



Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA)

JOINT SUBMISSION FOR STAKEHOLDERS' INFORMATION

3RD CYCLE OF UNIVERSAL PERIODIC REVIEW ON MALAYSIA

31ST SESSION, NOVEMBER 2018

MACSA Members:

Centre for Human Rights Research and Advocacy (CENTHRA) | Allied Coordinating Committee of Islamic NGOs (ACCIN) | Persatuan Peguam-Peguam Muslim Malaysia (PPMM) | Islamic and Strategic Studies Institute Berhad (ISSI) | Ikatan Pengamal Perubatan dan Kesihatan Muslim Malaysia (I-MEDIK) | Darul Insyirah | Pertubuhan Muafakat Sejahtera Masyarakat Malaysia (MUAFAKAT) | Persatuan Orang Cacat Penglihatan Islam Malaysia (PERTIS) | Persatuan Belia Islam Nasional (PEMBINA) | Concerned Lawyers for Justice (CLJ) | Pertubuhan Ikatan Kekeluargaan Rumpun Nusantara (HARUM) | Gabungan Peguam Muslim Malaysia (i-PEGUAM) | Ikatan Muslimin Malaysia (ISMA) | Majlis Ittihad Ummah | Pusat Kecemerlangan Pendidikan Ummah (PACU) | Persatuan Peguam Syarie Malaysia (PGSM) | CONCERN (Coalition of Sabah Islamic NGOs) | Harakah Islamiah (HIKMAH) | Lembaga Al-Hidayah | Malaysian Chinese Muslim Association (MACMA) Sarawak | Halaqah Kemajuan Muslim Sarawak (HIKAM) | Pertubuhan IKRAM Negeri Sarawak | Pertubuhan Kebajikan Islam Malaysia (PERKIM) Cawangan Sarawak | Angkatan Belia Islam Malaysia (ABIM) Negeri Sarawak | Yayasan Ikhlas Sarawak | Persatuan Ranuhabban Akhi Ukhti (PRAU) | Ikatan Graduan Melayu Sarawak (IGMS) | Persatuan Kebangsaan Melayu Sarawak (PKMS) | Sukarelawan Al-Falah YADIM Sarawak | Persatuan Kebajikan Masyarakat Islam Subang Jaya (PERKEMAS) | Young Professionals | Pertubuhan Damai & Cinta Insani (PENDAMAI) | Yayasan Ihtimam Malaysia | Persatuan Amal Firdausi (PAFI) | Persatuan Jihad Ekonomi Muslim Bersatu Malaysia | Yayasan Himmah Malaysia (HIMMAH) | Persatuan Syafaqah Ummah (SYAFAQAH) | Gabungan Persatuan Institusi Tahfiz Al-Quran Kebangsaan (PINTA) | Malaysian Lawyers Circle (MLC) | Persatuan Kebajikan Masyarakat Islam Subang Jaya (PERKEMAS) | The International Women's Alliance for Family Institution and Quality Education (WAFIQ) | Centre for Alternative Policies in Economics (CAPE) | Muslim Youth Movement of Malaysia (ABIM) | International Relations and Diplomacy Committee, Malaysian Youth Parliament (PBM) | Majlis Tindakan Ekonomi Melayu Berhad (MTEM) | WADI Malaysia | Human Security and Peace Scholars Network (HOPE) | Pergerakan Belia India Muslim Malaysia (GEPIMA)



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A. Introduction

- A.1. Article 4(1) of the Federal Constitution (FC) provides for the supremacy of the Constitution and any law which is inconsistent with the Constitution shall be void. Part II of the FC consists of nine articles, representing critical civil and political rights as stipulated in the Universal Declaration of Human Rights 1948 (UDHR). Any legislation or administrative action that falls afoul of these nine rights, unless within permissible exceptions, are liable to be annulled by the Malaysian courts following a complaint by any aggrieved party. In addition to the Constitution, there is also the Human Rights Commission of Malaysia Act 1999 which set up the Human Rights Commission of Malaysia (SUHAKAM) ensuring the protection of these nine rights.
- A.2. Since the last Universal Periodic Review (UPR), notable steps have been taken by the government and various agencies to implement the accepted 150 recommendations. However, there are areas where major human rights issues are still inadequately addressed. We have been approached by many Civil Society Organizations (CSOs) from various sectors that raised many significant human rights issues overlooked by other CSOs.
- A.3. The Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA) was established upon the conclusion of a series of consultations between the Foreign Ministry and a variety of CSOs, having determined that it is in our common interest to unite and form a coalition with the goal of studying, and advocating, human rights issues in Malaysia for the UPR Process.
- A.4. Malaysia has ratified three of the nine core international human rights instruments: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention of the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD). However, only the latter two have been given effect within domestic law, through the Child Act 2001 (Act 611) and Persons with Disabilities Act 2008 (Act 685) respectively.
- A.5. Despite several court pronouncements,¹ that Malaysia has a legal obligation to give effect to CEDAW, the Parliament has yet to pass any specific legislation on the protection of women's rights. There is also initiative by the Government to introduce a Gender Equality Act to propagate gender equality in Malaysia.²

¹ In the case of *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors* [2012] 1 MLJ 832, the Court held that CEDAW is a binding instrument and the word gender is incorporated into Article 8(2) of the FC in order to comply with Malaysia's obligation under the Convention. The court opined that since Malaysia has become a party to CEDAW therefore, it has the force of law and is binding on all Member States.

² Malay Mail Online. *Minister now says Gender Equality Act in the works*, Retrieved from <http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality-act-in-the-works> (Accessed on 15 March 2018).

- A.6. There are concerns regarding the interpretation of equality under the proposed legislation insofar as the interpretation may not be compatible with the requirements of the constitutional provisions. MACSA urges the Government to be mindful of this. It is to be noted that Malaysia has several reservations towards CEDAW, regarding Article 5(a),³ Article 7(b),⁴ Article 9,⁵ and Article 16.⁶
- A.7. Between November 2017 and January 2018, MACSA was also involved in various discussions on the possibility of Malaysia's accession to the Convention Against Torture (CAT). In relation to this issue, MACSA has met with His Excellency Mr. Abdel Wahab Hany, member of the Committee against Torture and the Association for the Prevention of Torture Geneva and SUHAKAM.

B. Marginalization of Communities from Economic, Social and Cultural Developments

- B.8. **Stateless People:** It is reported that currently there are nearly 300,000 stateless children residing in Malaysia.⁷ Statelessness denies their rights to work, travel, enrolment to public schools,⁸ access to public healthcare and participation in election,⁹ as well as increasing their risk of arrest, detention, discrimination, abuse, exploitation, and human trafficking.¹⁰ *For more details, refer to Reports by **CONCERN (Appendix A)** and **CENTHRA (Appendix B)**.*
- B.9. **Recommendations:**
- I. Accede to the Convention Relating to the Status of Stateless Persons 1954
 - II. Form Special Task Force under National Security Council to look into appropriate mechanism with the aim of granting citizenship to stateless persons
 - III. Respect the principles of international humanitarian law in regards to having access to education and healthcare

³ On the need to modify social and cultural patterns and conduct between men and women.

⁴ On the participation of women at all levels of government.

⁵ On the acquisition of nationality.

⁶ On the eliminate discrimination against women in all matters relating to marriage and family relations.

⁷ Free Malaysia Today. *Almost 300,000 stateless children in Malaysia*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2016/10/31/almost-300000-stateless-children-in-malaysia/> (Accessed on 23 November 2017).

⁸ Surail bin Abdul Kahar @ Eting Yazid bin Noh; Lajulliadi Bin Lajahidi; Rashidah Binti Omar, Education Intervention in the Rural Muslim Village of Sabah: Case Studies in the Rural Muslim Community in Eastern Sabah Security Command (ESSCOM) Zone, Mukim Tembisan, *The 10th Borneo Islamic International Conference 2017, Universitas Mulawarman Samarinda, Kalimantan Timur Indonesia*, 2017.

⁹ Allerton, C., Contested Statelessness in Sabah, Malaysia: Irregularity and the Politics of Recognition, *Journal of Immigration and Refugee Studies*, 2017.

¹⁰ Reuters. *Exclusive: More than 100 die in Malaysian immigration detention camps in two years*. Retrieved from <https://www.reuters.com/article/us-malaysia-detention-deaths/exclusive-more-than-100-die-in-malaysian-immigration-detention-camps-in-two-years-idUSKBN1710GR> (Accessed on 10 November 2017).

B.10. Refugees: There is no domestic law governing refugees' position, whereby Malaysia has not acceded the Refugee Convention,¹¹ and its Protocol.¹² As at the end of February 2018, there were 154,400 refugees and asylum seekers registered with the UNHCR in Malaysia upon which 68,510 (44.3%) are Rohingyas.¹³ They have no access to legal status, legal protection, lawful employment, as well as formal education, and are at constant risk of arrest, detention, deportation and exploitation.¹⁴ Despite the Government's recent policy allowing registered 300 Rohingya refugees to work in plantation sectors,¹⁵ however the initiative was not received well by the Rohingyas as they prefer to stay within their own community.¹⁶ For more details, refer to Report by **CENTHRA (Appendix B)**.

B.11. Recommendations:

- I. Accede to the Refugee Convention and Refugee Protocol
- II. Provide free elementary education in public schools
- III. Enact domestic law to regulate the registration and safeguard the basic rights of the refugees within the scope of the Refugee Convention
- IV. Provide resettlement program with cooperation from CSOs and UNHCR

B.12. Victims of Human Trafficking: From January - July 2017, there were 254 trafficking in persons (TIP) related cases.¹⁷ There were a total of 147 convictions for TIP in 2017.¹⁸ In 2015, police uncovered 139 graves and rescued 28 persons abandoned by a human trafficking ring targeted Rohingyas and Bangladeshis along the Malaysia-Thailand border (Wang Kelian).¹⁹ 12 Royal Malaysia Police officers were arrested for possible collusion with the trafficking ring, but in March 2017 it was reported that all 12 officers were released.²⁰ Thailand on the other hand, has handed

¹¹ Convention Relating to the Status of Refugees 1951.

¹² Protocol Relating to the Status of Refugees 1967.

¹³ UNCHR. *Figures at a Glance in Malaysia*. Retrieved from <http://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html> (Accessed on 23 March 2018).

¹⁴ Straits Time. *Rohingya refugees in Malaysia: Time for policy rethink*. Retrieved from <http://www.straitstimes.com/opinion/rohingya-refugees-in-malaysia-time-for-policy-rethink> (Accessed on 2 November 2017); **and** Fieldwork to Cox Bazaar, Bangladesh circa February 2017 by Zarina Othman and Mahbul Haq.

¹⁵ Malay Mail Online. *Putrajaya To Provide Work Permits, Skills Training For Rohingyas*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/putrajaya-to-provide-work-permits-skills-training-for-rohingyas> (Accessed on 23 November 2017).

¹⁶ Channel News Asis. *Rohingya refugees to be allowed to work in Malaysia from March*. Retrieved from <https://www.channelnewsasia.com/news/asiapacific/rohingya-refugees-to-be-allowed-to-work-in-malaysia-from-march-7538444> (Accessed 23 March 2018); **and** Discussion with Chief Director, Malaysia National Security Council on 20 October 2017; **and** Zarina Othman, Bakri Mat and Salawati Mat Basir, *Humanitarian Issues: Survival of Ethnic Rohingyas in Malaysia between 2016 - 2018*, Research Report GUP-2016-031, 2018.

¹⁷ Free Malaysia Today. *Human trafficking: 254 cases taken to court this year, 67 convictions*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/07/17/human-trafficking-254-cases-taken-to-court-this-year-67-convictions/> (Accessed on 23 November 2017).

¹⁸ New Straits Times. *Higher convictions of 147 for human trafficking cases last year*. Retrieved from <https://www.nst.com.my/news/crime-courts/2018/01/326846/higher-convictions-147-human-trafficking-cases-last-year> (Accessed on 15 March 2018).

¹⁹ The Diplomat. *The Plight of Rohingyas in Malaysia*. Retrieved from <https://thediplomat.com/2017/09/the-plight-of-rohingyas-in-malaysia/> (Accessed on 6 November 2017).

²⁰ MalaysiaKini. *Cops nabbed in Perlis mass graves case released as no evidence*. Retrieved from <https://www.malaysiakini.com/news/376377> (Accessed on 23 November 2017).

down severe sentences to an army general, two provincial politicians, and 59 others, in the same case.²¹ We are concerned with the lack of seriousness shown by the Government in resolving the matter. *For more details, refer to Report by CENHRA (Appendix B).*

B.13. Recommendations:

- I. Coordinate among the enforcement offices to fully implement the laws under Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670)
- II. Establish "Wang Kelian Royal Commission Inquiry" to reinvestigate the matter

C. Rights of Persons with Disabilities

C.14. Jobs & Subsistence: Only 0.26% of disabled people are working in the civil service.²² This is far below the 1% quota set by the Government for employment among disabled peoples in civil service via Government Circular No. 3/2008 (Employment Quota Circular).²³ Disabled people also encounter psychological stress at the workplaces due to the prejudices and underestimation of their abilities. Most private corporations are not providing job opportunities to disabled persons as some changes have to be made at workplace to ensure the safety of disabled persons and consequently, this requirement entails extra expenditures.²⁴

C.15. Purchasing Insurance & Properties: Insurance coverage for personal safety is limited for disabled persons because the insurance companies do not want to manage the risk of insuring a disabled person.²⁵ The difficulty of disabled people in buying a property is due to their income. The existing housing schemes are not inclusive to accommodate the needs of disabled people.

²¹ The Guardian. *Thailand convicts traffickers after 2015 mass graves discovery*. Retrieved from <https://www.theguardian.com/world/2017/jul/19/thailand-convicts-dozens-of-traffickers-after-mass-graves-discovery> (Accessed 23 November 2017).

²² The Star. *Chance of employment for those with disabilities*. Retrieved from <https://www.thestar.com.my/news/nation/2017/04/14/chance-of-employment-for-those-with-disabilities/> (Accessed on 9 March 2018).

²³ Government Circular No. 3/2008: The Implementation of a One-Percent Employment Quota System for the Employment Of Persons With Disabilities.

²⁴ Series of interviews with Association of Blind Muslims Malaysia (Persatuan Orang Cacat Penglihatan Islam Malaysia, "PERTIS") on 5 January 2018.

²⁵ The Edge Markets. *Allianz Malaysia launches product for persons with disabilities*. Retrieved from <http://www.theedgemarkets.com/article/allianz-malaysia-launches-product-persons-disabilities> (Accessed on 12 January 2018).

- C.16. **Misuse of Basic Facilities for Disabled Persons:** Most of the facilities for disabled peoples have been misused by abled members of the society.²⁶ Vehicles, especially motorcycles, are parked on the special route reserved for the blind.²⁷ The public transportation system is not friendly to the disabled people²⁸ while their facilities do not meet the safety-standards for disabled people.²⁹ Most accidents occurring in public places, such as falling on train tracks,³⁰ involved visually impaired persons.³¹

*For more details on **Rights of Persons with Disabilities**, refer to Report by PERTIS (Appendix C).*

C.17. **Recommendations:**

- I. Ensure full compliance with CRPD and the implementation of policies relating to disabled people
- II. Withdraw Malaysia's reservation on Article 15 of CRPD and to ratify the Optional Protocol
- III. Amend Articles 8 (2) and 12 (1) of the FC to eliminate discrimination based on disability
- IV. Amend Act 685 to include provisions on sanctions and enforcement
- V. Enact a specific legislation to regulate against discrimination of disabled people in workforce
- VI. Enforce Employment Quota Circular and to extend its application to private sector

D. Discrimination Based on Beliefs

- D.18. **Rights to Build Place of Worship in Sabah:** While Article 11(3) of the FC guarantees the rights of every religious group to establish and administer their own religious institutions, there have been reported cases of refusal from certain state/district authorities to allow Muslim communities from building and maintaining their own places of worship, in areas where they are the minority. *For more details, refer to Report by CONCERN (Appendix A).*

²⁶ New Straits Times. *Toilets for disabled misused at LRT stations*. Retrieved from <https://www.nst.com.my/news/2017/03/206319/actionline-toilets-disabled-misused-lrt-stations> (Accessed on 30 January 2018).

²⁷ The Star. *Showing no consideration*. Retrieved from <https://www.thestar.com.my/metro/community/2017/03/10/showing-no-consideration-many-ablebodied-malaysians-misuse-parking-bays-and-facilities-meant-for-the/> (Accessed on 30 January 2018).

²⁸ Berita Daily. *MRT stations not designed with the disabled in mind*. Retrieved from <https://www.beritadaily.com/mrt-stations-not-designed-with-the-disabled-in-mind/> (Accessed on 30 January 2017).

²⁹ Yuhainis Abdul Tali, Nurul Izzati Abdul Ghani, Kharizam Ismail and Nor'Aini Salleh (2016) The Provision of the Disabled Facilities in Public Hospitals, *The 4th International Building Control Conference*, 2016.

³⁰ Malay Mail Online. *Blind Man Falls On Train Track*. Retrieved from <http://epaper.mmail.com.my/2017/03/30/blind-man-falls-on-train-track/> (Accessed on 30 January 2018).

³¹ The Star. *Close call for wheelchair-user at LRT station*. Retrieved from <https://www.thestar.com.my/metro/community/2017/07/06/close-call-for-wheelchair-user-at-lrt-station/> (Accessed on 30 January 2018).

D.19. Recommendations:

- I. Call for the relevant authorities to action by immediately according the necessary approvals to the Muslim community to build Mosques and Community Centres
- II. Call for the necessary authorities to take action, including by initiating disciplinary proceedings, against the officers of any Local Municipality Authority, who deliberately refused to abide by the state authority's decision in granting approval for the building of the place of worship.

D.20. LGBT's Rights to Religion: Spiritual need is a form of religious right to LGBT community which has been consistently denied by the society.³² Issues of sexual orientation and gender identity should be addressed in accordance with religious guidance. Studies in Malaysia showed that about 80% of transgenders are Muslims.³³ Initiative by the Islamic Development Department of Malaysia (JAKIM) was met with vehement criticism,³⁴ as it is tantamount to denial and discrimination against the religious rights of LGBT persons. The *Manual Islam and Mak Nyah* by JAKIM aims to remove stigma and discrimination surrounding the LGBT people. However, it lacks guidelines and information on gender sensitization for Islamic authorities. The guidelines is important because previous studies have suggested that fusion of religious elements could benefit people in terms of psychological and physical health.³⁵ There have also been attacks against academics and institutions dedicated in studying and advocating religious and health rights of LGBT persons.³⁶ *For more details, refer to Report by I-Medik (Appendix D).*

D.21. Recommendations:

- I. Provide gender-sensitization and human rights training to religious authorities
- II. For religious authorities, to formulate guidelines on gender-sensitization
- III. Educate the Malaysian communities to respect the religious rights of the LGBT community

³² Malaysian Digest. *I Was A "Mak Nyah" And Rehab Made Me See How Far I Have Strayed Away From My Religion*. Retrieved from <http://malaysiandigest.com/frontpage/282-main-tile/577124-i-was-a-mak-nyah-and-rehab-made-me-see-how-far-i-have-strayed-away-from-my-religion.html> (Accessed on 8 March 2018).

³³ Teh YK, HIV-Related Needs For Safety Among Male-To-Female Transsexuals (Mak Nyah) in Malaysia, *SAHARA: Journal of Social Aspects of HIV/AIDS Research Alliance*, 2008; and Wei CL, Baharuddin A, Abdullah R, Abdullah Z, Ern KPC, Transgenderism in Malaysia, *Journal of Dharma*, 2012.

³⁴ Malay Mail Online. *Jakim's 'spiritual camp' tried to 'change' us, lament Muslim transgenders*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/jakims-spiritual-camp-tried-to-change-us-lament-muslim-transgenders#fUwj104Ep7WdWkGm.97> (Accessed on 8 March 2018).

³⁵ McCullough ME, Willoughby BL., Religion, Self-Regulation, and Self-Control: Associations, Explanations, And Implications, *Psychological Bulletin*, 2009; and Elifson KW, Klein H, Sterk CE., Religiosity and HIV Risk Behavior Involvement Among "At Risk" Women, *Journal of Religion and Health*, 2003; and Miller WR, Thoresen CE., Spirituality, Religion, and Health: An Emerging Research Field, *American Psychologist*, 2003.

³⁶ Malay Mail Online. *Public funds must not be used to create harmful educational environments — Justice for Sisters*. Retrieved from <http://www.themalaymailonline.com/what-you-think/article/public-funds-must-not-be-used-to-create-harmful-educational-environments-ju> (Accessed on 9 March 2018).

D.22. **Discrimination against Muslim Men at the Workplace:** Many Muslim employees are denied the right to perform Friday Prayers, and other daily prayers.³⁷ While Article 11 of the FC provides for the freedom to practise one's religion, the Malaysian Court however has held that the fundamental rights protected under the FC are only enforceable against a public body, and not against private sectors.³⁸ *For more details, refer to Report by CLJ (Appendix E).*

D.23. **Recommendations:**

- I. Extend the Constitutional protection to be enforceable against private entities
- II. Introduce laws that penalize private entities that deny religious rights of employees
- III. Amend Act 265 by inserting a provision prohibiting any employers preventing Muslim workers to perform any prayer

D.24. **Discrimination Towards Obligatory Headscarves:** Muslim women in particular suffer from discrimination in employment due to denial of their choice in wearing headscarves in accordance with their religious teachings. *For more details, refer to Report by WAFIQ (Appendix F).*

D.25. **Recommendations:**

- I. Fortify the existing Act 265, the Industrial Relations Act 1967 (Act 177), and Part VI of the Occupational Safety And Health Act 1994 (Act 514) by providing more protections against gender-based discrimination
- II. Enact Equality Act in strict compliance with domestic law and taking into account of the cultural sensitivities in the Malaysian society

D.26. **Discrimination Towards Muslim Reverts:** Many Muslim reverts (*muallaf*) face discrimination at workplace.³⁹ There are perceptions by certain segments within the society that when one embraces the religion of Islam, he becomes a Malay by race.⁴⁰ Muslim reverts also face rebuke from their own parents and family. *For more details, refer to Report by ACCIN (Appendix G).*

³⁷ New Straits Times. *NGOs want gov't to create anti-discrimination law*. Retrieved from <https://www.nst.com.my/news/nation/2017/11/304352/ngos-want-govt-create-anti-discrimination-law> (Accessed on 17 November 2017); and Malay Digest. *After Hijab Ban In Hotels, Shocking Confessions From Employees Reveal Religious Discrimination That Prohibits Them From Praying*. Retrieved from <http://www.malaysiandigest.com/frontpage/282-main-tile/723795-after-hijab-ban-in-hotels-shocking-confessions-from-employees-reveal-religious-discrimination-that-prohibits-them-from-praying.html> (Accessed on 20 February 2018).

³⁸ *Beatrice AT Fernandez v Sistem Penerbangan Malaysia & Anor* [2005] 2 CLJ 713.

³⁹ Series of interviews conducted by Allied Coordinating Committee of Islamic NGO's (ACCIN) with Muslim reverts between 2017 - 2018.

⁴⁰ Astro Awani. *What we can learn from Muslim converts in Malaysia*. Retrieved from <http://english.astroawani.com/malaysia-news/what-we-can-learn-muslim-converts-malaysia-151800> (Accessed on 9 March 2018).

D.27. **Recommendations:**

- I. Enact anti-discrimination laws at work place
- II. Provide a more comprehensive support system for Muslim reverts

E. **Women, Children & Sexuality**

E.28. **Sexual Harassment:** A study by WAFIQ with collaboration with local University showed that among 402 working women respondents aged 18-60 years old, as many as 33.7% have been sexually harassed in the form of unwelcome sexual connotations, glances, gestures and comments, and 32.6% experienced unwelcome conscious body contact. Majority of the women did not make any formal complaint as they felt the current legal redress is inadequate to protect them.⁴¹ *For more details, refer to Report by WAFIQ (Appendix F).*

E.29. **Recommendations:**

- I. Enact Equality Act to protect women's rights in the workplace, taking into account of the cultural sensitivities in the Malaysian society
- II. Fortify the procedures to deal with sexual harassment at workplace in Act 265 & Act 177
- III. Enact Sexual Harassment Act that includes Code of Practice, with clearer and more comprehensive definition of sexual harassment

E.30. **Discrimination against LGBT People:** Transgender in Malaysia faces discrimination in seeking employment. As a result, 86.6% of them are reportedly involved as sex workers.¹ Involvement in sex trade exposes them to HIV infection and sexual transmitted diseases.⁴² Data in 2016 shows homosexuals predominate the number of new HIV infection cases.⁴³ *For more details, refer to Report by I-Medik (Appendix D).*

E.31. **Recommendation:**

- I. Provide entrepreneurship incentives and loans in starting business or assistance in getting job to get out from the sex trade

⁴¹ New Strait Times. *Time for a sexual harassment act?*. Retrieved from <https://www.nst.com.my/opinion/columnists/2017/07/256939/time-sexual-harassment-act> (Accessed on 23 November 2017).

⁴² Gibson BA, Brown S-E, Rutledge R, Wickersham JA, Kamarulzaman A, Altice FL. Gender Identity, Healthcare Access, And Risk Reduction Among Malaysia's Mak Nyah Community, *Global Public Health* (2016) 1-16.

⁴³ MalaysiaKini. *Report: M'sia among top 10 Asia-Pacific nations with new HIV cases*. Retrieved on <https://www.malaysiakini.com/news/389509> (Accessed on 4 December 2017).

E.32. **Child Marriages:** Child-marriage is defined as marriage below 16 years of age, which requires the approval of a Shariah Court judge for Muslims,⁴⁴ or from State Chief Ministers for non-Muslims.⁴⁵ We are concerned with the high number of applications for child marriage submitted to and approved by the Shariah Courts, using mere discretion. Even though the law makes it compulsory to apply for permission prior to getting married for those under sixteen, there is no detailed procedures for such application. This has resulted in abuse of the system.⁴⁶ There has also been outcry of cases where rape victims were forced to marry their rapists.⁴⁷ *For more details, refer to Report by WAFIQ (Appendix F).*

E.33. **Recommendations:**

- I. Review the application process for marriages involving underage parties
- II. Enact laws to mandate consent of the parent, parents or guardian of the bride and a confirmation letter from the Attorney-General Chamber of any impending investigation and/or criminal charges in any application for underage marriage

E.34. **Dissolution of Marriage by Women (*Fasakh*):** According to statistics, in 2015 (until November) alone, there are about 590 cases of domestic violence cases in Malaysia. From this number, about 327 cases involves Muslims. *Fasakh* is seen as one way out of marriage for those suffering from violence in the marriage. However, it takes a long time for Syariah Court judges to adjudicate the *Fasakh* cases. *For more details, refer to Report by WAFIQ (Appendix F).*

E.35. **Recommendations:**

- I. For the state governments to amend various laws to allow for interim applications based on domestic violence to be heard by way of Ex Parte
- II. Regulate a Standard Operating Procedure applicable on all relevant agencies as to expedite the process of hearing *fasakh* applications that are filed on the basis of domestic violence

E.36. **Protection for Children:** UNICEF revealed in its study that levels of poverty and malnutrition among children living in low cost housing in Kuala Lumpur Malaysia are alarming.⁴⁸ *For more details, refer to Report by WAFIQ (Appendix F).*

⁴⁴ In Malaysia, different states enact their respective Shariah Enactments. For example of such enactments, please refer to Section 8 of the Islamic Family Law (Federal Territory) Act 1984.

⁴⁵ Section 10 of the Law Reform (Marriage And Divorce) Act 1976 (Act 164).

⁴⁶ Malay Mail Online. *Keep Shariah courts' discretion on child marriages but make it stricter, lawyers say*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/keep-shariah-courts-discretion-on-child-marriages-but-make-it-stricter-law>

⁴⁷ Malay Mail Online. *Minister: Girl married to her rapist is living with parents*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/minister-girl-married-to-her-rapist-is-living-with-parents> (Accessed on 23 November 2017).

⁴⁸ UNICEF. *Children living in poverty: unseen, but among us*. Retrieved from https://www.unicef.org/malaysia/media_urban_child_poverty.html (Accessed on 8 March 2018).

E.37. Recommendations:

- I. To revisit poverty indicators, that include the nutritional status of children and relative income poverty
- II. To ensure promotion of exclusive breastfeeding for at least six months
- III. To implement policies that facilitate access to nutritious food

E.38. Exposure to Pornographic Materials: It was reported that 37% of Malaysian parents felt their children's online life was interfering with their home and school obligations while 18% said their children were sacrificing basic social activities.⁴⁹ We are concerned with the recent trend where minors are found to be emulating sexual acts as more of them are exposed to pornographic materials.⁵⁰ *Refer to Report by **WAFIQ (Appendix F)**.*

E.39. Recommendation:

- I. The Malaysian Communication and Multimedia Commission (MCMC) should respond to this aggressively by reviewing its regulatory actions to curb cases of pornography exposure

E.40. Discrimination against Parental Rights of Muslim Reverts: A Muslim revert faces difficulty in having equal rights to the custody and upbringing of his non-Muslim children. The court has taken a simplistic approach by insisting for the consent of both parents before a child could be converted.⁵¹ Such a requirement amounts to stripping away the fundamental right of the reverted parent to determine the upbringing of the child. This is in direct contradiction to an earlier court decision.⁵² *For more details, refer to Report by **ACCIN (Appendix G)**.*

E.41. Recommendations:

- I. For the civil & Syariah law to be interpreted in a more harmonious approach for determination of disputes between Muslim reverts and their non-Muslim spouses
- II. Ensure that the issue of custody and religious upbringing of the children are determined based on a case to case basis
- III. Ensure welfare of the children is taken as a vital consideration in determining custody battles between Muslim reverts and their Non-Muslim spouses, as opposed to a blanket ban on unilateral conversion

⁴⁹ The Star. *Exposure to pornography*. Retrieved from <https://www.thestar.com.my/news/nation/2016/10/07/internet-addiction-on-the-rise-among-malaysian-youths-enough-evidence-to-show-links-to-anxiety-decre> (Accessed on 8 March 2018).

⁵⁰ Malay Mail Online. *Students caught having sex in school toilet*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/students-caught-having-sex-in-school-toilet> (Accessed on 23 November 2017).

⁵¹ Malay Mail Online. *Simplified: The Federal Court's groundbreaking Indira Gandhi judgment*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/simplified-the-federal-courts-groundbreaking-indira-gandhi-judgment> (Accessed on 15 March 2018).

⁵² *Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals* [2008] 2 CLJ 1.

F. Rights to Life

F.42. **Condition of Prisons & Detention Centres:** Despite our request for details of the prisons conditions, the Prison Department (PRIDE) was not entirely forthcoming.⁵³ Malaysia is facing an emerging prospect of prison overcrowding with over 50,000 prisoners currently serving jail terms across the country.⁵⁴ The main concern is lack of medical care in prison and its relation to custodial death. Many prisons and detention centres have no medical officer in-charge. Overcrowding, poor ventilation, poor hygiene, lack of food, recreational and leisure may amount to degrading and inhumane punishment or treatment.⁵⁵ Although PRIDE has implemented alternatives to address the issue,⁵⁶ however it is inefficiently implemented. *For more details, refer to Report by CENTHRA (Appendix B).*

F.43. **Recommendations:**

- I. For PRIDE to be more open in publishing relevant statistics and data relating to the prison conditions
- II. Ensure the efficiency of implementation of measures to improve the condition of prisons and to protect the rights of prisoners in accordance with the relevant International Standards

F.44. **Violence against Incarcerated Transgenders:** There has been reports on transgender people being physically and sexually assaulted by enforcement officers.⁵⁷ It is reported that placing transgender prisoners with men due to the legal status of their sex could lead to them being sexually abused or raped.⁵⁸ *For more details, refer to Report by I-Medik (Appendix D).*

F.45. **Recommendations:**

- I. Regulate a standard operating procedure (SOP) on the treatment of transgender prisoners to ensure they are treated fairly and lawfully

⁵³ Interview conducted by CENTHRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department on 13 March 2018.

⁵⁴ New Strait Times. *With over 50,000 prisoners, M'sia faces impending jail overcrowding crisis.* Retrieved from <https://www.nst.com.my/news/nation/2018/01/329323/over-50000-prisoners-msia-faces-impending-jail-overcrowding-crisis> (Accessed on 15 March 2018).

⁵⁵ The Star. *Suhakam: Reforms underway at immigration detention centres.* Retrieved from <https://www.thestar.com.my/news/nation/2017/04/01/suhakam-immigration-detention-centres-undergoing-major-reforms/> (Accessed on 15 March 2018).

⁵⁶ Interview conducted by CENTHRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department on 13 March 2018.

⁵⁷ Human Rights Watch. *"I'm Scared to Be a Woman": Human Rights Abuses Against Transgender People in Malaysia.* Retrieved from <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia> (Accessed 8 March 2018).

⁵⁸ Free Malaysia Today. *Suhakam calls for SOP on transgender prisoners.* Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/05/30/suhakam-calls-for-sop-on-transgender-prisoners> (Accessed on 8 March 2018).

- II. For Prisons Department to have gender-sensitization training for selected staff to ensure the security and protection of transgender prisoners, as well as to address their special needs in prisons

G. National Unity

G.46. **Cultural Rights:** Malaysia is a plural society, where the legitimate interests of all communities are provided for and are constitutionally protected.⁵⁹ However, there have been significant number of clashes caused by differences of ideologies where the cultural rights of certain societies are being ridiculed,⁶⁰ criticized,⁶¹ and disparaged.⁶² This is due to refusal of significant segments of Malaysian society to adopt a national identity,⁶³ with due respect of its historical heritage,⁶⁴ and the provisions in the FC.⁶⁵

G.47. **Recommendations:**

- I. Respect the cultural rights of all societies in accordance with the constitutional provisions
- II. Enforce the Malaysian National Culture Policy of 1971

G.48. **National Language:** The challenges in unifying Malaysians remain a pressing concern especially considering there is a strong distrust among the ethnics, where the civil service that is dominated by a certain ethnic while the private sectors are monopolized by certain other ethnic.⁶⁶ This is perpetuated by the policies of the government,⁶⁷ which have allowed the continued existence of segmented societies via its education system in vernacular schools.⁶⁸ These schools have fragmented the societies

⁵⁹ Malay Mail Online. *Bumiputera: Are you one? Or can you 'become' one in Malaysia?*. Retrieved from <http://www.themalaymailonline.com/print/malaysia/bumiputera-are-you-one-or-can-you-become-one-in-malaysia> (Accessed on 23 November 2017).

⁶⁰ Free Malaysia Today. *Is Islamophobia slowly creeping into Malaysian society?*. Retrieved from <http://www.freemalaysiatoday.com/category/opinion/2017/09/24/is-islamophobia-slowly-creeping-into-malaysian-society/> (Accessed on 3 February 2018).

⁶¹ Malay Mail Online. *Bumiputera no longer need a leg up... or do they?*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/bumiputera-no-longer-need-a-leg-up-or-do-they> (Accessed 3 February 2018).

⁶² Free Malaysia Today. *Ritual slaughter lesson at school ground shocks parents, students*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2016/10/14/ritual-slaughter-lesson-at-school-ground-shocks-parents-student/> (Accessed 23 November 2017).

⁶³ Malaysian Insight. *Malay-language activists say 'no' to English schools, insist Singapore poll flawed*. Retrieved from <https://www.themalaysianinsight.com/s/23996/> (Accessed on 3 February 2018).

⁶⁴ The Star. *Soul searching on Malaysia's cultural identity*. Retrieved from <https://www.thestar.com.my/news/nation/2017/10/29/soul-searching-on-malysias-cultural-identity-with-arts-earmarked-as-an-important-asset-for-the-coun/> (Accessed 3 February 2018).

⁶⁵ Sun Daily. *Unity and integration*. Retrieved from <http://www.thesundaily.my/news/2018/02/05/unity-and-integration> (Accessed on 8 March 2018).

⁶⁶ MalaysiaKini. *MCA boss admits Chinese community, gov't distrust each other*. Retrieved from <https://www.malaysiakini.com/news/384756> (Accessed 23 November 2017).

⁶⁷ There are 1,298 vernacular schools out of 7,773 government-assisted primary schools, where children as early as 7 years old are segregated based mainly on their races.

⁶⁸ Malay Mail Online. *BM proficiency key to national unity, language expert says*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/bm-proficiency-key-to-national-unity-language-expert-says> (Accessed 23 November 2017).

based on ethnicity,⁶⁹ and marginalized the communities from participating economically.⁷⁰ There were also instances where the ideals to achieve national unity,⁷¹ based on the constitutional and legal provisions were attenuated.⁷²

G.49. **Recommendation:**

- I. To enhance national unity by setting up national schools based on Bahasa Melayu as its dominant medium of instruction, where multi-ethnic school-goers are given the opportunity to interact and integrate.

G.50. **Interfaith Tolerance:** There have been cases where Christian Bibles in the Malay language were banned by the Malaysian government.⁷³ The contentious issue has been on the usage of the holy term 'Allah' to refer to the concept of God within the trinity concept of the Christian's faith, in the Malay language. There are currently at least two pending cases in Court, brought by one Jill Ireland Lawrence Bill and Sidang Injil Borneo, wherein the issue being disputed is on the right of the Christian community to use the term 'Allah' as translation of the word God in the Malay language.⁷⁴ Previously the Titular Roman Catholic Archbishop of Kuala Lumpur had also filed similar challenge.⁷⁵ The Court of Appeal in that case held that the Minister of Home Affairs had not acted inappropriately in exercising its discretion to prohibit the use of the term 'Allah' in the Malay publication of the Catholic Archbishop.⁷⁶ The reservation is because the term is very much associated with the Islamic faith that perceives the concept of trinity as against the teachings of Islam and against the definition of the term 'Allah' as defined by the Institute of Language and Literature [Dewan Bahasa dan Pustaka (DBP)]. There is fear that the use of certain terms that are associated with and are integral to the Islamic faith in the Malay language, such as 'Allah' in the Malay Bible, is a subtle attempt to

⁶⁹ Free Malaysia Today. *Malay Mandarin teachers not for Chinese schools, says ministry*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/04/20/education-ministry-malay-mandarin-teachers-not-for-chinese-schools/> (Accessed 23 November 2017).

⁷⁰ Malaysian Insight. *Majority of Chinese are low-income earners, says economist*. Retrieved from <https://www.themalaysianinsight.com/s/33423/> (Accessed on 23 November 2017); **and** Malaysian Insight. *Near-zero absolute poverty rate hides hardcore-poor Chinese*. Retrieved from <https://www.themalaysianinsight.com/s/33424/> (Accessed on 9 March 2018).

⁷¹ National University of Malaysia. *Research Found Malaysian Chinese Do Not Give Due Attention To Bahasa Malaysia Usage*. Retrieved from <http://www.ukm.my/news/archive/tahun-2014/mei-2014/research-found-malaysian-chinese-do-not-give-due-attention-to-bahasa-malaysia-usage/> (Accessed on 23 November 2017); **and** Sun Daily. *604 Chinese, Indian NS trainees cannot speak BM*. Retrieved from <http://www.thesundaily.my/news/1270251> (Accessed on 23 November 2017).

⁷² Malay Mail Online. *Most kids can already speak Malay, Chinese groups say*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/most-kids-can-already-speak-malay-chinese-groups-say> (Accessed on 23 November 2017).

⁷³ Free Malaysia Today. *JAIS raids bible society bibles*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2014/01/02/jais-raids-bible-society-bibles-seized/> (Accessed on 8 January 2017)

⁷⁴ Free Malaysia Today. *Court adjourns Sabah Church case on using 'Allah' in religious education*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/12/21/court-adjourns-sabah-church-case-on-using-allah-in-religious-education/> (Accessed on 8 January 2018).

⁷⁵ Malay Mail Online. *In Bumiputera Christian's constitutional challenge, court told 'Allah' not exclusive to Islam*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/in-bumiputera-christians-constitutional-challenge-court-told-allah-not-exclusive-7V4XyL06hTYuiIDZ.97> (Accessed 8 January 2018).

⁷⁶ *Menteri Dalam Negeri & Ors v Titular Roman Catholic Archbishop of Kuala Lumpur* [2013] 8 CLJ 890

propagate the Christian faith to the Malays, who by constitutional definition, are also Muslims, and thus breaching the restrictions provided by Article 11(4) of the FC. Some Malaysian Christians, on the other hand contend that they have the right to pray in the Malay language, and that the word 'Allah' is the Malay translation of the word 'God' in the English language. The authoritative body on the lexicology of the Malay language,⁷⁷ DBP, has been silent on the issue. The continued inaction and deafening silence on the part of DBP has caused the matter to be perceived as a constitutional crisis and infringement, which purportedly denies the Christian community their freedom of religion, and thus causing bitter division and hatred within Malaysia's multi-religious society.

G.51. Recommendations:

- I. Call on the Malaysian authorities to focus on the underlying scope, in addressing the issue. The contentious issue is specifically only on the alteration of the meaning of the holy name 'Allah', as understood in the Malay language, and not any other languages
- II. Call on DBP, as the authoritative body on the lexicology of the Malay language, to take a leading role in a national reconciliation initiative in resolving the issue with the presence of representatives from Christian communities

G.52. Shia: There have been complaints that certain practices of Shia sect in Malaysia, have the tendency of creating the atmosphere of animosity amongst the Sunni majority Muslims. These include the Shia practice of cursing the rightly guided companions of the Prophet Muhammad as being unworthy and deemed to be the worse of God's creatures who will go to hell, followers of satan and have cursed them in a prayer called "Two Idols of Quraish".⁷⁸ We are concerned that the issue of intersects relation within the Muslims majority of Malaysia is something that needs to be maintained harmoniously, so as to avoid clashes among the different followers.⁷⁹ The right to practice the religious doctrine of a particular sect must be balanced with the maintenance of unity, in consonant with the call made by the Human Rights Council in Resolution 16/18 to combat denigration of religion and religious figures.

G.53. Recommendation:

- I. For purpose of national unity and security, to regulate the freedom of the Shiah Community in accordance with domestic law and Resolution 16/18, and to ensure that no religious prominent figures such as the companions of the Prophets are allowed to be denigrated and/or defamed.

⁷⁷ Section 6A of the Dewan Bahasa dan Pustaka Act (Act 213) provides that DBP is the institution vested with the co-ordinating authority pertaining to composing, devising and standardizing of terminologies in the national language.

⁷⁸ Malaysian Digest. *Shiah Ideologies in Malaysia - Being Weary of its Threat*. Retrieved from <http://malaysiandigest.com/news/556999-shia-ideologies-in-malaysia-being-wary-of-its-threats.html> (Accessed 9 March 2018).

⁷⁹ Zarina Othman, Nor Azizan Idris, Bakri Mat. International Relations Theory from New Perspectives. The Rising of Persian Power, Shiite Doctrine and National Security of Malaysia. *Research Report* GS/1/2014/SS04/UKM/02/1, 2014.

For more details on **National Unity**, refer to Report by **CLJ (Appendix E)**.

H. Rights of Youth

H.54. **Free Education:** Under the Education Act 1966 (Act 550), primary school education is compulsory. Act 550 penalizes parents who fail for failing to send their children between 7 - 12 years old to school. Even though education in public schools are free, there are extra fees such fees for examinations and co-curricular activities, leading to financial burden to hardcore poor families.⁸⁰ Education for youths have barriers based on their academic results in the national examination system, whereby the vocational training are restricted only to those who meet their qualifying requirements.⁸¹ For more details, refer to Report by **PBM (Appendix H)**.

H.55. **Recommendations:**

- I. Provide for strategic financial assistance for hardcore poor families to send their children to primary schools
- II. Reevaluate the penalty imposed on parents who fail to send their kids to schools
- III. Allow admission to technical and vocational education on the basis of skills rather than academic requirements

H.56. **Housing:** The sharp increase in housing prices exceeding inflation growth has made houses unaffordable to the lower and medium-income earners. The increase in cost of living and a slow wage growth especially in the major urban areas have made it harder for youths to buy a house.⁸² For more details, refer to Report by **CAPE (Appendix I)**.

H.57. **Recommendations:**

- I. Address the inadequate supply of affordable houses for low and middle-income earners by incentivising Government-Linked Companies (GLCs) and other private developers to build more affordable houses
- II. Facilitate and encourage construction industry in using innovative and more cost-efficient methods of construction

⁸⁰ Malay Mail Online. Rising costs may force hardcore poor from school. Retrieved from <http://www.themalaymailonline.com/malaysia/article/rising-costs-may-force-hardcore-poor-from-school> (23 November 2017).

⁸¹ Malay Mail Online. *Lack of information hampers vocational training push*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/lack-of-information-hampers-vocational-training-push> (Accessed on 9 March 2018).

⁸² Malaysian Insight. *Hefty prices reason Malay youth delay buying homes*. Retrieved from <https://www.themalaysianinsight.com/s/40780/> (Accessed on 9 March 2018).

APPENDIX A CONCERN



Stakeholder Report by

Coalition of Sabah Muslim NGOs Council (CONCERN)
For Malaysia's Universal Periodic Review, 3rd Cycle, 2018

INTRODUCTION

1. Since its inception in 2006, CONCERN has been actively involved in human rights initiatives and other social activities, including engagements with various Muslim communities in Sabah. At present, CONCERN is made up of 20 members from various humanitarian and advocacy backgrounds.

VIOLATION AGAINST MUSLIMS' RIGHTS TO BUILD MOSQUES AND COMMUNITY CENTRES

2. Sabah is part of Malaysia and has adopted most of the pillars forming part and parcel of the Malaysian identity including adoption of Islam as state religion in 1973 under Article 5A of Constitution of the State of Sabah, in line with Article 3 of the Federal Constitution of Malaysia that enshrines Islam as the religion of the Federation.
3. Islam is the largest religion in Sabah; with 65% of its 3.5 million population are Muslims. However of late, there have been movements to underscore dissatisfaction among various religious communities by challenging these national and state identities.¹
4. CONCERN has received complaints from Muslims on discriminatory incidences against Muslim community, including the following:²
 - i. Non-Muslims prohibiting Muslims from practising Islamic culture;
 - ii. Muslim converts are prohibited from professing their religion in front of their families;
 - iii. Muslims are denied of their rights to perform Friday prayer;
 - iv. Muslim converts are denied of their rights to inherit family inheritance due to their conversion to Islam;
 - v. Muslims are not permitted to practise their customs and cultures fushioned with Islamic teachings.

¹ Santos, J. (16 Nov 2017) *No way to amend law on Islam as official religion of Sabah*. Retrieved from: <https://www.themalaysianinsight.com/s/23146/>

² Series of Interviews conducted by CONCERN with its members circa 2016 - 2017.

5. There are also reports where Muslims, who live in areas where they are the minorities, are denied of their rights to construct mosques. In most cases, the Muslims ended up forgoing their intention to build their place of worship after they faced objections from their communities.
6. In the District of Penampang, Kota Kinabalu, the Muslim community is the minority; while the majority are from the Christian faith. Since the formation of the Federation of Malaysia in 1963, the Muslims in the District had been trying to have and build a Mosque for the community living in the District, but were met with objections by the non-Muslim community who forms the majority.³
7. In the year 2008 Muslim Non-Governmental Organisations (NGOs) in the Penampang District bought a piece of land with the intention of building an Islamic Community Centre. However, the community surrounding the area objected, citing that the area is their sacred ancestral heritage.⁴
8. Despite the NGOs having complied with all of the legal requirements imposed onto them, including to submit various architectural plans, the consent to build the Centre seems to have been purposefully delayed by the local councils.
9. CONCERN has evidence to confirm that the State Town and Regional Planning Department had in the year 2016 approved and consented to the building of the Islamic Community Centre. However, the Local Municipality Authority withheld the letter of approval from the Central Board, and thus, to-date the Muslim Community in Penampang still cannot initiate the construction of their own place of Worship and/or Community Centre.⁵
10. Other similar situations are also happening across Sabah, where the Muslim community are in the minority. There are instances where the Muslim communities were not allowed to build mosques.

³ Malaysiakini (17 Mar 2015) *Residents upset over mosque in Penampang*. Retrieved from <https://www.malaysiakini.com/news/292221>

⁴ Sabahkini (17 Mar 2015) *No Necessity To Have A Mosque In The Middle Of Christian-Dominated Penampang*. Retrieved from <http://sabahkini.com/no-necessity-to-have-a-mosque-in-the-middle-of-christian-dominated-penampang/>

⁵ Vide **Appendix 1**: Letter dated 27 October 2017 from Sabah Town and Regional Planning Department, Kota Kinabalu Sabah Malaysia addressed to Penampang District Council stressing that the latter's refusal to grant consent to build Muslim Community Centre in the District of Penampang as being irrelevant and contravenes the decisions of LTown and Country Planning Board under Section 15 of Town and Country Planning Ordinance Cap.141.

RECOMMENDATIONS:

- A. To promote inter-religious harmony to the people of Sabah.
- B. To take actions against whoever politicizes or purposely ignites religious tension among different religious communities in Sabah.
- C. To call relevant authority to render approval without further delay.
- D. To call for the necessary authorities to take action against the officers of any Local Municipality Authority who deliberately refused to abide by the state authority's decision in granting approval for the building of the place of worship.

MARGINALIZATION OF BAJAU LAUT IN SEMPORNA

11. The total number of stateless persons in West Malaysia registered with the United Nations High Commissioner for Refugees (UNCHR) is within the range of 12,000 - 15,000.⁶ Malaysia has not ratified the 1951 Convention on Refugees and also the 1954 Convention on Stateless Persons.
12. Stateless children are denied of Malaysian citizenship due to various reasons, including that these children were born to parents from Indonesia, Philippines, and Myanmar, who are normally refugees or migrants without legal documents. Under Malaysian law, children of illegal migrants and refugees are automatically classified as undocumented by virtue of the irregular status of their parents.⁷
13. Statelessness denies their rights to travel, to attend government schools,⁸ and their access to public health care.⁹ With no official status

⁶ UNCHR (Accessed on 15 March 2018) *Ending Statelessness in Malaysia*. Retrieved from <http://www.unhcr.org/en-my/ending-statelessness-in-malaysia.html>

⁷ Muguntan Vanar, Ruben Sario, Stephanie Lee, Mazwin Nik Anis, Martin Carvalho, Yuen Meikeng, Hemananthani Sivanandam, Farik Zolkepli, Natasha Joibi, T. Avineshwaran, Akil Yunus, and Rahmah Ghazali, (4 Dec 2014) *RCI report: Record of birth for kids of stateless people*. Retrieved from <https://www.thestar.com.my/news/nation/2014/12/04/record-of-birth-for-kids-of-stateless-people/>

⁸ Surail bin Abdul Kahar @ Eting Yazid bin Noh; Lajulliadi Bin Lajahidi; Rashidah Binti Omar, Education Intervention in the Rural Muslim Village of Sabah: Case Studies in the Rural Muslim Community in Eastern Sabah Security Command (ESSCOM) Zone, Mukim Tembisan, *The 10th Borneo Islamic International Conference 2017, Universitas Mulawarman Samarinda, Kalimantan Timur Indonesia*, and Predeep Nambiar (12 Jan 2018) *More stateless children turned away from school*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2018/01/12/more-stateless-children-turned-away-from-school/>

and documentation, they are also at risk of detention and vulnerable to discrimination, abuse, exploitation and human trafficking.¹⁰ Stateless children are associated as “street children” and are seen as causing public nuisance.¹¹

14. These children are unable to trace their family ties to their parents’ country with many procedural hurdles serving as enduring problems for realization of their birth registration.¹²
15. With non-availability of the Philippine consulate in Sabah, birth and marriages are difficult to be registered. Consequently, without a valid marriage certificate from their parents, it is impossible for the stateless children to obtain a birth certificate. The Anti-Filipino sentiment, among Sabahan natives built around the historical claim of the Philippines on Sabah, discourages the authority to consider granting citizenship among stateless of Filipino decent.¹³

RECOMMENDATIONS:

- A. To accede the Convention Relating to the Status of Stateless Persons 1954.
- B. To initiate the process of granting citizenship to Bajau Laut community in accordance with domestic laws.
- C. To form a Special Task Force under National Security Council to look into appropriate mechanism with the aim of granting citizenship to the stateless persons.
- D. To respect the principles of international humanitarian law in regards to having access to education and health care.
- E. To ensure that the economic, social and cultural rights of the Bajau Laut community are protected based on humanitarian basis.

⁹ The Star (7 Jul 2015) *Look into the plight of Bajau Laut, urges NGO*. Retrieved from <https://www.thestar.com.my/news/nation/2015/07/07/look-into-the-plight-of-bajau-laut-urges-ngo/>

¹⁰ Al Jazeera (1 May 2015) *Sabah’s Invisible Children*. Retrieved from <https://www.aljazeera.com/programmes/101east/2015/04/sabah-invisible-children-150428090433383.html>

¹¹ Allerton, C. 2017. Contested Statelessness in Sabah, Malaysia: Irregularity and the Politics of Recognition. *Journal of Immigration and Refugee Studies*, 15 (3), 250-268.

¹² The Star (16 Apr 2015) *Solve issue of stateless folk to overcome immigrant woes*. Retrieved from <https://www.thestar.com.my/news/nation/2015/04/16/solve-issue-of-stateless-folk-to-overcome-immigrant-woes/>

¹³ Rodziana Mohamed Razali, Rohaida Nordin and Tamara Duraisingam, (2015) Migration and Statelessness: Turning the Spotlight to Malaysia. *Pertanika Journal of Social Science and Humanities*. Soc. Sci & Hum. 23 (5): 19-36.

APPENDIX B

CENTHRA



**CENTHRA SUBMISSION TO THE HUMAN RIGHTS COUNCIL FOR
MALAYSIA'S 3RD CYCLE IN THE UNIVERSAL PERIODIC REVIEW, 2018**

28th March 2018



CENTHRA SUBMISSION TO THE HUMAN RIGHTS COUNCIL FOR MALAYSIA'S 3RD CYCLE IN THE UNIVERSAL PERIODIC REVIEW, 2018

28th March 2018

INTRODUCTION

1. CENTHRA was formed as a research and advocacy group to provide an alternative global human rights perspective and to offer a more balanced view that is respectful of Abrahamic traditions.
2. CENTHRA strives towards the establishment of a more equitable human rights understanding where its implementation addresses conflicts with religious law, local customs and traditions, particularly with Islam, brought about by the existing Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, and the International Covenant on Economic and Social Rights (ICESR) 1966, which form the International Bill of Rights.
3. Since its establishment in 2014, CENTHRA has engaged with various human rights stakeholders, including Governmental agencies and functionaries, the Human Rights Commission of Malaysia (SUHAKAM) and Civil Society Organizations (CSOs) to promote as well as to conduct research and training on human rights understanding based on equity and compatibility with existing values and norms.
4. Within the UPR framework, CENTHRA was involved in consultative sessions with the Government, through the Ministry of Foreign Affairs, during which CENTHRA had given its comments and highlighted its concerns to the Government, including issues relating to the recommendations received in the last UPR Cycle, some of which are highlighted below.

STANDARDS IN INCARCERATION FACILITIES

Overcrowding in Prisons

5. Malaysia is facing an emerging prospect of prison overcrowding with over 50,000 prisoners currently serving imprisonment terms for various offences across the country.¹ Though the prisons are at present are not operating at more than full capacity, this issue must be addressed effectively in the present to avoid a crisis of overcrowding in the future.

¹ Halim Said (27 Jan 2018) *With over 50,000 prisoners, M'sia faces impending jail overcrowding crisis*. Retrieved from <https://www.nst.com.my/news/nation/2018/01/329323/over-50000-prisoners-msia-faces-impending-jail-overcrowding-crisis>

6. Overcrowding leads to other health issues,² caused by poor ventilation, poor hygiene, lack of food, as well as lack of recreational and leisure activities,³ causing adverse effects to be suffered by inmates who are supposed to be undergoing the rehabilitation process.
7. The Malaysia Prisons Department (PRIDE) has revealed that it has adopted Standard Operating Procedures (SOPs) to counter overcrowding in prisons.
8. These SOPs include PRIDE's initiatives to:
 - i. reallocate prisoners/detainees to the nearest prisons, which are below capacity;⁴
 - ii. conduct rehabilitation programmes outside prison walls such as the Community based Rehabilitation Programme (CRP) and parole probation system;⁵ and
 - iii. using Electronic Monitoring Devices (EMD), which allow for prisoners to serve sentences outside prisons.⁶
9. However, CENHTRA believes these initiatives are poorly implemented and ineffective in reducing the number of inmates in prison.

Religious Instruction and Education

10. CENHTRA is concerned with complaints regarding the implementation of the Prisons Regulations 2000, specifically regarding regulations under Parts 14 & 15 for religious instruction,⁷ and education in prisons.⁸

² Dr Milton Lum (20 Jul 2014) *Incarcerated health: Effective healthcare does not top the priority list in prisons*. Retrieved from <https://www.thestar.com.my/lifestyle/health/2014/07/20/effective-healthcare-does-not-top-the-priority-list-in-prisons/>

³ Lisa Goh (25 Aug 2013) *Opening doors to better segregation*. Retrieved from <https://www.thestar.com.my/news/nation/2013/08/25/opening-doors-to-better-segregation/>

⁴ Interview conducted by CENHTRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department on 13 March 2018.

⁵ New Straits Times (27 Sept 2017) *More than 17,000 prisoners completed parole since 2008 - Prison DG*. Retrieved from <https://www.nst.com.my/news/nation/2017/09/284493/more-17000-prisoners-completed-parole-2008-prison-dg>

⁶ Malay Mail Online (21 Dec 2015) *Over 200 under house arrest and strapped with electronic monitoring devices, says CID director*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/over-200-under-house-arrest-and-strapped-with-electronic-monitoring-devices>

⁷ Khairul Hamimah Mohamed Jodi, Mohd Afifuddin Mohamad & Mohammad Taquiuddin Mohamad (2015) *The Effectiveness Of Religious Programme: Analysis Of Spirituality Programme In Prison Among Muslim Female Inmates*. *Jurnal al-Tamaddun* 10 (2) 2015, 51-60.

⁸ Rebecca Rajaendram (9 Jul 2017) *Classes behind bars*. Retrieved from <https://www.thestar.com.my/news/education/2017/07/09/classes-behind-bars/>

11. Pursuant to Part 14 of the Prison Regulations 2000 enacted under section 67 of the Prison Act 1995 [Act 537], a prisoner has the right to receive religious instruction and education including access to religious books. Whereas under Part 15 of the Prison Regulations 2000, educational classes shall be arranged to accommodate prisoners, who wish to improve their education, and this includes the right to have access to suitable reading materials.
12. However, reports have revealed that Muslim prisoners are not getting adequate religious education,⁹ and prison libraries are not adequately stocked with reading materials.¹⁰

Legal Representation

13. A disproportionately high number of prisoners, namely 31%, are remand detainees who are awaiting trial. Of these, 82% of remand detainees are locals and 9 out of 10 remand detainees are male.¹¹
14. Although National Legal Aid Foundation (YBGK), Legal Aid Bureau (BBG) and Legal Aid Department (JBG) are assisting PRIDE in providing legal aid for the prisoners,¹² however, reports indicate that most detainees are not getting the legal assistance needed by them.¹³
15. There is shortage of legal counsels volunteering in the abovementioned programmes due to late payments to legal counsels resulting in fewer prisoners getting free legal aid from these schemes.¹⁴

Recommendations:

- i. To adopt and implement necessary measures to improve the condition of prisons and to protect the rights of prisoners in accordance with the relevant International Standards and Norms (e.g. Mandela Rules, Tokyo Rules, Bangkok Rules, Havana Rules, and Beijing Rules);
- ii. To improve and integrate the implementation of educational programs facilitating rehabilitation of prisoners by ensuring adequate availability of religious classes and good reading materials in prison libraries; and

⁹ V Anbalagan (2 Feb 2017) *Lawyer: Muslim prisoners don't get adequate religious education*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/02/02/lawyer-muslims-prisoners-get-insufficient-religious-education/>

¹⁰ Qishin Tariq (25 Dec 2015) *Reaching out, page by page*. Retrieved from <https://www.thestar.com.my/news/nation/2015/12/25/reaching-out-page-by-page-groups-collect-books-for-prison-libraries/>

¹¹ Interview conducted by CENThRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department on 13 March 2018.

¹² Interview conducted by CENThRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department on 13 March 2018.

¹³ Ida Lim (18 Mar 2017) *Legal aid shrinking due to delayed payments, Malaysian Bar report says*. Retrieved from http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/legal_aid_shrinking_due_to_delayed_payments_malaysian_bar_report_says.html

¹⁴ V Anbalagan (26 Jan 2017) *Slow govt payment causes legal aid lawyers to refuse cases*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/01/26/slow-govt-payment-causes-legal-aid-lawyers-to-refuse-cases/>

- iii. To ensure detainees' rights to legal counsel are monitored and protected by ensuring proper and prompt payment to legal counsels involved in legal aid, among other measures to be considered.

STATELESSNESS

16. It is estimated that currently there are nearly 300,000 stateless children residing in Malaysia.¹⁵ It is not uncommon to read about cases of stateless children who are not granted Malaysian citizenship due to various reasons.
17. The statelessness of children denies their rights to travel, access the public health system,¹⁶ and attend public schools.¹⁷ With no official status and documentation, they are at risk of detention and vulnerable to discrimination, abuse, exploitation and human trafficking.

Peninsular Malaysia - Indians & Orang Asli

18. Approximately 20,000 undocumented Indians were born in Malaysia without birth certificates.¹⁸ Various factors including lack of knowledge and understanding of the importance of having documents causes them to be stateless in Malaysia.¹⁹ Some have faced numerous obstacles such as errors in their applications.
19. Orang Asli (the aborigines) in Malaysia also suffer from the same problem. Some of the children were born to parents from Indonesia, Philippines, and Myanmar, who are refugees or illegal migrants in this country.²⁰
20. In the Royal Commission of Inquiry (RCI) report findings, it was noted that children of illegal immigrants and refugees do not have access to even basic education and are often seen as causing public nuisance.²¹

¹⁵ Free Malaysia Today (31 Oct 2016) *Almost 300,000 stateless children in Malaysia*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2016/10/31/almost-300000-stateless-children-in-malaysia/>

¹⁶ Chiew Hui-Yee (6 Jul 2017) *'An invisible jail' - stateless children in Malaysia*. Retrieved from <https://www.malaysiakini.com/news/387600>

¹⁷ Low Sock Ken and Ian McIntyre (10 Jan 2018) *Govt red tape stops stateless children from attending school*. Retrieved from <http://www.thesundaily.my/news/2018/01/10/govt-red-tape-stops-stateless-children-attending-school-updated>

¹⁸ R. Tikamdas (2006) *The Right to Identity and Citizenship under the Constitution and International Law*, Kuala Lumpur, Malaysia, Statelessness: An Obstacle To Economic Empowerment Seminar.

¹⁹ Yahya Awang (2010) *Studies on the Problems Relating to the Identification Documents Among the Orang Asli of Peninsular Malaysia*, Centre for Malaysian Indigenous Studies; and Centre for Malaysian Indigenous Studies (2008) *Seminar Report on the Development of the Orang Asli Community: Challenges and Successes in Celebrating International Day of the World's Indigenous Peoples*, Centre for Malaysian Indigenous Studies.

²⁰ Free Malaysia Today (13 Mar 2018) *Move to allow cross-border marriage amnesty welcomed*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2018/03/13/move-to-allow-cross-border-marriage-amnesty-welcomed/>

²¹ Predeep Nambiar (12 Jan 2018) *More stateless children turned away from school*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2018/01/12/more-stateless-children-turned-away-from-school/>

Sarawak

21. The children from the Penan tribe in Sarawak share the same fate of Orang Asli children in Peninsular Malaysia. These children are born out of wedlock to Penan women due to illicit sexual intercourse with lodgers in the rural areas of Sarawak,²² and their births are not registered.²³

Recommendations:

- i. To accede to the Convention Relating to the Status of Stateless Persons 1954;
- ii. To introduce universal birth certificates and ensure that all stateless children are granted birth certificates with no child left behind;
- iii. To form a Special Task Force under National Security Council to investigate and formulate appropriate mechanisms with the aim of granting citizenship to stateless persons; and
- iv. To respect and implement principles of international humanitarian law regarding access to education and healthcare to stateless children

REFUGEES

22. There are presently 154,400 refugees and asylum seekers from 59 countries registered with the UNHCR living in Malaysia.²⁴ The top ten originating countries of refugees and asylum seekers are as shown in TABLE below:

| No. | Country | Amount |
|-----|-------------|---------|
| 1. | Myanmar | 133,725 |
| 2. | Pakistan | 3,548 |
| 3. | Sri Lanka | 2,328 |
| 4. | Yemen | 2,095 |
| 5. | Somalia | 2,062 |
| 6. | Syria | 1,980 |
| 7. | Iraq | 1,461 |
| 8. | Afghanistan | 1,028 |
| 9. | Palestine | 698 |
| 10. | Iran | 440 |

²² Sheith Khidhir Abu Bakar (29 Mar 2016) *Stateless Penans demand citizenship papers*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2016/03/29/stateless-penans-demand-citizenship-papers/>

²³ Borneo Post (9 Aug 2017) *Many children at day care centre stateless*. Retrieved from <http://www.theborneopost.com/2017/08/09/many-children-at-day-care-centre-stateless/>

²⁴ UNCHR (Accessed 23 Mar 2018) *Figures at a Glance in Malaysia*. Retrieved from <http://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html>

23. The exodus of Rohingya refugees in May 2015 has contributed to more than 56,000 refugees seeking asylum in Malaysia.²⁵ They are currently living in a state of limbo as they have no access to basic rights including legal status, access to lawful employment and formal education.²⁶ They are at constant risk of arrest, detention, deportation and exploitation.²⁷
24. The repercussions of the absence of a legal and administrative framework to regulate and protect refugees were made apparent when it was reported that more than 100 died in Malaysian immigration detention centres.²⁸
25. Former detainees and rights groups blame overcrowding, insanitary conditions, and inadequate food, water and healthcare for contributing to the high death rate.²⁹ Many of the post-mortem revealed a series of illnesses including tuberculosis, pneumonia and leptospirosis.³⁰
26. Malaysia is lacking a legal framework for managing refugees, forcing the UNHCR to conduct all activities concerning the registration, documentation and status determination of refugees.
27. The government is in the midst of implementing a policy to allow Rohingya UNHCR cardholders to work in the plantation sector for three years beginning March 2017.³¹ However the initiative was not well received by the Rohingya refugees as they prefer to stay within their own community.³²

Recommendations:

- i. To accede to the Refugee Convention 1951 and Refugee Protocol 1967;
- ii. To provide free elementary education in public schools for children of refugees;
- iii. To enact a domestic law to regulate the registration and safeguard the basic rights of the refugees within the scope of the Refugee Convention; and

²⁵ Richard Towle (20 Mar 2017) *Challenges and way forward in handling Rohingya refugees in Malaysia*. Retrieved from <https://reliefweb.int/report/malaysia/challenges-and-way-forward-handling-rohingya-refugees-malaysia>

²⁶ Chan Xin Ying (31 Aug 2017) *Rohingya refugees in Malaysia: Time for policy rethink*. Retrieved from <http://www.straitstimes.com/opinion/rohingya-refugees-in-malaysia-time-for-policy-rethink>

²⁷ Yante Ismail (14 Feb 2018) *Rebuilding Hope and Opportunities for Refugees Through Self-Reliance*. Retrieved from <http://www.unhcr.org/5a839fdc4.html>

²⁸ A. Ananthalakshmi (30 Mar 2017) *Exclusive: More than 100 die in Malaysian immigration detention camps in two years*. Retrieved from <https://www.reuters.com/article/us-malaysia-detention-deaths/exclusive-more-than-100-die-in-malaysian-immigration-detention-camps-in-two-years-idUSKBN1710GR>

²⁹ Laignee Barron (16 May 2017) *Refugees describe death and despair in Malaysian detention centres*. Retrieved from <https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals>

³⁰ Malay Mail Online (1 June 2017) *Remand detainees run highest risk of contracting TB*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/remand-detainees-run-highest-risk-of-contracting-tb>

³¹ Malay Mail Online (19 Jan 2017) *Putrajaya to provide work permits, skills training for Rohingyas*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/putrajaya-to-provide-work-permits-skills-training-for-rohingyas>

³² Discussion with Chief Director, Malaysia National Security Council on 20 October 2017; **and** Zarina Othman, Bakri Mat and Salawati Mat Basir, *Humanitarian Issues: Survival of Ethnic Rohingyas in Malaysia*, Research Report GUP-2016-031, 2016-2018.

- iv. To provide resettlement programmes within Malaysia, as a host country, with cooperation from CSOs and the UNHCR.

HUMAN-TRAFFICKING VICTIMS

28. From January - July 2017, there are 254 trafficking in persons (TIP) related cases.³³ There are a total of 147 convictions for TIP in 2017.³⁴
29. In 2015, police uncovered 139 graves and rescued 28 persons abandoned by a human trafficking ring that targeted Rohingyas and Bangladeshis along the Malaysia-Thailand border (Wang Kelian).³⁵
30. 12 Royal Malaysia Police officers were arrested for possible collusion with the trafficking ring, but in March 2017 it was reported that all 12 officers were released.³⁶
31. The Thai Courts on the other hand, have handed down severe sentences to an army general, two provincial politicians, and 59 others, in the same case.³⁷ There is concern with the lack of seriousness shown by the Government in investigating the matter.

Recommendations:

- i. To coordinate among the enforcement offices to fully implement the law on human trafficking and migrant smuggling, namely the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670); and
- ii. To establish “Wang Kelian Royal Commission Inquiry” to reinvestigate the abovementioned human trafficking matter more thoroughly and investigate other instances of human trafficking.

Prepared by:

UPR Research Team, Centre for Human Rights Research & Advocacy (CENTHRA), Suite 1.1A, Ground Level, Block A, Chancery Place, Jalan Diplomatik 2/2, 62050 Putrajaya, Malaysia. Tel/fax: +603 – 8861 7707 Email: azril@centhra.org
www.centhra.org

³³ Bernama (17 Jul 2017) *Human trafficking: 254 cases taken to court this year, 67 convictions*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/07/17/human-trafficking-254-cases-taken-to-court-this-year-67-convictions/>

³⁴ Rahmat Khairulrijal (19 Jan 2018) *Higher convictions of 147 for human trafficking cases last year*. Retrieved from <https://www.nst.com.my/news/crime-courts/2018/01/326846/higher-convictions-147-human-trafficking-cases-last-year>

³⁵ Dominique F. Fernandes (1 Sept 2017) *The Plight of Rohingyas in Malaysia*. Retrieved from <https://thediplomat.com/2017/09/the-plight-of-rohingyas-in-malaysia/>

³⁶ Malaysiakini (25 Mar 2017) *Cops nabbed in Perlis mass graves case released as no evidence*. Retrieved from <https://www.malaysiakini.com/news/376377>

³⁷ Oliver Holmes (19 Jul 2017) *Thailand convicts traffickers after 2015 mass graves discovery*. Retrieved from <https://www.theguardian.com/world/2017/jul/19/thailand-convicts-dozens-of-traffickers-after-mass-graves-discovery>

APPENDIX C

PERTIS



PERSATUAN ORANG-ORANG CACAT PENGLIHATAN ISLAM MALAYSIA (PERTIS)

*Association of Blind Muslims Malaysia (PERTIS)
Submission for Universal Periodic Review, Malaysia's 3rd Cycle 2018*

Introduction

1. PERTIS was established in 1996 and is the only organization in Malaysia authorized to produce Braille Quran for blind people. This success is also the first of its kind in Southeast Asia. Apart from promoting Islamic education for blind people, PERTIS has been championing the rights of the community by engaging with various agencies to ensure the interest of blind people is protected.
2. PERTIS welcomes the commitment of Malaysian Government in protecting and promoting the rights of the disabled community with the enactment of the Persons With Disabilities Act 2008 (Act 685), which came into force in January 2008 and the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in July 2010.
3. The Government through its Department of Social Welfare has set up a registry for disabled people, under which disabled persons are entitled to also participate in various programs designed by the Government specifically for the disabled people. Although PERTIS commends the Government's initiative, however there are still much room for improvement.

The Rights to Participate Economically

4. The Government has indicated its commitment to support disabled people in the workforce.¹ Yet, in reality only 0.26% of disabled people are working in the civil service.² In an instance, a member of PERTIS was denied of placement in the civil service and was given a preposterous excuse of the denial.³
5. There are some employers who are not receptive in providing employment opportunities to disabled persons.⁴ The Government has passed a guideline for employers to observe in employing disabled persons with the intention of assisting the disabled community finding employment. However since the guideline provides that some changes must be made at workplace to ensure the safety of disabled persons, this requirement has imposed extra expenditures on employers.

¹ Government Circular No. 3/2008: The Implementation of a One-Percent Employment Quota System for the Employment Of Persons With Disabilities; **and** Chance of employment for those with disabilities, Retrieved from <https://www.thestar.com.my/news/nation/2017/04/14/chance-of-employment-for-those-with-disabilities/> (Accessed on 2 February 2018).

² Disabled in workplace yet to reach 1%, Retrieved from <http://www.thesundaily.my/news/1358614> (Accessed on 2 February 2018).

³ Refer to **Appendix A** for more details.

⁴ Workplace discrimination a reality in Malaysia — Azizi Ahmad, Retrieved from <http://www.themalaymailonline.com/what-you-think/article/workplace-discrimination-a-reality-in-malaysia-azizi-ahmad> (Accessed on 2 February 2018).

Consequently, most private companies prefers not to provide employment for disabled people.

6. In addition, even when disabled people are employed, they often faced with psychological stress in the workplaces due to others' underestimation because of their disability.⁵
7. Disabled persons' right to self-employment must be recognized. Presently many of the blind people either work as street vendors or as masseurs.⁶ However, Malaysian society still views disabled people with prejudices and stereotypes which has caused the disabled community to be discriminated against.⁷ Many view the disabled as incommodious,⁸ and perceived blind street-vendors as beggars.⁹

Recommendations

- a. To ensure full compliance with CRPD, to accede to Article 15 and to ratify the Optional Protocol
- b. To amend the Federal Constitution to include "discrimination based on disability" in Articles 8 (2) and 12 (1)
- c. To enact a specific legislation to regulate the employment of disabled people in work force in Act 685, including ensuring opportunity for promotions based on equitable rights
- d. To enact a law that makes it mandatory for all massage parlors to employ certain percentage of blind masseurs
- e. To cease raids on blind street vendors under Destitute Persons Act 1977 (Act 183)

Purchasing Insurance, Homes and Vehicles

8. Although the Government has given its commitment to look into providing wider range of insurance coverage for disabled people,¹⁰ regrettably insurance for personal safety is still very limited. This is mainly because the insurance companies do not want to manage the risk of insuring a disabled person.
9. The Automated-Teller Machines (ATM) in Malaysia have not adopted the technologies helpful for blind people.¹¹ This has caused much difficulties for visually impaired persons to conduct their financial affairs through ATM and must instead manage their banking needs over-the-counter.

⁵ Khoo, LK, Ling, TT, Lay, WL, Workplace discrimination against Malaysians with disabilities: Living with it or fighting against it?, Disability Studies Quarterly (2013).

⁶ Blind masseurs strive on despite challenges, Retrieved from <https://www.thestar.com.my/news/nation/2017/05/29/blind-masseurs-strive-on-despite-challenges-trainer-wants-independence-for-the-visually-impaired-wid/> (Accessed on 2 February 2018).

⁷ Blind exploitation, Retrieved from <https://www.thestar.com.my/news/community/2014/09/30/blind-exploitation-some-beg-on-own-free-will-others-taken-for-a-ride/> (Accessed on 15 March 2018).

⁸ Twice as hard for the disabled, Retrieved from <https://www.thestar.com.my/news/nation/2015/08/16/twice-as-hard-for-the-disabled-more-preparation-is-needed-to-assist-the-elderly-disabled-in-malaysia/> (Accessed 12 January 2018).

⁹ Woman suffers assault, insult after being accused of faking blindness, Retrieved from <http://www.themalaymailonline.com/malaysia/article/woman-suffers-assault-insult-after-being-accused-of-faking-blindness> (Accessed on 2 February 2018).

¹⁰ Insurance initiative for the disabled - Rohani, Retrieved from <http://english.astroawani.com/malaysia-news/insurance-initiative-disabled-rohani-120662> (Accessed on 12 January 2018).

¹¹ 'Banks neglecting facilities for the blind', Retrieved from <http://www.freemalaysiatoday.com/category/nation/2016/11/27/banks-neglecting-facilities-for-the-blind/> (Accessed on 2 February 2018).

10. The difficulty of disabled people in buying a property is due to their income, whereby most disabled people are hired on minimum wage basis or are self-employed as street vendors. The existing housing schemes are not inclusive to accommodate the needs of disabled people.
11. People with visual disabilities are discriminated from purchasing vehicles for their familial usage. This is because the regulations in Malaysia dictate that any purchases of vehicles must be by a person with a valid driving licence. As blind people cannot obtain a driving licence, this has hindered them from owning vehicles even if it is to be used by their abled family members.

Recommendations

- a. To regulate banking and insurance policies taking into consideration of the disabled community's interests and needs
- b. To provide housing scheme specifically-designed for disabled people
- c. To waive the requirement on driving licence for disabled people to purchase vehicles

Public Facilities for Blind People

12. The public transportation system is not friendly to the disabled people.¹² The facilities provided for at the stations do not meet the safety-standards for disabled people.¹³ Most accidents occurring in public places, such as falling on train tracks,¹⁴ involved visually impaired persons.¹⁵
13. PERTIS members reported many accidents occurred because the public transport providers had not taken the necessary and reasonable means to assist the blind commuters.¹⁶
14. Disabled people also have to spend a lot for transportation as they have to rely heavily on public transportation yet the discounted fares are still expensive.¹⁷

Recommendations

- a. To amend the legal provisions under Act 685 to ensure the implementation of policies relating to disabled people by including enforcement provisions
- b. To ensure public transportations are safe and affordable for the disabled people
- c. To install automated doors at train stations that will only open and allow embarkation and disembarkation at arrival of trains

¹² MRT stations not designed with the disabled in mind, Retrieved from <https://www.beritadaily.com/mrt-stations-not-designed-with-the-disabled-in-mind/> (Accessed on 30 January 2017).

¹³ Yuhainis Abdul Tali, Nurul Izzati Abdul Ghani, Kharizam Ismail and Nor'Aini Salleh, The Provision of the Disabled Facilities in Public Hospitals, The 4th International Building Control Conference (2016).

¹⁴ Blind Man Falls On Train Track, Retrieved from <http://epaper.mmail.com.my/2017/03/30/blind-man-falls-on-train-track/> (Accessed on 30 January 2018).

¹⁵ Close call for wheelchair-user at LRT station, Retrieved from <https://www.thestar.com.my/metro/community/2017/07/06/close-call-for-wheelchair-user-at-lrt-station/> (Accessed on 30 January 2018).

¹⁶ Refer to **Appendix B** for more details.

¹⁷ Haryati Mohd Isa, Halmi Zanol, Kartina Alauddin and Mohd Hafizuddin Naw, Provisions of Disabled Facilities at The Malaysian Public Transport Stations, The 4th International Building Control Conference (2016).

Society's Interactions with Disabled People

15. PERTIS is appalled at the recent reports of attacks and harassment done onto disabled persons. These reports have only highlighted how disabled people are often discriminated,¹⁸ ridiculed,¹⁹ and ostracized by the public.²⁰
16. Most of the special facilities for people with disabilities have been misused by abled members of the society.²¹ Street stalls and vehicles are places on special tactile pathways reserved for the blind.²² This had caused not only difficulty for the blind people but also caused minor accidents.²³

Recommendations

- a. To design public-awareness programs to educate the Malaysian public on the ways to interact with disabled people
- b. To penalize those who abuse the facilities that are designed specifically for disabled people

¹⁸ Malaysia's disabled still marginalised, says Suhakam, Retrieved from <https://www.nst.com.my/news/nation/2017/12/311353/malysias-disabled-still-marginalised-says-suhakam> (Accessed on 12 January 2018).

¹⁹ Watch: Mentally-disabled boy cruelly taunted, assaulted, robbed in Kluang playground, Retrieved from <https://www.nst.com.my/news/crime-courts/2018/03/345077/watch-mentally-disabled-boy-cruelly-taunted-assaulted-robbed-kluang> (Accessed on 15 March 2018).

²⁰ Disabled man claims discrimination by Penang apartment building manager, Retrieved from <https://www.nst.com.my/news/nation/2017/08/262938/disabled-man-claims-discrimination-penang-apartment-building-manager> (Accessed on 30 January 2018).

²¹ Toilets for disabled misused at LRT stations, Retrieved from <https://www.nst.com.my/news/2017/03/206319/actionline-toilets-disabled-misused-lrt-stations> (Accessed on 30 January 2018).

²² Showing no consideration; Retrieved from <https://www.thestar.com.my/metro/community/2017/03/10/showing-no-consideration-many-ablebodied-malaysians-misuse-parking-bays-and-facilities-meant-for-the/> (Accessed on 30 January 2018).

²³ Brickfields Deepavali stalls blocking the access of the blind, Retrieved from <https://www.thestar.com.my/metro/community/2015/11/02/clear-tactile-paths-urge-the-blind-community-wants-dbk1-to-take-action-against-shopkeepers-violating/> (Accessed on 30 January 2018).

APPENDIX D

I-MEDIK



**Submission for Malaysia's United Nations
Human Rights Council's Universal Periodic Review 2018**

Title: Religious Rights of LGBT people need to be respected.

Introduction: Islamic Medical and Health Practitioner Association of Malaysia (I-Medik)

1. Islamic Medical and Health Practitioner Association of Malaysia (**I-Medik**) is made up of registered medical, dentist, pharmacy, nurses and other healthcare practitioners. Established in 2013, I-Medik is dedicated in voicing up the Islamic point of view relating to various medical issues and organizing programs encompassing character building, community health enrichment, research and humanitarian aids. I-Medik is also updated with current health issues concerning the society and playing an active role in bridging the modern medicine with religious and cultural values.

LGBT's rights to religious practise

2. The lesbian, gay, bisexual and transgender (LGBT) community has reported that they are religiously discriminated by certain segments of the community. The spiritual need is also a form of religious rights to LGBT community which has been consistently denied.¹ Issues of sexual orientation and gender identity should be addressed in accordance to religious guidance.
3. Studies in Malaysia showed that 80% of transgender in Malaysia are Muslims.² Yet initiatives by the Islamic Development Department of Malaysia (JAKIM) was met with vehement criticism by certain groups.³
4. We are concerned that this is a form of denial and discrimination against the religious rights of LGBT persons. JAKIM should organize more all-rounded programmes on the LGBT community.⁴
5. The manual *Islam and Mak Nyah* aims to remove stigma and discrimination surrounding the LGBT people. However, it lacks guidelines and information on gender sensitization for Islamic authorities. The guidelines is important because

¹ I Was A "Mak Nyah" And Rehab Made Me See How Far I Have Strayed Away From My Religion, Retrieved from <http://malaysiandigest.com/frontpage/282-main-tile/577124-i-was-a-mak-nyah-and-rehab-made-me-see-how-far-i-have%20strayed-away-from-my-religion.html>

² Teh YK. HIV-Related Needs For Safety Among Male-To-Female Transsexuals (Mak Nyah) in Malaysia. SAHARA: Journal of Social Aspects of HIV/AIDS Research Alliance, 5 (4) (2008) 178-85; and Wei CL, Baharuddin A, Abdullah R, Abdullah Z, Ern KPC. Transgenderism in Malaysia. Journal of Dharma, (2012).

³ <http://www.themalaymailonline.com/malaysia/article/jakims-spiritual-camp-tried-to-change-us-lament-muslim-transgenders#fUwj104Ep7WdWkGm.97>

⁴ UM students want LGBT programmes to be more balanced. <https://www.themalaysianinsight.com/s/18441/>

previous studies have suggested that fusion of religious elements could benefit people in term of psychologically and physical health.

6. There have also been attacks against academics and institutions dedicated in studying and advocating religious and health rights of LGBT persons.^{5,6,7}
7. Previous studies have suggested that fusion of religious elements could benefit people in terms of psychological and physical health, thus attaining a happier, more meaningful life. The testimonies of the application of religion as a protector for the health in general and mental health in particular have been shown in different studies.⁸
8. A study revealed that religious beliefs enhanced healthy behaviours and decreased risky ones in these groups even more than the effect it exerted in the group of heterosexuals.⁹ In as much as the experience of rejection by religious communities and religion authorities is perceived concurrently, the individual resorts to build spirituality free of religion for him/herself.¹⁰ Spiritual needs are also a form of religious rights for LGBT community and should not be denied to them.

Discrimination against transgender at workplace

9. Transgender in Malaysia face discrimination in terms of employment, that as many as 86.6% of them are reportedly working as sex workers.¹ Involvement in sex trade exposes them to sexual transmitted diseases particularly HIV infection. The high prevalence of selling sex worsen the social stigma the community has already suffered from.¹¹

Discrimination regarding approaches to overcome HIV in LGBT

10. It is a concern that men having sex with men (MSM) or gay and transgender people (TG) represent the populations most affected by AIDS epidemic with HIV infection rates exceeding 5%. This data for 2014 was as reported in **“Global AIDS response progress report Malaysia 2016 in ending AIDS by 2030” (Malaysia Global AIDS)**. It was 8.9% to be exact in MSM and 5.6% in TG.¹²

⁵ McCullough ME, Willoughby BL. Religion, Self-Regulation, And Self-Control: Associations, Explanations, And Implications. *Psychological Bulletin*, 135 (1) (2009) 69.

⁶ Elifson KW, Klein H, Sterk CE. Religiosity And Hiv Risk Behavior Involvement Among “At Risk” Women. *Journal of Religion and Health*, 42 (1) (2003) 47-66.

⁷ Miller WR, Thoresen CE. Spirituality, Religion, And Health: An Emerging Research Field. *American Psychologist*, 58 (1) (2003) 24.

⁸ Safavifar F, Eftekhar M, Alavi K, Negarandeh R, Jalali AH, Eftekhar M. Religious experiences of Iranian transgenders: A qualitative study. *Med J Islam Repub Iran* 2016 (8 June). Vol. 30:385.

⁹ Hatzenbuehler ML, Pachankis JE, Wolff J. Religious climate and health risk behaviors in sexual minority youths: A population-based study. *American journal of public health* 2012;102(4):657-63.

¹⁰ Yip AK. Queering religious texts: An exploration of British non-heterosexual Christians' and Muslims' strategy of constructing sexualityaffirming hermeneutics. *Sociology* 2005;39(1):4765.

¹¹ Gibson BA, Brown S-E, Rutledge R, Wickersham JA, Kamarulzaman A, Altice FL. Gender Identity, Healthcare Access, And Risk Reduction Among Malaysia's Mak Nyah Community. *Global Public Health*, (2016) 1-16.

¹² KKM. National Strategic plan: Ending AIDS 2016-2030. Ministry of Health Malaysia, Putrajaya: 2015.

This rate was higher than the HIV rate of infection in the normal population which is 0.4 to 0.1%.

11. More recently, data in 2016 showed homosexuals predominate the number on new HIV infection cases. There were 1553 new cases of HIV in homosexuals and bisexuals, as compared to 1311 heterosexuals. 40% of those transmitted through homosexuals and bisexuals are in the age group of 19-29 years old, many are students. While 31% are made of adult age from 30-39 years old.¹³
12. These HIV cases especially among LGBT were rejected by religious communities. This rejection was experienced by the LGBT community especially those who had more intimate relations with the institutions associated with religion. So far, this experience has been studied in the sexual minorities in Christian societies.
13. In a study, it was found that the fact of religious authorities tackling homosexuality through Islamic penal codes will reduce the HIV cases.¹⁴ The comprehensive study in Malaysia verifies this status of religion rejection in order to overcome the HIV in LGBT.¹⁵

Rights for academic freedom

14. It is a concern that rights for academicians to research and intervene issue in LGBT have been denied. As example, a new research academy founded in USIM focusing on LGBT predicament has been maligned to give harmful misconceptions and biased opinions against LGBT at which the academy main objective is to help the LGBT community to face their challenges in society.¹⁶
15. The Action Plan to Address Social Ills (LGBT Behaviour) 2017-2021 in collaboration with 22 strategic partners including government agencies¹⁷ is one the positive resolutions. Since the launch of the Action Plan, in collaboration with Islamic NGOs, JAKIM has launched a 'self-help' e-book on solving sexual orientation and gender identity, and developed treatment and rehabilitation modules for LGBT community.¹⁸
16. The plan is important because previous studies have suggested that treatment and rehabilitation is a good approach that could benefit people psychologically. Researches and interventions on LGBT as well as educational institutions being said as a source of violence towards LGBT and gender diverse or gender non-conforming students¹⁹ are an absolute misperception.

¹³ Berita Harian. 4 Disember 2017. Punca jangkitan penyakit kelamin meningkat.

¹⁴ AbuKhalil Aa. Gender boundaries and sexual categories in the Arab world. *Gender Issues* 1997;15(1):91-104.

¹⁵ Ishak MSBH, Haneef SSS. Sex Reassignment Technology: The Dilemma of Transsexuals in Islam and Christianity. *Journal of religion and health* 2014;53(2):520-37.

¹⁶ ¹⁶ <https://www.themalaysianinsight.com/s/35865/>

¹⁷ Listed partners include, the Ministry of Education, Ministry of Women, Family and Community Development, and Ministry of Youth and Sports, Ministry of Health, Jabatan Kehakiman Syariah Malaysia; Lembaga Penduduk dan Pembangunan Keluarga Negara (LPPKN); Institut Kefahaman Islam Malaysia; Yayasan Dakwah Islamiah Malaysia; Jabatan Agama Islam Seluruh Malaysia.

¹⁸ <http://www.sinarharian.com.my/nasional/jakim-buka-pusat-perlindungan-pesakit-hiv-aids-guna-kaedah-islam-1.105193>

¹⁹ <http://m.themalaymailonline.com/what-you-think/article/public-funds-must-not-be-used-to-create-harmful-educational-environments-ju>

17. **Recommendations:**

- I. To provide gender sensitization and human rights trainings to religious authorities.
 - II. For religious authorities to formulate guideline on gender sensitization.
 - III. To educate the Malaysian communities to respect the religious rights of the LGBT community
 - IV. To ensure no discrimination in entrepreneurship incentive loans in starting business or assistance in getting job to get out from sex trade.
 - V. To provide more counselling facilities for HIV infected personnel
 - VI. To permit educational institutions and academician freedom for research and development among LGBT community.
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APPENDIX E

CLJ

A. INTRODUCTION

1. **CONCERNED LAWYERS FOR JUSTICE (or CLJ)** is a civil movement consisting of lawyers who are concerned for the state of the Malaysian nation. CLJ adheres to the principles that the Malaysian Federal Constitution ("Federal Constitution"), by virtue of Article 4(1) thereof, is the supreme law and underpins the grundnorm of the Malaysian society, forming the main pillars upon which Malaysia is built.¹
2. Since its establishment, CLJ has been actively promoting and advocating the legal and Constitutional provisions under the Federal Constitution to encourage the Malaysian public's awareness of its significance in promoting unity and harmony. CLJ believes that this is crucial as it is observed that certain segments of the Malaysian society have initiated movements to undermine these Constitutional provisions, in defiance of the social contract underpinning the existence of such Constitutional provisions.
3. Malaysia was initially formed as a Federation in 1957 and known as Tanah Melayu (or Malaya in the English language), pursuant to the agreement between the Rulers of the nine Malay Muslim Sultans, namely Johor, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Terengganu and Perak, along with Her Britannic Queen as the then ruler of the then British Settlements (which later became States) of Penang and Malacca.² The Federation that was formed by the Malay Islamic Rulers in 1957 was thereafter strengthened in the year 1963 with the inclusion of the States of Sabah and Sarawak (and Singapore, which left the Federation in 1965), to become the Malaysia that she is today.³

¹ Concerned Lawyers of Justice (Accessed 26 Mar 2018) CLJ - About, Retrieved from www.concernedlawyers.org/about

² *The Government of Kelantan v The Government of the Federation of Malaya and Tunku Abdul Rahman* (1963) 29 MLJ 355.

³ Article 1 of the Malaysia Agreement 1963.

B. NATIONAL UNITY

4. In the light of the Malay-Muslim roots of the respective sovereign states forming the Federation on the one hand; and the diverse and plural society of the nation's citizens on the other (pursuant to the mass granting of citizenship to the non-Malays and non-natives as part of the agreement for the formation of the Federation in 1957),⁴ the national identity of Malaysia was articulated in the *National Culture Policy of 1971*, which aims to strike a balance between the two: that the national identity must be based on the indigenous culture of the nation, with Malay civilisation and culture as well as Islam being the main and important component, but also catering to and celebrating suitable elements from other cultures through an on-going process of adaptation and assimilation from the Chinese, Indians, Arabs and Westerners.⁵
5. While the policy made it clear that its objective is to “*strengthen national unity... preserve national identity ... [and] enrich and enhance the quality of human life in equilibrium with socio-economic development,*”⁶ the Malaysian Government has shown little to no interest at all in enforcing and implementing the policy, which is reflected from the little progress in meeting those stated objectives.
6. After more than four decades since the introduction of the policy, and more than half a century since the inception of the Federation, real and deep rooted unity among the different ethnicities of the nation is still left with much to be desired. While living side by side, the different ethnic groups⁷ continue to live along parallel outlook and narratives, leading to still very

⁴ Chandra Muzaffar, “Understanding the Other”, International Movement for a Just World, December 9th 2008, Retrieved from <http://www.just-international.org/mediastatement/understanding-the-other/>

⁵ Department of National Unity (Accessed on 30 Oct 2016) *National Culture Policy*, Retrieved from <http://www.jkn.gov.my/en/national-culture-policy>

⁶ Ibid

⁷ According to the population estimation based on the census of 2010, as at July 2017, there are 68.8% Malays and Bumiputera, 23.2% Chinese, 7% Indians and 1% of other races.

much segregated way of lives, resulting in continued clashes of fundamental values and worldviews.

7. In the 2nd Cycle, Malaysia received 7 recommendations on the topic of National Unity and accordingly accepted all of the recommendations given.
8. Even though the Government's policies and efforts to implement these recommendations must be commended,⁸ CLJ is however concerned with the lackadaisical attitude demonstrated by the Government in honoring the provisions of the Federal Constitution as the framework towards unity. Much of the efforts are seen as superficial at best, and lack focus. There were instances where the ideals under the Federal Constitution were attenuated by the Governmental bodies. This extends to the Government attitude in adopting the national language as language of unity.
9. The Malaysian Government recently began a consultative session with civil society organisations, to gain feedback on a proposed legislation, namely the *National Harmony Bill*. While the preamble to the proposed law states that the aim is to form a National Harmony Commission "*to promote national harmony, unity, reconciliation, integration and non-unfair discrimination...*,"⁹ the contents of the same, however, do not reflect those stated objectives. Instead, the approach taken through the proposed Bill seems to focus only on fire-fighting approach – namely to settle disputes if and when inter-racial or inter-religious clashes occur – as opposed to implementing a wholistic action plan to truly forge a solid unity among the Malaysian people. There have also been concerns that the powers given to the proposed National Harmony

⁸ This includes policies, bodies and activities crafted under 1Malaysia, which aims at high performance culture, accuracy, knowledge, innovation, integrity, strong will, loyalty and wisdom: Retrieved from <http://www.1malaysia.com.my/en/values-0> (Accessed 15 Feb 2018); and programs under National Civics Bureau (BTN), which aims to inculcate patriotism and commitment to excellence: Retrieved from <http://www.btn.gov.my/index.php/ms/korporat/fungsi-utama-btn> (Accessed 15 Feb 2018).

⁹ Based on the Proposed National Harmony Bill, which was distributed to Civil Society Organisations and presented by Zulkifli bin Hashim, Director of the Department of National Unity and Integration, Malaysia, on 6th March 2018, in Putrajaya, Malaysia.

Commission under the proposed Bill may transgress upon autonomous powers of the States, as protected by the Federal Constitution.¹⁰

10. While dispute resolutions are important, CLJ is of the opinion that it must not be mistaken, neither should it be replaced, with a comprehensive approach in bringing together the diverse and polyglot races that live in Malaysia.
11. It is in this regard that CLJ is of the view that while unity is a virtue, diversity must also be celebrated. Mutual respect and tolerance of the different cultures among diverse religious and ethnic groups can only be achieved when serious and immediate steps are taken to foster national unity and strengthen national identity through the use of the national language as the common unifying force. This is especially so, because the appreciation and use of one common language that is understood across the nation, and which is reflective of the nation's cultural identity and worldview, would be paramount in fostering real and true unity.
12. As per Article 152 of the Federal Constitution, the national language of Malaysia is the Malay language, provided that *"no person shall be prohibited or prevented from using (otherwise for official purposes), or from teaching or learning, any other language...."*¹¹
13. In 1982, the Malaysian apex Court declared that *"[T]he framers of [the Malaysian] Constitution deliberately chose to use the expression "national language" because they intended that bahasa [i.e. the Malay language] should be used not only for official purposes but also as an instrument for bringing together the diverse and polyglot races that live here and thus*

¹⁰ "Lebih 300 NGO Islam bantah Akta Keharmonian Nasional", Utusan Online, March 12th, 2018, Retrieved from <http://www.utusan.com.my/berita/nasional/lebih-300-ngo-islam-bantah-akta-keharmonian-nasional-1.625835>

¹¹ Article 152 of the Malaysian Federal Constitution.

promote national unity ... [T]he use of bahasa could and should be used as an instrument for unifying the whole nation.”¹²

14. Despite such clear Constitutional provision and declaration from the Court, the lackadaisical attitude of the Malaysian Government to uphold and promote the appreciation and use of the national language has caused much damage to the nation-building process. What is more alarming is that such apathetic attitude is then reflected by the Malaysian citizens at large.
15. In February 2015, the now defunct online portal, *The Malaysian Insider*, reported a survey on the lackadaisical attitude that the Chinese Malaysian youths have towards the national language.¹³
16. A year before that, Professor Dr Sharon Carstens of the PSU Institute for Asian Studies presented her findings at the Universiti Kebangsaan Malaysia (UKM) as to how the Chinese Malaysians have “negative feelings towards using” national language, despite acknowledging Article 152 of the Federal Constitution.¹⁴
17. On October 25th of the same year, another academic, Professor Dr. Teo Kok Seong revealed his findings based on research conducted in 2010 that out of 14,000 trainees of the Malaysian National Service Training Programme, a staggering 604 trainees could not speak in the national language at all.¹⁵

Concerns

18. These are intensified by the segregation in the education system, where children of different ethnic groups are being segregated along their ethnic

¹² *Merdeka University Berhad v Government of Malaysia* [1982] 2 MLJ 243 @ 249.

¹³ Malaysian Insider (defunct) *Local Chinese Youth Divided on Importance of Speaking in BM in Malaysia*, Retrieved from <http://www.themalaysianinsider.com/malaysia/article/youths-divided-on-importance-of-speaking-bm-in-malaysia>

¹⁴ UKM Portal (27 May 2014) *Research Found Malaysian Chinese Do Not Give Due Attention to bahasa Malaysia (sic) Usage*, Retrieved from <http://www.ukm.my/news/archive/tahun-2014/mei-2014/research-found-malaysian-chinese-do-not-give-due-attention-to-bahasa-malaysia-usage/>

¹⁵ The Star (27 Oct 2014) *Schools where non-Malays fail to master BM to be reviewed*, Retrieved from <https://www.thestar.com.my/news/nation/2014/10/27/schools-where-non-malays-fail-malay-to-be-reviewed/>

tongues, i.e. children of the Chinese descent mainly go to the Mandarin National-Type Schools where Mandarin is not only taught as a subject, but also used as the medium of instruction through-out the primary school years, thus students have very little exposure to their peers of other ethnicity, much less the use of the national language; children of the Indian descent go to the Tamil National-Type Schools where Tamil is being used as the medium of instruction through-out the primary school years, thus students have very little exposure to their peers of other ethnicity, much less the use of the national language; while children of the Malay and other natives descent mainly go to the National Schools where the national language is used as the medium of instruction.¹⁶

19. As at December 2017, there are 1,298 National-Type school out of 7,773 government-assisted schools, where children as early as 7 years old are segregated based mainly on their races.¹⁷
20. The segregation is not only confined among students, but also teachers, where the Malaysian Government seems to encourage segregation based on ethnicity: that teachers of the Malay race were not to teach school children in the Mandarin National-Type Schools. On April 20th, 2017, Deputy Education Minister Chong Sin Woon was reported to have said that “Malay teachers will not be sent to Chinese schools to teach.”¹⁸
21. Segregation at school is then translated into strong distrust among the races especially between the Chinese communities,¹⁹ and the civil servants that are

¹⁶ Tan Yao Sua & R Santhiram, ‘Education Issues in Multiethnic Malaysia’, Petaling Jaya, 2014, pp. 91

¹⁷ Mohd Hafizee Mohd Arop (29 Dec 2017) *No shutting down of any vernacular schools in the country, says Zahid*, Retrieved from <https://www.nst.com.my/news/nation/2017/12/319550/no-shutting-down-any-vernacular-schools-country-says-zahid>

¹⁸ Free Malaysia Today (20 Apr 2017) *Malay Mandarin Teachers not for Chinese Schools, say ministry*, Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/04/20/education-ministry-malay-mandarin-teachers-not-for-chinese-schools/>

¹⁹ Ibid No. 11

significantly made up of Malays.²⁰ Because of this high level of distrust, there have been clashes between the many races over religious,²¹ racial,²² cultural,²³ and language issues.²⁴

22. In addition, CLJ is concerned with the malicious attacks by these flagitious segments of the community, who disparaged and denigrated the protections given to the Constitutional provisions, especially where it involves religion of the Federation,²⁵ the provisions on citizenship,²⁶ the importance of National Language, and the rights of the Malays and Anak Negeri (Native People) of Sabah and Sarawak.²⁷ This has caused much rift between the many different communities in Malaysia.
23. Apart from being seriously detrimental to the national integration and unity, there is also evidence to suggest that the continued existence of an education system that is not standardized is damaging to the students' future and livelihood as well. The Director of Research at Khazanah Research Institute, Dr. Muhammad Abdul Khalid noted in 2014 that *"a report from the Ministry of Education ("MOE") showed that between 2006 and 2010, the drop-out rates from Chinese national-type schools is the highest compared to Tamil*

²⁰ MalaysiaKini (6 June 2017) *MCA boss admits Chinese community, gov't distrust each other*, Retrieved from <https://www.malaysiakini.com/news/384756>

²¹ Free Malaysia Today (24 Sept 2017) *Is Islamophobia slowly creeping into Malaysian society?*, Retrieved from <http://www.freemalaysiatoday.com/category/opinion/2017/09/24/is-islamophobia-slowly-creeping-into-malaysian-society/>

²² Syed Jaymal Zahid (6 June 2017) *Bumiputera no longer need a leg up... or do they?*, Retrieved from <http://www.themalaymailonline.com/malaysia/article/bumiputera-no-longer-need-a-leg-up-or-do-they>

²³ Tarrance Tan (14 Oct 2016) *Ritual slaughter lesson at school ground shocks parents, students*, Retrieved from <http://www.freemalaysiatoday.com/category/nation/2016/10/14/ritual-slaughter-lesson-at-school-ground-shocks-parents-students/>

²⁴ Malay Mail Online (19 Oct 2015) *Language experts lament regrettable state of Bahasa Melayu usage*, Retrieved from <http://www.themalaymailonline.com/malaysia/article/language-experts-lament-regrettable-state-of-bahasa-melayu-usage>

²⁵ Malay Mail Online (12 June 2014) *Wither the myth of a secular nation – Aidil Khalid*, Retrieved from <http://www.themalaymailonline.com/what-you-think/article/wither-the-myth-of-a-secular-nation-aidil-khalid>

²⁶ Mayuri Mei Lin (7 Nov 2015) *'Pendatang' term is just based on historical fact, BTN says*, Retrieved from <http://www.themalaymailonline.com/malaysia/article/pendatang-term-is-just-based-on-historical-fact-btn-says>

²⁷ Malay Mail Online (26 Jan 2015) *Saying 'all Malaysians are equal', student group pushes for end to pro-Bumi policy, vernacular schools*, Retrieved from <http://www.themalaymailonline.com/malaysia/article/saying-all-malaysian-are-equal-student-group-pushes-for-end-to-pro-bumi-pol>

national-type schools or national schools. A report by the Malaysian Chinese Association (MCA) also noted that an estimated one of four students dropped out of Chinese schools by age 18, translating to a dropout rate of 25 per cent.”²⁸

24. Sometime in July 2017, the Government under its Ministry of Health passed a new ruling to exempt candidates who were going for their mandatory housemanship from fulfilling the Bahasa Melayu requirement.²⁹ Although this ruling was overturned,³⁰ however the message was clear that national narratives under the Constitution are at risk of being undermined by the Malaysian Government.

Recommendations

- i. To strictly abide by the provisions of the Federal Constitution and instill love and appreciation for the National Language;
- ii. To enforce and implement the National Culture Policy of 1971;
- iii. To respect the cultural rights of all communities in accordance with the Constitutional provisions and National Culture Policy of 1971;
- iv. To educate and promote the importance and significance of the social contract as agreed and reflected in the Federal Constitution;
- v. To enhance national unity by setting up national schools based on Bahasa Melayu as its dominant medium of instruction, where school-goers are given

²⁸ Muhammad Abdul Khalid, 'The Colour of Inequity', Kuala Lumpur, 2014, pp 41.

²⁹ Press Statement from Ministry of Health "Exemption to the Requirement of SPM-Level Bahasa Melayu for Appointment of Contract House Officer at the Ministry Of Health" dated 2 July 2017.

³⁰ Press Statement from Ministry of Health "Malay Language As National Language Continues to be Upheld by Ministry of Health Malaysia" dated 2 July 2017.

the opportunity to interact and integrate, whilst maintaining the right to teach and learn vernacular languages as a subject in those schools.

C. FREEDOM OF BELIEF

a. The Ruckus on the usage of the holy term 'Allah' in the Malay language

25. There have been cases where Christian Bibles in the Malay language were banned by the Malaysian Government.³¹ The contentious issue has been on the usage of the holy term 'Allah' to refer to the concept of God within the trinity concept of the Christian's faith.
26. There were cases brought to Court, wherein the issue being disputed is on the right of the Christian community to use the term 'Allah' as translation of the word God in the Malay language:
 - i. One of the case is the challenge brought by Jill Ireland Lawrence Bill against the decision of the Government to confiscate eight of her compact disc containing Christian publication with the word Allah in the Malay language.³²
 - ii. Another case is the challenge brought by Sidang Injil Borneo, to get a declaration of its right to use the word Allah in its Christian publications in the Malay language.³³
27. Apart from the two cases above, previously the Titular Roman Catholic

³¹ K Pragalath (2 Jan 2014) *JAIS raids bible society bibles*, Retrieved from <http://www.freemalaysiatoday.com/category/nation/2014/01/02/jais-raids-bible-society-bibles-seized/>

³² Ida Lim (19 Oct 2017) *In Bumiputera Christian's constitutional challenge, court told 'Allah' not exclusive to Islam*, Retrieved from <http://www.themalaymailonline.com/malaysia/article/in-bumiputera-christians-constitutional-challenge-court-told-allah-not-excl>

³³ V Anbalagan (21 Dec 2017) *Court adjourns Sabah Church case on using 'Allah' in religious education*, Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/12/21/court-adjourns-sabah-church-case-on-using-allah-in-religious-education/>

Archbishop of Kuala Lumpur had also filed somewhat similar challenge. The Court of Appeal in that case held that the Ministry of Internal Affairs had not acted inappropriately in exercising its discretion to prohibit the use of the term 'Allah' in the Malay publication of the Catholic Archbishop.³⁴

28. The reservation is said to be due to the fact that the term is very much associated with the Islamic faith that perceives the concept of trinity as against the teachings of Islam and against the definition of the term 'Allah' as given by Dewan Bahasa dan Pustaka (DBP). There is fear that the use of certain terms that are associated with and are integral to the Islamic faith in the Malay language, such as 'Allah' in the Malay Bible, is a subtle attempt to propagate the Christian faith to the Malays, who by Constitutional definition, are also Muslims, and thus breaching the restrictions provided by Article 11(4) of the Federal Constitution.
29. Some Malaysian Christians, on the other hand contend that they have the right to pray in the Malay language, and that the word 'Allah' is the Malay translation of the word 'God' in the English language.

Concerns

30. The authoritative body on the lexicology of the Malay language, Dewan Bahasa dan Pustaka (DBP), has been silent on the issue. The continued inaction and deafening silence on the part of DBP has caused the matter to be perceived as a Constitutional crisis and infringement, which purportedly denies the Christian community their freedom of religion, and thus causing bitter division and hatred within Malaysia's multi-religious society.

Recommendations:

- i. To call on the Malaysian authorities to focus on the underlying scope, in addressing the issue. The contentious issue must be confined to the alteration

³⁴ Menteri Dalam Negeri & Ors v Titular Roman Catholic Archbishop of Kuala Lumpur [2013] 8 CLJ 890.

of the meaning of the holy name 'Allah', as understood in the Malay language, and not any other languages, with due regard to the firmly rooted theological concepts emanating from it;

- ii. To call on Dewan Bahasa dan Pustaka (DBP) as the authoritative body on the lexicology of the Malay language to take leading role in a national reconciliation initiative in resolving the issue with the presence of representatives from Christian communities.

b. Shiite-Sunni Relations in Malaysia

31. There have been complaints that certain practices of Shia Muslim sect in Malaysia, have the tendency of creating the atmosphere of animosity amongst the Sunni majority Muslims. These include the Shia practice of cursing the rightly guided companions of the Prophet Muhammad as being unworthy and deemed to be the worse of God's creatures who will go to hell, followers of Satan and have cursed them in a prayer called "Two Idols of Quraish".³⁵

Concerns

32. We are concerned that the issue of intersects relation within the Muslims majority of Malaysia is something that needs to be maintained harmoniously, so as to avoid clashes among the different followers.³⁶ The right to practice the religious doctrine of a particular sect must be balanced with the maintenance of unity, in consonant with the call made by the Human Rights Council in Resolution 16/18 to combat denigration of religion and religious figures.

Recommendation:

³⁵ Nur Lina Mastura (9 June 2015) *Shiah Ideologies in Malaysia - Being Wary of its Threat Malaysian Digest*, Retrieved from <http://malaysiandigest.com/news/556999-shia-ideologies-in-malaysia-being-wary-of-its-threats.html>

³⁶ Zarina Othman, Nor Azizan Idris, Bakri Mat. International Relations Theory from New Perspectives. The Rising of Persian Power, Shiite Doctrine and National Security of Malaysia. *Research Report* GS/1/2014/SS04/UKM/02/1, 2014.

- i. For purpose of national unity and security, for the Malaysian Government to allow, but also regulate, the freedom of the Shiite Community in accordance with domestic laws and the UNHRC Resolution 16/18, and to ensure that no religious prominent figures such as the companions of the Prophets are allowed to be denigrated and/or defamed.

c. Denial of Rights to Perform Prayers

33. While Article 11 of the Federal Constitution provides for the freedom to practice one's religion, the Malaysian Court however has held that the fundamental rights protected under the Federal Constitution are only enforceable against a public body, and not against private individuals or entities.³⁷ This would mean that private companies could deny their employee's fundamental rights with impunity.³⁸

Concerns

34. There has been complaints that there are many Muslim employees being denied the right to perform Friday Prayers, and other daily prayers.³⁹

Recommendations:

- i. To extend the Constitutional protection to be enforceable against private entities;
- ii. To introduce laws that penalize private entities that deny religious rights of employees;

³⁷ *AirAsia Berhad v Rafizah Shima bt Mohamed Aris* [2014] 5 MLJ 318.

³⁸ *Beatrice AT Fernandez v Sistem Penerbangan Malaysia & Anor* [2005] 2 CLJ 713.

³⁹ Masriwanie Muhamading (17 Nov 2017) *NGOs want gov't to create anti-discrimination law*, Retrieved from <https://www.nst.com.my/news/nation/2017/11/304352/ngos-want-govt-create-anti-discrimination-law>; and Malaysian Digest (20 Feb 2018) *After Hijab Ban In Hotels, Shocking Confessions From Employees Reveal Religious Discrimination That Prohibits Them From Praying*, Retrieved from <http://www.malaysiandigest.com/frontpage/282-main-tile/723795-after-hijab-ban-in-hotels-shocking-confessions-from-employees-reveal-religious-discrimination-that-prohibits-them-from-praying.html>

Concerned Lawyers for Justice Pertubuhan Peguam Prihatin
Submission for Malaysia's 3rd Cycle of
Universal Periodic Review, 2018

- iii. To enact a section in the Employment Act 1955 (Act 265) to allow Muslim employees to practise their faith.

APPENDIX F

WAFIQ

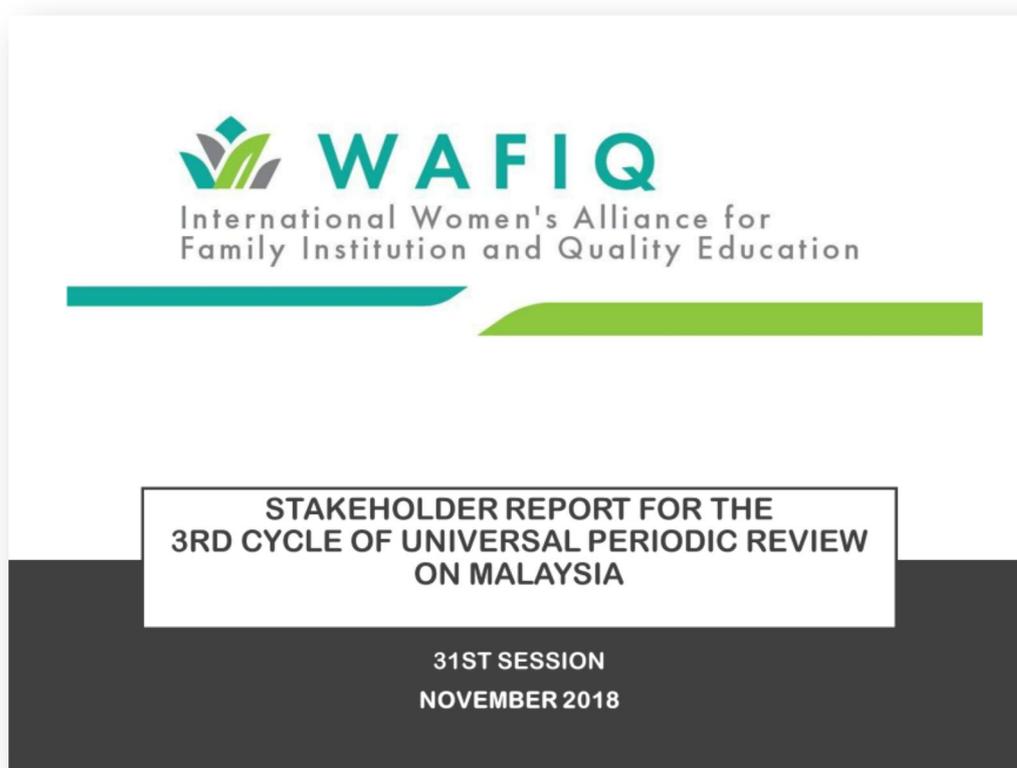
**STAKEHOLDER REPORT
FOR THE
3RD CYCLE OF UNIVERSAL
PERIODIC REVIEW
ON
MALAYSIA**

**31ST SESSION
NOVEMBER 2018**



**International Women's Alliance
for Family Institution and
Quality Education**

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INTRODUCTION

The International Women's Alliance for Family Institution and Quality Education (WAFIQ) is a women's civil society organisation, registered with the Malaysian Registrar of Society PPM-015-10-23032018. It upholds the rights of women to be respected and valued, ensures the sanctity of families to be preserved for better functioning of the society and strives for better education for all. It is a source for women to voice their concern on matters pertaining to their rights in various spheres of life. WAFIQ engages with relevant governmental bodies and non-governmental organisations to bring women's issues to light and for proper actions to take place.

RIGHTS OF WOMEN

A1 Discrimination Towards Obligatory Headscarves

Freedom of religion is protected by Article 11 of the Federal Constitution of Malaysia. No person shall be discriminated against based on gender, race or religion and that any policy which contradicts this goes against the spirit of the Federal Constitution.

Malaysia has long been a supporter of women's rights insofar as the same are not contrary to *local legis* and the Federal Constitution. Malaysia had acceded to the United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) back in 1995, but until presently has never incorporated it into domestic law, posing problems illustrated by cases such as *Noorfadilla bt Ahmad Saikin v Chayed Bin Basirun & Ors* [2012] 1 MLJ 832 where the court held that CEDAW is applicable in Malaysia domestically, and *Airasia Berhad v Rafizah Shima bt Mohamed Aris* [2014] MLJU 606 which holds that it does not apply in Malaysia unless incorporated by an Act of Parliament.

Muslim women in particular suffer from discrimination in employment due to their choice in wearing headscarves in accordance with their religious teachings. The cases were as reported as follow:

- a. In January 2016, a Muslim convert was forced to remove her head-scarf at a national school in Johor, Sekolah Jenis Kebangsaan Cina (SJKC) Nan Ya Telok Sengat.¹ She was threatened and forced to remove her head-scarf if she wanted to continue teaching at the school.
- b. Similarly, Muslim stewardesses are compelled to oblige to the companies' rulings where their rights to cover their aurat and their religious obligation not to serve liquor are not respected. The National Union of Flight Attendants Malaysia (Nufam) has reiterated its call for Malaysian Airlines (MAS) female crew to be given the option to observe the Muslim dress code since 2014, but to no avail.² The issue was brought to national attention again in 2016,³ when a stewardess had to use social media to express her grievances.⁴
- c. In November 2017, the nation was shocked to learn that hotel industries have been discriminating women based on their religious belief. The Malaysian Association of Hotels (MAH) stated its members' policy of prohibiting their front-line staffs from wearing hijab, or headscarf, saying it is based on the international practice and not meant to be discriminatory. Cheah Swee Hee, the President of MAH said the hotels, especially the international hotels, in Malaysia, followed a standard operating procedure (SOP) and policy on the matter.⁵
- d. The Malaysian Labour Centre of the Union Network International (Uni-MLC) has highlighted that hotel employees complained about discrimination against Muslim workers who were told to remove their headscarves. The centre said this was also happening to hospitality and tourism students applying for internship.⁶

WAFIQ has recently conducted a research on *Discriminatory Practices And Sexual Harassment Among Working Women In Malaysia* in collaboration with a local university involving 402 working female respondents aged 18-60 years old and found that 1 in 5 women experienced religious discrimination, which include inability to perform the obligatory prayer, prohibited from wearing headscarf and denied promotion. 60.9 % of these cases were from private sector. (**refer to Appendix A: Research Pamphlet**).

Recommendations:

- i. Fortify the existing Act 265, the Industrial Relations Act 1967 (Act 177), and Part VI of the Occupational Safety And Health Act 1994 (Act 514) by providing more protections against gender-based discrimination.
- ii. Enact Equality Act in strict compliance with domestic law and taking into account of the cultural sensitivities in the Malaysian society.

¹ 'Tudung' incident: Issue has been handed over to Education Ministry. Available at: <http://english.astroawani.com/malaysia-news/tudung-incident-issue-has-been-handed-over-education-ministry-28435> (Accessed: 14th January 2017)

² Union wants hijab option for Muslim MAS crew. Available at: <http://www.malaysiakini.com/news/269821> (Accessed: 14th January 2017)

³ Allow MAS stewardesses to cover up and not serve alcohol, Perlis mufti tells Putrajaya. Available at: <http://www.themalaymailonline.com/malaysia/article/allow-mas-stewardesses-to-cover-up-and-not-serve-alcohol-perlis-mufti-tells> (Accessed: 14th January 2017)

⁴ MAS stewardesses should be given choice to wear hijab, says Khairy. Available at: <http://www.thestar.com.my/news/nation/2014/08/26/mas-hujab-khairy/> (Accessed: 14th January 2017)

⁵ Hijab ban is international practice, says hotel group. Available at <https://www.themalaysianinsight.com/s/22351/> (Accessed: 11th Nov 2017)

⁶ Improper to ban headscarf at workplace, says MEF. Available at <http://www.freemalaysiatoday.com/category/nation/2017/11/07/improper-to-ban-headscarf-says-mef/> (Accessed: 7th Nov 2017)

A2 Sexual Harassment

In the same study by WAFIQ (**Appendix A**), it was found that as many as 33.7% have been sexually harassed in the forms of unwelcome sexual connotations, glances, gestures and comments, and 32.6% experienced unwelcome conscious body contact. 57.1% of the women did not make any formal complaint as they felt the current legal redress is inadequate to protect them. These data showed that the prevalence of sexual harassment has increased from media report in 2015 that estimated 10% of the women suffered from sexual harassment in the form of threats; and another 10% experienced verbal harassment⁸. The reluctance of many women to report these cases officially to the authority was reflected in the case of a hijab-clad Muslim female officer who struggled to break free from a man, who clearly made unwanted physical contact with her under the pretext of protesting against a parking ticket.⁹ He was merely charged under Section 353 of the Penal Code, for interference of duty, when there was a Section 354 of the Penal Code for outraging the officer's modesty.¹⁰ A standalone Sexual Harassment Act will serve better as a deterrent to such acts.

Recommendations:

- i. Enact Equality Act to protect women's rights in the workplace, taking into account of the cultural sensitivities in the Malaysian society
- ii. Fortify procedures to deal with sexual harassment at workplace in Act 265 & Act 177
- iii. Enact Sexual Harassment Act that includes Code of Practice, with more comprehensive definition of sexual harassment

A3 Discrimination Against Pregnant Women at Workplace

Previous study reported that 44% women stated that they had been victimized by their employers upon finding out that they were pregnant. The 5 discriminating ways faced by the women are by making the women's positions redundant, denying them promotions, placing them on prolonged probation, demoting them and terminating their services.¹¹ Cases where pregnant women have to work at the work-sites that are considered hazardous were reported; with companies taking their complaints lightly.

Recommendations:

- i. Enact Pregnancy Discrimination Act.
- ii. Enact Equality Act to protect women's rights in the workplace, taking into account of the cultural sensitivities in the Malaysian society
- iii. For the existing Employment Act 1955 and the Industrial Relations Act 1967, and Part VI Of the Occupational Safety And Health Act 1994 to be fortified.¹²

⁸ <http://www.malaysiandigest.com/features/528114-sexual-harassment-at-work-where-do-you-draw-the-line.html>

⁹ Couple who abused MBSA traffic officer get enhanced sentence <https://www.thestar.com.my/news/nation/2017/01/20/sentence-for-couple-who-abused-mbsa-traffic-officer-increased/> (Accessed November 2017).

¹⁰ Charge man in summons dispute with sexual harassment. Available at: <http://www.freemalaysiatoday.com/category/opinion/2016/11/28/charge-man-in-summons-dispute-with-sexual-harrasment/> (Accessed: December 2017)

¹¹ Discrimination Towards Pregnant Women Remains Prevalent In The Malaysian Workplace. Available at: http://www.wao.org.my/news_details.php?nid=383&ntitle=Discrimination+Towards+Women+Remains+Prevelant+in+the+Malaysian+Wo rkplace (Accessed December 2017)

¹² MTUC: Stop discrimination against pregnant women. Available at: <http://www.freemalaysiatoday.com/category/nation/2016/08/17/mtuc-stop-discrimination-against-pregnant-women> (Accessed: 14th January 2017)

- iv. For the Government of Malaysia to adopt and implement policies in line with Recommendation No. 191, Paragraph 6(1) from the International Labour Office (ILO), with respect to protection from dangerous and unhealthy work for pregnant and nursing women.

A4 **Dissolution of Marriage by Women (*Fasakh*)**

According to statistics¹³ in 2015 (until November) alone, there are about 590 cases of domestic violence in Malaysia. From this number, about 327 cases involves Muslim / Malays, where 309 were women while 18 were men. *Fasakh* is seen as one way out of marriage for those suffering from violence in the marriage. However, it takes a long time for Syariah Court judges to adjudicate the *Fasakh* cases, due to various reasons: a) In terms of proof as it is difficult for the women to get witnesses. Despite having all the relevant documents such as medical report, police reports, Interim Protection Order and Protection Order, there are still cases where Protection Order was transgressed and subsequently caused delay. This prolonged the process of hearing in the court. b) Lack of cooperation from the Defendant or Husband to attend the court and comply the procedure. The absence without reason is prevalent and again, prolonged the case as the court needs both parties to attend. c) While the proceeding of *Fasakh* is on-going, the husband may file an application of *Kembali Taat and Nusyuz*, or requirement for the wife to come back to the husband. While this is literally proof that he has no intention anymore to protect and to love the women as his wife, it further delays the case settlement. The main serious reason for *Fasakh* application is due to violence inflicted by husband. Prolong cases, delay in hearing and reaching decision means the women continue to live in a danger and fear.

Recommendations:

- i. For the state governments to amend various laws to allow for interim applications based on domestic violence to be heard by way of Ex Parte
- ii. To regulate a Standard Operating Procedure applicable on all relevant agencies as to expedite the process of hearing *fasakh* applications that are filed on the basis of domestic violence

RIGHTS OF CHILDREN

B1 Child Marriages

Child marriage is defined as marriage below the minimum legal age which requires the approval of a Syariah Court judge for Muslims or from the Chief Minister/ *Menteri Besar* for non-Muslims.¹⁴ Even though it is allowed in this country for various reasons, concerns were raised whether the system was being manipulated and whether this marriage can be sustained. Statistics from the Syariah Judiciary Department of Malaysia (JKSM) shows that between 2005 and 2015, there are approximately 10,240 applications for child marriage submitted to and approved by the Syariah Courts in Malaysia. From this number, the highest application was 2,064 from Sarawak, followed by 1,929 from Kelantan and 924 from Terengganu. The number of applications for non-Muslims' child marriage were 7,719 for 2000 to 2014 involving girls aged between 16 and 18 years. This number has stirred

¹³ www.data.gov.my

¹⁴ Section 8 Islamic Family Law Act (Federal Territory) Act 1984 provides that no marriage can be solemnised for man under 18 and woman under 16 without written permission from a Syariah court. Similarly under section 10 Law Reform (Marriage and Divorce) Act 1976 makes it compulsory for woman under 16 and man under 18 years of age to obtain permission from Chief Minister prior to solemnisation of marriage.

controversy where the authority was accused of allowing child marriage to take place.

Child marriage is seen as exposing young children to sexual acts too early before they are physically and emotionally ready. According to the Ministry of Family Development, child marriage is not encouraged because a child should be given opportunity to develop her/himself. She or he may not have full understanding about marriage, the responsibility and what entails after that. The young phase should be spent on capacity building, focusing on the development of personality, talents, mental and physical abilities to their fullest potential. Marriage at the tender age would mean preventing their physical, emotional and psychological development. At the same time, the situation deprives them from continuing their formal education. It is found that the decision to marry away the daughter were due to several reasons surrounding the girl who: i. was pregnant out of wedlock; ii. was school drop-out and intend to get married; iii. is ready to become a wife. Child marriage is also driven by tradition and culture and is prevalent among indigenous communities in Sarawak or Sabah. Even though Section 8 Islamic Family Law (Federal Territories) Act 1984 makes it compulsory to seek permission prior to getting married for those under sixteen, there is no detailed procedures for that until now.

Recommendations:

To restrict the application by adding that:

- i. it must be submitted by the parent, parents or guardian of the bride
- ii. All parties (the guardian, the bride-to-be and the bridegroom-to-be) must be present during hearing,
- iii. Reason or reasons for marriage must be provided,
- iv. The Social Report from the Department of Social Welfare must be enclosed,
- v. The Medical Report must be submitted,
- vi. Financial status of the bridegroom must be enclosed, vii. background information of the bridegroom-to-be must be provided

B2 Malnutrition of Children in Low Cost Housing

Malaysia has ratified the Convention on the Rights of the Child (CRC) in 1995. A key outcome of Malaysia's ratification is the Child Act 2001 (Act 611) which forms part of the protective legal environment for children in the country. Several initiatives have been introduced under this Act to safeguard children from violence, abuse, neglect and exploitation. For example, incest has been criminalised by the Penal Code (Act 574), while the Domestic Violence Act 1994 (Act 521) protects the child against violence within the family.

Recently, UNICEF revealed in its study that levels of poverty and malnutrition among children living in low cost housing in Kuala Lumpur Malaysia are alarming, as compared to the national average.¹⁵ The study found that as compared to the average children in Kuala Lumpur, children below the age of five in low cost housing are two times higher being underweight (15%) and stunted (22%). This clearly contravene article 6 which protects the child's rights to life, survival and development.

Recommendations:

- i. Government to revisiting poverty indicators, that include the nutritional status of children and relative income poverty

¹⁵ https://www.unicef.org/malaysia/media_urban_child_poverty.html

- ii. Government to provide universal child care grants.
- iii. Relevant ministries eg ministry of health, ministry of labour to ensure Promotion of exclusive breastfeeding for at least six months
- iv. To implement policies that facilitate access to nutritious food, such as taxes on sugar-sweetened beverages (SSB), regulation of food sold in and around schools.

B3 Exposure to Pornographic Materials

It was reported that 37% of Malaysian parents felt their children's online life was interfering with their home and school obligations while 18% said their children were sacrificing basic social activities¹⁶. Recently, cases where minors were emulating sexual acts shocked the nation. These probably stemmed out from the fact that they were exposed to pornography materials available at home and even at school. This contravene article 2 – to ensure child's best interest. Measures that may help to reduce, if not totally abolishing, cases of pornography exposure and addiction should be considered. South Korea had applied internet curfew called "Cinderella Law" for their youth as well as providing an effective rehab camp for internet addicts.¹⁷

Recommendation

The Malaysian Communication and Multimedia Commission (MCMC) should respond to this aggressively by reviewing its regulatory actions to curb cases of pornography exposure.

¹⁶ <http://www.thestar.com.my/news/nation/2016/10/07/internet-addiction-on-the-rise-among-malaysian-youths-enough-evidence-to-show-links-to-anxiety-decre/#mLtx2hLfkI95oHB3.99>

¹⁷ https://www.washingtonpost.com/world/asia_pacific/in-south-korea-a-rehab-camp-for-internet-addicted-teenagers/2016/01/24/9c143ab4-b965-11e5-85cd-5ad59bc19432_story.html?utm_term=.df4fc7dc3858

APPENDIX G

ACCIN



ALLIED COORDINATING COMMITTEE OF ISLAMIC NGOS (ACCIN) STAKEHOLDER REPORT FOR MALAYSIA'S 3RD CYCLE OF UNIVERSAL PERIODIC REVIEW

Introduction

1. ACCIN was established in 2001 as a coordinating body to synchronize and synergize efforts by Islamic Civil Society Organizations (CSOs) in matters relating to interfaith and intercultural harmony. Since its formation, ACCIN has attended various dialogues with its members to advocate,¹ and train the Malaysian public on human rights issues based on our local narratives.²
2. At present, ACCIN has 20 CSO members registered as it Alliance, made up of professionals from various disciplines including academicians and humanitarian activists. Within the UPR process, ACCIN was involved in the consultation process with the Malaysian Government through its engagements with several state and federal bodies, specifically to fortify interfaith harmony in Malaysia.³

Discrimination Towards Muslim Reverts By The Society

3. The conundrum faced by Muslim reverts, also called *muallafs*, is confounded by the false perceptions of certain segments within the public.⁴

¹ To illustrate, in 2014, ACCIN had published its human rights findings in a book entitled "Human Rights within Islamic Tradition", which aims at educating the Malaysian public on the importance of highlighting human rights issues based on Islamic teachings: Muddathir Abdel-Rahim, *Human Rights within Islamic Tradition*. Kuala Lumpur: ACCIN, 2014. Print.

² ACCIN saw a growing need to train activists and humanitarians in order to maximize our members' human rights works. For this purpose, between 2014 - 2017, ACCIN had conducted training workshops for CSOs registered under it, both in Peninsular and West Malaysia. ACCIN had organized and participated in series of training and engagement sessions in Kuala Lumpur, Putrajaya, Kedah, Sabah and Sarawak.

³ As an example, in October 2017, ACCIN was involved in outreach programs organized by National Unity and Integration Department, Malaysia to fortify interfaith dialogues in Sabah.

⁴ Nikole Mikhael Abdullah (24 Sept 2015) *Think of the Chinese Muslims*, Retrieved from <https://www.thestar.com.my/opinion/letters/2015/09/24/think-of-the-chinese-muslims/>

4. It is widely perceived that when one embraces the religion of Islam, he or she also becomes a Malay by race.⁵ This misconception could stem from the constitutional definition of what it means to be a 'Malay' within the Federal Constitution.⁶
5. The act of embracing Islam by Chinese ethnics is sometimes viewed as the act of turning away from one's ethnicity. Consequently, the reverts are shunned away by his family, relatives and society as he is now deemed as a 'traitor' to the ethnic.⁷
6. In turn, the Muslims reverts are deprived of their traditions, customs and cultures as their practice of the same is no longer supported by the communities they live in.⁸ Since Chinese ethnic (who are generally non-Muslims in Malaysia), hold the majority stakes economically, this also means Muslim reverts also face financial hardship.
7. Within the Muslim society, Muslim reverts are often assisted with emotional supports and financial aids given to them. However, these aids are seen as inadequate to fully allow the Muslim reverts to live independently off the aids. There are instances where Muslim reverts are reported to be too dependent on Muslim society's monetary aids and hence lack the psychological motivation to be independent.

Muslim Reverts' Rights to Inheritance

8. There is a misunderstanding about the concept of inheritance for a Muslim convert as many believe that a Muslim cannot inherit the property of non-Muslims.⁹ Due to such misunderstanding, many Muslim reverts conceal their conversion to Islam for fear of being denied the right to inherit property from their non-Muslim families.¹⁰ The Government has established e-muallaf registry to remedy this problem,¹¹ but its implementation is yet proven.

⁵ Shamil Norshidi (8 Aug 2017) *What we can learn from Muslim converts in Malaysia*, Retrieved from <http://english.astroawani.com/malaysia-news/what-we-can-learn-muslim-converts-malaysia-151800>

⁶ Article 160 of the Federal Constitution.

⁷ Rosey Wang Ma (2010) Shifting Identities: Chinese Muslims in Malaysia, *Asian Ethnicity*, 6 (2), 89-107.

⁸ Sayyid Buhar Musal Kassim, Mohd Syukri Yeoh Abdullah & Zawiyah Baba (2013) A Survey Of Problems Faced By Converts To Islam In Malaysia. *Journal of Social Sciences and Humanities* 8 (1) 085-097.

⁹ Dr Jasni bin Sulong (2014) The Implications of Religious Conversion towards Muslim Inheritance under Malaysian Law. *International Journal of Liberal Arts and Social Science* 2 (9) 122-135.

¹⁰ Nurul 'Izzah Baharudin & Noor Lizza Mohamed Said (2017) *Method of Resolving Inheritance Problem of New Muslim Converts in Malaysia*. *Islamiyyat* 39 (1) 47-56.

¹¹ Bernama (13 Mar 2018) *E-muallaf portal serves as reference for new converts - Asyraf Wajdi*. Retrieved from <http://www.bernama.com/en/news.php?id=1444170>

9. This has caused further hardship when Muslim reverts passed on without informing their families of their conversion to Islam. In some cases, there were struggles and contests on the burial rites of Muslim converts.¹²

Discrimination Towards Muslim Reverts At Workplace

10. ACCIN has received many reports of Muslim reverts, who faced discrimination at their workplaces, due to their respective decisions to embrace the religion of Islam. The worth and value of an employee should not be determined by his religious belief and should be evaluated solely on his ability to perform his duties to the employer. The discrimination reported of includes ostracizing Muslim reverts, demoting and even dismissing them.¹³

Discrimination Of Muslim Reverts' Spousal Rights

11. In 2017, the Malaysian Parliament has amended Law Reform (Marriage and Divorce) Act 1976 [Act 167] wherein it is now compulsory for all marriages contracted by civil procedures to be dissolved in civil courts, even if the reason for the dissolution is because one of the parties has converted to Islam.¹⁴
12. The challenge of dissolving a civil marriage after conversion by a Muslim revert is because the petition for the divorce can only be filed with the consent of non-Muslim spouse through civil courts. As a result, Muslim reverts can no longer opt to adopt Islamic family laws as their personal laws in the dissolution of their marriage to non-Muslim spouses.

Discrimination Of Muslim Reverts' Parental Rights

13. A revert, who was married before his acceptance of Islam also faces difficulty especially in cases where his spouse has not converted to Islamic faith. The revert often faces hardship in relation to having equal right to the custody and upbringing of his children to the civil marriage.

¹² Malay Mail Online (17 June 2014) *After body snatching, Penang insists budding Muslim converts must notify kin*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/after-body-snatching-penang-insists-budding-muslim-converts-must-notify-kin>

¹³ Sebastian Loh Xi Ving (20 Nov 2017) *Muslims and Malays face discrimination too*, Retrieved from <http://www.freemalaysiatoday.com/category/opinion/2017/11/20/muslims-and-malays-face-discrimination-too/>

¹⁴ Astro Awani (10 August 2017) *Law Reform (Marriage and Divorce) (Amendment) Bill 2017 passed*. Retrieved from <http://english.astroawani.com/malaysia-news/law-reform-marriage-and-divorce-amendment-bill-2017-passed-151956>

14. This scenario has become more intricate with the recent Federal Court decision in the case of *Indira Gandhi*, where the court took a simplistic approach of insisting that consent of both parents are required before a child could be converted.¹⁵
15. While such an approach, on the surface of it, may seem to ensure equality between both parents in determining the religious upbringing of their children, however upon closer inspection into the intricate issue, it is revealed that such approach is far too simplistic and would only act to discriminate against one of the parent who converts to Islam.¹⁶
16. This is because, to require a father or mother to obtain the consent of the other in cases where the parents are already in the midst of a divorce proceeding — and therefore expectedly are no longer on good terms — would almost certainly be impossible. Such a requirement would therefore amount to stripping away the fundamental rights of the father or the mother to determine the upbringing of the child.
17. The parent who converts to Islam will not have any opportunity at all at being heard, for the mandatory requirement of consent will obstruct the court from even entertaining any such application should such mandatory requirement not being fulfilled.
18. This is in direct contradiction to an earlier decision by the Malaysian Federal Court in the year 2008,¹⁷ wherein the court took a more harmonious approach, to allow a parent who converts to Islam to determine the religious upbringing of his children while according the non-converting parent the right to objection. Where such objection is raised, the matter would be resolved by the court on a case to case basis, taking into account all the surrounding facts, the opposing wishes of the parents as well as the paramount interest of the child.

¹⁵ Decision of Federal Court dated 29 January 2018 in the case of ***Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals*** [2018] 1 MLJ 545.

¹⁶ Farhana Syed Nokman (30 January 2018) *Mixed reactions to Federal Court's decision in Indira Gandhi's case*. Retrieved from <https://www.nst.com.my/news/crime-courts/2018/01/330408/mixed-reactions-federal-courts-decision-indira-ghandis-case>

¹⁷ Decision of Federal Court dated 27 December 2007 in the case of ***Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals*** [2008] 2 CLJ 1.

Recommendations:

- i. Call for the Government to enact anti-discrimination laws at work place to protect Muslim reverts
- ii. Call for the Government through its religious bodies to provide for a more comprehensive support system so as to ease the difficulty faced by a Muslim revert after conversion to Islam
- iii. Call for the Government to fully implement the *e-muallaf* registry and to educate Muslim converts on their rights after conversion
- iv. Call for the Malaysian Courts to take a more harmonious approach in deciding on disputes between Muslim reverts and their non-Muslim spouses
- v. Call for the Government to enact a law to ensure due consideration is given to the rights of Muslim reverts in cases for child custody and religious upbringing of the children
- vi. Call for the Malaysian Courts to deliberate on the issues of children's religious upbringing based on a case to case basis, as opposed to a blanket ban on unilateral conversion

PBM



**SUBMISSION BY THE MALAYSIAN YOUTH
PARLIAMENT (MYP) TO THE UN UNIVERSAL
PERIODIC REVIEW OF MALAYSIA**



**31st SESSION OF THE UPR WORKING GROUP IN THE
UN HUMAN RIGHTS COUNCIL (2018)**

Malaysian Youth Parliament (MYP)

**UNIVERSAL PERIODIC REVIEW ON MALAYSIA
FOR THE 31st SESSION
NOVEMBER 2018**

STAKEHOLDER'S REPORT

Prepared by:
Malaysian Youth Parliament

1. INTRODUCTION

- 1.1.** The Malaysian Youth Parliament (MYP) is modelled after the Parliament of Malaysia specifically for elected youth aged between 18 and 30. It is a democratic platform for the elected youth to table motions on policy for the betterment of youth to the Government of Malaysia (GoM). Motions adopted by MYP are brought to the Cabinet-level directly for consideration.¹
- 1.2.** In Malaysia, youth is defined as ‘a person not less than fifteen years and not more than forty years old’². However, to be noted is the Malaysian Youth Policy that was launched in 2015 that seeks to lower the official definition of youth to be between 15 and 30.
- 1.3.** While the MYP was established by the Ministry of Youth and Sports Malaysia, it is independent and autonomous in its views and motions brought forward. The MYP commends the GoM’s initiatives to empower the youth through the Ministry of Youth and Sports including the triannually held MYP proceedings and the biannual dialogue with the National Youth Consultative Council³.
- 1.4.** Issues related to the rights of the youth were not specifically addressed in the first (2009) and second cycle (2013) of the UPR on Malaysia. MYP reiterates that there are still issues to be resolved involving the rights of youth, to stand against discrimination, inequality, and marginalization.
- 1.5.** As the premier elected-youth platform, MYP is obliged to submit this report on the state of human rights, especially in relation to the youth in Malaysia with

¹ Official website of youth parliament, Retrieved from <http://www.parlimenbelia.gov.my/>

² Section 2 of the Youth Societies and Youth Development Act 2007

³ Inception of National Youth Consultative Council, Retrieved from <http://hids.arkib.gov.my/-/penubuhan-majlis-perundangan-belia-negara>

recommendations to the Office of the High Commissioner on Human Right (OHCHR) for the 31st session of the UPR Working Group in the UN Human Rights Council scheduled on November 2018.

2. RIGHT OF REPRESENTATION OF THE YOUTH IN POLITICS

2.1. Article 21 Universal Declaration of Human Rights (UDHR) provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives. In Malaysia, there are no direct barriers for the youth to take part in the government. Effectively however, political parties' nomination processes have not favoured the youth as candidates to contest in general elections. This is despite in almost every general election the youth factions appeal for a greater number of candidacies to the political parties⁴.

2.2. This is reflected in Malaysia's shared bottom position of 88 in the Global Ranking on Parliamentarians Aged Under 30 with 0.0% whilst for Parliamentarians Aged Under 40, Malaysia ranked 91 with 10.8%⁵. This is unrepresentative of the 8.1 million youth (aged 15-30) or 26.1% of the total 31 million Malaysian population⁶.

2.3. Inclusive political participation is not only a fundamental political and democratic right but also is crucial to building stable and peaceful societies and developing policies that respond to the specific needs of younger generations⁷.

Recommendations

- a. To create strategies for the inclusion of the youth as Members of Parliament.
- b. To promote quotas for the youth in political parties to increase the number of young members of Parliament and State Legislative Assemblies.
- c. To lower the voting age from 21 to 18 years old as this would reflect the growing political maturity of Malaysian youth.

⁴ Field young candidates for GE14, Umno Youth urges BN, Retrieved from <https://www.nst.com.my/news/politics/2017/05/237019/field-young-candidates-ge14-umno-youth-urges-bn>

⁵ Research entitled, *Youth Participation in National Parliaments 2016* by Inter-Parliamentary Union

⁶ Department of Statistics Malaysia, Population Statistics 2015.

⁷ Beeckmans & Matzinger, (2017) Youth Participation in Electoral Processes, UNDP Nepal Electoral Support Project (ESP).

- d. To consider implementing automatic voter registration as a Malaysian turns 18 years old.

3. RIGHT TO OWN PROPERTY

- 3.1.** Article 17 UDHR states that everyone has the right to own property alone as well as in association with others. In Malaysia, the rapid increase of house prices has made home ownership unaffordable to the low and middle class - including the youth⁸. Exacerbating the problem is the undersupply of affordable homes considering current trends of stagnant income growth and demographic factors.
- 3.2.** The price-to-income or median-multiple ratio was developed in 1998 by the UN Centre for Human Settlement (UNCHS) to indicate the affordability of housing in any given community. An affordable housing market should have a median multiple (median house prices as a multiple of median annual household income) of 3.0 times. In 2014, average house prices in Malaysia stood at a 'seriously unaffordable' 4.4 times.⁹ Reflecting the unaffordability of houses in Malaysia is 108,472 units priced above RM250,000 remain unsold in the first half of 2017.
- 3.3.** While there are no official statistics on home ownership among the youth in Malaysia, HSBC's *Beyond The Bricks 2017* research paper suggests that millennial¹⁰ home ownership in Malaysia stands at a mere 35%.
- 3.4.** In the 2nd cycle of UPR (2013), the National Report stated that the GoM had established PR1MA (1Malaysia People's Housing Company)¹¹ to plan, develop, construct and maintain affordable housing for middle-income households in key urban centres.
- 3.5.** However as it stood in 2017, PR1MA had only managed to construct 8,500 units or two percent of the 500,000 affordable homes promised in 2013¹². Further, the

⁸ Hefty prices reason Malay youth delay buying homes, Retrieved from <https://www.themalaysianinsight.com/s/40780/> (Accessed on 9 March 2018).

⁹[http://www.krinstitute.org/assets/contentMS/img/template/editor/_FINAL_Full_Draft__KRI_-_Making_Housing_Affordable__with_hyperlink__220815%20\(1\).pdf](http://www.krinstitute.org/assets/contentMS/img/template/editor/_FINAL_Full_Draft__KRI_-_Making_Housing_Affordable__with_hyperlink__220815%20(1).pdf)

¹⁰ Definition of millennial by majority of demographers start the generation in the early 1980s, with many ending the generation in the mid-1990s. Comparable to the age of youth in Malaysia. See :PwC; University of Southern California and the London Business School (2013). "PwC's NextGen: A global generational study"

¹¹ PR1MA was established under the PR1MA Act 2012 [Act 739]

¹² Only 8500 PR1MA homes built so far, says minister, Retrieved from <http://www.themalaymailonline.com/malaysia/article/only-8500-pr1ma-homes-built-despite-bns-500000-unit-pledge>

price of PR1MA-built homes are still beyond the average salary of the youth and the bottom 40% of income earners bracket group¹³¹⁴.

Recommendations

- a. To ensure access to adequate affordable housing.
- b. To reduce development charges associated with building affordable homes.
- c. To establish a national-level central authority to lead the planning and delivery of affordable housing and to manage the demand and supply of affordable housing.
- d. To encourage the government to adopt policies to further promote industrial building systems (IBS) technology to reduce house-building costs.

4. RIGHT FOR FREE EDUCATION

- 4.1. Primary and secondary level education is free and compulsory in Malaysia. Article 29A(2) Education Act 1996 provides that parents have to enrol their children aged between 7 and 12 in primary school. Failing which, Section 29A(4) of the same Act makes it an offence liable for a fine not exceeding RM 5,000 or to imprisonment for a term not exceeding six months, or both¹⁵. The latter, meant to ensure parents enrol their children in primary school has disproportionately affected households of lower income.
- 4.2. It remains that the take-up rate of technical and vocational education and training (TVET) after Form 3 (age 15) is lacking. This has indirectly affected the youth to opt for TVET over traditional curriculums¹⁶.
- 4.3. Currently undocumented children, including stateless children, children of lawful migrant workers, children of refugees and asylum seekers do not have the right to education in public schools in Malaysia.

¹³ B40 refers to the bottom 40% of households with monthly income of RM3,900 and below.

¹⁴ PR1MA houses at KL expo still beyond average salary, Retrieved from <https://www.themalaysianinsight.com/s/45067/>

¹⁵ Under Section 29(4) Education Act 1996, parents who fail to send their children to schools will be fined RM5000 or imprisoned or both.

¹⁶ Lack of information hampers vocational training push, Retrieved from <http://www.themalaymailonline.com/malaysia/article/lack-of-information-hampers-vocational-training-push> (Accessed on 9 March 2018).

Recommendations

- a. To ensure compulsory enrolment at secondary level of education for Malaysians aged 13 to 17 including public schools and TVET.
- b. To further promote TVET as an alternative option for Malaysians at secondary and tertiary level of education.
- c. To consider progressively reducing the cost to access higher education for Malaysians with ultimate goal of making it free.
- d. To allocate reasonable funding to non-governmental organisations (NGOs) operating education programmes for child refugee and asylum seekers.

5. DISCRIMINATION OF RACIAL PREFERENCES IN HIRING GRADUATES

5.1. Article 8(2) of the Federal Constitution of Malaysia prohibits discrimination in the process of appointment and employment¹⁷. However, Lee and Muhammad found substantial evidence of racial discrimination in Malaysia's private sector. The study elaborates that Malay applicants face differential treatment when applying for jobs compared to Chinese applicants. For every Malay applicant that gets called back, on average, 5.3 comparably qualified Chinese get called¹⁸.

5.2. Other employment discriminatory practices include advertisements highlighting Mandarin proficiency as a requirement, placing applicants of other races at a disadvantage when applying for the same position¹⁹. However Lee proposed that plausible reasons for discrimination in favour of Chinese applicants over Malays include linguistic and cultural compatibility between the job applicant, company and prospective colleagues²⁰.

Recommendations

¹⁷ Discrimination when hiring is rife, say job seekers, Retrieved from <https://www.thestar.com.my/news/nation/2013/09/18/discrimination-when-hiring-is-rife-say-job-seekers/#UHqIqtHD10eb5QX7.99>

¹⁸ Lee and Muhammad (2016), Discrimination of high degrees: Race and graduate hiring in Malaysia, Journal of the Asia Pacific Economy

¹⁹ See, for example, a popular blog: <http://www.rockybru.com.my/2013/10/proof-of-private-sector-discrimination.html>.

²⁰ Lee (2017) *Labour Discrimination in Malaysia: Passage Out of the Gridlock?* Yusof Ishak Institute

- a. To enact legislation prohibiting discrimination in the workplace by promoting employment equality, including at recruitment stage. This should include provisions to outlaw discriminatory practices at the workplace.
- b. To promote awareness, appreciation and best practice of workplace diversity.
- c. To offer tax incentives to companies that promote equal opportunities in its employment.

6. RIGHTS OF YOUNG WOMEN

6.1. The general age permissible for marriage in Malaysia is 18 for males and 16 for females²¹. However, exceptions are provided depending on the applicant's religion. Non-Muslims who are under-aged are permissible to marry provided that they obtain the approval of their respective Chief Minister.²² Muslims who are under-aged are able to marry if they obtain approval from a Sharia Court judge²³. In terms of policy, the Ministry of Women, Family and Community Development Malaysia supports awareness campaigns²⁴ to highlight the harmful practice of child marriages, but merely discourages underage marriage.²⁵

6.2. As it stands, there are reported cases of underaged rape victims being coerced to enter into marriage with the alleged rapist. Despite obtaining the Chief Minister or Sharia Court's approval, this should not be an excuse to make underaged marriages permissible²⁶. By entering into marriage at a young age, it hinders the development of the child's wellbeing. This necessitates the addressing of permissible child marriages in Malaysia as it adversely affects the development of young women.

Recommendations

- a. To consider the abolishment of child marriages²⁷.

²¹ Section 10 of Law Reform (Marriage and Divorce) Act 1976

²² Section 21(2) of Law Reform (Marriage and Divorce) Act 1976

²³ <http://www.themalaymailonline.com/malaysia/article/three-things-about-child-marriages-in-malaysia>

²⁴ [https://www.kpwkm.gov.my/kpwkm/uploads/files/TextUcapan/YBM%20Child%20Marriagev4%201%20\(media\).pdf](https://www.kpwkm.gov.my/kpwkm/uploads/files/TextUcapan/YBM%20Child%20Marriagev4%201%20(media).pdf)

²⁵ <http://www.thesundaily.my/news/2017/08/09/rape-victims-families-decide-underage-marriages-rohani>

²⁶ http://factsanddetails.com/southeast-asia/Malaysia/sub5_4b/entry-3640.html

²⁷ <https://www.reuters.com/article/us-malaysia-sexcrimes-law/malaysia-passes-child-sex-crimes-law-does-not-ban-child-marriage-idUSKBN1770ZH>

- b. To introduce educational policies to ensure young women understand their free will and consent over marriage.

7. OUT OF WEDLOCK CHILDREN AND ORPHANS

7.1. Between 2005 and 2015, approximately 532,158 children were born out of wedlock according to the National Registration Department (JPN)²⁸. Out of this figure, 16,270 were cases of teenage pregnancy. The Royal Malaysian Police also revealed that there were 526 cases of abandoned babies and more than 50% of the dumped babies do not survive²⁹.

7.2. In Malaysia, there is an increase in the operations of illegal orphanages that act as a facade for begging syndicates, sometimes with links to human trafficking. By exploiting the vulnerable orphan, these illegal orphanages stand to profit from the goodwill of the people. As they are illegal and consequently unregulated, there are no provisions to ensure that the collections from begging is properly channelled toward the wellbeing of the orphans.³⁰

Recommendations

- a. To increase the number of safe “baby-drop” facilities to reduce the death ratio of abandoned babies.
- b. To ensure all orphanages operating in the country are registered with the Department of Social Welfare to ensure proper oversight of these facilities.
- c. To provide reasonable budget allocation for registered orphanages to ensure that they are able to operate optimally.

²⁸ <http://says.com/my/news/more-than-530-000-illegitimate-children-registered-with-jpn>

²⁹ http://studentsrepo.um.edu.my/6911/1/OUTCOMES_OF_PREGNANCY_AMONG_UNMARRIED_MOTHERS.pdf

³⁰ <https://www.nst.com.my/news/nation/2017/08/272960/call-setting-body-control-illegal-orphanages>

CAPE

Thirty-First Session of the UPR Working Group, October-November 2018

About CAPE

1. Established in the year 2013, Centre for Alternative Policies in Economics (CAPE) was formed as an independent think-tank that promotes alternative views on economic and public policies. CAPE's main objective is to become an independent research and advocacy organisation on Malaysian economic and public policies. Since its establishment, CAPE had produced articles and conducted research on various economic and public policy issues in Malaysia.

Submission to the UN UPR of Malaysia

2. This submission by CAPE to the United Nations (UN) Universal Periodic Review (UPR) of Malaysia wishes to highlight on Malaysian government's compliance with human rights obligations in recognising, protecting and realising the right to a standard of living of Malaysian citizens specifically on to the provision of adequate and affordable housing.

Right to a Standard of Living and Right to Adequate & Affordable Housing

3. Three international declarations of human rights by the UN, ASEAN and the Organisation of Islamic Cooperation (OIC), which Malaysia is a party to, affirm the right of the people to a standard of living, including but not limited to, adequate and affordable housing.
4. Article 25 (1) of the Universal Declaration of Human Rights states that: *"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."*
5. Article 28 of ASEAN Human Rights Declaration states that: *"Every person has the right to an adequate standard of living for himself or herself and his or her family including: a. The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food; b. The right to clothing; c. The right to adequate and affordable housing; d. The right to medical care and necessary social services; e. The right to safe drinking water and sanitation; f. The right to a safe, clean and sustainable environment."*
6. Article 17 (c) of the Cairo Declaration on Human Rights in Islam states: *"The State shall ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs."*

The Role of the Malaysian Government in Recognizing and Realizing the People's Right to Adequate and Affordable Housing

7. Other than the three declarations mentioned above, Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) highlights the state's responsibility in recognising and realising the people's right to a standard of living: *"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."*
8. In Malaysia, the matter of welfare and housing falls under the purview of the federal and state governments as stated in in the Ninth Schedule of the Federal Constitution, under List III — Concurrent List of the Federal Constitution of Malaysia, which list: *"1. Social welfare; social*

services subject to Lists I and III; protection of women, children and young persons; and 9c. Housing and provisions for housing accommodation; improvement trusts”

Unaffordable Housing

9. Previous UPR of Malaysia - The issue on ensuring adequate and affordable housing especially for the low and middle-income households had been highlighted in the first and second cycle of UPR. CAPE notes that there were measures taken by the government to overcome the issue of inadequate affordable housing for low and middle-income households, but the issue of house unaffordability seems to exist to this day.
10. Reports on house unaffordability - In the past few years, the issue of house unaffordability had been highlighted by major government-related bodies including Khazanah Research Institute (KRI) and Bank Negara Malaysia (BNM). KRI published a report called 'Making Housing Affordable'¹ in 2015 and BNM published a special section in their 2015² and 2016³ annual reports highlighting the issue of house unaffordability. CAPE further investigated on the issue and the findings based on most recent data of 2016 are presented in this report.
11. House price trend – BNM reported that between 2009 and 2014, average house prices in Malaysia rose by 7.9% in compounded annual growth rate (CAGR) terms, exceeding the growth in average household income of 7.3% over the same period. CAPE compared the growth rate of the House Price Index (HPI) and the Consumer Price Index (CPI) and discovered that from 1990 to 2016, HPI grew at a CAGR of 10.4% against 3.1% for CPI. House prices had grown at more than three times than the rate of inflation annually.
12. Median multiple as house affordability measurement - The common measure for house affordability is the 'median multiple', a measure that is being used by the UN Human Settlements Programme (UN-Habitat), a UN programme for human settlements and sustainable urban development. A measurement of three and below (< 3.0) indicates house affordability. A median multiple between 3.1 to 4.0 indicates moderate unaffordability, a median multiple of between 4.1 to 5.0 indicates serious unaffordability and a median multiple of more than five (> 5.0) indicates severe unaffordability.
13. Overall house affordability in Malaysia – CAPE's finding based on 2016 data shows that the overall median multiple level for Malaysia has hit the serious unaffordability level at 4.8 in 2016. It worsened from 4.4 in 2014, a trend that had continued for at least since 2002.
14. House affordability by income segment – CAPE's calculation based on household income group, found that only top 20% income group (with a median multiple of 1.9) can afford the national median house price. Bottom 40% income group had a high median multiple of 4.8 and unfortunately even middle 40% income group could generally not afford a median priced house having a median multiple of 4.0.
15. House affordability by strata - In terms of strata, rural dwellers are worse off with a median multiple of 7.2, a striking difference compared to urban dwellers with median multiple of 4.2. CAPE argues that low and middle-income households in urban areas are very much affected too, as they have lower median household income.
16. House affordability by state – CAPE's finding based on 2016 individual state's median household income, found that all states reported unaffordability level with Kelantan, Pahang, Pulau Pinang, Sabah and Putrajaya having median multiple figures of more than five, falling

¹ Making Housing Affordable by KRI [http://www.krinststitute.org/assets/contentMS/img/template/editor/FINAL_Full_Draft_KRI_-_Making_Housing_Affordable_with_hyperlink_220815%20\(1\).pdf](http://www.krinststitute.org/assets/contentMS/img/template/editor/FINAL_Full_Draft_KRI_-_Making_Housing_Affordable_with_hyperlink_220815%20(1).pdf)

² BNM Annual Report 2015 http://www.bnm.gov.my/files/publication/ar/en/2015/ar2015_book.pdf

³ BNM Annual Report 2016 http://www.bnm.gov.my/files/publication/ar/en/2016/ar2016_book.pdf

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into the category of 'severely unaffordability'. The rest of the states fell into 'serious unaffordability' except for Labuan and Melaka than reported 'moderate unaffordability'.

17. House affordability in major cities – BNM in its 2015 Annual Report measured house affordability based on 'debt-to-income ratio' (ability to service mortgage loans using their income). They investigated affordability in all major cities including Kuala Lumpur city, Petaling, Johor Bahru and Georgetown, and found that capacity to own a house falls below the affordability level in the selected cities.
18. House affordability by ethnicity – Analysis based on major ethnicities was done by CAPE and it was found that Bumiputeras were the most affected by house unaffordability as they reported the lowest median household income level of RM4,846 a month, compared to RM6,582 for Chinese and RM5,428 for Indians. Median multiple for Bumiputeras was 5.1, 3.8 for Chinese and 4.6 for Indians.
19. House affordability by age group – In terms of age group, youths between 15 to 29 were affected the most by house unaffordability. The median multiple for age group 15 to 24 was 6.6 and for age group 25 to 29 was 5.0. CAPE found that 2014 to 2016 CAGR of median house price was 11% while the growth of youths' salary aged between 16 to 29 increased up to only 4.9%.
20. Underestimation of median multiple – CAPE argues that the actual calculation of median multiple might have underestimated the level of unaffordability as household debts have not been accounted for. Big portion of the population are trapped in high household debts, reducing their disposable income in buying a house. Additionally, with the constraint on disposable income, the basic requirement of 10% down payment made it almost impossible for them to own a house, another hurdle for the people to own a house.
21. Expenditure burden – As house prices remain high, spending power and expenditure for low and middle-income households were very much affected. Even if they were able to own a house, housing expenditure becomes a burden for them. For households at the very left end of the income scale who earn below than RM500 a month, expenditure on housing and utilities comprise about 40% of their total expenditure whereas only 20% for households earning RM5,000 and above as BNM reported⁴.
22. Housing supply - BNM in its 2015 Annual Report stated that the gap between the housing stock and the number of households widened to 2.5 million units in 2015 from 2.1 million units in 2005. KRI highlighted that composition of residential units of below than RM250,000⁵ for both existing and newly launched houses had been trending down in the past decade. Houses priced between RM250,000 to RM1,000,000 seemed to dominate the residential market, leaving limited housing options for most low and middle-income households.

Issues with Existing Housing Programmes

23. CAPE wishes to highlight that the provision of adequate and affordable housing should consider the criteria set in General Comment No. 4, of the Committee on Economic, Social and Cultural Rights (CESCR), on the Right to Adequate Housing that: *"The Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following: a) Legal security of tenure; b) Availability of services, materials, facilities and infrastructure; c) Affordability; d) Habitability; e) Accessibility; f) Location; and Cultural adequacy."*

⁴ https://www.bnm.gov.my/index.php?ch=en_publication&pg=en_papers&ac=37&bb=filea

⁵ Based on 2014 median annual income of RM55,020, the maximum house price to be considered affordable is RM165,060. Based on 2016 median annual income of RM62,736, the maximum house price to be considered affordable is RM188,208.

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24. Other than inadequate supply of low-cost houses⁶, CAPE wishes to highlight that the conditions of many existing low-cost houses especially in the urban areas are very poor and do not comply with the criteria set by UN CESCR. Many of these low-cost houses have unsafe environment, and have poor maintenance of services, materials and infrastructure. There have been many cases reported on the poor and unsafe environment^{7, 8, 9, 10} and substandard maintenance of facilities and infrastructure^{11, 12, 13, 14 15} of these low-cost houses. A recent case involved the life of 14-year-old Satishwaran Sathiasilan who was hit in the head by an office chair that was thrown out from a unit many floors above¹⁶. For such case, it is argued that the main factor is due to the lack of infrastructure^{17, 18, 19} and is a real proof of an unsafe environment for the people residing.
25. Another point worth highlighting is the poor state of welfare and health of low-cost flat residents in the urban areas. A recent study published by UNICEF²⁰ reported on the poor condition of the children living in low-cost 'Projek Perumahan Rakyat' (PPR) flats in Kuala Lumpur. Though the national poverty rate was less than 1%, 99.7% of the children in low-cost flats lived in relative poverty with 7% in absolute poverty. It was also reported that many of these children faced malnourishment and are behind in terms of school enrolment.
26. For middle income households, they are restricted by regulation to access low-cost houses. The fact that supply of middle-cost houses had been trending lower especially for new residential property launches, there had been very limited options for middle-income households in buying a house that they can afford. The government had introduced a few affordable housing programmes targeting at middle-income households, but it is argued that these houses are way above the affordability level of the population^{21, 22}. It was even reported since the introduction of PR1MA, there were only about half of total open units for sale were sold as at November 2017^{23, 24}. In the case of affordable houses built by private developers on the other hand, there has been a mismatch between the location of demand and the supply of these houses as they are built quite a distant from the business centres²⁵.

⁶ <https://www.thestar.com.my/metro/community/2015/05/06/housing-the-citys-poorest-the-lowincome-earners-in-kuala-lumpur-are-badly-affected-by-the-severe-hou/>

⁷ <https://asiancorrespondent.com/2018/03/child-poverty-malaysia-kl/#bYp68eLmPUawzKDL.97>

⁸ <http://www.themalaymailonline.com/malaysia/article/this-is-what-public-housing-looks-like>

⁹ <https://www.themalaysianinsight.com/s/35691/>

¹⁰ <https://www.malaysiakini.com/letters/346067>

¹¹ <https://www.thestar.com.my/metro/metro-news/2017/09/30/flats-residents-up-in-arms-over-poor-maintenance/>

¹² <http://www.themalaymailonline.com/malaysia/article/attend-to-our-needs-first-residents-tell-dbk1>

¹³ <http://www.thesundaily.my/node/361674>

¹⁴ <http://www.freemalaysiatoday.com/category/nation/2016/08/17/the-unfortunate-tale-of-ppr-dwellers/>

¹⁵ <http://www.themalaymailonline.com/malaysia/article/serious-maintenance-problems-at-ppr-houses-and-flats-in-selangor-says-noh>

¹⁶ <https://www.themalaysianinsight.com/s/32852/>

¹⁷ <http://www.themalaymailonline.com/malaysia/article/why-poor-flat-dwellers-simply-throw-trash>

¹⁸ <https://www.themalaysianinsight.com/s/32896/>

¹⁹ <https://www.themalaysianinsight.com/s/35970/>

²⁰ Children Without: A study of urban child poverty and deprivation in low-cost flats in Kuala Lumpur by UNICEF, <https://www.unicef.org/malaysia/FINAL-REPORT-1.pdf>

²¹ <http://www.thesundaily.my/news/2017/11/21/pr1ma-not-track-objectives>

²² <https://www.themalaysianinsight.com/s/23876/>

²³ <http://www.thesundaily.my/news/2017/11/21/pr1ma-homes-out-reach-average-malaysian>

²⁴ <http://www.thesundaily.my/news/2017/11/21/overhang-pr1ma-units-calls-review-approach>

²⁵ <https://themalaysianreserve.com/2018/02/20/unsold-properties-rise-locations-affordable-units/>

Conclusion

27. On the demand side, it has been challenging for majority of the population to access affordable houses as their income have not been able to keep up with the growth of house prices.
28. The main reason for the unaffordability of houses in Malaysia though, has been due to the mismatch of house supplies to the increasing demand for low and middle-cost houses especially in urban areas. There has been inadequate supply of affordable houses by both Government-Linked Companies (GLCs) and private developers.
29. Apart from unaffordability, the quality of the completed houses and that are being built do not comply with the criteria of housing right set by the UN CESCR, that ensures: security; availability of services, materials, facilities and infrastructure; habitability, accessibility, location; and cultural adequacy.
30. CAPE proposes that policies to be taken by the government should be able to address the root causes of the issue and be able to focus on the most affected groups including rural dwellers, urban low and middle-income households, Bumiputeras and youths.

Recommendations

1. For the government to introduce a comprehensive set of policies to enhance the income of households, as well as to reduce their burden in terms of cost of living, especially for the most affected groups including rural dwellers, urban low and middle-income households, Bumiputeras and youths.
2. For the government to introduce measures in improving the access to finance in buying a house for the most affected groups, without jeopardising the aggregate level of financial stability.
3. For the government to address the inadequate supply of affordable houses by incentivising GLCs and other private developers to build more and enough supply of affordable houses.
4. For the government to facilitate and encourage the property construction industry in using innovative and more cost-efficient methods of construction.
5. For the government to ensure that all housing programmes comply with the criteria set by the UN CESCR especially for low and middle-cost houses.