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Malaysia

The present report is a compilation of the information contained in the reports of treaty bodies and special procedures, including observations and comments by the State concerned, and of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and in other relevant official United Nations documents. It is presented in a summarized manner due to word-limit constraints. For the full text, please refer to the document referenced. This report does not contain any opinions, views or suggestions on the part of OHCHR other than those contained in public reports and statements issued by the Office. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

I. Background and framework

A. Scope of international obligations¹

International human rights treaties²

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified/not accepted</i>
<i>Ratification, accession or succession</i>	CEDAW (1995)	OP-CRC-AC (2012)	ICERD
	CRC (1995)	OP-CRC-SC (2012) CRPD (2010)	ICESCR ICCPR ICCPR-OP 2 CAT OP-CAT ICRMW CPED
<i>Reservations, declarations and/or understandings</i>	CRC (reservations, arts. 2, 7, 14, 28, para. 1 (a), and 37, 1995)	CEDAW (withdrawal of reservations to arts. 5 (a), 7 (b) and 16, para. 2, 2010)	
	CEDAW (general reservation, reservations, arts. 5 (a), 7 (b), 9, para. 2, 11, 16, para. 1 (a), (c), (f), (g), (h), and 16, para. 2, 1995)	CRC (declaration, art. 28, para. 1 (a), 2010)	
		OP-CRC-AC (declaration, art. 3, para. 2, age of recruitment seventeen and a half years, 2012)	
		OP-CRC-SC (reservations, arts. 2 (c), and 3, para. 1 (a)(ii), 2012)	
<i>Complaint procedures, inquiry and urgent action³</i>		CRPD (reservations, arts. 3 (b), 3 (e), 5, para. 2, 15, 18 and 30, 2010)	ICERD OP-ICESCR ICCPR ICCPR-OP 1 OP-CEDAW CAT

<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified/not accepted</i>
		OP-CRC-IC
		ICRMW
		OP-CRPD
		CPED

Other main relevant international instruments

<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified</i>
<i>Ratification, accession or succession</i>	Convention on the Prevention and Punishment of the Crime of Genocide	Conventions on refugees and stateless persons ⁶
	Geneva Conventions of 12 August 1949 and Additional Protocols I and II ⁴	Palermo Protocol ⁷
	ILO fundamental conventions, except Nos. 29, 87 and 105 ⁵	Additional Protocol III to the 1949 Geneva Conventions ⁸
		Rome Statute of the International Criminal Court
		ILO conventions Nos. 29, 87, 105 ⁹
		ILO conventions Nos. 169 and 189 ¹⁰
		UNESCO Convention against Discrimination in Education

1. The Working Group on Arbitrary Detention (WGAD) recommended that Malaysia become a party to the main international instruments on human rights, particularly ICCPR, ICESCR, CAT, ICERD, the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons, the Convention on the Reduction of Statelessness and the Rome Statute of the International Criminal Court. The Government should also study the possibility of becoming a party to ICRMW.¹¹

2. The Special Rapporteur on the right to education recommended that Malaysia ratify at least the basic instruments of international protection of human rights, including ICCPR and ICESCR, and withdraw its reservations to CRC.

3. The Special Rapporteur and the United Nations Educational, Scientific and Cultural Organization (UNESCO) recommended that Malaysia ratify the Convention against Discrimination in Education.¹² UNESCO also recommended that Malaysia adopt further measures (for example special laws) aimed at combating discrimination in education, protecting minority groups and promoting gender equality in education.¹³

4. The Office of the United Nations High Commissioner for Refugees (UNHCR) recommended that Malaysia accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.¹⁴

5. The United Nations Country Team, Malaysia (UNCT) noted the reservations Malaysia had made to CEDAW, namely, to article 9, para. 2, on nationality of children, and to article 16, paras. 1 (a) on the right to enter into marriage, 1 (c) on rights during marriage and dissolution, 1 (f) on guardianship, 1 (g) on same personal rights between spouses, and 1 (h) on same property rights for spouses.¹⁵

6. UNCT noted that at the Review Conference of the Rome Statute of the International Criminal Court, held in May/June 2010, the Minister in the Prime Minister's Department in charge of Law and Parliamentary Affairs stated that he would table accession papers to the Malaysian Cabinet upon his return to Malaysia. In March 2011, Malaysia had announced that it would accede to the Rome Statute. However, there had been no further publicly announced developments since then.¹⁶

B. Constitutional and legislative framework

7. UNCT noted significant law reforms that had been introduced: the repeal of the Internal Security Act 1960; the repeal of the Restricted Residence Act 1993 and the Banishment Act 1959; the revocation of three proclamations of emergency dating back to 1969 and 1977 and the resultant expiry of the Emergency (Public Order and Prevention of Crime) Ordinance 1969; the amendment to the University and University Colleagues Act 1971; the amendment to the Printing Presses and Publications Act 1984; the repeal of Section 27 of the Police Act 1967; the introduction of the Peaceful Assembly Act 2012; the introduction of the Security Offences (Special Measures) Act 2012; and the amendments to the Penal Code, Criminal Procedure Code and Evidence Act 1950.¹⁷

8. UNHCR recommended that Malaysia: strengthen its national legal framework to prevent and reduce statelessness; increase its efforts to ensure that Malaysian nationality is granted to all of those entitled to it under the Constitution, including minority groups such as Tamils and other persons of Indian origin; and ensure the registration of all births in the country to prevent statelessness, in line with article 7 of CRC.¹⁸

C. Institutional and human rights infrastructure and policy measures

Status of national human rights institutions¹⁹

<i>National human rights institution</i>	<i>Status during previous cycle</i>	<i>Status during present cycle²⁰</i>
Human Rights Commission of Malaysia (SUHAKAM)	A (2009)	A (2010)

9. WGAD recommended that the Government strengthen the status, powers and functions of the Human Rights Commission of Malaysia (SUHAKAM) in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Working Group also called upon Malaysia to take all measures necessary to ensure that SUHAKAM maintains its A-status. The Government should facilitate the access of SUHAKAM and non-governmental organizations (NGOs) to immigration detention facilities, police lock-ups and prisons to monitor conditions and provide additional services in partnership with the Government.²¹

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies²²

1. Reporting status

<i>Treaty body</i>	<i>Concluding observations included in previous review</i>	<i>Latest report submitted since previous review</i>	<i>Latest concluding observations</i>	<i>Reporting status</i>
CEDAW	May 2006	-	-	Third and fourth reports overdue since 2008
CRC	February 2007	-	-	Second to fourth reports pending consideration; initial reports to OP-CRC-AC and OP-CRC-SC due in 2014
CRPD	-	-	-	Initial report overdue since 2012

2. Responses to specific follow-up requests by treaty bodies

Concluding observations

<i>Treaty body</i>	<i>Due in</i>	<i>Subject matter</i>	<i>Submitted in</i>
-	-	-	-

Views

<i>Treaty body</i>	<i>Number of views</i>	<i>Status</i>
-	-	-

B. Cooperation with special procedures²³

	<i>Status during previous cycle</i>	<i>Current status</i>
<i>Standing invitation</i>	No	No
<i>Visits undertaken</i>	Education (2007)	Arbitrary detention (2010) Myanmar (2011)
<i>Visits agreed to in principle</i>	None	Food Indigenous peoples
<i>Visits requested</i>	Indigenous peoples (requested in 2005) Terrorism (requested in 2005) Freedom of religion (requested in 2006) Migrants (requested in 2006)	Freedom of association and assembly Human rights defenders (reminder in 2010) Independence of judges and lawyers

	Minority issues (requested in 2007)	Migrants
	Arbitrary detention (requested in 2008)	Minority issues Terrorism (reminders in 2010 and 2012) Racism
<i>Responses to letters of allegations and urgent appeals</i>	During the period under review 22 communications were sent. The Government replied to 4 communications.	

10. UNCT noted that Malaysia had issued no standing invitation to the Special Procedures.²⁴

C. Cooperation with the Office of the High Commissioner for Human Rights

11. Malaysia contributed financially to OHCHR in 2009, 2010 and 2011.²⁵

III. Implementation of international human rights obligations

A. Equality and non-discrimination

12. UNCT noted that although the Government had amended article 8, paragraph 2, of the Constitution in July 2001 to include gender as a basis for non-discrimination, it had not amended the Penal Code, which contained several discriminatory provisions.²⁶ UNCT further noted that despite the July 2012 decision by the High Court that regard had to be given to the obligation of Malaysia under CEDAW, and that it could refer to CEDAW in clarifying the term “equality” and “gender discrimination” under article 8, paragraph 2, of the Constitution, the wording suggested that discrimination based on gender coupled with other grounds continued to be permissible.²⁷

13. UNCT expressed concerns about discrimination against indigenous, disabled, refugee, asylum-seeking, migrant, stateless, and lesbian, gay, bisexual and transgender children. It also noted reports that 15,000 Filipino children at risk of statelessness had been denied access to government schools and access to basic amenities.²⁸

14. The International Labour Organization (ILO) stated that in its comments on application of Convention No. 100 (1951) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value in Malaysia, the ILO Committee of Experts on the Application of Conventions and Recommendations had recalled the importance of the concept of equal pay for work of equal value in eradicating gender-based pay discrimination and addressing occupational segregation, in particular when they are based on patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the labour market and in society.²⁹

B. Right to life, liberty and security of the person

15. UNCT noted that the death penalty was still handed down for certain offences. It also noted some public statements by the Minister in the Prime Minister’s Department in charge of Law and Parliamentary Affairs to the effect that the Malaysian Cabinet had discussed the possibility of ending mandatory death sentences in drugs cases involving “drug mules”, which appeared to indicate the possibility that a de facto moratorium on executions was in place.³⁰

16. The ILO Committee of Experts urged the Government to take measures to cooperate with neighbouring countries to bring an end to child trafficking for labour or commercial sexual exploitation and to the engagement of child migrants in the worst forms of child labour.³¹

17. UNCT stated that the issue of domestic violence remained a serious concern. It further noted that in 2011 the Domestic Violence Act 1994 had been amended and the definition of domestic violence expanded to include “psychological abuse, including emotional injury”. However, marital rape was still not a criminal offence.³²

18. UNCT expressed concern that the issue of female genital mutilation had publicly arisen in Malaysia. In December 2012, the Malaysian Health Ministry was reportedly developing guidelines to reclassify it as a medical practice.³³

19. In 2012, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a joint communication concerning the alleged arrest and deportation of a journalist. On 12 February 2012, he had allegedly been deported from Malaysia to a third country where he had since remained in detention. Despite publicly repenting and declaring himself a Muslim, the journalist was reportedly at serious risk of being charged with blasphemy and consequently receiving a death sentence as a result of his post on Twitter.³⁴

20. During its 2010 visit, WGAD observed the relatively long periods accused persons spent in pretrial detention, sometimes for several years, often because of understaffed and crowded courts. Police agents often failed to inform detainees about their rights to contact family members and to consult a lawyer of their choice. Police agents often questioned suspects without giving them access to legal counsel. Limited pretrial discovery prevented defendants from defending themselves properly. Government-held evidence was not consistently made available. The law imposed excessive restrictions on appeals. WGAD received complaints that women did not receive fair treatment from sharia courts.³⁵

21. WGAD stressed that, regardless of immigration status, nobody should be subjected to arbitrary detention or appalling detention conditions. The Government was reminded that it was its responsibility to guarantee the right to physical and psychological integrity and the right to security in immigration detention centres.³⁶

C. Administration of justice, including impunity, and the rule of law

22. WGAD recommended that the Government bear in mind that no one should be detained without a fair trial.³⁷

23. UNCT noted that the issue of diversion of children from the criminal justice system had been discussed by the Government, but no specific policy had been adopted. It also noted that there was no specialized response to children in conflict with the law. Criminal courts were generally not child friendly, significant numbers of children were on remand for minor offences, and principles of proportionality and detention as a last resort were not always followed.³⁸

D. Right to privacy, marriage and family life

24. UNCT stated that child marriages appeared to be on the increase, noting that the Islamic Religious Department received 75 marriage applications from underage individuals in 2008, 99 in 2009 and 101 in 2010, 90 per cent of which involved girls under 16.³⁹

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

25. UNCT noted that the rise in state-led conservative Muslim ideology threatened the ability of Muslims to practice their religion in a form and content other than as prescribed by the religious authorities. The push for one official view of Islam, supported by the use of punitive measures and the use of both sharia and civil laws to silence differences of opinion by State and non-State actors bred fear and ignorance, and encouraged intolerance in interactions between and within ethnic communities. Shias were restricted from public celebration or practice and Sufism was proscribed.⁴⁰

26. UNCT also noted bans on a number of publications of different religions, including the official newspaper of the Roman Catholic Church (*The Herald*), and the books *Muslim Women and the Challenges of Islamic Extremism* and *Allah, Liberty and Love*.⁴¹

27. UNCT stated that the Government continued to use the Printing Presses and Publications Act 1984, the Official Secrets Act 1972, the Sedition Act 1948 and the Penal Code to silence dissent, including attempts to tighten control over the Internet and restrict bloggers. The Government interpreted the fact that Islam was the religion of the federation in Malaysia as a basis to quell and suppress space for dialogue, discussion and debate.⁴²

28. UNCT noted that on 11 July 2012 the Prime Minister had announced that the Sedition Act 1948 would be repealed and replaced by a National Harmony Act, but no details of the proposed National Harmony Act had been made public.⁴³ The Government had amended the Printing Presses and Publications Act 1984 to do away with the requirement of the annual licensing of publications, and to allow for decisions of the Minister of Home Affairs to be challenged in court. UNCT noted the decision of the High Court at Kuala Lumpur that quashed the decision of the Ministry of Home Affairs not to grant a publishing permit to an online news portal.⁴⁴

29. UNESCO noted that the Internet continued to be a free environment in Malaysia in comparison to the print and broadcasting media, which were governed by more restrictive laws such as the Printing Presses and Publications Act 1984. It noted however that the recent amendment to section 114(A) of the Evidence Act 2012 passed in Parliament was problematic for freedom of expression, as the Act placed the onus on the owner of the domain, including social media and blog accounts, to prove his or her innocence in the event of an alleged wrongdoing.⁴⁵

30. UNESCO recommended that Malaysia: decriminalize defamation and move towards making it part of the civil code in accordance with international standards; introduce a freedom of information law that is in accordance with international standards; allow easier establishment of news print media, including the revision of the Printing Presses and Publications Act 1984 to bring it into line with international standards; develop the media self-regulatory mechanism; review the recent amendment to the Evidence Act 2012, which places undue burden on the user of media; and continue with its positive efforts to repeal the Sedition Act and the Internal Security Act, which represent significant obstacles to freedom of expression.⁴⁶

31. On 7 December 2011, the Special Rapporteurs on the rights to freedom of peaceful assembly and of association, on the right to freedom of opinion and expression, on the situation of human rights defenders, and on the human rights of migrants warned that a new Peaceful Assembly Bill in Malaysia may “arbitrarily and disproportionately restrict the right to assemble peacefully”. They noted that the restrictions ranged from a ban on street protests and a prohibition on non-citizens and citizens under 21 years of age to assemble peacefully, to conditional access for media to public gatherings.⁴⁷

32. UNCT noted that, in some areas, the Peaceful Assemblies Act 2012 imposed limitations on the freedom of peaceful assembly that were more drastic than those in the Police Act 1967. Under the new law, assemblies within 50 metres of certain locations were prohibited: for example, hospitals, petrol stations, railway stations, schools, places of religious worship and bridges. Assemblies in motion, which were defined as “street demonstrations”, were also prohibited. Selective prosecution was practiced, in that organizers of peaceful assemblies that were not supported by the Government of Malaysia were investigated.⁴⁸

33. UNCT noted that the Security Measures (Special Offences) Act 2012 allowed the police to detain a suspect for a maximum of 28 days. The courts did not have a supervisory function over the detention. UNCT also noted amendments made to the Penal Code and the Criminal Procedure Code; the combined effect of the new laws made it an offence to share and/or forward information, including e-mails of any event that undermined parliamentary democracy or which counselled disobedience of the law.⁴⁹

34. In 2011, the Special Rapporteurs on the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association, and on the situation of human rights defenders raised concerns regarding a court order allegedly imposing a ban on entering Kuala Lumpur. According to the information received, on 7 July 2011, the Magistrate’s Court in Kuala Lumpur issued a restriction order prohibiting 91 individuals from remaining in, entering or passing through Kuala Lumpur. A breach of the ban could result in a fine and /or imprisonment for up to six months. It was alleged that the Court had issued the order amid preparations for a “Walk for Democracy” demonstration organized by the Coalition for Clean and Fair Elections, known as Bersih, which took place on 9 July 2011. More than a hundred activists were reportedly arrested after their participation in supporting the demonstration.⁵⁰ The three Special Rapporteurs also noted that, between 1 March 2011 and the date of the communication, the Malaysian authorities had allegedly arrested up to 54 members of the Hindu Rights Action Force (HINDRAF) and the Malaysian Human Rights Party.⁵¹

35. UNCT noted that a peaceful assembly organized by Bersih 2.0 on 28 April 2012 highlighted the negative approach of the Royal Malaysian Police to freedom of assembly. A subsequent public assembly on 12 January 2013 organized by opposition political parties was allowed to proceed subject to the adherence to 27 different conditions imposed by the police. Following the assembly, the police launched investigations into breaches of the conditions, including participation by children below the age of 15, which is specifically prohibited under the Peaceful Assemblies Act 2012.⁵²

36. On 7 June 2012, the Special Rapporteurs on the situation of human rights defenders, on the rights to freedom of peaceful assembly of association and on the right to freedom of opinion and expression called on the Government and other parties involved to respect and protect the legitimate work of an umbrella group of NGOs campaigning for reform of the electoral process in the lead-up to the general election, scheduled to take place by April 2013. They urged the authorities to protect effectively one of the directors of Bersih, Ambiga Sreenevasan, and other members, against acts of harassment and intimidation by various groups of individuals.⁵³

37. In 2012, the Special Rapporteurs on the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and on the situation of human rights defenders sent a joint allegation letter concerning allegations of ongoing harassment of the NGO Suara Rakyat Malaysia (SUARAM). SUARAM had reportedly been the victim of a smear campaign in the media. According to reports, such investigations and attacks on the integrity of SUARAM might have been politically motivated.⁵⁴ UNCT expressed similar concerns.⁵⁵

38. In 2012, several Special Rapporteurs raised concerns regarding the alleged excessive use of force by law enforcement authorities against peaceful protestors, and acts of harassment against media personnel and human rights defenders. According to the information received, a public sit-in organized by Bersih in Kuala Lumpur on 28 April 2012 was met with police brutality. The police reportedly used, in an indiscriminate manner, tear gas and water cannons to disperse the peaceful protestors, injuring several of them. It was also reported that media personnel covering the protest were assaulted by security forces.⁵⁶

F. Right to work and to just and favourable conditions of work

39. The ILO Committee on Freedom of Association noted that the Trade Union Act and the Industrial Relations Act and their application had, for many years, resulted in serious violations of the right to organize and bargain collectively; it urged the Government to amend those laws.⁵⁷ In 2011, the ILO Committee of Experts urged the Government to take the necessary measures to ensure for public servants not engaged in administration of the State the right to bargain collectively.⁵⁸

40. The ILO Committee on Freedom of Association regretted that no policy for domestic workers to form and join associations had been adopted, and urged the Government to take the necessary measures, including legislative, to ensure that domestic workers may all effectively enjoy the right to establish and join organizations of their own choosing.⁵⁹

41. The ILO Committee of Experts reminded the Government that migrant children, street children and child domestic workers were particularly exposed to the worst forms of child labour, and requested the Government to take effective time-bound measures to ensure that these children are protected.⁶⁰

42. The ILO Committee of Experts asked the Government to provide information on the measures taken to ensure that the legislation protecting migrant workers from discrimination with respect to their conditions of work is effectively applied and enforced and that effective mechanisms exist for migrant workers to submit complaints without fear of reprisals.⁶¹

G. Right to social security

43. The ILO Committee of Experts recalled that, since 1 April 1993, the Malaysian social security system had contained inequalities of treatment that ran counter to the provisions of ILO conventions No. 19 (1926) concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents and No. 97 (1949) concerning Migration for Employment. The inequality was due to national legislation that transferred foreign workers who had been employed in Malaysia for up to five years from the Employees' Social Security Scheme to the Workmen's Compensation Scheme.⁶²

H. Right to health

44. In 2011, the Special Rapporteur on the right to health sent a letter to the Government concerning the alleged negative impact that the Trans Pacific Partnership (TPP) agreements would have on access to medicines. According to the information received, several rounds of negotiations on the TPP agreements had been held among nine Governments, including Malaysia. Some of the intellectual property provisions of the TPP would reportedly

strengthen monopolies for life-saving medicines and create barriers for access to medicines. It was alleged that new intellectual property standards would not only result in high prices for medicines but could also negatively impact the ability of developing countries to take positive steps towards ensuring the enjoyment of the right to health of their citizens.⁶³

I. Right to education

45. In 2009, the Special Rapporteur on the right to education recommended that Malaysia guarantee the principle of cost-free education, irrespective of membership of an ethnic group or citizenship, at least in the case of primary education, with gradual extension to the secondary level.⁶⁴

46. The Special Rapporteur also recommended establishing an indigenous affairs unit in the Ministry of Education, with links to the indigenous communities, to deal with educational matters affecting all indigenous communities in the country, including those on the island of Borneo, so that the needs of those communities and their views on ways of improving the education of their members could be integrated into educational policies. He recommended that Malaysia develop statistical policies and programmes providing constant information on the number of children without access to public education, including refugee children, asylum seekers, stateless children, children of (legal and illegal) migrant workers, and street children, throughout the territory of Malaysia, disaggregated by state, ethnic origin, gender, disabilities, and rural and urban areas, with a view to establishing a policy and appropriate measures for including such children in the national education system.⁶⁵

47. The Special Rapporteur further recommended revising the Education Act 1996 so that children who do not have a birth certificate may enrol in educational institutions, thereby guaranteeing the right of education for all children in the territory of Malaysia, regardless of whether they are refugees, asylum seekers, stateless children, children of legal or illegal migrant workers or street children. He stressed that Malaysia should take the necessary measures to implement a gender perspective in education at all levels, including teacher training.⁶⁶

48. UNESCO recommended that Malaysia further elaborate provisions in the legislation and/or report on the justiciability of the right to education to increase the potential for the right to education to be respected, protected, fulfilled and monitored.⁶⁷

J. Cultural rights

49. UNESCO noted that the most recent policy measurement by Malaysia on the protection of rights to take part in cultural life was included within the Tenth Malaysian Plan 2011-2015, a five-year national development initiative. In 2010, the Government announced the Tenth Malaysian Plan, in which the most instrumental developmental strategies were related to culture and tourism.⁶⁸

K. Persons with disabilities

50. UNCT stated that the absence of any sanction for non-compliance with the provisions of the Persons with Disabilities Act 2011, coupled with the lack of any mechanism for legal redress for non-compliance, represented a significant failure in the enhancement of human rights of persons with disabilities.⁶⁹

51. UNCT stated that stigma, prejudice and discrimination against children with disabilities remained. Children with disabilities faced difficulty in gaining access to comprehensive health services, largely due to a lack of skilled health-care providers able to work with children with disabilities and few suitable screening tools to detect disabilities at an early stage. Children with disabilities lacked sufficient access to education. Implementing inclusive education in schools was a challenge due to a lack of multi-agency collaboration, resources and specialized services for children with disabilities and the large class size.⁷⁰

L. Indigenous peoples

52. UNCT stated that indigenous peoples in Malaysia known as *Orang Asli* in Peninsular Malaysia and *Orang Asal* in Sabah and Sarawak continued to face threats to ownership of ancestral or native customary lands. State governments had cleared ancestral land and/or alienated land occupied or utilized by indigenous peoples to third parties and had only offered to pay compensation for loss of agricultural produce planted on such land. As at 31 December 2010, only 14.21 per cent of officially acknowledged *Orang Asli* lands had been gazetted by the various states. So long as land remained ungazetted, state authorities regarded it as belonging to the state and were free to deal with it.⁷¹

M. Migrants, refugees and asylum seekers

53. In 2011, WGAD reported that the regime applied to migrants in an irregular situation, refugees and asylum seekers was not seen to be in line with international human rights law. Immigrants in an irregular situation arriving in the country were subjected to mandatory detention without genuine recourse to a court of law. The conditions of detention at most of the immigration detention centres visited adversely affected the ability of detainees to challenge the lawfulness of their detention. WGAD had received complaints of detainee abuse, inadequate food, water and medical care, and poor sanitation in the immigration detention centres. It expressed concern about the excessive powers granted to the non-official organization Ikatan Relawan Rakyat Malaysia (RELA), particularly its activities concerning asylum seekers, refugees and migrants in an irregular situation. It had received allegations of ill-treatment and beatings by RELA militants.⁷² UNCT expressed similar concerns.⁷³

54. UNHCR noted that Malaysia continued to ensure some level of protection and assistance for the current refugee population despite the fact that it is not a party to the 1951 Refugee Convention and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons or the 1967 Convention on the Reduction of Statelessness. UNHCR praised the decision taken by Malaysia to accept 40 Rohingya asylum seekers rescued at sea from the Bay of Bengal in December 2012 as a commendable humanitarian gesture.⁷⁴

55. UNHCR noted that there were over 80,000 Filipino refugees in Sabah, many of whom arrived in the 1970s and 1980s; in its assessment, not all of the Filipino Muslim refugees who would have been eligible were granted residence permits. Some of those who were granted the permits were not able to renew them. As a result, many of their children had remained undocumented and thus did not have access to basic education and health services.⁷⁵

56. UNHCR noted that Malaysia did not have a legal or administrative framework for managing refugees and had not set up mechanisms to process asylum seekers and refugees when they arrive in the territory. The absence of a legal framework for managing the refugees issue was complicated by the migration context of Malaysia. The Malaysian law

did not distinguish between refugees/asylum seekers and undocumented migrants, with the former thus becoming vulnerable to arrest for immigrant offences and being subject to detention, prosecution, whipping, and deportation, including *refoulement*.⁷⁶ UNHCR recommended that Malaysia ensure that refugees and asylum seekers are not penalized for illegal entry and stay in the country, that the detention of asylum seekers is used only as a last resort, and where necessary, for the shortest possible period, and that judicial safeguards are in place to prevent arbitrary and/or indefinite detention.⁷⁷

57. UNHCR noted that in connection with the previous universal periodic review for Malaysia, the Government provided an explanation that Malaysia was improving its legislative framework to establish an appropriate mechanism for the treatment of persons with refugee status and/or asylum seekers in possession of identification documents issued by UNHCR. UNHCR stated that no legislative framework had been established to date, and arrangements to provide assistance and protection to persons claiming refugee status or asylum seekers had been limited.⁷⁸ It recommended that Malaysia enact a legislative and administrative framework for the treatment and protection of refugees and asylum seekers, as well as establish appropriate mechanisms to receive, register and process asylum seekers and refugees.⁷⁹ UNHCR noted that the Government of Malaysia had put in place ad hoc administrative arrangements to facilitate the work of UNHCR in providing assistance and protection to refugees and asylum seekers, among which is the recognition by the Government of UNHCR-issued identity documents. This had resulted in a significant decrease in the arrest and detention of individuals who possess such documents.⁸⁰

58. UNHCR noted that Malaysia had deported to China 11 Chinese nationals of Uighur ethnicity in August 2011 and a further six ethnic Uighur asylum seekers registered with UNHCR. It recommended that Malaysia fully respect the principle of *non-refoulement* in accordance with customary international law.⁸¹

59. UNHCR recommended that Malaysia ensure proper documentation of persons in need of international protection and grant them access to legal work, public services and education.⁸² It also recommended that Malaysia regularize the status of the Filipino Muslim refugees, many of whom had remained undocumented and whose children, in particular, were at risk of becoming stateless. In line with the decision taken by the Government of Malaysia in 1987, Filipino Muslim refugees and their children should be issued with a residence permit to enable them to apply for naturalization.⁸³

N. Situation in, or in relation to, specific regions or territories

60. On 6 March 2013, the Secretary-General urged an end to the violence in Sabah, encouraging dialogue among all the parties for a peaceful resolution of the situation. He expressed concern about the impact that the situation may have on the civilian population, urging all parties to facilitate delivery of humanitarian assistance.⁸⁴

Notes

¹ Unless indicated otherwise, the status of ratifications of instruments listed in the table may be found in the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://treaties.un.org/>. Please also refer to the United Nations compilation on Malaysia from the previous cycle (A/HRC/WG.6/4/MYS/2).

² The following abbreviations have been used for this document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights

OP-ICESCR	Optional Protocol to ICESCR
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
OP-CRC-IC	Optional Protocol to CRC on a communications procedure
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRPD	Convention on the Rights of Persons with Disabilities
OP-CRPD	Optional Protocol to CRPD
CPED	International Convention for the Protection of All Persons from Enforced Disappearance

³ Individual complaints: ICCPR-OP 1, art. 1; OP-CEDAW, art. 1; OP-CRPD, art. 1; OP-ICESCR, art. 1; OP-CRC-IC, art. 5; ICERD, art. 14; CAT, art. 22; ICRMW, art. 77; and CPED, art. 31. Inquiry procedure: OP-CEDAW, art. 8; CAT, art. 20; CPED, art. 33; OP-CRPD, art. 6; OP-ICESCR, art. 11; and OP-CRC-IC, art. 13. Inter-State complaints: ICCPR, art. 41; ICRMW, art. 76; CPED, art. 32; CAT, art. 21; OP-ICESCR, art. 10; and OP-CRC-IC, art. 12; Urgent action: CPED, art. 30.

⁴ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html.

⁵ International Labour Organization Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

⁶ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html.

⁹ International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour; Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise.

- ¹⁰ International Labour Organization Convention No. 169, concerning Indigenous and Tribal Peoples in Independent Countries and Convention No. 189 concerning Decent Work for Domestic Workers.
- ¹¹ A/HRC/16/47/Add.2, paras. 106-107.
- ¹² A/HRC/11/8/Add.2, para. 87 and UNESCO submission to the UPR on Malaysia, para. 42.
- ¹³ UNESCO submission to the UPR on Malaysia, para. 43.
- ¹⁴ UNHCR submission to the UPR on Malaysia, pp. 4 and 9.
- ¹⁵ UNCT submission to the UPR on Malaysia, para. 14.
- ¹⁶ *Ibid.*, para. 7.
- ¹⁷ *Ibid.*, para. 4.
- ¹⁸ UNHCR submission to the UPR, pp. 8-9.
- ¹⁹ According to article 5 of the rules of procedure for the International Coordination Committee (ICC) Sub-Committee on Accreditation, the different classifications for accreditation used by the Sub-Committee are: A: Voting Member (fully in compliance with each of the Paris Principles), B: Non-Voting Member (not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination); C: No Status (not in compliance with the Paris Principles).
- ²⁰ For the list of national human rights institutions with accreditation status granted by the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/23/28, annex.
- ²¹ A/HRC/16/47/Add.2, paras. 126-128.
- ²² The following abbreviations have been used for this document:
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| CEDAW | Committee on the Elimination of Discrimination against Women |
| CRC | Committee on the Rights of the Child |
| CRPD | Committee on the Rights of Persons with Disabilities |
- ²³ For the titles of special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx and www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.
- ²⁴ UNCT submission to the UPR, para. 9.
- ²⁵ OHCHR, *Report 2011*, p. 171, *Report 2010*, p. 285, *Report 2009*, p. 210.
- ²⁶ UNCT submission to the UPR, para. 12.
- ²⁷ *Ibid.*, para. 13.
- ²⁸ *Ibid.*, para. 23.
- ²⁹ ILO submission to the UPR on Malaysia, p. 2.
- ³⁰ UNCT submission to the UPR, para. 33.
- ³¹ ILO submission to the UPR, p. 3.
- ³² UNCT submission to the UPR, para. 16.
- ³³ *Ibid.*, para. 17.
- ³⁴ A/HRC/20/30, p. 65.
- ³⁵ A/HRC/16/47/Add.2, paras. 93-96.
- ³⁶ *Ibid.*, para. 117.
- ³⁷ *Ibid.*, para. 109.
- ³⁸ UNCT submission to the UPR, para. 21.
- ³⁹ *Ibid.*, para. 22.
- ⁴⁰ *Ibid.*, para. 44.
- ⁴¹ *Ibid.*, paras. 43-44.
- ⁴² *Ibid.*, para. 37.
- ⁴³ *Ibid.*, para. 36. See also OHCHR, press briefing note of 13 July 2012, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12348&LangID=E.
- ⁴⁴ UNCT submission to the UPR, para. 36.
- ⁴⁵ UNESCO submission to the UPR on Malaysia, para. 26.
- ⁴⁶ *Ibid.*, paras. 46-51.
- ⁴⁷ OHCHR, "Malaysia: new bill threatens right to peaceful assembly with arbitrary and disproportional restrictions". Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11694&LangID=E.
- ⁴⁸ UNCT submission to the UPR, para. 34.
- ⁴⁹ *Ibid.*, para. 38.
- ⁵⁰ A/HRC/19/44, p. 45.
- ⁵¹ A/HRC/18/51 and Corr. 1, p. 107.

- ⁵² UNCT submission to the UPR, para. 35.
- ⁵³ OHCHR, “Malaysia: UN rights experts call for the protection of NGOs working for free and fair elections”, 7 June 2012. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12226&LangID=E.
- ⁵⁴ A/HRC/22/67 and Corr. 1 and 2, p. 116.
- ⁵⁵ UNCT submission to the UPR, para. 42.
- ⁵⁶ A/HRC/21/49, p. 45.
- ⁵⁷ ILO submission to the UPR, p. 5.
- ⁵⁸ *Ibid.*, p. 6.
- ⁵⁹ *Ibid.*, p. 2.
- ⁶⁰ *Ibid.*, p. 3.
- ⁶¹ *Ibid.*, p. 4.
- ⁶² *Ibid.*
- ⁶³ A/HRC/19/44, p. 37.
- ⁶⁴ A/HRC/11/8/Add.2, para. 87.
- ⁶⁵ *Ibid.*
- ⁶⁶ *Ibid.*
- ⁶⁷ UNESCO submission to the UPR on Malaysia, para. 45.
- ⁶⁸ *Ibid.*, para. 39.
- ⁶⁹ UNCT submission to the UPR, para. 25.
- ⁷⁰ *Ibid.*, para. 27.
- ⁷¹ *Ibid.*, para. 28.
- ⁷² A/HRC/16/47/Add.2, paras. 100-101.
- ⁷³ UNCT submission to the UPR, para. 23.
- ⁷⁴ UNHCR submission to the UPR on Malaysia, pp. 2-3.
- ⁷⁵ *Ibid.*, p. 1.
- ⁷⁶ *Ibid.*
- ⁷⁷ *Ibid.*, p. 6.
- ⁷⁸ *Ibid.*, p. 4.
- ⁷⁹ *Ibid.*, p. 5.
- ⁸⁰ *Ibid.*, p. 3.
- ⁸¹ *Ibid.*, p. 5.
- ⁸² *Ibid.*, p. 7.
- ⁸³ *Ibid.*, p. 9.
- ⁸⁴ United Nations, “Secretary-General urges dialogue to resolve situation in Sabah, Malaysia”, press statement. Available from www.un.org/News/Press/docs/2013/sgsm14852.doc.htm.
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