

**MALAYSIA'S**

**2016**

**UPR MID - TERM  
REVIEW**

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**Civil Society's Participation:  
A Critical Engagement Towards  
Fulfilling Malaysia's UPR Obligations**

**Prepared by  
THE COALITION OF MALAYSIAN NGOs IN THE UPR PROCESS  
(COMANGO)**

Cover, Layout and Design:

Aniza Jawahir <[anizajawahir@gmail.com](mailto:anizajawahir@gmail.com)>

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# ABBREVIATIONS

1MDB	1 Malaysia Development Berhad
ABIM	Angkatan Belia Islam Malaysia // Muslim Youth Movement
AGC	Attorney-General's Chambers
AIDS	Acquired immunodeficiency syndrome
ATIP	Anti-Trafficking in Persons
ATIPSOM	Anti-Trafficking in Persons and Anti-Smuggling of Migrants
BHEUU	Bahagian Hal Ehwal Undang-Undang // Legal Affairs Division
BN	Barisan Nasional // National Front
BTN	Biro Tatanegara // National Civics Bureau
CAT	United Nations Convention Against Torture
CDHRI	Cairo Declaration on Human Rights in Islam
CEMD	Confidential Enquiry into Maternal Deaths
CERD	Convention on the Elimination of all forms of Racial Discrimination
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CMA	Communications and Multimedia Act 1998
COAC	Centre of Orang Asli Concern
COMANGO	Coalition of Malaysian NGOs in the UPR Process
CPED	Convention for Protection of All Persons from Enforced Disappearance
CRC	United Nations Convention on the Rights of the Child
CRC-OP-AC	Optional Protocol to the CRC on the involvement of children in armed conflict
CRC-OP-SC	Optional Protocol to the CRC on the sale of children, child prostitution and child pornography
CRPD	Convention on the Rights of People with Disabilities

CSOs	Civil Society Organizations
DAP	Democratic Action Party
DDA	Dangerous Drugs (Special Preventive Measures) Act 1985
DVA	Domestic Violence Act 1994
EAIC	Enforcement Agency Integrity Commission
EC	Election Commission
EMPOWER	Persatuan Kesedaran Komuniti Selangor
FGM	Female Genital Mutilation
GDI	Global Development Initiative Association of Malaysia
GE13	General Election
GLCs	Government-Linked Companies
GPB	Genting Plantations Berhad // Genting Plantations Limited
GST	Goods and Services Tax
GTP	Government Transformation Programme
HIV	Human immunodeficiency virus
HRBPS	Human Rights Best Practices in Schools
HRW	Human Rights Watch
IC	Identity Card
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ICPED	International Convention for Protection of All Persons from Enforced Disappearance
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers

ICU	Implementation Coordination Unit
ILO	International Labour Organization
IOM	International Organization for Migration
IPCMC	Independent Police Complaints and Misconduct Commission
ISA	Internal Security Act 1960
JAKIM	Department of Islamic Development
JAKOA	Jabatan Kemajuan Orang Asli // Department of Orang Asli Development
JAWI	Jabatan Agama Islam Wilayah Persekutuan // Federal Territories' Islamic Department
JAIS	Jabatan Agama Islam Selangor // Selangor State Islamic Department
JFS	Justice for Sisters
JKM	Jabatan Kebajikan Masyarakat // Department of Social Welfare
JOAS	Jaringan Orang Asal SeMalaysia // Indigenous Peoples Network of Malaysia
JPA	Jabatan Perkhidmatan Awam // Public Service Department
KPWKM	Kementerian Pembangunan Wanita, Komuniti dan Keluarga Malaysia // Ministry of Women, Family and Community Development
KRYSS	Knowledge and Rights with Young people through Safer Spaces
LFL	Lawyers for Liberty
LTSVP	Long Term Social Visit Pass
LGBT	Lesbian, Gay, Bisexual and Transgender
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning
MABT	Maklumat, Awal, Bebas, Telus // Information, Early, Free, Transparent
MAPO	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants
MCA	Malaysian Chinese Association
MCH	Maternal and Child Health Program

MDG	Millennium Development Goals
MOE	Ministry of Education
MP	Member of Parliament
Muslim-UPRo	Muslim-Unviersal Periodic Review Organistation
MVM	Muslim Volunteer Malaysia Association
NEM	New Economic Model
NGO	Non-Governmental Organization
NHRAP	National Human Rights Action Plan
NRD	National Registration Department
NSP	National Strategic Plan
NUCC	National Unity Consultative Council
OIC	Organization of the Islamic Conference
OP-CAT	Optional Protocol to United Nations Convention Against Torture
PAA	Peaceful Assembly Act 2012
PDRM	Polis DiRaja Malaysia // Royal Malaysian Police
PERHILITAN	Department of Wildlife and National Parks
PERKASA	Persatuan Pribumi Perkasa // Mighty Native Organization
PKR	Parti Keadilan Rakyat // People's Justice Party
PLI	Poverty Line Income
POCA	Prevention of Crime Act 1959
POTA	Prevention of Terrorism Act 2015
PP	Public Prosecutor
PPPA	Printing Presses and Publications Act 1948
PPRT	Houses for the Extreme Poor Project
PR	Permanent Residence
PWD	Persons with Disabilities
RELA	People's Volunteer Corps
SAR	Sekolah Agama Rakyat // Muslim Community School

SBJK	Sekolah Bimbingan & Jalinan Kasih // Guidance & Care Network School
SEED	Pertubuhan Kebajikan dan Persekitaran Positif Malaysia // Welfare and Positive Surrounding Organization Malaysia
SEIP	Special Education Integration Programme
SES	Special Education Schools
SOGIE	Sexual Orientation, Gender Identity and Expression
SOSMA	Special Offences (Special Measures) Act 2012
STU	Sarawak Teachers' Union
SUARAM	Suara Rakyat Malaysia
SUHAKAM	Human Rights Commission of Malaysia
UMNO	United Malays National Organization
TIP	Trafficking-in-Persons
TPPA	Trans-Pacific Partnership Agreement
TSK	Tanam Semula Komersial // Commercial Replantation
UiTM	University of Technology Mara
UDHR	Universal Declaration of Human Rights
UEC	Unified Examination Certificate
UKM	University Kebangsaan Malaysia // National University of Malaysia
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees
UNODC	United Nations Office on Drugs and Crime
UPR	Universal Periodic Review
WHO	World Health Organization
WSJ	Wall Street Journal
YR1M	Yayasan Rakyat 1Malaysia

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# EXECUTIVE SUMMARY

Malaysia accepted 150 recommendations in full, in part and in principle during its second cycle of the Universal Periodic Review, noting 82 of them. While this may appear impressive, representing 64.66% of the recommendations that were made by UN member states, many of these recommendations were not specific, measurable, attainable, realistic and time-bound (SMART). Only 64 of the accepted recommendations could actually be described as somewhat measurable, with only 17 of these actually calling for specific actions to be taken by the Government of Malaysia.

For a country that is often considered far more developed than most nations of similar economic standing, it is commendable that the Government of Malaysia has strived to accept recommendations pertaining to its accession to the remaining six core international human rights treaties, the repeal of the Sedition Act, the human rights of persons who are trafficked and the human rights of our indigenous peoples, the Orang Asli and the Orang Asal. However, many of the accepted recommendations still strongly lean toward those that primarily speak to poverty alleviation and the provision of basic needs—health, education and housing, and the human rights of vulnerable groups – children, and persons with disabilities. The issue of land rights of the Orang Asli and Orang Asal remains contentious. The practical translation of Malaysia’s commitment to upholding human rights remains painstakingly slow and piecemeal in nature, where some actions and measures are counter-productive and only serve to undermine earlier progress. This has resulted in contradicting outcomes of where a recommendation may be fully implemented, but the translation of policy, programme and law into change in practices on the ground towards the actual fulfilment of human rights is far from realised. Even in poverty alleviation, we have witnessed the continuing use of less efficient measures to design poverty reduction programmes and approaches. Worse, there is growing impunity in violating freedoms of expression and of association and assembly, and the economic, social and cultural rights of minorities are constantly under threat. What is equally worrying is when progressive court judgements that uphold human rights according to international standards are challenged by the Government, such as what happened in the judicial review of the syariah law criminalising transgender women in Negeri Sembilan. For these reasons, the Coalition of Malaysian NGOs in the UPR Process (COMANGO) has chosen to not only monitor the accepted recommendations but those that were noted (rejected) as well. This is done in the spirit and understanding that Malaysia is a member of the United Nations and by that expressed commitment, is obligated to always pursue higher standards in ensuring the respect, protection and fulfilment of human rights for all persons in Malaysia based on the principles of equality and non-discrimination, and the preservation of human dignity.

# RINGKASAN EKSEKUTIF

Malaysia menerima 150 cadangan sepenuhnya, sebahagiannya dan pada dasarnya pada kitaran kedua Penilaian Berkala Sejagat (UPR), mengambil perhatian terhadap 82 cadangan UPR. Mahupun ini kelihatan mengagumkan, di mana 150 cadangan tersebut mewakili 64.66% daripada cadangan yang telah dibuat oleh negara-negara anggota PBB, sebahagian besar cadangan-cadangan tersebut tidak khusus, boleh diukur, boleh dicapai, realistik dan diikat-masa (SMART). Hanya 64 daripada cadangan-cadangan yang diterima tersebut sebenarnya boleh digambarkan sebagai mampu diukur, dengan hanya 17 daripada jumlah tersebut sebenarnya memanggil untuk tindakan spesifik yang perlu diambil oleh Kerajaan Malaysia.

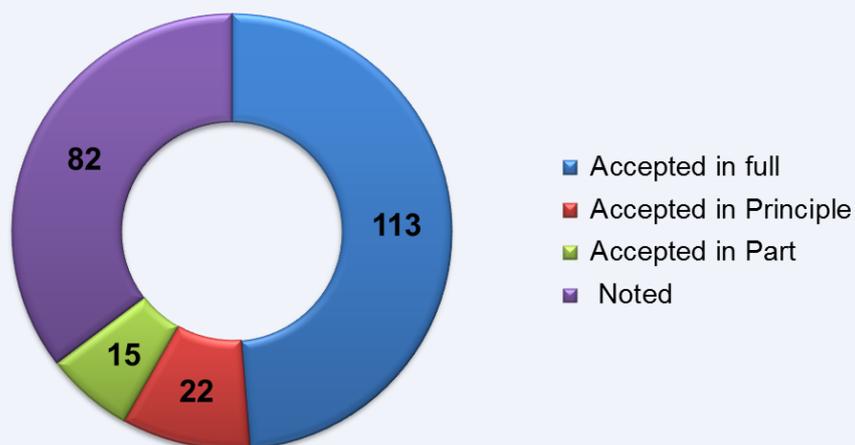
Bagi sebuah negara yang sering dianggap jauh lebih maju daripada kebanyakan negara-negara yang mempunyai kedudukan ekonomi yang sama, Kerajaan Malaysia telah mengambil tindakan terpuji untuk menerima cadangan-cadangan yang berkaitan dengan menandatangani baki enam perjanjian teras hak asasi manusia antarabangsa, pemansuhan Akta Hasutan, hak asasi manusia bagi mangsa-mangsa pemerdagangan manusia dan hak asasi Orang Asli dan Orang Asal. Walau bagaimanapun, kebanyakkan cadangan-cadangan yang diterima hanyalah yang berkaitan pembasmian kemiskinan dan penyediaan keperluan kesihatan asas, pendidikan dan perumahan, dan hak-hak asasi komuniti paling terdedah - kanak-kanak dan orang kurang upaya. Isu hak tanah Orang Asli dan Orang Asal kekal bermasalah. Pengimplementasian komitmen Malaysia untuk menegakkan hak asasi manusia masih teramat perlahan dan sedikit demi sedikit, bahkan beberapa tindakan dan langkah-langkah yang diambil tidak produktif dan menjejaskan kemajuan yang telah sedia ada. Ini telah menyebabkan percanggahan hasil di mana pengimplementasian cadangan UPR dijalankan sepenuhnya, namun terjemahan dasar, program dan undang-undang ke dalam perubahan amalan ke arah memenuhi hak asasi manusia setelusnya adalah jauh dari kenyataan. Sedangkan dalam isu pembasmian kemiskinan, kita telah menyaksikan penggunaan langkah-langkah yang kurang berkesan secara berterusan dalam membentuk program untuk mengurangkan permasalahan kemiskinan. Lebih teruk lagi, kebebasan bersuara dan berpersatuan dan berhimpun sewenang-wenangnya dinafikan dan pada masa yang sama hak-hak ekonomi, sosial dan budaya golongan minoriti sentiasa di bawah ancaman. Juga membimbangkan ialah apabila keputusan-keputusan kehakiman yang kelihatan progresif yang menegakkan hak asasi manusia mengikut piawaian antarabangsa dicabar oleh Kerajaan, contohnya dalam isu semakan kehakiman undang-undang jenayah syariah yang menjenayahkan wanita transgender di Negeri Sembilan. Atas sebab-sebab tersebut, Gabungan NGO-NGO Malaysia dalam Proses UPR (COMANGO) telah memilih bukan sahaja untuk memantau cadangan-cadangan UPR yang diterima tetapi juga cadangan-cadangan yang diambil perhatian. Ini dilakukan dalam semangat dan pemahaman bahawa Malaysia adalah ahli Pertubuhan Bangsa-Bangsa Bersatu (PBB) dan melalui komitmen yang dinyatakan, mempunyai kewajipan untuk sentiasa mengejar standard yang lebih tinggi dalam memastikan penghormatan, perlindungan dan pemenuhan hak asasi manusia untuk semua orang di Malaysia berdasarkan prinsip-prinsip kesaksamaan dan tanpa diskriminasi, dan menjaga maruah manusia.

# METHODOLOGY

The Government of Malaysia adopted its 2<sup>nd</sup> Universal Periodic Review (UPR) recommendations on 2<sup>nd</sup> April 2014. In the process, the government representatives accepted 150 recommendations, of which 113 were accepted in full (bolded in black throughout this report), 15 accepted in part (in blue) and 22 accepted in principle (in blue). Meanwhile, 82 recommendations from peer delegates were noted (in red), making it a total of 232 recommendations submitted to Malaysia from various member states in the UPR.

## Malaysia's 2<sup>nd</sup> UPR

### Recommendations



In this report, The Coalition of Malaysian NGOs in the UPR Process (COMANGO) provides status updates of implementation of the above UPR recommendations clustered into ten major thematic areas. The first chapter deals with Malaysia's accession into international human rights treaties. The second chapter delves into the status update of civil and political rights in Malaysia which, among others, includes freedom of expression, freedom of religion and elections. Next, in the third chapter, this report gives an update on recommendations in relation to economic, social and cultural rights of which encompasses issues related to rights to education, poverty eradication amongst others. The fourth chapter assesses the implementation of recommendations related to the rights of marginalised groups such as women, children, persons with disabilities, indigenous peoples, persons of diverse sexual orientations and gender identities, migrant workers and refugees and asylum seekers.

The report then provides an update on the implementation of recommendations regarding national mechanisms on human rights such as the Human Rights Commission of Malaysia (SUHAKAM), National Human Rights Action Plan (NHRAP), Independent Police Complaints and Misconduct Commission (IPCMC). The remaining thematic areas give a status update on recommendations regarding trafficking in persons, national unity and social cohesion, human rights education and training, conflict between civil and syariah courts, and finally, general recommendations on the promotion and protection of human rights respectively.

Referring to the categories of measurability determined and used by UPR Info, COMANGO identified a total of 64 measureable recommendations of which they were able to assess. These recommendations, level 4 and 5 as categorised by UPR Info, are those which require specific actions with words such as “ensure, take measures, implement or ratify”. Whereas level 1 to level 3 of the recommendations received were non-measureable which prompts general actions emphasizing continuity and a mere request to consider change.

**Malaysia's 2<sup>nd</sup> UPR**

**Recommendations**



Monitoring these recommendations require a framework to gauge the level of implementation and progress of each recommendation and cluster of recommendations. COMANGO’s mid-term report focuses on three aspects of implementation:

- the existence (or lack) of substantive law reform or new policies,
- practices on the ground,
- and agencies responsible for implementing the recommendations.

In addition, the report also highlights the work of civil society actors in implementing UPR recommendations. Civil society organizations in COMANGO have also made recommendations for more effective implementation of the recommendations, recognising the primary role of the Malaysian government, its expressed commitment to human rights, and its expressed willingness to reconsider noted recommendations.

To prepare this report, COMANGO sought input from its members in their respective areas of expertise. The co-secretariats of COMANGO organized a consultation, workshops and briefing sessions to introduce the monitoring framework, the process of mid-term reporting, and sources of information. The coalition notes challenges in procuring data and information from relevant state agencies due to the absence of a Freedom of Information Act at Federal level. Some endorsing organizations who have contributed to the report also work with vulnerable communities who may only be able to speak on the condition of anonymity.

Nevertheless, the report serves as a partial CSO assessment of the progress made on the 150 recommendations accepted by Malaysia in the UPR since April 2014. This report also reflects the worsening situation of many areas of human rights particularly freedoms of expression and of association and assembly, and in upholding equality and non-discrimination.

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**Persatuan Kesedaran Komuniti Selangor**

**(EMPOWER)**

**Suara Rakyat Malaysia**

**(SUARAM)**

**Co-Secretariats of the Coalition of Malaysian NGOs in the UPR Process**

**(COMANGO)**

**19 May 2016**

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The background of the page is an abstract composition of thick, expressive brushstrokes. The left side is dominated by various shades of blue, ranging from deep navy to light sky blue. The right side features a vertical band of bright yellow, which transitions into a lighter, pale yellow towards the right edge. The overall effect is dynamic and textured, suggesting movement and energy.

# OVERVIEW OF ASSESSMENT OF IMPLEMENTATION

RECOMMENDATIONS	BRIEF OVERVIEW	STATUS OF IMPLEMENTATION AND PROGRESS
<b>1. INTERNATIONAL OBLIGATIONS</b>		
<b>1.1 Accession to International Human Rights Instruments</b>		
<p><b>146.1</b> Move forward in the signing of the 6 core international conventions on human rights that the country is not yet a Party</p>	<p>There has been no discernible advancement towards the accession of the ICCPR, ICESCR, ICERD, CAT, ICRMW or ICPPED, let alone their respective optional protocols, and the Rome Statute of the International Criminal Court.</p>	<p><b>NOT IMPLEMENTED</b> <b>NO PROGRESS</b></p>
<p><b>146.7</b> Accede to the two optional protocols to the CRC as well as sign and ratify the third optional protocol to the CRC on a communication procedures</p>	<p>Specific penal code to cover holistically the issue of child pornography is still absent. Third optional protocol still not ratified.</p>	<p><b>NOT IMPLEMENTED</b> <b>MINIMAL PROGRESS</b></p>
<p><b>146.9</b> Speed up the process of accession to the ICESCR and ICCPR</p>	<p>There has been no discernible advancement towards the accession of the ICCPR and</p>	<p><b>NOT IMPLEMENTED</b> <b>NO PROGRESS</b></p>
<b>1.2 Engagement with International Human Rights Mechanisms (Treaty Bodies and Special Procedures)</b>		
<p><b>146.37</b> Fully cooperate with international bodies by submitting overdue reports on CEDAW and CRPD</p>	<p>There are no indications by the Government to send either their CEDAW or CRPD report in the near future.</p>	<p><b>NOT IMPLEMENTED</b> <b>NO PROGRESS</b></p>
<p><b>146.39</b> Continue to strengthen its cooperation with the special procedures of the Human Rights Council by responding positively to the pending visit requests and eventually consider extending a standing invitation to all the special procedures mandate holders</p>	<p>Since the adoption of the UPR by Malaysia in April 2014, there has been only one official visit by the Special Rapporteur on trafficking in persons, especially women and children who visited in February 2015. Pending visit requests by special rapporteurs yet to receive a positive response.</p>	<p><b>MINIMALLY IMPLEMENTED</b> <b>NO PROGRESS</b></p>
<p><b>146.44</b> Accept as many requests as possible, of special procedures of the Human Rights Council to visit Malaysia</p>	<p>Only 1 out of 12 requests for official visits by special rapporteurs has been accepted by Malaysia.</p>	<p><b>MINIMALLY IMPLEMENTED</b> <b>NO PROGRESS</b></p>

<b>2. CIVIL AND POLITICAL RIGHTS</b>		
<b>2.1 Freedom of Expression</b>		
<b>146.48</b> Repeal the Sedition Act	Increasing trend of use of Sedition Act for political motives since 2014.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>
<b>146.49</b> Repeal the Sedition Act and sustain previous reforms in the human rights field	Increasing trend of use of Sedition Act for political motives since 2014. Additionally, laws such as CMA and PPA are also seeing a steady upward trend of amendments which are deemed restrictive.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>
<b>2.2 Freedom of Assembly and Association</b>		
<b>146.160</b> Take steps to strengthen and promote the rights of journalists and bloggers to freely exercise their right to freedom of expression	Proposed CMA amendments will likely aim at controlling or even stifling political content online rather than facilitating freedom of expression and information.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>
<b>146.169</b> Take steps to raise the standards of press freedom and to adapt the Printing Presses and Publication Act to facilitate independent news media coverage	Law reforms going towards silencing and controlling the media.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>
<b>2.3 Freedom of Religion</b>		
<b>146.153</b> Take concrete steps to implement its commitment to promote and protect the rights of all people to worship in peace and security without discrimination or restriction	Various instances of crackdown towards minority religious groups causing disharmony among civilians had taken place since 2014.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>
<b>2.5 Death Penalty</b>		
<b>146.107</b> Carry out the necessary nation-wide consultations to find an alternative to the death penalty, and, as far as possible, explore the possibility of establishing a moratorium on the capital punishment	No progress on the ground in seeking an alternative to the death penalty, nor in exploring the possibility of establishing a moratorium on the capital punishment.	<b>NOT IMPLEMENTED NO PROGRESS</b>
<b>146.116</b> Abolish death penalty for minors and drug dealers	The mandatory death sentence is still meted out on those convicted of murder, treason, possession of firearms and certain drug offences.	<b>NOT IMPLEMENTED NO PROGRESS</b>

2.6 Torture and Cruel, Inhuman or Degrading Treatment		
<b>146.125</b> Strengthen measures to prevent and eliminate all forms of ill-treatment, including torture	Torture is still widely prevalent in government agencies as reported by CSOs. The government has been downplaying allegations of torture .	<b>NOT IMPLEMENTED</b> <b>GROWING</b> <b>IMPUNITY</b>
<b>146.127</b> Continue in its judicial reforms, including strengthening the independence of the judiciary, enact a robust legislation outlawing torture and tackling impunity for acts of torture and ill-treatment, and ensure that provisions for arrests and detention are in accordance with international human rights standards	There has been no change in practice or any proactive move to address this issue since 2014 except for a landmark court decision on the A. Kugan case.	<b>NOT IMPLEMENTED</b> <b>MINIMAL</b> <b>PROGRESS</b>
2.7 Elections		
<b>146.170</b> Accelerate the conclusion of investigations regarding applications on the conduct of elections by the Election Commission and other relevant authorities	Investigations regarding Election Commission's conduct were concluded. However, the 13 <sup>th</sup> General Elections was marred by a host of scandals which severely invalidate the efficiency of the aforementioned investigations.	<b>FULLY</b> <b>IMPLEMENTED</b> <b>SITUATION</b> <b>REGRESSING</b>
3. ECONOMIC, SOCIAL AND CULTURAL RIGHTS		
3.1 Poverty Eradication and Raising Standards of Living		
<b>146.64</b> Make more efforts to safeguard the benefits that would go to those who live in rural areas to ensure their economic and social rights	The inefficient Poverty Line Income (PLI) measurement and the land rights of indigenous peoples severely affect their basic economic and social rights.	<b>NOT IMPLEMENTED</b> <b>NO PROGRESS</b>
<b>146.80</b> Continue its efforts to eradicate poverty and uplift the standards of living for all Malaysians, including through ensuring effective implementation of the Government Transformation Programme strategies	The GTP has been striving to eradicate poverty. However, despite implementing the policies, there remain difficulties for certain individuals/families to access the benefits of the GTP. There are also newly impoverished families due to high living expenses and retrenchment not addressed by the GTP.	<b>FULLY IMPLEMENTED</b> <b>MINIMAL PROGRESS</b>

<b>146.82</b> Reinforce measures to eradicate poverty across all segments of society, including among the indigenous community	The protection of the land rights of indigenous peoples is still neglected severely affecting their basic economic and social rights.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>
<b>146.85</b> Increase efforts for a more fair distribution of wealth in line with the remarkable success in poverty reduction	Economic policies are not rights-based, hence effectively excludes B-40 income groups from access to fair distribution of wealth. Apart from that, the government implemented piecemeal programmes to offset rural poverty.	<b>MINIMALLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>3.2 Right to Education</b>		
<b>146.193</b> Implement a gender perspective in education at all levels, including teacher training, as well as establish a policy and appropriate measures for including children of all backgrounds in the national education system	National Education Blueprint does highlight gender equity as one of the main focal points. However, gender training for teachers and education in schools are yet to be implemented. Teachers and civil society have also been pushing for children in marginalised communities to receive education.	<b>MINIMALLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.194</b> Take necessary measures to Implement a gender prospective in education at all levels, including by training teachers	National Education Blueprint does highlight gender equity as one of the main focal points. However, gender training for teachers and education in schools are yet to be implemented.	<b>NOT IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.195</b> Take the necessary measures to take into account gender aspects at all levels of the educational system, including teachers' training		<b>NOT IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.198</b> Undertake further measures in order to address the problem of shortage of teachers, especially in rural and remote areas	Government failed to address fundamental factors for shortage of teachers in rural areas which is the severe lack of facilities in rural schools. Additionally, there is a lack of training on cultural sensitivities for teachers posted in rural areas and for those posted in Sabah and Sarawak from Peninsular Malaysia.	<b>NOT IMPLEMENTED NO PROGRESS</b>

<b>146.199</b> Step up measures to address the shortage of teachers especially in rural and remote areas	Government failed to address fundamental factors for shortage of teachers in rural areas which is the severe lack of facilities in rural schools. Additionally, there is a lack of training on cultural sensitivities for teachers posted in rural areas and for those posted in Sabah and Sarawak from Peninsular Malaysia.	<b>NOT IMPLEMENTED NO PROGRESS</b>
<b>3.3 Right to Health</b>		
<b>146.179</b> Step up its efforts in ensuring universal access to affordable health services particularly for the poor, vulnerable and marginalized groups	No accessibility to health care services for refugees and undocumented migrant workers. Increase in medical fees for foreigners, including migrant workers. Minimal positive measures taken for foreign spouses of Malaysian Citizens who are now able to get same rates for medical fees as locals in Government Health Care Institutions.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>
<b>146.180</b> Ensure that affordable healthcare and medicines remain available to all Malaysians, especially for those residing in the interior and remote areas of the country	Currently medicine remains available, although interior and remote areas have seen no improvements for the past few years.	<b>MINIMALLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.181</b> Step up its efforts to reduce maternal mortality, including through an increased access to quality family planning	Two major programmes: Maternal and Child Health Program (MCH), and the Confidential Enquiry into Maternal Deaths (CEMD)	<b>FULLY IMPLEMENTED PERCEIVED PROGRESS</b>
<b>146.183</b> Continue the measures to combat HIV incidence through the implementation of the National Strategic Plan for HIV Prevention	National Strategic Plan for HIV expired in 2015. However, in practice, laws that discriminate certain marginalized groups still exist, excluding them from full access to HIV prevention and treatment.	<b>FULLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.184</b> Take effective measures to reverse the increasing trend of HIV/AIDS incidence by strengthening the National Strategic Plan (NSP) on HIV/AIDS Prevention	National Strategic Plan for HIV expired in 2015. However, in practice, laws that discriminate certain marginalized groups still exist, excluding them from full access to HIV prevention and treatment.	<b>FULLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.185</b> Ensure that children without parental care due to parental incarceration or execution are provided for, including with support for physical and mental health	Situation on the ground is worsening for health of these children.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>

<b>146.189</b> Allocate more resources to training of specialists in the medical field, alongside doctors, nurses, midwives and social workers	Expected RM 250-300 Million allocation cut for Ministry of Health upon revision of 2016 Budget. However, lack of transparency and no freedom of information made specific updates unavailable.	<b>NOT IMPLEMENTED NO PROGRESS</b>
<b>3.4 Access to Social Services</b>		
<b>146.171</b> Take the necessary measures to ensure equal access for all to basic social services	Poor, vulnerable and marginalized communities still face lack of legal recognition as their biggest obstacle excluding them from gaining access to basic social services.	<b>MINIMALLY IMPLEMENTED NO PROGRESS</b>
<b>146.172</b> Ensure birth registration of all children to facilitate the access to social services	Reported 11645 stateless persons among rural poor Indians. This is mainly caused by inability to ensure birth registration.	<b>NOT IMPLEMENTED MINIMAL PROGRESS</b>
<b>4. MARGINALIZED GROUPS</b>		
<b>4.1 Women (including issues on empowerment, gender equality, violence against women and marital rape)</b>		
<b>146.68</b> Launch awareness raising programmes on a national level regarding women	KPWKM launched a 90-day awareness campaign to combat violence against women (1 Oct – 30 Dec 2015)	<b>FULLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.130</b> Further strengthen the legal provisions to effectively protect women who are victims of domestic violence, including marital rape	Consultations have been done with women's rights groups with regards to the amendments to the DVA, but no clear consideration to include marital rape.	<b>PARTIALLY IMPLEMENTED SOME PROGRESS</b>
<b>4.2 Children</b>		
<b>146.150</b> Take steps to address increasing trends in early, forced and child marriage	There was refusal to include early, forced and child marriage to the amendments of the Child Act in March 2016	<b>NOT IMPLEMENTED NO PROGRESS</b>
<b>146.151</b> Adopt proper measures in order to discourage the practice of early and forced marriages	No measures were taken, not even public education on the issues. Instead, there is a more disturbing trend of young girls being married off to their rapists.	<b>NOT IMPLEMENTED NO PROGRESS</b>
<b>146.149</b> Continue to improve the criminal justice system for children, including by making the court more child-friendly, and to come up with specialized response to children in conflict with the law	Research shows that Malaysia is placed 130th out of 197 countries in providing court access to children to protect their rights. Some progress in amendment to Child Act.	<b>PARTIALLY IMPLEMENTED SOME PROGRESS</b>

<p><b>146.73</b> Ensure prompt registration of all new-born children</p>	<p>Malaysian mothers of children born overseas, face difficulties in registering the birth of their children, which involves them having to return to Malaysia and complete the process at Putrajaya, the approval takes over 2 years and the rejections are without reasons provided.</p>	<p><b>NOT IMPLEMENTED MINIMAL PROGRESS</b></p>
<p><b>4.3 Persons with Disabilities</b></p>		
<p><b>146.204</b> Allocate more funds for the promotion and protection of the rights of persons with disabilities, particularly in the areas of employment, education and housing, and provide these persons with the necessary training to improve their employability and independence</p>	<p><b>Monitoring. Information pending.</b></p>	<p><b>Monitoring. Information pending.</b></p>
<p><b>146.205</b> Through stronger cross-institutional cooperation, provide more special services for children with disabilities, including taking necessary measures to improve the educational conditions</p>	<p><b>Monitoring. Information pending.</b></p>	<p><b>Monitoring. Information pending.</b></p>
<p><b>146.207</b> Take necessary steps to provide adequate facilities to improve access to education for persons with disabilities, especially children</p>	<p><b>Monitoring. Information pending.</b></p>	<p><b>Monitoring. Information pending.</b></p>
<p><b>146.208</b> Intensify efforts so that children with disabilities have sufficient access to education and health facilities</p>	<p><b>Monitoring. Information pending.</b></p>	<p><b>Monitoring. Information pending.</b></p>
<p><b>4.4 Indigenous People</b></p>		
<p><b>146.215</b> Intensify efforts to eradicate poverty, particularly among the Orang Asli in Peninsular Malaysia and the natives of Sabah and Sarawak</p>	<p>There is a persistent scepticism about the integrity of JAKOA in managing the budget allocated for the use of indigenous peoples.</p>	<p><b>MINIMALLY IMPLEMENTED SITUATION REGRESSING</b></p>

<p><b>146.216</b> Further progress in the eradication of poverty through the successful implementation of the Government Transformation Programme, particularly in the poverty zones of Orang Asli in Peninsular Malaysia, and the indigenous peoples of Sabah and Sarawak</p>	<p>GTP does not support subsistence economy. Focuses on urban jobs for youths.</p> <p>Widening income gap is of concern. GTP does not address Land Rights for indigenous peoples. Indigenous people's livelihoods dependant on land.</p>	<p><b>MINIMALLY IMPLEMENTED NO PROGRESS</b></p>
<p><b>4.6 Migrant Workers</b></p>		
<p><b>146.222</b> Ensure that the recruitment agencies for foreign workers fully comply with the applicable laws and regulation</p>	<p>Recruitment agencies are known to beat up migrant workers and force labour. These agencies are not monitored.</p>	<p><b>NOT IMPLEMENTED NO PROGRESS</b></p>
<p><b>146.223</b> Enhance access to justice for foreign workers</p>	<p>The enforcement of Passport Act and Anti-Trafficking in Persons (ATIP) Act is very weak.</p>	<p><b>NOT IMPLEMENTED SITUATION REGRESSING</b></p>
<p><b>146.224</b> Duly investigate all cases of abuse of migrant domestic workers, bring perpetrators to justice and allow migrant workers full access to legal remedies</p>	<p>Special Passes renewal for Court Cases restricts the ability of migrant workers to enjoy full access to justice</p>	<p><b>NOT IMPLEMENTED SITUATION REGRESSING</b></p>
<p><b>5. NATIONAL MECHANISMS ON HUMAN RIGHTS</b></p>		
<p><b>5.2 National Human Rights Action Plan (NHRAP)</b></p>		
<p><b>146.60</b> Implement a comprehensive policy for the development of human rights that includes a national institution that allows the coordination and implementation of the said policy</p>	<p>A legal consultancy firm is currently mandated by the government to conduct studies across the nation.</p>	<p><b>MINIMALLY IMPLEMENTED MINIMAL PROGRESS</b></p>

<b>6. TRAFFICKING IN PERSONS</b>		
<b>146.132</b> Enhance its efforts on Anti Trafficking in persons measures	A lot of progress has been made since Malaysia was downgraded to Tier 3 of the U.S. State Department's Trafficking-in-Persons (TIP) Report.	<b>FULLY IMPLEMENTED PERCEIVED PROGRESS</b>
<b>146.134</b> Further its national efforts to eradicate trafficking in persons, especially women and children	Special Rapporteur critiqued Government's lack of focus on human trafficking for sexual exploitation purposes.	<b>NOT IMPLEMENTED NO PROGRESS</b>
<b>146.137</b> Strengthen methods for combating trafficking	Rampant corrupt practices among enforcement officers have crippled efforts on combating trafficking.	<b>NOT IMPLEMENTED GROWING IMPUNITY</b>
<b>146.138</b> Enhance measures to implement the CRC and CEDAW, and to combat trafficking in persons, especially women and children, including strengthening cooperation with NGOs in the area of protection of victims of trafficking in persons	Two NGO representatives have been given seats in the Anti Trafficking in Persons Council (MAPO); consultations with NGOs are taking place	<b>FULLY IMPLEMENTED PERCEIVED PROGRESS</b>
<b>146.142</b> Allocate more resources to ensure the effective implementation of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act	A lot of progress has been made since Malaysia was downgraded to Tier 3 of the U.S. State Department's Trafficking-in-Persons (TIP) Report.	<b>FULLY IMPLEMENTED PERCEIVED PROGRESS</b>
<b>146.143</b> Provide support and assistance to victims of trafficking in persons, especially women and children, and fully implement the Anti-Trafficking in Persons Act amended in 2010	Amendments to the ATIPSOM Act were finally approved by Parliament in June 2015 which addresses most of NGOs' concerns. However, the lack of focus on addressing trafficking for sexual exploitation has severely reduced the possibility of providing necessary support.	<b>NOT IMPLEMENTED MINIMAL PROGRESS</b>

7. NATIONAL UNITY AND SOCIAL COHESION		
<b>146.89</b> Streamline current measures to address the unique needs of its diverse society	The National Civics Bureau is worryingly an institutional means which promotes more disunity than unity.	<b>NOT IMPLEMENTED SITUATION REGRESSING</b>
<b>146.90</b> Enhance its initiatives and further promote a sense of national unity and pride among all its citizens	JPNIN conducts grassroots-level programmes such as Rukun Tetangga. However, ministers and few government-linked individuals used racial sensitivities to incite disharmony with growing impunity.	<b>MINIMALLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.91</b> Enhance its initiatives on the programme to bolster a sense of national unity		<b>MINIMALLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.92</b> Enhance its initiatives and programmes to further instil a sense of national unity and pride among its people		<b>MINIMALLY IMPLEMENTED MINIMAL PROGRESS</b>
<b>146.94</b> Launch a comprehensive national policy on gender equality and non-discrimination	No clear indication of what will happen with the proposed National Harmony Bill.	<b>NOT IMPLEMENTED NO PROGRESS</b>
8. HUMAN RIGHTS EDUCATION AND TRAINING		
<b>146.74</b> Promote human rights education and training	Number of schools taking part in Human Rights Best Practices in Schools (HRBPS) Programme increased steadily since 2008. Promotion ongoing, SUHAKAM actively getting more schools from East Malaysia involved.	<b>FULLY IMPLEMENTED PERCEIVED PRO- GRESS</b>
<b>146.75</b> Build on progress made as regards training programmes on human rights and further improve such schemes	Improvement in number of schools partaking in HRBPS shows progress. Additionally, SUHAKAM has increased the number of trainings and is more consistent in training law enforcement agencies.	<b>FULLY IMPLEMENTED PERCEIVED PRO- GRESS</b>
<b>146.78</b> Step up efforts to further develop the human rights education system and strengthen the culture of human rights	Prime Minister waging a war on human rights culture by labelling liberalism and all “isms” as enemies of Islam and therefore enemies of the state.	<b>NOT IMPLEMENTED GROWING IMPUNITY</b>

## STAGES

### Implementation of Recommendations



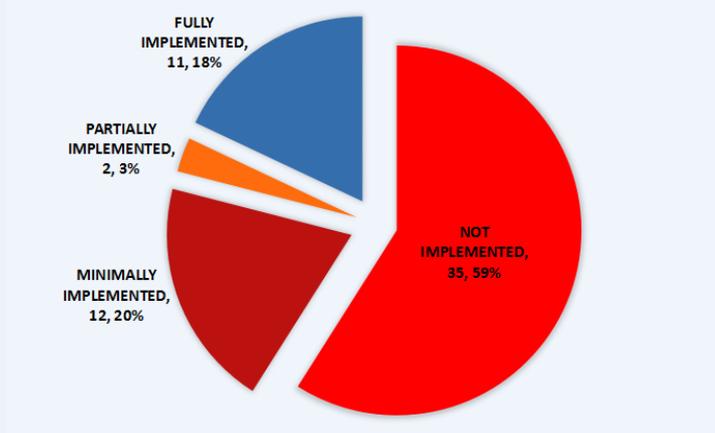
### Progress of Implementation of Recommendations



**TABLE A : STATUS OF IMPLEMENTATION OF RECOMMENDATIONS**

Status of Implementation	Not Implemented	Minimally Implemented	Partially Implemented	Fully Implemented
Number of Recommendations	35	12	2	11

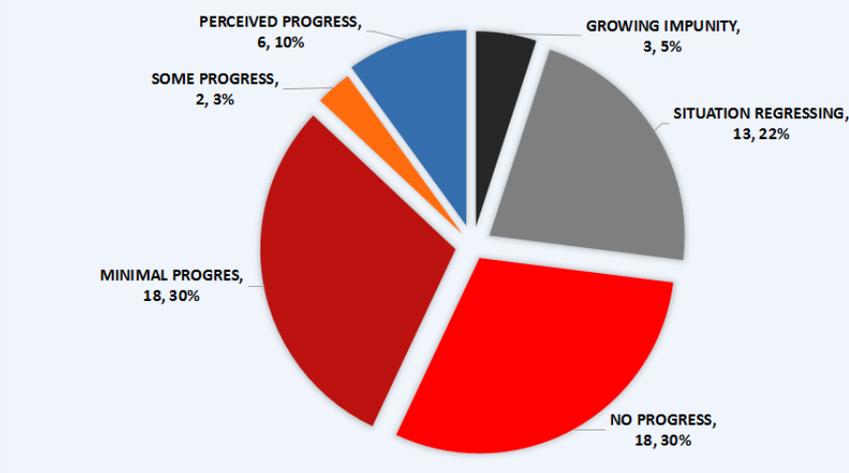
**CHART A: STATUS OF IMPLEMENTATION OF RECOMMENDATIONS**



**TABLE B : STATUS OF PROGRESS IN THE IMPLEMENTATION OF RECOMMENDATIONS**

Status of Progress	Growing Impunity	Situation Regressing	No Progress	Minimal Progress	Some Progress	Perceived Progress
Number of Recommendations	3	13	18	18	2	6

**CHART B: STATUS OF PROGRESS IN THE IMPLEMENTATION OF RECOMMENDATIONS**



# CHAPTER 1

## INTERNATIONAL OBLIGATIONS

MALAYSIA'S 2016  
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# 1.1 Accession to International Human Rights Instruments

- 146.1 Move forward in the signing of the 6 core international conventions on human rights that the country is not yet a Party (Spain)
- 146.2 Sign and ratify the 1951 Convention relating to the Status of Refugees, and enact domestic refugee law in line with international standards (New Zealand)
- 146.3 Become soon a Party to the core international Conventions on human rights that Malaysia has not ratified yet (Italy)/Become a party to the international human rights legal instruments, to which Malaysia has not yet acceded (Chad)/Further fulfil the internationally taken obligations as well as join new human rights international instruments (Kazakhstan)
- 146.4 Broaden the scope of its international human rights obligations by acceding to the ICCPR, ICESCR, ICERD and CAT (Poland)
- 146.5 Continue exploring possibilities to extend its international commitments, in particular consider ratification of the ICCPR and the Rome Statute of the International Criminal Court (Latvia)
- 146.6 Ratify the ICCPR (Sierra Leone)/Ratify the ICCPR, the ICESCR, as well as their protocols (Benin)/Ratify the ICCPR and the CAT (Australia, Brazil)/Ratify ICCPR, ICESCR as well as CAT (Maldives, Switzerland)/Ratify the CCPR, CDESCR, Third Optional Protocol of CRC and CAT (Albania)/Ratify the ICCPR, the ICESCR, the CAT and the CERD (Finland)/ Ratify the CAT and ICERD (Guatemala)/Ratify the ICERD, ICCPR, ICESCR and CAT (Hungary)/Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the ICCPR and ICESCR, as well as their Optional Protocols (Ecuador)
- 146.7 Accede to the two optional protocols to the CRC as well as sign and ratify the third optional protocol to the CRC on a communication procedures (Maldives)
- 146.8 Become a party to the ICCPR, the ICESCR, the CAT and its Optional Protocol, the ICERD and the Convention relating to the Status of Refugees and the Protocol thereto (Czech Republic)/Ratify the ICCPR, ICESCR, CAT, Convention for the Protection of All Persons from Enforced Disappearance (CPED), CERD, the Rome Statute and the 1951 Convention relating to the Status of Refugees (France)/Accede to the main international human rights instruments, in particular the ICCPR, the ICESCR, the CAT, the Optional Protocol to CAT (OP-CAT), the CERD, and the Rome Statute of the Court International Criminal (Costa Rica)
- 146.9 Speed up the process of accession to the ICESCR and ICCPR (Uruguay)

- 146.10 Promptly complete the process of ratification of other fundamental instruments, in particular the ICCPR and ICESCR, and consider ratifying the CAT, the CERD and the Rome Statute (Tunisia)
- 146.11 Carry on with the consultations to ratify the major international human rights instruments (Algeria)
- 146.12 Set a timeframe for the ratification of the ICCPR and the CAT (Ireland)
- 146.13 Ratify the ICCPR without further delays and integrate all provisions into domestic legislation (Slovenia)
- 146.14 Continue to speed up Malaysia's efforts towards accession to the Rome Statute (Afghanistan)
- 146.15 Ratify the Rome Statute (Switzerland)
- 146.16 Ratify the Rome Statute of the International Criminal Court in its 2010 version, including the Kampala amendments on the crime of aggression, and review Malaysia's national legislation in order to ensure full alignment with the Statute (Liechtenstein)
- 146.17 Accede to the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court (Uruguay)
- 146.18 Accede to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol (Djibouti)
- 146.19 Ratify ILO Convention No. 169 (Norway)
- 146.20 Consider favourably acceding to the international treaties, to which it is not yet party (United Republic of Tanzania)
- 146.21 Consider ratification of or accession to core international human rights conventions, to which Malaysia is not yet a party, including the ICRMW (Philippines)
- 146.22 Consider reviewing its position via-à-vis acceding to the ICCPR, ICESCR, ICERD, CAT and ICRMW (Egypt)
- 146.23 Consider ratifying the ICERD (Bolivia (Plurinational State of))

146.24	Consider ratification of core human rights treaties, including ICCPR, ICESCR and ICERD to be followed by their effective implementation (Slovakia)
146.25	Consider becoming party to the 3rd CRC Optional Protocol on a communications procedure (Thailand)
146.26	Consider ratification/accession to the Rome Statute of the ICC, to implement it fully at the national level and consider accession to the Agreement on Privileges and Immunities of the ICC (Slovakia)
146.27	Speed up consideration of the ratification of the Rome Statute of the ICC (Botswana)
146.28	Consider ratifying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and allowing refugees and other migrants to seek employment while they await resettlement or other durable solutions (United States of America)

### **Brief Assessment**

Most of the recommendations accepted by the Malaysian government only speak broadly to “considering to act” and the continuing of existing efforts, no matter how minimal they may be, with the signing of the six core international conventions on human rights that the country is not yet a Party. The acceptance of such recommendations are quite meaningless as these do not adequately refer to specific actions and suggest no stated deadline for accession.

With the recommendation regarding the Optional Protocols to the CRC, the Government of Malaysia has already acceded to optional protocols 1 and 2 in 2012 as stated in the government’s response. It is the third optional protocol on the Communications Procedure that the government has yet to accede. Amendments to the Child Act 2001 took place in the parliament in March 2016 which included the substitution of caning with community service. However, specific penal code to cover holistically the issue of child pornography is still absent.<sup>1</sup>

There has been no discernible advancement towards the accession of the ICCPR,<sup>2</sup> ICESCR,<sup>3</sup> ICERD,<sup>4</sup> CAT,<sup>5</sup> ICRMW<sup>6</sup> or ICPPED,<sup>7</sup> let alone their respective optional protocols, and the Rome Statute of the International Criminal Court.

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<sup>1</sup> 'Suhakam Welcomes Child Act Amendments, But Wants Legal Marrying Age Raised To 18 - Nation | The Star Online' (Thestar.com.my, 2016)  
<<http://www.thestar.com.my/news/nation/2016/04/18/suhakam-welcomes-amendments-to-child-act/>> accessed 30 April 2016.

<sup>2</sup> International Covenant on Civil and Political Rights

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights

<sup>4</sup> International Convention on the Elimination of all forms of Racial Discrimination

<sup>5</sup> United Nations Convention Against Torture

<sup>6</sup> International Convention on the Protection of the Rights of All Migrant Workers

<sup>7</sup> International Convention for Protection of All Persons from Enforced Disappearance

## 1.2 Engagement with International Human Rights Mechanisms

- 146.37 **Fully cooperate with international bodies by submitting overdue reports on CEDAW and CRPD (Sierra Leone)**
- 146.38 **Consider further cooperation with the international human rights monitoring mechanisms, including treaty bodies and Special procedures of the Human Rights Council (Turkmenistan)**
- 146.39 Continue to strengthen its cooperation with the special procedures of the Human Rights Council by responding positively to the pending visit requests and eventually consider extending a standing invitation to all the special procedures mandate holders (Latvia)
- 146.40 Issue a standing invitation to Special Procedures and consider early accession to major international human rights instruments such as the IC CPR, ICESCR, ICERD, CAT, and ICPED (Japan)
- 146.41 Consider the possibility to extend a standing invitation to all special procedures of the Human Rights Council, in order to strengthen cooperation with the universal human rights system (Uruguay)
- 146.42 Extend a standing invitation to the human rights mechanisms of the United Nations (Costa Rica)/Extend an open invitation to the special procedures (Guatemala)/Extend a standing invitation to all thematic special procedures (Montenegro) / Issue a standing invitation for United Nations human rights special procedures and accept all request visits by mandate holders (Hungary)
- 146.43 Issue a standing invitation to all the Special Procedures and accept their requests when they seek to visit Malaysia (Poland)
- 146.44 **Accept as many requests as possible, of special procedures of the Human Rights Council to visit Malaysia (Brazil)**
- 146.45 **Continue to follow up on the requests by a number of Special Procedures Mandate Holders to visit the country (Bulgaria)**
- 146.46 Allow for the visit of the UN Special Rapporteur on the rights of indigenous peoples (Denmark)

## **Brief Assessment**

Malaysia has yet to submit its third report to the CEDAW Committee, and its second report to the CRC Committee. No reports have been submitted by the Malaysian government to the CRPD Committee. According to

Only the Special Rapporteurs on the right to food, on trafficking in persons, especially women and children and on the right to health were officially invited to visit Malaysia.

The Special Rapporteur on the right to food conducted a visit to Malaysia from 9 to 18 December 2013, at the invitation of the Government. He had regretted to note that the disaggregation of data in national household surveys is limited to geographical location (districts and rural and urban populations) and three main population groups (Chinese, Indians and Bumiputra). Such broad categories do not allow for more detailed identification of poor and vulnerable groups in society. Equally, national household surveys do not present statistics disaggregated by gender. This persists despite the fact that in 2006, the Committee on the Elimination of Discrimination against Women also noted the difficulty in finding disaggregated data on poverty rates and the socioeconomic status of women.

The Special Rapporteur on trafficking in persons, especially women and children visited Malaysia from 23 to 28 February 2015, at the invitation of the Government of Malaysia. She expressed concern about, *inter alia*, the focus on trafficking for the purpose of sexual exploitation to the neglect of other forms of trafficking, particularly labour trafficking; and the restrictive national immigration policy focused on rapid deportation of irregular migrants, which does not provide the opportunity for accurate identification of and provision of assistance to victims of trafficking. Other concerns include the placement of victims in shelters without freedom of movement and the capacity gap of enforcement officials which is further exacerbated by reported prevalence of corruption of some officials.

Both Special Rapporteurs made recommendations to the Malaysian government to adopt the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and other key treaties not yet ratified by Malaysia. Specific concerns were also raised in relation to the lack of consultation in how the National Human Rights Action Plan was being developed and how the government needs to accede to all international human rights instruments that protect the human rights of refugees, asylum seekers, migrant workers, domestic workers, forced labour, and the indigenous peoples (Orang Asli and Orang Asal) of Malaysia.

Of the 17 UN Special Rapporteurs and 1 Independent Expert, only one has visited Malaysia since the completion of the UPR 2013. This was the Special Rapporteur on trafficking in persons, especially women and children who visited in February 2015. The last time the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression was in October 1998; on the right to education – February 2007; on Arbitrary Detention – June 2010; on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – November 2012; on the right to food - December 2013.

Malaysia has received 12 requests for official visits by Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression (2016); cultural rights (2016); on the sale of children, child prostitution and child pornography (2017); on the situation of human rights defenders (2002; reminder 2010); on freedom of religion or belief (2006); on the human rights of migrants (2006; reminder 2012); on the promotion and protection of human rights while countering terrorism (2005; reminders 2010, 2012); Independent Expert on minority issues (2007); on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2008); on the independence of judges and lawyers (2011); on the rights to freedom of peaceful assembly and of association (2011; reminder 2013). Only the request to conduct an official visit by the Special Rapporteur on Indigenous Peoples was accepted.

# CHAPTER 2

## CIVIL & POLITICAL RIGHTS

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## 2.1 Freedom of Expression

146.48	Repeal the Sedition Act (United Kingdom)
146.49	Repeal the Sedition Act and sustain previous reforms in the human rights field (Australia)
146.157	Bring the Printing Presses and Publication Act (1984), the Official Secrets Act (1972) and the Sedition Act (1948) in line with international human rights standards and enable all citizens to exercise fully the rights of opinion and expression (Czech Republic)
146.158	Take effective measures to ensure the full realization of the right to freedom of expression, by inter alia reviewing the Printing Presses and Publications Act, the Sedition Act and the Evidence Act (Poland)
146.159	Amend section 114A of the Evidence Act with the objective of increasing freedom of expression (Denmark)
146.160	Take steps to strengthen and promote the rights of journalists and bloggers to freely exercise their right to freedom of expression (Austria)
146.161	Takes steps to ensure proper judicial oversight regarding the granting and revoking of media licenses (Austria)
146.162	Amend or repeal both the Sedition Act and the Printing Presses and Publication Act, to bring Malaysia's domestic security legislation in line with its international human rights commitments on the freedoms of expression, peaceful assembly, and association (United States of America)
146.168	Repeal the Printing Presses and Publication Act and take steps to ensure full respect and protection for freedom of opinion and expression (Ireland)
146.169	Take steps to raise the standards of press freedom and to adapt the Printing Presses and Publication Act to facilitate independent news media coverage (Austria)

### Brief Assessment

Since the conclusion of the Malaysia's 2nd Universal Periodic Review (UPR) in 2013, the Government of Malaysia has reneged on many of its accepted recommendations in the area of civil and political rights. In many cases, rather than a gradual improvement in human rights, Malaysia has experienced a sharp decline in the enjoyment and fulfilment of rights as a result of the political scandal that permeates the Government and its senior officers and leaders.

Since 2013, the Sedition Act 1948, the Communications and Multimedia Act 1998, the Printing Presses and Publications Act 1984 and other laws impacting freedom of expression have been actively used against human rights defenders and other individuals, including politicians. In some cases, security laws designed to address domestic terrorism have been used to arrest and detain known human rights defenders during their public campaigns.

## The Sedition Act 1948

Contrary to recommendations 146.48 and 146.49, the Sedition Act 1948 has been strengthened since the 2<sup>nd</sup> review. In 2015, the Parliament of Malaysia passed an amendment to the Sedition Act 1948. The amendments "decriminalised" some areas and issues pertaining to sedition but notably increased the punishment against those deemed seditious. Critics have pointed out that the perceived improvement from the "restriction" on the Act's coverage was superficial as those that acted in a "seditious" manner can still be prosecuted under an alternate section in the Act. Some of the elements of the Act that were strengthened include:

1. Increase in the duration of prison sentence and a new aggravated sedition punishment that includes prison sentence of up to 20 years;
2. Inclusion of religion as a ground for sedition; and
3. Specific inclusion of "electronic" publications and devices, for the first time.

Malaysia also witnessed a sharp increase in number of arrests under the Act. The increase is reflected in the table and chart below<sup>8</sup>:

**Table 1: Status of Detainees under Sedition Act 1948**

	2013	2014	2015
<b>Investigated<sup>9</sup></b>	<b>10</b>	<b>29</b>	<b>206</b>
<b>Charged</b>	<b>7</b>	<b>12</b>	<b>11<sup>10</sup></b>
<b>Convicted</b>	<b>1</b>	<b>3</b>	<b>3<sup>11</sup></b>
<b>Total</b>	<b>18</b>	<b>44</b>	<b>220</b>

<sup>8</sup> SUARAM, 'Human Rights Report 2015 Overview' (2016).

A significant portion of the arrests in 2015 was made during a raid on a music gig at Rumah Api, a well-known space for the "straight edge"<sup>12</sup> punk subculture in Kuala Lumpur. The raid was reportedly conducted by anti-terrorism and K9 units, with 160 gig-goers arrested.

Some of the more notable arrests and prosecutions made under the Act are Zunar, a well-known cartoonist; Azmi Sharom, an associate professor of the law faculty at Universiti Malaya (case was dropped in February 2016); Eric Paulsen, a human rights lawyer; Adam Adli and Safwan Anang, both well-known student and youth activists; Khalid Ismath, activist and member of the Socialist Party of Malaysia; and N. Surendran, an opposition Member of Parliament.

<sup>9</sup> Arrests made under the Sedition Act 1948 are included in this number.

<sup>10</sup> Charges against Ali Tinju have been dropped; Hassan Karim was charged once in Kuala Lumpur and another round in Johor Bahru thus recorded as two incidences.

<sup>11</sup> Hishamuddin Rais was convicted on 9<sup>th</sup> January 2015 but his case was first heard in 2013.

<sup>12</sup> Elements commonly associated with the straight edge subculture include abstinence from alcohol, tobacco, and hard drugs; some adherents may also follow a vegetarian or vegan diet and refrain from promiscuous sex.

The suppression of freedom of expression under the Sedition Act 1948 was condemned by four special procedures mandate-holders in a statement to the Malaysian government on 8<sup>th</sup> October 2014<sup>13</sup>. The letter was signed by the Special Rapporteur on the Freedom of Expression, David Kaye; the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai; the Special Rapporteur on the situation of human rights defenders, Michel Forst; and the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul.

### **Communications and Multimedia Act 1998 (CMA)**

While this Act was not discussed in the previous UPR stakeholders' report submitted by COMANGO and there were no recommendation made with regards to this Act, the CMA has been used to investigate and charge individuals for statements made online,<sup>14</sup> at times in conjunction with the Sedition Act 1948.

Online communication that is deemed "obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person" is an offence under Section 233(1) of the CMA.

Offences under this section are very vaguely defined and case law appears to support a broad-ranging application: the High Court in the case of PP v Rutinin Suhaimin [2013] 2 CLJ 427 held that the victim of the offence under section 233 does not need to actually feel annoyed or abused, merely that the communications is shown to have a tendency to annoy or abuse any person.<sup>15</sup>

Among other legal actions, multiple charges under the CMA as well as the Sedition Act were levelled against Khalid Ismath in October 2015.<sup>16</sup> Provisions in the CMA have been used to justify blocking the following web sites: the Sarawak Report, since mid- 2015; an entire blogging platform (Medium) for carrying its content, since January 2016; and news portal, The Malaysian Insider, in 2016.<sup>17</sup> A number of blogs have also been blocked.<sup>18</sup>

Given the trend of heightened Internet censorship, it is likely that the proposed CMA amendments due to be tabled in the Parliament in May 2016 will be aimed at controlling or even stifling political content online rather than

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<sup>13</sup> 'Malaysia Sedition Act threatens freedom of expression by criminalizing dissent', United Nations Human Rights Office of the High Commissioner, <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15144&>> accessed 30<sup>th</sup> March 2016.

<sup>14</sup> Malaysian Bar, 'Section 233(1)(a) of the Communications and Multimedia Act 1998 Creates a Chilling Effect on Freedom of Speech and Expression, and Should be Repealed', <[http://www.malaysianbar.org.my/index2.php?option=com\\_content&do\\_pdf=1&id=39066](http://www.malaysianbar.org.my/index2.php?option=com_content&do_pdf=1&id=39066)> accessed 30<sup>th</sup> March 2016

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<sup>15</sup> EMPOWER, 'Status of Freedom of Expression Online – Country Report: Malaysia', page 21, 2015.

<sup>16</sup> Lu Wei Hoong, 'Activist slapped with 14 charges for posting on Johor royalty', <<https://www.malaysiakini.com/news/315569>> accessed 30<sup>th</sup> March 2016

<sup>17</sup> EMPOWER, 'Stop Censoring Information', <<http://empowermalaysia.org/blog/2016/02/26/stop-censoring-information/>> accessed 30<sup>th</sup> March 2016

<sup>18</sup> Ibid.

facilitating freedom of expression and information. It is yet to be seen if the government intends to consult a wide spectrum of stakeholders including civil society organizations and internet users, who would be most vulnerable to increased restrictions online.

### **Printing Presses and Publications Act 1948 (PPPA)**

Despite accepting recommendation 146.169 in principle, the Government of Malaysia did not take any steps to improve or amend the Act to better facilitate free and independent news media.

Apart from its chilling effect on the media, the Act continues to plague book publishers, authors and human rights defenders. The PPPA has been used in the arbitrary banning of books including comics and fiction both foreign and local (e.g. *To Love Ru Darkness*, *Fifty Shades of Grey*, and *Nazi Goreng: Young Malay, Fanatic, Skinheads*), the banning of yellow-coloured Bersih 4.0 t-shirts and the clamp down on publications such as the Herald. The wide-ranging and arbitrary nature of the application of the PPPA has led some critics to charge that the Act is one of the main tools used by the Government of Malaysia to suppress publications deemed to jeopardise the political dominance of the ruling party.<sup>19</sup>

### **Press and Media Freedom**

Despite accepting recommendations 146.160 and 146.169, the Government of Malaysia have failed to protect media freedom. Since the last review, the rights of journalist and bloggers have deteriorated.

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<sup>19</sup> 'Malaysian police target online sales of cartoonist's latest book', index on Censorship, <<https://www.indexoncensorship.org/2015/09/malaysian-police-target-online-sales-of-cartoonists-latest-book/>> accessed 30<sup>th</sup> March 2016.

In 2016, the Attorney General of Malaysia initiated a move to review the Official Secrets Act 1972 to include life imprisonment and ten strokes of the cane as punishment for whistleblowers.<sup>20</sup> This also extends to journalists who refuse to give up their source of information. In the context of the sharp rise in the use of the Sedition Act and other laws to silence critics, particularly on the 1MDB scandal, and the arbitrary blocking of websites, this points to the deteriorating situation overall for media freedom.

### **Conclusion**

Between 2013 to 2016, the Government of Malaysia has not in any way improved freedom of expression in Malaysia and failed to develop any initiative to fulfil the recommendations accepted in Malaysia's 2nd UPR. On the contrary, there has been a rapid degradation of rights to freedom of expression through the strengthening of the Sedition Act 1948, the rapidly increasing use of the CMA and the suppression of various publications. The situation pertaining to freedom of expression would likely continue to degrade further in 2016 and beyond.

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<sup>20</sup> Ida Lim, 'Info leaked too often, minister says AGC wants review of OSA penal ties', <<http://www.themalaymailonline.com/malaysia/article/info-leaked-too-often-minister-says-agc-wants-review-of-osa-penalties>> accessed 30<sup>th</sup> March 2016.

## 2.2 Freedom of Assembly and Association

- |                |  |
|----------------|--|
| <b>146.163</b> | <b>Continue its efforts to further enhance the exercise and enjoyment of civil and political rights, including the rights to freedom of peaceful assembly in the country (Indonesia)</b> |
| <b>146.164</b> | <b>Continue encouraging the right to peaceful assembly in accordance with national legislation (Russian Federation)</b>  |

### Introduction

In its report to the Human Rights Council for its 2<sup>nd</sup> UPR cycle, the Malaysian government noted that the Peaceful Assembly Act 2012 (PAA) “was enacted to breathe life to Article 10 of the Federal Constitution to enhance the implementation of the right to assemble peaceably as guaranteed by the Federal Constitution.”<sup>21</sup> However, in practice the PAA has not facilitated the right of citizens to peacefully assemble, and the law has been used against human rights defenders who exercised this right. Developments in 2015 also raised new concerns as some protestors or organizers of gatherings have been arrested for security offences under the Penal Code.

### Legal Developments

In 2014, the Court of Appeal of Malaysia delivered a judgment that declared section 9 of the PAA as unconstitutional, effectively neutering the PAA’s ability to criminalise organizers of peaceful assemblies who “failed” to notify the police. This was brought about by a constitutional challenge by Nik Nazmi Nik Ahmad, who was charged under the PAA for organising a protest (the Blackout 505 rally) over irregularities in the 13<sup>th</sup> General Election. Unfortunately, this landmark decision is now put in question following another Court of Appeal decision in 2015 which declared Section 9 of the PAA as constitutional. The Attorney General has expressed interest in re-prosecuting Nik Nazmi under the PAA to allow the Federal Court to “make a final ruling on the law.”<sup>22</sup> It remains to be seen which Court of Appeal decision would be recognised by the Federal Court.

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<sup>21</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Page 14, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/161/32/PDF/G1316132.pdf?OpenElement>> accessed 31 March 2016.

<sup>22</sup> Lionel Morais and Anisah Shukry, ‘It’s not personal, A-G says of multiple charges against Nik Nazmi’, The Edge Markets, <<http://www.theedgemarkets.com/my/article/it%E2%80%99s-not-personal-g-says-multiple-charges-against-nik-nazmi>> accessed 30<sup>th</sup> April 2016.

Even though there was a period in which section 9 of the PAA was declared unconstitutional and not applicable, up until the second Court of Appeal decision on 1<sup>st</sup> October 2015, the Royal Malaysian Police persisted with arresting and harassing organizers of peaceful assemblies under section 9 of the PAA and other laws. As an example, organizers for the Bersih 4.0 rally were called for questioning under Section 9 of the PAA at the conclusion of the Bersih 4.0 rally in August 2015.<sup>23 24</sup> Further, activist Amir Abdul Hadi was also arrested on dubious grounds after the protest against the Trans Pacific Partnership Agreement (TPPA).<sup>25</sup>

### **Criminalising Peaceful Assembly under the Penal Code**

Beyond the PAA, those attending peaceful assemblies have been charged under section 124b of the Penal Code for “activities detrimental to parliamentary democracy.” Arrests made under this section of the Penal Code included 17 student activists who were camping outside the Parliament of Malaysia,<sup>26</sup> and organizers and participants of the #TangkapNajib protest.<sup>27</sup>

Those attending peaceful assemblies have also been charged under section 143 of the Penal Code for attending an unlawful assembly. This was used to justify the arrests during the #KitaLawan rally and the Mayday Rally.<sup>28</sup> In the Anti-GST protest, 73 individuals were arrested under the PAA and section 447 of the Penal Code (criminal trespass).<sup>29</sup> Additionally, there was the arrest of one of the organizers of a right wing rally, Jamal Yunos on the 25<sup>th</sup> September 2015 under section 105 of the Penal Code for inciting a riot.<sup>30</sup>

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<sup>23</sup> Bernama, ‘Seven to appear at Bukit Aman on Wednesday over Bersih rally’, Astro Awani, <<http://english.astroawani.com/malaysia-news/seven-appear-bukit-aman-wednesday-over-bersih-rally-71878>> accessed 30 March 2016.

<sup>24</sup> ‘Cops to get statement from bersih organizer’, The Borneo Post, <<http://www.theborneopost.com/2015/08/30/cops-to-get-statement-from-bersih-organizer/>> accessed 30 March 2016.

<sup>25</sup> FMT reporters, ‘SUARAM activist reportedly arrested at rally’, Free Malaysia Today, <<https://www.malaysiakini.com/news/328037>> accessed 30<sup>th</sup> March 2016.

<sup>26</sup> Kamles Kumar, ‘16 students nabbed in sit-in outside Parliament’, The Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/16-students-nabbed-in-sit-in-outside-parliament>> accessed 30<sup>th</sup> March 2016.

<sup>27</sup> Mayuri Mei Lin, ‘chaos at #TangkapNajib rally as cop nab protestors (Video)’, The Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/chaos-at-tangkapnajib-rally-as-cops-nab-protestors>> accessed 30<sup>th</sup> March 2016.

<sup>28</sup> AFP, ‘Malaysian opposition activists held after May Day protest’, Daily Mail Online, <<http://www.dailymail.co.uk/wires/afp/article-3065049/Malaysian-opposition-activists-held-May-Day-protest.html>> accessed 30<sup>th</sup> March 2016.

<sup>29</sup> Nicholas Cheng, ‘59 anti-GST protestors arrested after Friday’s rally’, The Star Online, <<http://www.thestar.com.my/news/nation/2015/05/01/anti-gst-rally-twenty-arrested/>> accessed 30<sup>th</sup> March 2016.

<sup>30</sup> Austin Camoens, ‘Jamal arrested, rally called off’, The Star Online, <<http://www.thestar.com.my/news/nation/2015/09/25/jamal-yunos-detained/>> accessed 30<sup>th</sup> March 2016.

Human rights defender, Amir Abdul Hadi, was arrested following the conclusion of #BantahTPPA protest on the 23<sup>rd</sup> January 2016. He was arrested under Section 105 of the Criminal Procedure Code which permits police arrest in order to prevent a seizable offence. The reason given by the police for the arrest was an alleged anarchist connection.<sup>31</sup>

### **Government Harassment against Organizers of Peaceful Assembly**

On the eve of the Bersih 4.0 Rally in August 2015, the Government of Malaysia banned the website of Bersih 4.0 and criminalized the possession of yellow t-shirts bearing the word and number "Bersih 4.0". The challenge filed against the banning of the t-shirt was struck down by the Courts in February 2016 as the Court found that the ban was not unreasonable, irrational or non-compliant with the legal requirements of the Printing Presses and Publications Act 1948. The organizers of the Bersih 4.0 rally was also called for questioning with their leaders, Maria Chin Abdullah and Jannie Lasimbang charged under the PAA.<sup>32</sup>

On top of the arrests and prosecutions of organizers and participants, the Royal Malaysian Police have resorted to harassment and intimidating means aimed at key individuals of peaceful assemblies and rallies to create a culture of fear. Few instances include police actions in the days preceding the KitaLawan rally, when they arrested at least four activists and opposition politicians involved with the rallies. Rafizi Ramli and Hishamuddin Rais were both arrested on March 27 and held until after the conclusion of the March 28 rally. Rais was seized by a group of men wearing plainclothes as he got out of a taxi the evening of March 27: "As I leaned forward to pay the taxi they grabbed me. One put his arm around my neck and pulled me, squeezing my neck. They were not wearing uniforms and did not identify themselves."<sup>33</sup> Even after the KitaLawan rally, six carloads of police came to the house of PAS MP Khalid Samad at 3:20 a.m. the following morning to arrest him for sedition and unlawful assembly. Many of the officers were carrying M16 assault rifles. He was released from custody at 9:30 p.m.<sup>34</sup> The issuing of warnings persisted even when the proposed "rally" was a closed-door event.<sup>35</sup>

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<sup>31</sup> FMT reporters, 'SUARAM activist reportedly arrested at rally', Free Malaysia Today, <<https://www.malaysiakini.com/news/328037>> accessed 30<sup>th</sup> March 2016.

<sup>32</sup> Ibid 11 & 12.

<sup>33</sup> Human Rights Watch, 'Creating a Culture of Fear: The Criminalization of Peaceful Expression in Malaysia', <<https://www.hrw.org/report/2015/10/26/creating-culture-fear/criminalization-peaceful-expression-malaysia>> accessed 30<sup>th</sup> March 2016.

<sup>34</sup> Ibid.

<sup>35</sup> Nawar Firdaws, 'IGP: Cop eyeing Mar 27 gathering for seditious elements', Free Malaysia Today, <<http://www.freemalaysiatoday.com/category/nation/2016/02/25/igp-cops-eyeing-mar-27-gathering-for-seditious-elements/>> accessed 1<sup>st</sup> March 2016.

## Conclusion

There were positive developments for the right to freedom of assembly and association in Malaysia: the 2015 Bersih 4.0 rally and smaller protests such as the anti-Trans-Pacific Partnership Agreement rally in 2016 proceeded without violent crackdowns by the police, and the Court of Appeal decision on the PAA in 2014 was also a positive step. Unfortunately, taking into account the continuing harassment against organizers of peaceful assemblies, it is disappointingly clear that the Government of Malaysia have failed to fulfil the accepted recommendations.

The decision by the Court of Appeal in declaring Section 9 of the PAA was a step forward in protecting and promoting the freedom of expression in Malaysia. It is highly unfortunate that a subsequent Court of Appeal decision departed from this decision and placed the exercise of freedom of assembly in a flux in Malaysia. At this juncture, it would be ideal if the Federal Court of Malaysia would evaluate both decisions and favour the 2014 decision which reaffirmed human rights and civil liberties. On top of the role that can be played by the Judiciary of Malaysia, the Royal Malaysian Police must also step up and develop a curriculum to train and prepare police officers to handle peaceful assemblies in a manner that facilitates the exercise of fundamental rights and freedoms.

**Table 2: List of investigations, arrests and prosecutions related to freedom of assembly<sup>36</sup>**

No	Name	Date of Arrest or Investigation	Assembly in Question	Arrested under	Charged
1	Saifullah Zulkifli	7 March 2015	#KitaLawan	S143 Penal Code	
2	Nik Nazmi Nik Ahmad	8 March 2015	#KitaLawan	S9(5) PAA	
3	Fariz Musa	10 March 2015	#KitaLawan	S143 Penal Code & S9(5) PAA	8 Sep 2015
4	Rafizi Ramli	10 March 2015	#KitaLawan	S143 Penal Code & S9(5) PAA	
5	Fakhurazi Mokhtar	10 March 2015	#KitaLawan	S143 Penal Code & S9(5) PAA	8 Sep 2015
6	Mandeep Singh	14 March 2015 31 July 2015 2 September 2015	#KitaLawan #TangkapNajib Bersih 4.0 (no arrest)	S143 Penal Code & S9(5) PAA S124B Penal Code	8 Sep 2015
7	Adam Adli	14 March 2015 31 July 2015 2 September 2015	#KitaLawan #TangkapNajib Bersih 4.0 (no arrest)	S143 Penal Code & S9(5) PAA S124B Penal Code	8 Sep 2015
8	Teo Kok Seong	14 March 2015	#KitaLawan	S143 Penal Code	
9	Nurul Izzah	16 March 2015	#KitaLawan	Sedition Act	

<sup>36</sup> Names highlighted in grey marks arrests while names not highlighted marks those only investigated.

10	Tian Chua	20 March 2015	#KitaLawan	S143 Penal Code	
11	Hisshamuddin Rais	27 March 2015 1 August 2015	#KitaLawan #TangkapNajib	S143 Penal code S124B Penal Code	
12	Tan Kar Hing	27 March 2015 1 August 2015	#KitaLawan #TangkapNajib	S186 Penal Code S124B Penal Code	
13	Chang Lih Kang	27 March 2015 1 August 2015	#KitaLawan #TangkapNajib	S186 Penal Code S124B Penal Code	
14	Chee Chu Sang	27 March 2015	#KitaLawan	S186 Penal Code	
15	N. Tamilarason	27 March 2015	#KitaLawan	S186 Penal Code	
16	Yong Ming Chong	27 March 2015	#KitaLawan	S186 Penal Code	
17	Gan Zhi Mou	27 March 2015	#KitaLawan	S186 Penal Code	
18	Mohamed Sabu	27 March 2015	#KitaLawan		
19	Khalid Samad	29 March 2015	#KitaLawan	S143 Penal Code	
20	Jimmy Puah	11 April 2015	#KitaLawan Johor	Section 9(1) PAA	
21	Tan Hong Pin	11 April 2015	#KitaLawan Johor	Section 9(1) PAA	
22	Danny Tan	11 April 2015	#KitaLawan Johor	Section 9(1) PAA	
23	Sidiqin Omar	11 April 2015	#KitaLawan Johor	Section 9(1) PAA	
24	79 Anti-GST Protestors	23 March 2015	Anti-GST Protest	Section 21(1)(d) of PAA & Section 447 Penal Code	54 charged on 23 Apr 2015
25	Ambiga Sreenevasan	1 May 2015	May 1 Rally	S143 Penal Code & S9(5) PAA	
26	Antholy Loke	1 May 2015	May 1 Rally	S143 Penal Code & S9(5) PAA	
27	Arutchelvan	1 May 2015	May 1 Rally	S143 Penal Code & S9(5) PAA	
28	56 Anti-GST Protest	1 May 2015	May 1 Rally	S143 Penal Code & S9(5) PAA	
29	Syukri Razab	31 July 2015	#TangkapNajib	S124B Penal Code	
30	26 #TangkapNajib Protestors	1 August 2015	#TangkapNajib	S124B Penal Code	
31	17 Student Activists	25 August 2015	#OccupyParliament	Section 124B of Penal Code	

32	Jannie Lasimbang	1 September 2015	Bersih 4.0	Section 9(5) PAA	22 Oct 2015
33	Matthew Yong	1 September 2015	Bersih 4.0	Section 9(5) PAA	
34	S.M. Muthu	1 September 2015	Bersih 4.0	Section 9(5) PAA	
35	Stephen Wong	1 September 2015	Bersih 4.0	Section 9(5) PAA	
36	Henry Shim	1 September 2015	Bersih 4.0	Section 9(5) PAA	
37	Maria Chin Abdullah	14 March 2015 2 September 2015	#KitaLawan Bersih 4.0	S143 Penal Code Section 9(5) PAA	8 Sep 2015 3 Nov 2015
38	Sarajun Hoda Abdul Hassan	2 September 2015	Bersih 4.0	Section 9(5) PAA	
39	Masjaliza Hamzah	2 September 2015	Bersih 4.0	Section 9(5) PAA	
40	Fadiyah Nadwa Fikri	2 September 2015	Bersih 4.0	Section 9(5) PAA	
41	Farhana Abdul Halim	2 September 2015	Bersih 4.0	Section 9(5) PAA	
42	Jamal Yunos	25 September 2015	Himpunan Merah	S105 Penal Code	

Table 3 below shares statistics on incidents and number of cases that were eventually prosecuted:

**Table 3: Number of Cases of Arrests, Questioning and Actual Prosecutions**

	Number of Cases
<b>Arrests</b>	<b>212</b>
<b>Called for Questioning</b>	<b>12</b>
<b>Total Incidents</b>	<b>224</b>
<b>Incidents of Prosecution</b>	<b>61</b>

## 2.3 Freedom of Religion

146.97	Continue its efforts to combat all forms of discrimination particularly religious discrimination and protecting of religious minority groups (Iran (Islamic Republic of))
146.152	Revise Malaysia's legislative framework in order to ensure freedom of religion or belief for all (Italy)
146.153	Take concrete steps to implement its commitment to promote and protect the rights of all people to worship in peace and security without discrimination or restriction (Canada)
<b>146.154</b>	<b>Continue its efforts to promote inter-religious dialogues and reconcile different schools of Islamic thoughts and other religions (Sudan)</b>
146.155	Continue efforts and engage in a structured interfaith dialogue, including religious minorities (Austria)
146.156	Take measures to ensure that all persons, including Muslims, can freely exercise their right to freedom of religion and belief, without interference by the state and including the right to change their religion (Austria)

### Brief Assessment

There has been not much positive 'progress' since 2013 report when it comes to Freedom of Religion in Malaysia although Article 11 of the Federal Constitution of Malaysia states that every individual has the right to profess, practice and preach his religion or belief.

The following details are some of the cases which have resulted to discriminatory practices.

#### 1. Syariah Criminal Offences Act

Khalwat raids by the Religious Enforcement Officers are still being carried out despite vast criticisms by Civil Society Organizations, Mufti of Perlis who has been consistently criticizing this practice<sup>37</sup> and Human Rights agencies. The act is arbitrary,<sup>38</sup> it is only based on reports from the public without thorough scrutiny and some raids have resulted to death.

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<sup>37</sup> 'Perlis Mufti: Rage Over Khalwat But Not Against Power Abuse?' (Malaysiakini, 2015) <<https://www.malaysiakini.com/news/322764>> accessed 30 March 2016.

<sup>38</sup> 'Faye Kusairi Tahu Siapa Buat Aduan 'Khalwat' Tapi Biar Jais Dedah' (Themalaymailonline.com, 2016) <<http://www.themalaymailonline.com/projekmmo/berita/article/faye-kusairi-tahu-siapa-buat-aduan-khalwat-tapi-biar-jais-dedah>> accessed 30 March 2016.

For example, a 17 years-old teenage girl who sustained injuries after jumping from the second floor of a hotel in Kuala Terengganu to avoid enforcement officers during a raid.<sup>39</sup>

1.1. The religious sects such as Shiite, Ahmadiyah<sup>40</sup> and Millah Abraham<sup>41</sup> have been classified as deviant and often their private activities are raided by the Islamic Religious Enforcement Officers. A case example was the raid on a congregation center of an Ahmadiyah sect's Friday prayers by Jabatan Agama Islam Selangor (JAIS). The event which took place on the 11<sup>th</sup> April 2014 also saw 41 people arrested, including a child, 2 United Kingdom and 1 Pakistani national.<sup>42</sup> During these raids, the followers, women and children with no exception, were also detained and put in rehabilitation centres to "fix" their faith. The insistence on only allowing and following the Sunni school of thought (priority Shafei Hanafi, Maliki and Hanbali),<sup>43</sup> especially in matters of "aqidah", "ibadah" and "muamalah" has further demonised other Islamic Schools of Thought as stated in Amman Message signed by Malaysia in 2004.<sup>44</sup>

## 2. Administration of Islamic Law (Federal Territories) (Tauliah to Teach the Religion of Islam Rules 2006 (P.U. (A) 74/06)

This law restricts any qualified and voluntary religious teachers, preachers and even state muftis to preach and teach the religion of Islam in any state in Malaysia. The concerned person has to apply for a license from the Selangor Islamic Religious Council if she/he plans to preach in madrasah or mosques in the state if she/he is not from that state. Failing to do so can mean that she/he is liable to be charged and penalised. Such measures are seen as trying to control the public in how they seek diverse and alternative views on Islam (other than from the Sunni school of thought),<sup>45</sup> effectively limiting freedom of thought and belief.

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<sup>39</sup> Rubiah Omar, 'Terjun Bangunan Tinggal Kekasih' (Sinarharian.com.my, 2015) <<http://www.sinarharian.com.my/bisnes/terjun-bangunan-tinggal-kekasih-1.346705>> accessed 30 March 2016.

<sup>40</sup> Radzi Razak and K Pragalath, 'Harassed Ahmadiyyas May Seek Sanctuary In The West' (Free Malaysia Today, 2014) <<http://www.freemalaysiatoday.com/category/nation/2014/04/21/harassed-ahmadiyyas-may-seek-sanctuary-in-the-west/>> accessed 30 March 2016.

<sup>41</sup> 'Pengikut Millah Abraham Enggan Solat, Yakin Di Jalan Lurus' (Themalaymailonline.com, 2016) <<http://www.themalaymailonline.com/projekmmo/berita/article/pengikut-millah-abraham-enggan-solat-yakin-di-jalan-lurus#sthash.yzYs12uV.dpuf>> accessed 30 March 2016.

<sup>42</sup> 'Jemaah Jumaat Hotel Bajet | Perak Today' (Peraktoday.com.my, 2014) <<http://peraktoday.com.my/2014/04/jemaah-jumaat-hotel-bajet/>> accessed 30 March 2016.

<sup>43</sup> Section 2. Interpretation. (ADMINISTRATION OF ISLAMIC LAW (FEDERAL TERRITORIES) ACT 1993 - ACT 505)' (Www2.esyariah.gov.my, 2016) <[http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/2967d1d7d8c70095c82568a200176eb3?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/2967d1d7d8c70095c82568a200176eb3?OpenDocument)> accessed 30 March 2016.

<sup>44</sup> 'MAPIM Reminds Local Islamic Authorities Of Amman Message' (Ihrc.org.uk, 2016) <<http://www.ihrc.org.uk/news/articles/10655-mapim-reminds-local-islamic-authorities-of-amman-message>> accessed 30 March 2016.

<sup>45</sup> 'Larangan Berceramah Di Johor, Mufti Perlis Dakwa 'Difitnah' (Malaysiakini, 2016) <<https://www.malaysiakini.com/news/329047>> accessed 30 March 2016.

### **3. Selangor Non-Islamic Religious Enactment (Control Development among Muslims), 1988**

**3.1** The Islamic Religious Affairs Department of Selangor or Jabatan Agama Islam Selangor (JAIS) officers raided the Bible Society of Malaysia in January 2014 and confiscated 321 copies of the Alkitab, ten copies of the Iban Bible - Bup Kudus and 20 copies of the Malay translation of Luke's Gospel on the grounds that these contravened a 1988 Selangor enactment, which prevents non-Muslims from using the word "Allah".

**3.2** Members of Parliament and the Attorney General of Malaysia supported the right of expression of Ibrahim Ali, a leader of ultra-Malay nationalist NGO, Perkasa Pribumi Malaysia, when he threatened to burn all Bibles that contained the word "Allah". No action was taken against him and his words were not deemed seditious.<sup>46</sup> The lack of interest in prosecuting Ibrahim Ali demonstrates the arbitrariness of the application of the law by the Malaysian authorities in upholding freedom of religion.

**3.3** On 19 April 2015, a group of 50 residents of Taman Medan Petaling Jaya gathered outside the church to protest against a cross displayed on the building, claiming that it challenged Islam. The group demanded the church take down the cross. It was removed at around 2pm on the same day. The Attorney-General's Chambers (AGC) decided to take no further action against the protestors. The case was investigated under Section 448 and 551 of the Penal Code for trespassing rather than under laws that prohibit the incitement of violence or hate.<sup>47</sup>

**3.4** In 2014, the Mara University of Technology, Shah Alam and Melaka branch and Polis DiRaja Malaysia (PDRM) were holding two seminars on "Threat of Christian Proselytization Movement" and the objective was to instill fear and inculcate hatred by creating the impression that Islam is under threat. This seminar raises issues as to why a public university; utilising public funds, is allowed to undertake activities that demonise a religious minority.<sup>48</sup>

**3.5** The Department of Islamic Development (JAKIM) and the States Islamic Council are using sermons during the Friday prayers as a tool to demonise dissenting voices and who generally differ with their political views. These messages are further conflated with the terms Liberalism, Pluralism, and Feminism in order to associate such terms with negative connotations that people who are liberal, pluralist and feminist are against Islam. JAKIM also criticised the Human Rights Treaties and Conventions that Malaysia signed and ratified as un-Islamic.<sup>49</sup>

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<sup>46</sup> 'Putrajaya Must Act Against Ibrahim Ali'S Bible-Burning Threat To Nip Extremism In The Bud, Says Sabah Church' (Themalaymailonline.com, 2014) <<http://www.themalaymailonline.com/malaysia/article/putrajaya-must-act-against-ibrahim-alis-bible-burning-threat-to-nip-extremi>> accessed 30 March 2016.

<sup>47</sup> 'IGP Removed From Taman Medan Cross Protest Probe, Putrajaya Says' (Themalaymailonline.com, 2015) <<http://www.themalaymailonline.com/malaysia/article/igp-removed-from-taman-medan-cross-protest-probe-putrajaya-says#sthash.M3nsB4SE.dpuf>> accessed 30 March 2016.

<sup>48</sup> 'Seminar Ancaman Kristianisasi Di Uitm Jadi Isu, Sekali Lagi' (Themalaymailonline.com, 2016) <<http://www.themalaymailonline.com/projekmmo/berita/article/seminar-ancaman-kristianisasi-di-uitm-jadi-isu-sekali-lagi>> accessed 30 April 2016.

<sup>49</sup> See: <http://www.islam.gov.my/khutbah-online>

**3.6** Additionally, the Department of Islamic Development Malaysia (JAKIM) also stifles inter-faith roundtable discussions and meetings that are designed to counter Islamic extremism. For example, in 2014, Indonesian Islamic scholar Dr Ulil Abshar Abdalla was banned by the Home Minister from coming to Malaysia, citing a need to protect Malaysia's brand of Islam. Dr Ulil is regarded as a liberal Islamic scholar whose views are controversial among Islamic conservatives.<sup>50</sup> At the same time, the government is allowing religious figures from the Middle East countries and who are conservative to teach and preach Malaysian Muslims.<sup>51</sup>

**3.7** A discourse of hate and discrimination is also propagated by certain Members of Parliament in order to create distrust among different faiths.<sup>52</sup> Unfortunately, there has been no official attempt to counter such discriminatory discourses resulting in an exacerbation of the religious disharmony among people of a multi-ethnic, multi-religious and multi-cultural Malaysia.

## **Conclusion**

Syariah laws in Malaysia are not divine. The sources to extract “hukum-hakam” or legal maxim are divine (Al-Quran, Sunnah, Ijma’ and Analogy) but it needs human understanding and interpretation to come to a certain conclusion. The outcomes are called Fiqh (Islamic Jurisprudence) and it is open for criticism. Any discourse on the religion of Islam seen as a sensitive issue. In practice, such discourses are so heavily regulated that increasingly, the imposition by the government is that any discussions on Islam, has to be done by a group of ‘qualified religious scholars’.

Islam is highly politicised in Malaysia and fear-mongering is a dominant tactic, used to control the minds of muslims. While internationally, Malaysia may be deemed a moderate and progressive Islamic country, the realities on how laws are enforced and the resulting practices and outcomes are discriminatory to women, and the non-conforming, marginalised and minority groups.

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<sup>50</sup> 'No Entry For 'Deviant' Indonesian Islamic Scholar Ulil Abshar, Says Zahid Hamidi' (Themalaymailonline.com, 2014) <<http://www.themalaymailonline.com/malaysia/article/no-entry-for-deviant-indonesian-islamic-scholar-ulil-abshar-says-zahid-hami>> accessed 30 April 2016.

<sup>51</sup> (2016) <<http://www.islam.gov.my/imam-masjidil-haram-syeikh-dr-abdul-rahman-al-sudais-menyampaikan-muhadharah-di-masjid-darul-quran>> accessed 30 April 2016.

<sup>52</sup> 'Citing Nur Fitri Case, Najib Says Liberalism A Threat To Muslim Identity' (Themalaymailonline.com, 2015) <<http://www.themalaymailonline.com/malaysia/article/citing-nur-fitri-case-najib-says-liberalism-a-threat-to-muslim-identity>> accessed 30 April 2016.

## 2.4 Arbitrary Detention

- 146.47** Review recent amendments to the Prevention of Crime Act, as well as implementation of the Security Offences Act, for consistency with international human rights (New Zealand)
- 146.147** Continue to improve domestic legislation in order to guarantee the right of detainees to a fair trial (Japan)

### Detention without Trial

The Government of Malaysia did not support recommendation 146.47 on the grounds that human rights norms and standards were taken into consideration when the amendments were made to the Prevention of Crime Act 2015. However, the provisions of the Prevention of Crime Act 1959 (POCA) and laws similar to it such as the Prevention of Terrorism Act 2015 (POTA) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA) do not adhere to recognised international human rights standards.

For the most part, these laws permit detention without trial for up to 60 days in total. The detention period is determined by the Royal Malaysian Police with no room for any judicial input. The draconian nature of this practice creates a legal vacuum where detainees are put in a vulnerable position. There have been countless allegations of torture by detainees who were detained under such provisions.<sup>53</sup> After the 60-days detention period, detainees are produced before a “board” or the Minister in charge for a decision. The board and the Minister may extend the detention period for 2 years at this juncture and renew it whenever they feel it to be necessary.

As of 31<sup>st</sup> March 2016, civil societies have ascertained that at least 808 individuals have been arrested under the POCA with 188 individuals under detention order.<sup>54</sup> At this juncture, there have not been any officially confirmed cases of detention under POTA and no data on detention under DDA.

### Right to Fair Trial under Siege – Special Offences (Special Measures) Act 2012

The Special Offences (Special Measures) Act 2012 (SOSMA) was introduced in 2012 following the abolition of the Internal Security Act 1960 (ISA), which endowed the Royal Malaysian Police and Home Minister power to detain an individual without trial for up to two years. The countless political detentions under the ISA have dominated the civil and political landscape of Malaysia for more than 50 years. Its successor, SOSMA, as a procedural law, inherited the mantle of *the* law that permits detention without trial because detainees cannot be bailed.

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<sup>53</sup> SUARAM, ‘Use of Torture in Malaysia Must be Investigated and Stopped’, <<http://www.suaram.net/?p=7777>> accessed 30<sup>th</sup> March 2016

<sup>54</sup> ‘808 held under crime prevention act, says IGP’, the Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/808-held-under-crime-prevention-act-says-igp>> accessed 16<sup>th</sup> February 2016

While SOSMA only permits a 28-days detention without any judicial intervention and does not have the onerous and repressive provisions that was laid down in the ISA, POTA, POCA and DDA, SOSMA is a procedural law used in conjunction with the Penal Code. The aspect of SOSMA that undermines the right to fair trial only comes into play at the start of the trial. Those detained under SOSMA for crimes under Chapter 6 and 7 of the Penal Code are denied bail by default with no discretion given to the courts. As such, all those charged would be detained for a prolonged period even before the trial.

On average, it would take a few months for a hearing date to arrive after the initial case management. Even if the preliminary hearing is concluded with a decision given, any appeals would result in further “jail-time” as detainees cannot be bailed. As such, many of those charged for offences that carry shorter sentences have a tendency to plead guilty in order to minimize the time spent in detention.

As an example, one of the cases taken up by Suara Rakyat Malaysia (SUARAM) involves a detainee that was arrested in April 2015. At the time of this reporting, his trial is expected to commence in late April 2016. This hearing date could be pushed back if there are any adjustments to the court schedule. The injustice suffered under SOSMA by detainees is also reflected by the case of Yaziid Sufaat, the first detainee under the Act. Yaziid Sufaat was first arrested in 2012 and his trial has only recently concluded on January 2016.

The fact that the law creates a scenario in which an individual is placed in a predicament in which a guilty plea, regardless of guilt, is significantly more favourable is highly unconscionable and a clear infringement of the right to fair trial.

## **Conclusion**

With the existence of these laws, it is impossible for there to be a functional right to fair trial in Malaysia. Comprehensive legal reform must be taken in order for the right to fair trial is restored in Malaysia.

In the absence of legal reform, the Royal Malaysian Police and the respective board in charge of hearing cases under POCA and POTA must take proactive steps to minimize the damage caused by these laws. The Royal Malaysian Police should minimize the use of these laws as much as possible. In the event that the Royal Malaysian Police is required to use these law, preliminary detention periods must be avoided as there are provisions already provided for the use of electronic monitoring and house arrests for those detained. The Royal Malaysian Police and the POCA and POTA board should utilise electronic monitoring whenever possible and refrain from issuing detention orders under these laws.

## 2.5 Death Penalty

- 146.105** Remain open and continue the engagement with the public on the death penalty matter, including on possible alternatives to the death penalty and its abolishing (Ukraine)
- 146.107** Carry out the necessary nation-wide consultations to find an alternative to the death penalty, and, as far as possible, explore the possibility of establishing a moratorium on the capital punishment (Ecuador)
- 146.116** Abolish death penalty for minors and drug dealers (Albania)
- 146.106** **Maintain its good example in observing the legal safeguards surrounding the application of death penalty (Egypt)**
- 146.108** Finalize the review of the mandatory nature of the death penalty, maintain a moratorium and ultimately move to abolish the death penalty (Australia)
- 146.109** Take practical steps towards the abolishment of the death penalty, and as a first step officially introduce a moratorium on the implementation of death sentences (Bulgaria)
- 146.110** Broaden the review of the death penalty with a view of eliminating mandatory death sentencing for capital offences and commute all death sentences to terms of imprisonment (Sweden)
- 146.111** Consider reducing the number of crimes for which the capital punishment may be handed, including non-violent crimes, as well as establishing a moratorium on the use of the death penalty (Cyprus)
- 146.112** Reduce the number of crimes subject to death penalty and eliminate the compulsory application of the death penalty (Belgium)
- 146.123** Establish a moratorium on executions of those sentenced to the death penalty and move forward in the legal review to reach its abolition (Chile)
- 146.124** Instate an official moratorium on executions with a view to abolishing capital punishment, abolish the automatic sentencing to capital punishment for drug traffickers and commute all capital punishments to life prison sentences (France)

## Brief Assessment

Malaysia remains steadfast in applying the death penalty in the country despite research demonstrating that it is not effective as a deterrent.<sup>55</sup> On as recent as 29 March 2016, the Human Rights Commission of Malaysia (SUHAKAM) renewed calls for a moratorium on the death penalty following the “secretive” execution of three murderers, whose families were given only two days’ notice.<sup>56</sup> While Nancy Shukri who is law minister in the Prime Minister’s department assures that the government is working on amendments to the death penalty, with hopes to table these in March 2017, there appears to be no progress on the ground in seeking an alternative to the death penalty, and exploring the possibility of establishing a moratorium on the capital punishment. The mandatory death sentence is still meted out on those convicted of murder, treason, possession of firearms and certain drug offences. The Government is still yet to deliver its “nation-wide consultations with the public on matters regarding death penalty” promises as adopted during the last UPR.

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<sup>55</sup> 'Is The Death Penalty The Answer To Drug Crime?' (Amnesty.org, 2015) <<https://www.amnesty.org/en/latest/campaigns/2015/10/is-the-death-penalty-the-answer-to-drug-crime/>> accessed 30 April 2016.

<sup>56</sup> Mikha Chan, 'Suhakam Renews Call For Moratorium On Death Penalty' (Free Malaysia Today, 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/03/29/suhakam-renews-call-for-moratorium-on-death-penalty/>> accessed 30 April 2016.

## 2.6 Torture and Cruel, Inhuman or Degrading Treatment

146.125	Strengthen measures to prevent and eliminate all forms of ill-treatment, including torture (Botswana)
146.126	Eliminate all forms of cruel, inhuman or degrading treatments, particularly judicial beatings that should immediately be subjected to a moratorium (Belgium)
146.127	Continue in its judicial reforms, including strengthening the independence of the judiciary, enact a robust legislation outlawing torture and tackling impunity for acts of torture and ill-treatment, and ensure that provisions for arrests and detention are in accordance with international human rights standards (Czech Republic)

### Introduction

While recommendation **146.125** and **146.127** enjoyed the Malaysian government's acceptance in principle and in part respectively, the government did not support recommendation **146.126** stating that "corporal punishment is a form of punishment provided for under existing laws in Malaysia. It is only imposed on serious offences and is only carried pursuant to the order of the courts".<sup>57</sup> However, the situation on the ground has shown that the use of torture and other forms of cruel, inhuman and degrading treatment was carried out without a court order.

### Development of Legal Provisions Outlawing or Punishing the Use of Torture

Despite several public outcries and international condemnations against the use of torture and other form of cruel, inhuman and degrading treatment, Malaysia has experienced slow progress in the area.

An example of the weaknesses of the current legal provisions on torture can be seen in the

case of A. Kugan. The use of force and torture against A. Kugan which eventually lead to his death in 2009 finally resulted in a successful criminal charge against the former constable responsible for the injuries suffered by A. Kugan. Unfortunately, in the absence of legal protections against torture, the former constable in question was sentenced to only three years' prison sentence for causing grievous hurt.

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<sup>57</sup> Ohchr.org, 'UPR 2nd cycle – Malaysia', <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/MYSession17.aspx>> accessed 15 March 2016.

Senior officers that assisted with a misleading report on the cause of death were not punished for abetting. A. Kugan's family took up a civil case against the police, which resulted in a relatively favourable decision where exemplary damage was granted by the Court of Appeal.<sup>58</sup>

The case of A. Kugan clearly portrays the current predicament of lacklustre legal provisions for addressing the use of torture.

### **Use of Torture in Detention**

Despite the high profile cases of A. Kugan, N. Dharmendran and many others, allegations of torture against enforcement agencies especially the Royal Malaysian Police remain prevalent. In February 2016, SUARAM received 13 allegations of torture by those detained under Special Offences (Special Measures Act) 2012 SOSMA. The methods of torture alleged by these detainees include physical violence, sexual harassment, threat of violence, threats at gunpoint during questioning and other inhumane treatment. Despite the gravity of the allegations made, the Inspector-General of Police downplayed the allegations.<sup>59</sup>

### **Conclusion**

Systemic reform must be implemented for any improvement to be made in this regard. The Government of Malaysia must introduce legislative reform and introduce new laws to outlaw the use of torture in Malaysia. Substantive efforts must also be taken by enforcement agencies in ensuring that the use of torture is not sanctioned and that internal disciplinary actions will be taken against those found guilty of torturing detainees.

Agencies accused of alleged use of torture should also extend full cooperation to the national human rights institution, SUHAKAM and the Enforcement Agency Integrity Commission (EAIC) in their investigations and ensure that the truth regarding the allegations would be made publicly known and those guilty of torture punished accordingly.

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<sup>58</sup> Court of Appeal decision for the case of A. Kugan, <[http://www.kehakiman.gov.my/directory/judgment/file/W-01\(NCVC\)\(W\)-263-07-2013.pdf](http://www.kehakiman.gov.my/directory/judgment/file/W-01(NCVC)(W)-263-07-2013.pdf)> accessed 30<sup>th</sup> March 2016.

<sup>59</sup> Sosma detainees claim they were tortured while under remand, <<http://www.thestar.com.my/news/nation/2016/01/18/sosma-detainees-claim-they-were-tortured-while-under-remand/>> accessed 15<sup>th</sup> March 2016.

## 2.7 Elections

146.170

**Accelerate the conclusion of investigations regarding applications on the conduct of elections by the Election Commission and other relevant authorities (Turkey)**

### Introduction

Following the conclusion of the 13<sup>th</sup> General Election (GE13) in May 2013, there were numerous allegations of misconduct involving the Election Commission (EC), police personnel and public administrators. The People's Tribunal on the 13<sup>th</sup> General Election lists the following applications that were made in relation to conduct of the Election Commission and other relevant authorities:

1. A challenge to the integrity of the electoral roll by Klang Member of Parliament Charles Santiago. In early 2013, before the election, the application for leave was dismissed by the High Court.<sup>60</sup>
2. A total of 69 election petitions were filed after GE13,<sup>61</sup> all naming the winning candidates, the parliamentary constituency returning officers and the Election Commission as respondents. The grounds of the petitions all fell within Article 32(a), (b) or (c) of the Election Offences Act, relating to bribery, treating or intimidation, non-compliance of any written law relating to the conduct of the election, or a corrupt practice or illegal practice that was committed in connection with the election. In 2013, all the Petitions were either withdrawn or dismissed on technical grounds. However, on 24 December 2013, the Federal Court ruled four of the election petitions to be remitted back to the election courts to hear the merits of the case after allowing the appeals filed by the opposition.<sup>62</sup>
3. Over 1000 police reports were lodged on the failure of the indelible ink during GE13 and on May 21<sup>st</sup> 2013, the EC announced a team had been set up to investigate the indelibility of the ink.<sup>63</sup> The reports also included the opportunity for double voting in the Parliamentary seat of Kuantan.

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<sup>60</sup> *Report of the People's Tribunal on Malaysia's 13<sup>th</sup> General Elections*, (Petaling Jaya: EM-POWER, 2014), p. 52.

<sup>61</sup> V. Anbalagan, "Pakatan abandons appealing polls disputes, will push for reforms, say lawmakers", (*The Malaysian Insider*, 28 February 2014)

<sup>62</sup> *The People's Tribunal*, pp. 53-57.

<sup>63</sup> "EC sets up team to probe indelible ink issue", (*The Malaysian Insider*, 21 May, 2013), <http://www.themalaysianinsider.com/malaysia/article/ec-sets-up-team-to-probe-indelible-ink-issue>.

4. Police reports were also lodged during and after GE13 on:
- a) The murder of K. Murugan, a political aide of the PKR candidate for Tapah. He was reported missing four days before the election day and his body, with feet and hands bound, was later found afloat in a pond at an industrial park.<sup>64</sup>
  - b) Violence or threats of violence in the parliamentary constituency of Lembah Pantai.<sup>65</sup>
  - c) Election Commission officials opening and counting advance voting ballots at a police station in Malacca on 30 April 2013, 5 days before polling day.<sup>66</sup>

## **Results of investigations, police reports or applications**

### **1. The Electoral Roll and the Royal Commission of Inquiry**

The various challenges to the integrity of the electoral roll have yielded no substantial results. In December 2014, the Royal Commission of Inquiry on Illegal Immigrants in Sabah made their long-awaited report public. The report found:

*“It is clear that there was a clandestine exercise involving senior officers in the NRD, Sabah, who apparently acted on the orders from their political superiors. This clandestine exercise involved illegal activities relating to the processing and issuance of Malaysian identification documents to illegal immigrants in pursuit of a political agenda. The names mentioned by some of the above witnesses have included Tan Sri Harris Salleh, the former Chief Minister of Sabah; Tan Sri Aziz Shamsuddin, the former Political Secretary of the then Prime Minister of Malaysia, Tun Dr Mahathir and the late Tan Sri Megat Junid, the then Deputy Home Affairs Minister.”<sup>67</sup>*

The report also conclusively found that the current electoral roll has been tainted by “Projek IC”. It cited testimony by Sabah Rural Development Minister Radin Malleh that there are 80,620 dubious identity card (IC) holders listed in the electoral roll.<sup>68</sup>

In light of these findings, a technical committee was formed to compile recommendations and feedback. While committees have been set up to deal with the issue of illegal immigrants in Sabah, there has been no progress on correcting the irregularities in the electoral roll.<sup>69</sup>

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<sup>64</sup> *The People’s Tribunal*, pp. 33-34.

<sup>65</sup> *Ibid.*, p. 34.

<sup>66</sup> “Some EC Officials Counted Early Votes ‘On the Quiet’”, (*SelangorKini*, 29 May, 2013), <http://en.selangorku.com/5935/some-ec-officials-counted-early-votes-on-the-quiet/>.

<sup>67</sup> *Report of the Commission of Enquiry on Immigrants in Sabah*, p. 295.

<sup>68</sup> *Ibid.* pp. 307-308.

<sup>69</sup> Julia Chan, “A year after RCI report, Sabah leaders ask why nothing’s been done” (*The Malay Mail Online*, 4 December 2015) <http://www.themalaymailonline.com/malaysia/article/a-year-after-rci-report-sabah-leaders-ask-why-nothings-been-done>.

## 2. Election Petitions

Of the four election petitions that were remitted back to the election courts by the Federal Court in 2013, all were dismissed in 2014. Out of the four, only one was heard on merit. The remaining three were again dismissed on technical grounds.

In the case heard on merit, the election petition against the now Deputy Prime Minister Datuk Seri Ahmad Zahid Hamidi, the petitioners claimed Zahid had committed corrupt practices, including vote-buying, and spending above the RM200,000 limit allowed for campaigning. They alleged that Zahid gave RM100 in cash and five bags of rice printed with the Barisan Nasional logo to each voter and appointed some 24,000 workers with cash payment. However, the Federal Court ruled that corrupt practices can only be committed after nomination day and the alleged offence occurred before Zahid had been confirmed as a candidate.<sup>70</sup>

The People's Justice Party (PKR) eventually abandoned appealing the decisions of the Election Court as the costs were becoming too prohibitive and the outcome appeared pre-determined. PKR lawyer R. Sivarasa said the filing of petitions after the general election was a waste of time and too costly. Sivarasa said PKR had to raise about RM1.5 million to pay Barisan Nasional candidates and the Election Commission. He said the election court imposed, on average, RM80,000 in costs after hearing a preliminary objection when in normal civil cases the amount was between RM5,000 and RM10,000.<sup>71</sup>

## 3. Indelible Ink

No police action was ever taken on the over 1000 police reports made regarding how the indelible ink<sup>72</sup> would wash off the fingers of voters, except in two cases, where those making police reports were punished. In January 2015, Major Zaidi Ahmad was found guilty for breaching two standing orders – speaking to the media without the consent of the Defence Ministry, and sharing confidential information with the media without the consent of the Armed Forces Council under Section 50 of Armed Forces Act 1972.<sup>73</sup> Major Zaidi was an Air Force pilot who, after participating in advanced voting at an army camp, made a police report when the indelible ink washed off his finger. He also spoke to the media about the incident. Instead of being commended for highlighting the serious possibility of fraud in the General Election, he lost his job after over 20 years in the Air Force.

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<sup>70</sup> Qishin Tariq, "Federal Court throws out petitions, Ahmad Zahid keeps Bagan Datoh", (*The Star Online*, 7 July 2014), <http://www.thestar.com.my/news/nation/2014/07/07/ahmad-zahid-hamidi-retains-bagan-datoh/>.

<sup>71</sup> V. Anbalagan, "Pakatan abandons appealing polls disputes, will push for reforms, say law-makers", (*The Malaysian Insider*, 28 February 2014) <http://www.themalaysianoutsider.com/malaysia/article/pakatan-abandons-appealing-polls-disputes-will-push-for-reforms-says-lawmak>.

<sup>72</sup> *The People's Tribunal*, pp. 26.

<sup>73</sup> Muzliza Mustafa, "Found guilty, indelible ink whistleblower says 'see you in Allah's court'", (*The Malaysian Insider*, 12 January, 2015), <http://www.themalaysianinsider.com/malaysia/article/found-guilty-indelible-ink-whistleblower-says-see-you-in-allahs-court#sthash.9olsV4g7.dpuf>.

In the case of an opportunity for double voting in Kuantan, a young voter, Fadhli Kaharuddin, visited a polling station in the morning to cast his ballot. After noticing that the indelible ink washed off his finger, he returned to the polling station to test if he would be given a second ballot. After the second ballot was handed to him, he informed the police officer in charge and made a police report the same day. Fadhli was then charged in court for having taken a ballot paper out of the polling station. He was cleared of the charge at the Sessions Court, but the decision is in the process of being appealed.

#### 4. Additional Police Reports

- a) **Murder of K. Murugan:** In September 2013 the candidate for the Tapah parliamentary constituency, Vasantha Kumar, told the People's Tribunal that "the man who attacked us was picked up and then released the same day and since then, no further action has been taken". There has been no progress on the murder investigation since that time.<sup>74</sup>
- b) **Violence and threats of violence in Lembah Pantai:** No action was taken on the seven police reports lodged by victims of the violence. The violence included the throwing of rocks and eggs at event speakers, threats made to party workers and attacks against party volunteers.
- c) **Opening and counting advance ballots before election day:** No further action was taken.

#### Corruption allegations linked to the conduct of the 13<sup>th</sup> General Election since 2013

On June 18, 2015, a Wall Street Journal (WSJ) report titled "Fund Controversy Threatens Malaysia's Leader" written by Tom Wright claimed the following:

- In October 2012, 1MDB acquired a Genting unit that owned a 75% stake in a coal-fired power plant for about MYR 2.3 billion. Genting reported a RM1.9 billion extraordinary gain on this transaction. In its financial accounts for 2013, 1MDB took a write-down charge of RM1.2 billion. This write-down charge signals that 1MDB recognized it had overpaid for the power assets.
- A few months after the October 2012 sale, a unit of Genting called Genting Plantations Bhd. (GPB) made a donation of about USD 10 million to Yayasan Rakyat 1Malaysia (YR1M), a charity chaired by Prime Minister, Datuk Seri Najib Razak. Stock analysts at the time said the surprise donation reduced the company's net profit in the first quarter of 2013, and said they didn't expect it to be repeated.

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<sup>74</sup> Trinna Leong and Elizabeth Zachariah, "Tribunal hears of murder in the run-up to GE13", (*The Malaysian Insider*, 19 September 2013), <http://www.themalaysianinsider.com/malaysia/article/tribunal-hears-of-murder-in-the-run-up-to-ge13>.

- Though YR1M was set up to help underprivileged Malaysians through education and sports, its spending appeared designed to help the Prime Minister retain power in the May 2013 General Elections. During the campaigning for GE13, Najib visited Penang and announced that YR1M would donate two million ringgit (about USD 660,000 at the time) to two local schools which “serve Chinese communities that are not a poor demographic, but whose support would be crucial to win voting in the area.”<sup>75</sup>

Investigations into allegations that funds from the sovereign wealth fund 1MDB was used to finance Barisan Nasional’s election campaign are ongoing in Singapore, the United States, Hong Kong and Switzerland.

In Malaysia, however, when the allegations first emerged, Prime Minister Najib Razak replaced the Attorney General and sacked his then Deputy Prime Minister. Several officers of the Malaysian Anti-Corruption Commission were either transferred to the Prime Minister’s Department or detained in police custody. In January 2016, the replacement Attorney General announced that the RM2.6 billion for GE13 had come from a donor from Saudi Arabia and there was no evidence of wrongdoing. He then declared the case closed.<sup>76</sup>

## **Conclusion**

Committees were formed to investigate on the whole commotion caused by the alleged “Projek IC”, 69 electoral petitions were concluded amidst dubious court decisions on part of the Federal Court, besides being largely accelerated by the expensive nature of court charges. As of late, allegations of corruption linked to the 13<sup>th</sup> General Election since 2013 by Prime Minister, Datuk Seri Najib Razak met an abrupt end by the recently appointed Attorney General. In spite of the aforementioned conclusions, not only are all these “progress” in investigations pertaining to election misconduct ambiguous in nature, there have since been no genuine interest by the ruling coalition to comprehensively answer to the alleged delinquency and to improve the electoral processes in the future.

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<sup>75</sup> Tom Wright, “Fund Controversy Threatens Malaysia’s Leader”, (*The Wall Street Journal*, 18 June 2015), <http://www.wsj.com/articles/fund-controversy-threatens-malaysias-leader-1434681241>.

<sup>76</sup> Aizyl Azlee, “AG declares case closed, says ‘no criminal offence’ in SRC, RM2.6b probes”, *The Malay Mail Online*, <<http://www.themalaymailonline.com/malaysia/article/ag-declares-case-closed-says-no-criminal-offence-in-src-rm2.6b-probes#sthash.pMuGM1dd.dpuf>> accessed 3<sup>rd</sup> March 2016.

# CHAPTER 3

## ECONOMIC, SOCIAL & CULTURAL RIGHTS

MALAYSIA'S 2016  
UPR MID - TERM  
REVIEW

## 3.1 Poverty Eradication and Raising Standards of Living

- 146.64 Make more efforts to safeguard the benefits that would go to those who live in rural areas to ensure their economic and social rights (Oman)
- 146.79 Continue to address income inequality and share its experiences with other developing countries in the area of poverty eradication, in particular its eKasih programme (Myanmar)
- 146.80 Continue its efforts to eradicate poverty and uplift the standards of living for all Malaysians, including through ensuring effective implementation of the Government Transformation Programme strategies (Mozambique)
- 146.81 Continue its efforts to eradicate poverty and uplift the standards of living for all Malaysian people with more focus on the vulnerable and disadvantaged groups of people (Cambodia)
- 146.82 Reinforce measures to eradicate poverty across all segments of society, including among the indigenous community (Sri Lanka)
- 146.83 Continue its endeavours in poverty eradication, and strengthen the living standards and share experiences and best practices in that regard (Iran (Islamic Republic of))
- 146.84 Continue to take effective measures to overcome and solve the problem of income inequality in the country (Bolivia (Plurinational State of))
- 146.85 Increase efforts for a more fair distribution of wealth in line with the remarkable success in poverty reduction (Turkey)
- 146.86 Continue addressing income inequality in the development policy of the country (Azerbaijan)
- 146.173 Continue its efforts to improve the enjoyment of human rights and to raise the living standards of its people (Singapore)

## Introduction

On the theme of poverty eradication and raising living standards, Malaysia received nine comments and recommendations from nine member states. None of these were critical of Malaysia on this aspect. Instead, they recognised the Malaysian experience and encouraged Malaysia to undertake more efforts in the same manner, and to use Malaysia's experience as a learning model for other countries. This section is therefore divided into five parts to recognise the positive examples and note the contemporary challenges while attempting to chart a pathway to mitigating these challenges so as to ensure no one is left behind.

### Efforts to eradicate poverty

Historically, Malaysia has been very effective in poverty eradication reducing the poverty rate from 49.3% in 1970 to 0.6% in 2014.<sup>77</sup> This is also the conclusion in the MDGs review report by UN Malaysia. Therefore in contrast to many other developing countries, the socio-economic policies and programs have proven effective in reducing overall poverty in Malaysia.

However there are four key matters for review:

One, how is poverty measured in Malaysia? Malaysia is still using the Poverty Line Income (PLI) which is a basket of goods concept. This is based on "a minimum consumption requirement of an average-sized household for food, shelter, clothing and other non-food needs such as transport, healthcare and education. It is predominately an income measure which is fixed based on geographical locations such as rural and urban, also between Peninsular, Sabah and Sarawak.

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<sup>77</sup> EPU, 'Eleventh Malaysia Plan 2016-2020, Anchoring Growth On People' (EPU 2015).

The PLI for 2015 was fixed at RM 720.00 for Peninsular, RM960.00 for Sabah and RM830.00 for Sarawak. These figures were adjusted in 2016 to RM 930.00 for Peninsular, RM1,170 for Sabah and RM990.00 for Sarawak.

The PLI which is based on household income is viewed to be placed as too low taking the cost of living. Using this PLI method we could be creating a false sense of achievement based on a reality check on the economic and social hardships faced by families.

Second, using the current PLI approach, the persistent poverty issues continue to be rural poverty with 34% of the Orang Asli, 20.2% of Bumiputras of Sabah and 7.3% of Bumiputras of Sarawak experiencing poverty.<sup>78</sup>

Third, the multi-dimensional poverty measurement introduced in the 11<sup>th</sup> Malaysia Plan is a better measure with four dimensions namely income, education, health and living standards. However the specific indicators are not progressive enough as income measure is still focused on a PLI approach rather than placing this at a more realistic figure.

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<sup>78</sup> UN, 'Malaysia Millennium Development Goals Report 2015.' (UN 2015).

## Government's Transformation Programme

The 2016 BR1M figures provides some startling revelations as 7.1 million people have registered with the Federal government in need of financial aid. This is a very large figure. This is almost 26% of the Malaysian population. The figures here indicate incomes below RM4,000.<sup>79</sup> In this context while there are some good initiatives in skills training and micro business development, this cash handout approach has created a dependency syndrome rather than an empowering strategy through self-reliance.

In the 11th Malaysia Plan, government introduced the measure for families in the B40 category as those with RM2,537.00, comprising 2.7 million people. Therefore the size of the poor in Malaysia is much larger using relative measurement approach to poverty rather than using a very narrow definition. Larger numbers indicate that there are sizable sections of the Malaysian population who are having difficulties in experiencing quality of life.

This theme of measurement is discussed in the UNDP Human Development Report 2013 namely "if poverty is measured using the relative poverty rate (defined as less than half of the median income), as suggested in the NEM, about 20% of Malaysian household are considered poor".<sup>80</sup>

The GTP which focused on effective delivery is one good initiative. There is a strong emphasis on low income families and enabling them to experience a better quality of life. The inter agency cooperation using a coordinated effort in reaching poor and low income families is one effective outcome. The establishment of one stop centres such as rural and urban transformation centres has enabled easy access for those using these centralised facilities. In addition, the inclusive development agenda of the 11<sup>th</sup> Malaysia Plan is an other good policy.

However, we must recognise that there are many unresolved issues facing urban poor communities on the one hand and rural forest-based communities on the other. The lives of people living in high-rise low-cost flats is now a major concern. These neighbourhoods are densely populated with little public facilities. It has also become crime prone zones. The manifestation of urban poverty including rising crime, drug and alcohol dependence, gang-related activities is witnessed. These urban poor high-risk neighbourhoods have emerged in many urban poor neighbourhoods in towns and cities. They require greater public attending and resources through enhancing effective local governance.

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<sup>79</sup> 'Ahmad Husni: 7.1 Million People Approved For BR1M 2016 - Nation | The Star Online' (Thestar.com.my, 2016) <<http://www.thestar.com.my/news/nation/2016/03/14/ahmad-husni-7-point1-million-people-approved-for-br1m-2016/>> accessed 30 April 2016.

<sup>80</sup> UNDP, 'Malaysia Human Development Report 2013' (UNDP 2014).

In a similar way, the issues of forest based communities and their rights to their land is another matter of contestation. The delays in the effective implementation of SUHAKAM's national inquiry on indigenous land rights is a clear example of the failure to resolve the root cause of their poverty namely ownership to their customary lands.

### **eKasih Programme**

“eKasih” is a registration data base. It is a computer-based register maintained by the Implementation Coordination Unit (ICU) of the Prime Minister. This is a coordinated register used by all the lead agencies involved in providing services to the poor.

“Based on the Oct 2015 figures the register is maintained under three categories namely hard core poor (below RM580.00), poor (RM 940) and low income (below RM1,500) for Peninsular Malaysia.

As at October 2015, there are 80,640 hard core poor; 142,490 poor and 27,397 low-income families registered in eKasih”.<sup>81</sup>

There have been complaints of families' inability to get on to the register due to delays in verification and in others who have failed to benefit from the various assistance schemes. The current approach is once registered in eKasih, an individual or family has the option of participating in one of the 1Azam programs pertaining to work or undertake business which includes agricultural as well as service sector options.

While 183,931 people have participated in one of the four Azam programs between 2011 and 2015, some have expressed that they could not get access or due to the multiple nature of their poverty experience, the singular intervention was found to be not so effective.

### **Income Inequality**

Malaysia has been obsessed with race-based comparisons of income, employment, property ownership and stock market-equity participation, therefore focussing on individual and corporate wealth. The re-focusing on a case base approach taking the top 20, middle 40 and bottom 40 is an alternative approach which is more realistic and reflective of the grassroots situation.

The B40 are families with a household income of RM2,537 and there are 2.7 million Malaysians under this category. The plight of B40 communities are well documented in the MDG review report (p.30). These are: - the household heads are with lower educational attainment and skills acquired; lack entrepreneurship capabilities, their indebtedness level is seven times their annual household incomes; about 50% do not own a house and they have limited access to health care.

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<sup>81</sup> Denison Jayasooria, Towards 2030: Malaysia's Development Agenda. (KITA-UKM 2016).

It is noted that there is socioeconomic disparity between the top 20 and bottom 40 as indicated in the gap by 5.6 times in terms of the mean household income (UN 2015:30). It is more with the ethnic community as opposed to across the communities. The UNDP report notes that “among the ethnic groups in Malaysia, inequality is the highest among the Indians, at 0.443 followed closely by the Bumiputera and the Chinese both at 0.42” (p.35). The report goes on to state that this method of measuring inequality is inadequate and therefore calls on a broader measurement such as moving income distribution to also review asset inequality including financial and property assets. In addition, wage and employment inequalities must be also utilised.

In this context, it must be noted that 53% of Malaysian households do not have financial assets, including 57% indicated no earnings from investments.<sup>82</sup> This situation makes “them vulnerable in the event of an income or employment shock”.<sup>83</sup>

Effectively addressing inequality both across ethnic groups and within is essential for fostering a united nation. It must be a framework based on inclusivity across multiple dimensions.

### **Vulnerable and Disadvantaged Groups of People**

The UN MDG review report on Malaysia indicates that “child poverty is of particular concern because of its long-term effects on cognitive, physical and emotional

development, as well as on health”.<sup>84</sup> It notes based on a recent study, 85% of school drop-outs come from poor families. It is estimated that 157,000 children below 18 years are living under the poverty line of whom 135,000 are below 15 years of age.<sup>85</sup> While Malaysia has achieved full employment, however, there is a growing concern over young people. “Unemployed youth account for 4.1% of the total youth population as of 2014”.<sup>86</sup>

Among the Indian urban poor and former displaced plantation workers living in urban and semi urban locations, there are, since 2011, special efforts to address their concerns through the special units established and through financing voluntary and community organizations to undertake socio-economic interventions. While these are useful start-up programs, they are ad hoc and short-term which are non-sustainable. The focus must be towards ensuring that the civil service at the district level is effective in delivery as well as multi-ethnic in representation so as to facilitate the use of a common language and a better understanding of their concerns. This approach will provide greater meaning to inclusive development, instead of the current approach that fosters segmentation in delivery and which is not built on a rights-based foundation.

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<sup>82</sup> UNDP, 'Malaysia Human Development Report 2013' (UNDP 2014).

<sup>83</sup> Ibid. pp. 50.

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<sup>84</sup> UN, 'Malaysia Millennium Development Goals Report 2015.' (UN 2015). Pp.20.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid. pp.24.

## **Conclusion**

While historically Malaysia has experienced positive achievements in poverty eradication through socio-economic policies, these are no longer effective and have yet to embrace new thinking and approaches in poverty alleviation. Hence, Malaysia is increasingly experiencing a rise of inequality, especially in relation to urban poverty and its impact on social mobility and cohesion. The way forward in adopting a sustainable development goal agenda with the theme of “no one left behind” is by strengthening a human rights approach to poverty eradication which will in turn clear the way forward for equality in access to opportunities for all peoples in Malaysia and their experience of equal outcomes.

## 3.2 Right to Education

- 146.191 **Continue its successful measures in the field of education (Azerbaijan)**
- 146.192 **Implement a gender perspective in education at all levels, especially by providing gender-trainings for teachers (Timor-Leste)**
- 146.193 **Implement a gender perspective in education at all levels, including teacher training, as well as establish a policy and appropriate measures for including children of all backgrounds in the national education system (Bulgaria)**
- 146.194 **Take necessary measures to implement a gender prospective in education at all levels, including by training teachers (State of Palestine)**
- 146.195 **Take the necessary measures to take into account gender aspects at all levels of the educational system, including teachers' training (Kyrgyzstan)**
- 146.196 **Share its best practices in education and promote the gender perspective at all levels in education and teacher trainings with appropriate measures (Viet Nam)**
- 146.197 **Continue its efforts in promoting the right to education so as to ensure access to education for all its young citizens (Brunei Darussalam)**
- 146.198 **Undertake further measures in order to address the problem of shortage of teachers, especially in rural and remote areas (Timor-Leste)**
- 146.199 **Step up measures to address the shortage of teachers especially in rural and remote areas (Sri Lanka)**
- 146.200 **Continue to prioritize and facilitate the enrolment of qualified students to continue their higher education particularly the poor families and those with low income families through different funding mechanisms (State of Palestine)**
- 146.201 **Continue to prioritize and facilitate funding access for prospective and eligible students from poor and low-income families to pursue higher education (Pakistan)**
- 146.202 **Continue to facilitate access to financing for higher education (university level) to the needy categories (Morocco)**
- 146.203 **Take concrete measures to prevent children from becoming stateless and guarantee universal access to free primary education, irrespective of citizenship and immigration status (Norway)**

## Introduction

The UPR session in 2013 saw the government of Malaysia accepted in full a total of 11 recommendations while accepted in part 1 recommendation and took note of 1 recommendation from the total of 13 recommendations presented by various states.

The following paragraphs will focus on right to education (**146.197**), the enrolment of qualified students from poor or lower income groups (**146.200**, **146.201**), shortage of teachers especially in rural areas (**146.198**, **146.199**), access to higher education for needy categories (**146.202**), and gender issues in education (**146.192**, **146.193**, **146.194**, **164.195** and **146.196**).

## Privatisation of education

The privatisation policy was first announced as a national policy by the Government of Malaysia in 1983. Since then, the Government has been carrying out a policy of privatising various public sectors<sup>87</sup> including education. After the Private Higher Educational Institutions Act 1996 was enacted to provide for the establishment, registration, management and supervision of private higher educational institutions and for matters connected therewith,<sup>88</sup> the number of private educational institutions experienced a rapid growth.<sup>89</sup> Since then, the government is reluctant to allocate more funding for higher education in public institutions and instead transferred this burden to citizens

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<sup>87</sup>Official Website Of Economic Planning Unit - Privatization Policy' (Epu.gov.my, 2016) <<http://www.epu.gov.my/en/dasar-penswastaan>>

accessed 30 April 2016.

<sup>88</sup> Preamble of Private Higher Educational Institutions Act 1996 (Act 555).

<sup>89</sup> Liz Gooch, *Malaysia Tries to Rein In Private Education Institutions*, The New York Times, 2<sup>nd</sup> October 2011

whereby they will have to bear the high cost of higher education in private institutions.

This can be seen when the number of private institutions increased to a total of 485 (69 universities, 36 college universities and 380 colleges) in the year 2015, compared to only 33 public universities nationwide.<sup>90</sup> This results in those from high income groups to have guaranteed access to higher education, while those from lower income groups will have to depend on limited enrolment quotas available in public universities. This is contrary to recommendations number **146.200** and **146.201**, as students from the poor and lower income groups even with commendable academic qualifications face stiffer challenge to enrol in tertiary education. Apart from that, the situation above does not fulfil recommendation **146.197** on promoting the right to education.

## Discriminatory policies

Adequate allocations should be given to all public schools regardless of the medium of instruction. Malaysia's vernacular schools still serve the purpose of education: equipping the younger generation with knowledge, creating human capital for the development of the country and producing future leaders. Discrimination in the allocation of funds to schools on the basis of the language of instruction is contrary to recommendation **146.197**.

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<sup>90</sup> Malaysian Qualifications Register (Mqa.gov.my, 2016) <<http://www.mqa.gov.my/mqr/english/eperutusan.cfm>> accessed 30 April 2016.

For instance, there is a significant disparity in the allocations given to Chinese vernacular schools as shown in Table 4 below.

**Table 4: Average Budget Allocation Per Student Based on Types of School<sup>91</sup>**

Type of school	Allocation in Budget 2015 (RM)	Number of school (2014)	Number of student (2014)	Average allocation for each school	Average allocation for each student
National school	450 mil	5,863	2,029,658	76,752.5	221.7
National-type school (Chinese)	50 mil	1,294	560,788	38,639.9	89.2
National-type school (Tamil)	50 mil	523	89,007	9,5602.2	561.7

In addition, The Chinese independent high school's Unified Examination Certificate (UEC) is not recognised by the government despite being recognised in universities in Australia, Britain, Canada, China, France, Hong Kong, Ireland, New Zealand, Taiwan, United States and Singapore among the many.<sup>92</sup> There has been no change in this policy since the 2<sup>nd</sup> UPR review.

Even though there is no ethnic requirement for admission into public universities, only *Bumiputera* (Malay and indigenous Sabahan and Sarawakian peoples) are allowed to enrol in the MARA University of Technology (UiTM), a publicly-funded university. In year 2015, the higher education budget for public universities is RM 8.7 billion (US\$ 2.09 billion), with UiTM receiving a disproportionately large RM 2.6 billion (US\$ 62.46 million) or 29.91 per cent of the budget allocation. Despite budget cuts in 2016, UiTM still received the single largest allocation. There is also a 90 per cent *bumiputera* quota for the Malaysian Matriculation Program. This program is a one-year pre-university track for Malaysian students, one of the options to fulfil university admission requirements. This is highly discriminatory and affects many Malaysians' right to education, especially low-income communities and the poor from other ethnicities who rely on public universities which are already underfunded. Contrary to recommendations **146.200** and **146.201**, both accepted by the government of Malaysia, the priority is not based on needs but on ethnicity.

<sup>91</sup> Retrieved and translated from <http://dongzong.my/detail-declare.php?id=419#>.

<sup>92</sup> Ho Wah Foon, "Value of UEC beyond recognition", The Star Online, <<http://www.thestar.com.my/news/nation/2015/11/15/certificate-recognised-around-the-world-but-not-in-malaysia/>> accessed 4<sup>th</sup> April 2016

### **Shortage of teachers in rural areas**

The Malaysian government had accepted in full the recommendation on taking measures to solve the shortage of teachers in rural and remote areas (**146.198, 146.199**). However, this problem continues to occur as the government failed to address the fundamental factors. This resonated with the statement by Willian Ghani Bina, then the Sarawak Teachers' Union (STU) President when schools in East Malaysia did not make it to the list of Top 20 High Prestige Schools in 2010. The lack of facilities in rural schools makes teachers from West Malaysia shy away from teaching in the interior, he said.<sup>93</sup>

Apart from the lack of facilities in rural areas, the training and posting of teachers lack thorough consideration. The teachers, upon their graduation should be given priority to teach in their home states. It was reported on 9<sup>th</sup> January 2015 that, out of the 500 teachers posted to Sarawak, 90 per cent of them are from Peninsular Malaysia.<sup>94</sup> This is inappropriate for several reasons. One, teachers from Peninsular Malaysia often lack training in cultural sensitivity and are unaware of Sarawak's diverse cultures, resulting in conflict between teachers and the communities they teach in. Two, transferred teachers from Peninsular Malaysia are keen to apply to be transferred back to Peninsular Malaysia, resulting in a shortage of teachers in Sarawak especially in the rural areas.<sup>95</sup>

### **Budget cut for higher education**

Higher education institutions (including but not solely comprising of public universities) had their government budget allocation slashed by RM2.4 billion (US\$573 million), from RM15.78 billion (US\$3.8 billion) in 2015 to RM13.37 billion (US\$3.2 billion) for the year 2016.

19 out of 20 public universities saw their budget allocation slashed in year 2016. The overall declining trend budget allocation for public universities is presented in Table 5 below.

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<sup>93</sup> The Borneo Post Online, "Blame it on insufficient teachers, facilities : Ghani", <<http://www.theborneopost.com/2010/01/27/blame-it-on-insufficient-teachers-facilities-ghani/>> accessed 4<sup>th</sup> April 2016.

<sup>94</sup> Joseph Tawie, "Flooding of peninsula teachers alarms Sarawak", MalaysiaKini, <<https://www.malaysiakini.com/news/285863>> accessed 4<sup>th</sup> April 2016

<sup>95</sup> Ibid.

**Table 5: Change in Budget Allocation for Public Universities in Malaysia from 2015 to 2016<sup>96</sup>**

University	2015	2016	Change
	RM	RM	%
	8,753,564,300	7,311,337,500	-16.48
<b>Universiti Malaya (UM)</b>	638,115,900	463,905,000	-27.3
<b>Universiti Kebangsaan Malaysia (UKM)</b>	487,693,300	512,327,900	5.05
<b>Universiti Sains Malaysia (USM)</b>	654,208,400	542,093,000	-17.14
<b>Universiti Putra Malaysia (UPM)</b>	495,830,100	439,279,000	-11.41
<b>Universiti Teknologi Malaysia (UTM)</b>	497,947,100	415,644,000	-16.53
<b>Universiti Utara Malaysia (UUM)</b>	301,811,800	243,522,000	-19.31
<b>Universiti Islam Antarabangsa Malaysia (UIAM)</b>	548,515,300	504,020,000	-8.11
<b>Universiti Malaysia Sarawak (UNIMAS)</b>	197,874,100	195,787,000	-1.05
<b>Universiti Malaysia Sabah (UMS)</b>	379,902,200	315,961,000	-16.83
<b>Universiti Pendidikan Sultan Idris (UPSI)</b>	194,171,900	153,827,000	-20.78
<b>Universiti Teknologi Mara (UiTM)</b>	2,618,244,300	1,997,171,900	-23.72
<b>Universiti Sultan Zainal Abidin (UniSZA)</b>	170,971,100	148,027,500	-13.42
<b>Universiti Sains Islam Malaysia (USIM)</b>	173,856,800	142,557,900	-18
<b>Universiti Tun Hussein Onn Malaysia (UTHM)</b>	257,463,200	247,905,000	-3.71
<b>Universiti Malaysia Terengganu (UMT)</b>	186,371,700	142,091,000	-23.76
<b>Universiti Teknikal Malaysia Melaka (UTeM)</b>	227,973,200	203,395,600	-10.78
<b>Universiti Malaysia Perlis (UniMAP)</b>	220,406,700	212,389,000	-3.64
<b>Universiti Malaysia Pahang (UMP)</b>	252,228,200	224,020,000	-11.18
<b>Universiti Malaysia Kelantan (UMK)</b>	138,607,400	114,183,500	-17.62
<b>Universiti Pertahanan Nasional Malaysia</b>	111,371,600	93,230,200	-16.29

The drastic cuts are predicted to lead to issues such as reduced enrolment in universities and tuition fees increase. With the rising costs of living,<sup>97</sup> varsity students who are poor are increasingly finding it more difficult to cover their costs for food. The Muslim Volunteer Malaysia Association (MVM) discovered after a survey on 25,632 students from six public universities<sup>98</sup> that this situation of students who can ill afford the costs for food will not only persist but worsen.

<sup>96</sup> Malaysia Budget 2016.

<sup>97</sup> Fintan Ng, "Cost of living tops agenda as Malaysian continues to face challenges in 2016", <<http://www.thestar.com.my/business/business-news/2015/12/31/cost-of-living-tops-agenda/>> accessed 4<sup>th</sup> April 2016.

<sup>98</sup> MalaysiaKini, "Three out of four varsity students too broke to eat", <<https://www.malaysiakini.com/news/325812>> accessed 4<sup>th</sup> April 2016.

In an extreme case, a student from the National University of Malaysia (UKM) admitted to starving herself due to a lack of funds. This led to the puncturing of the student's intestine causing her to vomit blood.<sup>99</sup> Even with the said reports, replies by ministers in Malaysia show a worrying sign of reluctance to address the issue of poor students. The Minister of Youth and Sports was quoted saying he was "sceptical of starving students reports"<sup>100</sup> while the Higher Education Minister suggested impoverished university students seek part-time employment to cover their food bill.<sup>101</sup>

In February 2016, the Public Service Department (JPA) announced that they will cease providing scholarships, but instead will grant student loans.<sup>102</sup> These loans will only be converted into scholarships if loanees work in the public sector upon graduation. If the graduates work in government-linked companies (GLCs), they are required to pay back half of the loan amount. Graduates who do not work in the public sector or GLCs will have to repay the full amount.<sup>103</sup>

The unwillingness to address affordability of higher education suggests that there is a shift in the government's priorities which are contrary to its acceptance of recommendations of **146.200** and **146.201**.

### **Gender Issue in Education**

To address the gender gap in education, in 1989, the government formulated the National Policy for Women with an objective to safeguard women's rights to health, education, and social well-being.<sup>104</sup> Ensuing this was the National Policy for Women in 2009. Apart from empowering women through national laws, the government of Malaysia has pledged to fill the gender gap especially in education through international treaties and other expressed commitments such as Education for All, UN Millennium Development Goals, Beijing Declaration and Platform for Action, 1995 and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

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<sup>99</sup> Malay Mail Online, "Broke UKM student claims starved till intestines punctured", <<http://www.themalaymailonline.com/malaysia/article/broke-ukm-students-claims-starved-till-intestines-punctured>> accessed 4<sup>th</sup> April 2016.

<sup>100</sup> Free Malaysia Today, "Khairy skeptical of starving students reports", <<http://www.freemalaysiatoday.com/category/nation/2016/01/12/khairy-sceptical-of-starving-students-report/>> accessed 4<sup>th</sup> April 2016.

<sup>101</sup> Malay Mail Online, "We've food programmes, but how about working part-time too? Minister asks hungry students", <<http://www.themalaymailonline.com/malaysia/article/weve-food-programmes-but-how-about-working-part-time-too-minister-asks-hungry>> accessed 4<sup>th</sup> April 2016.

<sup>102</sup> Lian Cheng, "JPA scholarship converted to loans", <<http://www.theborneopost.com/2016/02/25/jpa-scholarship-converted-to-loan/#ixzz42B3Etapd>> accessed 4<sup>th</sup> April 2016.

<sup>103</sup> Ibid.

<sup>104</sup> Aminah Ahmad, Country Briefing Paper, Women in Malaysia, Asian Development Bank, p.21.

Despite the perceived indication that Malaysia is focusing on delivering gender equity in education as stipulated by the 2013-2025 National Education Blueprint Malaysia,<sup>105</sup> stereotypes and traditional perceptions of men's and women's roles are still prevalent in education, as documented by the Human Rights Commission of Malaysia (SUHAKAM) in their Human Rights Approach to the Millennium Development Goals report.<sup>106</sup> According to the report, the perception on traditional gender roles had resulted in more male students enrolling and ultimately pursuing a career in science and technical fields while females opt for education and health care related fields. SUHAKAM had urged the government to eliminate such stereotypes and traditional perceptions by implementing educational and awareness programs.<sup>107</sup>

Malaysia welcomed UNESCO's invitation to assess progress towards achieving "Education for All" with the Education for All 2015 National Review Report: Malaysia.<sup>108</sup> Among the issues raised in the report was the glass ceiling that female teachers often faced which ultimately hindered their progress. This is evident as female teachers outnumbered their male counterparts by 169,339 to 72,198 or 70.10 per cent to 29.90 per cent respectively in primary schools in 2015, while in secondary schools, the percentage of female teachers to male teachers are 69.94 per cent to 30.06 per cent or 127,616 to 54,858 in total respectively.<sup>109</sup> An international research in 2013 have also unearthed that while the ratio of female to male teachers are higher, the proportion of female principals are lower.<sup>110</sup> At this juncture, gender training for teachers is either absent or publicly informed.

### **Sekolah Bimbingan dan Jalinan Kasih : Leave no Child Behind**

In response to recommendation 146.193, the government has recently teamed up with a group of volunteering teachers to help homeless children to receive education. Sekolah Bimbingan Jalinan Kasih (SBJK) is the only school in the country which uses a special module prepared by the Education Ministry to help street children study. SBJK provided access to formal education in a conducive environment for homeless or underprivileged children, and allowed them to sit for public examinations that were suitable for them according to their age and skills to read, write and count.<sup>111</sup>

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<sup>105</sup> MOE (2013). Malaysia Education Blueprint 2013-2025. Pp. 2-3.

<sup>106</sup> SUHAKAM's Report on The Human Rights Approach To The Millennium Development Goals, p.26.

<sup>107</sup> *Ibid.* pg. 28

<sup>108</sup> Incheon, [2015] *Education for All 2015 National Review Report*, World Education Forum

<sup>109</sup> Ministry of Education Malaysia, "Quick Facts 2015: Malaysia Educational Statistics", Educational Data Sector, Educational Planning and Research Division.

<sup>110</sup> See : <https://www.oecd.org/edu/school/TALIS-Country-profile-Malaysia.pdf>

<sup>111</sup> 'Learning Tailored For Pupils - Education | The Star Online' (Thestar.com.my, 2016) <<http://www.thestar.com.my/news/education/2016/04/17/learning-tailored-for-pupils>> accessed 30 April 2016.

## Conclusion

The government of Malaysia deserves credit for embracing most of the recommendations suggested on the right to education during the 2013 UPR. Surely, such move puts the government in a position to iterate their intention in fulfilling its citizens' right to education. However, it remains to be seen, in terms of implementation, of the action plan by the government agency(ies) to implement all the 11 accepted recommendations on the right to education. Based on the preceding assessment of UPR implementation on education rights, CSOs in Malaysia suggested the following steps to address the challenges the Malaysian government might be facing.

The government of Malaysia is encouraged to provide affordable and, perhaps in certain cases, free education to the academically qualified but financially challenged students. This can be done by:

Putting higher weightage on family financial background in the enrolment of public universities and government scholarship.

Provide affirmative action on education which is based on need but not on race.

Build more colleges or universities which are subsidised by the government.

On the issue of shortage of teachers in rural areas, the government is encouraged to provide ample infrastructure development and basic utilities in rural areas with the participation and consent of the communities impacted. It is recommended that the Malaysia Education Service Commission, following best practices worldwide, target candidates with rural backgrounds, or have expressed interest to work and live in rural areas.<sup>112</sup> The Education Ministry should also provide incentives to local residents in the rural areas who are qualified to become teachers, such as providing necessary education and training.<sup>113</sup> More incentives, such as student loans waivers, opportunities for further education, the provision of adequate accommodation and subsidised transportation costs can attract and retain teachers in rural areas.

As for the issue of gender gap in education, the underlying issue seems to continually perpetrate because of the lack of awareness in itself. In this case, the best method of tackling such issues might not be formulating plug-gap policies, rather an overhaul of the education system in itself by mainstreaming gender in education policies. Apart from that, modules to educate the students on gender and inequality issues should be provided. These should not only be offered in tertiary education institutions through Gender Studies Programmes at universities, but instead, such syllabus should be made available in primary and secondary institutions to produce gender-sensitive generations in Malaysia.

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<sup>112</sup> Collins, Timothy [1999], *Attracting and Retaining Teachers in Rural Areas*, ERIC Digest.

<sup>113</sup> Collins, Timothy [1999], *Attracting and Retaining Teachers in Rural Areas*, ERIC Digest.

### 3.3 Right to Health

- 146.174 Consider comments of the Special Rapporteur on health regarding the negative impacts that the Trans Pacific Partnership agreements would have on access to medicines (Sierra Leone)
- 146.175 Continue its efforts to implement programmes for the integration of women in development, and the provision of maternal and child health care (Qatar)
- 146.176 Continue the efforts aiming at providing educational and health services (Saudi Arabia)
- 146.177 Continue all efforts to provide accessible health care and medications to all citizens (Mauritania)
- 146.178 Take further measures to develop a comprehensive national health system, Improving the quality and ensuring universal access to medical care (Belarus)
- 146.179 Step up its efforts in ensuring universal access to affordable health services particularly for the poor, vulnerable and marginalized groups (Thailand)
- 146.180 Ensure that affordable healthcare and medicines remain available to all Malaysians, especially for those residing in the interior and remote areas of the country (Pakistan)
- 146.181 Step up its efforts to reduce maternal mortality, including through an increased access to quality family planning (Cuba)
- 146.182 Take necessary steps to ensure the accessibility of the sexual and reproductive health services in Government facilities (Nigeria)
- 146.183 Continue the measures to combat HIV incidence through the implementation of the National Strategic Plan for HIV Prevention (Cuba)

- 146.184** Take effective measures to reverse the increasing trend of HIV/AIDS incidence by strengthening the National Strategic Plan (NSP) on HIV/AIDS Prevention (Nigeria)
- 146.185** Ensure that children without parental care due to parental incarceration or execution are provided for, including with support for physical and mental health (Croatia)
- 146.186** Continue efforts aimed at implementing existing national policies and plans to further strengthen health and education systems (Ukraine)
- 146.187** Continue Malaysia's commitment to provide equal access to health services and education (Turkey)
- 146.188** Allocate more funds for training of health care staff, including doctors, midwives, nurses, and social workers (Mauritania)
- 146.189** Allocate more resources to training of specialists in the medical field, alongside doctors, nurses, midwives and social workers (Bahrain)
- 146.190** Exchange expertise on the best practices on providing health care for all (Bahrain)

### **Brief Assessment**

It is heartening to note that Malaysia has such a high level of commitment to protecting the right to health for all, including for the poor, vulnerable and marginalised groups. In this regard, universal access and the right to health have been severely undermined by the government's lack of an integrated approach to ensuring the highest attainable standards of health.

## Health Access for Marginalised Groups

The rights to health of the indigenous peoples were of concern in recommendations number **146.177**, **146.179** and **146.180**. Civil societies in Malaysia applauds the Government's decision to accept outright these recommendations which includes to continue all efforts to provide accessible health care and medications to all citizens (**146.177**), step up its efforts in ensuring universal access to affordable health services particularly for the poor, vulnerable and marginalized groups (**146.179**) and to ensure that affordable healthcare and medicines remain available to all Malaysians, especially for those residing in the interior and remote areas of the country (**146.180**). In an effort to do just that, the government under the 11<sup>th</sup> Malaysian Plan has introduced the mobile clinic and flying doctors services. Such efforts were lauded by the Kelantan Orang Asli village committee youth chief, Dendi Johari.<sup>114</sup>

However, efforts to ensure universal access to medical attention and help for communities living in rural and remote areas require much more than just mobile clinic and flying doctor services. In a separate report, the Orang Asli in Sungai Keja claimed the clinics did not stop at every village. There are also some villages which do not welcome the mobile clinics.

Some of the Orang Asli are afraid of modern medicine, believing that doctors harvest organs from Orang Asli cadavers. At one village, elders of the Jahai tribe said it had been two months since a mobile clinic came. They said that they could not bring the sick and elderly to where the clinics were stationed because they mostly relied on bamboo rafts to travel. The nearest hospital is more than two hours away by speedboat or car, in Gerik town.<sup>115</sup> Instead of offering health access in the fashion of “the saviour and the saved”, the Government should really be looking at mechanisms to harness the ingenuity of the indigenous communities. More research should be done on the traditional health system and how such a system can benefit the indigenous peoples and those who live in remote and rural areas. Ideally, people from the indigenous communities themselves should be given the opportunity and resources to be trained as nurses, medical assistants and even doctors.

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<sup>114</sup> 'Orang Asli Laud Improved Healthcare Plans - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/05/23/better-access-to-doctors-welcomed-orang-asli-laud-improved-healthcare-plans/>> accessed 30 April 2016.

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<sup>115</sup> 'Medical Services Hard To Access For Orang Asli - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/11/24/medical-services-hard-to-access-for-orang-asli/>> accessed 30 April 2016.

In order to address the growing trend of HIV infection in Malaysia, the government through the Ministry of Health framed a National Strategic Plan for HIV in 2011. The plan has since expired in 2015.<sup>116</sup> It is commendable that the plan did not leave out marginalized communities such as the LGBT community; they were also compiled in a plan which includes engaging with religious leaders which had a critical role of providing complementary care and support services for people living with HIV.

The criminalization of same-sex conduct and of different forms of gender identity and expression has reinforced negative societal attitudes and has led to serious human rights violations of the rights of this group of the population, including significant barriers in access to health care. Law enforcement officials arrest transgender women and subject them to various abuses, including humiliation in the media, and physical and verbal abuse.<sup>117</sup>

Transgender women also face serious discrimination in public health-care facilities. They are often associated with sex work, which is a crime, and they are forcibly tested for HIV/AIDS. They are identified on the basis of their identity card and, unless they have undergone sex reassignment surgery, are often housed in male wards where they can be exposed to violence and abuse.

The fear of stigma and discrimination deters transgender women, and other LGBT people, from seeking health care, with the consequent devastating effects that this can have.<sup>118</sup>

Laws that criminalize same-sex conduct, as well as legal enactments that criminalize transgender women, infringe on the enjoyment of the right to health and other basic human rights which are guaranteed by the Federal Constitution and the international treaties that Malaysia has ratified, specifically the rights to dignity, equality before the law and equal protection of the law, freedom from discrimination and freedom of expression.<sup>119</sup>

The health needs of refugees, migrant workers, asylum seekers and foreign spouses remain inadequately addressed. The Special Rapporteur had observed deeply entrenched discriminatory attitudes towards groups in vulnerable situations, mostly based on certain restrictive interpretations of culture or religion that discriminate and restrict the rights of these groups, including the right to health. These arguments go against international human rights principles and standards, and when initiated, supported or tolerated by public authorities, they threaten the development of a healthy and inclusive society.

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<sup>116</sup> National Strategic Plan on HIV and AIDS 2011-2015. Ministry of Health 2011.

<sup>117</sup> see paragraph 86 of the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, visit to Malaysia, 19 November – 2 December 2014.

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<sup>118</sup> Ibid. paragraph 87.

<sup>119</sup> Ibid. paragraph 89.

The Special Rapporteur had also emphasised how Malaysia needs to move away from a selective approach to human rights. The rights of all people living in Malaysia need to be protected, and more efforts are needed to combat the discrimination of the more disadvantaged groups and to achieve their full inclusion in society. Malaysia also needs to critically consider the negative impacts of bad development on the environment which can have seriously adverse effects on the health of all Malaysians.

### **Maternal Mortality**

With regards to recommendation **146.181**, Malaysia has been successful in reducing its Maternal Mortality Rate due to the implementation of two major programs: the Maternal and Child Health Program (MCH), and the Confidential Enquiry into Maternal Deaths (CEMD).<sup>120</sup> Since the adoption of this recommendation, maternal mortality rate have steadily declined in Malaysia as depicted by world bank data.<sup>121</sup>

### **Reproductive Rights**

This section comments specifically on recommendations nos. **146.181**, **146.182** and other recommendations **146.175**, **146.176**, **146.178**, **146.179** which generally relate to access to healthcare

There have been improvements in accessibility and availability of contraceptive services among public and private service providers in the country. The quality and range of modern methods of contraception which are provided have also improved. Nevertheless, barriers to access for healthcare in government health centres remain for unmarried women, migrant workers and refugees. An effort to introduce comprehensive sexuality education in all national schools has been shelved indefinitely.

Malaysian law regarding abortion is progressive. Under the Penal Code [Act 574], termination of pregnancy is legal if performed by a medical practitioner registered under the Medical Act 1971 [Act 50] who is of the opinion formed in good faith that the continuance of the pregnancy would involve risk to the life of the pregnant woman, injury to the mental or physical health of the pregnant woman and that the continuance of the pregnancy would involve risk or injury greater than if the pregnancy were terminated. However, recent legal developments and restrictions on the provision of safe abortion services have been of urgent concern.

Since 2013, at least 2 doctors that provide safe abortion services in Penang and Melaka, have been charged under the Private Healthcare Facilities and Services Act 1998 (Act 586). There is no clear guideline on criteria required for clinic set up up for abortion service provision, with restrictions against providing the service in ambulatory care settings despite the procedure being a simple, safe one.

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<sup>120</sup> Ashrita Rau, 'The Decline Of Maternal Mortality In Malaysia - BORGEM' (BORGEM, 2015) <<http://www.borgenmagazine.com/decline-maternal-mortality-malaysia/>> accessed 30 April 2016.

<sup>121</sup> 'Maternal Mortality Ratio (Modeled Estimate, Per 100,000 Live Births) | Data | Table' (Data.worldbank.org, 2016) <<http://data.worldbank.org/indicator/SH.STA.MMRT>> accessed 30 April 2016.

Overall, social and structural barriers for access to contraceptive and abortion services remain despite the increase in availability of commodities and clinical service providers. Recommendations include increasing awareness on the availability of emergency contraception and abortion service providers, advocating for the registration of medical abortion medication and improving quality of safe abortion services. There is also an urgent need to work with the Ministry of Health for clarity on criteria required for abortion service provision and on the legality of abortion procedures in private clinics with ambulatory care settings.

#### **Physical and Mental Health for Children**

Recommendation **146.185** focuses on the physical and mental health support for children during parental incarceration. Based on reports SUARAM received, the situation on the ground has been detrimental to health of children. According to SUARAM, A family of 5 (Mother, Father, 3 sons) was arrested together during a raid for alleged terrorism offences. Minors was arrested along (youngest was 15 years old). Subsequently released but not given any state support.

#### **Budget cut for Ministry of Health**

According to recommendation **146.189** the government is supposed to allocate more resources to training of specialists in the medical field, alongside doctors, nurses, midwives and social workers. However, the Ministry of Health was at a juncture where they facing an RM 250-300 Million budget cut before the tabling of the revised 2016 budget in Parliament.<sup>122</sup> However, since then the update on budget for Ministry of Health was not to be found. This, alongside the limited freedom of information in Malaysia has made update unable for the time being.

#### **Conclusion**

The government is commendable for their action to accept in full almost all the recommendations with regards to Rights to Health. Although the government is exemplary in their effort to provide such rights to Malaysians, substantive improvements in terms of health access to marginalized communities and in rural areas are necessary at this juncture.

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<sup>122</sup> See : <http://www.themalaymailonline.com/malaysia/article/budget-2016-to-bite-health-ministry-but-wont-affect-basic-services-dr-subra>

## 3.4 Access to Social Service

146.171	<b>Take the necessary measures to ensure equal access for all to basic social services (Benin)</b>
146.172	<b>Ensure birth registration of all children to facilitate the access to social services (Sierra Leone)</b>
146.73	<b>Ensure prompt registration of all new-born children (Australia)</b>

### Brief Assessment

Despite accepting these recommendations in full, Malaysia remains non-committal in addressing the social needs of the poor, and vulnerable and marginalised communities. One of the biggest challenges is the lack of legal recognition of the right to basic social services of these groups. For example, Malaysia's immigration law does not recognize asylum seekers or refugees. The government is not a party to the Refugee Convention. It takes no responsibility for the education of refugee or migrant children, and does not give refugees legal permission to work. Malaysia's Anti-Trafficking in Persons and Anti-Smuggling of Migrants law conflates trafficking and people smuggling and fails to meaningfully protect victims of trafficking.<sup>123</sup> Similarly, stateless children, children of migrant workers, refugee children and asylum seeking children in the country continue to be deprived of basic social services. Based on a report by DHRAA a local NGO, they have recorded at least 11 645 stateless person in West Malaysia alone of many mainly rural poor Indians.<sup>124</sup> The number does not even take into consideration the perceived influx of stateless children in the state of Sabah mainly from neighbouring nations such as Indonesia and Philippines.

Exacerbating the situation is the economic downturn of the country. Many people are being laid off from work. This means that many are increasingly at the risk of being impoverished, especially older people who have no support system and single parents.

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<sup>123</sup> In 2014, the United States government demoted Malaysia to tier 3 in its "Trafficking in Persons" report.

<sup>124</sup> 'DHRRA Buletin April 2016' (DHRRA Malaysia, 2016) <<http://dhreramalaysia.org.my/publications/dhrra-buletin-april-2016/>> accessed 30 April 2016.

## 3.5 General Recommendations on Economic, Social and Cultural Rights <sup>125</sup>

- |        |   |
|--------|---|
| 146.62 | <b>Continue taking measures to promote social and economic rights (Uzbekistan)</b>  |
| 146.63 | <b>Continue to prioritise Malaysia's policies aimed at further improving the socio-economic condition of its citizens (Mauritius)</b> |

### Introduction

The global phenomenon of trans-national marriages is on the increase in Malaysia and non-citizen spouses of Malaysians face many challenges, despite living in Malaysia, for years, raising children and establishing permanent homes. Although a part of their Malaysian family, non-citizen spouses are required to apply repeatedly for visas with restrictions on their right to work, in order to stay in Malaysia.

Applications for permanent residence (PR) and citizenship take years to be approved, without clarification provided. Delays in the approval of PR, severely reduces the earning capacity of the non-citizen wives, resulting in impoverishment and dependency on their Malaysian husbands and making them vulnerable to situations of domestic violence.

Daily life is made difficult as they are discriminated against as foreigners by providers of private and public services, such as employers, Employees Provident Fund (EPF), banks, schools, universities etc. The challenges of daily living hinders the economic development and growth of women, also contributing to marital strife.

These issues also have a severe economic impact on Malaysian wives who are married to non-citizen husbands and experience similar conditions.

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<sup>125</sup> This section focuses on the issues faced by foreign spouses, as most of the human rights issues of other marginalised and vulnerable groups are discussed in their respective relevant sections.

## Right to Employment

Non-citizen spouses who initially apply for Spouse Visa are not allowed to work for the first six months or until they are on the one (1) year Long Term Social Visit Pass (LTSVP). This process may also involve non-citizen husbands being asked to go to home country for the six (6) months, bearing in mind that the newly married Malaysian wife may be pregnant, unwell, or a homemaker which necessitates that her non-citizen husband remain in Malaysia and be employed, being the breadwinner. Similarly this enforced unemployment for six (6) months is also applicable on spouses who are married for several years with children and decide to return to Malaysia, at times to take care of ageing Malaysian parents.

The statement on the LTSVP of non-citizen spouses of Malaysians states “**any form of employment is strictly prohibited – SPOUSE OF A MALAYSIAN CITIZEN.**”<sup>126</sup>

This leads to severe difficulty in securing employment especially for women, restricting their growth, development and making them vulnerable and dependent on their Malaysian husbands. Furthermore this also has an economic impact on Malaysian wives married to non-citizen husbands who face the same difficulty in getting employed.

In practice, the immigration website states “The foreign husband/wife is permitted to work in Malaysia without having to change their Social Visit Pass to the Employment Pass on condition that the spouse has acquired work approval from the Immigration Department”.<sup>127</sup> Although the process indicated by the immigration website seems simple and straight forward, anecdotal evidence points towards the requirement of more tedious documentation than mentioned on the website. The mandatory requirement of getting permission from the Malaysian spouse to work which is degrading considering that the right to livelihood is a basic human right. In addition the endorsement to work is restricted to the particular employer for the specified period on the contract.

In certain cases non-citizen spouses seeking employment, especially childless couples have to wait for a house checks from immigration officials and this could delay the employment process. Furthermore there have been instances of delays in the states of Sabah and Sarawak spouses have reported that the approval takes more than three months and employers are not willing for such a long waiting period.

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<sup>126</sup> Star online 13 January 2015 Review Transnational Marriage Policy, <http://www.thestar.com.my/opinion/letters/2015/01/13/review-transnational-marriage-policy/>

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<sup>127</sup> Immigration Website - working permit for spouse of Malaysian Citizen <http://www.imi.gov.my/index.php/en/main-services/pass/7-perkhidmatan-utama/295-working-permit-for-spouse-of-malaysian-citizen>

It is compounded with employers being reluctant to offer jobs to non-citizen spouses, as they believe they are contravening the law with this prohibition clearly stated on their visas.

In addition, for EPF, the employer's contribution is optional for non-citizen spouses, unlike their mandatory contribution of 12% for Malaysian citizens and PR holders. EPF constitutes the only savings at retirement for many employees in Malaysia and allows Malaysians to withdraw for housing, children's education and upon retirement, at age 55. However this facility is not extended to non-citizen spouses – Employers only need to pay RM5 per month. Non-citizen spouses who are contributing to EPF are not permitted withdrawals even for their Malaysian children's education nor for housing, they are further required to show an air ticket to home country (which they would have left decades ago) to claim withdrawal at age 55.

Furthermore, until one secures PR, certain sectors of employment remain inaccessible to non-citizen Spouses, such as insurance, banking, law and other such professions and licenses to practice. This situation continues until non-citizen spouses get PR, well known to be mired in long waiting periods and bureaucratic delay.<sup>128</sup>

### **Permanent Residence**

The road to PR is fraught with lengthy processes, rejections, copious documentation and bureaucratic delays;

it creates uncertainty and hardship to non-citizen spouses, especially in the event of domestic violence, divorce or death of a spouse. Securing PR is a huge challenge not only for non-citizen spouses but even impacts the Malaysian spouse and is a cause for strain and stress on the marriage and is not in the best interest of the children and the family.

Although the Immigration Department website states under the eligibility for PR that a non-citizen spouse must be married to a Malaysian for a minimum period of five years and must have stayed continuously in Malaysia for a period of five years on the LTSVP, however the approval period, as reported can take from 2-4 years for female non-citizen spouses and even longer approval period for male non-citizen spouses.

### **Housing**

Non-citizen spouses and Permanent Residents who wish to purchase housing/ property are subjected to foreign investment directives and to limitations on property purchase or ownership, which currently is at a ceiling of RM 1 million. This rule is applicable even when buying housing jointly with their Malaysian spouses. This has a direct impact on middle or low-income Malaysian families and if the Malaysian spouse does not earn enough to buy housing directly under his /her individual name.

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<sup>128</sup> Malaysia CEDAW Alternative Report 2012, Article 9, Page 112  
<http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf>

## Education

To study in Malaysian public universities, non-citizen spouses are required to withdraw from the spouse visa (LTSVP) and get on to a Student Visa, which does not permit employment, it also effectively jeopardises their PR eligibility and entails them having to restart their five years on LTSVP for PR.

## Access to Religious Facilities

Muslim Foreign Spouses cannot register with Tabung Haji to fulfil their religious duty together with their Malaysian Spouses, as this facility is only available to Malaysians.

## Widowed and Divorced Spouses

Non-citizen widowed and divorced spouses are only given short term visas and not allowed employment even though they are supporting their Malaysian children.<sup>129</sup> Without the right to employment, they cannot sustain themselves and their families.

## Conclusion

Generally, the government of Malaysia exhibits a genuine interest in catering to the socio-economic rights of its citizens. Despite the great deal of focus and energy poured into the 11<sup>th</sup> Malaysia Plan, the Government of Malaysia should not ignore the welfare of minorities such as the foreign spouses. In order to translate their interest to serve the people, it is suggested by the civil society of Malaysia to;-

## Employment

- Consider providing non-citizen spouses the right to employment upon registration of marriage to Malaysians and remove all restrictions and limitations on employment that stunts the economic growth of women and their family.
- Consider removing the statement on the prohibition of employment on the visa, bearing in mind that the direct beneficiaries are their Malaysian families. Consider abolishing the letter of permission from the Malaysian spouse, which makes spouses vulnerable.
- Make the Employer's contribution to EPF for non-citizen spouses mandatory and permit them to make withdrawals similar as Malaysians for their Malaysian children's education, housing and withdrawal upon retirement.

## Permanent Residence

- Simplify the PR application process and approvals for non-citizen spouses in order to prevent hardship and difficulties to their Malaysian families. Reduce the approval time and bureaucratic delay for PR applications, as spouses are already in the country for more than five years.

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<sup>129</sup> The Star Online 8 February 2013, Plight of Foreign Spouses-<http://www.thestar.com.my/opinion/letters/2013/02/08/plight-of-foreign-spouses/>

Have clear and transparent policy and guidelines published on the Immigration website on the legal and bureaucratic requirements for obtaining PR and citizenship by stipulating the time limits for the review of applications, reasons for rejection of the applications and judicial review procedures for PR and citizenship.

There should be a clear articulation of the policy that should treat both male and female citizens equally and not allow for wide administrative discretion.

Delays in the approval of PR severely reduce the earning capacity of the non-citizen wife, resulting in impoverishment and dependency on her Malaysian husband. This similarly has an economic impact on Malaysian women married to non-citizen husbands.

### **Housing**

Consider allowing foreign spouses to purchase housing based on rules that apply to Malaysians. The security of housing is a fundamental human right that protects individuals against the risk of ill health, disability and physical harm. As such, foreign spouses should be allowed to acquire the security of housing on par with Malaysians.

### **Education**

Allow non-citizen spouses, in the best interest of the Malaysian family, to study on their Spouse LTSVP, so as not to interrupt their employment and their PR application that is already fraught with delays.

### **Divorced and widowed Spouses**

Ensure that divorced and widowed non-citizen spouses of Malaysians (upon provision of supporting documents), are able to experience the right to reside and the right to work independently, taking into account the best interest of the children and the family unit.

# CHAPTER 4

## MARGINALIZED GROUPS

MALAYSIA'S 2016  
UPR MID - TERM  
REVIEW

## 4.1 Women (including issues on empowerment, gender equality, violence against women and marital rape)

- 146.65 **Continue all efforts to promote the rights of women at all levels (Lebanon)**
- 146.66 **Continue efforts in enhancing the autonomy of women (Senegal)**
- 146.67 **Continue efforts to empower women and underprivileged segments of the society (Ethiopia)**
- 146.68 **Launch awareness raising programmes on a national level regarding women (Kuwait)**
- 146.94 **Launch a comprehensive national policy on gender equality and non-discrimination (Colombia)**
- 146.95 **Continue to promote gender equality and the empowerment of women (Singapore)**
- 146.69 **Take necessary measures to increase the percentage of women in decision making positions in private and corporate sectors (Ethiopia)**
- 146.70 **Strengthen and intensify efforts to promote the role of women in society and provide them with equal opportunities in contributing and cooperating in all aspects of life, including policies and national development programmes (Bahrain)**
- 146.96 **Continue with the measures aimed at eradicating gender discrimination, particularly in relation to migrant women (Argentina)**
- 146.128 **Continue with its efforts to strengthen the enforcement of law on violence against women and protect the rights of women (Maldives)**
- 146.129 **Ensure the right to equal protection under the law by criminalizing marital rape through the removal of the exception in Section 375 of the Penal Code (Canada)**
- 146.130 **Further strengthen the legal provisions to effectively protect women who are victims of domestic violence, including marital rape (Chile)**

## Introduction

Of the twelve recommendations made to the Government of Malaysia pertaining to women's empowerment, gender equality, violence against women, and marital rape, eight of these recommendations, **146.65**, **146.66**, **146.67**, **146.68**, **146.69**, **146.70**, **146.95**, and **146.128** were accepted in full. One recommendation, **146.130**, was accepted in part. Two recommendations, **146.94** and **146.96**, were accepted in principle. One recommendation, **146.129**, was not supported.

Despite the Malaysian government's stated commitment to establish the National Human Rights Action Plan, which is expected to address issues such as the rights of vulnerable groups, including women, the implementation of the plan continues to be delayed due to a reported lack of funds. There remains in Malaysian society a persistent gender imbalance, a dearth of representation by women in decision-making and leadership roles, and an absence of sufficient legal protections and enforcement of existing laws addressing violence against women.

## Empowering and Enhancing the Autonomy of Women

This segment focuses on recommendations **146.65**, **146.66**, **146.67**, **146.68**, **146.94** and **146.95**. According to the 2015 World Economic Forum's Gender Gap Index, Malaysia's standing has declined for the fourth consecutive year, falling to an overall ranking of 111 out of the 145 countries evaluated. The report notes that while Malaysia ranks comparatively well in the category of educational attainment—scoring an overall 0.967 where a score of 1 represents parity between the genders—this is not translating into post-education career opportunities, as levels of economic participation and political empowerment are still very low.<sup>130</sup>

Overall, there is a lack of equality in the workforce, in particular, labour force participation. We, nevertheless, commend Malaysia for the trend of the steadily increasing rate of female labour force participation since 2010,

as estimated by the International Labour Organization (ILO).<sup>131</sup> According to the Malaysian government's statistics, the labour force participation rate of women increased in 2014 by 1.2 per cent, from a rate of 52.4 per cent to 53.6 percent<sup>132</sup> (in contrast, the rate of labour force participation of men were 80.7 percent in 2013 and 80.4% in 2014, according to the same government statistics).

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<sup>130</sup> 'The Global Gender Gap Report: 2015' (Www3.weforum.org, 2016) <<http://www3.weforum.org/docs/GGGR2015/cover.pdf>> accessed 30 April 2016.

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<sup>131</sup> 'World Bank Gender Statistics, July 2015 -Knoema.Com' (Knoema, 2016) <<http://knoema.com/WBGS2015Apr/world-bank-gender-statistics-july-2015?country=1000170-malaysia>> accessed 30 April 2016.

<sup>132</sup> 'Department Of Statistics Malaysia Official Portal' (Statistics.gov.my, 2016) <[https://www.statistics.gov.my/dosm/index.php?r=column/cthem&menu\\_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09&bu\\_id=NHUxTik1czVzMGYwS29mOEc5NUtOQT09](https://www.statistics.gov.my/dosm/index.php?r=column/cthem&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09&bu_id=NHUxTik1czVzMGYwS29mOEc5NUtOQT09)> accessed 30 April 2016.

However, international statistics show a more modest labour participation rate of women in Malaysia. The 2015 abovementioned Global Gender Index reports that the rate of labour force participation for females in Malaysia as 47 percent and males as 70 percent, ranking Malaysia at 120 out of 145 countries in this aspect of gender inequality. The Human Development Index of the United Nations Development Programme (UNDP) of 2015 reports 44.4 per cent as the female labour force participation rate in Malaysia and 75.5 per cent as the male labour force participation.<sup>133</sup>

2014 saw a short-lived victory against gender discrimination by public entities with the case of Noorfadilla Ahmad Saikin, who was offered a job as a temporary relief teacher, only to have the offer revoked by the Hulu Langat district education officers upon their learning of her pregnancy.<sup>134</sup> In a landmark decision in 2011, the Shah Alam High Court ruled that--notwithstanding the absence of an enabling statute incorporating the 1979 Convention on the Discrimination of All Forms of Discrimination Against Women (CEDAW) into domestic law--Malaysia must comply with its obligations under CEDAW and prohibit gender discrimination in employment by public entities.<sup>135</sup> Subsequently, in 2014, the High Court awarded Noorfadilla 300,000 Malaysian ringgit in damages for breach of her constitutional rights--a decision

that was both unprecedented in Malaysia and lauded by women's rights groups. However, the government appealed, and in February 2016, the High Court reduced the damages award by 90 percent, from 300,000 RM to 30,000 RM, describing the original award as a "handsome profit," and thereby undermining the harm done and the violation of constitutional rights.<sup>136</sup>

Gender discrimination also remains in the Federal Constitution, which provides non-citizen wives the right to citizenship by registration with the fulfilment of stipulated criteria and two years as a permanent resident,<sup>137</sup> but does not extend this same right to non-citizen husbands of Malaysian women. Non-citizen male spouses can only apply for citizenship by naturalization; to qualify, non-Malaysian male spouses must demonstrate residency of not less than ten years as Permanent Resident,<sup>138</sup> a much stricter requirement than that imposed on non-citizen wives.

Only Malaysian fathers are allowed to pass on their citizenship to their children born overseas. There is no provision in the law to allow Malaysian women to pass on citizenship to their children born overseas.

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<sup>133</sup> 'Human Development Reports' (Hdr.undp.org,2016) <<http://hdr.undp.org/en/countries/profiles/MYS>> accessed 30 April 2016.

<sup>134</sup> Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors [2012] 1 MLJ 832, HC

<sup>135</sup> Notably, the High Court's decision did not address the issue of non-entitlement to maternity leave as being a form of unlawful gender discrimination against female employee

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<sup>136</sup> 'To Prevent Profiteering, Court Slashes Woman'S Gender Equality Case Award By 90Pc' (Themalaymailonline.com, 2016) <<http://www.themalaymailonline.com/malaysia/article/to-prevent-profiteering-court-slashes-womans-gender-equality-case-award-by>> accessed 30 April 2016.

<sup>137</sup> Federal Constitution of Malaysia. Article 15 Par. 1.

<sup>138</sup> Federal Constitution of Malaysia. Article 19 Par. 1.

Although in 2010 the then Home Minister Hishammuddin announced that Malaysian women could register the birth of their children at an overseas High Commission, in practice, anecdotal evidence suggests that Malaysian women face difficulties in registering their children overseas. They have to submit documentation at Putrajaya with long waiting periods, and endure rejections without any justification given.

It is proposed that the discriminatory provisions within the Federal Constitution be amended to allow Malaysian men and women to have the same rights and conditions with regard to the acquisition of citizenship status by their non-citizen spouses, as well as the ability to pass on their citizenship to their children born overseas.

### **Equality of Participation in Decision-Making Positions**

Recommendations **146.69** and **146.70** focus on the issue of gender equality of participation in decision-making processes. In another sense, it is the empowerment of women to take up leadership roles. In the 10th Malaysia Plan, the government set targets to increase the number of women in key decision-making positions on company boards to 30 percent, and to increase female participation in the workforce to 55 per cent by 2016.<sup>139</sup> The Malaysian Prime Minister affirmed Malaysia's commitments to the Beijing Declaration and Platform for Action on 27<sup>th</sup> September 2015, by announcing its goal of women making up at least 30 percent of managerial and decision-making

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<sup>139</sup> 'TENTH MALAYSIA PLAN 2011-2015' (Onlineapps.epu.gov.my, 2016) <[http://onlineapps.epu.gov.my/rmke10/rmke10\\_english.html](http://onlineapps.epu.gov.my/rmke10/rmke10_english.html)> accessed 30 April 2016.

posts in the public and private sectors by 2016.<sup>140</sup> CSOs commend the Malaysian government for its making "improving participation of women in decision-making positions" a national priority.

However, according to the 2015 World Economic Forum's Gender Gap Index, women constitute only 28 percent of legislators, senior officials, and managers.<sup>141</sup> Further, only 12 percent of parliamentarians in Malaysia are women, while only 6 percent of those in ministerial positions are women.<sup>142</sup>

### **Citizenship**

Recommendation 146.95 requires Malaysia to continue to promote gender equality and the empowerment of women. A robust promotion of gender equality and women empowerment also lies in the very access for their set of basic human rights, which is their citizenship.

The Federal Constitution provides non-citizen wives, the right to citizenship by registration with the fulfilment of stipulated criteria and two years as a permanent resident (Article 15 (1)), which is not extended to non-citizen husbands of Malaysian women.

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<sup>140</sup> SMPKE Division SSA, 'Prime Minister's Office Of Malaysia' (Pmo.gov.my, 2016) <[https://www.pmo.gov.my/home.php?menu=speech&page=1676&news\\_id=774&speech\\_cat=2](https://www.pmo.gov.my/home.php?menu=speech&page=1676&news_id=774&speech_cat=2)> accessed 30 April 2016..

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

Non-citizen male spouses can only apply for citizenship by naturalization. To qualify, non-Malaysian male spouses must demonstrate residency of not less than ten (10) years as a Permanent Resident. (Article 19 (1)) – a much longer residency<sup>143</sup> requirement which has an impact on the Malaysian wife.

In practice however, obtaining PR status is often mired in bureaucratic delays. Application for Permanent Residence is withdrawn when the Malaysian spouse, divorces the non-citizen spouse even though there are children in the marriage or when the Malaysian spouse is deceased, the widowed spouse's application for PR is also withdrawn, even though there may be Malaysian children from the marriage. Many non-citizens come in as young couples in the 90s, got PR close to their retirement. The option of citizenship is taken up by few spouses.

Members of Parliaments should consider removing the discriminatory provisions within the Federal Constitution and amend to allow Malaysian men and women to have the same rights and conditions with regard to the acquisition of citizenship status by their non-citizen spouses.

In relation to recommendation **146.96** which the Malaysian government accepted in principle, but not in full, discriminatory treatment of migrant women remains prevalent today.

In November 2014, Nirmala Thapa, a Nepalese migrant worker, was charged and convicted of “conducting an act to prevent a child from being born alive without the intention of saving her own life as a mother,” under Section 315 of the Penal Code, and sentenced to a year's jail.<sup>144</sup> Nirmala was the first woman to be charged and convicted for having an ‘illegal’ abortion since 1989,<sup>145</sup> when an amendment was introduced to the Penal Code to permit abortion under certain circumstances. She appealed the conviction and was acquitted of the charges, but only after going through an arrest and prosecution that took almost one year out of her life.<sup>146</sup>

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<sup>143</sup> Malaysia CEDAW Alternative Report 2012, Article 9, Different constitutional provisions for citizenship for men and women, page 110.

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<sup>144</sup> 'Nepali Worker Acquitted Of Abortion Charge' (Malaysiakini, 2015) <<https://www.malaysiakini.com/news/312981>> accessed 30 April 2016.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

Although there are no specific laws restricting migrant workers from becoming pregnant, the reality is very different.<sup>147</sup> In practice, it is stated in the worker's contract that if they become pregnant, they will lose their jobs and be sent home.<sup>148</sup> Additionally, female foreign workers are tested for pregnancy when they enter the country for work or are seeking to renew their work permits; if they are pregnant, they will typically be deported.<sup>149</sup>

### **Enforcement of Laws on Violence against Women and Protection of Women's Rights**

For recommendations **146.128**, **146.129** and **146.130** regarding laws on violence against women, no significant progress has been made to strengthen laws and policies, or to strengthen the enforcement of existing laws and policies. Despite significant efforts to lobby policymakers to delete the exception for marital rape under the Penal Code, this amendment has not been adopted to date.

Rape, whether it occurs within or outside marriage, is a crime under international standards. Rape within marriage is recognised in CEDAW Committee General Recommendation 19, which states: "Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, [and] other forms of sexual assault."

The United Nations CEDAW Committee requested the Malaysian government to enact legislation criminalizing rape within marriage in 2006, defining such rape on the basis of lack of consent of the wife.<sup>150</sup>

Many countries have either enacted rape within marriage laws, repealed exceptions or have laws that do not distinguish between rape within marriage and rape outside marriage. These countries include Albania, Algeria, Australia, Belgium, Canada, China, Denmark, France, Germany, Hong Kong, Indonesia, Ireland, Italy, Japan, Mauritania, New Zealand, Norway, Philippines, Scotland, South Africa, Sweden, Taiwan, Tunisia, the United Kingdom, and the United States. Lesotho, Namibia, South Africa and Swaziland have all criminalized marital rape. The Namibian Combating of Rape Act (2000) does so by stating: "No marriage or other relationship shall constitute a defence to a charge of rape under this Act." In 2003, the introduction of the Criminal Code (Sexual Offences and Crimes against Children) Act 2002 in Papua New Guinea abolished marital immunity in relation to rape.<sup>151</sup>

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<sup>147</sup> Looi Sue-Chern. "Nepalese worker first woman in Malaysia jailed for terminating pregnancy." *The Malaysian Insider*. 5 December 2014. <http://www.themalaysianinsider.com/malaysia/article/nepalese-worker-first-woman-in-malaysia-jailed-for-terminating-pregnancy>.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

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<sup>150</sup> Paragraph 22 of the 2006 Concluding Comments by the Committee on the Elimination of Discrimination Against Women.

<sup>151</sup> Handbook for legislation on violence against women, Department of Economic and Social Affairs, Division for the Advancement of Women, United Nations Publication, New York, 2009, p. 27.

Notably, there has been a commitment to review and expand the definition of rape to include penetration by other organs outside of genitals.<sup>152</sup> Although no amendments have been implemented to date, Minister in the Prime Minister's Department, Nancy Shukri, indicated that discussions were underway between medical practitioners and relevant ministries.<sup>153</sup>

The government's commitment comes after a case in Sibul wherein a 60 year-old man was acquitted of statutory rape after sexually abusing a 15 year-old girl--who subsequently became pregnant--by penetrating her with his fingers.<sup>154</sup> After a conviction by the lower court, the man appealed, and the Court of Appeal found that a conviction of rape was not appropriate since the allegations did not involve penile penetration, and the Criminal Procedure Code does not currently provide for a definition of rape with other organs.<sup>155</sup> However, the Court also failed to utilise the Penal Code to convict the man of other lesser crimes, including sexual abuse, resulting in him being entirely acquitted of any crime.<sup>156</sup>

The need for an independent Sexual Harassment Act, outside of the limited provisions addressing sexual harassment in the Employment Act 1955, has also been emphasized to lawmakers. The need for a Sexual Harassment Act is underscored by the lack of protection for those outside of an

employer-employee relationship and the limited scope of the workplace, including women participating in the informal work sector. Even under the Employment Act 1955, there are limited avenues for redress for victims of sexual harassment.<sup>157</sup> However, the Malaysian government has failed to adopt such a bill, which has already been drafted and submitted for consideration. Sexual harassment, as with other forms of gender-based violence, tends to be largely under-reported.<sup>158</sup>

With regard to situations of domestic violence, CSOs commend the government for undertaking to review amendments to the Domestic Violence Act 1994, in order to strengthen the protections that exist for victims of violence. One area for improvement which affects victims of domestic violence as well as other women is the requirement in the Law Reform (Marriage and Divorce) Act 1976 of reference to a conciliatory body before a petition for divorce may be filed.<sup>159</sup> According to the report of a UN Expert Group Meeting on good practices in legislation on violence against women,

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<sup>152</sup> "Nancy Shukri: A-G's Chambers reviewing definition of rape." *The Star Online*. 16 June 2015. <http://www.thestar.com.my/news/nation/2015/06/16/rape-definition-review/>.

<sup>153</sup> *Ibid.*

<sup>154</sup> M. Mageswari. "Finger-rape case: Court wants definition of rape reviewed." *The Star Online*. 11 June 2015. <http://www.thestar.com.my/news/nation/2015/06/11/court-finger-rape-case/>.

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

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<sup>157</sup> Zurairi AR. "Can you sue for sexual harassment? Federal Court to decide today." *Malay Mail Online*. 26 August 2015. <http://www.themalaymailonline.com/malaysia/article/can-you-sue-for-sexual-harassment-federal-court-to-decide-today#sthash.mbWbMXSk.dpuf>.

<sup>158</sup> "Malaysia Millennium Development Goals Report 2015 Summary." United Nations Malaysia. January 2016.

<sup>159</sup> Law Reform (Marriage and Divorce) Act 1976, Section 106.

in 2008, legislation should explicitly prohibit mediation in all cases of violence against women, both before and during legal proceedings.<sup>160</sup> This is because it removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability.<sup>161</sup>

Another area of the law that leaves women, and particularly survivors of domestic violence, exposed to further abuse and discrimination is the law around unilateral conversion of children, which can result in custody of the children being awarded to the converting spouse, even where there is a history of domestic violence. This issue has come to light with several high-profile cases in Malaysia, including that of S. Deepa. Deepa and her former-husband were Hindus, who had undergone a civil marriage. Later, Deepa's husband converted to Islam, and then converted their two children without Deepa's consent.

On February 10, 2016, the Federal Court ruled that Deepa would retain custody of their ten year-old daughter, while Deepa's former-husband would retain custody of their seven year-old son, whom the former-husband had violently abducted almost two years prior to the Federal Court decision,

indirect contravention of a High Court order awarding custody of both children to Deepa.<sup>162</sup>

This determination came after an improper and incomplete evaluation of the best interests of the children, despite the documented history of domestic violence by the former-husband against Deepa, and in spite of the Court's ruling that the civil courts had exclusive jurisdiction over issues related to custody and divorce, as the marriage had been contracted under civil law.<sup>163</sup>

CSOs urge the government to amend the laws around unilateral conversion (so that such conversion would require the consent of both parents or guardians), to uphold the clear jurisdictional bounds of the civil and Syariah courts as articulated in the Federal Constitution of Malaysia, and to adopt a procedure for conducting the "best interests of the child" evaluation in accordance with international standards.

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<sup>160</sup>“Good practices in legislation on violence against women.” *Expert group meeting organized by United Nations Division for the Advancement of Women United Nations Office on Drugs and Crime*. 26-28 May 2008. [http://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf).

<sup>161</sup> Ibid.

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<sup>162</sup>“Federal Court ruling on Deepa case will encourage more unilateral conversion, WAO says.” *Malay Mail Online*. 10 February 2016. <http://www.themalaymailonline.com/malaysia/article/federal-court-ruling-on-deepa-case-will-encourage-more-unilateral-conversio#sthash.AVmIDkMZ.dpuf>.

<sup>163</sup> Ibid.

The laws around and practice of female genital mutilation must also be revisited in working to reduce violence against women. Classified as female genital mutilation (FGM) by the World Health Organization (WHO), FGM has been found to have no medical benefits, and only harm.<sup>164</sup>

In 2012, it was passed unanimously in the United Nations General Assembly as a human rights violation, calling every country in the world to ban the practice.<sup>165</sup> It contradicts a child's right to physical integrity, because it involves the defacement of healthy body parts.

In 2009, based on the National Fatwa Council's ruling, female circumcision has become mandatory, except when it is harmful.<sup>166</sup> This *fatwa* has not been gazetted in any state in Malaysia so it does not have the force of law. Nevertheless, based on a 2011 study conducted by University of Malaya, female circumcision is found to be a very common practice among Muslims in Malaysia. Out of the 671 respondents who had daughters, 93.2% indicated that their daughters were circumcised.<sup>167</sup>

## Conclusion

Despite the Malaysian government's stated commitment to accept in full a total of 8 recommendations in the area of women's rights, gender inequality, underrepresentation of women in decision-making sphere, an absence of legal security, remedy and enforcement of existing laws addressing violence against women persists in Malaysia. Addressing these issues requires a concerted effort from the government along with various stakeholders among which civil society organizations to plan and implement specific steps in order to fulfil these UPR obligations.

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<sup>164</sup> <http://www.who.int/mediacentre/factsheets/fs241/en/>

<sup>165</sup> General Assembly resolution 67/146, *Intensifying global efforts for the elimination of female genital mutilations*, A/RES/67/146 (20 December 2012), available from [undocs.org/A/RES/67/146](http://undocs.org/A/RES/67/146).

<sup>166</sup> <http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-pemotongan-genitalia-wanita-female-genital-mutilation>.

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<sup>167</sup> Dahlui, M. Ng, C.W., Moy, F.W., Masilamani, R., Choo, W.Y., Ilias, M., Abdul Hamid, Z., & Mardan, N.M. (2011). The status of female circumcision in Malaysia (unpublished). *University of Malaya*. Study funded by WHO and UNFPA.

## 4.2 Children

146.71	<b>Continue strengthening its efforts in safeguarding the rights of women and children (Brunei Darussalam)</b>
146.72	<b>Continue strengthening its efforts to promote and protect the rights of children in Malaysia (Qatar)</b>
146.150	Take steps to address increasing trends in early, forced and child marriage (Sierra Leone)
146.151	Adopt proper measures in order to discourage the practice of early and forced marriages (Italy)
146.149	<b>Continue to improve the criminal justice system for children, including by making the court more child-friendly, and to come up with specialized response to children in conflict with the law (Ethiopia)</b>
146.73	<b>Ensure prompt registration of all new-born children (Australia)</b>

### Introduction

Of the six recommendations that were made pertaining to rights of the child, the government of Malaysia accepted four of these recommendations--**146.71**, **146.72**, **146.73**, and **146.149**--in full. Two recommendations, [146.150](#) and [146.151](#), were accepted in part.

## Safeguarding the Rights of Children

In relation to recommendations **146.71** and **146.72**, Malaysia has demonstrated a commitment to improving the rights of children, by its accession to the Convention on the Rights of the Child (CRC) in 1995, the Optional Protocol to the CRC on the involvement of children in armed conflict (CRC-OP-AC) and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (CRC-OP-SC) in 2012.

The establishment of the Ministry of Women, Family and Community Development (KPWKM) in 2001, with its keen focus on children's issues, along with the establishment of the special Child Division in the Department of Social Welfare (JKM) in 2005, are evidence of the government's interest in protecting and promoting children's rights.

The adoption of laws, including the introduction of the Child Act 2001, and the formation of child-protection services for children and their various programmes aimed at preventing, rehabilitating and intervening during a crisis, further illustrate the government's willingness to safeguard the rights of the child.

Furthermore, the Ministry of Women, Family, and Community Development is expected to table amendments to the Child Act 2001 during the March 2016 Parliamentary session. These amendments focus on increasing child participation in the Ministry's policy-making, introducing punishments that focus more on community service, and reducing the institutionalisation of minors.<sup>168</sup>

Nevertheless, there are currently areas in domestic legislation that fail to uphold the rights of the children in Malaysian society. Notably, Malaysia maintains reservations to five articles of the CRC, including Article 2, on non-discrimination; Article 7, regarding birth registration and nationality; Article 14, relating to freedom of thought and religion; Article 28(1)(a), pertaining to compulsory and free primary education for all; and Article 37, on torture, cruel and inhuman, or degrading treatment and punishment.<sup>169</sup> Furthermore, there are many provisions of the CRC that remain to be implemented in national legislation.<sup>170</sup>

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<sup>168</sup> "Malaysia is 130th in children's access to justice report, below India, Bangladesh, Sierra Leone." *Malay Mail Online*. 15 February 2016. <http://www.themalaymailonline.com/malaysia/article/malaysia-is-130th-in-childrens-access-to-justice-report-below-india-banglad#sthash.IMJamhgt.dpuf>.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*

## Prevention and Reduction of Child Marriage

Recommendations 146.150 and 146.151 showcased the international need for protection against child marriage in Malaysia. Although the legal age of marriage under civil law is 18 for both genders, exceptions may be granted by the state menteri besar or chief minister.<sup>171</sup> Under Syariah laws, the legal age of marriage for boys is 18, and for girls 16, with an exception for girls below 16 to be married with the consent of the Syariah court.<sup>172</sup>

Despite the government's position that recommendations 146.150 and 146.151 are factually inaccurate, and that early, forced and child marriage has never been a trend in Malaysia, a 2010 UN report showed that over 82,000 married women in Malaysia were girls between the ages of 15 and 19.<sup>173</sup> In East Malaysia, where poverty is greater, the incidence of child marriage is believed to be higher.<sup>174</sup> Furthermore, there has been an even more disturbing trend of young girls being married off to their rapists.<sup>175</sup>

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<sup>171</sup> "Child marriages not rare in Malaysia with 15,000 underage brides, activists say." *Malay Mail Online*. 2 October 2015. <http://www.themalaymailonline.com/malaysia/article/child-marriages-not-rare-in-Malaysia-with-15000-underage-brides-activists-s#sthash.fAfk311J.dpuf>.

<sup>172</sup> Ibid.

<sup>173</sup> "Child marriage in Malaysia, a child rights issue." *Girls Not Brides*. 24 May 2013. <http://www.girlsnotbrides.org/tackling-child-marriage-in-malaysia-a-child-rights-activists-perspective/>.

<sup>174</sup> "Child marriages not rare in Malaysia with 15,000 underage brides, activists say." *Malay Mail Online*. 2 October 2015. <http://www.themalaymailonline.com/malaysia/article/child-marriages-not-rare-in-malaysia-with-15000-underage-brides-activists-s#sthash.fAfk311J.dpuf>.

<sup>175</sup> Ibid.

Notably, the Ministry of Women, Family, and Community Development has spoken out against child marriage, saying that it curbs the mental, physical, and psychological development of a child.<sup>176</sup>

## Improving the Criminal Justice System for Children

Addressing recommendation 146.149, Malaysia is in dire need of a reform in terms of criminal justice system for children especially when according to research by Children Rights International Network (CRIN), Malaysia was placed 130th out of 197 countries in providing court access to children to protect their rights.<sup>177</sup>

## Amendments to Child Act 2001

The Parliament has in March 2016, passed amendments to the Child Act 2001. However, the amendments did not include these considerations: automatic legal representation, limitations on child witness' exposure to court; although whipping for child offenders were abolished replaced with community service instead, and well specified conditions on when child offenders should be handcuffed.

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<sup>176</sup> A. Ruban. "Minister says against child marriages, tells Malaysians to prioritise careers." *Malay Mail Online*. 25 February 2016. <http://www.themalaymailonline.com/malaysia/article/minister-says-against-child-marriages-tells-malaysians-to-prioritise-career#sthash.oHR422RE.u56DISB1.dpuf>

<sup>177</sup> Ibid.

In terms of protecting the child from forced marriage, SUHAKAM has expressed their concern about the amendments to the Child Act especially on the omission to prohibit marriages between any persons below 18 years old.<sup>178</sup>

### **Registration of children born overseas to Malaysian Mothers**

For recommendation regarding the prompt registration of all new-born children which Malaysia have fully accepted (146.73), Only Malaysian fathers are allowed to pass on their citizenship to their children born overseas. There is no provision in the law to allow Malaysian women to pass on citizenship to their children born overseas.<sup>179</sup>

Although In 2010 the then Home Minister Hishammuddin announced that Malaysian women could register the birth of their children at overseas high commission,<sup>180</sup> in practice, anecdotal evidence suggests that Malaysian women find it difficult to register their children overseas.

They have to again submit documentation at Putrajaya with long waiting periods of approximately two years and rejections without reasons given

It is proposed that the Home Ministry and the National Registration Department to allow both men and women to automatically confer citizenship status on their children even when the child is born outside of Malaysia.

### **Conclusion**

Having ratified CRC in 1995 and indicated exemplary steps to promote and protect the rights of the child, Malaysia should be well ahead in terms of fulfilling their UPR obligations. Civil societies in Malaysia welcome commendable steps such as amending the Child Act to add more provisions in line with international standards domestically. Despite that, the government should be implementing more to work towards improving the justice system and institutions to ensure that they are child-friendly. Additionally, more political will is necessary in order to curb forced early marriages in Malaysia.

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<sup>178</sup> 'Suhakam Welcomes Child Act Amendments, But Wants Legal Marrying Age Raised To 18 - Nation | The Star Online' (Thestar.com.my, 2016) <<http://www.thestar.com.my/news/nation/2016/04/18/suhakam-welcomes-amendments-to-child-act/>> accessed 30 April 2016.

<sup>179</sup> Ibid, Discriminatory Constitutional Provisions regarding the citizenship of children born overseas, page 110. <http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf>

<sup>180</sup> The Star Online, April 12 2010, Malaysian women can register children born abroad. <http://www.thestar.com.my/story/?file=%2F2010%2F4%2F12%2Fnation%2F6037265>

## 4.3 Persons with Disabilities

146.204	<b>Allocate more funds for the promotion and protection of the rights of persons with disabilities, particularly in the areas of employment, education and housing, and provide these persons with the necessary training to improve their employability and independence (Tunisia)</b>
146.205	<b>Through stronger cross-institutional cooperation, provide more special services for children with disabilities, including taking necessary measures to improve the educational conditions (China)</b>
146.206	<b>Continue in its efforts to ensure an inclusive education system, particularly with respect to students with special educational needs and for those students most in need of financial assistance (Jamaica)</b>
146.207	<b>Take necessary steps to provide adequate facilities to improve access to education for persons with disabilities, especially children (Democratic People's Republic of Korea)</b>
146.208	<b>Intensify efforts so that children with disabilities have sufficient access to education and health facilities (Cyprus)</b>

### **Brief Assessment**

There still remains no single government agency that oversees all disability-related issues, thus making it difficult for disability issues to be dealt with comprehensively. The Persons with Disabilities Act 2008 (PWD Act) does not provide for any recourse for breaches. The Act does not ensure that the persons with disabilities are not discriminated, i.e. education and employment opportunities and providing amenities for persons with disabilities. Additionally, the majority of public transportation in the country is not disabled-friendly and some are dangerous for persons with disabilities to use. Paltry financial aid such as monthly allowances for unemployed persons with disabilities speak volumes to the lack of practical measures to concretely address the human rights issues of persons with disabilities by the government.

According to the Department of Statistics, there is an estimated 2.7 million senior citizens (aged 60 and above) as of 2014, and there are up to 400,000 disabled Malaysians registered, a growing proportion of which are aged above 50. Many of the disabled who are ageing have no form of social support.<sup>181</sup> This lack of attention to the human rights issues of persons with disabilities is likely largely contributed by the poor political participation and representation of persons with disabilities.

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<sup>181</sup> 'Twice As Hard For The Disabled - Nation | The Star Online' (Thestar.com.my, 2015) <<http://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 30 April 2016.

## 4.4 Indigenous People

- 146.209 Ensure that laws on indigenous peoples as well as their implementation comply with the Declaration on the Rights of Indigenous Peoples (Switzerland)
- 146.210 Ensure the rights of indigenous peoples and local forest dependent peoples in law and practice, in particular regarding their right to traditional lands, territories and resources (Norway)
- 146.211 Establish an independent National Commission on Indigenous Peoples and ensure that laws, policies and their implementations are in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (Sweden)
- 146.212 Establish an independent body to investigate disputes over land, territories and resources (New Zealand)
- 146.213 Take measures, with full and effective participation of indigenous peoples, to address the issues highlighted in the National Enquiry into the Land Rights of Indigenous Peoples (Finland)
- 146.214 Continue to implement its plans and strategies that enhance the economic and social welfare of indigenous peoples (Bolivia (Plurinational State of))**
- 146.215 Intensify efforts to eradicate poverty, particularly among the Orang Asli in Peninsular Malaysia and the natives of Sabah and Sarawak (Bolivia (Plurinational State of))**
- 146.216 Further progress in the eradication of poverty through the successful implementation of the Government Transformation Programme, particularly in the poverty zones of Orang Asli in Peninsular Malaysia, and the indigenous peoples of Sabah and Sarawak (Venezuela (Bolivarian Republic of))**

## Background

During the adoption of the second UPR, the government of Malaysia iterated its commitment to better protect and respect the human rights of its indigenous population.<sup>182</sup> Their intent was crystallised as the government of Malaysia welcomed an independent National Inquiry into the Land Rights of Indigenous Peoples by the Human Rights Commission of Malaysia (SUHAKAM) which was concluded with findings and recommendations submitted to the former in August 2013.<sup>183</sup> The national inquiry has since developed into a National Task Force to study the report by SUHAKAM which was then presented to Malaysia's Cabinet Ministers by June 2015. As an outcome, the Cabinet approved the formation of a Cabinet Committee for the Land Rights of Indigenous Peoples which would be headed by then the Deputy Prime Minister of Malaysia, Tan Sri Muhyiddin Yassin.<sup>184</sup> Judging from the above, recommendations **146.209, 146.210, 146.211, 146.212, 146.213** made significant strides albeit being only 'noted' by the Government of Malaysia.

The progress made in lieu of these recommendations however has merely been a façade. The recommendation made by Sweden (**146.211**) was

reportedly rejected outright even from the formation of the Cabinet Committee when they agreed to the implementation of all recommendations contained in the National Task Force's report, except for the establishment of the Commission on Indigenous Peoples.<sup>185</sup> Indigenous people all over Malaysia have continuously found themselves in various courts in Malaysia with the help of the Bar Council of Malaysia to fight for their rights to native lands against State agencies, companies or any other formidable entities. Apart from that, the Cabinet Committee for the Land Rights of Indigenous Peoples itself has fallen prey to the latest political scandal Malaysia is embroiled in.

## Constant legal battle

The formation of a Cabinet Committee for the Land Rights of Indigenous Peoples did not guarantee ripple effects in which other state agencies follow suit. In fact, the Department of Orang Asli Development (JAKOA), Department of Forestry, Department of Wildlife and National Parks (PERHILITAN), mega plantations companies and State governments such as Pahang, Perak, Negeri Sembilan and Melaka have over the years continued grappling for land entitlement against the indigenous peoples in pursuit of their logging, mining, commercial plantations and hydroelectric dams interests.

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<sup>182</sup> Human Rights Council (2014), Report of the Working Group on the Universal Periodic Review Malaysia : views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.

<sup>183</sup> Ibid.

<sup>184</sup> (2016) <<http://cfnhri.org/suhakams-national-inquiry-into-the-land-rights-of-indigenous-peoples/>> accessed 30 April 2016.

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<sup>185</sup> Ibid.

On the 20<sup>th</sup> January 2016, 11 Orang Asli<sup>186</sup> native land owners in Kampung Pelebar, Negeri Sembilan handed a memorandum to the Chief Minister of the aforementioned state, Datuk Seri Mohamad Hasan regarding the issue of land invasion and compensation by land developers. The land owners alleged land developers have logged rubber trees in their native lands and sold them without prior consent. Apart from that, graveyards in the said area was also excavated without the consent from their respective relatives, instead the land developers have only consulted the clan leader about it.<sup>187</sup> However, these claims were denied by the Director of JAKOA Negeri Sembilan, Haslin Abdul Razak. Sights like these are not a rare incident as most of these land grabbers do not go through the MABT<sup>188</sup> process whenever they execute their activities.

As of reporting, Malaysia has seen a few landmark cases regarding Native Land rights which shows not only the tedious process of winning back what was originally the land of the indigenous peoples, also the expensive costs leading into it.

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<sup>186</sup> Orang Asli in literal Malay translation means indigenous peoples. However, generally in Malaysia, the indigenous people of peninsular (or West) Malaysia are referred as Orang Asli. While the indigenous people of East Malaysia (or Sabah and Sarawak) are referred as Orang Asal.

<sup>187</sup> '11 Pemilik Tanah Serah Memorandum' (Sinarharian.com.my, 2016) <<http://www.sinarharian.com.my/edisi/melaka-ns/11-pemilik-tanah-serah-memorandum-1.475436>> accessed 30 April 2016.

<sup>188</sup> MABT or "Maklumat, Awal, Bebas, Telus" Malay words for "Information, Early, Free, Transparent" process in which when an Orang Asli Native Land is involved, development projects affecting the lands and livelihoods of indigenous people should incorporate and operationalise the principles of free, prior and informed consent.

Cases such as the Orang Asli of Kampung Orang Asli Kuala Senta against Bionest corp took five years to finally reach conclusion in 2015, the latter accused of encroaching 2000ha of native land in 2010<sup>189</sup> The Centre of Orang Asli Concern (COAC) on the other hand had announced via their facebook post that the Semaq Beri claiming native title rights to their customary lands in Kampung Mengkapur, Pahang have finally reached a settlement outside the court in April 2016 after initially filing suit to the Kuantan's High Court on the 14<sup>th</sup> December 2012.

### **Cabinet Committee for the Land Rights of Indigenous Peoples**

The formation of such a Cabinet committee relays a message of intent by the government to look into the issue native land rights of the indigenous people more seriously. However, this remains to be proven as indicated by their actions following the establishment of the Cabinet committee. Firstly, the Cabinet committee was to be headed by the then Deputy Prime Minister of Malaysia, Tan Sri Muhyiddin Yassin. The Human Rights Commission of Malaysia (SUHAKAM) and NGO bodies have been vocal about their confusion regarding the formation of such committee right from its establishment. As the commissioner of SUHAKAM, Tan Sri Hasmy Agam voiced out,

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<sup>189</sup> 'Landmark Victory For Orang Asli After Customary Land Dispute Win' (Themalaymailonline.com, 2015) <<http://www.themalaymailonline.com/malaysia/article/landmark-victory-for-orang-asli-after-winning-customary-land-dispute>> accessed 30 April 2016.

“the Deputy Prime Minister (of Malaysia) is a person overburdened with tasks. Our question, is this issue (the land rights of Indigenous People) of their utmost primary concern?”.<sup>190</sup>

Following his constant critique of the Prime Minister of Malaysia, Dato' Seri Najib Abdul Razak for his links with the investment arm 1 Malaysia Development Berhad (1MDB)<sup>191</sup> Tan Sri Muhyiddin Yassin was axed from his Deputy Prime Minister position and replaced with Dato' Seri Ahmad Zahid Hamidi the incumbent Minister of Home Affairs. The firing of Deputy Prime Minister along with the ensuing restructuring of governance since have seen the Land Rights Cabinet Committee take a backseat. Since its formation in June 2015, only as recent as April 2016 has the current Deputy Prime Minister chaired its first Special Cabinet Meeting on Land Rights of Indigenous Peoples and Access to Customary Lands.<sup>192</sup> The meeting was attended by 11 heads of state governments, ministers and the Attorney General's Department. As mentioned earlier, the delay in action towards land rights for the indigenous people made the situation worse as land developers, during the delay, continue their practices of land grabbing.

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<sup>190</sup> 'Suhakam, NGO Keliru Dengan Jawatankuasa Khas Kabinet Hak Tanah Orang Asal | HAKAM' (Hakam.org.my, 2015) <<http://hakam.org.my/wp/index.php/2015/06/20/suhakam-ngo-keliru-dengan-jawatankuasa-khas-kabinet-hak-tanah-orang-asal/#more-2255>> accessed 30 April 2016.

<sup>191</sup> For more, see '1MDB: The Case That's Riveting Malaysia - BBC News' (BBC News, 2016) <<http://www.bbc.com/news/world-asia-33447456>> accessed 30 April 2016.

<sup>192</sup> 'Committee Formed To Look Into Land Rights Of Indigenous People' (BorneoPost Online | Borneo , Malaysia, Sarawak Daily News, 2016) <<http://www.theborneopost.com/2016/04/08/committee-formed-to-look-into-land-rights-of-indigenous-people/>> accessed 30 April 2016.

Resulting from the Cabinet reforms by Prime Minister Najib Razak, the Ministry of Rural and Regional Development was also changed. The current minister, Datuk Seri Ismail Sabri Yaakob in a statement on 19<sup>th</sup> February 2016 iterated that the “Reserved Lands for Orang Asli issue will be resolved by the end of this (2016) year”.<sup>193</sup> He went on to say that so far, a total of 79,000ha of land was measured and pending to be gazetted while 24,000ha has already been gazetted by the Pahang State Government. Such statement is a worrying sign as most of the NGOs working on land rights for the indigenous people have not known of such effort, which means the land measuring, were done covertly. In response to such, an NGO for Orang Asal rights, Jaringan Orang Asal SeMalaysia (Joas), launched their campaign to map out and consolidate Orang Asal territories. JOAS have been training community mappers to map out Orang Asal traditional territories which would be later consolidated into a national database. In this sense, the mapping out of Reserve Lands for Indigenous People by the Ministry of Rural and Regional Development would have to be cross-examined by the results of JOAS's land mapping for indigenous people.

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<sup>193</sup> 'Berita Wilayah' (Bernama.com, 2016) <[http://www.bernama.com/bernama/state\\_news/bm/news.php?id=1217261&cat=tm](http://www.bernama.com/bernama/state_news/bm/news.php?id=1217261&cat=tm)> accessed 30 April 2016.

<sup>194</sup> Mikha Chan, 'NGO To Map Out And Consolidate Orang Asal Territories' (Free Malaysia Today, 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/03/02/ngo-to-map-out-and-consolidate-orang-asal-territories/>> accessed 30 April 2016.

## **Reflection on Land Rights for the Indigenous People**

The government of Malaysia's intention to look into the issue of land rights of the indigenous people is undoubtedly a commendable gesture. In terms of the UPR, not only will the governments' rejection of recommendations regarding land rights be converted into an acceptance on their part, actions such as setting up National Task Force and a Cabinet Committee shows that they have gone through lengths to ensure the rights of the indigenous people. However, the study on land rights of the indigenous people was started in 2010 by SUHAKAM. Six years on, the Government has only progressed on the setting up of a Cabinet Committee task force without any substantive law reforms or even on-the-ground practice changes. Consequently, the indigenous peoples of Malaysia constantly find themselves finding amicable solutions whether in or outside the courts with land developers while the advocacy work of land rights activists have not slowed down as an effect, but have instead doubled because of the political scandal Malaysia is involved in.

## **Socio-economic Rights of the Indigenous People**

For recommendations regarding the social and economic welfare of indigenous people, the government of Malaysia have accepted all of them in full. Such action is welcomed by the civil society of Malaysia, knowing that a certain degree of political will is necessary in order to see these recommendations above fully implemented. However, a political will is anything but apparent in the implementation of these recommendations.

Since the adoption of these recommendations, the Government of Malaysia's poverty eradication means can be seen from the shortcomings of the

houses for the extreme poor project (PPRT), leakages of funds, ineffectiveness of land laws and gaps in the Government Transformation Programme (GTP).

## **Houses for the Extreme Poor Project (PPRT)**

The PPRT, apart from being a housing project, appears to be more of a project to house the indigenous people in modern, concrete houses far away from their native land. Indeed, most of the PPRT apartment houses are located far away from the lively hood of the indigenous people, that is, the forest. Usually, a PPRT will only take construction if the indigenous people, whether they agreed or not, have been displaced by land developers, be it by the State governments, the Federal government or plantation companies. In return, the displaced families will get a house lot in the nearest PPRT. However, this has not only been disruptive to the social and economic welfare of the indigenous people, the PPRT has proven to be wasteful in terms of how the government uses its budget allocations for the socioeconomic welfare of the indigenous communities.

Reports of PPRT being constructed half-heartedly have been ample. Most indigenous communities, when asked about their problems by NGOs, stated PPRT's lack of basic amenities and infrastructure as one of the main issues. In a reported case, four indigenous families in Kampung Langkap, Dangi, Negeri Sembilan are disappointed

with the incomplete state of the PPRT lots handed to them. More frustratingly, one of the house lots is uninhabited as leaks from the water tank flows into the interior of that house.<sup>195</sup>

The indigenous communities also have to compete with the public to obtain a lot in the PPRT. A report in Rompin, Pahang shows that the Orang Asli there regard the authorities with a certain level of scepticism as they believe that the PPRT was only given to people with links to the enforcement agencies. Mariam Yusoh, an Orang Asli native in Rompin, was promised a house under the PPRT by elected representatives. Two decades on and three application attempts later, Mariam is still yet to be presented a house despite fulfilling the criteria as claimed by JAKOA. Since 2010, according to the village head Tok Batin Jusoh Keling, some 60 couples have been married, with only two obtaining the PPRT homes. Jusoh added that the (PPRT) houses were also being built in the village without obtaining his approval. Many outsiders and non-Orang Asli come here and build their houses through the programme. "We do not know how they obtained the approvals as they don't tell me and I can't say no to them as it will be rude to do so," Jusoh lamented.<sup>196</sup>

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<sup>195</sup> '4 Keluarga Kecewa Rumah PPRT Orang Asli Tak Sempurna' (Utusan Online, 2016) <[http://www1.utusan.com.my/utusan/Selatan/20121221/ws\\_03/4-keluarga-kecewa-rumah-PPRT-Orang-Asli-tak-sempurna](http://www1.utusan.com.my/utusan/Selatan/20121221/ws_03/4-keluarga-kecewa-rumah-PPRT-Orang-Asli-tak-sempurna)> accessed 30 April 2016.

<sup>196</sup> 'Orang Asli In Rompin Claim Houses 'Given To Those With Links' - The Rakyat Post' (The Rakyat Post, 2015) <<http://www.therakyatpost.com/news/2015/04/23/orang-asli-in-rompin-claim-houses-given-to-those-with-links/>> accessed 30 April 2016.

## Leakages of Funds

During a SUHAKAM consultation for the UPR Mid-Term with various stakeholders, including the government agencies on 15<sup>th</sup> December 2015, to correspond with recommendation **146.216**, a sample response by the Department for Orang Asli Development (JAKOA) reads :

*"The Government has set the target of reducing incidences of poverty among Orang Asli from 31.2% in 2010 to 25% by 2015. Household income for the Orang Asli rose from RM1,092 in 2009 to RM1,153 in 2014. They are receiving 1Malaysia People's Aid (BR1M) of RM900, a monthly allowance from the Department of Social Welfare, while Muslims also receive tithe (zakat)".<sup>197</sup>*

In the meantime, the Sarawak State Government, also responding to the same recommendation wrote :

*"Under the Government Transformation Programme, the 1AZAM programme has been undertaken by the State Government since 2011, which involves various implementing agencies. As of 17th August 2015, a total of 43,106 poor Bumiputera house holds have been assisted under the programme. This programme is further intensified with the implementation of Beyond 1AZAM Programme in 2015 which aimed to increase the income of the recipient via financial (micro-credit loans) and non-financial (market access, training and coaching) assistances."<sup>198</sup>*

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<sup>197</sup> SUHAKAM Consultation, Malaysia's implementation of Universal Periodic Review Recommendations, 15<sup>th</sup> December 2015, Premieria Hotel, Kuala Lumpur, Malaysia.

<sup>198</sup> Ibid.

Although these numbers show commendable improvements from the government's side to significantly reduce poverty, these statistics, with regards to the livelihood of the indigenous peoples' community shows nothing but vanity metrics. It is unclear whether the household income for this specific group has risen to those numbers in 2014. These numbers appears to contradict the following study which found out that it is believed that 81% of the Orang Asli lives below the official poverty line (the national average was 5%).<sup>199</sup> Obviously, the 1AZAM programme in Sarawak has reportedly assisted a large sum of indigenous household. However, the authenticity of such figures depends on whether those families break through the poverty line in terms of household incomes.

At the same time, JAKOA, the department holding the mandate to take care of the development and welfare of Orang Asli has repeatedly been ticked off in their annual financial reports. In one report, the Perak Orang Asli Department (JAKOA) commissioned an "unjustified" bridge worth RM404,161, the Auditor-General's Report 2014 said. As at Jun 15, 2015, a total RM86,543.35 has been paid as part of advance payment and payment for materials on site. However, the project in Kampung Santeh, Kuala Kangsar ended up abandoned despite the contractor being given a three month extension.<sup>200</sup>

This is a department entrusted with a reportedly RM60 million to build homes for the Orang Asli, RM300 million for the Orang Asli community, in which, RM160 million is for NGOs for community development, unity, welfare, health and safety projects.<sup>201</sup> It remains to be seen how the money will be allocated to the respective communities.

### **Ineffectiveness of Land Laws**

As mentioned in the previous section, land rights for indigenous people have always been treated with disdain. Its ineffective implementation also points to the mistreatment of the indigenous peoples in terms of their social and economic welfare as they lose their livelihoods in the process of losing their lands.

To add to this pressing issue are reports of the Orang Asli being poorer after being victims of huge commercial farming schemes such as the Tanam Semula Komersial<sup>202</sup> (TSK) which took over communal lands of indigenous peoples. Visits to Gerik and Tapah, Perak unearthed a local NGO with information that showed that not only were their communal lands mapped out into single family lands each,

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<sup>199</sup> Mariam Mokhtar, 'The Orang Asli And The Irony Of Being A True Bumiputra' (Theantdaily.com, 2016) <<http://www.theantdaily.com/Main/The-Orang-Asli-and-the-irony-of-being-a-true-Bumiputra#sthash.deElvhjq.dpuf>> accessed 30 April 2016.

<sup>200</sup> 'Orang Asli Dept Ticked Off Over Rm400k 'Unjustified' Bridge' (Malaysiakini, 2015) <<https://www.malaysiakini.com/news/320700>> accessed 30 April 2016.

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<sup>201</sup> '2016 Budget Breakdown | BAJET Malaysia' (Bajet.com.my, 2016) <<http://www.bajet.com.my/2016-budget-speech/2016-budget-breakdown/>> accessed 30 April 2016.

<sup>202</sup> 'Tanam Semula Komersial' is a Malay term for Commercial Replantation

### **Conclusion**

Enhancing the socio-economic welfare status of the indigenous people is best approached from a human rights based perspective. In this case, apart from giving handouts to the indigenous communities, be it in the form of housing, amenities, facilities and money, progress will be more apparent if they themselves have a hand in developing their own communities. They should be able to choose the livelihoods they prefer with less exterior supervision and handling, which is not only deemed unnecessary but often results in problems such as mismanagement and leakages of funds. At the same time, their original native land should not be encroached by any parties in the first place to ensure their socio-economic welfare is protected.

the indigenous peoples became labourers to harvest these plantations that were set on their lands by TSK for a meagre sum of RM 450 maximum for each household. This sum is evidently well below the poverty line stipulated by the government agency, PEMANDU, where the sum for Peninsular Malaysia is RM760, and RM1,050 for Sabah and RM910 for Sarawak.<sup>203</sup>

### **Government Transformation Programme (GTP)**

Based on the GTP, Malaysia is projected to reach a high income status nation by 2020. In this light, the government has come up with the 10<sup>th</sup> and 11<sup>th</sup> Malaysia plans. Although much has been focused on prospering the people with higher incomes and economic rewards, the GTP has no place for indigenous economy or subsistence economy. Instead of reducing the gap between the urban population and indigenous communities, a GTP which does not address indigenous economic empowerment will in turn widen the gap even further, leaving the indigenous peoples to an even greater risk of hardcore poverty in the future. Even then, most of the aid to help alleviate the indigenous people out of poverty is in form of cash handouts such as the BR1M, as mentioned by JAKOA earlier.

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<sup>203</sup> (2016) <[http://www.pemandu.gov.my/gtp/General-@-Alleviating\\_Poverty\\_Remains\\_a\\_Priority.aspx](http://www.pemandu.gov.my/gtp/General-@-Alleviating_Poverty_Remains_a_Priority.aspx)>

## 4.5 Sexual Orientation and Gender Identity

- 146.98 Take legislative and practical steps to guarantee that LGBTI persons can enjoy all human rights without discrimination (Germany)
- 146.99 Introduce legislation that will decriminalize sexual relations between consenting adults of the same sex (Croatia)
- 146.100 Decriminalize homosexuality and respect the fundamental rights of LGBT persons (France)
- 146.101 Take the necessary measures to eradicate the discrimination based on sexual orientation (Argentina)
- 146.102 Delete those provisions that could favour discriminatory practices against persons based on their sexual orientation and gender identity (Chile)
- 146.103 Repeal sections of the Malaysian Penal Code that criminalize consensual same-sex conduct between adults (Netherlands)
- 146.104 Enact legislation prohibiting violence based on sexual orientation, and repeal laws that directly or indirectly criminalize consensual same-sex sexual activities (Canada)

## Background

There were seven recommendations in total that referred to the protection of human rights based on sexual orientation and gender identity. Malaysia not only did not accept these recommendations but has allowed for the continued perpetuation of violence and discrimination towards persons based on sexual orientation, gender identity, and gender expression, especially towards transgender people. Targeting of children who are suspected to be lesbian, gay and transgender for rehabilitation and punishment has also intensified.

Although discrimination on the basis of gender is prohibited in the Federal Constitution (art. 8 (2)), the rights of lesbian, gay, bisexual, and transgender (LGBT) persons are not explicitly recognized. Colonial-era provisions have been retained under the Penal Code and they criminalize sodomy (Penal Code, sects. 377(a) and 377(b)) and perpetuate discrimination against LGBT persons. In addition, discriminatory societal attitudes towards LGBT persons prevail in Malaysia and have been exacerbated over the past few decades by the use of a stigmatizing rhetoric by politicians, public officials and religious leaders.<sup>204</sup>

Despite the judgement of the Court of Appeal issued on 7 November 2014 that found section 66 of the Syariah Criminal Enactment of Negeri Sembilan State criminalizing cross-dressing unconstitutional<sup>205</sup> that would have helped to effectively argue for the human rights of

transgender people, and which was welcomed by the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras,<sup>206</sup> Malaysia challenged this decision at the Federal Court and by doing so, deliberately obstructed the advancement of human rights for transgender people based on national law and through domestic processes.

The 2014 judgement of the Court of Appeal stated that section 66 of the Syariah enactment was not in conformity with the Federal Constitution and violated the rights to live with dignity, equality before the law and non-discrimination, and directly affected freedom of movement and expression. The judgement explicitly acknowledges the profound effect that section 66 has on the appellants who live perpetually at risk of arrest and prosecution simply because they express their gender identity. The Court of Appeal underlined that the existence of a law that punishes gender expression is degrading and deprives those affected of their dignity and value in society. At the Federal Court, the decision was overturned on a technicality on 8 October 2015.

Malaysia has two sets of laws — civil laws that are administered at the federal level,

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<sup>204</sup> see paragraph 83 of the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, visit to Malaysia, 19 November – 2 December 2014.

<sup>205</sup> Malaysia, Court of Appeal, Civil Appeal No. N-01-498-11/2012.

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<sup>206</sup> see visit to Malaysia, 19 November – 2 December 2014, see paragraph 88 of report.

which applies to all citizens, and sharia laws that are administered at the state level, which have expressed limited jurisdiction that these laws should only apply to Muslims. Same-sex sexual activities and “cross dressing” are criminalized in Malaysia, under both civil and sharia laws. In the 1860s, the British introduced the Penal Code 377 that criminalises carnal intercourse. Sharia laws exist to criminalise sodomy (liwat) and lesbianism (musahaqah). All 13 states have laws that prohibit “male person posing as woman”, and since 2013, more states now have laws that criminalise “female person posing as man”.

Malaysia has become one of the few countries where transgender people are criminalized. Since the 1980s, a series of legislative initiatives, mostly undertaken under Syariah enactments, prohibited “cross dressing” and forced transgender people, who had historically enjoyed a certain degree of acceptance in society, to go underground. In 1982, a fatwa issued by the National Fatwa Council, prohibited Muslims from undergoing sex reassignment surgery and since then, very few hospitals have performed such surgery. The National Registration Department does not allow the gender indicator on identity cards to be changed, and this applies both to Muslims and non-Muslims.<sup>207</sup>

Transgender people and those more visible in terms of their non-conformity in gender

expression and gender identity continue to be targeted, suffering various forms of abuse and discrimination. This is further buoyed by the Malaysian government’s attitude and stand that a ban against “Seksualiti Merdeka” in 2011, an annual sexuality rights event, is compatible with International human rights standards.<sup>208</sup>

Transwomen and transmen are at constant risk of arrest and harassment by authorities in Malaysia, merely because they are still seen as the biological sex they were as assigned at birth, biologically male or biologically female, despite the official recognition by American Psychiatrists Association of the gender dysphoria they suffer.

### **Attacks on Human Rights Defenders**

Human rights defenders of the Coalition of Malaysian NGOs in the UPR Process (COMANGO) were attacked for defending the human rights of the LGBTIQ against violence perpetuated at them during and after the second cycle of the UPR for Malaysia. These attacks are expected to escalate as the third cycle of the UPR for Malaysia approaches.

Trans woman activist, Nisha Ayub, who was awarded “Hero of the Year” at the Asia LGBT Milestone Awards and received an award for “Extraordinary Activism” by

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<sup>207</sup> see paragraph 84 of the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, visit to Malaysia, 19 November – 2 December 2014.

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<sup>208</sup> see Government of Malaysia’s official response to Special Rapporteurs on Freedom of Opinion and Expression; Freedom of Peaceful Assembly and of Association; Situation of Human Rights Defenders.

international watchdog Human Rights Watch (HRW) and who was in April 2016 the recipient of the prestigious International Women of Courage Award from the USA, was bruised and slashed by two unknown men in front of her home on 10 September 2015. There has been no further development on the case despite her lodging a police report.<sup>209</sup>

A fundraising event in Kuala Lumpur organised by a transgender rights group, SEED Malaysia, was raided by the state's Islamic religious authorities, JAWI, on 3 April 2016.<sup>210</sup> The main organiser of the event, Ira Sophia would be charged in May 2016 under Section 9 and Section 35 of the Shariah Criminal Offences (Federal Territories) Act. Section 9 of the Shariah Criminal Offences (Federal Territories) Act states that "any person who acts in contempt of religious authority or defies, disobeys or disputes the orders or directions of the Yang di-Pertuan Agong as the Head of the religion of Islam, the Majlis or the Mufti, expressed or given by way of fatwa, shall be guilty of an offence", punishable by a fine of not more than RM3,000, or imprisonment of not more than two years, or both. Section 35 prohibits anyone from promoting, inducing, or encouraging another person to indulge in "any vice", an offence punishable with a fine of not

more than RM5,000, or imprisonment of not more than three years, or both. In the conduct of the raid, JAWI officers had stated that it was on grounds that the "beauty contest" involving trans women violated a 1996 fatwa, which has been gazetted into law, that prohibits Muslim women from joining beauty pageants. While JAWI's recognition of transgender women as women is welcomed, raiding a closed door and private fundraising event that is meant to help a marginalised community uphold their dignity and protect their human rights is appalling.

### **Attacks on Freedom of Thought, Conscience and Religion**

Malaysians who try to promote a wider discourse on sexual orientation and gender identity are targeted for persecution, for example, publisher Mohd Ezra Mohd Zaid will have to face trial in the sharia court after failing to persuade the country's highest court to nullify a Selangor law that makes it an offence for Muslims to publish books the state religious authority deems un-Islamic. Ezra was charged as ZI Publications' director and majority shareholder in March 2013 under Section 16 of the Selangor religious law, which carries a penalty of a maximum RM3,000 fine or a maximum two-year jail term or both. He had then pleaded not guilty to a charge under Section 16 (1)(a) of publishing a Malay translation of Canadian author

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<sup>209</sup> 'Transgender Activist's Assault Shows Dangers LGBT Face' (Malaysiakini, 2015) <<https://www.malaysiakini.com/news/312160>> accessed 30 April 2016.

<sup>210</sup> Web Administrator, 'The Malaysian Bar - Lawyer Under Police Probe For Defending Transgenders During Jawi Raid' (Malaysianbar.org.my, 2016) <[http://www.malaysianbar.org.my/legal/general\\_news/lawyer\\_under\\_police\\_probe\\_for\\_defending\\_transgenders\\_during\\_jawi\\_raid.html](http://www.malaysianbar.org.my/legal/general_news/lawyer_under_police_probe_for_defending_transgenders_during_jawi_raid.html)> accessed 30 April 2016.

Irshad Manji's "Allah, Freedom and Love", a book which the sharia prosecutors had deemed to be contrary to Islamic law.<sup>211</sup>

### **Attacks on Freedoms of Expression, Association and Assembly**

A 2014 LGBT rights awareness event in Penang, "Penang Pink Dot", organised by human rights NGO SUARAM and Rainbow Connection, was attacked by Islamic/Malay rights groups such as ABIM and PERKASA, forcing its cancellation for safety and security purposes.<sup>212</sup>

Malaysians who are LGBTQ and who are Malay and Muslim are especially targeted with death threats and forced rehabilitation, and possible stripping of citizenship (e.g. Hazim Ismail in 2015/16). A Malay and Muslim lesbian couple were verbally attacked on Instagram in 2015 for their photographs by Robin Hammond in the portrait project, "Where Love is Illegal".

The film censorship board has tightened its guidelines and censors' portrayal of LGBT characters in movies. In addition to requiring LGBT characters to repent or die in films, passionate scenes including kissing are not permitted. However, rape or sexual scenes are permitted "if filmed without lighting, behind mosquito nets, or filmed

using vague shadows without sexual action".<sup>213</sup>

A raid on well-known gay nightclub, "Blue Boy" in Kuala Lumpur on 10 April 2016 conducted by the state's Islamic religious authorities, JAWI, came only seven days after the raid on the fund raising event of transgender rights group, SEED Malaysia. The raid was seen as a form of targeted persecution against transgender people, especially transgender women. Those detained were tested for alcohol consumption and three transgender women and one male performer were charged with wearing women's attire. Muslim men detained at the event and who were found to be drinking alcohol, were charged for alcohol consumption. For this raid, JAWI made sure that they were accompanied by the police.

### **Stigmatisation, Discrimination and Persecution of Children based on Suspected Sexual Orientation and Gender Identity**

The Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, visit to Malaysia, 19 November – 2 December 2014, expressed concern about information received on programmes and practices

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<sup>211</sup> 'Ezra Zaid To Stand Shariah Trial After Failing To Nullify Selangor Law On Un-Islamic Books Charge' (Themalaymailonline.com, 2015) <<http://www.themalaymailonline.com/malaysia/article/ezra-zaid-to-stand-shariah-trial-after-failing-to-nullify-selangor-law-on-u#sthash.5Oe1OdyD.dpuf>> accessed 30 April 2016.

<sup>212</sup> Athi Shankar, 'LGBT Event In Penang Cancelled' (Free Malaysia Today, 2014) <<http://www.freemalaysiatoday.com/category/nation/2014/03/14/lgbt-event-in-penang-cancelled/>> accessed 30 April 2016.

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<sup>213</sup> (Cinema.com.my, 2016) <[http://www.cinema.com.my/articles/news\\_details.aspx?search=2015.n\\_censorshipboardguidelines\\_24611&title=Censorship-board-lays-down-guidelines-for-movies](http://www.cinema.com.my/articles/news_details.aspx?search=2015.n_censorshipboardguidelines_24611&title=Censorship-board-lays-down-guidelines-for-movies)> accessed 30 April 2016.

supported by public institutions to change the sexual orientation of adolescents, so-called “corrective therapies”. Such therapies are not only unacceptable from the human rights perspective but they are also against scientific evidence, and have a serious negative impact on the mental health and well-being of adolescents. State-led programmes to identify, “expose”, and punish LGBT adolescents contribute to a detrimental educational environment where the inherent dignity of the child is not respected and discrimination on basis of sexual orientation and gender identity is encouraged.<sup>214</sup>

Every student in Kuala Lumpur is still given a student handbook by the Education Department of Kuala Lumpur that outlines the dress code and all the offences into three categories — serious offence, moderate offence and light offence. Lesbian/gay and “gender confused” are treated as serious offences that can be punished with a straight warning, whipping (1 to 3 times on padded derriere using a light rotan/cane), compensation/fine, suspension (no longer than 14 days), expulsion, or charged in court.<sup>215</sup> The introduction of such codes in schools contravenes the spirit and the commitment Malaysia made in ratifying the Convention on the Rights of the Child.

Religious leaders (including Christian leaders) and Islamic authorities continue to organise talks with youth and students to undermine human rights on the basis of the person’s actual or perceived sexual orientation, gender identity and gender

expression. These talks further perpetuate stigma and discrimination. This includes demonization and reiterating the requirement for rehabilitation. They have also published anti-LGBT materials (“10 myths about homosexuality”) that spreads misinformation about LGBTs alleging that such information is research-based.<sup>216</sup>

### **Hate Crimes and Hate Speech**

The acid attack on victims Nur Farziana and Nurul Umira on 24 August 2015 is suspected to be due to their gender expression and close friendship. While the MCA Public Service and Complaints Department is providing them with financial assistance, as both have been unable to work since the attack, these efforts are insufficient to address such hate crimes.<sup>217</sup>

### **Intensified Persecution by State Officials of the Trans Women Community**

The sharia ban on cross-dressing in the Negeri Sembilan state was upheld on 8 October 2015 and only applies to Muslims, but Justice for Sisters (JFS) confirms that transgender women of all ethnicities and nationalities have been targeted for persecution.

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<sup>214</sup> see paragraph 90 of the report.

<sup>215</sup> (2016)

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<sup>216</sup> 'Jakim Distributes Anti-LGBT Pamphlets' (Malaysiakini, 2015) <<https://www.malaysiakini.com/news/289670>> accessed 30 April 2016.

<sup>217</sup> Julian Editor, 'The Plight Of Acid Attack Victims Nur Farziana And Nurul Umira' (Malaysia Today, 2015) <<http://www.malaysia-today.net/the-plight-of-acid-attack-victims-nur-farziana-%EF%BB%BFand-nurul-umira/>> accessed 30 April 2016.

Since the decision by the Federal Court that set aside two court orders, and reinstated Section 66, raids and arrests have taken place in Kuala Lumpur, Terengganu and Penang, triggering a wave of fear among the transgender community to freely move. Three Indian transgender women were arrested while shopping in Brickfields, Kuala Lumpur on 12 October 2015 after a man accused them of stealing his wallet when they refused his request for sex. They were remanded in custody for three days and allegedly asked to remove their clothes and were subjected to further humiliation in detention. On 15 October 2015, 15 transgender women of various nationalities were arrested in a raid in Bukit Bintang, Pudu and Chow Kit, Kuala Lumpur. Four were charged under Sharia law and had their heads shaved. The remaining 11 were released on bail several days later, but on condition only cisgender men could post their bail. On 21 October 2015, three transgender women of Filipino nationality were arrested in Terengganu in a raid by the immigration department.<sup>218</sup>

Twelve trans women, including an Indonesian trans woman were arrested in a police raid in Penang on 2 March 2016. The 12 are being investigated under various charges, including gang robbery, violation of social pass, and Section 28 of the Penang Syariah Criminal Offences Enactment 1996, which criminalizes “male person posing as a woman”.

Persecution was also intense while the case challenging the cross-dressing ban was ongoing. Sixteen trans women were arrested in June 2014 when they were guests at a wedding in Negeri Sembilan.<sup>219</sup>

### **Positive Developments by Selected Agencies and Civil Society Organizations**

Some Government institutions have recognized the health needs of transgender persons. The Ministry of Health has included transgender persons and men who have sex with men as a group at risk under the National Strategic Plan on HIV/AIDS 2011–2015, which gives them access to treatment and medication and is a positive step.<sup>220</sup>

In a positive move in November 2015, Penang State EXCO for Youth and Sports; Women, Family and Community Development, and Member of Parliament for Bukit Mertajam YB Chong Eng recommended separate cells for transgender persons to protect their safety. Based on her correspondence with the Penang Police chief Datuk Abdul Rahim Hanafi in August 2015, she noted that there is currently no guideline for detainees who are transgender.

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<sup>219</sup> see The Transgender Case: A Summary (2016) <[http://www.loyarburok.com/2015/10/09/transgender-case-summary/;](http://www.loyarburok.com/2015/10/09/transgender-case-summary/)> accessed 30 April 2016.

<sup>220</sup> see paragraph 85 of the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, visit to Malaysia, 19 November – 2 December 2014

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<sup>218</sup> '21 Trans Women Arrested In Malaysia In Last Month - Gay Star News' (Gay Star News, 2015) <<http://www.gaystarnews.com/article/21-trans-women-arrested-in-malaysia-in-last-month/#gs.wjGPtU4>> accessed 30 April 2016.

However, sometimes they are placed in separate cells based on sensitivity and discretion of the police.<sup>221</sup>

Positive and supportive roles are undertaken by civil society organizations, such as Justice for Sisters, Seksualiti Merdeka, Global Development Initiative Association of Malaysia (GDI), Rainbow Connection Penang, and Knowledge and Rights with Young people through Safer Spaces (KRYSS). Justice for Sisters continues to provide legal support and advice to the transgender community. Justice for Sisters also continues to produce public education materials to inform the public on the discrimination and persecution faced by trans people, as well as carries out the ongoing I AM YOU campaign to encourage more people to become allies to the transgender people and to support their human rights issues. It has also collaborated with other groups such as Projek Dialog to hold fora that discusses the human rights issues faced by transgender people.

Seksualiti Merdeka, continues to exist through online platforms such as Facebook, providing a safe space for the LGBT community and allies to express themselves, share knowledge and experiences, exchange ideas for personal and collective activism and providing support to the community on safe sex, HIV/AIDS, access to LGBT-friendly clinics and doctors mental health and legal matters.

GDI contacted the Christian Federation of Malaysia, Malaysian Communication and Multimedia Commission, and also the Ministry of Home Affairs

to complain about a cyber bully on Facebook who issued distasteful statements about LGBT and heterosexual groups who support LGBTQ human rights due to passing of same sex marriage bill in the United States. Rainbow Connection Penang successfully organised an LGBTQ rights awareness event in Penang in September 2015.

Rainbow Connection conducts a safe space for the community based in Penang where they meet up once a month to hold discussions and social events such as movie screenings, games night, among others.

KRYSS focuses on research, training-of-trainers and litigation advocacy. The group has compiled a book of stories of lived realities of lesbians, bisexual women and transgender people, which will help educate the public and debunk myths about lesbians, bisexual women and transgender people. KRYSS also undertakes strategic communication to empower sexual minorities with positive images and representation of the community, as well as to educate the public on human rights, the important and non-negotiable principle of “equality before the law”, and the issues of the LGBTQ community.

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<sup>221</sup> see <https://justiceforsisters.wordpress.com/>

## Conclusion

The government's concerted efforts to curb homosexuality and transgenderism that are mostly focused in government schools and public universities suggest that the government is undertaking measures to prevent and correct gender non-conformity, and gender and sexual variance at a young age. This is a clear violation of the Convention of the Rights of the Child, to which Malaysia is a State party.

The government does not plan to support any repeal or enactment of legislation pertaining to sexual orientation, gender identity and gender expression, despite the trans women's win at the Court of Appeal in declaring Section 66 of the Syariah Criminal Offences Enactment of Negeri Sembilan that criminalises them as unconstitutional. The LGBTIQ community continue to be made political scapegoats in the current government's efforts to improve its chances for re-election.<sup>222</sup>

While Malaysia did not accept the recommendations with regard to sexual orientation and gender identity, Malaysia has emphatically noted that it "does not completely reject the possibility of revisiting these recommendations, as appropriate".<sup>223</sup> It is in this spirit, that the following recommendations are made:

- Take measures for the effective investigation, prosecution and punishment of all incidents and acts of violence targeting individuals based on sexual orientation and gender identity, including hate crimes against lesbian, gay, bisexual, transgender and intersex persons, as well as crimes against human rights defenders, journalists, and justice workers.
- Adopt a comprehensive anti-discrimination legislation to avoid all forms of discrimination on the basis of ethnicity, religion, sexual orientation or gender identity, language, political belief, mental or physical disability. In the absence of an anti-discrimination legislation, ensure that all forms of discrimination based on gender, gender identity, gender expression or sexual orientation are fully prohibited; implement the legal protection foreseen and provide assistance to victims of gender-based, sexual or domestic violence.
- Officially recognise transgender people as having legitimate identities by establishing an enabling environment through policies and laws for their socio-economic advancement. Transgender people must be entitled to change their name and gender on their identity cards without onerous legal and administrative procedures.

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<sup>222</sup> see for example, Michael Lavers, 'Malaysian Prime Minister Will Not Defend LGBT Rights' (Washington Blade: Gay News, Politics, LGBT Rights, 2015) <<http://www.washingtonblade.com/2015/08/21/malaysian-prime-minister-government-will-not-defend-lgbt-rights/#sthash.NwhghGyy.dpuf>> accessed 30 April 2016.

<sup>223</sup> See Report of the Working Group on the Universal Periodic Review, Malaysia, Addendum, paragraph 5, page 2.

- Immediately repeal laws that criminalise sexual orientation, gender identity and gender expression; recognise LGBTQ rights as human rights; and harmonise national laws, policies and practices with the Yogyakarta Principles.
- Enact a gender equality law, which should include provisions for the establishment of an anti-discrimination commission vested with powers to advise the government, hear complaints and deliver decisions and guidelines on all aspects of gender equality.
- Implement policies and programs that promote tolerance and non-discrimination against lesbian, gay, bisexual, transgender, queer and intersex persons, and to guarantee the compliance with the current international human rights standards in order to punish offences and violence motivated by prejudices.
- Undertake awareness-raising campaigns and programmes to promote tolerance and to address violence against lesbian, gay, bisexual, transgender, queer and intersex persons. This includes eliminating discriminatory restrictions against LGBTIQ persons in the areas of education, employment and livelihood.
- The government must rebuke the discriminatory comments of its representatives as well as non-State actors inciting hatred against people of diverse sexual orientations and gender identities.
- Conduct gender sensitisation trainings with media agents (editors, journalists, photographers etc.) on equal and fair representation of lesbians, bisexuals and queer and transgender people.
- Review national policies to address aspects of culture and religion, as well as gender stereotyping that perpetuate discriminatory practices against women and transgender people, in particular in relation to sexual orientation and gender identity, and sexuality in general.
- Ensure that schools do not punish students for their sexual orientation or gender identity. Homes and schools must be nurturing and supportive places for children. Parents and teachers have a vital role to play in encouraging students to become critical thinkers and eventually to become independent adults who can live full lives.
- Continue to review school textbooks and remove elements that perpetuate stereotyping of gender roles and expression.

- Put in place without delay, a comprehensive strategy to modify or eliminate patriarchal attitudes and stereotypes that discriminate against women and perceived femininity, including those based on sexual orientation and gender identity. Such measures should include efforts, in collaboration with civil society, to educate and raise awareness of this subject, targeting women and men at all levels of the society.
- Educate the judiciary, the legal profession, the police, Islamic religious affairs department officers and other State authorities on the right to equality and non-discrimination so that the human rights of trans people and men and women in consensual same-sex partnerships are respected and promoted.

## 4.6 Migrant Workers

- 146.217 Continue efforts to safeguard the dignity and protect the rights of foreign workers, including through requisite institutional and legislative measures (Nepal)
- 146.218 Adopt more robust measures to protect the rights of migrant workers and temporary workers (Colombia)
- 146.219 Expand the protection scope for migrants and their families and continue efforts to enhance the safety and welfare of foreign workers (Philippines)
- 146.220 Step up its efforts to protect the rights and to enhance the safety and welfare of foreign workers in Malaysia, particularly to secure better working conditions for domestic workers and better protection for those undocumented migrants (Indonesia)
- 146.221 Facilitate the process of immigration's regularization for those persons who have resided in the country for an extended period and allow the registration of their children born in Malaysia (Mexico)
- 146.222 **Ensure that the recruitment agencies for foreign workers fully comply with the applicable laws and regulation (Bangladesh)**
- 146.223 **Enhance access to justice for foreign workers (Bangladesh)**
- 146.224 **Duly investigate all cases of abuse of migrant domestic workers, bring perpetrators to justice and allow migrant workers full access to legal remedies (Germany)**
- 146.225 Ensure that all migrant workers, refugees and asylum seekers are treated in accordance with international standards, including respecting the principle of non-refoulement (Canada)

## Brief Assessment

With respect to recommendations number **146.222**, **146.223** and **146.224**, the Government of Malaysia has not been consistent with their promises. Recruitment agencies are not monitored and often become perpetrators of violence against migrant workers around the country with many charging exorbitant recruitment fees, withholding of passports and abusing of new as well as old recruits.<sup>224</sup> Contracts are substituted by agencies, and many are able to produce work permits for workers without even obtaining medical insurance for the workers. Many agencies are unregistered and fake permits are produced which render workers undocumented.

Migrant policies are ad hoc. Legalization process of undocumented migrants is subcontracted to recruitment agencies. The process keeps changing and there is a lack of transparency in the entire process which causes migrants to be cheated and subsequently to remain undocumented.

Access to justice for migrants workers and refugees is weak in Malaysia. The enforcement of Passport Act and Anti-Trafficking in Persons (ATIP) Act is very weak. Investigations carried out against employers are paltry and number of cases prosecuted and perpetrators convicted are very low. Little investigation is carried out with regards to migrant workers unless there are obvious physical abuses against the migrant/refugee. There is a lack of awareness on ATIP indicators therefore it is usually harder for victims to access the services which should be accorded to them. There is ample evidence of violence against migrants and refugees at detention centres and migrants and refugees both continue to be whipped.<sup>225</sup> There is no legal aid for these communities and many are not able to afford legal counsel to access justice. Physical and sexual abuse cases take too long to conclude so many opt to return home as they are not allowed to work with ongoing court cases. Undocumented migrants are not able to access justice without evidence of passports, while the immigration policy on “right to stay denied” forces a migrant to pay for special passes while court cases are ongoing. Special passes cost RM100/month to renew. Many migrant workers do not have the luxury of renewing special passes as they are not paid by employers in the first place.

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<sup>224</sup> Amnesty International (2010). Trapped : The Exploitation of Migrant Workers in Malaysia. See also, 'Sanders Is Right: Migrant Laborers In Malaysia Are Forced Into Working Under 'Slave-Like Conditions' (@politifact, 2016) <<http://www.politifact.com/global-news/statements/2016/apr/12/bernie-s/sanders-right-migrant-laborers-malaysia-are-forced/>> accessed 30 April 2016.

<sup>225</sup> Amnesty International (2010). Trapped : The Exploitation of Migrant Workers in Malaysia. Pp. 75.

## 4.7 Refugees and Asylum Seekers

- 146.225 Ensure that all migrant workers, refugees and asylum seekers are treated in accordance with international standards, including respecting the principle of non-refoulement (Canada)
- 146.226 Consider improving existing administrative frameworks to better manage and process refugees and asylum seekers in the country (Afghanistan)
- 146.227 Cooperate with international and regional organizations and diplomatic missions to tackle problems experienced by asylum seekers, refugees and foreigners who lose their documents in the country (Sudan)

### Legal Framework for the Protection of Refugees

The United Nations High Commission for Refugees (UNHCR) in Malaysia estimates that at the end of February 2016, there are approximately 158,510 refugees and asylum-seekers registered with them. Malaysia, however, is not a signatory to the 1951 Refugee Convention. There is at present no legal or administrative framework in the country in order to address the refugee situation. Consequently, refugees do not have access to fundamental rights including legal status, safe access to lawful employment, formal education and equal protection of the law. They are at constant risk of arrest, detention, deportation and exploitation.

The repercussions of having no legal or administrative framework to regulate and protect refugees was highlighted in May 2015, when two incidents were given significant local and international media coverage. This was the discovery of more than 100 mass graves of suspected human trafficking victims in the Thai-Malaysian border<sup>229</sup> and when thousands of refugees and migrants from Myanmar and Bangladesh attempted to land on Langkawi Island, Kedah state after being abandoned at sea by the

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<sup>226</sup> 'Figures At A Glance' (Unhcr.org.my, 2016) <[http://www.unhcr.org.my/about\\_us-@-figures\\_at\\_a\\_glance.aspx](http://www.unhcr.org.my/about_us-@-figures_at_a_glance.aspx)> accessed 30 April 2016.

<sup>227</sup> 'Refugees In Malaysia' (Unhcr.org.my, 2016) <<http://www.unhcr.org.my/refugeeMsia.htm>> accessed 30 April 2016.

<http://www.unhcr.org.my/refugeeMsia.htm>, <http://asylumaccess.org/program/malaysia/>

<sup>228</sup> 'Malaysia Mass Graves: Villagers Tell Of Migrants Emerging From Secret Jungle Camps' (the Guardian, 2015) <<http://www.theguardian.com/world/2015/may/26/malaysia-mass-graves-villagers-tell-of-desperate-migrants-emerging-from-jungle-camps>> accessed 30 April 2016.

<sup>229</sup> 'Malaysia Mass Graves: Villagers Tell Of Migrants Emerging From Secret Jungle Camps' (the Guardian, 2015) <<http://www.theguardian.com/world/2015/may/26/malaysia-mass-graves-villagers-tell-of-desperate-migrants-emerging-from-jungle-camps>> accessed 30 April 2016.

human traffickers responsible for their journey.<sup>230</sup> In the initial and critical phase of this humanitarian emergency, there appeared to be a high risk that the government would turn away those attempting to land and that those who had already landed would be detained and/or unlawfully returned.<sup>231</sup>

International criticism ensued, specifically against the potential breach of customary international law of *non-refoulement* by the government.<sup>232</sup> Eventually, the Government of Malaysia agreed to provide humanitarian assistance and temporary shelter for up to 7000 refugees and migrants for up to one year.<sup>233</sup>

## Developments

The period between May 2015-March 2016 has seen various developments and initiatives by the Malaysian government in improving existing administrative frameworks, better manage and process refugees and asylum seekers and cooperate with international and regional organisations and diplomatic missions to tackle problems experienced by asylum seekers.

As a response to the Rohingya boat arrivals, a crisis which also affected the region, Malaysia attended the Special Meeting on Irregular Migration in the Indian Ocean on 29 May 2015 and the Second Special Meeting on Irregular Migration in the Indian Ocean on 3-4 December 2015 held in Bangkok. The meeting was attended by approximately 19 countries within the region, by the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM), and the United Nations Resident Coordinator for Thailand. The objective was to initially deal with an immediate response to persons stranded at sea, to create a comprehensive strategy to prevent people smuggling and trafficking in persons and addressing root causes for the communities at risk.<sup>234</sup> The second meeting followed up on these agendas by addressing the current situation and challenges of irregular migration and discussed the way forward to resolving the contributing factors of the problem.<sup>235</sup>

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<sup>230</sup> Amnesty International, Amnesty International Report 2015/16 - Malaysia, 24 February 2016, available at: <http://www.refworld.org/docid/56d05b38c.html>

<sup>231</sup> 'Malaysia And Thailand Turn Away Hundreds On Migrant Boats' (the Guardian, 2015) <<http://www.theguardian.com/world/2015/may/14/malaysia-turns-back-migrant-boat-with-more-than-500-aboard>> accessed 30 April 2016.

<sup>232</sup> 'UNHCR Statement On Reports Of Boats Being Pushed To Sea By Authorities' (Unhcr.org.my, 2016) <[http://www.unhcr.org.my/News\\_Views-@-UNHCR\\_Statement\\_on\\_Reports\\_of\\_Boats\\_Being\\_Pushed\\_To\\_Sea\\_by\\_Authorities.aspx](http://www.unhcr.org.my/News_Views-@-UNHCR_Statement_on_Reports_of_Boats_Being_Pushed_To_Sea_by_Authorities.aspx)> accessed 30 April 2016.

<sup>233</sup> Amnesty International, Amnesty International Report 2015/16 - Malaysia, 24 February 2016, available at: <http://www.refworld.org/docid/56d05b38c.html>

<sup>234</sup> (2016) <<http://www.mfa.go.th/main/en/media-center/14/56880-Summary-Special-Meeting-on-Irregular-Migration-in.html>> accessed 30 April 2016.

<sup>235</sup> Ibid.

On 1 October 2015, Prime Minister Najib Razak announced at the United Nations General Assembly that Malaysia would accept 3,000 Syrian refugees in the next three years. While this is a generous and welcomed initiative commended by UNHCR, there was a simultaneous concern by various observers that it was an action that would create a sense of inequality amongst refugees already present in Malaysia, some who have been residing in the country for many years without meaningful access to state protection and assistance.

The Immigration Director-General Datuk Sakib Kusmi was also reported in the local media as conveying that the government was considering allowing UNHCR cardholders to work in the country. Home Ministry sources further revealed that a high level government committee was in the process of discussion with relevant stakeholders to reach this objective.

## Conclusion

The Government of Malaysia is strongly encouraged to sign and ratify the 1951 Convention relating to the Status of Refugees and enact domestic laws in line with international standards and that ongoing dialogue and initiatives should be consistent with the aforesaid objective. At the very minimum, the Government must observe their customary international law obligations in respect of the *non-refoulement* of refugees and asylum seekers in their territories.

There has been an evident trend in increased efforts by the Government of Malaysia to have more dialogue with the international community relating to the processing of asylum claims and refugee protection and to engage with regional initiatives in managing and resolving the refugee situation. These efforts are commended. It is however strongly recommended that all ongoing dialogues and initiatives are followed-up with concrete objectives supported by time-lines and with the engagement of relevant Ministries, law enforcement authorities and local and international organisations.

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<sup>236</sup> 'UN News - In UN Address, Malaysia Says Awareness Of True Islam Can Counter Extremists' 'Twisted Narrative' (UN News Service Section, 2016)

<sup>237</sup> <<http://www.un.org/apps/news/story.asp?NewsID=52100#.Vwdejc2vqeY>> accessed 30 April 2016.

'First-Class Refugees: Malaysia's Two-Tier System' (Aljazeera.com, 2015) <<http://www.aljazeera.com/indepth/features/2015/12/class-refugees-malaysia-tier-system-151221061627431.html>> accessed 30 April 2016.

<sup>238</sup> 'Job Prospects For Refugees' (NST Online, 2016) <<http://www.nst.com.my/news/2016/03/133453/job-prospects-refugees>> accessed 30 April 2016.

# CHAPTER 5

## NATIONAL MECHANISMS ON HUMAN RIGHTS

MALAYSIA'S 2016  
UPR MID - TERM  
REVIEW

## 5.1 Human Rights Commission of Malaysia (SUHAKAM)

- |        |   |
|--------|---|
| 146.53 | Continue the increased cooperation with the National Human Rights Commission and study ways to strengthen this institution, its status and functions (Russian Federation) |
| 146.54 | Continue efforts for strengthening Malaysia's National Human Rights Commission (Turkey)   |
| 146.55 | Continue the exemplary cooperation and interaction that exist between the Government and the National Human Rights Commission (Azerbaijan)                                |

### Brief Assessment

Despite the Government of Malaysia's wholehearted acceptance of all recommendations put forward in favour for the strengthening of the Human Rights Commission of Malaysia (SUHAKAM) and to increase cooperation between the government and SUHAKAM, the Government of Malaysia have on multiple counts failed to fulfil the accepted recommendations.

## SUHAKAM In Jeopardy

In 2015, the Prime Minister of Malaysia halved SUHAKAM's budget from roughly 11 million Ringgit (equivalent to roughly 2.7 million in<sup>239</sup> USD) to 5.5 million Ringgit (roughly 1.35 million in USD). The Chairperson of SUHAKAM, Tan Sri Hasmy Agam approached the Minister in the Prime Minister's Department in hopes of a review of the budget but was soon after informed publicly by the Minister in question to utilise their fixed deposits to operate.<sup>240</sup> According to the Chairperson of SUHAKAM, even with their fixed deposits, SUHAKAM would not have enough funds to cover its operations for 2016.<sup>241</sup> The deliberate measure to cut SUHAKAM's annual budget allocation is clearly in breach of Section 19 of the Human Rights Commission of Malaysia Act 1999 and the Paris Principles, and a clear step away from the accepted recommendations in regards to the empowerment of SUHAKAM.

Beyond SUHAKAM's budget, the Parliament of Malaysia dominated by the Barisan Nasional (the ruling coalition) has consecutively failed to debate or even examine the annual reports submitted by

SUHAKAM over the years. Further, proposals submitted by SUHAKAM for the strengthening and expansion of the Commission's power to conduct its operations were also summarily rejected without any further considerations.

SUHAKAM was not consulted or referred to during the drafting of the National Security Council Act 2015 that has been criticised by both national and international groups for its draconian measures and non-compliance with recognised human rights principles. SUHAKAM had expressed its concerns over the possibility of human rights violations following the introduction of the Act. Unfortunately, as per the Government of Malaysia's standard procedures, comments by SUHAKAM was duly noted and not taken into account in the subsequent debates in the Senate. The lack of consultation also manifested during the introduction of the Prevention of Terrorism Act 2015. Minister, Ahmad Zahid Hamidi announced that SUHAKAM was consulted but SUHAKAM vehemently denied any consultation and claimed that they were only briefed about the law.<sup>242</sup>

The lack of consultation by the Government of Malaysia and the wilful rejection of proposals to strengthen SUHAKAM make it undoubtedly clear that the Government of Malaysia has failed to fulfil the accepted recommendations.

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<sup>239</sup> 'SUHAKAM: Putrajaya has agreed to review our budget', The Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/suhakam-putrajaya-has-agreed-to-review-our-budget-cut>> accessed 24 February 2016

<sup>240</sup> Kow Gah Chie, 'Use your fixed deposit, Lows tell Suhakam after budget cut', Malaysia-Kini, <<https://www.malaysiakini.com/news/322425>> accessed 24 February 2016

<sup>241</sup> Melati A. Jalil and Nabihah Hamid, 'After 50% funding cut in 2016, SUHAKAM will close shop by Q3, says Hasmy', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/after-50-funding-cut-in-2016-suhakam-will-close-shop-by-q3-says-hasmy>> accessed 24 February 2016

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<sup>242</sup> 'No Zahid, we disagree with POTA , says SUHAKAM', MalaysiaKini, <<https://www.malaysiakini.com/news/295533>> accessed 24 February 2016

## CSO and NGO Cooperation and Collaboration with SUHAKAM

On a more positive note, SUHAKAM has actively worked on projects with local CSOs and NGOs. At the moment, SUHAKAM is working on a joint campaign for the ratification of the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment (UNCAT) with Amnesty International Malaysia, Bar Council of Malaysia, Suara Rakyat Malaysia (SUARAM) and Lawyers for Liberty (LFL). The willingness to collaborate and work with stakeholders as shown by SUHAKAM has strengthened the position of SUHAKAM and created new platforms for discussion and engagement to address human rights issues in Malaysia. Apart from that, SUHAKAM has been at the forefront of protecting human rights defenders especially when COMANGO was declared a 'HARAM'<sup>243</sup> organisation by the Home Ministry of Malaysia in January 2014, by coming up with a press statement expressing its concern over the latter's action.<sup>244</sup>

## Conclusion

Rather than undermining the operational capacity of SUHAKAM, the Government of Malaysia should be engaging SUHAKAM and establishing strong foundations between government agencies and SUHAKAM. SUHAKAM has expressed willingness to discuss and advise the Government of Malaysia on policies and laws that can directly and potentially have adverse implications for human rights. The relevant ministry or agency should take proactive steps in engaging with SUHAKAM.

Furthermore, the Government of Malaysia must provide adequate funding as outlined by the Paris Principles and in the Act of Parliament which legitimises SUHAKAM and its mandate to protect and promote human rights. SUHAKAM's request to strengthen its mandate and investigative powers should also be given due consideration. Last but not least, SUHAKAM's annual report that has been consistently tabled in Parliament every year should be given due consideration and be debated and discussed in Parliament.

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<sup>243</sup> Haram is a Malay word for illegal. The word was written in all capital letters as stated by SUHAKAM in their press release

<sup>244</sup> SUHAKAM, 'Ministry of Home Affairs' Statement on Comango a Setback for the Freedom of Association and Expression in Malaysia', Press Release, <<http://www.suhakam.org.my/ministry-of-home-affairs-statement-on-comango-a-setback-for-the-freedom-of-association-and-expression-in-malaysia/>> accessed 31<sup>st</sup> March 2016

## 5.2 National Human Rights Action Plan (NHRAP)

146.51	Give continuity to strengthening of national human rights mechanisms (Nepal)
146.52	Continue measures to strengthen the capacity of national human rights protection mechanisms (Uzbekistan)
146.57	Continue efforts on adopting the National Human Rights Action Plan (Kazakhstan)
146.60	Implement a comprehensive policy for the development of human rights that includes a national institution that allows the coordination and implementation of the said policy (Colombia)

### Brief Assessment

Following the conclusion of the UPR in 2013, the Government of Malaysia continues its effort in preparing the NHRAP by appointing the Legal Affairs Division (BHEUU) of the Prime Minister's Department as the focal agency. The proposed NHRAP contains five core features which are civil and political rights; economic, social, religious and cultural rights; rights of vulnerable groups, rights of indigenous peoples and international obligations.<sup>245</sup>

In the Special Meeting with Representatives of Non-Governmental Organizations (NGOs) and Civil Society Organizations (CSOs) Towards the Completion of the Baseline Study for Development of Malaysia's NHRAP in 2014,<sup>246</sup> the Minister in charge, Nancy Shukri, emphasized that the NHRAP must be based on the "Malaysian mould"<sup>247</sup> due to the country's racial compositions.<sup>249</sup>

Despite accepting the recommendation **146.57** in full, the Government of Malaysia did not take sufficient steps in preparing the NHRAP. In 2015, the Minister Nancy Shukri is quoted that the progress of developing the NHRAP has been slow due to the lack of funds. The NHRAP is now overdue as it was to be completed by the end of 2015 as envisaged by the Minister in charge.

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<sup>245</sup> As mentioned in the BHEUU's official portal, <<http://www.bheuu.gov.my/portal/index.php/en/perkhidmatan/orang-awam/185-pelan-tindakan-hak-asasi-manusia/781-national-human-rights-action-plan>> accessed 19 March 2016.

<sup>246</sup> This Special Meeting took place in Hotel Bangi-Putrajaya on 13 November 2014.

<sup>247</sup> 'Use Malaysian mould for human rights action plan, says Nancy,' The Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/use-malaysian-mould-for-human-rights-action-plan-says-nancy>> accessed 19 March 2016.

<sup>248</sup> It was mentioned that the government had approved an allocation of more than RM4 million for the implementation of the plan.

<sup>249</sup> 'Nancy: national human rights action plan to be implemented,' The Sun Daily. <<http://www.thesundaily.my/news/1546741>> accessed 20 March 2016.

### **Consultant Approach**

Recently, a consultancy team, Hazizah and Co legal firm, was mandated by the Government to conduct research across Malaysia in order to come up with preliminary studies and suggestions to develop a NHRAP. Ultimately, the framework, drafting and finalizing of an NHRAP will fall on the Government. A work plan shared by the consultancy team in a meeting with COMANGO on 16<sup>th</sup> May 2016 indicates that the Government will receive the final report to develop a NHRAP in March 2017.

Such approach is contradictory to the aforementioned timeline given by the Minister. Moreover, it is clear that the process to develop an NHRAP seems to have restarted despite the claim that there lack of funds have slowed the process.

### **Coordination and Implementation of a Comprehensive Policy for the Development of Human Rights**

As it stands, recommendation **146.60**, which the Government accepted in full, to implement a comprehensive human rights policy together with a national institution to oversee those policies is absent. The NHRAP is the best bet for the Government to implement the aforementioned recommendation and clearly it has not been in place. It is also a doubt whether a national institution to oversee the implementation of an NHRAP will be effective, as the current human rights commission, SUHAKAM is undermined and treated with disdain.

### **Conclusion**

While the Government had appointed the BHEUU of the Prime Minister's Department as the focal agency to prepare and develop Malaysia's NHRAP, the progress has been slow. With the inclination of the Minister in charge to confine the NHRAP to the Government's agenda, it remains a concern whether the final NHRAP would be consistent with the Universal Declaration of Human Rights (UDHR) and other binding international human rights instruments.

## 5.3 Independent Police Complaints and Misconduct Commission (IPCMC)

146.56

Establish an Independent Police Complaints and Misconduct Commission in accordance with the recommendations of the 2005 Royal Commission (New Zealand)

### **Enforcement Agency Integrity Commission (EAIC): a declared Independent Police Complaints and Misconduct Commission (IPCMC)<sup>250</sup>**

The Malaysian civil society has called for the establishment of the IPCMC since the recommendations put forward by the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police since 2005. Despite the findings by the Royal Commission and the call by civil society organizations, the Government of Malaysia has rejected the setting up of an IPCMC and established the Enforcement Agency Integrity Commission (EAIC) instead.

In principle, the EAIC was “designed” by the Government to be similar to IPCMC with a wider scope. Unfortunately, the wider scope does not include greater oversight power but a longer list of institutions and state agencies to be monitored. EAIC is tasked to monitor 21 different enforcement agencies in total. Even though the EAIC was tasked to monitor 21 enforcement agencies, a significant portion of the complaints received by EAIC were complaints made against the Royal Malaysian Police. Based on the statistic published by EAIC, 958 out of 1373 complaints (70 per cent) made between 2011 and 2016 were made against the Royal Malaysian Police.<sup>251</sup>

With this alarming statistic, EAIC has undertaken internal restructuring and established an internal task force to address the disproportionate amount of reports made against the Royal Malaysian Police. High profile investigations include the death of Syed Mohd Azlan, who had been arrested on November 3, 2014 near Pengerang, Johor over possible involvement in an armed altercation on September 14 the same year. Azlan was later transferred to the Kota Tinggi district police headquarters to be remanded, but died while in transit. A post-mortem determined the cause of death to be blunt force trauma to his chest, while 61 defensive wounds were discovered on his face, torso, and both legs.<sup>252</sup>

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<sup>250</sup> This report will focus on the interaction between the EAIC and the Royal Malaysian Police and excludes its efficacy in overseeing misconduct for the other 20 enforcement agencies.

<sup>251</sup> Enforcement Agency Integrity Commission, ‘Complaints Statistics’, <<http://www.eaic.gov.my/pusat-sumber/statistik/aduan>> accessed 7<sup>th</sup> March 2016

<sup>252</sup> ‘EAIC says Johor man’s 2014 death in custody was murder’, The Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/eaic-says-johor-mans-2014-death-in-custody-was-murder#sthash.4hjhCbdm.dpuf>> accessed 31<sup>st</sup> March 2016

Apart from the perceived lack of focus due to the responsibility to provide oversight for 21 enforcement agencies, EAIC is also not empowered to address the misconduct by the Royal Malaysian Police. From 31<sup>st</sup> March 2011 until May 30<sup>th</sup> 2015, of 1,088 complaints lodged with the EAIC, a whopping 778 of them, or 72 per cent, were complaints against the police.<sup>253</sup> While in the year 2014 alone, Amnesty International reported 13 cases of deaths in police custody.<sup>254</sup> This unfortunate predicament affirms some of the inherent weaknesses of the EAIC raised by critics at its inception.

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Despite the institutional weakness inherent in EAIC and the apathy shown by the Royal Malaysian Police, the EAIC took proactive steps in challenging the conditions imposed upon it. The EAIC has actively collaborated and cooperated with the Human Rights Commission of Malaysia (SUHAKAM) on various investigations into alleged misconduct. Thus far, civil society organizations were informed of SUHAKAM's initiatives to get the EAIC on board of crucial investigations especially during the alleged torture of detainees held under the Security Offences (Special Measures) Act 2012 (SOSMA) in January 2016.<sup>256</sup> The alleged torture includes claims of being threatened at gun point during questioning, being kept in an air-conditioned room after being drenched in cold water, and sexual harassment and threats against detainees' family members.<sup>257</sup>

The proactive steps for collaboration and joint venture between EAIC and SUHAKAM is greatly welcomed. In general, EAIC is endowed with more power in terms of conducting investigations when compared to SUHAKAM. EAIC's willingness to "share" its power with SUHAKAM in order to further human rights is highly commendable and bodes well for the development of EAIC.

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<sup>253</sup> Zurairi Ar, 'Four years and 1,000 complaints later, EAIC says nobody prosecuted yet', Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/four-years-and-1000-complaints-later-eaic-says-nobody-prosecuted-yet#sthash.bt49GiGQ.dpuf>> accessed 31<sup>st</sup> March 2016

<sup>254</sup> Ibid.

<sup>255</sup> The Malaysian Bar, 'Bar Council to Gov't: Admit EAIC is a failure', <[http://www.malaysianbar.org.my/legal/general\\_news/bar\\_council\\_to\\_govt\\_admit\\_eaic\\_is\\_a\\_failure.html](http://www.malaysianbar.org.my/legal/general_news/bar_council_to_govt_admit_eaic_is_a_failure.html)> accessed 7 March 2016

<sup>256</sup> HAKAM, 'Suhakam starts probe into Sosma detainees' torture allegation', <<http://hakam.org.my/wp/index.php/2016/01/25/suhakam-starts-probe-into-sosma-detainees-torture-allegation/>> accessed 1<sup>st</sup> April 2016

<sup>257</sup> HAKAM, 'More Sosma detainees allege torture, says rights group', <<http://hakam.org.my/wp/index.php/2016/02/19/more-sosma-detainees-allege-torture-says-rights-group/>> accessed 1<sup>st</sup> April 2016

## **Conclusion**

The EAIC has shown some initiative in discharging its duties. Unfortunately, it is still plagued by institutional weaknesses that were "built" into it by the EAIC Act. For it to step into the shoes of the proposed IPCMC would require significant amendments to the EAIC Act. It remains to be seen whether the Government of Malaysia would eventually amend the EAIC Act and grant EAIC the necessary powers to investigate and prosecute misconduct by the Royal Malaysian Police.

# CHAPTER 6

## TRAFFICKING IN PERSONS

MALAYSIA'S 2016  
UPR MID - TERM  
REVIEW

## 6.0 Trafficking in Persons

- 146.131 Continue the significant progress made in fighting trafficking (Djibouti)
- 146.132 Enhance its efforts on Anti-trafficking in persons measures (Iran (Islamic Republic of))
- 146.133 Continue taking measures on combating trafficking in persons (Kazakhstan)
- 146.134 Further its national efforts to eradicate trafficking in persons, especially women and children (Egypt)
- 146.135 Continue with efforts to combat human trafficking, inter alia, consider inviting the Special Rapporteur on trafficking in persons, especially women and children, to the country (Belarus)
- 146.136 Continue the efforts and cooperation in combating trafficking in persons in regional frameworks along with the share of the country's positive experience in this field (Cambodia)
- 146.137 Strengthen methods for combating trafficking (Senegal)
- 146.138 Enhance measures to implement the CRC and CEDAW, and to combat trafficking in persons, especially women and children, including strengthening cooperation with NGOs in the area of protection of victims of trafficking in persons (Philippines)
- 146.139 Continue its efforts to combat trafficking in persons, especially women and children (United Arab Emirates)
- 146.140 Continue its efforts in fostering cooperation with its neighbours to address the problem of trafficking in women and children (Bhutan)
- 146.141 Continue its efforts to fight against trafficking in persons and protect the rights of migrants (Algeria)

- 146.142 **Allocate more resources to ensure the effective implementation of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (Mozambique)**
- 146.143 **Provide support and assistance to victims of trafficking in persons, especially women and children, and fully implement the Anti-Trafficking in Persons Act amended in 2010 (United Arab Emirates)**
- 146.144 **Cease the practice of detaining trafficking victims, and allow them to travel, work and reside outside government facilities (United States of America)**

### **Brief Assessment**

In June 2014, Malaysia was downgraded to the lowest ranking in the U.S. State Department's Trafficking-in-Persons (TIP) Report. Malaysia's relegation to Tier 3 indicates that the country had failed to comply with basic international requirements to prevent trafficking and protect victims within its borders.<sup>258</sup> The immediate response by the government was that the US State Department had "*relied on unverified information provided by dubious organizations*" which was "*flawed, inaccurate and did not reflect measures and steps taken by the respective Malaysian authorities*" commitment to combat human trafficking in Malaysia.<sup>259</sup>

A video documentary released by journalists Mahi Ramakrishnan and Rian Maelzer which showed the extent of underage sex trafficking in Malaysia was met with denial by the government authorities which downplayed the pervasiveness of underage child prostitution. Likewise, the government responded with a denial of child or forced labour in Malaysia's palm oil sector following the publication of the US Department of Labour list that cites Malaysia's palm oil industry for employing children. A research report published by *Verité* revealed that "*one-third of migrant workers in the Malaysian electronics industry are trapped in forced labour*".<sup>260</sup>

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<sup>258</sup> 'Malaysia Downgraded In US Human Trafficking Report - Nation | The Star Online' (Thestar.com.my, 2014) <<http://www.thestar.com.my/news/nation/2014/06/21/malaysia-downgraded-in-us-human-trafficking-report/>> accessed 30 April 2016.

<sup>259</sup> 'US Downgrade Does Not Reflect Government's Effort To Fight Human Trafficking - Nation | The Star Online' (Thestar.com.my, 2014) <<http://www.thestar.com.my/News/Nation/2014/06/26/US-downgrade-does-not-reflect-Govts-effort-to-fight-human-trafficking/>> accessed 30 April 2016.

<sup>260</sup> Annie Kelly, 'Modern-Day Slavery Rife In Malaysia'S Electronics Industry' (the Guardian, 2014) <<http://www.theguardian.com/global-development/2014/sep/17/modern-day-slavery-malaysia-electronics-industry>> accessed 30 April 2016.

Following the downgrade, the Malaysian government announced that it will put several initiatives into place in its efforts to improve the ranking. This included amending the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM) Act 2007 (Act 670) to include key provisions which will allow freedom of movement and employment for trafficked victims and for NGOs to shelter the victims and appoint a representative as a Protection Officer.<sup>261</sup>

Since the downgrading of Malaysia to Tier 3, the government had been more pro-active in engaging with the NGOs. The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) had several consultative meetings in 2014 and 2015 with selected NGOs involved in anti-human trafficking efforts to inform the NGOs of the proposed amendments and to obtain the NGO's feedback and commitment to collaborate with the government in terms of sheltering the trafficked victims.

From 23 to 28 February 2015, the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Malaysia at the invitation of the Malaysian government and commended the government for its anti-human trafficking efforts *“as evidenced by its legislative and policy framework, and its multidisciplinary approach in anti-trafficking measures”* through MAPO. However, she expressed several key areas of concern, namely, *“the focus on trafficking for the purpose of sexual exploitation to the neglect of other forms of trafficking, particularly labour trafficking; and the restrictive national immigration policy focused on rapid deportation of irregular migrants, which does not provide the opportunity for accurate identification and provision of assistance to victims of trafficking. Other concerns include the placement of victims in shelters without freedom of movement and the capacity gap of enforcement officials which is further exacerbated by reported prevalence of corruption of some officials.”*<sup>252</sup>

Following the discovery of "death camps" in southern Thailand, the Malaysian government had initially denied the existence of such camps within its territory.<sup>263</sup> However, in May 2015, mass graves of human trafficked victims were in fact discovered in Perlis. Tenaganita reported that, based on testimonies of the the migrant and refugee communities of Myanmar, the Rohingya, and of Bangladesh, *“Malaysians are very much involved in the trafficking of persons at the Thailand-Malaysia border”*. There are cases of kidnapping for ransom, and refugees being sold to traffickers and agents for sex and labour trafficking.<sup>264</sup>

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<sup>261</sup> 'Withholding Passports Illegal, Govt Warns - Nation | The Star Online' (Thestar.com.my, 2014) <<http://www.thestar.com.my/News/Nation/2014/12/21/Withholding-passports-illegal-Govt-warns-In-a-bid-to-curb-human-trafficking-the-Home-Affairs-Ministr/>> accessed 30 April 2016. /

<sup>262</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, Mission to Malaysia, 23 to 28 February 2015.

<sup>263</sup> 'Home Ministry Says No Immigrant Mass Graves In Malaysia' (Themalaymailonline.com, 2015) <<http://www.themalaymailonline.com/malaysia/article/home-ministry-says-no-immigrant-mass-graves-in-malaysia>> accessed 30 April 2016.

<sup>264</sup> 'Tenaganita: Malaysians Likely Behind Southern Thai Mass Grave' (Themalaymailonline.com, 2015) <<http://www.themalaymailonline.com/malaysia/article/tenaganita-malaysians-likely-behind-southern-thai-mass-grave>> accessed 30 April 2016.

Tenaganita's claims that information of the existence of the slave camps at the border had been relayed to the police and the ASEAN Secretariat Committee years ago but was not taken seriously and was strongly denied by the Inspector General of Police who said he was not told.<sup>265</sup>

UNHCR had reported that the discovery of the mass graves was not surprising and was tangible evidence of what they have heard from many of the refugees.<sup>266</sup> The discovery of the mass graves revealed the extent and prevalence of human trafficking at the Malaysian borders. However, the government had maintained that no Malaysians were involved as the masterminds or organizers of the trafficking activities.<sup>267</sup> The Home Minister himself had gone on the report to say that following investigations carried out by Malaysian and Thai police, the traffickers were found to be Thais and Myanmar nationals and that no Malaysians were involved in this syndicate.<sup>268</sup>

As of April 2016, the Malaysian police have yet to arrest or charge anyone for the crime, in contrast with the Thai counterparts who had made sweeping crackdowns and arrested almost 100 people in relation to human trafficking.

The discovery of the mass graves and slave campsites highlighted the complicity of government officials in human trafficking activities. It was reported in the newspapers that two policemen were arrested for their involvement and were "undergoing rehabilitation" at a detention centre.<sup>269</sup> A local newspaper published a controversial story based on a report compiled by the Special Branch which revealed that 80 per cent of border security personnel and officers in enforcement agencies such as the Immigration Department, the Malaysian Maritime Enforcement Agency, the Anti-Smuggling Unit and the police's General Operations Force are corrupt. These personnel are not only on the take but on the payroll of the syndicates. It was claimed that although the information was shared with these agencies, they were not followed through.<sup>270</sup>

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<sup>265</sup> 'IGP: We Were Not Told - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/05/29/igp-we-were-not-told/>> accessed 30 April 2016.

<sup>266</sup> 'Tenaganita: Malaysians Likely Behind Southern Thai Mass Grave' (Themalaymailonline.com, 2015) <<http://www.themalaymailonline.com/malaysia/article/tenaganita-malaysians-likely-behind-southern-thai-mass-grave>> accessed 30 April 2016.

<sup>267</sup> 'Wan Junaidi: Malaysians Not Mastermind In Human Trafficking - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/05/28/wan-junaidi-malaysians-involvement-not-as-masterminds/>> accessed 30 April 2016.

<sup>268</sup> 'Malaysia Aims For Tier 1 - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/12/22/malaysia-aims-for-tier-1-dpm-govt-vows-to-do-more-in-fight-against-human-trafficking/>> accessed 30 April 2016.

<sup>269</sup> 'Nine Foreigners Held Over Human Smuggling - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/07/01/nine-foreigners-held-over-human-smuggling/>> accessed 30 April 2016.

<sup>270</sup> 'EXCLUSIVE: 80Pc Of Enforcers Manning Borders On The Take' (NST Online, 2016) <<http://www.nst.com.my/news/2015/09/exclusive-80pc-enforcers-manning-borders-take>> accessed 30 April 2016.

With the backdrop of the mass graves and the lack of any concrete action in its efforts to tackle the human trafficking problems, it came as a shock to many human rights groups when the U.S. State Department upgraded Malaysia in its TIP Report in June 2015 to Tier 2 Watch List. The U.S. Secretary of State John Kerry had remarked that whilst *“the government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking, however it is making significant efforts to do so”*.<sup>271</sup>

Human Rights Watch Asia Division deputy director Phil Robertson said Malaysia’s upgrade was not justified as the government had not made significant improvement to its anti-trafficking efforts.<sup>272</sup> The Bar Council president held that the discovery of the death camps and mass graves of victims of human trafficking was *“irrefutable proof that human trafficking has been ongoing on a large scale and for a considerable period of time”* in Malaysia.<sup>273</sup>

The amendments to the ATIPSOM Act were finally approved by Parliament in June 2015. On paper, the amendments appear to be a positive effort on the part of the government to address some of the issues which have continuously been advocated by NGOs and highlighted in the annual US TIP Report, namely, the issues on protection and freedom to move and to work. The Bar Council pointed out that the recent amendments to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 had yet to come into force to justify the upgrade of Malaysia’s ranking.<sup>274</sup> To date these key provisions in the Amendments have not been enforced due to a lack of a regulatory framework.

The government appears to be more interested in improving on the country’s tier ranking to Tier 1 by 2020 and had attributed the upgrade from Tier 3 to Tier 2 to “significant work” done to tackle human trafficking which “had paid off”.<sup>275</sup> Many NGOs and human rights groups, whether locally or internationally, including US lawmakers, would beg to differ, and had condemned the upgrading of Malaysia’s ranking as more about the Trans Pacific Partnership Agreement (TPPA) and U.S. trade politics than Malaysia’s efforts to combat human trafficking over the past year. Many NGOs and human rights groups warned that this undermines the integrity of the TIP report.<sup>276</sup>

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<sup>271</sup> 'M'sia Upgraded In US Human Trafficking Report' (Malaysiakini, 2015) <<https://www.malaysiakini.com/news/306370>> accessed 30 April 2016.

<sup>272</sup> Ibid.

<sup>273</sup> 'Bar Unhappy Over Malaysia's Upgrade On U.S. Watch List On Trafficking - The Rakyat Post' (The Rakyat Post, 2015) <<http://www.therakyatpost.com/news/2015/07/22/bar-unhappy-over-malaysias-upgrade-on-u-s-watch-list-on-trafficking/>> accessed 30 April 2016.

<sup>274</sup> Ibid.

<sup>275</sup> 'Malaysia Aims For Tier 1 - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/12/22/malaysia-aims-for-tier-1-dpm-govt-vows-to-do-more-in-fight-against-human-trafficking/>> accessed 30 April 2016.

<sup>276</sup> 'Ngos Pressure US To Tell All About M'Sia Trafficking Upgrade' (Malaysiakini, 2015)

It was reported by the Home Minister that the government is considering implementing the single-window system to register foreign workers online which will be able to tackle the issue of human trafficking and victimisation of foreign workers. The government's track record of implementing systems to address the undocumented migrant issues have not been exemplary, a case in point would be the controversial 6P Amnesty Program in 2013 to register migrants which resulted in "a mess of scams by agents" who swindled the migrant workers instead.

At the 27<sup>th</sup> ASEAN Summit in November 2015, the ASEAN leaders signed the ASEAN Convention against Trafficking in Persons to "prevent and combat trafficking in persons, especially women and children; protect and assist human trafficking victims with full respect for their human rights; and promote co-operation among relevant parties". Following the discovery of the mass graves and slave campsites, Thailand and Malaysia are in discussion to cooperate in the prevention of human trafficking and security along the border areas.

In December 2015, the Home Minister had reported in a local newspaper that 30 victims would be given employment at a hotel, with the help of the US embassy, and the ministries of Women, Family and Community Development, and Youth and Sports were providing them with counselling. However, there has been no further report on the development of this proposal.

## **Conclusion**

While the amendments of the ATIPSOM Act seem to address the issues on protection and provision of freedom for movement and employment, the weaknesses in the prosecution of the traffickers as reflected in the slow pace and low numbers of convictions in human-trafficking cases remains disconcerting.

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<sup>277</sup> 'Single Window System For Foreign Workers To Combat Human Trafficking, Says DPM' (Themalaymailonline.com, 2015) <<http://www.themalaymailonline.com/malaysia/article/single-window-system-for-foreign-workers-to-combat-human-trafficking-says-d>> accessed 30 April 2016.

<sup>278</sup> Anisah Shukry, '6P, An Engineered Mess?' (Free Malaysia Today, 2013) <<http://www.freemalaysiatoday.com/category/nation/2013/10/04/6p-an-engineered-mess/>> accessed 30 April 2016.

<sup>279</sup> 'Asean Summit: Pact To Protect Trafficking Victims - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/11/22/pact-to-protect-trafficking-victims-key-convention-to-also-mete-out-harsh-punishment-on-wrongdoer/>> accessed 30 April 2016.

<sup>280</sup> 'Wan Junaidi: Malaysians Not Mastermind In Human Trafficking - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/05/28/wan-junaidi-malaysians-involvement-not-as-masterminds/>> accessed 30 April 2016.

# CHAPTER 7

## NATIONAL UNITY & NATIONAL COHESION

MALAYSIA'S 2016  
UPR MID - TERM  
REVIEW

## 7.0 National Unity and Social Cohesion

146.87	In accordance with national circumstances, continue to strengthen mutual respect and tolerance and different cultures among religions and maintain social plurality while maintain improved family harmony and respect for women (China)
146.88	Continue the implementation of initiatives to strengthen national unity and promote inter-ethnic tolerance and respect (Russian Federation)
146.89	Streamline current measures to address the unique needs of its diverse society (Zimbabwe)
146.90	Enhance its initiatives and programmes to further promote a sense of national unity and pride among all its citizens (South Africa)
146.91	Enhance initiatives on the programme to bolster a sense of national unity (Islamic Republic of Iran)
146.92	Enhance its initiatives and programmes to further instil a sense of national unity and pride among its people (Democratic People's Republic of Korea)
146.93	Continue implementing the positive initiatives introduced under the 1Malaysia concept with a view to strengthen national unity (Democratic People's Republic of Korea)
146.94	<a href="#">Launch a comprehensive national policy on gender equality and non-discrimination (Colombia)</a>

### Introduction

Though over three years have passed since Malaysia accepted the UPR's recommendations, there have been no recent concrete signs of progress. In fact, the situation in Malaysia has regressed.

### **National Unity Consultative Council (NUCC)**

Despite the government's acceptance of the UPR recommendations to further strengthen National Unity and Social Cohesion in the State, the government had reneged on its commitment to fulfil the UPR recommendations. It is undeniable that there were some efforts by the State to fulfil the UPR recommendations. For instance, the National Unity Consultative Council (NUCC) was set up on November 25, 2013 which was given the mandate to prepare a national blueprint for national unity and social cohesion.<sup>281</sup> The newly-formed body discussed politically-sensitive topics such as the use of "Allah" by non-Muslims, housing issues and issues concerning Sabah and Sarawak, relative poverty issues that cut across all races, human rights issues of the LGBTIQ, and many other issues. Unfortunately, the recommendations which were encapsulated under the proposed National Harmony Bill to the Prime Minister and which were made public have yet to see any fruition. The council disbanded after completing their task, with no clear indication of what will happen with the proposed National Harmony Bill. There appears to be a lack of political will by the government to follow through with its own good initiatives in implementing the UPR recommendations in this area.

### **National Civics Bureau – Promoting Racism, Discrimination and Religious Intolerance through Institutional Means**

The National Civics Bureau (BTN) is an agency of the Malaysian government in the Prime Minister's Department. It was established in 1974 as the Youth Research Unit (Unit Penyelidikan Belia) under the Youth Ministry, but was renamed and transferred in 1981. BTN's stated objective is to nurture the spirit of patriotism and commitment to excellence among Malaysians, and train leaders and future leaders to support the nation's development efforts.<sup>282</sup>

Currently, the government of Malaysia conducts the National Civics Bureau course (Kursus Tatanegara) with objectives to instil patriotism and good values to prepare Malaysians to achieve a high-income nation. This course is offered to government agencies and corporations as well. Eventually, it became a systematic indoctrination of youths on Islam by upholding Malay supremacy in a multi-ethnic and multi-religious country.

In July 2015, BTN was under heavy criticism for uploading racially-sensitive slides on their website. The six slides contained "absolutely nothing patriotic or remotely relevant to civil servants" but were "cheap dirty manoeuvres" by the ruling party of the government (UMNO-BN) to cement their position and power in their preparation for the next general election.<sup>283</sup> These slides were uploaded onto BTN's website since March 2015 but were immediately taken down after it was widely circulated in social media. These slides that were found on the website depicted:

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<sup>281</sup> New Straits Times Online, "A nation united", <<http://www.nst.com.my/news/2015/12/114825/nation-united>> accessed 1<sup>st</sup> April 2016.

<sup>282</sup> Biro Tatanegara, 'Latar Belakang', <<http://www.btn.gov.my/index.php/korporat-bm/korporat-profil-bm/korporat-profil-latarbelakang-bm-4>> accessed 1<sup>st</sup> April 2016

<sup>283</sup> Free Malaysia Today, "BTN's own slides proof of racism, says Kasturi", <<http://www.freemalaysiatoday.com/category/nation/2015/06/21/btns-own-slides-proof-of-racism-says-kasturi/>> accessed 7<sup>th</sup> March 2016

- a) a detailed racial breakdown of analysis of parliamentary seats held by the ruling coalition and opposition parties' seats from 1959 to 2013
- b) phrases such as "Chinese-language press were daggers to stab the government" with news articles to promote the opposition movement
- c) the analysis of the election results by size of majority and a detailed breakdown of MPs in the Parliament divided into Muslim and non-Muslim MPs by race.
- d) a breakdown of the richest men in Malaysia (mostly of Chinese ethnicity)
- e) the number of Tamil and Chinese vernacular schools in the country
- f) a remark on how Christians who make up 9.1% of the population were granted permission to build a mammoth church, which poked into the sensitivities of a majority Malay-Muslim nation<sup>284</sup>
- g) the possible outcomes for the 14<sup>th</sup> General Election drawing comparison to the Killing Fields' Pol Pot regime
- h) attacks on young Malay leaders in the DAP and the G25 group of eminent Malays.<sup>285</sup>

### **Rukun Tetangga – Promoting Unity at the Grassroots Level**

The Department of Unity and National Integrity (JPNIN) have stated that they are actively working at grassroots level through a "good neighbourhood" programme also known as Rukun Tetangga. Currently, there are no clear statistics to show the impact of JPNIN's engagement with local communities. Nevertheless, this move is a slight progress towards implementing recommendations **146.90, 146.91, 146.92.**

### **Impunity in Inciting Disharmony**

The Rural and Regional Development Minister Ismail Sabri Yaakob had recently proposed and opened a Bumiputera-only (those of ethnic Malay and the indigenous peoples of Sabah and Sarawak) gadget mall. The minister mooted the idea for a Malay-only tech mall after the violent racial brawl that occurred outside the popular Low Yat Plaza on 12<sup>th</sup> July 2015.<sup>286</sup> The altercation was initially a brawl between personnel of a hand phone vendor, incidentally of Chinese descent, and a Malay youth who allegedly stole devices from the store.

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<sup>284</sup> According to the census by the National Statistics Department of Malaysia in 2010, Malays constitute 50% of the nation. Malays, as stated in Article 160 of Malaysia's

<sup>285</sup> Ibid.

<sup>286</sup> MalayMailOnline, "All-Bumi 'Low Yat 2' to open December with new name, says minister", <<http://www.themalaymailonline.com/malaysia/article/all-bumi-low-yat-2-to-open-december-with-new-name-says-minister>> accessed 7<sup>th</sup> March 2016

The fight erupted into a racial brawl when a person by the name of Ali Tinju incited Malay crowds outside of the mall to rally against Chinese Malaysians, whom they accuse of intentionally selling faulty devices in the digital mall.<sup>287</sup> In fact, the same minister, Ismail Sabri Yaakob, also sparked national uproar at the beginning of the year in a Facebook posting urging the people to boycott Chinese goods as Chinese traders are profiteering from the Malays.<sup>288</sup> Both Ismail Sabri Yaakob and Ali Tinju was not charged for committing sedition.

## Conclusion

The State's reluctance to take appropriate actions against individuals who stir racial disharmony and censure ministers who made provocative racial statements were in fact a violation of the government's commitment to fulfil the UPR recommendations to further strengthen National Unity and Social Cohesion in the State. The state should be able to use existing laws like the Penal Code and not repressive laws like the Sedition Act to address these issues to prosecute violators. We believe this can be done without compromising international human rights norms.

Many of the recommendations speak about initiatives to further promote the sense of national unity and respect of diversity in the society. Yet the government's reluctance to comply with the international norms and standards or work towards the ratification of ICERD shows that the government is reluctant to comply with the UPR's recommendations in substance. It is also very discouraging to note that there are no deliberate attempts by the government to support the ratification of ICERD in the future.

A few NGOs led by Pusat Komang have come together to form the International Convention on the Elimination of Racial Discrimination (ICERD) working group which has initiated a campaign on ICERD ratification. There were also initiatives on the preparation of a National Report on Racial Discrimination. In addition, there have also been a non-discrimination national conference and roundtable discussions with relevant stakeholders that were organized since the last 5 years.

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Constitution, are those who profess the religion of Islam, except in isolated cases, see Freedom of Religion section of this report.

<sup>287</sup> New Jo-Lyn, "Wait. How did the Low Yat fight turn into a racial incident?", Cilisos, <<http://cilisos.my/wait-how-did-the-lowyat-fight-turn-into-a-racial-incident/>> accessed 1<sup>st</sup> April 2016

<sup>288</sup> TheMalaysianInsider, "Minister calls for Malay boycott of Chinese businesses to lower prices", <<http://www.themalaysianinsider.com/malaysia/article/minister-calls-for-malay-boycott-of-chinese-businesses-to-lower-prices>> accessed 28<sup>th</sup> February 2016

# CHAPTER 8

## HUMAN RIGHTS EDUCATION TRAINING

MALAYSIA'S 2016  
UPR MID - TERM  
REVIEW

## 8.0 Human Rights Education and Training

146.74	Promote human rights education and training (Lebanon)
146.75	Build on progress made as regards training programmes on human rights and further improve such schemes (Cyprus)
146.78	Step up efforts to further develop the human rights education system and strengthen the culture of human rights (Uzbekistan)

### Introduction

Human rights education and training in Malaysia has been actively pushed by the Human Rights Commission of Malaysia (SUHAKAM) through their collaborations with various government agencies, departments and schools. In regards to the recommendations above (146.74, 146.75, and 146.78), the government has done a fairly good job of promoting human rights education and training through education programmes, law enforcement agencies trainings and public education. Despite rigorous efforts of promoting the idea of human rights, the government's practices often fatally weaken the culture of human rights in Malaysia.

### Incorporating Human Rights in the Education System

The Human Rights Best Practices in Schools (HRBPS) programme to integrate human rights values and principles into the school system was launched in 2008 by SUHAKAM in collaboration with the Ministry of Education (MOE). Currently, the HRBPS have expanded to 138 public schools and 93 Indigenous People schools in 2014<sup>289</sup> and two seminars of such were conducted in Sabah and Sarawak in 2015.<sup>290</sup> The civil society in Malaysia commends such commitment shown by both SUHAKAM and MOE to promote human rights education and training from schools. Moreover, such programmes not only enable the spread of human rights information to the children, teachers and administration, but also to the parents and the local community as a whole. Upon SUHAKAM's observations, there have been problems in the implementation of the programme. Some school administrators did not understand or appreciate fully the nature of the programme while some other coordinators were overburdened with the task of human rights training on top of their day-to-day tasks.<sup>291</sup>

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<sup>289</sup> SUHAKAM (2015). SUHAKAM Annual Report 2014. Pp. 18.

<sup>290</sup> Maklum Balas Kerajaan Terhadap Laporan Tahunan SUHAKAM 2014. Pp. 8.

<sup>291</sup> SUHAKAM (2015). SUHAKAM Annual Report 2014. Pp. 20.

Apart from HRBPS, SUHAKAM has also been actively promoting human rights education in Special Education Schools (SES) and Special Education Integration Programme (SEIP). In 2014, SUHAKAM conducted two workshops to educate and disseminate information on human rights to special education teachers who teach in Special Education Schools and the Special Education Integration Programme. During the workshop, participants were exposed to the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>292</sup>

SUHAKAM has also worked on familiarising administrators and teachers of Islamic-based schools, locally termed as Sekolah Agama Rakyat (SAR) with the principles of human rights. The Commission conducted four workshops on Human Rights Education for SAR teachers in 2014.<sup>293</sup>

A series of lectures and workshops on human rights, focusing on Higher Learning Institution students, were also held by SUHAKAM to enhance the students' knowledge and awareness of human rights issues and of their relevance to students, and to provide a platform to discuss human rights issues.<sup>294</sup>

### **Human Rights Training for Law Enforcement Agencies**

SUHAKAM engages with the Royal Malaysian Police in order to sensitize police officers with human rights issues. In 2014, the Commission received invitations from the Police Training Schools on a regular basis to give talks mainly focusing on the topic of deaths in police custody. Apart from the police, training programmes were also extended to the officers and volunteers of the People's Volunteer Corps (RELA). In total, 31 sessions were held in RELA Training Centres with each session an approximate 150 officers and volunteers attended. Last but not least, the Commission also conducted ten human rights courses customised to suit different working and management levels within the Prison Department with an attendance of 150 officers from various levels.<sup>295</sup>

### **Human Rights Education to the Public**

The Education Division of the Commission organised several "SUHAKAM Bersama Masyarakat" (SUHAKAM with the Community) sessions in various regions. This programme is aimed at familiarising local communities with the Commission and its functions. Apart from that, the programme also focused on sharing issues of human rights especially those faced by the public as well as receiving public complaints. In 2014, SUHAKAM conducted three programmes of such.<sup>296</sup>

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<sup>292</sup> SUHAKAM (2015). SUHAKAM Annual Report 2014. Pp. 20.

<sup>293</sup> Ibid. Pp. 22.

<sup>294</sup> Ibid. Pp. 24.

<sup>295</sup> Ibid. Pp. 25.

<sup>296</sup> Ibid. Pp. 25-6.

Realising the conflict persisting around the topic of Islam and human rights in Malaysia, SUHAKAM held a seminar on 3<sup>rd</sup> November 2014 to encourage dialogues regarding matters of Islam and human rights. The seminar was attended by approximately 120 participants consisting of officers from various Government departments, members of Parliament, members of the State Legislative Assembly, teachers from religious schools, community leaders and representatives from local NGOs.<sup>297</sup>

### **Restraining the Culture of Human Rights**

Undoubtedly, in terms of educating and promoting human rights in Malaysia, SUHAKAM has achieved more than their means. However, the idea and acculturation of human rights still is not widely accepted by some sections. This is largely due to the persistent agenda of religion and human rights politicised by certain leaders and sections of society. The ruling coalition, Barisan Nasional, is dominated by the largest political party in Malaysia, UMNO, which caters to the people of the Malay race. In response to controversial topics of human rights such as the acceptance of lesbians, gays, bisexuals and transgender people (LGBT), the Prime Minister of Malaysia, also the President of UMNO in front of a crowd of over 14,000 imams and mosque committee members from across the nation hurled these words: "LGBTs, pluralism, liberalism — all these 'isms' are against Islam and it is compulsory for us to fight these".<sup>298</sup> Such a statement from the current Prime Minister crippled the efforts of strengthening the culture of human rights in Malaysia.

Apart from that, human rights defenders in Malaysia have also been subjected to death threats and appalling treatment from the Home Ministry of Malaysia for being involved in the UPR process. Bar Council Human Rights Committee co-chairperson Andrew Khoo was shocked to find a hate-blog spreading false accusations about COMANGO's efforts in the UPR process with death threats posed to him in the comments section. The comment dated Sept 13 by an unnamed person, reads: "Just kill him!!! Talking a lot is useless, just hire someone to shoot him dead, end of story".<sup>299</sup> The coalition itself faced stiff maltreatment from the Home Ministry of Malaysia when the latter banned COMANGO, alleging the majority of the organizations under its umbrella were un-Islamic and unregistered. In its statement, the Home Ministry said COMANGO was promoting sexual rights contrary to Islam and that only 15 out of its 54 groups were legally registered.

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<sup>297</sup> SUHAKAM (2015). SUHAKAM Annual Report 2014. Pp. 26.

<sup>298</sup> 'Najib: Lgbts, Liberalism, Pluralism Are Enemies Of Islam' (Malaysia Today, 2012) <<http://www.malaysia-today.net/najib-lgbts-liberalism-pluralism-are-enemies-of-islam/>> accessed 30 April 2016.

<sup>299</sup> 'Lawyer Receives Cyber-Death Threat' (Malaysiakini, 2014) <<https://www.malaysiakini.com/news/279763>> accessed 30 April 2016.

From another angle, Malay-Muslim NGOs also posed another threat to human rights defenders in Malaysia. Putrajaya has been under pressure from Malay-Muslim NGOs — which have banded together under the name, MuslimUPRo — which accused COMANGO of challenging the position of Islam in Malaysia and spreading “liberalism teachings” backed by Western powers. Spearheading the move was Islamist group, Ikatn Muslimin Malaysia, which launched a nationwide campaign against the human rights recommendations made by COMANGO for the Malaysia’s UPR process. Called “Sejuta Ummah Tolak COMANGO” (Community of a million reject COMANGO), the campaign which included a petition and nationwide rallies kicked off in November 2013 and the distribution of leaflets at mosques after Friday prayers. The leaflets slammed COMANGO for allegedly calling for the freedom to renounce Islam; the protection of LGBT rights; the removal of Malay privileges; the freedom to embrace Shiite teachings; and the right for Catholics to refer to God as “Allah”, among others.<sup>300</sup>

## Conclusion

CSOs in Malaysia believe in the genuine intention of the Government of Malaysia to uphold its promises with regards to recommendations **146.74**, **146.75**, and **146.78** which were all accepted in full. It is imperative that the efforts of promoting and educating the public about human rights and its principles and values, as well as SUHAKAM’s role, continue in the coming years. However, local leaders, State leaders and especially the Prime Minister have to be consistent in their stance. If in the UPR process, the Government of Malaysia agreed in full to strengthen the human rights culture in the nation, the head of state should abide by such commitments.

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<sup>300</sup> Home Ministry Ban Signals Crackdown On Civil Society, Say Comango Reps' (Themalaymailonline.com, 2014) <<http://www.themalaymailonline.com/malaysia/article/home-ministry-ban-signals-crackdown-on-civil-society-say-comango-reps#sthash.NsK1fGgs.dpuf>> accessed 30 April 2016.

# CHAPTER 9

## CONFLICT BETWEEN CIVIL & SYARIAH COURTS

**MALAYSIA'S 2016  
UPR MID - TERM  
REVIEW**

## 9.0 Conflict Between Civil and Syariah Courts

146.50

Take steps to resolve the conflicts of competence between civil and Syariah courts, with a view to fully protect human rights (Austria)

### Brief Assessment

In respect to recommendations number 146.50, the Government of Malaysia has been lacking in initiatives to solve this issue although some talks on establishing and harmonising of the dual courts to deal specifically on conversion issue.

Article 121(1A) and Paragraph 1 of the State List in 9<sup>th</sup> Schedule of the Federal Constitution clearly stipulate subject matters that are exclusive to Syariah Courts. Although Article 121(1A) clearly states that the Syariah court has exclusive jurisdiction over certain matters i.e. family matters of a Muslim, however in practice the jurisdictions of the Syariah court are extending and creeping into Federal jurisdiction.

#### 1. The Arrest of Transgender Persons in Negeri Sembilan

In this particular case, section 66 of the Syariah Criminal Offence (Negeri Sembilan) 1992 outlaws any male person who, in any public place wears a woman's attire and poses as a woman. The apex court in Malaysia has overturned the Court of Appeal's decision in November 2015, that the Syariah law on anti-cross dressing was unconstitutional and void.<sup>301</sup>

Article 75 of Federal Constitution expressly provides any State laws that are conflicting with Federal laws; the conflicting laws are void as far as where it conflicts.

For example section 66 of Syariah Criminal (Negeri Sembilan) Enactment 1992 (En. 4/92) and section 66A Administration of the Religion of Islamic (State of Selangor) Enactment 2003.

The matters in dispute was constitutionality of the said provision, in which the Civil court has jurisdiction to rule. The failure of civil court to decide on the constitutional matter and dismissed the case on technicality grounds is seen as a reluctance on the their part to decide against Syariah laws.<sup>302</sup> This in effect indicates Federal Court judges' assertions in allowing the expansion of Syariah court jurisdiction.

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<sup>301</sup> 'Transgender Case Federal Court Overturns Court Of Appeals Decision' (English.astroawani.com, 2016) <<http://english.astroawani.com/malaysia-news/transgender-case-federal-court-overturns-court-appeals-decision-75716>> accessed 30 April 2016.

<sup>302</sup> 'Appeals Court: Not For Us To Hear Muslim Conversion Cases - Nation | The Star Online' (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/12/31/appeals-court-not-for-us-to-hear-muslim-conversion-cases/>> accessed 30 April 2016.

The provision cited above is, among many, an example where the constitutional guaranteed rights of Malaysians are blatantly violated. For instance, section 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992 glaringly violates multiple articles like articles 5(1) – the right to live with dignity, 8(1 and 2) – the right to equality before the law, 9(2) – the right to freedom of movement and 10(1)(a) – the right to freedom of expression.

In this particular instance, the apex court of Malaysia when deciding on the case, did not address the issue of constitutionality and dismissed the case on a technicality. That, further indicates reluctance of the Federal Court judges to assert Syariah laws exertion on federal jurisdiction.

## **2. Unilateral Conversion of Children to Islam by Their Fathers**

In cases like S. Deepa<sup>303</sup> and Indira Gandhi<sup>304</sup> (women of Hindu faith) whose husbands converted to Islam and unilaterally converted their children without their knowledge and consent, has affected mother's lives and children too. This issue is critical as it involves custody battles as a non-converting spouse attempts to gain custody at the civil court while the converted spouse tries to do the same at the Syariah court. This complicates the administration of justice as non-converting parties do not have locus standi, in the Syariah Court.

The case of Indira Gandhi has clearly demonstrate two custody orders emanating from two different courts has caused confusion on the law enforcer as to which order must prevail. While the matter is decided in the Court, Indira was left without avenue, as despite getting the custody of her children, law enforcer's failure to enforce it, as a result of the confusion, gave her no choice but to wait for the decision of the apex court.

## **Conclusion**

Different judgments by the civil courts and the Syariah courts on the same cases have resulted in justice not being served. Such developments are not tenable in multi-racial, multi-religious and multi-cultural Malaysia. It only results in discrimination and injustices as demonstrated in the cases of S.Deepa and Indira Gandhi.

We question the criminalisation of individuals and acts under the Syariah Criminal Offences Act/Enactments of each state which has nothing to do with family law matters, and especially when they are in conflict with the freedoms protected under the Federal Constitution. Further, Schedule 9, Federal List clearly states criminalisation is within the purview of the Federal Government.

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<sup>303</sup> 'Federal Court Divides Custody Of Kids In S. Deepa/ Izwan Abdullah Case' (NST Online, 2016) <<http://www.nst.com.my/news/2016/02/126694/federal-court-divides-custody-kids-s-deepa-izwan-abdullah-case>> accessed 30 April 2016.

<sup>304</sup> 'Indira Gandhi Says Her Children Are Hindus, Stuck In Legal Limbo' (Themalaymailonline.com, 2016) <<http://www.themalaymailonline.com/malaysia/article/indira-gandhi-says-her-children-are-hindus-stuck-in-legal-limbo>> accessed 30 April 2016.

# CHAPTER 10

## GENERAL RECOMMENDATIONS ON THE PROMOTION & PROTECTION OF HUMAN RIGHTS

MALAYSIA'S 2016  
UPR MID - TERM  
REVIEW

## 10.0 General Recommendations on the Promotion and Protection of Human Rights

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|--------|---|
| 146.58 | Continue efforts in the realm of promotion of human rights (Saudi Arabia)   |
| 146.59 | Continue its efforts in the promotion and protection of human rights (Yemen)  |
| 146.61 | Strengthen its efforts to achieve a balance in terms of securing economic, social and cultural rights and civil and political rights on the other hand (Zimbabwe) |

### Brief Assessment

Malaysia's position in the Organisation of the Islamic Conference (OIC) and its expressed commitment to the OIC's 1990 Cairo Declaration on Human Rights in Islam (CDHRI) raise questions to the government's understanding and appreciation of human rights based on international standards as set by UN member states. The lack of respect for the basic principles of equality and non-discrimination lays issues relating to religion, religious conversion, gender, sexuality, civil and political rights, and other aspects of contemporary society at odds with various interpretations and practices of Islamic law and traditions.

