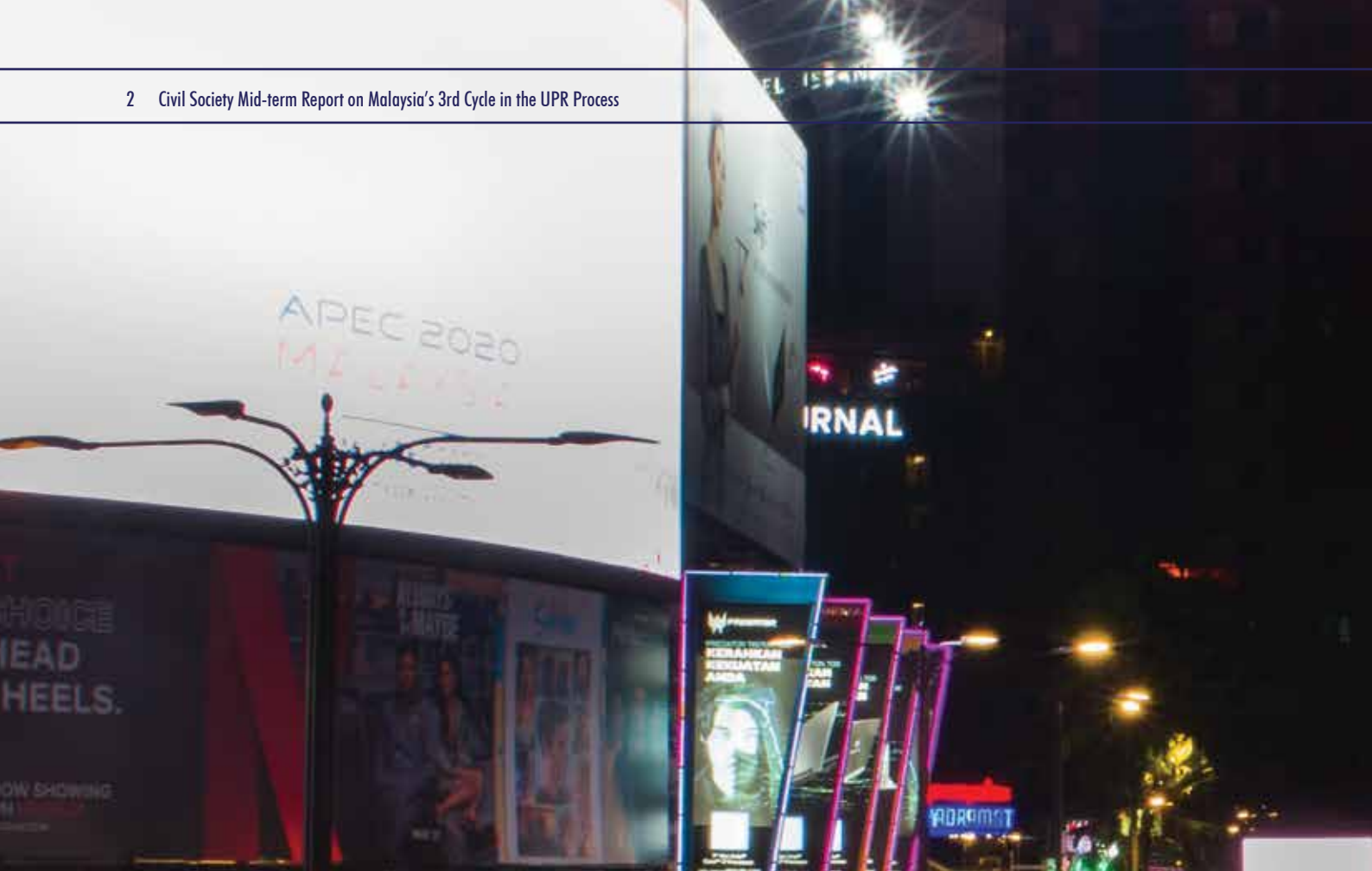


2021

# Civil Society Mid-term Report on Malaysia's 3<sup>rd</sup> Cycle in the UPR Process





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## 1

LIST OF  
ABBREVIATIONS

ADUN	Member of the State Legislative Assembly   Ahli Dewan Undangan Negeri
ATIPSOM	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007
B40	Bottom 40% of the Malaysian household income
BHEUU	Legal Affairs Division
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CMA	Communications and Multimedia Act 1998
COMANGO	Coalition of Malaysian NGOs in the UPR Process
COVID-19	Coronavirus disease
CRPD	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
DOSM	Department of Statistics Malaysia   Jabatan Perangkaan Malaysia
DUN	State Legislative Assembly   Dewan Undangan Negeri
DVA	Domestic Violence Act 1994
EAIC	Enforcement Agency Integrity Commission
EIA	Environmental Impact Assessments
EMTCT	Elimination of Mother-To-Child Transmission
EPU	Economic Planning Unit   Unit Perancang Ekonomi
FGM	Female Genital Mutilation
GERAKAN	Parti Gerakan Rakyat Malaysia
GLIC	Government-Linked Investment Company
HIV	Human Immunodeficiency Virus
HRD	Human Rights Defenders
ICERD	International Convention on the Elimination of Racial Discrimination
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
IPCMC	Independent Police Complaints and Misconduct Commission

IPG	Institute of Teacher Education   Institut Pendidikan Guru
JAG	Joint Action Group for Gender Equality
JAKIM	Department of Islamic Development Malaysia   Jabatan Kemajuan Islam Malaysia
JAKOA	Department of Orang Asli Development   Jabatan Kemajuan Orang Asli
JEC	Judges' Ethics Committee
KPKT	Ministry of Housing and Local Government   Kementerian Perumahan dan Kerajaan Tempatan
KPWKM	Ministry of Women, Family and Community Development   Kementerian Pembangunan Wanita, Keluarga dan Masyarakat
LGBTQI	Lesbian, Gay, Bisexual, Transgender, Queer and Intersex
LTTE	Liberation Tigers of Tamil Eelam
MCO	Movement Control Order
MOE	Ministry of Education   Kementerian Pendidikan Malaysia
MOFA	Ministry of Foreign Affairs   Kementerian Luar Negeri Malaysia
MOH	Ministry of Health   Kementerian Kesihatan Malaysia
MOHA	Ministry of Home Affairs   Kementerian Dalam Negeri
MOHR	Ministry of Human Resources   Kementerian Sumber Manusia
MUDA	Malaysian United Democratic Alliance
MySPC	Social Protection Council
NAPTIP	National Action Plan on Anti-Trafficking in Persons
NGO	Non-Governmental Organisation
NRD	National Registration Department
OSA	Official Secrets Act 1972
PAA	Peaceful Assembly Act 2012
PAS	Islamic Party of Malaysia
PDPS	Social Protection Database
PDRM	Royal Malaysia Police   Polis DiRaja Malaysia
PH	Pakatan Harapan
PLI	Poverty Line Income
PN	Perikatan Nasional
POCA	Prevention of Crime Act 1959
POTA	Prevention of Terrorism Act 2015
PPPA	Printing Presses and Publication Act 1984

PWD	Persons with Disabilities
RTI	Right to Information
SAMENTA	Small & Medium Enterprises Association
SDG	Sustainable Development Goals
SME	Small and Medium Enterprise
SOAC	Sexual Offences against Children Act 2017
SOCSSO	Social Security Organization   Pertubuhan Keselamatan Sosial
SOSMA	Security Offences (Special Measures) Act 2012
STI	Sexually Transmitted Infection
SUHAKAM	Human Rights Commission of Malaysia   Suruhanjaya Hak Asasi Manusia Malaysia
UMNO	United Malay National Organization
UN	United Nations
UNCAT	United Nations Convention against Torture
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
WHO	World Health Organisation



## 2

EXECUTIVE  
SUMMARY

“

During the 3rd Universal Periodic Review (UPR) cycle, Malaysia has experienced substantial political change. At the start of the UPR cycle in 2018, a new administration was voted into power for the first time in Malaysia's history; however, it collapsed two years later, prior to Malaysia's mid-term reporting. The rapid shift in political powers and dynamics was detrimental to the advancement of human rights in the country and this is clearly reflected in the divergent approach in the state's policy during the adoption of UPR recommendations and its subsequent fulfilment.

”

A key commendable aspect highlighted in this mid-term report is the government's commitment to increase its engagement with international mechanisms, with treaty bodies, special rapporteurs and the UPR process, internationally and domestically. The government has made its first commitment to formally engage in the mid-term UPR reporting and has provided an open invitation for special rapporteurs to conduct country visits to Malaysia. Engagement with treaty bodies, while improved to an extent, has largely been similar to past UPR cycles, with Malaysia still not fulfilling its reporting obligations on the Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD).

Civil and political rights experienced substantial improvement followed by a steep decline in tandem with the change of administration and its eventual collapse. Key reforms protecting freedom of expression were gradually withdrawn by the government with increased harassment of human rights defenders (HRDs) in the months leading up to the mid-term report. Additionally, the substantial progress towards the abolition of the death penalty and full acceptance of recommendations related to the issue has been on indefinite pause since 2020.

Commendable progress was made with regards to economic, social and cultural rights during the reporting cycle. Malaysia has met the World Health Organisation (WHO) recommended healthcare worker to population ratios and successfully eliminated the mother-to-child transmission (EMTCT) of the human immunodeficiency virus (HIV) and syphilis. The progress, however, has been overshadowed by the Coronavirus disease (COVID-19) pandemic that has severely hampered healthcare institutions, education systems, social welfare, leaving existing welfare infrastructure at its breaking point.

The rights of indigenous peoples and access to ancestral land remain unfulfilled by the government of Malaysia. Violation of indigenous communities' civil and political rights, and their economic, social and cultural rights were well documented during the reporting period. Minor progress was noted when the government initiated public consultations with the community and initiated a legal challenge against a state government for encroachment into ancestral lands.

Notable progress was made early in the UPR cycle when the government committed to enacting legislation on gender equality, sexual harassment and cyberstalking. Progress stalled following the change of administration. The recurring issue of female genital mutilations and child marriages that came to the fore of national news and international attention remains prevalent with limited actions taken by the federal and state government to further curb violations. Improvements were noted in selected areas such as women in leadership positions outside of government institutions.

In summary, the mid-term report on Malaysia for the 3rd UPR cycle notes marginal improvement in selected areas with a notable number of accepted recommendations yet to be fulfilled. Despite the challenges ahead, the regularisation of the UPR engagement process by the government is highly encouraging and provides a greater platform for stakeholder scrutiny and engagement for the implementation of UPR recommendations. The report strongly encourages the government to continue its engagement with stakeholders and strengthen its commitment to implement and fulfil accepted recommendations.



# 3

## METHODOLOGY

In 2018, Malaysia received 268 recommendations from various member states during her UPR cycle, and from it, fully accepted 149 recommendations, partially accepted 36 recommendations and took note on the remaining 83 recommendations.

This mid-term report presents all recommendations received in 2018 and civil society's input on the implementation progress of these recommendations, categorised into six major themes according to the classification used in the UPR Recommendation Monitoring Framework adopted by the government of Malaysia with minor adjustments.

The Coalition of Malaysian NGOs in the UPR Process (COMANGO) hosted several engagements and consultations with civil society organisations - both members and non-members of COMANGO - on their respective areas of expertise. Such consultations were held in Sabah, Sarawak, Penang and Klang Valley with organisations of the region in order to best capture the voices of as many civil society actors across the country as possible.

When possible and appropriate, the recommendations were evaluated based on the UPR Monitoring Framework which was adopted by the government of Malaysia.

# 4

## IMPLEMENTATION STATUS OF RECOMMENDATIONS: AN OVERVIEW

The first chapter of this report deals with Malaysia's human rights obligations as a member of the United Nations (UN), namely the accession to international human rights treaties and cooperation with special procedures and other mechanisms. The second chapter is concerned with civil and political rights of all who live in Malaysia, such as freedom of expression, association and assembly, and rights to citizenship. The third chapter consists of recommendations regarding economic, social and cultural rights in Malaysia as well as the rights of the indigenous peoples in Malaysia, including right to education and health. The fourth chapter presents issues of women, children, the LGBTQI community and persons with disabilities, whereas the fifth chapter discusses issues of migrant workers, refugees and asylum seekers, and trafficked persons. The sixth chapter presents other human rights issues not included in other chapters, such as human rights training, social cohesion and more.

The largest number of recommendations made were in the area of economic, social and cultural rights, and rights for the indigenous in Chapter 3 (61 recommendations), with the greatest proportion of accepted recommendations on the same area (90% of recommendations in Chapter 3 were fully or partially accepted) as well as the areas listed in Chapter 6 (human rights training, social cohesion, etc.).

The progress status of implementation of the given recommendations are summarised in the table below with the indicator labels No Progress/Regressing, Slow Progress, Good Progress and Change in Progress.

CHAPTER	TOPIC	STATUS
1	International Obligations	CP
2	Civil and Political Rights	NP
2.1	Equality before the Law	NP
2.2	Right to Life (Abolishment of Death Penalty)	CP
2.3	Right to Freedom from Torture	NP
2.4	Right to Liberty & Security (Arbitrary Detention)	NP
2.5	Right to Freedom of Religion or Belief	NP
2.6	Right to Access of Information	CP
2.7	Right to Freedom of Expression, Association & Assembly	NP
2.8	Independence of Judges & Lawyers	NP
2.9	Right to Citizenship	NP
3	Economic, Social and Cultural Rights, and Rights of the Indigenous	SP
3.1	General Recommendations on Economic, Social and Cultural Rights	SP
3.2	Right to Social Protection	SP
3.3	Economic Development & Poverty Eradication	SP
3.4	Right to Adequate Standard of Living	SP
3.5	Right to Education	SP
3.6	Right to Health	GP
3.7	Rights of the Indigenous	CP
4	Women, LGBTQ+, Children, and Persons with Disabilities	NP
4.1	Women's Rights in Legislation	CP
4.2	Women's Right to Freedom from Violence	NP
4.3	Support & Advancement for Women	NP
4.4	Women's Rights to Public Participation	CP
4.5	Rights of Gender and Sexual Minorities	NP
4.6	Protection from Child Abuse/Violence/Exploitation	SP

CHAPTER	TOPIC	STATUS
4.7	Protection from Child Marriage	SP
4.8	Rights of Persons with Disabilities	SP
5	Trafficking in Persons, Migrant Workers, Refugees & Asylum Seekers	NP
5.1	Trafficked Persons	NP
5.2	Migrant Workers	NP
5.3	Refugees & Asylum Seekers	NP
6	Other Human Rights Issues	NP
6.1	Human Rights Training	SP
6.2	Social Cohesion	CP
6.3	Protection against Terrorism	NP
6.4	General Comments on Human Rights	NP

**NP:**  
**No Progress /**  
**Regressing**

The government is not doing anything about the relevant issues and/ or is actively violating the relevant human rights.

**SP:**  
**Slow Progress**

The government is doing something with respect to the relevant issue but measures taken are not satisfactory.

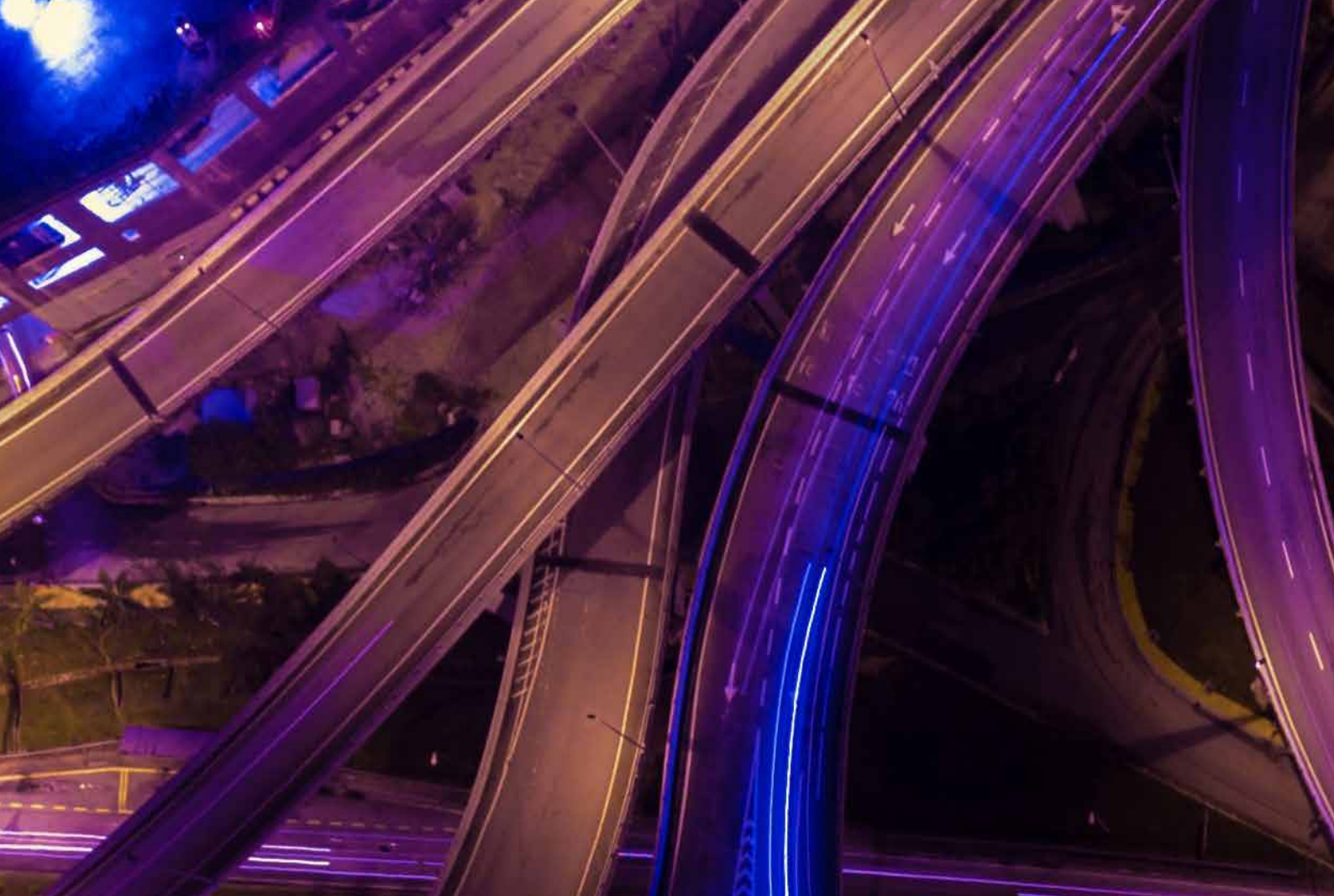
**GP:**  
**Good Progress**

The government is doing something with respect to the relevant issue and the measures taken are effective in improving the situation.

**CP:**  
**Change in Progress**

The government has done something with respect to the relevant issue but stopped or reversed their stance regarding the relevant issues.





CHAPTER

1

# INTERNATIONAL OBLIGATIONS



## RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.1	Ratify the remaining core international human rights treaties and ensure their proper implementation (Republic of Moldova); Finalize the ratification of and accession to outstanding core human rights instruments (South Africa); Advance in the ratification, accession and adhesion to the basic, core human rights treaties, as mentioned by the delegation (Spain); Expedite the ratification and implementation of the remaining six international human rights instruments, thereby publicly indicating the Government's commitment to human rights (Cyprus); Take steps to accede to the core international conventions on human rights and fundamental freedoms to which Malaysia is not yet a party (Italy); Ratify the remaining core international human rights treaties (Lithuania); Ratify and implement all remaining core human rights treaties (Norway)	<b>Taken note of</b>
151.2	Expedite the ratification of the main international legal instruments on human rights to ensure greater protection of the rights of the most vulnerable population (Angola)	<b>Taken note of</b>
151.3	Ratify key human rights treaties without reservations and take all the necessary actions to this end without delay (Finland)	<b>Taken note of</b>
151.4	Ratify without reservations the core international human rights instruments as well as the 1951 Convention relating to the Status of Refugees (France)	<b>Taken note of</b>
151.5	Continue efforts to accede to international treaties related to civil, political and cultural rights (Iraq)	<b>Accepted in full</b>
151.6	Accelerate the process of ratification of the key international human rights instruments (Kazakhstan)	<b>Accepted in full</b>
151.7	Strengthen its human rights framework, in particular by fulfilling its pledge to ratify core United Nations human rights instruments, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention relating to the Status of Refugees (Republic of Korea)	<b>Taken note of</b>
151.8	Continue the efforts of adhering to international legal instruments in the field of human rights, inter alia the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Rome Statute of the International Criminal Court (Romania)	<b>Partially accepted</b>
151.9	Speed up its deliberations on the signature and ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political	<b>Accepted in full</b>

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
	Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Turkey)	<b>Taken note of</b>
151.10	Ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention against Torture (United Kingdom of Great Britain and Northern Ireland)	<b>Taken note of</b>
151.11	Adopt measures to adhere to the different international instruments related to human rights, especially the international covenants and their optional protocols (Uruguay)	<b>Taken note of</b>
151.12	Ratify the International Covenant on Civil and Political Rights, the Convention on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Belgium); Join the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Benin); Ratify the International Covenant on Civil and Political rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as previously recommended (Switzerland)	<b>Taken note of</b>
151.13	Set a clear time frame for the ratification, without reservation, of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all other core international human rights treaties including their optional protocols, and the Rome Statute of the International Criminal Court (Czechia)	<b>Taken note of</b>
151.14	Ratify or accede to the human rights instruments to which it is not yet a party, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Honduras)	<b>Taken note of</b>
151.15	Join the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Hungary)	<b>Taken note of</b>
151.16	Ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination (Kenya)	<b>Taken note of</b>



NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.17	Consider early ratification of core international human rights instruments, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Nepal)	<b>Taken note of</b>
151.18	Ratify the main human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Paraguay)	<b>Taken note of</b>
151.19	Sign and ratify the International Covenant on Civil and Political Rights, bring its national law on communication and media into conformity with international human rights law and refrain from judicial and administrative harassment of journalists and human rights defenders (Slovakia)	<b>Partially accepted</b>
151.20	Ratify the International Covenant on Civil and Political Rights (Albania)	<b>Accepted in full</b>
151.21	Promptly ratify the International Covenant on Civil and Political Rights and the Convention against Torture (Australia)	<b>Taken note of</b>
151.22	Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Côte d'Ivoire)	<b>Taken note of</b>
151.23	Consider acceding to the International Covenant on Civil and Political Rights and the Convention relating to the Status of Refugees before the next review of the country by this Working Group (Greece)	<b>Taken note of</b>
151.24	Continue exploring possibilities to extend its international commitments, in particular consider ratification of the International Covenant on Civil and Political Rights and the Rome Statute of the International Criminal Court, as previously recommended (Latvia)	<b>Accepted in full</b>
151.25	Take more effective measures for securing economic, social and cultural rights by acceding to the International Covenant on Economic, Social and Cultural Rights (Myanmar)	<b>Taken note of</b>
151.26	Move forward towards the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Chile)	<b>Accepted in full</b>
151.27	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Denmark) (Montenegro)	<b>Taken note of</b>
151.28	Accede at the earliest possible date to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Fiji)	<b>Taken note of</b>

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.29	Speed up the discussion on accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and accede to the Convention as soon as possible (Ghana)	<b>Partially accepted</b>
151.30	Complete, as soon as possible, the necessary internal steps in order to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Greece)	<b>Taken note of</b>
151.31	Consider ratifying core international human rights treaties to which it is not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Philippines)	<b>Accepted in full</b>
151.32	Accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Sri Lanka)	<b>Taken note of</b>
151.33	Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) (Honduras)	<b>Taken note of</b>
151.34	Adopt more robust measures to protect the rights of migrant workers and members of their families, including by acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Indonesia)	<b>Partially accepted</b>
151.35	Ratify the International Convention for the Protection of All Persons from Enforced Disappearance as early as possible (Japan)	<b>Taken note of</b>
151.36	Sign and ratify the Optional Protocols to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities (Mexico)	<b>Taken note of</b>
151.37	Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro)	<b>Taken note of</b>
151.38	Withdraw its reservations to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, which are instrumental to promoting greater respect for the rights of women, children and persons with disabilities (Turkey)	<b>Taken note of</b>
151.39	Withdraw all reservations to the Convention on the Elimination of All Forms of Discrimination against Women and abandon discriminatory laws against all women regardless of their ethnic or religious background (Norway)	<b>Taken note of</b>

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.40	Consider accession to the 1951 Convention relating to the Status of Refugees (Afghanistan)	<b>Taken note of</b>
151.41	Proceed to the signing of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Spain)	<b>Taken note of</b>
151.42	Take immediate legislative or administrative measures, including ratifying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to provide legal status to refugees and asylum seekers to allow them to reside, work and access education and health care in Malaysia (Canada)	<b>Taken note of</b>
151.43	Ratify the Rome Statute of the International Criminal Court and take steps to resolve the conflicts of competence between civil and sharia courts, with a view to fully protecting human rights, as previously recommended (Austria)	<b>Partially accepted</b>
151.44	Become a party to the Rome Statute of the International Criminal Court (Netherlands)	<b>Accepted in full</b>
151.45	Ratify the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Comoros)	<b>Taken note of</b>
151.46	Consider ratifying the Convention against Discrimination in Education (Peru)	<b>Taken note of</b>
151.47	Create a national mechanism for implementation, reporting and follow-up of the recommendations from the universal periodic review (Portugal)	<b>Accepted in full</b>
151.48	Consider issuing a standing invitation to all special procedures of the Human Rights Council (Republic of Moldova); Extend an open invitation to all special procedures of the Human Rights Council (Ukraine); Extend an open standing invitation to the special procedure mandate holders (Paraguay)	<b>Accepted in full</b>
151.49	Respond positively to the pending visit requests by the special procedure mandate holders of the Human Rights Council and consider the extension of a standing invitation to all the special procedure mandate holders, as previously recommended (Latvia)	<b>Accepted in full</b>
151.50	Continue taking measures to implement the accepted recommendations of the universal periodic review (Bolivarian Republic of Venezuela);	<b>Accepted in full</b>
151.51	Continue taking measures to implement universal periodic review recommendations (Cameroon)	<b>Accepted in full</b>
151.52	Continue cooperation with the United Nations mechanisms for the promotion and protection of human rights (Brunei Darussalam)	<b>Accepted in full</b>



NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.53	Continue to cooperate with treaty bodies and special procedure mandate holders (Chad)	<b>Accepted in full</b>
151.54	Maintain its constructive dialogue and cooperation with the international community in the field of human rights (Cuba)	<b>Accepted in full</b>
151.58	Continue with its efforts to strengthen domestic legislation to bring it into compliance with international obligations (Bhutan)	<b>Accepted in full</b>
151.219	Eliminate all forms of discrimination against women and girls and withdraw all remaining reservations to articles 9 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Sweden)	<b>Taken note of</b>

## BRIEF ASSESSMENT

Progress on treaty ratification and domestication of ratified treaties remains at a snail pace. Within the reporting period, limited progress was made with the fulfilment of rights and obligations under Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention of the Rights of the Child (CRC) and Convention of the Rights of Persons with Disabilities (CRPD). The gap between the treaty and national legislation remains in place with some indication of renewed interest in engaging with treaty body processes and engagement in 2018.

This is however not a common practice as Malaysia has yet to indicate any intention to participate in the country review for CRC and CRPD. The last CRC review for Malaysia was in 2007 whereas the scheduled review cycle for CRPD was in 2012. There has been no indication that the government intends to engage with the two treaty bodies' review process.

Attempts to ratify additional core human rights treaties, specifically the United Nations Convention against Torture (UNCAT) and International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) were met with limited success with meetings taking place between the Attorney-General Chambers with members of the civil society. However, no further discussion and overture to advance on the agenda was put forward by the government.

Despite the prevailing number of refugees and asylum seekers in Malaysia and Malaysia's open support for victims and refugees in the conflict in Myanmar, Syria, Palestine and other conflict areas, there is no overture or expression of interest by the government in ratifying the Refugee Convention 1951 nor implement the principles of the convention on national legislations.

An attempt to ratify the International Convention on the Elimination of Racial Discrimination (ICERD) and Rome Statute was made during the reporting period. Unfortunately, the government's plans for ratification lacked clarity, and an active disinformation campaign had spread among grassroots communities, associating ICERD with ideas of erosion of the

affirmative actions and an undermining of the position of Islam within the Federal Constitution. The campaign was largely led by the then opposition, the Islamic Party of Malaysia (PAS) and its former ally, the United Malay National Organisation (UMNO)<sup>1</sup>.

Subsequent attempts by the government to ratify the Rome Statute was likewise opposed by the political opposition, citing misleading claims that the ratification of the Rome Statute would undermine the immunity provided to the constitutional monarch of Malaysia who serves as the ceremonial head of the armed forces.<sup>2</sup> Under pressure, the government was forced to withdraw its ratification barely a month after ratification.<sup>3</sup>

More concerning, PAS has expressed its intent to challenge further ratification of human rights treaties, including UNCAT following its success in halting the ratification of ICERD.<sup>4</sup> It remains to be seen how this would affect Malaysia's commitment in the UPR process as PAS is currently part of the administration.

In terms of engagement with Special Rapporteurs, Malaysia in 2019 implemented a policy of standing open invitation and welcomes visits by Special Rapporteurs, and has hosted the Special Rapporteur on the Sale and Sexual Exploitation of Children, Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, and Special Rapporteur on extreme poverty and human rights. An invitation was also extended to the Special Rapporteur on Freedom of Religion or Belief but was postponed due to the onset of the COVID-19 pandemic.

The development in this area has been worrying to say the least as political development relating to international human rights treaties has been repeatedly foiled by disinformation campaigns supported by the political parties which are now in power as part of the administration. This has put in question the long-established communication and engagement between different stakeholders, including government agencies in ratification of core treaties, specifically those on UNCAT and ICPPED.

Apart from its treaty obligations, Malaysia has made notable improvements with regards to its national engagement on the UPR process chaired and facilitated by the Ministry of Foreign Affairs (MOFA) and undertaken the writing and submission for its first voluntary mid-term report for the current report cycle. As of this report, the government has held several multi-stakeholder consultations on the UPR recommendation and collaborated with said stakeholders and the UN Office of the High Commissioner for Human Rights on developing and implementing a monitoring framework. The government has also made commitments to engage in mid-term reporting, a first time with regards to the UPR process.

<sup>1</sup> Siti Nur Mas Erah Amran 'Move to ratify ICERD would have 'disastrous' effect - Pas', (New Straits Times, 31 October 2018) <<https://www.nst.com.my/news/nation/2018/10/426951/move-ratify-icerd-would-have-disastrous-effect-pas>> accessed 9 June 2021

<sup>2</sup> Wisma Putra: 'Acceding to Rome Statute no effect on Agong's immunity' (The Star, 11 March 2019) <<https://www.thestar.com.my/news/nation/2019/03/11/wisma-putra-acceding-to-rome-statute-no-effect-on-agongs-immunity/>> accessed 9 June 2021

<sup>3</sup> Azura Abas, Hashini Kavishtri Kannan 'Dr M: Malaysia withdraws from Rome Statute due to smear campaigns' (New Straits Times, 5 April 2019) <<https://www.nst.com.my/news/nation/2019/04/476540/dr-m-malaysia-withdraws-rome-statute-due-smear-campaigns>> accessed 9 June 2021

<sup>4</sup> Anne Muhammad 'Nasuridin: Bukan Icerd saja, Konvensyen lain PBB juga ancam negara' (MalaysiaKini, 25 November 2018) <<https://www.malaysiakini.com/news/453337>> accessed 9 June 2021

### **Suggestions for Implementation of Recommendations**

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The report recommends for the government to review its implementation strategy and engagement plans for treaty ratification to better communicate the benefits of ratification, and tackle the issue of disinformation around treaty ratification and challenge the prevailing sentiment that human rights treaties are merely an imposition of imperialist influence in the country.

The report also welcomes the willingness of the government to welcome Special Rapporteur and strongly encourage the government and the responsible agencies to continue to open their doors to communicating with special rapporteur and coordinate official visits as appropriate. Recommendations and findings of the special rapporteurs should also be circulated among the relevant agencies among the Federal government, State governments, members of Parliaments and the Judiciary to ensure that recommendations can be adopted at all levels of governance as appropriate.

The report also recommends that the government withdraw all reservations from the signed treaties and fulfil the obligations under the ratified treaties.





CHAPTER **2**

**CIVIL AND  
POLITICAL  
RIGHTS**



## 2.1 EQUALITY BEFORE THE LAW

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.55	Approve a broad anti-discrimination law that includes the protection of all rights for all people without discrimination (Uruguay)	<b>Taken note of</b>
151.56	Prioritize the early submission of anti-discrimination legislation to Parliament (Australia)	<b>Taken note of</b>
151.70	Guarantee the right of everyone to equal protection under the law, in conformity with Malaysia's international commitments (Iceland)	<b>Taken note of</b>
151.73	Continue its efforts to enhance the rule of law, to ensure respect for human rights and fundamental freedoms and to eliminate all forms of discrimination, in compliance with international standards (Italy)	<b>Taken note of</b>

## BRIEF ASSESSMENT

As noted earlier in the report, the ratification of ICERD was foiled due to political opposition to its ratification. Similarly, anti-discrimination policies have been met with notable challenges during the reporting period. During the reporting period, a new department under the Prime Minister Office, namely, The National Unity and Integration Department was established. The department and its Ministers had organised several consultations in its early days with limited progress following the consultations. The subsequent administration retained the department but did not pursue further action.

Apart from the establishment of a new sub-ministry, there has been no effort to establish any form of anti-discrimination or equality law. A call for a gender equality law has consistently been advocated by the Joint Action Group for Gender Equality (JAG) with limited success. A small indication of progress was noted in early 2020 with the Deputy Prime Minister announcing that a Gender Equality Bill was in the drafting process following 16 consultations, this announcement took place weeks before the collapse of the administration and no subsequent updates were provided by the current administration.<sup>5</sup>

Apart from that, no further amendments have been made to improve equality in Malaysia despite continued calls from CSOs. It should be noted that a Federal Court decision delivered in May 2021 affirmed the discriminating element of the law on nationality of a child born of unwed parents of different nationalities. The majority decision took a literal interpretation of the Federal Constitution and requires citizenship of the child to follow the child's mother.<sup>6</sup>

<sup>5</sup> Rafidah Mat Ruzki and Veena Babulal 'DPM: Gender Equality Bill still being drafted' (New Straits Times, 11 February 2020) <<https://www.nst.com.my/news/nation/2020/02/564655/dpm-gender-equality-bill-still-being-drafted>> accessed 9 June 2021

<sup>6</sup> V Anbalagan 'Federal Court rules illegitimate child not entitled to citizenship' (Free Malaysia Today, 28 May 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/05/28/federal-court-rules-illegitimate-child-not-entitled-to-citizenship/>> accessed 9 June 2021



### Suggestions for Implementation of Recommendations

The report recommends for the government to pursue legislation and constitutional amendments to provide equal rights and recognition to all persons. This includes introducing the Gender Equality Bill, amending to sections of the Federal Constitution relating to citizenships, and introducing a Gender Recognition Bill that recognises gender diversity beyond the current binary framework.

## 2.2 RIGHT TO LIFE (ABOLISHMENT OF DEATH PENALTY)

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.91	Establish a de facto moratorium on the death penalty with a view to its abolition (Portugal)	<b>Accepted in full</b>
151.92	Ensure the adoption of the necessary legislation to abolish the death penalty in a timely manner (Republic of Moldova)	<b>Accepted in full</b>
151.93	Continue to take steps for the abolishment of the death penalty and to revise the cases of persons on death row (Romania)	<b>Accepted in full</b>
151.94	Complete legislative efforts aimed at abolishing the death penalty (Ukraine)	<b>Partially accepted</b>
151.95	Establish a moratorium on the death penalty pending an act of Parliament to abolish it (Albania)	<b>Accepted in full</b>
151.96	Ensure early submission to Parliament of legislation abolishing the death penalty and repealing the Sedition Act (Australia)	<b>Partially accepted</b>
151.97	Continue with abolishing the death penalty and adopt a moratorium on the execution of the death penalty (Spain)	<b>Accepted in full</b>
151.98	Take further steps in limiting capital crimes with the aim of abolishing the death penalty (Cyprus)	<b>Accepted in full</b>
151.99	Intensify its efforts towards the abolition of the death penalty (Georgia)	<b>Accepted in full</b>
151.100	Immediately place a moratorium on the application of the death penalty with a view to its complete abolition (Fiji)	<b>Accepted in full</b>
151.101	Fully abolish the death penalty without delay (Finland)	<b>Taken note of</b>
151.102	Maintain the recent moratorium on executions and completely abolish the death penalty (France)	<b>Partially accepted</b>
151.103	Swiftly pass all necessary legislation to abolish the death penalty for all criminal offences (Germany)	<b>Partially accepted</b>
151.104	Consider the adoption of a moratorium on executions (Italy)	<b>Accepted in full</b>

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.105	Improve and implement legislation for the complete abolishment of the death penalty (Sweden)	<b>Partially accepted</b>
151.106	Concretize the commitment of abolishing the death penalty as soon as possible (Switzerland)	<b>Accepted in full</b>
151.107	Abolish the death penalty (Norway)	<b>Accepted in full</b>
151.108	Introduce a moratorium on executions with a view to abolishing the death penalty (Paraguay)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

Within the reporting period, the Government of Malaysia has shifted its stance on the abolition of the death penalty and shifted the policy position to the abolition of the mandatory death penalty. The moratorium imposed by the government when it first announced the intent to abolish the death penalty in October 2018 continues to be in place within the reporting period.

In September 2019, the Minister of Law, the Late Dato VK Liew, appointed a special committee to review alternative sentences to the mandatory death penalty chaired by the former Chief Justice, Tan Sri Richard Malanjum. The report was submitted to the minister in February 2020, and the minister assured that the committee's report would be studied, and a cabinet paper will be presented to the cabinet for further action.<sup>7</sup>

Government policies on the death penalty were placed on hold following the collapse of the administration. The change of administration raised concerns that the government would renege on the commitments made during the UPR and a reversal of the announcement by the cabinet in October 2018. The concern was fueled by the support of several component parties of the new administration that were active advocates for the retention of the death penalty. Party members were mobilised to campaign for the retention of the death penalty and at times masqueraded as an NGO<sup>8</sup> to garner public support.

To its credit, the new administration maintained the moratorium introduced by the Pakatan Harapan (PH) administration and carried over the report by the Special Committee for consideration under the new cabinet. Since then, the report and its contents have been under scrutiny, with the Minister-in-charge suggesting that the committee's findings need thorough examination by the government before a decision can be made.<sup>9</sup>

<sup>7</sup> Rashvinjeet S. Bedi 'Committee on alternatives to mandatory death penalty hands over report to govt' (The Star, 12 February 2020) <<https://www.thestar.com.my/news/nation/2020/02/12/committee-on-alternatives-to-mandatory-death-penalty-hands-over-report-to-govt>> accessed 17 May 2021

<sup>8</sup> MCA activists badger Kit Siang on death penalty abolition' (MalaysiaKini, 23 January 2019) <<https://www.malaysiakini.com/news/461386>> accessed 17 May 2021

<sup>9</sup> Geraldine Tong, 'Mandatory death sentence abolition needs further scrutiny – minister' (MalaysiaKini, 6 November 2020) <<https://www.malaysiakini.com/news/549686>> accessed 6 April 2021



It should also be noted that the government voted in favour of the moratorium on death penalty at the UN General Assembly. While the vote was not publicised by the government, the support for a moratorium was largely welcomed by abolitionists advocates and provided assurance that the moratorium in Malaysia would likely be maintained.

Apart from the development within the executive with regard to the death penalty, legal developments on selected cases involving the death penalty were met with some successes in 2019 with a judgment that declared Section 37A of the Dangerous Drugs Act 1952 as unconstitutional. The judgment was noteworthy as three-quarters of those on death row in Malaysia are for the offence of drug trafficking and many of the convictions were secured on the premises of double presumption<sup>10</sup> under Section 37A of the Dangerous Drugs Act 1952.

The spirit of the decision, however, was not followed in the subsequent constitutional challenge on the constitutionality of the mandatory death penalty. The court, in the challenge, held that the power of sentencing is statutory and beyond judicial power<sup>11</sup> and as such, the provision requiring the sentence of the mandatory death penalty does not usurp judicial power nor violate the doctrine of separation of power. The decision is highly concerning as a similar rationale favouring Parliament supremacy in the constitutionality of legislations was raised when the constitutionality of the Sedition Act 1948 was challenged in 2015.<sup>12</sup>

Within the reporting period, the number of death row inmates has increased from 1,281 individuals on death row to 1,324. Of the 1,324, 536 were foreign nationals. In terms of gender, 129 are women. Earlier data in 2018 suggested that a disproportionate number of women on death row in Malaysia were foreign nationals. There is no indication that this has substantially changed within the reporting period.

## 2.3 RIGHT TO FREEDOM FROM TORTURE

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.109	Take further steps to eliminate all forms of cruel, inhuman or degrading treatment or punishment, including the practice of whipping and caning (Brazil)	<b>Taken note of</b>
151.110	Strengthen its national legislation with respect to the prevention of torture and ill-treatment and the elimination of the practice of whipping and caning (Czechia)	<b>Partially accepted</b>

<sup>10</sup> The double presumption in the amended Dangerous Drugs Act 1952 presumes that a person is in possession of the drugs and had intent to traffic said drugs if the quantity found is above a threshold dictated by the law.

<sup>11</sup> 'Federal Court: Parliament empowered to enact laws on offences, punishment includes the death penalty' (Malay Mail, 13 August 2020) <<https://www.malaymail.com/news/malaysia/2020/08/13/federal-court-parliament-empowered-to-enact-laws-on-offences-punishments-in/1893651>> accessed 17 May 2021

<sup>12</sup> Ida Lim 'Federal Court rules Sedition Act constitutional, UM's Azmi Sharom to stand trial' (Malay Mail, 6 October 2015) <<https://www.malaymail.com/news/malaysia/2015/10/06/federal-court-rules-sedition-act-constitutional-ums-azmi-sharom-to-stand-tr/982345>> accessed 17 May 2021

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.111	Abolish physical punishment, including caning and judicial beatings, in the legal system, both civil and sharia (Denmark)	<b>Taken note of</b>
151.112	Abolish all forms of corporal punishment in the legal system and withdraw its reservations to the Convention on the Rights of the Child, in particular article 37 on torture and deprivation of liberty (Sweden);	<b>Taken note of</b>
151.113	Include in the criminal law a clear definition of torture, consistent with article 1 of the Convention against Torture (Paraguay)	<b>Taken note of</b>
151.114	Conduct systematically an independent and impartial investigation into allegations of human rights violations in prisons, with a view to putting an end to reported practices of torture, inhuman and degrading treatment or punishment in prisons (Switzerland)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

Despite the existence and reports of prosecution against police officers for torture and abuse in custody<sup>13</sup>, and reported cases of physical violence by prison wardens, the Ministry of Home Affairs (MOHA) in a Parliamentary reply from the March-April Parliamentary session in 2018 noted that there were no recorded torture-related deaths in detention facilities.

While evidence of torture can be difficult to ascertain, the continual occurrence of deaths in custody in 2018, 2019, 2020 and 2021 and consistency in victims' narratives of torture technique and patterns in detention echo the trends documented in public inquiries held by the Human Rights Commission of Malaysia (SUHAKAM) and the Enforcement Agency Integrity Commission (EAIC). The conspicious violence and torture in detention are fairly common with allegations such as:

- In April 2021, a mother of a detainee alleged that there were dark spots on her son's hand, claiming that it was due to police torture.
- Families of 22 men detained under the Security Offences (Special Measures) Act (SOSMA) in 2019 in Jelebu Prison alleged that the detainees were tortured and assaulted. The family members claimed that the detainees were beaten with plastic pipes, sticks, chairs and objects, and had their private parts pepper-sprayed - rendering them unable to urinate or defecate.

Allegations of torture by prison wardens are relatively rare in comparison but cases such as those of Ustaz Wanji, a religious scholar briefly imprisoned for sedition who alleged that he was assaulted during his detention<sup>14</sup> do surface occasionally.<sup>15</sup>

<sup>13</sup> Nurbaiti Hamdan 'Federal Court upholds acquittal of four policemen in Dharmendran murder case' (The Star, 24 October 2018) <<https://www.thestar.com.my/news/nation/2018/10/24/federal-court-upholds-acquittal-of-four-policemen-in-dhamendran-murder-case>> accessed 9 June 2021

<sup>14</sup> Debra Chong 'Convicted of sedition, preacher Wan Ji gets stay of jail sentence' (Malay Mail, 12 July 2019) <<https://www.malaymail.com/news/malaysia/2019/07/12/convicted-of-sedition-preacher-wan-ji-gets-stay-of-jail-sentence/1770740>> accessed 9 June 2021

<sup>15</sup> Predeep Nambiar 'Man in prison abuse claim died due to heart infection, say police' (Free Malaysia Today, 31 July 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/07/31/man-in-prison-abuse-claim-died-due-to-heart-infection-say-police/>> accessed 9 June 2021

The government is largely silent on issues of torture and deaths in custody. Recently, MOHA has even refused to accept a memorandum pertaining to two deaths in custody that happened within a month. The ministry's gates were slammed shut and the petitioners were forced to leave copies of their memorandum on the ministry's gates before leaving.

Caning is still accepted as an appropriate punishment in some Syariah and civil offences in public education institutions. The existence of corporal punishment including caning was revealed as a stumbling block in Malaysia's ratification of UNCAT during engagement between CSOs and government agencies. Notable incidents within the reporting period include:

- Two women who pleaded guilty to attempting to have same-sex relations were caned 6 times at the Syariah High Court in September 2018, and;
- The Selangor Syariah High Court in November 2019 had sentenced 4 men to 6 months of jail plus 6 strokes of caning punishment and a fine for "attempting intercourse against the order of nature".

There is also a growing concern about inhumane and degrading treatment of migrants and refugees in immigration detention centres. The crackdown on undocumented migrant workers by the government during the first wave of COVID-19 in March 2020 contributed to a surge in the number of detainees in immigration detention and outbreaks of COVID-19 infection in detention facilities. Videos of mass arrest and detention in crowded spaces were publicly circulated, raising additional concerns<sup>16</sup> on government failures in complying with the UN Standard Minimum Rules for the Treatment of Prisoners.

Similar concerns arise yet again in another round of crackdown in June 2021 during Malaysia's lockdown under the 3rd Movement Control Order (MCO). In this instance, a video showed what appeared to be illegal migrants being sprayed with disinfectant by immigration officers during a night-time raid by the department<sup>17</sup>.

### **Suggestions for Implementation of Recommendations**

The report recommends for the government to establish an independent external police oversight body such as the Independent Police Complaints and Misconduct Commission (IPCMC) to oversee complaints relating to police misconduct and the development of policing policies and guidelines to prevent further mishaps.

The government must also ensure that the Coroners' court is empowered to investigate custodial deaths as required by existing legislation and ensure that other bodies such as SUHAKAM and EAIC are able to engage on the subject matter with relevant government agencies.

In addition, the government must immediately resume the long-standing consultation towards the ratification of UNCAT and takes proactive steps to adopt values and principles of UNCAT, including but not limited to introducing the act of torture as a criminal offence in national legislation.

<sup>16</sup> Lance Lakovic 'Malaysia's secret 'hell': victim of violence, extortion and abuse of power in immigration detention centres tell their stories' (South China Morning Post, 30 July 2018) <<https://www.scmp.com/lifestyle/travel-leisure/article/2157201/malaysias-secret-hell-victims-violence-extortion-and-abuse>> accessed 9 June 2021

<sup>17</sup> 'Don't spray Dettol on undocumented migrants, Immigration Dept told' (The Sun Daily, 9 June 2021) <<https://www.thesundaily.my/local/don-t-spray-dettol-on-undocumented-migrants-immigration-dept-told-YJ7946320>> accessed 9 June 2021

## 2.4 RIGHT TO LIBERTY & SECURITY (ARBITRARY DETENTION)

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.126	Amend and repeal legislation used to arbitrarily detain individuals without trial, including the Prevention of Crime Act, the Security Offences (Special Measures) Act and the Prevention of Terrorism Act (United Kingdom of Great Britain and Northern Ireland)	<b>Partially accepted</b>

## BRIEF ASSESSMENT

In 2018, a stakeholders' consultation was hosted by MOHA to review security laws and other legislation affecting civil and political rights. The consultation was meant to facilitate amendments to the law, with specific amendments remedying human rights violations under security laws as soon as November 2018. However, the amendments to security law were delayed numerous times by the Minister of Home Affairs of the day.

The last news of a possible amendment came in January 2020 where the Attorney-General revealed in court proceedings that the government aimed to amend SOSMA to allow bail. Since then, there has been no indication of further amendments or consultation on the issue. Parliament questions on the matter have also been met with inconclusive answers that the government is committed to improving security laws such as SOSMA.

The application of security laws remains consistent within the reporting period, with notable cases such as those involving alleged suspect members and supporters of the Liberation Tigers of Tamil Eelam (LTTE). Despite the defunct status of the group as a terrorist organisation, the absence of any indication of activity in Malaysia and the involvement of lawmakers in the arrest, the government was generally in agreement with the mass arrest and publicity by the Royal Malaysian Police (PDRM). The charges against the 12 arrested were eventually dropped by the Attorney General in 2020.

Concerns of juveniles detained without trial under the Prevention of Crime Act (POCA) and the Prevention of Terrorism Act (POTA) were somewhat addressed during the reporting period with the Deputy Prime Minister announcing that only 28 juveniles were detained without trial under POCA and one under POTA. Another 27 were under a two-year house arrest order under POCA. This is a notable improvement from an earlier reported number of juvenile detainees of 142 in 2018.

<sup>18</sup> Security laws in this context refers to the Security Offences (Special Measures) Act 2012, the Prevention of Crime Act 1960 and the Prevention of Terrorism Act 2015

<sup>19</sup> Rahmat Khairulrijal 'Government to amend Sosma enabling courts to grant bail to accused' (New Straits Times, 23 January 2020) <<https://www.nst.com.my/news/crime-courts/2020/01/559151/government-amend-sosma-enabling-courts-grant-bail-accused>> accessed 10 June 2021

<sup>20</sup> <https://pardocs.sinarproject.org/documents/2020-november-december-parliamentary-session/oral-questions-soalan-lisan/2020-12-09-parliamentary-replies/20201209-p14m3p2-soalan-lisan-42.pdf/view>

<sup>21</sup> 'Malaysia PM Mahathir says 'satisfied' with police's reasoning for Tamil Tigers arrests' (Channel News Asia, 14 October 2019) <<https://www.channelnewsasia.com/news/asia/ltte-mahathir-police-tamil-tigers-arrests-anwar-sosma-11999190>> accessed 10 June 2021

<sup>22</sup> Fatimah Zainal 'DPM: Fewer than 30 underage detainees under Poca, Pota' (The Star, 1 February 201) <<https://www.thestar.com.my/news/nation/2019/02/01/dpm-fewer-than-30-underage-detainees-under-poca-pota>> accessed 10 June 2021

### Suggestions for Implementation of Recommendations

The report strongly recommends for the government to institute operational procedures to limit and restrict the arbitrary use of security laws that permit the denial of the right to fair trial, and for the abolition of SOSMA. SOSMA is a procedural law that replaces judicial processes within the Criminal Procedure Code. SOSMA is not necessary for maintaining national security as the only element it provides is an option for PDRM to impose their own discretion arbitrarily in determining whether a person is to be processed in line with the Criminal Procedure Code or the onerous provisions of SOSMA.

The report also recommends the abolition of POCA and POTA as these laws provide for arbitrary detention and the complete denial of the right to fair trial. Juveniles detained under these laws must be given immediate priority for review and trial in line with existing protection and mechanism under the Child Act 2001. A moratorium ought to be implemented while systematic reviews of security laws take place with consultation from CSOs and legal experts.

## 2.5 RIGHT TO FREEDOM OF RELIGION OR BELIEF

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.127	Enhance protections for the right of freedom of religion or belief for all people in Malaysia, including the right to freely choose and practise their faith (United States of America)	<b>Taken note of</b>
151.129	Take measures to fully guarantee the right to freedom of religion and belief (Albania)	<b>Taken note of</b>
151.131	Guarantee freedom of religion or belief to all, stemming racial and religious intolerance, including against the Christian community (Croatia)	<b>Taken note of</b>
151.132	Amend the National Registration Act to remove all references to religion on identity cards, in follow-up to recommendations in paragraphs 146.87 and 146.152 of the Second Cycle (Haiti)	<b>Taken note of</b>
151.133	Take the necessary measures to ensure that all persons are free to exercise their right to freedom of religion and belief, especially the right to change their religion, without fear of judicial sanction, in follow-up to recommendations in paragraphs 146.87 and 146.152 of the second cycle (Haiti)	<b>Taken note of</b>
151.134	Make more efforts in the framework of freedom of religion and belief (Iraq)	<b>Partially accepted</b>
151.135	Undertake administrative, policy and legislative measures to guarantee freedom of religion and belief for all in Malaysia, consistent with the Constitution (Kenya)	<b>Accepted in full</b>



## BRIEF ASSESSMENT

Progress on improving the freedom of religion and belief has been slow. Malaysia is still largely haunted by the shadow of the enforced disappearance relating to individuals who have left Islam, persecution of religious minority<sup>23</sup> and other human rights violations perpetrated by state-linked religious bodies or the religious affair departments.

The change in political climate has also revived the possibility of the reintroduction of an amendment to Act 355 on the jurisdiction of the Syariah courts and its possible impact on the legal system of Malaysia and the role of religious law in a secular government.

Individuals registered as Muslim but who do not profess the faith continue to pursue legal resolution to their status. Positive progress was noted in selected cases where the individual's listing as a Muslim was struck out from their identification cards.<sup>24</sup>

While legal resolution is possible for those that have the opportunity or access to do so, similar successes are difficult for communities such as the Orang Asli to achieve.<sup>25</sup> Lawyers who were successful in these legal challenges are met with threats and harassment<sup>26</sup>, deterring other lawyers from undertaking legal challenges on the issue.

Similarly, SUHAKAM reported in January 2021 that children of mixed marriages were, in some circumstances, left registered as Muslim despite not practising the faith. This has led to a situation where they are required to observe rules applied to Muslim students and attend religious classes.<sup>27</sup>

Sarawak made some progress on this front in 2018 when it announced its intention to amend state laws on conversion with the aim to provide an administrative solution for those seeking to leave the Islamic faith.<sup>28</sup>

Apart from these concerns, incidences of forced conversion are still sporadically reported among indigenous communities.<sup>29</sup>

### Suggestions for Implementation of Recommendations

The report recommends for the government to observe and fulfil the right to freedom of religion and belief under Article 11 of the Federal Constitution and ensure that individuals are allowed to profess and practise their faith freely with no intervention or obstruction by the government. The report also recommends for relevant government departments such as the National Registration Department to establish avenues and processes to remedy clerical error relating to the faith designation in identity cards and ensure that those wrongly registered as Muslim are allowed a viable option to make the necessary corrections.

<sup>23</sup> <https://www.freemalaysiatoday.com/category/nation/2019/09/10/more-foreigners-arrested-in-fresh-raids-on-private-shia-functions-in-johor-selangor/>

<sup>24</sup> <https://www.malaymail.com/news/malaysia/2021/03/25/court-allows-chinese-malaysian-woman-unilaterally-converted-as-child-to-pur/1960865>

<sup>25</sup> <https://www.facebook.com/sitikasim/posts/10219166084965777>

<sup>26</sup> Baru Bian 'Christianising Muslim In Sarawak; Setting the record straight' (Borneo Today, 28 February 2018) <<https://www.borneotoday.net/christianising-muslims-in-sarawak-setting-the-record-straight/>> accessed 19 July 2021

<sup>27</sup> Syed Jaymal Zahid 'Suhakam report forced conversion of Sarawakian native children over Mykad blunder' (Malay Mail, 21 January 2021) <<https://www.malaymail.com/news/malaysia/2021/01/21/suhakam-reports-forced-conversion-of-sarawakian-native-children-over-mykad/1942696>> accessed 19 July 2021

<sup>28</sup> Trinna Leong 'Sarawak Chief Minister pledges to amend state law to allow converts to renounce Islam' (The Straits Times, 4 March 2018) <<https://www.straitstimes.com/asia/se-asia/sarawak-chief-minister-pledges-to-amend-state-laws-to-allow-converts-to-renoounce-islam>> accessed 19 July 2021

<sup>29</sup> Yiswatee Palansamy 'Religious conversion of Kelantan Orang Asli? Stop preying on the weak, Muslim preachers warned' (Malay Mail, 21 June 2019) <<https://www.malaymail.com/news/malaysia/2019/06/21/religious-conversions-stop-taking-advantage-of-orang-asli-muslim-preachers/1764386>> accessed 19 July 2021

## 2.6 RIGHT TO ACCESS OF INFORMATION

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.136	Enact legislation guaranteeing the right of access to information and ensure its full implementation (Slovakia)	<b>Accepted in full</b>

### BRIEF ASSESSMENT

At the Federal level, the Legal Affairs Division (BHEUU) under the Prime Minister Department actively engaged with CSOs and experts on the introduction of a Right to Information (RTI) legislation. A series of consultations was held in collaboration with a coalition of CSOs advocating for freedom of expression and information.

The Official Secrets Act 1972 (OSA) that is often viewed as antithetical to RTI legislation was initially slated to be repealed but was subsequently decided to be retained with amendments to align it with the new RTI legislation. A timeline was provided during a meeting in April 2021 hosted by BHEUU. It was shared during the meeting that a cabinet paper will be tabled for consideration by December 2021.

At the state level, existing RTI legislation has had limited impact. In Sarawak, the state-level legislation is hampered by government discretion in withholding information and limitations imposed by OSA. In selected cases, Environmental Impact Assessments (EIA) for projects were produced but withheld from public access. For example, in the case of Kajing Tubek, the EIA was only obtained after a case was filed by members of the public for the report.

In Penang, the opposition party Parti Gerakan Rakyat Malaysia (GERAKAN) had previously raised concerns of failure of the RTI legislation in the state after 20 failed attempts to obtain details on a controversial undersea tunnel project<sup>30</sup>. Civil society's engagement on similar issues with the state government was also met with resistance and onerous conditions to obtain information.<sup>31</sup> Similar resistance was also observed in Selangor which has its own RTI legislation. In Selangor, media personnel were forbidden from entering and attending an objection hearing involving a rezoning of a forest reserve in a city council local development plan.<sup>32</sup>

<sup>30</sup> Opalyn Mok, 'After 20 failed attempts, Penang Gerakan man tries FOI yet again' (Malaymail, 17 April 2017) <<https://www.malaymail.com/news/malaysia/2017/04/17/after-20-failed-attempts-penang-gerakan-man-tries-foi-yet-again/1357931>> accessed 10 June 2021

<sup>31</sup> Aliran 'Gamuda - double dipping or triple dipping?' (Aliran, 7 June 2021) <Opalyn Mok, 'After 20 failed attempts, Penang Gerakan mana tries FOI yet again' (Malaymail, 17 April 2017) <<https://www.malaymail.com/news/malaysia/2017/04/17/after-20-failed-attempts-penang-gerakan-man-tries-foi-yet-again/1357931>> accessed 10 June 2021> accessed 10 June 2021

<sup>32</sup> Kenneth Tee 'Whatever happened to Selangor's Right to Information law? Civil Societies ask Shah Alam Council after barring media from community hearing' (Malaymail, 8 April 2021) <<https://www.malaymail.com/news/malaysia/2021/04/08/whatever-happened-to-selangors-freedom-of-information-law-civil-societies-a/1964943>> accessed 10 June 2021

## Suggestions for Implementation of Recommendations

The report recommends for the Federal and State government to review the existing policy position of public authorities and ensure that information is made publicly available and accessible, and shift the burden on the public to obtain information, to a system where state and federal agencies provide all information and provide justification why selected information must be withheld.

Rules of engagement on RTI and the form of information that a government can and should provide must also be established to ensure that data which may compromise individuals' privacy and safety such as health information, personal records and other similar items can be adequately protected.

The RTI legislation in development by the Federal government ought to take into account the shortcomings of existing state-level legislation, and ensure that the new bill will provide clear guidance on data and information that can be made classified and the process and standards for classification to be challenged if necessary. Government agencies should also be empowered to provide information to the public as necessary, in line with the legislation without limitation imposed at a Ministerial level.

The report also recommends for the government to continue efforts to abolish OSA and prioritise the introduction of RTI legislation that would provide the necessary measures for classifying official secrets, amend the Whistleblower Protection Act 2010 to reflect the values and principles in support of the right to information, and amend Article 10 of the Federal Constitution to provide for the right to information as a constitutional right.

## 2.7 RIGHT TO FREEDOM OF EXPRESSION, ASSOCIATION & ASSEMBLY RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.137	Rescind or revise the Sedition Act, Security Offences Act and Communications and Multimedia Act, which negatively affect freedoms of expression, association and peaceful assembly (United States of America)	<b>Partially accepted</b>
151.138	Continue developing efforts in order to guarantee the freedoms and safety of human rights defenders (Uruguay)	<b>Partially accepted</b>
151.139	Take further steps to ensure a free, independent, pluralistic and diverse media landscape, including by reducing political influence on media outlets (Austria)	<b>Accepted in full</b>
151.140	Consider revising national legislation, including the Communications and Multimedia Act 1998, in order to bring it into conformity with international human rights law regarding the right of freedom of expression online and offline (Brazil)	<b>Partially accepted</b>
151.141	Amend existing provisions that limit the freedom of expression, the Evidence Amendment Act, Peaceful Assembly Act, and the cessation of arbitrary detention and apprehensions without charges following legislative reforms in accordance with international standards (Spain)	<b>Partially accepted</b>
151.142	Build upon its efforts to ensure the full enjoyment of the freedom of opinion and expression by repealing the Sedition Act and bringing the Printing Presses and Publication Act, the Official Secrets Act and the Anti-Fake News Act into line with international human rights law (Czechia)	<b>Taken note of</b>

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.143	Accelerate consultations within the Government in order to review the following legislation: the Sedition Act, the Printing Presses and Publications Act, the Prevention of Crime Act, the Special Offence Act, the Peaceful Assembly Act and the Prevention of Terrorism Act (Georgia)	<b>Accepted in full</b>
151.144	Continue efforts in the area of free speech to create a safe and enabling environment for the media and civil society and, in this regard, repeal the Printing and Publication Act, as previously recommended (Ireland)	<b>Partially accepted</b>
151.145	Review its legislation with the aim of ensuring that civil society, including human rights defenders and journalists, could freely exercise their rights to freedom of expression, both online and offline, association and peaceful assembly (Lithuania)	<b>Partially accepted</b>
151.146	Better protect journalists and human rights defenders, in particular by abolishing travel bans they are subject to and amending certain laws, such as the Peaceful Assembly Act and the Penal Code (Switzerland)	<b>Partially accepted</b>
151.147	Revise the Peaceful Assembly Act in order to eliminate discrimination and hindrance to the freedom of association and	<b>Accepted in full</b>

## BRIEF ASSESSMENT

Freedom of expression underwent a somersault during the reporting period. Soon after the General Election in May 2018, a moratorium was put in place against the application of laws restricting freedom of expression such as the Sedition Act 1948 and the Communication and Multimedia Act 1998 (CMA). The moratorium was accompanied by promises of reform and consultations with relevant government stakeholders. The initial progress was soon reversed after the attempted demolition of a 147-years old temple sparked protests and a localised riot. The moratorium imposed was lifted by the government with the assurance that renewed application of these laws would only be on incidences that threaten national security, public order and race relations.<sup>33</sup>

The Anti-Fake News Act 2018 was successfully repealed after an initial hurdle resulting from objections by the opposition-dominated Senate in Parliament.<sup>34</sup> The Peaceful Assembly Act 2012 (PAA) also underwent some progress when it was reviewed and amended to include a shorter notice period required of organisers and a new compound system as an alternative to criminal prosecution<sup>35</sup>. Other laws which were supposed to be reviewed, amended or abolished did not experience the same success.

<sup>33</sup> Nadia Hamid, Mohamad Ridzuan Anwar 'Moratorium on draconian laws suspended on issues threatening national security, public order, race relations' (New Straits Times, 3 December 2018) <<https://www.nst.com.my/news/nation/2018/12/436806/moratorium-draconian-laws-suspended-issues-threatening-national-security>> accessed 10 June 2021

<sup>34</sup> Dhivya Danielle 'Anti-Fake News Act: Birth, Life, Death; A possible Shot at Revival' (The Rakyat Post, 19 November 2020) <<https://www.therakyatpost.com/2020/11/19/anti-fake-news-act-birth-life-death-a-possible-shot-at-revival/>> accessed 10 June 2021

<sup>35</sup> Chester Tay 'Rules for peaceful assembly relaxed' (The Edge Markets, 5 July 2019) <<https://www.theedgemarkets.com/article/rules-peaceful-assembly-relaxed>> accessed 10 June 2021

In the remainder of the reporting period, Malaysia's progress was mostly undone<sup>36</sup> with renewed investigation initiated under the Sedition Act 1948 for protests against the new Perikatan Nasional (PN) administration<sup>37</sup>, investigation under Section 233 of the CMA for satire perceived to have insulted a member of the royal family<sup>38</sup>, revival of the Anti-Fake News Act<sup>39</sup> through an Emergency Ordinance<sup>40</sup>, investigation against media organisations<sup>41</sup>, investigation against opposition lawmakers<sup>42</sup> and a raid with confiscation of publications under the Printing Presses and Publications Act 1984 (PPPA).<sup>43</sup>

Apart from the restriction on freedom of expression, freedom of assembly was substantially curtailed during the reporting period. Part of the curtailment can be attributed to the COVID-19 pandemic that imposes strict social distancing requirements. However, authorities have at times applied the same legislation in a discriminatory manner, utilised rules to prosecute participants of peaceful protests who comply with social distancing requirements<sup>44</sup> and investigate individuals who participated in solidarity vigils<sup>45</sup>. The PAA continues to play a role in suppressing freedom of assembly, with PDRM threatening to call in 90 individuals for investigation<sup>46</sup> for a breaking-of-fast event at Parliament in protest of the Parliament shutdown which was part of the state of emergency.

Two new political parties also had their registrations denied by MOHA during the reporting period. Malaysian United Democratic Alliance (MUDA) has since filed for judicial review for the rejection and claims that the Minister of Home Affairs had tried to entice MUDA to be aligned with the government if the party wants their registration to be approved<sup>47</sup>.

<sup>36</sup> Breakdown and details of cases can be found in SUARAM's Human Rights Report <<https://www.suaram.net/wp-content/uploads/2020/12/HRR-Overview-2020-Digital-Print.pdf>> accessed 10 June 2021

<sup>37</sup> Justin Ong 'Cops confirm sedition probe against activist behind pro-democracy demonstration' (Malay Mail, 1 March 2020) <<https://www.malaymail.com/news/malaysia/2020/03/01/cops-confirm-sedition-probe-against-activist-behind-pro-democracy-demonstra/1842390>> accessed 10 June 2021

<sup>38</sup> 'SCMP Reporter 'Malaysian artist Fahmi Reza's arrest for 'insulting' queen sparks backlash' (South China Morning Post, 24 April 2021) <<https://www.scmp.com/week-asia/people/article/3130911/malaysian-artist-fahmi-rezas-arrest-insulting-queen-sparks>> accessed 10 June 2021

<sup>39</sup> 'Emergency Ordinance: Action only against fake news, not criticism, says minister' (Malay Mail, 16 March 2021) <<https://www.malaymail.com/news/malaysia/2021/03/16/emergency-ordinance-action-only-against-fake-news-not-criticism-says-minist/1958411>> accessed 10 June 2021

<sup>40</sup> Bernama 'Housewife, tutor first to be charged under Emergency Ordinance for spreading fake news on Covid-19' (The Edge Markets, 2 June 2021) <<https://www.theedgemarkets.com/article/housewife-tutor-first-be-charged-under-emergency-ordinance-spreading-fake-news-covid19>> accessed 10 June 2021

<sup>41</sup> 'Malaysian police raid Al Jazeera's office, seize computers' (Al-Jazeera, 5 August 2020) <<https://www.aljazeera.com/news/2020/8/5/malaysian-police-raid-al-jazeeras-office-seize-computers>> accessed 10 June 2021

<sup>42</sup> MalaysiaKini Team, 'Custodial Death: Syed Saddiq under probe over video calling for justice' (MalaysiaKini, 21 May 2021) <<https://www.malaysiakini.com/news/575551>> accessed 11 June 2021

<sup>43</sup> Ng Xiang Yi 'Cops seize Gerakbudaya computers over ex-AG's book' (MalaysiaKini, 19 February 2021) <<https://www.malaysiakini.com/news/563562>> accessed 10 June 2021

<sup>44</sup> Manjit Kaur 'Five activists charged with defying MCO over hospital protest' (The Star, 4 June 2020) <<https://www.thestar.com.my/news/nation/2020/06/04/five-activists-charged-with-defying-mco-over-hospital-protest>> accessed 10 June 2021

<sup>45</sup> Yiswaree Palansamy 'I have your back and you will have mine': Graphic artist Fahmi Reza stands with those investigated for supporting him' (Malay Mail, 4 May 2021) <<https://www.malaymail.com/news/malaysia/2021/05/04/i-have-your-back-and-you-will-have-mine-graphic-artist-fahmi-reza-stands-wi/1971533>> accessed 10 June 2021

<sup>46</sup> Zurairi Ar 'Cops call in around 90 who broke fast in front of Parliament yesterday urging for its reopening, end of Emergency' (Malay Mail, 1 May 2021) <<https://www.malaymail.com/news/malaysia/2021/05/01/cops-call-in-around-90-who-broke-fast-in-front-of-parliament-yesterday-urging/1970916>> accessed 10 June 2021

<sup>47</sup> FMT Reporters 'MUDA yet to appeal to me over registration, says home minister' (Free Malaysia Today, 2 February 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/02/02/muda-yet-to-appeal-to-me-over-registration-says-home-minister/>> accessed 11 June 2021



In addition to the generally deteriorating situation, media freedom experienced substantially greater harassment and restriction during the reporting period as compared to recent years. Presently, only state-affiliated media are allowed to attend press conferences by the Prime Minister and Defence Minister<sup>48</sup>. Prior to the shutdown of the Parliament and state of emergency, media coverage in Parliament and state assemblies were also restricted on the grounds of COVID-19 preventive measures.

Journalists were also actively targeted for investigation and faced state sanctions during the reporting period. Al-Jazeera was investigated by PDRM after their documentary on the situation of migrants and refugees in Malaysia, and subsequently had their press credentials revoked by the government. MalaysiaKini was charged with contempt of court<sup>49</sup> for user comments posted on its website and was issued with a fine of RM500,000<sup>50</sup>. Journalists who reported on cases of custodial death in police detention were also called for investigation<sup>51</sup>.

Apart from state-perpetuated violations of the right to freedom of expression and limitations of legitimate speeches, there are also growing numbers of documented cases of 'hate speech' towards minorities in Malaysia in tandem with death threats, rape threats and criminal intimidation that state agencies failed to address. Intolerant behaviours towards marginalised communities have regressed significantly in recent years and the communities have been acutely impacted by these developments.

In 2020, at the start of Malaysia's first lockdown in response to the COVID-19 pandemic after a political coup, a series of coordinated hate speech targeting migrants and refugees surfaced on social media. The hate speech perceivably increased xenophobia among members of the public and resulted in death threats against known community leaders<sup>52</sup> after a fake video of him claiming that Rohingya wants full citizenship was circulated<sup>53</sup> on social media.

In 2021, a 17-year-old student who exposed sexual harassment in her school subsequently became a target of rape threats and other forms of criminal intimidation from her peers. The Deputy Inspector-General of Police<sup>54</sup> dismissed the threat as a mere joke during a press conference<sup>55</sup>. The headmistress of the school was found to have made comments belittling the student referring to her as 'Satan's spawn' in an event poster involving the student<sup>56</sup>. As of the time of reporting, no further action of criminal investigation for criminal intimidation or Sexual Offences against Children Act 2017 (SOAC) and the headmistress alleges that her Facebook account was hacked<sup>57</sup>.

<sup>48</sup> 'The Future of Media Freedom in Malaysia, a World Press Freedom Day 2020 message' (Center for Independent Journalism, 3 May 2020) <<https://cijmalaysia.net/the-future-of-media-freedom-in-malaysia-a-world-press-freedom-day-2020-message/>> accessed 19 July 2021

<sup>49</sup> Hidir Reduan Abdul Rashid 'MalaysiaKini in contempt over readers' comments, rules Federal Court' (MalaysiaKini, 21 February) <<https://www.malaysiakini.com/news/563548>> accessed 11 June 2021

<sup>50</sup> Est. USD 125,000

<sup>51</sup> Jason Thomas 'Probe Ganapathy's death, not journalists, cops told' (Free Malaysia Today, 18 May 2021) <<https://www.google.com/search?q=malaysiakini+journalist+custodial+death+investigation>> accessed 11 June 2021

<sup>52</sup> Rozanna Latiff & Ebrahim Harris 'Death threats, hate speech turn Rohingya activist's Malaysia home into Prison' (Reuters, 6 April 2021) <<https://www.reuters.com/article/us-myanmar-rohingya-malaysia-idUSKBN2BT02M>> accessed 11 June 2021

<sup>53</sup> FMT Reporters 'Rohingya spokesman lives in fear after fake news on citizenship sparks death threats' (Free Malaysia Today, 24 April 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/04/24/rohingya-spokesman-lives-in-fear-after-fake-news-on-citizenship-sparks-death-threats/>> accessed 11 June 2021

<sup>54</sup> Who has since been promoted to the Inspector General of Police

<sup>55</sup> MalaysiaKini Team, 'Deputy IGP describes rape threat against teen as 'maybe a joke'' (MalaysiaKini, 27 April 2021) <<https://www.malaysiakini.com/news/572276>> accessed 11 June 2021

<sup>56</sup> Zurairi Ar, 'MPs call for action after school principal labels own student Ain 'Satan's spawn' on Facebook for rape joke expose' (Malay Mail, 9 May 2021) <<https://www.malaysiakini.com/news/572276>> accessed 11 June 2021

<sup>57</sup> 'MoE: Teacher accused of rape joke reassigned pending probe, principal who disparaged Ain claims Facebook account 'hacked'' (Borneo Post, 12 May 2021) <<https://www.theborneopost.com/2021/05/12/moe-teacher-accused-of-rape-joke-reassigned-pending-probe-principal-who-disparaged-ain-claims-facebook-account-hacked/>> accessed 11 June 2021

## Suggestions for Implementation of Recommendations

The report recommends that the government implement and restore the moratorium on the use of repressive laws and that the State adopt necessary plans, without delay, to review and amend or repeal these laws, including Section 233 of CMA, PPPA, the Sedition Act 1948, and OSA, among others. Investigation, arrest, persecution and prosecution against HRDs, political opponents, government critics and journalists must be dropped immediately. The report also recommends that the government guarantee free and equal access to all media, regardless of their affiliation, medium of practice or geographical locations. There shall be no arbitrary or discriminatory restrictions of access to government press conferences or events as well as to any upcoming State initiatives, including but not limited to parliament and state assembly sittings, open court and public hearings. COVID-19 must not be used as an excuse to undermine media access.

The government's advances in developing the Media Council is a welcomed development and the report strongly encourages the government to continue its efforts to pursue engagement with media organisations, journalists and CSOs in developing and introducing an independent media council.

Last but not least, the report recommends for the government to consult and engage stakeholders in the development of an action plan to address hate speech and adopt the Rabat Action Plan. The government must review enforcement agencies' protocols and guidelines in addressing criminal intimidation, death threat and rape threats against identifiable activists and individuals, to ensure that perpetrators of such crimes are subjected to appropriate criminal action in line with existing legal provisions of the Penal Code.

## 2.8 INDEPENDENCE OF JUDGES & LAWYERS

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.148	Ensure that the judicial ethics committee carries out independent investigations on violations of the code of ethics (Algeria)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

Concerns of judicial misconduct and manipulation surfaced in an affidavit by Court of Appeal Judge, Hamid Sultan Abdul Backer. In the affidavit, the judge alleged that there was intervention by senior judges in key civil and political rights cases, such as the sedition charge against the late-Karpal Singh<sup>58</sup>. A show cause letter was issued against the judge. As the existing legislation requires the hearing to be closed to the public, the nature and extent of the investigations are not publicly known<sup>59</sup>.

<sup>58</sup> A member of Parliament for Bukit Gelugor from 2004 - 2014.

<sup>59</sup> V Anbalagan 'Court of Appeal judge sends 'explosive' response to show cause notice' (Free Malaysia Today, 11 September 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/09/11/court-of-appeal-judge-sends-explosive-response-to-show-cause-notice/>> accessedd 10 June 2021

As of this report, the judge in question was suspended with no grounds for his suspension made public<sup>60</sup>.

### Suggestions for Implementation of Recommendations

The report recommends for the Judges' Ethics Committee Act 2010 to be amended to ensure that all Judges' Ethics Committee (JEC) hearings are made publicly accessible, and all documents related to the hearing made publicly available. Findings and decisions and the grounds of the decision of the JEC must also be made public. The principle of natural justice should be observed and there must be an appeal process for any decision by the JEC.

## 2.9 RIGHT TO CITIZENSHIP

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.150	Amend all provisions of the federal Constitution that deny women equal rights with respect to the transmission of their nationality to their children (Belgium)	<b>Taken note of</b>
151.151	Take steps to harmonize laws and policies on nationality to ensure equal rights for Malaysian women and men in all situations (Haiti)	<b>Taken note of</b>
151.152	Protect the right to nationality and prevent statelessness of children born to Malaysian citizens by removing restrictions thereof (Kenya)	<b>Taken note of</b>
151.208	Continue its efforts for gender equality and allow Malaysian women to pass on their citizenship to their children and spouses (Iceland)	<b>Taken note of</b>
151.262	In order to better safeguard the unity of the family, take steps to speed up the application process for permanent residence (Haiti)	<b>Taken note of</b>

## BRIEF ASSESSMENT

Statelessness remains a notable problem in Malaysia with high numbers of stateless individuals documented across the country. An NGO working on statelessness on the ground in Sarawak has documented no less than 600 cases at the time of reporting. The numbers of statelessness issue are also reflected in SUHAKAM's 2019 annual report where SUHAKAM shares that it has received 30 complaints related to the right to nationality in Sarawak, 294 in Sabah and 6 in Peninsular Malaysia in 2019<sup>61</sup>.

<sup>60</sup> Bernama, 'Court of Appeal judge Hamid Sultan suspended' (New Straits Times, 5 February 2021) <<https://www.nst.com.my/news/crime-courts/2021/02/663210/court-appeal-judge-hamid-sultan-suspended>> accessed 10 June 2021

Stateless individuals are also faced with additional challenges in terms of funding and financing their own DNA tests to prove the parentage of a child. Financial help used to be offered by the Welfare Department but this has been halted.

In November 2020, MOHA revealed that they had received a total of 14,477 citizenship applications between the start of 2019 to 15 October 2020. Of these applications, 45 have been successful, 691 were rejected, and 13,741 are still being processed. The backlog of applications is reflective of the waiting period of up to five years that some families have experienced. No effective steps have been taken towards processing the backlog of applications in a timely manner.

As noted in Chapter 2.1, discriminatory elements of the constitution that limit and restrict a parent's ability to transmit citizenship remain in place.

In the December 2020 parliamentary sitting, the Deputy Home Minister cited national security concerns as a reason to prevent Malaysian women married to non-citizens from conferring citizenship on their overseas-born children<sup>62</sup>. In line with the current government's stance, the National Registration Department continues to oppose ongoing judicial challenges on the issue.

### **Suggestions for Implementation of Recommendations**

The report recommends for the government to review and amend Article 14 of the Federal Constitution to ensure equality between men and women in the matter of conferring citizenship to children. This should include equalising citizenship by operation on the law<sup>63</sup>, giving equal recognition to children born outside of legally recognised marriages and recognising informal and traditional marriages for purposes of child registration<sup>64</sup>, and ensure that adopted children can inherit citizenship from adoptive Malaysian parents<sup>65</sup>.

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<sup>62</sup> <https://www.malaysiakini.com/news/553595>

<sup>63</sup> Requires amendment to Article 14(1)(b) of the Federal Constitution

<sup>64</sup> Requires repeal of Section 17 of Part III of the Second Schedule of the Federal Constitution

<sup>65</sup> Requires amendment to Section 1 of the Second Schedule of the Federal Constitution





CHAPTER

3

# ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND RIGHTS OF THE INDIGENOUS



### 3.1 GENERAL RECOMMENDATIONS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

#### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.63	Continue strengthening respect for economic and social rights (Egypt)	<b>Accepted in full</b>
151.87	Consider including measures aimed at ensuring increased efficiency and accountability of public service in its national development strategy (Azerbaijan)	<b>Accepted in full</b>
151.155	Continue its development efforts to raise the level of health care and improve education services in all regions of the country (Yemen)	<b>Accepted in full</b>
151.157	Not to relent in its efforts to improve the socioeconomic well-being of its people (Nigeria)	<b>Accepted in full</b>
151.169	Utilize information technology for creating employment opportunities for the youth (India)	<b>Partially accepted</b>
151.181	Continue its efforts in promoting social and economic rights, particularly in health-care services (Islamic Republic of Iran)	<b>Partially accepted</b>
151.260	Ensure that the right to health and education is available, irrespective of citizenship and immigration status (Philippines)	<b>Partially accepted</b>

## BRIEF ASSESSMENT

During the reporting period, a new economic development agenda was unveiled by the government in May 2019<sup>66</sup> and subsequently launched in October 2019<sup>67</sup>. The plan, coined as The Shared Prosperity Vision 2030, outlined 8 core challenges and issues along with 7 strategic thrusts to remedy the outlined challenges<sup>68</sup>. The first meeting by the appointed Shared Prosperity Council was held in May 2021 chaired by the Prime Minister. The council comprised government ministries, four heads of department, two heads of government-linked investment companies (GLICs), three representatives of the ethnic-based chambers of commerce and leaders of other sectors<sup>69</sup>.

<sup>66</sup> Denison Jayasooria 'A Critical Review of Dr M's 'shared prosperity' agenda for 2030' (MalaysiaKini, 13 May 2019) <<https://www.malaysiakini.com/letters/475916>> accessed 21 June 2021

<sup>67</sup> Shannon Teoh 'Mahathir Mohamed launches Shared Prosperity Vision 2030' (The Straits Times, 6 October 2019) <<https://www.straitstimes.com/asia/se-asia/mahathir-launches-shared-prosperity-vision-2030>> accessed 21 June 2021

<sup>68</sup> Government publication of the Share Prosperity Vision 2030 <<https://www.pmo.gov.my/wp-content/uploads/2019/10/SPV2030-summary-en.pdf>> accessed 21 June 2021

<sup>69</sup> FMT Reporters 'Shared Prosperity Council holds first meeting' (FMT, 5 May 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/05/05/shared-prosperity-council-holds-first-meeting/>> accessed 21 June 2021

## 3.2 RIGHT TO SOCIAL PROTECTION

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.160	Take further measures to protect social rights, including the rights of children, women and persons with disabilities (Uzbekistan)	<b>Accepted in full</b>
151.161	Continue the implementation of social protection programmes designed to reduce poverty (Syrian Arab Republic)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

The economic repercussions from the COVID-19 pandemic have highlighted the weaknesses and gaps in existing social protection mechanisms in Malaysia. During the pandemic, the Social Security Organisation (SOSCO) implemented a wage subsidy programme to supplement workers' salaries in companies and businesses adversely affected by the lockdown measures introduced to curb the spread of COVID-19<sup>70</sup>.

The government is preparing to undertake a comprehensive national social protection system by reactivating the Social Protection Council (MySPC) in 2020<sup>71</sup>. Coordinated by the Implementation Coordination Unit of the Prime Minister's Department, MySPC anchors specific components of social protection, namely social assistance, social insurance, labour and data market intervention, and governance. In the most recent meeting (2021), the Prime Minister called for a cross-agency Social Protection Database (PDPS) covering elements of employment, insurance and social assistance to be the sole reference point for social protection programmes and profiles in the country<sup>72</sup>.

### Suggestions for Implementation of Recommendations

The report recommends for the government to develop the necessary legislative and logistic framework to implement a shared database to facilitate inter-agencies collaboration in providing social protection and other welfare services.

<sup>70</sup> 'Wage Subsidy Programme' <<https://www.perkeso.gov.my/index.php/en/wage-subsidy-programme>> accessed 21 June 2021

<sup>71</sup> <https://www.theedgemarkets.com/article/pandemic-tells-us-extend-social-protection-all>

<sup>72</sup> <https://www.malaymail.com/news/malaysia/2021/06/08/pm-malaysia-needs-single-cross-agency-social-protection-database/1980624>

<sup>69</sup> FMT Reporters 'Shared Prosperity Council holds first meeting' (FMT, 5 May 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/05/05/shared-prosperity-council-holds-first-meeting/>> accessed 21 June 2021

### 3.3 ECONOMIC DEVELOPMENT & POVERTY ERADICATION

#### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.86	Intensify efforts to achieve the Sustainable Development Goals (Uzbekistan)	<b>Accepted in full</b>
151.88	Continue to implement the national development plan and endeavour to eliminate poverty and to achieve sustainable development (China)	<b>Accepted in full</b>
151.89	Work on mainstreaming human rights in development planning and the promotion of the right to development (Jordan)	<b>Accepted in full</b>
151.162	Continue to take further efforts and initiatives in the social and economic area aimed to eradicate poverty and to improve living standard of Malaysian people (Russian Federation)	<b>Accepted in full</b>
151.163	Continue implementing programmes to eradicate poverty (Saudi Arabia)	<b>Accepted in full</b>
151.164	Continue to support the poor groups and continue efforts to eliminate poverty in the framework of the 2030 Agenda (United Arab Emirates)	<b>Accepted in full</b>
151.165	Continue realization of the strategies to eradicate poverty and improving the social protection of citizens (Belarus)	<b>Accepted in full</b>
151.166	Continue placing poverty alleviation as one of its national priorities to promote sustainable economic and social development (Indonesia)	<b>Accepted in full</b>
151.167	Share its experiences and lessons learned on poverty eradication with ASEAN countries through bilateral and multilateral mechanisms (Lao People's Democratic Republic)	<b>Accepted in full</b>
151.168	Continue implementing the accepted recommendations with a special focus on the elimination of poverty and strengthening women's participation in political and social affairs (Lebanon)	<b>Accepted in full</b>



## BRIEF ASSESSMENT

The Sustainable Development Goals (SDG) have, to a notable extent, been the primary platform for engagement with the government on economic development and human rights. In earlier years, the government had shown substantial commitment to the SDG principles and released a clear SDG Roadmap<sup>73</sup>. The commitment undertaken by the government was also reflected in the Mid Term Review of the 11th Malaysia Plan<sup>74</sup>. In the implementation of SDGs, Malaysia is recognising three phases as reflected in the development plans (11th, 12th and 13th Malaysia Plans).

In contrast to the lack of engagement with international treaties and the respective treaty body, Malaysia presented its first Voluntary National Review Report in July 2017<sup>75</sup> and will present the second in July 2021. Since the inclusion of SDG, The Department of Statistics (DOSM) has released two reports in 2018<sup>76</sup> and 2019<sup>77</sup> giving details of available data on 128 out of the 247 proposed UN indicators.

While there has been notable progress on SDG implementation at the Federal level, there is some imbalance in the development and implementation of SDGs with a lack of awareness and implementation at district and grassroots level. Currently, there are initiatives such as URBANICE Malaysia, an agency of the Ministry of Housing and Local Government (KPKT) that has developed an agenda for the localisation of SDGs through cities with the preparation of Voluntary Local Reviews by local governments<sup>78</sup>.

On the issue of addressing poverty, the UN Special Rapporteur on Poverty made a field visit to Malaysia in 2019 and released the final report in 2020<sup>79</sup>. One of the major findings from the special rapporteur is the poverty line income measurement and the actual sum of RM980.00 which was regarded as too low a poverty line income (PLI), as well as the rate of poverty for Malaysia which was too low a figure.

The Economic Planning Unit (EPU) Minister dismissed the claims from a “UN representative that the country had undercounted the extent of its poverty as baseless”<sup>80</sup>. Despite the initial objection, by mid-2020, the Government announced that, based on the 2019 Household income survey, the PLI will be revised from RM980 to RM2,208.00<sup>81</sup>.

<sup>73</sup> ‘Wage Subsidy Programme’ <<https://www.perkeso.gov.my/index.php/en/wage-subsidy-programme>> accessed 21 June 2021

<sup>74</sup> Page 0-10 & 0-11 <https://www.epu.gov.my/sites/default/files/2020-08/3.%20Overview.pdf>

<sup>75</sup> <https://sustainabledevelopment.un.org/content/documents/15881Malaysia.pdf>

<sup>76</sup> FMT Reporters ‘Shared Prosperity Council holds first meeting’ (FMT, 5 May 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/05/05/shared-prosperity-council-holds-first-meeting/>> accessed 21 June 2021

<sup>77</sup> [https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=474&bul\\_id=OVpQNVJXMkxMbldxbT-dLQXJKbXV5dz09&menu\\_id=WjJGK0Z5bTk1ZEIVT09yUW1tRG41Zz09](https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=474&bul_id=OVpQNVJXMkxMbldxbT-dLQXJKbXV5dz09&menu_id=WjJGK0Z5bTk1ZEIVT09yUW1tRG41Zz09)

<sup>78</sup> Localising SDGs and its integration (page 12). [https://sustainabledevelopment.un.org/content/documents/2679004\\_NORLIZAHASHIM\\_red.pdf](https://sustainabledevelopment.un.org/content/documents/2679004_NORLIZAHASHIM_red.pdf)

<sup>79</sup> [https://www.ecoi.net/en/file/local/2032558/A\\_HRC\\_44\\_40\\_Add.1\\_E.pdf](https://www.ecoi.net/en/file/local/2032558/A_HRC_44_40_Add.1_E.pdf)

<sup>80</sup> <https://www.thestar.com.my/news/nation/2019/08/24/azmin-disputes-un-poverty-claims>

<sup>81</sup> <https://www.thestar.com.my/news/nation/2020/07/11/national-poverty-line-revised>



## BRIEF ASSESSMENT

Apart from the issue of poverty, issues related to the development of public infrastructure in rural areas continue to serve as further barriers to economic development. In Sarawak, limited infrastructure development plans and the lack of financial interest for private actors to invest in infrastructure have contributed to poor Internet access in the region. Due to the lack of adequate development and resources allocated to public road building and maintenance, existing roads are highly susceptible to damage. Similarly, consistent access to electricity is also challenging in more remote areas, with no clear resolutions to the issue after years of neglect<sup>82</sup>.

The limited access made headlines in 2020 during the pandemic when students were reported to have been forced to trek up a hill and sleep in a tree in order to have consistent mobile signal for Internet access for online examinations<sup>83</sup>. The problem is not only endemic to the larger states of Sabah and Sarawak but also occurs in places like Kelantan<sup>84</sup>.

As of the time of reporting, Malaysia is still actively combatting the COVID-19 pandemic. Despite past successes where the country resolved the first wave in February 2020 and succeeded in managing the second wave in July 2020, the third and fourth wave of COVID-19 had brought the country to its knees. Throughout the pandemic, the country has undergone varying levels of movement restrictions with varying degrees of impact on social welfare and economic development.

Since 1st June 2021, the country is in full lockdown for the second time. The second lockdown imposed in 2021 was preceded by erratic<sup>85</sup> and failing<sup>86</sup> policies and restrictions that have greatly hampered economic growth and financial health of businesses, especially those in the category of small and medium enterprise (SME)<sup>87</sup>. The national economic hub - the Selangor and KL central region - was greatly affected with the overall situation deteriorating from bad to worse. As the majority of the workforce are not involved in industries considered as part of the Essential Service Sectors, the brunt of the economic impact has been catastrophic, especially to the households whose breadwinner is self-employed but not allowed to work, and to those who are unemployed.

According to a Bank Negara Malaysia survey conducted in 2017, 3 out of 4 Malaysians could not raise RM1,000 in an emergency<sup>88</sup>. In that context, many affected by the movement restriction have gone on without income-stream for more than 6 weeks. This has brought about a severe impact on the households, resulting in severe mental health issues and doubling of documented cases of suicide when compared to 2020.

<sup>82</sup> <https://dayakdaily.com/40-households-live-without-electricity-for-20-years-despite-village-connected-to-grid/>

<sup>83</sup> <https://www.straitstimes.com/asia/se-asia/malaysian-students-forced-into-internet-extremes>

<sup>84</sup> <https://www.malaysiakini.com/news/553101>

<sup>85</sup> FMT Reporters 'Big cabinet, big inconsistencies, says Rafidah' (Free Malaysia Today, 5 July 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/07/05/big-cabinet-big-inconsistencies-says-rafidah/>> accessed 19 July 2021

<sup>86</sup> Timothy Achariam 'Covid-19: 2,713 SMEs closed down between March and October 2020' (The Edge Markets, 18 November 2020) <<https://www.theedgemarkets.com/article/covid19-2713-smes-closed-down-between-march-and-oct-2020>> accessed 19 July 2021

<sup>87</sup> Sheridan Mahavera '3 out of 4 Malaysians can't raise RM1,000 in an emergency' (The Malaysian Insight, 12 April 2017) <<https://www.themalaysianinsight.com/s/1557>> accessed 19 July 2021

<sup>88</sup> Eton Khir 'Rina Harun nafi dakwaan mempolitikkan isu bakul makanan' (Astro Awani, 5 July 2021) <<https://www.astroawani.com/berita-malaysia/rina-harun-nafi-dakwaan-mempolitikkan-isu-bakul-makanan-306639>> accessed 19 July 2021

While the government has promised aid to those requiring social welfare support, the aid has been widely criticised for varying reasons<sup>89</sup> and there continues to be heavy reliance on NGOs and other charitable aid. This gave rise to a ‘white flag’ movement that aimed to provide a platform for those in need of aid to easily reach out for help<sup>90</sup>.

As it stands, in April 2021, the unemployed workforce consisted of 742.7 thousand individuals. Among them, 83.3% were actively unemployed, and about half of them had been unemployed for more than 3 months. According to SOCSO, 37,252 of its members reported loss of employment for the period 1 Jan to 9 Jul 2021, 50.2% of them aged between 25-39, the golden age range for starting or having new families; about one-third of those who lost their job previously earned less than RM2,000. The statistic suggests that the unemployment in the time of pandemic disproportionately affects people of younger age and lower income bracket.

To make matters worse, SMEs contributed to 48.4% of total employment in Malaysia in 2018. According to the Economic Census 2016, 98.5% of business establishments in Malaysia belong to SMEs. In a parliamentary written reply dated 5 November 2020, a total of 32,469 SMEs have ceased operation since March when the MCO was first implemented, now according to the Small & Medium Enterprises Association (SAMENTA), the number could reach 90,000 businesses, where 30% of businesses could run out of cash during the second lockdown. This paints a grim outlook on people’s job security and general welfare, should the lockdown persist any longer.

### 3.4 RIGHT TO ADEQUATE STANDARD OF LIVING

#### RECOMMENDATIONS FROM MALAYSIA’S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT’S RESPONSE
151.156	Continue ensuring the right to basic standards of health, education, nutrition and welfare of the entire population (Kuwait)	<b>Accepted in full</b>
151.158	Continue its efforts to achieve sustainable and balanced development, and to focus on the implementation of the eleventh Malaysia Plan 2016–2020 to provide adequate housing for all while continuing to support low-income families (Qatar)	<b>Accepted in full</b>
151.159	Exert further effort in order to support the societal sectors in need of adequate shelter (Oman)	<b>Accepted in full</b>

<sup>89</sup> Eton Khir ‘Rina Harun nafi dakwaan mempolitikkan isu bakul makanan’ (Astro Awani, 5 July 2021) <<https://www.astroawani.com/berita-malaysia/rina-harun-nafi-dakwaan-mempolitikkan-isu-bakul-makanan-306639>> accessed 19 July 2021

<sup>90</sup> Serina Rahman ‘Commentary: Malaysia’s white flag movement a symbol of hope and helping each other’ (Channel News Asia, 10 July 2021) <<https://www.channelnewsasia.com/news/commentary/malaysia-s-white-flag-movement-umno-government-covid-19-15179086>> accessed 19 July 2021

## BRIEF ASSESSMENT

Affordable housing is a growing issue and challenge in Malaysia as a result of high rural-urban migration trends<sup>91</sup>. A number of government initiatives<sup>92</sup> are available but not necessarily accessible, as the schemes are not comprehensive and, in selected initiatives, the housing locations offered are far from employment opportunities. In addition to the implementation challenges, financial viability is yet another barrier for potential purchasers and house owners who need up to 100% financing<sup>93</sup> to make the purchase but are hampered by difficulties to access loans.

High demand and limited options and opportunity to access these housings result in a situation where every 1,000 affordable houses launched are hotly contested by 10,000 to 60,000 potential applicants<sup>94</sup>.

There was also no additional data on the progress of the initiatives introduced under the 11th Malaysia Plan which included providing quality and affordable housing, strengthening the management of affordable housing, and increasing access to targeted groups and environmentally friendly facilities for enhanced livability.

### Suggestions for Implementation of Recommendations

The report recommends for the government to provide accessible and transparent data on the housing issue and engage with key stakeholders in developing long-term and sustainable solutions addressing the housing needs in the long term. The government ought to review and study the successes of Singapore HDB flat models and their efficacy in the Malaysian context.

Government initiatives on providing adequate housing must also be complemented with necessary policy support to ensure future homeowners are able to afford or access housing through the introduction of two-generation loans.

## 3.5 RIGHT TO EDUCATION

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.153	Provide active support to vulnerable groups of the population – elderly persons, persons with disabilities, single mothers and indigenous population – and facilitate the broadening of their rights and opportunities through education and training in skills in demand in order to develop human potential (Russian Federation)	<b>Accepted in full</b>

<sup>91</sup> <https://www.propertyguru.com.my/property-guides/effects-of-urbanisation-affordable-homes-malaysia-40191>

<sup>92</sup> <https://www.imoney.my/articles/affordable-housing-schemes> & <https://www.iproperty.com.my/guides/government-housing-schemes-for-b40-and-m40-groups/>

<sup>93</sup> <https://www.freemalysiatoday.com/category/nation/2021/04/06/why-is-affordable-housing-not-so-affordable/>

<sup>94</sup> <https://www.theedgemarkets.com/article/twogeneration-plan-affordable-homes>

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.182	Update the current reproductive health and social education syllabus to include, <i>inter alia</i> , education on healthy and respectful family life and interpersonal relationships, human rights, violence and gender-based violence, consent and bodily integrity, in line with United Nations technical guidelines on education (Slovenia)	<b>Accepted in full</b>
151.183	Update the current reproductive health and social education syllabus to include education on health and respectful family life and interpersonal relationships, including on consent and bodily integrity, in line with the United Nations technical guidelines (Iceland)	<b>Accepted in full</b>
151.188	Continue its efforts to provide education opportunities for all children, particularly those belonging to vulnerable groups (Qatar)	<b>Partially accepted</b>
151.189	Continue to improve access to quality education by ensuring that its technical and vocational education institutions are well resourced (Singapore)	<b>Accepted in full</b>
151.190	Provide access to formal education for all children (Turkey)	<b>Taken note of</b>
151.191	Take further measures to promote the right to education, particularly for the underprivileged and disadvantaged (Bhutan)	<b>Accepted in full</b>
151.192	Continue to redouble efforts to support education for all (Chad)	<b>Accepted in full</b>
151.193	Further develop education to ensure that all people, particularly rural women and children, enjoy quality education (China)	<b>Accepted in full</b>
151.194	Increase input into education to ensure schools in rural and remote areas have sufficient teaching resources (China)	<b>Taken note of</b>
151.195	Intensify efforts in the field of education to ensure equal access to quality education for all, in particular for the indigenous population (Djibouti)	<b>Partially accepted</b>
151.196	Continue efforts to strengthen the right to education for all, particularly for groups who are underprivileged (Egypt)	<b>Partially accepted</b>
151.197	Develop a specific programme to ensure the inclusion within the educational system of children with disabilities, as well as refugee and migrant children (Honduras)	<b>Partially accepted</b>
151.198	Ensure quality education for all (India)	<b>Partially accepted</b>
151.199	Continue efforts in order to provide free primary education to all children, irrespective of their status (Kazakhstan)	<b>Taken note of</b>
151.227	Continue with measures aimed at facilitating the schooling of children in rural and remote areas, and include in its Criminal Code the prohibition of all forms of female genital mutilation (Côte d'Ivoire)	<b>Partially accepted</b>



NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.248	Increase efforts to implement legal measures and public policies that guarantee the right to education to persons with disabilities (Ecuador)	<b>Accepted in full</b>
151.250	Continue the implementation of national strategies and plans by providing all public services to persons with disabilities and redoubling efforts to integrate children with disabilities into the school system (State of Palestine)	<b>Accepted in full</b>
151.251	Develop programmes to strengthen the integration of children with disabilities and refugees in its school system (Greece)	<b>Accepted in full</b>
151.268	Intensify its efforts to ensure access to primary and secondary education to asylum seekers and refugees and to offer them equal education opportunity (Afghanistan)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

A 'zero reject' policy was introduced in December 2018 to ensure all children are accommodated and accounted for in the mainstream education system<sup>95</sup>. This was to ensure that special needs and undocumented children are not left out of the education system. This was seen as a positive departure from a policy earlier in the year where an Immigration Department circular effectively prevented undocumented or stateless children of Malaysian parents from attending school<sup>96</sup>. However, the new policy still falls short of Malaysia's obligation in CRC as the policy still requires one parent to be a Malaysian citizen.

Education for marginalised communities such as refugees and asylum seeker children remains challenging as the formal education system does not provide any avenue for access. According to the United Nations High Commissioner for Refugees (UNHCR) only 30% of refugees and asylum seeker children have access to a limited and informal education system, with notable overcrowding and resource restriction within the system. The informal education system is also plagued with financial constraints leading to employment of unqualified and untrained teachers<sup>97</sup>.

Education for indigenous communities remains challenging with physical access and concerns of racial discrimination. Communities are often reliant on subsidies and grants from the Department of Orang Asli Development (JAKOA) in providing transportation to indigenous children; any shortfall needs to be borne by the community or students would be unable to attend school. This is further exacerbated by decrepit roads resulting in travel hazards during rainy seasons, limiting children's access to education.

<sup>95</sup> Siti Nurazlinee Azmi 'Zero Reject Policy for all students' (New Straits Times, 20 December 2018) <<https://www.nst.com.my/news/nation/2018/12/442345/zero-reject-policy-all-students>> accessed 21 June 2021

<sup>96</sup> SUARAM 'Immigration Dept bars stateless child from school' (MalaysiaKini, 10 Jan 2018) <<https://www.malaysia-kini.com/news/408204>> accessed 21 June 2021

<sup>97</sup> Soo Wern Jun 'Half of English teacher have poor English skills, says don' (Free Malaysia Today, 21 May 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/05/21/half-of-english-teachers-have-poor-english-skills-says-don/>> accessed 19 July 2021

In Peninsular Malaysia, the Orang Asli are still awaiting school reform ever since the Sekolah Rendah Pos Tohoi incident where 6 children went missing after running away from their school/hostel (2 found alive, 4 found dead, 1 missing). Government ministers paid visitations to the village and the school, but until today there are no policy reforms<sup>98</sup> in primary school hostels for teachers and wardens to cater to young Orang Asli children who not only have to cope with separation but also face unique challenges to adapt/understand a school curriculum and system that is very different from their culture.

In Sarawak, communities reliant on schools with hostels due to the distance between villages and schools posed additional challenges for children as young as 7 years old may be required to undergo prolonged separation from their families in order to attend school.

The lack of access to preschool or early education also renders it difficult for some children to join and adapt to the mainstream education system due to language or cultural differences. For children with special needs, this is further complicated as the lack of early access to education to sign languages render it difficult for them to adapt to the schooling environment.

Accessibility for differently-abled children or children with special needs remains problematic as segregation is still encouraged by the current education system. Concerns of rejection by schools and limited access to schools that provide the necessary infrastructure for special needs further complicate the access to education for these children.

Poverty is another persistent problem affecting children's access to education. In some communities in Sarawak, families in poverty are more inclined to send children to work instead of continuing education due to limited funds for school activities, school materials and other costs. On this issue, some positive progress was made by the government when it introduced a free breakfast scheme for children from B40 families<sup>99</sup>.

In terms of school infrastructure and teaching capacity, notable challenges still exist, especially in rural areas. Government programmes to repair dilapidated schools have been slow in implementation with only 21 out of 1020 dilapidated schools in Sarawak having completed necessary restoration and repair work. Some schools in rural areas are reported to be highly reliant on solar power and generators for power supply, or lack core facilities such as laboratories, compromising the school's ability to deliver education in line with the prescribed syllabus. Teacher capacity and absenteeism is yet another problem faced in the country. A previously reported case of a teacher being absent with no repercussions or follow-up from the Ministry of Education (MOE) resulted in a civil suit against the teacher and school management<sup>100</sup>.

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<sup>98</sup> <https://www.malaymail.com/news/malaysia/2019/07/28/after-pos-tohoi-deaths-where-is-education-ministries-promised-cultural-sensi/1775363>

<sup>99</sup> Bernama 'MOE to study free breakfast scheme for children in B40 group' (New Straits Times, 6 November 2018) <<https://www.nst.com.my/news/nation/2018/11/428843/moe-study-free-breakfast-scheme-children-b40-group>> accessed 21 June 2021

<sup>100</sup> Julia Chan 'More Sabahan students sue English teacher who skipped class for a year' (Malay Mail, 23 December 2020) <<https://www.malaymail.com/news/malaysia/2020/12/23/more-sabahan-students-sue-english-teacher-who-skipped-class-for-a-year/1934460>> accessed 21 June 2021

The COVID-19 pandemic also introduces further complications to access to education. The introduction of online classes led to different levels of access based on children's ability to access digital resources and infrastructure. At the extreme, this resulted in cases where students were reported to have been required to stay overnight in a tree to sit for their school examinations<sup>101</sup>. Government plans to roll out free laptops and phones to support students who required them were also ineffective, with critics panning the government for failure to deliver and provide promised laptops for students<sup>102</sup>, and mobile phone provided from private-public collaboration failing to perform adequately<sup>103</sup>.

There are also substantial concerns in schools being able to provide a safe space for students and education. School bullying remains a point of concern with a survey by the United Nations Children's Fund (UNICEF) suggesting that 8 out of 10 students experienced bullying<sup>104</sup>. At the worst end of it, bullying has resulted in death in 2017<sup>105</sup>. Apart from issues of bullying instigated by peers, the more recent exposé of sexual harassment in school<sup>106</sup> and subsequent failure of the government to provide remedy and security for the complainant further exposes the institutional failing at play.

The sexual harassment case also highlights the underlying flaw of government policy in addressing such matters. While criminal prosecution does take place<sup>107</sup>, it is not necessarily the norm. More often than not, cases of sexual harassment or misconduct by teachers result in the transfer of said teachers to the state education department, or another school<sup>108</sup>. In a case addressed by an NGO<sup>109</sup> in 2018, a primary school teacher was alleged to have sexually assaulted school children under his care. In this case, the teacher was transferred multiple times in the past due to similar complaints and allegations. When the school was notified, the headmaster refused to act on the matter and only promised to have a meeting with the family of those involved with the teacher.

<sup>101</sup> Stephanie Lee 'Sabah student stays overnight in tree to get better Internet connection for online university exams' (The Star, 16 June 2020) <<https://www.thestar.com.my/news/nation/2020/06/16/sabah-uni-student-stays-overnight-in-tree-to-get-better-internet-connection-for-online-exams>> accessed 21 June 2021

<sup>102</sup> FMT Reporters 'Where are the 150,000 laptops for students? Ask MP' (Free Malaysia Today, 1 March 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/03/01/where-are-the-150000-laptops-for-students-asks-mp/>> accessed 21 June 2021

<sup>103</sup> Azizul Rahman Ismail 'Free Smartphone For B40 Student Burst Into Flames' (The Rakyat Post, 16 June 2021) <<https://www.therakyatpost.com/2021/06/16/free-smartphone-for-b40-student-burst-into-flames/>> accessed 21 June 2021

<sup>104</sup> 'Eight in 10 kids face bullying' (The Star, 20 November 2018) <<https://www.thestar.com.my/news/nation/2018/11/20/eight-in-10-kids-face-bullying-survey-finds-many-calling-for-laws-to-protect-victims-and-witnesses>> accessed 21 June 2021

<sup>105</sup> 'Malaysia teen Nhaveen dies after brutal assault by bullies' (The Straits Times, 16 June 2017) <<https://www.therakyatpost.com/2021/06/16/free-smartphone-for-b40-student-burst-into-flames/>> accessed 21 June 2021

<sup>106</sup> Al Jazeera Staff 'The 17-year-old exposing rape culture in Malaysian schools' (Al Jazeera, 19 May 2021) <<https://www.aljazeera.com/news/2021/5/19/the-17-year-old-exposing-rape-culture-in-malaysian-schools>> accessed 21 June 2021

<sup>107</sup> 'Malaysia school teacher remanded for molest, rape of student' (Channel News Asia, 21 January 2020) <<https://www.nst.com.my/news/crime-courts/2020/01/558520/melaka-teacher-nabbed-allegedly-raping-student-multiple-times>> accessed 24 June 2021

<sup>108</sup> Sandhya Menon 'Teacher who made rape joke transferred' (The Star, 13 May 2021) <<https://www.thestar.com.my/news/nation/2021/05/13/teacher-who-made-rape-joke-transferred>> accessed 24 June 2021

<sup>109</sup> Information is redacted and not cited due to concern of privacy and safety of the victims involved

### Suggestions for Implementation of Recommendations

The report recommends for the government to ensure that access to education is safeguarded, by ensuring that children regardless of birth, nationality and other needs are able to access and consistently attend formal education in the school system. Financial aid and other policies to encourage school attendance among poorer communities, rural communities and children with special needs ought to be developed to minimise dropout from schools.

The government must improve on policies relating to school bullying, cyberbullying and sexual offences committed against children. Urgent intervention plans must be in place to provide early mitigation and social-psychological support for victims, and ensure perpetrators are held accountable for their actions.

## 3.6 RIGHT TO HEALTH

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.65	Continue training and capacity-building programmes aimed at improving the skills and knowledge of health-care providers (Tunisia)	<b>Accepted in full</b>
151.171	Continue guaranteeing access to health-care services, in line with target 3.7 of the Sustainable Development Goals (Peru)	<b>Accepted in full</b>
151.172	Undertake further measures to realize universal health coverage (Thailand)	<b>Accepted in full</b>
151.173	Continue efforts in eradicating AIDS by increasing access to affordable first and second-line antiretroviral treatment (Viet Nam)	<b>Accepted in full</b>
151.174	Continue implementing initiatives to reduce the incidence of communicable diseases (Cuba)	<b>Accepted in full</b>
151.175	Continue efforts to improve the quality of health-care services and to increase allocations for health in the national budget (State of Palestine)	<b>Accepted in full</b>
151.176	Enhance further access to health services including facilitating greater access to mental health and neonatal health care (Indonesia)	<b>Accepted in full</b>
151.177	Continue to improve its national health-care system and ensure access to quality health care (Kuwait)	<b>Accepted in full</b>
151.178	Pursue its effort to improve the coverage of and accessibility to health care, especially for vulnerable groups as well as people in remote and rural areas (Mauritius)	<b>Accepted in full</b>

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.179	Make greater effort to improve health care (Oman)	<b>Accepted in full</b>
151.180	Continue introducing and implementing measures to improve the situation of women, especially access to health care (Morocco)	<b>Accepted in full</b>
151.184	Continue efforts to increase family planning and reproductive health services in both urban and rural areas (Tunisia)	<b>Accepted in full</b>
151.185	Make the necessary efforts in implementing the fight against HIV/AIDS (Chad)	<b>Accepted in full</b>
151.186	Strengthen efforts to reduce maternal mortality, through improved access to maternal health-care services (Sri Lanka)	<b>Accepted in full</b>
151.187	Take effective measures to ensure that unmarried women and vulnerable groups have access to sexual and reproductive health care in government health centres (Fiji)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

In general, public healthcare in Malaysia is commendable with notable subsidies and government support, ensuring accessible healthcare to most parts of the country<sup>110</sup>.

According to the government, the country currently has a ratio of 1 healthcare worker comprising a doctor and trained nurse to every 186 people<sup>111</sup>. While the ratio looks promising, this needs to be viewed with the relatively stagnant government investment and spending on the public healthcare system and burgeoning private healthcare and resources that are in some cases, known to be underutilised.

In contrast to the positive records of the government, there have been concerns about insufficiently trained healthcare workers, inadequate medical officers and specialists in some areas. In 2020, the government was criticised for the ongoing freeze on the hiring of specialists, compounded by the government's refusal to provide scholarships for local postgraduate study for contract doctors<sup>112</sup>. This is compounded by reports of overwhelming numbers of medical students graduating who require oversight by senior doctors. This resulted in waiting periods of upward a year for houseman postings<sup>113</sup>.

<sup>110</sup> However there is a general trend of gradual decline in government funding in healthcare

<sup>111</sup> 'Doctor-patient ratio exceeds target' (The Star, 5 August 2020) <<https://www.thestar.com.my/news/nation/2020/08/05/doctor-patient-ratio-exceeds-target>> accessed 21 June 2021

<sup>112</sup> Doctors Need Longer Contracts, Malaysia Lacks Specialists, Medical Groups say' (CodeBlue, 17 July 2020) <<https://codeblue.galencentre.org/2020/07/17/doctors-need-longer-contracts-malaysia-lacks-specialists-medical-groups-say/>> accessed 21 June 2021

<sup>113</sup> Loh Foon Fong 'Uncertain future for some Malaysian doctors' (The Star, 16 August 2020) <<https://www.thestar.com.my/news/nation/2020/08/16/uncertain-future-for-some-malaysian-doctors>> accessed 21 June 2021



In the more extreme examples, a single public clinic was noted to provide service for six villages that total a population of 2,437<sup>14</sup>. On average, it requires a 30-minute boat ride from each of the villages to reach the clinic, which creates access issues and limitations for nearby villages. Mobile clinics and home visits for maternal care in similar rural areas were unfortunately terminated during the reporting period due to limited financial capacity.

The increased burden on the healthcare system due to COVID-19 also led to further failings of the public healthcare system. In some situations, infection among healthcare workers was severe enough that it required a rotation of a whole department<sup>15</sup>. To alleviate the pressure on the system, the Ministry of Health (MOH) recalled retired doctors and nurses to supplement the existing capacity in public healthcare<sup>16</sup>.

Distinct from other government department's policies, MOH recognises that the female sex worker, the transwomen/gender and the men-having-sex-with-men communities are two of the key affected/high-risk populations for the transmission of sexually transmitted infections (STIs) including HIV. Funding was given to CSOs that work with HIV/AIDS by MOH to conduct harm reduction programmes through distribution of free condoms, awareness campaigns, and free testing for HIV and other STIs.

While MOH is forthcoming in relation to HIV intervention on key affected populations, the inclusion of LGBTQI is limited to HIV interventions. Some of its HIV prevention programmes promote abstinence and rehabilitation, having a counterproductive impact on access to healthcare for LGBTQI persons. This is evidenced by the Country Progress Report on HIV/AIDS 2019 which projects that by 2030, the men who have sex with men key population will become the main key population in Malaysia affected by HIV based on current trends<sup>17</sup>. The report has also been used by rightwing groups to further pathologise LGBTQI persons.

It should also be noted that MOH published a 'Guidelines on Dealing with Gender Health Problems in Public Clinics' (Garis Panduan Pengendalian Masalah Kesihatan Gender di Klinik Kesihatan). The guideline, which aims to provide guidance to health clinics in handling issues relating to gender, contains mixed messages on LGBTQI persons. For example, it provides tips for parents to correct and prevent their children from becoming LGBTQI.

Apart from policy issues, service delivery is also a point of concern in terms of discrimination due to a lack of affirming and non-discrimination policies, training of personnel, and monitoring and evaluation of the programmes and practices. The study reports that LGBTQI persons still face unfriendly practices that hinder them from accessing medical care and cause them to be at high risk for health problems and diseases.

<sup>14</sup> <https://pkbsamarahan.moh.gov.my/klinik-kesihatan-mentu/>

<sup>15</sup> <https://dayakdaily.com/20-medical-staff-in-miri-hospital-test-positive/>

<sup>16</sup> 'Health Ministry recalling retired doctors, nurses to reinforce frontlines, says Health DG' (The Star, 23 March 2020) <<https://www.thestartv.com/v/health-ministry-recalling-retired-doctors-nurses-to-reinforce-frontlines-says-health-dg>> accessed 21 June 2021

<sup>17</sup> [https://www.moh.gov.my/moh/resources/Penerbitan/Laporan/Umum/Report\\_GAM\\_2019\\_\(Final\).pdf](https://www.moh.gov.my/moh/resources/Penerbitan/Laporan/Umum/Report_GAM_2019_(Final).pdf)

There are also growing concerns of discrimination on issues relating to sexual and reproductive health despite MOH's policies and programmes to provide sexual and reproductive health services to all women. Limited incidences of discrimination against unmarried women were reported at public health services. This included Pap smears and other preventive diagnoses being restricted and offered only to married women. Migrants also suffer from similar limitations on access to sexual and reproductive healthcare.

### Suggestions for Implementation of Recommendations

The report recommends for the government to review public healthcare policy in rural and remote areas, specifically in terms of providing additional funding and resources to ensure adequate coverage through more mobile clinics and other infrastructure required to provide greater accessibilities for patients and communities in need. Public education and training should also be conducted for remote villages and communities to ensure that these villages can establish a basic healthcare facility with designated paramedics.

The report also recommends for the government to engage stakeholders to develop and implement policies on the current shortfall of healthcare workers by funding and expanding the permanent contracts offered to healthcare workers. Government should also explore opportunities and possibilities of supplementing and strengthening the public healthcare funds with a social health insurance model or increased allocation for the public healthcare system.

## 3.7 RIGHTS FOR THE INDIGENOUS

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.255	Strengthen the rights of indigenous peoples through the incorporation of the principles of the United Nations Declaration on the Rights of Indigenous Peoples in judicial and administrative procedures (Peru)	<b>Taken note of</b>
151.256	Continue the implementation of plans and strategies to strengthen the economic and social well-being of indigenous peoples (Plurinational State of Bolivia)	<b>Accepted in full</b>
151.257	Strengthen policies and measures for the well-being of the indigenous peoples in Malaysia to uplift their economic and social status and benefit from the country's economic development (Lao People's Democratic Republic)	<b>Accepted in full</b>
151.258	Ensure the rights of indigenous peoples in law and in practice, in particular regarding their right to traditional lands, territories and resources (Norway)	<b>Taken note of</b>

## BRIEF ASSESSMENT

Slow progress was noted with regard to the issues of indigenous peoples and communities. Key issues revolve around representation in policymaking, recognition of customary land, citizenship, access to education<sup>118</sup>, and access to basic amenities.

At the Federal level, the Cabinet Committee for the Land Rights of Indigenous Peoples was established in 2015 in line with recommendations from the 2nd UPR cycle. However, the committee has not been active since its inception. Public consultation with stakeholders and communities took place in the reporting period between senators and the director of JAKOA. Discussions include those on a proposed amendment to the Aboriginal Peoples Act and the drafting of a new Parliament bill on Indigenous Customary Lands. The proposed legislative changes were submitted to the Attorney-General Office for further consideration but it is unclear whether the change in administration marks a continuation of the policies developed.

In terms of recognition of customary lands, the Federal government's ability to influence was somewhat curtailed by a Court of Appeal judgment in 2021 which ruled the Federal government has no legal standing to sue on behalf of the Temiar peoples in a land dispute in Kelantan<sup>119</sup>.

The lack of proportionate representation in the appointment of Sabah and Sarawakian judges in the Court of Appeal and Federal Court, and the lack of representation by said judges in hearings and decisions that begin in Sabah and Sarawak have resulted in mixed decisions of success at the trial stage in Sabah and Sarawak but subsequently had the decision overturned by the Court of Appeal or Federal Court.

The issue of citizenship continues to adversely affect indigenous communities across Malaysia. In Peninsular Malaysia, the existing legislation leaves the power to determine whether a person is to be considered as indigenous or aborigine in the lands of the minister as opposed to the indigenous community itself.

In addition to the restriction of self-identification, there is also an issue of automatic classification of a person's faith as Muslim in government records by the National Registration Department (NRD) due to the common use of word bin and binti by non-Muslim indigenous peoples. This has resulted in cases where a non-Muslim indigenous person is treated as a Muslim by law with their children potentially losing their legal identity as an indigenous person<sup>120</sup>.

Since the change in administration in 2020, engagement and consultation with communities have been limited with no clear and meaningful engagement or initiative by the government to improve the situation and challenges faced by the indigenous community.

<sup>118</sup> More details can be found in section addressing fulfilment of the right to education

<sup>119</sup> Hidir Reduan Abdul Rashid 'Land dispute: Govt has no legal standing to sue for Temiar Orang Asli' (MalaysiaKini, 3 June 2021) <<https://www.malaysiakini.com/news/577354>> accessed 30 June 2021

<sup>120</sup> 'SUHAKAM urges NRD to make correction of religious status in Mykad' (Dayak Daily, 21 January 2021) <<https://dayakdaily.com/suhakam-indigenous-communities-request-change-in-religious-status-on-mykad/>> accessed 19 July 2021

In Sabah, the state government established a state-level Ministry of Law and Native Affairs in 2018<sup>121</sup>. The position was not continued by the subsequent government in 2020. Apart from the introduction of an additional ministry addressing local concerns, the state government accepted and held celebrations for the World Indigenous Peoples Day as an unofficial celebration and holiday<sup>122</sup>.

The Sabah state government also introduced a 'Free Prior Informed Consent' guideline in 2019 for palm oil certification that was intended to protect indigenous peoples living within plantations.

Under the Interpretation (Definition of Native) Ordinance, stateless indigenous peoples and communities have the right to be documented and recognised. However, this is not enforced in practice. In addition to the issue of recognition and statelessness, the state government has been reversing previous decisions and policies following the change in administration. Plans for a dam previously suspended by the state government was revived despite community concerns under the new government<sup>123</sup>.

As for Sarawak, the state government undertook initiatives to improve the social economic wellbeing of the community, such as through the Sarawak Craft Council that provided business opportunities to indigenous peoples via the sales of handcrafts by different ethnic groups in Sarawak.

Indigenous land issues remain contentious between indigenous communities, the state government and private actors. Despite the cultural and historical background behind the concept, Native Customary Rights are not defined in the existing land code and are not recognised in common law after the Federal Court ruled in 2019 that the concepts of 'pemakai menoa' and 'pulau galau' do not have force of law. Hence, this concept is not given recognition as a method for natives of Sarawak to claim and acquire customary rights to the land.

As for other indigenous peoples in Peninsular Malaysia, their socioeconomic status remains dire, with most of the Orang Asli<sup>124</sup> reportedly below the national poverty line<sup>125</sup>. This is exacerbated by the lack of basic necessities such as clean water supply, adequate road and infrastructure to and in villages, land grab by state and non-state actors, and lack of formal recognition as a community. State government-led projects and the consistent failure of the state government in recognising indigenous peoples alongside the lack of legal standing for the federal government to take action continue to place indigenous communities at substantial risk of losing their ancestral land, homes and in some circumstances, livelihoods.

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<sup>121</sup> 'SUHAKAM urges NRD to make correction of religious status in Mykad' (Dayak Daily, 21 January 2021) <<https://dayakdaily.com/suhakam-indigenous-communities-request-change-in-religious-status-on-mykad/>> accessed 19 July 2021

<sup>122</sup> <https://ids.org.my/sabah-assistant-minister-for-law-and-native-affairs-visits-ids-2/>

<sup>123</sup> Celebrated but not listed in national calendar

<sup>124</sup> Julia Chan 'Irked by the prospect of yet another dam, NGO urges Sabah govt to bin project completely' (Malay Mail, 23 December 2020) <<https://www.malaymail.com/news/malaysia/2020/12/23/irked-by-the-prospect-of-yet-another-dam-ngo-urges-sabah-govt-to-bin-projec/1934430>> accessed 30 June 2021

<sup>125</sup> Term for indigenous peoples in peninsular

### **Suggestions for Implementation of Recommendations**

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The report recommends for the federal government and the state government to implement necessary legal reform and procedural changes to ensure that community leaders are empowered and able to recognise and register indigenous peoples, so that they can avoid the potential pitfall of statelessness and failure by the state to recognise an indigenous person. The recognition ought to be complemented with formal recognition as an ethnic group in official government records and documentation.

Federal and state governments must endeavour to normalise and recognise customary territories of indigenous peoples in consultation with communities and stakeholders to ensure that ancestral and customary lands are recognised and protected. A moratorium must be imposed on lands and territories which are currently in dispute to ensure that the lands are protected from further encroachment or exploitation pending the resolution of necessary legislative reform or dispute settlement between indigenous communities and private bodies and/or government.

The government must also revise and improve on the policy engagement with indigenous communities by ensuring equal and proportionate representation in the executive, legislative and judicial bodies. Necessary processes and procedures must be introduced to ensure Sabah and Sarawakian judges are represented in panels presiding over constitutional hearings on matters relating to Sabah and Sarawak. Routine consultation ought to be conducted with communities to support and uplift the community and ensure that community needs are heard and addressed in a timely manner.

The government should also improve social inclusion of indigenous peoples, particularly the indigenous peoples of peninsular Malaysia in official government records, history, education guidelines and cultural or festive celebrations.





CHAPTER

# 4

## WOMEN, GENDER AND SEXUAL MINORITIES, CHILDREN, AND PERSONS WITH DISABILITIES





## 4.1 WOMEN'S RIGHTS IN LEGISLATION

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.59	Incorporate in its legislation a definition of discrimination against women in conformity with article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (Chile)	<b>Accepted in full</b>
151.60	Take effective measures to ensure that civil law and sharia law are in full compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women at the local, state and federal levels (Croatia)	<b>Taken note of</b>
151.201	Adopt gender equality legislation to reduce inequalities between men and women (Albania)	<b>Accepted in full</b>
151.203	Strengthen laws and policies aimed at providing women with safe protection and enhancing their roles in society (Bahrain)	<b>Accepted in full</b>
151.206	Expedite efforts for the adoption of a Gender Equality Bill to balance the roles of men and women in the nation's development (Pakistan)	<b>Accepted in full</b>
151.207	Continue with its initiatives to ensure equality for women in law and in practice, in addition to combating all forms of gender-based violence (Ecuador)	<b>Accepted in full</b>
151.209	Strengthen its legislation to ensure respect for women's and girls' human rights and to fully outlaw gender-based discrimination (Lithuania)	<b>Taken note of</b>
151.210	Define discrimination against women in national legislation in conformity with the provision in article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (Mexico)	<b>Accepted in full</b>
151.211	Step up efforts towards the adoption of a law on gender equality (Mexico)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

As noted in the report in preceding chapters, the Gender Equality Bill is currently stalled with the suspension of Parliament under the current administration.

In 2019, the Minister of Law was in discussion with CSOs and stakeholders on the possibility of introducing legislation to criminalise stalking. A bill was drafted and prepared in consultation with the government and was scheduled to be tabled in Parliament in 2019.

This was later delayed with no new progress following the collapse of the administration and suspension of Parliament<sup>126</sup>.

A teacher whose offer as a temporary teacher was withdrawn by a state education office following the discovery of her pregnancy had her case resolved by the Federal Court in 2018 which ruled in her favour, awarding damages for the elements of gender discrimination against her. Unfortunately, the ruling of the case has had no impact on public policy, specifically those on the hiring and employment of temporary teachers who are pregnant<sup>127</sup>.

### Suggestions for Implementation of Recommendations

The report recommends for the government to commit to its obligation under CEDAW and prioritise the tabling of the Gender Equality Bill, Sexual Harassment Bill and Anti-Stalking Bill in line with the findings and contribution of various stakeholders during the consultative and drafting of these bills. Necessary amendments to the Federal Constitution must also be made to bring Malaysia in line with the spirit of equality under Article 8 of the Federal Constitution and the obligations of Malaysia in ratifying CEDAW.

## 4.2 WOMEN'S RIGHT TO FREEDOM FROM VIOLENCE

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.212	Eliminate all forms of discrimination and violence against women, including by criminalizing all forms of female genital mutilation and marital rape and prohibiting the whipping of women as a form of punishment, as well as child marriages (Portugal)	<b>Taken note of</b>
151.213	Continue efforts to effectively protect women and children from human rights violations, including gender-based violence, child marriage and child labour (Republic of Korea)	<b>Taken note of</b>
151.214	Build on its efforts since its last review to better protect women from domestic and sexual violence by strengthening the relevant legal frameworks and policies (Singapore)	<b>Accepted in full</b>
151.215	Criminalize marital rape by amending section 375 of the Penal Code (Canada)	<b>Taken note of</b>

<sup>126</sup> Geraldine Tong 'Bill to make stalking a crime to be tabled this year' (MalaysiaKini, 19 February 2019) <<https://www.malaysiakini.com/news/464640>> accessed 21 June 2021

<sup>127</sup> V Anbalagan 'Woman who lost job offer due to pregnancy awarded RM40,000' (Free Malaysia Today, 15 May 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/05/15/woman-who-lost-job-offer-due-to-pregnancy-awarded-rm40000/>> accessed 21 June 2021

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.216	Continue efforts to combat discrimination and violence against women (Cuba)	<b>Taken note of</b>
151.217	Prohibit all forms of female genital mutilation, as defined by the World Health Organization, in its criminal code, ensuring that the prohibition cannot be overruled by any fatwas or other rulings issued by religious authorities (Denmark)	<b>Taken note of</b>
151.218	Prohibit all forms of genital mutilation and redouble its efforts to eradicate early marriages and criminalize spousal rape (Honduras)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

The concerns of domestic violence grew substantially during the reporting period. The concerns are contributed by the rapidly increasing reports of domestic violence received by NGOs providing assistance to victims during lockdown periods<sup>128</sup> and recurring news of sexual abuse of children at home<sup>129</sup> and physical violence against live-in domestic helpers in the preceding years.

At the moment, the Domestic Violence Act 1994 (DVA) is limited in its coverage as it does not cover abuses and violence against unmarried intimate partners, and violence against other members within the household, such as domestic helpers. Protection mechanisms for victim-survivors are also limited if the victim-survivor does not proceed to file a police report against the perpetrators.

Apart from domestic violence, the dated sexual offences laws within the Penal Code are also problematic in relation to the severity and appropriateness of punishment when addressing the issue of digital rape, rape with the use of an object and marital rape. At the moment, digital rape and rape with the use of an object are covered as lesser sexual offences within the Penal Code whereas marital rape is punishable with a lesser sentence and only applicable in limited circumstances<sup>130</sup>.

On top of the delay in introducing the sexual harassment bill, issues related to sexual harassment faced by athletes came to the fore after a series of exposés and call outs by national athletes on sexual harassment and assault they experienced throughout their careers<sup>131</sup>. The issue of sexual harassment was sparked by the case of sexual harassment in school that was called out by a student detailed earlier in this report<sup>132</sup>.

<sup>128</sup> Frankie D'Cruz 'Domestic violence at crisis level months after lockdown' (Free Malaysia Today, 25 november 2020) <<https://www.freemalaysiatoday.com/category/leisure/2020/11/25/domestic-violence-at-crisis-level-months-after-lockdown/>> accessed 21 June 2021

<sup>129</sup> Bernie Yeo 'Child sexual abuse and COVID-19: When the home becomes unsafe' (Focus Malaysia, 3 October 2021) <<https://focusmalaysia.my/child-sexual-abuse-and-covid-19-when-the-home-becomes-unsafe/>> accessed 21 June 2021

<sup>130</sup> Section 375A of the Penal Code

<sup>131</sup> 'Swimming: Malaysian swimmer opens up about abuse, hopes to be 'catalyst for change'' (The Straits Times, 17 June 2021) <<https://www.straitstimes.com/sport/swimming-catalyst-for-change-malaysian-swimmer-opens-up-about-abuse>> accessed 21 June 2021.

<sup>132</sup> 'Al Jazeera Staff 'The 17-year-old exposing rape culture in Malaysian schools' (Al Jazeera, 19 May 2021) <<https://www.aljazeera.com/news/2021/5/19/the-17-year-old-exposing-rape-culture-in-malaysian-schools>> accessed 21 June 2021

The development above is in trend with growing online gender-based violence that has become more prevalent and overt in recent years with death threats and other threats of bodily harm commonly levelled against HRDs, government critics and individuals perceived to have 'offended' certain groups or ideology. While perpetrators of such acts have been detained<sup>133</sup> in the past, there were no indications of further actions by the state to address the severity and unique ways this affected women, nor was there any action to engage with service providers and other stakeholders to mitigate recurrence of such offences.

Other examples of inaction include the exposé of a Telegram group sharing nude photos and child pornography, where the Malaysia Communication and Multimedia Commission made an announcement of its investigation with no further information following up from its investigations<sup>134</sup>. Parallel police investigations were not followed with any public updates or information despite the high profile nature of the issue and the large number of victims involved<sup>135</sup>.

Female Genital Mutilation (FGM) remains a common policy among communities in Malaysia as reported and highlighted during Malaysia's CEDAW session<sup>136</sup> and the UPR. The government previously maintained that FGM was cultural to Malaysia<sup>137</sup> with a Fatwa by the Department of Islamic Development Malaysia (JAKIM) requiring FGM for Muslims except when it poses harm for the person<sup>138</sup>. This is contrary to a reported MOH circular that forbids FGM in all public facilities<sup>139</sup>.

### Suggestions for Implementation of Recommendations

The report recommends for the government to expedite the necessary legislative reform and introduction of critical bills such as the sexual harassment bill and anti-stalking bill to ensure that sexual offences and other gender-based offences are criminalised with adequate protection mechanisms for victim-survivors. Law relating to domestic violence must also be rapidly expanded to ensure that all potential victims are adequately protected under the law; further improvement must be made to strengthen the protection mechanism by dissociating it from the need for criminal action.

<sup>133</sup> Emmanuel Santa Maria Chin 'Police confirms arrest of UK grad who made assault, rape and death threats towards a supporter of teen activist Ain' (Malay Mail Online, 23 June 2021) <<https://www.malaymail.com/news/malaysia/2021/06/23/police-confirm-arrest-of-uk-grad-who-made-assault-rape-and-death-threats-to/1984402>> accessed 22 July 2021

<sup>134</sup> New Straits Times, 'MCMC probing Telegram group for spreading nude photos, child porn' (New Straits Times, 2 October 2020) <<https://www.nst.com.my/news/nation/2020/10/629147/mcmc-probing-telegram-group-spreading-nude-photos-child-porn>> accessed 22 July 2021

<sup>135</sup> FMT Reporters 'MCMC working with Telegram, police over local group spreading porn' (Free Malaysia Today, 2 October 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/10/02/mcmc-working-with-telegram-police-over-local-group-spreading-porn/>> accessed 22 July 2021

<sup>136</sup> 'In Geneva, UN Committee tells Malaysia to eliminate FGM' (Malay Mail, 21 February 2018) <<https://www.malaymail.com/news/malaysia/2018/02/21/in-geneva-un-committee-tells-malaysia-to-eliminate-fgm/1582359>> accessed 21 June 2021

<sup>137</sup> Veena Babulal 'Female circumcision part of Malaysia culture, says DPM' (New Straits Times, 15 November 2018) <<https://www.nst.com.my/news/nation/2018/11/431411/female-circumcision-part-malaysian-culture-says-dpm>> accessed 21 June 2021

<sup>138</sup> JAKIM Fatwa on Female Genital Mutilation - <<http://e-smaf.islam.gov.my/e-smaf/index.php/main/main1/fatwa/pr/15253>> accessed 21 June 2021

<sup>139</sup> Robin Augustin 'Put stop to female circumcision, SIS urges govt' (Free Malaysia Today, 6 February 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/02/06/put-stop-to-female-circumcision-sis-urges-govt/>> accessed 21 June 2021



The report calls for an immediate halt of all female genital mutilation at a policy level, including recommendations for JAKIM to review the legitimacy and appropriateness of the Fatwa based on recommendations and feedback from other Islamic countries during the UPR process. MOH must also adopt further steps to clearly outlaw the practice of FGM in all public and private healthcare facilities, and implement necessary mechanisms to identify and report any injuries that resemble FGM.

The report also calls for the relevant government agency to implement the necessary data collection and analysis on the prevalence of gender-based violence online, accountability measures and its effectiveness in addressing such threats. The data collected ought to be made public with adequate depth and scope for appropriate policies and laws to be developed to ensure justice for the victim, appropriate mitigation and guidelines to be adopted and implemented by service providers, and perpetrators held accountable for their actions.

### 4.3 SUPPORT & ADVANCEMENT FOR WOMEN

#### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.154	Expand its existing economic empowerment programmes to cover more groups of vulnerable women, such as single mothers and indigenous women (Singapore)	<b>Accepted in full</b>
151.200	Invest additional efforts and take additional measures to ensure improvement of the situation of women and girls (Serbia)	<b>Accepted in full</b>
151.202	Further protect women's rights by providing more assistance to poor women, including women with disabilities (Azerbaijan)	<b>Accepted in full</b>
151.204	Further improve and advance women's rights, in particular for those in disadvantaged circumstances, and ensure gender equality (Sri Lanka)	<b>Accepted in full</b>
151.205	Continue to promote women's literacy (Gabon)	<b>Accepted in full</b>

### BRIEF ASSESSMENT

Women participation in the workforce has made some advancement during the reporting period. Previously, the government has expressed interest to increase women labour participation and promised to increase women participation in management or decision making positions. At present, reports suggest that in labour, women in senior leadership positions in Malaysia is at 37%, surpassing the 30% milestones set<sup>140</sup>. It should be noted that in political leadership, women representation has declined sharply with the change of administration in 2020.

<sup>140</sup> Syafiqah Salim 'Women's participation in senior leadership in Malaysia reaches highest ever recorded level - Grant Thornton report' (The Edge Markets, 8 March 2021) <<https://www.theedgemarkets.com/article/womens-participation-senior-leadership%2%A0-malaysia-reaches-highest%2%A0ever-recorded-level-%E2%80%94-grant>> accessed 19 July 2021

While representation at senior leadership positions is improving, women participation in the workforce remains relatively unchanged. Data from 2019 suggests that women only represent 6.1 million workers out of 15.6 million workers in the labour force<sup>141</sup>. Between 2018 and 2019, the number of employed workforce for men increased by at least two hundred thousand, whereas for women it is only around one hundred thousand. The same report also highlights men's labour participation rate to be 80.8% whereas for women, it is only at 55.6%.

Women participation in the workforce still faces challenges in accessible childcare services which adversely affects women due to Malaysia's gender and social context. However, there is some growing recognition of some of the issues with remote government offices and departments looking to provide appropriate facilities for breastfeeding mothers<sup>142</sup>. Salary inequality remains a prevalent problem with substantial pay gaps between men and women reported by DOSM<sup>143</sup>.

Malaysia has ratified but yet to domesticate the International Labour Organisation (ILO) Convention No. 100 on equal remuneration. Malaysia has not made any move to ratify ILO Convention No. 111 on employment discrimination and Convention No. 189 on domestic workers despite prevalence of issues in the two mentioned areas disproportionately affecting women.

The Domestic Worker bill was supposed to be tabled in 2020 but has been postponed indefinitely. The existing legislative framework provides limited and inadequate protection and social protection for women workers in precarious sectors. This includes the lack of protection for domestic workers that are often vulnerable to physical and mental abuse by employers.

Several government initiatives, such as an additional item in the government budget for encouraging the development of on-site childcare facilities for private employer's premises and Women@Work tax exemption implemented before 2020, are laudable and ought to be continued in greater capacity and scale.

### **Suggestions for Implementation of Recommendations**

The report recommends for the government to provide more gender-disaggregated data as a means to allow greater scrutiny on the issues of gender parity and allow stakeholders to better engage the government on issues that would strengthen women participation in the workforce.

The report also recommends for the government to strengthen legislation to provide greater protection for working women, especially domestic workers. The Employment Act 1955 ought to be amended to include protection and coverage for employees and job seekers against discrimination on the basis of gender, pregnancy and disabilities. Other bills legislating on issues adversely affecting women such as sexual harassment must be expedited to provide greater protection to women in the workforce which would encourage participation.

<sup>141</sup> Department of Statistic 'Labour Force Survey Report, Malaysia 2019' (Department of Statistic Malaysia, 29 April 2020) <<https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=TIVMbEtBVXBGTi80VjdqZ1JUdVRHdz09>> accessed 19 July 2021

<sup>142</sup> Johan Aziz 'Breastfeeding: Tambunan to set the lead' (Daily Express, 24 August 2019) <<http://www.dailyexpress.com.my/news/139759/breastfeeding-tambunan-to-set-the-lead/>> accessed 19 July 2021

<sup>143</sup> Dina Murad 'Feature: The gender wage gap is real' (The Star, 24 November 2019) <<https://www.google.com/search?q=malaysia+gender+inequal+pay>> accessed 19 July 2021

## 4.4 WOMEN'S RIGHTS TO PUBLIC PARTICIPATION

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.220	Continue the efforts to guarantee the increase of the labour participation rate of women to 59 per cent in 2020, as stated in paragraph 89 of the national report (United Arab Emirates)	<b>Accepted in full</b>
151.221	Intensify its efforts to ensure a better representation of women in political and public positions of high responsibility (Gabon)	<b>Accepted in full</b>
151.222	Strengthen efforts to promote empowerment of women and gender equality, with the objective of increasing their participation in decision-making (Pakistan)	<b>Accepted in full</b>
151.223	Continue efforts in promoting women's capacity to participate in all aspects of life as well as the nation's development (Lao People's Democratic Republic)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

Political representation of women in state legislators and the federal cabinet experienced a decline in representation in the reporting period.

Following a snap election in the state of Sabah, numbers of women legislators declined. The low numbers of elected representatives also directly contributed to the decline as the majority of the contesting party nominated limited numbers of women candidates, resulting in 43 women candidates out of a total of 447<sup>144</sup>. An avenue for nominated state legislators in the local state laws which permits for six nominated candidates to be sworn in as legislators was not applied to enhance equal representation and only one woman among the six candidates.

As for the Federal government, the collapse of the PH administration brought together a new cabinet with a substantial drop in representation of women. Under PH, the cabinet had five female ministers whereas the PN government only had four. The reduction of one female minister needs to be taken into account with the fact that PN has a substantially larger cabinet<sup>145</sup>.

On a more positive note, the Penang state government introduced Top-Up Women-Only Additional Seats (TWOAS) as a measure to ensure at least 30% women representation

<sup>144</sup> Sawo & Rakyat is Bos 'Appoint women as assemblypersons to remedy gender imbalance' (MalaysiaKini, 20 September 2020) <<https://www.malaysiakini.com/letters/543279>> accessed 22 June 2021

<sup>145</sup> 28 ministers and 27 deputy ministers under Pakatan Harapan, in contrast with 32 ministers and 38 deputy ministers under Perikatan Nasional.

in the state legislative assembly (DUN). The proposed initiative will be invoked when women representation in (DUN) falls below the required 30% and trigger appointment of additional women candidates as members of DUN (ADUNs) to improve gender representation<sup>146</sup>.

## 4.5 RIGHTS OF GENDER AND SEXUAL MINORITIES

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.77	Take the necessary measures to establish in its national legislation a comprehensive legal framework for effective protection against discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons (Argentina)	<b>Taken note of</b>
151.78	Take necessary measures to protect lesbian, gay, bisexual, transgender and intersex persons, in law and in practice, against any form of violence, harassment or discrimination and ensure the full enjoyment of all their fundamental human rights and freedoms (Austria)	<b>Taken note of</b>
151.79	Review and repeal laws that directly or indirectly criminalize consensual same-sex sexual activity and take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity (Canada)	<b>Taken note of</b>
151.80	Decriminalize consensual sexual relations between adults of the same sex (Chile)	<b>Taken note of</b>
151.81	Ensure respect for the fundamental rights of all, without discrimination, including in relation to lesbian, gay, bisexual, transgender and intersex persons by decriminalizing homosexuality (France)	<b>Taken note of</b>
151.82	Repeal all legislation that discriminates on the basis of sexual orientation or gender identity to guarantee that lesbian, gay, bisexual, transgender and intersex persons can enjoy all human rights without facing discrimination with regard to work, health, education, housing and other policy (Germany)	<b>Taken note of</b>
151.83	Repeal all laws that criminalize persons based on their sexual orientation and gender identity (Iceland)	<b>Taken note of</b>
151.84	Undertake efforts to guarantee and protect the human rights of lesbian, gay, bisexual, transgender and intersex persons in line with international obligations (Ireland)	<b>Taken note of</b>

<sup>146</sup> Khuzairi Ismail 'Penglibatan 30 peratus wanita dalam DUN, Pulau Pinang negeri pertama' (Utusan Malaysia, 10 December 2020) <<https://www.utusan.com.my/berita/2020/12/penglibatan-30-peratus-wanita-dalam-dun-pulau-pinang-negeri-pertama/>> accessed 22 June 2021

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.85	Take concrete steps to protect lesbian, gay, bisexual, transgender and intersex persons from discrimination and violence, including through the enactment of explicit non-discrimination provisions in law, the development of public awareness programmes, and allow for the recognition of the gender of transsexual persons (Netherlands)	<b>Taken note of</b>

## BRIEF ASSESSMENT

Criminalisation and prosecution against LGBTQI persons and community remain a core part of the Malaysian government's policies and approach to the community. The Penal Code still maintains offences that outlaws and criminalised consensual sexual acts between adults with additional state-level Syariah laws indirectly penalising LGBTQI persons and communities on the ground of insulting Islam, encouraging vice<sup>147</sup> and public indecency<sup>148</sup>.

In the reporting period, at least 6 LGBTQI persons were caned following prosecution under the state Syariah enactment in the state of Terengganu and Selangor<sup>149</sup> for attempt to partake in consensual sexual relations. Two of those persons involved were caned in an open court with broad media coverage reporting on the matter<sup>150</sup>. A trans-woman was also prosecuted for insulting Islam during the reporting period. The trans-woman in question was prosecuted for wearing female attire at a self-organised private religious charity event<sup>151</sup>.

A positive development during the reporting period in relation to the criminalisation of LGBTQI persons and community came in a Federal Court judgment that ruled Selangor Syariah legislation criminalising unnatural sex is invalid as the state legislature has no power to enact legislation under the Federal jurisdiction<sup>152</sup>. Unfortunately, this was followed by an announcement from the Ministry of Religious Affairs of new amendments to further criminalise LGBTQI persons<sup>153</sup>.

<sup>147</sup> Zulkifli, Zuliaty. "Woe-Man: Authorities Raid Jitra Birthday Bash [NSTTV]." NST Online, 28 Oct. 2020 <[www.nst.com.my/news/crime-courts/2020/10/635944/woe-man-authorities-raid-jitra-birthday-bash](http://www.nst.com.my/news/crime-courts/2020/10/635944/woe-man-authorities-raid-jitra-birthday-bash)>

<sup>148</sup> Justice for Sisters. Monitoring Report: LGBTIQ+ Rights in Malaysia. ARROW, 2020, pg 22 <[www.arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf](http://www.arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf)>

<sup>149</sup> Golingai, Philip. "EU Calls for Five Gay Men Sentenced to Jail, Caning in S'gor to Be Released." The Star, 12 Nov. 2019, <[www.thestar.com.my/news/nation/2019/11/12/eu-calls-for-five-gay-men-sentenced-to-jail-caning-in-sgor-to-be-released](http://www.thestar.com.my/news/nation/2019/11/12/eu-calls-for-five-gay-men-sentenced-to-jail-caning-in-sgor-to-be-released)>

<sup>150</sup> Timbuong, J. "Duo in Lesbian Sex Case Whipped Six Times at Terengganu Syariah High Court." The Star, 2 Sept. 2018,

<sup>151</sup> Noorshahrizam, Jerry Choong And Shahrin Aizat. "Selangor Islamic Enforcers Probed for Violence against Nur Sajat in Arrest for 'Insulting Islam.'" Malaysia | Malay Mail, 13 Jan. 2021,

<sup>152</sup> Kairah N. Karim 'Federal Court declares Selangor syariah law criminalising unnatural sex unconstitutional' (New Straits Times, 25 February 2021) <<https://www.nst.com.my/news/crime-courts/2021/02/668825/federal-court-declares-selangor-syariah-law-criminalising-unnatural>> accessed 23 June 2021

<sup>153</sup> Abdullah, Sharifah Mahsinah. "Deputy Minister Explains Amendment of Act 355 for LGBT." NST Online, 21 Jan. 2021,



In addition to criminalisation of the LGBTQI community, there are also growing attempts to restrict expression and assemblies related to LGBTQI community and issues. This includes the removal of portraits of LGBTQI HRDs at an exhibition in conjunction with the national day and investigation of organisers of a women's march for sedition and violation of PAA due to participation of LGBTQI persons in the march. In terms of publications, MOHA banned a LGBTQI-affirming book on Christianity in 2020<sup>154</sup>. The government had also announced the establishment of a social media task force to oversee the following issues - LGBT, heresy, insult to Islam, and atheism<sup>155</sup>.

These restrictions are accompanied by intimidation from state authorities through public statements by the Minister of Religious Affairs calling for the arrest and rehabilitation of trans people<sup>156</sup>, and state-funded rehabilitation and conversion therapies. The government introduced treatment and rehabilitation programmes, camps, seminars and programs targeting students, school counsellors among others, and a 5-year action plan to proactively and effectively curb 'LGBT behaviour'.

According to JAKIM, nine activities were held under their 'treatment and rehabilitation programmes on gender confusion' in 2019 – four seminars on gender confusion related issues targeting the public and five activities targeting LGBTQI persons, which includes Mukhayyam programmes for the lesbian and gay communities, an appreciation of Islam (preventing wayward life) programme for women prisoners, among others<sup>157</sup>. Commentaries by a HRD against such practice resulted in a police report<sup>158</sup> and investigation against the HRD in question.

Apart from the abovementioned violations, The Federal Territory's Mufti's office obtained a trans woman's legal documents from the Registration Department and released her personal information, including name and sex assigned at birth as stated in her birth certificate, breaching her privacy and fueling public hatred towards the trans woman<sup>159</sup>. The person in question was later subjected to a manhunt involving 122 Islamic enforcers from the religious affairs department for allegedly insulting Islam<sup>160</sup>.

State-led violations of rights are also accompanied by widespread discrimination and violence against LGBTQI persons and community. Reported incidences include forced marriages, domestic violence, hate crimes, among others, some of which intersect with other forms of discrimination, in particular HIV status. Between 2019 to 2020, at least 10

<sup>154</sup> Bernama. "Home Ministry Bans Two Books, Including 'Gay Is OK!'" NST Online, 19 Dec. 2020, <[www.nst.com.my/news/nation/2020/12/650656/home-ministry-bans-two-books-including-gay-ok](http://www.nst.com.my/news/nation/2020/12/650656/home-ministry-bans-two-books-including-gay-ok)>

<sup>155</sup> [https://www.bernama.com/en/general/news\\_covid-19.php?id=1869999](https://www.bernama.com/en/general/news_covid-19.php?id=1869999)

<sup>156</sup> Ewe, Koh. "Malaysian Official Grants 'Full License' to Arrest, 'Educate' Transgender People." Vice, 17 July 2020, <[www.vice.com/en/article/ep45dp/malaysian-official-grants-full-license-arrest-educate-transgender](http://www.vice.com/en/article/ep45dp/malaysian-official-grants-full-license-arrest-educate-transgender)>

<sup>157</sup> Justice for Sisters. Monitoring Report: LGBTIQ+ Rights in Malaysia. ARROW, 2020, pg 22 <[www.arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf](http://www.arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf)>

<sup>158</sup> "Jakim Lodges Police Report against Twitter Account Owner Regarding Mukhayyam Programme." Wwww.Thesundaily.My, 3 Aug. 2020, <[www.thesundaily.my/local/jakim-lodges-police-report-against-twitter-account-owner-regarding-mukhayyam-programme-BK3286715](http://www.thesundaily.my/local/jakim-lodges-police-report-against-twitter-account-owner-regarding-mukhayyam-programme-BK3286715)>

<sup>159</sup> Zurairi Ar 'Justice for Sisters: REal concern is Nur Sajat's safety and security, not her 'umrah' attire' (Malay Mail, 4 February 2020 <<https://www.malaymail.com/news/malaysia/2020/02/04/justice-for-sisters-real-concern-is-nur-sajats-safety-and-security-not-her/1834260>><https://www.malaymail.com/news/malaysia/2020/02/04/justice-for-sisters-real-concern-is-nur-sajats-safety-and-security-not-her/1834260>> accessed 23 June 2021

<sup>160</sup> Ashman Adam 'Assigning 122 Islamic enforcers for Nur Sajat witchhunt overzealous, says transgender rights group' (Malay Mail, 27 February 2021) <<https://www.malaymail.com/news/malaysia/2021/02/27/assigning-122-islamic-enforcers-for-nur-sajat-witchhunt-overzealous-says-tr/1953276>> accessed 23 June 2021

cases of gay, bisexual or queer men in their 20s were forced to seek shelter due to family rejection of their sexual orientation with another 12 employment-related cases of discrimination documented<sup>162</sup>. These numbers are likely to be underreported due to the prevalence of fear of public reprisal and state sanction.

### Suggestions for Implementation of Recommendations

The report recommends for an end to public and state-funded rehabilitation and conversion programmes which can amount to torture<sup>163</sup> and enact legislation to criminalise and outlaw the organising and implementation of rehabilitation and conversion therapies.

The report also recommends the abolition of all laws criminalising LGBTQI persons and communities, and ensuring that the fundamental rights to expression, assembly and association for LGBTQI persons and communities are provided for, in line with the Federal Constitution of Malaysia. The Federal Government must work with the respective state government to ensure that state-level Syariah legislation is in line with the fundamental liberties provided for under the Federal Constitution.

The report further recommends for the government to adopt a neutral position in fostering dialogue among communities, including but not limited to promote engagements and dialogue with LGBT-affirming religious groups, dialogues with religious groups on issues of gender diversity and sexuality, and facilitate capacity building and dialogues among legislative members for the Federal and State legislatures, the Judiciary and other government officers.

## 4.6 PROTECTION FROM CHILD ABUSE/VIOLENCE/EXPLOITATION

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.224	Implement anti-bullying campaigns in schools addressing all forms of bullying, including that based on actual or perceived sexual orientation, gender identity or gender expression (Portugal)	<b>Partially accepted</b>
151.225	Continue efforts to combat child abuse, including through the elimination of caning in education facilities (Ukraine)	<b>Partially accepted</b>
151.226	Continue the enactment of legislation to protect children from all forms of ill-treatment and violence (Bahrain)	<b>Accepted in full</b>
151.228	Abolish corporal punishment in the legal system (Germany)	<b>Taken note of</b>

<sup>162</sup> Page 33 <<https://arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf>>

<sup>163</sup> [https://www.ohchr.org/EN/NewsEvents/Pages/ConversionTherapy\\_and\\_HR.aspx](https://www.ohchr.org/EN/NewsEvents/Pages/ConversionTherapy_and_HR.aspx)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.229	Continue efforts to improve the protection of children from abuse (Sudan)	<b>Accepted in full</b>
151.230	Take further actions to protect children's rights, especially access to public education, protection from child labour and sexual exploitation and prevention of sexual crimes against children (Japan)	<b>Accepted in full</b>
151.231	Continue to ensure the physical and emotional safety and welfare of children (Morocco)	<b>Accepted in full</b>
151.244	Continue efforts to combat violence against children (Maldives)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

An Office of the Children Commissioner was established as part of SUHAKAM following a series of public consultations<sup>164</sup>. The Child Commissioner operates on an additional mandate and priority on the rights of the child with its own staff and capacity<sup>165</sup>.

Corporal punishment of children in school remains an accepted practice with school regulations permitting corporal punishment on the basis of a student's sexual orientation, gender identity and gender expression. The student handbook issued by the Federal Territory of Kuala Lumpur Education Department explicitly includes homosexuality and gender confusion as an offence that could be punished with caning, suspension and expulsion.

In addition to school-related bullying raised in relation to the issue of right to education (refer to Chapter 3.5), there is also a growing concern of inadequate protection and support mechanisms for cyberbullying among children. A UNICEF poll suggested that 3 in 10 adolescents has experienced bullying and 9% of those polled shared that they utilised digital platforms to harass and bully others<sup>166</sup>. On the more extreme spectrum, cyberbullying with elements of sexual offences was reported with a 17-year-old committing suicide as a result of it<sup>167</sup>. In another case, a 16-year-old committed suicide after a poll on Instagram asking her followers if she should die or not<sup>168</sup>.

<sup>164</sup> Bernama 'Noor Aziah Mohd Awal appointed as Suhakam commissioner for children' (MalaysiaKini, 23 August 2019) <<https://www.malaysiakini.com/news/489173>> accessed 24 June 2021

<sup>165</sup> Website to the Office of the Children Commissioner - <https://suhakam.org.my/occ/>

<sup>166</sup> Bernama '1 in 5 young people skip school because of cyberbullying - Unicef poll' (New Straits Times, 5 September 2019) <<https://www.nst.com.my/news/nation/2019/09/519070/1-5-young-people-skip-school-because-cyberbullying-unicef-poll>> accessed 24 June 2021

<sup>167</sup> Imran Hilmy 'Penang CPO: Cyber-bully who caused 17-years-old girl to commit suicide detained' (The Star, 11 August 2020) <<https://www.thestar.com.my/news/nation/2020/08/11/penang-ocpd-cyber-bully-who-caused-17-year-old-girl-to-commit-suicide-detained>> accessed 24 June 2021

<sup>168</sup> Jamie Fullerton 'Teenage girl kills herself 'after Instagram poll' in Malaysia' (The Guardian, 15 May 2019) <<https://www.theguardian.com/world/2019/may/15/teenage-girl-kills-herself-after-instagram-poll-in-malaysia>> accessed 24 June 2021 regarding-mukhayyam-programme-BK3286715>

Protection for children who are victims of domestic violence is also lacking. In its current form, i.e., the DVA, children experiencing domestic violence are eligible for a protection order. In practice, this is not necessarily the case as the protection order in some circumstances may be attributed to their mother, who may not be qualified for the protection order, and as such resulting in the request for the protection order to be denied.

Corporal punishment in school remains an accepted practice, and remains commonplace in schools<sup>169</sup>. In the context of the criminal justice system, corporal punishment is not explicitly forbidden by law, but a number of legal interpretations allow for the use of corporal punishment<sup>170</sup> by the judiciary<sup>171</sup>. In private settings, corporal by parents or is in a legal grey area as the Penal Code does provide some degree of exemptions<sup>172</sup>.

Sexual offences against children is another pressing issue. Studies conducted on the issue suggest that one in ten children has experienced sexual abuse, with 95% of the sexual abuse inflicted by people known to them<sup>173</sup>. Investigative journalism by local media companies in the past also revealed the depth and scale of sexual exploitation and grooming in Malaysia<sup>174</sup>. SOAC was introduced with bipartisan support as additional means of addressing sexual offences against children. While the Act has made some progress in improving the situation, more resources and equipment are necessary for enforcement agencies to better curb sexual offences against children.

Labour exploitation of children was reported to be highly prevalent in Sabah and Sarawak in an employee survey in oil palm plantations published in 2018 that estimated 33,600 children aged 5-17 years were child labour, and identified that children in Sarawak and Sabah were most involved in child labour in oil palm plantations<sup>175</sup>. The results differentiated working children, child labour, and forced child labour. A statement by the Ministry of Human Resources (MOHR) clarified that not all child labour is forced or involves dropping out of school, and that children who merely help out their family members at work during weekends and school holidays also contribute to the child labour statistic<sup>176</sup>. In response to the findings, the ILO and the Malaysian MOHR launched the process for a National Action Plan on Child Labour, but no further progress was noted from the collaboration<sup>177</sup>.

<sup>169</sup> Soo Wern Jun 'Caning for late PTA fees: Incident blown out of proportion, case resolved' (New Straits Times, 3 July 2017) <<https://www.nst.com.my/news/crime-courts/2017/07/254281/caning-late-pta-fees-incident-blown-out-proportion-case-resolved>> accessed 24 June 2021

<sup>170</sup> Section 293 of the Criminal Procedure Code

<sup>171</sup> It should be noted that this is disputable as the law which states the mechanism for caning of juvenile offenders does not take into account the sentencing powers and option of the Court for Children under the Child Act 2001

<sup>172</sup> Section 80 of the Penal Code

<sup>173</sup> 'One in 10 Malaysian children sexually abused, usually by those they know: Studies' (The Straits Times, 29 November 2019) <<https://www.straitstimes.com/asia/se-asia/one-in-10-malaysian-children-are-sexually-abused-usually-by-those-they-trust>> accessed 24 June 2021

<sup>174</sup> 'Predator in my phone' (R.AGE, 14 June 2016) <<https://www.rage.com.my/predator/>> accessed 24 June 2021

<sup>175</sup> [https://www.mpic.gov.my/mpic/images/01-Bahagian/PSA/MPIC\\_EmploymentSurvey2018\\_FINAL.pdf](https://www.mpic.gov.my/mpic/images/01-Bahagian/PSA/MPIC_EmploymentSurvey2018_FINAL.pdf)

<sup>176</sup> <https://www.mohr.gov.my/index.php/ms/85-kenyataan-media-2018/724-maklumbalas-kepada-isu-buruh-kanak-kanak-membimbangkan-laporan-khas-akhbar-utusan-malaysia-pada-20-dan-21-jun-2018>

<sup>177</sup> [https://www.ilo.org/asia/media-centre/news/WCMS\\_722357/lang--en/index.htm](https://www.ilo.org/asia/media-centre/news/WCMS_722357/lang--en/index.htm)

### Suggestions for Implementation of Recommendations

The report recommends a review of all laws affecting the right of the child to harmonise existing legislation. The Child Act 2001 should also be clarified and made the 'supreme' law on matters relating to the rights of the child and the interaction of a child with the criminal justice system and other government bodies, to ensure consistency in the protection and promotion of the right of the child.

A Child Protection Policy should be made mandatory for government bodies, institutions and private agencies. The policy should be binding and compulsory, especially for institutions, organisations or private agencies that would be in contact with children or affect children in any way.

Additional resources and capacity ought to be allocated to PDRM to enhance its ability to address domestic violence involving children and sexual offences against children, and provide the necessary services and support to ensure victims are adequately cared for and protected. PDRM should also have the necessary capacity and resources to engage and collaborate with other stakeholders such as the Child Commissioner and MOE to improve outreach and access to better address offences against children.

MOE must also establish a suitable sexual and reproductive health education syllabus in school as a means of educating children and young adults on sexual knowledge to help them identify sexual abuses or offences committed against them.

## 4.7 PROTECTION FROM CHILD MARRIAGE

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.232	Ensure that the legal age for marriage is set at 18 years of age with no exceptions, as established under international human rights standards (Slovenia)	<b>Taken note of</b>
151.233	Intensify efforts to raise the age of marriage to 18 years of age, in order to avoid early and forced child marriage (Argentina)	<b>Accepted in full</b>
151.234	Take early action to raise the minimum age for marriage to comply with international child rights standards (Australia)	<b>Partially accepted</b>
151.235	Introduce effective measures to prevent child marriage and ensure their implementation in all states of Malaysia (Austria)	<b>Partially accepted</b>
151.236	Review all relevant laws to set the minimum legal age for marriage for all males and females at 18 years (Belgium)	<b>Taken note of</b>
151.237	Review state and federal laws to raise the minimum age of marriage to 18 for everyone in Malaysia and adopt policies to discourage child marriage (Canada)	<b>Taken note of</b>
151.238	Continue actions to combat child marriage (Gabon)	<b>Partially accepted</b>



NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.239	Review all relevant legislation with a view to setting the minimum legal age for marriage for all persons at 18 years of age (Germany)	<b>Taken note of</b>
151.240	Ensure that the legal age for marriage is set at 18 years of age and do its utmost to eradicate and prevent child marriage (Hungary);	<b>Taken note of</b>
151.241	Promote and protect the rights of women and children, with particular attention to the fight against child, early and forced marriage (Italy)	<b>Partially accepted</b>
151.242	Intensify its efforts to fully eliminate child, early and forced marriages (Lithuania)	<b>Taken note of</b>
151.243	Intensify measures to address issues of child marriages (Myanmar)	<b>Partially accepted</b>

## BRIEF ASSESSMENT

Malaysian law in general permits child marriages with some limitations including executive via the office of the Chief Minister or judicial oversight. Under civil law, marriages including those done by custom or religious rites are recognised for non-Muslims whereas Muslim marriages are in line with Syariah legislation of each respective state and the Federal Territories.

The majority of those affected by child marriage are female, with a report in 2018 indicating 90% of children married in 2018 were girls<sup>178</sup>. A Parliament reply also points out that between 2007 to 2017, a total of 14,999 child marriages were recorded with 10,000 involving Muslims<sup>179</sup>.

In response to growing criticism and condemnation, the Ministry of Women, Family and Community Development (KPWKM) launched a national strategic plan in handling causes of child marriage in January 2020. In Sabah, the state government committed to ending child marriage in Sabah by raising the minimum age of marriage and begun a state-level stakeholder consultation in 2019<sup>180</sup>. Developments of both plans are now unclear as both the Federal government and Sabah state government had undergone a change of administration. In the state of Selangor, child marriage was removed with an amendment of the Islamic Family Law Enactment and Syariah Court Civil Procedure Enactment increasing the minimum age of marriage from 16 to 18<sup>181</sup>.

<sup>178</sup> <https://www.unicef.org/malaysia/media/711/file/Child%20marriage%20in%20Malaysia.pdf>

<sup>179</sup> Khaw Chia Hui 'Child marriage: Why is it still a problem in 2018' (Malay Mail, 10 November 2018) <<https://www.malaymail.com/news/malaysia/2018/11/10/child-marriage-why-it-is-still-a-problem-in-2018/1691899>> accessed 24 June 2021

<sup>180</sup> 'Sabah state government acts to end child marriage' (UNICEF Malaysia, 3 July 2019) <<https://www.unicef.org/malaysia/press-releases/sabah-state-government-acts-end-child-marriage>> accessed 24 June 2021

<sup>181</sup> Siraj Mohd Zaini 'Selangor Sultan paved the way for state to tackle child marriages' (New Straits Times, 11 December 2018) <<https://www.nst.com.my/news/nation/2018/12/439592/selangor-sultan-paved-way-state-tackle-child-marriages>> accessed 24 June 2021

### Suggestions for Implementation of Recommendations

The report recommends for a committee to be set up between relevant federal and state-level agencies to ensure that law reforms to eliminate child marriages are monitored and implemented with a common timeline. Data and records of child marriages should be made publicly available for stakeholders and other interest groups to support and implement action plans to address child marriage.

The report also recommends for the government to implement necessary preventive and mitigation measures, including but not limited to sexual and reproductive health education in schools and improved social protection mechanisms.

## 4.8 RIGHTS OF PERSONS WITH DISABILITIES

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.245	Respect the human rights of persons with mental health conditions and psychosocial disabilities, in line with the Convention on the Rights of Persons with Disabilities (Portugal)	<b>Accepted in full</b>
151.246	Continue to promote the rights of people with disabilities (Senegal)	<b>Accepted in full</b>
151.247	Continue to advance the rights of persons with disabilities, including by ensuring that public places are friendly to persons with disabilities (Cameroon)	<b>Accepted in full</b>
151.249	Intensify efforts so that children with disabilities have sufficient access to education and health care (Fiji)	<b>Accepted in full</b>
151.252	Continue to advance the rights of persons with disabilities, including by adjusting public places and transforming them into friendly spaces for persons with disabilities (Jordan)	<b>Accepted in full</b>
151.253	Continue with efforts to fulfil the rights of persons with disabilities and facilitate their access to public places (Lebanon)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

Despite being a signatory to CRPD, Malaysia has yet to submit its country report under Article 35 of the CRPD. Beyond the government failures in meeting its international obligations, the rights of persons with disabilities (PWD) are compromised by inadequate legislation, accessibility issues and other challenges.

Issues of physical accessibilities are limited by weaknesses in the Persons with Disabilities Act 2008 that does not impose mandatory requirements for minimum standard and universal design for disabled accessibilities features in publicly accessible

buildings. This is further exacerbated by the lack of clear city council and local authorities guidelines, leading to poorly equipped buildings and public access ensuring persons with mobility difficulties and challenges are limited and restricted in their ability to access services and amenities.

Inconsistencies of traffic and parking permits granted to PWD and their caretakers often result in a shortfall in access to designated parking spaces and parking fee exemptions. This is compounded by the lack of public transportation infrastructure friendly to persons with disabilities, especially in more rural and remote areas.

In terms of employment, policies encouraging the employment of PWD are in place but its impact remains limited. There are policies by MOHR and SOCSO requiring a 1% employment quota for PWD. However, only limited numbers of public services were known to have achieved the 1% target with no clear oversight and monitoring mechanism for the private sectors.

As noted in the education chapter, the limited access for children with disabilities and lack of specialised schools and capacity in national schools render it difficult for the integration of children with disabilities in mainstream schools. Vocational training is often pushed as an alternative for children who left school. However, access to further education is difficult due to conflicts in entry requirements where graduates from specialised schools for children with disabilities are not evaluated in line with the national examination, effectively disqualifying graduates of specialised schools from vocational training and courses.

Those who are able to be part of national education systems are not necessarily exempted from potential glass ceilings. Children with hearing difficulties are able to complete education up to secondary levels but further studies in tertiary education are restricted by limited training facilities outside of the nation's capital, Kuala Lumpur.

To the government's credit, a pilot project called 'Special Education Transition Programme from School to Work' was conducted several years ago in several schools in Sabah, Johor, Selangor, Kuala Lumpur and Putrajaya. Sarawak is implementing a similar pilot in some schools for children entering secondary education<sup>183</sup>. In addition, the Welfare Department<sup>184</sup> maintains a 'Job Coach' programme; unfortunately, the programme is not equally implemented with limited implementation reported in Sarawak.

Welfare homes and safe houses for PWD involved in abuses are often limited due to the limited expertise and capacity in the average children's home to take care of children with disabilities. In addition to affecting children, the issue is also noted among PWD that are under the care of elderly family members who are unable to provide further care. The limited welfare homes and safe houses often result in victims being left at hospitals or treatment centres for indefinite periods.

The government also provides a number of welfare funds to support persons with disabilities. Allowances for workers with disabilities were increased from RM400 to RM450 during the reporting period. Allocations for caregivers of bedridden PWD were also increased in the same time period. The government also expressed that allowances for workers in community rehabilitation programmes will be increased in the future.

<sup>182</sup> Nur Afifah Suhaimi, 'Fair working opportunities for disabled people' (Emir Research, 2 November 2021) <<https://www.emirresearch.com/fair-working-opportunities-for-disabled-people/>> accessed 19 July 2021

<sup>183</sup> 2 Bernama 'KPM sasar sifar keciciran murid masuk ke sekolah menengah' (Astro Awani, 10 February 2021) <<https://www.astroawani.com/berita-malaysia/kpm-sasar-sifar-keciciran-murid-masuk-ke-sekolah-menengah-230271>> accessed 19 July 2021

<sup>184</sup> Jabatan Kebajikan Malaysia

Unfortunately, access to these funds is subjected to accessibility challenges in some places. In more rural parts of Malaysia, PWD who are registered and eligible for these benefits are often prevented from accessing them due to travel difficulties, financial challenges in travel necessary to access the funds, or from the lack of necessary amenities such as therapists in their locality.

The COVID-19 pandemic has brought further challenges and hardship to the community. Access to rehabilitation, healthcare and early intervention services were substantially derailed and crippled by the pandemic's impact on healthcare services and by the government's pandemic prevention policies. PWD afflicted with chronic illnesses are made even more so vulnerable to the prevailing health crisis.

### **Suggestions for Implementation of Recommendations**

The report recommends for the government to withdraw its reservations on Article 15 and 18 of the CRPD and ratify the optional protocol of CRPD and CRC, specifically on those affecting children with disabilities. The report also encourages the government to prepare Malaysia's country report for considerations and engagement with the CRPD treaty body. In addition, the government ought to implement the principles of the UNESCO Salamanca Statement which Malaysia signed in 1998. Consideration ought to be given for Malaysia to further sign and ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

The report also calls on the government to establish a task force and parliamentary select committee to review and reform the PWD Act 2008 to better harmonise the legislation with Malaysia's obligations under CRPD. The reform should include a review of key areas such as the scope and range of disabilities; definition of discrimination and harassment of PWD; establishment of remedy for victims of harassments; implement enforcement mechanisms to strengthen the Act.

An Independent Disability Commission should be established by the government to provide oversight on policy development affecting PWD; investigate and report on challenges affecting PWD, and support the implementation and adoption of CRPD policies at all levels of government and private sectors. Obligations under Article 33(2) of CRPD ought to be fulfilled through the establishment of this commission and its appointment as an independent monitoring mechanism, or through a collaborative committee led by SUHAKAM with consultation with community leaders and NGOs.

The government must implement necessary policy changes and commit the necessary financial resources to provide greater accessibility support for PWD, especially in rural areas or poorer states. The government ought to strengthen its commitment to achieving its 1% employment quota policy and provide further incentives and monitor mechanisms to ensure adoption and compliance among private sectors.

Shortfalls in education systems that inadvertently discriminate against persons with disabilities and prevent them from accessing further education must be tackled immediately to provide better employment opportunities to school-leaving PWD. Vocational training, education programme and skills retraining programme should also be developed to ensure PWD are ready for the 4th industrial revolution and the future market needs to safeguard PWD welfare and ensure the community's employability.

<sup>182</sup> Nur Afifah Suhaimi, 'Fair working opportunities for disabled people' (Emir Research, 2 November 2021) <<https://www.emirresearch.com/fair-working-opportunities-for-disabled-people/>> accessed 19 July 2021

<sup>183</sup> 2 Bernama 'KPM sasar sifar keciciran murid masuk ke sekolah menengah' (Astro Awani, 10 February 2021) <<https://www.astroawani.com/berita-malaysia/kpm-sasar-sifar-keciciran-murid-masuk-ke-sekolah-menengah-230271>> accessed 19 July 2021





CHAPTER

5

TRAFFICKING IN  
PERSONS, MIGRANT  
WORKERS, REFUGEES &  
ASYLUM SEEKERS





## 5.1 TRAFFICKED PERSONS

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.115	Continue providing physical, psychological and social integration assistance to victims of trafficking in persons (Saudi Arabia)	<b>Accepted in full</b>
151.116	Continue efforts to protect the rights of women and children, in particular in the fight against human trafficking (Senegal)	<b>Accepted in full</b>
151.117	Continue its efforts to combat child labour and trafficking in persons at the national, regional and international levels (Thailand)	<b>Accepted in full</b>
151.118	Fully implement the 2016–2020 national action plan to combat human trafficking (United Kingdom of Great Britain and Northern Ireland)	<b>Accepted in full</b>
151.119	Increase efforts to prosecute and convict human traffickers, including complicit officials; protect victims; and reduce migrant workers' vulnerability to debt bondage (United States of America)	<b>Accepted in full</b>
151.120	Intensify efforts to strengthen its policies and strategies aimed at fighting against trafficking in persons, especially women and children (Algeria)	<b>Accepted in full</b>
151.121	Increase the funds allocated to support structures for victims of human trafficking, including children (Angola)	<b>Accepted in full</b>
151.122	Ensure that anti-trafficking laws and policies are in accordance with international human rights standards (Cambodia)	<b>Accepted in full</b>
151.123	Continue with efforts made to combat human trafficking, especially the exploitation of girls and women, further strengthening its fight against traffickers (Djibouti)	<b>Accepted in full</b>
151.124	Establish a formal procedure throughout the country to promptly identify victims of trafficking and refer them to appropriate services for protection (Hungary)	<b>Accepted in full</b>
151.125	Continue with efforts to combat human trafficking (Nigeria)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

During the reporting period, efforts to combat human trafficking have not experienced any notable improvement or decline, maintaining the Tier 2 classification by the US Trafficking in Person Report<sup>185</sup>. The Council for Anti-Trafficking in Persons (MAPO) continues to be the main focal point for government response to human trafficking and smuggling of migrants.

The government launched its new National Action Plan on Anti-Trafficking in Persons (NAPTIP 3.0) for 2021 to 2025 in March 2021<sup>186</sup>. While NAPTIP does cover measures and strategies that include positive measures such as improving protection mechanisms, strengthening collaboration with partners, and adopting a human rights-based and gender-responsive approach in tackling human trafficking, the flawed Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM) still remains as the go-to for addressing human trafficking.

As noted in earlier issues relating to the right to fair trial, the current anti-trafficking legislation works in tandem with SOSMA which permits detention without trial for 28 days and with onerous trial conditions detrimental to the right to fair trial.

It should also be noted that the effectiveness of the past NAPTIP was not publicised by the government, rendering it difficult for external stakeholders from being able to examine progress and provide useful feedback or criticism.

In terms of protection mechanisms, KPWK continues to provide intervention services for victims which include healthcare, counselling, legal support and necessary documentation for those eligible to work in Malaysia.

### Suggestions for Implementation of Recommendations

The report recommends for the government to improve transparency and access to the data on human trafficking to ensure all stakeholders are able to contribute and engage with the government on the issue of human trafficking. The report also recommends an expansion of training and capacity building to include public prosecutors and the judiciary for better understanding and appreciation for existing trafficking in persons indicators and standards.

<sup>185</sup> '2020 Trafficking in Persons Report - Malaysia' (U.S. Embassy in Malaysia, 26 June 2020) <<https://my.usembassy.gov/our-relationship/official-reports/2020-trafficking-in-persons-malaysia/>> accessed 30 June 2021

<sup>186</sup> 'Home Ministry launches national action plan on anti-trafficking in persons 2021-2025' (Malay Mail, 31 March 2021) <<https://www.malaymail.com/news/malaysia/2021/03/31/home-ministry-launches-national-action-plan-on-anti-trafficking-in-persons/1962751>> accessed 30 June 2021

## 5.2 MIGRANT WORKERS

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.149	Ensure all foreign workers have the right to full access to justice and legal remedies (Bangladesh)	<b>Accepted in full</b>
151.170	Intensify measures to improve working conditions, security and safety, and further improve education on individual and collective rights for migrant workers (Viet Nam)	<b>Accepted in full</b>
151.259	Continue efforts aimed at enhancing the safety and advancing the welfare of migrant workers (Philippines)	<b>Accepted in full</b>
151.261	Continue efforts to enhance the transparency and efficiency of the recruitment system of migrant workers (Bangladesh)	<b>Accepted in full</b>
151.263	Ensure that all migrant workers and their families have access to medical services, including for sexual and reproductive health (Honduras)	<b>Partially accepted</b>
151.264	Explore best practices adopted by the receiving countries for migrant workers, in line with relevant ILO conventions (India);	<b>Accepted in full</b>
151.265	Increase further efforts for social inclusion of migrant workers and integration with the local community, irrespective of their race and religion (Myanmar)	<b>Accepted in full</b>
151.266	Take necessary measures to prevent and punish all forms of violence against migrant workers, including hate crimes and racism (Myanmar)	<b>Accepted in full</b>
151.267	Continue to take further necessary measures to ensure protection of the rights of migrant workers (Nepal)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

Issues of debt bondage, forced labour, and other forms of abuse remain issues of priority with regard to the rights of migrant workers. In the reporting period, several high profile allegations of forced labour surfaced including multinational companies such as Good-year Tire & Rubber co<sup>188</sup>, Sime Darby<sup>189</sup> and others.

<sup>144</sup> Sawo & Rakyat is Bos 'Appoint women as assemblypersons to remedy gender imbalance' (MalaysiaKini, 20 September 2020) <<https://www.malaysiakini.com/letters/543279>> accessed 22 June 2021

<sup>145</sup> 28 ministers and 27 deputy ministers under Pakatan Harapan, in contrast with 32 ministers and 38 deputy ministers under Perikatan Nasional.

One of the companies that was alleged to have used forced labour during the reporting period paid a settlement of RM136 million to compensate migrant workers after an import ban by the US Customs and Border Protection's<sup>190</sup>. Similar allegations against the company surface from time to time, with one of the more high profile incidents occurring in 2018. MOHR at that juncture visited the factories after allegations surfaced, and claimed that there was no evidence of violation<sup>191</sup>. The same company was later ordered to close during a COVID-19 wave after more than 1,000 workers were tested positive for the virus<sup>192</sup>.

The pandemic shed new light on the situation of migrant workers in Malaysia as the migrant community was severely impacted by the COVID-19 pandemic due to the living and working conditions provided by employers. Unfortunately, the pandemic not only shed light on the deplorable conditions<sup>193</sup>, but it also drove a government crackdown on undocumented migrant workers, causing fears and concerns among migrant workers, documented and undocumented alike<sup>194</sup>.

Apart from the contemporary rights violations, the policy relating to migrant workers in the past continues to be in place, exposing migrant workers to risk of debt bondage caused by middlemen<sup>195</sup>, high barrier to access healthcare due to high cost for foreign nationals, discrimination against women migrant workers<sup>196</sup> and illegal conduct by certain employers in confiscating migrant workers' passports<sup>197</sup>.

For migrant workers working as domestic helpers, victims of violence and abuse are also prevalent with a number of high profile cases involving grievous harm and abuse<sup>198</sup> resulting in death<sup>199</sup>. While criminal prosecution has taken place, effectiveness of the criminal justice system in addressing these grievances has been lacklustre in some cases<sup>200</sup>. Calls by other governments<sup>201</sup> have been met with little success as the underlying conditions and gaps in policy continue to allow such abuse to occur.

<sup>190</sup> Justin Lim 'Top Glove to pay RM136m to migrant workers as remediation for recruitment fees' (The Edge Market, 6 October 2020) <<https://www.theedgemarkets.com/article/top-glove-pay-rm136m-migrant-workers-remediation-recruitment-fees>> accessed 30 June 2021

<sup>191</sup> Bernard Cheah 'Kula: Claims of overworked Top Glove migrant workers untrue' (The Star, 10 December 2018) <<https://www.thestar.com.my/news/nation/2018/12/10/kula-claims-of-overworked-top-glove-migrant-workers-untrue/>> accessed 30 June 2021

<sup>192</sup> 'Covid-19: Top Glove factories ordered closed after 1k workers test positive' (MalaysiaKini, 23 November 2020) <<https://www.malaysiakini.com/news/552157>> accessed 30 June 2021

<sup>193</sup> 'Malaysia enforces requirement for improved worker lodging to rein in Covid-19' (The Straits Times, 18 February 2021) <<https://www.straitstimes.com/asia/se-asia/malaysia-enforces-requirement-for-improved-worker-accommodation-to-rein-in-covid-19>> accessed 30 June 2021

<sup>194</sup> Tashny Sukumaran & Bhavan Jaipragas 'Coronavirus: hundreds arrested as Malaysia cracks down on migrant in Covid-19 red zones' (South China Morning Post, 1 May 2020) <<https://www.scmp.com/week-asia/politics/article/3082529/coronavirus-hundreds-arrested-malaysia-cracks-down-migrants>> accessed 30 June 2021

<sup>195</sup> Beh Lih Yi 'Malaysia targets middlemen to end debt bondage of migrant workers' (Reuters, 19 December 2018) <<https://www.reuters.com/article/us-malaysia-migrants-rights-idUSKBN1O10G2>> accessed 30 June 2021

<sup>196</sup> 'Fair Labour Association reports pregnancy discrimination and deportation of migrant women workers in Asia' (Business & Human Rights Resource Centre, 1 April 2018) <<https://www.reuters.com/article/us-malaysia-migrants-rights-idUSKBN1O10G2>> accessed 30 June 2021

<sup>197</sup> 'Christina Chin 'Withholding passports illegal, Govt warns' (The Star, 21 December 2014) <<https://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/>> 30 June 2021

<sup>198</sup> Nurul Azwa Aris 'Domestic worker tell of 'torture' by employers' (Free Malaysia Today, 14 February 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/02/14/domestic-workers-tell-of-torture-by-employers/>> accessed 30 June 2021

<sup>199</sup> 'The Story of Adelina: Female Migrant Worker Tortured in Malaysia' (Tempo.co, 13 February 2018) <<https://en.tempo.co/read/915704/the-story-of-adelina-female-migrant-worker-tortured-in-malaysia>> accessed 30 June 2021

<sup>200</sup> V Anbalagan 'Prosecution to appeal against acquittal of woman freed of murdering maid' (Free Malaysia Today, 24 September 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/09/24/prosecution-to-appeal-against-acquittal-of-woman-freed-of-murdering-maid/>> accessed 30 June 2021

<sup>201</sup> Budi Sutrisno 'Jakarta 'strongly condemns' abuse of Indonesia worker in Malaysia' (Jakarta Post, 26 November 2020) <<https://www.thejakartapost.com/seasia/2020/11/26/jakarta-strongly-condemns-abuse-of-indonesian-worker-in-malaysia.html>> accessed 30 June 2021

Despite the prevalence of this issue, support for victims has been limited with no access to appropriate and timely counselling or medical services by public health services. Even when these women manage to survive the horrors of sexual violence, medical attention is not made accessible until they finally leave their workplace. Leaving the workplace, however, is never an option for most due to consistent threats made by the employers and the involvement of contractual obligations tied to their salary<sup>202</sup>.

### Suggestions for Implementation of Recommendations

The report recommends for the government to strengthen the existing investigation process for labour rights violations and establish an independent committee to oversee investigation processes and remedial actions to ensure companies that are complicit in or enable the abuse of workers can be held accountable with oversight by an independent panel.

The report also recommends that the government pause its policy on arrest and detention of undocumented migrant workers. The government ought to engage with stakeholders and communities in developing appropriate and effective COVID-19 mitigation and prevention plans in lieu of the current arrest and detention.

The report also calls for the management of migrant labour at all stages to be placed under MOHR to ensure that the appropriate ministry with the necessary expertise, capacity and knowledge of employment issues and management to be in control of recruitment and employment process.

## 5.3 REFUGEES & ASYLUM SEEKERS

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

*\*All the recommendations below have been listed in other categories; the list shown here is only for the purpose of demonstrating which recommendations are particularly concerned with refugees and asylum seekers*

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.42	Take immediate legislative or administrative measures, including ratifying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to provide legal status to refugees and asylum seekers to allow them to reside, work and access education and health care in Malaysia (Canada)	<b>Taken note of</b>
151.251	Develop programmes to strengthen the integration of children with disabilities and refugees in its school system (Greece)	<b>Partially accepted</b>
151.268	Intensify its efforts to ensure access to primary and secondary education to asylum seekers and refugees and to offer them equal education opportunity (Afghanistan)	<b>Taken note of</b>

<sup>202</sup> <https://www.umlawreview.com/lex-omnibus/the-perilous-plight-of-unsung-heroes-domestic-workers-in-malaysia>

## BRIEF ASSESSMENT

Situations relating to the rights of refugees and asylum seekers deteriorated significantly in 2020 and 2021. Despite Malaysia's earlier commitments to the protection and promotion of the right of the refugees and the show of solidarity by government-aligned political leaders for Rohingya<sup>203</sup> and Syrians, the government has since adopted a new approach in dealing with refugees.

A wave of xenophobia and threat against refugees sprung up when Malaysia underwent its first wave of the pandemic in March 2020. The rising resentment was fueled by coordinated disinformation campaigns that spurred public sentiment against the refugee community. This resulted in substantial harassment and threats levelled against prominent community activists, forcing some to hide in fear of the death threat against them<sup>204</sup>.

The government policies of mass arrest and crackdown on poorly defined illegal migrant workers further exacerbate the situation, leaving many refugees and asylum seekers in the crossfire. MOHA also took up a combative stance with UNHCR alleging that UNHCR was not sincere in providing information on refugees for vaccination when a request was made by the UNHCR to ensure that these refugees would not be under threat of detention<sup>205</sup>.

The government is also suspected to have repatriated refugees and asylum seekers in 2021 when it deported 1,086 Myanmar nationals in midst of the political coup in Myanmar. This is in spite of a High Court order to stay the deportation obtained by Amnesty International Malaysia and Asylum Access due to concerns of potential refugees and asylum seekers in the mix<sup>206</sup>.

In addition to the deteriorating situation affecting refugees and asylum seekers, the government has not expressed any further intent on recognising refugees and asylum seekers in Malaysia beyond allowing UNHCR to register refugees. Those registered with UNHCR are also not given any guarantee of safety or recognition as there is no official policy on UNHCR documents.

The lack of formal documentation also places an impossible hurdle for the right to employment for refugees and asylum seekers. Without formal recognition, refugees and asylum seekers are often pushed to work illegally in sectors that are considered dirty, difficult and dangerous. The lack of recognition renders the community highly vulnerable to labour exploitation, harassment by enforcement agencies, trafficking and abuse.

In the past, the government conducted pilot programmes to provide formal employment for refugees with collaboration with UNHCR and private actors. The growing public resentment placed additional pressure on private actors involved, including a call for

<sup>203</sup> Shannon Teoh 'Umno, PAS chiefs in joint protest over Rohingyas' (The Straits Times, 5 December 2016) <<https://www.straitstimes.com/asia/se-asia/umno-pas-chiefs-in-joint-protest-over-rohingyas>> accessed 30 June 2021

<sup>204</sup> 'Death threats, hate speech turn Rohingya activists' Malaysia home into a prison' (Channel News Asia, 6 April 2021) <<https://www.channelnewsasia.com/news/asia/rohingya-malaysia-activist-zafar-ahmad-home-prison-death-threats-14564478>> accessed 30 June 2021

<sup>205</sup> Predeep Nambiar 'UNHCR 'not sincere' in offer to give refugee details, says Hamzah' (Free Malaysia Today, 15 June 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/06/15/unhcr-not-sincere-in-offer-to-give-refugee-details-says-hamzah/>> accessed 30 June 2021

<sup>206</sup> 'Malaysia deports 1,086 Myanmar nationals despite court order' (Al Jazeera, 23 February 2021) <<https://www.aljazeera.com/news/2021/2/23/malaysia-deports-1200-people-to-myanmar>> accessed 30 June 2021



boycott and assertion that local employment capacity is taken up by refugees<sup>207</sup>. At this juncture, it is unclear whether the pilot programmes are still implemented by the government.

Access to healthcare is also severely restricted as refugees are not eligible for subsidised public healthcare and only eligible for a 50% discount based on hospitalisation rates and fees for foreign nationals. The financial barrier effectively prevents effective access to long-term healthcare for the majority of the refugees and asylum seekers in Malaysia.

Apart from the harassment and death threat levelled against prominent communist activists, the government has also responded harshly against a Bangladeshi national who criticised the government treatment of migrant workers in an Al Jazeera interview<sup>208</sup> and investigated Al Jazeera for the documentary of the situation pertaining migrants and refugees in Malaysia<sup>209</sup>.

### Suggestions for Implementation of Recommendations

The report recommends for the government to make efforts to ratify the 1951 Refugee Convention and take immediate steps to provide legislative and policy recognition of refugees and asylum seekers in Malaysia. The government must also coordinate with other stakeholders and allocate the necessary resources and infrastructure to provide basic necessities and support for refugees and asylum seekers.

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<sup>208</sup> 'Malaysia arrests Bangladeshi migrant who criticised government on TV' (BBC News, 25 July 2020) <<https://www.bbc.com/news/world-asia-53537312>> accessed 30 June 2021

<sup>209</sup> 'Al Jazeera rejects Malaysian officials' claims over documentary' (Al Jazeera, 9 July 2020) <<https://www.aljazeera.com/news/2020/7/9/al-jazeera-rejects-malaysian-officials-claims-over-documentary>> accessed 30 June 2021



CHAPTER **6**

**OTHER  
HUMAN RIGHTS  
ISSUES**





## 6.1 HUMAN RIGHTS TRAINING

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.62	Take additional measures to strengthen education and training in the area of respecting and protecting human rights (Egypt)	<b>Accepted in full</b>
151.64	Continue its endeavours to promote human rights education and training (Islamic Republic of Iran)	<b>Accepted in full</b>
151.66	Strengthen human rights training at all levels of the Administration and relevant agencies (France)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

Malaysia's national human rights institution SUHAKAM regularly conducts relevant training for law enforcement agencies with the view to enable the officers to fulfil, promote and protect human rights in Malaysia.

Since 2002, the Commission in collaboration with the Training Division of PDRM has been conducting various training programs for PDRM officials, aimed at expanding the expertise of PDRM officials in the field of human rights through sharing of information on police standards and international human rights. PDRM also periodically invites the Commission to deliver human rights briefings to new recruits and existing officers at the PDRM training institute. A collaboration is ongoing to develop the Human Rights Module for PDRM to be used by the PDRM trainers in their training later.

The Malaysian Prison Department, Malaysian Immigration Department, National Anti-Drug Agency and Local Authorities were also recipients of human rights training from SUHAKAM.

SUHAKAM has also collaborated with the Institute of Teacher Education (IPG) to raise awareness on human rights issues, in particular on children rights among future educators. For 2020, the Commission was involved in the review of IPG's syllabus to incorporate sufficient human rights contents in the syllabus.

Much of the human rights training and education falls on SUHAKAM, and other relevant industries such as MOFA, MOE or KPWKM should get involved in strengthening human rights training at their respective agencies.

## 6.2 SOCIAL COHESION

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.57	Continue efforts aimed at nation-building strategies and the development of a solid legislative, administrative and policy framework, notably to cater for the needs of the vulnerable groups (South Africa)	<b>Accepted in full</b>
151.67	Continue efforts in maintaining social cohesion in the country (Viet Nam)	<b>Accepted in full</b>
151.72	Continue efforts towards strengthening community integration through protecting cultural diversity (Iraq)	<b>Accepted in full</b>
151.76	Continue and strengthen efforts in promoting the culture of mutual respect and peaceful coexistence among different religious communities (Cambodia)	<b>Accepted in full</b>
151.128	Continue to implement policies on interreligious harmony, to further promote unity among religions and creeds (Bolivarian Republic of Venezuela)	<b>Accepted in full</b>
151.130	Continue the implementation of measures aimed at strengthening inter-ethnic and interreligious interaction in the country (Belarus)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

The PH Government launched the *Majlis Perundangan Keharmonian Rakyat (2019-2022)*<sup>210</sup> to mediate and facilitate discussion amongst the plural societies in Malaysia. The council was supposed to be an advisory body to advise the government on issues relating to unity and social wellbeing as part of the government's approach towards strengthening national unity<sup>211</sup>. After the change of administration, it is unclear if the council still convenes and advises the government.

Apart from establishing the council, the administration also proposed three pieces of legislation on the subject of national unity. The three bills include the National Harmony and Reconciliation Commission Bill, Racial and Religious Hate Crime Bill and the National Harmony and Reconciliation Bill. The government favoured the National Harmony and Reconciliation Commission Bill, removing the other two from the government's agenda<sup>212</sup>. The proposed bill includes a compulsory mediation mechanism and process to address and resolve ethnic or faith-related disputes within local communities and groups.

<sup>210</sup> Consultative Council on Peoples' Harmony

<sup>211</sup> 'Bernama 'Majlis Perundangan Keharmonian Rakyat dilancar ganti MKPN' (Free Malaysia Today, 14 November 2019) <<https://www.freemalaysiatoday.com/category/bahasa/2019/11/14/majlis-perundangan-keharmonian-rakyat-dilancar-ganti-mkpn/>> accessed 29 June 2021

<sup>212</sup> 'Martin Carvalho, Hemananthani Sivanandam, Rahimy Rahim and Tarrence Tan 'Waytha: Govt will not table two national harmony Bills but favours a commission' (The Star, 1 April 2019) <<https://www.thestar.com.my/news/nation/2019/04/01/waytha-govt-will-not-table-two-national-harmony-bills-but-favours-a-commission/>> accessed 29 June 2021

The change of government was followed by a change of policy on this issue with the current administration shelving the bill on the grounds that there are adequate laws to tackle issues linked to ethnic and religious issues. The minister asserts that the current law, specifically the Sedition Act 1948, CMA, and selected sections in the Penal Code was adequate for this purpose<sup>213</sup>.

Apart from these initiatives, the government in the past has introduced a variety of policies and departments to address concerns on social inclusion of ethnic minorities. This includes the appointment of a special minister in the Prime Minister Department on Sabah & Sarawak, the establishment of JAKOA, and the allocation of special funds to bodies such as the Federal New Village Development and Security Committees and the Malaysian Indian Transformation Unit.

## 6.3 PROTECTION AGAINST TERRORISM

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.90	Work seriously against extremist doctrines and groups which constitute a fertile environment for terrorism (Syrian Arab Republic)	<b>Accepted in full</b>

## BRIEF ASSESSMENT

While the Malaysian government rejects any extremist doctrine and militant groups that aim to terrorise the country, the methods that are being employed by the former are mostly confined to using excessive security laws which allows detention without trial to detain radicalised individuals.

While civil society is not against the limited use of security laws against terrorists, the state lacks thus far a proper definition of terrorism act and that would lead to abuse of security laws in the name of 'combatting terrorism'. Take the example of the individuals that were detained under SOSMA for having loose links with LTTE: one of the detainees was arrested over a video where he was purported to show support to LTTE<sup>214</sup>.

Additionally, the definition of international terrorist groups and giving support to them is not properly defined. In the context of Malaysia, LTTE is a terrorist group while some Malaysians viewed Hamas as freedom fighters<sup>215</sup>.

<sup>213</sup> 'Minister: Existing laws in Malaysia adequate, National Harmony Commission Bill will not be continued' (Malay Mail, 5 august 2020) <<https://www.malaymail.com/news/malaysia/2020/08/05/minister-existing-laws-in-malaysia-adequate-national-harmony-commission-bil/1891354>> accessed 29 June 2021

<sup>214</sup> <https://www.malaysiakini.com/news/502522>

<sup>215</sup> <https://www.freemalaysiatoday.com/category/nation/2021/05/13/two-rtm-editors-issued-show-cause-letters-for-labeling-hamas-militant/>

## 6.4 GENERAL COMMENTS ON HUMAN RIGHTS

### RECOMMENDATIONS FROM MALAYSIA'S 3RD UPR (2018)

NO.	RECOMMENDATION	GOVERNMENT'S RESPONSE
151.61	Continue undertaking efforts in addressing human rights issues in an institutionalized, systematic and holistic manner (Pakistan)	<b>Accepted in full</b>
151.68	Strengthen efforts to promote and protect the rights of women, children, persons with disabilities and the elderly (Brunei Darussalam)	<b>Accepted in full</b>
151.69	Continue promoting the rights of vulnerable groups and of minorities, considering their specific needs and capabilities, empowering them in their rights and through fair mechanisms for redress (Ecuador)	<b>Taken note of</b>
151.71	Continue to intensify efforts to prevent and combat disparities against children belonging to vulnerable groups (Sudan)	<b>Accepted in full</b>
151.74	Continue to support the issues of women, children and persons with disabilities (Libya)	<b>Accepted in full</b>
151.75	Continue to adopt measures to protect the rights of vulnerable groups including persons with disabilities and minority groups in rural areas (Maldives)	<b>Accepted in full</b>
151.254	Continue its efforts to protect minorities (Libya)	<b>Accepted in full</b>

Progress updates and implementation suggestions for these recommendations were highlighted in Chapter 4.1 to 4.4 for women issues, Chapter 4.5 for LGBTQI issues, Chapter 4.6-4.7 for children issues, Chapter 4.8 for PWD issues respectively.



# 4

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- 2 Association of Women Lawyers
- 3 Asylum Access Malaysia
- 4 Bersih 2.0
- 5 Centre for Independent Journalism (CIJ)
- 6 Challenger Malaysia
- 7 Community Action Network (CAN) Malaysia
- 8 EMPOWER Malaysia
- 9 Family Frontiers
- 10 Imagined Malaysia
- 11 Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM)
- 12 Jaringan Orang Asal SeMalaysia (JOAS)
- 13 Justice for Sisters
- 14 KLSCAH Civil Rights Committee
- 15 Knowledge and Rights with Young people through Safer Spaces (KRYSS)
- 16 Lariche Community
- 17 Malaysian Atheists & Secular Humanists
- 18 Migration Working Group
- 19 National Human Rights Society (HAKAM)
- 20 North South Initiative (NSI)
- 21 Our Journey
- 22 PANGGAU
- 23 Pelangi Campaign
- 24 Perak Women for Women Society
- 25 Persatuan Sahabat Wanita Selangor
- 26 Pertubuhan Pembangunan Kebajikan Dan Persekitaran Positif Malaysia (SEED)
- 27 People Like Us Hang Out! (PLUHO!)
- 28 Pusat KOMAS
- 29 Sarawak AIDS Concern Society
- 30 Sarawak Women for Women
- 31 Seksualiti Merdeka
- 32 Sisters in Islam (SIS)
- 33 Society for Equality, Respect And Trust for All (SERATA)
- 34 Society for the Promotion of Human Rights (PROHAM)
- 35 Suara Rakyat Malaysia (SUARAM)
- 36 Tenaganita
- 37 Terabai Kenyalang Heritage Association
- 38 The Malaysian Feminist
- 39 Tindak Malaysia
- 40 Women's Aid Organisation (WAO)
- 41 Women's Centre for Change (WCC)
- 42 Yayasan Chow Kit

**(ORGANISATIONS WHO HAVE CONTRIBUTED TO THE MID-TERM REPORT)**

1	Advancing Knowledge in Democracy and Law
2	Advocates for Non-Discrimination and Access to Knowledge (ANAK)
3	Agora Society
4	Borneo Komrad
5	Catholic Welfare Services Council Sarawak
6	Child Rights Coalition Malaysia
7	Dyslexia Association of Sarawak
8	Gender and Sexuality Alliance Kota Kinabalu (GSAKK)
9	Good Shepherd Welfare
10	Greenfriends Sabah
11	Harapan OKU Law Reform Group
12	HUTAN
13	Lawyer Kamek for Change
14	Malaysian Care
15	Malaysian CSO SDG Alliance
16	Non-timber Forest Product (NTFP)
17	Partners of Community Organisations in Sabah (PACOS) Trust
18	Persatuan Dayak Sarawak (PEDAS)
19	Persatuan Ibumama Kanak-Kanak Terencat Akal (PERKATA) Sarawak
20	Purple Lily
21	Rise of Social Efforts (ROSE)
22	Sabah Human Rights Centre (SHRC)
23	Sabah Reform Initiative (SARI)
24	Sarawak Cheshire Home
25	Sarawak Dayak Iban Association (SADIA)
26	Sarawak Deaf Sports Association (SDSA)
27	Sarawak OKU Skills Development Association
28	Sarawak Society of the Deaf (SSD)
29	Society for Rights for Indigenous People of Sarawak (SCRIPS)
30	Tiada.Guru
31	Undi Sabah
32	Wishesland (Malaysia Cerebral Palsy Association, Kuching & Samarahan Division)

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