

## **ADDENDUM 1 (SEPTEMBER 2013)**

To the Stakeholder Report on Malaysia for the 17th Session in the 2nd Cycle  
of the HRC's Universal Periodic Review in 2013

Prepared by:

The Coalition of Malaysian NGOs in the UPR Process (**COMANGO**)

### **A. PROCESS**

#### **About the reports**

R1. The government of Malaysia should translate into Bahasa Malaysia and upload onto its website the 2013 Malaysian UPR Report it has submitted to the UN Human Rights Council, the report to be prepared by the Working Group on the Universal Periodic Review of Malaysia, and the Addendum to the report of the Working Group on the Universal Periodic Review of Malaysia (if any).

#### **Reason**

- i. Under the UPR process, it is the obligation of the government to disseminate their reports as widely as possible. Translating those reports into Bahasa Malaysia will enable more Malaysians to be informed. None of these documents from the 2009 UPR were translated.

#### **About consultations with NGOs**

R2. The government of Malaysia should give reasonable notice of at least two weeks when holding consultations with NGOs so as to maximise their attendance.

#### **Reasons**

- ii. In preparation for Malaysia's review in October 2013, the Ministry of Foreign Affairs conducted two consultations on the UPR with civil society. The first consultation was held on 28 December 2012, the last working day of 2012, with less than a week's notice given to invitees. The second consultation was held on 3 May 2013, two days before the 13<sup>th</sup> general elections, again with less than a week's notice given to invitees.
- iii. Civil society representatives attended the 28 December 2012 consultation. But because, for the 3 May 2013 consultation, the Ministry of Foreign Affairs again chose a date on which many civil society members were unlikely to be available and failed to give adequate notice to invitees, COMANGO and other civil society members boycotted the consultation.

## **B. ISSUES**

### **About free and fair elections**

- R3. The government of Malaysia should carry out timely electoral reforms so that clean, free and fair elections may be carried out in the 14<sup>th</sup> general elections. These reforms include the usage of indelible ink that will not wash off, and cleaning up the electoral rolls.
- R4. The government of Malaysia should hold public consultations in order to enable the participation of Malaysians when carrying out the delineation exercises planned for 2013/2014, and state clear criteria on how boundaries are drawn to determine constituencies.

#### Reasons

- iv. None of civil society's demands to create free and fair elections, expressed through Bersih 2.0's eight demands,<sup>1</sup> have been fulfilled.
- v. The current government draft 2013 UPR report, updated as of 3 May 2013 (before the 13<sup>th</sup> general elections), does not address electoral issues in any of its sections.
- vi. Accredited election observers concluded that the 13<sup>th</sup> general election was partially free and not fair.<sup>2</sup>
- vii. Election petitions have been filed in a total of 46 parliamentary seats, by both Pakatan Rakyat and Barisan Nasional.<sup>3</sup>

### **About the politicisation of religion**

- R5. The government of Malaysia should promote, protect and fulfil the right of Malaysians to profess the religions of their choice including different sects within a particular religion.
- R6. The government of Malaysia should accede to the Convention Against Torture (CAT) and abolish whipping and other forms of corporal punishment.
- R7. The government of Malaysia should ensure that laws are only passed through the legislative process by elected representatives, and clarify that fatwas do not have the force of law.

#### Reasons

- viii. Only Sunni Muslims are recognised as Muslims in Malaysia. Other sects e.g., the Shi'ite, are labelled as 'deviants' and action has been taken against them.
- ix. At Malaysia's UPR review in 2009, Australia noted "concerns about the rights of non-Muslims in cases involving Shar'iah law and freedom of religion, particularly for ethnic-Malays," the Holy See recommended that Malaysia continue to guarantee religious freedom by taking away any impediment to the full enjoyment of this basic human rights

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<sup>1</sup> Bersih 2.0's eight demands are: clean the electoral roll, reform postal ballot, use of indelible ink, minimum 21 days campaign period, free and fair access to media, strengthening public institutions, stop corruption, and stop dirty politics. Indelible ink was used at the 13<sup>th</sup> general elections, but could be easily washed off.

<sup>2</sup> The Malaysian Insider, "GE13 'partially free but not fair', say think tanks", 8 May 2013.

<sup>3</sup> The Wall Street Journal, "Malaysian Political Foes Carry Election Battle Into the Courts", 12 June 2013.

for all its citizens,” and Chile recommended that Malaysia “adopt the measures necessary to guarantee freedom of religion.”<sup>4</sup> Malaysia took note<sup>5</sup> of those recommendations.

- x. Under Syariah law, whipping is still used as a form of punishment, including against women even though whipping women is not permitted under civil law.
- xi. Under Syariah Criminal Offences laws, it is a criminal offence for a Muslim to defy, disobey or dispute or to give, propagate or disseminate any opinion concerning Islamic teachings, Islamic law or any issue, contrary to any fatwa for the time being in force. Enforcement is selective.<sup>6</sup>

### **About the right to life, liberty and security of the person**

- R8. The government of Malaysia should repeal the Security Offences (Special Measures) Act 2012 (SOSMA).
- R9. The government of Malaysia should release all those currently detained under the Internal Security Act (ISA) immediately and unconditionally and provide reparations equivalent to the torture and suffering experienced by the detainees and family.
- R10. The Malaysian Government should adopt the UN Declaration on Human Rights Defenders.

### **Reasons**

- xii. The Internal Security Act (ISA) which allowed for indefinite detention without trial was repealed in 2012, but was replaced with the Security Offences (Special Measures) Act 2012 (SOSMA). SOSMA, which has already been used, does not meet international human rights standards, including by allowing police to detain suspects incommunicado for 48 hours, increasing the risk of torture, and by allowing detention without charge or access to courts for up to 28 days.<sup>7</sup>
- xiii. Eight individuals are still being detained under the ISA, despite its repeal.<sup>8</sup>
- xiv. The state continues to employ intimidation and harassment to silence voices of civil society and NGOs. In 2012, the government launched a non-routine, targeted investigation on leading human rights organisation SUARAM, deploying six government agencies. In August 2013, SUARAM secretariat member Cynthia Gabriel was investigated under the Sedition Act 1948 in relation to a fundraising dinner organised by SUARAM.

### **About gender discrimination**

- R11. The government of Malaysia should criminalise marital rape by removing the exception in S375 of the Penal Code.

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<sup>4</sup> United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review, Malaysia, A/HRC/11/30, 3 March 2009.

<sup>5</sup> During the 2009 review, the government supported 62 recommendations, did not support 22, and took note of 19.

<sup>6</sup> Zainah Anwar, “Only in Malaysia: where we have gone wrong with fatwa,” The Star Online, 4 August 2013.

<sup>7</sup> Amnesty International, “First arrests under Malaysia’s oppressive new security law,” 7 February 2013.

<sup>8</sup> As of 29 August 2013.

- R12. The government of Malaysia should submit its combined 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> periodic report to the CEDAW Committee, ratify the Optional Protocol (OP) to CEDAW, and remove the remaining reservations it has to CEDAW.
- R13. The government of Malaysia should standardise inter-agency protocols to respond to domestic violence and rape cases as soon as possible, including specifying time-frames and the roles of the agencies involved, as well as strengthen the implementation and enforcement of such protocols, including by setting up a national steering committee to oversee the response mechanisms.

### Reasons

- xv. It is discrimination against women that their husbands may rape them with impunity whereas other men raping them may be charged with rape. S375A of the Penal Code does not criminalise marital rape.
- xvi. In 2010, Malaysia withdrew its reservations to Articles 5(a), 7(b), and 16(2) of CEDAW, but it still maintains reservations to Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g). Malaysia has not ratified the Optional Protocol to CEDAW.
- xvii. At Malaysia's UPR review in 2009, Algeria recommended that Malaysia "continue to spearhead progress towards gender equality and development for women, in particular by giving due consideration to the recommendations of the inter-agency committee coordinated by the Ministry of Women, Family and [Community] Development regarding the compliance of Malaysia with CRC and CEDAW and by withdrawing its reservations to both conventions."<sup>9</sup> Malaysia supported this recommendation.
- xviii. On 18 January 2011, the Ministry of Women, Family and Community Development informed SUHAKAM that the Ministry was "in the process of getting feedback from various agencies and stakeholders on the ratification of the OP."<sup>10</sup>
- xix. Enforcement of the Domestic Violence Act is poor. Women often do not receive protection, provided under the law, even after lodging police reports.<sup>11</sup>

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<sup>9</sup> United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review, Malaysia, A/HRC/11/30, 3 March 2009.

<sup>10</sup> SUHAKAM, Matrix Summary of Malaysia's Universal Periodic Review (UPR) Recommendations, 14 November 2012.

<sup>11</sup> Women's Aid Organisation, "Domestic Violence Act already protects men; put efforts on implementation and enforcement," The Malaysian Insider, 6 August 2013.