

**REPORT FOR THE UNIVERSAL PERIODIC REVIEW (UPR) ON
MALAYSIA, 4TH SESSION, FEBRUARY 2009
FROM THE HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)**

Introduction

1. SUHAKAM was established under the Human Rights Commission of Malaysia Act 1999 (Act 597). The Minister of Foreign Affairs in moving the Bill had stated that it was formulated in accordance with the Paris Principles. SUHAKAM's acceptance by the UN Human Rights Council (HRC) was on status "A". Its status remains the same unless further determined by the International Coordinating Committee of National Institutions (ICC) in April 2009.

2. The review covers a period of four years. In preparing the UPR, SUHAKAM held consultations with various national and regional NGOs and at a later stage, consulted with the Government jointly with NGOs. All statements attributed to people and events have factual references but are not foot-noted due to space constraints. There are no annexures. The opinion in this document is solely that of SUHAKAM.

Normative References and Performance

3. Part II of the Federal Constitution of Malaysia provides, *inter alia*, for the protection of such fundamental liberties as liberty of the person; equality before the law; freedom of movement; freedom of speech, assembly and association; and freedom of religion. Under the Act 597, regard is to be had to the Universal Declaration of Human Rights (UDHR) only to the extent it is not inconsistent with the Federal Constitution. The fundamental liberties are however circumscribed by laws which have been applied not infrequently in the name of public order and national security. Resort to the use of ouster clauses appearing in various legislations further strengthens the hand of the authorities. It should be noted that the jurisdiction of the courts following the amendments of the Constitution in 1998, is now being determined by law. The past four years have seen progress in the protection of civil and political rights while some areas have sadly regressed. The most assailed is the integrity of certain judges and individuals. A transparent system of the appointment of judges is now being considered by the Government.

4. SUHAKAM was established with popular support and a national aspiration to be aligned with international developments in the promotion and protection of human rights. It operates in an advisory capacity. From the onset, Commissioners themselves as well as civil society had found the Act to be too restrictive and behind those of leading best practices. Most of SUHAKAM's recommendations deriving from public inquires, researches and fora have not been accepted and implemented by the Government. The annual reports of SUHAKAM submitted to Parliament were never debated upon. A Minister in the Prime Minister's Department publicly said that SUHAKAM would not be given "teeth". The credibility and effectiveness of SUHAKAM may now be greatly damaged together with a loss of international standing if steps are not taken by April 2009 to address the concerns raised in an ICC report recommending to downgrade SUHAKAM's status grading to "B". The ICC perceives SUHAKAM's founding Act to be not fully compliant with Paris Principles especially where the appointment process of Commissioners is non-transparent. Pertinent legislative amendments to the Act are of utmost necessity and urgency.

5. Of the nine core human rights international treaties Malaysia has only ratified Convention on the All Forms of Elimination against Women (CEDAW) and Convention on the Rights of the Child (CRC), albeit with certain reservations. It

adopted the Declaration on Education for All, Declaration on Indigenous Peoples' Rights, and signed the Convention on the Rights of Persons with Disabilities (CRPD) in April 2008.

6. Reservations on CRC were made to Article 2, 7, 13, 14, 15, 28(1)(a) and 37, as well as on CEDAW to Articles 5(a), 7(b), 9(2), 16(1) (a), (c), (f) and (g) and 16(2). Government reports submitted to UN Committee on CRC and CEDAW were overdue. The Child Act 2001 was one of the first major efforts to implement the CRC but it suffers from weak enforcement. The Act is presently under review. While Article 8(2) of the Constitution was amended to recognise gender as not being a ground for discrimination, Malaysia has yet to provide an Act that translates fully the provisions of CEDAW into domestic law. Malaysia's accession to CEDAW is ultimately subject to the understanding that its provisions do not conflict with the provisions of the Islamic Syariah law and the Constitution.

7. The "Anti-Trafficking in Persons Act" which provides greater protection of the rights of women and children and a "Persons with Disabilities Act" came into force in 2008.

8. The recommendation by a Royal Police Commission set up in 2004 specifically to address practices of the police calls for the establishment of an Independent Police Complaints and Misconduct Commission. That has yet to come. Instead a Special Complaints Commission Bill was introduced. But that too was deferred due to much criticism of its effectiveness, independence and also its lack of investigative powers. The said Bill is now being reviewed by the Government.

9. Amendments were made to the Penal Code and Criminal Procedure Code (CPC). These amendments led to positive changes which include eliminating confessionary statements, detailed procedures for body searches, requiring public prosecutors to provide trial documents before trial to defence counsel, requiring remand periods to be in accordance with the severity of the crime, and requiring the police to inform detainees of the grounds of their arrest within 24 hours. The implementation of the parole system under the Prisons Act passed by Parliament in 2007 helped towards the reduction of overcrowding in prisons and relief from imprisonment to some.

10. Malaysia was elected as a member of the HRC in 2006 on its own credentials. Ironically, while adopting a liberal stance in foreign policy, on the home front the Government continues to wield laws allowing detention without trial under the Internal Security Act (ISA), Emergency Ordinance, and Dangerous Drugs Act, alongside restrictions under the Official Secrets Act, Sedition Act, Printing Presses and Publications Act (PPPA) and Societies Act.

Regional and International Cooperation

11. Malaysia has ratified the ASEAN Charter which provides an enabling clause for an ASEAN Human Rights body. The Government is committed to establishing such a body or some form of human rights mechanism within ASEAN. Presently the Terms of Reference for this body are being drafted by a High Level Panel which includes a Malaysian representative. Meanwhile the Foreign Minister called for the incorporation of an "Asian value system" in the human rights provisions in the ASEAN Charter, a concept which is debatable.

12. Malaysia signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007 which enjoins eight commitments among which are improvement in migrant worker rights and welfare and steps to combat human

smuggling and trafficking. This Declaration provides a needed regional basis to intensify its efforts to help migrant workers and curb human trafficking.

13. The request in 2005 for a country visit by the UN Special Rapporteur, Martin Scheinin on Promoting and Protecting Human Rights while Countering Terrorism, was denied. However, positive development was seen later in 2007 in the approval of a visit by the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos. (In June 2008, Jannie Lasimbang, nominated by SUHAKAM was appointed to the Expert Mechanism on the Rights of Indigenous People.)

Challenges

14. Whereas SUHAKAM had asked for the abolition of all preventive legislations the Government said it would review only one of them, the ISA. It declined to provide neither details nor state when it would do so. SUHAKAM has also urged for review of such legislations which are contradictory to human rights principles such as the Official Secrets Act, Sedition Act, PPPA and Societies Act. To date, these legislations are yet to be reviewed.

15. Delays in court proceedings and availability of written judgements need to be addressed urgently. Convicted persons remain in jail and their appeals to superior courts are severely delayed when judges and magistrates do not provide written judgments expeditiously and in some cases there are none at all. This tardiness contributes to overcrowding in prisons. Despite announcing in April 2008 that the Government would proceed to establish a Judicial Appointments Commission similar to one proposed by SUHAKAM in July 2005 to enhance public confidence and transparency in the appointment of judges, no such Commission has yet been set up.

16. The Royal Police Commission pinpointed three priorities for police reform: reduce crime, eradicate corruption and end human rights abuses. Despite reforms undertaken by the authorities pursuant to the Royal Police Commission, incidents of police abuse and brutality continue to occur as evidenced in public inquiries by SUHAKAM into alleged police violence. Deaths in police custody cases remain of great concern. Inquests into many long overdue cases of deaths in custody are either still pending in court or have not been conducted at all.

17. SUHAKAM is against death penalty and is equally against the imposition of natural life sentence. While these provisions exist, SUHAKAM urges Pardon Boards to review such cases.

18. The Government acknowledges that good governance, integrity and transparency in the public sector are essential for the development and protection of human rights. Several high profile cases of corruption evidence the depth of the problem in Malaysia. The Government's intention to find a remedy saw the formulation of a National Integrity Plan and the establishment of the Malaysian Integrity Institute. Further, in 2008, the Prime Minister promised to provide full investigative and prosecution powers to the Anti-Corruption Agency to make the agency truly independent.

19. While elections in Malaysia are held democratically, it cannot be claimed that the process has been completely fair when the incumbent ruling parties have wide control and use of public resources and media. However police permits required to hold political rallies were not denied to any political party in the March 2008 General Election.

20. Freedom of assembly and association are restricted on the grounds of maintaining public order and national security. Section 27 of the Police Act 1967 gives power to the police to grant permits for peaceful assemblies without setting the criteria. In practice there is no transparency in the decisions to issue such permits. While it is recognised that the police have a duty to ensure peace and security, they should act in good faith in a timely, non-selective and reasonable manner on requests for permits to assemble from legal persons including bodies. An urgent review of the Act and other preventive legislations is due. On a positive note, the Government has allowed registration of a new political party, Socialist Party of Malaysia, after a decade-long battle.

21. The problem of access and dissemination of information has been compounded by the absence of a Freedom of Information Act. During the March 2008 General Election, the Government invoked the Official Secrets Act to prevent the disclosure of potentially damaging information on political corruption. Freedom of expression is constitutionally guaranteed in Malaysia but the right is restricted in practice, particularly through the PPPA which allows the authorities to revoke licenses at any time without judicial review. The mass media remains tightly controlled by the Government through its 'advisories' and directives not to publish or air alternative and opposition views. At the time of writing, a show-cause letter has been sent to the Herald (a Catholic newsletter) requesting explanation on some of its published articles deemed to be political and outside religious concern. However, two newspapers, *Suara Keadilan* and *Watan* finally obtained their permits and no restrictions have been effectively imposed on cyber media.

22. At the time of writing, a Bill has been tabled to amend the Universities and University Colleges Act of 1971. Its passage is being delayed by public opinion that the proposed amendments still do not sufficiently address the restrictions on academic freedom and political rights of students.

23. There is a growing controversy regarding freedom of religion arising from conversions to Islam (mostly marital) and apostasies. The Constitutional provision of a Civil Court and a Syariah Court and exclusion of jurisdiction of the former in respect of any matter within the jurisdiction of Syariah Court raised conflicts in more than one case. Necessary amendments to tackle these issues are being examined and will hopefully resolve the issue of divorce, custody and maintenance where one spouse has converted. No less troubling are the instances of demolitions of temples built illegally on either state land or private property without heed to religious sensitivities of non-Muslim communities.

24. The Government should act on the recommendations of the UN Committee on CRC to Malaysia, which include abolishing caning and other forms of corporal punishment on those under 18 years of age; taking urgent measures not to detain children for immigration proceedings; establishing a screening process to identify asylum-seeking and refugee children; developing legislation for their protection; strengthening collaboration with the UNHCR and other agencies, including providing access to persons of concern in detention. SUHAKAM finds that indigenous children have limited access to education in the deep hinterland. Other children on plantations, on the street, in detention centres, and in asylum camps are similarly disadvantaged.

25. The Government has not ratified the Workers Convention on Migrant Workers and the adoption of principles of the ILO. Many migrant workers face discrimination at various levels and denial of basic rights. Malaysia also does not recognize refugee or asylum seeker status because it has not ratified the 1951 Convention relating to the

Status of Refugees and its 1967 Protocol. All persons found to be undocumented, are subject to detention and trial under the Immigration Act.

26. The rights of indigenous people have not received sufficient attention. Their rights to customary land which embrace cultural sites and traditional burial places should be upheld. Existing state legislations concerning all indigenous communities should be positively and urgently reviewed with priority given to their right to land. A right to land would create economic opportunities and provide means to sustain a basic livelihood. Such factors are vital considerations in minimising social displacement. It is heartening that the Malaysian Court has progressively recognised customary land rights.

27. The State of Sabah in East Malaysia saw rapid expansion in its population. The phenomenon defies natural growth rates based on earlier census data. SUHAKAM's investigations seem to indicate that this is due to the presence of illegal immigrants as well as foreign immigrants who have acquired citizenship through dubious means. The increase is all the more alarming when cumulatively it reaches millions and is likely to exceed native numbers. The situation has eroded the social welfare, economic opportunities and electoral rights of indigenous people as well as the major races in Sabah.

28. The attainment of Millennium Development Goals (MDGs) is deemed to be human rights challenges for the Government. SUHAKAM has held a series of dialogues on the various MDGs relating to human rights situations within the country. A report by the Government jointly with the UNDP has highlighted the problem of HIV/AIDS as requiring greater Government attention. Related to this issue is the need to provide specific treatment, care and support to those affected. Access to healthcare services for communities that are disadvantaged due to economic, social and geographical difficulties also requires continuous Government support.

29. The Government has signed the CRPD but has not ratified it. Ratifying the CRPD and implementing the Persons with Disabilities Act, should go hand-in-hand.

Recommendations and Encouragement in the Context of the UPR

30. SUHAKAM calls upon the Government to:

- amend Act 597, to be more in line with the Paris Principles;
- repeal all preventive legislations;
- review all legislations that are in conflict with human rights principles;
- uphold Constitutional right to freedom of speech, assembly and association;
- ensure better access to basic amenities and infrastructure for rural communities in line with the MDGs;
- consider SUHAKAM's proposal on National Human Rights Action Plan;
- develop capacity building and technical assistance in cooperation with SUHAKAM as well as civil society;
- provide continual human rights training to enforcement personnel;
- fulfil the commitments and obligations made in its pledge to HRC in 2006;
- withdraw reservations on CEDAW and CRC;
- ratify the core human rights instruments and their additional protocols; and
- submit periodic reports on time to the treaty monitoring bodies and to follow-up on their recommendations.