

I. Introduction

This is an independent submission that reflects SUHAKAM's views based on information gathered from its own deliberations and monitoring of Malaysia's third UPR.

II. Implementation of UPR Recommendations

1. International Obligations

1.1. Accession to International Human Rights Treaties

SUHAKAM recognizes the Government's initiatives to translate the nine-core international human rights treaties and the Rome Statute into the national language to educate the public and increase awareness.

To date, Malaysia has only acceded to CEDAW, CRC and CRPD¹. It is understandable that the Government is focusing its efforts to increase awareness before accession of any Treaty. However, SUHAKAM is concerned about the lack of progress.

Recommendations:

- Accede to the remaining six core international human rights treaties without delay.
- Foster constructive dialogues with stakeholders on the benefits of human rights treaties in advancing human rights on the ground and in the administration of justice.

1.2. Withdrawal of Reservations

Withdrawal to reservations is instrumental towards promoting greater respect for the rights of children, women, and persons with disabilities. SUHAKAM is concerned that currently the Government's plans to withdraw its reservations to CEDAW, CRC and CRPD is unclear.

The Government indicated that they would continue to review domestic laws to determine the possible withdrawal of the respective reservations.

Recommendation:

- Intensify efforts towards the withdrawal of remaining reservations to CEDAW, CRC and CRPD.

1.3. Reporting to Treaty Bodies

Malaysia submitted its combined second to fifth periodic reports to the CRC Committee in August 2021 and sixth periodic report to the CEDAW Committee in April 2022.

Recommendation:

- Submit the overdue periodic reports to the CRPD Committee without further delay.

1.4. Engagement with Special Procedures Mandate Holders

Since the last UPR, Malaysia in February 2019, had issued a standing invitation to all Special Procedures Mandate Holders. Since then, there has only been three country visits.

Recommendations:

- Implement the recommendations of the Special Procedures who have visited Malaysia.
- Accept annually, at least two country visit requests by Special Procedures.

2. Civil and Political Rights

2.1. Freedom of Expression and Right to Information

The Government has yet to repeal, amend or reform the Printing Presses and Publications Act 1984 [Act 301] and Sedition Act 1948 [Act 15]; and is planning to amend the Communications and Multimedia Act 1998 [Act 588].

SUHAKAM's stance is to ensure citizen's rights to freedom of expression and right to information is as governed by Article 10 of the Federal Constitution (FC).

Recommendations:

- Ensure the amendment of Act 588 does not restrict freedom of expression and the media.
- Repeal, amend or reform Act 301 and Act 15.

2.2. Freedom of Assembly

In 2019, the Parliament amended the Peaceful Assembly Act 2012 [Act 736] which reduced the mandatory police notification period from 10 days to 7 days prior to the planned event and decriminalized street protest. However, the Act still imposes criminal penalties for violation, lacks provisions to allow

spontaneous assemblies, bars those under age 21 from organizing an assembly, and prohibits non-citizens and children below 15 from participating.

Recommendation:

- Amend Act 736 namely section 4 (Right to Organize Assembly or Participate in Assembly), section 9(5) (Notification of Assembly), and section 10 (Requirements Regarding Notification of Assembly).

2.3. Freedom of Religion

The Government was urged to amend the National Registration Act 1959 [Act 78] to remove all references to religion on the National Registration Identity Cards (NRICs) but it has received objections from Muslim groups.

Many States Syariah laws allow for Syariah courts to make a declaration that one is no longer a Muslim and with such declaration, the person may submit it to the National Registration Department to delete the word “Muslim” from his/her NRIC. Apostasy only affects Muslims. These laws do not conflict with the right to equality as stated in Article 8 as it must be read with Art. 11(4) FC.

Recommendations:

- Ensure the Interfaith Harmony Committee (HARMONI)ⁱⁱ carries out its functions.

2.4. Arbitrary Detention

Current laws provide for arbitrary detention such as the Prevention of Crime Act 1959 [Act 297], Security Offences (Special Measures) Act 2012 [Act 747], and the Prevention of Terrorism Act 2015 [Act 769], which contravene civil liberties guaranteed in the FC including due process and fair trial.

Recommendations:

- Anti-terrorism provisions must be clearly defined in Malaysian laws and drafted in adherence to international human rights standards.
- Act 747 should be amended to include judicial and parliamentary oversight for independent means of check and balance to safeguard against abuse of powers. The courts should be given discretionary power to review the merits of detention based on evidence produced.
- The Government to amend and/or abolish Act 297 and similar preventive detention laws, to safeguard human rights of the detainees against abuse.

2.5. Death Penalty

SUHAKAM was part of a Special Committee to Review Alternative Sentences to the Mandatory Death Penalty, established by the Government in 2019.

In 2018, the Government placed a moratorium on the death penalty and in 2023, the Parliament passed two bills in relation to abolition of the mandatory death penalty:

- Abolition on Mandatory Death Penalty Bill 2023;
- Revision of Sentence of death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Bill 2023.

Recommendations:

- Replace the death penalty with life imprisonment of 30 years in respect of the most serious crimes.

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

UNCATⁱⁱⁱ is considered as a “low hanging fruit” in Malaysia, yet there remains resistance to treaty accession. Among the reasons for non-accession to UNCAT is because Malaysia’s domestic laws allow for the implementation of corporal punishment in all settings and the imposition of the death penalty.

Recommendations:

- Emulate other countries’ best practices to identify ways to reconcile domestic civil and religious legal systems with UNCAT.
- Abolish corporal punishment such as whipping and caning in custodial and educational institutions.

3. Economic, Social and Cultural Rights

3.1. Poverty Eradication and Raising Standard of Living

SUHAKAM acknowledge that the absolute Poverty Line Income (PLI) was revised in 2020 to better reflect household consumption patterns and cost of living. However, the raise of the PLI from RM980.00 to RM2,208.00 in 2019 resulted in the rise of the country’s poverty rate.

Incidence of poverty persists among those who are economically and socially vulnerable. The COVID-19 pandemic, combined with the lack of a comprehensive social protection system exacerbated the insecurity and vulnerability of these groups and caused the rate of absolute poverty to increase further to 8.4% in 2020^{iv}.

SUHAKAM welcomes the increase in minimum wage for employees from RM1,200.00 to RM1,500.00 per month throughout Malaysia.

Recommendation:

- Adopt a human rights-based approach to eradicate poverty.

3.2. Right to Education

The COVID-19 pandemic posed challenges in students' access to education particularly children from economically disadvantaged families, or who live in rural areas including indigenous children in accessing online education.

The marginalized non-citizen children such as refugees and stateless children face obstacles in attending public schools. The Ministry of Education (MoE)'s directive on the requirements for the 2024/2025 academic session stated that only Malaysian citizen's children born between 2 January 2017 and 1 January 2018 are eligible to apply for enrolment, implying that non-Malaysian children are excluded from this right.

Recommendation:

- Take immediate action to ensure that all children, regardless of their legal status, have the right to access free and compulsory primary education in Government schools.

3.3. Right to Health

Under the Twelfth Malaysia Plan (2021-2025), the Government has adopted strategies towards achieving universal access to quality healthcare for its citizens.

In 2020, SUHAKAM organised consultations to discuss issues affecting women's rights during the Movement Control Order (MCO). There was closure of public clinics providing affordable reproductive healthcare services which prevented non-Malaysian women comprising refugees, migrants, etc. from gaining access to healthcare.

Similar dialogues were held in 2020 with other vulnerable communities such as migrant workers, refugees, asylum seekers and stateless persons who had also faced challenges in fully accessing their fundamental right to healthcare.

SUHAKAM remains committed to working closely with the detention authorities and the Ministry of Health (MoH) to ensure effective healthcare

and reducing custodial deaths at places of detention.

Recommendations:

- Government must ensure all women, regardless of nationality or income, have effective access to affordable healthcare services, including childbirth, reproductive health, and family planning.
- MoH to establish a dedicated unit/department to better address healthcare issues at places of detention.

4. Vulnerable Groups

4.1. Rights of Women

SUHAKAM was a member of the Special Project Team (SPT) under the Ministry of Women, Family and Community Development (MWFCD) to draft the Gender Equality Bill in 2019, which is yet to be enacted.

The Government enacted the Anti-Sexual Harassment Act 2022 [Act 840] and SUHAKAM was actively involved in stakeholder engagements as a SPT member, to improve remaining gaps in this Act.

The Government has applied patriarchal lineage in citizenship status application for children and a constitutional challenge is pending in the Federal Court on this matter. SUHAKAM is advocating for constitutional amendments to resolve lingering issues. Where a person is born in wedlock, outside of Malaysia, the person will qualify for citizenship only if the father is a Malaysian citizen, by operation of law under Part II, Second Schedule, FC.

Recommendations:

- Legislate a Gender Equality Bill.
- Withdraw reservation to Article 9(2) of CEDAW to grant women equal rights with men with respect to the nationality of their children.
- Government to be consistent with the implementation of non-discriminatory policies and laws relating to gender discrimination under Article 8 FC.
- Government to consider reviewing the current legislation by providing legal protection to both married and unmarried partners.
- Government to expedite amendments in allowing mothers to grant citizenship to their children.

4.2. Rights of Children

The Government made a significant move towards enhancing the rights of children with the appointment of a Children's Commissioner in August 2019. The Office of the Children's Commissioner is an independent office responsible for empowering and safeguarding the rights of children as set out in CRC.

However, the Government remains reserved on the issue of Female Genital Mutilation (FGM)/Female Circumcision (FCr) as FGM/FCr is under the purview of the National Fatwa Committee. The main concern on FGM/FCr is regarding the Fatwa issued in April 2009, which makes it obligatory for Muslim women to undergo FCr, a common practice among Malay Muslim communities and a small percentage within the indigenous people.

Recommendations:

- Raise the minimum age of marriage to 18 for women and men in civil and Sharia marriages.
- Provide compulsory and comprehensive sexuality education in schools.
- MoH and medical experts to play an important role on this issue by ensuring dissemination of knowledge on the position of FGM/FCr among all levels of the community.
- The National Fatwa Committee to revisit its fatwa on female *khitan*.

4.3. Rights of Persons with Disabilities (PWDs)

As of January 2023, there are 637,537 PWDs who are registered with the Social Welfare Department. This may not accurately reflect the number of PWDs due to general ignorance and reluctance to register.

The Government announced that the amendments to the Persons With Disabilities Act 2008 [Act 685] is expected to be finalised in 2023.

Recommendation:

- The amendments to Act 685 should include the provisions on enforcement, penalties, and remedies, to address non-compliance.

4.4. Rights of Indigenous Peoples

Disputes over land rights of indigenous peoples in Malaysia persist and resulted in several conflicts and court cases between indigenous peoples and the businesses and/or State Governments.

Other issues faced by indigenous peoples include poverty, lack of access to basic needs including access to education, healthcare services and medicine, sanitation, and basic infrastructures.

Recommendations:

- Take necessary steps towards progressively achieving the full realization of the economic and social rights of the indigenous peoples as provided under Article 21 UNDRIP^v, including accession to ICESCR.^{vi}
- To implement recommendations from SUHAKAM's National Inquiry on Land Rights of Indigenous Peoples.

4.5. Rights of Migrant Workers, Refugees and Stateless Persons

From 2020 - 2022, SUHAKAM organised four stakeholder consultations, on forced labour issues in key industries such as manufacturing, plantation, construction, and medical supply. The stakeholders shared their concerns and challenges in addressing forced labour issues.

SUHAKAM observed incidents of racist and xenophobic remarks from the public towards refugees and migrant workers and the negative portrayals of migrants, undocumented or irregular migrants, refugees, and asylum seekers as a threat to the safety and security of the country, especially during and post COVID-19.

There remains an alarming number of stateless persons in Malaysia and the conditions that cause statelessness. Experiences of stateless persons vary when compared between Peninsular Malaysia and Sabah. SUHAKAM observed that among the reasons for statelessness in Malaysia was a lack of knowledge of the importance of legal documents, lack of access to registration services, inconsistent administrative issues in obtaining the documents, non-registration of the parents' marriages, no proof of birth or abandonment of the child without identification documents and information about their background, and gaps in nationality laws.

Recommendations:

- Establish a structured and informal consolidatory body to ensure better coordination led by SUHAKAM that consists of multi-stakeholders from Government, non-government and private sectors to address forced labour issues.

- Improve the workers' recruitment manual by including SUHAKAM as a channel to lodge complaints.
- Observe the international principle of non-refoulement of refugees or asylum seekers and provide protection to the migrant and refugee community including access to work, education, healthcare, and shelter whilst in Malaysia.
- Accede to the Convention Relating to the Status of Stateless Persons 1954, Convention on the Reduction of Statelessness 1961 and Convention Relating to the Status of Refugees 1951.

4.6. Discrimination Based on Gender Identity and Sexual Orientation

SUHAKAM has been receiving complaints from transgender persons on human rights violations including harassment, bullying, denial of employment and education opportunities and medical treatment.

Recommendations:

- All individuals are entitled to equal fundamental rights under the FC and reflected in policies.

4.7. Trafficking in Persons

According to the U.S. Department of State's 2023 Trafficking in Persons (TIP) Report, Malaysia was upgraded to Tier 2-Watch List category that signifies significant progress in addressing TIP issues.

The Government launched the National Action Plan on Anti-Trafficking in Persons 2021 - 2025 (NAPTIP 3.0) in March 2021 and the National Action Plan on Forced Labour (NAPFL) in November 2021. To realize the objectives of NAPTIP 3.0 and NAPFL, collaboration between the Government, civil society organizations and relevant stakeholders is urgently required.

Recommendation:

- Ensure full protection and assistance for trafficked and smuggled victims at all stages, in line with international standards set by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

5. Strengthening of Human Rights Commission of Malaysia (SUHAKAM)

SUHAKAM's 2018 Annual Report was debated for the first time in Parliament in 2019 and SUHAKAM's 2020 Annual Report was debated in Parliament in 2023 signifying an important commitment by the Government to improve human rights in Malaysia.

Amendments to the SUHAKAM Act 1999 [Act 597] is crucial to enhance SUHAKAM's effectiveness and its compliance with the Paris Principles.

Recommendations:

- Consistently debate SUHAKAM's Annual Report in Parliament.
- Amend SUHAKAM's founding law to strengthen SUHAKAM's functions and powers and enhance the selection and appointment process of Commissioners.

6. National Unity and Social Cohesion

The National Harmony and Reconciliation Commission Bill drafted to address the racial sentiment issues was discontinued in 2020.

The National Unity Action Plan 2021 - 2030 was launched in November 2021.

SUHAKAM welcomes, with respect and gratitude, the decree made by the Malay Rulers at the 260th meeting of the Conference of Rulers in 2022, to urge political leaders to stop playing up racial or religious issues with the purpose of incitement. The decree is vital to preserving racial harmony and stability of the multiracial society.

Recommendation:

- Revisit the decision to discontinue the National Harmony and Reconciliation Commission Bill.

7. Human Rights Education and Training

SUHAKAM and MoE, jointly developed and launched two human rights modules for UPSR and PT3 pupils respectively. Furthermore, SUHAKAM worked together with RMP and developed a human rights module for RMP.

Recommendation:

- To expand the implementation of the modules by incorporation within the national education curriculum for both primary and secondary schools.

8. Sustainable Development Goals

SUHAKAM commends the Government for presenting its second Voluntary National Review Report in July 2021 as part of the follow up and review mechanisms of the 2030 Agenda for Sustainable Development. The Government's commitment to the Sustainable Development Goals (SDGs) is also reflected in the alignment of strategies and action plan of the Twelfth Malaysia Plan.

Recommendation:

- Align the implementation of UPR recommendations with the SDG targets.

ⁱ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and Convention on the Rights of Persons with Disabilities (CRPD).

ⁱⁱ Jawatankuasa Keharmonian Antara Penganut Agama (HARMONI).

ⁱⁱⁱ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

^{iv} World Bank, 'Poverty & Equity Brief Malaysia 2023', accessible via https://databankfiles.worldbank.org/public/ddpext_download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/current/Global_POVEQ_MYS.pdf

^v United Nations Declaration on the Rights of Indigenous People (UNDRIP).

^{vi} International Covenant on Economic, Social and Cultural Rights (ICESCR).