SUHAKAM Project to Study and Analyse The Compatibility of Malaysian Laws with The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

Practical Briefing and Action Paper

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SUHAKAM

PROJECT TO STUDY AND ANALYSE THE COMPATIBILITY OF MALAYSIAN LAWS WITH THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (UNCAT)

PRACTICAL BRIEFING AND ACTION PAPER

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ACRONYMS

#ACT4CAT	Coalition of human rights groups campaigning for the ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984/1987
AGC	Attorney General's Chambers
AKM	Judicial Academy Malaysia
APMM	Malaysian Maritime Enforcement Agency
APRM	Malaysian Anti-Corruption Academy
ASEAN	Association of Southeast Asian Nations
BERNAMA	Malaysia National News Agency
BHEUU	Legal Affairs Division
BPA	Public Complaints Bureau
CA	Child Act 2001
CAT	Committee against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women 1979/1981
CIDT	cruel, inhuman and degrading treatment
CJA	Courts of Judicature Act 1964
CLA	Civil Law Act 1956
CPC	Criminal Procedure Code
CSOs	Civil Society Organisations
CTI	Convention Against Torture Initiative
DDSPMA	Dangerous Drugs (Special Preventive Measures) Act 1985
EA	Evidence Act 1950
EAIC	Enforcement Agency Integrity Commission
EduA	Education Act 1996
ExA	Extradition Act 1992
FC	Federal Constitution
GPA	Government Proceedings Act 1956
HRC	United Nations Human Rights Committee
IA	Immigration Act 1959/63
I-CeLLS	International Centre for Law and Legal Studies
ICC	International Criminal Court
IGP	Inspector-General of Police
ILKAP	Judicial and Legal Training Institute

INTAN	National Institute of Public Administration
IPCMC	Independent Police Complaints and Misconduct Commission
JAKIM	Department of Islamic Development Malaysia
JIM	Immigration Department of Malaysia
JIPS	Integrity and Standard Compliance Department
JKSM	Department of Syariah Judiciary Malaysia
JPM	Prime Minister's Department
JPenjM	Malaysian Prisons Department
KDN	Ministry of Home Affairs
KKMM	Ministry of Communications and Multimedia
KLN	Ministry of Foreign Affairs
KPM	Ministry of Education
KPWKM	Ministry of Women, Family and Community Development
MACMA	Mutual Assistance In Criminal Matters Act 2002
MinDef	Ministry of Defence
MKN	National Security Council
MPDRM	Royal Malaysia Police College
NHRAP	National Human Rights Action Plan 2018
OCAA	Offenders Compulsory Attendance Act 1954
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002/2006
PA	Police Act 1967
PAPA	Public Authorities Protection Act 1948
PassA	Passports Act 1966
PC	Penal Code
PDRM	Royal Malaysian Police
PH	*Pakatan Harapan* coalition
PN	*Perikatan Nasional* alliance
POCA	Prevention of Crime Act 1959
POTA	Prevention of Terrorism Act 2015
PrisA	Prison Act 1995
PULAPOL	Police Training Centre
Rome Statute	Rome Statute of the International Criminal Court 1998/2002
SCMDP	Special Committee to Study Alternative Sentences to the Mandatory Death Penalty
SCPA(FT)	Syariah Criminal Procedure (Federal Territories) Act 1997
SIAs	States' Islamic Authorities
SIAP	Enforcement Agency Integrity Commission
SIAP Act	Enforcement Agency Integrity Commission Act 2009

SOSMA	Security Offences (Special Measures) Act 2012
SPRM	Malaysian Anti-Corruption Commission
SPRM Act	Malaysian Anti-Corruption Commission Act 2009
SR-T	Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SUHAKAM	Human Rights Commission of Malaysia
SUHAKAM Act	Human Rights Commission of Malaysia Act 1999
Tokyo Rules	United Nations Standard Minimum Rules for Non-Custodial Measures 1990
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984/1987
UPR	Universal Periodic Review
YDPA	Yang di-Pertuan Agong

The most rudimentary manner of avoiding or suppressing moral dilemmas resulting from self-interested decision-making is denial of fact. Importantly, when used as a method of moral disengagement, the primary purpose of denial of fact is not the deception of others, but self-deception through wilful ignorance. It is not a conscious defence mounted by perpetrators to cover up their crimes, but an unconscious defence mechanism of institutional or public bystanders to suppress feelings of guilt and shame. Time and again, officials and private individuals flatly deny and ignore the occurrence of wrongful conduct, simply to avoid the distress of having to acknowledge the truth and, potentially, give up the comfort, certainty and security of passive conformity and complacency. Psychologically, wilful ignorance is motivated primarily by the basic drives of self-affirmation (against guilt and shame) and self-preservation (against a system threat).[1]

Nils Melzer
Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

[1] *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer: Biopsychosocial factors conducive to torture and ill-treatment*, U.N. Doc. A/75/179 (20 July 2020), para. 28. Available: http://undocs.org/A/75/179 [accessed 10 October 2020].

I. EXECUTIVE SUMMARY

UNCAT represents the international human rights legal standard on torture, and other cruel, inhuman and degrading treatment and punishment. Given that Malaysia has yet to adopt UNCAT's definition of torture cruel, inhuman and degrading treatment and punishment in our laws, a compatibility gap exists. Malaysia also practises corporal punishment as a form of judicial sentencing in our civil and Syariah laws, and as a disciplinary measure in our schools. The challenge to close the compatibility gap is not insurmountable. For some time, the Government of Malaysia has engaged with international, regional and local stakeholders to lay the foundations to progress towards UNCAT accession. Domestic line agencies have provided their views on the implications of accession. Both the political will of our leaders and technical expertise of our policy-makers in Government are needed to make the acceptance of the norms in UNCAT, and its localisation, a reality. To this end, our report presents several strategic pathways moving forward.

II. PREAMBLE & SITUATIONAL ANALYSIS OF MALAYSIA

Objectives

This is a "legal compatibility" study. Primarily, we were tasked to assess the compatibility of Malaysia's laws with UNCAT. Second, we were to provide practical recommendations and a "legal roadmap" towards UNCAT accession.

Context

The adoption of UNCAT in 1984 followed nine years after the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The prohibition of torture and other forms of ill-treatment is absolute and non-derogable. They cannot be justified under any

circumstances.[2] It is a norm of *jus cogens*.[3] *Jus cogens* refers to peremptory norms in international law that are "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".[4] Any objection, reservation, treaty provision, declaration of interpretation, or any other customary rule inconsistent with the prohibition is invalid to the extent of the inconsistency.[5] Thus, the absolute prohibition of torture cannot be altered or changed by a single nation or group of countries on any ground. All States are bound to prohibit acts of torture and are not permitted by any treaty to temporarily limit the prohibition under its domestic laws under any context such as for war, national emergency, armed conflict, or to suppress terrorism.

UNCAT provides for a comprehensive policy and legal framework to prevent and prohibit torture at the domestic level. It guides States to undertake incremental steps to fulfil their obligations to combat torture. OP-CAT complements State obligations under UNCAT with a monitoring system by an international committee of experts and a domestic national preventive mechanism.

To date, there are 171 State Parties to UNCAT, the latest being St. Kitts and Nevis which joined on 21 September 2020. 90 States are parties to OP-CAT. In Southeast Asia, six countries (Cambodia, Indonesia, Lao PDR, Philippines, Thailand and Viet Nam) have ratified UNCAT. Brunei Darussalam signed the Convention in 2015 while the Philippines and Cambodia have ratified OP-CAT. Many countries with majority Muslim populations, and some with Syariah laws in force, are parties to UNCAT.

Malaysia's position regarding UNCAT

[2] HRC, General Comment No. 20, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) at pg. 200 (10 March 1992), para. 3.
[3] Belgium v Senegal [2012] ICJ Rep, para. 99; *Ex parte* Pinochet (No.3) [2000] 1 AC 147, 198; Prosecutor v Anto Furundzija IT-95-17/1-T (10 December 1998), para. 153; Siderman de Blake v Argentina 965 F 2d 699 (9th Cir, 1992), 717; Al-Adsani v The United Kingdom [2001] ECHR 761, para. 61; and Yong Vui Kong v Public Prosecutor [2015] 2 SLR 1129, para. 27.
[4] Article 53, Vienna Convention on the Law of Treaties 1969.
[5] HRC, General Comment No. 24, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (4 November 1994), para. 8.

Malaysia has yet to accede to UNCAT. The full force of the Convention to prohibit torture and other cruel, inhuman or degrading treatment or punishment cannot be brought to bear to scrutinise the Executive's actions that contravene UNCAT. Judicial opinion has been clear that because Malaysia has not signed UNCAT, the Convention cannot apply in our courts:[6]

> [148] The essential difficulty that I have with the submissions of learned counsel is that all countries from which cases have been quoted in his written submissions have incorporated in their constitutions provision which provides 'No person shall be subjected to torture, cruel, inhumane or degrading punishment' or similar phrase as a result of their ratification of the United Nations Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). As such they are in a different position compared to our country, as we have never acceded to UNCAT or any other international treaty to that effect.

Therefore, it falls on the Government of Malaysia to take the needed steps to either accede to UNCAT or amend our laws to incorporate the requirements of the Convention to achieve consistency, or to do both simultaneously. Encouragingly, some progress on this front has been made. Since 2014, the Government has openly participated in numerous international fora and engaged with experts such as the CTI[7] focusing on torture prevention and criminal justice reforms. A six-person delegation was sent to Geneva in May 2016 to study the benefits of acceding to UNCAT. After Malaysia's third UPR cycle in November 2018, the Government supported recommendations to speed up on its deliberations to accede to UNCAT.[8]

Local campaign efforts by CSOs and SUHAKAM through the national #ACT4CAT coalition to lobby the Government have built a strong momentum on the issue. SUHAKAM's forum in 2018 saw progressive positions taken by Muslim professionals and scholars. They said that there is no impediment in Islam to prohibit torture.[9]

[6] Letitia Bosman v Public Prosecutor and other appeals (No. 1) [2020] 5 MLJ 277, 343.
[7] https://www.cti2024.org
[8] https://www.ohchr.org/EN/HRBodies/UPR/Pages/MYindex.aspx
[9] Choong, *Ratifying convention against torture not against Islamic law, forum told* (2 July 2018, Malay Mail). Available: https://www.malaymail.com/news/malaysia/2018/07/02/ratifying-convention-against-torture-not-against-islamic-law-forum-told/1647796 [accessed 10 October 2020].

#ACT4CAT had invited a CAT member, Abdelwahab Hani, to lead a series of high-level dialogues with our Ministries, agencies, Member of Parliaments and religious groups in 2017 and 2018. There was a general agreement that supporting UNCAT is not inconsistent with Islamic values and should be encouraged.

More than 30 State parties[10] to UNCAT have a Syariah system in place appropriate to their contexts and needs. They range from the classical (for example, Saudi Arabia) and secular (for example, Turkey) to mixed and hybrid (for example, Egypt and Pakistan) systems. A broader analysis of this phenomenon indicates the following:

(1) The States did not have to change or repeal their Syariah laws before signing UNCAT. They used their periodic reviews before CAT to argue their cases. They are able to take a more active role at the global level to explain themselves on an official platform. In light of CAT's recommendations, they meaningfully deliberate on their positions to gradually seek ways and means to achieve real reforms.

(2) Islamic jurisprudence has evolved in its contextual interpretation of corporal punishment. It is no longer confined to the strict, conventional sense envisaged by the classical Islamic schools ordaining corporal punishment as an immutable precept of Islam that is immune from revision and reform by legislatures. As such, there are grounds to evoke further, and constructive, discussions on the use of corporal punishment under Malaysia's Syariah laws. UNCAT provides some impetus to embark on such discussions.

(3) Where corporal punishment is found in civil laws, particularly in the States' penal legislation largely inherited from colonial laws, religious justifications feature less. Thus, the debate has shifted towards the effectiveness of corporal punishment in altering behaviour and impacting society's mores.

[10] For example: Indonesia, Brunei Darussalam, Algeria, Comoros, Djibouti, Egypt, State of Eritrea, Ethiopia, Kenya, Libya, Islamic Republic of Mauritania, Morocco, Nigeria, Somalia, South Sudan, Uganda, Afghanistan, Bahrain, Bangladesh, Iraq, Jordan, Kuwait, Lebanon, Republic of Maldives, Pakistan, Saudi Arabia, Qatar, Sri Lanka, Syria, United Arab Emirates, Yemen and Palestine.

Under PH's leadership from May 2018, efforts were made by the Government to change specific policies and laws in line with PH's election promises. One of the promises was to accede to the remaining core international human rights treaties. Traditionally, the AGC adopts the position that Malaysia's laws must be first revised to be consistent with the relevant treaty before accession is effected. The Government has usually followed this advice.[11] In the process, an extended period would be taken to conduct compatibility and alignment studies along with stakeholder consultations before domestic laws are changed.

Several other measures initiated during PH's time which have eased the pathways for Malaysia to be a party to UNCAT include the following:

- establishing the IPCMC to more effectively deal with complaints of human rights violations by the police;

- establishing an independent Ombudsman Malaysia to replace the BPA to improve the public complaints mechanism;

- debating SUHAKAM's annual reports in Parliament in the spirit of strengthening national oversight mechanisms;[12]

- seeking to decriminalise minor drug offences to potentially release 50% of the 65,000 prison inmates in Malaysia thereby managing overcrowding and reducing the risk of CIDT in detention centres;

[11] Two exceptions are notable. Malaysia became a State party to CEDAW in 1995. The Government only amended article 8(2), FC in 2001 to include "gender" as one of the prohibited forms of discrimination. To date, there is still no gender equality law which implements Malaysia's obligations under CEDAW. In March 2019, KPWKM established a Special Project Team to draft the bill. Second, Malaysia acceded to the Rome Statute on 4 March 2019 although new laws had yet to be introduced to criminalise genocide, crimes against humanity, war crimes and the crime of aggression; and to grant universal jurisdiction over the offences. For other reasons, the Government withdrew from the Rome Statute on 29 April 2019.

[12] SUHAKAM's Annual Report 2018 was debated in 2019. This was the first time SUHAKAM's report was debated in Parliament since its establishment. See: SUHAKAM, *Annual report debate fulfils Harapan manifesto's Promise 26* (5 December 2019, Malaysiakini). Available: https://www.malaysiakini.com/letters/502565 [accessed 10 October 2020].

- implementing prison management reforms in the areas of detention, rehabilitation, staff training, community correction and inmate reintegration;[13]

- increasing the coverage of legal aid services to represent poor and marginalised groups;[14]

- giving more serious attention to CSOs' allegations of torture by police officers; and,[15]

- establishing the SCMDP to recommend alternative sentences if the death penalty is abolished as a method of execution.[16]

PN took over the administration of Government in February 2020. It has not made its position known in relation to UNCAT accession. Still, the issue remains high on the agenda of CSOs as they continue advocacy efforts to lobby for accession.

III. COMPATIBILITY OF MALAYSIAN LAWS WITH UNCAT

Methodology and methods

The main research question in our study was whether Malaysian laws are compatible with the provisions of UNCAT. In consultation with SUHAKAM, we conducted desk legal research to answer the question. This Paper is a summation of the current state

[13] BERNAMA, *Prison reform in the pipeline, says Muhyiddin* (22 April 2019, Malay Mail). Available: https://www.malaymail.com/news/malaysia/2019/04/22/prison-reform-in-the-pipeline-says-muhyiddin/1745673 [accessed 10 October 2020].
[14] Augustin, *AG pledges to support bill for legal aid law* (14 October 2019, Free Malaysia Today). Available: https://www.freemalaysiatoday.com/category/nation/2019/10/14/ag-pledges-to-support-bill-for-legal-aid-law/ [accessed 10 October 2020].
[15] BERNAMA, *IGP: Police to investigate claims by Suaram of abuse during detention* (12 October 2019, Malay Mail). Available: https://www.malaymail.com/news/malaysia/2019/10/12/igp-police-to-investigate-claims-by-suaram-of-abuse-during-detention/1799740 [accessed 10 October 2020].
[16] The SCMDP submitted its recommendations to the Government in February 2020. See: BERNAMA, *Minister: Special committee submits report on death penalty alternative sentences* (11 February 2020, Malay Mail). Available: https://www.malaymail.com/news/malaysia/2020/02/11/minister-special-committee-submits-report-on-death-penalty-alternative-sent/1836640 [accessed 10 October 2020].

of play in terms of the law. We relied on primary and secondary sources (including CAT's official documents) to analyse and interpret the Convention. We undertook a textual analysis of UNCAT and Malaysian laws to review the same and conclude on the latter's compatibility with the Convention. Further, we sought SUHAKAM's assistance to write to law enforcement agencies for their responses to our questions regarding articles 10 and 11, UNCAT. To derive our findings, we were not required by our terms of reference to collect data by conducting interviews or field research.

Findings

We opine on the compatibility issue in two ways.

First, we find that Malaysian civil and Syariah[17] laws providing for corporal punishment are not compatible with UNCAT.[18] "Annex I – Malaysian laws with corporal punishment under lawful sanction, and therefore incompatible with UNCAT" to this Paper lists the said laws. In one report, the SR-T wrote as follows:[19]

> 28. On the basis of the review of jurisprudence of international and regional human rights mechanisms, the Special Rapporteur concludes that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

[17] Today, there is no doubt that corporal punishment meted out under Syariah laws violates UNCAT: CAT, *Conclusions and recommendations of the Committee against Torture: Saudi Arabia*, U.N. Doc. CAT/C/CR/28/5 (12 June 2002); CAT, *Concluding observations of the Committee against Torture: Indonesia*, U.N. Doc. CAT/C/IDN/CO/2 (2 July 2008); and CAT, *Concluding observations on the second periodic report of Saudi Arabia*, U.N. Doc. CAT/C/SAU/CO/2 (8 June 2016). See also: Karapetyan A. (2016). A Recurring Phenomenon: The Lawful Sanctions Clause in the Definition of Torture and the Question of Judicial Corporal Punishment under International Human Rights Law. *Polish Yearbook of International Law*, XXXVI, 137-161.

[18] The SR-T has consistently held that the judicial or administrative application of corporal punishment to be contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment: *Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37B*, U.N. Doc. E/CN.4/1997/7 (10 January 1997), para. 6. Available: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/101/13/PDF/G9710113.pdf?OpenElement [accessed 10 October 2020]. See also: HRC, General Comment No. 20, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) at pg. 200 (10 March 1992), para. 5; and George Osbourne v. Jamaica, Communication No. 759/1997, U.N. Doc. CCPR/C/68/D/759/1997 (13 April 2000), para. 11.

[19] *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/60/316 (30 August 2005), pg. 9. Available: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/476/51/PDF/N0547651.pdf?OpenElement [accessed 10 October 2020]. See also: *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *Manfred Nowak*, U.N. Doc. A/HRC/13/39 (9 February 2010). Available: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/100/42/PDF/G1010042.pdf?OpenElement [accessed 10 October 2020].

> Moreover, States cannot invoke provisions of domestic law to justify the violation of their human rights obligations under international law, including the prohibition of corporal punishment. He therefore calls upon States to abolish all forms of judicial and administrative corporal punishment without delay.

Parliament has to repeal laws permitting corporal punishment as a form of judicial sentencing for crimes under our civil and Syariah laws to achieve compatibility. Caning, as a disciplinary sanction [20] in our education system,[21] has to stop. Today, 61 States have a full prohibition of children's corporal punishment, while 27 countries have committed themselves towards achieving a complete legal ban.[22] However, to dismantle corporal punishment from Syariah law, Syariah proponents would argue that the punishment is sanctioned by, or it is indeed a required tenet of the Islamic faith. Additionally, law and order proponents would contend that corporal punishment has educational values as it deters would-be offenders and further, is a form of proportional retribution for crimes committed. These are the twin challenges which have to be met. An immediate response is to study the range of possible alternative modes of punishment to replace corporal punishment. The alternatives should be equally weighty measures comparable with whipping or caning but are allowed by international human rights law. They should also have additional rehabilitative elements to impact both the offender and society positively. The Tokyo Rules[23] list a range of alternatives to custodial sentences that have an acceptable punitive and rehabilitative impact if clearly defined and properly implemented. These alternatives should be considered to replace corporal punishment in the criminal justice system and in penitentiary and educational settings. Some of the alternatives are status penalties; economic sanctions and monetary penalties; confiscation or expropriation

[20] *Surat Pekeliling Ikhtisas Bil. 7/2003: Kuasa Guru Merotan Murid* (29 October 2003). Available: https://www.moe.gov.my/pekeliling/1970-surat-pekeliling-ikhtisas-bilangan-7-tahun-2003-kuasa-guru-merotan-murid/file [accessed 10 October 2020].

[21] Balasingam, U., Nor, A. M. & Shah, S. S. A. (2019). Corporal Punishment in Malaysian Public Schools: Legal and Educational Perspectives. *IIUM Law Journal*, 27(2), 525-548.

[22] See: Global Initiative to End All Corporal Punishment of Children: https://endcorporalpunishment.org/countdown/ [accessed 10 October 2020].

[23] See: https://www.ohchr.org/EN/ProfessionalInterest/Pages/TokyoRules.aspx [accessed 10 October 2020]. Our research does not yield any global study that has compared the effectiveness of non-custodial sentences with corporal punishment towards crime reduction.

orders; restitution or compensation orders; suspended or deferred sentences; probation and judicial supervision; community service orders;[24] referral to attendance centres; and house arrests. Post-sentencing dispositions to assist offenders in their reintegration into society may include furlough and halfway houses; work or education release; various forms of parole and remission. The alternatives are imposed subject to each case's facts and the nature of the crimes committed. In extreme cases, the gravity of the offence and the offender's offending pattern coupled with his or her failure to rehabilitate militate against the use of non-custodial alternatives. The only sentence available is life imprisonment subject to parole at the appropriate time.

Second, we find a legal gap in Malaysia's laws and policies because we do not have a comprehensive definition of torture, cruel, inhuman, degrading treatment and punishment. While our penal laws criminalise public officials' use of force, they do not meet UNCAT's standard. The definitional inadequacy impacts how law enforcement agencies carry out their work and how judicial bodies interpret public officials' conduct and actions that contravene UNCAT's prohibition. It permeates through the whole corpus of practices by the Executive (including SIAs), and interpretations by the Judiciary. A policy change leading to legislative revisions is therefore required. A summary of our reasons is found in "Annex II – Compatibility Matrix: UNCAT and Malaysian law" to this Paper. The primary legislative reform measure is to criminalise torture as a new offence. The four elements in UNCAT – (i) an act or acts causing severe pain or suffering, mental or physical; (ii) intentionally inflicted;[25] (iii) by a public official who is directly or indirectly involved;[26] and (iv) for a specific purpose – must be included in the offence. Once the Government is convinced to accept these elements – and we see no reason why it should not – to graft it into law, much of UNCAT's requirements follow naturally.

[24] See section 293(1)(e), CPC; section 97A, CA; and generally, the OCAA.

[25] The intention of the perpetrator to inflict severe pain or suffering is required for an act to amount to torture. This distinguishes an act of torture from other forms of ill-treatment. Negligence does not amount to torture. Torture may also be inflicted by "omission" such as by depriving a detainee access to medical care on purpose.

[26] The definition includes actions committed by non-State or private actors if public officials knew or have reasonable grounds to believe that those actors committed the acts of torture and they failed to exercise due diligence to prevent, investigate, prosecute or punish them.

Similarly, a specific offence of CIDT, which is defined broadly following UNCAT, should be introduced with the offence of torture. It is not a huge leap for the Government to take given that sections 330 and 331 already – though inadequately – sanction some forms of unlawful behaviour by public officials. The new offences will complement the said sections. Ideally, article 5(1), FC should be amended to include "torture and other cruel, inhuman or degrading treatment or punishment" as an overarching guarantee under the right to life. That should be Malaysia's end goal.

Once the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment is recognised in law, procedural and evidential safeguards in the criminal justice system must be strengthened. Robust remedies for survivors and victims, and their families, should also be spelt out in the law. Legislative revisions to the CPC, DDSMA, EA, ExA, PA, POCA, POTA, SOSMA and SUHAKAM Act should meet the following main objectives, namely, to provide for:

- clearer exclusionary rules to protect against confessions, admissions or information procured by torture and CIDT;

- improved procedures, rules and safeguards regarding arrests, detentions, investigations and treatment of detainees to eliminate risks of torture and CIDT;

- improved detention and prison conditions, particularly to reduce overcrowding;

- reduced detention without trial periods under preventive detention laws as prolonged detention may amount to CIDT;

- enhanced legal aid coverage for detainees who are non-citizens;

- enhanced independent investigation and prosecutorial mechanisms over complaints of torture and CIDT to ensure greater accountability, and prompt and effective actions to be taken;

- increased powers for SUHAKAM to visit prisons, investigation rooms and detention centres to monitor conditions of detention and conduct spot checks without prior notice, and further, to mediate, conciliate and adjudicate on complaints of human rights violations between affected parties;

- non-refoulement principles and protective measures for persons at risk of torture and CIDT on extradition, and the concomitant obligation for a prompt and impartial assessment of such risks by an independent competent authority;

- a specialised, stand-alone Coroner's Court that will conduct inquiries into custodial deaths;

- the mandatory conduct of inquiries into custodial deaths as a matter of course;

- the reversal of the burden of proof (from the survivors and victims) to the detaining authorities in inquiries and cases of custodial deaths for them to justify by applicable standards of proof why they did not cause the deaths; and,

- enhanced judicial and non-judicial remedies and redress packages (including compensation and counselling programmes) for survivors and victims, and their families, of torture and CIDT.

Implications if Malaysia acceded to UNCAT

Policy and law reforms need to be effected necessitating consultations by the Government with stakeholders. These engagements take up time and resources. They are part of the bureaucracy's practices before new policies and laws are introduced. Without a fixed structure or deadline to the engagements, genuine progress will not be evident. There would also be financial implications to build more "torture-free places",[27] improve detention and prison conditions,[28] increase and update law

[27] For example, prisons and investigation rooms.
[28] For example, to reduce the risk of CIDT, prison overcrowding has to be managed by modifying prison cells and building more prisons.

enforcement agencies' facilities and tools for investigations,[29] and establish new accountability mechanisms[30] that entail institutional changes and additional human power. A larger budget has to be allocated for resources to undertake targeted training and awareness-raising programmes for law enforcement agencies in line with UNCAT's obligations. However, should corporal punishment be abolished, the time costs of personnel[31] and financial burden[32] to carry out whipping or caning sentences could be reduced. In summary, wholesale prison reforms[33] are long overdue. The Government cannot run away from the fact that implementing such reforms require an injection of funds. An in-depth study is called for in this regard.

IV. CHALLENGES, OPPORTUNITIES & RECOMMENDATIONS

The nature of the law and policy reforms are mentioned above. Here, from a bird's eye view of things, we sketch recommendations that can be pursued. They are predicated on the present challenges and opportunities identified in the continuing advocacy for UNCAT accession.

Political will and governance

The advent of PH as a new political force in the country's administration since the last general election provided CSOs numerous pathways to politicians who wanted to involve Malaysia in the global human rights movement and live up to international human rights standards. The greater openness of the PH's administration to dissenting voices also surfaced populist ideologies promoting race and religion narratives to

[29] For example, by providing advanced technological equipment to combat crime that will not rely on torture-induced confessions or leads.
[30] For example, the IPCMC and Ombudsman Malaysia.
[31] For example, prison wardens and medical officers.
[32] Costs associated with the instruments to execute the whipping or caning and post-execution medical treatment of those who have been whipped or caned.
[33] The changes encompass analysing the effectiveness of Malaysia's penal institutions for its rehabilitative aspects and consistent with the principles of restorative justice; upgrading prison facilities; increasing the capacity and skill sets of prison officers; and introducing better re-integration programmes for offenders.

challenge human rights. The challenge is not insurmountable, but it requires a combination of smart strategies. Human rights is never popular. Methods such as conducting nationwide polls to gauge the population's sentiments are dangerous. Because politicians often keep an eye to ensure they are re-elected to office, their electability matters. If human rights is low on the agenda of governance, political will is required in the face of great adversity and grave opposition to move human rights higher on the list of government's business. One narrative that can be built in urging the Government to sign UNCAT is to say that if Malaysia does not commit torture, the Government should not hesitate to accept UNCAT. Only if we are afraid of being sanctioned for our practices that we should be fearful of accession. Should the Government hold to the view that our policies and laws have to be aligned first with UNCAT, then a timetable of deliverables for such alignment should be set.

Discourse on torture and CIDT within Islam

Empirical-based research on the religious legitimacy of anti-torture norms within Islam in Malaysia has been few and far between. An-Na'im calls for the acculturalisation of human rights through the Islamic perspective. He has called for human rights advocates in the Muslim world to work within the framework of Islam to be effective:[34]

> They need not be confined, however, to the particular historical interpretations of Islam known as Shari'a. Muslims are obliged, as a matter of faith, to conduct their private and public affairs in accordance with the dictates of Islam, but there is room for legitimate disagreement over the precise nature of these dictates in the modern context. Religious texts, like all other texts, are open to a variety of interpretations. Human rights advocates in the Muslim world should struggle to have their interpretations of the relevant texts adopted as the new Islamic scriptural imperatives for the contemporary world.

He also urges human rights advocates to "claim the Islamic platform and not concede it to the traditionalist and fundamentalist forces"[35] in society. To do so requires much Islamic academic rigour. For example, to what extent do the dictates of Islam require

[34] An-Na'im, A. A. (1990). Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives – A Preliminary Inquiry. *Harvard Human Rights Journal*, 3, 13-52, pg. 15.
[35] *Ibid.* pg. 50.

corporal punishment? What are the points of agreement and disagreement between Islam and UNCAT? Of course, we are clear that for a long as our civil laws do not do away with corporal punishment, there will be little push for the SIAs to do the same.

Vernacularisation of UNCAT principles by bridge-building

How do UNCAT proponents localise anti-torture norms in Malaysia? There has been a distinct lack of sustained and direct communication between secular and religious CSOs on torture and CIDT. UNCAT allies within Islamic-based CSOs should be identified to work on commonalities. “Bridge-builders” are needed, and SUHAKAM can forge this role. Vernacularisation of international human rights norms through the localisation and translation of their content through language and Islamic discourses will help. Bridge-building is not limited to discussions on UNCAT alone but can be thought of as a holistic package that includes other matters of human rights interest. We note from interactions with Islamic-based CSOs that the opposition towards human rights is not focused entirely on one issue only, but over unhappiness regarding a host of other issues that undergird their rejection of human rights. These other issues have proven to be “spoilers” to constructive discussions. Bridge-building encourages us to understand different nodes of practical strategies such as mediation and peacebuilding in non-conflict situations and demands that we re-orient our advocacy practices. A cobweb of relationships to make the bridging discussions fruitful will have to be built towards achieving the desired outcomes.

Specialisation to lobby the Government bureaucracy

CSOs have largely failed to properly engage the civil servants who write the policy documents and implement the necessary bureaucratic practices to change policy or implement a new one. The civil servants at each Ministry write policy recommendations and then submit them to other agencies for comments and feedback. Consultations are organised with interest groups and other stakeholders. The penholder of the policy document is the civil servant in the respective policy divisions of the Ministries. Once Cabinet has approved the policy and requires introducing a bill in Parliament, the policy will be turned into a bill. The AGC drafts the bill. This behind-the-scenes process is not always transparent but usually opaque. To

make manifest the latent, CSOs and SUHAKAM should consider forming a specialist advocacy team focused on strategic lobbying of the Government's policy-makers. The team will build relationships of trust and confidence over the long term with those who hold power. Law and policy reform should be seen as a "business" following how special interests groups such as trade associations and for-profit corporations pressure the Government to advance their causes.

Agenda for further research

There is a paucity of human rights research in Malaysia that brings in sociological considerations. Legal scholarship methodology has dominated human rights. The methodology "often assumes the validity of the normative baselines it employs" and "neglects *impacts* of legal norms on the ground and places insufficient emphasis on policy uptake and contextual relevance".[36] McInerney-Lankford further contends[37]:

> As Michael Freeman has argued, there is a need to break the grip of legal scholarship on the study of human rights law and get the balance right between law and politics for effective human rights policy-making. Freeman also argues that a legalistic approach to human rights may distract the attention of human rights scholars and activities from the political, social, economic, and cultural causes of human rights violations.

What is required is a broader scope of human rights research which takes on a more inter- and multi-disciplinary approach looking beyond legal constructs to tackle the issues in empirical terms. The "everyday" cannot be ignored. Thus, human rights CSOs and academics should pursue sustained efforts on the following areas of research:

- how is torture and CIDT viewed or understood by the public;

[36] McInerney-Lankford S. (2017). Legal methodologies and human rights research: challenges and opportunities. *In:* Andreassen, B. A., Sano H.-O. & McInerney-Lankford S. (eds.) *Research Methods in Human Rights: A Handbook*, Cheltenham and Massachusetts: Edward Elgar Publishing, 38-67, p. 40.
[37] *Ibid.* pg. 52-53.

- how is torture and CIDT viewed or understood by civil servants, law enforcement agencies and SIAs particularly from an Islamic standpoint;

- to what extent has the use of torture and CIDT as methods of interrogation and investigation increased the reliability of confessions, admissions or information obtained ultimately leading to the guilt or innocence of the suspect;

- how does UNCAT accession and alignment of Malaysian laws to meet UNCAT's standards impact the lives of Malaysians;

- how do the "generic biopsychosocial factors that have shaped human decision-making"[38] impact, and are evident in, torture and CIDT in Malaysia;

- how are recurring patterns of behaviour common in cases of torture and CIDT to be modified and changed; and,

- from an organisational angle, how is human rights integrated and embedded within the Government's bureaucracy among its civil servants?

[38] Above (fn. 1), para. 75.

ANNEX I
Malaysian laws with corporal punishment under lawful sanction, and therefore incompatible with UNCAT

Civil laws

	Laws	*Provisions*
1	Arms Act 1960	sections 14(1); 33
2	Child Act 2001	sections 43(1)(bb); 43(2); 53(4)
3	Corrosive and Explosive Substances and Offensive Weapons Act 1958	sections 3; 4; 6(1)
4	Criminal Procedure Code	sections 286; 287; 288; 289; 290; 291; 293(1)(c)
5	Dangerous Drugs Act 1952	sections 6B(3); 12(4); 39A(1); 39A(2); 39B(2); 39C(1); 39C(2)
6	Drug Dependants (Treatment and Rehabilitation) Act 1983 --- Drug Rehabilitation Centre Rules 1983	sections 6(3); 19(3) rule 72(2)(b)
7	Education (School Discipline) Regulations 1959 [Note that the then Minister of Education issued the Regulations on 20 February 1959 under the now repealed Education Ordinance 1957.]	regulation 5
8	Firearms (Increased Penalties) Act 1971	sections 4; 5; 6; 7; 8; 9
9	Immigration Act 1959/63	sections 6(3); 36; 55A(1); 55A(3); 55A(4); 55B(3); 55D; 56(1)(bb)
10	Kidnapping Act 1961	sections 3; 5; 6(1)
11	Law Reform (Eradication of Illicit Samsu) Act 1976	sections 3; 4; 5; 6; 7
12	Moneylenders Act 1951	sections 5; 10I(3); 10P; 29B(1); 29B(3)

13	Passports Act 1966	section 12B
14	Pawnbrokers Act 1972	sections 7; 34I(3)
15	Penal Code	sections 130ZC; 223(2); 324; 326; 327; 329; 354; 356; 364; 372; 372A; 376; 376B; 377; 377B; 377C; 377CA; 377E; 379; 380; 382; 384; 385; 386; 387; 388; 389; 392; 394; 395; 396; 397; 399; 400; 401; 402; 403; 404; 406; 407; 408; 409; 420; 430A; 453; 455; 457; 459
16	Prevention of Crime Act 1959	section 17
17	Prevention of Terrorism Act 2015	section 25
18	Prison Act 1955 --- Prison Regulations 2000	section 50(3) regulations 125(i); 131; 132; 133; 134; 135; 136
19	Public Order (Preservation) Act 1958	sections 23; 24; 25
20	Sexual Offences Against Children Act 2017	sections 6; 12; 13; 14; 16; 25
21	Water Services Industry Act 2006	sections 121(2)(a); 121(2)(b)

Syariah laws

	Laws	*Provisions*
1	Syariah Criminal Offences (Federal Territories) Act 1997	sections 4; 20; 21; 22; 23; 25; 26
2	Syariah Criminal Procedure (Federal Territories) Act 1997	sections 125; 126
3	Johor Syariah Criminal Offences Enactment 1997	sections 20; 21; 22; 23; 25; 26
4	Syariah Criminal Procedure (State of Johor) Enactment 2003	sections 125; 126
5	Syariah Criminal Offences (Kedah Darul Aman) Enactment 2014	sections 4; 18; 19; 20; 21; 23; 24
6	Syariah Criminal Procedure (Kedah Darul Aman) Enactment 2014	sections 126; 127
7	Kelantan Syariah Criminal Code 1985 --- The Whipping Rules 1987 [Note that the Syariah Criminal Code (II) (1995) 2015 has been passed by the State Legislative Assembly but it is not in force.]	sections 11; 12; 14; 25(1) rules 3; 4; 5; 6; 7; 8; 9; 10; 11
8	Kelantan Syariah Criminal Procedure Enactment 2002	sections 125; 126
9	Syariah Offences Enactment (State of Malacca) 1991	section 58
10	Syariah Criminal Procedure (State of Malacca) Enactment 2002	sections 125; 126
11	Syariah Criminal (Negeri Sembilan) Enactment 1992	section 72
12	Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003	sections 129; 130
13	Pahang Syariah Criminal Offences Enactment 2013	sections 4; 5; 6; 7; 8; 9; 10; 11; 12; 27; 28; 29; 30; 31; 37; 42; 44; 47; 49

14	Pahang Syariah Criminal Procedure Enactment 2002	sections 125; 126
15	Syariah Criminal Offences (State of Penang) Enactment 1996	sections 4; 20; 21; 22; 23; 25; 26
16	Syariah Criminal Procedure (State of Penang) Enactment 2004	sections 125; 126
17	Perak Crimes (Syariah) Enactment 1992	sections 45; 47; 48
18	Syariah Criminal Procedure (Perak) Enactment 2004	sections 125; 126
19	Perlis Criminal Offences in the Syarak Enactment 1991	section 24(1)
20	Perlis Syariah Criminal Procedure Enactment 2006	sections 125; 126.
21	Sabah Syariah Criminal Offences Enactment 1995	sections 76; 80
22	Sabah Syariah Criminal Procedure Enactment 2004	sections 125; 126
23	Sarawak Syariah Criminal Offences Ordinance 2001	sections 4; 17; 18; 19; 20; 22; 23
24	Sarawak Syariah Criminal Procedure Ordinance 2001	sections 125; 126
25	Syariah Criminal Offences (Selangor) Enactment 1995	sections 7; 11; 22; 23; 24; 25; 28
26	Syariah Criminal Procedure (State of Selangor) Enactment 2003	sections 125; 126

27	Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001	sections 4; 24; 25; 26; 27; 28; 30
28	Syariah Criminal Offence (Hudud and Qisas) Terengganu Enactment 2002 [Note that while the law is in force, it cannot be enforced because certain provisions contravene the Syariah Courts (Criminal Jurisdiction) Act 1965.]	sections 5; 8; 13; 15; 18; 20; 23; 55; 56; 58; Schedule V
29	Syariah Criminal Procedure (Terengganu) Enactment 2001	sections 125; 126

ANNEX II
Compatibility Matrix: UNCAT and Malaysian laws

UNCAT and Malaysian laws compared		Compatibility: [Compatible | Partially Compatible | Not Compatible]
UNCAT	Key Malaysian Laws[1]	
Article 1 1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or	Sections 319, 320, 321, 322, 323, 324, 325, 326, 330, 331, 349, 350, 351, 352 and 357, PC.	**PARTIALLY COMPATIBLE** The PC offences on the use of force and causing hurt provide for certain acts of criminality. However, our laws have not explicitly defined acts of torture and CIDT, and have not criminalised them. Ideally, conduct amounting to torture and CIDT as defined by UNCAT should be included in the PC as new offences. Individuals who commit acts amounting to torture and CIDT defined in UNCAT could, however, in some instances, be prosecuted under the existing PC offences. Further, corporal punishment is being practised as a form of judicial sentence in both civil and Syariah laws, and as a disciplinary measure in schools. The death penalty continues to be meted out as a mandatory sentence for 11 offences while it is anoption in respect to 22 other offences in Malaysia.

[1] Because Malaysia has not incorporated a comprehensive definition of torture, cruel, inhuman, degrading treatment and punishment in line with UNCAT's standard, this inadequacy permeates through the whole corpus of practices by the Executive (including SIAs), and interpretations by the Judiciary. The relevant laws are stated here to illustrate the main points of contention. We did not include policies, guidelines, standard operating procedures, standing orders, codes of ethics, administrative instructions and circulars, or the SIAs' religious rulings such as *fatwas* and edicts.

suffering arising only from, inherent in or incidental to lawful sanctions. 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.		
Article 2 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.	Articles 5, 8, 149, 150 and 151 FC. POCA, DDSPMA, SOSMA and POTA.	**NOT COMPATIBLE** Our views above are reiterated. There is a definitional deficit regarding torture and CIDT in our laws. Preventive detention and emergency laws provide for exceptions to life and liberty safeguards such as lengthy detention periods without trial. There are limited independent accountability measures to check the use of such laws as judicial reviews on substantive bases are ousted. There is also no exclusion of the superior orders "defence".
Article 3 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant	ExA, IA, PassA.	**NOT COMPATIBLE** There are no legal prohibitions against the removal and return of non-citizens on the basis that the country of origin or the requesting country practises torture. The limited exceptions under section 8, ExA not to surrender a fugitive criminal do not include the risk of torture or CIDT being inflicted on him or her as a factor to be considered.

considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.		
Article 4 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.	-	**NOT COMPATIBLE** Due to the definitional deficit regarding torture and CIDT in our laws, the Malaysian legal position, its policies and practices do not meet the requirements of article 4.
Article 5 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State; (c) When the victim is a national of that State if that State considers it appropriate.	Section 22, CJA. Sections 3 and 4, PC.	**NOT COMPATIBLE** The Malaysian courts are vested with universal criminal jurisdiction over certain offences. However, due to the definitional deficit regarding torture and CIDT in our laws, acts of torture and CIDT are not included as offences over which universal jurisdiction may be exercised.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article. 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.		
Article 6 1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted. 2. Such State shall immediately make a preliminary inquiry into the facts. 3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest	-	**NOT COMPATIBLE** Due to the definitional deficit regarding torture and CIDT in our laws, the Malaysian legal position, its policies and practices do not meet the requirements of article 6. For purposes of extradition, an "extradition offence" must be punishable under Malaysian law.

appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides. 4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.		
Article 7 1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. 2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent	-	**NOT COMPATIBLE** Our views above are reiterated. There is a definitional deficit regarding torture and CIDT in our laws. Under article 145(3), FC, the Attorney General has the absolute discretion to institute prosecutions or not.

than those which apply in the cases referred to in article 5, paragraph 1. 3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.		
Article 8 1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. 2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State. 3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.	ExA. (Note extradition treaties between Malaysia and other countries such as Hong Kong, Australia, Indonesia, India and United States of America.)	**NOT COMPATIBLE** None of the publicly-available extradition treaties provides for torture and CIDT as extraditable offences.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.		
Article 9 1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary forthe proceedings. 2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.	MACMA. (Note treaties of mutual assistance between Malaysia and other countries in ASEAN, Hong Kong, United States of America, United Kingdom and India.)	**PARTIALLY COMPATIBLE** Malaysia does not recognise specific offences of torture and CIDT. Under section 20(1)(f), MACMA, a request for assistance may be refused if in the opinion of the Attorney General the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would not have constituted an offence against Malaysian law.
Article 10 1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be	Broad powers are given to heads of Ministries, agencies, departments, public bodies and SIAs to issue guidelines, standard operating procedures, standing orders, codes of ethics, administrative instructions and circulars. As illustrations,	**PARTIALLY COMPATIBLE** Due to the definitional deficit regarding torture and CIDT in our laws, the prevention and prohibition of torture and CIDT are not addressed as such. Only general directions regarding the proper treatment of detainees, and the prohibition of the use of force and inducements, threats or promises to procure

involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. 2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.	these powers are exemplified by sections 95, 96 and 97, PA, sections 12, 20, 26, 46R and 67, PrisA and section 12, SPRM Act.	information are made explicit to operationalise the laws as they currently stand.
Article 11 Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.	-	**PARTIALLY COMPATIBLE** While some law enforcement agencies (such as SPRM) have oversight bodies to monitor their roles and functions, none appear to operationalise a regular, holistic, transparent and systematic review of their rules, instructions, methods and practices, as well as arrangements for the custody and treatment of detainees. Revisions and updates occur on an *ad hoc* basis (usually) only when cases or media attention bring the issues to light.
Article 12 Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.	Sections 107 and 107A, CPC. Sections 12, 13, 14 and 15, SUHAKAM Act. Sections 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43, SIAP Act. PA.	**PARTIALLY COMPATIBLE** While torture and CIDT *per se* are not criminal offences in Malaysia, investigations into the use of force and abuse of powers by law enforcement agencies would fall to be investigated by PDRM. The complainant initiates the process by lodging a police report. In theory, the police should commence investigations and regularly report on the status of the complaint. In practice, however, there are documented cases of slow, inadequate or biased police investigations

		particularly regarding complaints made against police officers themselves. Attempts have been made to improve. In 2014, PDRM established JIPS, but it is insufficiently independent and focuses in main on administrative misconduct. Efforts to pass the IPCMC bill faced stiff resistance from the police force. The bill was first tabled in Parliament by the PH government in July 2019. The IPCMC has yet to see the light of day. PH also initiated the drafting of a new law to set up an independent Ombudsman Malaysia to replace the ineffective BPA. In the meantime, and despite their limited powers, SIAP and SUHAKAM continue to play the role of impartial investigators in respect of complaints they receive.
Article 13 Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.	Sections 107 and 107A, CPC. Sections 12, 13, 14 and 15, SUHAKAM Act. Sections 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43, SIAP Act. PA.	**PARTIALLY COMPATIBLE** Consistent with our views on article 12, the main challenge has been more to do with the failure, inability, unwillingness, refusal or neglect of PDRM to promptly and impartially investigate complaints regarding the use of force and abuse of powers by law enforcement agencies.

Article 14 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.	Section 426, CPC Section 2, PAPA Sections 7, 8, 10 and 11, CLA Section 5 and 6, GPA	**PARTIALLY COMPATIBLE** Under section 426, CPC, a criminal court may when convicting the offender also order him or her to pay compensation to the survivor or victim. In practice, section 426 orders are rarely made. Under the civil law process, survivors and victims, and their families, are not given compensation as of right. They have to prove their case in court through a lengthy and tedious judicial process which is subject to legal technicalities and evidentiary defences raised by the Government. At times, they fail. There are also no rehabilitation programmes provided to them by the Government.
Article 15 Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.	Sections 24, 25, 26, 27, 28, 29, 30, 31 and 167, EA. Sections 112, 113 and 114, CPC. Section 53, SPRM Act. Sections 60, 61 and 62, SCPA(FT). Other laws with similar exclusionary mechanisms include section 10N, Moneylenders Act 1951; section 37A, Dangerous Drugs Act 1952; section 16, Kidnapping Act 1961; section 21, Official Secrets Act 1972; section 34N, Pawnbrokers Act 1972; and Syariah laws under the SIAs such as sections 60, 61 and	**PARTIALLY COMPATIBLE** Statements, confessions or admissions given due to inducements, threats or promises may be excluded from use in criminal proceedings. However, given the definitional deficit of torture and CIDT in our laws, there are no provisions for the exclusion of evidence procured through torture or CIDT.

	62 of the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 and sections 60, 61 and 62 of the Syariah Criminal Procedure (State of Selangor) Enactment 2003.	
Article 16 1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment. 2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.	Article 5(1), FC.	**PARTIALLY COMPATIBLE** Our views above regarding articles 1 and 2 are reiterated. Ideally, there should be an overarching prohibition of torture and CIDT grafted into article 5(1), FC to read as follows: "No person shall be <u>subjected to torture, and other cruel, inhuman or degrading treatment or punishment,</u> <u>or</u> be deprived of his life or personal liberty ~~save in accordance with law~~."

Note: Part II (articles 17 to 33) have been excluded from this Compatibility Matrix because they relate to operational, logistical and administrative matters of CAT. As Malaysia is not a party to CAT, these provisions are inapplicable. We do not foresee any impediment to the Government to comply with these provisions.

ANNEX III

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It

does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory

under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs I to 4 is article s hall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article; (e) Subject to the provisions of subparagraph

(e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned. 5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering an d voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Con vention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of- the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

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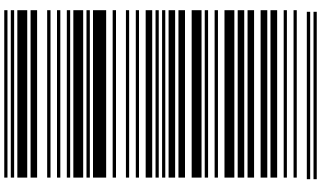

SUHAKAM Project to Study and Analyse The Compatibility of Malaysian Laws with The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)