

BRIEFING NOTE
ON THE SPECIAL REVIEW OF THE
NATIONAL HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)
BY THE INTERNATIONAL COORDINATING COMMITTEE OF NHRIs
- March 2009 -

****For more exhaustive information on SUHAKAM please refer to the Summary that was prepared by the ICC Secretariat in April 2008.****

I. BACKGROUND

The National Human Rights Commission of Malaysia (hereinafter SUHAKAM) was established in 1999 by an Act of Parliament (597). SUHAKAM first submitted its application for accreditation to the International Coordinating Committee of National Human Rights Institutions (ICC) in 2002. At this time it was granted 'A status'.

In line with the ICC decision to initiate a regular and periodic process of re-accreditation of all NHRIs, SUHAKAM's status of compliance with the Paris Principles was reviewed in April 2008. At this session, the ICC Sub-Committee on Accreditation (hereinafter SCA) issued the following recommendation regarding SUHAKAM:

*The Sub-Committee informs the Commission of its intention to recommend to the ICC **status B**, and gives the Commission the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The Commission retains its "A" status during this period.*

The Sub-Committee notes the following:

- 1) The independence of the Commission needs to be strengthened by the provision of clear and transparent appointment and dismissal process in the founding legal documents, more in line with the Paris Principles. The Sub-Committee refers to General Observation "Selection and appointment of the governing body".*
- 2) With regard to the appointment, the Sub-Committee notes the short term of office of the members of the commission (two years). It refers to General Observation "Guarantee of tenure for members of governing bodies".*
- 3) It further refers to General Observation "Ensuring pluralism" to highlight the importance of ensuring the representation of different segments of society and their involvement in suggesting or recommending candidates to the governing body of the Commission.*
- 4) The Sub-Committee refers to General Observation "Interaction with the International Human Rights System".*

II. DOCUMENTATION PROVIDED FOR THE SPECIAL REVIEW

To permit the SCA to make a determination on the continuous compliance of the SUHAKAM with the Paris Principles following the ICC deliberations of April 2008, on 12 December 2008, SUHAKAM submitted the following documents to the ICC Secretariat:

- Letter of SUHAKAM Chairperson to ICC (12 December 2008)
- Term of Office of SUHAKAM Members
- Response of SUHAKAM on Re-Accreditation to the ICC (hereinafter referred to as 'Response')

III. CLARIFICATIONS PROVIDED BY SUHAKAM ON THE ISSUES RAISED BY THE ICC

The Chairperson's letter provides an update on the actions taken by SUHAKAM to request the Government to make legislative changes to Act 597 to comply with the Paris Principles (para.2) and

also helps put in context SUHAKAM's response to ICC/SCA. It informs that following ICC deliberations, SUHAKAM held a meeting with the Deputy Prime Minister and MOFA to discuss SUHAKAM's accreditation status. After this, the "Deputy Prime Minister did direct the Legal Affairs Division under his office as well as the Attorney General's Chambers to study SUHAKAM's draft on amendments to Act 597" (para. 8). In August 2008, the Prime Minister also informed the House of Representatives that action to maintain SUHAKAM's status would be taken (para 9). However, the letter warns that timing is not propitious and might take some time before the bill to amend the Act 597 is tabled in Parliament. SUHAKAM would therefore find itself in a limbo: despite there is a "clear political will to conform to developing regime of human rights under the United Nations, there are real political constraints in the domestic environment" (para. 12).

Additionally, the letter recognizes that there is "an international dimension in the promotion and protection of human rights which encourages cooperation and interaction amongst NHRIs in the world (...); an engagement which could ultimately strengthen the structure and position of individual NHRIs in their own society" (para. 6). It highlights the actions of Malaysian NGOs to call upon the Malaysian authorities to "honor its commitment to keep Suhakam on status A" (para 7).

A. Clarity and transparency of Appointment and Dismissal Processes

On the appointment process:

Section 5(4) of the Act 597 stipulates that Members of the Commission shall be appointed by the Head of State (Yang di-Pertuan Agong), on recommendation of the Prime Minister. Under section 6(1) the Head of State shall designate one of the members appointed under section 5 to be the Chairman of the Commission.

In its response (page 1), SUHAKAM states that "the Paris Principles deal with criteria for the appointment of members *in a general way*". They do not provide "a clear criterion on the selection and appointment of members except on the composition and guarantees of independence and pluralism". By this token, SUHAKAM contends "that the appointment of members of the Commission by the Head of State on the recommendation of the Prime Minister does not contravene the Paris Principles. (...) neither pluralism nor human rights experience are mandated as defined criterion to be included in the legislation for the selection of members. *It is only interpreted otherwise by the ICC Sub-Committee's own General Observation* (all emphasis added)".

It is noted, that in its letter to the ICC/SCA, the Chairperson highlights that the provision (Section 5) was "made in good faith before the Parliament and recorded (...) to be in compliance with the Paris Principles in (...) 1999 before the *imposition of the ICC Statute*" (emphasis added). "The enactment- the letter reads- is in consonance with the country's political culture and legal norms of governance".

On the dismissal process:

Section 10 of the Act 597 stipulates that a member of SUHAKAM may be removed from office by the Head of State in the following cases:

- a) *the member is adjudged insolvent by a court of competent jurisdiction;*
- b) *the Head of State, after consulting a medical officer or a registered medical practitioner, is of the opinion that the member is physically or mentally incapable of continuing his office;*
- c) *the member absents himself from three consecutive meeting of the Commission without obtaining leave of the Commission or, in the case of the Chairman, without leave of the Minister;*
- d) *the Head of State, on the recommendation of the Prime Minister, is of the opinion that the member:*
 - (i) *has engaged in any paid office or employment which conflicts with his duties as a member of the Commission;*
 - (ii) *has misbehaved or has conducted himself in such a manner as to bring disrepute to the Commission; or*
 - (iii) *has acted in contravention of the 597 Act and in conflict with his duties as a member of the Commission.*

In its response (page 2), SUHAKAM argues that Section 10 of the Act lists “as much detail as possible, the circumstances under which a member may be dismissed. Failure to participate in the work of the Commission also considered for inclusion as a ground for dismissal”. By this token, SUHAKAM affirms that this set of norms are “clear and sufficient to meet with the requirements of the Paris Principles”.

B. Length of the Term

Section 5 (4) of the Act 597 stipulates that every member shall hold office for a period of 2 years and is eligible for re-appointment. SUHAKAM’s response (page 3) stipulates that “although the stipulated length of tenure is two years, the average tenure saw triple re-appointments. Re-appointments help the expansion of cumulative knowledge of an individual as well as that of the Institution” (for more information on the tenure(s) of SUAHAKAM’s members please refer to the “Term of Office” document).

As per the ‘Term of Office’ table, out of 31 Commissioners:

- 3 have served for 5 consecutive terms;
- 4 have served for 4 consecutive terms;
- 5 have served for 3 continuous terms;
- 6 have served for 2 continuous terms;
- 9 have served for one term only;
- 2 passed away during their term;
- 2 resigned during the first term.

C. Pluralism

On the issue of pluralism, SUHAKAM’s response (page 9) implies that “pluralism is reflected in the composition of the members and staff of the Commission” ; since its establishment “the composition of SUHAKAM reflects a broad representation by civil society according to the Paris Principles; members and staff comprise of persons from various religious and ethnic backgrounds, and include minority groups of both genders”.

The response (pages 2-3) recalls Section 5 (3) of the Act 597, which reads that “Members of the Commission shall be appointed from amongst prominent personalities including those from various religions and racial backgrounds. Such provision is extensive and offers flexibility on the appointment of members. (...)”. According to SUHAKAM, this appointment process is such as to “reflect the diversity and pluralism of Malaysian society”. It is stressed that “once made known upon their appointment”, SUHAKAM’S members continue being continuously open “to public scrutiny” throughout their tenure.

The response also clarifies that “prominent persons” in a plural society may be further explained as:

- Knowledgeable and literate;
- Morally upright;
- Competent in their own profession;
- Of standing in ethnic community;
- Have a commitment to and understanding of human rights;
- Maturity; and
- Served public in various capacities with distinction.

The response also indicates that “the term ‘prominent’ might be arguable; however the pluralism and human rights knowledge is clearly manifested in the current members”.

From the time of establishment, SUHAKAM has been composed of a variety of members from diverse backgrounds, each with a particular interest, expertise or experience in various fields (*please refer to pages 2-3 of the response for more details on the current composition of SUHAKAM*). The response (table at page 4) provides a breakdown of SUHAKAM’s current composition (18 members) per:

- Gender: 13 males and 5 females;
- Race: 9 Malay; 4 Chinese; 3 Indians; 2 Indigenous natives;
- Religion: 10 Muslims; 6 Christians; 1 Hindu; 1 nil.

- Specialization: please refer to table.

D. Interaction with the International Human Rights System

SUHAKAM's response (page 10) refers to the Commissions' active engagement with international organizations such as UNHCR, UNICEF, UNDP and ICRC "with the aim to exchange views on human rights issues". SUHAKAM also "works with international and regional bodies for this purpose to recommend to the government with regard to the subscription or accession of treaties and other international instruments in the field of human rights" (page 11).

In terms of SUHAKAM's engagement at the regional and international levels, the response refers to:

- SUHAKAM's engagement within the "ASEAN NHRI Forum" (a network established amongst NHRIs of Indonesia, Thailand, Malaysia and the Philippines);
- Its "pivotal role in supporting the development of the ASEAN Charter and the creation of a human rights body under the Charter", and "with the Regional Working Group for an ASEAN Human Rights Mechanism".
- Its regular participation in the Human Rights Council sessions in Geneva since 2000.
- Its participation and role in the APF.
- Its participation in the ICC's activities. In this respect the response mentions (page 11) that "where it is not able to attend all the sessions, it (SUHAKAM) keeps close touch with the discussions, *through Malaysian Permanent Representative in Geneva under the Ministry of Foreign Affairs (two of the current members of SUHAKAM whose expertise is in international relations are former Ambassador who had a life-long experience in international work as career diplomats)*" (emphasis added).
