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## Human Rights Council

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Agenda item 6

### Universal Periodic Review

## Report of the Working Group on the Universal Periodic Review\*

### Malaysia

#### Addendum

#### Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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

## **Malaysia's position on the recommendations received during the third Universal Periodic Review (UPR) on 8 November 2018**

1. Malaysia sees the UPR as an exemplification of positive dialogue between friends and as a forum for sharing of best practices in the field of human rights under the United Nations Human Rights Council. Malaysia's Third UPR has provided us with an avenue for a constructive and frank assessment on our achievements and shortcomings.
2. This is in tandem with the spirit of the Malaysian Government in placing greater importance and urgency on issues of human rights while at same time recognising the difficult steps and challenges which we have to undertake.
3. During its Third UPR, Malaysia received a total of 268 recommendations put forward by 108 Member States. In deliberating the recommendations, the Government discussed with all relevant stakeholders which involved the civil society organisations (CSOs), Human Rights Commission of Malaysia (SUHAKAM), Ministries and Agencies at both the Federal and State levels.
4. Malaysia is pleased to **accept 147 recommendations in full (outright)** and **37 recommendations are accepted in part**. Outright acceptance is whereby the Government of Malaysia is able to adhere fully to the principles and spirit of the recommendations. On the other hand, those accepted in part means that the Government of Malaysia agrees with and is able to implement part of the recommendations due to existing Government policies or position.
5. Malaysia also **takes note of 84** recommendations due to several reasons, which amongst others being in contradiction with the Federal Constitution or existing laws. In addition to that, some recommendations which were made were formulated based on inaccurate assumptions or assertions.
6. Nonetheless, the Government of Malaysia wishes to emphasize that all recommendations accepted in part or noted will be regularly reviewed taking into consideration its domestic development and international obligations. It is therefore fluid in nature.

### **Recommendations fully accepted by Malaysia**

7. 151.5, 151.6, 151.9, 151.24, 151.26, 151.31, 151.44, 151.47, 151.49, 151.50, 151.51, 151.52, 151.53, 151.54, 151.58, 151.59, 151.61, 151.62, 151.63, 151.64, 151.65, 151.66, 151.67, 151.68, 151.70, 151.71, 151.72, 151.73, 151.74, 151.75, 151.76, 151.86, 151.87, 151.88, 151.89, 151.90, 151.91, 151.92, 151.93, 151.95, 151.97, 151.98, 151.99, 151.100, 151.104, 151.106, 151.107, 151.108, 151.114, 151.116, 151.117, 151.118, 151.119, 151.120, 151.121, 151.122, 151.123, 151.124, 151.125, 151.128, 151.130, 151.135, 151.136, 151.139, 151.143, 151.147, 151.148, 151.149, 151.153, 151.154, 151.155, 151.156, 151.157, 151.158, 151.159, 151.160, 151.161, 151.162, 151.163, 151.164, 151.165, 151.166, 151.167, 151.168, 151.169, 151.170, 151.171, 151.172, 151.173, 151.174, 151.175, 151.176, 151.177, 151.178, 151.179, 151.180, 151.181, 151.182, 151.183, 151.184, 151.185, 151.186, 151.187, 151.189, 151.191, 151.192, 151.193, 151.194, 151.200, 151.201, 151.202, 151.203, 151.204, 151.205, 151.206, 151.207, 151.210, 151.211, 151.214, 151.216, 151.220, 151.221, 151.222, 151.223, 151.226, 151.229, 151.230, 151.231, 151.233, 151.244, 151.245, 151.246, 151.247, 151.248, 151.249, 151.250, 151.252, 151.253, 151.254, 151.256, 151.257, 151.259, 151.261, 151.264, 151.265, 151.266 and 151.267.

### **Recommendations partially accepted by Malaysia**

8. 151.8, 151.19, 151.29, 151.34, 151.35, 151.43, 151.94, 151.96, 151.102, 151.103, 151.105, 151.110, 151.115, 151.126, 151.134, 151.137, 151.138, 151.140, 151.141,

151.144, 151.145, 151.146, 151.188, 151.195, 151.196, 151.197, 151.198, 151.224, 151.225, 151.227, 151.234, 151.235, 151.238, 151.241, 151.243, 151.251 and 151.263.

## **Clarification for the partially accepted recommendations**

### **1. International instruments and dual legal system**

*Recommendations 151.8, 151.19, 151.29, 151.35 and 151.43*

9. The Government of Malaysia commits itself to ratifying all remaining core international human rights instruments as stated by the Prime Minister at the 73<sup>rd</sup> session of the United Nations General Assembly. The Government of Malaysia has always adhered in principle to the fundamental values expounded in the core international human rights treaties. Notwithstanding that, the signing and ratification by Malaysia will be carried out after in-depth consultation with all relevant stakeholders. The Government of Malaysia will also want to ensure that it will be in a position to fulfil its international obligations entailed following the signing or ratification of the treaties.

10. The jurisdiction of the Civil and Syariah Courts in Malaysia is provided for under the Federal Constitution. The Government of Malaysia will continue to take steps to further harmonise these dual legal systems.

### **2. Migrant workers**

*Recommendations 151.34 and 151.263*

11. Malaysia will continue to protect and promote the rights of migrant workers in line with the International Labour Standards as well as regional instruments in accordance with relevant domestic legislations. To date, all foreigners have access to medical services including sexual and reproductive health at private or public health services subject to charges according to the Fees Act 1951.

### **3. Death penalty**

*Recommendations 151.94, 151.96, 151.102, 151.103 and 151.105*

12. The Government has announced on 10 October 2018 that the death penalty will be abolished. The announcement was made following the Cabinet's decision for the Pardons Board to review their decision to reject the clemency request on death sentence and to consider replacing it with life imprisonment. A moratorium has also been imposed on all executions for death row inmates who have yet to be considered by the Pardons Board. Once the necessary legislation amendment for the abolition of the death penalty is deliberated at Parliament and endorsed, the recommendations will thereafter be fully accepted.

### **4. Corporal punishment and enforcement**

*Recommendation 151.110*

13. Malaysia wishes to emphasize that the valid and legal forms of corporal punishments such as whipping and caning as prescribed under its domestic laws will only be carried out upon the direction of the Courts.

14. Nonetheless, the relevant national legislation has been strengthened through the review of Law and Standard Operating Procedure (SOP) and establishment of the Enforcement Agency Integrity Commission (SIAP) to prevent the torture and ill-treatment by enforcement agencies.

**5. Trafficking in persons**

*Recommendation 151.115*

15. The Government of Malaysia will always assist victims of trafficking in persons within the ambit of its legal jurisdiction, with the ultimate aim of ensuring the safe return of the victims to their home country.

**6. Security Act and human rights defenders**

*Recommendations 151.126, 151.137, 151.138, 151.140, 151.141, 151.144, 151.145 and 151.146*

16. A Special Committee has been established to review several laws including the Sedition Act 1948, Printing Presses and Publications Act, POCA, SOSMA, Peaceful Assembly Act 2012 and POTA. The recommendations proposed by the Special Committee will be submitted to the Cabinet for consideration. The Government will take into account its international human rights obligations while making the necessary amendments to ensure that public order and security are safeguarded.

**7. Right to education**

*Recommendations 151.188, 151.195, 151.196, 151.197, 151.198, 151.224, 151.227 and 151.251*

17. In Malaysia, access to formal education is provided to all Malaysian children including indigenous people, the underprivileged children and children with disabilities, as stipulated in Article 12 of the Federal Constitution. The Government of Malaysia will continue to take more progressive measures towards broadening education facilities to include those previously denied access, as what has been done with stateless children.

## **Recommendations noted by Malaysia**

18. 151.1, 151.2, 151.3, 151.4, 151.7, 151.10, 151.11, 151.12, 151.13, 151.14, 151.15, 151.16, 151.17, 151.18, 151.20, 151.21, 151.22, 151.23, 151.25, 151.27, 151.28, 151.30, 151.32, 151.33, 151.36, 151.37, 151.38, 151.39, 151.40, 151.41, 151.42, 151.45, 151.46, 151.48, 151.55, 151.56, 151.57, 151.60, 151.69, 151.77, 151.78, 151.79, 151.80, 151.81, 151.82, 151.83, 151.84, 151.85, 151.101, 151.109, 151.111, 151.112, 151.113, 151.127, 151.129, 151.131, 151.132, 151.133, 151.142, 151.150, 151.151, 151.152, 151.190, 151.199, 151.208, 151.209, 151.212, 151.213, 151.215, 151.217, 151.218, 151.219, 151.228, 151.232, 151.236, 151.237, 151.239, 151.240, 151.242, 151.255, 151.258, 151.260, 151.262 and 151.268.

## **Clarification for the noted recommendations**

**1. International human rights instruments**

*Recommendations 151.1, 151.2, 151.3, 151.4, 151.7, 151.10, 151.11, 151.12, 151.13, 151.14, 151.15, 151.16, 151.17, 151.18, 151.20, 151.21, 151.22, 151.23, 151.25, 151.27, 151.28, 151.30, 151.32, 151.33, 151.36, 151.37, 151.38, 151.39, 151.40, 151.41, 151.42, 151.45, 151.46*

19. The Government of Malaysia reaffirms its commitment to ratify all remaining international human rights instruments. However, there is a need to achieve precise and full understanding of the relevant rights and obligations as well as to consider the possibility of reconciling any of the standards established by the said instruments with those embodied in long-standing domestic laws, traditions and circumstances as well as philosophy, as reflected in the Federal Constitution of Malaysia. As a responsible member of the international community, Malaysia has always taken into consideration its commitment and ability to fulfil the entailing obligations before becoming a signatory to any international

instruments. With regard to the reservations made for the instruments that Malaysia has acceded to, these reservations will still be retained due to their inconsistency with the Federal Constitution, law and national policies. Nevertheless, consultations with the relevant Ministries and civil society organisations are ongoing to pursue the ratification of suitable conventions.

## 2. Human rights mechanism

*Recommendation 151.48*

20. The Government has consistently cooperated with the Special Procedures mandate holders. For example, Malaysia is expected to receive the visit by the SR on extreme poverty and human rights in August 2019. Malaysia will continue to work closely with the Office of the High Commissioner for Human Rights to facilitate future country visits by the Special Procedures mandate holders.

## 3. Anti-discrimination law and vulnerable groups

*Recommendations 151.55, 151.56, 151.57, 151.69*

21. The Government is currently seeking views and inputs from stakeholders to legislate a National Harmony Bill aimed at promoting national harmony, unity, reconciliation, integration and non-discrimination. Vulnerable groups officially recognized by the Government are women, children, older persons, person with disabilities, the destitute and homeless.

## 4. LGBT

*Recommendations 151.77, 151.78, 151.79, 151.80, 151.81, 151.82, 151.83, 151.84, 151.85*

22. The Government of Malaysia recognises that the rule of law depends on the moral consensus of the community which cannot be ignored in a democracy. In Malaysia, cultural or religious beliefs directly influence the views and outlook as well as the law on questions of sexual behaviours and the moral ethos of communities. The Government of Malaysia does not discriminate against the LGBT community and their rights are protected in accordance with our domestic laws.

## 5. Death penalty and corporal punishment

*Recommendations 151.101, 151.109, 151.111, 151.112, 151.113, 151.228*

23. Malaysia wishes to emphasize that corporal punishment as prescribed under its domestic laws will only be executed when a person is found guilty and convicted by the Courts. With regard to the death penalty, once the amendment to the necessary legislation for the abolition of the death penalty is tabled before and passed by Parliament, the related recommendations will thereafter be accepted.

## 6. Freedom of religion

*Recommendations 151.127, 151.129, 151.131, 151.132, 151.133*

24. Malaysia recognises the right to freedom of religion, as provided under Article 11 (1) of the Federal Constitution which states that "every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it". Clause (4) allows States the power to legislate for the control or restriction of the propagation of any religious doctrine among persons professing Islam. The right to freedom of religion in Malaysia constitutionally guarantees the rights of any person to profess, practice, and propagate its own religion. Every person in Malaysia has the right to profess and practice any religion and subject to Article 11(4) on the propagation of religion.

## **7. Freedom of opinion and expression, freedom of speech**

Recommendation 151.142

25. Malaysia remains committed to upholding the right to freedom of opinion and expression as enshrined in its Federal Constitution. The Government is in the process of amending the relevant laws but a complete abrogation may not be possible.

## **8. Transmission of nationality and application of permanent residency**

*Recommendations 151.150, 151.151, 151.152, 151.208 and 151.262*

26. The Government wishes to emphasize that the registration for citizenship must be done in accordance with the relevant articles as stipulated in the Federal Constitution.

27. The Government would also like to highlight that subject to qualifications, foreigners may apply passes such as Resident Pass from the Immigration Department which will enable them to reside in Malaysia with their family. Permanent Resident Identity Card (MyPR) is the basis of eligibility of an individual to apply for Malaysian citizenship. Therefore, each application is thoroughly scrutinized to ensure national security and protect the best interest of the citizens.

28. Existing legislation framework for awarding citizenship in Malaysia is adequate in addressing this issue while laws on citizenship in Malaysia are based on provisions under Part III of the Federal Constitution. It is not awarded automatically and is subject to individual applications. With regard to the issue of equality, both men and women are given avenues under the Federal Constitution to confer Malaysian citizenship for their children. To ensure that sovereignty and national security are protected, all applications are properly reviewed especially with regard to foreign citizenships as Malaysia does not recognise dual citizenship.

## **9. Education and health**

*Recommendations 151.190, 151.199, 151.260, and 151.268*

29. Formal education is only for children of Malaysian citizens while healthcare is accessible to everyone.

30. Although Malaysia is not a State Party to the 1951 Refugee Convention, it has introduced guidelines for the establishment and registration of Community Learning Centres (CLC) and Alternative Learning Centres (ALC) as an alternative for undocumented non-citizen children to gain access to education in Malaysia.

## **10 Women, children and gender equality**

*Recommendations 151.60, 151.209, 151.212, 151.213, 151.215, 151.217, 151.218, 151.219, 151.232, 151.236, 151.237, 151.239, 151.240, 151.242*

31. The Government has always placed importance on the promotion and protection of the rights of the child, including taking the necessary measures to set up the minimum age of marriage. The Government will also strengthen its efforts in addressing the main factors of child marriages such as low income household, school drop outs and lack of knowledge on sexual reproductive health.

32. Malaysia objects to any practices that are harmful to female babies and children. Female circumcision is allowed to be practiced under strict medical procedures performed by accredited medical professionals.

33. In 2004, the Penal Code was amended vide the Penal Code (Amendment) Act 2004 to insert a new Section 375A which provides that:

*“Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to*

*five years". Any man who is found guilty of this offence shall be punished with imprisonment for a term which may extend to five years".*

34. Section 375A mainly intends to further strengthen legal protection for wives from being hurt by their husbands in order to have sexual intercourse, although the term "marital rape" is not explicitly stipulated in the provision.

35. Apart from section 375A, there are other existing provisions in the Penal Code which can be resorted to by wives, depending on facts of the case. Among others, a husband can always be charged for an offence of causing injury in which the punishment may go as high as 20 years imprisonment. Such a punishment is generally similar to punishment for rape, and significantly higher than certain other countries that make specific provision for "marital rape".

## **11. Indigenous peoples**

*Recommendations 151.255 and 151.258*

36. The Government takes note that UNDRIP covers all aspects of the rights of indigenous peoples including economic, social, political, cultural and land. However, as each State in the Federation has its own jurisdiction over their natural resources, the Government of Malaysia will continue to look for the best manner in ensuring the rights of the indigenous peoples are protected.

37. The Government of Malaysia will continue to ensure that the indigenous people are represented at the highest level, including having their voices heard as Senators and Members of Parliament.