



globalbersih.org  GlobalBersih  GlobalBersih

Global Bersih's summary of the proceedings of Malaysia's Universal Periodic Review process

Prepared by:

Bala Chelliah, President of Global Bersih, bala.chelliah@globalbersih.org

Anis Azizi, a.amalina7@gmail.com

1. Introduction

- 1.1. Global Bersih is an international movement by Malaysians living abroad, to support the work of Malaysian's civil society and strengthen Malaysia's maturing democracy, using peaceful and legal means of action.

- 1.2. This report summarizes the third Universal Periodic Review (UPR) of Malaysia's human rights situation – recently conducted by the United Nation Human Rights Council (UNHRC) on 8th November 2018 and 13th November 2018 in Geneva, Switzerland. The Malaysia delegation present during the review was led by H.E. Mr. Dato' Seri Ramlan Ibrahim, Secretary-General of the Ministry of Foreign Affairs.

- 1.3. We focused on the Government's presentation regarding the key developments made in implementing accepted recommendations addressed to Malaysia during the previous UPR session; the recommendations from selected UN Member States during the interactive dialogue; and we conclude with the adoption of the recommendations. Hence, we adopted the national report submitted by the Government in accordance with paragraph 15 (a) (A/HRC/WG.6/31/MYS/1); and the draft report by the Working Group on the UPR.

- 1.4. The implementation efforts took place during the period under review; November 2013 to March 2018 were related to seven clusters namely:
 - 1.4.1. International obligations;

 - 1.4.2. Civil and political rights;

 - 1.4.3. Economic, social and cultural rights and the rights of indigenous peoples;

 - 1.4.4. Women, children and persons with disabilities;

 - 1.4.5. Foreign workers, refugees, asylum seekers and trafficking in persons (TIP);

 - 1.4.6. National mechanisms on human rights;

 - 1.4.7. General recommendations

2. International obligations

- 2.1.** The Government reported that the ratification of the Rome Statute is being considered. Meanwhile, six remaining international human rights instruments are currently in the process of ratification: i- International Covenant on Civil and Political Rights; ii- International Covenant on Economic, Social and Cultural Rights; iii- International Convention on the Elimination of All Forms of Racial Discrimination; iv- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT); v- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and vi- International Convention for the Protection of All Persons from Enforced Disappearance.
- 2.2.** Additionally, the Government demonstrated their commitment to ensure ongoing promotion and protection of human rights in Malaysia. Increasing engagement, openness and transparency with the Special Rapporteur (SR) can be observed as they agreed to requests for country visits by the Special Procedures of the HRC.

3. Civil and political rights

- 3.1.** The Government claimed that the political discourse in Malaysia is robust and healthy in which the rule of law is upheld ever since the country's governance is under a new management. This claim was supported by illustrating their commitment towards promoting better democracy, good governance and accountability.
- 3.1.1.** To illustrate, the Government lowered the universal suffrage from 21 to 18 years old, is in the process of further reforming the Electoral Commission and even employed an opposition Member of Parliament as the head of the Public Accounts Committee.
- 3.1.2.** Furthermore, the Government announced their decision to abolish the death penalty in which law amendments will soon be tabled in the Parliament. In the meantime, a moratorium on all pending death sentences has been imposed.
- 3.2.** In regards to freedom of expression in the country, the Government had taken steps into the right direction whereby the Anti Fake News Act and Sedition Act will be repealed; the application of Sedition Act has now been suspended; and a Special Committee was established for reviewing the Printing Presses and Publications Act, the Communications and Multimedia Act, the suspension of the Security Offences (Special Measures) Act, the Prevention of Crime Act and the Prevention of Terrorism Act.

4. Economic, social and cultural rights and the rights of indigenous peoples

4.1. Given the multiracial and multi-ethnic context of Malaysia, the Government reminded the UN Member States that the economic rights of all Malaysians are addressed by a distributive economic policy with ten main thrusts as its pillars, as outlined in the 11th Malaysia Plan (MP).

4.1.1. In line with the 11th MP, the Government's poverty eradication program provides capacity building, education, entrepreneurship and special programs for the targeted groups regardless of ethnicity, gender, socio-economic status and geographic locations. This targeted group has been expanded to households which fall within the Bottom 40 percent by income (B40).

4.2. Moreover, the Government claimed an improvement in the quality of life of indigenous peoples through the implementation of the 11th MP, such that it was achieved by addressing the concerns of the vulnerable and disadvantaged groups.

4.3. In regards to the indigenous populations of Sabah and Sarawak, the Government allocated over RM 350 million to both States under the 11th MP for the construction of native courts, capacity building and native customary land survey program.

4.3.1. In addition, the Government has established Rural Transformation Centre (RTC), Mini RTC and the Rural Service Centers all over Malaysia including Sarawak. In Sarawak, these facilities were built in remote areas at strategic locations for the Penan community, with the purpose of providing basic and essential facilities, a place to gather and socialise, and for encouraging a more coordinated way to implement programs among government agencies.

5. Women, children and persons with disabilities

5.1. The Government informed the UN Member States of the recent raise of the minimum age for marriage to 18 years old as an initiative to address child marriage in the country. This is done because the Government acknowledges their responsibility to ensuring children's physical, emotional, safety and welfare are always protected in Malaysia so that the children can reach their full potential.

5.1.1. This child protection starts with providing parents of all children born in Malaysia access to formal birth registration procedures and birth certificate, regardless of their nationality or legal status. With this in mind, the Government, through the National Registration Department (NRD) has deployed several programs to encourage birth registration including establishing mobile registration teams to provide parents living in remote areas nationwide with access to birth registrations.

5.2. In addition, the Government's initiatives for empowering women in the country appears to be minimal such that they only reported efforts to further strengthen the National Policy on Women and the National Action Plan for the Advancement of Women.

5.3. Furthermore, the Government detailed their efforts to implement recommendations related to the rights of persons with disabilities (PWD). The Government reviewed and approved a new Plan of Action for Persons with Disabilities for the period of 2016 to 2022 that is in line with their 11th MP which aims to reduce PWDs' barriers to work and increasing the group's employability. This approach is a 'rights-based approach' as compared to the previous 'charity-based approach', hoping that employment can encourage the group's participation in the community.

5.3.1. The Government announced that in the long run, future development of PWDs will be undertaken through an adoption of a dual approach encompassing both global and regional (i.e. Asia and Pacific regions) mandate for persons with disabilities. The Convention on the Rights of Persons with Disabilities (CRPD) will be the global mandate the government commits to.

6. Foreign workers, refugees, asylum seekers and trafficking in persons (TIP)

6.1. The Government reported that they have taken effective steps to protect the rights and welfare of all migrant workers under Malaysian labour laws where recently, there was an increase of minimum wage for all workers in Malaysia including foreign workers and the establishment of an independent committee to address irregular migration problems.

6.2. On the other hand, the Government announced their intention to examine the United Nations Convention relating to the Status of Refugees 1951. Although this seems insignificant, it is a major step considering that Malaysia is currently not a State Party to the aforementioned convention but already has an ongoing collaboration with the United Nations High Commissioner for Refugees (UNHCR) to manage approximately 160,000 refugees and asylum seekers currently existing in the country.

6.2.1. To demonstrate, these refugees are issued identification cards by the UNHCR Representative in Malaysia – giving them access to local healthcare facilities and education for their children. Next, a Joint Task Force with UNHCR was established to address any challenges about migration management issues in the country, and the Government also showed commitment to support the human right protection of all refugees and migrants regardless of the status by participating in the New York Declaration on the Global Compact on Refugees.

7. National mechanisms on human rights

7.1. The Government reported significant developments on the country's national mechanisms on human rights. First, they launched the National Human Rights Action Plan (NHRAP) that was designed for strengthening human rights implementation in the country, which will be reviewed periodically to ensure its practicality and objectivity while progress is being made. Second, SUHAKAM's annual report will be debated in both houses of Parliaments and the appointment of SUHAKAM's commissioners will be approved by a Parliament Committee to ensure its independence and compliance with the Paris Principles. Third, the appointment of the new Malaysian representative to ASEAN Intergovernmental Commission on Human Rights (AICHR) will be conducted openly and in a transparent manner. This is considered important for finding the right

people because the Government plays a more prominent role in human rights issues at the regional level. As a matter of fact, the Government pledged to increase capacity of the Office of the Malaysian Representative to AICHR and build on this mechanism in the future.

8. General recommendations

- 8.1. The Government announced three key advancements relating to the process of undertaking the current UPR and beyond. In addition to accepted recommendations from the 2nd UPR, the Government will also make progress in recommendations that were only noted in the past in order to further advance their efforts to promote and protect human rights in Malaysia. Next, the Government will start conducting half-yearly reviews with their main stakeholders including CSOs to keep track of the progress on the implementation of the UPR recommendations, in fact, the first meeting will be held after the Malaysian delegations return to Malaysia. Finally, the collaborative engagement between the Government, SUHAKAM and CSOs will be institutionalize in order to have a more effective UPR process.

9. Recommendations of UN State Members

- 9.1. A total of 268 recommendations were submitted by the State(s). We focus on the recommendations of selected States as found below:
 - 9.1.1. Austria – Ratify the Rome Statute of the ICC and begin resolving disagreement of competence between civil and Sharia courts with the intention to fully protect human rights; Develop means (i.e. in law or practice) to protect LGBTI persons from any form of violence, harassment or discrimination and ensure they fully enjoy all their basic human rights and freedoms; Undertake additional actions to reduce political influence on media outlets and ensure a free, independent, pluralistic and diverse media landscape; Develop effective means to hinder child marriage and enforce them in all states of Malaysia.
 - 9.1.2. Canada – Immediately ratify the 1951 Refugee Convention and 1967 Protocol to provide legal status to refugees and asylum-seekers so that they can reside, work and access education and healthcare in Malaysia; Review and repeal laws that criminalise consensual same-sex sexual activity whether directly or indirectly and take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity; Criminalise marital rape by amending Section 375 of the Penal Code; Review state and federal laws to raise the minimum age of marriage to 18 for all Malaysians and adopt policies to discourage child marriage.
 - 9.1.3. Croatia – Execute measures for ensuring that both civil law and sharia law fully comply with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women at the local, state and federal levels; Assure everyone of their freedom of religion or belief and restrict racial and religious intolerances including against the Christian community.

- 9.1.4. Denmark – Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Eradicate physical punishment in both civil and Sharia law which includes caning and judicial beatings; Ban all forms of female genital mutilations (as defined by WHO in its criminal code) such that the prohibition cannot be overruled by any fatwas or other rulings issued by religious authorities.
- 9.1.5. Japan – Ratify the International Convention for the Protection of All Persons from Enforced Disappearances as soon as possible; Make advancements in ensuring children have access to public education, protection from child labour and sexual exploitation, and prevention of sexual crimes against children for the purpose of protection children’s rights.
- 9.1.6. Portugal – Construct a National Mechanism for Implementation, Reporting and Follow-Up of the recommendations from the UPR; Establish a de facto moratorium on the death penalty with a view to its abolition; Criminalize all forms of female genital mutilation and marital rape, and prohibit whipping of women as a form of punishment and child marriage to eliminate all forms of discrimination and violence against women; Execute anti-bullying campaigns in schools to address all kinds of bullying, including based on actual or perceived sexual orientation, gender identity or gender expression; Respect the human rights of persons with mental health conditions and psychosocial disabilities in line with the CRPD.
- 9.1.7. Slovenia – Update the current Reproductive Health and Social Education syllabus to be further in line with the UN technical guidelines on education whereby it should include inter alia education on healthy and respectful family life and interpersonal relationships, human rights, violence and gender-based violence, consent and bodily integrity; Ensure that the legal age for marriage complies with the international human rights standards whereby it is set at 18 years of age with no exceptions.
- 9.1.8. Switzerland – Ratify the International Covenant on Civil and Political rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as previously recommended; Actualize the commitment of abolishing the death penalty as soon as possible; Conduct systematically an independent and impartial investigation into allegations of human rights violations in prisons, for the purpose of ending reported practices of torture, inhuman and degrading treatment or punishment in prisons; Abolish travel bans that journalists and human rights defenders are subjected to and amend laws such as the Peaceful Assembly Act and the Penal Code to better protect their rights.
- 9.1.9. Turkey – Quicken deliberations on the signature and ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Covenant on Economic, Social and Cultural Rights and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Promote greater respect for the rights of women, children and persons with disabilities by removing reservations from Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities; Provide all children with access to formal education.
- 9.1.10. Tunisia – Proceed with training and capacity building programmes targeted at enhancing skills and knowledge of healthcare providers; Carry on with providing more family planning and reproductive health services in both urban and rural areas.

10. Conclusion and adoption of the recommendations

- 10.1. The Government will review the recommendations addressed to Malaysia such that they will provide a response about their position towards all recommendations listed in the 'Draft Report of the Working Group on the Universal Periodic Review' by the fortieth session of the HRC. The Government reassures the UN Member States that all relevant stakeholders will be consulted for each recommendation as it is in the Government's interest to improve the human rights situation in Malaysia. In due time, Malaysia's final UPR outcome report will be considered for adoption by the HRC.