

INTRODUCTION

1. The purpose of this reportⁱ is to highlight issues that continue to persist in Malaysia in terms of human rights since the first UPR. The report will cover a review of what have been identified as key human rights issues, illustrated with important developments and events, and conclude with specific recommendations to the Malaysian government,ⁱⁱ which are included in the accompanying Annex I.

2. Malaysia's first Universal Periodic Review ("UPR") was on 11 February 2009. 147 separate recommendations were made, of which 80 were accepted and 31 rejected; 36 received a general response. (When considered thematically, 103 recommendations were received, 62 accepted, 22 rejected, and there was no clear position on the remaining 19.) Upon adoption of the Report of the Working Group on the Universal Periodic Review of Malaysiaⁱⁱⁱ on 3 June 2009, Malaysia presented an Addendum^{iv} in response to the recommendations listed under para. 106 of the Report. Subsequently, on 23 April 2010, Malaysia made 6 specific pledges in seeking election to the Human Rights Council ("HRC") for the 2010-2013 term.^v Overall, Malaysia highlighted 12 commitments and pledges.^{vi} Notwithstanding these commitments and pledges, Malaysia has not presented any mid-term report on implementation of accepted recommendations. The Human Rights Commission of Malaysia, known as "SUHAKAM", presented information in relation to Malaysia's UPR implementation on 6 September 2011.^{vii}

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS TO WHICH MALAYSIA IS ALREADY PARTY AND INDICATIONS OF INTENT TO WITHDRAW RESERVATIONS

3. Malaysia's binding international obligations, in terms of international human rights instruments to which it is already a party, remain few. Although Malaysia made a commitment and pledge of "[s]trengthening capacities for implementation and enforcement measures for human rights conventions which Malaysia is party to, alongside reconsidering of instruments which it has yet to accede to" (see endnote v), it has to-date acceded to 3 international human rights conventions: Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") on 5 July 1995, Convention on the Rights of the Child ("CRC") on 17 February 1995, Convention on the Rights of Persons with Disability ("CRPD") on 19 July 2010, all with reservations. On 19 July 2010 Malaysia withdrew reservations to CEDAW on Articles 5(a) on social and cultural patterns, 7(b) on formulation of government policy and all public functions and 16(2) on legal capacity in civil matters. On 19 July 2010 it withdrew 3 further reservations to CRC on Articles 1 on definition, 13 on freedom of expression, and 15 on freedom of association. On 12 April 2012 it acceded to the Optional Protocol on the Involvement of Children in Armed Conflict and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, with reservations.^{viii ix} The reservations to CRPD are on Articles 15 on torture and 18 on liberty of movement and nationality. It made declarations in respect of Articles 3(b), 3(e), 5(2) on non-discrimination and equality of opportunity and 30 on cultural life, recreation, leisure.

4. Notwithstanding Malaysia's statements in the Addendum, significant law reforms have been introduced:-

- 4.1 repeal of the Internal Security Act 1960 (see para. 32 below);
- 4.2 repeal of the Restricted Residence Act 1933 and the Banishment Act 1959 (see para. 32 below);
- 4.3 revocation of 3 proclamations of emergency dating back to 1969 and 1977 and the resultant expiry of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (see para. 32 below);
- 4.4 amendment to the University and University Colleges Act 1971 (see para. 40 below);
- 4.5 amendment to the Printing Presses and Publications Act 1984 (see para. 36 below);
- 4.6 repeal of Section 27 of the Police Act 1967 (see para. 34 below);
- 4.7 introduction of the Peaceful Assembly Act 2012 (see paras. 18, 34-35 and 40 below);
- 4.8 introduction of the Security Offences (Special Measures) Act 2012 (see para. 38 below); and
- 4.9 amendments to the Penal Code, Criminal Procedure Code, and Evidence Act 1950 (see paras. 21 and 38 below).

INDICATIONS OF INTENT TO RATIFY FURTHER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

5. Notwithstanding the response from Malaysia in the Addendum that it is studying accession to the ICCPR, ICESCR, CAT and CERD, there has been no announced progress on the same. In addition, no specific time-frame has been announced in relation to the accession to these international human rights instruments.

6. Malaysia signed the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. However Malaysia continues not to be a signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

7. At the Review Conference of the Rome Statute held in May 2010 in Kampala, Uganda, the Minister in the Prime Minister's Department in charge of Law and Parliamentary Affairs stated he would table accession papers to the Malaysian Cabinet upon his return to Malaysia. Subsequently, Parliamentarians for Global Action (PGA) held a regional meeting in Malaysia on 8-9 March 2011. Later in March 2011, Malaysia announced it would accede to the Rome Statute. However there have been no further publicly-made-known developments since then.

INTERACTIONS WITH SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL AND OHCHR

8. There are 12 pending requests for visits to Malaysia by Special Procedures of HRC. Apart from a visit by the Special Rapporteur ("SR") on Right to Education, Malaysia has only extended an invitation to the Working Group on Arbitrary Detention ("WGAD") to visit the country, which they did from 7 to 17 June 2010. They visited 14 detention facilities throughout Malaysia, interviewed detainees, prisoners, government officials and representatives of civil society. In their report released on 8 February 2011^x WGAD made: 3 recommendations on developing a human rights culture, acceding to main international instruments on human rights and revising reservations and declarations to conventions it had acceded to; 9 recommendations on criminal detention, abrogating all norms that limit independence of the judiciary, repeal of Internal Security Act 1960 ("ISA 1960") and 3 other laws, and development of a parole system; 9 recommendations on detention under immigration powers, arbitrary detention, appalling detention conditions; 3 recommendations on monitoring mechanisms, strengthening SUHAKAM's status, powers and functions.

9. Malaysia has issued no standing invitations to any of the Special Procedures of the HRC. A few SRs have however informally visited Malaysia in their private capacity. Over the course of the last 2 years, various SR have raised 13 urgent appeals or communications to the Malaysian government on a range of issues, to some of which the Malaysian government has responded.^{xi} The Office of the High Commissioner for Human Rights has also issued public statements and briefing notes in relation to Malaysia on several occasions in 2011 and 2012 on various issues.^{xii}

MAJOR HUMAN RIGHTS CONCERNS IN MALAYSIA

10. Major human rights concerns remain in Malaysia. These are addressed here in terms of themes, and then subsequently classified into civil and political rights, and economic, social and cultural rights.

Women's rights

11. Malaysia stated in its 2008 National Report for the UPR that it was "also undertaking a comprehensive review of national legal framework to ensure compatibility with the principles and provisions of...CEDAW."^{xiii} The results of such a comprehensive review, if any, have not been made known. In general, no gender equality or anti-gender discrimination legislation has been passed.

12. In August 2009 the Ministry of Women, Family and Community Development launched the second National Policy on Women and Women's Development Action Plan. Based on the 1989 National Policy on Women, the main objective of this policy is to ensure an equitable sharing in the acquisition of resources, information, opportunities and benefits of development for men and women, and to integrate women in all sectors of development in accordance with their capabilities and needs, in order to enhance the quality of life, eradicate poverty, ignorance and illiteracy, and ensure a peaceful and prosperous nation. However, although the Malaysian government amended Article 8(2) of the Federal Constitution ("FC") in July 2001 to include gender as a basis for non-discrimination, it has not amended the Penal Code ("PC"), which contains several discriminatory provisions: Section 498 perpetuates the idea that women are property of their husbands; Section 375A does not recognise marital rape; Section 377CA states that rape with an object is an "unnatural offence" rather than rape.^{xiv} Provisions on citizenship in the FC - Article 14 Second Schedule, para. 1(d), Articles 15, 24(4) and 26(2) - discriminate against women's rights to citizenship, rights to confer citizenship on their children, and rights to enable their foreign husbands to obtain permanent residence status.

13. In July 2012, in the case of Noorfadilla bt Ahmad Saikin^{xv}, the High Court decided that regard had to be made to Malaysia's obligation under CEDAW, and held that it could refer to CEDAW in clarifying the term "equality" and "gender discrimination" under Article 8(2) of the FC. Notwithstanding this decision, the wording of Article 8(2) suggests that discrimination based on gender coupled with other grounds is permissible. The provision provides "there shall be no discrimination against citizens on the ground *only* of religion, race, descent, place of birth or gender..." Article 8(2) makes specific reference to non-discrimination in relation to "employment under a public authority" implying that employment in the private sector may be unaffected by the amendment.

14. Article 8(5) of the FC provides that equality clauses in the FC do not invalidate or prohibit "any provision regulating personal law", effectively leaving Muslim personal law unaffected by the amendment to Article 8(2).

Further, as “Malaysia’s accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia,” reservations have been taken to CEDAW Articles 9(2) on nationality of children; 16(1)(a) on the right to enter into marriage; 16(1)(c) on rights during marriage and dissolution; 16(1)(f) on guardianship; 16(1)(g) on same personal rights between spouses, and 16(1)(h) on same property rights for spouses.

15. Malaysia’s commitment under 9th Malaysian Plan (2006-2010), Beijing Platform for Action and CEDAW to implement 30% participation of women in decision-making has not been met. Gender-equality laws using CEDAW principles stated by CEDAW Committee has not been adopted. Malaysia failed to submit its third and fourth national report (due August 2004 and August 2008 respectively), and has not ratified the Optional Protocol to CEDAW.

16. The issue of domestic violence (“DV”) remains a serious concern. Although the Domestic Violence Act 1994 (“DVA 1994”) has been in operation since that year, implementation of the law has not been satisfactory. The CEDAW Shadow Report states that an interim protection order against a perpetrator of DV may take anywhere between 24 hours and 3 months. There is also inconsistency in the way cases are handled by the police, welfare officers and the courts. In 2011 DVA 1994 was amended and the definition of DV was expanded to include “psychological abuse, including emotional injury”. However, marital rape is still not a criminal offence. Reported cases of rape in Malaysia trebled in a span of 10 years, from 1,200 in 2000 to approximately 3,600 in 2009. Analysis of various forms of violence^{xvi} show that cases of “rape”, “incest” and “outrage of modesty” (taken together to represent “sexual violence”) in 2009 translate into an incidence rate of 21.8 per 100,000 population, placing women in Malaysia at high risk of violence. However only a small number of cases are heard and an even smaller number prosecuted.^{xvii} Even when a perpetrator is prosecuted the sentence meted out may be lenient as in 2 recent cases of sex with a minor where the court concluded that it was the perpetrators’ first offence and the act was consensual.^{xviii}

17. The issue of female genital mutilation has also publicly arisen in Malaysia.^{xix} In December 2012 it was reported that the Malaysian Health Ministry was developing guidelines to reclassify it as a medical practice.^{xx} The Fatwa Committee of the National Council of Islamic Religious Affairs Malaysia decreed in April 2009 that “female circumcision is part of Islamic Teachings and it should be observed by Muslims. However, as Islam also pays attention to the safety of its people, the circumcision can be exempted if the practice brings harm to the person. As far as the majority of jurists’ views are concerned, the Committee has decided that female circumcision is obligatory (mandatory). However, if it is harmful, it must be avoided.”^{xxi}

Child rights

18. Malaysia maintains these reservations to CRC: Articles 2 on non-discrimination, 7 on right to nationality and name, 14 on freedom of thought, conscience and religion, 28(1)(a) on free and compulsory primary education for all, and 37 on freedom from torture and deprivation of liberty. There is no indication any of these will be removed in the near future. The Malaysian government has stated that removal of these reservations would be challenging as this would be contrary to the FC, state laws and government policies. Subsequent to acceding to the CRC in February 1995, Malaysia enacted the Child Act 2001 (“CA 2001”) to bring some CRC provisions into Malaysian law. However, in line with Malaysia’s then existing CRC reservations, CA 2001 does not contain provisions dealing with a child’s civil and political rights. Thus contrary to the CRC, the newly-introduced Peaceful Assembly Act 2012 (“PAA 2012”) renders it unlawful for a child (defined as below 15 years of age) to participate in a peaceful assembly. The law also renders it unlawful for a person below 21 years of age to organise a peaceful assembly. These provisions specifically violate provisions of the CRC and Article 10 of the FC.

19. Malaysia stated in its 2008 National Report for the UPR that it was “also undertaking a comprehensive review of national legal framework to ensure compatibility with the principles and provisions of...CRC.”^{xxii} The results of such a comprehensive review, if any, have not been made known. Further, no draft of proposed amendments to CA 2001 has been made publicly available. The National Child Policy and National Child Protection Policy and respective Action Plans (2009-2015) which were introduced by Malaysia in 2009 aimed at increasing awareness of and commitment to child protection. However, costing, implementation, monitoring and evaluation of these Action Plans were not well structured. Additionally awareness of these policies among all stakeholders is weak.

20. In April 2011, in the case of Lee Soon Seong v. Tan Siew Siew^{xxiii}, the Court of Appeal varied a custody order for a child originally in favour of her mother on grounds that the child had not been accorded the right to be heard and her views had not been taken into consideration when determining the best interest of the child. General Observations previously issued by the Committee on the Rights of the Child on a child’s right to be heard and the concept of best interest of the child were presented to and accepted by the Court of Appeal in arriving at its decision.

21. The issue of diversion of children from the criminal justice system has been discussed by government, but no specific policy has been adopted; there is no specialised police response to children in conflict with the law. Criminal courts are generally not child friendly, significant numbers of children are held on remand for minor offences, and principles of proportionality and institutionalisation as a last resort are not always followed. Corporal punishment is not prohibited fully in any setting. Recent amendments to the PC and Criminal Procedure Code (“CPC”) have introduced non-custodial sentences such as community service.

22. Child marriages appear to be on the increase in Malaysia. A local newspaper carried a report on 11 October 2012^{xxiv} highlighting that in just one state in Malaysia, Kedah, there was a 35% increase in marriage applications involving underaged individuals between 2008 and 2010. The state’s Islamic Religious Department received 75 marriage applications from underaged individuals in 2008, 99 in 2009 and 101 in 2010. 90% of these applications involved girls under 16.^{xxv} An online news portal highlighted on 25 November 2012 the marriage of a 12 year old Muslim female to a 19 year old Muslim male.^{xxvi xxvii}

23. Concerns remain about the discrimination of indigenous, disabled, refugee, asylum seeker, migrant, stateless and LGBTIQ children. It was reported that 15,000 Filipino children at risk of statelessness have been denied access to government schools and access to basic amenities.^{xxviii} Children of migrants or unaccompanied minors and unregistered asylum-seekers are frequently arrested and prosecuted under immigration offences in Special Immigration Sessions Courts instead of the court for children. As they possess no documentation whatsoever, age determination and mental capacity is frequently overlooked and they may be and on several occasions have been, subjected to a sentence of whipping. Many of the issues highlighted in the Concluding Observations of the Committee on the Rights of the Child during their review of Malaysia dating back to 25 June 2007 remain unresolved, in particular problems relating to birth registration, access to education and provision of health care. The Malaysian government has also not submitted its second national report to the CRC which was due in March 2012.

24. The International Labour Organisation’s (“ILO”) Committee of Experts on the Application of Conventions and Recommendations (“CEACR”) noted in 2011 that there was progress in bringing child labour laws into greater conformity with the Minimum Age Convention, 1973 (“C. 138”). In particular the Children and Young Persons (Employment) (Amendment) Act 2010 raised the minimum age of employment from 14 to 15 years of age, and prohibited children and young persons below 18 years from engaging in hazardous work. As for the Worst Forms of Child Labour Convention, 1999 (“C. 182”), CEACR noted that effective enforcement of national laws giving effect to C. 182 remained weak; tens of thousands of migrant workers’ children worked in plantations without regulated hours.

Persons with disability

25. Malaysia has not ratified the Optional Protocol to CRPD. Prior to acceding to CRPD, Malaysia enacted the Persons With Disability Act 2008 (“PWDA 2008”) in order to implement the provisions of CRPD. The absence of any sanction for non-compliance with the provisions of PWDA 2008, coupled with the lack of any mechanism for legal redress for non-compliance with this legislation, represent a significant failure in the enhancement of human rights of persons with disability. Indeed, PWDA 2008 contains an express provision prohibiting legal action against the Malaysian government for violating the rights of persons with disability (“PWDs”).

26. In 2012, the Gerakan Bersama Kebangkitan OKU 2012 (2012 Arising of PWD Joint Movement), assisted by Bar Council Malaysia, published and submitted to SUHAKAM a memorandum on bettering the lives of PWDs in Malaysia^{xxix}. They called for across-the-board improvement in or alleviation of: enhancing existing laws to guarantee improved living for PWDs; compulsory registration of PWDs so as to more accurately ensure government policy and planning; early intervention and family support and empowerment; education tailored to the needs of PWDs; life skills, employment and livelihood; the challenges faced by PWDs in raising families; housing; access to public places and services; the participation of PWDs in shaping society; and consideration of the needs of PWDs in their old age.

27. Children with disability lack sufficient access to education.^{xxx} Section 28(1) of Education Act 2008 prohibits exclusion of children with disability from schooling, including vocational training and lifelong learning, yet Regulation 3 of the Education (Special Education) Regulations 1997 states only children with disability who are “educable” are eligible for special education. “Educable” is defined as a person who is able to manage himself without help and confirmed by a panel as capable of undergoing a national education programme. Implementing inclusive education in schools is also a challenge due to lack of multi-agency collaboration, resources, specialised services for children with disability and large class size. Children with disability also face difficulty in accessing comprehensive health services largely due to lack of skilled healthcare providers able to work with children with disability and few suitable screening tools to detect disability at an early stage. Stigma, prejudice and discrimination remain. Disability is still largely looked at and addressed from a perspective of charity rather than rights/entitlement.

Indigenous peoples

28. Although Malaysia is a member of the ILO, it has not adopted the Indigenous and Tribal Peoples in Independent Countries Convention (“C. 169”), which spells out that rights of ownership and possession of indigenous peoples over lands which they traditionally occupy shall be recognised. Measures must be taken to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities. The spirit and intent of C. 169 is nonetheless reflected in the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”), which is supported by Malaysia. Notwithstanding C. 169, fundamental rights given by the FC and UNDRIP, indigenous peoples in Malaysia (known as *Orang Asli* in Peninsular Malaysia and *Orang Asal* in Sabah and Sarawak) continue to face threats to ownership of ancestral or native customary lands. State Governments (as land is under state jurisdiction in Malaysia’s federal system of government) have cleared ancestral land and/or alienated land occupied or utilised by aborigines to third parties (e.g. for logging, oil palm cultivation, commercial tree planting, building of dams) and have only offered to pay compensation for loss of agricultural produce planted on such land.^{xxxii} Such activities have also proceeded without compliance with environmental legislation, including the requirement to carry out environmental and social impact assessments in respect of the various activities. Preliminary work, including the clearing of road access, has even permanently destroyed/killed live tributaries that feed rivers which are a source of water and livelihood. The most crucial part that needs to be preserved is ancestral or native customary land, not only for the sake of aborigines’ livelihood but also for culture and spiritual values of the aboriginal community. The various State Governments have not taken sufficient steps as necessary to identify lands which the aborigines concerned traditionally occupy, and guarantee effective protection of their rights of ownership and possession. Despite recent legal success^{xxxiii}, where the High Court ordered portions of gazetted Malay reserve land which had encroached into customary land belonging to *Orang Asli* to be degazetted, the loss of *Orang Asli* customary land remains a pressing issue. As at 31 December 2010, only 14.21% of officially-acknowledged *Orang Asli* lands had been gazetted by the various states.^{xxxiii} So long as land remains ungazetted, state authorities regard it as belonging to the state, and are free to deal with it.

Rights of refugees and asylum seekers

29. Malaysia has not acceded to the 1951 Convention on the Status of Refugees and its 1967 Protocol, continuing to maintain that responsibility for refugees and asylum seekers lies with the United Nations High Commissioner for Refugees (“UNHCR”). Malaysia stated in the Addendum that “the Government has instituted administrative arrangements to provide assistance and protection to persons claiming refugee status and/or asylum seekers in possession of identification documents issued by UNHCR, based on humanitarian grounds on a case-by-case basis.”^{xxxiv} It was also stated that “Malaysia is improving its legislative framework to establish an appropriate mechanism for the treatment of such persons.” However, to-date, no legislative framework has been established, and arrangements to provide assistance and protection to persons claiming refugee status and/or asylum seekers remain administrative at best. Malaysia also stated in the Addendum that, “the Government is engaged with UNHCR in developing a legislative framework to coordinate policy and enforcement measures towards irregular migrants claiming refugee status.”^{xxxv} However, to-date, all such arrangements with UNHCR have remained administrative, unsupported by any legislative recognition of the status of refugees. UNHCR has also been consciously left out from the list of international organisations recognised by the Malaysian government pursuant to the International Organizations (Privileges and Immunities) Amendment Act 2011 and regulations made thereunder.^{xxxvi}

30. Notwithstanding the above, in August 2011 Malaysia arrested 16 Chinese nationals of Uighur ethnicity. 5 of them had applied for refugee status to UNHCR and were eventually released, while the remaining 11 were deported without UNHCR being given an opportunity to interview and assess their claim. A further 6 Chinese nationals of Uighur ethnicity were *refouled* on 31 December 2012. The 6 persons had been registered with UNHCR and UNHCR was in the process of finalising their application for refugee status. Despite this, in late December 2012 Malaysia handed over custody of the 6 to Chinese authorities, who took them from Malaysia to China on a chartered flight.

31. An arrangement between Australia and Malaysia for the processing of irregular maritime arrivals to Australian territorial waters in Malaysia, popularly referred to as the “Malaysia Solution”, was struck down by the High Court of Australia on 31 August 2011 in view of the fact that Malaysia had no legislation in place, whether under domestic law or international law, for protection of refugees and asylum seekers.

Civil and political rights: Right to life

32. In 2012, Malaysia abolished ISA 1960. It also repealed the Banishment Act 1959 and the Restricted Residence Act 1933. Parliament also annulled 3 proclamations of emergency. By virtue of the annulment of the proclamations of emergency, the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ceased to be in force.

33. The death penalty is still handed down in Malaysia for certain offences. There has been some public debate calling on the Malaysian government to consider abolishing the death penalty. While there has been no official change to the current position, there have been 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 has discussed the possibility of ending mandatory death sentences in drugs cases involving "drug mules". There appears to be a de facto moratorium on executions in place.

Freedom of assembly

34. While Malaysia accepted the recommendation to repeal Section 27 of the Police Act 1967 ("PA 1967") (to which it gave no clear response during the UPR in June 2009) which required a permit to be obtained for public assemblies of more than 3 persons, and this and some other changes have been positive, it has imposed more drastic limitations in some other areas on the freedom of peaceful assembly through PAA 2012. Under PAA 2012, which came into force on 23 April 2012, organisers must notify the officer in charge of the police district ("OCPD") at least 10 days in advance of any planned peaceful assembly. The OCPD then has 5 days to respond, and to set out any restrictions or conditions imposed. An organiser aggrieved by the restrictions or conditions imposed can appeal to the Minister of Home Affairs, who shall respond within 2 days. Assemblies within 50 metres of certain locations are prohibited, e.g. hospitals, petrol stations, airports, railway stations, schools, places of religious worship and bridges. Assemblies in motion, which are defined as "street demonstrations", are prohibited. There is a provision under PAA 2012 for the Minister of Home Affairs to designate permitted places of peaceful assembly. To-date, no such places have been designated. However, prosecutions for breaches of PAA 2012 have already commenced. Selective prosecution is practised in that organisers of peaceful assemblies which are not supported by the Malaysian Government are investigated by RMP. However organisers of moving assemblies for issues such as support for Palestinians in Gaza have not been made the subject of action by RMP under PAA 2012.

35. A peaceful assembly organised by the Coalition for Clean and Fair Elections 2.0 (known as BERSIH 2.0) on 28 April 2012 highlighted the negative approach of RMP to freedom of assembly. Although PAA 2012 came into force on 23 April 2012, a mere 5 days before the peaceful assembly, it has been admitted by RMP, in testimony before a panel of inquiry established by SUHAKAM, that RMP personnel were still operating under the framework of Section 27 of PA 1967. The RMP obtained a court order under the CPC prohibiting any gathering at Dataran Merdeka in central Kuala Lumpur, the capital of Malaysia, notwithstanding that it is a popularly-used venue for outdoor events. A subsequent public assembly on 12 January 2013 organised by opposition political parties was allowed to proceed by RMP under PAA 2012 subject to the adherence to 27 different conditions imposed by the police. Approximately 100,000 people attended the rally at iconic Merdeka (Independence) Stadium in central Kuala Lumpur, which took place without any untoward incident. Following the assembly, RMP launched investigations into breaches of the conditions, including participation by children below the age of 15, which is specifically prohibited under PAA 2012.

Freedom of opinion and expression

36. On 11 July 2012 the Prime Minister of Malaysia announced that the Sedition Act 1948 ("SA 1948") would be repealed and replaced by a National Harmony Act. However apart from some general statements of principles, no details of the proposed National Harmony Act have been made public. The Malaysian government has amended the Printing Presses and Publications Act 1984 ("PPPA 1984") to do away with the requirement of the annual licensing of publications. This legislation was also amended to allow for the decision of the Minister of Home Affairs pursuant to the legislation to be challenged in court. An online news portal, Malaysiakini, had, through its publishing arm Mkini Dotcom Sdn. Bhd., first applied for a permit to publish a newspaper in 2002. This was rejected. Subsequent applications were made, with the last rejection occurring in August 2010. Mkini Dotcom Sdn. Bhd. then challenged the decision to reject its application. In October 2012 the High Court at Kuala Lumpur quashed the Ministry of Home Affairs' decision not to grant a publishing permit to Mkini Dotcom Sdn. Bhd. Notwithstanding these developments, the Malaysian government arrested and charged in court individuals alleged to have committed acts of sedition, including bloggers and a politician.^{xxxvii}

37. The Malaysian government continues to use PPPA 1984, Official Secrets Act 1972 ("OSA 1972"), SA 1948 and the Penal Code to silence dissent, including attempts to tighten control over the Internet and restrict bloggers as stated above. It also interprets the fact that Islam is the religion of the federation in Malaysia to quell and suppress space for dialogue, discussion and debate to explore diversity of opinion on matters relating to Islam, including administration of the Syariah legal system.

38. In place of ISA 1960, the Malaysian government introduced the Security Measures (Special Offences) Act 2012. This allows RMP to detain a suspect for a maximum of 28 days. The courts however do not have a supervisory function over the detention, which is at the discretion of RMP. Amendments have also been made to PC and CPC.

The combined effect of these new laws make it an offence to share and/or forward information, including emails, of any event that undermines parliamentary democracy or which counsels disobedience of the law. The Malaysian government has also introduced amendments to the Evidence Act 1950 that will allow for the presumption that a message sent from any electronic device through an Internet account will be deemed to have been sent by the owner of that device or registered user of that Internet account unless proven otherwise.

Freedom of information

39. The State Governments of Penang and Selangor have passed state-level freedom of information enactments. However the Malaysian government continues to utilise the provisions of OSA 1972, and also the provisions of the Banking and Financial Institutions Act 1982, to suppress exposure of irregularities in relation to contracts entered into by the Malaysian government.

Freedom of association

40. In 2012 the Malaysian Government amendment the Universities and University Colleges Act 1971 to remove the prohibition on students of universities and university colleges in Malaysia from participating in party political activity. University vice-chancellors were freed from the supervision of the Minister of Higher Education in terms of allowing on-campus activities at institutions of higher learning. Nonetheless university vice-chancellors continue to adopt a narrow and/or pro-government stance in exercising their discretion. Notwithstanding the amendments, students of universities and university colleges in Malaysia who are under the age of 21 years are prohibited, by virtue of the provisions of the PAA 2012, from organising any peaceful assembly. This effectively restricts on-campus political activity in institutions of higher learning.

41. The ILO's Committee on Freedom of Association and CEACR in their examination of Malaysia's application of the Right to Organise and Collective Bargaining Convention, 1949 ("C.98") continue to emphasise that Malaysian labour legislation and its application has, for many years, resulted in serious violations of the right to organise and bargain collectively. These violations include: discretionary and excessive powers granted to authorities as regards a trade union's registration and scope of membership; denial of workers' rights to establish and join organisations of their own choosing, including federations and confederations; refusal to recognise independent trade unions; interference of authorities in the internal activities of unions, including free elections of trade unions' representatives; establishment of employer-dominated unions; and arbitrary denial of collective bargaining. Migrant workers continue to be imposed with conditions attached to their employment permits that prohibit them from joining any trade union.

42. Freedom of association must also include the freedom to decide on the legal form and structure of the association, and the freedom to obtain funding for operations and activities from any source, so long as such funding is transparent. In July 2012 the Malaysian government launched intensive investigations into one particular non-governmental organisation, known as SUARAM ("Suara Rakyat Malaysia" or the "Voice of the Malaysian People") for having received funding from sources outside the country. It conducted a public campaign vilifying SUARAM and accusing it, and several other organisations, of a plot to destabilise the nation by virtue of having received foreign funding.^{xxxviii} However at the end of February 2013 the Government announced that all investigations have ceased and no further action would be taken against SUARAM.

Freedom of religion or belief

43. On 31 December 2009, High Court at Kuala Lumpur held that the Minister of Home Affairs was wrong to deny the official newspaper of the Roman Catholic Church in Malaysia, The Herald, an annual publication permit because it had used the term "Allah" in its publications. The Malaysian Government subsequently announced that it would appeal against the decision. Case management of the appeal has only recently been fixed for 14 March 2013, after being in abeyance for more than 3 years. Both the Roman Catholic Church, another Christian denomination known as the Sidang Injil Borneo and an individual are currently pursuing legal action against the Malaysian Government in the Malaysian courts in relation to Christian material withheld from distribution by the Malaysian Government on the ground that such material printed in Bahasa Malaysia (the Malay language) use the term "Allah" when referring to God. The Malaysian Government takes the position that non-Muslims cannot use this term. In March 2011, the Malaysian Government finally released 30,000 copies of the Indonesian-language Al-Kitab which had been imported from Indonesia by an organisation known as the Gideons. At the same time, it released the 5,100 copies of the Malay-language Al-Kitab which had also been impounded to the Bible Society of Malaysia. All 35,100 copies were however first stamped on the inside with wording to the effect that these were a Christian publication. This was done without the consent, and in fact with the disapproval of, the 2 organisations.

44. On 27 July 2012, the Court of Appeal upheld a decision by the High Court to lift a ban ordered by the Ministry of Home Affairs on a book entitled "Muslim Women and the Challenges of Islamic Extremism" published by Sisters

In Islam (SIS) Forum. The court held that the book, which had been published in 2005 and banned by the Ministry of Home Affairs in 2008, was not prejudicial to public order since there was an absence of any clear evidence of any prejudicial events occurring. In another book-ban related incident, the book “Allah, Liberty and Love” by Irshad Manji was banned by the Ministry of Home Affairs in May 2012. Subsequently, a Muslim bookstore manager was charged in the Syariah court for distributing the banned book. According to the authorities, the book was banned for being against Islam and a threat to religious stability. The 2 book bannings raise the issue of freedom of religion for Muslims. The rise in state-led conservative Muslim ideology threatens 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 (primarily Sunni) and Syariah supremacy, which is supported by the use of punitive measures under Islamic laws and the use of both Syariah and civil laws to silence differences of opinion by State and non-State actors breed fear and ignorance, as well as encourage intolerance in interactions between and within ethnic communities, sometimes along religious lines. Shias in Malaysia are restricted from public celebration or practice, and Sufism is proscribed.

Non-racial discrimination

45. Malaysia’s New Economic Policy (“NEP”) since the 1970s has been premised on the twin pillars of eradication of poverty regardless of race and eliminating the identification of race with economic function. In furthering the second pillar of the NEP, Malaysia has promoted policies of affirmative action aimed at addressing historical ethnic imbalances in the areas of tertiary education, high-level employment as well as asset and equity ownership. Focusing on inter-ethnic distribution of wealth within Malaysian society, the NEP gave preferential treatment to a group known as the Bumiputra (literally, “sons of the soil”) using a comprehensive set of affirmative action tools and programmes such as government contracts, state-sponsored unit trust funds, ethnic quotas, equity rules, housing discounts, public sector employment, matriculation colleges and higher education scholarships. The NEP agenda has been criticised as having become an institutionalised system of racial preferment and entitlement, based on a sense of racial and religious superiority, and distorted in favour of supporters of the ruling political party, leading to discrimination against those outside the preferred race, religion and political class. The NEP instruments are non-targeted and have been abused to benefit primarily a small elite class. Hence while inter-ethnic inequality has reduced, it has resulted in worsening overall inequality with widening income gap between the top and bottom household quintiles as well as growing intra-ethnic inequality. The NEP (1971-1990) was succeeded by the National Development Policy (1991-2000) and the National Vision Policy (2001-2020). Both the latter policies continue the NEP agenda in essence. The New Economic Model (“NEM”) (2010), however, states that affirmative action will be transformed to be more market-friendly, merit-based, transparent and needs-based. The Economic Transformation Programme, Government Transformation Programme and Strategic Reform Initiatives have been designed to implement the recommendations of the NEM but neither these nor the 10th Malaysia Plan (2011-2015) contain any exit strategy and timeline to dismantle the NEP structures, programmes and tools or introduce a new and improved affirmative action regime.

Persons at risk of statelessness

46. Unknown numbers of persons including children are at risk of statelessness in Malaysia, largely due to lack of documentation to prove citizenship. Extensive administrative and procedural requirements for birth registration, particularly late birth registration, insufficient mobile registration services in remote areas, and lack of people-friendly services have led to children and adults, especially from marginalised communities, being non-registered. Non-registration of births has created in some instances generations of families who are unregistered and thus at risk of statelessness. Consequently, some children are prevented from enrolling in schools, people are unable to access legal employment, and the majority in marginalised communities are unable to obtain free or equitable health care services - all of which perpetuate the poverty cycle.

Economic, social and cultural rights: Right to health

47. The Malaysian Population and Family Survey estimates that the number of young people who are sexually active has increased from less than 1% in 1994 to 2% in 2004. More recent studies have found rates to be much higher, ranging from 5.4% to 13%. The Malaysian government introduced a revised sexuality education curriculum in 2011, which to-date has been rolled out in 27 schools as a pilot programme.^{xxxix} Reproductive Health and Social Education modules have also been introduced to National Service trainees (who undergo 3 months training at age 18 years or on completion of Secondary School Form 5) since January 2011.^{xl} Young people may obtain sexual and reproductive health services including HIV prevention services from 642 adolescent health clinics under the primary health care services of the Ministry of Health throughout the country, though information on actual barriers to access contraception services is as yet unavailable.

48. Marginalised communities, especially those living in plantations and groups of indigenous peoples, continue to encounter difficulties in accessing government-funded health care. In theory, the law provides that plantation employers must provide health services for their employees, but there are no definitions of what services should be

included and implementation by employers can vary considerably. The government has set fee rates for various health services provided by public providers. Refugees and asylum seekers who are registered with UNHCR are entitled to a 50% subsidy from the rates charged to non-citizens; other non-citizens receive no subsidy, and no subsidy is paid for the use of privately-provided services. However, there is no cap on the total fees that a non-citizen might have to pay, and so for services that involve longer-term treatment, or require an intensive level of services or specialised expensive drugs or medical devices, services provided by public providers may not be affordable to non-citizens (even to those entitled to a 50% subsidy).

Right to work

49. The Employment (Amendment) Act 2012 came into force on 1 April 2012. This amends the Employment Act 1955. Among the amendments is the inclusion of the term “contractor for labour” as a “person who contracts...to supply the labour required for the execution of the whole or any part of any work...” In practice this legitimises the act of a company importing and supplying migrant workers to work for other companies in Malaysia. Such migrant workers are the employees of that company and not the company for which they have been assigned to work. As such, they do not enjoy the benefit of terms and conditions offered to employees of the company to which they have been assigned to work. In May 2011 a new memorandum of understanding in relation to migrant workers was signed between the governments of Indonesia and Malaysia. However difficulties continue to persist in relation to the implementation of the provisions of this new memorandum of understanding.

50. A 2011 observation regarding the Equality of Treatment (Accident Compensation) Convention, 1925, (“C. 19”) by ILO’s CEACR highlighted the inequalities of treatment stemming from national legislation that transferred foreign workers employed in Malaysia for up to 5 years from the Employees’ Social Security Scheme, which provided for periodical payments to victims of industrial accidents, to the Workmen’s Compensation Scheme, which guaranteed only a lump sum payment of a significantly lower amount.

51. The right to work is also an issue for average Malaysians. Employees in the banking sector in particular have alleged that union-busting activities on the part of management have led to a situation whereby employment security is threatened for those who participate in union activities. Once labour unions have been weakened, then, it is further alleged, terms and conditions of employment have been significantly weakened vis-a-vis bank employees.

Right to a clean environment

52. Malaysia has adopted various multilateral environmental agreements. Implementation continues to be a problem. Malaysia’s ecological footprint of 2.4 global hectares a person in 2005, is lower than the average global footprint of 2.7, although it is slightly higher than the threshold of sustainability for 2005, which was 2.1 global hectares a person.^{xii} Malaysia’s carbon dioxide emissions increased by 32.1 % from 2000 to 2006, higher than those of Philippines, Indonesia and Thailand - and these are expected to increase unless energy use is reduced significantly.^{xiii} It should also be noted that based on the Second National Communication report to UNFCCC (2010),^{xiii} Malaysia’s green house gases emission was in net sink in 2000 due to loss of forest cover and it is expected that it will become a net emitter by 2005 due to the increased anthropogenic activities mainly from the energy sector. The phasing out of HCFCs is well ongoing in meeting the 2030 deadline.

53. Decisions relating to land development and major infrastructure projects have not reflected readiness and controls and taken into account aspects of human rights in embracing the effects of climate change, in terms of food security and rights to healthy food, water and safety in Malaysia.^{xiv}

Capacity Building: SUHAKAM

54. The current 7 SUHAKAM commissioners were appointed in April 2010 for a term of 3 years, pursuant to 2 sets of amendments in the Human Rights Commission of Malaysia Act 1999 that also provided for the establishment of a Selection Committee. The amendments were rushed through to prevent SUHAKAM from being downgraded to “B” status. The Selection Committee membership, however, was not transparent as the amendments did not stipulate how the 3 members of the public included in the Selection Committee would be appointed. There were also no widespread announcements or invitations for nominations to be Commissioners of SUHAKAM. As such, the 7 Commissioners began their term viewed with doubt. However they have been pro-active in their work, and have generally been regarded as more approachable. They have engaged both with government, its ministries and agencies, and civil society. SUHAKAM has conducted watching briefs in several court cases involving human rights issues. It has also conducted monitorings of public assemblies, launched a National Inquiry into Land Rights of Indigenous Peoples, and carried out a public inquiry into the events surrounding the BERSIH 3.0 public assembly, at which allegations of brutality were levelled against RMP. At the time of writing, SUHAKAM’s report on the National Inquiry and public inquiry are awaited. SUHAKAM proposed in 2002 that the Malaysian government draw up a Human Rights Action

Plan. A seminar was held in 2012 on this matter, organised by the Bahagian Hal-Ehwal Undang-Undang of the Prime Minister's Department which is responsible to draw this up. However no specific time-frame has been announced.

55. Both SUHAKAM and the Judicial and Legal Training Institute carry out human rights training for judges and prosecutors from time to time. SUHAKAM also conducts training for the police and other law enforcement agencies. But no major shift has been detected in police and other law enforcement agencies in relation to human rights.^{xiv} A Judicial Colloquium was organised in 2010 by SUHAKAM with a keynote speaker from the Office of the High Commissioner for Human Rights in Bangkok. SUHAKAM organised another Judicial Colloquium in September 2012. There have been some positive pro-human rights decisions coming from the Malaysian courts in certain cases.

Independent and impartial police complaints commission

56. The Malaysian government's alternative to the recommended Independent Police Complaints and Misconduct Commission ("IPCMC"), the Enforcement Agency Integrity Commission ("EAIC"), became operational in April 2011. It comprises 7 Commissioners. The EAIC can receive complaints in relation to 18 government law enforcement agencies and the RMP. It does not cover independent commissions set up by the government, such as the Inland Revenue Board, Companies Commission of Malaysia and Malaysian Anti-Corruption Commission ("MACC"), which have their own individual complaints mechanisms. According to its website, of the 171 complaints received by it from April to mid-June 2011, 120 involved RMP. However EAIC's role in all cases is limited to investigating complaints that it has chosen to accept, and making recommendations to the relevant body supervising the enforcement agency in question. It has no power to launch investigations on its own or initiate disciplinary or prosecutorial action. In response to many complaints of abuse of police powers, allegations of police brutality and deaths in police custody, the Malaysian government established EAIC to show that it is serious about the conduct of law enforcement agencies. However having a combined body to look into the complaints against 19 different organisations limits the ability to monitor RMP. As the bulk of complaints are against RMP, a specialised complaints mechanism dealing only with RMP is necessary.

57. During the BERSIH 3.0 rally, a crowd of between 50,000 and 250,000 (estimates vary) gathered at various points in Kuala Lumpur heading towards Dataran Merdeka. As their routes were blocked by RMP barricades set up beyond the area restricted by a court order, they gathered where they could. What transpired next is the subject of an inquiry by both SUHAKAM and a government-appointed panel. It seems that in response to a breach of the barricades in one location, RMP fired tear gas and water cannon, and charged into the crowds at various locations. Approximately 511 arrests were made. There are numerous allegations, with video and oral evidence, of acts of violence perpetrated by RMP on participants. Journalists were beaten up, and their equipment either damaged and/or confiscated.

58. Investigations into 3 recent cases involving police brutality have not resulted in any police officer being found responsible. In the death in custody of A. Kugan, 1 police officer was charged but subsequently acquitted. In an allegation of police brutality made by Chia Buang Ting, 2 police officers were detained for investigation but later freed. The prosecution of 2 RMP officers for alleged brutality against civilians during the BERSIH 3.0 public assembly failed for lack of evidence. An earlier inquiry into the shooting death of a teenager A. Aminulrasyid by police officers did not lead to any charges being filed. A coroner's inquiry into the death in police custody of R. Gunasegaran, led to an "open verdict" and was inconclusive as to police culpability. The death in police custody of C. Sugumar occurred on 23 January 2013.^{xlvi}

Judicial Appointments Commission

59. The Judicial Appointments Commission ("JAC"), in operation since 2009, comprise the 4 senior-most members of the Malaysian judiciary, and 5 others. The 4 new appointees to the JAC on 10 February 2013 are all former judges. There are no lay members of the JAC, and all 9 current members are male. Meetings of the JAC are not open to the public, nor are recommendations for judicial positions or promotions made known. The establishment of the JAC was undertaken without making any changes to the prescribed mode of consultation for judicial appointments stipulated under the FC. The Prime Minister may thus still reject any recommendation by the JAC without giving any reason.

ASEAN Intergovernmental Commission on Human Rights ("AICHR")/ASEAN Human Rights Declaration

60. By its terms of reference, AICHR does not have a strong protection mandate; it does not receive or investigate complaints of human rights abuses. The representative to AICHR from Malaysia is appointed by the government; civil society does not have any opportunity to nominate or participate in the process. AICHR has been criticised for drafting a regional human rights declaration whose standards are lower than existing international human rights norms and standards, and which is limited by the specificities and particularities of individual ASEAN member countries.