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HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C) OF  
THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1

**Malaysia \***

The present report is a summary of 11 stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

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\* The present document was not edited before being sent to the United Nations translation services.

## **I. BACKGROUND AND FRAMEWORK**

### **A. Scope of international obligations**

1. Malaysia has not ratified most of the major international human rights instruments, as highlighted by several organizations.<sup>2</sup> The Bar Council of Malaysia (BCM) indicated that Malaysian Courts have taken the clear position that the Universal Declaration of Human Rights (UDHR) is not legally-binding, and the Government of Malaysia (GOM) has stated on numerous occasions that the UDHR would only be given effect insofar as it is not inconsistent with the Federal Constitution (FC). This is one possible reason for the apparent reluctance to ratify the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and their respective optional protocols.<sup>3</sup> Malaysia has also yet to ratify the Rome Statute of the International Criminal Court, as indicated by Amnesty International (AI).<sup>4</sup>

2. Malaysia has only ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), albeit with certain reservations, as noted by the Human Rights Commission of Malaysia (SUHAKAM) and other organizations.<sup>5</sup> Malaysia's accession to CEDAW is subject to the understanding that its provisions do not conflict Islamic Sharia law and the Constitution.<sup>6</sup> SUHAKAM indicated that ratifying the Convention on the Rights of Persons with Disabilities (CRPD) and implementing the Persons with Disabilities Act 2007 (PDA) should go hand-in-hand.<sup>7</sup>

### **B. Constitutional and legislative framework**

3. The Coalition of Malaysian NGOs in the UPR process (COMANGO) indicated that the FC guarantees the fundamental liberties, however the protection afforded has been diminished.<sup>8</sup> Until 8 March 2008, the ruling parties have held more than two-thirds of the parliamentary seats and were as such in a position to amend the FC at their convenience. In 1988, amendments were made to the FC, subordinating the Judiciary to Parliament.<sup>9</sup> The Becket Fund (BF) referred to the parallel Sharia and civil court systems. Non-Muslims are governed exclusively by civil law. Muslims are also governed by Sharia in specific matters, usually having to do with family law and property rights.<sup>10</sup> The European Centre for Law and Justice (ECLJ) further noted that the country's civil court system has gradually ceded jurisdictional control to Sharia's courts in family law areas involving disputes between Muslims and non-Muslims.<sup>11</sup>

4. The Child Act 2001, currently under review, suffers from weak enforcement, as noted by SUHAKAM.<sup>12</sup> BCM highlighted the absence of express statutory provisions for children to be able to make their views known, particularly in the juvenile justice system or in civil proceedings. BCM also noted that the underlying spirit of the CRC to treat children differently from adults, has not been applied by the Courts in the interpretation of detention provisions, nor has the Federal Court annulled a legal provision which allows for an undetermined length of deprivation of liberty of a child.<sup>13</sup>

### **C. Institutional and human rights infrastructure**

5. SUHAKAM was created through the Human Rights Commission of Malaysia Act 1999 (Act 597)<sup>14</sup> with popular support. From the onset, Commissioners, as well as civil society had found the Act to be too restrictive.<sup>15</sup> Most SUHAKAM's recommendations have not been accepted by the Government and the annual reports submitted to Parliament were never debated

upon.<sup>16</sup> SUHAKAM faces a possible downgrade from ‘A’ to ‘B’ status by the International Coordinating Committee of National Human Rights Institutions (ICC), after failing to comply with the Paris Principles.<sup>17</sup> Similar concerns were raised by other organizations indicating, *inter alia*, that SUHAKAM is not viewed as an independent and effective body; the criteria for selection and appointment of Commissioners are non-transparent and without consultation with civil society and SUHAKAM does not have any enforcement authority.<sup>18</sup> SUHAKAM called upon the Government to amend Act 597 in line with the Paris Principles.<sup>19</sup> In addition, AI recommended amending section 2 of the Act to widen SUHAKAM’s jurisdiction to cover all rights provided for in the UDHR.<sup>20</sup>

6. Reference was also made to the recommendation by a Royal Police Commission to Enhance the Operations and Management of the Royal Malaysia Police, set up in 2004, calling for the establishment of an Independent Police Complaints and Misconduct Commission (IPCMC). Instead a Special Complaints Commission (SCC) bill was introduced<sup>21</sup>, which, as noted by AI would only receive complaints, would not be authorised to investigate and; is seen as lacking independence.<sup>22</sup> According to BCM, a subsequent Royal Commission of Inquiry determined that further investigations should be conducted against key individuals, however to-date, no information on such investigations (if any) has been forthcoming.<sup>23</sup>

#### **D. Policy measures**

7. SUHAKAM called on the Government to consider its proposal for a National Human Rights Action Plan and for human rights training to enforcement personnel.<sup>24</sup>

8. Concerns raised by the Committee on the Rights of the Child have yet to be comprehensively addressed, especially the National Plan of Action for Children 2005-2010 and the Child Protection Policy, as indicated by some organizations.<sup>25</sup>

## **II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **A. Cooperation with human rights mechanisms**

9. The International Federation for Human Rights and SUARAM (FIDH-SUARAM) noted that no standing invitation has been extended to Special Procedures.<sup>26</sup> Of the 8 Special Procedures that have requested a visit since 2002, only one was approved in 2007.<sup>27</sup> The Migration Working Group and the Northern Network for Migrants and *Refugees Jaringan Utara Migrasi dan Pelarian* (MWG-JUMP) recommended to the Government to extend an invitation to the Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and the Special Rapporteur on the Human Rights Situation of Migrants and the Working Group on Arbitrary Detention.<sup>28</sup> Human Rights Watch (HRW) highlighted that the Government has not responded to a request for a visit by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, nor has it responded to his request for information on ISA detentions.<sup>29</sup>

### **B. Implementation of international human rights obligations**

#### **1. Equality and non-discrimination**

10. Save for the amendment of the FC in 2001 prohibiting gender discrimination, CEDAW’s principles of equality and non-discrimination have not been incorporated into domestic legislation and cannot be invoked and given effect to by courts, tribunals and administrative authorities, as highlighted by BCM.<sup>30</sup> This was clearly illustrated in the *Beatrice Fernandez*

*case*, in which the Federal Court held that the equal protection guarantee in Article 8(2) extended only to persons in the same class, i.e. as all female flight stewardesses were subject to the same requirement, there was no discrimination. It also held it was limited to individuals aggrieved by violations of rights by the State.<sup>31</sup>

11. The FC defines ‘Malay’, which are 60% of the population, as being Muslim. COMANGO referred to contested official figures used to continue with race-based affirmative action policies for the *bumiputera* (Malays and the natives of Sabah and Sarawak) which have fomented national disunity.<sup>32</sup>

12. COMANGO and BCM noted that the PDA was passed but it does not provide for redress, nor does it provide for amenities for persons with disabilities, and its implementation remains to be seen.<sup>33</sup> Persons with disabilities continue to face real difficulties in accessing employment, education, housing, and public facilities.<sup>34</sup>

13. AI called on the Government to repeal or reform articles 377a and 377b of the Penal Code, which have created an environment, that allows for discrimination against lesbians, gays, bisexuals and transsexuals.<sup>35</sup>

## **2. Right to life, liberty and security of the person**

14. Malaysian law provides for capital punishment for a wide variety of crimes, and some carry a mandatory death sentence, as indicated by AI.<sup>36</sup> Dates of executions and details of those who have been or will be executed are not made public. AI noted that in January 2008, Malaysians Against Death Penalty estimated the number of inmates on death row to be as high as 300.<sup>37</sup> While these provisions exist, SUHAKAM urged Pardon Boards to review such cases.<sup>38</sup> AI called on the Government to immediately impose a moratorium on executions, with a view to complete abolition, in line with the 18 December 2007 General Assembly resolution 62/149.<sup>39</sup>

15. According to COMANGO, no information is available on the number of prisoners sentenced to the death penalty or whipping and the number of strokes.<sup>40</sup> MWG-JUMP reported that the Home Affairs Ministry announced in December 2004 that 18,607 ‘illegal immigrants’ had been whipped since the Immigration Act was amended in 2002.<sup>41</sup>

16. AI referred to reported incidents of torture and other ill treatment involving police officers of the Special Branch (SB) of the Royal Malaysian Police and the Federal Reserve Unit.<sup>42</sup> AI indicated that the Royal Commission to Enhance the Operations and Management of the Police recommended that in order to make the SB more accountable, its responsibilities be clearly defined by law, however no information on the steps taken by the Government is reported.<sup>43</sup>

17. COMANGO indicated that cases of violence against women are on the rise and that the Government needs to improve its efforts to protect women, including: to criminalise marital rape; legislate to prohibit sexual harassment and stalking; implement the Domestic Violence Act 1994 more efficiently; and train the police and judiciary on gender awareness.<sup>44</sup>

18. AI noted that Malaysian human rights organization Suaram recorded an estimated 1,000 individuals detained under the EO, including minors. The Internal Security Ministry estimated 1,531 persons to be detained under the DDA in the same year. As of September 2008, there are approximately 65 individuals detained under the ISA, including foreign nationals.<sup>45</sup>

19. FIDH-SUARAME also noted that a significant number of EO detainees have won their freedom through *habeas corpus* applications. However, many were re-arrested immediately after the court had released them and others were released but put under the RRA.<sup>46</sup> In practice, HRW noted that ISA has served as an excuse to silence government critics through the use of open-ended incarceration.<sup>47</sup> AI also noted the use of the ISA in relation to criminal activities such as human trafficking, currency counterfeiting, forgery of passports and identity cards.<sup>48</sup>

20. MWG-JUMP noted that there have been numerous reports of excessive violence and abuse by the Immigration Department of the Ministry of Home Affairs and the Malaysian Volunteer Corps (RELA) created in 1972 to assist, maintain and safeguard peace and security.<sup>49</sup> MWG-JUMP also referred to cases where Police, Immigration and RELA officers extort migrants using arrest as a threat.<sup>50</sup> Failure to distinguish asylum seekers, refugees and stateless persons during Immigration-RELA operations (including those carrying UNHCR documents) has resulted in their arrest. Those without UNHCR documents (including those whose UNHCR documents were destroyed by RELA at point of arrest) are not given access to the UNHCR while in detention.<sup>51</sup> COMANGO further noted that since 2005, the powers of RELA have been expanded and, as set out in the RELA regulations, RELA members have immunity from prosecution. COMANGO also noted that the numbers of RELA members, now estimated at 475,000, is high compared to 93,348 police personnel.<sup>52</sup> Similar concerns were raised by HRW further expressing concern about plans to turn RELA into a full-fledged enforcement department within the Home Ministry.<sup>53</sup>

21. Conditions in some prisons and Immigration Detention Centres (IDCs) remain deplorable, with severe and chronic over-crowding, poor sanitation, as well as insufficient food and water, as reported by some organizations.<sup>54</sup> There are also reports of physical violence and abuse; children detained with adults, including unaccompanied minors. In 2008, the management of IDCs was handed over to the Immigration Department, who employed RELA personnel to assist in ensuring security in the IDCs. Since the handover, there has been an increase in abuse of power, violence and corruption, as reported by MWG-JUMP.<sup>55</sup>

22. According to COMANGO, official statistics show a sharp increase in child abuse cases from 2002 to 2006, and the police is slow in investigating cases of commercially and sexually exploited children. There are no adequate provisions to protect the safety of the children physically, emotionally or otherwise. More agencies and mental health practitioners specialising in the area of child sexual exploitation are needed.<sup>56</sup>

### **3. Administration of justice and the rule of law**

23. SUHAKAM referred to recent amendments to the Penal Code and Criminal Procedure Code which led to positive changes, such as eliminating confessionary statements; detailed procedures for body searches; requiring public prosecutors to provide trial documents before trial to defence counsel; requiring remand periods to be in accordance with the severity of the crime; and requiring the police to inform detainees of the grounds of their arrest within 24 hours.<sup>57</sup> SUHAKAM also noted that the implementation of the parole system under the Prisons Act 2007 helped towards the reduction of overcrowding in prisons.<sup>58</sup>

24. COMANGO referred to the dismissal of the head of the Judiciary and 2 senior Supreme Court justices in 1988, as well as to a questionable system of appointments and promotions to and on the bench that greatly undermined the Judiciary and seriously eroded public confidence in the institution. It also noted that numerous scandals have allowed for the perception that the Judiciary is not independent and is corrupt.<sup>59</sup>

25. Several organizations reported on the continued use of administrative detention and other restrictive legislation to arbitrarily arrest and detain, and deny the right to a fair trial and other human rights. These include the Internal Security Act (ISA) 1960, the Emergency Public Order Preventive Ordinance (EO) 1969, the Dangerous Drugs Act (DDA) 1985, the Restricted Residence Act (RRA) 1933, and other laws such as the Sedition Act 1948 (revised 1969), the Printing Presses and Publications Act (PPPA) 1984, and the Official Secrets Act (OSA) 1989.<sup>60</sup>

26. Under the ISA, EO, and DDA, police are empowered to arrest without a warrant any person they suspect of being an actual or potential threat to national security or public order and to detain them incommunicado for up to 60 days for “investigation”, as reported by several organizations. Based on police investigation reports, the Internal Security Minister is empowered to issue two-year detention orders, renewable indefinitely, without judicial review.<sup>61</sup>

27. According to FIDH-SUARAM, Malaysia’s courts have been extremely conservative in protecting individual liberties against extensive executive powers and although there is a three-member Advisory Board under the ISA to review detention cases, its mode of operation compromise any claim of independence.<sup>62</sup> HRW further noted that the recommendations of the ISA Advisory Board are not binding.<sup>63</sup> Several organizations considered that the ISA should be repealed in its entirety and all persons should be tried in conformity with international fair trial standards.<sup>64</sup>

28. Some organizations raised concerns with regard to the administration of justice and barriers faced by migrant workers to gain redress, *inter alia*: the length a migrant arrested under Immigration Act may be held before being brought before a Magistrate; indeterminate detention pending removal; sentencing to whipping; and the absence of specific protection in case of abuse by employers or unpaid wages.<sup>65</sup> Since the introduction of immigration courts within immigration camps in remote parts, some organizations questioned whether standards for a fair public hearing by an impartial tribunal are being observed.<sup>66</sup>

#### **4. Right to privacy, marriage and family life**

29. The stalled amendments to the Islamic Family Laws and the Law Reform (Marriage and Divorce) Act 1976 continue to place hardship on women and children, as noted by COMANGO. Despite the calls by women’s groups, no Special Select Committee of Parliament was established to ascertain what would best reflect the needs of women and children.<sup>67</sup>

30. According to COMANGO, the Government’s hetero-normative stand discriminates against people of non-heterosexual orientations by adopting conservative and restrictive interpretations of religions and laws, such as the S377A and S377D of the Penal Code (PC) and the S21 of the Minor Offences Act 1955.<sup>68</sup>

#### **5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

31. The Constitutional provision of a Civil Court and a Sharia Court and exclusion of jurisdiction of the former in respect of any matter within the jurisdiction of Shariah Court, regarding freedom of religion arising from conversions to Islam (mostly marital) and apostasies, raised conflicts in more than one case, as indicated by SUHAKAM and other organizations.<sup>69</sup> BF noted that Sharia’s jurisdictional reach is supposed to extend exclusively over Muslims, however, the question of who is a Muslim has presented serious barriers to the exercise of

religion among non-Muslims in cases dealing with conversion, burial, an other sensitive topics over which the Sharia courts claim jurisdiction.<sup>70</sup>

32. COMANGO also noted instances of demolitions of temples of non-Muslim communities by the local councils, such as the 100-year old Sri Maha Mariaman Hindu temple, the Sri Maha Periyachi Amman Hindu temple and the Sri Kaliaman Hindu temple demolished in 2007.<sup>71</sup>

33. Islamic authorities have powerful influence over the administration of religious matters at the state and federal levels, as indicated by the COMANGO. Sunni Islam is the officially accepted school of thought and any other forms, practices or schools of thoughts in Islam may be considered deviant.<sup>72</sup>

34. COMANGO and other organizations also indicated that the freedom of opinion and expression is curtailed by restrictive laws, such as the PPPA 1984, the Sedition Act (SA) 1948 (revised 1969), the Official Secrets Act (OSA) 1972, the Trade Unions Act 1959 (TUA), and the Universities and the University Colleges Act 1971 (UCA).<sup>73</sup>

35. COMANGO indicated that the Government had pledged “the promotion of a free media, including in cyberspace”, however, numerous cases of action against bloggers to control political expression in the Internet, were documented, in particular since 2006. In October 2007, the Malaysia Communications and Multimedia Commission instructed 11 websites to be shut down for contravening “rules and regulations concerning the publication of information on the Internet”.<sup>74</sup> According to COMANGO, the right to information is also severely restricted by the OSA.<sup>75</sup>

36. AI noted that in 1987, the Government amended the PPPA, granting the Minister of Home Affairs absolute discretion, not subject to judicial review, to ban or restrict ‘undesirable’ publications. AI expressed concern that vaguely worded provisions of Section 3 (1) A of the SA are used to arrest persons solely for criticizing the government and its policies.<sup>76</sup> SUHAKAM indicated that at the time of writing, a letter had been sent by a Catholic newsletter requesting explanation on some of its published articles deemed to be political and outside religious concern.<sup>77</sup>

37. According to COMANGO, the violation of freedom of expression through the regulation of sexuality is most often used against women and the transgendered. Muslim entertainers have borne the brunt of religious authorities' regulation of 'immoral activities' in pubs, bars and other entertainment outlets. Singers have been arrested, charged under Sharia offences and harassed.<sup>78</sup> There are also curbs on cultural and artistic expression, particularly on those deemed ‘against the teachings of Islam’. In 2006, the State Government of Kelantan imposed a ban on *Mak Yong* performances despite UNESCO certifying these as a world cultural heritage. No action was taken by the Federal Government.<sup>79</sup>

38. FIDH-SUARAM noted that human rights defenders operate within the context of national security laws, which seriously impede their work and constantly threaten their physical and psychological integrity. Chief among the barriers is the curtailment of freedom of speech and restrictions to congregate, organize or protest freely.<sup>80</sup> Several organizations referred to the situation of five leaders of the Hindu Rights Action Force (HINDRAF), an NGO defending the rights of the Indian minority, who are detained since December 13, 2007, under Section 8 (1) of ISA. On February 26, 2008, the Kuala Lumpur High Court rejected their *habeas corpus* applications.<sup>81</sup> COMANGO also indicated that various groups face difficulties in forming associations (formal or otherwise).<sup>82</sup> MWG-JUMP reported that Malaysia has interfered with the

ability of civil society to criticize its migration policies, as exemplified by the case of a migrant rights activist who was sentenced to 12 months imprisonment after seven years of trial, charged under section 8A(1) of the PPPA after releasing a memorandum entitled “Abuse, Torture and Dehumanized Treatment of Migrant Workers at Detention Camps”. An appeal to the High Court remains pending.<sup>83</sup>

39. The right to assemble peacefully is severely circumvented by the Police Act 1967, which confers wide discretionary powers to the police to regulate assemblies, as indicated by COMANGO and FIDH-SUARAM.<sup>84</sup> COMANGO also reported on emerging trends obtaining court orders to bar individuals from access to places surrounding the venues of planned assemblies; erecting roadblocks a few days before and after the events.<sup>85</sup> AI called on the Government to amend the Police Act to ensure that its 1987 amendments do not violate the right to peaceful assembly.<sup>86</sup>

40. Women’s participation in decision-making is low despite Malaysia’s commitment under its 9th Malaysian Plan, the Beijing Platform for Action and CEDAW to implement 30% participation of women in decision-making, as highlighted by BCM.<sup>87</sup>

## **6. Right to work and to just and favourable conditions of work**

41. COMANGO made reference to limitations in the TUA, in particular the prohibition for public officers from joining any trade union; for trade unions officers from holding office in political parties and some limitations for unions to represent workers. COMANGO also noted that the Director General of Trade Unions has absolute discretion to refuse the registration, and in some circumstances, may also withdraw the registration of a trade union.<sup>88</sup> The Malaysian Trade Union Congress, the largest umbrella body of trade unions is not able to register as a trade union and is therefore registered as a society.<sup>89</sup> MWG-JUMP reported that many standard employment contracts provide an express prohibition against migrant workers becoming members or taking part in trade union activities even if the TUA and the Employment Act 1955 do not set any prohibition in this regard.<sup>90</sup>

42. The MWG-JUMP raised concerns regarding the impact of the ‘outsourcing’ recruitment system introduced in 2006, which contributes to labour trafficking, as well as to the vulnerability and lack of protection by foreign workers.<sup>91</sup> HRW expressed concern about the situation of migrant domestic workers and recommended to the Government, *inter alia*, to strengthen regulations governing recruitment agencies; institute screening procedures and support services at its borders, in cooperation with trafficking experts, SUHAKAM and nongovernmental organizations; to identify and assist trafficking victims and abused migrant workers ;and to conclude comprehensive labour agreements with all countries that send domestic workers to Malaysia, ensuring workers minimum labour protections, and creating clear and accessible remedies for abuse.<sup>92</sup>

## **7. Right to social security and to an adequate standard of living**

43. The privatisation of health services has impacted negatively on the quality of public health services, as highlighted by COMANGO.<sup>93</sup> There is a real concern that ongoing bilateral Free Trade Agreement (FTA) negotiations will result in the Government failing to protect accessibility to affordable medicines, especially those to treat persons living with HIV.<sup>94</sup> COMANGO noted that heterosexual transmission of HIV is on the rise. It further indicated that laws criminalizing sex work, sexual practices and the carrying of syringes and needles are legal barriers for vulnerable groups to access HIV testing, prevention and treatment.<sup>95</sup>

44. MWG-JUMP reported on the discrimination and problems faced by non-citizens, including those in IDCs, to access health services; their fear of non-citizens unable to provide valid identity documents of being reported at government hospitals and; the mandatory testing for more than 15 infectious diseases and pregnancy tests for migrant women.<sup>96</sup>

45. According to COMANGO, emergency ordinances, such as the Essential Clearance of Squatters Regulation 1969 and laws like the National Land Code 1965 and the Land Acquisition Act 1991, are often used to evict urban settlers, longhouse settlements, low cost flat dwellers and other urban poor communities. COMANGO indicated that decisions on the processes of construction and allocation of the low cost housing governmental scheme established in 1982, are controlled by the local government officials and the private developers without any participation from the people.<sup>97</sup>

### **8. Right to education and to participate in the cultural life of the community**

46. According to COMANGO the Government has not succeeded in providing appropriate vocational training to enable the youth to exercise their right to work.<sup>98</sup>

47. The pre-school education in the rural and semi-rural areas is within the jurisdiction of the Rural Development Ministry, however, children from the rural plantation have little access to these schools as it caters mainly for the Malay rural children, as indicated by COMANGO.<sup>99</sup> In addition, teachers must possess a higher secondary school certification on the subject of Islam, which discriminates against some pre-school teachers. In addition, the absence of Tamil language in the *Kemas* kindergartens accessed by a few, does not prepare the children who would eventually enter Tamil vernacular primary schools.<sup>100</sup>

### **9. Minorities and indigenous peoples**

48. The *Orang Asal*, or indigenous peoples, consist of more than 80 ethno-linguistic groups, each with its own culture, language and territory, as indicated by the **Jaringan Orang Asal Semalaysia (JOAS)**.<sup>101</sup> Collectively, the 4 million indigenous peoples are among the poorest and most marginalised.<sup>102</sup> SUHAKAM noted that the rights of indigenous people to customary land should be upheld; and existing state legislations should be reviewed. SUHAKAM noted that the Malaysian Court has progressively recognised customary land rights.<sup>103</sup> BCM noted that State Governments have cleared ancestral land and/or alienated land occupied or utilised by aborigines to third parties (e.g. for logging, palm cultivation) and has only offered to pay compensation for loss of agricultural products planted on such land.<sup>104</sup> According to BCM, the GOM has found it difficult to extend to the aboriginal community the right to proper education and health services.<sup>105</sup> COMANGO also indicated that there is also an 'Islamisation policy' that targets the conversion of the Orang Asli community.<sup>106</sup>

### **10. Migrants, refugees and asylum-seekers**

49. According to MWG-JUMP Malaysia hosts around 2.1 million documented migrant workers, amongst whom there are 315,703 domestic workers and 1 million or more additional migrants in an irregular situation.<sup>107</sup> SUHAKAM noted the entry into force in 2008 of the Anti-Trafficking in Persons Act<sup>108</sup> and Malaysia's signature of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007.<sup>109</sup> Several organizations drew attention to the human rights violations and discrimination faced by non-citizens.<sup>110</sup> MWG-JUMP reported that deportees testify that Immigration officials collude with human smugglers/traffickers. It further reported that gender-based violence is significant amongst non-

citizens with irregular status, since perpetrators are aware that victims are reluctant to lodge police reports for fear of getting arrested on immigration offences.<sup>111</sup>

50. Malaysia has not ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, according to SUHAKAM.<sup>112</sup> As there are no domestic laws enacted concerning asylum seekers, refugees and stateless persons and no state facilities for their reception, registration, status determination and protection, the Office of the United Nations High Commissioner for Refugees (UNHCR) performs some of these functions as indicated by MWG-JUMP.<sup>113</sup> As of 1 August 2008, the UNHCR had registered 41,405 persons of concern, of which 11,172 were children. An additional 61,314 Muslim refugees from a nearby country, reside in Sabah with documented status under IMM13 work permits. However, thousands of individuals remain unregistered and outside UNHCR's protection. Both UNHCR-registered and unregistered asylum seekers, refugees and stateless persons are considered irregular migrants by most government agencies, in particular the Immigration Department and the RELA, who continue to arrest them for immigration offences.<sup>114</sup> There have been cases of *refoulement*.<sup>115</sup>

### **11. Human rights and counter-terrorism**

51. According to AI, the Government continues to use or threaten to use the ISA against perceived critics of the government, individuals who distribute alleged "false news", persons described as suspected foreign agents and people allegedly involved in "terrorist-linked" activities.<sup>116</sup> AI called on the Government to repeal all provisions allowing administrative detention in the name of 'national security' or similar grounds.<sup>117</sup>

## **III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

52. BCM made reference to the declaration made by Malaysia when ratifying the CRC, that even though primary education is not compulsory and available free to all, primary education is available to everybody.<sup>118</sup> However, such education is not sufficient for children with disabilities;<sup>119</sup> children (of Malaysians) without birth certificates are denied the opportunity to attend schools; and<sup>120</sup> asylum seeking children, refugee children, stateless children as well as children of migrant workers are not given free primary education in government-run schools, as indicated by MWG-JUMP<sup>121</sup> and BCM.<sup>122</sup>

## **IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS**

53. Malaysia has ratified the ASEAN Charter, which provides for the establishment of an ASEAN human rights body, which the Government is committed to establishing, as highlighted by SUHAKAM.<sup>123</sup>

## **V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE**

54. SUHAKAM called upon the Government to develop capacity building and technical assistance in cooperation with SUHAKAM and civil society.<sup>124</sup>

## Notes

<sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org). (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council. Two asterisks denote a national human rights institution with “A” status):

### *Civil society*

AI	Amnesty International, London ( England)*
BCM	Bar Council of Malaysia, Malaysia
BF	The Becket Fund for Religious Liberty, United States*
COMANGO	Coalition of Malaysian NGOs in the UPR Process, Selangor ( Malaysia). Joint submission by 56 NGOs: All PJ Residents’ Association Coalition (APAC) (a coalition of 9 residents’ associations), All Women’s Action Society (AWAM), Centre for Independent Journalism (CIJ), Centre for Orang Asli Concerns (COAC), Centre for Public Policy Studies (CPPS), Civil Rights Committee of the Kuala Lumpur and Selangor Chinese Assembly Hall, Community Action Network (CAN), Education and Research Association for Consumers, Malaysia (ERA Consumer), Health Equity Initiative, Human Rights Committee of the Malaysian Medical Association, Independent Living and Training Centre (ILTC), Indigenous and Peasant Movement Sarawak (Panggau), International Association for Peace (IAP), Indian Malaysian Active Generation (IMAGE), Knowledge and Rights with Young People through Safer Spaces (KRYSS), Malaysian Animal-Assisted Therapy for the Disabled and Elderly Association (Pet Positive), Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) (a coalition of 9 religious organisations), Malaysian Trade Union Congress (MTUC), Malaysian Youth and Students Democratic Movement (DEMA), Myanmar Ethnic Rohingya Human Rights Organisation Malaysia (MEHROM), Persatuan Sahabat Wanita Selangor (PSWS), Persatuan Masyarakat Selangor and Wilayah Persekutuan (PERMAS), Persatuan Guru-guru Tadika (PGGT), Positive Malaysian Treatment Access & Advocacy Group (MTAAG+), Protect and Save the Children (PS the Children), PT Foundation, Pusat Jagaan Nur Salam, Pusat Komunikasi Masyarakat (KOMAS), Research for Social Advancement (REFSA), Sarawak Dayak Iban Association (SADIA), Sisters in Islam (SIS), Tenaganita, United Dayak Islamic Brotherhood, Sarawak, Women’s Aid Organisation (WAO), Women’s Centre for Change, Penang (WCC), Writers’ Alliance for Media Independence (WAMI), Youth for Change (Y4C), Youth Section of the Kuala Lumpur and Selangor Chinese Assembly Hall
ECLJ	European Centre for Law and Justice, Strasbourg ( France)*
FIDH	Joint submission by the International Federation for Human Rights /Fédération internationale des ligues des droits de l’Homme, Geneva, Switzerland* and SUARAM
HRW	Human Rights Watch, Geneva ( Switzerland)*
JC	Jubilee Campaign, United States*
JOAS	Indigenous Peoples Network of Malaysia (umbrella network for 21 organizations throughout Malaysia), Sabah, Malaysia.
MWG and JUMP	Migration Working Group& the Northern Network for Migrants and Refugees. Joint submission by 19 organizations: Aliran Kesedaran Negara, All Women’s Action Society; Building & Wood Workers International, Asia-Pacific Region; Coordination of Action Research on AIDS and Mobility, Asia (CARAM Asia); Health Equity Initiatives; Kumpulan ACTS Berhad; Labour Resource Centre; Malaysian Social Research Institute; Malaysian Trade Union Congress; Migrants Desk, Melaka-Johor Catholic Diocese; Migrant Workers Support Centre; National Human Rights Society; Penang Office for Human Development; P.S. The Children; Pusat Jagaan Kanak Kanak NurSalam, Chow Kit; Shelter Home for Children; Tenaganita; United Friendship Initiative and Women’s Aid Organisation.

### *National human rights institution*

UHAKAM Human Rights Commission of Malaysia, Kuala Lumpur ( Malaysia ).\*\*

<sup>2</sup> See also FIDH-SUARAM; SUHAKAM; BCM; COMANGO; JOAS; The Becket Fund; AI.

<sup>3</sup> BCM, page 1.

<sup>4</sup> AI, page 6.

<sup>5</sup> SUHAKAM, pages 1-2. See also submissions by FIDH; BCM; AI.

<sup>6</sup> SUHAKAM, page 2.

- <sup>7</sup> SUHAKAM, page 5.
- <sup>8</sup> COMANGO, page 1.
- <sup>9</sup> COMANGO, page 1.
- <sup>10</sup> The Becket Fund, pages 1-5. See submission for cases cited. See also submission by the ECLJ.
- <sup>11</sup> ECLJ, page 3. See submission for cases cited.
- <sup>12</sup> SUHAKAM, page 2.
- <sup>13</sup> BCM, pages 1-2.
- <sup>14</sup> AI, page 1.
- <sup>15</sup> SUHAKAM, page 1.
- <sup>16</sup> SUHAKAM, page 1.
- <sup>17</sup> SUHAKAM, page 1. See also AI, page 1.
- <sup>18</sup> COMANGO, page 1; FIDH-SUARAM, page 5; BCM, page 4 ; AI, page 1.
- <sup>19</sup> SUHAKAM, page 5.
- <sup>20</sup> AI, page 7.
- <sup>21</sup> SUHAKAM, page 2. See also submission by the COMANGO, page 8; AI, pages 4 and 7; BCM, pages 4-5.
- <sup>22</sup> AI, page 4.
- <sup>23</sup> BCM, pages 4-5.
- <sup>24</sup> SUHAKAM, page 5.
- <sup>25</sup> BCM, pages 1-2; COMANGO, page 5. See also submission by SUHAKAM; AI, page 6.
- <sup>26</sup> FIDH - SUARAM, page 1.
- <sup>27</sup> FIDH - SUARAM, page 1. See also SUHAKAM, page 2; MWG-JUMP, page 2.
- <sup>28</sup> MWG-JUMP, page 9.
- <sup>29</sup> HRW, page 2.
- <sup>30</sup> BCM, page 1. See also submission by COMANGO and SUHAKAM.
- <sup>31</sup> BCM, page 1. See submission for case cited.
- <sup>32</sup> COMANGO, page 2.
- <sup>33</sup> COMANGO, page 6; BCM page 2.
- <sup>34</sup> COMANGO, page 6. See also SUHAKAM, page 2; BCM, page 2.
- <sup>35</sup> AI, pages 6 -7. See submission for case cited.
- <sup>36</sup> AI, pages 4-5.
- <sup>37</sup> AI, pages 4-5.
- <sup>38</sup> SUHAKAM, pages 3 - 4.
- <sup>39</sup> AI, page 7.
- <sup>40</sup> COMANGO, page 9.
- <sup>41</sup> MWG-JUMP, page 4.
- <sup>42</sup> AI, pages 5-6. See submission for cases cited.
- <sup>43</sup> AI, page 4.
- <sup>44</sup> COMANGO, page 5.
- <sup>45</sup> AI, page 1.
- <sup>46</sup> FIDH-SUARAM, page 3.
- <sup>47</sup> HRW, page 2. See submission for cases cited.
- <sup>48</sup> AI, page 1. See also HRW, page 2.
- <sup>49</sup> MWG-JUMP, page 3. See also AI, page 6; HRW, pages 2-3.
- <sup>50</sup> MWG-JUMP, page 3.
- <sup>51</sup> MWG-JUMP, page 3. See also AI, page 6 ; HRW, pages 2-3.
- <sup>52</sup> COMANGO, page 9.
- <sup>53</sup> HRW, pages 1-3.
- <sup>54</sup> MWG-JUMP, pages 4-5. See FIDH-SUARAM, pages 4-5 ; HRW, page 3.
- <sup>55</sup> MWG-JUMP, pages 4-5.
- <sup>56</sup> COMANGO, page 5.
- <sup>57</sup> SUHAKAM, page 2.
- <sup>58</sup> SUHAKAM, page 2.
- <sup>59</sup> COMANGO, page 1.
- <sup>60</sup> COMANGO, page 8; FIDH-SUARAM, pages 1-3; SUHAKAM; page 2; AI, page 1 ; HRW ; JC, page 2.
- <sup>61</sup> AI; BCM; FIDH-SUARAM; HRW; COMANGO; SUHAKAM; JC.
- <sup>62</sup> FIDH - SUARAM, page 2.
- <sup>63</sup> HRW, page 1.
- <sup>64</sup> FIDH - SUARAM, page 3. See also AI, HRW, BCM.
- <sup>65</sup> MWG-JUMP page 6. See also FIDH-SUARAM pages 4-5; BCM pages 2-3.

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- <sup>66</sup> BCM, page 3.
- <sup>67</sup> COMANGO, page 5.
- <sup>68</sup> COMANGO, page 4. See submission for cases cited.
- <sup>69</sup> SUHAKAM, page 4. See submission of The Becket Fund for Religious Liberty; European Centre for Law and Justice ; Bar Council of Malaysia ; Jubilee Campaign. See also emblematic cases on the right to change religion, burial rights, child custody, religious dress and; religious discrimination cited by The Becket Fund and several other organizations.
- <sup>70</sup> The Becket Fund, pages 1-5. See submission for cases cited. See also submission by the ECLJ.
- <sup>71</sup> COMANGO, page 3. See also The Becket Fund and SUHAKAM, page 4.
- <sup>72</sup> COMANGO, page 3.
- <sup>73</sup> COMANGO, page 5. See also AI; HRW; BCM.
- <sup>74</sup> COMANGO, page 7. See also AI, page 5.
- <sup>75</sup> COMANGO, page 7.
- <sup>76</sup> AI, page 2.
- <sup>77</sup> SUHAKAM, page 4. See also submission by Jubilee Campaign.
- <sup>78</sup> COMANGO, page 3.
- <sup>79</sup> COMANGO page 7.
- <sup>80</sup> FIDH-SUARAM, pages 3-4.
- <sup>81</sup> FIDH-SUARAM, pages 3-4. See also COMANGO page 8; AI, page 5; HRW, page 2; The Becket Fund, page 5.
- <sup>82</sup> COMANGO, page 8. See submission for cases cited.
- <sup>83</sup> MWG-JUMP page 2. See submission for case cited.
- <sup>84</sup> COMANGO page 8. See also FIDH-SUARAM, pages 3-4.
- <sup>85</sup> COMANGO page 8.
- <sup>86</sup> AI, page 7.
- <sup>87</sup> BCM, page 1.
- <sup>88</sup> COMANGO, page 8.
- <sup>89</sup> COMANGO, page 8.
- <sup>90</sup> MWG-JUMP, page 6. See also COMANGO, page 8; BCM, pages 2-3.
- <sup>91</sup> MWG-JUMP, pages 6-7.
- <sup>92</sup> HRW, page 6.
- <sup>93</sup> COMANGO, page 3.
- <sup>94</sup> COMANGO, pages 3-4.
- <sup>95</sup> COMANGO, page 3; SUHAKAM, page 5.
- <sup>96</sup> MWG-JUMP, pages 7-8.
- <sup>97</sup> COMANGO, page 8.
- <sup>98</sup> COMANGO, page 4.
- <sup>99</sup> COMANGO, page 6.
- <sup>100</sup> COMANGO, page 6.
- <sup>101</sup> JOAS, page 1.
- <sup>102</sup> JOAS, page 1.
- <sup>103</sup> SUHAKAM, page 4. See also BCM, page 2.
- <sup>104</sup> BCM, page 2.
- <sup>105</sup> BCM, page 1.
- <sup>106</sup> COMANGO, page 3.
- <sup>107</sup> MWG-JUMP, page 1.
- <sup>108</sup> SUHAKAM, page 2.
- <sup>109</sup> SUHAKAM, page 3.
- <sup>110</sup> See submissions from MWG-JUMP, page 1; COMANGO, page 6; FIDH-SUARAM, , pages 4-5; Bar Council of Malaysia, pages 2-3; SUHAKAM, page 4.
- <sup>111</sup> MWG-JUMP, pages 4-5. See also BCM, pages 2-3.
- <sup>112</sup> SUHAKAM, page 4. See also FIDH-SUARAM, page 5; AI, page 6.
- <sup>113</sup> MWG-JUMP, page 1.
- <sup>114</sup> MWG-JUMP, page 1. See also SUHAKAM page 4.
- <sup>115</sup> MWG-JUMP, page 9.
- <sup>116</sup> AI, page 1. See also submission by FIDH - SUARAM, pages 1-2.
- <sup>117</sup> AI, page 7.
- <sup>118</sup> BCM, pages 1-2.
- <sup>119</sup> BCM, pages 1-2.
- <sup>120</sup> BCM, pages 1-2.

<sup>121</sup> MWG-JUMP, page 9.

<sup>122</sup> BCM, pages 1-2.

<sup>123</sup> SUHAKAM, page 2.

<sup>124</sup> SUHAKAM, page 5.

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