



Mid-Term Report by the Human Rights Commission of Malaysia (SUHAKAM) on Malaysia's Third Universal Periodic Review

I. Introduction

The Human Rights Commission of Malaysia (SUHAKAM) was established in 1999 by legislation, *i.e.* the Human Rights Commission of Malaysia Act 1999 [Act 597]¹. In accordance with the Act, SUHAKAM is a body corporate, publicly funded and independent from the Government where it could only be dissolved through an Act of Parliament.

SUHAKAM has been a member of the Global Alliance of National Human Rights Institutions (GANHRI) since 2002. GANHRI, through its Sub-Committee on Accreditation (SCA) reviews and accredits national human rights institutions (NHRIs) in compliance with the Paris Principles every five years. SUHAKAM has undergone four cycles of review and maintained its 'A' status until present time, denoting its 'full compliance' with the Paris Principles. The latest review took place on 18 June 2021 and at the time of writing, the SCA recommended that SUHAKAM be re-accredited with 'A' status, pending the approval from the GANHRI Bureau.

As a NHRI, SUHAKAM actively engages in all stages of the Universal Periodic Review (UPR) process. While being primarily a peer review instrument involving governments, SUHAKAM sees many opportunities that the UPR offers governments to make recommendations that would bring about real improvements and positive changes to the human rights situation in Malaysia.

The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.

On 8 November 2018, Malaysia underwent its third UPR during the 31st Session of the UPR Working Group, during which 111 United Nations Member States participated in the review. Malaysia received 268 recommendations and of these recommendations, the Government accepted 147 recommendations in full, 37 recommendations in part and the remaining 84 recommendations were noted.²

¹ The Human Rights Commission of Malaysia Act 1999 can be accessed at <https://suhakam.org.my/wp-content/uploads/2021/05/SUHAKAM-Act-1999-copy.pdf>

² Report of the Working Group on the Universal Periodic Review: Malaysia, A/HRC/40/11/Add.1 (18 February 2019).

The Government's work on the UPR recommendations was somewhat affected due to the change of Government in February 2020 and COVID-19 pandemic in March 2020.

This Mid-Term Report mainly seeks to provide an overview of Malaysia's implementation of the recommendations received and the Government's effort in the UPR process. The Mid-Term Report is an independent submission of SUHAKAM and reflects SUHAKAM's views based on information gathered from its own deliberations and monitoring of Malaysia's third UPR and its UPR consultations including a consultation held on 25 May 2021 specifically to discuss SUHAKAM's draft Mid-Term Report with government agencies and civil society organizations (CSOs).

II. Status of Implementation of the 268 Recommendations Received by Malaysia

For the purposes of organization and structure, SUHAKAM has clustered the recommendations received by Malaysia into a number of categories and sub-categories as set out in the paragraphs below.

1. International Obligations

1.1. Accession to International Human Rights Instruments

Malaysia received 44 recommendations specific to the accession of international human rights instruments. However, SUHAKAM notes that the recommendations accepted by the Government were vague, immeasurable and lack specific actions to be taken. Despite the commitments made by the Government to accede to the remaining core international human rights treaties specifically treaties that are considered "low hanging fruits" namely the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the International Convention on the Protection of All Persons from Enforced Disappearance (ICPPED) and the establishment of inter-agency standing committees to look into the accession to the six international human rights treaties to which Malaysia is not yet a party, SUHAKAM observes that the Government has not made much progress in this regard.

In November 2018, the Government backtracked on its commitment to accede to the International Convention on the Elimination of Racial Discrimination (ICERD). SUHAKAM reiterates its view that the function of ratifying international treaty is the Government's commitment towards compliance within minimum international norms and domesticating the treaty into relevant local laws; which involves parliamentary processes, after ratification of any international treaty.

SUHAKAM hopes that the current Government will focus on existing reports that have been previously made available and developed by inter-agency committees, and adopt a realistic action plan on Malaysia's accession to the remaining core human rights treaties.

SUHAKAM recognizes the ongoing efforts by the Government in partnership with the Office of the High Commissioner for Human Rights (OHCHR) in working towards the translation of the nine core international human rights treaties into Bahasa Malaysia, the national language of Malaysia. This is a positive step forward in raising awareness and better understanding on the core principles of the treaties among all levels of society. In addition to this, SUHAKAM deems it important for the Government to foster constructive dialogues with various stakeholders on the benefits of human rights treaties in advancing human rights on the ground and in the administration of justice.

1.2. Accession to the Rome Statute

In April 2019, the Government withdrew its accession to the Rome Statute of the International Criminal Court (ICC) due to political backlash after the, then, Minister of Foreign Affairs of Malaysia had signed it.³ As Malaysia faces issues such as the mass graves of human-trafficked victims at Wang Kelian that carries cross-border implications on the execution of justice, SUHAKAM reiterates its call for the Government to revisit its decision, as acceding to the Rome Statute will be an additional legal avenue to bring justice to all victims of human rights violations.

1.3. Withdrawal of Reservations & Reporting to Treaty Bodies

The Government did not accept any of the recommendations to withdraw all existing reservations to the three international human rights treaties that Malaysia is a State Party to, namely the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

The reservations that remain for CRC are Article 2 on non-discrimination; Article 7 on name and nationality; Article 14 on freedom of thought, conscience and religion; Article 28(1)(a) on free and compulsory education at primary level; and Article 37 on torture and deprivation of liberty, the reservations that remain for CEDAW are Article 9(2) on nationality and citizenship, Article 16(1)(a) on equal rights to enter into marriage, Article 16(1)(c) on equal rights during marriage and at its dissolution, Article 16(1)(f) on rights and responsibilities with regard to guardianship and Article 16(1)(g) on the same personal rights as husband and wife, and the reservations that remain for CRPD are Article 15 on freedom from torture or cruel, inhuman or degrading treatment or punishment and Article 18 on liberty of movement and nationality.

³ <https://www.malaysiakini.com/news/471007>

SUHAKAM hopes that the Government will intensify its efforts towards the withdrawal of remaining reservations to CRC, CEDAW and CRPD. Furthermore, SUHAKAM continues to observe a delay in the State's reporting to the CRC and CRPD Committees on the progress of the implementation of its obligations under these treaties. On 5 August 2021, the Government submitted its combined second to fifth periodic reports to the CRC Committee. SUHAKAM recommends that the Government submit its overdue periodic reports to the CRPD Committee without further delay.

In line with the recommendation to create a national mechanism for implementation, reporting and follow-up of the recommendations from the UPR which the Government accepted in full, SUHAKAM repeats its call for the establishment of a Permanent Inter-Ministerial Tracking System for effective coordination on human rights issues, consultation and report writing.

1.4. Engagement with Special Procedures

SUHAKAM commends the Government for issuing a standing invitation to all Special Procedures of the Human Rights Council on 26 February 2019. Since Malaysia's third UPR, the following Special Procedures have conducted official visits to Malaysia at the invitation of the Government:

- i. Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Mr. Leo Heller in November 2018;
- ii. Special Rapporteur on the Situation of Human Rights in Myanmar, Ms. Yanghee Lee in July 2019; and
- iii. Special Rapporteur on Extreme Poverty and Human Rights, Professor Philip Alston in August 2019.

SUHAKAM is pleased that following the country visits by Special Procedures, relevant Government agencies came together to study the report of the Special Procedure before providing a response to the Special Procedure. SUHAKAM was also invited to take part in the discussion and hopes that this practice will continue for future visits. SUHAKAM urges the Government to consider positively the recommendations received from the Special Procedures and to implement the recommendations for better improvement.

SUHAKAM engaged with Mr. Ahmed Fathalla, Chairman of the United Nations Human Rights Committee through a Workshop on Rights-Based Hate Speech and Anti-Discrimination organised on 17 December 2019 to discuss issues on racial discrimination, religious freedom, protection of minorities, and hate speech in terms of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Federal Constitution, as well as to coordinate strategies for

law reforms in these areas. SUHAKAM hopes that the recommendations from the workshop would be taken into consideration by the Government to achieve meaningful protection under the law.

Once the COVID-19 situation improves in Malaysia, SUHAKAM hopes that the Government will aspire to accept at least two country visit requests by Special Procedures each year and to look into previous country visit requests that it has yet to respond to.

2. Civil and Political Rights

2.1. Freedom of Expression and Right to Information

The Government accepted in full, recommendations to enact legislation assuring the right of access to information and ensure its full implementation and to take further steps to ensure a free, independent, pluralistic and diverse media landscape, including by reducing political influence on media outlets. Recommendations to revise or repeal the Sedition Act 1948 [Act 15], Communications and Multimedia Act 1998 [Act 588] and the Printing Presses and Publications Act 1984 [Act 301] were accepted in part by the Government.

In reviewing the security laws namely, the Security Offences (Special Measures) Act 2012 [Act 747], Prevention of Crime Act 1959 [Act 297], Prevention of Terrorism Act 2015 [Act 769], Sedition Act 1948, Peaceful Assembly Act 2012 [Act 736] and Printing Presses and Publications Act 1984, the Government conducted a stakeholder consultation in 2018 involving SUHAKAM, the Malaysian Bar, legal practitioners and academics. To date, SUHAKAM has not seen any progress or significant evidence to suggest that the Government is moving toward the amendment of the aforementioned security laws.

SUHAKAM continues to observe the use of laws such as the Sedition Act 1948, Section 233 of the Communications and Multimedia Act 1998 and Section 505(b) of the Penal Code [Act 574] to restrict freedom of speech and right to information through censorship and criminal sanctions.

SUHAKAM takes note of the disproportionate penalty sentenced to an online news agency, Malaysiakini, over a reader's comment relating to the judiciary on its site, for contempt of court earlier this year. Moreover, the opening of investigation papers by the police over a Member of Parliament under Section 4(1) of the Sedition Act 1948 and Section 233 of the Communications and Multimedia Act 1998 for comments made on the Federal Court's decision in Malaysiakini's contempt of court case continue to raise concerns on the infringement on freedom of opinion and expression.

SUHAKAM reiterates its position for the repeal of the Sedition Act 1948. SUHAKAM also recommends the reinstatement of the agenda to reform laws and enforcement regulating hate speech and to comply with international human rights standards. This would ensure better respect and protection of the right to free speech as guaranteed under Article 10 of the Federal Constitution and Article 19 of the UDHR.

SUHAKAM encourages the Government to follow suit of the State legislations in Penang and Selangor through Freedom of Information Penang 2010 (Enactment 16) and Freedom of Information (State of Selangor) Enactment 2011 (Enactment 8). The objective of these Enactments is to promote and enhance the access of information by the State Governments through an application to the relevant State departments.

In March 2021, the Government announced that the Emergency (Essential Powers) (No. 2) Ordinance 2021 [PU(A) 110] will be used during the emergency period to deal with misinformation and individuals who create, publish, or circulate fake news on COVID-19 or on the emergency proclamation. SUHAKAM is of the view that the imposition of heavy penalties may create a chilling effect on the freedom of opinion, expression and speech as enshrined in Article 10(1)(a) of the Federal Constitution, as well as in internationally recognized human rights standards and principles.

The Government should commit to the accepted recommendations and adopt a freedom of information legislation at the federal level, to ensure access to public information in Malaysia. The Government should also amend the Official Secrets Act 1972 [Act 88] and the Whistleblower Protection Act 2010 [Act 711] and resist calls to reinstate the repealed Anti-Fake News Act 2018 [Act 803].

In April 2021, Malaysia dropped 18 spots to rank 119 in the 2021 World Press Freedom Index which is disappointing after significantly improving its rank to 101 in the 2020 World Press Freedom Index, outranking other ASEAN countries. SUHAKAM acknowledges the movement towards establishing a Malaysian Media Council including the setting up of a pro-tem committee council and submission of the proposed draft bill to the Ministry of Communications and Multimedia in 2020. It is essential to set up an independent Malaysian Media Council to focus on legal reforms to regulate the industry and protect media freedom in Malaysia.

SUHAKAM reiterates that the media is an essential instrument, contributing towards greater awareness and protection of human rights by its reporting on incidents of transgressions upon the rights of the people. Throughout the implementation of COVID-19 Movement Control Order (MCO), press and

media played a pivotal role in reporting on accurate and updated information, whilst combating fake and false news. Protections need to be in place to allow journalists and independent producers to carry out their role, free from fear of intimidation, reprisal or retaliation.

2.2. Freedom of Assembly and Association

The Government accepted in full, the recommendation to revise the Peaceful Assembly Act 2012 in order to eliminate discrimination and hindrance to the freedom of association and peaceful assembly.

SUHAKAM welcomes the decision by the Government to amend the Peaceful Assembly Act 2012. In July 2019, the Peaceful Assembly Act (Amendment) 2019 Bill was passed by the Dewan Rakyat (House of Representatives). The amendments include the decriminalization of street protests and shortened the notification period of assembly from 10 days to 7 days before the date of the assembly.

SUHAKAM is of the view that further improvements can be made namely to shorten the notification period and reiterates its position against the punitive element of provisions in the Act as criminal sanctions should not, as a matter of principle, be used in response to a peaceful assembly. In view of the existing law, SUHAKAM further recommends the implementation of safeguards against delays and abuse of process that may cause prolonged and arbitrary detention of persons and their property.

SUHAKAM recently monitored the #Lawan public assembly organized by Sekretariat Solidariti Rakyat that took place on 31 July 2021⁴. SUHAKAM observed that the assembly was peaceful without any untoward incidents and the police were seen facilitating the assembly. SUHAKAM is particularly concerned over the arrests of organizers and the activists of the planned assembly under section 4 of the Sedition Act 1948 and section 233 of the Communications and Multimedia Act 1998 prior to the event, and despite complying with the public health standard operating procedures during the public assembly, organizers and participants of the public assembly were called in for questioning thereafter. SUHAKAM wishes to remind the Government to respect the rights of its citizens to gather peacefully as granted in Part II, Article 10(1)(b) of the Federal Constitution.

2.3. Freedom of Religion

Recommendations to guarantee the right to freedom of religion and belief to all were taken note, while the recommendation to undertake administrative,

⁴ https://suhakam.org.my/wp-content/uploads/2021/08/Press-Statement-No.-27-2021_SUHAKAM-Monitoring-of-the-Public-Assembly.pdf

policy and legislative measures to guarantee freedom of religion and belief for all in Malaysia consistent with the Federal Constitution was accepted in full.

Malaysia received a recommendation to amend the National Registration Act 1959 [Act 78] to remove all references to religion on the National Registration Identity Cards (NRICs), which the Government took note of. Malaysia requires its citizens to carry identification cards which has their faith stated on it. SUHAKAM's Sarawak Office has received various complaints in Sarawak where indigenous people have had their religion stated as "Muslim" on their NRIC because their names have 'bin' or 'binti' in it.

The Office of the Children's Commissioner (OCC) and SUHAKAM's Sarawak Office held a consultation with complainants from Sarawak. Among the complaints received were on conversion issues from Islam to other faiths. The issue lies whereupon getting divorced, the parent who had converted to Islam due to marriage with a Muslim partner, decided to convert out of Islam and their school-going children are forced to attend religious classes due to their lack of documentation despite not practicing the religion.

SUHAKAM calls for the relevant authorities/government to address this issue, as in this case, children become victims of the situation. These children do not see themselves as Muslims but were asked to practice the religion, which traumatizes the children. The Jabatan Agama should guide the parent to seek a resolution of their religious documentation issue at the Syariah court. Based on Syariah Court's orders that they would be allowed to leave Islam, the said court order may be presented at the National Registration Department (NRD) to enable the change of their stated religion, as well as that of their children's in the NRIC. The Ministry of Education also must take a pro-active role by advising teachers not to force the children who claim to be non-Muslim, to attend religious classes. The teachers should advice the children's parents to do the needful, such as going to Syariah court, to resolve the issue of their children's religious status in the NRIC.

While freedom of religion is guaranteed under Article 11 Federal Constitution, the promotion and protection of this civil right of every person in Malaysia is complex due to its historical, legal, political, social and even economic dynamics and impact.

Consistent with its finding in the Public Inquiry on the Enforced Disappearance of Amri Che Mat (2019), SUHAKAM reiterates that the civil right to freedom of religion of every person including those of religious minority groups – whether of the Islamic or non-Muslim faith – must be

respected and protected by all Federal and State authorities in Malaysia. Federal and State government agents including law enforcement officers should refrain from taking State legal action; exercising State's powers or otherwise causing the disappearance of persons based on their profession and practice of minority faiths and beliefs.

Although Article 11 Federal Constitution is silent on whether freedom of religion in Malaysia includes the freedom to leave or change one's religion, State Syariah laws provide for Syariah courts' jurisdiction to make declarations that one is no longer a Muslim and that criminalises apostasy only affect Muslims and Muslims in certain States. Therefore, these laws may be incompatible with one's right to equality before the law under Clause 8(1) Federal Constitution, especially when the consequential effects of a Muslim's conversion to other faiths go beyond the permissible exception based on personal law under Clause 8(5)(a) Federal Constitution (e.g. in changing status or name on NRICs, property titles etc).

In absence of any lawful exception and rational classification, SUHAKAM finds that the State apostasy laws in Malaysia are discriminatory and more likely to interfere with freedom of religion of Muslims.

2.4. Arbitrary Detention

The Government accepted in part recommendations to cease arbitrary detention and apprehensions without charges, following legislative reforms in accordance with international standards and to amend and repeal legislation used to arbitrarily detain individuals without trial, including the Prevention of Crime Act 1959, Security Offences (Special Measures) Act 2012 and the Prevention of Terrorism Act 2015.

SUHAKAM is of the general view that any detention without trial goes against human rights' core principles. UN General Assembly Resolution 68/178 on human rights protection and counter-terrorism emphasises that a criminal justice system should be based on respect for human rights and the rule of law, which includes due process and fair trial guarantees to ensure accountability, as this can be one of the effective means of counter terrorism. SUHAKAM urges the Government to adopt this view in amending and enforcing the Security Offences (Special Measures) Act 2012, as well as in designing and implementing effective counter-terrorism measures in Malaysia.

SUHAKAM is of the view that the counter-terrorism legislation should have safeguards against abuse or illegality. It is essential that when extraordinary powers are introduced by the Government, with the potential to infringe basic

human rights, these powers are subject to speedy, actual and a thorough review by an independent judiciary.

Therefore, such laws must be accompanied by adequate protection for all parties to avoid misuse of the law. SUHAKAM also stresses that the implementation of a law should not be a waiver of the principles of human rights particularly the right to be presumed innocent until proven guilty. Every individual accused of any crime should also be treated equally and tried fairly before the court. SUHAKAM reiterates its recommendation to the Government to review all laws that allow for sentencing without a trial, so that all laws are in line with the principles of human rights contained in the UDHR and the Federal Constitution.

2.5. Death Penalty

The Government accepted in full, recommendations to abolish the death penalty and place a moratorium on the use of the death penalty. In 2018, the Government introduced a moratorium on the mandatory death penalty. In 2019, the Government announced its decision to abolish the mandatory death penalty instead of a total abolition of the death penalty across all laws as originally announced following a Cabinet meeting in October 2018 and during Malaysia's Third UPR.

In 2019, the Government established a Special Committee to study and make recommendations on the alternatives to the mandatory death penalty and transitional measures for the current death row prisoners. The Special Committee had conducted numerous public consultations across the country with the relevant stakeholders including the Government agencies, civil society organizations, the families of the death row prisoners and the victims, as well as the death row prisoners themselves.

In 2020, the Malaysian Government was among 120 UN Member States voting in support of the UN General Assembly's (UNGA) resolution regarding the moratorium on the use of the death penalty during the 75th session of the UNGA. SUHAKAM welcomes the Government's support for the resolution that recommended among others, that States should guarantee the right to fair trial and limit the imposition of the death penalty to the most serious crimes, pending the abolition of the death penalty.

SUHAKAM hopes that the Government will make public the report of the Special Committee and expedite its efforts in abolishing the mandatory death penalty in the country, as a first step toward total abolition of the death penalty.

2.6. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Recommendations related to the elimination of all forms of torture and other cruel, inhuman or degrading treatment or punishment including the abolishment of corporal punishment were taken note of. SUHAKAM has repeatedly urged the Government to accede to the UNCAT as well as to abolish corporal punishment such as whipping and caning in custodial settings and in education institutions that are inconsistent with international human rights principles. However, the Government reiterates that the domestic legislation should be in full compliance with the UNCAT, prior to acceding to the Convention and that the main obstacle to Malaysia's accession to the UNCAT lies with the incompatibility of UNCAT provisions with existing legal provisions in both civil and Syariah laws that allow for the implementation of corporal and capital punishments in Malaysia. SUHAKAM recommends that the Government emulate best practices from other countries to identify ways to reconcile domestic civil and religious legal systems with the UNCAT provisions.

In efforts to address healthcare problems, issues of torture and deaths in police custody, SUHAKAM has been working closely with the Royal Malaysia Police and Ministry of Health to ensure the implementation of Custodial Health Units (CHU) at five police lock-ups. However, the implementation has been delayed due to COVID-19.

In January 2021, an All-Party Parliamentary Group Malaysia (APPGM) on Prison and Detention Centre Reforms, was established.

3. Economic, Social and Cultural Rights

3.1. Poverty Eradication and Raising Standard of Living

The Government accepted in full, all recommendations related to poverty, eradication and raising the standard of living. In July 2020, the Government had announced the revision of the absolute Poverty Line Income (PLI) from a monthly household income of RM980.00 to RM2,208.00 raising the country's poverty rate from 0.4% in 2016 to 5.6% in 2019. The PLI revision is in line with the recommendations made by the United Nations Special Rapporteur on Extreme Poverty and Human Rights, on his visit to Malaysia on 13 to 23 August 2019. However, according to the Government, a new national PLI will be introduced under the Twelfth Malaysia Plan (2021-2025) because a targeted and more focused approach is needed so that the problem of poverty could be addressed more effectively.

SUHAKAM observed that the incidence of poverty persists among those who are economically and socially vulnerable, including single mothers, older persons, Persons with Disabilities (PWDs), plantation workers and

indigenous communities, youths as well as rural and urban poor households. Malaysia lacks a comprehensive social protection system which makes these vulnerable groups more insecure, increased exposure to risks, unable to protect themselves against interruption or loss of income, and participate both economically and socially in society.

SUHAKAM commends the Government for using the Multidimensional Poverty Index (MPI) to calculate Malaysia's poverty rate that will provide for a more accurate calculation of poverty, and enable policy-makers to identify and target poverty-alleviation programmes to households, groups, and individuals who require assistance and support.

SUHAKAM recommends that the definition of poverty and the PLI take into account human rights aspects that significantly affect poverty and using a human rights approach to poverty alleviation that includes empowerment and participation, equality and non-discrimination, and recognition of the national and international human rights framework.

3.2. Right to Education

The Government accepted in full, recommendations to improve access to quality education, particularly in rural and remote areas. However, recommendations that call for the access to education for all children, regardless of their status were taken note of.

The COVID-19 pandemic has posed challenges in students' access to education. SUHAKAM was informed through its consultations that indigenous people's children from economically disadvantaged families, or who live in rural or isolated locations faced issues in accessing online education as they do not have internet service. During the MCO, all schools and higher learning institutions were closed, and the Ministry of Education directed the use of online platforms to conduct classes. While this was a good alternative, it did not ensure access to education for all, as many pupils from B40 households as well as those living in rural areas do not have access to either the necessary devices or internet service. SUHAKAM commends the notable efforts by various parties including non-governmental organizations, Members of Parliament and State Legislative Assemblies for providing laptops and tablets for underprivileged students.

SUHAKAM notes that RM47.2 billion has been allocated to the Ministry of Education and RM11.6 billion to the Ministry of Higher Education in Budget 2021 to provide quality education in the country. SUHAKAM urges both Ministries to expedite the improvement of educational facilities and provide the necessary assistance to enable online education and a conducive learning environment for all in every corner of Malaysia, leaving no one behind.

SUHAKAM strongly recommends the Government to take immediate actions to avert a lost-learning generation as COVID-19 threatens to cause irreparable harm to children's education, health and well-being.

SUHAKAM wishes to highlight that challenges and limitations such as non-inclusiveness and discrimination continue to arise with regard to the right to education. Refugees and stateless children are denied access from attending public schools. Under the current policy, only Malaysian and non-Malaysian children are allowed to attend Government schools, and refugees and stateless children are not included. The Malaysian Education Ministry issued a circular in 2006 which stated that undocumented children can attend Government schools as long as one of the parents is Malaysian and a local leader can attest to the fact that the child is Malaysian (*Surat Pekeliling Iktisas Bil.1/2009 Kemasukan Kanak-kanak Warganegara Malaysia Tanpa Dokumen*). Refugee and stateless children are clearly excluded from this circular. Additionally, by amending Section 29A of the Education Act of 1995, Malaysia explicitly mandates the compulsory primary education for Malaysian children only, while it remains silent on whether stateless children have the same right. As a party to the CRC, the Government should ensure that all children regardless of citizenship must have the right to access free and compulsory primary education.

3.3. Right to Health

The Government accepted in full, all recommendations except one to ensure the right to health would be available, irrespective of citizenship and immigration status. However, SUHAKAM commends the Government for its decision to provide free COVID-19 vaccination for all, including non-citizens residing in Malaysia which will include diplomats, expatriates, students, foreign spouses and children, foreign workers and UNHCR card holders. This initiative by the Government is a step forward in line with the accepted recommendation to undertake measures to realize universal health coverage and with the principles of non-discrimination and equal treatment as promulgated in the UDHR.

SUHAKAM applauds the decision of the Ministry of Health to enforce a smoking ban in all eateries beginning of 2019, as this is in the interest of public health and which is also in line with SDG 3 to ensure healthy lives and promote well-being for all ages.

SUHAKAM proposes to the Government to have an inclusive approach to the right to health that includes accessible and affordable healthcare to all persons in Malaysia including vulnerable and diverse communities i.e. male, female, non-binary, LGBTQ+ persons and migrant workers.

Hence, while the discussion on the right to maternal, child and reproductive health care services and facilities should be initiated by the Government, it needs to look into the right to health of these communities as this may assist and provide an understanding on the diversity and complexity of the health needs within these communities. This will assist the Government to make sound decisions, policies and programmes concerning right to health of persons from the vulnerable and diverse communities.

4. Vulnerable Groups

4.1. Women

The Government noted the recommendations related to equal rights for Malaysian women and men in conferring nationality on their children. Presently, Article 14(1)(b) of the Federal Constitution allows an application for citizenship for every person born outside Malaysia whose father is, at the time of birth, a Malaysian citizen. Mothers, on the other hand, have to go through a more arduous process, which can take years. Other challenges include the lengthy and complicated process and the lack of clarity in the reasons for rejecting the application.

SUHAKAM understands that the Ministry of Women, Family and Community Development is pushing for a review of the laws on citizenship. As such, SUHAKAM reiterates its call for the Government to review the matter under Article 8(2) of the Federal Constitution. This clause explicitly states that there shall be no discrimination against its citizens on the grounds of religion, race, descent and place of birth or gender in any law.

SUHAKAM commends the Kuala Lumpur High Court's decision on 9 September 2021, for its ruling, that Malaysian mothers have the right to confer citizenship to their children born overseas on an equal basis with Malaysian men. The Court found that Article 14(1)(b) of the Federal Constitution together with the Second Schedule, Part II, Section 1(b), pertaining to citizenship rights, must be read in harmony with Article 8(2) of the Federal Constitution, which prohibits discrimination based on gender, and thus, the meaning of "father" in that Section 1(b) also read to mean "mother". However, on 13 September 2021, the Government filed an appeal against the High Court's ruling⁵.

This High Court landmark decision has a very important implication to the progress of the rights of children and sets a precedent that upholds the principles of equality aligned with the international conventions to which Malaysia is a signatory/party to, as well as the principles laid down in the

⁵<https://www.thestar.com.my/news/nation/2021/09/14/govt-appeals-high-court-ruling-over-automatic-citizenship-for-children-of-malaysian-mothers-born-overseas>

Federal Constitution. The decision has clearly paved the way for a brighter and fairer future for all children born to a Malaysian parent married to a non-Malaysian, irrespective of gender and as stated by the Minister in the Prime Minister's Department (Parliament & Law)⁶ that each provision of the Article in the Federal Constitution could not be read in isolation, but it must be read together with other related provisions or provisions governing related subject matter. Therefore, the Government is urged to withdraw its appeal against the High Court decision, and to recognise and undertake the necessary revisions of policies to implement the mother's right to confer citizenship to their children born overseas on an equal basis with Malaysian men.

The Government accepted in full, recommendations to expedite efforts and adopt a Gender Equality Bill. Having ratified CEDAW, Malaysia has the obligation to enact laws that formally recognize gender equality and criminalize sexual harassment. Since 2019, SUHAKAM has been actively involved in stakeholder engagements concerning the formulation, drafting and review of the Sexual Harassment Bill and Anti-Discrimination against Women Bill, intended to formally recognize and bridge gaps concerning discrimination against women.

SUHAKAM and the Ministry of Women, Family and Community Development has been actively engaged in providing inputs for the Sexual Harassment Bill. It is hoped that the Bill will be tabled in the next Parliament session to enhance the protection against sexual harassment in Malaysia. Furthermore, SUHAKAM hopes that the Ministry would also expedite the process of introducing a gender equality legislation i.e. the Anti-Discrimination against Women Bill and in doing so, ensure that the consultative process in developing this Bill, is inclusive.

4.2. Children

The Government accepted in full, recommendations to continue to combat violence against children and the enactment of legislation to protect the child from all forms of ill-treatment and violence as well as efforts to combat child labour.

The appointment of a Children's Commissioner in August 2019 was a significant move by the Government to enhance the rights of children in Malaysia. The Office of the Children's Commissioner (OCC), SUHAKAM is an independent office that is responsible for empowering and protecting the rights of children as set out in the CRC.

⁶ <https://www.theborneopost.com/2021/09/09/minister-lauds-kl-high-courts-decision-on-automatic-citizenship-for-children-born-to-msian-mothers-abroad/>

The Government only accepted in part or took note of the recommendations to fully eliminate child marriage. Child marriage continues to be an alarming issue in Malaysia. According to statistics from the Ministry of Women, Family and Community Development, from 2007 until 2017, there were 14,999 cases of child marriages, out of which 10,000 involved Muslims⁷. Meanwhile, the NRD's statistics showed that there were 930 nuptials in 2018 among non-Muslims below the age of 18 years, up from 436 in 2015. This means that the number of child marriages among non-Muslims had doubled between 2015 and 2018⁸.

On 16 January 2020, the Government launched its five-year "National Strategy Plan in Handling the Causes of Child Marriage"⁹. The National Strategy Plan encompasses 7 objectives, 17 strategies and 58 programmes to address the causes of child marriage over a period of 5 years. The Government must monitor the implementation of the National Strategy Plan and ensure that the programmes therein are effectively implemented so that they would raise awareness, change perception and stigma related to underaged marriage issues in the society. SUHAKAM maintains that child marriage is a complete violation of a child's human rights and must be made a crime.

4.3. Persons with Disabilities

SUHAKAM is pleased to note that the Government accepted in full all of the 11 recommendations on Persons with Disabilities (PWDs) in various aspects, including education, healthcare and accessibility. While SUHAKAM appreciates the Government's commitment in this regard, there is a need for the Government to undertake a more significant effort to transform its commitments into actions that bring tangible change in the lives of PWDs in Malaysia.

SUHAKAM recommends that the Government reconsiders the lifting of the reservations on Article 15 of the Convention on the Rights of Persons with Disabilities (CRPD) as the reservation implies that PWDs can be subjected to torture and abuse, while Article 18 has been fulfilled under Section 7 of the Births and Deaths Registration Act 1957 [Act 299] and Section 25(2) of

⁷ Khaw Chia Hui, Child marriage: Why it is still a problem in 2018, 2018. (<https://www.malaymail.com/news/malaysia/2018/11/10/child-marriage-why-it-is-still-a-problem-in-2018/1691899#:~:text=While%20data%20is%20scant%2C%20Deputy,number%20of%20registered%20child%20marriages>)

⁸ Ashley Tang, Non-Muslim child marriages on the rise, 2019. (<https://www.thestar.com.my/news/nation/2019/07/15/nonmuslim-child-marriages-on-the-rise>)

⁹ <https://www.kpwkm.gov.my/kpwkm/uploads/files/Dokumen/Pelan%20Strategi%20Perkahwinan%20Bawah%20Umur/EXECUTIVE%20SUMMARY.pdf>

Persons with Disabilities Act 2008 [Act 685] (PWD Act 2008) on the conclusive evidence for registering as disabled person.

SUHAKAM also urges the Government to provide PWDs with a user-friendly platform to ensure appropriate dissemination of information so as to avoid fake, false and inappropriate dissemination of information. This will assist the PWDs to have access to accurate and through information especially with regards to the COVID-19 pandemic and vaccinations.

SUHAKAM is of the opinion that the PWD Act 2008 should be reviewed by strengthening its protection mechanisms through the inclusion of additional provisions on enforcement, penalties and access to remedies. This can be seen under Section 30¹⁰ and Section 31¹¹ on the right to access information and cultural life in accessible formats including television programmes. There should be a mechanism to ensure that these rights are adhered to by the Government and private sectors. SUHAKAM further recommends that the Government ensures inclusive access to education, public places, information on election and Parliament in accessible formats.

SUHAKAM urges the Government to fulfil the policy on inclusive employment opportunity for PWDs thoroughly. The 1% policy within the Public Services Commission (PSC) has been welcomed, which should provide more opportunity to this community. The application process under the PSC and its system is not PWD friendly. For example, the online exam is not accessible to visually impaired persons as the screen reader in the system has limitations and is unable to read the graphs. A suitable portal

¹⁰ Persons with Disabilities Act 2008: Access to information, communication and technology
Section 30

(1) *Persons with disabilities shall have the right to access information, communication and technology on equal basis with persons without disabilities.*

(2) *The Government and the provider of information, communication and technology shall in order to enable persons with disabilities to have such access, provide the information, communication and technology in accessible formats and technologies appropriate to different kind of disabilities in a timely manner and without additional cost.*

(3) *The Government and the private sector shall accept and facilitate the use of Malaysia Sign Language, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official transactions.*

¹¹ Persons with Disabilities Act 2008: Access to Cultural life
Section 31

(2) *Persons with disabilities shall have the right to enjoy access-*
(a) *to cultural materials in accessible formats;*

(b) *to television programmes, films, theatre and other cultural activities, in accessible formats; and*

(c) *to places for cultural performances or services such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, to monuments and sites of national cultural importance.*

...

(4) *Persons with disabilities shall be entitled on equal basis with persons without disabilities to recognition and support of their specific cultural and linguistic identity, including Malaysia Sign Language and deaf culture.*

should be set up to enable audio description and to allocate additional time for the PWDs.

SUHAKAM is of the view that Government should exert more effort to remove barriers faced by the PWDs. This includes access to free and inclusive education, as the current practice within the education system does not reflect inclusive education as recommended in General Comment No. 4 of Article 14 CRPD.

4.4. Indigenous Peoples

The Government accepted in full the recommendations related to uplifting the economic and social well-being of indigenous peoples, however, only took note of the recommendations related to strengthening the rights of indigenous peoples through the incorporation of the principles of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and ensuring the rights of indigenous peoples to traditional lands, territories and resources.

SUHAKAM is of the view that such principles are contradictory to each other because indigenous peoples have a distinct spiritual and material relationship with their customary land since it is a part of their identity. The recognition, promotion and protection of rights of indigenous peoples' customary lands and resources are vital for their economic development and cultural survival.

Therefore, SUHAKAM recommends that the Federal and State Governments expedite the implementation of SUHAKAM's National Inquiry Report on the Land Rights of Indigenous Peoples in Malaysia recommendations, especially the recognition of native customary land rights of indigenous peoples.

Additionally, all agencies should observe the principles of Free, Prior and Informed Consent (FPIC) and indigenous peoples must be consulted and provided accurate information in relation to any development programmes involving them and their land.

4.5. Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons

The Government only accepted in part the recommendation to implement anti-bullying campaigns in schools addressing all forms of bullying, including based on actual or perceived sexual orientation, gender identity or gender expression; and only noted all other recommendations related to LGBTI persons.

SUHAKAM proposes that the Government indefinitely sanction programmes and practices supported by public institutions on correcting actual or perceived sexual orientation and gender identity of adolescents.

Such programmes are not only unacceptable from a human rights perspective, but they are also against scientific evidence, and have a severe irreversible negative implication on the mental health and well-being of adolescents. SUHAKAM urges the Ministry of Education and religious authorities to commit to maintaining an educational environment where the inherent dignity of the child is respected and discrimination on the basis of sexual orientation and gender identity is eliminated.

SUHAKAM reiterates that all human beings regardless of their sexual orientation, gender identity and expression shall enjoy a full range of human rights. SUHAKAM is concerned by the ongoing harassment and ill-treatment, discrimination, bullying, humiliation, intimidation, denial of employment and educational opportunities as well as medical treatment purely because of their gender identity.

SUHAKAM welcomes the proposal of former Prime Minister Tan Sri Dato' Haji Mahiaddin bin Md Yassin at the 1st ASEAN Digital Ministers' Meeting, in January 2021 that ASEAN States should consider enacting stronger laws to act against hate speech, including harassment over one's sexual orientation and incitement to violence whether physical or verbal.

According to the NRD, since there is no provision in the laws or policies on legal gender recognition, no amendments of gender can be made on the Identification Card. Those who have had Sex Reassignment Surgery (SRS) are required to present medical evidence and the matter will then be taken to court. NRD will act upon the court's decision on whether to grant the change of gender. While a gender marker cannot be amended, a partial name change is still possible with due consideration.

4.6. Migrant Workers

The Government accepted in full the recommendations related to ensure protection of the rights of migrant workers and the right to full access to justice and legal remedies.

Migrant workers have been confronted with problems like exorbitant recruitment fees, long overtime hours, unsafe work environments, low wages etc. The migrant workers are often at the mercy of their employers due to their vulnerability. Migrant workers also still face situations where their passports are held by employers even though it is an offence under the Passports Act 1966 [Act 150]. This may lead to abuse and complications for the workers as the production of valid documents is essential for inspection by the authorities.

Migrant workers play an important role not only in production but also in economic growth. One of SUHAKAM's key recommendations is for migrant workers to be allowed to become an executive member or employee of registered trade unions. Meaningful participation and representation in trade unions for migrant workers is necessary to ensure respect and protection of their right to just and favourable conditions of work. This is consistent with the Government's commitment to protect the rights of migrant workers.

4.7. Trafficking in Persons

The Government accepted in full, all recommendations related to the trafficking in persons. According to the U.S. Department of State's 2021 Trafficking in Persons (TIP) Report, Malaysia was downgraded to Tier 3 in July 2021 for failing to fully meet the minimum standards for the elimination of trafficking in persons and not making significant efforts to ensure compliance, even considering the impact of the COVID-19 pandemic on its anti-trafficking capacity. SUHAKAM is very concerned with the downgrade and urges the Government to establish a Royal Commission of Inquiry pursuant to the TIP Report and focus its attention on implementation of the recommendations.

SUHAKAM recognizes that the Government has taken some initiatives to address trafficking in persons such as identifying and providing protection services to victims of trafficking and adopting standard operating procedures on victim identification. In March 2021, the Government launched the National Action Plan on Anti-Trafficking in Persons 2021 - 2025 (NAPTIP 3.0) in efforts toward eradicating human trafficking.

SUHAKAM recommends that the Government accede to the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (1990); the Convention relating to Status of Refugees (1951) and Protocol Relating to the Status of Refugees (1967) to amplify its efforts toward combatting human trafficking and in providing adequate protection to the victims of human trafficking.

SUHAKAM also recommends that the Government make public the findings from the Royal Commission of Inquiry (RCI) into the Wang Kelian human trafficking camps and mass graves in 2015 and the report and recommendations of the Special Independent Committee on Foreign Worker Management. The findings of the RCI which concluded in June 2019 needs to be released to the public to increase transparency and accountability in the Government's measures in combating human trafficking.

5. Discrimination

The Government fully accepted the recommendation to continue its efforts to enhance the rule of law, to ensure the respect for human rights and fundamental freedoms and to eliminate all forms of discrimination, in compliance with international standards. However, the Government only noted the recommendations for the creation of anti-discrimination law.

SUHAKAM urges the Government to ensure adequate protection is provided for job seekers as well as employees against discrimination in the amendment of the Employment Act 1955 [Act 265].

6. National Unity and Social Cohesion

The Government accepted in full, all recommendations to maintain social cohesion in the country and promote unity among different religious communities.

On 15 February 2021, the Government launched the National Unity Policy and National Unity Blueprint 2021-2030. Based on the concept of “Unity in Diversity”, the policy outlines continuous efforts to strengthen unity and national integration based on the Federal Constitution and the Rukun Negara (National Philosophy); to form a national identity with character, patriotism, the attitude of caring, tolerance, mutual respect and responsibility, as well as producing Malaysians who appreciate and foster unity, nurture, strengthen and preserve the unity of the people.

SUHAKAM urges the Government to appropriately monitor the implementation of the National Unity Policy in order to promote national harmony, unity, reconciliation, integration and non-discrimination and as relevant, to implement relevant laws for the said matter.

7. Human Rights Education and Training

The Government accepted in full, recommendations to promote and strengthen human rights education and training.

SUHAKAM, in collaboration with the Ministry of Education, introduced the “Human Rights Best Practices in Schools” programme or ATHAM. The purpose of ATHAM was to promote and create an environment within schools in which human rights are not only taught and learned, but practised, respected, and promoted by students, teachers and administrators. From 5 schools in 2009, the programme was expanded to 469 schools nationwide in 2019.

SUHAKAM, in collaboration with the Institute of Teacher Education (IPG) had conducted several human rights talks at the IPG campuses to raise awareness on human rights and child rights among future educators. In 2019, the Institute of Teacher Education Malaysia (IPGM) proposed to SUHAKAM to develop a human rights module for students of IPG throughout Malaysia. The main objective of the

module is to equip IPG students with adequate human rights knowledge and later to apply the knowledge while carrying out their duties as teachers, once they have graduated from IPG. SUHAKAM was also involved in the review of IPG's syllabus to incorporate sufficient human rights contents in the syllabus.

8. Sustainable Development Goals and Development

The Government accepted in full, recommendations related to achieving the Sustainable Development Goals (SDGs). In 2019, an All-Party Parliamentary Group Malaysia on Sustainable Development Goals (APPGM-SDG) was established.

SUHAKAM commends the Government for presenting its second Voluntary National Review (VNR) report¹² in July 2021 as part as the follow up and review mechanisms of the 2030 Agenda for Sustainable Development. The Government's commitment to the SDGs is also reflected in the alignment and implementation of the SDG initiatives under the framework of the Eleventh Malaysia Plan and to be continued subsequently with the Twelfth and Thirteenth Malaysia Plan.

III. General Observations

The Government has accepted more recommendations in the third UPR cycle than in previous cycles. However, SUHAKAM observes that recommendations that call upon specific formulations of policy, ratification/accession and/or withdrawal of reservations to international treaties tend to be accepted in part or taken note of, whereas general and open-ended recommendations tend to be accepted in full. SUHAKAM is also disappointed with the quality of recommendations received that do not follow the SMART formula that has been accepted for recommendations to be specific, measurable, achievable, relevant and time-bound.

Since 2018, SUHAKAM was part of a working group with the Ministry of Foreign Affairs, UN Country Team (UNCT) and CSOs to jointly develop a UPR Monitoring Matrix. The UPR Monitoring Matrix will include indicators to showcase the Government's progress in the implementation of UPR recommendations during each UPR cycle and will relate each UPR recommendation to SDG targets, National Human Rights Action Plan (NHRAP), recommendations and/or concluding observations from international human rights instruments, treaty bodies and special procedures mandate holders.

On 10 December 2020, the Ministry of Foreign Affairs announced that they have agreed to use the National Recommendations Tracking Database (NRTD) to facilitate the monitoring and coordination among the relevant agencies on the implementation of UPR recommendations. SUHAKAM hopes that the development process and

¹² Malaysia's second Voluntary National Review (VNR) report can be accessed at https://sustainabledevelopment.un.org/content/documents/277332021_Main_Message_Malaysia.pdf

utilization of the monitoring tools will be expedited to contribute towards effective monitoring of the UPR recommendations. SUHAKAM hopes that the Government adopts without further delay, a formal, comprehensive, more efficient and sustainable approach to reporting, engagement and follow-up on its UPR recommendations. SUHAKAM reiterates that establishing a national mechanism for reporting and follow-up to ensure timely reporting and a reduction in backlogs in periodic State reports is necessary.

In March 2020, SUHAKAM was informed by the OHCHR that Malaysia had been selected as one of six countries to take part in OHCHR's study on good practices emanating from the UPR. SUHAKAM commends the Government for its notable efforts in its approach toward the UPR process namely the Ministry of Foreign Affairs, in its capacity as the National Mechanism for Reporting and Follow-Up (NMRF) in carrying forth its commitment to conduct half-yearly reviews and in leading efforts to develop the contents of the UPR Monitoring Matrix. SUHAKAM is also pleased that the Government, for the first time ever, submitted its mid-term report for this UPR cycle. These efforts in turn, demonstrates the Government's commitment to protect and promote human rights in the country.

IV. Conclusion

The UPR, if utilized correctly and fully, can be an effective mechanism to improve the situation on the ground. Given that Malaysia is mid-way through its third UPR cycle, SUHAKAM urges the Government to continue its efforts in the implementation of recommendations that were accepted fully and in part, and also recommendations that were taken note of. SUHAKAM continues to stand ready to provide its assistance to the Government in both the UPR process and toward the overall protection and promotion of human rights in Malaysia.