

**RECOMMENDED LIST OF VOLUNTARY PLEDGES AND COMMITMENTS
FOR THE MALAYSIAN GOVERNMENT TO ADOPT FOR
ELECTION TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL 2010-2013**

A. INTRODUCTION

1. Malaysia has declared her intention to seek election to the United Nations Human Rights Council (HRC) for the term 2010-13. In accordance with General Assembly resolution A/RES/60/251, Member States of the United Nations, when electing members of the HRC, shall take into account:-
 - 1.1 the contribution of candidates to the promotion and protection of human rights; and
 - 1.2 their voluntary pledges and commitments made thereto.
2. Additionally, members elected to the HRC shall:-
 - 2.1 uphold the highest standards in the promotion and protection of human rights;
 - 2.2 fully cooperate with the HRC; and
 - 2.3 be reviewed under the universal period review (UPR) mechanism during their term.
3. Member States presenting candidatures for membership of the HRC are encouraged to include specific, measurable and verifiable voluntary pledges and commitments in their submissions. Member States are also encouraged to share information on their voluntary pledges and commitments both with the public in their respective countries and with all other Member States.
4. With these matters in mind, we call upon the Malaysian Government to make the following voluntary pledges and commitments and to undertake to fulfil these voluntary pledges.

B. LIST OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS TO WHICH MALAYSIA IS ALREADY PARTY AND INDICATIONS OF INTENT TO RATIFY FURTHER INSTRUMENTS AND TO WITHDRAW RESERVATIONS

5. Withdraw all remaining reservations to Malaysia's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Malaysia currently has made reservations in respect of Articles 5(a), 7(b), 9(2), 16(1)(a), (c), (f), (g), and 16(2) of CEDAW.
6. Ratify the Optional Protocol to CEDAW.
7. Withdraw all remaining reservations to Malaysia's ratification of the Convention on the Rights of the Child. Malaysia currently has made reservations in respect of Articles 1, 2, 7, 13, 14, 15, 28(1)(a) and 37 of CRC.
8. Ratify the Optional Protocol to CRC on the involvement of children in armed conflict and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

9. Ratify the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the ICCPR and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
10. Ratify the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol. Notwithstanding that the Malaysian Government touted its successes in the area of economic, social and cultural rights during its 2009 UPR, major concerns of inadequate and inappropriate housing and neighbourhoods, unrealised access to education, affordable healthcare and public utilities remain.
11. Ratify the International Convention on the Elimination of All Forms of Racial Discrimination. Whilst the Malaysian Government has announced its New Economic Model, the mindset and legacy of racial discrimination prevails, situations of racial discrimination persist, and racial imbalances in the public sector perpetuate. These remain unabated.
12. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol. In particular, all forms of punishment involving the infliction of corporal punishment should be abolished.
13. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Whilst Malaysia is involved in regional negotiations in this regard, the Malaysian Government must accept that protection should be accorded not just to migrant workers in Malaysia but be extended also to members of their families. Also, the International Labour Organisation has recognised freedom of association and the effective recognition of the right to collective bargaining as a core labour standard. The Right to Organize and Collective Bargaining Convention, 1949 (No. 98) was ratified in 1961. Migrant workers may fall within the scope of collective agreements where there are unions in that industry but have not been given the right to form societies or associations to look after their welfare.
14. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance. This includes abolition of legislation that permits preventive detention without trial such as the Internal Security Act 1960, the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and the Dangerous Drugs (Special Preventive Measures) Act 1985 where, within such legislation, the holding of detainees incommunicado for prolonged periods of time is provided for. This should also include outlawing the practice by the police and other law enforcement agencies of holding suspects of crime and persons under interrogation incommunicado.
15. Ratify the Convention on the Rights of Persons with Disabilities and the Optional Protocol. Whilst Malaysia has signed this Convention, it has still not ratified it. Domestic legislation for persons with disabilities does not provide for any mechanism for legal redress for non-compliance, which is a significant deficiency.
16. Ratify the Convention relating to the Status of Refugees and the Protocol. While the Malaysian Government is co-operating with agencies such as the United Nations High Commission for Refugees, such co-operation is ad-hoc and does not have the benefit of being backed by enabling legislation. Further, while the work of non-governmental organisations is recognised, they do not enjoy the protection of the law in so doing, thus placing them at risk.
17. Affirm Malaysia's opposition to immunity from prosecution for those involved in war crimes, genocide, crimes against humanity and crimes of aggression by expediting the process of reviewing domestic legislation and identifying necessary constitutional and legislative amendments that need to be effected in order to accede to the Rome Statute of the International Criminal Court.

18. Improve co-operation with the HRC's special procedures by accepting all requests for visits, extending standing invitations, and responding positively to communications and follow-up on recommendations. Support for the special procedures is ad-hoc and sporadic. There are currently eight pending requests for country visits to Malaysia by special procedures, which have not been accepted by the Malaysian Government, and only recently was an invitation extended to the Working Group on Arbitrary Detention.
19. Co-operate with treaty monitoring bodies, submit reports in a timely fashion and implement concluding observations of such bodies. There have been inordinate delays in reporting to the committees for CEDAW and CRC.
20. Contribute to the global reform of the treaty body system in a positive, not negative way, by devising a policy whereby Malaysia will only support those measures that will further promote and protect human rights throughout the world and to engage in a constructive manner in deliberations of the HRC, its subsidiary bodies and mechanism including the special procedures.
21. Contribute to international and domestic initiatives for the promotion and protection of human rights through the provision of human, technical and financial resources, and generally co-operate with and support the activities of the Office of the High Commissioner for Human Rights.

C. NATIONAL HUMAN RIGHTS INSTITUTIONS AND GUARANTEES OF EFFECTIVE REMEDIES TO REDRESS HUMAN RIGHTS ABUSES

22. Finalise and implement the National Human Rights Action Plan proposed by the Malaysian Human Rights Commission as far back as 2002.
23. Broaden the scope and powers of the Malaysian Human Rights Commission (SUHAKAM), including the ability to conduct inquiries and investigations even though legal proceedings have been commenced by the parties involved, the ability to conduct amicus curiae briefs, the power to initiate legal proceedings to enforce compliance with human rights norms and to award monetary compensation to victims of violations of human rights.
24. Ensure that the process of choosing members of the Selection Committee and the process of nomination for the position of Commissioner are both open and transparent.
25. Commit to holding regular sessions of Parliament to discuss and debate SUHAKAM's recommendations and annual report.
26. Include non-judges and the introduction of lay persons' participation into the Judicial Appointments Commission. Where the Prime Minister does not accept the recommendations of the Judicial Appointments Commission, provide in legislation that he must give written reasons why he has not done so.
27. Reconsider the recommendation of the Royal Commission to Enhance the Operations and Management of the Royal Malaysian Police in 2004 and introduce an Independent Police Complaints and Misconduct Commission separately from the proposed Enforcement Agencies Integrity Commission. This is to recognise that a vast majority of public complaints with respect to law enforcement agencies involve the police, and that disciplinary proceedings for the police are not open and transparent to the public, leading to a severe erosion of trust and confidence in the police force.

D. APPROACH TO THE CONTRIBUTION OF CIVIL SOCIETY, INCLUDING IN THE FORMULATION AND IMPLEMENTATION OF DOMESTIC HUMAN RIGHTS POLICY AND PROGRAMMES

28. Openly and constructively engage in a robust universal review procedure including reporting on measures taken to follow-up on its recommendations. We note that the Malaysian Government has not submitted any follow-up report since the Working Group Report was adopted in June 2009.
29. Commit to a regular, on-going and meaningful consultation and engagement with non-governmental organisations (NGOs), both within and outside Malaysia. Consult in development of human rights policies for greater inclusiveness. Institutionalise a process of dialogue and regular consultation. We note that the Malaysian Government has failed to meaningfully consult and engage with human rights-focused NGOs in Malaysia both in preparation for the universal period review of Malaysia in February and June 2009 and since then. The Malaysian Government also did not carry out any public consultation to discuss what voluntary pledges and commitments it would undertake as part of this present election process for membership of the HRC.
30. Involve non-governmental organisation with expertise in human rights education in sensitivity training for government ministries and agencies at all levels. This includes exposure to international commitments to respect the role of lawyers and human rights defenders, especially the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba in 1990, and the Declaration of the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms passed in 1998 pursuant to General Assembly Resolution A/RES/53/144.

E. COMMITMENT TO PROTECT AGAINST AND PREVENT DISCRIMINATION IN ALL ITS FORMS, IN BOTH LAW AND IN PRACTICE

31. Ensure the removal of all religious and legal barriers that discriminate against people of non-heterosexual orientations, such as Sections 377A and 377D of the Penal Code, Section 21 of the Minor Offences Act 1955 and Shariah laws that criminalise same-sex sexuality and same-sex sexual acts.
32. Institutionalise policies and guidelines and conduct gender sensitisation and sexual rights courses that aim to broaden existing perspectives and attitudes of relevant authorities, personnel of government agencies, medical/health personnel and the media which obstruct women and men from fully exercising their sexual rights.
33. Implement sex education in schools so as to create a more supportive environment for the exploration of sexuality issues to enable all women, girls, men and boys to have easy and ready access to information and services.
34. Address the rise in conservative Muslim ideology through opening up space for dialogue, discussion and debate to explore the diversity of opinion on matters pertaining to Islam, including the administration of the Shariah legal system. The push for Shariah supremacy, support for punitive measures under Islamic laws and the use of both Shariah and civil laws to silence differences of opinion by State and non-State actors breed fear and ignorance, as well as encourage intolerance in interactions between and within ethnic communities, sometimes along religious lines.

35. Ensure full compliance with the principles of the UN Declaration on the Rights of Indigenous Peoples (UN-DRIP) in all laws, actions and programmes concerning the rights of indigenous peoples in Malaysia. Despite voting for the adoption of the UN-DRIP both at the Human Rights Council and the General Assembly in 2007, the Malaysian Government has demonstrated a lack of understanding of the important role that a connection to ancestral land plays in the culture of indigenous peoples. It has also shown a lack of recognition of native customary land rights and continued to implement forced relocation and forced assimilation policies which affect the cultures and religions of indigenous peoples in Malaysia. The Malaysian Government manages the rights of indigenous peoples through a federal agency which continues to adopt a paternalistic approach both in terms of land rights, as well as healthcare and social welfare. Many from the indigenous peoples communities have lost confidence in this federal agency. The Malaysian Government must fully commit to the comprehensive recognition and respect of native customary land rights of indigenous peoples in Malaysia, and to obtain the free, prior and informed consent and active participation of women and men in the development and self-determination and well-being of their communities. Equal focus should be given to all indigenous peoples in the country.
36. Ensure citizens have the right to freedom of expression as guaranteed by Article 10 of the Federal Constitution. We note that the Malaysian Government has used the Printing Presses and Publications Act 1984, Official Secrets Act 1972, Sedition Act 1948, Internal Security Act 1960 and the Penal Code to silence dissent and restrict freedom of assembly, including attempts to tighten control over the Internet and restrict bloggers. The Malaysian Government must commit to repeal laws and provisions that restrict Freedom of Expression and enact a Freedom of Information Act and ensure no Internet censorship, in line with its pledge to promote free media, including in cyberspace as contained in its Aide Memoire in respect of Malaysia's candidature to the HRC in 2006. The use of Penal Code must be used sparingly against all incitements to violence, regardless of political affiliation, to encourage informed debates between and within communities, particularly on matters of importance such as ethnicity and religion.
37. Fully recognise the right to Freedom of Religion by removing restrictions under Article 11 of the Federal Constitution to address issues such as the construction of places of worship; conversion into and out of Islam, including conversion of minors by one parent to Islam, and the impact on rights and responsibilities; as well as recognise the right of other religions to publish and comment on matters in the public sphere. While the Malaysian Government has announced the establishment of an Inter-Religious Committee, which has begun meeting, discussion of inter-religious matters cannot be limited only to a government-appointed select body.
38. Fully recognise and respect the right to freedom of association by removing all restrictions in the provisions of laws such as in the Societies Act 1966, the Trade Unions Act 1959, and the Universities and University Colleges Act 1971. We note that the Special Rapporteur on the Right to Education had urged the Malaysian Government to amend the Universities and University Colleges Act 1971 "to guarantee recognition of the right of teachers and pupils to freedom of expression, freedom of assembly and their right to participate in political activity". Despite amendments to the Universities and University Colleges Act in 2008, impediments remain and the legislation still severely violates the right to freely associate.
39. Ensure that no person is arbitrarily denied his/her freedom of movement. There are many instances of individuals, mainly human rights defenders, from Peninsular Malaysia being barred from entering the east Malaysian state of Sarawak by the state authority pursuant to the exercise of autonomous state immigration controls. While recognising the state's autonomous powers over immigration, the Malaysian Government must ensure that these powers are not abused to stifle the legitimate activities of human rights defenders, bearing in mind the obligations of the Malaysian Government pursuant to the 1998 Declaration of the Right and

Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

F. CONCLUSION

40. The Malaysian Government should ensure the harmonisation of the Federal Constitution and all domestic legislation with international human rights instruments. In particular, the Malaysian Government should repeal the Sedition Act 1948, the Internal Security Act 1960, the Emergency (Public Order and Prevention of Crime) Ordinance 1969, the Universities and University Colleges Act 1971, the Printing Presses and Publications Act 1984, and the Dangerous Drugs (Special Preventive Measures) Act 1985 as being odious to the concept of human rights. There are also 4 Proclamations of Emergency arising from events in the 1960s and 1970s which are still in effect. These are anomalous to the functioning of a democracy and to the full expression of human rights.
41. As Malaysia is seeking membership of the HRC for the term 2010-13 (which ends in June 2013), and as Malaysia's review under the Universal Periodic Review process was completed in June 2009, the Malaysian Government should stipulate that it is committed to fully implementing and achieving these voluntary pledges and commitments by June 2013. The Malaysian Government however is encouraged to progressively implement and achieve these voluntary pledges and commitments by indicating specific, measurable and verifiable milestones and to provide regular and frequent progress updates and reports to the HRC.
42. The Malaysian Government must meaningfully embrace the call by the HRC to uphold the criteria stipulated for election to the HRC, specifically to maintain the highest standards in the promotion and protection of human rights. The Malaysian Government must make this a major component of all national policies and a significant pillar of the national mandate. Adoption of and adherence to international human rights instruments are the sine qua non of a developed society that Malaysia has set herself to become, and represent the minimum, not maximum, level of achievement to which Malaysia must aspire.

THE MALAYSIAN BAR COUNCIL AND THE COALITION OF MALAYSIAN NON-GOVERNMENTAL ORGANISATIONS FOR THE UNIVERSAL PERIODIC REVIEW PROCESS (COMANGO)

13 APRIL 2010