

HUMAN RIGHTS COMMISSION OF MALAYSIA

REPORT TO THE 11TH ANNUAL MEETING OF THE ASIA-PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

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1. Introduction

1.1. The following report summarises recent changes to the composition of the Malaysian Human Rights Commission (SUHAKAM), and core activities that have been embarked upon by the Commission since the 10th APF Annual Meeting in Ulaanbataar last August. The report also provides information on some of the Commission's upcoming core activities for the remainder of 2006.

2. Composition of the Human Rights Commission of Malaysia

2.1. The composition of the Commission saw some minor changes since the 10th APF Annual Meeting in 2005. Commissioners Tan Sri Dato' Ramon Navaratnam and Dato' Ranita Mohd Hussein left the Commission after two terms of service, while Dato' Dr. Sharifah Hapsah Syed Hasan Shahabudin left the Commission to take up another appointment.

2.2. Four new Commissioners were appointed to join the fold of the existing Commission in May 2006, bringing the total number of Commissioners to 17. The new Commissioners are Dato' Dr Denison Jayasooria, Dato' Zaitoon Othman, Dato' Dr Michael Yeoh and Ustad Dr Muhammad Uthman El-Muhammady. The four new Commissioners bring with them a variety of experiences and different areas of expertise to contribute towards the work of the Commission.

3. Complaints and Public Inquiries

3.1. The Malaysian Commission received a total of 687 complaints from January to June 2006. Out of this total, only 446 complaints were deemed to be within the jurisdiction of the Commission. The majority of admissible cases relate to allegations of human rights violations by law enforcement officials, particularly the police, prison authorities and the immigration officials. Complaints were also received alleging violations of economic, social and cultural rights, mainly relating to land rights and the right to housing.

3.2. Where complaints are determined to be within the Commission's mandate as spelt out within the Human Rights Commission of Malaysia Act 1999 (Act 597), the Commission makes appropriate recommendations to the authorities to address the concerns raised in these complaints. Act 597 does not provide the Commission with powers to enforce its recommendations. However, section 14 of Act 597 does provide the Commission with the power to conduct inquiries, which includes the power to summon witnesses to testify before the Inquiry Panel, or to produce "any document or other thing" in a person's possession. Section 12(1) enables the Commission to conduct inquiries either on its own motion, or in response to a complaint.

3.3. However, limitations are placed on the Commission's inquiry powers. Section 12(2) prohibits the Commission from inquiring into any complaint of a human rights violation which is the subject matter of any proceedings in court, or if the matter has been finally determined by any court. Should court proceedings be initiated in respect of an issue which the Commission has begun inquiring into, section 12(3) requires the Commission to immediately cease its inquiry. Thus far in 2006, these sections have impeded the Commission from proceeding with two public inquiries it had decided to embark upon. In the first of such occasions, the Inquiry Panel decided to cease its public

inquiry into an allegation of torture in a police lock-up shortly after it announced its decision to conduct the inquiry, due to news reports and subsequent confirmation from the police that prosecution proceedings had been initiated against the alleged perpetrator. In the second of the halted inquiries, the Commission was forced to abruptly cease its public inquiry into the custodial death of Mr. Ravindran Alagiry on the day before the public inquiry was scheduled to begin. The Inquiry Panel noted that the police referred the custodial death case file to the Deputy Public Prosecutor to initiate a sudden death inquest on the same date when the Commission issued its inquiry subpoenas. The day before the Inquiry was scheduled to begin, the Commission received a letter from the Legal and Prosecutions Department of the Royal Malaysian Police, reminding the Commission that Act 597 requires the Commission to immediately cease all inquiries once court proceedings have been initiated.

3.4. However, the Commission was able to complete a third public inquiry in 2006 without any impediments, namely with regard to the custodial death of Mr. S. Hendry, who was found hanging in an isolation cell within hours of his admission to a detention centre. The Inquiry Panel was entrusted with the task of inquiring into the cause of the deceased's death, the circumstances surrounding his death, and to review the overall system of the detention centre, with particular emphasis on matters relating to youth detainees. After examining 27 witnesses and receiving 32 exhibits during the course of the two-day public inquiry, the Inquiry Panel found that the most probable cause of death was homicide by way of suicide. However, the Inquiry Panel also found much evidence of failure on behalf of the warders and guards in the detention centre, which enabled the deceased's death to remain undetected for several hours after the estimated time of death. Many deficiencies in the management of detention centre were also noted by the Inquiry Panel.

3.5. The Commission has recently decided that it will conduct another public inquiry into an incident involving the use of excessive force by the police when dispersing a demonstration. The Commission has appointed its inquiry panel, and is in the process of developing the terms of reference for this inquiry.

4. Human rights education and promotion

4.1. Thus far in 2006, the Commission has continued with its ongoing work of informing the public of their rights. As in previous years, road-shows were organised all across Malaysia, aimed at familiarising the public with human rights principles and the work and mandate of the Commission. These road-shows are an important aspect of the Commission's work to nurture, develop and advance a human rights culture within Malaysia. The Commission has been seeking to promote the development of a human rights culture from a young age, through formal and informal methods. In 2005, the Commission worked closely with the Ministry of Education to integrate human rights into the framework of a new secondary school, namely that of "civics and citizenship".

4.2. Since 2006, the Commission has been placing greater emphasis on human rights education at the university level. The Commission is currently negotiating with the Ministry of Higher Education on the development of human rights awareness raising programmes for university students. Discussions are also taking place on the possibility of introducing human rights into university modules.

4.3. As in previous years since the Commission's inception, the Commission is continuing to provide human rights training for law enforcement officials. In the past, such training focused primarily on the police and prison authorities. Since 2006, the Commission has begun expanding the ambit of this training to include officers from the immigration department, in view of increasing complaints of human rights violations against undocumented migrants.

4.4. The Commission will also continue to focus on promoting greater access to human rights education for vulnerable groups, including indigenous peoples and persons with disabilities. The Commission is currently working with the Ministry of Education, the Department of Orang Asli Affairs and the National Registration Department, in an attempt to increase the primary school enrolment rate of indigenous children, which still falls below par that of the larger population.

5. Administration of Justice

5.1. Since 2006, the Commission has been embarking on research into various aspects of the administration of justice, including to review the rights of prisoners to be treated with dignity, and to be free of torture or cruel, inhuman or degrading treatment or punishment. Other areas of research include research into the issue of life imprisonment, research into the liability of local authorities, and research into the registration of societies under Malaysian law. The Commission also organised follow-up forums on the right to an expeditious and fair trial, a matter which was focused upon by the Commission in 2005.

6. Economic, social and cultural rights

6.1. Various activities have been planned by the Commission in the area of economic, social and cultural rights for 2006. This emphasis on economic, social and cultural rights is in continuation of the Commission's work from the past two years. Previously, the Commission focused its attention on the human rights perspectives of the Millennium Development Goals (MDGs), including into the right to health dimensions of these goals.

6.2. The current Commission intends to examine the economic, social and cultural rights aspects of the Ninth Malaysia Plan, the government development plan which was released in 2006 to guide the direction of Malaysia's development until 2010. Expert group meetings will also be organised on health financing schemes, and the rights of persons with mental illness. Rights relating to religion and culture are also to be examined by the Commission. Thus far, the Commission has held a meeting to examine the issue of demolition of Hindu temples which were built without approval from the authorities.

7. Women's and Children's rights

7.1. The Commission is currently researching into various aspects of women's rights, including research into the principle of equality within the context of maternity rights and the need to provide family-friendly working environments. In continuation from previous years, the Commission will continue to encourage the government to lift its remaining reservations to the Convention on the Rights of the Child, and the Convention on the Elimination of Discrimination Against Women. The Commission will also continue to

monitor implementation of these Conventions, and encourage the government to adhere to its treaty reporting obligations. In 2006, the Commission has twice engaged in discussions with Ms Shanthy Dairiam of the UN Committee on the Elimination of Discrimination Against Women.

7.2. The Commission has been continuing its work for women and child victims of human trafficking. The Commission and UNICEF jointly organised a forum on reducing violence, harm and exploitation of children in September 2005. The forum focused on combating the exploitation of children, particularly in situations of forced labour, or slavery like conditions, including child victims of human trafficking and children of undocumented migrant workers. The forum made a number of recommendations, including strengthening legislation and law enforcement, adoption of a legally binding ASEAN instrument, establishment of an ASEAN / Asia-Pacific Anti-Trafficking Network, and for the problem of stateless children to be addressed. In late 2006, the Commission plans to organise a Dialogue on the Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of Children, Child Prostitution and Child Pornography. The Commission will also organise an expert group meeting on the development of an anti-trafficking legislation for Malaysia.

8. Indigenous Peoples

8.1. The Commission's earlier researches have indicated that indigenous peoples are afflicted by a range of concerns, including deprivation of their native customary land rights following acquisition of lands by the government for development projects. Indigenous peoples in rural areas are also often deprived of access to basic living amenities, including healthcare and clean drinking water. Ultimately, many rural indigenous communities are unable to exercise their right to self-determination, which is recognised within the international human rights framework as the core right to enable realisation of all other rights.

8.2. In 2006, the Commission has been continuing its work for indigenous peoples. Activities for 2006 include those that focus on specific indigenous communities. For example, the Commission is currently undertaking a multi-pronged approach to the rights of the Orang Asli indigenous community, by researching into various aspects of their rights, including their right to education and their right to political participation. The Commission will also be looking at issues affecting the Penan indigenous community in the East Malaysian state of Sarawak. In this regard, the Commission intends to organise a dialogue on economic, social and cultural rights of the Penan, and also conduct field visits to the Penan settlements.

9. Persons with Disabilities

9.1. The Commission has been in continuous discussions with the Ministry of Women, Family and Community Development regarding the development of legislation on persons with disabilities, and the elaboration of the UN Comprehensive and Integral International Convention on the Protection and Promotion of Rights and Dignity of Persons with Disabilities. The Commission also intends to conduct research on physical barriers for persons with disabilities, particularly in relation to the accessibility of buildings and public transportation.

9.2. Additionally, the Commission plans to launch a public campaign on the rights of persons with disabilities, in cooperation with the NGOs and Kuala Lumpur City Hall. This campaign will aim to bring the message of rights for persons with disabilities in all manner of public places.

10. Regional Human Rights Cooperation

10.1. Since 2005, the Commission has been increasing its involvement in the area of regional human rights cooperation, including assisting in the development of other national human rights institutions in the region. In September 2005, the Vice-Chairman of the Commission was appointed by the United Nations to provide advice and induction training to the Provedor for Human Rights and Justice of Timor Leste. In March 2006, the Vice-Chairman participated in a high-level conference aimed at promoting the establishment of a national human rights commission for Iraq.

10.2. The Commission has also been increasing its cooperation with the other four national human rights commissions in the ASEAN region, namely the Commissions of Indonesia, the Philippines and Thailand. In March 2006, SUHAKAM hosted the 2nd consultation meeting of the ASEAN national human rights institutions. During this meeting, the representatives of the four Commissions presented draft researches which had been prepared by each of the Commissions, as decided during their first consultation meeting in Bangkok in 2005. The Malaysian Commission presented its research into migration, which aimed at suggesting strategies for sustainable cooperation between the four commissions to address human rights concerns of both undocumented and documented migrants. Researches into the issues of terrorism, human rights education, economic, social and cultural rights and trafficking in women and children were presented by the representatives of the other three Commissions. As an outcome of the meeting, the four Commissions have agreed to sign a declaration to formalise their cooperation mechanism.

10.3. The Commission has also begun to increase its involvement in initiatives aimed at promoting the establishment of an ASEAN regional human rights mechanism. In June 2006, the Commission jointly organised the 5th workshop on an ASEAN human rights mechanism, together with the Ministry of Foreign Affairs, the ASEAN Working Group for a Human Rights Mechanism, and the UiTM Centre for ASEAN Studies. The Commission has since established a specific Committee to work towards the establishment of an ASEAN human rights mechanism.