



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

EDITOR, NEWS DESK

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PRESS STATEMENT

KUALA LUMPUR (31 OCTOBER 2018) - In full support of the Prime Minister's promise to position Malaysia at the forefront of progressive civil rights policy and practice, the Human Rights Commission of Malaysia (SUHAKAM) joins the call for accession to the International Convention on the Elimination of All Forms of Racial Discrimination 1966 (ICERD), which was created with the principles of the dignity and equality inherent in all human beings in mind. SUHAKAM underscores that racial discrimination of any form must have no place in multiracial and moderate Malaysia, as all Malaysians deserve to live peacefully and enjoy the benefits of civilized values.

SUHAKAM is aware of some public opinion against accession to the Convention, some of which in our view can be construed as incitement to discrimination. SUHAKAM regrets that many opinions have misinterpreted whether deliberately or otherwise the spirit of ICERD, and accordingly cautions those who push for polarization and superiority, or pre-eminence of one race or one religious belief over another, to stop if Malaysia is to be seen to be unhesitating to the elimination of racial discrimination.

In furthering Malaysia's human rights objectives, moving towards a society free of racial discrimination for enhanced social harmony, tolerance and peaceful co-existence, SUHAKAM believes accession to the Convention is possible with political will and courage. SUHAKAM looks forward to a collective decision in Cabinet on this matter in keeping with the pronouncement of the Prime Minister.

As in the case of all international human rights treaties, the function of ratifying international treaty is to make an aspirational promise towards compliance within minimum international norms, over time as done previously when Malaysia ratified the 3 earlier. In implementing a treaty, domesticating the treaty in relevant local laws, which involves parliamentary processes, is the manner to be undertaken over time, after ratification of any international treaty. Also policies can be made to give effect to some of the provisions of treaty to supplement the legal reforms. Therefore, claims that accession to the Convention shall distort Malay special position are baseless, unsubstantiated and possibly made in bad faith, as any changes must go through the due process of Parliament.

SUHAKAM wishes to reinforce the following:

- i. The new Government is now in a position to remediate contemporary manifestations of race-based discrimination that seemed tolerable under the previous administration, such as workplace discrimination; for example, of Muslim women in the hotel industry who

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

choose to wear the ‘tudung’ (headscarf) and segregation of customers based on their religious background such as the Muslim only launderette policy.

- ii. While the Federal Constitution in Article 8 provides a constitutional guarantee of equality for all persons and provides protection against discrimination based upon religion, race, descent, place of birth or gender, in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment, accession to the Convention would encourage anti-discrimination practices, policies and legislation that are necessary in Malaysia to provide further protection against racial discrimination.
- iii. ICERD recognises the concept of ‘substantive equality’ in Article 2(2) meaning that in appropriate situations, the Government can take special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them; hence protecting the integrity **of the Federal Constitution, the royal prerogative of the Agong and Article 153 on “reservation of quotas in respect of services, permits, etc., for Malays and natives of any of the States of Sabah and Sarawak”**.
- iv. The allowances of special measures must be seen as short-term measures to address historical socio-economic disadvantages. Once addressed, all such measures should be equally accessible to all communities. This would mean that programmes developed as affirmative action will have to be more transparent with far greater public scrutiny. It is thus recommended that the Government develop indicators to measure the fulfilment of the objectives and purposes of special measures so that it can be harmonized with Article 1(4) of ICERD.
- v. On the defective and ill thought out argument that accession to ICERD would mean that raced based political parties will be deemed illegal in Malaysia, Article 4 of ICERD requires States Parties to condemn and outlaw the dissemination of racist propaganda and prohibit organisations based on racist ideas or those which promote racial hatred or racial supremacy, which SUHAKAM believes cannot be the vision or mission of any political party in Malaysia.
- vi. There continues to be a significant development gap between the *Orang Asli* and other Malaysians in terms of the realisation of human rights and fundamental freedoms. SUHAKAM’s finding is that the *Orang Asli* still face comparative disadvantage, marginalisation and discrimination in health, education, employment, economic opportunities and most importantly social inclusion. Accession to ICERD will assist the



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

government in ending practices of segregation, exclusion and discrimination associated therewith, in whatever form and wherever they exist.

- vii. SUHAKAM is steadfast in its position that university entry policies that discriminate on the basis of race cannot be accepted by a government committed to moderation as every Malaysian deserves to be an equal beneficiary of public education. However, given the provisions for special measures for the sole purpose of securing adequate advancement of certain racial groups in Articles 1(4) and 2(2) of ICERD, universities with race-based entry requirements will not have to be automatically or immediately abolished.
- viii. SUHAKAM urges the Government to increase public awareness on ICERD through active public engagement and stands ready to assist.

SUHAKAM believes that the international community has embraced commitment to take an effective and proactive stance against racial discrimination, manifested in the numbers of countries that have acceded to ICERD, presently **179 of 193** United Nations Member States, with 52 Organisation of Islamic Cooperation (OIC) countries.

SUHAKAM hopes that accession to the Convention will serve as the benchmark for how the new government should protect and promote human rights for all regardless of race, colour, descent or national or ethnic origin.

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**Tan Sri Razali Ismail
Chairman
Human Rights Commission of Malaysia (SUHAKAM)
31 OCTOBER 2018**

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