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## **Written submission by the Human Rights Commission of Malaysia (SUHAKAM)\***

### **Note by the Secretariat**

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Human Rights Commission of Malaysia (SUHAKAM),\*\* reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

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\* National human rights institution with “A”-status accreditation from the Global Alliance of National Human Rights Institutions.

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## Annex

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## Mid-term Report by the Human Rights Commission of Malaysia (SUHAKAM) on Malaysia's Second Universal Periodic Review

### I. Introduction

1. The Human Rights Commission of Malaysia (SUHAKAM) was established in 1999 by an Act of Parliament entitled the Human Rights Commission of Malaysia Act 1999.<sup>1</sup> SUHAKAM is a member of the Global Alliance of National Human Rights Institutions (GANHRI), formerly known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), and is accredited 'A' status under the GANHRI accreditation system.
2. As a national human rights institution (NHRI), SUHAKAM plays an active role in Malaysia's UPR process ever since the first UPR cycle.
3. Malaysia's second UPR took place in October 2013, during which Malaysia received 232 recommendations from 104 United Nations Member States. Of the 232 recommendations, Malaysia accepted 150.<sup>2</sup> Malaysia has classified the 150 accepted recommendations into three categories, as follows:
  - i. Recommendations accepted in full, which indicate Malaysia's support for the spirit and the principles underpinning those recommendations as well as its ability to implement them. Malaysia accepted in full 113 recommendations.
  - ii. Recommendations accepted in principle, which indicate that Malaysia is taking steps towards achieving the objectives of the recommendations but disagrees with the specific actions proposed; or that certain recommendations have already been implemented or are in the process of being implemented; or that Malaysia is not in a position to implement at this juncture. Malaysia accepted in principle 22 recommendations.
  - iii. Recommendations accepted in part. The Government did not provide any definition for the recommendations accepted in part, but provided specific clarifications for all the respective recommendations accepted in part. Malaysia accepted in part 15 recommendations.<sup>3</sup>
4. This Mid-term Report seeks mainly to provide an overview of Malaysia's implementation of the 150 recommendations accepted by Malaysia, as of 25 April 2016. Comments on the implementation of certain recommendations not accepted by Malaysia are also reflected in the Mid-term report, where relevant.
5. The Mid-term Report is an independent submission of SUHAKAM and reflects SUHAKAM's views based on its own deliberations and monitoring of Malaysia's second UPR exercise. In preparing the Mid-term Report, SUHAKAM has also taken into consideration information obtained through two series of consultations with stakeholders, organised by SUHAKAM at various locations in Malaysia in 2014 and 2016.

<sup>1</sup> Human Rights Commission of Malaysia Act 1999, Act 597, Laws of Malaysia. Available at <http://www.suhakam.org.my/about-suhakam/akta-suhakan/akta-597/>. (Accessed 22 April 2016).

<sup>2</sup> Report of the Working Group on the Universal Periodic Review: Malaysia, A/HRC/25/10/Add.1 (4 March 2014).

<sup>3</sup> *ibid.*

## II. Status of Implementation of the 150 Recommendations Accepted by Malaysia

6. For purposes of organisation and structure, SUHAKAM has clustered the recommendations accepted by Malaysia into a number of categories. SUHAKAM's comments regarding the implementation of the accepted recommendations are provided according to such categories, as reflected in paragraphs 7 to 69 below.

### 2.1 International Obligations

#### *Accession to International Human Rights Treaties*

7. Malaysia accepted in principle, recommendations to move forward in acceding to the six core international human rights conventions, to which it is not yet a party, as well as the Rome Statute of the International Criminal Court. SUHAKAM observes that the Government is not making much progress in this regard.

8. The Government has established an inter-agency standing committee (IASC) on human rights to carry out studies on the feasibility of Malaysia's accession to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>4</sup> IASC's work in this regard commenced since as early as 2013. However, information regarding the progress or outcomes of such studies has yet to be made publicly available. To date, SUHAKAM does not see any significant evidence to suggest that the Government is moving forward in acceding to the aforesaid international instruments.

#### *Withdrawal of Reservations*

9. Malaysia did not accept any of the recommendations to withdraw its existing reservations to the three international human rights treaties to which it is a party, namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on Persons with Disabilities (CRPD).

10. The Government, through its Sub-Committee on Reservations to CRC, had a discussion on the feasibility of withdrawing its reservation to Article 28(1)(a) of CRC on 25 November 2014. SUHAKAM has been informed that the matter is still being studied by several Government ministries and agencies.

11. In addition, the Ministry of Women, Family and Community Development (MWFCD) is in the process of carrying out a series of meetings to review the Government's position on its reservations to Articles 15 and 18 of CRPD.

#### *State Party's Report to Treaty Bodies*

12. Malaysia accepted in full, the recommendation to submit its State party's report to the CEDAW Committee and CRPD Committee. Malaysia did not receive any recommendation to submit its State party's report to the CRC Committee.

13. Malaysia has yet to submit its overdue State party's report to the CEDAW Committee. According to the Government, its combined third, fourth and fifth reports to

<sup>4</sup> Shaila Koshy, 'Setting Our Human Rights Record Straight', The Star Online, 1 December 2013, <http://www.thestar.com.my/news/nation/2013/12/01/setting-our-human-rights-record-straight/> (accessed 22 April 2016).

the CEDAW Committee are currently being reviewed by the Attorney General's Chambers before submission to the CEDAW Committee. In drafting the report, the Government consulted SUHAKAM for views and feedback.

14. Malaysia is also due to submit its second, third and fourth State party's reports to the CRC Committee. The draft report has been prepared by the Government and in the preparation of the draft, SUHAKAM and relevant civil society organisations (CSOs) were consulted.

15. Malaysia is due to submit its State party's report to the CRPD Committee. The report is being prepared by MWFC. Consultations have been held with SUHAKAM and relevant CSOs in this regard.

#### *Engagement with Special Procedures*

16. Malaysia accepted in full, recommendations to accept as many requests as possible, of Special Procedures to visit Malaysia. Since Malaysia's second UPR, the following Special Procedures have conducted an official visit to Malaysia at the invitation of the Government:

- i. Special Rapporteur on the Right to Food in December 2013
- ii. Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health in November 2014
- iii. Special Rapporteur on the Trafficking in Persons especially Women and Children in February 2015

17. The Government's decision to invite the aforesaid Special Rapporteurs all within a time frame of less than two years is commendable. SUHAKAM hopes that the Government will extend invitations to other UN Special Procedures.

## **2.2 Civil and Political Rights**

### *Freedom of Expression*

18. The recommendations to repeal the Sedition Act were accepted in principle by Malaysia. However, although in 2012, the Government had announced its intention to repeal the Sedition Act,<sup>5</sup> there has been an alarming escalation in arrests and interrogations of individuals including Members of Parliament, State Assemblymen, academicians, journalists and university students, under the Sedition Act since 2014.

19. In addition, several amendments to the Sedition Act 1948 were passed by the Parliament in 2015.<sup>6</sup> SUHAKAM is of the view that the amendment to Section 3(a)(i) of the Act,<sup>7</sup> which removes "hatred and contempt or exciting disaffection against the Government" from the definition of "seditious tendency" – thus decriminalising criticism

<sup>5</sup> The Guardian, 'Malaysia to Repeal Repressive Sedition Law', The Guardian, 12 July 2012, <http://www.theguardian.com/world/2012/jul/12/malaysia-repeal-repressive-sedition-law> (accessed 22 April 2016).

<sup>6</sup> Yuen Meiking, Hemananthani Sivanandam and Martin Carvalho, 'After 12-hour debate, amendments to Sedition Bill passed with voice vote', The Star Online, 10 April 2015, <http://www.thestar.com.my/news/nation/2015/04/10/sedition-bill-amendments-passed-12-hour-debate/> (accessed 22 April 2016).

<sup>7</sup> Sedition (Amendment) Act 2015 (Act A1485), Laws of Malaysia, [http://www.federalgazette.agc.gov.my/outputaktap/20150604\\_A1485\\_BI\\_Act%20A1485.pdf](http://www.federalgazette.agc.gov.my/outputaktap/20150604_A1485_BI_Act%20A1485.pdf) (accessed 22 April 2016).

of the Government – will encourage better public scrutiny and constructive discourse on Government's policies and practices, leading to a more transparent and accountable Government. However, SUHAKAM regrets that other amendments to the Act have included the removal of discretionary powers of the court in sentencing, and provisions to bar individuals charged under Section 4 from leaving the country. Taking into account all of the amendments, SUHAKAM is of the view that the Sedition Act as amended by the Sedition (Amendment) Act 2015 may pose an even greater threat to freedom of expression in the country, and maintains that it should be repealed.

20. Malaysia accepted in principle, the recommendation to take steps to raise the standards of press freedom. SUHAKAM does not see much improvement in the promotion of press freedom in the country. On the contrary, there have been a number of occasions since 2015 when the Government had denied public access to certain news portals.<sup>8</sup> For instance, The Edge Weekly and The Edge Financial Daily were suspended for three months in 2015.<sup>9</sup> It was reported that according to the Ministry of Home Affairs, the two publications were 'prejudicial or likely to be prejudicial to public order, security or likely to alarm public opinion or is likely to be prejudicial to public and national interest'.<sup>10</sup> In February 2016, access to The Malaysian Insider, an online news portal, was blocked by the Malaysian Communications and Multimedia Commission (MCMC). MCMC, through a press statement,<sup>11</sup> indicated that The Malaysian Insider had published contents that were in breach of Section 233 of the Communications and Multimedia Act 1998 relating to improper use of network facilities or network service. In the same breath, MCMC reminded news portals not to publish articles that have not been verified.<sup>12</sup> While SUHAKAM recognises that the media has a duty to provide information in a sensible, ethical and responsible manner, it calls upon the Government to adopt a more progressive approach in dealing with media censorship in safeguarding the peoples' right to freedom of expression and information as enshrined in Article 19 of the UDHR.

#### *Freedom of Assembly*

21. Malaysia accepted in full, the recommendation to continue its efforts to further enhance the exercise and enjoyment of the right to freedom of peaceful assembly. SUHAKAM observes that since the enactment of the Peaceful Assembly Act in 2012, there has been an overall positive shift in the attitude of the authorities towards the right to peaceful assembly in the country. SUHAKAM welcomes the announcement by the Inspector General of Police in November 2014 that the Standard Operating Procedure (SOP) of the Federal Reserve Unit on crowd control and public order will be reformed to meet the requirements of the Peaceful Assembly Act 2012 and international standards.<sup>13</sup> While incidences of human rights violations by the authorities in handling public

<sup>8</sup> Yiswaree Palansamy, 'Home Ministry to restrict media access to 'ethical' practitioners', Malay Mail Online, 28 March 2016, <http://www.themalaymailonline.com/malaysia/article/home-ministry-to-restrict-media-access-to-ethical-practitioners> (accessed 22 April 2016).

<sup>9</sup> Malay Mail Online, 'The Edge daily and weekly suspended three months over 1MDB reports', Malay Mail Online, 24 July 2015, <http://www.themalaymailonline.com/malaysia/article/the-edge-daily-and-weekly-suspended-three-months-over-1mdb-reports> (accessed 22 April 2016).

<sup>10</sup> *ibid.*

<sup>11</sup> Malaysian Communications and Multimedia Commission, Press Statement 'MCMC Sekat Laman The Malaysian Insider', 25 February 2016, <http://www.mcmc.gov.my/Media/Press-Releases/MCMC-Sekat-Laman-The-Malaysian-Insider.aspx> (accessed 22 April 2016).

<sup>12</sup> *ibid.*

<sup>13</sup> Human Rights Commission of Malaysia (SUHAKAM), 2014 Annual Report, Kuala Lumpur, Human Rights Commission of Malaysia, 2015, p. 57.

assemblies still occur from time to time, SUHAKAM is of the view that on balance, there is notable progress in the enjoyment of the right to assemble peacefully in Malaysia.

#### *Freedom of Religion*

22. The recommendations to continue efforts to combat all forms of discrimination particularly religious discrimination were accepted in principle by Malaysia. In 2014, a Racial and Religious Hate Crimes Bill was proposed by the National Unity Consultative Council (NUCC) to outlaw hate speech.<sup>14</sup> To date, the aforesaid proposed law has yet to be enacted.

#### *Arbitrary Detention*

23. Malaysia accepted in full, the recommendation to improve domestic legislation in order to guarantee the right of detainees to a fair trial. In this regard, SUHAKAM regrets the passing of legislation that contravene fundamental principles of human rights, namely the amendments to the Prevention of Crime Act in 2014<sup>15</sup> and the Prevention of Terrorism Act in 2015,<sup>16</sup> which have revived provisions for detention without trial and allow for the denial of an individual's rights to legal representation and to a fair trial as well as to be presumed innocent until proven guilty.

#### *Death Penalty*

24. In November 2015, it was reported that the Attorney General of Malaysia would propose to the Cabinet to review the imposition of the mandatory death penalty for drug-related offences<sup>17</sup> so that judges would have the power to exercise discretion in sentencing a convicted person. SUHAKAM believes that this positive development will bring Malaysia's position on the issue closer in line with many countries that have abolished the mandatory death sentence.

#### *Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment*

25. Malaysia accepted in principle, the recommendation to strengthen measures to prevent and eliminate all forms of ill-treatment, including torture. One of the amendments to the Child Act 2001, which were passed by the House of Representatives in April 2016, is the removal of provision for corporal punishment for child convicts.<sup>18</sup> While SUHAKAM commends this move by the Government, it regrets that caning remains a form of disciplinary action for students in schools.

<sup>14</sup> Malay Mail Online, 'Harmony laws will protect race, religion, royalty, NUCC tell critics', Malay Mail Online, 14 July 2014, <http://www.themalaymailonline.com/malaysia/article/harmony-laws-will-protect-race-religion-royalty-nucc-tells-critics> (accessed 22 April 2016).

<sup>15</sup> Prevention of Crime (Amendment and Extension) Act 2014, Act A1459, Laws of Malaysia, [http://www.federalgazette.agc.gov.my/outputaktap/20140401\\_1459\\_BI\\_AKTA%20A1459-POCA\(BI\).pdf](http://www.federalgazette.agc.gov.my/outputaktap/20140401_1459_BI_AKTA%20A1459-POCA(BI).pdf) (accessed 22 April 2016).

<sup>16</sup> Prevention of Terrorism Act 2015, Act 769, Laws of Malaysia, [http://www.federalgazette.agc.gov.my/outputaktap/aktaBI\\_20150604\\_Act769\(BI\).pdf](http://www.federalgazette.agc.gov.my/outputaktap/aktaBI_20150604_Act769(BI).pdf) (accessed 22 April 2016).

<sup>17</sup> Yiswaree Palansamy, 'End of Malaysia's mandatory death sentence on the horizon', Malay Mail Online, 17 November 2015, <http://www.themalaymailonline.com/malaysia/article/end-of-malaysias-mandatory-death-sentence-on-horizon> (accessed 22 April 2016).

<sup>18</sup> Dina Murad, 'Suhakam welcomes Child Act amendments, but wants legal marrying age raised to 18', The Star Online, 18 April 2016, <http://www.thestar.com.my/news/nation/2016/04/18/suhakam-welcomes-amendments-to-child-act/> (Accessed 22 April 2016).

## 2.3 Economic, Social and Cultural Rights

### *Poverty Eradication and Raising Standard of Living*

26. Malaysia accepted in full, all recommendations to continue efforts to eradicate poverty and elevate the standard of living of Malaysians. The Government continues to employ its 1Azam Programme to alleviate poverty and to uplift the living standards of low-income households. The 1Azam Programme comprises four main components, which focus on securing job placements, providing micro-credit financing, promoting the setting up of small service-based businesses and providing training for the establishment of agro-based enterprises, respectively. In September 2014, the Government introduced the Beyond 1Azam Programme<sup>19</sup> aimed at assisting successful 1Azam participants to further increase their income by equipping them with advanced business and entrepreneurial skills. Other Government programmes that seek to assist the lower income group, include the following:

- i. The 1Malaysia people's aid scheme (BR1M), which takes the form of cash disbursements for low income households.
- ii. The Department of Social Welfare financial assistance schemes offered to single mothers, the elderly, persons with disabilities, poor families and disaster victims.

27. However, SUHAKAM has learned that with the imposition of the Goods and Services Tax (GST) at the rate of 6 percent as well as the increase in highway toll charges and public transportation fares in 2015, among other things, a large fraction of the population especially the low and middle income groups, are facing difficulties coping with the increase in the cost of living. The rising cost of living is one of the issues most frequently raised by the public at SUHAKAM's more recent outreach programmes such as roadshows and meetings with communities.

28. Recommendations to continue addressing income inequality were also accepted in full by Malaysia. According to the 11th Malaysia Plan 2016-2020, the Government will be focusing on enhancing the wellbeing of the bottom 40 percent income group by, among other things, raising their income and wealth ownership, addressing the increasing cost of living and strengthening delivery mechanisms for supporting the bottom 40 percent households.<sup>20</sup>

29. While the Government has made good progress in eradicating poverty and raising the standard of living of Malaysians, SUHAKAM observes that little is being done to address the economic hardships faced by vulnerable and disadvantaged groups who are not Malaysian citizens including migrant workers, refugees and stateless persons, the majority of whom have income-levels below the poverty line.

### *Right to Education*

30. Malaysia accepted in full, the recommendation to continue with successful measures in the field of education. SUHAKAM observes that the Government has, for decades, given significant priority towards improving its education system and promoting greater access to quality education for Malaysians. In 2013, the Government adopted the Malaysia Education

<sup>19</sup> Government Transformation Programme, *2014 Annual Report*, Putrajaya, Prime Minister's Department, 2014, p. 75.

<sup>20</sup> Economic Planning Unit (EPU), *Eleventh Malaysia Plan 2016-2020*, Putrajaya, Prime Minister's Department, 2015, p. 3-13.



Blueprint 2013-2025,<sup>21</sup> which aims at transforming the education system into one that will equip students with the education, skills and values necessary to enable them to succeed in the face of an increasingly competitive global environment. SUHAKAM hopes that the Blueprint will be implemented effectively so as to ensure that the goals are achieved meaningfully. In addition, the Government has, throughout the years, allocated a large fraction of its annual budget to the Ministry of Education, which is responsible for the development of the education system.

31. Malaysia accepted in full, several recommendations to implement a gender perspective in the education system. SUHAKAM is not aware of any official programme initiated solely by the Government to promote a gender perspective in the education system. However, SUHAKAM works together with the Government, especially through the Sultan Idris University of Education, to provide training to prospective school teachers on human rights principles including the need to apply a gender perspective in schools. SUHAKAM observes that in general, there are no notable gender-biased practices in schools. However, the Government acknowledges that in recent years, girls are consistently outperforming boys in schools and boys are more likely to drop out, resulting in a disproportionate ratio of enrolment between boys and girls, especially in the later stages of school.

32. The recommendations to address the shortage of teachers in rural and remote areas were also accepted in full by Malaysia. The Government does not appear to acknowledge the shortage of teachers in rural and remote areas. The Government however recognises the shortage of Science, English and male teachers as well as the shortage of special education needs teachers or specialists such as psychologists, speech therapists and audiologists. The Government has indicated its plans to address these shortages by, among other things, raising the profile of the teaching profession to attract more high-performers and qualified individuals to undertake a teaching profession.

33. In addition, Malaysia accepted in full, recommendations to facilitate enrolment of students from low-income families in higher education programmes by providing access to financial assistance. The Government has in place several programmes that provide financial assistance to qualified students who wish to pursue higher education. Three of such programmes are as follows:

- i. The National Higher Education Fund (PTPTN) provides loans to eligible students at higher learning institutions. For 2016, the Government has committed to allocating a total of 5 billion Malaysian Ringgit in loans for undergraduates under the National Higher Education Fund.<sup>22</sup>
- ii. The Public Services Department also has a Sponsorship Programme to assist students enrolled in institutions of higher learning. In 2016, the Public Services Department implemented a new sponsorship model which provides financial assistance to students, mostly in the form of loans that are convertible into

<sup>21</sup> Ministry of Education Malaysia, Malaysia Education Blueprint 2013-2025 (Preschool to Post-Secondary Education). Available at [http://passthrough.fw-notify.net/download/450905/http://planipolis.iiep.unesco.org/upload/Malaysia/Malaysia\\_Blueprint.pdf](http://passthrough.fw-notify.net/download/450905/http://planipolis.iiep.unesco.org/upload/Malaysia/Malaysia_Blueprint.pdf) (accessed 22 April 2016).

<sup>22</sup> The Star Online, 'Budget 2016 revision: full text of PM's speech', *The Star Online*, 28 January 2016, <http://www.thestar.com.my/news/nation/2016/01/28/budget-2016-revision-full-text-of-speech/> (accessed 22 April 2016).

scholarships if certain criteria are met. Such financial assistance are channeled through the following programmes:

- a. National Sponsorship Programme
  - b. Engineering special programme in Japan, Korea, France and Germany
  - c. Local Degree Programme
  - d. Dermasiswa B40 Programme – targeted at low income groups
  - e. Bursary Programme
  - f. Post-Bursary Programme.<sup>23</sup>
- iii. For 2016, the MyBrain15 Programme, which is an initiative of the Ministry of Education, will offer 15,000 scholarships for students pursuing a master's degree and 5,000 scholarships for PhD students.<sup>24</sup>

34. SUHAKAM recognises that commendable efforts have been made by the Government to enhance the education system for Malaysian citizens as a whole. However, SUHAKAM notes with concern the difficulties faced by certain vulnerable or disadvantaged groups in accessing formal and quality education. Such groups include indigenous children, children with disabilities, migrant children, refugee children and stateless children.

#### *Right to Health*

35. Malaysia accepted in full, almost all recommendations to continue efforts to promote greater access to healthcare. The Government has undertaken measures to further enhance access to healthcare. Since 2010, the Government has introduced the 1Malaysia Clinics, which are located mainly in housing areas and offer basic medical services at a fee of 1 Malaysian Ringgit for Malaysian citizens and 15 Malaysian Ringgit for non-citizens, with a view to improving access to healthcare for the low income groups. In 2014, 51 new 1Malaysia Clinics were established bringing the total to 307 1Malaysia Clinics nationwide.<sup>25</sup> Other facilities provided by the Government are the 1Malaysia Mobile Clinics and the Flying Doctor Services, which promote access to healthcare in rural and remote areas. According to the 11th Malaysia Plan, which covers the period from 2016-2020, the following strategies will be adopted towards achieving universal access to quality healthcare in the country:

- i. Enhancing support for targeted groups, especially those from low-income households as well as indigenous peoples.
- ii. Improving system delivery by reviewing and formulating health legislation and by intensifying coordination between Government agencies and the private sector.
- iii. Expanding capacity to enhance accessibility by developing new facilities and upgrading existing ones.
- iv. Intensifying collaboration with the private sector and NGOs to promote greater health awareness.<sup>26</sup>

<sup>23</sup> The Sun Daily, 'PSD introduces new sponsorship model', *The Sun Daily*, 5 April 2016, <http://www.thesundaily.my/news/1751233> (accessed 22 April 2016).

<sup>24</sup> The Borneo Post Online, 'Idris: 9,010 postgraduate students accept MyBrain15 scholarship offers', *the Borneo Post Online*, 25 February 2016, <http://www.theborneopost.com/2016/02/25/idris-9010-postgraduate-students-accept-mybrain15-scholarship-offers/> (accessed 22 April 2016).

<sup>25</sup> Economic Planning Unit (EPU), p. 4-6.

<sup>26</sup> Economic Planning Unit (EPU), p. 4-11.

36. Malaysia also accepted in full, recommendations to continue taking measures to combat HIV infections. In December 2015, the Government launched its National Strategic Plan on Ending AIDS 2016-2030,<sup>27</sup> which seeks to chart the way forward in achieving the vision of zero new infections, zero discrimination and zero AIDS related deaths. SUHAKAM has found, through its own programmes pertaining the rights of people living with HIV, that the level of awareness on HIV-related issues, such as mode of transmission, among people especially from the rural areas of the States of Sabah and Sarawak, is very low. SUHAKAM hopes that the Strategic Plan will effectively address this lack of awareness.

37. The recommendation to take necessary steps to ensure accessibility of sexual and reproductive health services in Government facilities was also accepted in full by Malaysia. The Government, through its Health Clinics and the Nur Sejahtera Clinics of the National Population and Family Development Board, provides sexual and reproductive health services such as pregnancy test, subfertility treatment, screening and treatment for sexually transmitted infections, breast cancer screening, human papillomavirus (HPV) vaccination and counselling.

38. While noting the many laudable efforts by the Government to improve access to quality healthcare, SUHAKAM expresses its concern regarding the Government's decision to increase the medical fees for non-citizens beginning 2016<sup>28</sup> as it will have a serious and negative effect on access to healthcare for migrant workers especially those involved in low-skilled labour who may not have the financial means to obtain medical treatment, owing to their low and, at times, irregular wages. In this regard, SUHAKAM calls upon the Government to review this decision, and echoes the recommendation by the Special Rapporteur on the Right to Health, following his mission to Malaysia in December 2014, to ensure that non-citizens, in particular undocumented migrants, refugees and asylum seekers, can afford to access public healthcare, and consider exempting them from the increase in fees.

## 2.4 Vulnerable/Marginalised Groups

### *Women*

39. Malaysia accepted in full, recommendations to continue efforts to promote the empowerment and rights of women. To this end, the Government has put in place numerous programmes and initiatives, including the following:

- i. The adoption of the National Action Plan to Empower Single Mothers 2015-2020, which seeks primarily to provide economic empowerment, enhance the social wellbeing and improve research and development for single mothers.
- ii. The introduction of the Career Comeback Grant, which provides incentives for employers to implement programmes to recruit and retain women who have been on career breaks. This is part of the Government's efforts to raise participation of women in the workforce.

<sup>27</sup> Ministry of Health Malaysia, National Strategic Plan on Ending AIDS 2016-2030. Available at [http://www.moh.gov.my/images/gallery/Report/MalaysiaNSPEA2016-20302.3\(Final\\_27Nov\)\\_printed%20version.pdf](http://www.moh.gov.my/images/gallery/Report/MalaysiaNSPEA2016-20302.3(Final_27Nov)_printed%20version.pdf) (accessed 22 April 2016).

<sup>28</sup> Loh Foon Fong, 'Medical feed for non-citizens to increase by 70%', *The Star Online*, 26 October 2015, <http://www.thestar.com.my/news/nation/2015/10/26/medical-fees-for-noncitizens-to-increase-by-70/> (accessed 22 April 2016).

- iii. An annual 90-day awareness raising campaign to address violence against women.
- iv. The Introduction of the 1Malaysia Support for Housewives programme aiming at creating jobs for low-income housewives and providing social security to housewives.
- v. The continuation of the Single Mother Skill Incubator Programme (I-Kit), the Women Entrepreneurship Incubator Programme (IkUnita) and Azam Niaga, which provide entrepreneurial skills training to promote economic empowerment of women.

40. The recommendation to take measures to increase the percentage of women in decision making positions in the private sector was also accepted in full by Malaysia. The Government has continued to strengthen the Women Directors' Programme to bolster the policy to have at least 30 percent women in decision-making positions in the corporate sector by 2016. However, in May 2015, the Prime Minister indicated that Malaysia was behind its target in this regard with women occupying only 16 percent of the boards of public companies and 10.3 percent in listed companies.<sup>29</sup>

41. Malaysia accepted in part, the recommendation to further strengthen legal provisions to effectively protect women who are victims of domestic violence including marital rape. According to the Ministry of Women, Family and Community Development, 3,343 cases of domestic violence were reported between January and August 2015.<sup>30</sup> While acknowledging that Section 375A of the Penal Code makes it an offence for a man to cause hurt or fear of death or hurt to his wife or any other person to have sexual intercourse with his wife, SUHAKAM notes that Section 375 of the Penal Code does not categorise non-consensual sex between a married couple as rape.

#### *Children*

42. Malaysia accepted in full, the recommendation to continue strengthening efforts to promote and protect the rights of children in Malaysia. In April 2016, the Parliament passed amendments to the Child Act 2001 with a view to making it more in line with the CRC and according greater protection to children. Among the amendments include the abolition of corporal punishment and the introduction of community service for child convicts as well as increased penalties for offences involving child negligence by parents or guardians. The amendments also provide for the establishment of a National Council for Children, the functions of which include advising the Government on children-related issues as well as developing programmes and strategies to raise awareness on the rights and dignity of a child. SUHAKAM is pleased to note that the amendments incorporate provisions for the inclusion of child representatives in the membership of the proposed Council. However, SUHAKAM is concerned that the amendments do not abolish caning in primary and secondary schools, and have omitted any specific provision on child pornography. In spite of Malaysia's accession to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2012, there are currently no specific penal laws in Malaysia to address holistically the issue of child pornography.

<sup>29</sup> The Borneo Post Online, 'PM: Malaysia on right track to achieve 55 pct women labour participation', *The Borneo Post Online*, 9 May 2015, <http://www.theborneopost.com/2015/05/09/pm-malaysia-on-right-track-to-achieve-55-pct-women-labour-participation/> (accessed 22 April 2016).

<sup>30</sup> The Borneo Post Online, '3,343 domestic violence cases reported in first eight months of this year – Rohani', *The Borneo Post Online*, 2 October 2015, <http://www.theborneopost.com/2015/10/02/3343-domestic-violence-cases-reported-in-first-eight-months-of-this-year-rohani/> (accessed 22 April 2016).

43. In February 2015, the Government adopted a Plan of Action on Child Online Protection with a view to providing greater protection to children against the potential threats and dangers arising from their activities in cyberspace.<sup>31</sup>

44. Malaysia accepted in part, recommendations to address child, early and forced marriage. The occurrence of child and early marriage is not uncommon in the country. Under civil law, the legal age for marriage for both men and women is 18 years, but a girl who has attained the age of 16 years may be married through authorisation granted by the State Chief Minister. Under Syariah law, the minimum legal age for marriage for Muslim men is 18 years, whereas for Muslim girls, it is 16 years. Syariah law allows Muslims to enter into marriage at a younger age with the consent of the parents and permission from the Syariah court. At the moment, SUHAKAM is unaware of any move by the Government to review such laws to prohibit child and early marriage. Noting that the Minister of Women, Family and Community Development had, in February 2016, acknowledged that child, early and forced marriage was a violation of human rights,<sup>32</sup> SUHAKAM hopes that the Government would intensify its efforts to raise awareness on the potential and likely detriments of child and early marriage.

#### *Persons with Disabilities*

45. Malaysia accepted in full, recommendations to take steps to improve access to education for persons with disabilities including access to inclusive education settings. According to the Malaysia Education Blueprint 2013-2025, the Government aims to have 75% of students with special needs enrolled in inclusive programmes by 2025.<sup>33</sup> In this regard, the Ministry of Education has projected, in its report to the National Council of Persons with Disabilities dated 8 May 2014, that in 2014, 20 percent of students with special needs would enrol in inclusive education programmes, and that the percentage would increase to 30 percent in 2015.<sup>34</sup> The Annual Report of 2014 regarding the implementation of the Malaysia Education Blueprint 2013-2025 states that in 2014, 10,700 or 18.4 percent of 58,006 registered students with special needs are in inclusive education programmes.<sup>35</sup> The report also indicates that the number of schools offering such programmes have increased from 1,742 schools in 2013 to 2,798 schools in 2014.<sup>36</sup>

<sup>31</sup> The Sun Daily, 'Plan of action on child online protection ready for implementation', *The Sun Daily*, 24 March 2015, <http://www.thesundaily.my/news/1364135> (accessed 22 April 2016).

<sup>32</sup> YB Dato' Sri Rohani Abdul Karim, Speech during Child, early and Forced Marriage Exhibition 'Girls' Voices- Speaking Out Against Child Marriage', 25 February 2016, [http://www.kpwkm.gov.my/en/speech?p\\_p\\_id=XY\\_CMS\\_MULTI\\_WAR\\_xycmsportlet\\_INSTANCE\\_I2dd&p\\_p\\_lifecycle=2&p\\_p\\_state=exclusive&p\\_p\\_mode=view&p\\_p\\_cacheability=cacheLevelPage&\\_XY\\_CMS\\_MULTI\\_WAR\\_xycmsportlet\\_INSTANCE\\_I2dd\\_primKey=24701&\\_XY\\_CMS\\_MULTI\\_WAR\\_xycmsportlet\\_INSTANCE\\_I2dd\\_cmd\\_ajax=get\\_file&\\_XY\\_CMS\\_MULTI\\_WAR\\_xycmsportlet\\_INSTANCE\\_I2dd\\_fileName=YBM+Child+Marriagev4+1+\(media\).pdf&\\_XY\\_CMS\\_MULTI\\_WAR\\_xycmsportlet\\_INSTANCE\\_I2dd\\_articlePK=24701&\\_XY\\_CMS\\_MULTI\\_WAR\\_xycmsportlet\\_INSTANCE\\_I2dd\\_jspPage=%2Fhtml%2Fxy%2Fcms%2Fview\\_multi\\_cms\\_detail.jsp](http://www.kpwkm.gov.my/en/speech?p_p_id=XY_CMS_MULTI_WAR_xycmsportlet_INSTANCE_I2dd&p_p_lifecycle=2&p_p_state=exclusive&p_p_mode=view&p_p_cacheability=cacheLevelPage&_XY_CMS_MULTI_WAR_xycmsportlet_INSTANCE_I2dd_primKey=24701&_XY_CMS_MULTI_WAR_xycmsportlet_INSTANCE_I2dd_cmd_ajax=get_file&_XY_CMS_MULTI_WAR_xycmsportlet_INSTANCE_I2dd_fileName=YBM+Child+Marriagev4+1+(media).pdf&_XY_CMS_MULTI_WAR_xycmsportlet_INSTANCE_I2dd_articlePK=24701&_XY_CMS_MULTI_WAR_xycmsportlet_INSTANCE_I2dd_jspPage=%2Fhtml%2Fxy%2Fcms%2Fview_multi_cms_detail.jsp) (accessed 22 April 2016).

<sup>33</sup> Ministry of Education Malaysia, *Malaysia Education Blueprint 2013-2025 (Preschool- Post-Secondary Education)*, Putrajaya, Ministry of Education Malaysia, 2013, p. 4-18.

<sup>34</sup> Human Rights Commission of Malaysia (SUHAKAM), *The Right to Education for Children with Learning Disabilities-Focusing on Primary Education*, Kuala Lumpur, Human Rights Commission of Malaysia (SUHAKAM), 2015, p. 39.

<sup>35</sup> Ministry of Education Malaysia, *Malaysia Education Blueprint: Annual Report 2014*, Putrajaya, Ministry of Education Malaysia, 2015, p.57.

<sup>36</sup> *ibid*, p. 72.

46. Malaysia also accepted in full, the recommendation to provide more special services and improve educational conditions for persons with disabilities through cross-institutional cooperation. In July 2015, the Ministry of Education together with the Ministry of Health and Nurul Yakin Foundation introduced 14 School-in-Hospital Programmes with the aim of providing access to education for hospitalised students.<sup>37</sup>

#### *Indigenous Peoples*

47. Recommendations to intensify efforts to eradicate poverty and enhance the economic status and social welfare of indigenous peoples were accepted in full by Malaysia. The Department of Orang Asli Development (JAKOA), which is the agency responsible for matters relating to indigenous peoples in Peninsular Malaysia, has several programmes to promote the enhancement of the socio-economic status of the indigenous communities. Among these programmes include the following:

- i. Providing financing to indigenous peoples to engage in activities in rubber and palm oil plantations. This programme is jointly carried out with the Rubber Industry Smallholder Development Authority (RISDA) and the Federal Land Consolidation and Rehabilitation Authority (FELCRA).
- ii. Providing courses and training to indigenous peoples to equip them with the necessary skills and knowledge to engage in modern agricultural projects such as hydroponics.
- iii. Providing entrepreneurial courses and incentives to assist indigenous peoples start a business.
- iv. Allocating funds for the construction of premises that would provide spaces for indigenous peoples' businesses.
- v. Promoting indigenous peoples' enrolment in formal education in primary, secondary and tertiary levels through various scholarship programmes and financial aid schemes.

48. Malaysia did not accept the recommendation to take measures, with full and effective participation of indigenous peoples, to address the issues highlighted in SUHAKAM's Report of its National Inquiry into Land Rights of Indigenous Peoples of 2013, with the justification that the Government did not want to pre-judge the outcomes of the deliberations of the Task Force that was set up to look into the recommendations emerging from the National Inquiry. As an update, the Task Force after two years completed its study on the findings and recommendations arising from the National Inquiry and submitted its report to the Cabinet. In June 2015, the Government announced the establishment of a Cabinet Committee on Native Land Rights, which would be responsible for addressing, monitoring, and implementing the findings of the Government's National Task Force report.<sup>38</sup> SUHAKAM is pleased to note that on 7 April 2016, the Cabinet Committee chaired by the Deputy Prime Minister, held its first meeting. SUHAKAM also welcomes several recommendations that were presented during the meeting including the proposal to undertake a study on the concept of Native Land Rights in the context of Malaysia. SUHAKAM hopes that the implementation of the recommendations of the

<sup>37</sup> Ministry of Foreign Affairs Malaysia, Presentation during SUHAKAM's Consultation on Malaysia's second Universal Periodic Review, 25 February 2016.

<sup>38</sup> Loh Foon Fong, 'Cabinet forms committee on indigenous land rights', *The Star Online*, 17 June 2015, <http://www.thestar.com.my/news/nation/2015/06/17/cabinet-approves-indigenous-lands-rights/> (accessed 22 April 2016).

National Inquiry will be carried out in an expeditious and effective manner to safeguard the rights of indigenous peoples in the country.

*Migrant Workers, Refugees and Asylum Seekers*

49. Malaysia accepted in part, recommendations to continue efforts and adopt more robust measures to protect the rights and dignity of migrant workers. In October 2015, the Minister in the Prime Minister's Department, YB Datuk Paul Low Seng Kuan announced the Government's proposal to implement strict liability provisions, which need to be complied with by employers of migrant workers to ensure that they do not violate the rights of their employees. The proposed provisions include strict adherence to the minimum wage and the ban on withholding the employees' passports as well as the requirement to provide proper accommodation facilities to the workers. SUHAKAM emphasises the need for strict enforcement of the aforesaid proposed provisions.

50. SUHAKAM observes that violations of the rights of migrant workers are prevalent in the country. Such violations take many forms including incomplete or irregular payment of wages, long and irregular working hours as well as deplorable living conditions. Migrant workers have played an important role in contributing to the development of the country. The Government should dedicate greater effort to protect the rights of migrant workers.

51. Malaysia accepted in full, the recommendations to consider improving existing administrative frameworks to better manage and process refugees and asylum seekers, as well as to cooperate with international and regional organisations and diplomatic missions to tackle the problems experienced by asylum seekers, refugees and foreigners who lose their documents in the country. In response to the arrival of thousands of refugees, asylum seekers, smuggled migrants and victims of trafficking on the shores of Malaysia and Indonesia in May 2015, the Malaysian Government together with the Indonesian Government decided to allow entry and offer temporary shelter to 7,000 of them.<sup>39</sup> In December 2015, the Government announced that it would accept 3,000 Syrian refugees over a period of three years and offer them shelter, employment and access to education for the children, while they reside in Malaysia temporarily.<sup>40</sup> Also in 2015, the Government announced its proposal to allow Rohingya refugees to seek employment through a pilot project, which will focus on certain market sectors.<sup>41</sup> SUHAKAM recommends that access to shelter, employment and education are not granted exclusively to a certain group of refugees only but are extended to other refugees as well.

52. As Malaysia is not party to the Convention and Protocol relating to the Status of Refugees, the Government does not officially recognise the status of refugees and does not make any distinction between refugees, asylum seekers and undocumented migrants. As a result, refugees and asylum seekers, in particular those who are not yet registered with the Office of the United Nations High Commissioner for Refugees (UNHCR), remain vulnerable to arrest for immigration offences and may be subject to repeated arrests, detention, and charges on immigration offences which may carry sentences of imprisonment and/or whipping. SUHAKAM acknowledges the administrative arrangement

<sup>39</sup> Syed Jaymal Zahiid, 'Malaysia, Indonesia agree to provide 'boat people' temporary shelter', *Malay Mail Online*, 20 May 2015, <http://www.themalaymailonline.com/malaysia/article/malaysia-and-indonesia-agree-to-provide-boat-people-temporary-shelter> (accessed 22 April 2016).

<sup>40</sup> Shaila Koshy, 'SUHAKAM urges Malaysia to recognise rights of refugees', *The Star Online*, 27 November 2015, <http://www.thestar.com.my/news/nation/2015/11/27/suhakam-urges-malaysia-to-recognise-rights-of-refugees/> (accessed 22 April 2016).

<sup>41</sup> P. Prem Kumar, 'Malaysia Mulls Opening Jobs Sector For Rohingya Refugees', *The Malaysian Reserve*, 18 November 2015, <http://themalaysianreserve.com/new/story/malaysia-mulls-opening-jobs-sector-rohingya-refugees> (accessed 22 April 2016).

established between the Government and UNHCR, under which a directive has been issued to provide guidance to the authorities on the handling of refugees in Malaysia.

53. SUHAKAM is particularly concerned with the detention of refugee children and undocumented migrant children, especially unaccompanied minors, in immigration detention centres. It has been reported to SUHAKAM that as of 8 November 2013, a total of 782 migrant children were placed in immigration detention centres throughout Malaysia.<sup>42</sup> SUHAKAM stresses that placing children in detention centres is detrimental to their physical and psychological well-being as they are exposed to numerous possible health and safety risks. SUHAKAM urges the authorities to introduce an alternative to detention policy in order to release those children into the community or shelters operated by NGOs with the necessary support to education, health and other relevant services, pending the resolution of their cases, to ensure their safety and development.

## 2.5 National Mechanisms on Human Rights

### *Human Rights Commission of Malaysia (SUHAKAM)*

54. Malaysia accepted in full all three recommendations relating to SUHAKAM, specifically to increase cooperation with SUHAKAM as well as to strengthen it. SUHAKAM believes that on balance, Government agencies have been cooperative towards SUHAKAM in the course of its work.

55. In December 2013, SUHAKAM submitted a proposal to the Government to amend SUHAKAM's enabling law – the Human Rights Commission of Malaysia Act 1999 – with a view to strengthening SUHAKAM's mandate and powers. In essence, the submission included proposed amendments to the Act that seek to:

- i. Further strengthen the selection process of Commissioners.
- ii. Appoint full-time and/or part-time Commissioners.
- iii. Increase the period of the Commissioners' terms.
- iv. Enable the Commission to conduct unannounced visits to places of detention.
- v. Enable the Commission to undertake mediations.
- vi. Formalise a consultation process between the Government and the Commission in the formulation or amendment of laws.
- vii. Ensure that adequate funds are allocated to the Commission annually via Parliament.
- viii. Enable the Commission to have an *amicus curiae* role in selected court cases that involve alleged human rights violations.
- ix. Ensure that the Commission's Annual Report is debated in Parliament.

Unfortunately, all of the above proposed amendments were not found favourable by the Government. SUHAKAM will continue to advocate for these amendments.

56. As an NHRI, SUHAKAM receives its funding from the Government of Malaysia in the form of an annual grant. According to SUHAKAM's founding law, the Government is to provide SUHAKAM with adequate funds annually to enable it to discharge its functions. However, the Government has decided to reduce SUHAKAM's grant for 2016 by 49.85

<sup>42</sup> Human Rights Commission of Malaysia (SUHAKAM), *2015 Annual Report*, Kuala Lumpur, Human Rights Commission of Malaysia, 2016, p. 25.



percent in comparison to the amount approved for 2015. SUHAKAM has been made to understand that the budget reduction was mainly due to the underwhelming economic situation of the country. While SUHAKAM appreciates the fact that most Government bodies and agencies are also faced with budget cuts, it is discouraging to note that the percentage of budget reduction for SUHAKAM is among the highest. SUHAKAM is very concerned with this drastic cut as it will have a significant and negative impact on SUHAKAM's ability to carry out the activities and programmes it has planned for the year.

#### *National Human Rights Action Plan (NHRAP)*

57. Malaysia accepted in full the recommendation to continue efforts to develop Malaysia's NHRAP. In 2012, the Cabinet announced its decision to develop Malaysia's first ever NHRAP.<sup>43</sup> While commending this decision, SUHAKAM finds that the progress to date in developing the five-year NHRAP has been rather slow, despite SUHAKAM's repeated calls for the process to be expedited. Originally, the NHRAP was expected to be finalised in 2016, following which the implementation of the NHRAP would commence in 2017. However, SUHAKAM was made to understand in November 2015, that an external consultant had been commissioned by the Government to develop the NHRAP and that the complete draft NHRAP would be presented by the external consultant to the Government in April 2017.<sup>44</sup> This will lead to a delay in the implementation of the NHRAP.

## **2.6 Trafficking in Persons**

58. Recommendations that called on the Government to continue its efforts to combat trafficking in persons were accepted in full by the Government.

59. In 2015, the Parliament passed several amendments to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act.<sup>45</sup> In essence, the amendments provide the following:

- i. Place of Refuge - The amendment allows the Minister to declare any NGO shelter home as a place for refuge without the requirement to gazette them. Interested NGOs will only be required to provide details and register their shelter homes with the Ministry of Women Family and Community Development.
- ii. Appointment of Protection Officers – The amendment widens the scope of Protection Officers and allows the Minister to appoint any suitable persons, which could include members of NGOs as Protection Officers.
- iii. Protection Officers as Public Servants – The introduction of Section 65(a) provides that all Protection Officers appointed under the Act shall be deemed to be public servants as defined by the Penal Code and hence shall enjoy all protections accorded therein.

Overall, SUHAKAM welcomes the amendments. However, SUHAKAM is of the view that the appointment of any suitable persons as Protection Officers by the Minister should be based on well-defined and sound criteria, which were not incorporated in the amendments. SUHAKAM believes that the amendments have, to some degree, enhanced the legal

<sup>43</sup> Human Rights Commission of Malaysia (SUHAKAM), *2012 Annual Report*, Kuala Lumpur, Human Rights Commission of Malaysia (SUHAKAM), 2013, p. 121.

<sup>44</sup> SUHAKAM, *2015 Annual Report*, p. 23.

<sup>45</sup> Ministry of International Trade and Industry, 'Media Release: Joint Malaysia – US Electrical & Electronics (E & E) Sector Best Labour Practices Workshop, <http://www.miti.gov.my/index.php/pages/view/2602>, 2015 (accessed 22 April 2016).

framework for combating trafficking in persons more effectively in the country. In addition, SUHAKAM was pleased that the Government, in formulating the amendments, had engaged in consultations with SUHAKAM and CSOs.

60. In 2015, Malaysia was upgraded from Tier 3 to Tier 2 on the Watch List by the U.S. Department of State in its 2015 Trafficking in Persons (TIP) Report.<sup>46</sup> While SUHAKAM acknowledges the Government's efforts to improve its victim protection policies, which have led to the upgrade, it is nonetheless concerned that the number of trafficking convictions remains low.

61. SUHAKAM finds the discovery of numerous detention camps and grave sites near the Malaysia-Thailand border in 2015 – where victims of human trafficking were believed to have been detained, tortured and buried – gravely alarming. SUHAKAM calls upon the Government to investigate into these heinous crimes and gross violations of human rights, and bring the perpetrators to justice.

62. At the 27<sup>th</sup> Summit of the Association of Southeast Asian Nations (ASEAN), which was hosted in Kuala Lumpur in November 2015 by Malaysia as the then Chair of ASEAN, ASEAN Member States adopted the ASEAN Convention Against Trafficking in Persons Especially Women and Children.<sup>47</sup> SUHAKAM views the ASEAN Convention as a potentially instrumental document, which could promote greater cooperation and coordination of efforts among ASEAN Member States towards preventing and combating trafficking in persons, especially women and children in the region. SUHAKAM therefore calls upon the Government of Malaysia to ratify the ASEAN Convention as soon as possible, and implement the provisions contained in it.

## 2.7 National Unity

63. Malaysia accepted in full, all recommendations relating to the promotion of national unity. In 2015, the Government adopted the National Unity Blueprint drafted by the National Unity Consultative Council (NUCC), containing 16 recommendations that seek to foster greater unity among Malaysia's multi-ethnic and multi-religious population. The Government is also in the process of formulating a National Unity Plan of Action.

64. In addition, SUHAKAM has been made to understand that the drafting of a National Harmony Bill, which aims at creating greater awareness and education on the importance of maintaining national harmony, is currently at its final stage.

## 2.8 Enforcement Agencies

65. Malaysia accepted in part, the recommendation to ensure that police conduct is in accordance with international human rights standards through human rights training for all police and security officers. Every year, SUHAKAM works together with the Government to conduct training sessions for law enforcement officials including the police. In 2015, a total of six sessions were held at the Malaysian Police Training Centre (PULAPOL) Kuala Lumpur and the Kuala Lumpur Royal Malaysia Police College.<sup>48</sup> SUHAKAM finds that despite the regular training, human rights violations by law enforcement officials continue to occur.

<sup>46</sup> The Sun Daily, 'M'sia upgraded to Tier 2 Watch List status for TIP report', *The Sun Daily*, 28 July 2015, <http://www.thesundaily.my/news/1502868> (accessed 22 April 2016).

<sup>47</sup> The Sun Daily, 'ASEAN leaders sign key convention against trafficking in persons', *The Sun Daily*, 21 November 2015, <http://www.thesundaily.my/news/1616892> (accessed 22 April 2016).

<sup>48</sup> SUHAKAM, *2015 Annual Report*, p. 160-161.

66. In addition, Malaysia accepted in part the recommendation to ensure that detention conditions and provisions for access to legal and in particular judicial remedies, comply with international standards and strengthen the training of police and other law enforcement officials and set up effective mechanisms to ensure an independent investigation of alleged misconduct. In 2009, the Government established the Enforcement Agency Integrity Commission (EAIC) that seeks to address complaints against law enforcement officials. With regard to places of detention, SUHAKAM finds that the conditions in immigration detention centres, in particular, are of serious concern and clearly do not meet international standards.

## 2.9 Human Rights Education and Training

67. Malaysia accepted in full, recommendations to promote human rights education and training as well as to step up efforts to further develop the human rights education system and strengthen the culture of human rights.

68. SUHAKAM and the Ministry of Education have worked together through a programme called Human Rights Best Practices in Schools to inculcate a culture of human rights in schools, where human rights are not only taught and learned but practised, respected and promoted by students, teachers and administrators. The Ministry of Education has played an instrumental role in sustaining the programme and expanding it to include more schools. The programme, which started with five schools in 2009 now involves 152 schools in Peninsular Malaysia and will reach out to another 24 schools in the State of Sabah and 31 schools in the State of Sarawak by the end of 2016.<sup>49</sup>

69. The Malaysian national school curriculum does not have a dedicated subject on human rights, which is something that SUHAKAM has been advocating for as an effort to instill human rights values at an early age beginning at the primary school level. To date, the Government has not been very receptive to the idea of introducing a human rights subject in the school curriculum.

## III. General Observations

70. SUHAKAM commends the Government for the positive actions it has taken thus far in implementing the accepted UPR recommendations. SUHAKAM observes that by and large, the Government has made greater strides in fulfilling recommendations relating to economic, social and cultural rights in comparison to those pertaining to civil and political rights. SUHAKAM also notes that the various programmes and initiatives carried out by the Government in promoting economic, social and cultural rights are mostly devoted to Malaysian citizens. As a result, vulnerable groups who are not Malaysian nationals such as migrant workers, refugees, asylum seekers and stateless persons continue to fall through the cracks and remain the most vulnerable to human rights abuses. SUHAKAM hopes that the Government will adopt a more receptive stance and approach in addressing the rights of such marginalised groups, who make up a sizable portion of Malaysia's population, by extending to them equal access to relevant Government programmes and services with a view to fulfilling their fundamental rights including the right to formal education, healthcare and employment as well as the right to live a decent life free from poverty and discrimination.

71. In addition, SUHAKAM calls upon the Government to revisit the recommendations not accepted by Malaysia, with a view to implementing relevant ones. SUHAKAM

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<sup>49</sup> *ibid.*, p. 155.

believes that the implementation of those recommendations will contribute substantially to the enhancement of the human rights situation in the country.

72. Noting with appreciation that world leaders have adopted the 2030 Agenda for Sustainable Development, which includes 17 Sustainable Development Goals (SDGs), SUHAKAM urges the Government to implement the UPR recommendations in tandem with the SDGs.

73. SUHAKAM strongly believes that the UPR mechanism has great potential in bringing about meaningful improvements to the human rights situation in the country. SUHAKAM holds that the UPR process can achieve real and meaningful progress in the promotion and protection of human rights only if the following foundations are established:

- i. All stakeholders should play an active role in the UPR exercise especially in implementing the UPR recommendations. Stakeholders should consist of the Government, the NHRI, CSOs, the media and the public. The Government, in this case, should include the Federal and State Governments and local authorities as well as all three organs of Government namely the Executive, the Legislature and the Judiciary. SUHAKAM has found, especially from the two series of nationwide consultations it had organised in 2014 and 2016, respectively, that the involvement of State Governments (save the State of Sarawak) and local authorities in the UPR process has been minimal, at most. At the same time, CSOs operating at the State level, in general, have not been very active in advocating for the implementation of the UPR recommendations. The active participation of State Governments and local authorities in the implementation stage of the UPR mechanism is clearly necessary to ensure that the progress made under the UPR exercise can be felt by the population on the ground. SUHAKAM therefore hopes that this regrettable situation will be addressed by the Government as soon as possible so as to allow for a more inclusive UPR follow-up process in the remaining period of Malaysia's second UPR cycle.
- ii. The Government, in fulfilling its UPR commitments, should work together and in consultation with stakeholders including the NHRI and CSOs. The NHRI and CSOs are well positioned to offer their respective expertise and input, which would complement the efforts of the Government towards achieving the country's UPR goals. To date, the Malaysian Government has yet to engage in consultations with SUHAKAM and CSOs since the adoption of Malaysia's Second UPR Outcome Report in March 2014. However, SUHAKAM is pleased to note that the Government has put in place a plan of action for the UPR follow-up, which will include consultations with stakeholders. SUHAKAM hopes that the plan of action will be implemented accordingly.
- iii. Recommendations posed by UN Member States and accepted by the State under review should be adequately substantial to effect meaningful improvements on the situation of human rights in the country. SUHAKAM notes that the majority of the recommendations presented by UN Member States to Malaysia are general and indefinite in nature. SUHAKAM also observes with disappointment that recommendations, which are more specific and deliberate in character, are mostly not accepted by Malaysia. Such circumstances are likely to result in a situation where the Government may be able to fully implement the accepted recommendations without actually addressing the key concerns of the various human rights issues and without having much impact on the ground. Acknowledging that the UPR mechanism is likely to evolve over time, SUHAKAM looks forward to seeing more meaningful recommendations put forth by UN Member States at Malaysia's

third UPR in 2018, in hopes that Malaysia would accept and diligently implement them.

## **IV. Conclusion**

74. **SUHAKAM calls upon the Government of Malaysia to grant the UPR the priority it deserves by dedicating the effort and resources needed to effectively fulfil Malaysia's UPR commitments, with a view to ensuring that the progress achieved under the UPR mechanism is not merely satisfactory in the eyes of the Human Rights Council, but will in effect lead to improvements in the realm of human rights that will make a difference in the lives of the population of Malaysia.**

*As of 25 April 2016.*

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