



Human Rights Commission of Malaysia (SUHAKAM)

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Submission to the Universal Periodic Review (UPR) Malaysia October 2013

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A. INTRODUCTION

1. The Human Rights Commission of Malaysia (SUHAKAM) is an “A” status national human rights institution (NHRI) established in 1999 by the Human Rights Commission of Malaysia Act (Act 597).
2. This independent submission reflects the views of SUHAKAM, based on its own deliberations and monitoring of the UPR follow up process. In preparing the submission, SUHAKAM also takes into consideration information obtained through a series of consultations¹ with stakeholders.
3. Since its first UPR in February 2009, Malaysia has seen a number of positive developments that have contributed to some level of progress in the human rights situation of the country. SUHAKAM observes that many of these significant achievements relate to civil and political rights. SUHAKAM also notes that many of the positive changes pertain to UPR recommendations that were not supported by the Government such as the abolition of the Internal Security Act (ISA) and other preventive laws; the review of the Police Act; and the proposed review of the mandatory death penalty.

B. HUMAN RIGHTS ISSUES (Related to UPR Recommendations)

I. Accession to International Human Rights Treaties

4. SUHAKAM welcomes Malaysia’s accession to two of the Optional Protocols² to CRC³ in April 2012 and also its withdrawal of certain reservations⁴ to CRC and CEDAW⁵ in 2010.
5. SUHAKAM commends the Government’s initiative in establishing a Technical Sub-Committee to study the feasibility of becoming party to ICCPR, ICESCR, CAT and ICERD.⁶
6. SUHAKAM calls on the Government to accelerate the process of acceding to the remaining six core international human rights treaties. Existing laws, policies and practices inconsistent with those treaties should not be seen as impediments to accession. Rather, accession should be used as a foundation for gradual compliance.

II. National Strategies and Institutional Framework on Human Rights⁷

7. SUHAKAM commends the Government’s decision in October 2010 to develop a National Human Rights Action Plan (NHRAP) for Malaysia. However, SUHAKAM is very concerned about the slow progress of the NHRAP despite earlier indications that it would be pursued as a matter of urgency. While SUHAKAM recognizes the need for extensive deliberation in formulating the NHRAP, it believes that the NHRAP should be completed in a reasonably short timeframe. SUHAKAM also urges the

Government to hold broad and meaningful consultations with all stakeholders in developing the NHRAP.

8. SUHAKAM looks forward to the establishment of the proposed Parliamentary Select Committee on Human Rights, which could serve as a meaningful body to deliberate its Annual Report⁸ as well as other human rights issues.

III. Marginalized Groups

Children

9. The Government has taken various measures to protect the rights of children and address child abuse⁹ such as the introduction of the National Child Protection Policy and Plan of Action, ChildLine 15999, Kuala Lumpur Crash Pad, National Urgent Response Alert (NUR Alert) system and the Suspected Child Abuse and Neglect Team (SCAN).
10. SUHAKAM urges the Government to give due attention to the rights of children of marginalized groups¹⁰ such as children with disabilities, stateless children, street children, migrant children, indigenous children and refugee children, especially in terms of access to quality education,¹¹ healthcare and protection from abuse.

Women

11. A number of measures have been taken by the Government towards the empowerment of women¹² especially in promoting gender equality and women participation at the decision-making level,¹³ both in public and private sectors.
12. SUHAKAM welcomes the amendments to the Domestic Violence Act in 2012, which have expanded the definition of 'domestic violence' to include psychological and emotional injuries. The amendments also make domestic violence a seizeable offence, which allows the police to investigate and make arrests immediately.¹⁴
13. SUHAKAM calls on the Government to further look into the absence of a Gender Equality Act; double standards on the right to citizenship in the Federal Constitution; sexual abuse and violence within marriage; the enactment of a sexual harassment law; the cap on the total number of days for maternity leave; trafficking of women; rights of single mothers; women refugees/asylum seekers and the Optional Protocol to CEDAW.¹⁵

Persons with Disabilities¹⁶

14. The Government should step up its efforts in addressing the rights of persons with disabilities (PwDs) especially with regard to registration of PwDs; access to education, in particular for those with learning disabilities; access to public facilities, amenities, buildings and public transportation; as well as employment.

Indigenous Peoples

15. The Government has introduced various programmes to foster better economic opportunities as well as to provide equal education¹⁷ for indigenous communities. The Indigenous Education Transformation Plan was launched to offer education that would furnish indigenous peoples with the necessary knowledge and skills for better occupational opportunities.
16. SUHAKAM, through its National Inquiry into Land Rights of Indigenous Peoples, finds that it is necessary for the Government to take legal, policy and administrative measures to address issues related to indigenous peoples' right to land. These issues include the lack of recognition of indigenous peoples' concept of Native Customary Rights to Land; inclusion of native customary land in protected areas and development projects; and inadequate compensation for the loss of indigenous peoples' land, territories, crops and resources. In addition, it is imperative that the Government apply the principle of free, prior and informed consent when addressing issues concerning indigenous communities.

Migrant Workers

17. SUHAKAM welcomes the Government's amnesty programme (6P), carried out in 2011, which was aimed at deriving the actual number of undocumented migrant workers in Malaysia and issuing them with documents for work or returning them to their countries of origin at their own cost and without penalty.
18. Nonetheless, more concrete measures must be taken to ensure that the rights of migrant workers, in particular undocumented migrant workers, are safeguarded. Among the problems faced by migrant workers are irregular or long working hours; incomplete and irregular payment of wages; deplorable living conditions; and the lack of appropriate personal identification card while their passports are held by their employers.

Refugees and Asylum Seekers¹⁸

19. The Government does not recognize the status of refugees and does not make distinction between refugees, asylum seekers and undocumented immigrants. There are no laws governing refugees and asylum seekers and their rights are extremely limited especially in terms of access to formal education, employment and healthcare services. SUHAKAM recommends that the Government accede to the Convention and Protocol relating to the Status of Refugees.

IV. Judicial Reforms¹⁹

20. SUHAKAM commends the establishment of the Judicial Appointments Commission (JAC) in February 2009, to provide for a more transparent mechanism in appointing judges; as well as the introduction of human rights subjects in the training programmes conducted by the Judicial and Legal Training Institute (ILKAP) for the judicial officers and public prosecutors. SUHAKAM welcomes the references by judges to international human rights conventions, where relevant, in their decisions and hopes that the judiciary will continue to take into account human rights standards in their judgments.

V. Trafficking in Persons

21. SUHAKAM welcomes the Government's initiative in introducing the National Action Plan against Trafficking in Persons 2010-2015. SUHAKAM notes that the amendments made to the Anti-Trafficking in Persons Act in 2010 provide for, among others, the imposition of a higher fine on any person convicted of profiting from the exploitation of a trafficked person; as well as a mandatory Interim Protection Order for a suspected victim of trafficking.
22. SUHAKAM is concerned that the amendments have widened the scope of the Act to include smuggling of migrants. Trafficking in persons and smuggling of migrants must be treated as separate issues to avoid problems in identifying victims of trafficking. In addition, the Act should allow victims to work pending the resolution of the cases. SUHAKAM also finds that there is lack of awareness, skills and resources within the law enforcement agencies in addressing the issue.

VI. Right to Education

23. SUHAKAM commends the Government for introducing Malaysia's Education Blueprint 2013-2025 as an effort to further strengthening the education system.²⁰ However, gaps still exist in terms of access to education for children of marginalized groups such as children with disabilities,²¹ indigenous children, migrant children, refugee children and stateless children. SUHAKAM recommends that the Government withdraw, among others, its reservation to Article 28(1)(a) of CRC, which calls upon state parties to make primary education compulsory and free to all, and in line with the Child Act 2001 under which all children are entitled to protection and assistance in all circumstances without regard to distinction of any kind.

VII. Poverty Eradication²²

24. SUHAKAM finds that the various programmes put in place by the Government through its agencies, particularly under the Government Transformation Programme, have led to positive results in eradicating poverty and in raising the living standards of low income households.

25. SUHAKAM, however is concerned that poverty eradication policies and programmes are focused only on raising income levels and still do not have a holistic measurement and goals that take into consideration social, cultural and land tenure aspects. There are no effective and meaningful consultations with affected communities or persons, or in-built periodic assessments to enable adaptation of such programmes and to mitigate negative impacts.

VIII. Healthcare

26. The Government has taken various steps to ensure accessibility and affordability of healthcare, including the introduction of the 1Malaysia Clinics and outreach programmes such as mobile clinics and flying doctors. Nevertheless, SUHAKAM urges the Government to take the necessary measures to ensure that marginalized groups such as asylum seekers, undocumented migrants and stateless persons also have equitable access to healthcare.
27. SUHAKAM is concerned about the possible ramifications of the proposed Free Trade Agreement (FTA) with the European Union and the proposed Trans-Pacific Partnership Agreement (TPPA) with the USA on patented drugs and medicines, which may in turn raise the costs of healthcare significantly and affect access to healthcare. SUHAKAM calls for transparent and meaningful consultation with all stakeholders.

IX. Housing²³

28. The Government has undertaken various initiatives to address the right to housing especially for the low-income groups. These include the Public Housing Programme; the Urban Housing Assistance Project; the Rental House Assistance Project; the Low Cost Housing Fund Scheme and the My First Home Scheme. However, in many cases, these programmes do not benefit the intended target groups because of their failure to qualify for loans, shortage of affordable units and inefficient low-cost housing distribution system.

X. Preventive Detention Legislation

29. SUHAKAM lauds the repeal of the Internal Security Act (ISA) 1969,²⁴ the Banishment Act 1959 and the Restricted Residence Act 1933 as well as the annulment of the three remaining proclamations of Emergency, all of which provide for detention without trial. While SUHAKAM welcomes the Security Offences (Special Measures) Act, which replaced the ISA, it is of the view that Sections 4, 5, 6 and 30²⁵ of the Act may lead to violation of human rights.

XI. Freedom of Assembly

30. The repeal of Sections 27, 27A and 27B of the Police Act²⁶ and the adoption of the Peaceful Assembly Act in 2012 are positive moves by the Government in relation to the right to peaceful assembly. While the Peaceful Assembly Act places upon the police the responsibility to ensure orderly conduct of a peaceful assembly, it also gives the police discretion to impose conditions, which could potentially undermine the right of the public to assemble peacefully.

XII. Freedom of Expression and Information

31. The Government has taken progressive steps towards full respect of the right to freedom of expression and information. Amendments were made to the Printing Presses and Publications Act 1984 in 2012, removing the Minister's absolute discretion over the issuance of licences; and abolishing the requirement for these licences to be renewed annually. While SUHAKAM welcomes these amendments, it is of the view that reforms should not be restricted to addressing procedural matters.
32. SUHAKAM welcomes the Government's decision to repeal the obsolete Sedition Act of 1948, which restricts the freedom of speech and expression. SUHAKAM hopes that the proposed replacement law - the National Harmony Act - will strike a balance between providing greater enjoyment of freedom of speech and expression, and the need to handle the delicate nature of the country's plural society.
33. SUHAKAM is concerned by the inclusion of section 114A in the Evidence Act. SUHAKAM believes that section 114A of the Act, which relates to the presumption of fact in publication, could seriously undermine and threaten freedom of speech and expression, especially on the Internet, and possibly reverse the burden of proof in criminal and civil matters.

XIII. Death Penalty

34. SUHAKAM welcomes the Government's proposal to review the mandatory death penalty for drug trafficking. This will allow the court the liberty and discretion to determine punishment based on the gravity of the offence in each case. SUHAKAM hopes that this move will gradually lead to the abolition²⁷ of the death penalty.

XIV. Sexual Orientation and Gender Identity²⁸

35. SUHAKAM is concerned by the ill-treatment, discrimination, bullying, vilification, humiliation and intimidation of sexual minority groups. Regardless of sexual orientation or gender identity, everyone is entitled to rights and fundamental liberties.

XV. Proposal to Amend SUHAKAM Act

36. SUHAKAM's founding Act was amended twice in 2009 in response to recommendations made by the International Coordinating Committee NHRIs (ICC) Sub-Committee on Accreditation (SCA) in relation to SUHAKAM's accreditation status. The amendments provided for, among others, a more transparent selection and appointment process of Commissioners.
37. To further strengthen²⁹ its effectiveness in the discharge of its functions, SUHAKAM has proposed an amendment to allow it to visit places of detention without prior notification, as is currently required.

XVI. UN Special Procedures³⁰

38. The Working Group on Arbitrary Detention, which conducted an official visit to Malaysia in June 2010, thus far was the only UN Special Procedures Mandate Holder (SPMH) that was invited by the Government. SUHAKAM calls on the Government to extend formal invitations to other SPMH, who are keen to visit Malaysia, which would allow them to offer their expert insights on ways to address various human rights issues in the country.

D. OTHER HUMAN RIGHTS ISSUES (Not Related to UPR Recommendations)

I. Business and Human Rights

39. SUHAKAM calls on the Government to take the necessary measures to ensure that the private sector, which includes transnational corporations and other business enterprises, fulfils their responsibility to observe and respect human rights standards in their daily operations. Such measures must take into consideration standards highlighted in the *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*.
40. SUHAKAM is concerned with the possible impact of the proposed Free Trade Agreement (FTA) with the European Union and the proposed Trans-Pacific Partnership Agreement (TPPA) with the USA, on human rights in the country. Among the concerns are the lack of consultation with stakeholders; the possible impact of increased intellectual property protection on access to affordable medicines; tariff liberalisation on rice and agricultural products; and workers rights.

II. Rights of Older Persons

41. SUHAKAM commends the Government for its Policy on Older Persons and Plan of Action, adopted in 2011. SUHAKAM calls for the effective implementation of the provisions and proposed programmes contained therein so that the rights of older persons are safeguarded. In addition, SUHAKAM urges the Government to give

particular attention to issues related to care services, employment and social security of older persons.

III. UPR Follow-Up

42. SUHAKAM believes that the UPR process would serve as an effective mechanism in enhancing the human rights situation of a country only if all stakeholders play an active role throughout process. SUHAKAM was disappointed to learn through its consultations, that many stakeholders at the grassroots level, including Government agencies and civil society organisations, had little awareness and understanding of the UPR process, much less the recommendations accepted or rejected by the Government.
43. SUHAKAM recommends that the Government play a more active role in ensuring all stakeholders, especially Government agencies at the state level, are not only aware of the UPR but are also directly involved in the implementation of the UPR recommendations. At the same time, SUHAKAM will step up its own efforts in promoting awareness and understanding of the UPR.

D. CONCLUSION

44. The Government has taken commendable steps in improving the human rights situation of Malaysia. Laws relating to preventive detention and freedom of assembly, among others, have been reformed to ensure greater compliance with international standards. Policies and programmes have led to positive results in promoting and protecting women's rights. Progress can be seen in areas relating to economic and social rights such as education and healthcare.
45. Nevertheless, there must be more concerted efforts to address problems faced by marginalized groups as they continue to become victims and the most vulnerable to human rights violations. Urgent priority must be given to accession to human rights treaties and the development of the NHRAP as these will bring about significant changes towards greater respect for human rights.

As of 11 March 2013

¹ A series of nine consultations were organised by SUHAKAM in various areas of Malaysia to obtain feedback from stakeholders, including Government agencies and civil society organisations, on the UPR recommendations accepted by Malaysia; the extent to which the recommendations have been implemented; as well as other human rights issues. Two of the consultations, which were held in the states of Sabah and Sarawak, were organised in collaboration with the United Nations Country Team.

² Optional Protocol to CRC on the Involvement of Children in Armed Conflict; and Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography.

³ Acronyms:

CRC – Convention on the Rights of the Child

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

CAT – Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination

⁴ In 2010, Malaysia withdrew its reservations to Articles 1, 13 and 15 of CRC and Articles 5(a), 7(b), 16(2) of CEDAW.

⁵ Recommendation 3 (supported by the Government).

⁶ Recommendations 1, 2 and 5 (supported by the Government).

⁷ Recommendations 11 and 12 (supported by the Government).

⁸ As stipulated by the Human Rights Commission of Malaysia Act, SUHAKAM submits its Annual Report to the Parliament every year. However, none of the Annual Report has ever been debated in Parliament.

⁹ Recommendations 20 and 21 (supported by the Government).

¹⁰ Recommendation 22 (supported by the Government).

¹¹ Recommendation 23 (supported by the Government).

¹² Recommendations 17 and 18 (supported by the Government)

¹³ Recommendation 19 (supported by the Government).

¹⁴ Recommendation 16 (supported by the Government).

¹⁵ Not supported by Government.

¹⁶ Recommendations 13 and 14 (supported by the Government).

¹⁷ Recommendation 51 (supported by the Government).

¹⁸ Not supported by the Government.

¹⁹ Recommendations 25-28 (supported by the Government).

²⁰ Recommendations 31 and 32 (supported by the Government).

²¹ Recommendation 23 (supported by the Government).

²² Recommendations 35-42 (supported by the Government).

²³ Recommendations 48 and 49 (supported by the Government).

²⁴ Not supported by the Government.

²⁵ Section 4 does not provide for judicial oversight when the detention period is extended up to 28 days. Section 5 allows the police to deny immediate access to legal representation for a period of up to 48 hours.

Section 6 permits the interception of communication which may infringe personal liberty and the right to privacy. Section 30 compels the court, upon application by the Public Prosecutor, to commit an acquitted person pending exhaustion of all appeals.

²⁶ Not supported by the Government.

²⁷ Not supported by the Government.

²⁸ Not supported by the Government.

²⁹ Recommendation was noted and responded to by the Government.

³⁰ Not supported by the Government.