

The Human Rights Commission of Malaysia (SUHAKAM)'s Responses to OHCHR Questionnaire on "The role of prevention in the promotion and protection of human rights".

- 1. a. Please describe legislative, judicial, administrative and other measures aimed at prevention of human rights violations and abuses in place at the domestic level, both with regard to direct prevention (aiming to prevent violations from occurring by reducing the risk factors that cause violations) and indirect prevention (aimed at ensuring non-recurrence through investigation and addressing causes of violations as well as accountability).**

The Federal Constitution of Malaysia provides for the protection of basic human rights standards, which includes children. These include liberty of the person (Article 5) and prohibition of slavery and forced labour (Article 6). At the national level, legislative measures that exist to prevent human rights violations and abuses can be found in Acts and laws on issues that either have a human rights component or relate to certain groups of society whose rights may be at risk of being violated.

An example of this would be child rights. Malaysia has a number of laws that not only aim at preventing the violations of child rights, but also to ensure the care and rehabilitation of children, such as the Child Act 2001, which was enacted to fulfil its obligations after acceding to the Convention on the Rights of the Child in 1995. The Act has established a protective legal environment for children in the country and has given rise to several other initiatives to protect children from violence, abuse, neglect and exploitation. An example of this is how incest has been criminalized by the Penal Code (Act 574), while the Domestic Violence Act 1994 (Act 521) protects the child against violence within the family.

Other child-related legislation in Malaysia includes Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Child Care Centres Act 1984, Children and Young Persons (Employment) Act 1966, and the Education Act 1996.

With regard to women's rights, in addition to CEDAW, other applicable international conventions, laws and national policies related to women's rights in Malaysia are as follows:-

- (i) National Policy on Women 1989;
- (ii) Amendment to Article 8(2) of the Federal Constitution in 2001 to prohibit any gender discrimination;
- (iii) Second National Policy on women and the Women's Development Action Plan in August 2009;
- (iv) Malaysia's Domestic Violence Act 1994 was recently amended to include psychological and emotional injuries. It is also now an offence for a husband to coerce his wife into having sexual intercourse by the use of or threat of violence or death.
- (v) The third goal of the MDGs which aims to promote gender equality and empower women. The other MDGs related to women's issues are MDGs 4: reduce child mortality and MDGs 5: Improve maternal health.

In Malaysia, the role of women in society is being continuously highlighted in the country's long-term development plans and has seen positive developments. For

example, the quota to have at least 30% of women in decision-making positions was recently extended to the private sector.

While there is no specific legislation on older persons, there exist policies and frameworks that address the rights of older persons, which include:

- i. National Health Policy for Older Persons 2008
- ii. National Policy and Plan of Action for Older Persons 2011
- iii. National Advisory and Consultative Council for Older Persons

Relevant laws in place that protect the rights of older persons on the other hand are:

- i. Employment Act 1955: Employment (Part-Time Employees) Regulations 2010
- ii. Minimum Retirement Age Act 2012
- iii. Domestic Violence Act 1994
- iv. Care Centre Act 1993

Other laws that prevent human rights violations and/or abuses include the Persons with Disabilities Act 2008 and the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2010.

There have been instances where the judiciary has played an important role in setting precedents for human rights standards in Malaysia. One of the most notable cases was one that concerned the rights of women, involving Ms. Noorfadilla Ahmad Saikin, who applied for and obtained employment as a temporary teacher ('GSTT'). After receiving her placement, she was asked to attend a briefing on the terms of her service of employment. At this briefing, she was questioned as to whether she was pregnant. When she admitted that she was three months pregnant, her placement was withdrawn. Ms Noorfadilla lodged a complaint to the Human Rights Commission of Malaysia (SUHAKAM), which inquired into the case. However, when the case was brought to the court, the Commission ceased its investigation, pursuant to Section 12(2)(a) of the Human Rights Commission of Malaysia Act 1999. (Section 12(2) (a) states that the Commission shall not inquire 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.)

Nevertheless, the Commission held a watching brief in her case and made representation to the court on the Government's obligations under CEDAW, to which Malaysia is party. As a result, the Shah Alam High Court ruled that revocation of an offer of employment as a temporary teacher made to a woman on the grounds of her pregnancy was unconstitutional and breached Malaysia's commitment and obligations as a State Party to CEDAW.

With regard to administrative measures aimed at preventing human rights abuses and violations, the Commission found that certain Government agencies had taken the initiative to protect its employees from violations of their rights at the workplace. For instance, the Ministry of Women, Family and Community Development has produced an 'ethics' code, which includes regulations banning violence, discrimination and also all forms of sexual harassment.

b. Please describe any good practices in the implementation of these measures, as well as any challenges, which have been faced.

With regard to perceived good practices that assist in the prevention of human rights in Malaysia, examples include poverty eradicating initiatives whereby in 2010, the Government introduced the Intensive Skills Training for Single Mothers (I-KIT) and Women Entrepreneur Incubator (I-KEUNITA) which aims to eradicate poverty among women.

In 2007, the Government launched the eKasih project, which is a national poverty databank to provide aid to the poor, used by relevant government agencies for fair distribution of assistance and to avoid overlapping aid programmes. This database assists in addressing poverty by offering programs such as vernacular skills, which equips those in need with basic skill sets to ensure employment opportunities needed for an adequate standard of living. Malaysia's eKasih project was awarded with first prize in the United Nations Public Service Awards in 2012.

Furthermore, under the Ministry of Women, Family and Community Development, *Talian Nur* was launched in 2007, which is a hotline link to enable early intervention for victims of domestic violence. Additionally, a nationwide alert system known as National Urgent Response Alert (NUR Alert) was launched in January 2011. NUR Alert coordinates child protection functions at the interagency level and is activated when a child under the age of twelve is reported missing.

While there are legislative measures in place to promote and protect human rights in Malaysia, there exist many challenges in ensuring the prevention of human rights abuses and violations.

One instance of such challenges relates to trafficking in persons. Although the Anti-Trafficking in Persons Act came into force in 2008 and was later amended and renamed the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act in 2010, one of the main challenges in preventing and addressing human trafficking is the lack of capacity of law enforcement authorities, who do not receive sufficient training to work with victims. Also, poor investigation procedures do not take into account the best interests of victims.

In addition, there appears to be a lack of cohesion amongst the branches of the State. According to the preliminary findings by the United Nations Special Rapporteur on Trafficking in persons, especially women and children during a visit to Malaysia in February 2015, it was found that

The rate of prosecution of cases for all types of trafficking remains low, while convictions related to trafficking for labour exploitation are even rarer. Moreover, there is concern about the lengthy judicial process and the lack of speedy judicial trials for trafficking cases.¹

¹ Maria Grazia Giammarinaro, 'Trafficking in persons: UN Human Rights expert urges Malaysia to focus efforts on victims', Preliminary Findings, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15631&LangID=E> (accessed 7 March 2015)

The Commission is also of the view that there is a lack in cooperation with all relevant stakeholders, especially non-governmental organisations (NGOs) who should be viewed as key players in assisting the Government in preventing human rights abuses and violations. For example, with regard to trafficking in persons, the Commission is of the opinion that the Government must realise the benefits from working together with NGOs, due to the fact that they operate at the grass roots level and would be able to provide first hand vital information and support, especially with regard to victim identification, protection and safe repatriation/reintegration of those trafficked.

c. Please describe how such measures encompass all branches of the State (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local.

Measures to prevent human rights violations are essentially encompassed in the Federal Constitution of Malaysia, whereby the Constitution protects 'Fundamental Liberties' in Articles 5 to 13. The Federal Constitution guarantees certain fundamental liberties, such as:

- i. Personal liberty (Article 5);
- ii. Prohibition against slavery and forced labour (Article 6);
- iii. Protection against retrospective criminal laws and repeated trials (Article 7);
- iv. Equality before the law and the rights to equal protection of the law (Article 8);
- v. Prohibition of banishment and freedom of movement (Article 9);
- vi. Freedom of speech, assembly and association (Article 10);
- vii. Freedom of religion (Article 11);
- viii. Rights in respect of education (Article 12); and
- ix. Right to property (Article 13).

The Federal Constitution is viewed and practiced as the supreme law of the land, and this is enshrined in Part VI, Article 75 of the Federal Constitution, concerning relations between the Federation and the States, which states 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.'*²

This was reflected in the case whereby three transgender women had been arrested several times for violating a State enactment that prohibits men from wearing women's attire or posing as a women in the state of Negeri Sembilan. However, on 7 November 2014, the Court of Appeal declared that the provision by the Negeri Sembilan Islamic religious enactment, which made it an offence for Muslim males to dress and behave as women was unconstitutional due to the fact that it violated Articles 5, 8, 9 and 10 of the Federal Constitution. This unanimous ruling meant that similar laws enacted by the states and the Federal Territory are also null and void.

² Federal Constitution of Malaysia 1957, <http://www.commonlii.org/my/legis/const/1957/6.html> (accessed 8 March 2015).

2. a. What action-oriented policies, practices and strategies to prevent human rights violations and abuses have been put in place at the national level, including the establishment of independent national institutions, national human rights action plans and any early warning mechanisms?

At the national level, there are several mechanisms that exist to prevent and monitor violations of human rights in Malaysia, which include the Human Rights Commission of Malaysia (SUHAKAM) and also the Government of Malaysia's plan to develop a National Human Rights Action Plan (NHRAP).

The Human Rights Commission of Malaysia (SUHAKAM)

The Human Rights Commission of Malaysia (SUHAKAM) was established by an Act of Parliament in 1999, under the Human Rights Commission of Malaysia Act 1999 (Act 97). The main functions of the Commission are:

- i. To promote awareness of and provide education in relation to human rights;
- ii. To advise and assist the Government in formulating legislation and procedures and recommend the necessary measures to be taken;
- iii. To recommend to the Government regarding accession to international human rights instruments; and
- iv. To inquire into complaints regarding infringements of human rights.

With the goal of achieving greater fulfilment of civil, cultural, economic, political and social rights, the Commission makes it a point to monitor the human rights impact of the Government's law reforms; the exercise of freedom of assembly; and conditions in places of detention. Additionally, it works to ensure the rights of vulnerable groups such as children, women, older persons, Indigenous Peoples, persons with disabilities, migrant workers, refugees, asylum seekers and detainees.

In 2014, the Commission received 717 complaints from all branches, Kuala Lumpur (409), Sabah (279) and Sarawak (29), whereby 15 were in the form of memorandums. From this, 448 cases were accepted under its jurisdiction and the Commission succeeded in resolving 195 cases and is following up on the remaining 253. The complaints were mainly on fundamental liberties and the right to security; arrests and detention; rights of workers and migrant workers, refugees and asylum seekers; right to adequate standard of living, and the Murum dam.

Since its inception, SUHAKAM has raised its concerns over the limitations of its founding law which have bearing on its independence and effectiveness.

SUHAKAM's Act was amended twice in 2009, among others, to make more transparent the selection and appointment process of the Members of the Commission. The amendments were in response to the impending move by the ICC in 2008 to downgrade SUHAKAM to 'B' Status.

The need to further strengthen SUHAKAM's mandate, power and resources remain an important agenda for SUHAKAM. To this end, SUHAKAM is of the view that further amendments are pivotal to increase SUHAKAM's effectiveness, clarify ambiguous provisions and bring the Act fully in line with the Paris Principles.

In May 2014, SUHAKAM submitted its proposal on amendments to the SUHAKAM Act, to the Government, which includes recommendations relating to the following:

- i. Selection of Members of Commission by Parliament
- ii. Types of Commissioners' Appointment
- iii. Term of the Commission
- iv. Power to Visit Places of Detention
- v. Power to Undertake Mediation
- vi. Consulting the Commission on Formulation and Amendment of Laws
- vii. Funds of the Commission
- viii. The Relations with the Judiciary (*Amicus Curiae*)
- ix. Debate of the Commission's Annual Reports/Special Reports

National Human Rights Action Plan (NHRAP)

Other than that, since 2001, the Commission had proposed the idea of a Malaysian National Human Rights Action Plan (NHRAP), as a roadmap to safeguard and enhance the promotion and protection of human rights in Malaysia. In 2006, the Commission submitted a proposal paper on the NHRAP, outlining its research on the standard preparatory processes of developing a NHRAP based on recommendations from the United Nations, along with examples of Plans adopted by other countries in the Asia-Pacific region.

In 2010, the Government had decided to develop Malaysia's first NHRAP and had appointed the Legal Affairs Division of the Prime Minister's Department as the focal agency for the formulation of the NHRAP.

A Roundtable Discussion (RTD) with Civil Society Organisations (CSOs) and the Government was held by the Commission in 2011, for the purpose of discussing the NHRAP along with its proposal to conduct baseline studies. In 2013, the Commission was invited in its capacity as the national human rights commission to be a member of the NHRAP Steering Committee. The First Steering Committee Meeting was held on 2 December 2013 and was attended by representatives of various Government agencies, SUHAKAM and the academia. In November 2014, the Government initiated a consultation exercise with civil society to further obtain feedback on the proposed implementation of the NHRAP.

The Government is currently in the process of developing the NHRAP, which is scheduled to be completed by the end of 2016. Although the Commission is pleased with the fact that the Government is taking progressive steps towards making the NHRAP a reality, it has recommended that the development process of the NHRAP be expedited.

Action-Oriented Plans and/or Strategies

Action-oriented strategies concerning the protection of human rights may also be found within specific thematic human rights issues under individual government ministries. For example, in Malaysia, the Department of Welfare adopted three policies/plan of actions that essentially concern rights of the child and persons with disabilities, which are:

- i. National Child Protection Policy

- ii. National Child Policy
- iii. Disabled Persons Policy

It should also be noted that the Government has also taken a serious stand on women's rights, which can be seen through the 2009 National Policy on Women and the Action Plan for Women, which is a key document for the empowerment of women and which highlights a number of important issues for women such as poverty, violence, health, religion, culture, decision making roles, politics, etc.

These policies clearly define the areas of interest, objectives, principles, and strategies, which act as a guideline for the Malaysian Government's efforts and decision-making in upholding the rights of the marginalized. While the Commission commends the Government's efforts and commitment in addressing the rights and needs of vulnerable groups, the Commission is of the opinion that fruitful results would depend on an effective, time-bound implementation of the said policies. Further, the Commission is of the view that the Government of Malaysia should strive to engage in greater collaborative efforts with all relevant stakeholders such as non-governmental organisations in order to achieve a successful implementation of the policies.

b. Please describe how national human rights institutions contribute to prevention of human rights violations.

With regard to the Human Rights Commission of Malaysia, the Human Rights Commission of Malaysia Act (Act 597) serves as the legal framework for the tasks that SUHAKAM is mandated to do. The Commission is mandated to perform the following functions, among others:

- i. Power to receive and investigate complaints
- ii. Power to subpoena information and examine witnesses
- iii. Power to enter and inspect premises
- iv. Mandate to educate and conduct research with regard to human rights
- v. Power to advise/make recommendations to Government and/or Parliament on laws, regulations, policies or programs/international treaties

The Commission believes that an important aspect of the prevention of human rights violations stems from activities such as awareness-raising and also monitoring.

As such, part of the Commission's initiatives includes the "SUHAKAM Bersama Masyarakat Program", which is an outreach program that primarily targets suburban and rural communities who have little understanding of the Commission's work and human rights in general. The theme is usually general in nature, focusing on the Commission's role and functions as a National Human Rights Institution as well the general idea behind human rights and how it affects their daily lives.

The Commission also regularly conducts human rights talks and training for public officials, especially the police force, People's Volunteer Corps (RELA), the Prison Department and also local authorities in order to sensitize enforcement officials to the incorporation of human rights in their daily tasks. For example,

the Commission has been working with the Prison Department to draft a permanent human rights curriculum for prison officials.

As mentioned above, visits to and monitoring of detention centres are among the Commission's responsibilities under the Human Rights Commission of Malaysia Act 1999. In 2013, the Commission carried out a total of 30 visits to detention centres. The Commission carried out periodic visits to monitor the physical state of a detention centre, its facilities, rehabilitation programmes, treatment, diet and healthcare provisions and the wellbeing of personnel. Case-based visits are carried out when complaints are received, and focus on issues brought to the Commission's attention.

The Commission is also regularly involved in the monitoring of public assemblies. Freedom of assembly in Malaysia is frequently controversial. To date, the Commission has carried out seven public inquiries into alleged violations of citizens being denied their right to freedom of assembly and have also carried out 37 monitoring of public assemblies from 2011-2014.

The Commission has observed that while the Government has not been very forthcoming in promoting the right to freedom of peaceful assemblies, on the pretext of maintaining public order and security, positive developments have been witnessed. In November 2011, the Government tabled and passed the Peaceful Assembly Act, which only requires organisers to notify the police within 10 days before the date of the assembly, instead of having to apply for police permits, which was mandatory previously.

Indeed, in 2012, the Commission observed that in the subsequent public assemblies, there were instances when the actions and operations of the police did reflect a shift in thinking. However, the Commission is of the view that much more needs to be done by the police in facilitating such gatherings, managing the crowd and ensuring the exercise of the right to assemble in an orderly and peaceful manner.

c. In those States that have established a national preventive mechanism under the Optional Protocol in the Convention against Torture, please provide information on any lessons learnt regarding prevention of torture that may also apply to prevention of other human rights violations.

Malaysia has yet to become party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and therefore the establishment of a national preventive mechanism under its Optional Protocol is not applicable at this point in time. In this regard, SUHAKAM has repeatedly called upon the Government to accede to the remaining six core international human rights treaties, to which Malaysia has yet become party, including CAT.

- 3. a. Please describe what policies and processes are in place at the national level to collect, maintain and analyse statistical records on the situation of human rights in the country, in order to monitor the human rights situations and inform the formulation of prevention strategies and programmes; and please describe any good practices and the main challenges in this regard.**

Currently, Malaysia does not have a specific policy or process that solely concentrates on collating and analyzing data to gauge the situation of human

rights in the country. However, it was found that on an individual basis, government agencies tasked with dealing with specific issues that consist of human rights elements, have produced statistical records of their own. An example of this would be the National Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) which have separate statistical cases of trafficking in persons and also the smuggling of migrants.

**STATISTIC CASES FOR
TRAFFICKING IN PERSONS**

FROM 28.02.2008 UNTIL 30.11.2012

| BIL | CASES | YEAR | | | | | TOTAL |
|-----|-----------------------------------------------|------|------|------|------|------|-------|
| | | 2008 | 2009 | 2010 | 2011 | 2012 | |
| 1 | TOTAL CASE | 17 | 151 | 132 | 117 | 174 | 591 |
| 2 | TOTAL NO OF ARRESTED | 20 | 217 | 195 | 159 | 206 | 797 |
| 3 | TOTAL NO OF VICTIM (INTERIM PROTECTION ORDER) | 85 | 956 | 870 | 447 | 1005 | 3363 |
| 4 | TOTAL NO OF VICTIM (PROTECTION ORDER) | 29 | 206 | 471 | 220 | 309 | 1235 |

**STATISTIC CASES FOR
SMUGGLING OF MIGRANTS**

FROM 15.11.2010 UNTIL 30.11.2012

| BIL | CASES | YEAR | | | | | TOTAL |
|-----|-----------------------------|------|------|------|------|------|-------|
| | | 2008 | 2009 | 2010 | 2011 | 2012 | |
| 1 | TOTAL CASES | | | 3 | 22 | 44 | 69 |
| 2 | TOTAL NO OF ARRESTED | | | 2 | 31 | 56 | 89 |
| 3 | TOTAL SMUGGLING OF MIGRANTS | | | 18 | 516 | 495 | 1029 |

It should be noted that statistics collected only cover certain thematic issues that have human rights elements and are not essentially collected on the basis of understanding better the human rights situation in Malaysia.

The Commission believes that one of the challenges in preventing human rights abuses and violations is the lack of disaggregated data on various social and human rights issues, which are crucial in order to gauge not only the actual human rights situation in Malaysia, but also the trends and changes in human rights abuses and violations. The Commission is of the view that statistical

collation and analysis is vital for the purpose of relevant and effective policy formulation and monitoring.

b. Please describe how statistical collection ensures the inclusion of all persons and groups.

The Commission is of the opinion that there remains room for improvement with regard to the collation and organisation of national statistics on issues that concern human rights. An example of this would be with regard to the Commission's research on the right to education for children with learning disabilities. One of the findings and/or recommendations in the report was as such:

'While recognizing that registration of persons with disabilities is voluntary, the Commission sees the need for consolidated data and statistics, especially on children with learning disabilities to ensure they too have equal access to education, both at the primary and secondary level.

It should be emphasised that the collection of data on children with disabilities should be systemized, synchronized and shared among the government agencies, in particular the Department of Social Welfare, the Ministry of Education and the Ministry of Health.³

The Commission believes that it is important to ensure that the data collected is able to accurately reflect the potential scale of the problem in order for the Government to identify appropriate areas of concern.

4. What measures have been taken to promote a human rights situation among the population and to increase the level of human rights awareness in your country, including among public officials?

The Commission has noted that individual government agencies have carried out awareness raising programs and consultations of their own, with regard to their own respective thematic human rights issues. For example, Trafficking in Persons is a critical issue in Malaysia. Hence, the Malaysian Government had formulated a five year National Action Plan on Trafficking in Persons (2010-2015), under which one of the main objectives was to organize awareness campaigns amongst all relevant stakeholders, as a part of its preventive measures. Efforts under the Plan included:

- i. **Eliciting public cooperation** - the public was encouraged to report to the police and other relevant authorities if they were aware of any instances of human trafficking.
- ii. **Mobilisation of NGOs** – Five specific NGOs were appointed to MAPO and contributed to the prevention of trafficking in persons by sharing ideas and expertise, as well as participating in the organization of public awareness campaigns.

³ Human Rights Commission of Malaysia, *Right to Education for Children with Learning Disabilities – Focusing on Primary Education*, p. 49.

However, the Commission believes that there remains room for improvement with regard to the extent of awareness raising programs and promotional activities concerning human rights situation carried out by the Government.

5. a. How have partnerships with civil society been strengthened to harness their experience and expertise to promote and protect human rights?

As mentioned above, the Commission believes that the Government of Malaysia could improve in strengthening the level of engagement with civil society organisations (CSOs), especially with regard to including CSOs in meaningful consultations and/or advisory councils. An example of this would be the formulation of Malaysia's first National Human Rights Action Plan. The Commission noted that CSOs were not included in the Steering Committee and that the role of CSOs were assumed to be taken on by the Commission instead.

The Commission views engagement with CSOs as a vital aspect in the promotion and protection of human rights. It is a common practice for the Commission to not only engage with Government agencies, but also with CSOs on all human rights issues through various consultations, meetings and roundtable sessions. The Commission has found that it is necessary for CSOs to be present in order to gain a better understanding of their experiences and for a balanced perspective of the real challenges that Malaysia faces with regard to the realisation of human rights on the ground.

b. What roles and actions can and do civil society and NGOs take to prevent human rights violations?

The Commission believes that the struggle to prevent human rights violations is one that requires collaborative efforts amongst all stakeholders, while placing the Government as the main actor.

CSOs are key grassroots representatives that will be able to provide valuable input to the Government with regard to the actual human rights situation on the ground, which will enable the Government to formulate effective, progressive and relevant policies that could improve the protection and promotion of human rights in the country. The Commission has also noted the important role of CSOs in the process of raising awareness on human rights issues in Malaysia, especially with regard to educating the general public on what rights they are even entitled to in the first place.

The Commission is also of the view that the importance of CSOs lies in their ability to act as a pressuring mechanism to ensure that the Government carries out their duties effectively. This is especially due to the advancement of social media, whereby it is much easier now for CSOs to bring to light incidents or practices of human rights abuses and violations in the country, which then will be brought to the attention of the Government.

6. What measures and procedures have been put in place to ensure effective follow-up to recommendations regarding your country issued by international or regional human rights mechanisms, and which may contribute to preventing human rights violations?

Universal Periodic Review

Malaysia's first and second UPR took place in February 2009 and October 2013 respectively. Currently, Malaysia is at the follow-up stage of its second UPR cycle.

For both UPR cycles, the Human Rights Commission of Malaysia (SUHAKAM) had been equally active throughout all the stages of the UPR process, including before and after the reviews in Geneva.

SUHAKAM has been informed by the Ministry of Foreign Affairs, which has been designated as the coordinating body for Malaysia's engagement with the UPR process, that for the follow-up to the second UPR cycle, relevant Government agencies are currently in the process of developing action plans for the implementation of accepted recommendations that fall under their purview. SUHAKAM hopes such action plans would be developed in consultation with stakeholders including CSOs and would facilitate the full and effective implementation of the recommendations.

The Commission learned through its nationwide consultations that many of the Government and CSO representatives, especially at the State level, were unaware of the UPR process, what it entailed, and the recommendations that were put forth to Malaysia. Despite the lack of awareness on the UPR process at the State level, SUHAKAM found that most of the participants of the consultations were receptive to the idea of engaging with the UPR process in their respective areas of work.

Recommendations by the Commission were put forth to the Government in order to play a more active role in ensuring all stakeholders, especially Government agencies at the state level, are not only aware of the UPR but are also directly involved in the implementation of the UPR recommendations in order to pave the way forward for its effective implementation and subsequently, the advancement of human rights in Malaysia as a whole.

International Treaties

Malaysia is party to three of the international conventions, which are the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against women (CEDAW) and also the Convention on the Rights of Persons with Disabilities (CRPD).

With regard to CEDAW, the Malaysian government submitted its combined initial and second report to the Committee on the Elimination of Discrimination against Women in 2006. In May 2006, the Committee released recommendations for the Malaysian government based on the government's report and the appearance of its representatives before the Committee. These recommendations are in the CEDAW Committee's Concluding Comments.

Malaysia's third and fourth periodic reports to the CEDAW Committee were due in August 2004 and August 2008 respectively. Upon the delay of the third report, the CEDAW Committee requested that a combined third and fourth report be submitted in 2008. However, the Malaysian government has not submitted its combined third and fourth report to the CEDAW Committee.

Follow-up measures by the Government with regard to international human rights mechanisms include the establishment of a 'Technical Committee on International Instruments: CEDAW, CRC and CRPD', in which the Commission attended a meeting held on 18 August 2014. The objectives of the meeting were:

- i. To inform and ascertain views from government related agencies on acceptance of recommendations made by non-governmental organisations (NGOs) to withdraw the remaining reservations to CEDAW, CRC and CRPD; and
- ii. To obtain views on the feasibility of Malaysia acceding to the Optional Protocol on CEDAW, CRC and CRPD.

One of the resulting decisions of the Meeting was to establish specific sub-committees to review in detail the proposed withdrawal of Malaysia's reservations to CEDAW, CRC and CRPD, respectively.

7. a. What legislative, judicial, administrative and other measures are in place to provide victims of human rights violations by State actors and abuses by non-State actors with an effective remedy?

SUHAKAM finds that many of Malaysia's laws that deal with human rights issues or address certain marginalised or disadvantaged groups include provisions that provide for remedy.

For example, the Anti-Trafficking of Persons and Anti-Smuggling of Migrants Act 2007 provides for remedies in Part III, which outlines the Trafficking in Persons Offences, Immunity, Etc. For example, Article 25 essentially protects victims of trafficking from criminal prosecution, in which:

'A trafficked person shall not be liable to criminal prosecution in respect of –

- a) his illegal entry into the receiving country;*
- b) his period of unlawful residence in the receiving country; or*
- c) his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering the receiving country'.⁴*

Other than that, judicial measures that provides victims of human rights abuses with an effective remedy can be seen in the Domestic Violence Act 1994, whereby Article 10 (1) states that:

'Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court hearing a claim for compensation may award such compensation in respect of the injury or damage or loss as it deems just and reasonable.'⁵

⁴ Laws of Malaysia, Anti-Trafficking in Persons Act 2007 (Act 670), <http://www.hsph.harvard.edu/population/trafficking/malaysia.traf.07.pdf> (accessed 8 March 2015).

⁵ Laws of Malaysia, Domestic Violence Act 1994 (Act 521), <http://www.agc.gov.my/Akta/Vol.%2011/Act%20521%20-%20Domestic%20Violence%20Act%201994.pdf> (accessed 10 March 2015).

The Act also provides that the court may accord victims of human rights abuses with counselling, whereby Article 11 (1) states that:

'The court may, in an application in which a protection order is sought, instead of or in addition to issuing a protection order, make an order to refer the parties concerned to a conciliatory body.

(1A) The conciliatory body referred to in subsection (1) shall submit a report together with its recommendation to the court within one month from the date of referral.

*(1B) The court may, after considering the report and recommendation submitted to it under subsection (1A), order that one or more parties be referred to rehabilitative therapy, psychotherapy or such other reconciliatory counselling as it deems appropriate.'*⁶

b. What measures are in place to ensure that all can access such remedies in practice?

The Commission has noted that some Acts have strived to provide clarification of the application of the law. An example of this would be the Domestic Violence Act 1994, in which Article 1(2) states that:

*'This Act shall apply to all persons in Malaysia.'*⁷

Also, the Child Act 2001's preamble also provides that every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any status, which essentially based on the four core principles of the Convention on the Rights of the Child (CRC).

Strictly speaking, the law dictates that there is nothing in the Act that could potentially prevent any particular group from accessing remedies. However, in practice, the Commission is aware that while the application of laws in Malaysia, whether national or international, is and should not be limited to a certain group of people, it is different in practice.

For example, a report by the Child Rights Coalition Malaysia, found that there were several groups of marginalized and disadvantaged children who continue to experience on-going discrimination, which are indigenous children, children with disabilities, PGBTIQ persons, refugee, asylum-seeking, stateless and irregular migrant children.⁸

⁶ Ibid., <http://www.agc.gov.my/Akta/Vol.%2011/Act%20521%20-%20Domestic%20Violence%20Act%201994.pdf> (accessed 10 March 2015).

⁷ Ibid., <http://www.agc.gov.my/Akta/Vol.%2011/Act%20521%20-%20Domestic%20Violence%20Act%201994.pdf> (accessed 10 March 2015).

⁸ Child Rights Coalition Malaysia, *Universal Periodic Review Submission*, Report for the Universal Periodic Review, <http://wao.org.my/file/file/Child%20Rights%20Coalition%20Malaysia%20UPR%202013%20Submission.pdf> (accessed 10 March 2015)

8. What contribution do international and regional organisations make to the prevention of human rights violations? What additional roles could they play?

The Commission is of the view that international and regional organisations play an important role in setting a widely-agreed upon minimum standard of human rights that all States should attempt to achieve, through international instruments such as the Universal Declaration of Human Rights.

In this sense, international organisations may also play the role of monitoring the progress of Governments with regard to their efforts in ensuring the prevention of human rights violations in their respective countries. The Commission also believes that Governments and relevant stakeholders, alike will benefit from engaging with international organisations through capacity building initiatives.

For instance, the Commission is regularly invited to attend workshops and trainings held by the Asia Pacific Forum of NHRIs (APF), which acts to advance human rights in the Asia Pacific by facilitating and providing training, networking and resource sharing in order to improve national human rights institutions in the region.

Another example of this is the Commission's membership to the Commonwealth Forum of National Human Rights Institutions (CFNHRI), which is an informal body of Commonwealth national human rights institutions (NHRIs) and other national accountability mechanisms having a human rights mandate.

SUHAKAM took its position as the Chair of CFNHRI in May 2013 and will be expected to continue till 2015. The nomination took place at the 25th ICC Annual Meeting in Geneva, March 2012.

Activities that SUHAKAM has carried out/will be carrying out as Chair of CFNHRI are:

- i. Submission of CFNHRI Communique to the Commonwealth Heads of Government Meeting (CHOGM), concerning human rights issues on the ground and recommendations for the attention and consideration of CHOGM, November 2013.
- ii. CFNHRI Annual meeting in Geneva in March 2014.
- iii. Mediation and Negotiation Training for National Human Rights Institutions, 11-15 August 2014, Kuala Lumpur.
- iv. CFNHRI Capacity Building Programme on Early and Forced Marriage and Sexual Violence in Conflict in May 2015 in Rwanda.
- v. CFNHRI Biennial meeting in Malta in November 2015.