

HUMAN RIGHTS COMMISSION OF MALAYSIA

**REPORT TO THE 16TH ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL
HUMAN RIGHTS INSTITUTIONS**

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1.0 INTRODUCTION

This report is a summarisation of the activities undertaken by the Human Rights Commission of Malaysia (SUHAKAM) to promote and protect human rights from the period after the 15th Annual APF Meeting in Bali on the 3-5 August 2010.

This report, being an update of its previous report to the APF, will focus on the areas of priority to SUHAKAM as it continues its efforts to improve the human rights situation in the country.

2.0 DEVELOPMENT/ACHIEVEMENTS

2.1 Regional and International Cooperation

Recognising its important role as a National Human Rights Institution (NHRI), SUHAKAM has undertaken several steps to follow up on and monitor the Universal Periodic Review (UPR) recommendations. They include:

- Establishment of an Internal UPR Follow-up and Monitoring Committee comprising focal officers of various Working Groups/Divisions within SUHAKAM;
- Awareness raising on the importance of the UPR mechanism and Malaysia's obligations under the international human rights mechanism;
- Engagement with Government agencies and other stakeholders through consultation meetings and briefing sessions;
- Sharing of best practices and contribution in UPR-related training materials;

Furthermore, SUHAKAM with assistance from the Office of the High Commissioner for Human Rights (OHCHR), also conducted a Training Workshop on the UPR for its members and staff on 21 – 22 April 2011. In conjunction with that workshop, a briefing session on the UPR was also held with Government and Non-Governmental Organizations (NGOs). The purpose of the session was to raise awareness and familiarise the participants to the UPR mechanism.

SUHAKAM will also be presenting an interim report on the implementation of the UPR recommendations at the 18th Human Rights Council (HRC) session, under Item 6 of the HRC agenda. An oral statement will also be delivered at the HRC, following the submission of the interim report. SUHAKAM will be represented by its Vice Chairman Prof Datuk Dr Khaw Lake Tee.

As chair of South East Asian NHRI Forum (SEANF) in 2010, SUHAKAM hosted the 7th Annual Meeting of SEANF from 15-16 November 2010 in Kuala Lumpur. At the Meeting a new member; the Office of the Provedor for Human Rights and Justice Timor Leste (PDHJ), was admitted to SEANF making it the fifth member, alongside NHRIs from Thailand, the Philippines, Indonesia and Malaysia. It is hoped that with the inclusion of

a fifth member, SEANF will reinforce its role and relevance in upholding human rights in South East Asia. The meeting also saw the development of a five year strategic plan for SEANF and also a greater recognition of SEANF's role in supporting Regional and International Human Rights Mechanisms. At the end of the meeting SUHAKAM handed over the chairmanship of SEANF to the Commission of Human Rights of the Philippines (CHRP), which will be chairing the forum for the year 2011.

Following the publishing of the paper on SEANF's joint project on migrant workers, SUHAKAM held two consultations with Government agencies on 16 December 2010 and also on 9th August 2011. The consultations proved to be useful for SUHAKAM as the agencies involved were very cooperative although skeptical at the initial stage. Feedbacks and inputs were able to be collated on several key recommendations, which will be presented back to SEANF.

In addition, SUHAKAM has recently been invited by the HRC to participate in a HRC Panel Discussion on Promotion and Protection of Human Rights in the Context of Peaceful Protests, to be held at the 18th HRC Session on 13 September 2011. SUHAKAM will be represented by its Vice-Chairman at the panel discussion.

2.2 Education and Promotion of Human Rights

In 2009 SUHAKAM, in collaboration with the Ministry of Education (MOE), embarked on a project called the "Human Rights Best Practices in School". The project involves five selected Secondary schools, which was asked to promote human rights values in the schooling environment. This year SUHAKAM did a review of all the five schools and discovered that the project was very well received. Many programmes on human rights were conducted and an election of school prefects was also held in one of the school as part of the project. SUHAKAM is currently engaging with a local University to study the effectiveness of the project and to identify its strengths and weakness before expanding it to more schools. The Commission is also exploring with the Ministry of Education on the early introduction of Human Rights as an integral part of the curriculum in schools, and with a leading national University on the establishment of a Human Rights Centre, both for purposes of research and teaching.

SUHAKAM is also looking seriously into the problem of access to education by the indigenous community. Throughout the year SUHAKAM conducted several discussions with the community and relevant Governmental agencies to identify problems that are contributing to the low attendance of indigenous children to school. SUHAKAM is working closely with both parties to resolve the issues and problems faced by indigenous children when attending school, which range from transportation difficulties to attitude of teachers, parents and the students as well.

SUHAKAM continues its training programmes with University students, enforcement personnel including the People's Volunteer Corps (RELA) and also other vulnerable

groups with the aim of widening the exposure of these groups to human rights values and norms.

2.3 Rights of Vulnerable Groups

Although last year the Government withdrew several reservations on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), some of the reservations, particularly on Article 16 still remain. According to the Government this is because of its incomparability with the Federal Constitution and Islamic Law. In view of the complex nature of Article 16, SUHAKAM commissioned a study on the adoption and application of CEDAW focusing on Article 16 in other Islamic Countries. A report of the study has been forwarded to the Government.

SUHAKAM is further concerned with new developments in technology that has enabled sex predators to make children their victims over the internet. SUHAKAM is disturbed to learn that there has been an increase in the number of cases of child sexual exploitation and the use of children in pornography. The problem is worsened by the fact that there is a very low level of awareness in Malaysia on the issue and that child victims are sometimes portrayed in the media as delinquents. In this regard, SUHAKAM has called on the Government to ratify the Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography and to ensure that Child Pornography is outlawed in local legislations. In its efforts SUHAKAM has conducted a round table discussion and also published a report on the issue.

As a follow up to the ratification on the Convention on the Rights of Persons with Disabilities (CPRD), SUHAKAM has requested to be appointed as the National Monitoring Mechanism (NMM), as recommended by ICC Sub-Committee on Accreditation (ICC-SCA) in its special review. The main task of the NMM would be to observe the implementation of the Convention. The Government has responded to the request by including SUHAKAM as part of the NMM mechanism. In accepting the invitation, the Commission would ensure that it would continue to play its independent monitoring role, in compliance with the Paris Principles.

SUHAKAM is also currently conducting a research study on the situation of the Lesbian, Gay, Bi-sexual and Transgender Groups (LGBT) in the country. For the purpose of the study SUHAKAM has met with various groups, including the religious authorities and LGBT groups. Upon completing the study, SUHAKAM will make appropriate recommendations to the Government on how to better protect the rights of LGBT, while recognising the existing religious and cultural sensitivities.

2.4 Human Rights Complaints and Inquiries

In 2010, SUHAKAM received almost 1005 complaints from the public; however 437 of them were outside of SUHAKAM's jurisdiction. In peninsular Malaysia, the complaints were focused on the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and police inaction. In Sabah, the majority of cases were on land matters and citizenship issues, while in Sarawak most complaints received were on the infringement of customary land rights of the indigenous peoples.

SUHAKAM monitored the public assembly organised by a coalition of civil society organisations, known as "Bersih", calling for free and clean elections on 9 July 2011 in Kuala Lumpur which was declared illegal by the Government. In the aftermath of the assembly the Commission also received several memorandums alleging the use of excessive use of force by the Police in dispersing the crowd. Concerned about such allegations and also based on its own monitoring of the event, it decided to hold a public inquiry into the allegations of violations of human rights, including the use of excessive force by the authorities prior to and during the assembly on 9 July 2011. Currently, SUHAKAM is gathering evidence and statements from the public on what happened during the assembly.

In 2010 SUHAKAM also embarked on a new role of monitoring an election process. It began with the monitoring of a by-election in the state of Kelantan, where SUHAKAM monitored the election process and informed the public of their right to a fair and free election. In addition, SUHAKAM also set up a complaints booth for the public during the campaigning process, thereby using the by-election as part of its outreach program.

2.5 Economic, Social and Cultural Rights and Civil and Political Rights

In 2010, SUHAKAM conducted a round table discussion on freedom of religion as a reaction towards a series of arson attacks on places of worship. The objectives were to:

- Discuss the growing racial intolerance;
- Discuss the role of religious bodies and NGOs to resolve religion-based conflicts and promote racial intolerance; and
- Make recommendations to strengthen respect for freedom of religion and religious practices.

The discussion was attended by representatives from the Government as well as from various religious groups. Many useful feedbacks were received during the discussion, and participants expressed their hopes that SUHAKAM could continue to facilitate this type of discussion more in the future so that people would have the avenue to talk about sensitive issues that affect them.

Apart from that, SUHAKAM also has taken up a new area in its work, which is Business and Human Rights. It conducted various discussions with the relevant stakeholders, including business entities, NGOs and Government regulators. The purpose of the discussions was to identify the various perspectives on the increasingly important subject and to develop policy recommendations to the Government on business and human rights, to be observed by the business sector.

2.6 Human Trafficking

On 28 September, SUHAKAM launched its brochure on Anti-Trafficking of Persons (ATIP). The objective of the brochures was to raise the awareness of the general public on the problem of human trafficking, as well as to provide assistance to the victims by outlining their rights and the inclusion of emergency contact information. The brochure was printed in English and Malay and further translated into other languages including Tamil, Mandarin, Tagalog, Sinhala and Thai. It is hoped that the brochure would be more effective in highlighting the rights of the victims, in a more accessible language for the victims. The brochures have been distributed to various Government agencies, diplomatic missions, NGOs and the public.

2.7 National Inquiry into the Land Rights of Indigenous Peoples.

This year, SUHAKAM created another precedent when it announced that it would conduct its first ever National Inquiry, into the Land Rights of the Indigenous Peoples of Malaysia. SUHAKAM had over the years received various complaints and memorandums from the indigenous communities in Peninsular Malaysia, Sabah and Sarawak, alleging infringements of their land rights--which is a clear violation of their fundamental human rights. In making that decision SUHAKAM felt that it was timely for a national inquiry to be conducted to solve the systemic problems facing the indigenous community. The objectives of the Inquiry are:

1. To determine the constitutional, legal, administrative and political recognition of the Indigenous Peoples' right to land and their effectiveness in protecting and promoting the Indigenous Peoples' right to land.
2. To inquire into the land rights situation of the Indigenous Peoples and the impact of the recognition or non-recognition of the Indigenous Peoples' right to land on their social, economic, cultural and political rights, taking into consideration relevant international and domestic laws.
3. To identify the constraints which impede the full enjoyment of the Indigenous Peoples' right to land in accordance with their needs and requirements.
4. To create and promote more awareness, knowledge and understanding of the Indigenous Peoples' right to land and their way of life.

5. On the basis of an in-depth analysis and evaluation of the facts and problems gathered during the National Inquiry, to develop recommendations to the Federal and State governments relating but not limited to the following:-

- the review of domestic land laws and other related laws and policies, with a view to incorporating a human rights focus therein, addressing, in particular, the problems faced by Indigenous Peoples in their land claims; and
- the formulation of strategies and a plan of action with the aim of protecting and promoting the Indigenous Peoples' right to land as an indivisible and integral part of the protection and promotion of their other human rights.

SUHAKAM has allocated 18 months to complete the Inquiry, which began in January 2011. Currently SUHAKAM is organizing consultations in the three regions; Peninsular Malaysia, Sabah and Sarawak, to get feedback from stakeholders on issues and problems facing them and also to understand the situation on the ground better.

2.8 National Human Rights Action Plan

SUHAKAM commends the Government for agreeing to develop a National Human Rights Action (NHRAP) for Malaysia in 2010. The Commission also welcomes the appointment of the Legal Division of the Prime Minister's Department (BHEUU) as the focal agency to develop the plan.

SUHAKAM deems it an important milestone as it signifies the first and decisive step undertaken by the Government to improve the promotion and protection of human rights in the country by placing human rights in the centre of public policy and goal setting. This will require the Government to ensure appropriate programmes, sufficient resources and necessary engagement with all stakeholders to fulfill its human rights goals and commitments, locally.

SUHAKAM is pleased to note the positive progress spearheaded by BHEUU in its preparatory stage of the NHRAP. The Commission had also attended two meetings organized by the BHEUU to discuss the preparatory stages of the plan.

2.9 Engagement with Other Stakeholders

From its discussion with various stakeholders, SUHAKAM strongly believes that there is a need for the Government to enhance its engagement with the NGOs through more regular dialogue or briefing sessions in order to promote greater understanding among the civil society on the progress of the Government's work particularly in the areas of human rights.

SUHAKAM realizes that it is in a unique position to play a bridging role between the Government and other stakeholders, and seeks to promote constructive engagement and collaboration efforts among all key stakeholders in the advancement of human rights in the country. This will include sharing of best practices and expertise, capacity building and conduct of joint studies in human rights issues of common concern and, whenever necessary, to act as a mediator between the Government and Civil Society.

2.10 Capacity Development

In relation to the National Inquiry into the Land Rights of the Indigenous Peoples, the APF in collaboration with the Raoul Wallenberg Institute of Human Rights (RWI) conducted a Workshop on National Inquiries for SUHAKAM Commissioners and staff as well as other stakeholders, such as NGOs and the media, from 7-11 March 2011. The Workshop was conducted in order to provide SUHAKAM with the knowledge and skills to convene the National Inquiry and also to elaborate on the different roles that each stakeholder has to play in the exercise. Furthermore, there were also discussions on the thematic issue of land rights and the indigenous community itself, which has helped SUHAKAM to understand better the issue and in making preparations for the Inquiry.

3 CHALLENGES AND UPDATES

3.1 SUHAKAM's status with the ICC

The ICC Sub-Committee on Accreditation (ICC-SCA) conducted its Special Review on SUHAKAM on 13 October 2010 and on 22 October, the SCA in its review outcome, accorded SUHAKAM with status 'A'. In its report, the SCA recognizes SUHAKAM efforts in pursuing with the legislative changes and opined that any Key Performance Indicators (KPIs) introduced by the Government should not be used to infringe on the functional independence of an NHRI. The SCA further advised SUHAKAM to work closely with NGOs, OHCHR and the APF and to act as the NMM under the CPRD Convention.

4 WAY FORWARD

SUHAKAM is actively engaging with various stakeholders, in particular the Government, in advocating and promoting human rights, and in urging for the early implementation of its many recommendations. In recognising the importance of the vitality and robust character of the Commission as essential ingredients of an effective NHRI, SUHAKAM intends to submit in due course a number of recommendations to the Government that would further strengthen and empower the Commission along the lines of the best and most effective NHRIs in the Asia-Pacific region.