

## SUBMISSION OF THE MALAYSIAN BAR COUNCIL

1. On 28 April 2006 the Government of Malaysia (“GOM”) submitted an aide-memoire (“AM”) to the Secretariat of the United Nations detailing GOM’s voluntary pledges and commitments in respect of its candidature to the Human Rights Council.

2. The Bar Council of Malaysia, the regulator of the legal profession in Peninsular Malaysia and which represents currently about 12,600 practising advocates and solicitors, hereby makes its submission to the Human Rights Council. The state of human rights in Malaysia today is different than under the previous administration. We have assessed the state of human rights in Malaysia vis-à-vis GOM’s voluntary pledges and commitments.

### **3. Universal Declaration of Human Rights (“UDHR”)/International Human Rights Treaties, Laws and Norms (GOM’s statement in para. 2 of the AM).**

3.1 **UDHR.** There has been no real attempt to understand and interpret the Federal Constitution in light of GOM’s stated commitment to the UDHR. The Malaysian courts have taken the clear position<sup>i</sup> that the UDHR is merely a statement or declaration which is not legally-binding on GOM. GOM has stated on numerous occasions that UDHR would only be given effect insofar as it is not inconsistent with the Federal Constitution. This is one possible reason for GOM’s apparent reluctance to-date to accede to and ratify the International Covenant on Civil and Political Rights (“ICCPR”) and International Covenant on Economic, Social and Cultural Rights (“ICESCR”), and their respective optional protocols.

3.2 **Women.** GOM acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1995 with reservations (see Appendix A). The Bar Council has commented upon those reservations<sup>ii</sup>. GOM has also not ratified the Optional Protocol to CEDAW. Further, save for amendment to Article 8(2)<sup>iii</sup> of the Federal Constitution in 2001, which prohibits gender discrimination, CEDAW’s principles of substantive equality and non-discrimination have not been incorporated into domestic legislation and cannot be invoked and given effect to by courts, tribunals and administrative authorities. This was clearly illustrated in the Beatrice Fernandez case<sup>iv</sup>. Pursuant to a collective agreement Beatrice, a flight stewardess, was dismissed for failing to resign when she became pregnant. Beatrice challenged the validity of the collective agreement as being unconstitutional and discriminatory against her as a woman. The Federal Court<sup>v</sup> held that the equal protection guarantee in Article 8(2) extended only to persons in the same class, i.e. as all female flight stewardesses were subject to the same requirement, there was no discrimination. It also held that Article 8(2) was limited to individuals aggrieved only by violations of rights by the State. Constitutional remedies were not available for violations of rights by private individuals. Apart from this, GOM also continues to discriminate against women through gender-discriminatory legislation, e.g. in citizenship (see Appendix B). Women themselves are unable to effect the necessary changes as their participation in decision-making is low despite GOM’s commitment under its 9<sup>th</sup> Malaysian Plan, the Beijing Platform for Action and CEDAW to implement 30% participation of women in decision-making (see Appendix C). Ratification of CEDAW and amending the Constitution alone are insufficient. Gender-equality legislation adopting CEDAW principles must be enacted as stated by the CEDAW Committee<sup>vi</sup>. To-date no steps have been taken by GOM.

3.3 **Children.** GOM acceded to the Convention of the Rights of the Child (“CRC”) with reservations<sup>vii</sup>. Provisions have not been comprehensively adopted in domestic legislation. There is an absence of express statutory provisions in the principal legislation, Child Act 2001, mandating that children have the right to make their views known in proceedings affecting their interests, and/or adequate representation of their needs to be made independently particularly in the juvenile justice system or in civil proceedings, e.g. custody arrangements in divorce proceedings. The underlying spirit of the CRC to treat children differently from adults has not been applied by the courts in the

interpretation of detention provisions under the Child Act<sup>viii</sup>. The Federal Court failed to annul a legal provision in the Child Act which allows for the deprivation of a liberty of a child at the pleasure of the Ruler resulting in an undetermined length of deprivation<sup>ix</sup>. Children (of Malaysians) born without birth certificates are denied the opportunity to attend schools. Children of refugees do not receive any free public primary education as they are undocumented by GOM and are therefore unable to go to government schools. Further, concerns raised by the Committee on the Rights of the Child at its 44<sup>th</sup> session in 2007 have yet to be comprehensively addressed by GOM. Positive action is needed by GOM to fulfil its obligations under CRC.

3.4 **Persons with Disabilities.** Malaysia recently signed the Convention on the Rights of Persons with Disabilities (“CRPD”) on 8 April 2008 but with reservations to Article 16<sup>x</sup>. GOM did not sign the Optional Protocol. Being a party to the Optional Protocol is imperative as there is no one single GOM agency that oversees all disability-related issues, thus making it difficult for disability issues to be dealt with comprehensively. Although GOM enacted the Persons with Disabilities Act 2008, which came into force in July 2008, the Act does not provide for any form of punishment or remedy for breaches. It remains to be seen how GOM will ensure provisions are implemented. The Act also does not ensure that the persons with disabilities are not discriminated, e.g. education and employment opportunities. The right to education is provided in the Constitution<sup>xi</sup> and GOM declared when ratifying the CRC (Art 28.1 (a)) in 1995 that though primary education is not compulsory, free public primary education is available to all. To-date, more than 10 years since that declaration, such education is not sufficient for children with disabilities.

3.5 **Indigenous Peoples.** Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its 76<sup>th</sup> session spelled out that rights of ownership and possession of the indigenous peoples over lands which they traditionally occupy shall be recognised. Measures must be taken to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities. Notwithstanding the Convention, fundamental rights given by the Federal Constitution and the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples in Malaysia continue to face threats to ownership of ancestral or native customary lands. State Governments have cleared ancestral land and/or alienated land occupied or utilised by aborigines to third parties (e.g. for logging, palm cultivation) and has only offered to pay compensation for loss of agricultural produce planted on such land.<sup>xii</sup> Such activities have also proceeded without compliance with the Environmental Quality Act 1974 and the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 in respect of logging and other activities on hill forests. Preliminary work has even permanently destroyed/killed live tributaries that feed rivers which are a source of water and livelihood. The most crucial part that needs to be preserved is ancestral or native customary land, not only for the sake of aborigines’ livelihood but also for culture and spiritual values of the aboriginal community. GOM has not taken sufficient steps as necessary to identify lands which the aborigines concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. GOM has also found it difficult to extend to the aboriginal community the right to proper education (notwithstanding GOM’s statement in para. 8 of the AM) and good health due to lack of appropriate infrastructure to the settlements. Ultimately, aborigines should have access to all amenities and facilities similar to other citizens of Malaysia.

3.6 **Migrant workers and refugees.** 1/3 of workers in Malaysia are migrants. A simplistic approach of classifying them as either “legal” or “illegal” excludes all undocumented migrants from rights under the Federal Constitution and UDHR. The current system of recruiting and managing migrant labour perpetrates lack of responsibility and accountability by GOM and individual employers. Although it is an offence under the Passports Act to retain the passport of another, no deterrent action is taken against employers for retaining employees’ passports. The existence of migrant workers who are charged exorbitant recruitment fees to secure employment in Malaysia vide

the system of "outsourcing" and who fall into bonded labour or work without pay and little food clearly constitutes a breach of Article 4 of UDHR. Many groups suffer confinement to workplace and accommodation, poor housing conditions (connected to overcrowding, lack of proper food preparation and sleeping areas, lack of hygienic facilities for bathing and toilets), restrictions on seeking medical treatment and contract substitution. Contrary to CRC and Article 26 of UDHR, no right to birth certificates, education (notwithstanding GOM's statement in para. 8 of the AM) or access to health care is provided to children of migrant workers, refugees, asylum seekers and stateless persons. Redress for criminal offences perpetrated against migrants is unlikely as the possibility of arrest of a migrant complainant when lodging a complaint is high. In contravention of CEDAW, temporary employment visit passes are issued with conditions prohibiting marriage during tenure of employment and deportation upon pregnancy. Migrant workers are subject to mandatory testing for HIV. In breach of Article 5 of UDHR, whipping is widely used to penalise migrants arrested for immigration offences. Stateless persons, asylum seekers and refugees also often receive this punishment. Due to absence of documentation and inability to determine age of refugees and asylum seekers, minors have been held in detention and also been whipped. Migrant workers, refugees, asylum seekers and stateless persons charged with offences under the Penal Code rarely enjoy the privilege of legal representation and are often induced into pleading guilty, purportedly in their own interest as trials often taken several months/years to be concluded during which time the migrant worker's pass may expire and deprive him of any work opportunity. Section 33 of the Immigration Act provides for arrest, detention and deportation of "illegal immigrants" notwithstanding no proceedings have been instituted for alleged offences under the Immigration Act. As at March 2006, the number of deportees stood at 362,958. Since the introduction of immigration courts within immigration camps in remote parts of Malaysia, it is questionable whether reasonable standards of detention, conditions of detention and fair public hearing by an impartial tribunal are being observed. These circumstances display scant regard for Articles 9, 10 and 11 of UDHR. Migrant workers who seek redress for long work hours, no rest days and little or non-payment of wages before courts or tribunals are in similar vulnerable positions as delays often frustrate their claims as their status as documented migrant workers often expires prior to the hearing. Special passes issued by the immigration department are available but their prohibitive cost, given a migrant worker's unemployment, of RM100.00 per month and their inability to work legally, constitutes a deterrent to instituting claims. Additionally, personal injuries suffered in the course of employment often go uncompensated in spite of the existence of the Occupational Safety and Health Act. All domestic workers are excluded from several key provisions of the Employment Act such as weekly rest days, sick days and limits to hours of work and overtime. Reports of confiscation of documents issued by United Nations High Commission for Refugees (UNHCR) are frequent. Given the inability of UNHCR officials to gain access to detention centres and prisons, many registered refugees and asylum seekers are frequently deported to Malaysian borders contrary to the principle of non-refoulement and Article 14 of UDHR. Reports of collusion between immigration officers and traffickers "trading" on deportees have also surfaced. In addition to Articles 20 and 23 of UDHR, the International Labour Organisation has recognised freedom of association and the effective recognition of the right to collective bargaining as a core labour standard. The Right to Organize and Collective Bargaining Convention, 1949 (No. 98) was ratified in 1961. Migrant workers may fall within the scope of collective agreements where there are unions in that industry but have not been given the right to form societies or associations to look after their welfare.

4. **Free and fair elections (GOM's statement in para. 3 of the AM).** Despite recent successes of opposition political parties in the 12<sup>th</sup> General Elections ("12<sup>th</sup> GE") held on 8 March 2008, considerable concerns remain with respect to variations in the delineation and number of registered voters in Parliamentary constituencies and whether these could arguably be a violation of the equal protection of the law clause of the Federal Constitution (Article 8(1)). Grave doubts also exist on the

transparency of voting by postal ballots. Concerns also exist about the use by candidates of government assets and announcements of new projects or funding during election campaigning.

5. **Promotion of free media (GOM's statement in para. 4 of the AM).** Control of all free-to-air news stations – television or radio - is in the hands of GOM or GOM-linked companies. News of non-government political views or activities is rarely aired on GOM-owned and operated television and radio stations, if at all. Mainstream print media did not carry any opposition political advertisements during the period prior to the 12<sup>th</sup> GE. In response to mainstream media's reticence, new news websites have sprung up and there is increasing involvement of ordinary citizens with minimal censorship. GOM continually states that the media in Malaysia is free because there is no censorship of the Internet. However on 27 August 2008 GOM through its Communications and Multimedia Commission ordered that access to a popular Malaysian news website ("Malaysia Today"), generally known to be critical of GOM politicians, be blocked by all Malaysian-licensed internet service providers (although the effectiveness of this censorship is doubtful since mirror sites were not blocked). GOM has investigated and used the Sedition Act 1948 against bloggers in an attempt to restrict free speech.

6. **Freedom of Expression (GOM's statement in para. 5 of the AM).** GOM continues to utilise section 27 of the Police Act to require a permit to be obtained for public assemblies of more than 3 persons. A Human Rights Day walk organised by the Bar Council on 9 December 2007 had to be called off. A group of activists who went ahead with the walk was arrested and prosecuted. In contrast, GOM through its police force was "powerless" to act against an assembly of 300 persons gathered to protest a Bar Council open forum held on 9 August 2008 on the consequences of an individual's conversion into Islam, and instead forced the Bar Council to terminate its forum. Subsequently there were threats by some in power to use the Internal Security Act 1960 ("ISA") or Sedition Act against the Bar Council. Rallies to protest US action in the Middle East are allowed to proceed without harassment. The right to express views contrary to those held by GOM is curtailed.

7. **SUHAKAM (Malaysian Human Rights Commission) (GOM's statement in para. 6 of the AM).** Since its establishment in 1999, SUHAKAM has produced 8 annual reports and numerous other topical reports on the state of human rights in Malaysia. None of these reports has ever been discussed in Parliament. Some GOM agencies had wanted to see such annual reports before being tabled in Parliament<sup>xiii</sup>. GOM has not materially acted on any proposal made by SUHAKAM such as to repeal the draconian ISA or to expedite the ratification of international human rights treaties.

8. **Terrorism/Integrity of Law and Order Enforcement Agencies (GOM's statement in paras. 7 and 9 of the AM)/Courts.** As at 4 September 2008, 66 persons are detained by GOM under the ISA, which provides for indefinite detention without trial. 5 have been in detention for more than 6 years; 5 for > 5; 6 for > 4; 6 for > 3; 13 for > 2; 14 for > 1; and 17 for < 1 year. Not all are detained for alleged terrorism. Detainees are denied many basic rights and forced to attend GOM rehabilitation programmes. There is other similar legislation in force that provide for detention without trial. Judicial review of detentions is extremely limited due to legislative ouster of the courts' jurisdiction to question the merits of detention orders. The integrity of law and order enforcement agencies and the courts are much in question. A Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police, set up on 4 February 2004, made 125 recommendations including the setting up of an Independent Police Complaints and Misconduct Commission ("IPCMC") to provide for an institutionalised, external, independent oversight mechanism to investigate police corruption, abuses of powers and other criminal acts. Cases of death in police custody, police brutality, violation of human rights relating to arrest and detention, freedom of speech and assembly still remain pressing issues. The deadline of 31 May 2006 to realise the IPCMC

as recommended was not met. Much later and in its place, GOM tabled a watered-down Special Complaints Commission (“SCC”) Bill in December 2007, though now intended to cover not only police but all enforcement officers at federal level. The SCC Bill contains many defective provisions<sup>xiv</sup>, and is still under study. In dealing with migrant workers, refugees, asylum seekers and undocumented workers, GOM utilises a people’s ‘voluntary corps known as RELA. RELA personnel have been used to carry out raids on premises and detain without warrant undocumented migrant workers and refugees/asylum seekers, often on a “bounty” basis given by GOM, which has led to massive abuses and ill-treatment of detainees, evidencing lack of integrity in the performance of duties. 2007 saw the coming to light of a controversial series of video clips highlighting a lawyer allegedly brokering the appointment of judges in 2000. A subsequent Royal Commission of Inquiry determined that further investigations should be conducted against key individuals. To-date no news on such investigations (if any) has been forthcoming. It also recommended setting up an independent Judicial Appointments Commission. Although GOM announced in April 2008 that one would be set up, GOM has not made any headway on the matter. In July 2008 a Panel of Eminent Persons<sup>xv</sup> concluded that the dismissal of Malaysia’s Lord President and two senior judges in 1988 was not only unconstitutional but reflective of political interference of the judiciary and bias<sup>xvi</sup>. This and other adverse perceptions have undermined public confidence in the Judiciary. Concerns have also been expressed about GOM’s apparent selective prosecution of alleged violations of the law.

9. **Proactive and Innovative Measures to Further Promote and Protect Human Rights and Fundamental Freedoms/Official Secrets/Freedom of Information/Data Protection/DNA Identification/Privacy (GOM’s statement in para. 11 of the AM).** Notwithstanding this statement, it is evident that GOM does not view the creation of an environment where privacy and personal data are protected and information on the workings of Government is made available to the public as key issues. While there has recently been increased prior consultation, GOM legislative bills remain officially secret until they are released for debate in Parliament. The concept of freedom of information does not exist where GOM is concerned. As shown most recently (in August 2008) by the example of the DNA Identification Bill, GOM released proposed legislation on a Thursday, scheduled debate the following Tuesday, with every intention of it being passed by Thursday of the same week. This was blocked by strong criticism of the Bill by Opposition parliamentarians and Bar Council, and further debate has been delayed. This Bill will allow authorities to obtain both non-intimate and intimate samples of DNA by any means necessary from those charged (but not convicted) or convicted of any criminal offence. Failure to furnish a sample may lead to criminal prosecution and jail and/or fine upon conviction. Production of DNA evidence by the prosecution will be “conclusive evidence” and cannot be challenged in court. The Bill introduces significant inroads to civil rights, criminal procedure and evidentiary proceedings. Yet GOM has wilfully refused to submit this Bill to a Parliamentary Select Committee to hold open hearings and receive oral and written submissions. GOM attempted to rush this Bill through Parliament without first having in place any data protection legislation. One has been promised since 2001, but no urgency has been shown. Only in the face of strong criticism of the DNA Identification Bill has GOM announced that it will bring a Data Protection Bill before Parliament. Such promises have been made before. Malaysia does not have the right to privacy enshrined in its Federal Constitution. It also does not have corresponding laws akin to Article 12 of UDHR, Article 8 of the European Convention of Human Rights and Article 17 of ICCPR, which provide for the privacy of individuals to be protected and respected.

10. **Freedom of Religion/Religious Dialogue.** Non-Muslims also face difficulties from the authorities in the construction of places of worship. The right of religious organisations to publish and comment on matters in the public sphere is also being threatened by GOM’s actions.<sup>xvii</sup> And notwithstanding 51 years of independence, inter-religious dialogue remains problematic.

**MALAYSIA'S CANDIDATURE TO  
THE UNITED NATIONS HUMAN RIGHTS COUNCIL**

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**AIDE-MEMOIRE**

Malaysia, a member of the Commission on Human Rights prior to it being dissolved, is seeking election to the new Human Rights Council (HRC) at the elections to be held by the United Nations General Assembly on 9 May 2006.

2. Malaysia, since attaining independence in 1957, upholds that the promotion and protection of all human rights as an indispensable aspect in the process of nation building. Consistent with the Universal Declaration of Human Rights (UDHR), successive Malaysian Governments have made the guarantee of the individual's fundamental rights and liberties, as enshrined in the Constitution, the cornerstone of its policies and programmes; while noting that all individuals have duties and responsibilities to the community to ensure the continued enjoyment of peace, stability and prosperity.

3. The respect that the Malaysian Government has for each individual's rights is clearly manifested in the fact that free, fair and peaceful General Elections have been held consistently without fail since independence for the people to elect their representatives to the various branches of Government within the nation's democratic system. Universal suffrage has been a principal feature in each election.

4. Another manifestation of the importance that the Government attaches to the enjoyment of all human rights and fundamental freedoms is the promotion of a free media, including in cyberspace, as well as the encouragement of vibrant and active civil societies.

5. As a nation with a multi-ethnic and multi-religious society, Malaysia is confident that its experience in managing a plural society would bring an important dimension to the work of the new Human Rights Council. Malaysia recognizes that the stability of any multiethnic society depends on a spirit of mutual tolerance and respect for diversity which is based on an inclusive and responsive political and legal system, which balances civil and political rights such as the freedom of expression and opinion and the wider needs of such a society.

6. Laws, regulations and institutions related to human rights in Malaysia continue to evolve in step with the increasing aspirations of a democratic society. One of the measures was the establishment of the National Commission on Human Rights (SUHAKAM) in 1999. SUHAKAM monitors human rights developments in Malaysia and is entrusted *inter-alia* with powers to investigate complaints regarding alleged human rights violations. Over and above its investigative function, SUHAKAM is also active in promoting a culture of human rights, particularly through education not only in schools but also within government institutions, such as the police force. SUHAKAM is also involved in activities at the regional and international levels.

7. The increasing threat posed by terrorism worldwide has highlighted the importance of balancing security concerns with the preservation of individual liberties. Malaysia believes that it has achieved this balance, drawing on its experience in combating the armed insurgency by forces aiming to dismantle the democratic government in the early years of its independence. The events of September 11 have also given rise to the misperception that democracy and human rights are incompatible with Islam and countries in which Islam is the dominant religion. Malaysia's record in this regard disproves this misperception. These achievements would not have been possible if individual rights and freedoms are not respected.

8. Beyond civil and political rights, the Malaysian Government has also sought to fulfill its responsibilities with regard to economic, social and cultural rights. As an example of this commitment, the Malaysian Government has consistently allocated the largest proportion of the annual budget to education. Having achieved many of the goals set out in terms of primary education, the Government is now endeavoring to expand the tertiary education system, not only as a means of strengthening the right to education but also in order to better equip Malaysians to meet the challenges posed by globalisation.

9. Malaysia is fully aware that good governance, integrity in the public sector and transparency in the Government's activities are essential if the goals of full enjoyment of human rights and fundamental freedoms are to be achieved. Towards this end, the National Integrity Plan (PIN) was launched on 23 April 2004, which is aimed at, among others, to:

- 9.1 Continuously and effectively combat and reduce the incidence of corruption, malpractices and abuse of power;
- 9.2 Enhance efficiency in the delivery system of the civil service and to reduce unnecessary inefficiencies;
- 9.3 Improve corporate governance and business ethics; and
- 9.4 Strengthen the family institution.

10. To ensure that these aims are achieved, the Government formed the Malaysian Integrity Institute, whose functions include to:

- 10.1 Undertake research and conduct training and education pertaining to community and institutional integrity;
- 10.2 Develop a database on ethics and integrity;
- 10.3 Formulate policies to enhance ethics and integrity as well as advising the Government on programmes to enhance integrity; and
- 10.4 Continuously monitor and ensure the implementation of the Plan.

11. Malaysia will continue to take proactive and innovative measures to further promote and protect human rights and fundamental freedoms in the country.

12. At the international level, Malaysia has been a member of the Commission on Human Rights (CHR) for four terms, and was a member of that body for the term 2005-2007 when the Commission on Human Rights was dissolved, to be replaced by the Human Rights Council. As an active and committed member of the Commission, Malaysia has contributed constructively in its deliberations. Malaysia is determined to continue to do so in the work and activities of the newly established Human Rights Council if elected to the membership.

13. Malaysia believes that the new Human Rights Council has an important role to play in the universal promotion and protection of human rights and in ensuring the effective enjoyment by all of all human rights. In order to achieve these lofty goals, the Human Rights Council needs to be made strong, fair, effective and efficient, and free of acrimony and undue politicization.

14. Towards this end, Malaysia pledges to:

- 14.1 Engage constructively in evolving modalities of work of the Human Rights Council with the aim of making it a strong, fair, effective, efficient and credible vehicle for the promotion and protection of human rights worldwide;
- 14.2 Support the work of the Office of the High Commissioner for Human Rights;
- 14.3 Continue to participate actively in the norm-setting work of the Human Rights Council;
- 14.4 Work towards fostering a spirit of cooperation in the Human Rights Council, free from acrimony and politicization, based on the principles of mutual respect and dialogue;
- 14.5 Promote greater coherence between the work of the Human Rights Council with other United Nations agencies and actors in achieving internationally agreed targets and goals, such as the Millennium Development Goals and those contained in the Vienna Declaration and Plan of Action, the Beijing Declaration and Platform of Action, the Copenhagen Declaration and Plan of Action as well as the Cairo Declaration and Programme of Action;
- 14.6 Actively support international action to advance the rights of vulnerable groups such as women, children and the disabled.

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## APPENDIX A

GOM's reservations re CEDAW are in respect of Articles 5(a), 7(b), 9(2), 16(1)(a), (c), (f), (g), and 16(2).

## APPENDIX B

- (i) The wording of Article 8(2) seems to suggest that discrimination based on gender coupled with other grounds is permissible. The provision provides "there shall be no discrimination against citizens on the ground *only* of religion, race, descent, place of birth or gender..."
- (ii) Article 8(2) makes specific reference to non-discrimination in relation to "employment under a public authority" implying that employment in the private sector may be unaffected by the amendment
- (iii) Article 8(5) of the Federal Constitution also provides that the equality clauses of the Constitution do not invalidate or prohibit "any provision regulating personal law", effectively leaving Muslim personal law unaffected by the amendment. The second exception in article 8(5) to the prohibition is similarly with respect to "any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion".
- (iv) Article 12(1) on rights in respect of education prohibits discrimination against any citizen on the grounds only of religion, race, descent or place of birth. The article has not been amended to include prohibition against gender discrimination;
- (v) Article 12(4) also needs to be amended to recognise the rights of both parents to decide the religion of a minor. (In *Shamala Sathiyaseelan v Dr Jeyaganesh C Mogarajah & Anor* [2004] 2 CLJ 416 the court held that a converted Muslim father is entitled to convert his children to Islam without their mother's consent and in so doing dismissed the mother's application to nullify the conversion.)
- (vi) Provisions on citizenship in Article 14, Second Schedule s. 1(d), Articles 15, 24(4) and 26(2) of the Federal Constitution continue to expressly discriminate against women's rights to citizenship, to confer citizenship on their children and to enable their foreign husbands to receive permanent residence status.

(Source: Malaysian NGO Shadow Report to the Malaysian Government Initial and Second Report 2006)

## APPENDIX C

### **Women's Political Participation**

#### **Parliament**

Year	Total No. of Women MP Candidates Contesting	Total No. of Contestants for MPs (men & women)	%of Women MP Candidates	No. of Women who won as MPs	Total No. of MPs	% of Women MPs	% of Men MPs
1990				9	180	5.00	95.00
1995				13	192	6.80	93.20

2000				19	193	9.80	90.20
2004	36			23	219	10.50	89.50
2006 <sup>3</sup>				21	219	9.60	90.40
2008	45	477 <sup>1</sup>	9.43	24	222	10.81	89.19

### State Assembly

Year	Total No. of Women SA Candidates	Total No. Contestants for SA (men & women)	%of Women SA Candidates	No. of Women State Assembly (SAs)	Total No. of SAs	% of Women SAs	% of Men SAs
1990				15	443	3.40	96.60
1995				24	498	4.80	95.20
2000				15	250	6.00	94.00
2004	61			36	576	6.9	93.75
2008	86	1105 <sup>1</sup>	7.87	40	505 <sup>4</sup>	7.92	92.08

#### Notes:

1. 477 Parliament seats and 1105 State seats are based on The Star, 10 March 2008. Total contestants are 1582 contesting 727 Parliament and State seats (excludes State seats in Sarawak).
2. Teresa Kok Suh Sim and Christina Liew Chin Jin contest both parliament and state seat. Therefore, total women's candidates are at 129 and contesting 131 Parliament and State seats.
3. Between 2004 and 2006, there were changes to the number of women MPs.
4. The 505 State seats exclude Sarawak.

(Source: Persatuan Kesedaran Komuniti Selangor (Empower)).

<sup>i</sup> As reported in Mohamad Ezam Bin Mohd Noor v Ketua Polis Negara & Other Appeals [2002] 4 MLJ 449 at 513-514).

<sup>ii</sup> Bar Council's letter dated 28 March 2008 to the Ministry of Women, Family and Community Development. The comments and views concluded that, "we are of the view that Malaysia's ratification to CEDAW obliges Malaysia to take a normative stance in promoting gender equality and eliminate all forms of discrimination against women. For Malaysia to comply with international law, its reservations, while allowed, must be limited in scope and must not detract from the purpose and objective of the convention."

<sup>iii</sup> Article 8(2) "Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law ..."

<sup>iv</sup> Beatrice Fernandez v Sistem Penerbangan Malaysia [2004] 4 CLJ 403 (CA) and [2005] 2 CLJ 173 at 719 (FC).

<sup>v</sup> The apex court in Malaysia.

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- vi CEDAW Committee's recommendations made when considering the State's report at the 35th session.
- vii Articles 1, 2, 7, 13, 14, 15, 28(1)(a) and 37.
- viii Public Prosecutor v N (A Child) [2004] 2 MLJ 299).
- ix Pendakwa Raya v Kok Wah Kuan [2007] 6 AMR 269).
- x Art 16 conflicts with Malaysian law as the Penal Code provides for capital punishments. Adoption of Art 16 would mean that disabled persons would have to be exempted from such punishment.
- xi Article 12 of the Federal Constitution 1957: "(1) Without prejudice to the generality of Art 8...there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth: (a) In the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or (b) In providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution."
- xii Although the courts in the cases of Adong bin Kuwau v Kerajaan Negeri Johor [1997] 1 MLJ 418, Nor Anak Nyawai & Ors v Borneo Pulp Plantations Sdn Bhd v. Superintendent of Lands and Survey & Anor [2001] 2 CLJ 297, and Sagong Tasi & Ors v Kerajaan Negeri Selangor & Ors [2002] 2 MLJ 591 (affirmed by Court of Appeal in 2005) have awarded the respective plaintiffs (being groups of aboriginal peoples) more substantive compensation. However cases like Sagong Tasi are still awaiting appeal.
- xiii See the report at [http://malaysianbar.org.my/legal/general\\_news/suhakam\\_rebuffs\\_demands\\_by\\_government\\_agencies.html](http://malaysianbar.org.my/legal/general_news/suhakam_rebuffs_demands_by_government_agencies.html)
- xiv Chief among the SCC's objectionable characteristics is the inclusion of the Inspector-General of Police as a permanent commissioner which not only militates against rules of natural justice, but renders the concept of an 'independent, external oversight mechanism' illusory. The other serious concern is that the SCC plays a passive role to receive and investigate complaints of misconduct in contrast to an active role as envisaged under the IPCMC, whereby the Commission can initiate an investigation of its own without receipt of a complaint.
- xv The Panel comprised Hon. Mr. Justice (Retd) J.\_S.\_Verma – Chairman, formerly, Chief Justice of India, Chairman, National Human Rights Commission, Chief Justice of the High Courts of Madhya Pradesh & Rajasthan, and Acting Governor of Rajasthan; Hon. Mr. Justice (Retd) Fakhruddin G. Ebrahim – Member, formerly, Judge of Supreme Court of Pakistan, Federal Law Minister, Attorney General of Pakistan, and Governor of Sindh Province; Dr. Ms. Asma Jahangir – Member, Advocate, Supreme Court of Pakistan, Chairperson, Human Rights Commission of Pakistan, UN Special Rapporteur for Religious Freedom or Belief, and Magsaysay Award Winner; Dr. Gordon Hughes – Member, Former President, Law Institute of Victoria, Law Council of Australia, LAWASIA, and Partner, Blake Dawson, Lawyers, Melbourne; Tan Sri Dato' Dr. Abdul Aziz bin Abdul Rahman – Member, Advocate & Solicitor, High Court of Malaya, Partner, Messrs. Nik Saghir & Ismail, Kuala Lumpur; Dato' W.S.W. (Bill) Davidson – Member, Barrister-at-Law, Advocate & Solicitor, High Court of Malaya, Senior Partner, Messrs. Azman Davidson & Co., Kuala Lumpur.
- xvi Although GOM has made ex-gratia payments to the judges involved on account of the pain and suffering they endured.
- xvii The official newspaper of the Roman Catholic Church in Malaysia, The Herald, was issued with a show-cause letter by the Ministry of Home Affairs as to why its publication permit should not be withdrawn after The Herald published news commentary during the campaigning period for a recent by-election. The Herald was also issued similar show-cause letters previously for the use of the term "Allah" in its publications. The Roman Catholic Church and another Christian denomination known as the Sidang Injil Borneo are currently pursuing legal action against GOM in the Malaysian courts in relation to Christian material withheld from distribution by GOM on the ground that such material printed in Bahasa Malaysia (the Malay language) use the term "Allah" when referring to God. GOM takes the position that non-Muslims cannot use this term.