

UNIVERSAL PERIODIC REVIEW ON MALAYSIA

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(COMANGO)

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All PJ Residents' Association Coalition (APAC) (a coalition of 9 residents' associations), All Women's Action Society (AWAM), Centre for Independent Journalism (CIJ), Centre for Orang Asli Concerns (COAC), Centre for Public Policy Studies (CPPS), Civil Rights Committee of the Kuala Lumpur and Selangor Chinese Assembly Hall, Community Action Network (CAN), Education and Research Association for Consumers, Malaysia (ERA Consumer), Health Equity Initiative, Human Rights Committee of the Malaysian Medical Association, Independent Living and Training Centre (ILTC), Indigenous and Peasant Movement Sarawak (Panggau), International Association for Peace (IAP), Indian Malaysian Active Generation (IMAGE), Knowledge and Rights with Young People through Safer Spaces (KRYSS), Malaysian Animal-Assisted Therapy for the Disabled and Elderly Association (Pet Positive), Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) (a coalition of 9 religious organisations), Malaysian Trade Union Congress (MTUC), Malaysian Youth and Students Democratic Movement (DEMA), Myanmar Ethnic Rohingya Human Rights Organisation Malaysia (MEHROM), Persatuan Sahabat Wanita Selangor (PSWS), Persatuan Masyarakat Selangor and Wilayah Persekutuan (PERMAS), Persatuan Guru-guru Tadika (PGGT), Positive Malaysian Treatment Access & Advocacy Group (MTAAG+), Protect and Save the Children (PS the Children), PT Foundation, Pusat Jagaan Nur Salam, Pusat Komunikasi Masyarakat (KOMAS), Research for Social Advancement (REFSA), Sarawak Dayak Iban Association (SADIA), Sisters in Islam (SIS), Tenaganita, United Dayak Islamic Brotherhood, Sarawak, Women's Aid Organisation (WAO), Women's Centre for Change, Penang (WCC), Writers' Alliance for Media Independence (WAMI), Youth for Change (Y4C), Youth Section of the Kuala Lumpur and Selangor Chinese Assembly Hall

A. *The current normative and institutional framework*

A1. The supreme law of the Federation of Malaysia is the Federal Constitution (*FC*)ⁱ, a constitution founded on the Westminster model. Subject to permissible restrictions by enacted law on grounds of security and public order, morality and health, the FC guarantees the fundamental liberties (Part II, FC). As is explained more fully below, in view of developments that have undermined the effectiveness of the key institutions of state, in particular the Legislature and the Judiciary, the protection afforded by these guarantees has been diminished.

A2. Though there is ostensible subscription to the doctrine of separation of powers on the part of the authorities, the practical reality is that by virtue of Parliamentary, as opposed to constitutional, supremacy, the Executive has assumed an inordinate and worrying extent of power. In part, this has been achieved through the dominance of those political parties making up the Government in the Legislature since independence. At times, this has meant that laws can be passed at very short notice. Example: the DNA Bill 2008 which contains draconian provisions which violate the rights to not incriminate oneself, and to a fair trial.

A3. Until 8 March 2008 (50 years after independence), the ruling parties have held more than two-thirds of the parliamentary seats and were as such in a position to amend the FC at its convenience. In 1988 controversial amendments were made to the FC which had the effect of suborning the Judiciary to Parliament, paving the way for provisions of law designed to oust the jurisdiction of the courts and preclude judicial review. This, coupled with an attack on the Judiciary that resulted in the unfair dismissal of the head of the Judiciary and 2 senior Supreme Court justices in 1988, and a questionable system of appointments and promotions to and on the bench has greatly undermined the Judiciary and seriously eroded public confidence in the institution. This state of affairs is also brought on by numerous scandals that have allowed for the perception that the Judiciary is not independent and is corrupt. Though the need for the rehabilitation of the Judiciary has been recently recognised through, amongst others, a more effective appointments and promotions mechanism, no firm steps have been taken to that end as yetⁱⁱ.

A4. There is no information available regarding the number of complaints, investigations, prosecutions, and rates of conviction on the work done by the Anti-Corruption Agency (*ACA*). In 2008, there have been some instances of actions being taken against corrupt politicians and civil servants. However, the actions taken are still insufficient when viewed in relation to the scale of the problem, and there is selective prosecution by not going after “political leaders who are responsible for big-time corruptionⁱⁱⁱ.” The Corruption Perceptions Index of the Transparency International places Malaysia at 43 out of 179 countries in 2007, down from 39 out of 145 countries in 2004.

A5. The Human Rights Commission of Malaysia (*SUHAKAM*) is not viewed as an independent and effective body. It operates under the Prime Minister’s Department and its annual reports are never debated in Parliament. The selection and appointment processes of Commissioners are non-transparent and without consultation with civil society^{iv}. The Prime Minister alone decides even though many of the Commissioners lack experience and expertise in human rights. These clearly do not conform to the Paris Principles and SUHAKAM may be downgraded to Class B by the International Coordinating Committee of National Human Rights Institutions. (This issue will be more fully addressed in the submission by FIDH-SUARAME).

A6. There are four emergency proclamations still in force. (This issue will be more fully addressed in the submission by Amnesty International.) The combination of all the factors listed above and more mentioned below, have contributed to serious violations of human rights, and its lack of promotion and protection in Malaysia.

B. Politicisation of Race and Religion

B1. Malaysia is a multi-ethnic, multi-religious nation with many different indigenous groups, as well as migrants and refugees. Malays are approximately 60% of the population. Issues of race and religion are intricately linked as the FC defines ‘Malay’ as being Muslim (Article 160(2), FC). This conflation of race and religion set in place a divisive discourse of Malays (Muslims) and non-Malays (non-Muslims) that continues to be perpetuated by the Government in its play on identity politics. Poorly administered and monitored affirmative action policies of “special privileges” (Article 153, FC) for Malays and the natives of Sabah and Sarawak have fomented national disunity. Some claim that several of their rights have been violated or not promoted. Examples: rights to education, education in their mother tongue, and to freedom of religion especially when a Malay person wants convert out of Islam.

B2. Affirmative action policies began with the New Economic Policy (*NEP*) of 1971, and was a temporary special measure “to reduce and eventually eradicate poverty” and to restructure “Malaysian society to correct economic imbalance, so as to reduce and eventually eliminate the identification of race with economic function^v.” It was meant to end in 1990. It has been effective in increasing corporate equity ownership among the Malays. There is great dissatisfaction with the denial of the right to development for **all** Malaysians due to the continuance of discriminatory policies which some feel are no longer justified. The restrictions on freedom of information under the Official Secrets Act 1972 (*OSA*) compounds that feeling as Government official figures do not accurately reflect the amount of corporate equity ownership in the country by ethnicity. Official figures report that the *Bumiputera* (Malays and the indigenous peoples) own only 19.4% of corporate equity. The Centre for Public Policy Studies contends that the figure is based on faulty calculation methodology^{vi}. Its report estimated that 70% ownership of government-linked companies is already attributable to the *bumiputera*^{vii}. Despite these contradictions, the Government continues to use its figures for race-based affirmative action for the *bumiputera* until 30% of corporate equity ownership is achieved according to its calculations. Under strong pressure from the Government and businessmen the said report was retracted^{viii}.

B3. Similar policies have institutionalised discrimination on the basis of race and violated the right to education. Example: The Universiti Teknologi Mara has a *bumiputera* only policy. When a suggestion was made to include 10% of non-*bumiputera* as students, many including the Prime Minister, Minister of Higher Education and its Vice-Chancellor rejected the proposal, and reaffirmed its current policy^{ix}.

B4. After the 2008 General Elections, the Government appointed a Special Adviser on the issues of Muslim women (with Ministerial status) when a Chinese non-Muslim was appointed the Minister for Women, Family and Community Development. This creates a false divide between Muslim and non-Muslim women. It also disables the Ministry from dealing holistically with all matters affecting women.

B5. Since the late 1980s, there has been an increase in the presence of Islam into the public sphere even though “Islamic law was rendered isolated in a narrow confinement of the law of marriage, divorce and inheritance only.^x” In contravention of the Ninth Schedule of the FC, the Government of Kelantan enacted *hudud* laws which, among others, made theft a crime under Syariah laws even though it is

already a crime under the Penal Code. No action was taken by the Federal Government to declare the *hudud* laws *ultra vires* the FC. The unanimous decision of the same Supreme Court case of Che Omar^{xi} also held that Malaysia is a secular State.

B6. Religious authorities routinely rely on tip-offs from individuals who receive monetary rewards for information^{xii} on ‘moral policing’ matters e.g. *khalwat* (the offence of being in close proximity with a person of the opposite sex who is not a relation). The violation of freedom of expression through the regulation of sexuality is most often used against women and the transgendered. There have been reports of these volunteer "snoop squad" members sexually assaulting women during *khalwat* raids^{xiii}. Muslim entertainers have borne the brunt of religious authorities' regulation of 'immoral activities' in pubs, bars and other entertainment outlets^{xiv}. Singers have been arrested, charged under Syariah offences, harassed in the process, and in one case subjected to being excessively photographed^{xv}.

B7. In the period under review, there has been conflict of jurisdiction issues which relate to competing rights. Examples: The conversion of non-Muslim spouses to Islam and its effects on the non-Muslim family;^{xvi} the dispute over the bodies of purported Muslims;^{xvii} and the discussion of the rights under Article 11 of the Federal Constitution which guarantees freedom of religion.^{xviii} (These issues will be more fully addressed in the submission by the Bar Council of Malaysia.)

B8. In violation of the freedom of religion, a number of Hindu temples were demolished by the local councils. In 2007 alone, the known ones included the 100-year old Sri Maha Mariaman Hindu temple (Shah Alam, October), Sri Maha Periyachi Amman temple (Melaka, July) and the Sri Kaliaman temple (Shah Alam, June). There is poor implementation of policies and guidelines for the erection, demolition, relocation or replacement of places of worship for non-Muslims.

B9. In Malaysia, Sunni Islam is the officially accepted school of thought. Any other forms, practices or schools of thoughts in Islam may be considered deviant. Islamic authorities have powerful influence over the administration of religious matters at the state and federal levels. This includes determining “true” Islam. Example: In 2007, a gathering of Ruffaqa’ Corporation (owned by the former leader of the banned Darul Arqam movement) was interrupted by the Penang Islamic Religious Affairs Department on the grounds that it violated Islamic law and 43 were charged^{xix}.

B10. There is also an ‘Islamisation policy’ that targets the conversion of the Orang Asli community which would restrict their freedom to freely to participate in the cultural life of their communities, and to enjoy the arts. (This issue will be more fully addressed in the submission by Jaringan Orang Asal Se-Malaysia (JOAS)).

C. Discrimination

C1 *Right to health*

C1.1 The Government’s privatisation of health care services has contributed to reduced universal accessibility to health services. Private wings are set up in government hospitals. This allows specialists to earn higher fees, but has impacted negatively on the quality of public health services because other doctors have to take on the extra load while specialists attend to fee paying patients. In June 2008, the Malaysian Medical Association reported that some 400 doctors resigned from the public health services in 2007, citing heavy workload.

C1.2 A study on the people living with HIV (*PLHIV*) communities revealed that stigma and discrimination, real or perceived, deterred them from seeking treatment, limited their social interactions and made them live in secrecy. The majority of male drug users in the study reported experiencing some form of discrimination, primarily from healthcare or prison staff.^{xx} Anti-retroviral (ARV) drugs are available for free for first line treatment, but PLHIV are required to travel significant distances if they live in remote areas to healthcare centres which provide anti-retroviral therapy (ART)^{xxi}. One drug of triple combination of second line treatment is borne by the patient and is relatively more expensive.^{xxii}

C1.3 There is a real concern that the ongoing US-Malaysia FTA negotiations will result in the Government failing to protect accessibility to affordable medicines, especially those to treat PLHIV.

C1.4 Heterosexual transmission of HIV is on the rise. Ministry of Health statistics show that the proportion of women reported with HIV has increased dramatically in the last decade from 4% of new cases in 1995 to 15% of new cases in 2006. More housewives than sex workers tested HIV-positive. Gender inequality, stigma, discrimination, silence, denial and ignorance fuel the epidemic in Malaysia.

C1.5 Malaysia reaffirmed at the United Nations High Level Meeting on HIV and AIDS in 2006 the full realization of all human rights and fundamental freedoms in meeting the global response to HIV and AIDS. In light of this, laws criminalizing sex work, sexual practices and carrying syringes and needles^{xxiii}, are legal barriers for vulnerable groups, both for Malaysians and non citizens to access HIV testing, prevention services and information, and treatment for vulnerable groups^{xxiv}.

C2 *Sexuality Rights*

C2.1 The Government's hetero-normative stand discriminates against people of non-heterosexual orientations by adopting conservative and restrictive interpretations of religions and laws. Examples:

- a) S377A of the Penal Code (*PC*) criminalises oral and anal sex among consensual adults. Such acts are punishable with imprisonment of up to 20 years and shall be liable for whipping.
- b) S377D of the PC allows for the persecution of consenting adults who commit 'an act of gross indecency', even in the privacy of their homes. It is punishable with imprisonment of up to 2 years.
- c) S21 of the Minor Offences Act 1955 provides for the offence of indecent behaviour, which includes cross-dressing. Those found guilty can be fined anywhere between RM25 to RM50.
- d) Syariah laws criminalise homosexuality and homosexual acts. It denies Muslims (the majority of whom are Malays) the freedoms of expression, thought, conscience, religion or belief. Syariah laws also criminalise *zina* (sexual intercourse with a person who is not your legal spouse), and men cross-dressing as women. They could be charged under the various Syariah criminal offence enactments, which provide for penalties ranging from RM800 to RM3000 and/or imprisonment.

C2.2 Homosexuals and the trans-gendered are routinely harassed and persecuted. A study conducted by Dr. Teh Yik Koon in 2001 of over 500 male-to-female trans-sexual community members showed that about 50% of the interviewees had been arrested by the police at least once, and at least five% had been arrested ten times or more.^{xxv}

C3 *Women's Human Rights*

C3.1 Malaysia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (*CEDAW*) in 1995 with several reservations^{xxvi}. CEDAW and the recommendations by its Committee have not been effectively implemented. There is a need for a comprehensive legislation on

non-discrimination and substantive equality, especially after the decision in Beatrice's case^{xxvii}. There are many other discriminatory provisions in the FC and other laws. (These issues on CEDAW and the laws will be more fully addressed in the submissions by OHCHR and the Bar Council of Malaysia respectively.)

C3.2 The stalled amendments to the Islamic Family Laws and the Law Reform (Marriage and Divorce) Act 1976 continue to place hardship on women and children. Despite the calls by women's groups, no Special Select Committee of Parliament was established to ascertain what would best reflect the needs of women and children. These actions of the Government illustrate how it has not fulfilled its duties to protect women's rights to marry, found a family, and that women are entitled to equal rights to marriage, during marriage and at its dissolution.

C3.3 Cases of violence against women are on the rise. Often times, these violations are carried out with impunity by the perpetrators. This is reflected in the low conviction rate of sexual crimes in Penang of only 4% after trial^{xxviii}. The Government needs to improve its efforts to protect women's rights to security of person thereby enabling them to enjoy their full economic, social and cultural rights. Examples: criminalise marital rape, legislate to prohibit sexual harassment and stalking, implement the Domestic Violence Act 1994 more efficiently, and train the Police and Judiciary on gender awareness.

C4 *Rights of Students and Youth*

C4.1 The education curriculum is designed to produce skilled labour to aid rapid development. Even then, the government has not succeeded well in fulfilling its obligations to provide appropriate education to enable the youth to exercise their right to work^{xxix}. The curriculum should develop critical thinking, include human rights education. Vocational and skills training programmes should be expanded.

C4.2 The Universities and University Colleges Act (*UUCA*) restricts the rights of students to freedom of association, assembly, expression and political participation. The proposed amendments to UUCA still vest excessive powers in the Vice-Chancellor of the university on how students could be active in political participation. The Vice-Chancellor may still restrict any involvement outside the university, while there is no remedy for students outside the university administrative system.

C5 *Rights of Children*

C5.1 Malaysia ratified the Convention on the Rights of the Child (*CRC*) in 1995^{xxx}. CRC and the recommendations by its Committee have not been effectively implemented especially the National Plan of Action 2005-2010 for Children and the Child Protection Policy. (These issues on CRC, the laws and the rights of non-citizen children will be more fully addressed in the submissions by OHCHR, the Bar Council of Malaysia, and the Migration Working Group.)

C5.2 Statistics from the Ministry of Women, Family and Community Development (*the Women's Ministry*) show a sharp increase in child abuse cases from 1,242 in 2002 to 1,999 in 2006.^{xxxi} International experience however suggests that reported cases are likely to represent only 10% of total cases perpetrated^{xxxii}. In cases of commercially and sexually exploited children, the Police are slow in the follow-up action to investigate the cases. There are no adequate provisions to protect the safety of the children physically, emotionally or otherwise. More agencies and mental health practitioners specialising in the area of child sexual exploitation are needed.

C5.3 The processes of adopting children take more than 2 years. The issuance of adoption certificates and withdrawal of birth certificates serve to discriminate and stigmatise adopted children.

C5.4 The pre-school education in the rural areas and semi-rural areas are within the jurisdiction of the Rural Development Ministry, which runs the Kemas kindergartens. Children from the rural plantation have little access to these schools as it caters mainly for the majority Malay rural children. Teachers who can qualify to teach there must possess a higher secondary school certification on the subject of Islam. This discriminates against other pre-school teachers who use Tamil as a medium, especially in the plantation sector. For the few non-Malays who are accepted into the Kemas kindergartens, the absence of Tamil language does not prepare the children who would eventually enter Tamil vernacular primary schools^{xxxiii}.

C6 *Rights of Persons with Disabilities*^{xxxiv}

Malaysia signed the Convention on the Rights of Persons with Disabilities on 8 April 2008. In 2007, The Persons with Disabilities Act was passed, but it does not provide for rights of redress against those who discriminate against or fail to provide amenities for persons with disabilities. So they continue to face real difficulties in accessing employment, education, housing, and public spaces and facilities. The majority of public transportation in the country is not disabled-friendly, and some are dangerous to be used. Despite the RM300 financial aid given by the Government to persons with disabilities who earn less than RM1,200 per month, it is still inadequate. Most persons with disabilities are unemployed and face rising medical costs.^{xxxv} In the 2009 national budget, there was a provision of a monthly allowance of RM150 for those who are unable to work. This paltry sum allocated has been criticised as another example of policy making without consultation with people with disabilities^{xxxvi}. (These issues will also be addressed in the submission by the Bar Council of Malaysia.)

C7 *Rights of Non-Citizens*

Malaysia is host to an estimated 2.6 million migrants, both documented and undocumented. Of these, about 155,700 are estimated to be asylum seekers and refugees^{xxxvii}. Refugees, undocumented migrants, migrant workers, stateless and trafficked persons face many problems. Examples: subject to abuse with impunity by enforcement agencies; exploitation of labour standards; inability to access to health, due process of the law, housing and education; and violation of the non-*refoulement* principle. (These issues will be more fully addressed in the submission by the Migration Working Group, FIDH-SUARAM and the Bar Council of Malaysia.)

C8 *Indigenous Peoples*

Indigenous peoples continue to suffer a lack of recognition of their land rights. They are continuously subjected to forced relocation, and forced assimilation policies affecting their cultures and religions. Malaysia barely complies with the human rights standards for the protection of indigenous peoples as stated in UNDRIP. A core principle of UNDRIP, ‘prior, free and informed consent’ is not adhered to in all development policies affecting them. (These issues will be more fully addressed in the submission by JOAS.)

D. Freedom of Speech and Expression

D1. Freedom of speech and expression are seriously curtailed by restrictive laws. Examples: the Printing Presses and Publications Act 1984, the Sedition Act 1948, OSA, the Trade Unions Act 1959, and the UUCA which impose an array of restrictions on the exercise of the freedom of expression and

related activities. (These issues will be more fully addressed in the submissions by the Bar Council of Malaysia, Amnesty International, Human Rights Watch and FIDH-SUARAM.)

D2. Almost all mainstream newspapers, television, and radio stations are state-owned, owned by the component parties of the ruling coalition, or by media owners loyal to the ruling parties. The Government has *de facto* control of the editorial policies of the media industry. Despite the ownership structure, most of the mainstream media are regularly subjected to the laws under the different licensing provisions, secrecy laws and charges of sedition.

D3. In 1996, a 10-point Bill of Guarantees (*the Bill*) was given by the Government to attract investors of multimedia industries. It states that the Government “[will] ensure no Internet censorship”. Further, the government had pledged “the promotion of a free media, including in cyberspace” in the Aide-Memoire of its candidature to the UN Human Rights Council^{xxxviii}. In contravention of those guarantees and pledges, the Government launched attacks on bloggers in a clear attempt to control political expressions in the Internet. Numerous cases of persecution of bloggers were documented during the period under review, particularly since 2006. The most notable is that against Raja Petra Kamaruddin^{xxxix}, now charged under the Sedition Act 1948, and the Penal Code for criminal defamation^{xl}. In August 2008, his blog, Malaysia Today, was blocked by internet service providers under the instructions of the Malaysia Communications and Multimedia Commission (MCMC).^{xli} In October 2007, the MCMC had also instructed 11 websites to be shut down for contravening “rules and regulations concerning the publication of information on the Internet”.^{xlii}

D4. This can be contrasted with the non-prosecution of members of the United Malays National Organisation (*UMNO*) for hate speech and the brandishing of the *keris* (dagger) at the 2006 UMNO General Assembly. UMNO is the leading party in National Front Coalition (Barisan Nasional) which forms the Government, and promotes Malay supremacist ideology (*Ketuanan Melayu*).

D5. There is a suppression of cultural and artistic expressions, particularly on those deemed ‘against the teachings of Islam’. In 2006, the State Government of Kelantan imposed a ban on *Mak Yong* performances despite UNESCO certifying that Malay dance theatre form as a world cultural heritage. No action was taken by the Federal Government against the State Government of Kelantan for this violation of freedom of expression.

D6. The denial in the choice of dressing, especially among women and the transsexuals, seriously curtails their freedom of expression. Under several state Syariah enactments, it is an offence for men to dress as women. Example: in July 2007 Ayu, a transsexual, was seriously beaten by officials from the Islamic Religious Affairs Department of Melaka when she was arrested for committing the offence of cross-dressing.

E. Freedom of Information

The right to information is severely restricted by the OSA. This ranges from statistics about housing development to reports on social research, health and the environment. Information on sexual and reproductive health, especially those concerning non-heterosexuals, has also been suppressed. The lack of information on non-heterosexual issues was noted as a matter of concern in a report commissioned by the Women’s Ministry in February 2006. The report attributed this to the lack of

acceptance of non-heterosexuals in the Malaysia and censorship by the authority^{xliii}. (This issue on the freedom of information will also be addressed in the submission by the Bar Council of Malaysia.)

F. Freedom of Assembly

F1. Despite Article 10 of the FC guaranteeing the right to assemble peaceably, it is severely circumvented by the Police Act 1967, which confers wide discretionary powers to the police to regulate assemblies. It requires a permit to be obtained from the police for any public assemblies, meetings and processions. (These issues will be more fully addressed in the submissions by the Bar Council of Malaysia, and Amnesty International.)

F2. It is important to note a new trend in involving the Judiciary by obtaining court orders to bar individuals from access to places surrounding the venues of planned assemblies. These court orders allow the Police to arrest individuals named in the court orders if they are found in the prohibited areas. Examples: the HINDRAF rally in November 2007^{xliv}, the handing over of the BERSIH memorandum in December 2007^{xlv}, the barring of five individuals from protesting the rise in fuel prices in January 2008^{xlvi}, the prohibition against opposition leader Anwar Ibrahim and his supporters from being within 5 kilometres of the Parliament building to restrain them from attending a parliament debate session on a non-confidence motion by the Opposition against the Prime Minister^{xlvii}.

F3. Another emerging trend is to erect roadblocks at the outer periphery and roads leading into the venues of public assemblies both a few days before and after the events. This creates fear and intimidation, and restricts freedom of movement. In the case of the HINDRAF rally, racial profiling was used to stop members of the public who may resemble Malaysians of Indian descent. The government also embarked on a propaganda campaign to demonise demonstrators and organisers of demonstrations. In the last quarter of 2007, TV clips were periodically aired depicting those rallies as foreign to Malaysian culture by juxtaposing them against pictures of bloody demonstrations and riots in Pakistan and Palestine, alluding to the threat of similar chaos if assemblies were permitted.

G. Freedom of Association

G1. Various groups in Malaysia face difficulties in forming associations (formal or otherwise) and the registration process is unduly prolonged. Examples of those rejected: Parti Sosialis Malaysia (political party); Amnesty International Malaysia (human rights organisation); Knowledge and Rights with Young People Through Safer Spaces (sexuality and sexual orientation organisation).

G2. Some workers are unable to form unions due to the Trade Unions Act 1959, which prohibits public officers from joining any trade union. It also prohibits officers of trade unions from holding office in political parties unless exemptions are obtained. The Act further limits unions to representing workers in a “particular establishment, trade, occupation, or industry; or within similar trades, occupations and industries”^{xlviii}. The Director General of Trade Unions has absolute discretion to refuse the registration of a trade union, and in some circumstances, may also withdraw the registration of a trade union. Workers from the electronics industry and migrant workers are prohibited from forming or joining in trade unions. The Malaysian Trade Union Congress, the largest umbrella body of trade unions in Malaysia is not able to register as a trade union. It is registered as a society.

H. Urban Poverty

H1. In 2004, it was estimated that almost 10% of the population in Malaysia were living in squatter areas and temporary longhouses. Emergency ordinances, such as the Essential Clearance of Squatters Regulation 1969, laws like the National Land Code of 1965 and the Land Acquisition Act 1991 are often used to evict urban settlers, longhouse settlements, low cost flat dwellers and other urban poor communities from their homes. Many continue to be sent to temporary longhouses settlements more than once because the Government claimed that there were not enough low cost houses to be sold outright to urban poor families.

H2. The low cost housing scheme was a Government initiative established in 1982. 30% of all private housing projects had to be allocated for the construction of low cost housing. This was seen as a social obligation by the developers to complement the efforts of the Government to provide affordable housing for all based on a cross subsidizing scheme. However decisions on the processes of design, construction, location and allocation are controlled by the local government officials and the private developers without any participation from the people. Urban poor communities should be consulted to ensure that their rights to adequate housing, health and economic livelihood are secured and protected.

I. Administration of Justice and The Rule of Law

I1. *Detention Without Trial*

The continued use of the Internal Security Act 1960, the Emergency Ordinance (Public Order and Prevention of Crime) 1969, and the Dangerous Drugs (Special Preventive Measures) Act 1985 to arbitrarily arrest and detain persons without trial is one of the most serious violations of human rights by the Government. (These issues will be more fully addressed in the submission by the Bar Council of Malaysia, Amnesty International, Human Rights Watch and FIDH-SUARAM.)

I2. *The Royal Malaysian Police*

The Government had convened two Royal Commissions related to the Police: one to Enhance The Operation and Management of the Royal Malaysian Police, and another on Approaches or Regulations in the Handling of Body Search in Connection With Arrest and Detention By The Police. Not all the recommendations were implemented, especially the setting up of the Independent Police Complaints and Misconduct Commission^{xlix}.

I3. *Sentencing*

Malaysia continues to impose corporal and capital punishments despite it being contrary to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There is a lack of information pertaining to the number of prisoners who have been sentenced for whipping and the number of strokes, and to the death penalty. (These issues will be more fully addressed in the submission by Amnesty International.)

I4. *Impunity*

I4.1 The People's Volunteer Corps (*RELA*) is a voluntary civilian force that was originally set up in 1972 to assist, maintain and safeguard peace and security. Since 2005, the powers of RELA have been expanded tremendously. The members of RELA are now permitted to bear and use firearms, stop, search and demand documents, raid premises, and arrest refugees and undocumented migrants without warrant. They have immunity from prosecution as set out in the Essential (Ikatan Relawan Rakyat) Regulations. Regulation 16 states: "The Public Protection Authorities Act 1948 shall apply to any action, suit, prosecution or proceedings against [...] RELA [...] or any member [...] in respect of any

act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith, in such capacity.” There is also a worrisome gap between the numbers of RELA members, now an estimated 475,000^l as compared to 93,348 police personnel^{li}. There are increasing reports of the abuse of power by RELA members. (These issues will be more fully addressed in the submissions by the Migration Working Group, the Bar Council of Malaysia, FIDH-SUARAM and Human Rights Watch.)

I4.2 There is continued environmental degradation at the hands of non-state actors, usually large multinational corporations. They are able to exploit the rich natural resources, and circumvent environmental laws with impunity as the Government fails to enforce environmental protection standards, as contained in Agenda 21 of the Rio Summit. It outlines that sustainable development is only possible when human development and human rights are given equal importance^{lii}.

J. Recommendations

J1. All necessary measures should be taken forthwith to:

- i. amend Article 121(1) of the FC to restore it to its original state prior to the amendments in 1988;
- ii. ensure that provisions relating to human rights in the FC are strengthened, and all limitations or qualifying clauses contained in Articles 8, 9 and 10 of the FC are removed;
- iii. amend Part III of the FC relating to citizenship to ensure there is no gender discrimination;
- iv. enact laws pertaining to anti-discrimination, and for the freedom of information.
- v. ensure the absolute protection of certain rights at all times, including the right not to be deprived of life arbitrarily, freedom from torture and ill-treatment, and the guarantee of a fair trial;
- vi. to revoke all existing Proclamations of Emergency in Malaysia and repeal all emergency laws specifically the Emergency (Essential Powers) Act 1979, and all Regulations and Rules made there under be repealed;
- vii. repeal the Internal Security Act, the Emergency (Public Order and Prevention of Crime) Ordinance, the Restricted Residence Act and the Dangerous Drugs (Special Preventive Measures) Act; and
- viii. initiate a comprehensive and independent review on all restrictive laws, including Articles 149 and 150 of the FC, the Sedition Act, the Printing Presses and Publications Act, the Societies Act, UUCA, OSA, the Police Act and the Penal Code with a view to reform or abolish.

J2. Judges, prosecutors, the Police and other law enforcement agencies should be trained regularly on human rights, non-discrimination and the legally binding nature of international laws.

J3. There should be comprehensive and universal access to health services which includes coverage for citizens and non-citizens alike, including migrants workers, refugees, asylum seekers, indigenous peoples, sex workers, and the LBGTIQ community.

J5. Taking into account the commitments and pledges made by the Government in its efforts to be elected into the HRC, all the core human rights conventions and their optional protocols should be ratified. It should issue a standing invitation to all thematic special procedures^{liii}. The Concluding Comments of the CEDAW Committee and the Concluding Recommendations of the CRC Committee should be implemented.

ANNEXURES

Annex 1 (in the PDF file “Lingam Tape Recommendations” attached to the email) :

The recommendations of the Commission Of Inquiry On The Video Clip Recording Of Images Of A Person Purported To Be An Advocate and Solicitor Speaking On The Telephone On Matters Regarding The Appointment of Judges.

Annex 2 (in the PDF file “Royal Police Recommendations” attached to the email):

The Royal Commission to Enhance The Operation and Management of the Royal Malaysian Police.

Annex 3: End notes

ⁱ Article 4, FC

ⁱⁱ See Annex 1: the recommendations of the Commission Of Inquiry On The Video Clip Recording Of Images Of A Person Purported To Be An Advocate and Solicitor Speaking On The Telephone On Matters Regarding The Appointment of Judges, under the Commissions of Enquiry Act 1950.

As at 2005, the FC has been amended 650 times – see: See Zainon Ahmad and Phang, Llew-Ann, “The All-Powerful Executive”, *The Sun* (October 1, 2005): <http://www.sun2surf.com/article.cfm?id=11381> (accessed October 25, 2007) in Bon, E.T.S., [2008] *The Law Review*, pp. 232-254 at p. 252.

ⁱⁱⁱ See the interview of the President of Transparency International, Malaysia, Ramon Navaratnam in “Watchdog groups: ACA, haul up 'big fishes'” <http://www.malaysiakini.com/news/89033> last accessed on 7 September 2008.

^{iv} 10 out of 16 Commissioners are retired civil servants or from state run universities. See http://www.suhakam.org.my/en/about_com_member.asp last accessed on 7 September 2008.

^v See the Second Malaysia Plan (1971-1975), p.1.

^{vi} Par value is used, as opposed to the more accurate market capitalization value. GLCs are excluded from the analysis and this skews the figures to show a lesser number, enabling the Government to continue to call for greater *Bumiputera* corporate equity ownership and hence economic participation

^{vii} See http://www.cpps.org.my/downloads/D_%20Corporate_Equity_Distribution.pdf last accessed on 7 September 2008.

^{viii} “Lim quits over Asli’s report retraction”, *Malaysiakini*, 11 October 2006 <http://www.malaysiakini.com/news/58020> last accessed on 7 September 2008.

^{ix} “Call to open uni to non-bumis slammed”, *The Straits Times Singapore*, 14 August 2008

http://www.malaysianbar.org.my/legal/general_news/call_to_open_uni_to_non_bumis_slammed.html last accessed on 7 September 2008.

^x [1988] 2 MLJ 55

^{xi} *Ibid.*

^{xii} More recently: “Jawi launches enforcement hotline”

http://www.mmail.com.my/Jawi_launches_enforcement_hotline.aspx last accessed on 2 September 2008.

^{xiii} “Moral crusaders turned molesters”, *The Star*, 8 Feb 2006

^{xiv} “Kedah says no to gyrations, bans concerts”, *Malaysiakini*, 29 August 2008 at

<http://www.malaysiakini.com/news/88825> last accessed on 2 September 2008.

^{xv} “Singer held over dressing”, *The Star*, 6 Jul 2007.

^{xvi} For instance, see the case *Subashini*: “Subashini case: Divorce comes under civil court”, *Malaysiakini*, 27 December 2007, <http://www.malaysiakini.com/news/76423> last accessed on 7 September 2008.

^{xvii} For instance, see the cases of *Moorthy in Kaliammal a/p Sinnasamy -v- Pengarah Jabatan Agama Islam Wilayah Persekutuan (JAWI) dan lain-lain* [2006] 1 MLJ 685

^{xviii} For instance, the disruptions of public forums held by the Article 11 Coalition (in 2006) and the Bar Council (in 2008).

^{xix} Suaram, (2008) *Malaysia Human Rights Report 2007: Civil and Political Rights*, Petaling Jaya, Suaram, p. 123.

^{xx} Zulkifli, S.N., Huang, M., Low.W.Y., and Wong.Y.L. (2007), *Impact of HIV on People Living with HIV, Their Families and Community in Malaysia*, United Nations Country Team.

^{xxi} *UNGASS Country Progress Report 2008, Malaysia*, p. 34

^{xxii} *Ibid.*

^{xxiii} S37(c), *Dangerous Drugs Act 1952*: “If any syringe and dangerous drug suitable for hypodermic injection, or any pipe and dangerous drug suitable for smoking be found in any premises, it shall be presumed, until the contrary is proved, that the premises are used for the purpose of the administration of a dangerous drug to, or the smoking or consumption otherwise of a dangerous drug by, a human being and that the occupier permits such premises to be used for such purposes;”

^{xxiv} *UNGASS Country Progress Report 2008, Malaysia*, p. 20

^{xxv} There are no other available studies. Teh, Y.K. (2001) “Mak Nyahs (Male Transsexuals) in Malaysia: The Influence of Culture and Religion on their Identity.” *IJT* 5,3 http://www.symposion.com/ijt/ijtvo05no03_04.htm last accessed on 25 August 2008.

^{xxvi} There are reservations on Articles 5(a), 7(b), 9(2), 16(1)(a), (c), (f), (g), and 16(2).

^{xxvii} *Beatrice a/p A.T. Fernandez -v- Sistem Penerbangan Malaysia & Anor*, [2005] 3 MLJ 681.

^{xxviii} Seeking More Effective Prosecution Of Sexual Crimes: Background Paper for Dialogue with Prosecutors, (2007), Women’s Centre For Change, Penang, p.11.

^{xxix} In 2004, there were 80,000 unemployed graduates: see news report in website of the Prime Minister’s Office <http://www.pmo.gov.my/website/webdbase.nsf/915b75851947326448256e86000c5808/62d0d37fbf5a1cde48256fcc0001fccc?OpenDocument> last accessed on 7 September 2008.

^{xxx} There are reservations on articles 1, 2, 7, 13, 14, 15, 28, paragraph 1 (a) and 37.

^{xxxi} “Child abuse by state and sex, 2002-2006”, Ministry of Women, Family and Community Development, http://www.kpwkm.gov.my/BI/Upload/20080623_064826_21122_t9.8.pdf last accessed on 2 September 2008

^{xxxii} See UNICEF website, <http://www.unicef.org/malaysia/protection.html> last accessed on 2 September 2008

^{xxxiii} Interview with Francis Xavier, Director of West Malaysian Association of Preschool Teachers (PGGT), 1 September 2008.

^{xxxiv} There is a dispute over the use of the term ‘persons with disabilities’ by the United Nations. Instead there is a preference by some for the term ‘disabled persons’ as they are ‘disabled’ by society: Interview with Anthony Siva Balan Thanasayan, activist on the rights of disabled persons on 6 September 2008.

^{xxxv}, “RM300 a month inadequate for disabled”, Malaysiakini, 30 June 2008, <http://www.malaysiakini.com/letters/85316> last accessed on 2 September 2008

^{xxxvi} “Budget 2009: What the rest say”, Malaysiakini, 29 August 2008, <http://www.malaysiakini.com/news/88852> last accessed on 2 September 2008

^{xxxvii} Estimated figures according to the US Committee for Refugees and Immigrants (2007) World Refugee Survey 2007, Washington DC (pp. 86-89).

^{xxxviii} Malaysia “Aide-Memoire; Malaysia’s Candidature to the United Nations Human Rights Council”, dated 28 April 2006.

^{xxxix} The charges were made based on an article posted by Raja Petra Kamaruddin on his blog, *Malaysia-Today*, alleging that the Malaysian Deputy Prime Minister Najib Razak and his wife, Rosmah Mansor, were involved in the October 2006 murder of a Mongolian national.

^{xl} “Any person who prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.”

^{xli} “ISPs ordered to cut access to Malaysia Today website”, The Star, 28 August 2007, <http://thestar.com.my/news/story.asp?file=/2008/8/28/nation/22187596&sec=nation> last accessed 7 September 2008.

^{xlii} “11 sites shut down by MCMC”, The Star, 22 October 2007, <http://star-techcentral.com/tech/story.asp?file=/2007/10/22/technology/20071022143857&sec=technology> last accessed on 7 September 2008.

^{xliii} University of Malaya Consultancy Unit (2006) “Experiences of non-heterosexual persons in Klang Valley, Malaysia: an exploratory study”, Report commissioned by the Ministry of Women, Family and Community Development.

^{xliv} “Cops obtain rare court order against HINDRAF”, Malaysiakini, 23 November 2007

<http://www.malaysiakini.com/news/75175> last accessed on 2 September 2008

^{xlv} “Memo to Parliament: 26 arrested, all released tonight”, Malaysiakini 11 December 2007

<http://www.malaysiakini.com/news/75897> last accessed on 2 September 2008

^{xlvi} “Court bans PROTES from protesting”, Malaysiakini, 26 January 2008

<http://www.malaysiakini.com/news/77475> last accessed on 7 September 2008

^{xlvii} “Anwar barred from Parliamnet”, The Star, 14 July 2008

<http://thestar.com.my/news/story.asp?file=/2008/7/14/nation/21817223&sec=nation>

^{xlviii} Section 2, Trade Unions Act 1959.

^{xlix} See Annex 2 for the full list of recommendations by the Royal Commission to Enhance The Operation and Management of the Royal Malaysian Police.

ⁱ “RELA chief: Give us more power”, Malaysiakini, 20 May 2007 <http://www.malaysiakini.com/news/67857> last accessed on 7 September 2008.

ⁱⁱ See Royal Malaysian Police website at: <http://www.rmp.gov.my/> last accessed on 2 September 2008

ⁱⁱⁱ Kohila Yanasekaran (2002) “Human Rights Approach towards Sustainable Development”. In Wong, Elizabeth (ed). Critical Voices on Sustainable Development, Petaling Jaya: SUARAM (p. 1).

^{liii} By doing so, the Government announces that it will always accept requests to visit from all special procedures. Malaysia has not acceded to the requests of the Special Representative (**SRS**) on the situation of human rights defenders in 2002, the Special Rapporteur (**SR**) on indigenous people in 2005, the SR on human rights and counter terrorism in 2005, the SR on freedom of religion in 2006, the SR on migrants in 2006, the Independent Expert on minority issues in 2007, and the Working Group on arbitrary detention in 2008.