

TOWARDS THE REALISATION OF HUMAN RIGHTS FOR ALL

The Human Rights Commission of Malaysia (SUHAKAM) is an independent Commission, established by the Malaysian Parliament under the Human Rights Commission of Malaysia Act 1999 (Act 597), for the promotion and protection of human rights in Malaysia. Section 2 of Act 597 defines “human rights” as the fundamental liberties enshrined in Part II of the Federal Constitution. Additionally, the Act 597 authorises SUHAKAM to give regard the 1948 Universal Declaration of Human Rights (UDHR) in undertaking its functions, so long as it is not inconsistent with the Federal Constitution of Malaysia. Towards this, SUHAKAM is mandated by Section 4 (1) of Act 597 to promote awareness of, and provide education in relation to human rights; to advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken; to recommend to the Government with regard to the subscription or accession of treaties and other international instruments in the field of human rights; and to inquire into complaints regarding infringements of human rights.

In the course of fulfilling its duties for over 20 years, it is apparent to SUHAKAM that its capacity and effectiveness in performing its roles and functions are contingent upon its independence and ability to act conscientiously. SUHAKAM takes great effort to ensure this, not only to meet the requirements as stated in the Paris Principles¹, but more importantly, to maintain its credibility amongst the Malaysian public as an institution that performs its duties impartially and without fear or favour in order to promote and protect human rights in Malaysia. As such, while SUHAKAM takes serious consideration of all views provided by stakeholders from different extremes and of differing aspirations, SUHAKAM’s decisions and stances on human rights are made independently and in line with the parameters given by Act 597. Additionally, guided by Section 7(4) of Act 597, SUHAKAM endeavours, as far possible, to make all decisions by consensus of its members.

In spite of the above, there appears to be continued misunderstanding by certain quarters, about SUHAKAM’s status, roles, and functions. These misconceptions have become more apparent recently based on reactions from certain individuals and groups following SUHAKAM’s bold decision to take up issues that may be seen by some as “controversial” and not in keeping with the Malaysian social context. Some have even alleged that SUHAKAM only champions perverse issues while ignoring core human rights issues that affect the lives of grassroots communities.

¹ Principles relating to the Status of National Institutions (The Paris Principles) was adopted by General Assembly resolution 48/134 of 20 December 1993 . The Paris Principles set out the minimum standards that NHRIs must meet in aspects of, among others, NHRIs’ legal standing, independence, powers, mandate, and resources to be considered as credible and effective. In June 2021, SUHAKAM was reaccredited ‘A’ status by the Sub-Committee on Accreditation (SCA) of the Global Alliance for National Human Rights Institutions (GANHRI) denoting that SUHAKAM fully complies with the Paris Principles. <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

In light of these, and consistent with SUHAKAM's motto "Human Rights for All", SUHAKAM wishes to correct some of the misconceptions about SUHAKAM and its way of work towards the promotion and protection of human rights in Malaysia:

"SUHAKAM is western-centric"

Undeniably, SUHAKAM has had its fair share of criticisms from different stakeholders in the country due to their differing perceptions and expectations of SUHAKAM. Some still hold on to the view that SUHAKAM has not lived up to their expectations while others continue to see SUHAKAM as being 'pro-NGO' or an institution that blindly follows western concepts due to its many statements and stances that were critical of the authorities or seen as challenging cultural relativism.

In reality, SUHAKAM's positions take into consideration the local contexts and are not made in silo.

Since the very beginning of its inception, SUHAKAM has built in its way of work, platforms for stakeholders' consultations on which, individuals and groups with interest are invited to provide their concerns and views on arising human rights issues as well as expectations of changes that need to be made in the country to ensure meaningful human rights progress. In conducting these consultations, SUHAKAM goes to great lengths to ensure that local individuals and groups, including CSOs of diverse backgrounds are engaged, aside from its regional and international partners. Some of the key stakeholders engaged by SUHAKAM include religious groups, women, children, indigenous peoples, persons with disabilities and many more. One example is the current initiative by SUHAKAM to improve the conditions of places of detention in Malaysia to ensure that such places meet, among others, the UN Standard Minimum Rules for the Treatment of Prisoners. Aside from persons in custody, SUHAKAM made sure that it consulted the relevant Ministries, agencies and officers involved from the start of the initiative. As a result, SUHAKAM's recommendations to the Government on this matter include not only improvements that could better protect the rights of persons in custody, but also the rights of officers to have safe, clean and healthy working environment.

Another example is SUHAKAM's promotion work to combat torture. SUHAKAM initiated the formation, and is currently part of a coalition known as the ACT4CAT Coalition². Other than SUHAKAM, members of the Coalition include the Bar Council, Suara Rakyat Malaysia (SUARAM), Amnesty International (AI), Lawyers for Liberty (LFL), Anti-Death Penalty Asia Network (ADPAN). Members of the coalition works together to advocate for Malaysia's ratification of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

² See more information about the ACT4CAT Coalition and its activities at <https://www.facebook.com/ACT4CAT/>

(UNCAT)³. The Coalition actively seeks other CSOs to join the initiative including faith-based organisations. In 2019, SUHAKAM hosted a regional dialogue on UNCAT which aimed to explore best practices of other States towards the accession and implementation of UNCAT at the domestic level. In getting wider views and perspectives on this issue, SUHAKAM invited local representatives from government agencies, civil society organisations, medical practitioners, NHRIs, academics to the dialogue to ensure the domestic context is considered.

Another example is in 2016, SUHAKAM embarked on a study on discrimination against transgender persons based in Kuala Lumpur and Selangor relating to their rights to employment, healthcare, education, housing and dignity. Discussions were conducted with various groups including faith-based and human rights organisations, as well as individuals who work with them. The report was then published in March 2019 and one of the recommendations is for this community to be able to enjoy full range of human rights without exception and discrimination.

The above are consultation examples on a plethora of human rights issues carried out by SUHAKAM and are made evident in SUHAKAM's annual reports since year 2000. The consultations conducted by SUHAKAM ensure that local views and contexts form part of the key considerations.

“SUHAKAM disrespects the Federal Constitution”

SUHAKAM abides by its founding legislation, Act 597, in undertaking its functions which includes the promotion and protection of human rights as defined in Part II of the Federal Constitution, as well as guided by the UDHR. Accordingly, SUHAKAM strives to reflect this in all its work.

Be that as it may, Section 4(1)(b) of Act 597 provides that SUHAKAM is also responsible *“to advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken”*. Based on this provision, SUHAKAM has persistently provided recommendations to the government on improvements to domestic laws to ensure that they attain the universally accepted common standard of achievement for all peoples set forth in the UDHR. Moreover, SUHAKAM has been consulted and invited by various Ministries to be in various law review committees to ensure that the human rights perspective is considered in the formulation and review of laws. Some of them include the Special Project Team on the Anti-Sexual Harassment Bill (2019), Anti-Discrimination against Women Bill, Special Committee on alternatives to mandatory death penalty. SUHAKAM is involved in many other law review committees set up by the Government.

³ The UNCAT which was adopted by the UN General Assembly on 10 December 1984, aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment; <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

In this respect, the Government of Malaysia has demonstrated strong commitment to make the necessary changes; for example, the formulation and review of the Peaceful Assembly Act 2012 (Act 736) and abolition of the Internal Security Act 1960 (Act 82). Even the supreme law of the land, the Federal Constitution of Malaysia was amended in July 2001 to include the term “gender” as a basis for non-discrimination, in line with Malaysia’s international commitment.

SUHAKAM will continue to render its assistance to the government in reforming our domestic laws to reflect the Country’s international human rights commitment, including rights categorised as non-derogable.

“SUHAKAM’s positions contradict religious teachings and the Malaysian culture”

SUHAKAM respects freedom of religion as it itself is a human right. SUHAKAM also respects that Islam is the religion of the Federation, and that other religions may be practised in peace and harmony in any part of the Federation, as provided by Article 3(1) of the Federal Constitution of Malaysia.

SUHAKAM is disturbed by recent allegations that some of its positions were seen as subtle attacks on certain faith(s). SUHAKAM reiterates that in forming its stances, it is guided by the Federal Constitution of Malaysia as well as the UDHR as allowed by Act 597.

SUHAKAM is of the view that all religions demand for justice, equality and dignity, which also form the cornerstones of the Federal Constitution of Malaysia as well as international human rights standards. On the basis of the supremacy of the Federal Constitution of Malaysia, the practice of religion must yield to the fundamental human rights protections afforded by the Constitution. In addition, the Federal Constitution makes clear in Article 75 of Part VI that *“If any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void.”*

“SUHAKAM only champions perverse matters and ignores real grassroot issues”

SUHAKAM underscores that this assumption is unfounded and blatantly false. SUHAKAM has worked on a wide range of human rights issues involving both economic, social, cultural rights as well as civil and political rights themes. In terms of complaints received for instance, between 2017-2021, SUHAKAM received a total of 4,510 complaints from all over Malaysia. Based on the complaints received, SUHAKAM investigated issues such as the right to a standard of living, work, education, health, social security, citizenship, racial discrimination, freedom of movement, expression, assembly, association, religion and many more. SUHAKAM also reaches out to communities through its Meet-the-People Session (*SUHAKAM Bersama Masyarakat*) to, among others, provide a platform for the local communities to bring to SUHAKAM’s attention existing grassroot human rights issues affecting their lives.

In addressing those thematic issues, and consistent with Article 8(1) and (2) of the Federal Constitution of Malaysia, SUHAKAM takes consideration of the lived realities of vulnerable groups and grassroot communities. They include women, children, persons with disabilities, indigenous peoples, refugees, migrants, and many others. Moreover, SUHAKAM upholds the position that all human beings, irrespective of their backgrounds, are born free and equal in worth, dignity and rights.

SUHAKAM's current Five-Year Strategic Plan 2021-2025 – that is publicly accessible in its website – shows the extensive human rights focus areas being addressed by SUHAKAM including, among others, advancing economic, social and cultural rights especially for vulnerable groups, combating xenophobia, racism and racial discrimination, and enhancing the realisation of children's rights. This, together with the fact that SUHAKAM's annual reports – that record the breadth of human rights themes addressed and vulnerable groups engaged by SUHAKAM – debunks this baseless allegation.

SUHAKAM will continue to address arising human rights issues in Malaysia without fear or favour. This will include addressing human rights matters that may be seen as unpopular by certain quarters. In addition, SUHAKAM will, if the need arises, speak on behalf of any oppressed and vulnerable communities in the country, who may, otherwise, be rendered voiceless due to political and social pressure. In this regard, SUHAKAM also underscores the need for its annual report to be debated by Parliament so that all human rights issues affecting vulnerable groups in Malaysia can be addressed effectively by the Government.

SUHAKAM has consistently adopted independent and fair positions in addressing human rights issues and while its statements are sometimes critical on some policies and actions which are inconsistent with the international human rights principles and norms, SUHAKAM's positions are always constructive in character and impelled by the need to encourage the country to move forward towards becoming a nation with exemplary human rights standards and performance.