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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review *

Malaysia

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

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

**RESPONSE OF THE GOVERNMENT OF MALAYSIA TO THE
RECOMMENDATIONS LISTED UNDER PARAGRAPH 106
OF THE OUTCOME REPORT OF THE UNIVERSAL
PERIODIC REVIEW OF MALAYSIA**

In accordance with the relevant provisions contained in the annex to Human Rights Council resolution 5/1 concerning the adoption of the Universal Periodic Review working group outcome reports, the Government of Malaysia has examined the recommendations noted under paragraph 106 of the draft outcome report of the Universal Periodic Review of Malaysia and offers the following responses:

<i>Number</i>	<i>Recommendation</i>	<i>Response</i>
1	Ratifies the ICCPR and CAT and implements both treaties at national level (United Kingdom); Recommended that Malaysia ratify the Disabilities Convention (Finland); Withdraw all of its reservations to CEDAW and CRC as soon as possible (Finland); to withdraw its reservations to CRC (Belgium); Promotion of gender equality and protection of childhood and that favourable consideration be given to withdrawing the reservation on CRC and CEDAW (Mexico); Withdraw the reservations made to CEDAW, as an extension of measures already taken in 1998 (France).	<p>Malaysia is progressively studying the proposal to ratify ICCPR and CAT and would be in a position to do so once major issues related to the legislative framework are resolved.</p> <p>Malaysia signed CRPD on 8 April 2008 and is in the final stages of ratifying the convention.</p> <p>Malaysia is progressively reviewing the reservations to CEDAW with a view to lifting them, taking into consideration the constitutional provisions, laws and national interests.</p> <p>Malaysia has undertaken the necessary policy and legislative amendments and conducted awareness programmes targeted at all sections of society on gender equality and children's rights. These activities were carried out with substantive involvement of NGOs and civil society.</p> <p>Presently, the Government is formulating a National Child Protection Policy and its Plan of Action in order to enhance protection of children from negligence, abuse, violence and exploitation.</p>
2	Take further steps towards protecting human rights of migrant workers, refugees and their dependants including through signature and ratification of the 1951 United Nations Convention relating to the status of Refugees (United Kingdom).	<p>Malaysia is not party to the 1951 United Nations Convention relating to the status of refugees and as such does not recognise persons claiming refugee status or asylum seekers.</p> <p>However, 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.</p> <p>Malaysia is improving its legislative framework to establish an appropriate mechanism for the treatment of such persons.</p>

<i>Number</i>	<i>Recommendation</i>	<i>Response</i>
3	That domestic legislation be brought into conformity with CEDAW (Chile).	Malaysia is undertaking appropriate measures including strengthening existing legislation and is currently engaging relevant stakeholders especially civil society to translate the provisions of CEDAW into domestic laws.
4	Accede to the Rome Statute of the International Criminal Court (France).	<p>Presently, Malaysia is not considering accession to the Rome Statute of the ICC. Nevertheless, the Government continues to observe and assess the implementation and operationalisation of both the Rome Statute and the ICC.</p> <p>Malaysia does not preclude the possibility of cooperation with the ICC, however such cooperation can only occur once the domestic legal framework is strengthened so as to enable the prosecution of crimes under the jurisdiction of ICC, whether committed in the country or abroad.</p>
5	Enact laws pertaining to anti-discrimination (Ukraine).	<p>Equality before the law and protection from discrimination on the grounds of religion, race, descent, gender or place of birth is enshrined in Article 8 of the Federal Constitution.</p> <p>Additional protection against discrimination is instituted in various other existing legislation and through policy measures.</p>
6	Implement the recommendations of the Committee on the Rights of the Child to ensure comprehensive protection of the rights of children, including those of minority groups, indigenous peoples and migrant workers (South Africa).	The Government has established a Technical Committee to coordinate implementation of recommendations of the CRC Committee, including the protection of the rights of children of minority groups, indigenous peoples and migrant workers.

<i>Number</i>	<i>Recommendation</i>	<i>Response</i>
7	<p>Ensures the independence of SUHAKAM in accordance with the Paris Principles (United Kingdom, Netherlands) and amend act 597 (United Kingdom); so that the SUHAKAM's scope covers all rights in the Universal Declaration of Human Rights (United Kingdom, Netherlands). Recommended that an efficient follow-up system for the recommendations given by SUHAKAM be developed and it also recommended that Malaysia take measures to ensure the compliance of the Commission with the Paris Principles (Finland); That Malaysia strengthen the independence of SUHAKAM in accordance with the Paris Principles (Canada).</p>	<p>SUHAKAM functions independently and does not receive instruction from the Government. SUHAKAM has wide functions and powers which include inquiring into complaints on human rights infringements.</p> <p>SUHAKAM's independence is in line with the Paris Principles and the latter's provisions on the composition and guarantees of independence and pluralism.</p> <p>SUHAKAM members are appointed by the King based on the recommendation of the Prime Minister upon consultation with the appointments committee comprising the Chairman of SUHAKAM and three members from civil society representatives.</p> <p>With a view to strengthening SUHAKAM's operational capabilities, the Government had undertaken measures to amend Act 597 which has been ratified by Parliament.</p>
8	<p>Establish an independent and impartial police complaints commission in accordance with the recommendations of the Royal commission on police reform (Netherlands).</p>	<p>The Government is in the process of establishing an independent and impartial commission that has been designated the Enforcement Agency Integrity Commission as an alternative to the police complaints commission proposed by the Royal Commission.</p> <p>The proposed Enforcement Agency Integrity Commission will have wider jurisdiction as it is given the power to investigate complaints of misconduct not only by the police force but also by other federal enforcement agencies.</p> <p>Currently, the establishment of the proposed Enforcement Agency Integrity Commission is undergoing the necessary legislative process through Parliament.</p>
9	<p>Ensure the regular training for judges, prosecutors, the representatives of the police and other law enforcement agencies on human rights, non-discrimination and the legally binding nature of the international law (Ukraine).</p>	<p>Members of the Malaysian Judiciary have been actively involved in continuous legal education. Judges and judicial officers participate in seminars, workshops, conferences and training courses at the regional and international levels. Police and other law enforcement agencies continue to receive appropriate and necessary training.</p> <p>Various activities on capacity building in relation to human rights were conducted. The Judicial and Legal Training Institute provides courses to enhance knowledge, expertise and quality of public officers, statutory bodies and local authorities, on human rights issues.</p>

<i>Number</i>	<i>Recommendation</i>	<i>Response</i>
10	Reduce the number of crimes for which the death penalty may be handed down, including non-violent crimes, and to consider abolishing death penalty (France).	<p>Offences that carry the death penalty in Malaysia are limited in number and only involve crimes of very serious nature.</p> <p>However, the Government is considering to further reduce this number by among others, proposed amendments to existing anti-drug trafficking legislation to reduce the maximum sentence to life imprisonment.</p> <p>Malaysia is also reviewing all offences that carry the death penalty by reconsidering the appropriate charges to be preferred in that only in deserving cases will the charges that carry mandatory death penalty be framed against the offences.</p>
11	Outlaw corporal punishment at home; and provide victims of domestic violence with access to legal remedies and protection from potential perpetrators. Effective campaigns should be set in place to inform and sensitise the population on this matter (Germany).	<p>Protection against domestic violence is enshrined in existing legislation including the Domestic Violence Act 1994, the Penal Code and the Child Act 2001.</p> <p>The Child Act 2001 was enacted based on the principles of the CRC and provides for laws relating to the care, protection and rehabilitation of children, without regard to distinction of any kind.</p> <p>Victims of domestic violence are afforded protection and avenues for remedies under existing legislative and administrative frameworks.</p> <p>Awareness and sensitisation campaigns are being consistently carried out by the Government.</p>
12	Strengthen efforts to combat violence against women, including by ensuring that rape within marriage, defined as being when one of the spouses does not consent, is a criminal offence (Canada).	<p>The Government has undertaken necessary measures to address this issue, including by amending the Domestic Violence Act, the Criminal Procedure Code, the Penal Code and the enactment of the Anti-Trafficking in Persons Act of 2007, all of which are aimed at strengthening protection for victims of domestic violence.</p> <p>The Domestic Violence Act was amended to expand the definition of “domestic violence” to include emotional, mental and psychological forms of domestic violence; to extend the duration of interim protection and to introduce a new provision on the right to compensation to the victim.</p> <p>The Penal Code was amended to provide that “any man who during the subsistence of a valid marriage causes hurt or fear of death to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to 5 years.”</p>

<i>Number</i>	<i>Recommendation</i>	<i>Response</i>
13	Consider an alternative to indefinite preventive detention such as criminal prosecutions (United Kingdom); Ensure that provisions for arrest and detention are compatible to international human rights standards; that all persons detained have timely access to legal remedies to challenge their detention, have access to legal counsel and are brought to trial or released without unnecessary delays (Germany); Consider amending the Internal Security Act and bring domestic security legislation in line with international human rights standards, including through increasing legal safeguards of detainees and abolishing the practice of long detention without trial (Italy).	<p>The Government considers existing preventive detention legislation to be of vital importance to national security. These laws are to prevent subversive elements and protect the security of the nation and its people, as recognised in international law. At the same time, proper and sufficient safeguards are provided to ensure compliance with the rule of law.</p> <p>The Government considers that safeguards for the protection of the human rights of persons detained under such legislation are sufficiently provided for under existing legislation. That notwithstanding, the Government plans to undertake a comprehensive study to review the Internal Security Act.</p>
14	Adopt the measures necessary to guarantee freedom of religion (Chile); Continue to guarantee religious freedom by taking away any impediment to the full enjoyment of this basic human right for all its citizens (the Holy See).	<p>The Federal Constitution guarantees the right to freedom of religion. Each religious group is given the freedom to manage its own religious affairs, institutions and property for religious or charitable purposes. Every person has the right to profess and practice any religion and subject to certain restrictions, propagate his/her own religion.</p> <p>The Federal Constitution also allows for States and the Federal Territories to promulgate laws to control or restrict the propagation of non-Islamic religious doctrine or belief among Muslims.</p> <p>The Federal Constitution also provides that the right to exercise freedom of religion shall not contravene any law relating to public order, public health or morality. The Government considers that such restrictions are fully consistent with relevant provisions of international law.</p>
15	Adopt the law on the media in order to guarantee the freedom of expression and information (France); Review and amend laws such as the Sedition Act, the Printing Press and Publications Act, and the Official Secrets Act, to enable its citizens to exercise fully the right to freedom of opinion and expression, including freedom of the press and freedom of information (Canada).	<p>The Government believes that existing legislation in Malaysia provides sufficient guarantees to ensure that the right to freedom of opinion and expression may be exercised fully.</p> <p>The Government also believes that preservation of national unity, harmony and security are of paramount importance. Thus, while certain restrictions are in place under the relevant laws and regulations, these are in conformity with international standards.</p>

<i>Number</i>	<i>Recommendation</i>	<i>Response</i>
16	That the Police Act be reformed in such a way that the requirement of a police permit for public assemblies of three or more persons does not violate the right to peaceful assembly (Netherlands); Repeal or amend the Internal Security Act and the Emergency Public Order and Preventive Ordinance in accordance with its international human rights obligations, and in the meantime refrain from applying them to political activists, journalists or others engaged in peaceful activities (Canada).	The right to peaceful assembly is fully guaranteed by the Federal Constitution. However, as is the practice in other countries, the Government considers that the requirement for permits or approval from the relevant authorities to hold such assemblies or gatherings is essential for the maintenance of security, public order, morality and to avoid incitement to disturbances of peace.
17	Ensure comprehensive and universal access to health services for citizens and non-citizens alike, including migrant workers, refugee, asylum seekers, indigenous peoples (Ukraine).	<p>Health services in Malaysia are publicly and privately provided. The private services are accessed either through insurance or a fee. The public primary health care facilities are accessible to all, without any discrimination, regardless of social grouping, gender, citizenship and affordability to pay, including migrant workers irrespective of their legal status. Under public primary care services, comprehensive care is provided covering from antenatal, maternal, infant and child, adolescent, adult and elderly care. In remote areas, communities are provided with outreach services including services of mobile clinics and flying doctors.</p> <p>The National Population and Family Development Board provides family base-health clinics which aims to promote healthy living. Free and discounted screening services are made available to the public and are not restricted to only citizens. The Board also conducts free courses on sexual reproductive and family development for the public which is aimed to promote better family life.</p>
18	Develop with UNHCR an administrative framework to distinguish refugees and asylum seekers from irregular migrants and apply international standards for the treatment of foreign nationals (Netherlands).	<p>Despite not being a party to the 1951 Refugee Convention and its Protocol and not recognising the status of persons claiming refugee status and/or asylum seekers, Malaysia has established administrative arrangements to provide assistance and protection to such persons on humanitarian grounds on a case-by-case basis, which effectively distinguishes persons claiming such status from the irregular migrants.</p> <p>At present, the Government is engaged with UNHCR in developing a legislative framework to coordinate policy and enforcement measures towards irregular migrants claiming refugee status.</p>

<i>Number</i>	<i>Recommendation</i>	<i>Response</i>
19	Adopt the necessary measures to prevent abuses against migrant workers and respect for their rights (Chile); Allow migrant domestic workers full access to legal remedies in case of abuse and duly investigate all cases of abuse and bring perpetrators to justice; take effective steps to protect migrant workers from attacks from militia groups, ensure that the pre-departure training centres are operated to meet the basic needs of the workers and do not encourage any form of abuse (Germany); Continue to take measures to ensure that the rights of migrants are observed and not to allow any negative phenomena related to migration, including trafficking in persons (Belarus).	<p>Foreign workers are protected by local labour laws including the Employment Act 1955; the Industrial Relations Act 1967; the Trade Union Act 1959; the Workmen's Compensation Act 1952; and the Occupational Safety and Health Act 1994. Foreign workers also have access to legal remedies.</p> <p>The Government regularly reviews labour policies, laws and regulations to meet current needs. New provisions are being introduced to deal with cases of sexual harassment involving foreign workers and to protect the wages and condition of work for foreign domestic workers and to control exploitative employment of foreign workers.</p> <p>The Government has also introduced guidelines on the requirements for employers for the recruitment of foreign domestic workers on the treatment and protection of the rights of foreign domestic workers.</p>
