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Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

Malaysia*

The present report is a summary of 28 stakeholders' submissions[1] to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

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

I. Information provided by the accredited national human rights institution of the State under review in full compliance with the Paris Principles

A. Background and framework

1. The Human Rights Commission of Malaysia (SUHAKAM) commended the Government's initiative to establish a technical sub-committee to study the feasibility of becoming party to ICCPR, ICESCR, CAT and ICERD calling on the Government to accelerate the process of acceding to the remaining six core international human rights treaties.[2]

2. SUHAKAM noted that to further strengthen the effectiveness in the discharge of its functions, it had proposed an amendment to the SUHAKAM's founding Act that would allow SUHAKAM to visit places of detention without prior notification as currently required.[3]

3. SUHAKAM looked forward to the establishment of the proposed Parliamentary Select Committee on Human Rights.[4]

4. While commending the Government's decision in October 2010 to develop a national human rights action plan, SUHAKAM expressed concern about slow progress and urged the Government to hold broad and meaningful consultations with all stakeholders in developing such a plan.[5]

B. Cooperation with human rights mechanisms

5. SUHAKAM called on the Government to extend invitations to all special procedures mandate holders that have requested to visit Malaysia.[6]

6. SUHAKAM recommended that the Government play a more active role in ensuring all stakeholders, especially government agencies at the state level, are not only aware of the UPR but are also directly involved in the implementation of the UPR recommendations.[7]

C. Implementation of international human rights obligations

7. SUHAKAM called on the Government to look into the absence of a gender equality act and double standards on the right to citizenship.[8]

8. SUHAKAM welcomed the Government's proposal to review the mandatory death penalty for drug trafficking expressing hope that it will gradually lead to the abolition of the death penalty.[9]

9. SUHAKAM expressed concern about ill-treatment, discrimination, bullying, vilification, humiliation and intimidation of sexual minority groups.[10]

10. While welcoming the amendments to the Anti-Trafficking in Persons Act in 2010, which provides for the imposition of a higher fine on any person convicted of profiting from the exploitation of a trafficked person and a mandatory interim protection order for a suspected victim of trafficking, SUHAKAM expressed concern that the amendments had widened the scope of the Act to include smuggling of migrants.[11]

11. SUHAKAM welcomed the amendments to the Domestic Violence Act in 2012, which have expanded the definition of "domestic violence" to include psychological and emotional injuries.[12]

12. SUHAKAM commended the establishment of the Judicial Appointments Commission to provide for a more transparent mechanism in appointing judges, as well as the introduction of human rights subjects in the training programmes conducted by the Judicial and Legal Training Institute for judicial officers and public prosecutors. SUHAKAM welcomed the references by judges to international human rights treaties in their decisions.[13]

13. While welcoming legislative reforms, SUHAKAM expressed concern that section 114A of the Evidence Act, which relates to the presumption of fact in publication could seriously undermine and threaten freedom of speech and expression, especially on the Internet, and possibly reverse the burden of proof in criminal and civil matters.[14]

14. SUHAKAM expressed concern that social housing programmes did not benefit the intended target groups because of their failure to qualify for loans, shortage of affordable units and inefficient low-cost housing distribution system.[15]

15. SUHAKAM urged the Government to take necessary measures to ensure that marginalized groups such as asylum seekers, undocumented migrants and stateless person have equitable access to healthcare.[16]

16. While commending the introduction of the Education Blueprint 2013 – 2025, SUHAKAM noted that gaps existed in terms of access to education for children of marginalized groups.[17]

17. SUHAKAM stated that the Government should step up its efforts in addressing the rights of persons with disabilities especially with regard to their registration, access to education, access to public facilities, amenities, buildings and public transportation, as well as employment.[18]

18. SUHAKAM regarded it necessary for the Government to take legal, policy and administrative measures to address issues related to indigenous peoples' right to land, including the lack of recognition of indigenous peoples' concept of native customary rights to land, inclusion of native customary land in protected areas and development projects, inadequate compensation for the loss of their land, territories, crops and resources. The Government should apply the principle of free, prior and informed consent.[19]

There is no specific recommendation to access the migrant workers Convention?

19. SUHAKAM noted the problems faced by migrant workers, including irregular or long working hours, incomplete and irregular payment of wages, deplorable living conditions, and the lack of appropriate personal identification card while their passports are held by their employers.[20]

20. SUHAKAM noted that there were no laws governing refuges and asylum seekers and their rights were extremely limited especially in terms of access to formal education, employment and healthcare services recommending the accession to the Convention and Protocol relating to the Status of Refugees.[21]

II. Information provided by other stakeholders

A. Background and framework

1. Scope of international obligations

21. The Equal Rights Trust (ERT) and International Commission of Jurists (ICJ) noted that despite its positive response to progressively study the proposal to ratify the ICCPR and CAT during the previous UPR review, Malaysia had yet to ratify these treaties. Malaysia had not yet ratified the ICESCR and CERD.[22] Amnesty International (AI) expressed similar concerns.[23]

22. Commonwealth Human Rights Initiative (CHRI) recommended that Malaysia urgently ratify all core international human rights instruments including: ICCPR, ICESCR, CAT and UN Convention on the Status of Refugees; withdraw all reservations to CEDAW and CRC; and ensure that domestic legislation is in conformity with international human rights standards as contained in the core international human rights instruments,[24] as similarly recommended by Joint Submission 1 (JS1)[25] and Joint Submission 3 (JS3).[26]

23. Joint Submission 6 (JS6) noted that in 2010, Malaysia lifted reservations to Article 1 (defining the age of a child); Article 13 (regarding freedom of expression); and Article 15 (regarding freedom of assembly and participation) of the Convention on the Rights of the Child. In 2011, the Government also signed two of three Optional Protocols to the CRC, on the sale of children, child prostitution and child pornography, and on children in armed conflict.27 JS6 expressed concern that inconsistencies in the definition of the child under national laws remained with multiple, contradictory definitions of the child under both civil and Sharia law. Little has been done to realize the practical intent of Articles 13 and 15 of the CRC, and the policies and realities on the ground have remained unchanged.[28] JS1 recommended that Malaysia remove all reservations and declarations on CEDAW, CRC and CRPD.[29]

24. ERT noted that despite its response that it was "strengthening existing legislation" and engaging stakeholders to translate CEDAW into domestic law during the previous UPR review, Malaysia's domestic law was inconsistent with its CEDAW obligations.[30]

2. Constitutional and legislative framework

25. JS1 stated that laws were regularly passed with very short notice, no or very little consultation and hardly any debate in Parliament. These practices often resulted in laws contrary to human rights.[31]

26. ERT noted that discriminatory laws remained in force on a number of grounds and in various areas of life referring to affirmative action policies enshrined in Article 153 of the Constitution, enforcement of the Constitution and the 1967 Police Act in a discriminatory manner to political opponents of the Government, and enforcement of Section 377 of the Penal Code through practices that amount to criminalization and discriminatory ill-treatment of Lesbian, Gay, Bisexual and Transgendered persons.[32]

27. JS6 cited the lack of legislative or administrative protections for refugee and asylum-seeking children as an example of the national law's being incompatible with the CRC. JS6 further noted that the parallel systems of Sharia law applicable for Muslims and civil law caused several inconsistencies in practice.[33]

3. Institutional and human rights infrastructure and policy measures

28. JS1 noted that the Commissioners of SUHAKAM had shown more willingness to deal with controversial issues such as sexual orientation and gender identity rights by initiating dialogues with religious groups and other stakeholders, participating as observers in *BERSIH 2.0* and *BERSIH 3.0* rallies, holding an on-going public inquiry into the events of *BERSIH 2.0*, and appointing counsels to hold watching briefs in workplace gender discrimination and child rights cases.[34] JS1 however expressed concern that SUHAKAM's annual reports to Parliament were not debated.[35]

29. JS6 stated that implementation, self-monitoring, evaluation and follow-up mechanisms for the National Plans of Action for child protection needed to be strengthened noting that coordination among Government agencies mandated by the 2001 Child Act remained poor due to a lack of formalized coordination processes, clearly defined mandated roles and responsibilities and accountabilities among agencies.[36]

B. Cooperation with human rights mechanisms

1. Cooperation with treaty bodies

30. International Commission of Jurists (ICJ) noted that Malaysia had not adhered to periodic reporting deadlines to treaty bodies.[37]

2. Cooperation with special procedures

31. ICJ noted pending requests for visits by Special Procedures,[38] recommending that Malaysia accept requests of the Special Procedures to undertake official missions at the earliest possible opportunity.[39] JS1 recommended that Malaysia issue an open standing invitation to all Special Procedures mandate holders.[40]

C. Implementation of international human rights obligations

1. Equality and non-discrimination

32. ERT stated that Malaysia lacked comprehensive equality legislation and equality enforcement bodies across all grounds, a significant factor contributing to the persistence of the patterns of discrimination and inequality.[41]

33. JS1 stated that Malaysia refused to recognize sexual orientation and gender identity rights as human rights noting that lesbians, bisexuals, gays, transgendered, inter-sexed and queer persons were vilified, faced violence and were subjected to constant harassment by state and non-state actors alike.[42]

34. JS1 noted that being non-citizens, foreign spouses bore higher fees for public services such as healthcare, banking and universities. Foreign wives were only allowed to work with the written permission from their husbands, which constitutes another example of gender discrimination.[43]

2 Right to life, liberty and security of the person

35. According to AI, in October 2012, the Government reported that there were more than 930 prisoners on death row. The Government also announced it would consider replacing mandatory death sentences with prison sentences for drug offences under certain circumstances.[44] Joint Submission 8 (JS8) stated that Malaysia's approach to drug offences violated international standards,, and that Malaysia imposed an automatic death penalty to anyone found guilty of "trafficking" drugs[45] recommending that in the absence of abolition,

Malaysia limit the use of capital punishment to the most serious crimes thereby eliminating its use for drug trafficking and/or other drug-related offences.[46] Child Rights International Network (CRIN) stated that the death penalty was lawful for persons under 18 at the time of the offence for certain offences.[47]

36. Joint Submission 10 (JS10) noted that the lack of criminal legislation that clearly defines and prohibits torture contributed to a failure to adequately investigate, prosecute and punish acts of torture [48] recommending that Malaysia include, without delay, a definition of torture in its penal legislation, and enact anti-torture legislation that ensures that all acts of torture are punishable by appropriate penalties taking into account their grave nature.[49]

37. Human Rights Watch (HRW) stated that since the first UPR, the police had continued to use unnecessary or excessive force to shut down protests, obtain coerced confessions and mistreat persons in custody. Suspicious deaths in police custody, including three in January 2013 alone, were frequently attributed to suspects' pre-existing medical conditions or drug use.[50]

38. AI noted that dozens of people were arrested and detained indefinitely and without charge under the Internal Security Act (ISA) although Parliament repealed it in 2012. As of February 2013, 23 people remain detained under the law. In June 2012, the Security Offences (Special Measures) Act (SOSMA) replaced the ISA, allowing for *incommunicado* detention for up to 48 hours, which puts the detainee at risk of torture, and detention without charge or judicial review for up to 28 days.[51] Bar Council of Malaysia (BCM), Front Line Defenders (FLD), ICJ and HRW also expressed similar concerns with respect to SOSMA. [52] JS3 and JS10 recommended that Malaysia repeal or substantially amend SOSMA in compliance with international standards.[53]

39. FLD stated that many Malaysian human rights defenders regularly received hate email or death threats via electronic communications means. Raids and attacks on the offices by police as well as by unknown individuals had been used as a tool of intimidation.[54] FLD also noted that between 13 and 21 February 2011, some 80 volunteer members, and other individuals associated with Hindu Rights Action Force (HINDRAF) were arrested and detained throughout Malaysia before being released without charge.[55]

40. HRW stated that Malaysia had failed to effectively combat human trafficking, preferring to focus on the criminal aspect of cases without permitting victims access to necessary social services. Trafficking victims were often locked away for extended periods in government-run shelters. Amendments to the Anti-Trafficking in Persons Act conflated people smuggling with human trafficking and created similarly harsh penalties for both acts, creating difficulties for effective and timely identification of trafficking victims, and extension of protection to them.[56]

41. AI claimed that Malaysia routinely inflicted torture, imposing judicial caning as a punishment for over 60 offences, including immigration offences. In prisons, specially trained caning officers tear into the prisoners' body with a metre-long cane swung with both hands at high speed (up to 160 kilo meter per hour). The pain is so severe that victims often lose consciousness. In June 2011, the Government revealed that 29,759 migrant workers were caned for immigration offences between 2005 and 2010.[57]

42. Global Initiative to End All Corporal Punishment of Children (GIEACPC) stated that corporal punishment of children was lawful in Malaysia despite the recommendations of the 2009 UPR. There had been no progress in prohibiting corporal punishment of children even in the penal system where the Government expressed its positive intention to reform the law. It remained that corporal punishment of children in Malaysia was lawful in all setting, including the home, schools, penal system and alternative care settings.[58] CRIN expressed similar concerns.[59]

3. Administration of justice, including impunity, and the rule of law

43. ICJ stated that the Prime Minister's great influence in the selection of the members of the Judicial Appointments Commission, as well as in the general appointment of judges clearly undermined the independence of the judiciary.[60] JS1 expressed similar concerns.[61]

44. JS1 recommended that Malaysia train judges, other legal and judicial officers, and parliamentarians to increase their understanding of human rights.[62]

45. BCM stated that the Government continued its practice of intimidating lawyers by summoning them for questioning, and by requesting them to furnish documents, written statements and information relating to their clients in cases where their clients are under investigation.[63] According to BCM, in reprisal against its report that police had acted with brutality and had used excessive force on journalists and participants at the *BERSIH 2.0* public assembly on 28 April 2012, senior members of government threatened to introduce legislation to establish an alternative bar council and academy of law that would dilute the strength and independence of the Malaysian Bar.[64]

46. Joint Submission 4 (JS4) urged the Malaysian authorities to guarantee the right of arrested persons to receive assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings and to ensure that lawyers are able to consult with their clients freely at all times.[65]

47. JS1 stated that decisions appeared to be made selectively by the police regarding which cases to investigate and by the Attorney General's Chambers on which cases to prosecute. Sentencing in certain crimes, for instance statutory rape cases did not reflect the gravity of the crime.[66] JS10 stated that effective investigations into reports of law enforcement abuse were rare. The Government had also failed to establish the Independent Police Complaints and Misconduct Commission. Instead, the Enforcement Agencies Integrity Commission was introduced, but this Commission lacked prosecuting powers and independence.[67]

48. Joint Submission 9(JS9) recommended that Malaysia immediately stop targeting and intimidating children and adults on the basis of gender identity or sexual orientation, and make reparation for those who have been harmed through their anti-LGBT programmes.[68] JS4 made similar recommendations.[69]

4. Right to privacy, marriage and family life

49. According to JS1, multiple sections within the Islamic Family Law in Malaysia discriminate against Muslim women and there have been a roll-back in those rights such as equal rights to marriage, during marriage and its dissolution.[70]

50. While noting that the criminalization of same-sex conduct is incompatible with international human rights law and the mere existence of such laws encourages and reinforces intolerance, abuse and discrimination against the LGBT community in Malaysia, and that laws that penalise same-sex conduct stigmatize LGBT persons and make it difficult for them to claim and assert their rights, CHRI recommended that Malaysia: embark on a process of repealing Section 377A, Section 377B and Section 377D of the Malaysian Penal Code that criminalise consensual same-sex conduct between adults.[71]

5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

51. ERT stated that the Constitutional guarantee of freedom of religion was both excessively limited in scope and poorly enforced with the result that the religious freedom of non-Muslims was not fully guaranteed.[72] European Centre for Law and Justice (ECLJ) stated that the Constitution, the judicial system and the Government permitted and

promoted a variety of forms of religious discrimination. The mandatory jurisdiction of Sharia courts over conversion applications from Islam to another religion allowed Sharia courts to effectively prohibit conversion from Islam.[73]

52. JS1 noted that the Catholic weekly, the Herald, was prohibited from using the word "Allah" by the Ministry of Home Affairs although the High Court quashed the Minister's decision. As a result of the court decision, ultra-Malays pressure groups attacked at least 10 churches with petrol bombs, Molotov cocktails and splashed paint.[74] JS1 also stated that there was no freedom of religion for Muslims of other obediences or schools as only the Sunni sect is permitted. Other Muslim sects such as Shiite are labelled as "deviant" and actions may be taken against them.[75]

53. According to AI, restrictions to freedom of expression continue. National laws such as the Sedition Act, the Communication and Multimedia Act 1998 (CMA), the Printing Press and Publications Act (PPPA), the Official Secrets Act, and the Evidence Act, are used to curtail free speech.[76] AI also noted that the Government amended the Printing Press and Publications Act in 2012 striking out references to the Home Minister's "absolute discretion" in granting a printing press license. Centre for Independent Journalism (CIJ) [77], ERT, International Publishers Association (IPA) and HRW noted similar concerns.[78] Joint Submission 2 (JS2) stated that the Sedition Act 1948 tabled for replacement by the National Harmony Act later in 2013 prohibited criticizing the Government, questioning the established order or questioning Malaysia's sovereignty thus severely limiting the discourse on political speech and intimidating free speech advocates.[79]

54. IPA noted the 1 October 2012 landmark decision by the Kuala Lumpur High Court's Appellate and Special Powers Division that quashed the Home Ministry's decision not to grant a newspaper printing permit to Mkini Dotcom Sdn Bhd saying that the home minister's decision "affects the right of the plaintiff to the right to freedom of expression which also includes the right to a permit and it is a fundamental liberty enshrined in the Constitution".[80]

55. CHRI noted that the Official Secrets Act 1972 had created obstacles for freedom of information as the Act impeded the sharing of information by imposing criminal sanctions on officials thereby entrenching a climate of secrecy.[81] JS3 recommended that Malaysia enact a national law on the right of access to information and ensure that all pre-existing laws that restrict this right are reviewed and amended in accordance with international standards.[82]

56. HRW stated that amendments to the Evidence Act in August 2012 marked the Government's first overt attempt to censor the Internet. According to HRW, they tighten restrictions by classifying computer owners and operators of computer networks as publishers, responsible for whatever is displayed on their screens.[83] AI and JS1 expressed similar concerns.[84]

57. JS2 noted that most Malaysian newspapers were owned by members of parties in the ruling coalition Government. JS2 also stated that broadcasting was tightly controlled and largely owned by the same party members and business persons as the newspapers.[85]

58. JS2 stated that bloggers had faced legal harassment with accusations of sedition and defamation from the Minister of Information[86] recommending that Malaysia repeal all laws criminalizing blasphemy and defamation.[87]

59. HRW noted that the Home Affairs Minister had absolute discretion to declare a society unlawful if he believes it would prejudice the "security of Malaysia" or "public order or morality".[88] FLD expressed similar concerns[89] recommending that Malaysia review the Societies Act.[90]

60. ICJ and HRW noted that the 2012 Peaceful Assembly Act (PAA) replaced sections 27, 27A, 27B and 27C of the 1967 Police Act. The PAA appeared to be more restrictive than the provisions in the Police Act. According to ICJ, the PAA expressly states that the right to organize an assembly or participate in an assembly peacefully does not extend to non-citizens and persons below 21 years of age in contravention of international standards. The PAA also places undue onerous responsibilities on organizers of public assemblies. .[91] AI and FLD expressed similar concerns.[92]

61. Specifically, CIJ and HRW noted that on 28 April 2012, tens of thousands of Malaysians gathered in Kuala Lumpur for Bersih 2, a rally demanding free and fair elections. The rally's demand to use *Dataran Merdeka* (freedom square) for the peaceful gathering was denied by a court injunction at the very last minute and thousands of extra police force were summoned by the Home Ministry to limit entry into the city on that day and guard the perimeters to keep protesters off the square. When some protesters surrounding the sealed area of *Dataran Merdeka* breached the barricades, the police reacted with an all-out attack against the protestors.[93]

62. ICJ noted that in November 2011, the police banned the Seksualiti Merdeka (Sexuality Independence) festival on the ground that the festival was a threat to national security and public order. As a result, the organizing committee filed an application for judicial review, which the High Court of Kuala Lumpur rejected in 2012 stating that the police were acting within their powers to investigate under the Police Act and the matter was not open to review.[94]

6. Right to work and to just and favourable conditions of work

63. JS2 stated that amendments to the Employment Act 1955 in 2011 eroded protection for workers as employers would no longer be directly responsible for the welfare of their employees. Employers were permitted to use contract, or labour from agencies to avoid union representation for workers.[95]

64. Joint Submission 11 (JS11) referred to legislation whose negative implications affect migrant workers more than local workers and restrains their rights to freedom of association and collective bargaining.[96]

65. JS11 also noted legislation and practices that discriminate against migrant workers regarding their access to healthcare, the prices they have to pay for healthcare and the compensation they are entitled to in case of occupations diseases and accidents.[97]

66. According to JS1, the Employment Act 1955 discriminates against domestic workers in relation to a number of rights, including the right to maternity benefits, rest days, limited hours of work, holidays, as well as termination, layoff and retirement benefits.[98]

7. Right to social security and to an adequate standard of living

67. JS1 recommended that usage of gazetted water catchment areas be strictly supervised and actions be taken to prosecute in the event of non-compliance.[99]

8. Right to health

68. JS1 stated that non-citizens faced discrimination regarding access to health services because they are required to pay foreigner rates at government hospitals. Non-citizens in an irregular situation are also afraid of seeking medical treatment for fear of arrest..[100]

69. Joint Submission 12 (JS12) noted sexual and reproductive health services, including family planning, meant to be available under the Adolescent Health Policy were not generally available in government facilities to unmarried women.[101] JS12 recommended

that Malaysia enact laws and policies protecting the confidentiality and privacy of all women who access sexual and reproductive health services.[102]

70. JS1 noted that there had been a declining budget allocation for NGOs to respond to HIV-AIDS with prevention, support and care work.[103]

9. Right to education

71. World Vision Malaysia (WVM) noted that efforts had been made to enhance the teaching profession by providing high quality teachers. However, there was still a shortage of quality teachers especially in the most rural areas of the country, namely in Sabah, Sarawak and the *Orang Asli* settlements. WVM also stated that this issue had significantly impacted the ability of students to comprehend the lessons, which subsequently leads to high dropout rates especially when transitioning from primary to secondary school education.[104]

72. JS1 stated that asylum seeking, refugee, stateless, and migrant workers children, were not given primary education in government schools.[105] Joint Submission 5 (JS5) expressed similar concerns.[106]

73. Orang Asli Network Peninsular Malaysia (JKOASM) stated that the quality of education for the Orang Asli students in the interior was unsatisfactory in terms of infrastructure, facilities, learning and poorly trained teachers.[107]

10. Cultural rights

74. JKOASM stated that there had been an Islamization programme with material benefits implemented by the Department of Orang Asli Development (JAKOA) over the years designed to change *Orang Asli* identity, which is potentially damaging to the culture and rights as indigenous peoples.[108]

11. Persons with disabilities

75. JS1 stated that there was no single government agency that oversees all disability-related issues thus making it difficult for disability issues to be dealt with comprehensively. According to JS1, the Persons with Disabilities Act 2008 does not provide for any recourse for breaches. JS1 also noted that the majority of public transportation in the country was not disabled-friendly and some were dangerous. Further, financial aid and provision of monthly allowance for unemployed persons with disabilities were grossly inadequate.[109]

12. Indigenous peoples

76. According to JS1, indigenous peoples continue to suffer a lack of recognition of their land rights, culture and advancement. They are continuously subjected to forced relocation and forced assimilation policies affecting their cultures and religions without prior free and informed consent, and compensation.[110] Joint Submission 7 (JS7) also noted that many indigenous leaders appointed by their communities had been replaced by government appointed representatives who carry out the agenda of the state government, which had caused strife within communities.[111] JAKOASM expressed similar concern that the system violated and defied traditional *Orang Asli* leadership and decision-making systems.[112]

77. JS7 noted that in the Borneo state of Sabah, the issuance of communal titles to develop native customary lands under a joint venture scheme with government agencies or private sector eroded Sabah's indigenous peoples' right to ancestral lands.[113] Similarly, Society for Threatened Peoples noted that in Sabah and Sarawak, customary land rights were widely recognized by the law. However, they were not properly implemented and

even ignored by the Government's providing the land for large-scale resource extractions and plantations.[114]

78. STP stated that *Orang* Asli faced severe marginalization and discrimination in socio-economic opportunities.[115] BCM stated that the current protection and recognition by the Government of *Orang Asli* customary land rights was far from adequate. .[116] JAKOASM and JS7 expressed similar concerns.[117]

79. JAKOASM noted that Palm Oil Commercial Replanting (TSK), a government project, effectively destroyed crops that had been cultivated for generations and polluted and reduced the customary land area. There was no systematic or transparent information of dividend payments to Orang Asli participants.[118]

13. Migrants, refugees and asylum-seekers

80. According to AI, over 20 percent of Malaysia's workforce is composed of migrants, with many forced to work in hazardous situations and for 12 hours or more every day, often against their will. Many had been subjected to verbal, physical and sexual abuse and some were in situations close to bonded labour. Most employers hold their workers' passports, which places them at risk of arrest if they leave their workplace, since police routinely check migrants' passports..[119]

81. HRW also stated that in 2009 migrant domestic workers ILO Convention were excluded from key provisions of Malaysia's labour law. Migrant workers remained subject to excessively long hours, lack of rest days, unpaid wages, restrictions on freedom of movement and association, and physical and sexual abuse, in some cases amounting to forced labour or trafficking.[120] JS5 expressed similar concerns.[121]

82. JS1 stated that there were no special legislative provisions regarding the administrative detention of vulnerable groups such as children, pregnant women, elderly and persons with physical and mental disabilities.[122] AI also noted that conditions were poor in immigration detention centres.[123]

83. JS5 stated that in order to avoid deportation, pregnant foreign workers choose to give birth outside of the healthcare system thus facing high risks. JS5 also stated that the Government did not include migrant workers in its HIV/AIDS programmes and thus denying them access to information, counselling, and support services.[124]

84. According to AI, in 2010, there were between 90,000 and 170,000 refugees and asylum-seekers in Malaysia. AI also noted that in August 2011, the Australian High Court ruled as invalid a bilateral agreement to send to Malaysia 800 asylum-seekers who had reached Australia by sea in exchange for resettling 4,000 refugees from Malaysia. .[125] HRW also stated that there was no guarantee that UNHCR-recognized refugees or asylum seekers with refugee claims pending will not be forcibly returned to their countries thus violating the internationally protected prohibition against *refoulement*.[126]

85. AI noted that in August 2011, Malaysia forcibly returned at least 11 Chinese nationals of Uighur ethnicity to China. In February 2012, Malaysia forcibly returned blogger Hamza Kashgari to Saudi Arabia, where he faces the possibility of the death penalty for his tweets about the Prophet Mohamed[127], as noted by JS3.[128]

86. HRW noted that refugees and asylum seekers in Malaysia faced extortion and abuse from law enforcement officers. They were refused legal authorization to work, which increases their risk of exploitation, particularly as they often wait years for resettlement. Refugees' children had little or no access to education, and basic medical care was often beyond their financial reach.[129]

14. Right to development and environmental issues

87. JS1 recommended that Malaysia enforce existing laws on the protection of environment.[130] JS7 noted that Malaysia's first smelter pant began operation in Balingian, Sarawak in 2009 and since its operation indigenous peoples living adjacent to the plant had suffered serious acute respiratory problems, including breathing difficulties, coughing, headaches, skin rashes, sores, dizziness and asthma. The toxic smog had polluted nearby rivers that the villagers are dependent for water supply.[131]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a national human rights institution with "A" status)

Civil society

AI	Amnesty International, [London, United Kingdom];
BCM	Bar Council of Malaysia [Kuala Lumpur, Malaysia];
CIJ	Centre for Independent Journalism, [Malaysia];
CHRI	Commonwealth Human Rights Initiative [London, United Kingdom];
CRIN	Child Rights International Network;
ECLJ	European Centre for Law and Justice [Strasbourg, France];
ERT	The Equal Rights Trust, [London, United Kingdom];
FLD	Front Line Defenders [Dublin, Ireland],
GIEACPC	Global Initiative to End All Corporal Punishment of Children [Geneva, Switzerland],
HRW	Human Rights Watch [New York, USA];
ICJ	International Commission of Jurists [Geneva, Switzerland];
IPA	International Publishers Association [Geneva, Switzerland];
JAKOASM	Orang Asli Network Peninsular Malaysia [Malaysia];
STP	Society for Threatened Peoples [Göttinen, Germany];
WVM	World Vision Malaysia [Malaysia];
JS1	Joint submission No. 1 by 54 organizations: [Pusat Kesedaran Komuniti Selangor (EMPOWER), Suara Rakyat Malaysia (SUARAM), Education and Research Association for Consumers, Malaysia (ERA Consumer), All Petaling Jaya, Selangor Residents' Asscociation (APAC), All Women's Action Society (AWAM), Amnesty International, Malaysia, ASEAN Institute for Early Childhood Development, Association of Women's Lawyers (AWL), Association of Women with Disabilities Malaysia, Coalition to Abolish Modern Day Slavery in Asia (CAMSA), Centre for Independent Journalism (CIJ), Childline Malaysia, Christian Federation Malaysia, Community Action Network (CAN), Centre for Rights of Indigenous Peoples of Sarawak (CRIPS), Dignity International, Foreign Spouses Support Group, Good Shepherd Welfare Centre, Health Equity Initiatives, Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM), Jaringan Rakyat Tertindas (JERIT), Justice For Sisters, Pusat Komunikasi Selangor (KOMAS), Knowledge and Rights with Young people through Safer Spaces (KRYSS), KLSCAH Civil Rights Committee, Land Empowerment Animals People (LEAP), Malaysians Against Death Penalty and Torture (MADPET), Malaysian Child Resource Institute (MCRI), Malaysian Physicians for Social Responsibility, Malaysia Youth & Student Democratic Movement (DEMA), Migration Working Group (MWG), PANGGAU, Persatuan Masyarakat Selangor dan Kuala Lumpur (PERMAS), PS The Children, PT Foundation, People's Service Organisation (PSO), Seksualiti Merdeka, Perak Women for

	Women Society, Persatuan Guru-Guru Tadika Semenanjung Malaysia (PGGT), Persatuan Komuniti Prihatin Selangor dan Kuala Lumpur, Persatuan Sahabat Wanita Selangor, Rainbow Genders Society, Sabah Women's Action-Resource Group (SAWO), Southeast Asian Centre for e-Media (SEACem), Sinui Pai Nanek Sengik (SPNS), SIS Forum (Malaysia) Bhd (SIS), Tenaganita, Voice of the Children (VOC), Writers' Alliance for Media Independence (WAMI), Women's Aid Organisation (WAO), Women's Centre for Change, Penang (WCC), Yayasan Chow Kit, Young Buddhist Association, Youth Section, Kuala Lumpur and Selangor Chinese Assembly Hall, Youth Section];
JS2	Joint submission No. 2 by CIVICUS: World Alliance for Citizen Participation and PAX ROMANA - International Catholic Movement for Intellectual and Cultural Affairs (Asia);
JS3	Joint submission No. 3 by Article19 and SUARAM [Kuala Lumpur, Malaysia];
JS4	Joint submission No. 4 by Lawyers for Lawyers (L4L) [Netherlands] and The Law Society of England and Wales [London, United Kingdom];
JS5	Joint submission No. 5 by the Migration Working Group composed of: Building and Woodworkers' International Asia Pacific; Coalition to Abolish Modern-day Slavery in Asia (CAMSA); Health Equity Initiatives Union Congress (MTUC); Suara Rakyat Malaysia (SUARAM); Tenaganita (Women's Force); Women's Aid Organisation (WAO); and Pusat Kebajikan Good Shepherd (PKGS);
JS6	Joint submission No. 6 by Child Rights Coalition Malaysia composed of Childline Malaysia, Malaysian Care, Malaysian Child Resource Institute, National Early Childhood Intervention Council, Protect and Save the Children, Voice of the Children and Yayasan Chow Kit [Kuala Lumpur, Malaysia]. The submission was also endorsed by Women' Centre for Change [Penang, Malaysia];
JS7	Joint submission No. 7 by Indigenous Peoples Network of Malaysia (Jaringan orang Asal Semalaysia (JOAS) composed of the following organizations: [PR Pusakag; PR Tonibung; PR Monungkus; PR Gompito; PR JGPT Tongod; PR Tinungkusan; PR G5 Simbuan; PR Tinipot; PR Piroton Dagaling; PR Nokiikito; PR Mukakas; PR Mamakat; PR Balat-Kuamut; PR G5 Mangkawago; PR AARP Ulu Senagang-Mongool; PR Mongopud; PR Alab Lanas; PR G8 Komokitukod; PR Kelab Belia Kampung Gana; PR G14 Ulu Tomani; PR Kawakahan; G4-Janibungan; PR Nambayan; PR Sinungkalangan; JKKK Kg Orang Asli P. Ke,pas; Bukit Cheeding; Jaringan Orang Asli Bukit Tampoi; Jaringan Orang Asli Sebir; Jaringan Kg Orang Asli Perak; Jaringan Kg Orang Asli Pahang; Jawatankuasa Bertindak Kg Payah-Rekoh-Berdut; SPNS (Sinui Pai Nanek Sengik Perak);Gabungan Orang Asli Johor Selatan; Tompoq Topoh; Gabungan Orang Asli Pahang; JKKK Pos Simpor; Gua Musang; Sarawak Keruan Organisationi; Kampung Bukit Peninjau; PDBT; PPU; Indigenous People Development Centre; Kampung Bukit Limau-sungai Nat; Pekat Kanowit; SILOP; PANGAU; WADESA (Wanita Desa Sarawak); IPIMAS; Persatuan Penduduk Balingan Satu; ADC MERADONG-JULAU; Jaringan Orang Asal Baram; TAHABAS (Jaringan Tanah Hak Adat Bangsa Asal Sarawak); Rumah Rajang dan Tatu; JKKK Pusat Krokong; Tring-Kameh; Jawatanjuasa Tindakan Rakyat Baram; Jawatanjuasa Bertindak Hak Kg Spaoh-Benat; Jawatankuasa Bertindak Melindungi Hak Kawasan Penduduk Tutoh-apoh; MEBUSA; Sarawak Indigenous Youths Network; and JKKK Pusat Jagoi];

JS8	Joint submission No. 8 by The Advocates for Human Rights and HARM REDUCTION INTERNATIONAL;
JS9	Joint submission No. 9 by Knowledge and Rights with Young people through Safer Spaces (KRYSS), Seksualiti Merdeka, Justice for Sisters, and PT Foundation [Malaysia];
JS10	Joint submission No. 10 by OMCT [Geneva, Switzerland] and SUARAM [Malaysia];
JS11	Joint submission No. 11 by Clean Clothes Campaign (CCC) [Amsterdam, the Netherlands] and Workers Hub for Change (WH4C) [Pahang, Malaysia];
JS12	Joint submission No. 12 by Federation of Reproductive Health Association of Malaysia (FRHAM) [Malaysia], Reproductive Rights Advocacy Alliance Malaysia (RRAAM) [Malaysia] and the Sexual Rights Initiative.

National human rights institution

SUHAKAM	Human Rights Commission of Malaysia.

[2] SUHAKAM, paras. 5 – 6.
[3] SUHAKAM, paras. 36 – 37.
[4] SUHAKAM, para. 8.
[5] SUHAKAM, para. 7.
[6] SUHAKAM, para. 38.
[7] SUHAKAM, para. 43.
[8] SUHAKAM, para. 13.
[9] SUHAKAM, para. 34.
[10] SUHAKAM, para. 35.
[11] SUHAKAM, paras. 21 – 22.
[12] SUHAKAM, para. 12.
[13] SUHAKAM, para. 20.
[14] SUHAKAM, paras. 31 – 33.
[15] SUHAKAM, para. 28.
[16] SUHAKAM, para. 26.
[17] SUHAKAM, para. 23.
[18] SUHAKAM, para. 14.
[19] SUHAKAM, paras. 15 – 16.
[20] SUHAKAM, para. 18.
[21] SUHAKAM, para. 19.
[22] ERT, para. 11., and ICJ, paras. 18- 20.
[23] AI, p. 1.
[24] CHRI, para. 11.
[25] JS1, para. 1.2.
[26] JS3, para. 25.
[27] JS6, para. 2.1.
[28] JS6, para. 2.2.
[29] JS1, para. 1.1.
[30] ERT, para. 13.
[31] JS1, para. 2.2.
[32] ERT, para. 8 (ii).
[33] JS6, para. 2.3.
[34] JS1, para. 3.1.
[35] JS1, para. 3.2.
[36] JS6, para. 2.4.
[37] ICJ, para. 21.
[38] ICJ, para. 21.
[39] ICJ, Recommendation xvi) on p. 5.
[40] JS1, para. 5. 2.

[41] ERT, para 8 (iii). See also JS1, para. 4.2.
[42] JS1, para. 6.1.1.
[43] JS1, para. 6.3.
[44] AI, p. 2.
[45] JS8, para. 9.
[46] JS8, Chpater. V. Recommendations (2).
[47] CRIN, p. 1.
[48] JS10, p. 1.
[49] JS10, p. 3.
[50] HRW, p. 3.
[51] AI, pp. 2 – 3.
[52] BCM, p. 1., FLD, para. 6., ICJ, paras. 13 – 17. , HRW, pp. 2 – 3.
[53] JS3, para. 25., and JS10, p. 4.
[54] FLD, para. 10.
[55] FLD, para. 13.
[56] HRW, p. 4.
[57] AI, p. 4.
[58] GIEACPC, pp. 1 - 4
[59] CRIN, pp. 1- 2.
[60] ICJ, para. 6.
[61] JS1, para. 2.3.
[62] JS1, para. 2. 6.
[63] BCM, p. 2.
[64] BCM, p. 2. See also JS4, paras. 17- 20 and para. 23.
[65] JS4, para. 14.
[66] JS1, para. 8.1.
[67] JS10, p. 3.
[68] JS9, para. 4.1.1.
[69] JS4, para. 27.
[70] JS1, paras. 9.2.1. -9.2.2.
[71] CHRI, paras. 39 and 41. See also HRW, p. 3., and JS1, para. 6.4. See also JS9, para. 4.1.4.
[72] ERT. Para. 15.
[73] ECLJ, p. 5.
[74] JS1, paras. 10.1.1. -10.1.3.
[75] JS1, para. 10.1.6.
[76] AI, p. 2.
[77] CIJ, para. 4.
[78] ERT, para. 16., IPA, pp. 1 – 2., HRW, p. 1.
[79] JS2, paras. 2.3 – 2.4.
[80] IPA, pp. 3- 4.
[81] CHRI, para. 14.
[82] JS3, para. 25.
[83] HRW, p. 2.
[84] AI, p. 2., and JS1, para. 10.4.2.
[85] JS2, paras. 2.6 – 2.7.
[86] JS2, para. 2.10.
[87] JS3, para. 25.
[88] HRW, p. 2.
[89] FLD, paras. 16 – 18.
[90] FLD, para. 24 (f).
[91] ICJ, para. 8., and HRW, p. 1.
[92] AI, p. 1., and FLD, paras. 7 – 9.
[93] CIJ, paras. 5 – 6., and HRW, p. 1. See also FLD, paras. 19 – 21.
[94] ICJ, para. 11.
[95] JS2, para. 2. 15.
[96] JS11, paras. 17 – 20.

[97] JS11, paras. 12 -14.
[98] JS1, para. 11.3.
[99] JS1, para. 17.4.
[100] JS1, para. 12.1.
[101] JS12, para. 10.
[102] JS12, paras. 25 (b) and 25 (c).
[103] JS1, para. 12.2.
[104] WVM, p. 3.
[105] JS1, para. 13.1.
[106] JS5, para. 44.
[107] JAKOASM, paras. 23 – 24.
[108] JAKOASM, para. 9.
[109] JS1, paras. 14.1. – 14.2.
[110] JS1, para. 15.1.
[111] JS7, para. 22.
[112] JAKOASM, para. 11.
[113] JS7, para. 5.
[114] STP. Para. 4. See also paras. 9 and 11- 12.
[115] STP, para. 7.
[116] BCM, p. 5.
[117] JAKOASM paras. 13 – 19., and JS7, para. 7.
[118] JAKOASM, para. 20.
[119] AI, p. 4.
[120] HRW, p. 4.
[121] JS5, para. 8.
[122] JS1, para. 16.3.
[123] AI, p. 4.
[124] JS5, paras. 42 – 43.
[125] AI, p. 4.
[126] HRW, p. 3.
[127] AI, p. 4.
[128] JS3, para. 17.
[129] HRW, p. 4.
[130] JS1, para. 17. 3.
[131] JS7, para. 14.