



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

JOINT SUBMISSION FOR STAKEHOLDERS' INFORMATION

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A	Introduction	1
B	Marginalization of Communities from Economic, Social and Cultural Developments	
	<i>Stateless People</i>	2
	<i>Refugees</i>	3
	<i>Victims of Human Trafficking</i>	3
C	Rights of Persons with Disabilities	
	<i>Jobs and Subsistence</i>	4
	<i>Purchasing Insurance & Properties</i>	4
	<i>Misuse of Basic Facilities for Disabled Persons</i>	5
D	Discrimination Based on Beliefs	
	<i>Rights to Build Place of Worship in Sabah</i>	5
	<i>LGBT's Rights to Religion</i>	6
	<i>Discrimination Against Muslims Men at the Workplace</i>	7
	<i>Discrimination Towards Obligatory Headscarves</i>	7
	<i>Discrimination Towards Muslim Reverts</i>	7
E	Women, Children & Sexuality	
	<i>Sexual Harassment</i>	8
	<i>Discrimination against LGBT People</i>	8
	<i>Child Marriages</i>	9
	<i>Dissolution of Marriage by Women (Fasakh)</i>	9
	<i>Protection for Children</i>	9
	<i>Exposure to Pornographic Materials</i>	10
	<i>Discrimination against Parental Rights of Muslim Reverts</i>	10
F	Rights to Life	
	<i>Condition of Prison & Detention Centres</i>	11
	<i>Violence against Incarcerated Transgenders</i>	11
G	National Unity	
	<i>Cultural Rights</i>	12
	<i>National Language</i>	12
	<i>Interfaith Tolerance</i>	13
	<i>Shia</i>	14
H	Rights of Youth	
	<i>Free Education</i>	15
	<i>Housing</i>	15

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 down severe sentences to an army general, two provincial politicians, and

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 Mahbulul 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 Asia. *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).

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 CENTHRA (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-abled-bodied-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#Uw1104Ep7WdWkGm.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-employee-s-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 involved 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-lawy>

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 propagate the Christian faith to the Malays, who by constitutional definition,

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. *JAI's 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-excl#7V4XyL06hTYuiIDZ.97> (Accessed 8 January 2018).

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

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.

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

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.

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**.*

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**.*

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).