

UNITED NATIONS HUMAN RIGHTS COUNCIL

17th Session of the Working Group on the Universal Periodic Review

21 October to 1 November 2013

**COMPARISON OF ICJ SECOND CYCLE RECOMMENDATIONS FOR THE UPR OF MALAYSIA
WITH CORRESPONDING FIRST CYCLE RECOMMENDATIONS AND COMMITMENTS**

Concerning independence of the judiciary		
<i>Second cycle ICJ recommendations</i>	<i>Corresponding 1st cycle recommendations</i>	<i>Corresponding 1st cycle voluntary commitments</i>
i) Review and amend Article 121 of the Federal Constitution to bring it back to its pre- 1988 position;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
ii) Implement safeguards to guarantee that judicial appointment procedures are transparent and independent in practice and that decisions are not influenced by any reason other than those related to an objective criteria;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
iii) Establish an independent secretariat for the Judicial Appointment Commission to ensure that the management, activities and functions of the Commission are not administered by the Executive;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
iv) Establish guidelines under the law, including in the Constitution or in the Judicial Appointments Commission Act 2009, for the appointment of judges so as to ensure that there is no discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, linguistic or social origin, property, income, birth, sexual orientation, disability or other status; and	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>

Concerning Malaysian Freedom of peaceful assembly and of association		
<i>Second cycle ICJ recommendations</i>	<i>Corresponding 1st cycle recommendations</i>	<i>Corresponding 1st cycle voluntary commitments</i>
vi) Insert a provision in Peaceful Assembly Act 2012 (PAA) to recognise criminal liability of public officials, police officers and volunteers and officers from security forces for the prevention of excessive or unlawful use of force and arbitrary arrests in peaceful assemblies;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
vii) Repeal Section 6 of the PAA; and	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
viii) Increase the human rights training and education of staff involved in handling assemblies.	Related recommendations (partially taken up): 104 (9) and 109 (9) (Jordan and Ukraine). Ensure the regular training for judges, prosecutors, the representatives of the police and other law enforcement agencies on human rights, non-discrimination and the legally binding nature of international law - <i>Not accepted</i> .	Related voluntary commitment: Concerning 104(9) and 109(9): UN Doc. A/HRC/11/30/Add.1: Various activities on capacity building in relation to human rights were conducted; The Judicial and Legal Training Institute provides courses to enhance knowledge, expertise and quality of public officers, statutory bodies and local authorities, on human rights issues.
Concerning Malaysian Right to Freedom of Expression of LGBT Groups		
<i>Corresponding 1st cycle recommendations</i>	<i>Corresponding 1st cycle voluntary commitments</i>	<i>Corresponding 1st cycle voluntary commitments</i>
ix) Withdraw the ban on Seksualiti Merdeka and allow civil society groups to freely express issues concerning sexual orientation and gender identity in Malaysia.	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
Concerning Malaysian Security Offences (Special Measures) Act 2012		
<i>Corresponding 1st cycle recommendations</i>	<i>Corresponding 1st cycle voluntary commitments</i>	<i>Corresponding 1st cycle voluntary commitments</i>
x) Insert a provision in SOSMA to recognise the criminal liability of public officials and superior or commanding police officers complicit in, or instigating, acts of torture and other ill-treatment;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>

xi) Increase human rights training and education of staff involved in the detention of persons;	Related recommendation (partially taken up): 104 (9) and 109 (9) (Jordan and Ukraine). Ensure the regular training for judges, prosecutors, representatives of the police and other law enforcement agencies on human rights, non-discrimination and the legally binding nature of international law - <i>Not accepted</i> .	Related voluntary commitments: Concerning 104(9) and 109(9): UN Doc. A/HRC/11/30/Add.1: Various activities on capacity building in relation to human rights were conducted; The Judicial and Legal Training Institute provides courses to enhance knowledge, expertise and quality of public officers, statutory bodies and local authorities, on human rights issues.
xii) Take steps to guarantee that detained persons are allowed prompt access to legal counsel; and	Related recommendation (partially taken up): 106 (13) (Italy). Consider amending the Internal Security Act and bring domestic security legislation in line with international human rights standards, including through abolishing the practice of long detention without trial - <i>Not accepted</i> .	Related voluntary commitment: UN Doc. A/HRC/11/30/Add.1: Although considering that safeguards for the protection of the human rights of persons detained are sufficiently provided, the Government plans to undertake a comprehensive study to review the Internal Security Act.
xiii) Repeal Sections 4, 5(2) and 6 of the SOMSA.	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
Concerning Malaysian International Human Rights Instruments and Mechanisms		
<i>Second cycle ICJ recommendations</i>	<i>Corresponding 1st cycle recommendations</i>	<i>Corresponding 1st cycle voluntary commitments</i>
xiv) Become party to the: ICCPR, its two Optional Protocols, ICESCR and its Optional Protocol, CAT, OPCAT and ICERD, ICPED, the Optional Protocol to CEDAW and the third Optional Protocol (on a communication procedure) to the CRC;	Related recommendation (partially taken up): 106 (1) (United Kingdom). Ratify ICCPR and CAT - <i>Not accepted</i> .	Related voluntary commitment: UN Doc. A/HRC/11/30/Add.1: Malaysia is studying the proposal to ratify the ICCPR and reviewing the reservations to CEDAW with a view of taking into consideration the constitutional provisions, laws and national interests.
xv) Withdraw reservations from the CRPD, CEDAW and CRC;	Related recommendation (partially taken up): 106 (1) (Finland, Mexico, France and Finland). Withdraw reservations to CEDAW and to CRC - <i>Not accepted</i> .	Related voluntary commitment: UN Doc. A/HRC/11/30/Add.1: The Child Act 2001 was enacted based on the principles of the CRC and provides for laws relating to the care, protection and rehabilitation of children without regard to distinction of any kind.

<p>xvi) Accept requests of the Special Procedures to undertake official missions in Malaysia at the earliest possible opportunity, and extend to them all reasonable cooperation and assistance to facilitate timely and effective country missions, including the request of the Special Rapporteur on the independence of judges and lawyers;</p>	<p><i>No corresponding recommendations</i></p>	<p><i>No corresponding voluntary commitments</i></p>
<p>xvii) Provide without delay periodic reports to the CRPD, CEDAW and CRC;</p>	<p><i>No corresponding recommendations</i></p>	<p><i>No corresponding voluntary commitments</i></p>
<p>xviii) Present to the Council, as soon as possible after adoption of the outcome document for the UPR of Malaysia, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and</p>	<p><i>Recommendation calling for action in future UPR engagement</i></p>	<p>-</p>
<p>xix) Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.</p>	<p><i>Recommendation calling for action in future UPR engagement</i></p>	<p>-</p>