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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Посещение Малайзии

Доклад Специального докладчика в области культурных прав* **

Резюме

Специальный докладчик в области культурных прав посетила Малайзию 11–22 сентября 2017 года по приглашению правительства. Цель посещения заключалась в выявлении в духе сотрудничества и конструктивного диалога передовой практики и возможных препятствий в деле поощрения и защиты культурных прав в Малайзии. Специальный докладчик рассмотрела, в частности, вопросы, касающиеся права отдельных лиц и групп лиц на участие в культурной жизни и воздействия фундаментализма и экстремизма на осуществление культурных прав. Она выносит ряд рекомендаций с целью оказания помощи правительству и другим соответствующим субъектам в их усилиях по решению проблем, связанных с осуществлением культурных прав в Малайзии.

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.

** В связи с обстоятельствами, не зависящими от представителя, было решено издать настоящий доклад после стандартной даты его опубликования.



Annex

Report of the Special Rapporteur in the field of cultural rights on her visit to Malaysia

I. Introduction

1. The Special Rapporteur in the field of cultural rights visited Malaysia from 11 to 22 September 2017. The Special Rapporteur would like to thank the Government of Malaysia for extending an invitation to her to visit this diverse and dynamic country. She notes that the Government changed subsequently and hopes that the new authorities will prioritize implementation of her recommendations.

2. The Special Rapporteur appreciated the care with which official meetings were prepared and the extensive documentation she received. She is particularly grateful to the relevant staff of the Ministry of Tourism and Culture¹ for their ongoing assistance and hospitality. She also extends her thanks to the Office of the United Nations Resident Coordinator.

3. She appreciated the opportunity to visit different areas of Malaysia, to meet with 62 government agencies and with the Minister of Tourism and Culture, and to have discussions with a wide array of civil society representatives and experts, including representatives of different minority groups, women human rights defenders, indigenous rights defenders, lesbian, gay, bisexual, transgender and intersex rights defenders, religious activists and other representatives of the country's rich human rights movement.

4. The Special Rapporteur travelled to Kuala Lumpur, Kelantan and Sarawak, and met with a delegation from Sabah. She visited a multi-ethnic school, a Chinese museum and a gallery devoted to Wayang Kulit (shadow puppetry) and attended several cultural performances. She met with a wide array of persons, including lawyers, artists, museum professionals, writers, cartoonists, filmmakers, sociologists, puppeteers, specialists in interfaith and inter-ethnic dialogue, and academics.

5. The visit aimed to address the realization of the right of all people to take part in cultural life without discrimination, as guaranteed in article 27 of the Universal Declaration of Human Rights. The purpose of the cultural rights mandate is not to protect culture or cultural heritage per se, but rather the conditions allowing all people, without discrimination, to access, participate in and contribute to cultural life in a continuously developing manner.

6. As enshrined in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

7. Cultural rights are not tantamount to cultural relativism. They are not an excuse for violations of other human rights. They do not justify discrimination or violence. They are not a licence to impose identities or practices on others or to exclude them from either in violation of international law. They are firmly embedded in the universal human rights framework. Hence, the implementation of human rights must take into consideration respect for cultural rights, even as cultural rights themselves must take into consideration respect for other universal human rights norms.²

¹ The name of this ministry was changed on 2 July 2018 to the Ministry of Tourism, Arts and Culture Malaysia. Following the 2018 elections there may have been other administrative changes as well which are not reflected in the present report.

² A/HRC/31/59, para. 27.

II. General context and framework

A. National human rights framework

8. Malaysia has ratified the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and its two Optional Protocols, and the Convention on the Rights of Persons with Disabilities. The Convention on the Elimination of All Forms of Discrimination against Women requires States to guarantee the equality of men and women and non-discrimination on the basis of sex in “all aspects of cultural life” (art. 13). The Convention on the Rights of the Child requires respect for the right of the child to participate freely in cultural life and the arts (art. 31). The Convention on the Rights of Persons with Disabilities likewise requires States to recognize the rights of persons with disabilities to take part on an equal basis with others in cultural life and to enjoy access to cultural programming and services (art. 30).

9. Malaysia is also one of the founding members of the Association of Southeast Asian Nations (ASEAN). In 2012, ASEAN adopted its own Human Rights Declaration, which recognizes the right of every person, individually or in association with others, to freely take part in cultural life and to enjoy the arts (art. 32).

10. International treaties are enforceable domestically when they have been incorporated into Malaysian law by statute. According to article 4 of the Constitution, national law prevails in the case of a conflict between a statute and a provision of international law. Malaysian courts have taken the position that the Universal Declaration of Human Rights is not legally binding and that it would only be given effect insofar as it is not inconsistent with the Constitution.

11. The Special Rapporteur believes that it is essential for Malaysia, both in relation to concerns in the national context and in order to exercise regional leadership on human rights, to improve its record on the ratification of international human rights treaties, as well as on their implementation. During her mission, she was pleased to learn that ratifications of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were under consideration. However, she regrets that there has reportedly been no progress in that regard since then.

12. While Malaysia’s ratification of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child are very positive, the Special Rapporteur continues to have concerns about their limited implementation and about Malaysia’s remaining reservations to these conventions. She calls for the withdrawal of these reservations at the earliest opportunity.³ While she welcomes the withdrawal of some of the reservations to the Convention on the Elimination of All Forms of Discrimination against Women, she deplores the fact that for the remaining reservations, the official local interpretation of syariah law is given precedence over universal human rights. She encourages the ratification of the Optional Protocol to this Convention, which would greatly enhance the Convention’s implementation. Furthermore, she encourages the Government, in line with its support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, to consider ratifying the International Labour Organization’s Indigenous and Tribal Peoples Convention, 1989 (No. 169), which stipulates that indigenous peoples’ rights of ownership and possession over lands which they traditionally occupy shall be recognized.

13. It is essential that thorough attention be paid to following up on recommendations made by United Nations human rights treaty bodies and experts. While some in government indicated that these were given serious consideration, some in civil society felt that little action had been taken in this regard on some critical issues.

14. At the time of her visit, the Special Rapporteur was informed about the ongoing development of a new national strategy on human rights through a thorough process which reportedly involved some 50 agencies and elements of civil society and which took account

³ See also CEDAW/C/MYS/CO/3-5, paras. 9–10.

of the United Nations *Handbook on National Human Rights Plans of Action*, of 2002. The National Human Rights Action Plan was launched on 1 March 2018. It aims to provide a way of assessing divergence between practice and human rights guarantees, to integrate human rights efforts by all ministries and to contribute to the promotion of human rights in Malaysia. The Special Rapporteur encourages the Government to make ratification of the core international human rights treaties a priority of this plan and to clarify the role of all international human rights standards as benchmarks. She also hopes that concrete procedures for monitoring the implementation of the plan will be developed and will include close cooperation with the Human Rights Commission of Malaysia (SUHAKAM). She is pleased to learn that cultural rights were incorporated in the second pillar of the plan, and urges that these rights be fully implemented in accordance with international standards, taking into consideration the work of her mandate.

15. SUHAKAM was established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and seems to enjoy the ability to carry out its work meaningfully, including by conducting investigations into violations. However, official and regular interactions between SUHAKAM and policymaking bodies are not adequately ensured. The Special Rapporteur believes that cooperation in the field of human rights could be further developed by arranging for the annual reports of SUHAKAM to be debated in Parliament, either at one of its general sessions or through a permanent parliamentary committee, with gender-balanced membership, established to consider these questions.

B. Constitutional and legislative framework

16. The Malaysian Federal Constitution contains a chapter on the protection of fundamental rights and freedoms. Important freedoms relating to cultural rights are included, such as the rights to equality and to freedoms of religion, expression, assembly and association, and rights in respect of education. However, no direct reference is made to cultural rights, in particular the rights to take part in cultural life, to engage in creative and artistic activities, to enjoy the arts and cultural heritage or to share in scientific advancement and its benefits. Article 152 states that the national language is Malay and provides that everyone is free to teach, learn or use any other languages, except for official purposes – understood as interactions with the authorities.

17. Although freedom of “speech and expression” are recognized in the Constitution under article 10 (1) (a), they are severely limited and qualified by broad provisions in article 10 (2) (a). The Special Rapporteur remains concerned about a number of national laws, including the Sedition Act of 1948, the Communication and Multimedia Act of 1998, the Printing Press and Publications Act of 1984, the Official Secrets Act, and the Evidence Act, which are reportedly used to curtail expression or acts seen as critical of religion or the Government. This affects not only the media landscape but also freedom of artistic expression and the right to take part in cultural life generally.

18. Article 3 of the Constitution states that Islam is the religion of the federation but that other religions may be practised in peace and harmony in any parts of the federation. Article 11 recognizes the right of every person “to profess and practise his religion” and “to propagate it”, subject to possible limitations on doing so among “persons professing the religion of Islam”, as well as the right for any religious group to manage its religious affairs and maintain religious institutions. Pursuant to articles 74–79 of the Constitution, matters related to what are deemed to be Muslim laws are decided upon by the State legislature. However, the Federal Department of Islamic Development (JAKIM) plays a dominant role in shaping the policy for the development of Islam in the country and in standardizing laws, regulations, teachings and information in this regard across the country. The Special Rapporteur underscores that the Government has a responsibility to safeguard the religious freedom of all, and not to protect any religion – or any interpretation of that religion – per se, and that freedom of religion or belief also includes the right not to profess any religion and to change one’s religion or belief.

19. The Special Rapporteur notes that particular challenges arise in light of Malaysia's plural legal systems, including civil courts, Syariah Courts and indigenous customary courts. The Syariah Courts only apply to those deemed Muslims. They have jurisdiction in matters such as marriage, inheritance, adoption and "apostasy", and have a particular impact on the human rights, including the cultural rights, of women and children. In addressing women's equal cultural rights, the former Special Rapporteur emphasized that legal pluralism could be problematic when communal or tribal courts or elders are authorized to apply "traditional" values, norms and practices.⁴ However, she also noted that some "fairer balance between gender equality and recognizing cultural and religious identities" was possible in systems that allowed recourse to constitutional challenge of traditional authorities, or that ensured that any such plural systems could not justify or enact dehumanization, violations of dignity or injuries to the physical or mental well-being of women.⁵

20. Malaysia aligned its tenth and eleventh development plans with the Sustainable Development Goals. Of particular interest for the visit, because of their relationship with the realization of cultural rights, were the commitments to reach Goal 4 on inclusive and equitable education, Goal 5 on gender equality, Goal 10 on reducing inequality, Goal 11 on resilient and sustainable cities and Goal 16 on an inclusive society and the rule of law. The Special Rapporteur encourages the Government to make clearer the essential role of cultural rights in development and in the eradication of poverty, as well as in building social cohesion and mutual respect and understanding.⁶

21. Although article 8 of the Constitution proclaims equality before the law of all persons and the Government aims to implement the 2030 Agenda for Sustainable Development objective of leaving no one behind, Malaysia has not ratified the Convention relating to the Status of Refugees, of 1951, nor has it enacted any laws or regulations concerning the status of asylum seekers and refugees in the country, leaving this part of the population highly vulnerable.

C. General context

22. Malaysia has developed as a multi-ethnic society comprised of diverse ethnic, linguistic and religious groups. Apart from the largest groups, of Malays, Chinese and Indians, Malaysia is home to a number of minorities and indigenous peoples, including the Negrito, the Senoi and the Proto-Malay in Peninsular Malaysia (generally referred to as Orang Asli), the Kadazan Dusun, the Bajau and the Murut mainly in Sabah, and the Iban, the Bidayuh, the Melanau and the Orang Ulu predominantly in Sarawak. Malaysia is also a multi-religious society, with a population comprised of approximately 60 per cent Muslims, 20 per cent Buddhists, 9 per cent Christians, 6 per cent Hindu and others. One of Malaysia's strengths in the past has been the conscious efforts to capitalize on the diversity and creativity of its people to build the nation.

23. There are over 130 languages spoken in the country, the vast majority of them being indigenous languages. Malay is recognized as the sole official language, however public primary schooling is provided in Mandarin, in Tamil and in some of the major indigenous languages such as Semai in Peninsular Malaysia, Iban in Sarawak, and Dusun and Kadazan in Sabah.

24. Since the 1969 Kuala Lumpur riots which led to a two-year state of emergency and suspension of the Parliament, one declared goal of the Government has been to defuse ethnic tensions between Malays and ethnic Chinese Malaysians and foster harmony by reducing economic inequalities. Malays were guaranteed a number of governmental benefits in terms of access to land, to physical capital and participation in economic activities, to training and to public facilities, especially through the implementation of the New Economic Policy (1971–1990). Though initially established as temporary, many of these affirmative actions – referred to as "the Bumiputera policy" and applying to "Malays and natives of Sabah and

⁴ A/67/287, para. 52.

⁵ Ibid., para. 53.

⁶ A/HRC/14/36, para. 3.

Sarawak” – are still in force today. The fairness of this continuation is now the subject of debate among Malaysians.

III. Realizing cultural rights in Malaysia: specific issues

A. System of cultural governance

25. While the Special Rapporteur was pleased to meet many government officials who were committed to striving for improvement in the enjoyment of cultural rights, implementation and monitoring to bring stated commitments and practice into line remain an outstanding concern. A very sophisticated set of institutions exists in the area of cultural governance in Malaysia, both at the federal and the state levels, and the Special Rapporteur was pleased to have met with representatives of many of them. Malaysia has a federal Ministry of Tourism and Culture, as well as two dedicated entities at the state level: the Ministry of Tourism, Arts, Culture, Youth and Sports Sarawak and the Ministry of Tourism, Culture and Environment Sabah, and a number of specialized agencies.

26. The national culture policy was introduced in 1971. During the Special Rapporteur’s visit, the Government informed her that the policy was being revised to determine the way forward and to integrate the 2030 Agenda. However, none of the relevant civil society actors that she met seemed to have been meaningfully informed or involved in the discussions. Should the new Government continue the review, she urges it to engage in an open and participatory process with all stakeholders.

27. The Special Rapporteur appreciated the commitment to diversity expressed repeatedly by cultural officials, and their pride, for example, in the diversity of holiday celebrations in Malaysia and in open house and homestay programmes that are meant to foster inter-ethnic and interreligious understanding. She was also pleased by their sense that culture is a critical part of development, that there is a need to promote the arts in daily life and that “culture is the soul of the country”.

28. A precondition for the exercise of cultural rights is that cultural resources are made accessible to all. Innovative programmes, such as “one museum, one student” which aims to ensure museum visits by students, are being developed to increase cultural awareness. The national archive is undertaking a praiseworthy initiative to digitize its documentation system so that important historical documents are not lost. Public museums and the National Academy of Arts, Culture and Heritage (ASWARA) have integrated the arts, crafts, traditional costumes and performances of a diverse range of Malaysians into their programmes.

29. However, the Special Rapporteur has received reports questioning the way in which some cultural resources are being presented and transmitted. One tension to consider is the relationship between culture and tourism, which have been combined in one ministry at the federal level. There are also concerns about “the need to monetize culture”, which can have both positive and negative consequences. Using culture as a resource for development and tourism can boost regional economies and provide avenues for promoting a diversity of arts, crafts and ways of life. From a cultural rights perspective, however, what is important is that people continue to live their culture in a way that is meaningful to them, not only perform it for tourism-related purposes, and that they are the main actors and beneficiaries of their practices and ways of life, not that the revenue generated with their products and knowledge end up in the hands of others.

30. The Special Rapporteur heard concerns about the centralization, politicization and nationalization of culture – trends which put at risk cultural diversity and the enjoyment of cultural rights without discrimination.

31. She calls for greater resources to be given to the culture sector and cultural institutions, whose work is at the heart of guaranteeing cultural rights, harmony and inclusion. This must at a minimum comply with the recommendation of the United Nations Educational, Scientific and Cultural Organization (UNESCO) that 1 per cent of expenditures be devoted to culture.

B. Unity in diversity

32. The Special Rapporteur understands that cultural governance in a society characterized by “super diversity” can be challenging and requires a thoughtful, contextualized approach. It also affords tremendous potential, and she was pleased to receive many testimonies about this open, cross-cultural, tolerant and inclusive culture. More must be done to preserve this in all parts of Malaysia. In both Sabah and Sarawak, the demographic balance is such that there is no overly dominant group. Accordingly, the necessity to respect the cultural expressions of all seems to be more naturally integrated in everyday life, yet this should not be taken for granted.

33. Both intergroup and intragroup diversity must be recognized and celebrated everywhere. While diversity between religions is recognized, intragroup/intrareligious diversity is insufficiently taken into account. For example, the Special Rapporteur was worried to hear reports about the inability of Malaysian Shia Muslims to worship freely, and the obstacles they face in carrying out rituals which are both cultural and religious. She was also told of the struggles of a variety of minority religious groups in conducting their religious practices, acquiring land and appropriate and convenient sites for their places of worship and cemeteries, and maintaining their cultural sites.

34. Diversity also exists within individuals. Inter-marriages, successive and cumulative experiences, but also fusions and new developments in traditions, dialects and culinary and other practices to integrate a variety of influences have made a truly Malaysian blend that is unique, complex and rich, and to which rigid ethnic and religious categories, such as those stated on identity documents, do not do justice.

35. Efforts to build unity on a foundation of diversity are vital, and yet harmony cannot imply silence about issues deemed “sensitive”, a term that the Special Rapporteur heard repeatedly. The Government must take a clear stand to protect the legitimate exercise of all to freely take part in cultural life, including cultural practices of their choice. This is a precondition for cultural diversity to flourish. Incitement to hatred and violence in response to ideas and practices rejected by some must be challenged publicly and responded to effectively by the authorities in accordance with international standards.⁷

36. Mutual understanding and respect can only be developed when people have opportunities to engage with one another and to dialogue and discuss freely. This does not have to result in homogeneity or conformity. Measures should be taken to create, support, develop and maintain spaces and opportunities for people from different backgrounds to engage meaningfully with one another, particularly at a young age, including by enhancing the use of multiple languages in schools.

37. The equation made in article 160 of the Constitution between Malay ethnicity and the Muslim religion is inaccurate, and does not represent the lived identity of all the persons concerned. The Special Rapporteur on freedom of religion or belief has warned against equating religion and ethnicity.⁸ Hence, the use of the term “race” in the Malaysian context interchangeably with religion or ethnicity is problematic and should be reconsidered.

38. Many times during the mission, the Special Rapporteur heard public officials use the problematic term “others” to refer to non-Bumiputera citizens. Given that it was based on ethnicity rather than on socioeconomic status, one of the negative impacts of the Bumiputera policy has been to draw a line between those citizens entitled to government help on the basis of ethnicity and those who have no access to it. Without prejudice to article 153 of the Constitution, these measures should be re-examined to determine if they are still necessary and how they could be readjusted to contribute to more equal opportunities for all Malaysian citizens. More broadly, it is important to continue to centre the notion of the inclusion of all of Malaysia’s cultures, religions and traditions on an equal footing, in accordance with international standards.

⁷ A/67/357.

⁸ A/HRC/25/58, A/HRC/28/66/Add.1 and A/HRC/22/51/Add.1.

39. Respect for cultural diversity has been challenged recently, especially when it comes to the right to take part in cultural life without discrimination of groups such as lesbian, gay, bisexual, transgender and intersex persons, refugees and stateless persons, and persons with disabilities.

40. Although more socially accepted in the past, homosexuality and gender fluidity is now considered a crime. Article 377 A of the Penal Code criminalizes same-sex activity between men, with punishments of up to 20 years in prison and whipping. In all states, as well as in the Syariah Criminal Offences Act, there are provisions which penalize transgender individuals on the basis of their gender identity and expression and which have led to arrests by the police and state religious departments. Lesbian, gay, bisexual, transgender and intersex persons have been repeatedly called “deviant”, and films portraying homosexual or transgender persons in a positive manner have been censored. In the months leading up to the Special Rapporteur’s visit, at least three LGBTI events, including a film screening, were cancelled, one of them following online protest by conservative and fundamentalist groups. Statements from the Government rejecting discrimination and bullying of lesbian, gay, bisexual, transgender and intersex persons, such as that posted by the Federal Department of Islamic Development (JAKIM) on social media on 19 June 2017, while important, are rendered meaningless if measures taken by the authorities themselves are discriminatory and intolerant.

41. The Special Rapporteur strongly supports efforts by the Ministry of Women, Family and Community Development to improve accessibility for persons with disabilities, which is critical to the enjoyment of cultural rights without discrimination. She was pleased to note that the Ministry had undertaken programmes to test the accessibility of – for example – public transportation. The Ministry’s efforts in promoting accessibility require the full support of all relevant government agencies.

42. The lack of a legal and administrative framework to regularize the status of refugees and stateless persons leaves them highly vulnerable to abuse. This is particularly true for women refugees. Furthermore, thousands of children who are asylum seekers, refugees, stateless or migrants have no access to government schools.

C. The cultural rights of women

43. Cultural practices or what are claimed to be cultural practices must evolve when they constitute or lead to discrimination against women, including gender-based violence. Under article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women, States are required to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

44. Women should have equal right to take part in cultural life without discrimination.⁹ To fulfil this vision in Malaysia, more needs to be done to ensure that women can equally participate in cultural practices and policymaking and in decision-making in these areas, and in religious and cultural leadership and interpretation.

45. The Special Rapporteur appreciated her lengthy exchange with representatives of the Ministry of Women, Family and Community Development and the seriousness with which they approached their work, including through an intergenerational perspective. She commends their efforts to promote sexual and reproductive health and sex education, but notes that this process involves consultation with religious authorities who may not possess the necessary technical competence, which raises obstacles to advancement. She appreciates the awareness of the ongoing need to tackle cultural biases, and in particular the stigma related to violence against women, which sometimes precludes women from seeking remedies. Efforts to implement flexible work arrangements in this ministry, to allow both parents to work and take on family responsibilities, should be replicated in all public services.

⁹ A/67/287.

The Special Rapporteur further encourages this ministry to increase its collaboration with women human rights defenders in civil society.

46. The Special Rapporteur shares the concerns of the Committee on the Elimination of Discrimination against Women about “the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society”.¹⁰

47. The Committee likewise expressed “deep concern about the issuance of a fatwa on female circumcision by the Malaysian National Council of Islamic Religious Affairs in April 2009, which makes it obligatory for Muslim women to undergo female genital circumcision”.¹¹ The Special Rapporteur condemns this fatwa and the subsequent reclassification of “female circumcision as a medical practice”, which allows it to be performed in health-care facilities. International human rights standards clearly establish that religious or cultural arguments cannot justify violations of basic human rights, including the rights of women.¹² As the previous Special Rapporteur made clear, “cultural diversity is not a justification for practices that violate women’s human rights; not all cultural practices can be considered as protected in international human rights law”.¹³

48. The application of what is deemed syariah law in Malaysia results in continuing discrimination against women, particularly in the fields of marriage and the family. The Special Rapporteur is concerned about the impact of unilateral conversions of children by fathers on the cultural rights of both mothers and their children, and hopes that measures will be taken to clarify the relevant legal standards and guarantee the equal cultural rights of all, without discrimination, as well as the best interests of the child, in accordance with the obligations of Malaysia under international human rights law. She recommends amendment of the Law Reform (Marriage and Divorce) Act 1976 to prohibit unilateral conversion of a child by a parent. The minimum legal age for marriage should be 18 for all, and the Special Rapporteur regrets that attempts to legislate this in 2016 were unsuccessful.

49. To enable women to freely participate in cultural life, the authorities need to ensure that discrimination against women and gender-based violence at all levels and in all forms is addressed through the prompt enactment of the Gender Equality Act and by strengthening and/or putting in place the necessary mechanisms and procedures for effective implementation, in consultation with women’s rights groups.

50. Authorities must also review the formal and informal education of religion, the clergy and religious educators to ensure that training materials and programmes reflect the equality of women, taking into consideration the changing roles and realities of women’s lives. In accordance with their international commitments, they must review and rewrite school curricula, textbooks and teaching materials for religion, “moral education”, “living skills” and all other subjects to eliminate discrimination against women and girls and reflect the principle of gender equality. Moreover, women’s political representation, including that of women with disabilities, indigenous women and ethnic minority women, still needs to be significantly increased.

D. The cultural rights of indigenous peoples

1. Sabah and Sarawak

51. The Constitution of Malaysia recognizes the status of indigenous peoples in Sabah and Sarawak and has from the beginning granted them a certain degree of protection and autonomy. The active involvement of indigenous peoples in the management of parks and reserves as well as the representation and integration of arts, crafts, traditional costumes and performances in museums, tourism-related products and the national arts academy’s curriculum are positive features. However, more must be done to preserve diverse mother

¹⁰ CEDAW/C/MYS/CO/3-5, para. 19.

¹¹ Ibid., para. 21.

¹² Ibid., para. 22; and A/67/287, para. 60.

¹³ A/67/287, para. 60.

tongues, to include indigenous peoples' histories in school curricula and to increase the representation of indigenous peoples in the bodies focused on their issues and rights in all parts of Malaysia.

52. The Special Rapporteur has received reports of pressure to conform culturally. This includes the negative perception of culturally significant tattoos, which may prevent employment in the police and the army and has led to invasive physical examinations, and pressure to convert to Islam, to practise Islam in school or to adopt Muslim names.

53. Because customary marriages are not always recognized, cases were brought to the attention of the Special Rapporteur concerning difficulties in registering children of couples married under customary law, for lack of what is considered a legitimate marriage certificate.

54. The most difficult issue remains that of customary land disputes, and the more than 400 cases awaiting judgment. This situation has a significant impact on indigenous peoples' ability to exercise customary rights over their lands, upon which they depend for fishing, hunting, farming and water, and which are critical for their cultural survival. The Native Customary Rights Land Survey Programme is reportedly unknown to some relevant stakeholders, who have not been consulted about its work to identify and recognize customary lands. The July 2018 amendment to the Sarawak Land Code is also strongly contested. Any sustainable resolution of this issue can only be reached with clear and meaningful consultation of all the persons concerned and with full application of the principle of free, prior and informed consent.

2. Peninsular Malaysia

55. The Orang Asli in Peninsular Malaysia do not seem to enjoy the same recognition as the Sabahans and Sarawakians and are often socioeconomically disadvantaged. The 1954 Aboriginal Peoples Act states that the Director General for Orang Asli Affairs, now known as the Department for Orang Asli Development, is responsible for ensuring the "administration, welfare and advancement of aborigines" (para. 4). However, there were widespread concerns about failures to safeguard endangered minority languages, to preserve access to the forest for cultural practices and to enable indigenous peoples to maintain their ways of life. Some report feeling pressured to conform and become "Malays", adopt Islam and assimilate, especially at school. There are also reports of attempts to register Orang Asli persons as Muslims, and about the use of material inducements to promote conversion.

56. At school, Orang Asli children are reportedly sometimes pressured to join Muslim prayers and wear headscarves, and accounts of their history and ways of life are almost completely absent in the curriculum. Teachers need to integrate tolerance and respect for diversity in their daily interactions with children. The Special Rapporteur expresses grave concern about the reports of bullying of Orang Asli children in schools, which contributes to the incidence of dropping out. She was especially concerned that such bullying is considered "normal". All relevant agencies must take a strong position against this phenomenon, develop and implement a systematic programme to combat it and provide tools for teachers and school administrators to prevent it.

57. The Special Rapporteur heard accounts of Orang Asli villages being displaced for infrastructure or development projects, which implies loss of their traditional lands, the majority of which are not officially protected. For Orang Asli, losing their lands means active destruction of their ways of life, including the possibility of transmitting rituals, beliefs, knowledge and practices related to it. Significant steps must be taken with the Orang Asli on this matter.

58. Another issue concerns various projects aimed at collecting and transforming indigenous peoples' knowledge about plants and the forest for the purpose of commercializing medicinal and beauty products. Free, prior and informed consent of the Orang Asli is necessary at the different steps of the process of gathering, analysing and transforming their knowledge. Benefit-sharing schemes should be carefully developed.

59. The Special Rapporteur was pleased to learn that her colleague the Special Rapporteur on the rights of indigenous peoples will visit Malaysia in 2019, and she considers that visit as an essential element of effective follow-up to the recommendations made in the present

report, and by other relevant United Nations bodies, about the cultural rights of indigenous peoples in Malaysia.

E. Freedom of artistic expression

60. Malaysia has a diverse and dynamic arts world. The Special Rapporteur was pleased to note that the National Heritage Act, of 2005, integrated both tangible and intangible forms of cultural heritage, including traditional art forms, and to note the pride that some federal officials expressed regarding traditional art forms (even some that are banned in the state of Kelantan).

61. The Special Rapporteur appreciated the fact that radio programming was available in multiple languages and dialects through Radio Television Malaysia, the public broadcasting system, but is also aware of civil society calls to increase local multilingual content on television. Diversity in programming could also be improved by providing greater support to independent and documentary film producers, and giving them access to national media to present their works.

62. The Special Rapporteur is concerned about the predominance of political parties in the media landscape and reiterates the recommendation to “take all necessary steps to ensure the independence of the media”.¹⁴ Of great concern also are the Sedition Act and certain sections of the Communication and Media Act, in particular sections 211 (1) and 233 (1), under which journalists and artists have been charged for the peaceful exercise of their right to freedom of expression.

63. Freedom of artistic expression faces a number of challenges in the country. The Special Rapporteur condemns restrictions and sometimes full bans imposed on a number of artistic and cultural practices at the state level, and on authors, publishers, filmmakers and artists at the federal level. At the time of her visit in 2017, those restrictions seemed to have increased over time. Many of those consulted criticized the lack of transparency and dialogue in the process of reviewing their works, and the difficulties that they faced in challenging the decisions.

64. The bans and restrictions in the state of Kelantan that target vibrant cultural heritage practices, such as Mak Yong, Wayang Kulit, Main Puteri and Dikir Barait, art forms that have contributed to Malaysia’s international reputation in these fields, are particularly worrying. These undue restrictions on the right to access and enjoy cultural heritage, and on the freedoms necessary for creative expression, negatively affect their practitioners, threaten the transmission of these art forms and must be lifted without delay.

65. The Special Rapporteur deplores the obviously discriminatory restrictions on women artists performing for mixed audiences in the state of Kelantan. These restrictions set a negative tone and encourage other informal restrictions in social and cultural practice involving women performing on stage. The Special Rapporteur was told of social pressures on women performing, for example in university contexts, in other parts of Malaysia as well, and a perceived growing social stigma against women appearing on stage.

66. Steps must also be taken to make up for the negative impact – including stigma – caused by these bans and restrictions and to support these art forms and their practitioners inside Kelantan and elsewhere, in close consultation with practitioners affected. Simply moving the practice of these art forms away from the region where some of them emerged is insufficient to guarantee cultural rights. Measures should be taken to improve understanding of the meaning of these practices and their long histories in Malaysia. In doing so, it is important not only to focus on the ritual elements but also on the social function that these arts play in society, by providing spaces to engage intergenerationally and to explore social issues.

67. There is an urgent need to review and clarify the criteria for censorship of books and films and to make the decision-making process more transparent so as to guarantee freedom of artistic expression. Terms such as “controversial” or “sensitive” are too subjective to

¹⁴ E/CN.4/1999/64/Add.1, paras. 38 and 76.

conform to international standards on freedom of expression. The authorities should abolish prior censorship bodies and processes and make use of rating and classification (age limit) procedures that apply to the work as a whole, rather than imposing cuts within a work.¹⁵

68. The Special Rapporteur was very surprised to hear of the banning of books, including some about moderate and progressive Islam, when the Government extols these very concepts abroad. This can have a chilling effect on needed debates. She is also deeply concerned that cartoonist Zunar has faced a travel ban, confiscation of his artworks and nine charges under the Sedition Act related to tweets, all of which send a negative message about everyone's right to freedom of artistic expression.

69. Artistic works and fiction explore a variety of aspects of reality and must be understood and respected as a crucial element of the freedom indispensable for creative activities. The Government of Malaysia needs to develop concrete plans to guarantee freedom of artistic expression. The Special Rapporteur encourages the Government to support a diversity of spaces and platforms for people to engage meaningfully with one another about culture, including in relation to issues upon which they do not agree.

F. Fundamentalism, extremism and cultural rights

70. The impact of fundamentalism and extremism on cultural rights was the Special Rapporteur's priority theme for 2017, and one of her major concerns during her mission to Malaysia. As explained in her related thematic report (A/HRC/34/56), fundamentalisms are: "political movements of the extreme right, which in a context of globalization ... manipulate religion, culture or ethnicity, in order to achieve their political aims".¹⁶ Fundamentalisms have emerged out of all of the world's major religious traditions. Opposition to fundamentalism is not akin to an anti-religion stance. Both religious believers who do not conform to fundamentalist dogma, including clergy, and non-religious people have often been targets of fundamentalist movements. Both have played important roles in the human rights struggle against fundamentalism.

71. The Special Rapporteur deeply appreciated the response from Malaysia to her thematic report on fundamentalism, extremism and cultural rights: "The challenges and threats of fundamentalism and extremism to cultural rights ... deserve more consideration by this Council. In Malaysia's experience, ensuring a multiracial, multi-religious and multi-ethnic population have freedoms to practise their cultures, traditions and religious beliefs has been essential and integral to our nation-building and progress."¹⁷ The Special Rapporteur also welcomed the commitments of the Government of Malaysia to representing a "moderate and progressive Islam", including important statements made to this effect by Najib Razak, the then-Prime Minister, while the Special Rapporteur was in the country: "The key to it is to support moderate and progressive Muslim regimes and governments around the world, because that is the true face of Islam; that is the authentic face of Islam."¹⁸

72. However, many sectors of Malaysian society, including diverse government officials themselves, expressed concern at what they saw as the growing Islamization and Arabization of the society and polity, based on an increasingly rigid and fundamentalist interpretation of Islam which represents a significant break with the past and is giving rise to cultural engineering. One lawyer said, "I fear for my country." A writer said, "There is a fire here. Wahhabism is creeping fast and deep into our society." Some experts indicated that this tendency was infusing the educational system and affecting the corps of teachers, as well as "corroding values" among young people. It has reportedly also had deleterious consequences for the cultural rights of religious minorities, of indigenous peoples, of women, of human rights defenders, including women human rights defenders, of lesbian, gay, bisexual,

¹⁵ A/HRC/23/34, paras. 57–64.

¹⁶ See para. 4.

¹⁷ Statement by Syed Edwan Anwar, Permanent Mission of Malaysia to the United Nations Office and other international organizations in Geneva, to the Human Rights Council at its thirty-fourth session, 6 March 2017.

¹⁸ See www.whitehouse.gov/the-press-office/2017/09/12/remarks-president-trump-and-prime-minister-najib-abdul-razak-malaysia.

transgender and intersex persons, of artists and cultural experts and of many others in society, and most especially for the cultural rights and the freedom of religion or belief of Muslims and people of Muslim heritage.

73. Fundamentalist movements often seek to impose a form of religion at odds with diverse, syncretic local forms of practice. In keeping with the spirit of the slogan *Malaysia Truly Asia*, the Special Rapporteur hopes that the authorities will consider how to foster and allow to flourish the diversities of Malaysian Islam, which represent the plurality and complex history of South-East Asian Islams. Allowing religion to be homogenized under a hegemonic interpretation imported from the Arabian Peninsula, and Saudi Arabia in particular, undermines the cultural rights of Malaysians.

74. The Special Rapporteur salutes the stated commitment of the Government of Malaysia to combating terrorism, which is vital to the protection of human rights. However, she notes that acquiescing to aspects of the underlying ideology of terror groups, such as that there is only one way to be Muslim or that religion should be used as a tool of State policy, can create conditions that are conducive to the radicalization that heightens the risk of terror. She notes with concern that one state in the country, Kelantan, is referred to by some as “the Islamic State of Kelantan” by some of its state representatives with whom she met. The Special Rapporteur is concerned about the pervasiveness of fundamentalism in many areas of Malaysia, but is especially concerned at the situation of cultural rights in this regard in the state of Kelantan where the state government is controlled by the Islamic Party of Malaysia (or PAS), and where a state education official told her that there was only one way to be Muslim and that any other form of practice was based on ignorance. She is also deeply concerned at the level of involvement of religious authorities, and often only those of the majority religion, in policy decisions throughout the country, including in relation to culture.

75. The Special Rapporteur is alarmed that Parliament has been considering adopting legislation under the RUU355 bill expanding the punishments – including corporal punishments that violate international human rights law – that can be imposed by Syariah Courts to up to a 30-year prison sentence, a RM 100,000 fine (approximately \$23,920 in November 2018) and 100 lashes. She greatly regrets that some religious authorities with whom she met clearly support this expansion. Such punishments are difficult to rationalize with stated commitments to moderation and progressiveness. Experts fear that any such legislation would be used to discriminatory effect, with particular impact on lesbian, gay, bisexual, transgender and intersex people among others. The future of the RUU355 bill was uncertain as the present report was being finalized.

76. The Special Rapporteur was concerned about the impact of a particular form of Islamization on the cultural rights of women through the imposition of a de facto dress code for Malaysian Muslim women in many contexts. This has reportedly homogenized women’s attire, normalized “modest” dress which is not traditional to Malaysia, and reduced Muslim women’s cultural choices. This transformation occurred in a short span of time, such garments being virtually unknown in Malaysia as recently as the 1970s. Other women are also affected by the regulation of “modesty”.¹⁹ Security guards are reportedly being allowed to police dress in some official buildings where it is impermissible to appear sleeveless. The Special Rapporteur was particularly concerned to hear reports that some girls had been told by teachers that they had to pay a fine if they came to school unveiled, and that a teacher had said that girls who covered were her children, but those who did not were not. She notes increasing representation of only one form of dress for Muslim women in official publications and textbooks. One human rights defender reported that a hijab had been photoshopped onto her photograph on the Internet.

77. The Special Rapporteur was also dismayed to learn that religious minorities had been prohibited since 1986 from using the Arabic word Allah (God), and of the seizure of publications using that word. This results in undue restriction on the freedom of religious minorities to express their faith as they wish to, and of non-religious people to openly discuss their beliefs.

¹⁹ See also CEDAW/C/MYS/CO/3-5, para. 19.

78. There appears to be no official recognition or acceptance of non-religious persons, though experts indicate that there is nothing in the Constitution that prohibits being an atheist. The Special Rapporteur condemns the reported statements by ministers in the Prime Minister's department that those involved in a gathering of atheists shortly before her mission should be investigated or forced into re-education. Non-religious persons must be recognized, alongside the wide variety of religious believers, as part of the fabric of a diverse and tolerant society. The Special Rapporteur on freedom of religion or belief has regularly reiterated that "the right to freedom of religion or belief applies equally to theistic, non-theistic and atheistic beliefs. Furthermore, the right not to profess any religion or belief is also protected."²⁰

79. The rule that those choosing to leave Islam must undergo counselling and must obtain a certificate from a Syariah Court to do so is demeaning and a limit on their right to take part in cultural life without discrimination. The Special Rapporteur was sorry to learn that some of the lawyers who had represented clients in such cases were reported to be shunned, and stresses that freedom of religion or belief includes the right to change one's beliefs.²¹

80. Islamization has also affected official views of the past, with reports that the pre-Islamic history of Malaysia, as well as non-Muslim cultural heritage, are being omitted from textbooks so that the contributions of Malaysians of Chinese and Indian descent and of indigenous peoples are marginalized. Certain contributions by indigenous peoples, such as stories, are progressively modified to make them more "Malay", thereby erasing their origins. Ensuring that the rich heritage of the past is broadly shared is critical to promoting and protecting diversity and tolerance today.

81. One of the most worrying developments that the Special Rapporteur was informed about is the emergence of several abduction cases reportedly targeting those associated with religious minorities, including Pastor Koh. This suggests the possibility of extremist violence. She strongly supports the public inquiry held by SUHAKAM into these cases, and hopes that this body will be afforded every assistance and support in this regard. She calls for every effort to be made to locate the missing persons in question.

82. The Special Rapporteur is gravely concerned about the misuse of the concept of extremism to repress activities undertaken in accordance with international human rights standards. She was very sorry to receive reports that progressive Muslim groups and lesbian, gay, bisexual, transgender and intersex rights defenders had erroneously been labelled extremists, or "like Daesh", in certain instances by authorities. This undercuts the struggle against actual extremism and the critical efforts of these human rights defenders.

83. In general, the Special Rapporteur regretted hearing reports of the difficulties that human rights defenders and others face when they try to challenge fundamentalism, to defend the diversities of Muslim culture or religious minorities, and to promote cultural rights. Whereas she experienced Malaysian civil society as outspoken, several individuals declined to meet with her to discuss these particular issues, reportedly due to fear of reprisals – the only area in which this was the case.

84. The civil society group G25, which seeks to promote tolerance, has had its book *Breaking the Silence: Voices of Moderation* banned under the Printing Presses and Publications Act (part IV: control of undesirable publications) (No. 12), order of 26 July 2017. The book contains writings by academics, journalists and civil society advocates on the impact of the Islamic bureaucracy and the consistency of its actions with the Constitution of Malaysia.

85. The author and human rights advocate Faisal Tehrani, six of whose books have been banned at the instigation of the National Council for Islamic Affairs, has had booksellers afraid to sell his other books due to the chilling effect of the bans, has repeatedly received threats and has been accosted and insulted in public, as has a member of his family. The Special Rapporteur was glad to read the Court of Appeal's January 2018 decision to quash the banning order on four of his books, and welcomes the October 2018 decision of the

²⁰ A/62/280, para. 75.

²¹ CCPR/C/21/Rev.1/Add.4, para. 5.

Attorney General not to appeal this judgement. Mr. Tehrani and other banned writers should be compensated for their losses.

86. Discrimination against the 500,000 to 800,000 Shia Muslims in Malaysia is a matter of concern, especially because of the taboo surrounding the question. In a 1996 fatwa, the National Council for Islamic Affairs declared the Shia school of Islam to be a deviant sect and any production, broadcast and distribution of any books, pamphlets, films and videos deviating from the Sunni teaching as *haram* (forbidden). Reports suggest that this problem was exacerbated by the return of Saudi-trained scholars who imported sectarian views leading to a growing trend of intolerance toward Muslim minorities. Shia Muslims have reportedly been prohibited from engaging in their religious rituals, as have Ahmadi Muslims.

87. The Special Rapporteur deplores the fatwa against the Muslim women human rights defenders Sisters in Islam, who are globally renowned for their work. This fatwa has compromised their important work protecting the rights of women, led to cancellation of some of their events due to the stigma, and resulted in increasing threats and online harassment against them. The Special Rapporteur calls for the withdrawal of the fatwa and will be watching developments in this case. She reiterates the recommendation of the Committee on the Elimination of Discrimination against Women that the Government must “ensure women human rights defenders can freely undertake their important work”.²² She further calls on the Malaysian authorities to take all necessary steps to respect and ensure the rights of all human rights defenders challenging fundamentalism and extremism.

88. Putting a stop to the rise of fundamentalism and curbing its negative effect on cultural rights requires political will, principle and moral courage, and must be a top priority of Malaysia’s new Government. One expert indicated to the Special Rapporteur a sentiment echoed by others, that “religion is being used as a weapon in Malaysia for political gain and control”. The only way for cultural rights to be respected in the country is for this weaponization of religion to cease.

IV. Conclusions and recommendations

A. Conclusions

89. It is time to ensure that the lived reality of moderation and progressiveness in Malaysia is consistent with the rhetoric of its Government. This is essential for the enjoyment of cultural rights. Human rights defenders report that not enough people are speaking out against the human rights impact of Islamization and some officials indicated to the Special Rapporteur that, while they agreed with her analysis of the cultural rights impact of fundamentalism, they were often afraid to speak publicly about this. More voices of moderation must be raised and allowed to express themselves freely. Malaysia is a wonderful diverse country with a rich history, vibrant and multifaceted cultures and a sophisticated set of cultural institutions in which many people can and do enjoy their cultural rights. However, the many gains achieved since independence and the cultural freedoms historically enjoyed must be protected with vigilance. They cannot be preserved by rhetoric alone, but rather by concrete action demonstrating effective commitment to the cultural rights of all, to cultural diversity and pluralism, and to unequivocal rejection of fundamentalist ideology.

B. Recommendations

1. International and national legal framework

90. **The Government of Malaysia should:**

(a) **Improve its record of ratifying human rights treaties, including by becoming a party, without delay, to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the**

²² CEDAW/C/MYS/CO/3-5, para. 50.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the UNESCO Convention against Discrimination in Education;

(b) **Remove its reservations to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child;**

(c) **Enact implementing legislation for all human rights treaties to which Malaysia is a State party, and monitor progress toward full implementation. Implement all recommendations made to Malaysia by international human rights bodies, including the Committee on the Elimination of Discrimination against Women, and Special Rapporteurs, and during the universal periodic review;**

(d) **Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; in the meantime, urgently take measures in the domestic framework to regularize the situation of people living unlawfully in the country and improve the rights and protection of refugees and asylum seekers;**

(e) **Monitor implementation of the new national strategy on human rights with full transparency, and ensure compliance, including with its cultural rights provisions;**

(f) **Ensure coordination of all bodies tasked with implementing human rights in Malaysia and require that cultural rights be fully considered in their work;**

(g) **Establish a gender-balanced standing committee on human rights in Parliament and ensure that this body holds regular consultations with the Human Rights Commission of Malaysia (SUHAKAM) and human rights defenders, including women human rights defenders;**

(h) **Ensure that Malaysia's plural legal systems do not justify or enact dehumanization, violations of dignity, or injuries to the physical or mental well-being of women.**

2. Governance, cultural rights and respect for cultural diversity

91. The Government should:

(a) **Ensure that cultural rights are guaranteed throughout Malaysia;**

(b) **Increase the resources devoted to the culture sector to meet, at a minimum, the UNESCO target of 1 per cent of expenditure;**

(c) **Remove ethnic and religious affiliation from identity documents; and refrain from equating religion with ethnicity;**

(d) **Guarantee that in practice all persons – including Muslims, Muslim minorities such as Shia and Ahmadis, religious minorities and non-religious persons – are able to take part in cultural life without discrimination, to have equal access to cultural and religious sites, and to take part in cultural and religious practices, in accordance with international standards; ensure the equal protection of their cultural heritage and religious sites, and give further consideration to the proximity of religious sites to relevant residential areas. Ensure that non-religious persons have equal rights to freedom of thought, conscience and religion and freedom of assembly;**

(e) **Review the current affirmative action programmes to determine how they could be readjusted to reflect contemporary economic and other inequalities and best contribute to inclusion and the benefit of all Malaysian citizens who need it, regardless of ethnic, linguistic, religious or gender affiliation;**

(f) **Ensure that both official discourse and official policy reflect commitment to the full inclusion of all Malaysians on an equal footing and full recognition of their contributions to Malaysia;**

(g) Investigate all allegations of violations of cultural rights by State and non-State actors, and bring perpetrators to justice in accordance with international standards;

(h) Encourage the development and preservation of places for diverse people, particularly youth, to engage with one another; promote the use of multiple languages in schools, joint visits to diverse places of heritage, and sharing of knowledge about the histories, world views and practices meaningful to diverse Malaysians;

(i) Review and rewrite school curricula, textbooks and teaching materials and programmes for religion, “moral education”, “living skills” and all other subjects, including those used in the formal and informal training of clergy and religious educators, so as to eliminate discrimination against women and girls and reflect the principle of gender equality;

(j) Increase the diversity of teachers and include more cross-cultural experiences and visits to cultural sites to increase cultural literacy. Ensure that education promotes critical thinking.

92. The Government of Malaysia should allocate more funds for the promotion and protection of the rights of persons with disabilities, including accessibility, particularly in the areas of employment, education and housing, and provide these persons with the necessary training to improve their employability and independence. One per cent employment of people with disabilities in public services should be a minimum.

93. Malaysia should:

(a) Repeal all laws that directly and indirectly criminalize same-sex sexual activities and cross-dressing;

(b) Take immediate and effective measures to end hostility and intolerance on the basis of sexual orientation and gender identity and provide meaningful protection to lesbian, gay, bisexual, transgender and intersex people against all forms of stigmatization, violence and discrimination.

94. The Government of Malaysia should:

(a) Adopt effective measures to reverse increasing trends towards early, forced and child marriage;

(b) Take concrete measures to prevent children from becoming stateless and guarantee universal access to free primary education, irrespective of citizenship and immigration status;

(c) Amend the Law Reform (Marriage and Divorce) Act 1976 to prohibit unilateral conversion of a child by one parent.

3. Women’s equal cultural rights

95. The federal and state authorities should:

(a) Encourage the promotion and substantive engagement of women judges in both the civil and syariah legal systems;

(b) Ensure that women can participate equally in cultural and religious practices, including as leaders, and can contribute to policymaking and decision-making about and interpretation of those practices and policies;

(c) Prohibit all forms of female genital mutilation and abrogate the fatwa on female genital mutilation issued by the Malaysian National Council of Islamic Religious Affairs in April 2009;

(d) Set a concrete timeframe for the adoption of the Gender Equality Act.

4. The cultural rights of indigenous peoples

96. The federal and state authorities should:

- (a) Implement past recommendations from human rights bodies, including those of the Human Rights Commission of Malaysia (SUHAKAM), and the steps that have been announced by the Government to tackle the issue of customary land recognition and land disputes. When defining land rights, consider the diverse ways that indigenous peoples use land and their customary practices in this area;
- (b) Improve the consultation and participation of the persons concerned in the customary land survey and ensure their free, prior and informed consent at each step;
- (c) Adopt measures to safeguard endangered indigenous languages and to foster their transmission to younger generations.

5. Freedom of artistic expression

97. The federal and state authorities should:

- (a) Remove the bans on Mak Yong, Wayang Kulit, Main Puteri and Dikir Barait in Kelantan, and on women performing in public. In consultation with a diversity of practitioners, take steps to redress the harm done to these art forms and their practitioners by these bans, including through compensation and the promotion of spaces for their performance and transmission;
- (b) Take measures to provide greater understanding and more informed explanation about the complex meaning of these practices and their social function and actively combat any stigma that has resulted from the bans;
- (c) Review critically all legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions;
- (d) Abolish prior censorship bodies and processes; and review and clarify the criteria for imposing restrictions on freedom of artistic expression so that they comply with the necessary provisions under international human rights law;
- (e) Repeal the Sedition Act and all laws criminalizing blasphemy and defamation; ensure the amendments currently being made in the Communications and Multimedia Act are consistent with international standards for freedom of expression and cultural rights; and repeal or clarify sections 211 (1) and 233 (1) of this Act;
- (f) Review critically all previously imposed bans on books and artistic works and lift all bans that do not meet the threshold for limitation as defined under international law;
- (g) Compensate Zunar and all other authors and artists who have lost income and whose reputations have been harmed due to the banning of their intellectual and artistic works, which violated their human rights.

6. Fundamentalism, extremism and cultural rights

98. The Government of Malaysia should:

- (a) Conform its national policies and actions to its expressed commitments to promoting “moderate and progressive Islam”;
- (b) Develop and implement a human rights-based strategy with clear benchmarks for combating fundamentalism and fundamentalist ideology in Malaysia, including in the educational system, in consultation with local human rights defenders, including women human rights defenders, who have been working on these issues;
- (c) Abrogate the rule requiring persons wishing to leave Islam to obtain a certificate from a Syariah Court; in the interim, ensure that those seeking to obtain such certificates and their lawyers are treated with respect;
- (d) Withdraw the fatwa against Sisters in Islam and take effective steps to reverse the stigma that has resulted from it.

99. All public, private and civil stakeholders should:

- (a) Recognize, respect and protect the diversity of religions and beliefs, and the diversity of approaches to each religion, including Islam, in the Malaysian context;
 - (b) Respect and ensure the human rights and security of human rights defenders, including women human rights defenders, who are challenging fundamentalism;
 - (c) Oppose any effort to reintroduce the RUU355 bill or any effort to augment the punishments available to Syariah Courts;
 - (d) Take effective measures to combat the “moral policing” of women’s dress and ensure that Malaysian women and girls have a diversity of cultural choices regarding their dress, including in official settings; ensure that unveiled women, including unveiled Muslim women, are also depicted positively in educational and official materials;
 - (e) Respect the rights of non-religious persons, including former Muslims, and affirm respect for their rights; ensure that government officials express respect for non-religious persons, and take effective steps to hold accountable those who do not;
 - (f) Respect freedom of religion or belief for all, in accordance with international standards, and promote the principle of separation of religion and State, an essential guarantor of the diversity of Malaysia and of cultural rights for all, without discrimination.
-