

UN Permanent Forum on Indigenous Issues: Questionnaire to National Human Rights Institutions

In recent sessions, the United Nations Permanent Forum on Indigenous Issues has recognized and appreciated the active inputs of national and regional human rights institutions at its sessions and recognized their contributions in the promotion and protection of human rights, including the rights of indigenous peoples. The Permanent Forum invites human rights institutions to continue to contribute to its work and to provide information on their activities related to the following elements:

- 1. The 2017 session of the Permanent Forum featured a focus on indigenous human rights defenders. Please provide information on the work of your institution in relation to indigenous human rights defenders. What results have been achieved through such efforts and what are some lessons learned?**

The Human Rights Commission of Malaysia (SUHAKAM) had worked closely with the NGOs working on indigenous peoples' rights in promoting and protecting the rights of indigenous peoples in Malaysia and this was also reflected in SUHAKAM's first ever National Inquiry (NI) on the land rights of indigenous peoples in Malaysia in 2010.

During the conduct of the NI, SUHAKAM was assisted by five independent consultants, which included former Members of SUHAKAM, representatives from the Malaysian Bar Council and an NGO which works on indigenous peoples' issues. The independent consultants were selected based on their wide knowledge and experience in the field of indigenous rights in Peninsular Malaysia and the States of Sabah and Sarawak. They provided assistance in, among others, perusal of public submissions and research reports, conduct of public consultations and hearings and contributed to the writing of the NI report, particularly on the findings and recommendations of the NI. *Please refer to SUHAKAM's response to Question no. 2 for further information on the outcome of the NI.*

Aside from the above, SUHAKAM also collaborated with the NGOs in organising workshops and / or talks on human rights for the indigenous communities.

SUHAKAM also met with Ms. Victoria Tauli-Corpuz, the UN Special Rapporteur on the Rights of Indigenous Peoples during her working visit to Malaysia in October 2017 to discuss the current situation of indigenous peoples in Malaysia. In addition, SUHAKAM also facilitated the meetings between Ms. Victoria Tauli-Corpuz and the relevant government agencies to discuss the issues of indigenous peoples in Malaysia, which included the Minister in the Prime Minister's Department in charge of governance, integrity and human rights, Ministry of Rural and Regional Development, Department of Orang Asli Development (JAKOA) and the Division of Good Governance and Integrity (BITU)¹.

In terms of complaints handling, SUHAKAM had recently received a number of complaints from the indigenous peoples regarding encroachment into native customary lands of indigenous peoples. For instance, SUHAKAM had received recurring complaints from the indigenous peoples in the State of Kelantan regarding

¹ In November 2017, the Malaysian Government set up the National Integrity and Good Governance Department (JITN) to replace the Division of Good Governance and Integrity (BITU).

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the encroachment on the native customary land, which is a forest reserve, by logging companies. The logging companies had been given licenses by the State Government of Kelantan to carry logging activities in the aforesaid area. The indigenous peoples set up blockades near the forest reserve and protested against the logging activities by the companies. In response, the Kelantan State Forestry Department took uncompromising action by dismantling the indigenous peoples' blockades and arrested around 41 protesters. The protesters were released within 24 hours of the arrest.

SUHAKAM visited the indigenous peoples' settlement in Gua Musang, Kelantan twice in 2017 to assess the situation. Following that, SUHAKAM met with the State Government of Kelantan and the relevant government agencies to discuss the issue and the possible solution to the issue. While SUHAKAM noted that the State Government of Kelantan depends on the revenue from activities such as the logging activities to support the state expenditure, SUHAKAM pointed out that these activities would also infringe on the rights of the indigenous peoples and that the State Government should address the issue in an urgent manner to stem the marginalisation of the indigenous peoples. As an outcome from the Meeting, the State Government indicated that they would look into the matter and possible solutions for the issues facing the indigenous peoples. At the same time, they also welcomed SUHAKAM to liaise directly with the relevant state government agencies to address any complaints from the indigenous peoples in the future, if any. In this regard, SUHAKAM planned to meet with the Kelantan State Forestry Department, Kelantan State Department of Orang Asli Development (JAKOA Kelantan) and Kelantan State Land and District Office in January 2018 to discuss the complaints received regarding the issues of indigenous peoples in the State of Kelantan.

2. The theme of the 2018 session will be Indigenous peoples' collective rights to lands, territories and resources. Please provide information about indigenous peoples' collective rights to lands, territories and resources in your country. Has your institution been engaged in work relating to indigenous peoples' collective rights to lands, territories and resources?

Yes, SUHAKAM had been engaged in work relating to indigenous peoples' collective rights to lands, territories and resources since its establishment. Over the years, SUHAKAM received numerous complaints from the indigenous peoples relating to customary rights to land, many of which had not been resolved. These complaints were related to allegations of encroachment and/ or dispossession of land; land included into forest or park reserves; overlapping claims and slow processing of requests for the issuance of native titles or community reserves.

In view of the magnitude of the issue, in 2010, SUHAKAM conducted its first ever NI to look into the issues of land rights faced by indigenous peoples in Malaysia. The scope of the NI focused on the indigenous peoples of Peninsular Malaysia and the natives in the states of Sabah and Sarawak. The NI adopted a cooperative and responsive approach, involving a wide range of stakeholders, including government

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departments and agencies, NGOs, indigenous communities, private companies, media as well as other interested groups and individuals.

The NI process was completed in 2012 and the report on its findings was subsequently published in 2013. The NI recognises indigenous peoples' rights to lands, territories and resources and this is reflected in its recommendations to the Government. In the same year, the Malaysian Government had set up a National Task Force to study the NI report and the recommendations contained therein. The Task Force completed its study in 2014 and came up with its own report which endorsed most of the recommendations contained in SUHAKAM's NI report, except for the establishment of a Commission on Indigenous Peoples.

The Task Force's report was submitted to the Cabinet of Malaysia in 2015 for its consideration and decision. As an outcome, the Cabinet approved the formation of a Cabinet Committee for the Land Rights of Indigenous Peoples which would be headed by the Deputy Prime Minister of Malaysia. The Cabinet Committee would address, monitor and implement the recommendations in the Task Force's report.

During the first meeting of the Cabinet Committee in 2016, the following recommendations were made:

- i. Each State Government is to report periodically on the status of gazetting aboriginal areas and/ or reserves under Section 6 and 7 of the Aboriginal Peoples Act 1954;
- ii. Guided by the principle of a human rights-based approach and the principle of free, prior and informed consent (FPIC) as envisaged by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Department of Orang Asli Development (JAKOA) and the states of Sabah and Sarawak are to develop guidelines to ensure the participation of indigenous peoples in the country's or state's development agenda, especially in those areas which would have direct impact on them;
- iii. The proposal for JAKOA's restructuring is to be submitted to the Ministry of Rural and Regional Development (KKLW) and the Public Service Department (JPA) for approval;
- iv. The National Institute of Land Survey (INSTUN) and JAKOA are to develop a training module for staff members and officers in charge of native land and administration of indigenous peoples;
- v. The Legal Affairs Division of the Prime Minister's Department (BHEUU) is to carry out a research on the concept of native land rights;
- vi. The objective of the National Legal Aid Foundation (YBGK) is to be amended by expanding its mandate to enable it to represent indigenous peoples in land cases

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as well as to enhance the capacity of its members in dealing with native land cases; and

- vii. Three additional posts are to be created in the Division of Good Governance and Integrity (BITU) in order for BITU to effectively carry out its duty as the Secretariat to the Cabinet Committee.

In 2017, SUHAKAM continued to follow up with BITU on the implementation of the recommendations contained in the Task Force report. On the other hand, SUHAKAM had also organised briefing sessions on the updates regarding the implementation of the recommendations of the Task Force's report for the relevant government agencies and CSOs in Kuala Lumpur, Sabah and Sarawak.

Despite clear evidence that the situation of the indigenous peoples constitutes a serious derogation of Malaysia's obligations to respect, protect and fulfil their rights, the Malaysian Government had done little to meaningfully address their situation, and the indigenous peoples continue to lose more land and with it the enjoyment of related rights. It is also highlighted that not all States in Malaysia recognise the indigenous peoples' rights to native customary lands. As of November 2017, SUHAKAM received 34 complaints relating to the right to native customary land. In view of this, SUHAKAM called upon the Government to issue a moratorium or temporary prohibition order on all developments which involve indigenous peoples' lands, pending the implementation of the recommendations in the Task Force's report.

At the same time, SUHAKAM also felt that it should step up its advocacy efforts to ensure that the Government give greater prioritisation to the issues facing the indigenous peoples in the country. In relation thereto, SUHAKAM would intensify its engagement with the State Governments to follow up on the implementation of the recommendations in the Task Force's report and offer assistance and advice to the State Governments, where appropriate.

3. What are the three to five main activities carried out by your institution at the national and/or regional level to implement the UN Declaration on the Rights of Indigenous Peoples and the principles contained therein?

Some of the specific activities carried out by SUHAKAM included, among others, the following:

- i. Awareness – raising workshops and/ or talks for the indigenous communities
SUHAKAM conducts regular workshops and/ or talks for the indigenous communities to raise their awareness on human rights. For instance, SUHAKAM conducted a briefing on indigenous peoples' rights for the Indigenous Youth Council and the villagers in the Ayer Denak Village in the State of Perak.

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- ii. Visits to schools for indigenous children
SUHAKAM conducts regular visits to the schools for indigenous children in order to monitor the quality of education and facilities of the schools. SUHAKAM would also provide its observation and recommendations to the relevant Government agencies for further improvement in the provision of education for the indigenous children.
- iii. Meetings and/ or discussions with the government agencies
SUHAKAM met with Division of Good Governance and Integrity (BITU) to discuss the status of implementation of the recommendations in the Task Force's report on SUHAKAM's NI into the land rights of indigenous peoples in Malaysia. SUHAKAM also met with the State Governments of Selangor and Kelantan to discuss among others, the gazetting of indigenous peoples' land in their respective States. SUHAKAM would continue to meet with the State Governments in 2018 to follow up on the aforementioned matter.

4. What are the main constitutional, legislative and/or administrative developments taken or planned to promote and/or implement the UN Declaration on the Rights of Indigenous Peoples in your country? Has your institution been involved in these processes, and if so how?

There were no constitutional or legislative developments since Malaysia's signing of the UN Declaration on the Rights of Indigenous Peoples in 2007. However, there were some administrative developments in relation to the issue of indigenous peoples in the country.

The Department of Orang Asli Development (JAKOA) is the main government agency which looks into the issues of indigenous peoples in the country. In its 2016-2020 Strategic Plan, JAKOA identified 7 strategic thrusts, namely the following:

- i. To improve on the administration of indigenous peoples' land;
- ii. To provide infrastructure facilities in villages of indigenous peoples;
- iii. To develop human capital and increase indigenous youth's competence;
- iv. To increase indigenous peoples' income through sustainable economic activities;
- v. To preserve and promote the arts, culture and heritage of indigenous peoples;
- vi. To strengthen social safety net in assisting the indigenous peoples in the bottom 40% household income (B40) Group; and
- vii. To enhance service delivery system through organisational development.

As an outcome of SUHAKAM's NI, JAKOA would be developing a standard operating procedure on the implementation of free, prior and informed consent in Malaysia. SUHAKAM is not involved in this process. Subject to JAKOA's progress in the development of the SOP, SUHAKAM would also consider preparing a draft SOP to expedite the process.

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5. Please provide information on any activities and programmes that your institution carries out or plans to that are specific to indigenous peoples.

As mentioned in the response for Question no. 3, SUHAKAM had been conducting awareness – raising talks and workshops for indigenous peoples, regular monitoring visits to the schools for indigenous children and meetings with the State Governments on land gazetting issues.

SUHAKAM also participates in the sessions of the UN Permanent Forum on Indigenous Issues (UNPFII) and the Expert Mechanism on the Rights of the Indigenous Peoples (EMRIP) via submission of written and/ or oral statements. One of the Commissioners of SUHAKAM, Mr. Jerald Joseph attended the 16th UNPFII, which was held on 24 April – 5 May 2017 in New York and presented an oral statement to the session which highlighted among others, the current issues facing the indigenous peoples in Malaysia. In addition, SUHAKAM, along with other NHRIs from Indonesia, Thailand, the Philippines, Australia and New Zealand were also involved in side events which included, inter alia:

- i. Side event: Demonstrating the Work of NHRIs on the Rights of Indigenous Peoples and the Value of Their Participation in the UNPFII
- ii. Meeting with the Assistant Secretary – General for Human Rights, OHCHR New York
- iii. Meeting with the UN Special Rapporteur on the Rights of Indigenous Peoples
- iv. Meeting with the Department of Political Affairs (Asia and the Pacific Division) of the United Nations, New York
- v. Meeting with the Danish Institute of Human Rights on the ‘Indigenous Navigator’ tool

One of the purposes of the aforementioned side event and meetings was to advocate for NHRIs’ independent participation in the UN mechanisms in New York including the UNPFII. Currently, NHRIs do not have independent participation rights in many UN mechanisms in New York, except for the UN Open-ended Working Group on Ageing (OEWG) which had recently formalised the participation of NHRIs in its work. At the national level, SUHAKAM had been advocating for the Malaysian Government’s support for NHRIs’ independent participation in the UN mechanisms in New York by co-sponsoring the UN resolutions on NHRIs but to no success. Referring to the aforementioned landmark decision by the OEWG, SUHAKAM is of the view that early action should be taken to recognise NHRIs’ independent participation in other UN mechanisms in New York. In this regard, SUHAKAM would continue to engage with the Government and its counterparts at the international level to lobby for the Government’s support in this matter.

SUHAKAM is also of the view that the UNPFII is a useful platform for indigenous peoples from all over the world to share their concerns and experiences on issues facing them and explore possible solutions to address these issues. However, SUHAKAM also noted that the participation of indigenous groups in Malaysia in the UNPFII was limited and that information from the UNPFII might not reach the other

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indigenous groups in the country. In this regard, SUHAKAM was of the view that perhaps it would be useful to translate the key points from the UNPFII session into the national language for distribution to the indigenous groups for their information.

In 2018, SUHAKAM plans to organise a seminar on the land rights of the Indigenous Peoples in Malaysia as a follow up on SUHAKAM's National Inquiry.

6. Has your institution been engaged in work relating to the development or implementation of national action plans, strategies or other measures to achieve the ends of the Declaration on the Rights of Indigenous Peoples? If yes, then please provide information.

SUHAKAM had been advocating for the development of the National Human Rights Action Plan (NHRAP) since 2002. In 2010, the Malaysian Government decided to develop Malaysia's first NHRAP and appointed the Legal Affairs Division of the Prime Minister's Department (BHEUU) as the focal agency for the formulation of the NHRAP. In 2013, SUHAKAM was invited in its capacity as the national human rights commission to be a member of a NHRAP Steering Committee. SUHAKAM is not satisfied with the delay in the development of the NHRAP, even though the Malaysian Government indicated that they would be launching the NHRAP in 2018.

In 2015, SUHAKAM submitted to the Government a proposal paper which mapped out the core thrusts of the NHRAP based on the accepted recommendations from Malaysia's second UPR in 2013. It was agreed that the NHRAP would focus on five core thrusts, namely Civil and Political Rights, Economic, Social and Cultural Rights, Rights of Vulnerable Groups, Rights of Indigenous Peoples, and International Obligations. At the same time, BHEUU also appointed Hazizah & Co. as the consultant in the development of the NHRAP. For the purpose of developing the NHRAP, the consultant interviewed various Ministries and conducted an online survey on general perception of human rights. More than 3,000 Malaysian respondents had taken part in the survey.

Between January and March 2017, BHEUU had organised consultations with the relevant government agencies and CSOs to obtain views on the draft NHRAP. SUHAKAM also had a separate meeting with BHEUU and the consultant in July 2017 to discuss the draft NHRAP. Subsequently, SUHAKAM submitted its feedback on the final draft NHRAP to BHEUU in September 2017. According to the draft NHRAP, the Government would focus on the indigenous peoples' right to self-determination, access to health services, access to education, poverty eradication programmes and land administration, among others.

7. How does your institution address violence and discrimination against indigenous peoples and individuals, in particular women, children, youth, older persons and persons with disabilities?

Over the years, SUHAKAM had carried out various programmes which aimed to, among others, increase the public's awareness on human rights and in turn prevent

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violence and discrimination between individuals. Some of the programmes carried out by SUHAKAM included the following:

i. Human Rights Best Practices in School (HRBPS)

In collaboration with the Ministry of Education, SUHAKAM launched a pilot programme called 'Human Rights Best Practices in School' in 2009. The programme aimed to integrate human rights values and principles into school life, shaping an environment in which human rights are not only taught and learned, but also practised, respected and promoted by the students, teachers and administrators. The pilot programme was carried out by five secondary schools in different States of Malaysia. The programme was successful, and it had convinced the Ministry of Education to expand the programme to more schools, including schools for indigenous children. In order to monitor the implementation of the programme, SUHAKAM conducted regular visits to the participating schools to observe their progress and when necessary, to provide guidance and advice to the latter. As of March 2017, there are 222 schools participating in the programme. Out of the 222 schools, there are 36 indigenous schools participating in the programme.

ii. Human Rights Activities Module

In 2017, SUHAKAM had been working on a post exam human rights activities module for Standard Six students and Form 3 students. The main objective of the module was to instil a sense of responsibility and respect for human rights in the students. The activities in the module were developed based on the Universal Declaration of Human Rights and the Convention on the Rights of the Child. After the module is finalised, it would be implemented at the HRBPS schools including the schools for indigenous children.

iii. SUHAKAM's Anti-Bullying Campaign

SUHAKAM also launched a campaign on anti-bullying in 2016 to increase the students' awareness on the issue of bullying. As a starting point, SUHAKAM focused on boarding schools and expanded to other schools at a later stage. There were also indigenous children in some of the boarding schools visited by SUHAKAM. The main component of SUHAKAM's visits to the boarding schools was a 2-hour talk session with the students. The topics covered during the talk included a brief introduction on SUHAKAM, the basic concept of human rights and child rights, the definition of bullying, types of bullying, the impact of bullying and ways to overcome it.

iv. Thematic Study on Right to Primary Education for Children with Learning Disabilities

In 2013, SUHAKAM decided to conduct a study on the issue of right to primary education for children with learning disabilities (CWLD). The objectives of the study were as follows:

- To raise awareness among education professionals, decision-makers and the public of the challenges CWLD experience in accessing primary education;

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- To identify the gaps in information about education for CWLD in order to build support for the education of CWLD; and
- To build bridges between government agencies and civil society, so as to promote more participatory, transparent and accountable policy-making in the education sector.

For the purpose of the study, SUHAKAM visited a number of government schools with special education integration programmes, schools run by NGOs as well as community rehabilitation centres in Peninsular Malaysia and the States of Sabah and Sarawak. There were indigenous children in the schools and centres in the States of Sabah and Sarawak. Aside from the above, SUHAKAM also conducted a series of forums on the right to education for CWLD, workshops on human rights for special education teachers and analysed data and statistics on CWLD gathered from the relevant government agencies including the Ministry of Education, Department of Social Welfare and the Statistics Department.

SUHAKAM published and launched the report of the study in 2015. The report was distributed to the relevant government agencies for their information and consideration. SUHAKAM also presented the said report to the National Council for Persons with Disabilities during the Council's meeting in November 2016. The Council's meeting was chaired by the Minister of Women, Family and Community Development (MWFCD), YB Dato' Sri Rohani Abdul Karim and was attended by its members which included officers from the relevant government agencies and individuals who have the experience, expertise and knowledge relating to issues of persons with disabilities. In response to SUHAKAM's report, the Ministry of Education stated the following:

- The MOE issued a directive that CWLD would undergo a three-month probation period and, based on their suitability, will then be placed either in the special education programme, special education integrated programme, or inclusive education programme.
- The MOE conducted awareness programmes on learning disabilities to the public at the state level and was also planning to create more awareness on learning disabilities through media broadcasting.
- There would be an advocacy campaign in the form of an 'inclusive walk' to be held early 2017 to promote awareness on disabilities.
- The classes for the special education integrated programme in Government schools were to be gradually upgraded.

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- The MOE had undertaken a partnership project with the RHB Foundation – an initiative to build disabled-friendly facilities in schools i.e. toilets, hand rails, and ramps for physically challenged children. At the moment, this initiative was to be carried out only in Kuala Lumpur.

Given the importance of the issue, SUHAKAM would continue to monitor the implementation of its recommendations as well as commitments made by the Government with the ultimate aim of ensuring access to education for every child in Malaysia without discrimination.