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**COMPILATION PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER  
FOR HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15(B) OF  
THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1**

**Malaysia**

The present report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review. In the absence of recent information, the latest available reports and documents have been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty and/or to a low level of interaction or cooperation with international human rights mechanisms.

## I. BACKGROUND AND FRAMEWORK

### A. Scope of international obligations<sup>1</sup>

<i>Core universal human rights treaties<sup>2</sup></i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>
CEDAW	5 July 1995	Yes (arts. 2(f), 5(a), 7(b), 9 and 16) <sup>3</sup>	-
CRC	17 Feb. 1995	Yes (arts. 1, 2, 7, 13, 14, 15, 28 para. 1(a) and 37) <sup>4</sup>	-

Core treaties to which Malaysia is not a party: ICERD, ICESCR, ICCPR, ICCPR-OP1, ICCPR-OP2, OP-CEDAW, CAT, OP-CAT, OP-CRC-SC, OP-CRC-AC, ICRMW, CPD, CPD-OP, and CED.

<i>Other main relevant international instruments<sup>5</sup></i>	<i>Ratification, accession or succession</i>
Convention on the Prevention and Punishment of the Crime of Genocide	Yes
Rome Statute of the International Criminal Court	No
Palermo Protocol <sup>6</sup>	No
Refugees and stateless persons <sup>7</sup>	No
Geneva Conventions of 12 August 1949 and Additional Protocols thereto <sup>8</sup>	Yes, except Additional Protocol III
ILO fundamental conventions <sup>9</sup>	Yes, except Nos. 87, 105 and 111.
UNESCO Convention against Discrimination in Education	No

1. In 2006, the Committee on the Elimination of Discrimination against Women (CEDAW) encouraged Malaysia to consider ratifying ICESCR, ICCPR, ICERD, CAT and OP-CEDAW; and to accept the amendment to article 20, paragraph 1, of the Convention.<sup>10</sup> The Committee on the Rights of the Child (CRC) recommended that Malaysia accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.<sup>11</sup> CRC also recommended that Malaysia ratify CPD, CPD-OP,<sup>12</sup> OP-CRC-SC and OP-CRC-AC<sup>13</sup> and expedite efforts to review the nature of its reservations to articles 1, 2, 7, 13, 14, 15, 28, para.1 (a), and 37<sup>14</sup> of the Convention with a view to withdrawing them.<sup>15</sup> Both CRC and CEDAW encouraged Malaysia to ratify ICRMW<sup>16</sup> and the Palermo Protocol.<sup>17</sup>

2. While welcoming Malaysia's assurances that it was reviewing reservations to articles 5 (a) and 7 (b) with a view to removing them, CEDAW urged Malaysia to review all its remaining reservations with a view to withdrawing them, especially to article 16.<sup>18</sup> It was particularly concerned at Malaysia's position that laws based on sharia interpretation cannot be reformed.<sup>19</sup>

### B. Constitutional and legislative framework

3. CEDAW was concerned that the Convention was not yet part of Malaysian law and thus its provisions were not enforceable in domestic courts.<sup>20</sup>

4. While welcoming the translation of the Convention into Bahasa Melayu, Chinese and Tamil, its dissemination to women's NGOs and the initiative to create a children's handbook on the Convention, CEDAW was concerned that the provisions of the Convention were not widely known by judges, lawyers and prosecutors.<sup>21</sup>

5. In 2007, CRC welcomed the adoption of the Child Act 2001<sup>22</sup> and many other laws aimed at protecting and promoting the rights of the child.<sup>23</sup> CRC shared Malaysia's view that laws which were not consistent with the definition of the child under article 1 of the Convention should be reviewed<sup>24</sup> and recommended that Malaysia take all necessary measures to harmonize the definition of the child in national laws.<sup>25</sup>

6. An ILO Committee of Experts in 2008 encouraged Malaysia to take into consideration, during the review of labour legislation, including the Children and Young Persons (Employment) Act of 1966, discrepancies between national legislation and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182).<sup>26</sup>

### **C. Institutional and human rights infrastructure**

7. CRC welcomed the establishment of the Human Rights Commission of Malaysia (SUHAKAM)<sup>27</sup>, particularly its mandate, which included carrying out analyses and awareness-raising and training activities, as well as receiving and investigating individual complaints, and visiting places of detention.<sup>28</sup> SUHAKAM was accredited with "A" status by the International Coordinating Committee in 2002.<sup>29</sup> In April 2008, during the re-accreditation process, SUHAKAM retained its 'A' status, however the ICC gave the Commission the opportunity to provide, within one year of notice, the documentary evidence to establish its continued conformity with the Paris Principles.<sup>30</sup>

8. An ILO Committee of Experts noted in 2007 the recent establishment of a Cabinet Committee on Gender Equality.<sup>31</sup> CRC appreciated the establishment of the Ministry of Women, Family and Community Development (MWFCD) in 2001,<sup>32</sup> and the special Child Division in 2005 in the Department of Social Welfare.<sup>33</sup> CRC noted with satisfaction the establishment of the National Advisory and Consultative Council for Children and of the Coordinating Council for the Protection of Children, mandated to advise MWFCD on child protection.<sup>34</sup>

### **D. Policy measures**

9. CRC noted that MWFCD was finalizing a second comprehensive National Plan of Action for Children, which would be streamlined with the National Child Policy.<sup>35</sup> CRC recommended, inter alia, that activities related to this second National Plan of Action be oriented towards the implementation of the Convention.<sup>36</sup>

10. CRC also recommended that Malaysia include human rights education, including the rights of the child, in the curriculum.<sup>37</sup>

## **II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **A. Cooperation with human rights mechanisms**

## 1. Cooperation with treaty bodies

<i>Treaty body</i> <sup>38</sup>	<i>Latest report considered</i>	<i>Latest concluding observations</i>	<i>Follow-up response</i>	<i>Reporting status</i>
CEDAW	2004	May 2006	-	Third and fourth reports due in 2008
CRC	2006	Feb. 2007	-	Combined second to fourth reports due in 2012

## 2. Cooperation with special procedures

<i>Standing invitation issued</i>	No
<i>Latest visits or mission reports</i>	Special Rapporteur on the right to education (5-14 February 2007) <sup>39</sup>
<i>Visits agreed upon in principle</i>	None
<i>Visits requested and not yet agreed upon</i>	Special Rapporteur on indigenous people, requested in 2005; Special Rapporteur on human rights and countering terrorism, requested in 2005; Special Rapporteur on freedom of religion, requested in 2006; Special Rapporteur on migrants, requested in 2006; independent expert on minority issues, requested in 2007; Working Group on Arbitrary Detention, requested in 2008.
<i>Facilitation/cooperation during missions</i>	-
<i>Follow-up to visits</i>	-
<i>Responses to letters of allegations and urgent appeals</i>	A total of 29 communications were sent during the period under review. In addition to communications sent for particular groups, 54 individuals, including 9 women, were covered by these communications. The Government replied to 17 communications, representing replies to 59 per cent of communications sent.
<i>Responses to questionnaires on thematic issues</i> <sup>40</sup>	Malaysia responded to 1 of the 12 questionnaires sent by special procedures mandate-holders <sup>41</sup> during the period under review, within the deadlines. <sup>42</sup>

## 3. Cooperation with the Office of the High Commissioner for Human Rights

11. Malaysia is covered by the OHCHR regional office in Bangkok.<sup>43</sup> In 2007, the regional office worked with the existing national human rights commission to strengthen its capacity.<sup>44</sup> Malaysia contributed financially to OHCHR in 2005 and 2006.<sup>45</sup>

### B. Implementation of international human rights obligations

#### 1. Equality and non-discrimination

12. While appreciating the amendment to article 8 (2) of the Constitution in 2001 to prohibit discrimination on the basis of gender, CEDAW was concerned about the narrow interpretation given to this article by courts.<sup>46</sup> The Committee urged Malaysia to incorporate in its Constitution and/or other appropriate national legislation, the definition of discrimination in line with article 1 of the Convention and to enact and implement a law reflecting substantive equality of women with men in public and private spheres of life, including adequate sanctions and availability of effective remedies.<sup>47</sup>

13. CEDAW was concerned: that the existence of the dual legal system of civil law and multiple versions of sharia law resulted in continuing discrimination against women, particularly in marriage and family relations; about the restrictive interpretation of sharia

law which adversely affected the rights of Muslim women; and about the lack of clarity in the legal system, particularly as to whether civil or sharia law applies to the marriages of non-Muslim women whose husbands convert to Islam.<sup>48</sup> CEDAW urged Malaysia to undertake a process of law reform to remove inconsistencies between civil and sharia law, including by ensuring that any conflict of law regarding women's rights to equality and non-discrimination be resolved in full compliance with the Constitution and the Convention. CEDAW further recommended that a strong federal mechanism be put in place to harmonize and ensure consistency of application of sharia laws across all states.<sup>49</sup>

14. While noting the work of the Ministry of Education in providing guidelines to eliminate gender stereotypes from schoolbooks, CEDAW was concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men.<sup>50</sup> CRC recommended that Malaysia continue to address the problems faced by the girl child and to raise awareness regarding the equality of girls and boys.

15. While appreciating the principle of non-discrimination in the Constitution and in the Child Act 2001, and the special measures taken to advance and protect the status and existence of indigenous peoples, CRC recommended that Malaysia undertake steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups. These include the *Orang Asli*, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum-seeking and refugee children, children born out of wedlock, children of migrant workers,<sup>51</sup> and children with disabilities living in remote areas.<sup>52</sup>

## **2. Right to life, liberty and security of the person**

16. CRC noted that capital punishment was not imposed in practice for offences committed by persons who were under 18 at the time of the offence but was gravely concerned that Malaysia has not yet withdrawn its reservation to article 37 of the Convention.<sup>53</sup> CRC recommended that Malaysia, as a matter of priority, expedite its measures to amend the Essential (Security Cases) Regulations to abolish the imposition of capital punishment on children.<sup>54</sup>

17. A 2006 UNFPA report noted cases of violent assaults and deaths of domestic workers in 2004.<sup>55</sup> It indicated that domestic workers also reported abuse during their recruitment and stay in pre-departure training centres, confined for months at a time in cramped quarters with little food and threatened with physical and sexual assault.<sup>56</sup>

18. In 2006 the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants sent a communication regarding the alleged killing of five migrant workers by agents from the Department of Immigration belonging to a volunteer service known as "RELA", reportedly following a raid by RELA immigration officials the day before. The overall circumstances of these deaths led the Special Rapporteurs to emphasize the importance of ensuring that a thorough investigation be undertaken and that it not be left to the officials involved or those working closely with them. The Special Rapporteurs were concerned that the RELA personnel reportedly lack adequate training, command and accountability in relation to the Malaysian immigration department. The Government did not reply to this communication.<sup>57</sup>

19. On 28 May 2004, the Working Group on Arbitrary Detention rendered an opinion based on unrefuted allegations regarding five Malaysian students who were detained in another country and deported to Malaysia, where they were kept in detention without trial. The administrative detention had been extended by the Home Minister, without criminal charge. The students weren't given the opportunity of a fair trial before an independent judicial authority, nor were they allowed to appoint a lawyer or to communicate with their relatives.<sup>58</sup>

20. CEDAW commended Malaysia for continued efforts to reform laws on violence against women, including initiatives to amend the Domestic Violence Act to broaden the definition of domestic violence and to improve measures to protect victims.<sup>59</sup> CEDAW was concerned about the reluctance to criminalize marital rape and that the proposal before Parliament on this issue was narrowly tailored to criminalize sexual assault based on use of force and death threats by the husband, rather than marital rape based on lack of consent of the wife,<sup>60</sup> and made recommendations on this matter.<sup>61</sup>

21. While appreciating that violence against children, including incest, was addressed by various laws, CRC was gravely concerned that domestic violence, including violence against children in the family, remained a serious problem. Owing to strong taboos, victims and witnesses rarely reported these cases, despite established mechanisms to receive reports on child abuse and neglect. CRC was also concerned that corporal punishment in the home was lawful<sup>62</sup> and made several recommendations in this regard.<sup>63</sup> The Committee also recommended the prohibition by law of all forms of corporal punishment in schools.<sup>64</sup>

22. CRC regretted that the unclear definition of the child due to disparities in national laws impedes the full implementation of the 1999 ILO Worst Forms of Child Labour Convention.<sup>65</sup>

23. In 2006, CEDAW urged Malaysia to intensify efforts to combat all forms of trafficking in women and girls, including by enacting specific and comprehensive legislation; increase efforts at international, regional and bilateral cooperation with countries of origin and transit; collect and analyse data from the police and international sources; prosecute and punish traffickers; and ensure that trafficked women and girls are not punished for violations of immigration laws and have adequate support to be in a position to provide testimony against their traffickers.<sup>66</sup>

24. In 2007, CRC noted with appreciation the establishment of a Coordinating Committee on Trafficking in 2006 and that Malaysia was in the process of submitting an Anti-Trafficking of Persons Bill to Parliament in 2007. It noted with concern, however, that trafficked children were often detained, subsequently deported, and not provided with adequate specialist support. CRC also noted with deep concern reports suggesting that babies were trafficked from neighbouring countries for sale to childless couples in Malaysia.<sup>67</sup>

25. CRC appreciated legislation criminalizing sexual exploitation of children, including child prostitution, and the preventive work of Child Protection Teams and Child Activity Centres. Considering the reportedly high demand for commercial sex in Malaysia, CRC was concerned about prostitution involving children, in particular the vulnerability of certain children to being exploited, such as those without any official record of their existence.<sup>68</sup> CRC recommended that Malaysia design and implement policies and

measures to prevent and combat the sexual exploitation of children,<sup>69</sup> with particular attention to existing risk factors, such as the increasing sex tourism in the region, and continue to collaborate with relevant actors dealing with the protection of children from sexual commercial exploitation in travel and tourism.<sup>70</sup> CRC encouraged Malaysia to consider adopting specific legislation on the obligations of Internet service providers in relation to child pornography on the Internet.<sup>71</sup>

26. As regards children living and/or working in the streets, particularly in Sabah, CRC noted with concern that “cleaning operations” have resulted in detaining street children and that negative public attitudes and prejudices against street children exacerbated their situation.<sup>72</sup>

### **3. Administration of justice and the rule of law**

27. In her 2006 report, the Special Representative of the Secretary-General for human rights defenders noted that human rights guarantees in Malaysia were hindered by the Internal Security Act (ISA). This allows police to detain incommunicado and without a warrant any person deemed a threat to national security or economic life for up to 60 days of investigation. Under ISA, the Minister of Home Affairs may extend detention for an initial period of up to two years without reference to the courts and the Prime Minister can issue a further detention order for up to another two years, again without reference to the courts, and this period is renewable indefinitely.<sup>73</sup>

28. CRC noted with concern the low minimum age of criminal responsibility (10 years), and the discrepancies between the minimum age standards in the Penal Code, the interpretation in the Sharia Court and the Sharia Criminal Procedure (Federal Territories) Act 1984. CRC expressed concern, among other things, at long pre-trial detention periods, and delays in dealing with cases involving children.<sup>74</sup>

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

29. On 16 July 2006, the Special Rapporteur on freedom of religion and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression wrote to the Government about the fact that over the previous month the Internal Security Ministry had banned 18 books, mainly devoted to the study of inter-religious matters, on the grounds that they could have “disrupted peace and harmony”. Reportedly, more than 45 books had been banned since 2003.<sup>75</sup> The Government replied that publications which are in conflict with the true teachings of Islam, if made available without a certain amount of regulation, would create confusion and misunderstanding about the religion, leading to the creation of deviant movements and a detrimental environment within a plural society.<sup>76</sup>

30. In 2006, the Special Representative of the Secretary-General on the situation of human rights defenders remained disturbed at reports of the use of ISA against such defenders and considered such use to be a potential threat to activities for the promotion, protection and implementation of human rights, including the right to expression and demonstration.<sup>77</sup>

31. On 23 August 2006, the Special Representative of the Secretary-General on human rights defenders together with the Special Rapporteur on the independence of judges and

lawyers sent a letter of urgent appeal concerning death threats against a lawyer representing a woman who had renounced Islam and embraced Christianity. Such threats were reportedly linked to his/her lawful activity as a lawyer and may represent an attempt to intimidate lawyers who take on cases in defense of the right to freedom of religion and belief. The Special Representative regretted the absence of any official reply from the Government.<sup>78</sup>

32. On 27 December 2007, the Special Rapporteur on freedom of opinion and expression jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders wrote to the Government about the recent wave of arrests and detention of a number of ethnic Indian human rights defenders. Allegations related to the arrest and detention pursuant to ISA of five ethnic Indian human rights defenders following non-violent demonstrations. They were not presented with an arrest warrant, nor were they brought before a tribunal or given access to legal counsel.<sup>79</sup> Allegations also related to the use of tear gas and water cannons to disperse thousands of ethnic Indians peacefully rallying against alleged discrimination practices.<sup>80</sup> On the eve of this rally, over 2,000 ethnic Indians assembled in a Hindu temple were reportedly beaten by police officers with a view to dissuading them from attending the next day's rally. Around 70 persons who attempted to escape were arrested; many were charged with attending an illegal assembly and failing to obey police orders.<sup>81</sup>

33. On 14 January 2008, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Representative of the Secretary-General on the situation of human rights defenders wrote to the Government about the death of an aboriginal leader involved in anti-logging campaigns. Concern was expressed that his death may be directly linked to his non-violent activities, particularly in defense of the rights of indigenous peoples in the Upper Baram region.<sup>82</sup>

34. On 14 December 2007, the Special Rapporteur on adequate housing sent a joint letter with the Special Representative of the Secretary-General on the situation of human rights defenders regarding the detention of a number of activists and villagers who were arrested while protesting the demolition of houses in a district in Kuala Lumpur.<sup>83</sup> The Government has not replied to this communication.

35. While appreciating Malaysia's policy of at least 30 per cent women in decision-making levels in the public sector and noting that the MWFC was developing an action plan, CEDAW was concerned about the low level of representation of women in public and political life and in decision-making positions, including in the foreign service and in private sector organizations.<sup>84</sup> It encouraged Malaysia to take sustained measures, including temporary special measures.<sup>85</sup> In 2008 the United Nations Statistics Division indicated that the proportion of seats held by women in the national parliament increased from 9.1 per cent in 2005 to 10 per cent in 2008.<sup>86</sup>

## **5. Right to work and to just and favourable conditions of work**

36. While appreciating that the Ninth Malaysia Plan (2006-2010) aims to increase women's participation in the labour force, CEDAW was concerned at the lack of employment opportunities for women despite the high level of education attained by girls and women. It noted with concern that restrictions on women's employment, as well as protective employment legislation and policies, perpetuated traditional stereotypes.<sup>87</sup>



37. An ILO Committee of Experts in 2007 asked the Government to provide information on measures taken to implement the National Policy for Women relating to the position of women in the labour market and the principle of equal remuneration for men and women.<sup>88</sup> The Committee recommended that this principle be taken into consideration when rating jobs according to responsibilities and duties in order to prevent gender bias in the determination of remuneration.<sup>89</sup>

38. In 2008, an ILO Committee of Experts expressed the firm hope that the Government would provide information in its next report on measures taken or envisaged to align national law and regulations with the Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents (No. 19) to ensure that foreign workers (and their dependants) who are nationals of countries that have ratified the Convention receive the same compensation as that granted to national workers in the event of occupational accidents.<sup>90</sup> The ILO Committee of Experts also noted in 2008 that relevant legislation did not prohibit persons under 18 years of age from being employed in types of work likely to jeopardize their health, safety or morals.<sup>91</sup>

39. CRC noted with concern that the Children and Young Persons (Employment) Act permitted employment involving light work and employment as a domestic servant without detailing the acceptable conditions of such work.

## **6. Right to social security and to an adequate standard of living**

40. In 2006, CRC commended Malaysia on its continuous and remarkably successful efforts to reduce poverty in Malaysia. However, CRC noted with concern that indigenous groups, especially in Sabah and Sarawak, and the *Orang Asli* in peninsular Malaysia, were affected by poverty<sup>92</sup> and made recommendations in this regard.<sup>93</sup> The 2006-2008 WHO Country Cooperation Strategy noted that the highest incidences of poverty are in Sabah (16 per cent) and Kelantan (12 per cent).<sup>94</sup>

41. CRC commended Malaysia on the significant progress achieved in the field of health care and the provision of health services, especially to improve maternal health care and to reduce infant mortality rates,<sup>95</sup> and made recommendations in this regard.<sup>96</sup>

42. The 2006-2008 WHO Country Cooperation Strategy noted that the urban poor and displaced people, people living with HIV/AIDS, injecting drug users and sex workers might have reduced access to existent health services.<sup>97</sup> The Strategy also noted the decision to establish a new national health financing mechanism. Those who can afford to pay will have to contribute, while the government will contribute for disadvantaged groups such as the poor, the elderly and the disabled.<sup>98</sup>

43. CRC was concerned that, despite the adoption of plans and programmes, the incidence of HIV/AIDS was rapidly rising and that existing resources were insufficient. It was also concerned at the increasing number of children orphaned by AIDS.<sup>99</sup> UNICEF noted on its website that reported HIV cases are doubling every three years.<sup>100</sup>

44. A 2006 UNICEF report noted that, in Sarawak, it is currently too expensive to maintain permanent health clinics. Health care on the island is provided through a combination of outreach and community-based services.

45. CRC recommended that Malaysia continue and increase, where necessary, assistance for tsunami-affected children suffering from post-traumatic stress disorder and other emotional and mental problems and their families.<sup>101</sup>

46. Noting the current policy to achieve a drug-free Malaysia by the year 2015, CRC was concerned at the increasing use of illegal drugs, in particular amphetamines and ecstasy, among adolescents,<sup>102</sup> and made recommendations in this regard.<sup>103</sup>

47. A 2006 UNDP report noted that water pollution was so severe that rivers often contained 30 to 100 times the pathogen load permitted by health standards.<sup>104</sup>

## **7. Right to education and to participate in the cultural life of the community**

48. CRC welcomed the Education Amendment Act 2002 which made primary education compulsory for all children aged 6. CRC noted as a positive factor that the enrolment rate of girls and boys in primary education was relatively equal but regretted that an estimated 200,000 children of primary-school age were not attending school.<sup>105</sup>

49. CRC was concerned that, despite certain programmes, other costs of schooling were likely to cause financial obstacles to education for children from low-income families. It noted with concern that non-citizen children had to pay a school fee and that they were accepted in schools only if they had adequate documents and if places were available.<sup>106</sup> CRC also noted with deep concern the high dropout rate of indigenous children and in particular the *Orang Asli* and recommended that Malaysia strengthen efforts to address the special educational needs of these children.<sup>107</sup>

50. A 2007 UNESCO report also noted that the bilingual early childhood programmes in Malaysia have shown promising results and have influenced language policies and practices for the first years of primary education.<sup>108</sup> A 2004 UNDP report noted the introduction of a project to incorporate a comprehensive Islamic-studies syllabus in the national education system; students will thus get both religious and secular education.<sup>109</sup>

## **8. Migrants, refugees and asylum-seekers**

51. While noting the establishment of a Cabinet Committee on Foreign Workers, CEDAW was concerned about the lack of legislation and policies on the rights of migrant workers, particularly migrant domestic workers, who are mostly women.<sup>110</sup> It urged Malaysia to enact laws and establish procedures to safeguard the rights of migrant workers, including migrant domestic workers; to provide avenues of redress against abuse by employers, and permit them to stay in the country while seeking redress and to make them aware of such rights.<sup>111, 112</sup>

52. Malaysia was in the process of submitting a Bill on Foreign Workers to Parliament in 2007, according to CRC. However, CRC remained concerned that children of migrant workers still face many difficulties in the enjoyment of their rights.<sup>113</sup> CRC recommended that Malaysia: continue and strengthen efforts to register and document all children of migrant workers and ensure their unrestricted access to education and health care services; ensure that repatriation of migrant workers with children to their country of origin takes place with due regard to article 3 of the Convention;<sup>114</sup> and negotiate agreements with neighbouring on measures to deal with the high number of cross-border migrants.<sup>115</sup> CRC noted with concern that many asylum-seeking and refugee children, among them Muslim children from a nearby country, including the *Rohingya* refugee children who had lived in

Malaysia since 1990s, lacked access to formal education;<sup>116</sup> it made recommendations in this regard.<sup>117</sup>

53. CEDAW was concerned that asylum-seekers and refugees, including women, were prosecuted for immigration-related offences and might be indefinitely detained at immigration detention centres or deported.<sup>118</sup> It recommended that Malaysia adopt laws and regulations relating to the status of asylum-seekers and refugees, in line with international standards, and that Malaysia fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status in close cooperation with, in particular, UNHCR.<sup>119</sup> CRC raised similar concerns.<sup>120</sup>

54. CRC was alarmed at the high number of migrant domestic workers in Malaysia, including child domestic workers who work under hazardous conditions which interfere with the child's education<sup>121</sup> and made recommendations in this regard.<sup>122</sup>

55. On 30 June 2005, the Special Representative of the Secretary-General for human rights defenders together with the Special Rapporteur on the right to freedom of opinion and expression, sent an urgent appeal concerning the arrest and detention of 64 citizens of a nearby country following a peaceful demonstration. It was feared that, in addition to being charged with illegal assembly, they might also be charged with illegal entry into Malaysia, and therefore risk being sent back to their country. UNHCR confirmed that 38 of the persons arrested were registered with it, including three women. According to police sources 60 of those arrested had refugee status. The Special Rapporteurs did not receive a response to this communication.<sup>123</sup>

56. A 2007 UNHCR report noted that, in the absence of national refugee legislation and related mechanisms, UNHCR performed core protection functions for more than 39,000 registered people of concern. Efficient procedures resulted in almost 15,000 refugee status determination decisions, as well as a substantial increase in the number of submissions for resettlement. However, UNHCR's advocacy for alternative solutions with regard to the Rohingya and populations from a nearby country has yet to produce the desired results.<sup>124</sup>

### **III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

57. A 2006 ILO report noted that Malaysia has managed to reduce the incidence of poverty drastically and to lessen inequalities in income and education while achieving rapid economic growth and maintaining racial harmony.<sup>125</sup> CRC commended Malaysia on its notable improvement in economic and social development, including continuous investments in health services, the protection infrastructure and the educational system.<sup>126</sup>

58. In 2006, CEDAW commended Malaysia for achievements in the field of women's education. It congratulated Malaysia for amendments ensuring that widows of civil servants do not lose their pensions upon remarriage; allowing wives or ex-wives of settlers to become joint owners of the settlement; and increasing penalties for rape and incest.<sup>127</sup>

## **IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS**

### **Pledges by the State**

59. In 2006, Malaysia pledged to continue to take proactive and innovative measures to further promote and protect human rights and fundamental freedoms in the country, and that it would, inter alia, actively support international action to advance the rights of vulnerable groups such as women, children and the disabled.<sup>128</sup> A 2005 UNDP report mentioned steep declines in neonatal deaths through simple, home-based, district-level interventions supported through training for health workers and midwives.<sup>129</sup> A 2006 World Bank report indicated that, by making midwives widely available in rural areas, Malaysia dramatically reduced maternal mortality rates.<sup>130</sup>

## V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

60. A 2008 UNHCR report mentioned that mobile registration teams were deployed to detention centres and lock-ups in jungle areas and in the highlands in the Northeast of the country to register persons of concern.<sup>131</sup>

61. The 2006-2008 WHO Country Cooperation Strategy indicated that WHO provides technical assistance to support pro-poor health policies in many areas, including access to essential drugs, improved social protection, and health care financing mechanisms.<sup>132</sup>

62. CRC also recommended that Malaysia seek assistance from a variety of United Nations agencies regarding different issues.<sup>133</sup>

### Notes

<sup>1</sup> Unless indicated otherwise, the status of ratifications of instruments listed in the table may be found in *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2006* (ST/LEG/SER.E.25), supplemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://untreaty.un.org/>.

<sup>2</sup> The following abbreviations have been used for this document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPD	Convention on the Protection of Persons with Disabilities
OP-CPD	Optional Protocol to Convention on the Protection of Persons with Disabilities
CED	International Convention on the Protection of All Persons from Enforced Disappearance.

<sup>3</sup> The original reservations read as follows: The Government of Malaysia declares that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia. With regards thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles 2 (f), 5 (a), 7 (b), 9 and

16 of the aforesaid Convention. In relation to article 11, Malaysia interprets the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only. On 6 February 1998, the Government of Malaysia notified the Secretary-General of a partial withdrawal as follows: “The Government of Malaysia withdraws its reservation in respect of article 2(f), 9(1), 16(b), 16(d), 16(e) and 16(h).”

<sup>4</sup> Reservation: “The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 1, 2, 7, 13, 14, 15, [...], 28, [paragraph 1 (a)], 37, [...] of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.” Declaration of 23 March 1999: “With respect to article 28, paragraph 1 (a), the Government of Malaysia wishes to declare that in Malaysia, even though primary education is not compulsory and available free to all, primary education is available to everybody and Malaysia has achieved a high rate of enrolment for primary education i.e. at the rate of 98 percent enrolment”.

<sup>5</sup> Information relating to other relevant international human rights instruments may be found in the pledges and commitments undertaken by Malaysia before the Human Rights Council, as contained in the note verbale dated 12 April 2006 sent by the Permanent Mission of Malaysia to the United Nations addressed to the Secretariat (A/60/835).

<sup>6</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>7</sup> 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

<sup>8</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Convention relative to the Treatment of Prisoners of War (Third Convention); Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at [www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html](http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html).

<sup>9</sup> International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No.105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

<sup>10</sup> CEDAW/C/MYS/CO/2, para. 31.

<sup>11</sup> CRC/C/MYS/CO/1, para. 83.

<sup>12</sup> Ibid., para. 61.

<sup>13</sup> Ibid., para. 107.

<sup>14</sup> Ibid., para. 39.

<sup>15</sup> Ibid., para. 12.

<sup>16</sup> Ibid., para. 89 and CEDAW, concluding comments, para. 35.

<sup>17</sup> CRC/C/MYS/CO/1, para. 96 and CEDAW, concluding comments, para. 24.

<sup>18</sup> CEDAW/C/MYS/CO/2, concluding comments, para. 10.

<sup>19</sup> Ibid., para. 9.

<sup>20</sup> Ibid., para. 8.

<sup>21</sup> Ibid., para. 11.

<sup>22</sup> CRC/C/MYS/CO/1, para. 7.

<sup>23</sup> Ibid., para. 8.

<sup>24</sup> Ibid., para. 29 and para. 30.

<sup>25</sup> Ibid., para. 30.

<sup>26</sup> ILO Committee of Experts on the Application of Convention and Recommendations, 2008, Geneva, document (ILOLEX) No. 092008MYS182, fifteenth paragraph.

<sup>27</sup> For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/7/69, annex VIII, and A/HRC/7/70, annex I.

<sup>28</sup> CRC/C/MYS/CO/1, para. 21.

<sup>29</sup> A/HRC/7/70, annex I, p. 5.

<sup>30</sup> A/HRC/10/55, report of the Secretary-General on the process currently utilized by the International Coordinating Committee of National Institutions to accredit national institutions in compliance with the Paris Principles, and ensure the process is strengthened with appropriate periodic review and on ways and means of enhancing participation of national human rights institutions in the work of the Human Rights Council.

<sup>31</sup> ILO Committee of Experts on the Application of Convention and Recommendations, 2008, Geneva, document (ILOLEX) No. 092007MYS100, para. 1.

<sup>32</sup> CRC/C/MYS/CO/1, para. 5.

<sup>33</sup> Ibid., para. 6.

<sup>34</sup> Ibid., para. 19.

<sup>35</sup> Ibid., para. 17.

<sup>36</sup> Ibid., para. 18.

<sup>37</sup> Ibid., para. 75.

<sup>38</sup> The following abbreviations have been used for this document:

CEDAW Committee on the Elimination of Discrimination against Women

CRC Committee on the Rights of the Child

<sup>39</sup> Special Rapporteur on the right to education, Vernor Munoz, report on mission to Malaysia (A/HRC/8/10/Add.3).

<sup>40</sup> The questionnaires included in this section are those which have been reflected in an official report by a special procedure mandate-holder.

<sup>41</sup> See (a) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006; (b) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in 2006; (c) report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons sent in 2006; (d) report of the Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005; (e) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous people sent in August 2007; (f) report of the Special Rapporteur on trafficking in persons, especially in women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the sent in July 2005; (g) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005; (h) report of the Working Group on mercenaries (A/61/341), questionnaire concerning its mandate and activities sent in November 2005; (i) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent on July 2006; (j) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004; (k) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/7/8), questionnaire on assistance and rehabilitation programmes for child victims of sexual exploitation sent in July 2007; (l) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices.

<sup>42</sup> Working Group on mercenaries, questionnaire concerning its mandate and activities sent in November 2005 (A/61/341, para. 47).

<sup>43</sup> See OHCHR 2007 Report of Activities and Results, p. 90.

<sup>44</sup> Ibid., p. 91.

<sup>45</sup> OHCHR 2005 Annual Report, pp. 24 and 178, and OHCHR 2006 Annual Report, p. 158.

<sup>46</sup> CEDAW/C/MYS/CO/2, para. 7.

<sup>47</sup> Ibid., para. 8.

<sup>48</sup> Ibid., para. 13.

<sup>49</sup> Ibid., para. 14.

<sup>50</sup> Ibid., para. 15.

<sup>51</sup> CRC/C/MYS/CO/1, para. 32.

<sup>52</sup> Ibid., para. 61.

<sup>53</sup> Ibid., para. 38.

<sup>54</sup> Ibid., para. 39.

<sup>55</sup> UNFPA, State of World Population 2006, New York, 2006, p. 52, available at [www.unfpa.org/swp/2006/english/introduction.html](http://www.unfpa.org/swp/2006/english/introduction.html).

<sup>56</sup> Ibid., p. 54.

<sup>57</sup> A/HRC/4/20/Add.1, p. 202.

<sup>58</sup> E/CN.4/2005/6/Add.1, Opinion No. 10/2004 (Malaysia), paras 4, 11 and 12.

<sup>59</sup> CEDAW/C/MYS/CO/2, para. 6.

<sup>60</sup> Ibid., para. 21.

<sup>61</sup> Ibid., para. 22.

<sup>62</sup> CRC/C/MYS/CO/1, para. 57.

<sup>63</sup> Ibid., para. 58.

<sup>64</sup> Ibid., para. 78.

<sup>65</sup> Ibid., para. 90.

<sup>66</sup> CEDAW/C/MYS/CO/2, para. 24. See also ILO Committee of Experts on the Application of Convention and Recommendations, 2008, Geneva, document (ILOLEX) No. 092008MYS182, para. 11.

<sup>67</sup> CRC/C/MYS/CO/1, para. 95.

<sup>68</sup> Ibid., para. 99.

<sup>69</sup> Ibid., para. 100.

<sup>70</sup> Ibid., para. 101.

<sup>71</sup> Ibid., para. 102.

<sup>72</sup> Ibid., para. 93.

<sup>73</sup> E/CN.4/2006/95/Add.5, para 969.

<sup>74</sup> CRC/C/MYS/CO/1, para. 103.

<sup>75</sup> A/HRC/7/10/Add.1, paras 167-168.

<sup>76</sup> Ibid., paras. 172.

<sup>77</sup> E/CN.4/2006/95/Add.5, para. 969.

<sup>78</sup> A/HRC/4/37/Add.1, paras. 413-414.

<sup>79</sup> A/HRC/7/14/Add.1, para. 384.

<sup>80</sup> Ibid., para. 385.

<sup>81</sup> Ibid., para. 386.

<sup>82</sup> A/HRC/9/9/Add.1, paras 270-272.

<sup>83</sup> A/HRC/7/16/Add.1, para. 69.

<sup>84</sup> CEDAW/C/MYS/CO/2, para. 17.

<sup>85</sup> Ibid., para. 18.

<sup>86</sup> United Nations Statistics Division coordinated data and analyses, available at <http://mdgs.un.org/unsd/mdg/Data.aspx>.

<sup>87</sup> CEDAW/C/MYS/CO/2, para. 19.

<sup>88</sup> ILO Committee of Experts on the Application of Convention and Recommendations, 2008, Geneva, document (ILOLEX) No. 092007MYS100, para. 1.

<sup>89</sup> Ibid., para. 2.

<sup>90</sup> See ILO Committee of Experts on the Application of Convention and Recommendations, 2008, Geneva, document (ILOLEX) No. 062008MYK019.

<sup>91</sup> Ibid., fourth paragraph.

<sup>92</sup> CRC/C/MYS/CO/1, para. 71.

<sup>93</sup> Ibid., para. 72.

<sup>94</sup> WHO Country Cooperation Strategy Malaysia 2006-2008, p. 4, available at [www.who.int/countryfocus/cooperation\\_strategy/ccs\\_mys\\_en.pdf](http://www.who.int/countryfocus/cooperation_strategy/ccs_mys_en.pdf).

<sup>95</sup> CRC/C/MYS/CO/1, para. 62.

<sup>96</sup> Ibid., para. 63.

<sup>97</sup> WHO Country Cooperation Strategy Malaysia 2006-2008, p. 5, available at [www.who.int/countryfocus/cooperation\\_strategy/ccs\\_mys\\_en.pdf](http://www.who.int/countryfocus/cooperation_strategy/ccs_mys_en.pdf).

<sup>98</sup> Ibid., p. 10.

<sup>99</sup> CRC/C/MYS/CO/1, para. 69.

<sup>100</sup> See [www.unicef.org/infobycountry/malaysia.html](http://www.unicef.org/infobycountry/malaysia.html).

<sup>101</sup> CRC/C/MYS/CO/1, para. 65.

<sup>102</sup> Ibid., para. 97.

<sup>103</sup> Ibid., para. 98.

<sup>104</sup> UNDP, Human Development Report 2006, New York, 2006, p. 143, available at: <http://hdr.undp.org/en/media/HDR06-complete.pdf>.

<sup>105</sup> CRC/C/MYS/CO/1, para. 73.

<sup>106</sup> Ibid., para. 74.

<sup>107</sup> Ibid., para. 75.

<sup>108</sup> UNESCO, EFA Global Monitoring Report 2007, Paris, 2006, p. 159, available at [www.unesco.org/education/GMR/2007/Full\\_report.pdf](http://www.unesco.org/education/GMR/2007/Full_report.pdf).

<sup>109</sup> UNDP, Human Development Report 2004, New York, 2004, p. 83, available at: [http://hdr.undp.org/en/media/hdr04\\_complete.pdf](http://hdr.undp.org/en/media/hdr04_complete.pdf).

<sup>110</sup> CEDAW/C/MYS/CO/2, para. 25.

<sup>111</sup> Ibid., para. 26.

<sup>112</sup> ILO, Equality at Work: Tackling the Challenges, International Labour Conference, 96th session 2007, Geneva, 2007, p. 33.

<sup>113</sup> CRC/C/MYS/CO/1, para. 87.

<sup>114</sup> Ibid., para. 88.

<sup>115</sup> Ibid., para. 89.

<sup>116</sup> Ibid., para. 84.

<sup>117</sup> Ibid., para. 85.

<sup>118</sup> CEDAW/C/MYS/CO/2, para. 27.

<sup>119</sup> Ibid., para. 28.

<sup>120</sup> CRC/C/MYS/CO/1, para. 82.

<sup>121</sup> Ibid., para. 91.

<sup>122</sup> Ibid., para. 92.

<sup>123</sup> E/CN.4/2006/95/Add.1, paras 313 and 315.

<sup>124</sup> UNHCR, Global Report 2007, Geneva, 2008, p.371, available at [www.unhcr.org/gr07/index.html](http://www.unhcr.org/gr07/index.html).

<sup>125</sup> ILO, The End of Child Labour: Within Reach, International Labour Conference, 95th session, Geneva, 2006, paras. 41-42, available at [www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-i-b.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-i-b.pdf).

<sup>126</sup> CRC/C/MYS/CO/1, para. 4.

<sup>127</sup> CEDAW/C/MYS/CO/2, para. 5.

<sup>128</sup> Pledges and commitments undertaken by Malaysia before the Human Rights Council, as contained in the letter dated 12 April 2006 sent by the Permanent Mission of Malaysia to the United Nations addressed to the Secretariat (A/60/835), p. 4 .

<sup>129</sup> UNDP, Human Development Report 2005, New York, 2005, p. 33, available at [http://hdr.undp.org/en/media/HDR05\\_complete.pdf](http://hdr.undp.org/en/media/HDR05_complete.pdf).

<sup>130</sup> World Bank, World Development Report 2006, Washington DC, 2005, p. 144, available at [www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/09/20/000112742\\_20050920110826/Rendered/PDF/322040World0Development0Report02006.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/09/20/000112742_20050920110826/Rendered/PDF/322040World0Development0Report02006.pdf).

<sup>131</sup> UNHCR, Handbook for the Protection of Women and Girls, Geneva, 2008, p. 117, available at <http://www.unhcr.org/protect/PROTECTION/47cfa9fe2.pdf>.

<sup>132</sup> WHO Country Cooperation Strategy Malaysia 2006-2008, p. 25, available at [www.who.int/countryfocus/cooperation\\_strategy/ccs\\_mys\\_en.pdf](http://www.who.int/countryfocus/cooperation_strategy/ccs_mys_en.pdf).

<sup>133</sup> CRC/C/MYS/CO/1, paras. 70, 76, 86, 89, 92, 94, 96 and 104.