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Our Ref: SHM.005/5/2-6
Date: 10 September 2009

Attn: Ibrahim Wani
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Dear Sir,

Human Rights Council Resolution 10/7 – “Human Rights of Persons with Disabilities: National Frameworks for the Promotion and Protection of the Human Rights of Persons with Disabilities”

In reference to the above and your letter dated 10 July 2009.

Attached herewith are the information requested which is within SUHAKAM's purview. (Please refer to **Annexure 1**) We would like to advise you that we could not furnish details of some of the information requested as it has to be referred directly to the relevant Ministry in charge i.e. The Ministry of Women, Family and Community Development.

We apologize for the late reply as we were trying to communicate with the relevant Ministry in furnishing your requested information.

Thank you.

Yours sincerely,

(SHAZEERA AHMAD ZAWAWI)
On behalf of
Secretary
Human Rights Commission of Malaysia

OHCHR REGISTRY

14 SEP 2009

Recipients : S. Lavagnoli

c) The existence, structure and mandate of national frameworks tasked with promoting, protecting and monitoring implementation of the Convention, with particular reference to how the principles relating to the status and functioning of national human rights institutions for the promotion and protection of human rights are taken into account in such frameworks (art. 33 para 2)

The Human Rights Commission of Malaysia (SUHAKAM) established through an Act of Parliament which is known as the Human Rights Commission of Malaysia Act 1999. Section 4 of the Act, provides that SUHAKAM is empowered to advise the Government in ensuring that the national laws are compatible with human rights principles and also to recommend for the accession or ratification of international human rights treaties.

For the said purpose, the Law Reform and International Treaties Working Group (LRITWG), a working group within SUHAKAM is entrusted for such work. Besides that, for the purpose of promotion of awareness and education, the Education Working Group (EWG) is specifically designated with the said tasks.

Both working group has also been active in having dialogues with the civil society to get their views in matters related to the accession of international human rights instruments and Government's obligations under the international human right treaties of which Malaysia is a party to including the Convention on the Rights of Persons with Disabilities. Further, there are various and vital pressing legal issues impinging on human rights that needed legal research to be undertaken which is done by the LRITWG. Some of these were undertaken internally by the Working Group while others that require independent and varied opinion were commissioned by SUHAKAM through the Working Group to be undertaken by legal luminaries from academia and from legal practitioners and legal researchers.

LRITWG also worked with government agencies and NGOs in providing comments to the government for the signing of Convention on the Rights of Persons with Disabilities (CRPD) in April 2008, and also for the passage of the Persons with Disabilities Act 2008.

Attached in **Annexure 2** is a paper to illustrate how Malaysia has in place laws and policy related to persons with disabilities that may support Malaysia's intention to ratify CRPD. It illustrates the existence of such mechanism in some of the domestic legislations i.e. the Person with Disabilities Act 2008 and other International instruments that Malaysia has ratify or comply with the Convention and it also shows how the Malaysia's National Policy on Persons with Disabilities is in line with the Convention as well.

Annexure 2
COMMENTARY ON MALAYSIA'S LAW AND POLICIES ON PERSONS WITH DISABILITIES AND ITS RELEVANCY TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

This paper is to briefly illustrate how Malaysia has in place laws and policy related to PWD that may support Malaysia's intention to ratify CRPD. Column 1 briefly states the content or theme of the Articles under the Convention, Column 2 illustrates the domestic legislations such as the Person with Disabilities Act 2008 and other International instruments that comply with the Convention and Column 3 shows how the Malaysia's National Policy on Persons with Disabilities is in line with the Convention as well.

Articles	Relevant Domestic Laws	Policy and implementation
1 Purpose	<ul style="list-style-type: none"> • Person with Disabilities Act 2008 - Preamble of the Act provide for the protection, rehabilitation, development and wellbeing of persons with disabilities (PWD). 	<ul style="list-style-type: none"> • Policy Persons with Disabilities - 2 (Definition) – the definition of “PWD” is the same with the definition in the Convention. - 4 (Objectives of the Policy) – includes to make sure that the PWD is given their right, opportunities and the same access under the Malaysian legislation and to eliminate discrimination to the PWD.
2 Definitions	<ul style="list-style-type: none"> • Person with Disabilities Act 2008 - the definitions of the Act use the same word as in the Convention except for the definition on the 'discrimination on the basis of disability" which is not adopted in the Act. 	
	<ul style="list-style-type: none"> - For information, the definition of “Discrimination on the 	

	<p>basis of disability" stated in the Convention are any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.</p>	
3 General principles	<ul style="list-style-type: none"> • Person with Disabilities Act 2008 - Preamble of the Act recognizes all principles stated in the Convention. 	
4 General obligations	<ul style="list-style-type: none"> • Person with Disabilities Act 2008 - All of the obligations stated in the articles will be fulfill if all sections in this Act were implemented carefully by the State Party i.e. Malaysia. 	
5 Equality and non-discrimination	<ul style="list-style-type: none"> • Article 8 of the Federal Constitution (FC) - everyone is equal before the law and there is no discrimination against citizen. • Persons with Disabilities Act 2008 - Preambles of the Act become the basis of the principle. - It gives equal opportunity and protection to the PWD. 	<ul style="list-style-type: none"> • Policy Persons with Disabilities - 4.3 (Objectives of the policy) - to eliminate discrimination on anybody by the reason of disabilities.

<p>6 Women with disabilities</p>	<ul style="list-style-type: none"> ● Article 8 of the FC <ul style="list-style-type: none"> - everyone is equal before the law and there is no discrimination against citizen. ● Persons with Disabilities Act 2008 <ul style="list-style-type: none"> - Preamble of the Act becomes the basis of the principle. - It gives equal opportunity and protection to them. ● Convention on the Elimination of Discrimination against Women (CEDAW) <ul style="list-style-type: none"> - Most articles related have been acceded to and there is no reservations made to the articles in question. 	<ul style="list-style-type: none"> ● Policy Persons with Disabilities <ul style="list-style-type: none"> - 4.3 (Objectives of the policy) - to eliminate discrimination on anybody by the reason of disabilities. - 5.15 (PWD Women) - to prioritize the best interest of women in all programmes.
<p>7 Children with disabilities</p>	<ul style="list-style-type: none"> ● Persons with Disabilities Act 2008 <ul style="list-style-type: none"> - Section 28 states that the children should not be excluded from the general education system at all stage. ● Convention on the Rights of Children (CRC) <ul style="list-style-type: none"> - Article 23, 28, 29 of the Convention are related articles by which the children including those with disabilities can enjoy their rights without any discrimination. 	<ul style="list-style-type: none"> ● Policy Persons with Disabilities <ul style="list-style-type: none"> - 4.4 (Objectives of the policy) - to educate and raise awareness on the rights of persons with disabilities. - 5.5 (Education) - the education must be provided in all stages.

<p>8 Awareness-raising</p>	<p>● Persons with Disabilities Act 2008</p> <ul style="list-style-type: none"> - Preamble of the Act stated on the importance of the co-operation between Government and the private sector and NGOs in ensuring full and effective participation and inclusion of PWD in society. - In other words, the Government shows commitment towards cooperating with other bodies in ensuring that the PWD will not be left behind. 	<p>● Policy Persons with Disabilities</p> <ul style="list-style-type: none"> - 4.4 (Objectives of the policy) - to educate and raise awareness on the rights of persons with disabilities. - 5.1 (Advocacy) – to increase awareness and to mould positive attitude among society towards PWD through effective programmes.
<p>9 Accessibility</p>	<p>● Persons with Disabilities Act 2008</p> <ul style="list-style-type: none"> - Chapter 1 (Section 26 to section 31) which covers accessibility to public facilities, amenities, services, building, public transport facilities, education, employment, information, communication and technology and cultural life. <p><u>Commentary:</u></p> <ul style="list-style-type: none"> - it goes hand in hand with the Convention for example Article 9 of the Convention which deals with the issue of accessibility. - it cover quite broad aspect by taking a holistic approach. 	<p>● Policy Persons with Disabilities</p> <ul style="list-style-type: none"> - 5.2 (Accessibility) – to make sure barrier-free environment including facilities inside and outside buildings, workplace, housing area, public area, public transportation and ICT access.
<p>10 Right to life</p>	<p>● Article 5 of the Federal Constitution (FC)</p> <ul style="list-style-type: none"> - Everybody is equal and there shall be no deprivation of life or personal liberty. 	

	<ul style="list-style-type: none"> ● Persons with Disabilities Act 2008 - Preamble of the Act becomes the basis for equality. 	
<p>11 Situation of risk and humanitarian emergencies</p>	<ul style="list-style-type: none"> ● Persons with Disabilities Act 2008 - Section 40 states that PWD shall have the right to have assistance in situations of risk and humanitarian emergencies the same as persons without disabilities. 	
<p>12 Equal recognition before the law</p>	<ul style="list-style-type: none"> ● Article 5 of the Federal Constitution (FC) - Everybody is equal before the law and there shall be no deprivation of life or personal liberty. 	<ul style="list-style-type: none"> ● Policy Persons with Disabilities - 5.7 (Security and social protection) - to protect PWD from exploitation, violence and abuse. - to upgrade services and facilities to the qualified PWD.
<p>13 Access to justice</p>	<p><u>Commentary:</u></p> - In the case of preventive detention, SUHAKAM is of the view that this type of detention should be abolished.	
<p>14 Liberty and security of the person</p>	<ul style="list-style-type: none"> - Currently, the government has taken steps to establish a Committee on this matter. It will give the same effect to the PWD. 	
<p>15 Freedom from torture or cruel, inhuman or degrading treatment or punishment</p>	<ul style="list-style-type: none"> ● Convention on the Rights of the Child - Article 37 states that no child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. - Capital punishment and life imprisonment are prohibited for offences committed by those below 18 years. 	

<p>16 Freedom from exploitation, violence and abuse</p>	<p>• Penal Code / Act 574</p> <ul style="list-style-type: none"> - Section 336 – Punishment for act which endangers life or the personal safety of others. Punishment – imprisonment up to 3 months, fine up to RM500 or both. - Section 337 – Causing hurt by an act which endangers life or the personal safety of others. Punishment – imprisonment up to 6 months, fine up to RM1000 or both. - Section 338 – Causing grievous hurt by an act which endangers life on the personal safety of others. 	
<p>17 Protecting the integrity of the person</p>	<p>• Persons with Disabilities Act 2008</p> <ul style="list-style-type: none"> - Although there is no mention of protecting integrity specifically in the PWD Act, the preamble of the Act does state that the Government recognizes the importance of accessibility to the physical and mental of PWD and thus it can be said that it includes the integrity of the person. 	
<p>18 Liberty of movement and nationality</p>	<p>• Article 9 of the FC</p> <ul style="list-style-type: none"> - Prohibition of banishment and freedom of movement to the citizen of Malaysia. <p><u>Commentary:</u></p> <ul style="list-style-type: none"> - Although it states that only citizen is protected, nevertheless Malaysia has never discriminated other 	

	<p>citizen including PWD in this matter.</p> <ul style="list-style-type: none"> • Persons with Disabilities Act 2008 - Section 25 – Issuance of “Kad OKU” – person with disability who is registered shall be issued a card by the Ministry of Women. 	
<p>19 Living independently and being included in the community</p>	<ul style="list-style-type: none"> • Persons with Disabilities Act 2008 - Section 34 – In-home, residential and other community support services – shall not prevent isolation or segregation of PWD from the community. <p><u>Commentary:</u></p> <ul style="list-style-type: none"> - It promotes the sense of inclusiveness of the PWD into the community. 	<ul style="list-style-type: none"> • Policy Persons with Disabilities - 5.9 (Social) – to encourage PWD’s participation in social activities. - 5.11 (Community involvement) – to encourage private sector and volunteers participation in development programmes of PWD.
<p>20 Personal mobility</p>	<ul style="list-style-type: none"> • Persons with Disabilities Act 2008 - Section 26 and section 27 – Access to public facilities, amenities and services, buildings and public transport facilities. 	<ul style="list-style-type: none"> • Policy Persons with Disabilities - 5.2 (Accessibility) – barrier-free environment to the PWD.
<p>21 Freedom of expression and opinion and access to information</p>	<ul style="list-style-type: none"> • Article 10 of the FC - All citizens have the right to freedom of speech, assembly and association. • Persons with Disabilities Act 2008 	<ul style="list-style-type: none"> • Policy Persons with Disabilities - 5.2 (Accessibility) – shall have access to the ICT services.
	<ul style="list-style-type: none"> - Section 30 – Access to information, communication 	

	<p>and technology.</p> <p><u>Commentary:</u></p> <ul style="list-style-type: none"> - Although they are entitled to the freedom of expression and access to information, nevertheless they are still subjected to some limitations as stated under the following Acts: • Sedition Act 1948 (revised 1969) - Section 3 – Seditious tendency - to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia. • Official Secret Act 1972 • Printing Presses and Publication Act 1984 • Universal Declaration on Human Rights (UDHR) - Article 12 – everyone has the right to privacy in their home, family and communication. • CRC - Article 16 (protection of privacy) – every child/ren have the right to protection from interference with privacy, family, home and correspondence and from libel or slander. • Article 5 of the FC - Right to life and personal liberty. 	
<p>22 Respect for privacy</p>		<ul style="list-style-type: none"> • Policy Persons with Disabilities - 5.13 (Housing) – to give opportunity for PWD to own a house.
<p>23 Respect for home and the family</p>		

<p>24 Education</p>	<ul style="list-style-type: none"> ● Article 12 of FC - Rights in respect of education -no discrimination against any citizen in providing education. ● Persons with Disabilities Act 2008 - Section 28 – Access to education – should be included in pre-school, primary, secondary and higher education including vocational training and lifelong training. 	<ul style="list-style-type: none"> ● Policy Persons with Disabilities - 5.5 (Education) – to give access to the PWD in all level including lifetime education.
<p>25 Health</p>	<ul style="list-style-type: none"> ● Persons with Disabilities Act 2008 - Section 35 – Access health – they have the right to the enjoyment of health on equal basis with everyone else. 	<ul style="list-style-type: none"> ● Policy Persons with Disabilities - 5.3 (Health) – to give access to the PWD in all level including lifetime education.
<p>26 Habilitation and rehabilitation</p>	<ul style="list-style-type: none"> ● Persons with Disabilities Act 2008 - Section 33 – Habilitation and rehabilitation – to take effective and appropriate measures to attain and maintain habilitation and rehabilitation services and programmes for PWD. 	<ul style="list-style-type: none"> ● Policy Persons with Disabilities -5.4 (Rehabilitation) - to create new rehabilitation programmes to PWD according to current situation.
<p>27 Work and employment</p>	<ul style="list-style-type: none"> ● Persons with Disabilities Act 2008 - Section 29 – Access to employment – PWD shall have the right to access to employment on equal basis with persons without disabilities. 	<ul style="list-style-type: none"> ● Policy Persons with Disabilities - 5.6 (Employment) – to encourage more job opportunities in all sector and to encourage self-employment.

<p>28 Adequate standard of living and social protection</p>	<p>● Persons with Disabilities Act 2008</p> <ul style="list-style-type: none"> - Section 38 – Lifelong protection and social system - the Government shall provide lifelong protection and social support system including ensuring that the welfare of persons with severe disabilities remains unaffected after the death of their parents or their caregivers to enable them to have better quality life. 	<p>● Policy Persons with Disabilities</p> <ul style="list-style-type: none"> - 5.7 (Self security and social protection) – to upgrade services and facilities to the qualified PWD.
<p>29 Participation in political and public life</p>	<p>● Persons with Disabilities Act 2008</p> <ul style="list-style-type: none"> - Section 31– Access to cultural life – PWD shall have right to cultural life and to participate in its activities. 	<p>● Policy Persons with Disabilities</p> <ul style="list-style-type: none"> - 5.9 (Social) – to encourage PWD’s participation in social activities. - 5.10 (iii) (Human Resources Development) – to encourage the participation of PWD in planning and decision making. - 5.11 (Community involvement) – to encourage private sector and volunteers participation in development programmes of PWD.
<p>30 Participation in cultural life, recreation, leisure and sport</p>	<p>● Persons with Disabilities Act 2008</p> <ul style="list-style-type: none"> - Section 31 & 32 – Access to cultural life and access to recreation, leisure and sport – PWD shall have right to cultural life and to participate in recreational, leisure and sporting activities. 	<p>● Policy Persons with Disabilities</p> <p>5.9 (Social) – to encourage PWD’s participation in social activities.</p>

<p>31 Statistics and data collection</p>	<ul style="list-style-type: none">• Persons with Disabilities Act 2008<ul style="list-style-type: none">- Section 21 to 25 – Registration of PWD – Application for PWD shall be made to the Council and the Minister may make regulations for the registration.	
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