



# General Assembly

Distr.: General  
6 August 2013

Original: English

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## Human Rights Council

Working Group on the Universal Periodic Review

Seventeenth session

Geneva, 21 October–1 November 2013

### **National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\***

**Malaysia**

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## **I. Introduction**

1. Malaysia accomplished its maiden Universal Periodic Review (UPR) on 11 February 2009. During the course of the exercise, a total of 103<sup>1</sup> individual recommendations were addressed to Malaysia. 62 recommendations were accepted outright and 22 recommendations were noted. The Government clarified its position on the remaining 19 recommendations during the adoption of Malaysia's UPR outcome report (A/HRC/11/30) at the 11<sup>th</sup> regular session of the Human Rights Council (HRC) in June 2009.

2. The present report aims to briefly capture and explain the human rights situation in Malaysia for the period under review i.e. February 2009–February 2013, as well as follow-up on the outcome of the first UPR in three key aspects, namely: (i) the Government's efforts in implementing the 62 accepted recommendations; (ii) the current human rights situation on the ground; and (iii) achievements and best practices, as well as constraints and challenges faced in the promotion and protection of human rights in the country.

## **II. Methodology and consultation process**

3. The present report has been prepared in accordance with the provisions contained in A/HRC/RES/5/1, A/HRC/RES/16/21, A/HRC/DEC/17/119 and other relevant guidelines for the UPR process.

4. The preparation of this report was coordinated by the Ministry of Foreign Affairs, under the auspices of a standing inter-agency committee on human rights established shortly after the completion of Malaysia's first UPR. Regular consultations were held with all relevant government ministries and agencies beginning April 2009 until June 2013.

5. Dedicated consultations with other partners and stakeholders including Civil Society Organisations (CSOs) as well as Malaysia's National Human Rights Commission (SUHAKAM) were held in 2010, 2012 and 2013. The Government is appreciative of the keen interest and participation of roughly 45 Malaysian CSOs and their umbrella bodies throughout the UPR consultation process. In this report, the Government has taken into account and responded to a number of issues articulated during such consultations as well as to several proposals which were submitted in writing.

6. The Government holds that all recommendations addressed to and accepted by Malaysia in the first UPR exercise were constructive and influential in supporting its efforts to promote and protect human rights in the country. Malaysia also greatly appreciates that UN member states had taken great interest to propose recommendations during the review and at the same time is mindful of the non-definitive nature of a number of them. The Government holds the view that all accepted recommendations which are considered to be voluntary commitments have been fully implemented, and remains dedicated to maintain its engagement on this matter.

7. That said, the Government recognises and accepts the need to continuously monitor and where necessary, to improve implementation of those recommendations with a view to ensuring the continued enjoyment and exercise of all human rights by all persons in Malaysia.

8. Currency conversion rates applied throughout the report are as at 31 March 2013, whereby 1.00 Malaysian Ringgit (MYR) = 0.3229 United States Dollars (USD) or USD1.00 = MYR3.0968.

### III. Implementation of accepted recommendations

9. The administration led by Prime Minister Najib Abdul Razak who was recently re-elected during Malaysia's 13<sup>th</sup> General Elections on 5 May 2013 has and continues to be characterised by among others, a strong commitment to the rule of law, to upholding respect for human rights, and a commitment to continue widening the democratic space initiated during previous administrations.

10. In recalling the outcome of Malaysia's 2009 UPR exercise, it is pertinent to highlight that a number of measures taken by the Government since then have in fact addressed - either partially or in full - a number of recommendations on civil and political rights that were not accepted at that time. These developments are discussed in Section IV, below.

11. The following thematically clustered sections III.A to III.E contain the bulk of the Government's feedback and responses on the 62 accepted recommendations. Recommendations are cited in the manner which they have been listed in A/HRC/11/30<sup>2</sup>. Additional responses to certain recommendations are also addressed in other sections of the report and are indicated accordingly.

#### A. Economic, social and cultural rights

##### 1. Adequate housing and standard of living (Recommendations 48, 49)

12. The Government acknowledges that Malaysia's rapid industrialisation has led to increasing urbanisation which has given rise to increased financial pressures that constrains the ability of urban, middle-income households to secure quality and affordable housing. In an effort to address this situation and ameliorate the pressure on prospective homeowners, the Government established a corporate entity namely PR1MA (*Syarikat Perumahan Rakyat 1Malaysia* - 1Malaysia People's Housing PLC) established vide the PR1MA Act 2012 [Act 739] and tasked to plan, develop, construct and maintain affordable housing for middle-income households in key urban centres.

13. During the period under review, the Government has prioritised the housing needs of those in the low and middle income categories. Specific targets include construction and delivery of 78,000 affordable housing units for the urban/semi urban poor and those in the lower income bracket. Additionally, the Government provides house rental assistance for poor and hardcore poor families in urban areas.

14. For the period 2010–2012, Government has delivered 53,376 new and restored houses for the poor and hardcore poor in rural areas. This is over and above its initial target of 50,000 houses under Horizon 1 of the Government Transformation Programme launched in 2010 (GTP 1.0.) The second phase of this programme which commenced in early 2013 will see an additional 22,000 new and restored houses built for this group by the end of December 2015.

##### 2. Right to education (Recommendations 31, 32, 36, 37, 47, 53, 55, 61)

15. Malaysia remains committed to providing quality and affordable education to its people. The Government continues to allocate a significant portion of its annual budget to education and education-related activities. During the period under review, the total expenditure for the education sector in Malaysia (preschool to tertiary level) has averaged roughly MYR 50 billion per annum.

16. Beginning 2010, the Government has taken measures to increase access to Early Childhood Care and Education (ECCE) including by providing preschool programmes and

establishment of day care centres for toddlers through grants (maximum of MYR 10,000) to preschool owners and additionally, loans for start-up and expansion of ECCE establishments. The focus on ECCE has yielded positive results whereby preschool enrolment has increased from 67% in 2011 to 87% in 2012.

17. As of 1 January 2012, the Government abolished all fees for primary school (age 7–12) and secondary school (age 13–19) students in a bid to further widen access to education.

18. Under the “Back to School” programme under the 1Malaysia initiative, 5.3 million primary and secondary students have been provided MYR 100 each to begin the school year in 2012 and 2013.

19. The Government has also increased allocations for construction of new schools and related infrastructure as well as refurbishment of existing schools in the rural interior throughout the country. Measures have also been taken to address teacher shortages including increasing recruitment efforts among fresh university graduates.

20. In recent years, vigorous efforts have been undertaken to ensure that students with special education needs enjoy wider access to education. For example, beginning July 2011, “Schools inside hospitals” programme was implemented to ensure that students undergoing treatment would be able to continue receiving education and keep up with their peers.

21. With a view to ensuring an inclusive education system, pupils with Special Educational Needs (SEN) are assured 13 years of free education, two years additional compared to the 11 years provided to pupils without SEN. The Government has introduced alternative education pathways for pupils with SEN to meet their learning needs and to help them achieve their full potential, including through: (i) Inclusive Education (IE); (ii) Integrated Special Education Programme (ISEP); and (iii) Special Education Schools. Presently, the Government maintains 33 special schools (28 Special Primary Schools and 5 Special Secondary Schools) for pupils with SEN.

22. Recognising that rising education costs are adversely affecting the ability of Malaysians to pursue higher or tertiary education, the Government continues to prioritise and facilitate access to funding for prospective students. Towards that end, various funding mechanisms comprising mainly grants, scholarships, disbursements and loans have been established and continue to be maintained by the Government. Key criteria considered when disbursing financial assistance to students in need remain academic merit and socioeconomic status. The Government also actively encourages private sector actors<sup>3</sup> to contribute in this regard as part of their Corporate Social Responsibility (CSR) initiatives.

23. On sharing of experiences in promoting and protecting the right to education, Malaysia has in place the Malaysia Technical Cooperation Programme (MTCP<sup>4</sup>), launched in 1982 as a mechanism for sharing Malaysia’s development experiences and expertise with other developing countries. Up to December 2012, MTCP has hosted 26,557 participants from 138 countries and 2 British Overseas Territories. MTCP programmes include short-term specialised courses, long-term post-graduate courses (scholarships), study visits, attachment, consultation services/dispatch of experts, and supply of equipment and materials.

24. In October 2011, the Ministry of Education launched a comprehensive review of the national education system aimed at developing a National Education Blueprint (NEB)<sup>5</sup>. The NEB outlines comprehensive and sustainable transformation programmes for Malaysia’s education system for the period 2013–2025, aimed at achieving national aspirations and goals. The Government believes that the implementation of the NEB will help prepare young Malaysians to meet the demands and challenges of an increasingly globalised and connected society where knowledge commands a premium.

**3. Poverty eradication and efforts to uplift living standards (Recommendations 35, 36, 37, 38, 39, 40, 41, 42, 46, 49, 52(a), 56, 57)**

25. Poverty eradication and uplifting living standards of all Malaysians have been among the core policy objectives of the Government since independence and remain continuing priorities. With this commitment, hard core poverty has been eradicated in 2010 and general poverty been reduced to 1.7% in 2012. Malaysia has also achieved the Millennium Development Goals (MDGs) target on poverty reduction well ahead of schedule. Despite this achievement, there are still some pockets of poverty, particularly among the *Orang Asli* in Peninsular Malaysia and natives of Sabah and Sarawak.

26. Presently, Malaysia is seeing a declining trend in income inequality and income disparity partly attributed to the higher growth of household income among the bottom 40% household and the increasing share of middle income group. However, income inequality remains a major concern and is being addressed in Malaysia's development policy.

27. To further expedite the poverty eradication process, the Government initiated the *eKasih* programme in June 2008<sup>6</sup> to monitor, evaluate and enhance delivery of the Government's poverty eradication plans and programmes. During the review period, the implementation of *eKasih* tremendously improved the Government's ability to deliver specific and targeted assistance and aid to the neediest sections of society. In June 2012, *eKasih* won international recognition from the United Nations Public Service Award committee.

28. New and additional measures have been implemented by the Government during the period under review to further reduce socioeconomic inequality in Malaysia. As part of the Government Transformation Programme (GTP) strategy, and in consonance with the concept of 1Malaysia<sup>7</sup>, the Government has embarked on numerous touch-point initiatives aimed at securing immediate improvements in key areas particularly health, housing, food and employment for the poorer and disadvantaged sections of society. Examples include:

(a) 1AZAM (AZAM: *Akhiri Zaman Miskin* - Ending Poverty Era)

1AZAM programmes provide a balance between direct aid and economic opportunities for the poor to become more financially self-sustaining. The programme includes job placement, financial assistance and grants to small business enterprises, services providers and agricultural activities;

(b) 1Malaysia Grants (BR1M: *Bantuan Rakyat 1 Malaysia*)

BR1M is a policy measure aimed at alleviating financial hardship through cash disbursement of MYR 500 to families earning monthly incomes of MYR 3000 or less. Thus far, BR1M payouts in 2011 and 2012 have benefitted 5.3 million households in the country;

(c) 1Malaysia People's Housing (PR1MA: *Perumahan Rakyat 1Malaysia*)

PR1MA is an initiative geared towards helping Malaysia's increasingly urbanised population in Johor Bharu, Kuala Lumpur and Penang cope with rising housing costs. Rollout of projects in other parts of the country will follow in stages. As indicated in paragraph 12 (above), PR1MA PLC which is a statutory body has been tasked to spearhead the development and construction of affordable housing and related infrastructure for middle-income households<sup>8</sup>;

(d) 1Malaysia Clinics

Under this initiative which is led by the Ministry of Health, the Government has established 228 such clinics to date throughout Malaysia which cater to treatment of non-critical illnesses such as coughs and colds, blood and sugar testing as well as provide dressing service for minor wounds and catheter replacements. The

clinics are open seven days a week from 1000 to 2200 hours. Malaysians are charged at MYR 1 while non-nationals are charged MYR 15;

(e) 1Malaysia People's Welfare Programme (*Program Kebajikan Rakyat* 1Malaysia: *KARISMA Hati Rakyat*)

*KARISMA Hati Rakyat* is a one-off programme launched on 15 February 2013. It aims to provide financial relief to less fortunate Malaysians i.e. low income earners, senior citizens, single-mothers including widows or disabled citizens disbursed in the form of vouchers worth MYR 200 for Peninsular Malaysia and MYR 300 for Sabah, Sarawak and Labuan. Recipients are required to redeem the *KARISMA Hati Rakyat* vouchers through purchase of household goods from selected stores registered with the Government. As of May 2013, a total of MYR50 million have been disbursed to 200,000 targeted Malaysian citizens through this programme; and

(f) *Kedai Rakyat 1Malaysia* (KR1M – 1Malaysia Peoples' Grocery)

KR1M is a shop operating on a mini market format, which provides various basic necessities at low prices, intended for the low income citizens located in the urban areas. It also acts as the medium for the Government to control prices and lessens the monopolisation of products by multinational manufacturers.

#### 4. Right to health (Recommendations 43, 46, 47, 59, 60)

29. At present, Malaysia is on track towards establishing a structured, responsive and inclusive national health system. The 10<sup>th</sup> Malaysia Plan (10MP) outlines comprehensive health strategies with the aim of improving quality of health care services and providing universal access. Strategies currently being implemented include: (i) Transformation of the healthcare system; (ii) Improving the quality of care; (iii) Increasing the capacity and coverage of healthcare infrastructure; (iv) Shifting towards wellness and disease prevention; and (v) Increasing the quality of human resources for health.

30. In its continuing commitment to improve the health and wellbeing of the general population, the Government has put in place a number of long and medium-term initiatives aimed at addressing specific diseases or areas including the National Strategic Plan on Non-Communicable Diseases (2010–2014), National Plan of Action for Nutrition of Malaysia 2006-2015, National Medicine Policy, National Strategic Plan on HIV and AIDS 2011-2015, National Adolescent Health Policy and National Health Policy for Older Persons, among others.

31. The Government continues to take significant measures towards ensuring equitable access to needed care especially by those with no or low-income and/or in economic hardship, the chronically ill, the mentally handicapped and persons in rural or remote areas including the indigenous population.

32. Maternal mortality ratio in Malaysia has declined from more than 40 per 100,000 live births in 1991 to 27.3 per 100,000 live births in 2010. Among the factors that contributed to the reduction of the maternal mortality ratio include greater access to professional care during pregnancy, childbirth and postnatal care, increasing access to quality family planning services and information, as well as the full implementation of the Confidential Enquiries into Maternal Deaths (CEMD) which started in 1991.

33. In the fight against HIV/AIDS, the Ministry of Health (MoH) continues to play a pivotal role by providing preventive measures, including screening, treatment and care. In other related areas, government authorities work closely with the NGO community.

34. The Malaysia AIDS Council (MAC) established in 1992 is the umbrella body that coordinates HIV/AIDS-related activities by the NGO community. In support of MAC and

its activities, the Government committed to allocate MYR40 million for the period 2003–2012. However, actual disbursement for the period amounted to MYR 66,389,500.00, i.e. 66% increase from the initially agreed amount. For 2013, MoH and MAC have agreed on allocation of MYR 6.06 million to NGOs for HIV-related preventive activities.

35. Since 2006, the Government has noted the increasing trend of HIV incidence through sexual transmission and provisions were made in the National Strategic Plan (NSP) on HIV/AIDS Prevention (2006–2010) and further strengthened in the NSP for 2011–2015. On-going activities under the NSP include intensification of preventive activities among Intravenous Drug Users (IDUs) and strengthening contact tracing activities, especially for sexual partners and spouses.

36. Department of Islamic Development Malaysia (JAKIM) in collaboration with MoH and MAC have jointly developed a “Manual on HIV/AIDS in Islam” since 2009. This manual has been developed for the Malaysian Muslim community to enable them to play a more effective role in the management of HIV/AIDS in the country.

37. Due to the general and broad nature of recommendations 44 and 45, the Government considers that those recommendations are being implemented through various plans, policies, programs, initiatives and activities that the Government undertakes on an ongoing basis, including through the various measures, plans, programmes and initiatives highlighted in this report.

## **B. Compliance with international human rights standards**

### **1. Human rights treaties ratification and international human rights obligations (Recommendations 1, 2, 3, 4, 5)**

38. Presently, Malaysia is party to three core international human rights instruments: (i) the Convention on the Rights of the Child (CRC); (ii) Convention on the Rights of Persons with Disabilities (CRPD)<sup>9</sup>; and (iii) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

39. In line with its commitment to implement the principles and provisions enshrined in CEDAW, the Government has been progressively reviewing its position in accordance with the *Syariah* and the Federal Constitution of Malaysia (FCM) leading to the withdrawal of a number of reservations to the convention.

40. During the period under review, significant measures were taken to better implement the non-discrimination principles under CEDAW, among others, (i) establishing administrative arrangements to allow children born to Malaysian women legally married to a non-Malaysian man and residing outside the country to apply for Malaysian citizenship and (ii) providing effective legal recourse for complaints of sexual harassment at the workplace by amendments to the Employment Act (Amendment) 2012.

41. Malaysia is scheduled to submit its combined 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> periodic reports in accordance with Article 18 of CEDAW to the treaty body in 2013.

42. As for the CRC, Malaysia had withdrawn its reservation on Articles 1, 13 and 15. On 12 April 2012, the Government further reaffirmed its commitment to promoting and protecting the rights of children by acceding to two Optional Protocols to the CRC, namely on the Sale of Children, Child Prostitution and Child Pornography and on the Involvement of Children in Armed Conflict.

43. By end of 2013, the interagency standing committee (IASC) on human rights is expected to conclude its work and to submit its recommendations concerning Malaysia's

accession to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

44. The IASC has also initiated several preliminary studies spearheaded by the Department of National Unity and Integration (JPNIN), Prime Minister's Department on the feasibility of Malaysia's accession to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). IASC's initial findings will be submitted to the Government in due course.

## **2. Application of the death penalty (Recommendation 15)**

45. Malaysia reiterates that the death penalty is only applied on the most serious crimes which are provided for in law and only after all rights of appeal have been exhausted. The existing legal framework provides for stringent safeguards that must be complied with before the death penalty is carried out. The Government maintains that such safeguards are in line with international standards, in particular Article 6 of ICCPR.

46. The Government notes that in recent years there has been more debate on the issue of the death penalty in Malaysia. In this connection, the Government remains open and will continue the engagement and consultation with the public on this matter including on possible alternatives to the death penalty.

47. The Government had taken the initiatives to undertake a study on comprehensive reform of administration of criminal justice in Malaysia, including on death penalty. For the period from February 2009 until May 2013, six accused were sentenced to death for murder, trafficking in dangerous drug and firearms offences, all of which are classified as serious offences in Malaysia. This statistic highlights that only very few cases result in the accused being sentenced to death. In this connection, it seems fair to conclude that there exists to a certain extent a conscious initiative or trend against the implementation or execution of the death penalty.

## **C. Cultural diversity and national unity (Recommendations 10, 54)**

48. Malaysia continues to uphold respect for different cultures, languages and religions of its people, focusing on the common values that bind its diverse population. Indeed, such convergence of cultures has enriched the country in many ways and has over time led to acceptance and not mere tolerance of differences. Since independence, the Government has been fully seized of the importance of harnessing the differences and diversities of its people towards effective, equitable and sustained development.

49. The task of managing such diversity, daunting in and of itself, would have been near impossible even by the most capable of people. In this regard, much credit is due to the drafters of the Federal Constitution of Malaysia, who had recognised the peculiarities of Malaysian society and accounted for it in that document.

50. To illustrate, the Federal Constitution contains provisions on the special position of the *Bumiputra* (native sons of the soil) and natives of the States of Sabah and Sarawak, and at the same time emphasises the State's responsibility to safeguard the legitimate interests of other communities. Additionally, while Article 3 of the Federal Constitution recognises Islam as the religion of the Federation, it goes on to state that other religions may be practiced in peace and harmony in any part of the Federation.

51. From the examples above, it is clear that key values embedded in the Federal Constitution among which includes moderation, tolerance, understanding and acceptance provides the nation's moral compass and shall continue to do so.

52. Upon first assuming the premiership in 2009, PM Najib introduced the 1Malaysia concept, which is essentially an initiative aimed at reflecting values such as moderation, tolerance, understanding and acceptance through tangible and positive people-oriented programs and initiatives. Several 1Malaysia initiatives were discussed in paragraph 28 (above).

**D. Women, children, persons with disabilities and indigenous peoples  
(Recommendations 8, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 33, 34, 51, 58)**

53. The Government remains committed to not only recognising the important role of women in the country but also towards ensuring their rights continue to be promoted and protected. Towards that end, the principles and provisions of CEDAW have been gradually incorporated into domestic legislations such as the Penal Code, the Pensions Act 1980, the Land (Group Settlement Areas) Act 1960 (Revised 1994), the Immigration Regulations 1963, the Domestic Violence Act 1995 and the Employment Act 1955.

54. The Government has also executed long-term strategies and programmes since 1989 beginning with the first National Policy on Women which was last updated in 2009. In essence, the policy seeks to ensure women's equitable share in the acquisition of resources, information, opportunities and in the benefits of development. The policy also emphasises equality and justice in the implementation of development policies so that women can contribute to and realise their potential to the optimum; and the integration of women in all sectors of development in accordance with their capabilities and needs. The Government's continuous effort in providing maternal and child healthcare, access to family planning services as well as educational opportunities have enabled women to participate and contribute significantly to the nation's socioeconomic development.

55. The national Plan of Action for the Advancement of Women (2009–2014) serves as a general guideline in the implementation of programmes for the integration of women in development. The core deliverable of the Plan seeks to ensure equal opportunities for women's participation and involvement in all facets of life.

56. The policy of having women occupy 30 per cent of decision-making positions in the public sector was announced by the Government in 2004. Proactive implementation of this policy has seen the percentage of women holding decision-making positions in the public sector increased to 31.7 per cent in 2012 from 18.8 per cent in 2004. In 2011, the Government announced the policy of at least 30 per cent women in decision-making positions in the corporate sector. The policy aims to increase the number of women holding executive and non-executive director positions (excluding alternate director positions) in companies listed in the Malaysia Stock Exchange to 30 per cent so that by 2016, women will comprise 30% of those holding board positions in these companies.

57. The Government believes that empowerment of women is closely linked to their ability to earn a decent income and that the independence afforded by income/employment increases women's ability to assert their rights. In this regard, childcare issues have been identified as among the primary obstacles that hamper women from achieving such independence.

58. Aimed at easing the childcare burden which disproportionately and negatively affects women, the Government has taken significant steps including by: (i) encouraging employers particularly in the public and private sectors to set up more childcare centres; (ii) providing subsidies for child care costs; and (iii) fostering the practice of family-friendly working environment to enhance work-life balance.

59. Empowerment of women is prioritised under the 10MP with initiatives focused on: (i) increasing women's participation in labour force; (ii) increasing the number of women in key decision-making positions; (iii) improving provision of support for women in challenging circumstances such as widows, single mothers and those with lower income; and (iv) elimination of all forms of discrimination against women.

60. In October 2011, the Government improved maternity leave facility for civil servants by providing flexibility to self-determine fully paid maternity leave which has been increased from 60 to 90 days, subject to a total of 300 days maternity leave throughout tenure of service. The 90-day fully paid maternity leave has also been implemented by local banks after this benefit came into effect under the collective agreement between the Malaysian Commercial Banks Association and the National Union of Bank Employees in August 2010.

61. The National Policy on Children and its Plan of Action, and the National Child Protection Policy and its Plan of Action were approved by the Government on 19 July 2009. Taken together, both sets of initiatives outline the Government's priorities *vis-à-vis* the promotion and protection of children's rights in Malaysia.

62. On the ground, the ability of Government agencies and actors tasked with responding to child protection needs was enhanced with the launching of a dedicated hotline for children i.e. "Childline 15999" on 13 November 2010. Childline operators are specially trained to handle calls from children and its establishment is in line with the recommendation of the CRC Committee to Malaysia. Additionally, a nationwide alert system known as National Urgent Response Alert (NUR Alert) was launched in January 2011. NUR Alert coordinates child protection functions at the interagency level and is activated when a child under the age of twelve is reported missing. The Government also continues to support SCAN (Suspected Child Abuse and Neglect) Team services which is provided in major hospitals throughout the country.

63. For vulnerable and at-risk inner city adolescents and young persons, the Government in collaboration with civil society established the 'Kuala Lumpur Krash Pad' (KLKP) in the Chow Kit area in March 2009. KLKP reaches out to all teens and youth including the stateless, refugees and the undocumented. KLKP offers alternatives to risk behaviour that may expose them to gangs, violence, crime, substance abuse and risk of HIV infection. While KLKP is primarily funded through independent means, Ministry of Women, Family and Community Development (MWFC) provides an annual grant to KLKP amounting to about MYR 400,000. As of May 2013 around 509 youths have registered with KLKP with some of them visiting daily.

64. The Department of Social Welfare, an agency under MWFC, assists in providing basic care and amenities for street children. MWFC also collaborates with civil society organisations such as Korea Food for the Hungry International (NUMBAK Centre), Humana and All Saints Academy in assisting children of non-citizens, including street children to study in government funded schools.

65. The National Family Policy and National Family Plan of Action were formulated in 2011 to provide the framework and guidance for efforts aimed at strengthening the family institution in the country. The Government has tasked the National Population and Family Development Board (LPPKN) to spearhead such efforts. Primarily, LPPKN undertakes awareness raising and education on issues such as gender, family relationships including conflict management and parenting skills, reproductive health and sexuality as well as on living without violence.

66. In line with the CRPD, the Government has in place a National Policy and Plan of Action on PWDs which provides guidance for partners and stakeholders in efforts to further mainstream PWDs. Policy implementation and enforcement of the Persons with Disabilities

Act 2008 is spearheaded by the Department for PWDs under MWFCDD. A National PWD Council chaired by the Minister for Women, Family and Community Development monitors the implementation of PWD related policies and programmes.

67. In Peninsula Malaysia, the relatively small number of indigenous peoples namely the Negrito, Senoi and Proto Malay are collectively and officially referred to as *Orang Asli*, while in East Malaysia the term used is natives of Sabah and Sarawak. *Orang Asli* affairs fall under the purview of the Department of *Orang Asli* Development (JAKOA) which is responsible for the welfare and advancement of these communities. The Government recognises that in relative terms, the *Orang Asli* and other indigenous communities are socioeconomically disadvantaged compared to other segments of the population.

68. Towards ensuring that the rights of *Orang Asli* and other indigenous communities remain promoted and protected, the Government continues to take measures to widen their access to food, shelter, health, education and employment, among others. The Government has set itself the target of further reducing poverty among the *Orang Asli* to 25% in 2015. As of 2010, poverty levels among the *Orang Asli* stood at 31.16 % in 2010, compared to 83.4% in 2005. JAKOA has also established an *Orang Asli* Development Strategic Plan for the period 2011-2015, consisting 6 core elements namely, achieving progressive economic activity, strengthening human capital, expanding access to infrastructure, improving health level, cultivating traditional knowledge and heritage and improving the Government's delivery system and good governance.

69. The main legal provisions guaranteeing the rights of *Orang Asli* are contained in the Federal Constitution and the Aboriginal Peoples Act 1954. Due primarily to their lifestyle, culture and traditions, the situation of *Orang Asli* has generated much attention both domestically and internationally. In line with its duties and responsibilities towards its citizens, the Government maintains that *Orang Asli* must be afforded the choice and be free to decide whether they wish to join mainstream society or not.

70. Taking into account the importance of preserving the cultures and traditions of *Orang Asli* as well as the rapidly evolving socioeconomic scenario in Malaysia, the Government continues to offer *Orang Asli* opportunities to participate in the mainstream socioeconomic activities. Among others, efforts such as income-generating programmes and other commercial agricultural activities have been offered for their socioeconomic advancement.

71. In 2012, JAKOA disbursed MYR10 million for perimeter surveys to ensure that *Orang Asli* land is gazetted and therefore protected from encroachment. JAKOA has also cooperated with civil society in resolving land rights issues of the *Orang Asli* and it continues to work closely with all partners from the governmental and non-governmental sector in ensuring that the rights of *Orang Asli* continue to be promoted and protected.

72. During the period under review, there has been an increasing trend for Malaysian courts to rule in favour of the rights of indigenous communities both in Peninsula Malaysia and in Sabah and Sarawak. Notable decisions include *Sagong Tasi & Ors v. Kerajaan Negeri Selangor & Ors* [2005] 4 CLJ 169 and *Madeli Salleh v. Superintendent of Land & Surveys Miri Division & Anor* [2007] 6 CLJ 609. The courts, in making decisions, had taken into consideration the proofs and circumstances of the cases in terms of customary land title.

**E. Institutional framework for human rights (Recommendations 11, 12, 25, 26, 27, 28)**

73. In October 2012, the Government mandated the formulation of a National Human Rights Action Plan for Malaysia. Assigned as focal agency for the task, the Legal Affairs Division of the Prime Minister's Department has established a Steering Committee to coordinate the development of the Plan. One of the committee's main functions is to conduct a baseline study to establish the national human rights context. Paving the way for a comprehensive baseline study is the commissioning of several universities in January 2013 to conduct reviews of Malaysian laws in the context of promotion and protection of human rights.

**The judicial system**

74. The Bangalore Principles have been adopted by the Malaysian Judiciary and incorporated into the Judges' Code of Ethics 2009, particularly in Part II of said code.

75. The Judicial Appointments Commission (JAC) was established under the Judicial Appointments Commission Act 2009 [Act 695]. The JAC's establishment represents a significant step forward in the continuing effort to strengthen and increase the integrity of the Malaysian judiciary.

76. Among others, the roles and functions of JAC include: (i) to receive and consider applications to judicial appointments; (ii) to ensure that appointment of judges is based on merit and quality; and (iii) to review and recommend programmes aimed at improving the administration of justice in Malaysia.

77. The Malaysian judiciary has also embarked on an extensive transformation process aimed at enhancing the judiciary's effectiveness and efficiency in delivering and administering justice including among others: (i) electronic monitoring of requests for postponement of cases; (ii) introduction of Case Management System (CMS), the Queue Management System (QMS) and the Court Recording and Transcription System (CRT) to enable better management and analysis of court data; (iii) introduction of tracking system to streamline administration of courts for better management of judges, registrars and court staff; (iv) establishment of specialised courts e.g. Commercial Courts, Intellectual Property Courts, Corruption Courts, Admiralty Court, *Muamalat* (Islamic Banking) Court and New Civil Courts (NCvC); (v) introduction of Judge-Led Mediation; and (vi) introduction of E-filing system which enables pleadings to be filed from the lawyers; offices and service bureaus.

78. As part of the Government's continuing effort to develop a human rights culture in Malaysia, courses on human rights have been conducted for judges, magistrates and prosecutors through the Judicial and Legal Training Institute (ILKAP) of Malaysia. Some of the courses conducted by ILKAP include courses on compliance with the obligations under CRC, CEDAW, and CRPD, as well as courses pertaining to evidence, care, protection and rehabilitation of children. Such initiatives had led to positive development in sensitizing judges to apply principles enumerated in the human rights treaties to which Malaysia is party.

79. For instance, in the case of *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors* [2012] 1 MLJ 832 the Court dealt with whether the refusal to employ a woman on the ground of her pregnancy alone is a form of gender discrimination and thus unconstitutional under Article 8 of the FCM. The High Court Judge referred to CEDAW in clarifying the term "equality" and the concept of gender discrimination under Article 8 of the Federal Constitution. It was held that CEDAW is not a mere declaration but has a force of law and

is binding on member states. The Attorney General had decided not to pursue with the appeal against the above decision.

#### **IV. Latest developments**

80. During the period under review, the Government's primary policy implementation and monitoring framework remains the successive Malaysia Plans implemented over a 5 year cycle. The relevant Malaysia Plans for the period are the 9<sup>th</sup> and 10<sup>th</sup> covering 2006–2010 and 2011–2015 respectively. The long-term strategic framework remains the National Vision Policy (NVP) 2001–2020.

81. In 2010, the Government launched two major policy initiatives to supplement the Malaysia Plans, namely the Government Transformation Programme (GTP) and the Economic Transformation Programme (ETP). Taken as a whole, the 10MP, GTP, ETP, NVP and their respective workplans, programmes and strategies comprise the framework under which the Government implements its domestic agenda, including on human rights<sup>10</sup>.

82. The GTP's core deliverables focus on 7 National Key Results Areas (NKRAs) which correspond to a wide range of human rights including: (i) fighting corruption; (ii) improving student outcomes; (iii) improving rural basic infrastructure; (iv) improving urban public transport, (vii) addressing cost of living; (vi) raising living standards of low-income households and; (vii) reducing crime. On the other hand, the ETP was designed to support the GTP by fostering enabling economic conditions and an environment conducive towards achieving targets set under the GTP.

83. The GTP is essentially the Government's response to calls made to revamp and improve delivery of public services in a sustainable manner, including through benchmarking against best practices and the use of Key Performance Indicators (KPIs) for ministers, ministries and line agencies. GTP is a primarily a means through which accountability, transparency and predictability of government action could be measured.

84. As the principal duty bearer for the promotion and protection of human rights in the country, the Government believes that the rolling out and implementation of the various new plans, programmes and initiatives under both the GTP and the ETP will lead to significant enhancement in the enjoyment of all human rights in Malaysia.

#### **A. Achievements and best practices (Recommendations 1, 2, 5, 15, 35, 36, 37, 38, 39, 40, 41, 42, 46, 52a, 52b, 56, 57, 60, 61)**

##### **1. Institutional developments**

85. The Government has been taking measures to progressively strengthen the independence of Malaysia's National Human Rights Commission (SUHAKAM) since its establishment in 1999. SUHAKAM has enjoyed 'A' Status accreditation by the International Coordinating Committee for National Human Rights Institutions (ICC NHRIs) since its establishment. The Government amended the SUHAKAM Act in 2009 to ensure the Act is line with international standards including the Paris Principles.

86. In line with the Paris Principles and its own establishing statute, SUHAKAM publishes its annual report which is submitted to Parliament and circulated to the Ministries. It has been the Government's longstanding practice to provide replies and feedback on issues arising from each SUHAKAM Annual Report.

87. During the period under review, SUHAKAM has undertaken a number of inquiries on issues such as freedom of expression and opinion, freedom of assembly and situation of land rights of Malaysia's indigenous people<sup>11</sup>.

88. The Malaysian Law Reform Committee (MLRC) was established in December 2009 under the direction of the Prime Minister's Department with the primary aim of studying Malaysian laws and to recommend reform on those which are considered archaic. MLRC works closely with local universities and academic institutions which are often tasked with carrying out research projects and studies. Those outcomes are shared with the relevant government ministries and agencies, which may choose to either accept and implement the recommendations or reject them, given that the MLRC's recommendations are of non-binding character. MLRC is also mandated to commission studies on its own initiative.

## **2. Legislative developments related to civil and political rights**

89. Following Malaysia's first UPR in 2009, the Government recognised that the development of civil and political rights in the country should keep pace with the significant progress made in economic, social and cultural rights. Since then, the Government has taken significant measures aimed at further enhancing the exercise and enjoyment of civil and political rights in the country including: (i) annulment of 3 Emergency Proclamations<sup>12</sup>; (ii) repealing the Internal Security Act (ISA) 1960 [Act 82]; (iii) repealing the Banishment Act 1959 [Act 79]; and (iv) repealing the Restricted Residence Act 1933 [Act 377].

90. The repeal of Act 79 also corresponds to the recommendation by the Working Group on Arbitrary Detention which was made in the course of the working group's visit to Malaysia in June 2010<sup>13</sup>. Alongside other efforts aimed at improving compliance with international human rights standards, the Government decided to repeal Act 377 on the grounds of it being out-dated and of having outlived its purpose.

91. Amongst the more drastic measures taken by the Government that underscores its serious efforts and commitment to protect human rights in Malaysia is the repeal of the much criticised ISA. The ISA, which was enacted as a preventive law for curbing acts such as subversion and action prejudicial to public order was repealed with effect from July 2012.

92. The Security Offences (Special Measures) Act 2012 (SOSMA) [Act 747] on the other hand was enacted as a procedural law to deal with the investigation of security offences. SOSMA must be read together with the Penal Code as section 3 of SOSMA, defines 'security offences' as offences under Chapter VI (offences against the State) and Chapter VIA (offences relating to terrorism) of the Penal Code.

93. With the repeal of ISA, the practice of preventive detention was effectively ended. The discretionary power of the Home Minister to detain a person without court order had been removed. SOSMA also guarantees necessary safeguards to a detainee consistent with international human rights norms and standards such as right to counsel and notification to family members.

94. The promotion and protection of the right to peaceful assembly in Malaysia has also progressed since the last review. The Peaceful Assembly Act 2012 [Act 736] (PAA) was enacted to breathe life to Article 10 of the Federal Constitution to enhance the implementation of the right to assemble peaceably as guaranteed by the Federal Constitution.

95. Essentially, the PAA reaffirms the right of citizens to organize assemblies and participate in assemblies peaceably and without arms subject only to restrictions deemed necessary or expedient in the interest of the security of the Federation or any part thereof or

public order, in line with relevant international instruments including the UDHR and the ICCPR. The Act was drafted taking into consideration provisions of similar legislation in other jurisdictions including in Europe and the USA. Related guidelines on peaceful assembly such as the Organization for Security and Cooperation in Europe (OSCE) Guidelines on Freedom of Peaceful Assembly, and Office for Democratic Institution and Human Rights (ODIHR) Handbook on Monitoring Freedom of Peaceful Assembly were used as references.

96. Under the PAA, the licensing requirement to hold an assembly had been removed. In essence, the role and function of the police had been completely transformed from active policing to positive facilitation of peaceful assembly.

97. Amendments to the Printing Presses and Publications Act 1984 [Act 301] (PPPA) which came into force on 15 July 2012 among others, removed the Home Minister's "absolute discretion" in relation to granting of permits and also abolished the requirement for annual licence renewal. In essence, amendments to PPPA were premised on two principles namely the right to freedom of expression and the right to be heard. In moving forward, the Government is actively undertaking consultations on the possibility of establishing an independent media regulatory body which could eventually replace Act 301.

98. Amendments to the University and University Colleges Act 1971 [Act 30] (UUCA) which came into force on 1 August 2012 among others, removed the restriction on university students from becoming members of political parties.

99. The Whistleblower Protection Act 2010 [Act 711] (WBPA) is a new legislation which entered into force on 15 December 2010. The Act aims to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector, to protect persons making those disclosures from detrimental action, to provide for the matters disclosed to be investigated and dealt with and to provide other matters connected therewith. Thus far, out of 1,690 complaints received in 2011, 17 cases were provided protection under WBPA. In 2012, the number of complaints increased to 14,007 with 98 cases being provided protection. The 83.7% increase in number of complaints in 2012 compared to 2011 signifies increased public awareness of whistleblower protection provided by the Act.

100. The National Wages Consultative Council Act 2011 (Act 732) came into force on 23 September 2011. The main objective of the Act is the establishment of a Council with the responsibility to conduct studies on all matters regarding minimum wages and to make recommendation to the Government with regard to making of a minimum wages order. The Council comprises of representatives from the Employees, Employers, Public Officers and Other Groups. Under this legislation, a Minimum Wages Order was made on 16 July 2012. The Order came into effect on 1 January 2013 for an employer with 6 employees and above and on 1 July 2013 for employers with 5 employees and less. The Government is enhancing existing awareness programs in ensuring smooth implementation of minimum wages throughout the country. Relevant government authorities i.e. the Secretariat of the National Wages Consultative Council and the Department of Labour have been in continuous engagement with employers and this effort is on-going. As of April 2013, more than 100 engagement sessions involving more than 5,000 employers have been conducted.

### 3. General elections

101. Malaysia's 12<sup>th</sup> General Elections (GE-12) held on 8 March 2008 was considered by many observers as a watershed event not least because it saw the ruling *Barisan Nasional* (BN – National Front) coalition lose power to opposition political parties known collectively as the *Pakatan Rakyat* (PR – Peoples Alliance) in several states in Peninsula Malaysia including Kedah, Penang, Perak and Selangor.

102. Following Malaysia's 13<sup>th</sup> General Elections (GE-13) held on 5 May 2013, *Pakatan Rakyat* retained control of Penang, Selangor and Kelantan states. During the course of the election process, the Government has noted that certain parties had gone to extraordinary lengths to cast negative aspersions on the conduct and outcome of the elections, despite the significant measures taken to improve the transparency of the election process.

103. Prior to GE-13, the Special Select Committee on Electoral Reforms (SSCER) was appointed by the House of Representatives on 3 October 2011 to study matters related to the election process in Malaysia. The responsibility, role and duty of the Committee were to study matters that could help to strengthen the Election Commission (EC) and regarding the fair and free election process. Pursuant to recommendations made by the SSCER, the subsidiary legislation under the election laws was amended. The amendments introduced allowed for the following, among others: (i) for the first time ever, Malaysians residing overseas could cast their votes earlier at Malaysian missions or through postal voting; (ii) longer campaigning period; and (iii) the use of indelible ink.

104. Furthermore, the Federal Constitution guarantees that an election result could be questioned by way of petition<sup>14</sup>. Disaffected political party or individual may file petition to the High Court within 21 days after the results are gazetted.<sup>15</sup> The High Court must complete hearing of the election petition six months after it has been filed while appeal to the Federal Court must also be completed within the same period. An election petition may be filed on grounds of corruption or misconduct and non-compliance with election laws and regulations<sup>16</sup>.

105. The results of GE-12 and GE-13 and provisions of the election laws demonstrate that elections in Malaysia are conducted with due process in accordance with the law and in full compliance with applicable international norms and standards.

#### **4. Good governance**

106. Since its establishment in 2009, the Malaysian Anti-Corruption Commission (MACC) has been steadily discharging its duties and responsibilities as the primary agency tasked with weeding out corruption in Malaysia. MACC regularly publishes its annual reports and also regularly undertakes awareness raising campaigns.

107. In order to ensure MACC's independence, transparency and professionalism, five separate and independent external oversight bodies<sup>17</sup> were formed as a check and balance mechanism to monitor the functions of the MACC. Members of these panels represent the general public and include senior former government officials, politicians (government and opposition), professionals, academicians, lawyers and persons of high societal standing. Malaysia had also shown successes and good practices in the context of its implementation of the United Nations Convention against Corruption<sup>18</sup>.

108. In response to calls for strengthened oversight of Malaysian law enforcement agencies, the Government established the Enforcement Agency Integrity Commission (EAIC) on 1 April 2011 upon the entry into force of the Enforcement Agency Integrity Commission Act 2009 [Act 700].

109. The primary statutory functions of EAIC include: (i) to receive complaints of misconduct from the public against an enforcement officer or against an enforcement agency in general and to investigate into and conduct hearings on such complaints; (ii) to formulate and put in place mechanisms for the detection, investigation and prevention of misconduct by an enforcement officer; (iii) to protect the interest of the public by preventing and dealing with misconduct of an enforcement officer; (iv) to provide for the auditing and monitoring of particular aspects of the operations and procedures of an enforcement agency; (v) to promote awareness of, enhancement of, and education in relation to, integrity within an enforcement agency and to reduce misconduct amongst

enforcement officers;(vi) to assist the Government in formulating legislation, or to recommend administrative measures to the Government or an enforcement agency, in the promotion of integrity and the abolishment of misconduct amongst enforcement officers; (vii) to study and verify any infringement of enforcement procedures and to make any necessary recommendations relating thereto; and (viii) to make site visits to the premises of an enforcement agency, including visiting police stations and lockups in accordance with the procedures under any written law, and make any necessary recommendations relating thereto.

110. Government agencies over which the EAIC has oversight include Royal Malaysia Police (PDRM); Malaysia Maritime Enforcement Agency (MMEA); *Ikatan Relawan Rakyat Malaysia* (RELA); Malaysian Immigration Department (JIM); Royal Malaysia Customs (RMC) and Road Transport Department (JPJ).

111. The Government reaffirms its commitment to ensure that EAIC will be able to fulfil its statutory function and duties and continues to be allocated the necessary financial and manpower resources in order for it to discharge its mandate effectively and efficiently.

## 5. Foreign workers

112. Malaysia is presently host to approximately 1.4 million documented non-skilled foreign workers employed in various permitted sectors namely construction, plantation, agriculture, manufacturing and selected services industry, including domestic work.

113. These workers enjoy protection under various domestic laws such as the Employment Act 1955, the Trade Union Act 1959, the Workmen's Compensation Act 1952 and the Industrial Relations Act 1967. Among others, these laws regulate working conditions, obligations of employers towards employees, wages, working hours, termination and lay-off benefits and all other matters pertaining to employment. There is also no restriction on remittances.

114. Beginning 1 January 2011, the Government introduced compulsory health insurance for foreign workers under the Health Insurance Scheme for Foreign Workers in Malaysia (SPIKPA). The insurance covers up to MYR10, 000 of hospitalisation and treatment costs at public hospitals in Malaysia.

115. As part of the efforts to protect the rights and to enhance the safety and welfare of foreign workers working in Malaysia, the Ministry of Human Resources (MoHR) has established guidelines on employment and has signed a number of agreements with source countries to establish bilateral cooperation on recruitment, employment and repatriation of foreign workers.

116. One such bilateral agreement concluded in 2012 is worth highlighting as it removed the involvement of the recruitment agencies for the purpose of the recruitment and employment of foreign workers. This arrangement is particularly unique in the sense that the Memorandum of Understanding (MoU) on recruitment of workers was concluded together with a MoU on transnational crime. The transnational crime MoU is intended to complement the efforts of both source and recipient countries in addressing issues related to trafficking in persons. Furthermore, such bilateral agreement effectively locks out unscrupulous employment agents that tend to exploit workers resulting in labour trafficking. In the past, irresponsible parties hiked recruitment fees and exploited workers in the recruitment process. Malaysia is presently considering the possibility of implementing similar mechanism with other source countries.

117. Alongside the source country, Malaysia has also concluded a bilateral agreement in May 2011 which sought to secure better working conditions for domestic workers, who are mostly women, including allowing them to keep their own passports; the requirement for

the employers to credit the domestic workers' salaries into bank accounts; and provision for weekly day of rest.

118. Domestic workers are recognised as employees under the Employment Act 1955. With a view to ensure respect for the rights of such workers by their employers, the Government introduced amendments to the Act which entered into force on 1 April 2012 to clearly stipulate that wages must be paid into the bank account designated by the employee. Presently, the Government is working towards finalising regulations on the employment of domestic workers.

119. Section 69 of the Employment Act 1955 also provides for workers' claims and labour cases that can be filed by local and foreign workers with regards to their employment. In addition thereto, the Workmen's Compensation Act 1952 compensates foreign workers in the event of accidents which occur in the course of employment. In 2011, 4,781 claims (inclusive of male and female workers) were reported with total compensation disbursed in the amount of MYR 9,289,207.

120. *Talian NUR*, a hotline set up by the MWFCDD to enable early intervention for victims of domestic violence has also been extended to foreign domestic workers as an avenue to lodge complaints on abuse by irresponsible employers and employment agencies.

121. Through 180 nationwide seminars and briefings to 6000 persons held in 2010–2012, the Department of Labour has successfully reached out to and sensitised domestic workers, employers and private employment agencies on the rights and responsibilities of domestic workers and their employers.

122. During the period under review, Malaysia embarked on a comprehensive foreign workers' registration programme known as the 6P Programme aimed at updating the foreign workforce database with biometric data. On the cut-off date for the programme on 31 August 2011, a total of 2.3 million foreign workers were registered (1 million regular and 1.3 million irregular).

123. The 6P Programme has proven a beneficial exercise as those foreign workers that have registered under the programme are now regularised and could henceforth be accorded protection from exploitation by unscrupulous employers and/or criminal syndicates. In ensuring smooth implementation of the 6P Programme Malaysia had worked closely with source countries.

## **B. Challenges and constraints**

### **1. Refugees, asylum seekers, stateless persons, undocumented persons**

124. Malaysia continues to be a transit and destination country for refugees, asylum seekers, stateless persons, and undocumented persons. During the period under review, and while not being party to the 1951 Convention on Refugees, Malaysia continues to cooperate with relevant international organisations including UNHCR Office in Kuala Lumpur and the International Organisation for Migration (IOM) on a case-by-case basis to manage the situation of such persons in the country.

125. Malaysia has been actively participating in the Bali Process regional forum which addresses migration issues. This platform has managed to strengthen the regional cooperation to effectively tackle challenges posed by irregular migration, particularly with the adoption of the Regional Cooperation Framework during the Ministerial Meeting in Bali on 31 March 2011. Malaysia fully supports the Bali Process through which shared responsibilities for countries of origin, transit and destination in dealing with irregular movement of people have been identified.

## 2. Trafficking in persons (TiP)

126. In the fight against trafficking in persons, Malaysia has in place the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM) 2007, which was amended in 2010 to give better effect to the law by *inter alia* introducing new provision for the criminalisation of migrant smuggling, imposing more severe penalties and extending the length of imprisonment for such crimes as a credible deterrent as well as widening the definition of trafficking in persons to include labour trafficking.

127. Other amendments to ATIPSOM 2007 include the designation of the Labour Department as an additional law enforcement agency alongside Royal Malaysian Police (PDRM), Immigration Department (JIM), Royal Malaysian Customs (KDRM) and Malaysia Maritime Enforcement Agency (APMM). At present, the Government is studying the possibility of introducing further amendments to Part V of the Act concerning care and protection of trafficked persons.

128. During the period under review, 29 specialised Deputy Public Prosecutors (DPPs) throughout Malaysia were appointed to improve on prosecution of TiP cases. The DPPs received related training including by the US Immigration and Customs Enforcement (ICE). Local NGOs have also been actively involved in case management/investigation including providing interpretation services to foreign victims, thereby enabling them to give statements which contributes towards ensuring better chance of conviction.

129. Malaysia had made significant progress in improving the protection element of its anti-TiP efforts. On 12 January 2012, a policy decision was taken to allow TiP victims to take up employment in the country after completion of their Protection Order. Subsequently, the first batch of 33 victims had taken up the offer.

130. Malaysia concluded Agreements/MoUs in combating transnational crime with several countries in 2012. The agreements allow Malaysia to work collectively with its strategic partners in combating transnational crime including trafficking in persons. On 2 April 2012, Malaysia signed an agreement on legal cooperation activities with a treaty partner, providing a framework for agencies from both countries to cooperate on criminal matters particularly relating to prosecutorial aspects, including effective prosecution of TiP cases.

## 3. Complementarity of civil and *Syariah* legal systems

131. In Malaysia, the civil legal system (modelled after British civil law) and the *Syariah* (Islamic) legal system co-exist as a parallel legal system as provided for by the Federal Constitution which further clarifies that the constitution, organisation and procedures of the civil and *Syariah* courts are subject to the powers and jurisdiction at the Federal-level and at the State-level, respectively.

132. The civil courts have jurisdiction over all persons in the Federation whilst the *Syariah* courts only have jurisdiction over persons professing the religion of Islam. In order to prevent conflict between the jurisdictions of the civil and the *Syariah* courts, the Federal Constitution distinguishes between these two courts *vide* Article 121(1A).

133. Malaysia's *Syariah* Courts do not practice discrimination in the appointment of all *Syariah* court officials, including judges and other officers, subject to the qualifications as prescribed by the relevant laws and public authorities. The *Syariah* legal system also maintains equality of all persons before the law and their entitlement to the equal protection of the law.

134. The *Syariah* court system undergoes continuous improvement to ensure smooth administration and running of its processes and procedures. This is especially important as a significant number of cases brought before the *Syariah* courts relate to matrimonial and

family matters. Among the efforts taken by the Government agencies are, by issuing the Practice Direction of the *Syariah* Court, establishing Family Support Division and proposing to upgrade the status of the *Syariah* judicial system.

135. The Islamic alternative to conventional dispute resolution or mediation is also available in Malaysia's *Syariah* courts through a mechanism known as the *Majlis Sulh* which is equivalent to mediation in the practice of civil law. The aim of both processes is similar which is to achieve amicable settlement between the disputing parties. The practice of *Sulh* and procedure of the *Majlis Sulh* are subject to the *Syariah* court rules of laws.

136. With a view to disseminate information on the role and function of *Syariah* law in Malaysia, the Government through efforts spearheaded by the Institute of Islamic Understanding (IKIM) has organised a number of programmes including: International Conference on harmonisation of and Civil Laws, establishment of a *Syariah* Community comprising of experts from different backgrounds as well as ongoing discussions, intellectual discourses, negotiations and talks between Muslim and Non-Muslim scholars.

## **C. Cooperation at the regional and international level**

### **1. Association of Southeast Asian Nations (ASEAN)**

137. Malaysia continues to support the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN sectoral bodies such as the ASEAN Commission on the rights of Women and Children (ACWC) and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).

138. Malaysia is also a strong proponent for anti-trafficking in persons through its involvement in the ASEAN Ministerial Meeting on Transnational Crime which is currently considering a regional convention to combat anti-trafficking in persons in the Southeast Asia region.

139. The 7<sup>th</sup> ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) held in Lao PDR in June 2007 agreed to commence discussion on a possible legally-binding instrument on trafficking in persons informally known as ASEAN Convention on Trafficking in Persons (ACTiP). Additionally, at the 7<sup>th</sup> ASEAN Working Group Meeting on TiP in April 2012, the idea of developing a Regional Plan of Action (RPA) on TiP was introduced to reflect the immediate and continuous commitment of ASEAN Member States in tackling the issue of TiP. Malaysia shares the view that the RPA is intended as a catalyst towards the development of ACTiP.

### **2. Organisation for Islamic Cooperation (OIC)**

140. Malaysia is a member of the recently established OIC Independent Permanent Commission on Human Rights (IPHRC). Thus far, the IPHRC has convened two full sessions to deliberate and finalise its terms of reference.

### **3. The Commonwealth**

141. During the period under review, Malaysia participated in several capacity-building workshops organised by the Commonwealth Secretariat on the UPR mechanism. Malaysia and the Commonwealth Secretariat also jointly organised a workshop entitled Human Rights Training for ASEAN Police Trainers on 15–19 June 2009 in Kuala Lumpur.

#### 4. Asian and African Legal Consultative Organization (AALCO)

142. As an AALCO member, Malaysia has been actively participating in AALCO Sessions every year which cover legal issues on broad spectrums such as refugees, migrant workers, anti-trafficking in persons and anti-smuggling of persons. Malaysia also hosted the 48<sup>th</sup> Session of AALCO in Putrajaya in 2009 and conducted special sessions and workshop on anti-trafficking in persons.

#### 5. United Nations

143. During the period under review, Malaysia responded to 15 communications from HRC Special Procedures Mandate Holders.

144. In June 2010, Malaysia received a visit by the HRC Working Group on Arbitrary Detention. A number of measures highlighted in this report have been undertaken by the Government as follow-up to the recommendations made during the working group's visit.

145. The Government has agreed to accept a request for visit by the Special Rapporteur on the right to food which will be held on 9–18 December 2013. The Government also agrees in principle to accept a visit by the Special Rapporteur on the highest attainable standard of mental and physical health on a date to be mutually agreed.

### V. Conclusion

146. Malaysia's unique and diverse society has long been characterised by tolerance, acceptance as well as moderation in terms of the political and religious convictions of its people. That said, the country's inexorable march forward, particularly in expanding the space for freedom of expression, including of dissent and of peaceful assembly necessarily means that the Government must exercise utmost sensibility and sensitivity in upholding peace, stability and security of the country in accordance with the law.

147. It is submitted that during the period under review, significant progress has been made in rolling back certain laws, regulations and practices that had hitherto limited the full enjoyment of human rights in Malaysia, particularly on civil and political rights.

148. The Government of Malaysia underscores its commitment to continue ensuring the promotion and protection of all human rights in the country, taking into account the needs of the most vulnerable and disadvantaged segments as well as society's readiness particularly with regard to certain sensitive issues such as religion, race and rights of refugees or undocumented migrants, among others.

149. As developments reflected in this report have illustrated, Malaysia is on its way towards achieving a much sought after balance in terms of securing economic, social and cultural rights on the one hand and promotion and protection of civil and political rights on the other.

#### Notes

<sup>1</sup> A/HRC/11/30 Paragraphs 104–106; pp. 21–28.

<sup>2</sup> *Ibid.*, Paragraph 104; pp. 21–25.

<sup>3</sup> Malaysian corporate entities that regularly provide tertiary-level scholarships and grants include FELDA, *Khazanah Nasional*, *Permodalan Nasional Berhad* (PNB), PETRONAS, Sime Darby Group, TM Malaysia, *Tenaga Nasional Berhad* (TNB), UEM Group, etc. Additionally, various state-level foundations provide similar form of assistance.

<sup>4</sup> Further information on MTCP may be found at <http://mtcp.kln.gov.my/>

- <sup>5</sup> Partners and stakeholders involved in preparing the NEB include the United Nations Education, Scientific and Cultural Organisation (UNESCO), the World Bank, the Organisation for Economic Cooperation and Development (OECD), local universities, principals, teachers, lecturers and students. Preliminary report on the NEB may be downloaded at:  
<http://www.moe.gov.my/userfiles/file/PPP/Preliminary-Blueprint-Eng.pdf>
- <sup>6</sup> *eKasih* was not discussed during Malaysia's first UPR in 2009 since it was in the very early stages of implementation.
- <sup>7</sup> 1Malaysia is an initiative aimed at reflecting values such as moderation, tolerance, understanding and acceptance through tangible and positive people-oriented programs and initiatives.
- <sup>8</sup> Under PR1MA, middle-income household is defined as either individual or family (husband and wife) earning monthly income between MYR2500-MYR7500. Other eligibility criteria includes Malaysian citizenship; applicants to be at least 21 years old at time of submitting application; at time of application, applications must not already own more than one property.
- <sup>9</sup> Parliament ratified Malaysia's accession to the CRPD on 6 July 2010.
- <sup>10</sup> Background information on the GTP and ETP, including Annual Reports from 2010 are accessible at <http://www.pemandu.gov.my/gtp/> and <http://etp.pemandu.gov.my/>, respectively.
- <sup>11</sup> Inquiries undertaken by SUHAKAM during the review period include: (i) Report of SUHAKAM public inquiry into the incidents during and after the public assembly of 28 April 2012; (ii) *Laporan ringkas hasil penemuan siasatan awam ke atas dakwaan pelanggaran hak asasi manusia termasuk penggunaan kekerasan yang melampau sebelum dan semasa perhimpunan pada 9 Julai 2011*; (iii) Report Of SUHAKAM Public Inquiry Into The Arrest And Detention Of Five Lawyers Of The Kuala Lumpur Legal Aid Centre On 7 May 2009; and (iv) SUHAKAM National Inquiry into the Land Rights of Indigenous People in Malaysia. Further details on SUHAKAM inquiries may be accessed via [http://www.suhakam.org.my/public\\_inquiry](http://www.suhakam.org.my/public_inquiry)
- <sup>12</sup> The three annulled proclamations of emergency are: (i) Proclamation of Emergency 1966 [*P.U. (A) 339A/1966*]; (ii) The Proclamation of Emergency 1969 [*P.U. (A) 145/1969*]; and (iii) The Proclamation of Emergency 1977 [*P.U. (A) 358/1977*]
- <sup>13</sup> A/HRC/16/47 Add. 2 dated 8 February 2011
- <sup>14</sup> Article 118 of the Federal Constitution provides that no election to the House of Representatives or to the legislative assembly of a state shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.
- <sup>15</sup> Elections Act 1958 [Act 19], Election Offences Act 1954 [Act 5], Elections (Conduct of Elections) Regulations 1981 [P.U. (A) 386/1981], Elections (Postal Voting) Regulations 2003 [P.U. (A) 185/2003], and Elections (Registration of Electors) Regulations 2002 [P.U. (A) 293/2002].
- <sup>16</sup> Election Offences Act 1954 sets out three main types of election offences - electoral offences, corrupt practices and illegal practices in relation to election agents and election expenses. Election offences range from tampering with the electoral roll, nomination paper, ballot paper or ballot box, corruptly inducing persons to vote for a certain candidate to employers prohibiting their employees from voting.
- <sup>17</sup> Additional information on the 5 MACC oversight panels namely: (i) The Anti-Corruption Advisory Board; (ii) Special Committee on Corruption; (iii) Complaints Committee; (iv) Operations Review Panel; and (v) Consultation and Corruption Prevention Panel as well as information on MACC in general may be accessed via [www.sprm.gov.my](http://www.sprm.gov.my)
- <sup>18</sup> CAC/COSP/IRG/2013/CRP.11