**HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)**

**INPUT FROM SUHAKAM TO THE WORKING GROUP ON BUSINESS AND HUMAN RIGHTS ON THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN FACILITATING ACCESS TO EFFECTIVE REMEDY FOR BUSINESS-RELATED HUMAN RIGHTS ABUSES**

1. The Human Rights Commission of Malaysia (SUHAKAM) responded to the call for input by the Working Group on Business and Human Rights on the role of national human rights institutions in facilitating access to effective remedy for business-related human rights abuses with the following’s information.

**Questions and Responses**

1. **The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses**
	1. **Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods (e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?**

**Responses:** The Human Rights Commission of Malaysia Act 1999 (Act 597) was enacted by Parliament to provide for the establishment of the Human Rights Commission of Malaysia; to set out the powers and functions of such commission for the protection and promotion of human rights in Malaysia; and to provide for matters connected therewith or incidental thereto. Section 4(1)(d) of Act 597 states that one of SUHAKAM’s main functions is to inquire into complaints regarding infringements of human rights referred to in section 12. Pursuant to the mandated function, SUHAKAM has established Complaints and Monitoring Division to carry out activities that are related to that function.

SUHAKAM, therefore, are open to receive any complaints in relation to human rights infringement. However, section 12 (2) of Act 597 restricts SUHAKAM from inquiring into any complaint relating to any allegation of the infringement of human rights which is the subject matter of any proceedings pending in any court, including any appeals; or has been finally determined by any court. SUHAKAM also has to cease from inquiring into an allegation under section 12(1), as stipulated under section 12(3), should during the pendency of such inquiry the allegation becomes the subject matter of any proceedings in any court.

Once SUHAKAM received the complaints, the complaints will be assessed. The assessment of complaints involves forming a view as to whether a complaint falls within SUHAKAM’s jurisdiction and, as such, involves determining whether a matter constitutes a complaint as well as whether it concerns a matter of human rights. SUHAKAM must also determine if a complaint appears to be within its jurisdiction, whether it should be referred to another body which would be in a better position to deal with the matter. If SUHAKAM determines to accept a complaint, it must decide what action to take in relation to it, i.e. site-visit, inquiry, investigation, etc.

* 1. **What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?**

**Responses:** SUHAKAM has the power to make appropriate recommendations, such as proposing new legislation, revisions of existing legislation or new policy measures or suggested any remedies it deems necessary to the affected party or the complainants. However, SUHAKAM did not have the authority to enforce those recommendations.

Section 4(2)(b) stated that for the purpose of discharging its functions, SUHAKAM may advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken.

* 1. **Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated.**

**Responses:** Section 14 of Act 597 allows 2 types of inquiries (investigation). One is the investigative inquiry without a public hearing (closed investigation). A closed investigation is conducted mainly through correspondence, meeting, interview, site-visit, mediation and recording of authenticated statements of witnesses and receipt of documentary and other exhibits. A closed investigation may also include a ‘private/closed inquiry’. A private/closed inquiry is where the Commissioner in-charge may subpoena respondent to attend a meeting and provide a response to a complaint lodged with the Commission.

The second type of inquiry is the open or public/national inquiry. Public Inquiry is an inquiry into the specific incident which has a public interest where the Commission will appoint a panel of inquiry comprising of Commissioners to conduct a public hearing of testimonies from witnesses, whereby witnesses will be subpoenaed. National inquiry is an inquiry into a systemic human rights issue with a view to solving them through systemic means.

The obligation to respect, protect and fulfil human rights lies both on the government and private companies. Over the years, SUHAKAM has been receiving complaints involving allegations of infringements of a wide range of human rights related to business operations including the exploitation of migrant workers, employment, indigenous peoples’ rights, and environmental rights. However, SUHAKAM did not have specific categorization for the complaints on business and human rights. From 2015 to July 2017, the Commission received a total of 78 complaints related to business and human rights. Among the issues received by SUHAKAM are:

* The disputes between the employer and employee. For examples on the issues of wages, termination or alleged constructive dismissals, leaves, sexual harassments, etc.
* On the issues of worker rights, for example, the rights to a minimum wage, the rights to an identity (holding their own passport) and security, the rights to unionise, etc.
* Business activity that affected the individual or community such as the construction of highway (land acquisition and compensation), the plantation or logging activity that affected the nearby community (indigenous peoples, villagers or water catchments).
* The complaints about the inefficient of the agencies that supposed to protect worker rights such as labor office and Industrial Relations Department Malaysia.

SUHAKAM also received 103 complaints specifically on workers right from 2015 to 2018. These complaints range from minimum wage violations; forced overtime; child labour; sexual harassment; exposure to toxic substances and other extreme occupational hazards; retaliation against workers who attempt to organize; physical abuse by the employer; retention of passport; and breach of their work permit.

The following are complaints received from Migrant workers from 2015-2018:

|  |  |  |
| --- | --- | --- |
| No. | Complaints | Total |
|  | Issues with police officers or immigration officers | 17 |
|  | Seeking for help  | 9 |
|  | Late or no payment of Salary | 8 |
|  | Retention of passport by employer | 8 |
|  | Fraud agent | 6 |
|  | Request to be legalised | 5 |
|  | Abuse by employer | 2 |
|  | Working hour more than 8 hours a day | 1 |
|  | No rest | 1 |
|  | Request for compensation | 1 |

Meanwhile, the following are complaints made by local workers to SUHAKAM

|  |  |  |
| --- | --- | --- |
| No. | Complaints | Total |
|  | Late or no payment of salary | 33 |
|  | No payment of EPF or SOCSO | 10 |
|  | Termination without notice | 8 |
|  | No payment of Overtime | 4 |
|  | Enforcement of judgment made by the Industrial Court | 4 |
|  | Complaints on Labour Office | 4 |
|  | Been denied medical leave | 3 |
|  | Termination due to a mental issue | 3 |
|  | Forced to work not in job scope | 2 |
|  | Termination before due to contract | 2 |
|  | Absence of contract of service | 2 |
|  | No rest | 2 |
|  | Retrenchment | 2 |
|  | Improper Payment of salary  | 2 |
|  | Termination due to syiah | 1 |
|  | Termination due to political involvement | 1 |

* 1. **Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalised groups? If yes, what measures have been taken in this regard?**

**Responses:** SUHAKAM will try to be as much accessible to the peoples. Even though SUHAKAM only have 1 headquarters and 2 regional offices, SUHAKAM can still be reachable by email, online complaints system, social media, phone call, letter, and fax. SUHAKAM also received a complaint on behalf of the victims. Furthermore, SUHAKAM will open a mobile complaint counter during the roadshows. Apart from that, SUHAKAM also has a close working relationship with the CSOs and NGOs so that they can bring any matters for SUHAKAM’s attention.

Section 12(1) also provides that SUHAKAM may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into an allegation of the infringement of human rights of such person or group of persons.

All services provided to the complainants by SUHAKAM is on a free basis. In some cases, SUHAKAM wrote a letter to the Malaysian Bar to ask if they can provide a council on a “pro bono” basis to the complainants if they need legal advice or legal representative.

To ensure the safety of people who may be at risk of treats or intimidation, every complaint received by SUHAKAM will be treated as ‘Private and confidential’ and information given will only be used for the purpose of the inquiry. SUHAKAM also advise the complainant to lodge a police report if they felt threaten or intimidated by the perpetrator or any other parties.

* 1. **What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (e.g. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?**

**Responses:** As stated in the Act, one of the functions of SUHAKAM is to promote awareness of and provide education in relation to human rights. Among the activities included human rights campaigns, the development of human rights tools, outreach programmes, human rights awareness programmes for local university students, and engagement with local and international stakeholders.

SUHAKAM also introduced the Human Rights Award to a business enterprise that has demonstrated exemplary human rights best practices in is service delivery and business conduct. In 2016, SUHAKAM honored Mydin Mohamed Holdings Berhad with this Award for its continued efforts to train and employ PWDs, thus helping to alleviate this group from employment and economic marginalisation.

* 1. **Can your NHRI deal with alleged business-related human rights abuses with a transnational or cross-border dimension (e.g. through informal visits and exchange of information or a cooperation arrangement with counterparts in other States)?**

**Responses:** The Human Rights Commission of Malaysia Act 199 were an act to provide for the establishment of the Human Rights Commission of Malaysia; to set out the powers and functions of such commission for the protection and promotion of human rights in Malaysia. However, SUHAKAM also did receive an extraterritorial or cross-border complaint with regards to the Malaysian companies operated abroad.

On 20 October 2014, SUHAKAM received a Memorandum from Earth Rights International and representatives from Mekong River Communities from Cambodia pertaining to the development of the Don Sahong Hydropower project. The Memorandum alleged that a Malaysian company which had been appointed to build a dam along Mekong River in southern Laos had violated the human rights of the communities living along Mekong River in Vietnam, Cambodia, and Thailand. It was alleged that damming the Don Sahong endangers the Mekong’s migratory fish and impose negative impacts on the communities that rely upon them.

During the initial thought, this complaint was not within SUHAKAM’s jurisdiction because it involves a project at Cambodia and Laos. However, SUHAKAM decided to act on this case since the company that involved, in this case, was a Malaysian company and it is within SUHAKAM’s reach. SUHAKAM met with the company to discuss the allegations and obtain further information regarding the Don Sahong Hydropower Dam Project.

While on January 2017, a group of Myanmar CSOs submitted a complaint to SUHAKAM regarding the environmental degradation and human rights abuses allegedly committed by a joint-venture company (JVC) between a Malaysian company and a Myanmar company, in executing the oil palm project in Tanintharyi Township, South-eastern Myanmar. The complainant claimed that the JVC did not follow the procedure to acquire the land of the communities involved for the project by not obtaining permission from the Central Committee for the Management of Vacant, Fallow and Virgin Lands or putting up acquisition notices issued under the Myanmar Land Acquisition Act 1894. The complainant further claimed that the JVC activities have caused severe negative social and environmental impacts on four indigenous Karen villages, home to approximately 4,480 people, within the concession area and affected the livelihood of the villagers who depend on betel nut and cashew orchards. It was further claimed that the families who have lost their productive land have fallen into high levels of debt or been forced to work as day labourers with low wages.

In response to the complaint, SUHAKAM wrote to its counterpart in Myanmar and received feedback on 6 November in which the Myanmar National Human Rights Commission (MNHRC) informed that they have written to the Myanmar Ministry of Agriculture, Livestock and Irrigation, the Myanmar Investment Commission (MIC) and Tanintharyi Regional Government with a view to obtain a response.

The example above showed that SUHAKAM also tries to accommodate a complaint it received from the extraterritorial entity. SUHAKAM also will be forwarded the cases it received to the other NHRIs for a referral.

* 1. **Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?**

**Responses:** The stepped up or the idea to develop the NAP for Malaysia was started since 2014, when SUHAKAM in partnership with the UN Country Team of Malaysia (UNCT) were successful in obtaining a grant from UK Foreign and Commonwealth Office (FCO) for a research project entitled “Promoting Business and Human Rights in Malaysia for Business Success and Inclusive Growth”. The objective of the project, which was conducted over a period of 9 months (from July 2014-March 2015), was to formulate and propose a framework to the government for a National Action Plan towards the adoption and implementation of UNGP by both state and non-state actors. As part of the project, various discussions were held with regulators, businesses, government-linked corporations as well as government agencies, and a survey involving stakeholders was conducted.

In March 2015, to mark the conclusion of the research project, the Honorable Senator Datuk Paul Low Seng Kuan, Minister in the Prime Minister’s Department launched the “Strategic Framework on a National Action Plan for Business and Human Rights for Malaysia”, which was the principal outcome of the project. During the launching, the Strategic Framework was submitted to the Government of Malaysia via the Minister, who had supported SUHAKAM's proposal for a NAP for Malaysia. He had also publicly expressed his commitment, on behalf of the Government towards playing a leading role in developing Malaysia’s NAP.

Pursuant to this SUHAKAM remained active in advocating for the expeditious formulation of a NAP for Malaysia. While the NAP has yet to be materialized, SUHAKAM has continued to work closely with the office of Datuk Paul Low and submitted to him a proposed roadmap towards the development of Malaysia’s NAP on Business and Human Rights.

SUHAKAM has assisted the office of YB Datuk Paul Low Seng Kuan in preparing a Cabinet Paper to get the government’s approval to develop a NAP on Business and Human Rights for Malaysia. Ultimately, during the 6th UN Forum on Business and Human Rights 2017 in Geneva, Switzerland, YB Datuk Paul Low Seng Kuan announced that Malaysia would develop a NAP on BHR. Malaysia is one of the countries in Southeast Asia, apart from Indonesia, Thailand and the Philippines, that has demonstrated its commitments to develop such a NAP. The development of the NAP on BHR would demonstrate Malaysia’s leadership in advancing sustainable socio-economic development and protecting and promoting human rights and fundamental freedoms in the region.

From 2014 to 2018, SUHAKAM managed to organize RTDs on Promoting Business and Human Rights in Malaysia in several States including, Putrajaya, Kuala Lumpur, Sabah, Sarawak, Penang, Terengganu, and Johor. The RTDs were held with the objectives to introduce the UNGPs to relevant stakeholders related to business activities in Malaysia and to identify and promote good practices on the implementation of the UNGPs. The RTDs were attended by stakeholders including, State and Federal agencies, businesses, academicians, and CSOs.

The May 2018 Malaysian elections saw a new administration in government led by the Pakatan Harapan coalition. The development of Malaysia’s NAP now falls under the auspices of YB Datuk Liew Vui Keong, Minister in the Prime Minister’s Department (Law & Parliamentary Affairs) supported by the Legal Affairs Division (BHEUU).

In 24 June 2019, the Human Rights Commission of Malaysia (SUHAKAM) and the Legal Affairs Division (Bahagian Hal Ehwal Undang-Undang, BHEUU), Prime Minister’s Department and United Nations Development Programme (UNDP) ; in collaboration with Law Faculty, National University of Malaysia (Universiti Kebangsaan Malaysia, UKM), the Malaysian Centre for Constitutionalism and Human Right (MCCHR), the Institute of Malaysian and International Studies (IKMAS) organised a National High Level Dialogue (NHLD) on Business and Human Rights: “Towards a Malaysian National Action Plan (NAP) on Business and Human Rights”. During that dialogue, Minister in the Prime Minister’s Department (Law & Parliamentary Affairs), YB Datuk Liew Vui Keong announced that Malaysia would start a process to develop a National Action Plan on Business and Human Rights.

1. **Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses**
	1. **What are the most critical challenges and limitations (e.g., legal, practical, or financial) that your NHRI has experienced in facilitating access to effective remedy in business-related human rights abuses? How could these challenges or limitations be overcome?**

**Responses:** SUHAKAM's agreed that getting compensation is not necessarily an adequate remedy for the victims. There is a form of remedies provided by NHRIs being a state-based non-judicial mechanism. The ability to conduct an inquiry and receiving complaints is a very valuable form of remedy. NHRIs is a platform where they can bring in witness, procure evidence, and similar to the quasi-judicial mechanism. however, one of the shortcomings for NHRIs is the lacked enforcement power[[1]](#footnote-1). SUHAKAM, for example, have the power to make appropriate recommendations, such as proposing new legislation, revisions of existing legislation or new policy measures or suggested any remedies it deems necessary to the affected party or the complainants. However, SUHAKAM did not have the authority to enforce those recommendations.

SUHAKAM treated all complaints received equally, although for some cases they were sometimes given a priority depending on the severity of the complaints. However, the only different in business related complaints and other types of complaints were the perpetrators in business related complaints often involved a non-state actor such as individuals and companies.

SUHAKAM did not have any enforcement power nor the power to visit government or private business premises without prior notice. However, in some cases, SUHAKAM seeks assistant from other enforcement agencies to enter private business premises. For example, when SUHAKAM received a complaint about the private drug rehabilitation center, SUHAKAM managed to enter the said premises with assistance from the National Anti-drugs Agency (AADK). SUHAKAM also have visited the factories, plantations, and few others business premises during its inquiry works.

Sometimes, when a complaint does not fall within SUHAKAM’s jurisdiction or could be more effectively or expeditiously dealt with by another appropriate body, SUHAKAM may refer the complaint to/or advise the complainant to contact the said relevant body. Referrals may be direct or indirect. A direct referral is one where SUHAKAM passes on the complaint to the relevant body and advises the complainant accordingly. An indirect referral is one in which SUHAKAM provides relevant contact details to the complainant, so that they may pursue the alternative avenue themselves.

SUHAKAM also may request feedback to a complaint from the respondent. SUHAKAM’s letter should summarise the complaint or attach a copy of the complainant’s letter/statement. If the original letter of complaint is clear, legible and comprehensive, or a signed statement has been obtained, it may be sufficient to simply send it as an attachment to SUHAKAM’s letter. If it is considered inappropriate to send a copy of the complaint, SUHAKAM’s letter should include a clear and objective summary of the allegations, to enable the respondent to provide a reasonable response for the purposes of SUHAKAM’s investigation of the matter. SUHAKAM may put forth specific questions and require the production of particular documents from the respondent.

For this purpose, SUHAKAM has the power to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as SUHAKAM thinks necessary or desirable to procure or examine (Section 14(1)(a)); to require that the evidence, whether written or oral, of any witness be given on oath or affirmation, such oath or affirmation is that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorised in that behalf by the Commission an oath or affirmation to every such witness (Section 14(1)(b)); to summon any person residing in Malaysia to attend any meeting of SUHAKAM to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession.

1. **Good practices, innovations, and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses**
	1. **Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?**

**Responses:** Since its establishment, SUHAKAM has received various complaints and memorandums from indigenous communities alleging various forms of human rights violations. In response to these, SUHAKAM conducted investigations into specific cases, carried out field studies, held dialogues with the relevant communities, roundtable discussions with the State Government and other relevant agencies as well as private enterprises indicated in these complaints. Among the complaint received by SUHAKAM was regarding the encroachment of the indigenous people’s land by private companies. SUHAKAM is of the view that a problem of this magnitude could not be overcome by using piecemeal approaches or addressed on a case by case basis and thus decided to conduct a National Inquiry into the Land Rights of indigenous peoples in Malaysia. It was also the aim of the Inquiry to create and promote more public awareness of the indigenous peoples’ rights to land and their way of life. In addition to creating public awareness, the Inquiry is seen as a major empowering platform for the indigenous communities, thereby mobilizing themselves towards protecting their customary land. The National Inquiry Report contains a number of recommendations for the consideration and follow-up actions of the Government, both by the Executive and Legislative, where appropriate.

Among the alarming findings during the Inquiry is that many companies who appeared before the Panel did not understand their corporate responsibility in respecting human rights. Most Government agencies dealing with companies and development were also unaware of the UN Guiding Principles on Business and Human Rights.

* 1. **Can you identify any innovative steps taken by your NHRI in overcoming various challenges and limitations faced in dealing with complaints concerning business-related human rights abuses?**

**Responses:** SUHAKAM recognises the importance of building good relationships across a company and with external groups, in expanding the recognition of human rights values within the company. In so doing, SUHAKAM continues to explore various avenues through our partnership to promote greater respect and compliance of human rights in the business operations of Felda Global Ventures Holdings Berhad (FGV) and the Federal Land Development Authority (FELDA) through an MoU signed in March 2017. The parties actively engaged with each other to discuss and review current policies to ensuring their compliance and respect for human rights principles.

Apart from that, a roundtable discussion on “FGV’s Social Compliance and Human Rights Initiative” was organised by FGV with the support of SUHAKAM on 20 April 2018 to discuss initiatives FGV has taken to address the concerns raised by a Wall Street Journal article in 2016 about human rights violations in FGV plantations. The roundtable was part of FGV’s initiatives to develop and improve its sustainability and human rights policies and procedures.

Engaging stakeholders strategically and effectively which mean long-term commitments at all stages of SUHAKAM’s work is recognised as fundamental towards achieving greater responsibility to respect human rights.

1. Prof. Dato’ Dr. Aishah Bidin, Former Commissioner of SUHAKAM input during the 2018 UN Forum on Business and Human Rights. [↑](#footnote-ref-1)