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普遍定期审议

普遍定期审议工作组报告\*

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## Introduction

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its fourth session from 2 to 13 February 2009. The review of Malaysia was held at the 16th meeting on 11 February 2009. The delegation of Malaysia was headed by H.E. Rastam Mohd. Isa, Secretary-General, Ministry of Foreign Affairs. At its meeting held on 13 February 2009, the Working Group adopted the present report on Malaysia.

2. On 8 September 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Malaysia: Nicaragua, Qatar, and Egypt.

3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Malaysia:

(a) A national report submitted / written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/4/MYS/1);

(b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/4/ MYS/2);

(c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/4/ MYS/3).

4. A list of questions prepared in advance by Czech Republic, Latvia, Lichtenstein, Netherlands, Sweden, Denmark, Germany, Lithuania, United Kingdom of Great Britain and Northern Ireland and Finland was transmitted to Malaysia through the troika. These questions are available on the UPR extranet.

## I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS

### A. Presentation by the State under review

5. At the 16th meeting, on 11 February 2009, Malaysia presented its national report and indicated that it was drafted by a working group encompassing relevant government agencies, the National Human Rights Commission (SUHAKAM) as well as human rights NGOs.

6. The delegation noted that respect for human rights has been long established given the country's character as a melting pot of various cultures, religions and ethnicities. In considering the promotion and protection of human rights and fundamental freedoms, including the exercise of international obligations, Malaysia's unique character required prime importance be given to national unity, stability and security. The colonial period introduced the practice of associating ethnicity with particular economic activities, resulting in huge income and wealth disparities. In extreme cases, the promotion of hatred and violence among the various ethnic groups led to serious consequences, culminating in the explosive race riots of May 1969. In response, the Government radically modified its approach in tackling social inequalities by initiating the New Economic Policy in 1971 which aimed at universal poverty reduction through equitable redistribution of wealth. Today, Malaysia is a robust democracy fully committed to the principles of rule of law, good governance, integrity and accountability. Efforts have been largely devoted to achieving inter-racial harmony, and equitable socio-economic development, while taking into account individual human rights and fundamental freedoms.

7. The delegation informed that the Federal Constitution clearly defines the responsibilities of the State towards the individual, and vice-versa. For the past 35 years, poverty rates have declined dramatically due to effort in introducing new dimensions to address poverty among broad sections of the population, including indigenous groups, urban and rural poor. Poverty among Malaysians declined from 5.7 per cent in 2004 to 3.6 per cent in 2007 and Malaysia expects to halve general poverty to 2.8 per cent by 2010. . To improve the quality of life, the Government strives to provide adequate, affordable and quality housing, particularly for the low-income group and squatters. Various policies, programmes and substantial resources are devoted to ensuring this right as well as access to basic amenities including clean drinking water.

8. Malaysia recognises the importance of education and has allocated about 21 per cent of the total annual budget (US\$ 14.53 billion) for expenditure on education and training development. It is currently implementing an Education Development Master Plan (EDMP) 2006 – 2010 which outlines Malaysia's actions for eliminating imbalances by ensuring that students receive fair and equal educational opportunities regardless of location, race, ability or ethnic background, and that no students drop out of the system due to poverty or location.

9. The delegation referred to the United Nations compilation report highlighting specific communications addressed to Malaysia, and informed that the Government has responded to those communications and stands ready to share further information.

10. In thanking and responding to advance questions, Malaysia noted that an Inter-Agency Coordinating Committee has the mandate to recommend Malaysia's accession to human rights treaties and compliance with treaties which Malaysia are a party to. On accession to ICCPR, ICESCR, CAT and OP-CAT, the Government is seriously looking into the changes required in domestic legislation and policies. Malaysia has undertaken a detailed study and held consultations to study the legal implications arising from the provisions of the Rome Statute. Despite several concerns, Malaysia is fully committed to the principles and the establishment of the International Criminal Court and their integrity.

11. The delegation informed that Malaysia is open to the possibility of further discussions with the various Special Procedures and is willing to consider requests for visits positively on the merit of each proposal.

12. Despite not being party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees, Malaysia has complied with international obligations to persons who have entered Malaysia claiming to be refugees and asylum seekers through special arrangements with the UNHCR on humanitarian grounds, ever since it agreed to the establishment of the Office of the United Nations High Commissioner for Refugees some thirty years ago, with which it has cooperation and constructive engagement. In dealing with refugees detained under the Immigration Act of 1959/1963, Malaysia does not prosecute UNHCR card holders in court for their illegal stay, but only if they commit crimes. The Immigration Department uses its discretion in determining whether detained people claiming to be refugees should be released or deported. Malaysia is of the view that the onus and responsibility lie with the UNHCR to look into the welfare of refugees/asylum seekers particularly in finding suitable third countries to receive them since Malaysia is only a transit point.

13. Malaysia explained that the flow of foreign workers is managed on a bilateral basis with sending countries by executing legally binding instruments to regulate their entry and exit and

noted the need to also protect the rights of employers. Legally documented foreign workers are accorded equal treatment as local workers, as stipulated under the Employment Act 1955.

14. Due to resource and capacity limitations, Malaysia generally practices a policy of deportation of illegal immigrants. The rights of such immigrants are protected in accordance with the Federal Constitution and the Immigration Acts of 1959/1963. Illegal immigrants are not detained longer than necessary, however in certain cases, the most likely causes for prolonged detention include delays in confirming their nationality and delays in issuance of relevant travel documents by the respective foreign missions. While in detention, they are provided with the basic necessities and amenities.

15. Malaysia noted that the accreditation sub-committee of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) has alleged that SUHAKAM is not in full compliance with the Paris Principles. The Government was informed by SUHAKAM that it is at risk of being reaccredited by the ICC, from its current "A-status" to "B-status". Malaysia informed that several measures are being taken by the Government to ensure that SUHAKAM retains its credible and respected status.

16. The delegation stated that the newly established Judicial Appointments Commission (JAC) is entrusted with the core responsibility of identifying and recommending suitable candidates for judicial appointments and promotion based on clearly defined criteria. The Judicial Appointments Commission Act 2009 has been passed by Parliament and the Commission will be operational as soon as the Act comes into force.

17. On the eradication of corruption, the delegation noted the establishment of the Malaysian Anti-Corruption Commission (MACC) under the Malaysian Anti-Corruption Commission Act 2009 (Act 694). The MACC officially commenced operations on 1 January 2009 to enhance the effectiveness and efficiency of anti-corruption efforts as well as to increase public confidence in the independence and transparency of the Commission.

## **B. Interactive dialogue and responses by the State under review**

18. During the inter-active dialogue, statements were made by 60 delegations. Additional statements by twenty-three delegations which could not be delivered during the dialogue due to time constraints are also posted on the UPR extranet when available.\*\* A number of delegations thanked the Government for the comprehensive national report, its presentation and for its responses to advance questions that enabled an assessment of Malaysia's human rights promotion and protection efforts. Statements were made welcoming Malaysia's efforts to promote and protect human rights and the importance attached to this review. Many delegations welcomed the establishment of SUHAKAM. Numerous delegations also highlighted the ethnic, cultural and religious diversity in the country.

19. Brunei commended Malaysia's constructive engagement with its communities for their rights to, inter alia, education, health, culture, and adequate housing. It acknowledged the challenges in implementing these efforts. It cited Malaysia's close cooperation with other

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\*\* Mauritius, Slovakia, Japan, Sweden, Brazil, Argentina, Jamaica, Nigeria, Botswana, Peru, Democratic People's Republic of Korea, Slovenia, Azerbaijan, Russian Federation, Syrian Arab Republic, Ireland, Czech Republic, New Zealand, Bosnia and Herzegovina, Latvia, Maldives, Albania and Afghanistan.

members of the Association of Southeast Asian Nations (ASEAN) in formulating the terms of reference for the ASEAN Human Rights Body. It supported Malaysia's pledges and commitments to the Council, towards greater integration of its national priorities and universal human rights principles.

20. Algeria noted the establishment of an inter-agency Coordinating Committee to study Malaysia's accession to other international human rights treaties. It recommended that Malaysia (a) continue to undertake the appropriate steps to ratify the international human rights instruments mentioned in paragraph 23 of the national report; (b) continue to spearhead progress towards gender equality and development for women, in particular by giving due consideration to the recommendations of the inter-agency committee coordinated by the Ministry of Women, Family and Development regarding the compliance of Malaysia with CRC and CEDAW and by withdrawing its reservations to both conventions; (c) pursue reforms aimed at restoring public confidence in the judiciary; (d) continue to take effective policies to ensure adequate housing for all citizens, particularly for those in the lower income bracket; and (e) strengthen the monitoring mechanism at the federal and district level to ensure that the programmes on poverty eradication reach the intended target group, and to share best practices with interested developing countries.

21. Israel recognized Malaysia's efforts to further economic and social development, noting progress in health services, education and reduction of poverty. Israel recommended that Malaysia (a) abrogate or amend legislation, such as the Internal Security Act (ISA), that restricts fundamental freedoms in the name of national security or the economic life of the state, fosters the arbitrary arrest and detention of persons without granting access to judicial review, hinders the right to a fair trial, and acts to repress the free expression of human rights defenders and other members of civil society; (b) abolish the death penalty as the final form of punishment and establish a moratorium on the use of the death penalty in accordance with General Assembly resolution 62/149; (c) outlaw the practice of torture and cruel, inhuman and degrading treatment, including the whipping of persons for alleged violations of the Immigration Act; (d) enact legislation providing for the status determination and protection of asylum seekers, refugees and stateless persons and revise national immigration laws and procedures to distinguish such persons from those termed "irregular migrants"; (e) end the impunity of members of the Malaysian Volunteer Corps (RELA) for acts of violence, corruption, and the abuse of power against immigrants by amending the relevant RELA regulation; and (f) develop and adopt national legislation and practices granting formerly trafficked and exploited women and children remaining in Malaysia immunity from penalties under national immigration laws.

22. Nepal noted the high priority placed on education, public infrastructure, development of human capital, and provision of family health services. It noted the impressive progress in poverty reduction and in providing social safety nets to the elderly and vulnerable population. It noted Malaysia's commitment to the welfare of foreign workers in the country. Nepal recommended that Malaysia (a) continue its efforts to the protection of the rights of migrant workers, and enhance their safety and welfare through institutional arrangements.

23. Sudan noted Malaysia's recognition of the importance of economic, social and cultural rights as much as civil and political rights. Its experience demonstrates that economic development decisively helps in preserving national unity and stability. It strongly recommended that Malaysia share in detail and through the appropriate mechanisms of the Council, its achievements, experiences and lessons drawn in the following areas: (a) how it managed to bring down poverty rates in urban and rural areas in a consistent and progressive way during the last 35 years; (b) how the establishment of the Anti-Corruption Academy in Malaysia helped and

continues to help fighting corruption and raising awareness; and (c) how to better acknowledge and serve the notion of the diversity of world major legal systems by applying the universally agreed norms and applying the standards included in the provisions of the International Convention on Civil and Political Rights in cases where death penalty is imposed.

24. Bhutan noted steps strengthening the culture of human rights awareness and accountability within the government, notably the establishment of the Malaysian Institute of Integrity, of the Malaysia Anti-Corruption Academy, and the Inter-Agency Coordinating Committee to study and recommend accessions to international instruments. Bhutan recommended that Malaysia (a) continue to carry out comprehensive reviews and studies on its existing legislation and level of preparedness, moving towards accessions of international human rights instruments as it deems appropriate, in the context of its institutional and legal framework, resources, and national priorities.

25. Lao People's Democratic Republic recognized Malaysia's cultural diversity, noting its achievements in economic and social development, human rights, national unity, public security, education and poverty reduction. It welcomed Malaysia's work in the Council, in establishing an ASEAN human rights body, and in the ratification of ASEAN's Charter. It hoped that Malaysia would continue to act in the light of its national cultural diversity and national realities to achieve the national vision policy and Malaysia's vision 2020. It recommended that Malaysia: (a) continue to carry out efforts to reduce the incidence of poverty and lessen income and educational inequalities; and encouraged it to (b) share its experiences and best practices with other countries in the area of poverty eradication, especially in developing small and medium-sized enterprises.

26. China welcomed that Malaysia, while achieving economic growth and maintaining ethnic harmony, reduced poverty and inequality in income and education. It noted Malaysia's long-term investments in healthcare, infrastructure, education and its comprehensive human rights protection system. It cited laws on the rights of children, disabled people, indigenous peoples and foreign workers. China (a) encouraged Malaysia to share with other developing countries its education development, especially in formulating plans to ensure that students, regardless of their location and background, have access to education; (b) appreciated its positive initiatives in guaranteeing indigenous peoples' access to education, healthcare and judicial assistance and hoped continuous efforts will be made; and (c) encouraged it to continue cooperation with civil society in capacity building and further improve people's lives.

27. Viet Nam welcomed initiatives amending laws on violence against women, improving measures to protect victims, and intensifying efforts to combat all forms of trafficking in women and girls, including by working closely with neighbouring countries, including Viet Nam. It highlighted Malaysia's active roles in ASEAN and in the Council. It recommended that Malaysia (a) share with the international community its experiences in the national development and poverty reduction; (b) continue its efforts to strengthen the enforcement of law on violence against women; (c) continue its positive engagement with neighbouring countries in combating trafficking in persons and explore further ways and means aimed at improving and enhancing protection of victims of domestic violence.

28. Cambodia welcomed Malaysia's progress in education and training, which receive the biggest allocation in the national budget. It asked Malaysia to share its experience and best practices with other developing countries, particularly in formulating an Education Development Plan. Noting with appreciation the reduction of poverty, income inequality and noting the

country's ethnic diversity, it strongly recommended that Malaysia (a) continue to carry out further measures to reduce poverty and redouble its efforts to strengthen relations and harmony between the different races in the country. It encouraged Malaysia to continue intensifying efforts to combat trafficking in women and children, particularly by increasing bilateral and regional cooperation with countries of origin, and to share experiences in this area.

29. Thailand welcomed Malaysia's constructive participation in human rights at the regional level, within ASEAN and the OIC, its efforts in ensuring social harmony in a multi-racial society, its successful economic growth policies and the special attention paid to human rights promotion and protection of vulnerable groups, including women, children and people with disabilities and the establishment of a Committee to review laws relating to women's rights under the Islamic family law. Welcoming enactment of the Child Act 2001 and the Persons with Disabilities Act, it urged Malaysia to continue to focus its efforts on ensuring full protection of human rights for all vulnerable groups. One such avenue is through the rigorous capacity building programmes it has initiated in this area particularly for public officers.

30. Myanmar said that as an ethnically diverse country, Malaysia enjoys political stability with good governance that consistently promotes socio-economic development. It commended Malaysia's commitment to human rights nationally and internationally, welcoming legislative reforms to strengthen and uphold the independence and integrity of the judiciary in conformity with international standards. Noting several programmes for the promotion of economic, social and cultural rights, Myanmar recommended that Malaysia (a) continue to share and extend its experience and best practices in the efforts in developing comprehensive policies and strategies for the advancement of indigenous groups which focus on uplifting the status and quality of life of the community via socio-economic programs; and (b) share its experience with other developing countries in the area of poverty eradication, in particular, urban poverty.

31. Morocco welcomed the attention given to poverty eradication in partnership with the private sector and civil society. It noted Malaysia's Education Master Plan and the measures taken for the promotion and protection of children's and women's rights. It recommended that Malaysia (a) continue its efforts to support children with special needs, notably the categories mentioned in paragraph 35 of the national report; (b) share its experience with other countries as regards education programmes for students to teach them the values of tolerance and openness of Islam; (c) take the necessary measures to effectively promote and strengthen family and moral values; and (d) continuing to organize training programmes for parental competencies targeted to general public to ensure the well-being of children.

32. Singapore commended Malaysia's continual efforts, as a diverse country, to improve the welfare of its various communities, of women, children, minorities, indigenous peoples and persons with disabilities, through wide-ranging legislation to safeguard their rights and through policies to provide access to basic services like health care and housing, all of which have helped raise living standards. Malaysia has taken steps to harmonise national policies with international human rights obligations, for instance, its Child Act of 2001 and the recent enactment of its Persons with Disabilities Act. Singapore recognized Malaysia's impressive efforts in working towards gender equality. Malaysia had also played a leading role on such issues in the international arena, such as through the Non-Aligned Movement. Malaysia hosted the first NAM Ministerial Meeting on the Advancement of Women in 2005, and set up the NAM Institute for the Empowerment of Women (NIEW). It noted that Malaysia was among the earliest in its region to have a policy on older persons to optimize their potential through access to opportunities, care and protection, to ensure their dignity and well-being.



33. Cuba noted that Malaysia is a leading member and former president of NAM, with rich diversity. It said since its independence, Malaysia has grown into a major economic power committed to human rights relating to health, education, women, employment, culture, housing and to combating poverty through sustained efforts. Cuba expressed particular interest in positive results in the right to education, where a substantial part of the national budget is allocated. Malaysia has programmes guaranteeing differential care. It recommended that Malaysia: (a) continue with positive efforts to promote economic, social and cultural rights, particularly the priority given to health, education and the care of disabled; (b) continue positive efforts directed at eradicating poverty; and (c) share with the international community their good practices in matters of access to health, particularly the advantages of the Tele Primary Care system.

34. Australia noted the valuable contribution made regionally by the SUHAKAM. It noted the success in promoting multi-lingual education, including allowing minority-language mother-tongue teaching in schools. Noting concerns about the rights of non-Muslims in cases involving Shar'iah law and freedom of religion, particularly for ethnic-Malays, it encouraged Malaysia to allow more open discussion on freedom of religion. It noted, inter alia, calls for greater media and judicial independence. Recognizing its successful record on economic development and poverty alleviation, it encouraged Malaysia to take steps to provide more protections for the rights of migrant workers and illegal migrants. Welcoming the 2007 law against trafficking, it noted concerns about victims of human trafficking being treated as illegal immigrants.

35. Netherlands welcomed Malaysia's achievements in economic, social and cultural rights, such as the provision of free education to all. It recommended that (a) the Police Act be reformed in such a way that the requirement of a police permit for public assemblies of three or more persons does not violate the right to peaceful assembly; (b) establish an independent and impartial police complaints commission in accordance with the recommendations of the Royal Commission on police reform; and (c) SUHAKAM is in compliance with the Paris Principles and that jurisdiction covers all rights in the Universal Declaration of Human Rights. Noting Malaysia's support to the UNHCR, the Netherlands recommended that Malaysia (d) develop with UNHCR an administrative framework to distinguish refugees and asylum seekers from irregular migrants and apply international standards for the treatment of foreign nationals.

36. The Philippines noted that Malaysia has overcome significant obstacles to successfully improve the well-being and human rights of its people, drawing from its diversity to generate dynamic growth. It noted Malaysia's important role in ASEAN and in building a stable and harmonious ASEAN Community. It thanked Malaysia's efforts to raise ASEAN's profile in the United Nations and other international fora. Noting Malaysia's focus on education as a tool for national development, it congratulated it for dedicating a large portion of its budget for education, training and the implementation of the Education Development Master Plan, and for its policy of providing generous technical assistance and scholarships to citizens of other developing countries. It encouraged Malaysia to continue along this path, contributing to capacity-building and development through international cooperation. Congratulating Malaysia for its successful efforts to reduce maternal mortality rates, it recommend (a) that it share its best practices and strategies on this issue.

37. Uzbekistan welcomed steps to strengthen national human rights mechanisms and Malaysia's endeavours at national, regional and international level. It noted Malaysia's recognition of the importance of economic, social and cultural rights as much as civil and political rights. Uzbekistan recommended that Malaysia: (a) continue to find ways and means to increase investments by the public and private sectors in combating urban poverty. It (b)

encouraged the participation of public and private sectors and NGOs in the efforts towards poverty eradication, among other by creating more employment opportunities and providing human resources skills and trainings; (c) share its experience and best practices with other developing countries in the area of poverty eradication, in particular between the rural and urban population; and (d) continue to carry out efforts to reduce the incidence of poverty and lessen inequalities in income and education.

38. The United Arab Emirates congratulated Malaysia's incorporation of human rights principles in its Constitution and legislation and its adherence to international human rights treaties. It noted with interest the country's achievements through a rational development policy, poverty reduction, and its promotion of education and rapid development while safeguarding ethnic harmony. It appreciated and encouraged Malaysia's achievements in ensuring adequate housing and a comfortable living standard. It recommended that Malaysia: (a) continue efforts to reduce poverty and limit disparities in education and income; (b) share its experience with other developing countries with respect to poverty eradication; and (c) continue to set up policies and programmes necessary to guarantee adequate housing at reasonable cost for all inhabitants, particularly people with limited income.

39. Venezuela welcomed, inter alia, the establishment of SUHAKAM and noted the importance attached to economic, social and cultural rights and the related public policies and programmes. It referred particularly to the right to health that, as a social right, should be guaranteed as a part of the right to life. In that regard, Venezuela recommended that Malaysia (a) continue and deepen its current health plans, the main objective of which is to facilitate the access of the population to modern and quality health services.

40. Pakistan noted that Malaysia has been able to transform its ethnic diversity into strength; that fundamental liberties are guaranteed by the Constitution; and that SUHAKAM has been entrusted with wide powers. Pakistan noted the enactment of the Child Act 2001 and the establishment of the Cabinet Committee on Gender Equality, the dramatic poverty reduction and the priority given by Malaysia on education.

41. Jordan commended Malaysia for its sincere ongoing efforts for human rights promotion and protection, appreciating efforts to strengthen the institutional framework, including establishment of a high number of specialized agencies. It recommended that Malaysia: (a) continue to develop the institutional framework with respect to the promotion and protection of human rights; (b) enhance human rights education; and (c) provide and improve training programs on human rights for the judiciary, law enforcement personnel and lawyers.

42. Oman highlighted the importance of unity in this diverse country, noting also its scientific and economic successes, which have made it a developed country, and its ratification of and cooperation with a number of international human rights instruments, as well as with civil society. Proof of this is shown in efforts made to improve the status of women. Oman recommended (a) taking all necessary measures and implement all necessary programmes to overcome the obstacles that prevent women's status to progress further; and (b) continuing to promote human rights in accordance with the values of the country.

43. Libyan Arab Jamahiriya noted that the Federal Constitution guarantees economic, social and cultural, as well as civil and political rights. It cited the 2001 law on the rights of the child, and mandatory primary education for all, as proof of the Malaysia's interest in the rights of the child. It said Malaysia has worked to guarantee human rights for all children without distinction,

and asked about measures adopted to implement the ILO Convention on the Elimination of the Worst Forms of Child Labour.

44. In response to questions raised, including those written in advance, the delegation of Malaysia stated that although the country was not a party to the Convention against Torture, Malaysia did not tolerate or condone any conduct by any person which constituted torture, particularly involving enforcement officials. Any person who committed torture shall be subjected to the law, both penal and civil and no exception was made for enforcement agencies and its officials. Any form of torture is considered as a serious offence. Two recent cases, which involved the police, were used to illustrate the point. In both examples, there were clear commitments shown by Malaysia to deal with conduct that may give rise to the violation of human rights principles.

45. The Federal Constitution confers freedom of assembly and expression. In exercise of such rights, the Government is responsible to ensure that the security of the Federation, public order and morality shall be fully guaranteed, in line with the UDHR.

46. With regard to freedom of religion, the delegation of Malaysia noted that Article 11 of the Federal Constitution guaranteed every person the right to profess and practise his religion and, subject to Clause (4), to propagate it. Much has been said about Clause (4) to Article 11 being restrictive in its application to freedom of religion. However, there was currently no legislation that has been enacted to impose such restriction. Section 5 of the Shari'ah Criminal Offences Act of the Federal Territories was enacted to prohibit propagation of deviationist teachings by one Muslim to another Muslim. That Act was only applicable to Muslims and therefore Non-Muslims cannot be brought before the Shari'ah Courts under that law.

47. The delegation responded to the issue of the demolition of Hindu Temples, which was alleged to be an issue of violation of freedom of religion. Malaysia was of the view that those intending to build places of worship must respect the Federal Constitution and the relevant laws of the country, irrespective of whatever religion. There had been many instances where the affected parties challenged the Government's actions in court. The acts of demolitions of such illegally constructed buildings by the authorities had no connection whatsoever with the freedom of religion in Malaysia. This had been confirmed by the findings of the complaint procedure mechanism of the Human Rights Council established to investigate this matter.

48. The delegation noted that it was correct to say that currently the Malaysian Penal Code criminalized oral and anal sex. Such sexual conduct was not only against the tenets of Islam, which was Malaysia's official religion, but also the other major religions in Malaysia such as the Christian and Buddhist religions. Responding to a question raised with regard to the Minor Offences Act, the delegation stated that it was clear that the Act did not provide for cross-dressing to be an offence.

49. On the question of indigenous peoples rights, the delegation stated that the land rights for indigenous people, natives and aborigines were adequately protected under existing laws, including the right to compensation.

50. The delegation of Malaysia noted that another significant area of law which is a subject of frequent debate is the issue of preventive laws in Malaysia. The focus is the ISA, enacted with the purpose of providing for the internal security of Malaysia. The ISA empowered the

preventive detention of persons suspected of acting in any manner prejudicial to Malaysia's national security, maintenance of essential services, or the economic life of Malaysia.

51. The ISA and related Malaysian laws provided the necessary safeguards to ensure the rule of law is observed. A person obtained under the ISA can petition by way of a writ of habeas corpus to the High Court at any time and as many times during his or her detention period. Whether a person is detained under section 73 for investigation purposes or section 8 under the Minister's order, that person could file for the writ of *habeas corpus*. The Malaysian Courts in the past had on many occasions granted the writ of habeas corpus to detainees whom they considered were wrongfully detained. Additionally, any person detained under section 8 is entitled to make representations to an Advisory Board chaired by legally qualified person of at least 20 years experience. This Board would make recommendations to the King as opposed to the Executive either to release the detainee or otherwise. The detainees are also accorded right to be heard and counsel at the hearing before the Advisory Board.

52. The delegation of Malaysia provided information on the three most recent cases of detention under the ISA to illustrate that rule of law had always been upheld and due safeguards are always provided to the detainees. Teresa Kok and Tan Hoon Cheng, were detained on 12 September 2008 for activities which could create unrest among citizens of various races and over reporting containing racist remarks, respectively. Teresa Kok was released unconditionally on 19 September 2008 when the authorities were satisfied that they had no case against her. Tan Hoon Cheng was released unconditionally on 13 September 2008 when the authorities found no valid reason to detain her under the ISA. The third person, Raja Petra, was detained under section 73(1) of the ISA for alleged continuous posting of "racially sensitive" material in his blog Malaysia Today. Nine days later, a ministerial detention order under section 8(1) of the ISA was issued to detain him for two years effective 22 September 2008. On 28 September 2008, Raja Petra's counsel filed an application for a writ of *habeas corpus* in the High Court challenging the legality of his detention and seeking his release. On 7 November 2008, the High Court allowed the application. The Ministry of Home Affairs filed an appeal to the Federal Court on the decision made by the High Court.

53. The delegation of Malaysia provided information on efforts taken to improve the situation of children whose mothers were serving sentence or detained in prison, including in compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

54. Information was provided by the delegation that a remand order was mandatory after the initial 24 hours of detention. During the remand proceedings, the detainee could complain to the Magistrate of any ill treatment, and also about what had transpired during the initial 24 hours of detention. Any further detention was at the discretion of the Courts. The delegation stated that this clearly demonstrated Malaysia's commitment to ensuring that the police did not condone such abuse and ill treatment of detainees by its own officers.

55. On the issue of the death penalty, Malaysia stated that, as a democratic state, the Government's policy must take into consideration the views of the majority of the electorates and that the death penalty was seen as the ultimate deterrence. Death penalty was a sentence that could be passed only by the Superior Courts namely the High Court, Court of Appeal and the Federal Court. The latter two when exercising their appellate powers. It was only executed when all rights to an appeal had been exhausted and the right to pardon had been exercised.

56. Although the death penalty and corporal punishment were still applied for certain serious offences, Malaysia's immediate concern was to abolish the imposition of death penalty and caning on children. The Ministry of Women, Family and Community Development was in the midst of preparing a paper to recommend to the Government to withdraw the sentence of caning for children. Malaysia was also in the midst of amending the relevant provision of the Essential (Security Cases) Regulations 1975 to abolish the imposition of capital punishment on children.

57. In response to questions on issues related to women's and children's rights, the delegation informed that an inter-agency committee had been established to address the implementation of the recommendations of CEDAW. The committee had embarked on a review of existing laws and legislation which were deemed discriminatory against women. The Committee was also finalising its study with regard to the proposal to withdraw Malaysia's reservation to Articles 5(a) and 16(2) of CEDAW.

58. The delegation provided information on other recent developments. With regard to legislative measures, the Penal Code and Criminal Procedure Code were amended to provide stiffer penalties for rape and incest. The Government had also enacted the Anti-Trafficking in Persons Act in 2007 which came into force in 2008 which specifically criminalizes the act of trafficking in persons, especially women and children, for the purpose of exploitation and also recognizes the rights of the victims as well as distinguishes them from the perpetrators of trafficking. The Act also provides protection and rehabilitation of trafficked victims. The delegation indicated that Malaysia was also currently reviewing the Domestic Violence Act 1994. Among the proposed amendments include expanding the definition of "domestic violence" to include emotional, mental and psychological forms of domestic violence and the usage of drugs or intoxicating substance on the victim without consent, extend the duration of interim protection order from the time the investigations were completed until the time the case was brought to court; and to add a new provision that would allow the victim the right to compensation.

59. Recent measures taken by Malaysia to fulfil its obligations under the Convention on the Rights of the Child and implement the recommendations of the Committee on the Rights of the Child, included a review of Malaysia's reservations and the legislative framework as well as the formulation of policies and plans of action on children. A technical committee was in the process of recommending to the Government to withdraw Malaysia's reservations to Articles 1 and 13 of the CRC. Malaysia was currently reviewing the Child Act 2001, including the recommendation to prohibit the imposition of corporal punishment and to introduce community service order as an alternative punishment. Additionally, Malaysia was at the final stage of completing the National Child Policy as well as the National Child Protection Policy. Both the policies and their plans of action were scheduled to be tabled for the Government's approval. Malaysia had engaged experts from the University Malaysia Sabah to undertake a comprehensive study on street children. Malaysia unequivocally stated that street children had never been arrested or detained by the police if they had not committed any criminal offence. In the event that they were arrested for criminal offences, they would be detained in a special area, separated from other detainees.

60. Yemen admired Malaysia for achieving harmony among religious and ethnic groups in a tolerant, diverse country, praising also achievements in the right to education. Yemen noted that the high spending on education strengthened the economic, social and cultural structures of Malaysia. Yemen welcomed efforts to achieve good governance with the establishment of the Malaysian Institute for Integrity, the Anti-corruption Academy, and the ratification of the United Nations Convention Against Corruption. Yemen recommended that Malaysia: (a) share its

experience in strengthening education with other countries, particularly with multi-cultural and multi-religious countries; and (b) share its experience in combating corruption with the countries that have the same interest.

61. Egypt commended Malaysia's efforts to uphold human rights, combat human trafficking and violence, to criminalize sexual exploitation of children, and its achievements in the delivery of healthcare services. It sought elaboration on measures to face the spread of HIV/AIDS and Malaysia's assessment of the level of cooperation received from international organizations in this regard. It recommended that Malaysia (a) further pursue national strategies and policies aimed at consolidating the human rights infrastructure and achieving more progress in the promotion of a culture of respect for human rights; and (b) continue exercising its sovereign right of adopting national legislations and the penal code in conformity with its international obligations and the universally agreed human rights standards, including the application of the death penalty.

62. Saudi Arabia noted Malaysia's Education Development Master Plan 2006-2010 and the guaranteed free basic education. It praised the assistance provided to poorer pupils and programmes covering the cost of studies. It recommended that Malaysia a) continue on this positive path to support education. Saudi Arabia noted that Malaysia by submitting itself to the UPR and legal review of its national laws and legislation in order to harmonize them with the CRC and CEDAW as well as its accession to the Convention relating to the abolition of Slavery and the Slave Trade were another testimony of Malaysia's commitment to promote and protect civil and political rights. It recommended that Malaysia (b) continue to further improve the health care system and guarantee more extensive protection in this area to the Malaysian people.

63. Bahrain welcomed measures to adapt Malaysian legislation to CRC, the enactment of the law on children in 2001, Malaysia's role in ensuring adequate health care to all at a low cost, providing adequate housing and improving the standard of living of low-income households. Bahrain recommended that Malaysia (a) continue its efforts to provide adequate housing and adequate standard of living for all; and (b) continue its efforts in finding ways to improve the protection of children victims of abuse and to enhance family institutions and reinforce moral values as an effective means to promote and protect child rights.

64. Turkey noted that an Inter-agency Coordinating Committee was studying Malaysia's possible accession to ICCPR, ICESCR, CAT and CERD. It recommended that Malaysia (a) speed up its considerations over the signature and ratification of the international human rights covenants. Pleased that Malaysia is in the process of considering withdrawing its reservations on CRC and CEDAW, Turkey asked about a timetable. Turkey recommended (b) ratification of the Optional Protocol to CEDAW. Turkey encouraged Malaysia to consider comments by the Special Representative of the Secretary-General for human rights defenders on detention conditions under the ISA. Turkey welcomed the signature of the Convention on the Right of Persons with Disabilities and the enactment of Persons with Disabilities Act. It recommended that Malaysia (c) continue its positive actions for further promoting the rights of disabled people; and (d) continue to enhance its activities towards the eradication of poverty in all its states and share its experiences with other countries.

65. The Islamic Republic of Iran noted that despite its diversity, Malaysia's socio-economic policies and constitutional provisions have enabled it to maintain and strengthen national unity through inclusiveness. It encouraged Malaysia's major steps to ensure compatibility of the national legal framework with principles and provisions of the CRC and the Child Act 2001, and

its review of laws relating to women's rights under the Islamic family law. It recommended that Malaysia (a) consider undertaking a comprehensive study on the positive implications of the legal system of civil law and Shari'ah law; (b) undertake more effective measures to further improve the implementation of Shari'ah law in the country; (c) explore further ways and means aimed at improving and enhancing the welfare and protection of victims of child abuse; and (d) take more effective measure to strengthen family institution and inculcate good moral values and effective ways to protect and promote the rights of the child.

66. Bangladesh welcomed Malaysia's socio-economic development, progress in poverty reduction and in increasing access to quality education and health care. It welcomed measures taken to safeguard the rights of vulnerable groups, including women, children, persons with disabilities, indigenous and migrant populations. Bangladesh recommended that Malaysia (a) share its experiences and best practices in poverty alleviation with other developing countries; (b) step up its efforts to enhance women's participation at the decision making level in both public and private sectors in line with the progress made in women's education; and (c) further strengthen the legal and institutional mechanisms to protect the rights and interests of migrant workers against all forms of discrimination and exploitation.

67. Belgium noted with interest that Malaysia is considering acceding to ICCPR and ICESCR and has begun the process of withdrawing its reservations to CRC. It highlighted serious problems faced by refugees, immigrants and asylum seekers linked to a lack of clarity regarding their legal status and lack of infrastructure for their reception and protection. It noted treaty body concerns and cited UNHCR figures regarding more than 40,000 critical cases, including 11,000 involving children, in August 2008. It and asked about follow-up to CRC recommendations regarding discrimination against refugee or asylum seeking children and about plans to adopt legal measures governing the status of asylum seekers and refugees. It recommended that Malaysia: (a) take concrete measures to address the absence of adequate infrastructure for the reception, registration and housing of refugees and asylum seekers; and encouraged (b) (i) accession to the ICCPR, ICESCR and (ii) the Convention on the Status of Refugees and its Additional Protocol of 1967 and (iii) withdrawal of reservations to CRC.

68. Indonesia commended Malaysia's desire to foster a just, balanced and prosperous society in which the country's various ethnic components are well integrated and enjoy equality. It commended judicial reform and measures addressing shortcoming in judicial procedures, the creation of the Malaysian Institute for Integrity and the Malaysian Anti-Corruption Academy, as well as Malaysia's achievements in reduction of poverty and income inequalities, and in the field of education. Indonesia asked Malaysia to share its strategies in poverty reduction. It recommended that Malaysia (a) continue its efforts to promote greater prosperity and improve the welfare of the population, notably through progressive education and health policies.

69. Sri Lanka noted, inter alia, that Malaysia had developed comprehensive policies and strategies for the development of indigenous groups and communities; and enacted such laws as the Child Act 2001, the Persons with Disabilities Act 2008 and the Anti-Trafficking in Persons Act 2008. It cited the Inter-Agency Coordinating Committee on treaty accession and noted the comprehensive review of the national legal framework to ensure compatibility with CRC and CEDAW. It commended Malaysia for reducing poverty drastically and lessening inequalities in income and education while achieving rapid economic growth and maintaining racial harmony. It recommended that Malaysia: a) continue to intensify its efforts to prevent and combat discriminatory disparities against children belonging to vulnerable groups, including children of indigenous group, children with disabilities as well as those living in remote areas; and b)

continue its efforts in providing educational facilities to students with special educational needs, such as children with visual and hearing impairment and those with learning difficulties.

70. The United Kingdom of Great Britain and Northern Ireland welcomed Malaysia's key role in establishing an ASEAN human rights body and recognised efforts to make education and health services available to a large refugee and migrant workers population, while aware of concerns on treatment of detained refugees and migrants. It noted treaty body recommendations urging the enactment of laws and procedures to protect refugees, migrant workers, and their children. It said the national report rightly highlights the Internal Security Act and its implementation as a challenge. It shared with Malaysia concerns over terrorism and recognised that maintaining national security and safeguarding human rights of detainees in accordance with international standards is a complex issue. It recommended that Malaysia: (a) take further steps towards protecting human rights of migrant workers, refugees and their dependants including through signature and ratification of the 1951 United Nations Convention relating to the status of Refugees; (b) ratify the ICCPR and CAT and implement both treaties at national level; (c) consider an alternative to indefinite preventive detention such as criminal prosecutions; and (d) ensure the independence of the SUHAKAM in accordance with the Paris Principles and amend Act 597 so that the Commission's scope covers all rights in the UDHR.

71. The Republic of Korea commended Malaysia's achievements in human rights promotion and protection, particularly in women and children's rights, and its accession to CRPD. It welcome that the Inter-agency Coordinating Committee is examining major human rights instruments such as ICCPR, ICESCR, CAT and CERD with a view to acceding to them. It recommended that Malaysia favourably consider becoming a party to the aforementioned conventions.

72. Finland expressed concern that some of SUHAKAM's recommendations have not been acted upon. It noted International Coordination Committee questions on SUHAKAM's independence. Finland asked about and recommended that (a) an efficient follow-up system for the recommendations given by SUHAKAM be developed and that Malaysia take measures to ensure its compliance with the Paris Principles; that Malaysia (b) ratify CRPD and withdraw all of its reservations to CEDAW and CRC as soon as possible; and (c) encouraged Malaysia to sign and ratify the other core international human rights instruments (CAT, CERD, CCPR and CESC).

73. Qatar commended the strengthening and protection of economic, social and cultural rights; particularly the right to education and health, cultural rights, the right to housing and the right of elderly people. It welcomed efforts made to eradicate poverty and trafficking in persons. Qatar welcomed achievements and best practices mentioned in the national report especially regarding the rule of law, good governance and the strengthening of the democracy. It asked what safeguards and measures are in place to promote and protect indigenous' rights and to strengthen minorities' rights.

74. Kuwait recognized Malaysia's vast efforts to attain accelerated economic development and protect and strengthen all human rights. It noted that Malaysia's harmony between communities has contributed to its development and progress. It cited Malaysia's positive role in the institutional building of the Council and in its operation. It recommended that Malaysia: (a) continue with efforts to promote and protect human rights according to international commitments and religious and cultural specificities; and (b) continue with its efforts to develop education as a great investment for the future.



75. Ukraine welcomed in particular achievement in poverty eradication, education and health care. It commended Malaysia's efforts aimed at ensuring the rights of vulnerable groups such as women, children and elderly persons. Ukraine recommended that Malaysia (a) enact laws pertaining to anti-discrimination; (b) ensure the regular training for judges, prosecutors, the representatives of the police and other law enforcement agencies on human rights, non-discrimination and the legally binding nature of international law; (c) ensure comprehensive and universal access to health services for citizens and non-citizens alike, including migrant workers, refugees, asylum seekers, indigenous peoples; (d) ratify all core human rights treaties to which Malaysia is not a party; (e) implement the comments and recommendations of CEDAW and CRC; and (f) issue a standing invitation to all special procedures.

76. Chile expressed concern about abuse against women in particular sexual violence within marriage. It recommended that (a) domestic legislation be brought into conformity with CEDAW. Chile noted that the death penalty still exist and recommended (b) as a first step that a moratorium on executions be established; (c) the elimination of all cruel and degrading punishment; (d) adopt the measures necessary to guarantee freedom of religion; (e) adopt the necessary measures be adopted to prevent abuses against migrant workers and respect for their rights; and (f) the elimination from the Penal Code of standards which allow for discrimination against people on the grounds of their sexual orientation.

77. Senegal noted Malaysia's relevant approach in ensuring that that economic progress leads effectively to the promotion and improvement of living standards. It saluted initiatives to eradicate poverty, strengthen governance and the rule of law, and promoting the right to education and health, with a system of virtually complete coverage of medical costs. It encouraged Malaysia to continue along these lines and to consider acceding to the ICRMW.

78. Chad welcomed the ratification by Malaysia of the Core international instruments on human rights. It recommended that Malaysia a) continue along these lines on a domestic level to improve the human rights situation in its country and it recommended the international community to help Malaysia meet its challenges.

79. Tunisia said Malaysia's commitment to human rights was particularly clear through the creation of SUHAKAM, which is empowered, inter alia, to review complaints on human rights violations and advise the Government on the elaboration of laws and procedures, and to recommend the Government to accede to certain international human rights treaties. Tunisia asked for elaboration on the activities of this important body.

80. Belarus noted the enactment of recent laws on children, persons with disabilities and the law on combating trafficking in persons, as well as the Committee on gender equality. It recommended that Malaysia: (a) continue to take measures to protect the rights of women, children and people with disabilities. Belarus noted Malaysia's endeavours to ensure the rights of migrant workers including by concluding specific agreement with neighboring countries. It recommended that Malaysia (b) continue to take measures to ensure that the rights of migrants are observed and not to allow any negative phenomena regarding them, including trafficking in persons. It recommended that Malaysia (c) work more actively to accede to the core international human rights instruments.

81. Canada welcomed recent initiatives such as the new Malaysian Anti-Corruption Commission and the creation of a Judicial Appointments Commission. Canada recommended that Malaysia (a) continue its judicial reforms, including by strengthening the independence of

the judiciary; (b) repeal or amend the Internal Security Act and the Emergency Public Order and Preventive Ordinance in accordance with its international human rights obligations, and in the meantime refrain from applying them to political activists, journalists or others engaged in peaceful activities; (c) review and amend laws such as the Sedition Act, the Printing Press and Publications Act, and the Official Secrets Act, to enable its citizens to exercise fully the right to freedom of opinion and expression, including freedom of the press and freedom of information; (d) review its Police Act to enhance its citizens' ability to exercise the right to peaceful assembly; (e) strengthen efforts to combat violence against women, including by ensuring that rape within marriage, defined as being when one of the spouses does not consent, is a criminal offence; (f) take steps to ensure that all migrant workers, refugees, and asylum seekers are treated in accordance with international human rights standards and that it sign and ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and adopt and implement refugee protection legislation; (g) that Malaysia strengthen the independence of SUHAKAM in accordance with the Paris Principles; and (h) become a party to the ICCPR, ICESCR, CERD, and CAT.

82. Holy See noted that the constitution provides for freedom of religion for all, but recognizes Islam as the country's religion. The generally tolerant relationship among religious groups contributes to religious freedom, it said. Non-Islamic confessions however are submitted to many bureaucratic restrictions, and it recommended (a) continuing to guarantee religious freedom by taking away any impediment to the full enjoyment of this basic human rights for all its citizens. It noted that there is still a lack of legislation and policies on the rights of migrant workers and refugees, many of them women. It noted, inter alia, that while maintaining its restrictive abortion policies, Malaysia's level of maternal mortality has diminished close to that of the most developed countries, according to the UNDP.

83. Djibouti welcomed the work of SUHAKAM and congratulated Malaysia for the progress made in combating poverty and in effectively redistributing the results of growth. It noted the high budget allocation to education demonstrating the importance given by Malaysia to offering a mandatory education based on equality and equity and noted the Education Master Plan 2006-2010. It welcomed measures taken to ensure protection, rehabilitation and psychological support to victims of trafficking and the 2008 law against trafficking in persons. It encouraged Malaysia to (a) establish an independent committee responsible for appointing judges. In order to ensure a better implementation of human rights, it recommended that Malaysia (b) consider abolishing the death penalty.

84. South Africa noted the promulgation of the Child Act, the establishment of the National Council for Persons with Disabilities, the promulgation of the Anti-Trafficking in Persons Act and shelter homes for victims of trafficking, the introduction of compulsory primary education, provision of adequate health services, implementation of strategies for poverty eradication, as well as the establishment of the Cabinet Committee on Gender Equality, among others. South Africa noted however that Malaysia is still considering acceding to other core human rights instruments, and it encouraged Malaysia to intensify this effort. South Africa recommended that Malaysia (a) implement the recommendations of the Committee on the Rights of the Child to ensure comprehensive protection of the rights of children, including those of minority groups, indigenous peoples and migrant workers and (b) that comprehensive protection is accorded to all migrant workers, including access to essential services like education, health and housing.

85. Zimbabwe noted that despite Malaysia's complex ethnic, cultural and religious diversity, its people live harmoniously, it has made tremendous strides in socio-economic development and

it takes pride in promoting and protecting human rights. It said Malaysia's development model has been studied and copied by many. It recommended that Malaysia (a) continue with the positive steps it has taken in the implementation of the Bangalore Principles of Judicial Conduct; (b) continue its capacity building programmes related to all aspects of human rights; and (c) continue to implement the existing policy and programmes to eradicate poverty.

86. Kazakhstan noted Malaysia's success in becoming a prosperous country with a dynamic economy achieved due to its ability to maintain political stability, good governance and sustain its democracy. It noted the improvement of the quality of life. Kazakhstan highly appreciated the opportunity given to the ethnic and religious groups to participate at every level of political, social, economic and cultural life. It recommended that Malaysia a) pay a special attention to the problems of the children living and working on the streets; and b) continue to enhance efforts to further improve the status of women to enable them to reach their full potential and contribute towards the social and economic development of the country.

87. Lebanon noted Malaysia's achievements in establishing the institutional framework for human rights, it welcomed steps undertaken to ensure women and children's rights and its continuous and remarkably efforts to realize some basic Millennium Development Goals. It commended the investment in health services, the protection infrastructure and the educational system. It recommended that Malaysia: (a) continue to take proactive and innovative measures to ensure sustainable development policies related to the promotion of economic, social and cultural rights in the country; and (b) maintain its commitment to realizing the Millennium Development Goals in parallel with striving for economic success.

88. France asked about Malaysia's plans to: ratify ICCPR, ICESCR and the Geneva Conventions on the status of refugees; and amend the International Security Act. It asked what measures are envisaged to improve the work conditions, in particular of migrant workers. France strongly encouraged Malaysia (a) to respect the human rights of all individuals, including homosexuals, by de-penalizing homosexuality. It also recommended that Malaysia (b) reduce the number of crimes for which the death penalty may be handed down, including non-violent crimes, and to consider abolishing death penalty; (c) adopt a law on the media in order to guarantee the freedom of expression and information; (d) withdraw the reservations made to CEDAW, as an extension of measures already taken in 1998 and (e) accede to the Rome Statute of the International Criminal Court.

89. Mexico congratulated Malaysia, a culturally and ethnically diverse country, for guaranteeing fundamental freedoms in its Constitution, noting adoption of legislation on trafficking in persons, its recent signature to the CRPD and its leadership regionally to achieving full signing of the ASEAN Charter. It recognized progress in registering public policy to guarantee access to health and education, and national plans to reduce extreme poverty while guaranteeing dignified housing. It recommended: (a) bearing in mind that there has already been thinking in this direction, consider positively accession to international human rights treaties, particularly ICCPR, ICESCR, ICRMW and ILO Convention 169 on indigenous peoples and tribes; (b) an open standing invitation to special procedures visiting the country, particularly relating to the fundamental rights and freedoms of indigenous peoples and the rights of migrants; and (c) promotion of gender equality and protection of childhood and that favourable consideration be given to withdrawing the reservation on CRC and CEDAW.

90. Palestine noted the Federal Constitution's amendment for the full implementation of Malaysia's commitment to combat all forms of discrimination against women. Palestine

congratulated Malaysia's efforts to eliminate poverty, the reduction of the number of poor households and that in 2008 the economic growth was calculated by 5,7 per cent. Palestine supported Malaysia's commitment and efforts to combat corruption, particularly thanks to the Malaysian Academy against Corruption. Palestine recommended that Malaysia a) continues raising awareness of trafficking in persons and migrant workers, particularly women and children, who are a vulnerable group in the society, and deserves all possible help.

91. India commended Malaysia's effort to reform the legislation on violence against women and to prevent exploitation of children, as well as achievements in women's education, health care, reduction of poverty and inequalities in income and education. It also welcomed the legislation on human trafficking, the steps taken to restore public confidence in the judiciary. While welcoming the mandate of, and the work done by, the SUHAKAM, it requested Malaysia to elaborate on concerns expressed about its effectiveness, autonomy and independence. It enquired about steps taken to protect human rights defenders and migrant workers and asked Malaysia to share its experience on the success of the measures taken to enhance the participation of minorities and various ethnic groups in the country's political and decision-making process.

92. Germany recommended that Malaysia: (a) ensure that provisions for arrest and detention are compatible to international human rights standards; that all persons detained have timely access to legal remedies to challenge their detention, have access to legal counsel and are brought to trial or released without unnecessary delays; (b) outlaw corporal punishment at home; and provide victims of domestic violence with access to legal remedies and protection from potential perpetrators; effective campaigns should be set in place to inform and sensitise the population on this matter; and (c) allow migrant domestic workers full access to legal remedies in case of abuse and duly investigate all cases of abuse and bring perpetrators to justice; effective steps should be taken to protect migrant workers from attacks from militia groups; Malaysia should ensure that the pre-departure training centres are operated to meet the basic needs of the workers and do not encourage any form of abuse.

93. Italy noted that SUHAKAM and other stakeholders expressed concerns at possible abuses of prevention detention and other restrictive measures. In this respect, recommended that Malaysia (a) consider amending the Internal Security Act and bring domestic security legislation in line with international human rights standards, including through increasing legal safeguards of detainees and abolishing the practice of long detention without trial. Italy noted with concern the continued application of death penalty as well as the lack of reliable official information on this issue and recommended also that (b): Malaysia (i) publish official figures concerning executions and death sentences, (ii) restrict the application of the death penalty to the most serious crimes according to international minimum standards and (iii) consider the establishment of a moratorium on the use of death penalty with a view to its abolition. Italy recommended that Malaysia (c) adhere to the 1951 Convention on the Status of the Refugees and its additional Protocols.

94. Lithuania recommended that Malaysia (a) facilitate attempts indicated in the report to the UPR procedure in order to ratify the core human rights instruments, in particular ICCPR and ICESCR; (b) reconsider consequences of the death penalty to the society and to take steps to reduce the number of crimes which carry death penalty as sanction, and secondly, to introduce a moratorium on the death penalty that would be followed by abolition. In furthering protection of the rights of women Lithuania recommended (c) ratifying the OP-CEDAW.

95. H.E. Tan Sri Rastam Mohd. Isa, Secretary-General, Ministry of Foreign Affairs thanked delegations for raising important and pertinent issues. He briefly touched on measures taken by the Government to advance and protect the rights of disabled persons. The Government was working towards completing the ratification process for the Convention on the Rights of Persons with Disabilities, which it had signed in April 2008.

96. He informed that the status of indigenous people had been legally recognised since 1954 and was fully enshrined in the Federal Constitution. In accordance with the Constitution, the indigenous population had always been represented in the Senate of the Malaysian Parliament.

97. He also provided further information on the role of the Government in ensuring the right to health for all in Malaysia. Around 98 per cent of the health care costs in primary, secondary and tertiary public health care facilities were borne by the Federal Government. Basic health care services are available to and accessible for more than 95 per cent of the population in Peninsular Malaysia and 70 per cent of the population in Sabah and Sarawak. To meet the healthcare demands of an increasingly aging population Malaysia endeavoured to provide geriatric services in all government hospitals. The Government had also initiated programmes aimed at providing sanitary latrines and clean water supply to the rural population. So far, 98 per cent of rural houses have been provided with sanitary latrines and 95 per cent of those have been provided clean water supply.

98. Concerning persons with disabilities, the Policy on Persons With Disabilities (PWD) and its Plan of Action was approved in December 2007. In accordance with the Persons With Disabilities Act 2008, the National Council for Persons With Disabilities was established. Information was provided on the membership and mandate of the Council, which included responsibility for monitoring the implementation of the National Policy and Plan of Action. Malaysia was consulting with relevant stakeholders, including Government departments, with a view to moving towards ratification of the Convention on the Rights of Persons with Disabilities.

99. Malaysia had succeeded in achieving most of the Millennium Development Goals (MDGs). In 1970, half of all households in Malaysia were living in poverty. By 2007, only 3.6 per cent of households were classified as poor, although poverty levels still varied by state and ethnic groups. It was the objective of the Government to fully eradicate hardcore poverty, which now stands at 0.8 per cent, by 2010. Hardcore poverty was defined as those earning less than 50 per cent of the poverty line income.

100. The delegation of Malaysia informed that universal primary education was achieved by 1990. Attendance of girls has increasingly exceeded that of boys at secondary and tertiary levels. The Government also recognised the importance of education for the Orang Asli children and children of other indigenous groups, which had led to the introduction of a modified curriculum in Orang Asli primary schools and Penan schools of Sarawak that took into consideration the knowledge relevant to the indigenous groups and adopted indigenous pedagogy. Additionally, information was also provided on special education schools and programmes developed in 2008 for persons with disabilities.

101. Malaysia still faced the challenge of halting the spread of HIV/AIDS. To address this challenge, it had formulated the National Strategic Plan on HIV/AIDS 2006-2010. The approaches adopted under the Plan were outlined.

102. Malaysia would also be undertaking greater efforts to ensure that the role of the family as the basic socialising, stabilising and care agent for the young and the elderly was maintained. A National Family Policy would be formulated. Information was provided on various programmes aimed at strengthening family institutions.

103. To conclude, H.E. Tan Sri Rastam Mohd. Isa, Secretary-General, Ministry of Foreign Affairs, stated, inter alia, that Malaysia, had participated in the UPR process with the aim of sharing its experiences, approaches and certain fundamental viewpoints relating to the promotion and protection of human rights. He reiterated that while Malaysia had come a long way, it acknowledged that there was room for improvement in certain areas. He assured all delegations that the various comments and recommendations made during the interactive dialogue had been duly noted and would be fully considered by the Government. On behalf of his delegation, he thanked all who had contributed to Malaysia's review.

## 二、结论和/或建议

104. 马来西亚审查了在互动对话中提出的建议，下列建议得到马来西亚的支持：

1. 继续采取适当措施，考虑批准国家报告第 23 段提到的国际人权文书（《公民权利和政治权利国际公约》、《经济、社会、文化权利国际公约》、《禁止酷刑公约》和《消除一切形式种族歧视国际公约》）(阿尔及利亚)；
2. 加速考虑签署和批准国际人权公约(土耳其)；更加积极地努力加入核心人权文书(白俄罗斯)；
3. 继续首先在实现男女平等和妇女发展方面取得进步，具体通过适当考虑妇女、家庭和发展部协调的机构间委员会就马来西亚遵守《儿童权利公约》和《消除对妇女一切形式歧视公约》以及撤销对这两项公约的保留问题提出的建议(阿尔及利亚)；
4. 继续落实消除对妇女歧视委员会和儿童权利委员会的评论意见和建议(乌克兰)；
5. 继续对其现行立法和准备工作的程度开展全面审查和研究，在其体制和法律框架、资源和国家优先事项范畴内努力争取加入其认为适当的国际人权文书(不丹)；
6. 考虑对民法和伊斯兰法法系的积极影响问题开展全面研究(伊朗)；采取更加有效的措施，进一步改善该国执行伊斯兰法的情况(伊朗)；
7. 继续在能力建设方面与民间社会合作，进一步改善人民的生活(中国)；继续开展与人权的各个方面都有关的能力建设方案(津巴布韦)；

8. 继续着重努力确保所有弱势群体的人权都得到充分保护，其中一个途径是通过马来西亚在这一领域特别为公职人员启动而且目前正在严格进行的能力建设方案(泰国)；
9. 为司法、执法人员和律师提供有关人权的培训方案，并加以改善(约旦)；加强人权教育(约旦)；
10. 继续按照本国的价值增进人权(阿曼)；继续努力按照国际承诺和宗教及文化特性增进和保护人权(科威特)；
11. 进一步推行有关国家战略和政策，争取巩固人权基础设施，在提倡尊重人权的风尚方面取得更多进展(埃及)；
12. 继续发展增进和保护人权的体制框架(埃及)；
13. 继续开展积极行动，进一步增强残疾人的权利(土耳其)；
14. 继续采取措施保护妇女、儿童和残疾人的权利(白俄罗斯)；
15. 继续行使其制订通过国家立法和刑法典的主权权利，包括适用死刑(埃及、苏丹)；
16. 继续努力加强针对暴力侵害妇女行为的执法活动(越南)；
17. 采取一切必要措施，执行一切必要方案，克服阻碍妇女地位进一步提高的障碍(阿曼)；
18. 不断加强的努力，进一步改善妇女的地位，使妇女能够发挥充分潜力，对该国的社会 and 经济发展作出贡献(哈萨克斯坦)；
19. 加紧努力，提高妇女参与公立和公营部门决策的程度，使之与妇女教育方面所取得的进展相称(孟加拉国)；
20. 继续努力设法改善受虐待儿童的保护，强化家庭作用，并加强道德作为增进和保护儿童权利有效办法的价值(巴林)；采取更有效的措施，强化家庭作用，反复灌输优秀道德价值，并采取有效办法保护和增进儿童权利(伊朗)；
21. 探索更多的改善和加强受虐待儿童的福利和保护工作的方式方法(伊朗)；
22. 继续加强的努力防止和解决属于弱势群体的儿童、包括土著群体儿童、残疾儿童以及生活在边远地区儿童的落后差距(斯里兰卡)；
23. 继续努力向具有特殊教育需要的学生提供教育设施，例如视力和听力障碍儿童以及学习困难的儿童(斯里兰卡)；继续努力支助具有特殊需

要的儿童，即视力缺陷儿童、听力缺陷儿童以及学习困难的儿童(摩洛哥)；

24. 特别关注流落街头儿童问题(哈萨克斯坦)；
25. 继续不断开展旨在恢复公众对司法信心的改革(阿尔及利亚)；
26. 继续进行司法改革，包括加强司法独立(加拿大)；
27. 在执行《班加罗尔原则》方面，继续实行已经采取的积极措施(津巴布韦)；
28. 设立负责任命法官的独立委员会(吉布提)；
29. 继续在打击贩运人口方面积极与邻国互动协作，探索更多的方式方法改善和加强对家庭暴力受害者的保护工作(越南)；
30. 继续提高对贩运人口和移徙工人、特别是贩运妇女和儿童活动的认识，他们是社会上的弱势群体，应该得到一切可能的帮助(巴勒斯坦)；
31. 继续走支持教育的积极道路(沙特阿拉伯)；
32. 继续努力发展教育，把它作为对今后的巨大投资(科威特)；
33. 采取必要措施，有效推动和加强家庭和道德价值(摩洛哥)；
34. 继续针对公众开展父母能力培训方案，确保儿童福祉(摩洛哥)；
35. 加强联邦和地区一级的监测机制，确保减贫方案帮助到预定目标群体，并与有关发展中国家分享最佳做法(阿尔及利亚)；
36. 继续努力减少贫困，限制教育和收入差距(阿拉伯联合酋长国)；继续努力降低贫困发生率，减少收入和教育的平等(乌兹别克斯坦)；
37. 继续努力降低贫困发生率，减少收入和教育的平等(老挝人民民主共和国)；
38. 继续采取更多的措施减少贫困，加倍努力增强该国不同种族间的关系与和谐(柬埔寨)；
39. 继续积极努力消除贫困(古巴)；继续执行现行减贫政策和方案(津巴布韦)；
40. 继续加强所有各州消除贫困的活动，并与其他国家分享经验(土耳其)；
41. 继续想方设法提高公共和私营部门的资金投入，根治城市贫困问题(乌兹别克斯坦)；



42. 鼓励公共和私营部门以及非政府组织参与消除贫困的工作，特别是创造更多的就业机会，提供人力资源技能和培训(乌兹别克斯坦)；
43. 继续积极努力增进经济、社会、文化权利，特别是优先注重卫生、教育和关爱残疾人的事业(古巴)；
44. 继续主动积极采取创新措施，确保增进该国经济、社会、文化权利的发展政策的可持续性(黎巴嫩)；
45. 在力争取得经济成果的同时，继续致力于实现千年发展目标(黎巴嫩)；
46. 继续深入开展其目前的健康工作规划，其主要目标是协助人们获得现代优质保健服务(委内瑞拉)；继续进一步改善保健制度，保障在这方面向马来西亚人民提供更为广泛的保护(沙特阿拉伯)；
47. 继续努力，尤其要通过实行进步的教育和卫生政策，增进繁荣，改善人们的福祉(印度尼西亚)；
48. 继续采取有效政策，确保所有公民，特别是低收入阶层的人都能获得适足住房(阿尔及利亚)；继续制定必要的政策和方案，保障所有居民，特别是收入有限的人都能以合理的费用获得适足住房(阿拉伯联合酋长国)；
49. 继续努力为所有人提供适足住房和适足生活水准(巴林)；
50. 继续努力保护外籍工人的权利，通过体制安排增强外籍工人的安全和福利(尼泊尔)；继续努力保护外籍工人的权益(孟加拉国)；
51. 继续努力采取积极举措，保障土著人民获得教育、保健和司法协助的机会(中国)；
52. 通过理事会的适当机制详细介绍下列领域的成就、经验和教训：(a) 在过去 35 年中，如何以持续和渐进的方式设法降低城市和乡村地区的贫困率；(b) 马来西亚反腐协会的建立如何促进并继续促进反腐和提高认识的工作(苏丹)；
53. 鼓励与其他发展中国家分享其发展教育，特别是制定计划确保学生不论其来自何方背景如何均有机会获得教育的经验(中国)；
54. 与其他国家分享教育方案方面向学生讲授伊斯兰的容忍和开放价值观的经验(摩洛哥)；
55. 与其他国家，特别是多种文化和宗教国家加强教育的经验(也门)；

56. 与国际社会分享在国家发展和减贫方面的经验(越南); 与其他国家分享在减贫, 特别是城市减贫方面的经验(缅甸); 与其他发展中国家分享减贫、特别是乡村和城市人口的减贫经验和最佳做法(乌兹别克斯坦); 与其他发展中国家分享有关减贫的经验和良好做法(阿拉伯联合酋长国); 与其他发展中国家分享缓解贫困的经验和最佳做法(孟加拉国);
57. 与其他国家分享消除贫困, 特别是发展中小型企业方面的经验和最佳做法(老挝人民民主共和国);
58. 继续分享和推广其努力制定提高土著群体地位的综合政策和战略、着重通过社会经济方案提高土著社区的地位和生活质量的经验和最佳做法(缅甸);
59. 向国际社会介绍卫生面向大众的良好做法, 特别是“远程初级保健”系统的优点(古巴);
60. 分享其在减少孕产妇死亡率方面的最佳做法和战略(菲律宾);
61. 与具有相同兴趣的国家分享反腐经验(也门);
62. 继续积极努力改善国内人权状况(乍得);

105. 上述报告第 71、72(c)、81(d)、(f)和(h)、83(b)、94、67(a)、(b)(一)和(二)、89(a)和(b); 64(b)、75(d)和(f); 93(b)和(c); 21、76(b)和(f); 88(a); 和 84(b)等段落提到的建议没有得到马来西亚的赞同。

106. 关于下列各项建议, 马来西亚记下这些建议, 将在适当时间里作出答复。人权事务委员会第五十一届会议即将通过的成果报告将载列马来西亚的答复。

1. 批准《公民权利和政治权利国际公约》和《禁止酷刑公约》, 并在国家一级执行这两项条约(联合王国); 批准《残疾人公约》(芬兰); 尽快撤回对《消除对妇女歧视公约》和《儿童权利公约》的所有保留意见(芬兰); 撤回对《儿童权利公约》的保留意见(比利时); 提倡两性平等和保护儿童, 考虑同意撤回对《儿童权利公约》和《消除对妇女歧视公约》的保留(墨西哥); 作为已经在 1998 年采取措施的扩展, 撤回对《消除对妇女歧视公约》的保留(法国);
2. 采取进一步措施, 包括通过签署和批准 1951 年联合国《关于难民地位的公约》, 保护移徙工人、难民及其家属的人权(联合王国);
3. 使国内立法与《消除对妇女歧视公约》相一致(智利);

4. 加入《国际刑事法院罗马规约》(法国);
5. 制订禁止歧视的法律(乌克兰);
6. 执行儿童权利委员会的有关建议, 确保包括少数群体、土著人民和移徙工人子女在内的所有儿童的权利得到全面保护(南非);
7. 按照《巴黎原则》确保马来西亚人权委员会的独立(联合王国和荷兰), 修订 597 号法(联合王国); 使马来西亚人权委员会的工作范围涵盖《世界人权宣言》所载各项权利(联合王国、荷兰), 开发一个高效的马来西亚人权委员会建议后续落实系统, 并采取措施确保委员会遵守《巴黎原则》(芬兰); 按照《巴黎原则》加强马来西亚人权委员会的独立(加拿大);
8. 按照皇家委员会关于警察改革的建议, 设立独立和公正的警务控诉委员会(荷兰);
9. 确保定期对法官、检察官、检察代表和其他执法机构进行有关人权、不歧视和国际法法律约束力性质的培训(乌克兰);
10. 降低可判处死刑的罪名数目, 包括非暴力罪, 并考虑废除死刑(法国);
11. 取缔家庭内的体罚; 为家庭暴力受害者提供机会, 能够诉诸法律补救、免遭肇事人危害的保护(德国); 开展有效运动, 使人们了解和认识这一事项(德国);
12. 加强努力打击对妇女的暴力行为, 包括确保确定在配偶一方不同意的情况下发生的婚内强奸为犯罪行为(加拿大);
13. 考虑一种取代无限期预防性羁押的办法, 如刑事起诉等(联合王国); 确保逮捕和拘押规定与国际人权标准相符; 确保所有被拘留者都能及时获得为其拘留提出异议的法律补救方法、获得法律顾问和在没有不必要拖延的情况下受审或释放(德国); 考虑修正《国内安全法》, 使国内安全立法与国际人权标准相符, 包括增加被拘留者的法律保障措施, 废除未经审讯长期拘押的做法(意大利);
14. 采取必要措施保障宗教自由(智利); 继续保障宗教自由, 消除所有公民享有这项基本人权的障碍(罗马教庭);
15. 通过有关媒体的法律, 保障言论和信息自由(法国); 审查和修订诸如《煽动法》、《印刷和出版法》和《国家机密法》等法律, 使公民充

分行使意见和言论自由，包括出版自由和新闻自由(加拿大)；

16. 改革《警察法》，使 3 个或 3 个以上的人集会需获警方许可的要求不侵犯和平集会的自由(荷兰)；按照其国际人权义务，废止或修订《国内安全法》和《紧急公共秩序和预防条例》，同时不对政治活动人士、记者或其他参与和平活动的人士适用这些条例(加拿大)；
17. 确保公民和包括移徙工人、难民、寻求庇护人、土著人民在内的非公民全面和普遍一律都能获得卫生服务(乌克兰)；
18. 与难民署一道拟订一个行政框架，将难民和寻求庇护人与非正常移徙人员区分开来，适用外国侨民国际待遇标准(荷兰)；
19. 采取必要措施防止虐待移徙工人，尊重他们的权利(智利)；允许移徙家庭佣工如受虐待能够充分获得法律补救，正式调查所有虐待案件，将肇事人绳之以法；采取有效步骤，保护移徙工人不受民团的攻击；确保离开前培训中心的运作符合工人的基本需要，不鼓动任何形式的虐待(德国)；继续采取措施确保移徙人员的权利得到尊重，不允许与移徙有关的任何消极现象的出现，包括贩运人口(白俄罗斯)；

107. 本报告所载各项结论和/或建议均反映提出国和/或受审议国家所持立场，不应将其视为得到整个工作组的认可。

## Annex

### COMPOSITION OF THE DELEGATION

The delegation of Malaysia was headed by H.E. Tan Sri RASTAM Mohd. Isa, Secretary-General, Ministry of Foreign Affairs, and composed of 31 members:

H.E. Tan Sri ABDUL GANI Patail, Attorney General of Malaysia Attorney-General's Chambers, Alternate Head of Delegation;

H.E. Datuk OTHMAN Hashim, Permanent Representative, Permanent Mission of Malaysia, to the United Nations, Alternate Head of Delegation;

Datuk FAIZAH Mohd Tahir, Secretary-General, Ministry of Women, Family, and Community Development, Advisor;

Datuk AHMAD FUAD Ab. Aziz, Deputy Secretary-General, Ministry of Home Affairs, Advisor;

Datin ARPAH Abdul Razak, Director General, Local Government Department, Ministry of Housing and Local Government, Advisor;

Mr. MOHD SANI Mistam, Director General, Department of *Orang Asli* Affairs, Ministry of Rural and Regional Development, Advisor;

Datuk AZAILIZA Mohd Ahad, Head, International Affairs Division, Attorney-General's Chambers, Advisor;

Mme. SITI HAJJAR Adnin, Deputy Permanent Representative, Permanent Mission of Malaysia, to the United Nations, Advisor;

Mr. HASNAN ZAHEDI Ahmad Zakaria, Undersecretary, National Intelligence Division, National Security Council, Advisor;

Mme. MAHZUM Ariffin, Deputy Director General, Legal Affairs Division, Prime Minister's Office, Advisor;

Datin ROHANI Parkash Abdullah, Undersecretary, Ministry of Higher Education, Advisor;

Mr. HARJEET Singh, Undersecretary, Policy Division, Ministry of Women, Family, and Community Development, Advisor;

Mr. Liew SWEE LIANG, Undersecretary, Policy Division, Ministry of Housing and Local Government, Advisor;

Mr. ELANGO VAN Singaraveloo, Undersecretary, Planning and Coordination Division, Ministry of Unity, Culture, Arts and Heritage, Advisor;

Mme. SHARIFFAH NORHANA Syed Mustaffa, Principal Assistant Secretary, Ministry of Foreign Affairs, Advisor;

Mr. MOHD. RADZI Harun, Head of Human Rights and International Organisation Section, International Affairs Division, Attorney-General's Chambers, Advisor;

Mr. AZALI Mohamed, Director, Research and Planning Department, Department of *Orang Asli* Affairs, Ministry of Rural and Regional Development, Advisor;

Mr. HILAL Haji Othman, Director, Corporate & International Relations Division, Department of National Unity and Integration (JPNIN), Ministry of Unity, Culture, Arts and Heritage, Advisor;

Mr. AMINUDDIN Abdul Rahman, Labour Attache, Permanent Mission of Malaysia , to the United Nations, Advisor;

Mr. MUHAMMAD RUSHDAN Mohamed, Senior Federal Counsel, Human Rights and International Organisation Section, International Affairs Division, Attorney-General's Chambers, Advisor;

Mr. AZRIL Abdul Aziz, First Secretary, Permanent Mission of Malaysia, to the United Nations, Advisor;

Mme. JUNAINA Johan, Principal Assistant Secretary, Ministry of Home Affairs, Advisor;

Mr. ISMAIL Mohammad Bkri, Second Secretary, Permanent Mission of Malaysia, to the United Nations, Advisor;

Mr. JOHAN ARIFF Abdul Razak , Second Secretary, Permanent Mission of Malaysia to the United Nations, Advisor;

Mr. SAFERI Ali, Legal Officer, State Attorney General's Chambers, Sarawak State Government, Advisor;

Mme. FARISHA Salman, Assistant Secretary, Ministry of Foreign Affairs, Advisor;

Mr. FAUZI Azmat, Second Secretary (Administration), Permanent Mission of Malaysia, to the United Nations, Advisor;

Mme. ROHAYATI Abd. Hamed, Assistant Secretary, Ministry of Education, Advisor;

Mme. MAREIA Hasan, Assistant Director, Economic Planning Unit, Sarawak State Government, Advisor;

Col. ROSHAIMI Zakaria, Principal Assistant Secretary, Policy Division, Ministry of Defence, Advisor;

Supt. MAZUPI Abdul Rahman, Police Superintendent, Criminal Investigation Department, Royal Malaysian Police, Advisor.

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