan.

MOHAMAD ZABIDIN B MOHD DIAH
Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

Conference Diary

3RD NATIONAL TAX CONFERENCE 2003: MEETING FUTURE CHALLENGES OF TAX ADMINISTRATION

5 - 6 AUGUST 2003

Royal Ballroom, Palace of the Golden Horses, Selangor

Jointly organised by the Malaysian Institute of Taxation (MIT) and the Inland Revenue Board of Malaysia (LHDN). The annual conference is the leading tax event bringing together local and foreign tax officials and experts to discuss international as well as national taxation policy, issues and administration. It is dedicated to highlighting and updating delegates on the current world events and the new challenges in tax administration. It further aims to offer delegates clarification, guidance and explanation on the policies and administration procedures that have been implemented and that will be implemented in the near future. Topics on the programme are: 'Reorganisation and Restructuring of Companies: Impact on Taxation', 'Tax Issues Surrounding Accounting Malpractices', 'AFTA and Its Impact on Malaysia', 'Self Assessment for Companies: Review of Progress', 'Fostering Public Confidence in the Tax System Through Criminal Investigation', 'Use of Information Technology for Mutual Benefit: Lembaga Hasil Dalam Negeri Malaysia & Taxpayer', and 'A Better Understanding of Public Rulings'. For further details and to register, contact Ms Ng/Cik Nur, Tel: 03-7729 8989; Fax: 03-7729 1631; E-mail: secretariat@mit.org.my.

ACEH: HUMANITY IN CONFLICT

9 AUGUST 2003, 2.30 PM

Bar Council Auditorium

The Bar Council with Solidarity for Aceh will be having a forum focusing on the plight and suffering of the Acehnese refugees in Malaysia. Since military initiatives have stepped up in May 2003, thousands of Acehnese have been displaced by conflict. Some of them have ventured onto the shores of Malaysia in hopes of peace and security. This creates a humanitarian crisis within Malaysia, as many of them do not have basic resources to cope with such upheaval. There will be 2 sessions: **1) 'Conflict and the Production of Refugees** (encompassing topics 'Military Conflict and the Creation of Refugees', 'Background of the Aceh Conflict', 'The Position of Malaysia on the Aceh Conflict'); and **2) 'Responses in Malaysia - Different Challenges'** (encompassing topics 'Malaysia in Handling Refugees: A Historical Perspective of Refugees in Malaysia and the Current Acehnese Refugee Concern', 'A Human Rights Perspective: Malaysia's Ratification of Human Rights Instruments', 'Prosecution and Legal Treatment of Asylum Seekers and Refugees - A Case Study', 'The Police Perspective on Acehnese Refugees in Malaysia', 'Recent Developments in Malaysia'). Admission is free. Register by 8 August 2003. For more details, contact Ka Ea at Tel: 03-2072 5818; E-mail: kaea.lim@malaysianbar.org.my.

RECENT DEVELOPMENTS IN THE LAW RELATING TO EXTRADITION, MONEY LAUNDERING AND TRANS-NATIONAL CRIME

15 AUGUST 2003, 5.30 PM

Bar Council Auditorium

A talk jointly organised by the Bar Council Malaysia and the British Council, with speakers Mr Paul Garlick QC and Mr Jeremy James Carter-Manning QC. The registration fee for members of the Bar is RM10 per person; non-members pay RM20. Both fees are inclusive of light refreshments. The last date for registration and payment is 8 August 2003. Registration will be treated on a first come first served basis. For other details, please contact Ms May Leng (Tel: 03-2031 3003, Ext 103) or Pn Rozi (Ext 160).

AIDS/HIV SEMINAR

(*for Lawyers, Chambering Students & Final Year Law Students*)

16 AUGUST 2003

Bar Council Auditorium

With the increase in number of AIDS/HIV patients coupled with the progressive awareness of the fundamental rights of individuals, the Bar Council is initiating a discussion among present and future legal practitioners on the issue. This seminar aims to provide participants with an arena packed with information regarding AIDS/HIV and human rights, a ground for open discussion on issues pertaining to the rights of AIDS/HIV patients as part of a vulnerable group and an opportunity for the dissemination of such knowledge to the rest of the legal profession. Please call Lim Ka Ea at 03-2031 3003, ext. 148 or email her at kaea.lim@malaysianbar.org.my for registration now.

INDEPENDENT FUNCTIONING OF MEDIA COUNCILS, MEDIA FREEDOM & HIGH MEDIA ETHICS

29 AUGUST 2003, 10.00 AM

Bar Council Auditorium

A talk by Hon Justice K Jayachandra Reddy, Chairman of the World Association of Press - Media Councils Press Freedom & Media Ethics Committee, Honorary Chairman of the Press Council of India. A panel consisting of representatives from the National Union of Journalists and Inisiatif Wartawan (a groups consisting of independent journalists) will address the relevant issues. Admission is free. For details, contact Pn Rohani, Tel: 03-20313003 (ext 129).

PUBLIC FORUM ON TERRORISM AND HUMAN RIGHTS

6 SEPTEMBER 2003, 2.30 PM

Bar Council Auditorium

This is a follow-up to the previous forum on the Legality of War Against Iraq Without United Nations' Sanction held at the Bar Council on 21 March 2003. Speakers at the previous forum were Mr Zainur Zakaria, Mr Tommy Thomas and Mr Malik Imtiaz Sarwar with the session chaired by Mr Mah Weng Kwai. All the speakers unanimously deplored the war and agreed that it was in contravention of international law. This time, the Bar Council seeks to invite other speakers who may have dissenting views from the American embassy, British and Australian high commissions. This forum will also discuss the issue of war against terror and human rights status post-September 11. This will be a timely event in conjunction with the 2nd anniversary of the attack on the World Trade Centre, New York and Malaysian Human Rights Day, held on 9 September annually.

FESTIVAL OF RIGHTS 2003: WATER - OUR FUNDAMENTAL RIGHT

13 DECEMBER 2003

This is the annual Human Rights event organised by the Bar Council in conjunction with International Human Rights Day, celebrated on 10 December each year. Traditionally, the Festival kicks start with a public seminar in the morning followed by a celebration dinner at night. This year, the dinner will be held the day before, on 12 December 2003, and will incorporate various entertainment carrying the theme. More details will follow.

The Bar Council Auditorium is located at 1st Floor, Nos 13, 15 & 17, Leboh Pasar Besar, 50050 Kuala Lumpur.

In Memoriam

Tripti Kumar Joshi a/l K N Joshi

8 August 1945 – 3 November 2003

Mr Tripti Kumar Joshi a/l K N Joshi was born in 1945. He was admitted as an Advocate & Solicitor of the High Court of Malaya on 4 January 1991. The late Mr Tripti Kumar began practice as a partner at P M Mahalingam & Co afterwhich he left to become a partner at Messrs C S Saini & Associates in 1993. In 1996, he was employed briefly at Messrs K S Tay & Rashid before becoming a sole proprietor under the name of Messrs T K Joshi & Co in July that same year. In September 2000, he became a partner at Messrs Shaun K S Tan & Co. In December 2000, he left the partnership and ceased practice.

Mr Tripti Kumar died at the age of 57 and leaves behind his beloved wife and sons.

Anandarajah a/l Ponnudurai

28 October 1945 – 12 January 2003

Mr Anandarajah a/l Ponnudurai was born in 1945. He was admitted as an Advocate & Solicitor of the High Court of Malaya on 22 January 1993. The late Mr Anandarajah was employed as a civil servant with the Government of Malaysia until March 1999, when he retired from government service and joined Messrs Albar Zulkifly & Yap as a legal assistant. In December 1999, he joined Messrs Zul Rafique & Partners as a partner until his demise.

Mr Anandarajah died at the age of 57 and leaves behind his beloved wife and daughter.

Tan Lip Yip

20 February 1938 – 17 January 2003

Mr Tan Lip Yip was born in 1938. He was admitted as a Barrister-at-Law, Lincoln's Inn in 1971. The late Mr Tan Lip Yip was practising as a sole proprietor under the name of Messrs Tan Lip Yip and Co until 1994 when he ceased practice for a short time. In 1995, he resumed practice as a sole proprietor under the same firm of Messrs Tan Lip Yip & Co until he ceased practice in January 2003.

Mr Tan Lip Yip died at the age of 65 and leaves behind his beloved wife, three daughters and a son.

Lee Siew Kee

8 August 1942 – 21 February 2003

Mr Lee Siew Kee was born in 1942. He was admitted as an Advocate & Solicitor of the High Court of Malaya on 31 December 1966. The late Mr Lee Siew Kee was a partner at Messrs Chung & Huang until 1991, afterwhich he practised as a partner at Messrs Lee, Ling & Partners from 1992 until his demise.

Mr Lee Siew Kee died at the age of 60 and leaves behind his beloved wife and son.

Wan Azlan bin Wan Adnan

15 January 1977 – 27 April 2003

Encik Wan Azlan bin Wan Adnan was born in 1977. He was admitted as an Advocate & Solicitor of the High Court of Malaya on 13 November 1997. The late Encik Wan Azlan began practice as a legal assistant in Messrs Shooklin & Bok in 1998. In 2000 he went into partnership under the name of Messrs Azlan & Loh until his demise.

Encik Wan Azlan died at the age of 26.

INDEX TO P.U.(A) SERIES 2003
PU(A) 131/2003 - PU(A) 133/2003

TITLE	P.U.(A) NO.
CUSTOMS ACT 1967 [ACT 235] CUSTOMS (VALUES) (PALM OIL) (NO.19) ORDER 2003 Issued under s.12, Customs Act 1967 *w.e.f:- 12.5.2003-18.5.2003*	**133/2003**
CUSTOMS ACT 1967 [ACT 235] CUSTOMS DUTIES (AMENDMENT) ORDER 2003 Issued under s.11(1), Customs Act 1967 *Notes: Amends Sch 1 [P.U.(A) 15/96]* *w.e.f:- 8.5.2003*	**131/2003**
ROAD TRANSPORT ACT 1987 ROAD TRANSPORT (COMPOUNDING OF OFFENCES) RULES 2003 CORRIGENDUM Issued under s.12, Customs Act 1967 *Notes:- Corrigendum to [P.U.(A) 103/2003]* *w.e.f:- 9.5.2003*	**132/2003**

INDEX TO SELETED P.U.(B) SERIES 2003

TITLE	P.U.(B) NO.
COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1993 COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994 [P.U.(A) 233/94] NOTICE OF EXTENSION OF PERIOD FOR MAKING PRELIMINARY DETERMINATION (AD 01/03) *Notes: Government has granted an extension of time in relation to the period for making the preliminary determination in the case of anti-dumping duty investigation with regard to the importation of newsprint in rolls into Malaysia originating in or exported from Canada, the Republic of Indonesia, the Republic of Korea, the Republic of the Philippines and the United States of America from 16 May 2003 to 15 June 2003.*	**176/2003**

NEW HUMAN RIGHTS BOOKS IN THE MALAYSIAN BAR LIBRARY

1. Attacks on Justice :A Global Report on the Independence of Judges and Lawyers, 11th ed. Geneva Switzerland. International Commission of Jurists, 2002.
2. Attacks On Justice: The Harassment and Persecution of Judges and Lawyers, 10th ed. Geneva, Switzerland: International Commission of Jurists, 2000.
3. Attacks on Justice: The Harssment and Persecution of Judges and Lawyers: January 1996 - February 1997. Geneva –Switzerland.
4. Austin, Granville. Working a Democratic Constitution the Indian Experience. New Delhi : Oxford University Press, 1999.
5. Bakshi, P.M. Public Interest litigations. New Delhi (India): Ashoka law House, 1999.
6. Blake, Nicholas. Blackstone's Human Rights Series Immigration Asylum & Human Rights. New York:: Oxford University Press, 2003.
7. Clayton, Richard. Privacy and Freedom of Expression. London: Oxford University Press, 2001.
8. De,D.J. Interpretation & Enforcement of Fundamental Rights. Calcutta: Eastern Law House, 2000.
9. Humana Charles. World Human Rights Guide. New York: Facts On File, 1986.
10. Human Rights and Finland's Foreign Policy. Report by Minister for Foreign Affairs. Committee of Parliament on the Human Rights Policy of the Finnish Government November 29, 2000.
11. Joseph, Sarah. The International Covenant on Civil and Political Rights. New York. Oxford University Press, 2000.
12. Kua Kia Soong. K.Das & The Tunku Tapes. Petaling Jaya, Selangor: Strategic Info Research Development (SIRD), 2002
13. Nicol, Andrew. Media Law & Human Rights. London: Blackstone Press Limited, 2001.
14. Ruler's Law. The Report of the International Commission of Jurists: Mission to Indonesia. Switzerland: International Commission of Jurists, 1999.
15. Peoples' Rights. New York: Oxford University Press, 2001.
16. Starmer, Keir. Blackstone's Human Rights Digest . London: Blackstone Press Limited , 2001.
17. Terrorism and Human Rights. Geneva, Switzerland: International Commission of Jurists, 2002.
18. Wadham, John. Blackstone's Guide to the Human Rights Act 1998. 2nd ed. London: Blackstone Press, 2000.
19. Wallace, Rebecca. International Human Rights Text and Materials. 2nd ed. London: Sweet & Maxwell , 2001.
20. Zander, Michael. A Bill Of Rights? 4nd ed. Singapore: Sweet Maxwell , 1997.

MALAYSIAN BAR LIBRARY

INDEX TO FEDERAL ACTS, AMENDMENT ACTS AND SUBSIDIARY LEGISLATION (PU(A) AND SELECTED PU(B) SERIES) 2002 [WITH NOTES]
PRACTICE DIRECTIONS 2001-2002, REGISTRAR'S CIRCULAR 2001-2002
PRACTICE DIRECTIONS (CHIEF JUSTICE'S) 2003 [FULL TEXT]
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This is an index with notes to Federal Acts, Amendment Acts and Subsidiary Legislation (PU(A) and selected PU(B) series) for the year 2002. This issue also includes full text of Practice Directions, Registrar's Circulars and Chief Justice's Practice Directions.

Members of the Bar can access the website at http://www.malaysianbar.org.my as regards latest legislation updates.

This index is available to lawyers at a nominal Price of RM15.00 per copy plus RM3.00 for postage and handling charges.

The 2000 - 2001 Index can be purchased at RM25.00. Both the 2000-2001 & 2002 publications can be purchased as a package for RM30.00 per copy plus RM6.00 for postage and handling charges.

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