

A. INTRODUCTION

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

B. NATIONAL UNITY

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

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

³ Article 1 of the Malaysia Agreement 1963.

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

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

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

⁶ Ibid

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

7. In the 2nd Cycle, Malaysia received 7 recommendations on the topic of National Unity and accordingly accepted all of the recommendations given.
8. Even though the Government's policies and efforts to implement these recommendations must be commended,⁸ CLJ is however concerned with the lackadaisical attitude demonstrated by the Government in honoring the provisions of the Federal Constitution as the framework towards unity. Much of the efforts are seen as superficial at best, and lack focus. There were instances where the ideals under the Federal Constitution were attenuated by the Governmental bodies. This extends to the Government attitude in adopting the national language as language of unity.
9. The Malaysian Government recently began a consultative session with civil society organisations, to gain feedback on a proposed legislation, namely the *National Harmony Bill*. While the preamble to the proposed law states that the aim is to form a National Harmony Commission "*to promote national harmony, unity, reconciliation, integration and non-unfair discrimination...*,"⁹ the contents of the same, however, do not reflect those stated objectives. Instead, the approach taken through the proposed Bill seems to focus only on fire-fighting approach — namely to settle disputes if and when inter-racial or inter-religious clashes occur — as opposed to implementing a wholistic action plan to truly forge a solid unity among the Malaysian people. There have also been concerns that the powers given to the proposed National Harmony Commission under the proposed Bill may transgress upon autonomous powers of the States, as protected by the Federal Constitution.¹⁰

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

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

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

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

¹¹ Article 152 of the Malaysian Federal Constitution.

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

15. In February 2015, the now defunct online portal, *The Malaysian Insider*, reported a survey on the lackadaisical attitude that the Chinese Malaysian youths have towards the national language.¹³
16. A year before that, Professor Dr Sharon Carstens of the PSU Institute for Asian Studies presented her findings at the Universiti Kebangsaan Malaysia (UKM) as to how the Chinese Malaysians have “negative feelings towards using” national language, despite acknowledging Article 152 of the Federal Constitution.¹⁴
17. On October 25th of the same year, another academic, Professor Dr. Teo Kok Seong revealed his findings based on research conducted in 2010 that out of 14,000 trainees of the Malaysian National Service Training Programme, a staggering 604 trainees could not speak in the national language at all.¹⁵

Concerns

18. These are intensified by the segregation in the education system, where children of different ethnic groups are being segregated along their ethnic tongues, i.e. children of the Chinese descent mainly go to the Mandarin National-Type Schools where Mandarin is not only taught as a subject, but also used as the medium of instruction through-out the primary school years, thus students have very little exposure to their peers of other ethnicity, much less the use of the national language; children of the Indian descent go to the Tamil National-Type Schools where Tamil is being used as the medium of instruction through-out the primary school years, thus students have very little exposure to their peers of other ethnicity, much less the use of the national language;

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

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

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

while children of the Malay and other natives descent mainly go to the National Schools where the national language is used as the medium of instruction.¹⁶

19. As at December 2017, there are 1,298 National-Type school out of 7,773 government-assisted schools, where children as early as 7 years old are segregated based mainly on their races.¹⁷
20. The segregation is not only confined among students, but also teachers, where the Malaysian Government seems to encourage segregation based on ethnicity: that teachers of the Malay race were not to teach school children in the Mandarin National-Type Schools. On April 20th, 2017, Deputy Education Minister Chong Sin Woon was reported to have said that "Malay teachers will not be sent to Chinese schools to teach."¹⁸
21. Segregation at school is then translated into strong distrust among the races especially between the Chinese communities,¹⁹ and the civil servants that are significantly made up of Malays.²⁰ Because of this high level of distrust, there have been clashes between the many races over religious,²¹ racial,²² cultural,²³ and language issues.²⁴
22. In addition, CLJ is concerned with the malicious attacks by these flagitious segments of the community, who disparaged and denigrated the protections given to the

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

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

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

¹⁹ Ibid No. 11

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

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

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

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

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

Constitutional provisions, especially where it involves religion of the Federation,²⁵ the provisions on citizenship,²⁶ the importance of National Language, and the rights of the Malays and Anak Negeri (Native People) of Sabah and Sarawak.²⁷ This has caused much rift between the many different communities in Malaysia.

23. Apart from being seriously detrimental to the national integration and unity, there is also evidence to suggest that the continued existence of an education system that is not standardized is damaging to the students' future and livelihood as well. The Director of Research at Khazanah Research Institute, Dr. Muhammad Abdul Khalid noted in 2014 that *"a report from the Ministry of Education ("MOE") showed that between 2006 and 2010, the drop-out rates from Chinese national-type schools is the highest compared to Tamil national-type schools or national schools. A report by the Malaysian Chinese Association (MCA) also noted that an estimated one of four students dropped out of Chinese schools by age 18, translating to a dropout rate of 25 per cent."*²⁸
24. Sometime in July 2017, the Government under its Ministry of Health passed a new ruling to exempt candidates who were going for their mandatory housemanship from fulfilling the Bahasa Melayu requirement.²⁹ Although this ruling was overturned,³⁰ however the message was clear that national narratives under the Constitution are at risk of being undermined by the Malaysian Government.

Recommendations

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

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

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

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

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

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

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

C. FREEDOM OF BELIEF

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

25. There have been cases where Christian Bibles in the Malay language were banned by the Malaysian Government.³¹ The contentious issue has been on the usage of the holy term 'Allah' to refer to the concept of God within the trinity concept of the Christian's faith.
26. There were cases brought to Court, wherein the issue being disputed is on the right of the Christian community to use the term 'Allah' as translation of the word God in the Malay language:

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

- i. One of the case is the challenge brought by Jill Ireland Lawrence Bill against the decision of the Government to confiscate eight of her compact disc containing Christian publication with the word Allah in the Malay language.³²
 - ii. Another case is the challenge brought by Sidang Injil Borneo, to get a declaration of its right to use the word Allah in its Christian publications in the Malay language.³³
27. Apart from the two cases above, previously the Titular Roman Catholic Archbishop of Kuala Lumpur had also filed somewhat similar challenge. The Court of Appeal in that case held that the Ministry of Internal Affairs had not acted inappropriately in exercising its discretion to prohibit the use of the term 'Allah' in the Malay publication of the Catholic Archbishop.³⁴
28. The reservation is said to be due to the fact that the term is very much associated with the Islamic faith that perceives the concept of trinity as against the teachings of Islam and against the definition of the term 'Allah' as given by Dewan Bahasa dan Pustaka (DBP). There is fear that the use of certain terms that are associated with and are integral to the Islamic faith in the Malay language, such as 'Allah' in the Malay Bible, is a subtle attempt to propagate the Christian faith to the Malays, who by Constitutional definition, are also Muslims, and thus breaching the restrictions provided by Article 11(4) of the Federal Constitution.
29. Some Malaysian Christians, on the other hand contend that they have the right to pray in the Malay language, and that the word 'Allah' is the Malay translation of the word 'God' in the English language.

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

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

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

Concerns

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

Recommendations:

- i. To call on the Malaysian authorities to focus on the underlying scope, in addressing the issue. The contentious issue must be confined to the alteration of the meaning of the holy name 'Allah', as understood in the Malay language, and not any other languages, with due regard to the firmly rooted theological concepts emanating from it;
- ii. To call on Dewan Bahasa dan Pustaka (DBP) as the authoritative body on the lexicology of the Malay language to take leading role in a national reconciliation initiative in resolving the issue with the presence of representatives from Christian communities.

b. Shiite-Sunni Relations in Malaysia

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

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

Concerns

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

Recommendation:

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

c. Denial of Rights to Perform Prayers

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

Concerns

34. There has been complaints that there are many Muslim employees being denied the

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

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

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

right to perform Friday Prayers, and other daily prayers.³⁹

Recommendations:

- i. To extend the Constitutional protection to be enforceable against private entities;
- ii. To introduce laws that penalize private entities that deny religious rights of employees;
- iii. To enact a section in the Employment Act 1955 (Act 265) to allow Muslim employees to practise their faith.

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