



Submission by the Human Rights Commission of Malaysia (SUHAKAM)
to the United Nations Human Rights Council's Third Universal Periodic Review of Malaysia

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About SUHAKAM:

The Human Rights Commission of Malaysia (SUHAKAM) is a national human rights institution established on 9 September 1999 by an Act of Parliament with the mandate to promote and protect human rights in Malaysia. SUHAKAM's statutory functions include promoting human rights awareness and education, inquiring into complaints of human rights violations and advising the government on laws and policies as well as on accession to international human rights treaties. SUHAKAM is accredited in full compliance with the Paris Principles with 'A' status under the Global Alliance of National Human Rights Institutions (GANHRI) accreditation system.

I. Introduction

1. This submission reflects the Human Rights Commission of Malaysia (SUHAKAM)'s independent views, observations and recommendations on the fulfilment of Malaysia's commitments arising from its second UPR as well as on other human rights issues.

II. Implementation of UPR Recommendations

Accession to Human Rights Treaties

2. Despite having established inter-agency committees to look into the accession to the six international human rights treaties to which Malaysia is not yet a party, the government has not shown much progress in this regard. While there were some discussions particularly on CAT, there is no evidence of concrete action towards acceding to the treaties.

3. Recommendation:
 - i. Accede without delay to ICCPR, ICESCR, ICERD, CAT, ICRMW and ICPPED and the relevant Optional Protocols.¹

Withdrawal of Reservations

4. In the last UPR, the government did not commit to withdrawing its reservations to CEDAW, CRC and CRPD. There is no concrete evidence that the government is planning to withdraw any of the reservations. The withdrawal of the reservations is instrumental to promoting greater respect for the rights of women, children and persons with disabilities.

5. Recommendation:
 - i. Withdraw reservations to CEDAW, CRC and CRPD.

Reporting to Treaty Bodies

6. Malaysia submitted its combined third to fifth periodic report to the CEDAW Committee in September 2016. Malaysia has yet to submit its overdue periodic reports to the CRC and CRPD Committees respectively. In addition, Malaysia has not fully implemented the CEDAW and CRC Committees' recommendations.

7. Recommendations:
 - i. Implement the recommendations of the CRC Committee and CEDAW Committee following the consideration of Malaysia's reports in 2007 and 2018 respectively.
 - ii. Submit the periodic reports to the CRC and CRPD Committees without further delay.

Engagement with Special Procedures

8. Since the last UPR, the Special Rapporteurs on the right to food, right to health, trafficking in persons, and cultural rights, respectively, visited Malaysia at the invitation of the government. The government has also invited the Special Rapporteurs on water and sanitation, sale of children, indigenous peoples and extreme poverty, respectively, to visit Malaysia within the next two years. SUHAKAM commends the government for this. However, recommendations by the Special Rapporteurs have not been entirely implemented.

9. Recommendations:
- i. Implement the recommendations of the Special Rapporteurs who have visited Malaysia.
 - ii. Extend a standing invitation to all special procedures.

Freedom of Expression and Right to Information

10. Malaysia accepted in principle the UPR recommendation to repeal the Sedition Act 1948. However, the government amended it in 2015, making it, in some ways, a greater threat to freedom of expression. There was an alarming escalation of arrests and prosecutions under the Sedition Act especially in 2014, which SUHAKAM views as a form of unnecessary restriction to freedom of expression.

11. The Anti-Fake News Bill 2018, given the unclear definition of ‘fake news’ and other concerns, could have negative repercussions on freedom of information and expression, if enforced.

12. Recommendations:
- i. Repeal the Sedition Act 1948.
 - ii. Enact a right to information law.
 - iii. Establish a parliamentary committee instead to consider measures to address fake news.

Freedom of Assembly

13. While there has been some positive shift in approach by authorities in handling public assemblies since the enactment of the Peaceful Assembly Act 2012, SUHAKAM notes with concern that intimidation and unjustifiable arrests of assembly participants still occur during certain public assemblies.

14. Recommendation:
- i. Review the Peaceful Assembly Act 2012 particularly provisions on the prohibition of street protests and the organization of assemblies by persons below 21 years old; on the strict requirement for notification ten days prior to the assembly; and on the specified prohibited places of assembly.

Preventive Detention

15. The government still enforces laws that provide for preventive detention such as the Prevention of Crime Act 1959, the Prevention of Terrorism Act 2015 and the Security Offences (Special Measures) Act 2012, leading to deprivation of the right to a fair trial, to legal representation and to be presumed innocent until proven guilty.
16. Recommendation:
 - i. Review the Prevention of Crime Act 1959, the Prevention of Terrorism Act 2015, the Security Offences (Special Measures) Act 2012 to repeal provisions of detention without trial.

Death Penalty

17. The amendments to the Dangerous Drugs Act 1952 in December 2017, which removed the mandatory death penalty for drug related offences subject to certain conditions, is a positive development. Nonetheless, the death penalty still exists under the Dangerous Drugs Act 1952 and other laws including the Penal Code, Firearms (Increased Penalties) Act 1971, Kidnapping Act 1961, Water Services Industry Act 2006 and the Strategic Trade Act 2010.
18. Recommendation:
 - i. Review relevant laws to remove the death penalty and in the interim, apply a moratorium on the use of the death penalty.

Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment

19. SUHAKAM welcomes the amendment to the Child Act 2001 in 2016 that removed corporal punishment for child convicts. Nonetheless, caning remains a form of disciplinary punishment in schools.
20. SUHAKAM is deeply concerned with the poor conditions in many places of detention. The main issues include overcrowding, unsanitary conditions, dilapidated and unsafe detention buildings, and inadequate budget allocated for upkeep of the detention centres.
21. SUHAKAM is troubled by the relatively large number of cases on the ill-treatment of detainees, which possibly amount to torture or inhuman or degrading punishment or treatment.
22. Recommendations:
 - i. Abolish corporal punishment in schools and in the legal system.
 - ii. Ensure all places of detention meet the Standard Minimum Rules for the Treatment of Prisoners.
 - iii. Allocate adequate budget for proper upkeep of places of detention and for new facilities to replace dilapidated ones.
 - iv. Ensure all interrogations by the authorities are video recorded.

- v. Ensure the National Legal Aid Foundation lawyers are notified of all criminal offenders awaiting court hearing.
- vi. Reform investigation methods and do away with coercive and violent interrogation methods.

Poverty Eradication and Raising Standard of Living

- 23. Malaysia has done relatively well in combating poverty and in improving the standard of living of its citizens. Nonetheless, while the national poverty rate is 0.4 percent², pockets of poverty still exist and are relatively high among indigenous peoples.
- 24. A report by UNICEF on urban child poverty in Kuala Lumpur published in February 2018 revealed that 99.7 percent of children in low-cost flats in Kuala Lumpur live in relative poverty and 7 percent live in absolute poverty.³
- 25. The Minimum Wages Order 2016 came into effect in July 2016 and a new minimum wage rate is expected in 2018. In 2016, Malaysia also ratified the ILO Minimum Wage Fixing Convention (No. 131).

- 26. Recommendations:
 - i. Ensure strict enforcement of the minimum wage order on all employers.
 - ii. Revise the minimum wage regularly towards achieving an adequate standard of living for all.

Right to Education

- 27. While commendable efforts have been made to improve the education system, access to formal education by certain vulnerable groups including migrant, refugee and stateless children remains an issue of concern.

- 28. Recommendation:
 - i. Provide access to formal education for all children regardless of citizenship or immigration status including migrant, refugee and stateless children.

Right to Health

- 29. Under the 11th Malaysia Plan 2016-2020, the government has adopted strategies towards achieving universal access to quality healthcare for its citizens.
- 30. SUHAKAM is concerned about the government's decision to increase the medical fees for non-citizens in 2016 as it will impact negatively access to healthcare for migrants, refugees and stateless persons who may not afford the increased fees.

- 31. Recommendation:
 - i. Reduce the medical fees for non-citizens including refugees, migrant workers and stateless persons to ensure they can afford public healthcare services.

Rights of Women

32. SUHAKAM was disappointed that the government withdrew the proposed Section 88A in the 2017 Amendment Bill to the Law Reform (Marriage and Divorce) Act 1976, which would have resolved the issue of unilateral conversion of children. However, the Judiciary created a commendable precedent in the case of Indira Gandhi by declaring that both parents have the right over a child's religion.
33. Non-citizen women married to Malaysian men are dependent on their husbands to maintain their legal status in the country, leaving the women in a vulnerable position especially in cases of domestic violence, estrangement, abandonment or death of the husband.
34. SUHAKAM welcomes the government's move towards introducing a gender equality law.
35. Recommendations:
 - i. Enact a gender equality law.
 - ii. Adopt a comprehensive law on sexual harassment.
 - iii. Introduce clear provisions on marital rape within criminal legislation.
 - iv. Review legislation on domestic violence to provide legal protection to both married and non-married partners.
 - v. Implement gender responsive budgeting.

Rights of Children

36. SUHAKAM welcomes the decision of the National Fatwa Council in October 2014 that child marriages are not a healthy practice and are not obligatory or encouraged in Islam. However, certain provisions under existing laws still provide for marriages under the age of 18 years.
37. SUHAKAM commends the enactment of the Sexual Offences against Children Act 2017 and the establishment of the Special Court for Sexual Crimes against Children in 2017.
38. The detention of undocumented migrant children, especially unaccompanied minors, in immigration detention centres is a serious concern. The establishment of the Task Force on the improvement of the management of children at detention centres is a positive step in this regard.
39. Recommendations:
 - i. Review all relevant laws to set the minimum legal age for marriage for all males and females to 18 years old.
 - ii. Create a register containing details of convicted child sex offenders.
 - iii. Introduce an alternative to detention policy for children with the necessary support to ensure access to education, healthcare and other relevant services.

Rights of Persons with Disabilities

40. In 2017, the government announced that by 2020 all schools will be equipped with the necessary facilities to make them accessible to persons with disabilities.
41. SUHAKAM is concerned with the inadequate protection of the rights of persons with disabilities under the Persons with Disabilities Act 2010. This Act also does not provide remedy to persons with disabilities whose rights have been denied.
42. Recommendations:
 - i. Enforce strict compliance with by-law 34A of Uniform Buildings By-laws, which requires all public buildings to be accessible to persons with disabilities.
 - ii. Review the Persons with Disabilities Act 2010 to include provisions on enforcement, penalties, and remedies so that cases of non-compliance with the Act could be addressed properly.

Rights of Indigenous Peoples

43. In 2016, a Cabinet Committee was formed to monitor the implementation of 17 out of the 18 recommendations from SUHAKAM's National Inquiry on Land Rights of Indigenous Peoples. However, implementation of the recommendations lacks the urgency that is needed, arguably leading to further violations of land rights of indigenous peoples.
44. Recommendations:
 - i. Expedite the implementation of SUHAKAM's National Inquiry recommendations.
 - ii. Recognize indigenous peoples' customary rights to land and expedite gazetting of indigenous land.
 - iii. Develop a national plan on the application of the UNDRIP.
 - iv. Adopt a policy framework to guarantee the application of the principle of free, prior and informed consent.

Rights of Migrant Workers, Refugees and Stateless Persons

45. In 2015, the government introduced a pilot project to provide Rohingya refugees access to employment in certain sectors, and announced that it would accept 3,000 Syrian refugees over a period of three years and offer them shelter, employment and access to education for the children. SUHAKAM notes that the pilot project was not very successful arguably due to lack of consultation with the refugees concerned.
46. Undocumented migrant workers, refugees and stateless persons remain among the most vulnerable to human rights abuses owing to their irregular immigration status.
47. Recommendations:
 - i. Amend the Employment Act 1955 to provide greater protection for all workers including migrant workers and domestic workers.

- ii. Ratify the ILO Domestic Workers Convention (No. 189).
- iii. Accede to the Convention relating to the Status of Refugees and its Protocol, and in the interim, adopt a clear policy framework to address the rights of refugees.
- iv. Provide access to employment to all refugees.

Discrimination Based on Gender Identity and Sexual Orientation

48. Discrimination on the basis of gender identity and sexual orientation still occurs. Many transgender persons face discrimination in the education system and in accessing formal employment, healthcare, housing and insurance. Many of them were not treated with dignity especially when detained by authorities.

49. Recommendation:
- i. Adopt policies that prohibit discrimination and violence on grounds of sexual orientation and gender identity.

Human Rights Commission of Malaysia (SUHAKAM)

50. SUHAKAM's Annual Reports have never been debated in Parliament.
51. In December 2013, SUHAKAM proposed amendments to the Human Rights Commission of Malaysia Act 1999 to strengthen SUHAKAM's mandate and functions. The proposed amendments were not accepted by the government.

52. Recommendations:
- i. Amend SUHAKAM's founding Act to enhance the selection process of Commissioners and enable SUHAKAM to have an amicus curiae role.
 - ii. Provide adequate funding to SUHAKAM annually.
 - iii. Debate SUHAKAM's Annual Report in Parliament.

National Human Rights Action Plan (NHRAP)

53. Malaysia's first NHRAP was adopted in March 2018. However, the NHRAP does not address adequately the rights of non-citizens and issues of freedom of expression, freedom of the press, freedom of peaceful assembly and racial discrimination, among other things.

54. Recommendations:
- i. Review the NHRAP to include action items to address freedom of expression, freedom of the press, freedom of assembly, racial discrimination and the rights of non-citizens.
 - ii. Develop specific human rights indicators for the NHRAP in consultation with stakeholders.
 - iii. Allocate adequate funds for the effective implementation of the NHRAP.

Trafficking in Persons

55. SUHAKAM notes the amendments to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 in 2015, which SUHAKAM believes have enhanced, to some degree, the legal framework for combating trafficking in persons.
56. The government adopted the National Action Plan on Anti-Trafficking in Persons 2016-2020. SUHAKAM welcomes the decision to establish a special court on human trafficking.
57. The discovery of the detention camps and mass graves in 2015 in Wang Kelian, near the Malaysian-Thai border, is gravely alarming. SUHAKAM is disappointed with the low number of prosecutions in this regard.
58. Recommendations:
 - i. Develop indicators to be used to identify victims of trafficking when screening vulnerable persons, including undocumented migrants, refugees, asylum seekers and stateless persons.
 - ii. Fulfil the commitments made under the Call to Action to End Forced Labour, Modern Slavery and Human Trafficking adopted at UNGA 72 in September 2017.

National Unity

59. SUHAKAM was pleased that the National Unity Consultative Council (NUCC) in 2014 proposed the introduction of the Racial and Religious Hate Crimes Bill, the National Harmony and Reconciliation Bill, and the National Harmony and Reconciliation Commission Bill. However, SUHAKAM is disappointed that other recommendations of NUCC have not been made public, and that only the National Harmony Commission Bill is being pursued.
60. Recommendations:
 - i. Make public the report and recommendations of the NUCC.
 - ii. Adopt the Racial and Religious Hate Crimes Bill, the National Harmony and Reconciliation Bill, and the National Harmony and Reconciliation Commission Bill.

Human Rights Education and Training

61. Human rights education is not incorporated in the national school curriculum. However, SUHAKAM welcomes the Ministry of Education's commitment in working with SUHAKAM to develop human rights modules, which would be used in post-exam programmes for primary six and secondary three students.
62. Recommendation:
 - i. Incorporate a human rights syllabus in the national education curriculum for primary and secondary schools.

III. Other Human Rights Issues

Deaths in Detention

63. Around 650 deaths in prisons, immigration detention centres and police lock-ups were recorded from 2015 to 2016⁴. Although SUHAKAM is informed that the causes of death were mostly related to diseases contracted prior to detention, the number of deaths is alarming.

64. Recommendations:
- i. Place a medical officer at every detention centre.
 - ii. Conduct health screening on detainees upon admission to detention centres.
 - iii. Conduct an inquest including a post-mortem examination following all deaths in detention to verify the cause of the death.

Business and Human Rights

65. SUHAKAM welcomes the government's decision in November 2017 to develop a national action plan on business and human rights (NAPBHR).

66. Recommendation:
- i. Develop a NAPBHR in line with the UNGP and integrate a gender perspective in the development process and contents of the NAPBHR.

Inter-Agency Coordination

67. SUHAKAM welcomes the establishment of the National Department of Integrity and Good Governance in 2017, which also serves as the main government body to coordinate efforts on human rights matters.

68. Recommendations:
- i. Provide the Department with adequate human and financial resources.
 - ii. Enhance inter-agency coordination for greater effectiveness in addressing human rights issues.

Parliamentary Select Committee on Human Rights (PSC)

69. As the Parliament does not debate SUHAKAM's Annual Reports, a PSC is necessary to ensure that human rights issues are deliberated in Parliament. The government has agreed to form a Parliamentary Caucus on Human Rights, which started operating in March 2018. Hopefully, the Caucus will lead to the establishment of the permanent PSC.

70. Recommendation:
- i. Establish a permanent PSC.

Sustainable Development Goals (SDGs)

71. A National SDG Council and Steering Committee have been established for the SDG implementation. Nonetheless, SUHAKAM believes that a human rights-based approach to the SDGs has not been adopted.

72. Recommendations:
- i. Develop national indicators for the SDGs based on human rights principles and standards.
 - ii. Collect and make publicly-available disaggregated data especially data disaggregated by vulnerable and marginalized population groups including women, children, persons with disabilities and indigenous peoples.
 - iii. Adopt policy guidelines for the application of a human rights-based approach to development.

Other Recommendations

- 73.
- i. Facilitate inter-faith dialogues for greater inter-religious understanding and harmony.
 - ii. Ensure the right to practice religion by all, in all conditions including in places of detention.
 - iii. Institutionalise a meaningful consultation process between the government and stakeholders including SUHAKAM and CSOs in the formulation of laws and policies.
 - iv. Adopt policy guidelines to safeguard human rights defenders especially from reprisals.
 - v. Adopt a human rights-based approach to national budgeting.

¹ Acronyms:

- i. ICCPR – International Covenant on Civil and Political Rights
- ii. ICESCR – International Covenant on Economic, Social and Cultural Rights
- iii. ICERD – International Convention on the Elimination of All Forms of Racial Discrimination
- iv. CAT – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- v. ICRMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- vi. ICPPED – International Convention for the Protection of All Persons from Enforced Disappearance

² Department of Statistics Malaysia, 'Report of Household Income and Basic Amenities Survey 2016', Putrajaya, 2017, pp. 7.

³ UNICEF, 'Children Without: A Study of Urban Child Poverty and Deprivation in Low-Cost Flats in Kuala Lumpur', Putrajaya, 2018, pp. 44.

⁴ SUHAKAM, 'Annual Report 2016', Kuala Lumpur, 2017, pp. 61.