

JOINT STAKEHOLDER REPORT ON MALAYSIA

FOR THE 31ST SESSION IN THE 3RD CYCLE
OF THE HRC'S
UNIVERSAL PERIODIC REVIEW IN 2018

Prepared by:



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(COMANGO)¹

Endorsed by 52 organisations:

Persatuan Kesedaran Komuniti Selangor (EMPOWER), Suara Rakyat Malaysia (SUARAM), All Women's Action Society (AWAM), Association of Women Lawyers (AWL), Asylum Access Malaysia, Center to Combat Corruption & Cronyism (C4 Center), Centre for Independent Journalism (CIJ), Challenger, Community Action Network (CAN), Foreign Spouses Support Group (FSSG), Gerakan Pembebasan Wanita (GPW), Good Shepherd Welfare Centre, HAKAM, Imagined Malaysia, Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM), Jaringan Orang Asal SeMalaysia (JOAS), Jaringan Rakyat Tertindas (JERIT), Justice For Sisters, KLSCAH Civil Rights Committee, Knowledge and Rights with Young people through Safer Spaces (KRYSS), Komuniti Muslim Universal (KMU), Lariche Community, Lawyers For Liberty, Malaysia Youth & Student Democratic Movement (DEMA), Malaysian Atheists & Secular Humanists (MASH), Malaysian Physicians for Social Responsibility, Migration Working Group (MWG), North-South Initiative (NSI), OKU Bangkit, PANGGAU, Pelangi Campaign, People Like Us Hang Out! (PLUHO), People's Service Organisation (PSO), Perak Women for Women Society, Persatuan Sahabat Wanita Selangor, Pertubuhan Pembangunan Kebajikan Dan Persekitaran Positif Malaysia (SEED), Projek Dialog, Pusat KOMAS, Sabah Women's Action-Resource Group (SAWO), Sarawak Women for Women, Seksualiti Merdeka, Sinui Pai Nanek Sengik (SPNS), Sisters in Islam (SIS), Society for the Promotion of Human Rights (PROHAM), Tenaganita, The Malaysian Feminist, Talisman Project, Tindak Malaysia, Universiti Kaki Lima (Sidewalk University), Women's Aid Organisation (WAO), Women's Centre for Change, Penang (WCC), Yayasan Chow Kit.

A. BACKGROUND AND FRAMEWORK

Consultation Process

This report was prepared after a series of national consultations with rights-based Malaysian *NGOs* to monitor the Government of Malaysia's (*GoM*) implementation of the UPR recommendations on 4th - 5th August 2014, 31st October 2015, and 15th - 16th December 2017. COMANGO also met with *GoM* representatives in 6 thematic consultations throughout 2017, 4 of which were coordinated by the Ministry of Foreign Affairs (*MOFA*), and twice coordinated by COMANGO.

Overview of UPR recommendations accepted by the GoM in 2013

Malaysia accepted 150 recommendations in full, in part and in principle during its 2nd cycle of the UPR, noting 82 of them. However, only 64 of these could be described as somewhat measurable, with only 17 calling for specific actions to be taken by the *GoM*.²

1. INTERNATIONAL OBLIGATIONS

1.1 Accession to International Human Rights Instruments

Malaysia has acceded to only 3 of the core human rights treaties: CEDAW³; CRC⁴; and CRPD⁵, and to 2 of the 3 optional protocols under the CRC. In its 2nd cycle of the UPR, Malaysia accepted in part or in principle 12 recommendations.⁶ Together, these recommended Malaysia's accession to the remaining Conventions, the optional protocols to the CRC and the Rome Statute of the International Criminal Court. Unfortunately, there has been no discernible advancement. In addition to these recommendations, Special Rapporteurs on the right to food (2013) and trafficking in persons, especially women and children (2015) echoed the need to ratify the remaining 6 Conventions, especially the ICCPR and the ICESCR.

1.2 Engagement with International Human Rights Mechanisms

1.2.1 Cooperation with Treaty Bodies

1.2.1.1 Malaysia has been reviewed by the CRC Committee only once despite their ratification in 1995. Malaysia only had its second review by the CEDAW Committee in February 2018. Malaysia has never submitted a report to the CRPD Committee since ratification in 2010.

1.2.1.2 The CEDAW Committee noted the lack of a legal framework to fully incorporate equality and non-discrimination into Malaysian law. There is only the provision in Article 8(2) of the Federal Constitution (*FC*) that prohibits discrimination on the basis of gender, but is insufficient to hold private actors responsible when they breach women's right to work and women's rights at the workplace.⁷

1.2.1.3 The CEDAW Committee's questions on matters that violate Muslim women's rights were attacked by government-linked, Malaysian Alliance of Civil Society Organisations in the UPR Process (*MACSA*)⁸ and the Centre for Human Rights Research and Advocacy (*CENTHRA*), both of which adhere to the Islamic human rights framework of the Cairo Declaration and therefore,

reject gender equality. They and government officials claimed that female genital mutilation (*FGM*) or cutting, whipping, polygamy, and women's and girls' unequal inheritance are non-issues in Malaysia.^{9,10}

1.2.1.4 Malaysia's implementation of the CEDAW Committee's recommendations is poor especially when these intersect with religion and culture¹¹ e.g., the requirement of the *wali*'s (guardian) consent for the prospective bride even though she is an adult, and how early and child marriage are still permitted.

1.2.1.5 Critical CRC Committee recommendations that Malaysia failed to implement are to:¹²

1.2.1.5.1 undertake a review and reform of the plural legal systems, without which inconsistencies in the definition of the child under national laws remain, with multiple contradictory definitions of the child under both civil and sharia law; and

1.2.1.5.2 accede to other human rights instruments, including ICRMW and CRSR¹³ to promote and protect the rights of migrant, refugee and stateless children.^{14,15}

1.2.2 Cooperation with Special Procedures

1.2.2.1 Since April 2014, there were only three official visits by the Special Rapporteur on health (November/December 2014) who expressed concern on the deteriorating health rights of women and girls; migrants, refugees and asylum seekers; indigenous communities; *LGBTIQ* persons;¹⁶ people living with HIV and AIDS and drug users; and children and persons with mental disabilities;¹⁷ the Special Rapporteur on trafficking in persons, especially women and children (February 2015) who expressed concern on the social vulnerability of migrants, the detention and deportation of victims and the sexual exploitation of trafficked women and girls;¹⁸ and on cultural rights (September 2017) who expressed concern on the rise of fundamentalism and extremism.¹⁹ Yet, Malaysia accepted in full 4 recommendations.²⁰ Malaysia received 5 official requests/reminders for official visits by Special Rapporteurs since October 2013, whose mandates—such as freedom of expression, freedom of peaceful assembly and of association, torture and counter terrorism—are most critical for the human rights issues faced in Malaysia. None of these were accepted.²¹

Recommendations:

1.3 Remove all reservations and declarations on CEDAW, CRC and CRPD.

1.4 Accede to ICCPR,²² ICESCR,²³ ICERD,²⁴ CAT,²⁵ ICRMW,²⁶ ICPPED²⁷ and their optional protocols, the Rome Statute of the International Criminal Court and ratify the optional protocol to CEDAW and the 3rd optional protocol to the CRC.²⁸

1.5 Fully comply with the recommendations made by the CEDAW and CRC Committees, to promote gender equality, non-discrimination and the rights of the child, without fear or favour, and stop all early and child marriages.

1.6 Issue an open invitation to all the Special Procedures.

1.7 Accept requests by special procedures when they seek to visit Malaysia.

2. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

2.1. The Federal Constitution (*FC*) is the supreme law of Malaysia.

2.2. The Executive in Malaysia remains overwhelmingly dominant and powerful. Laws developed by government Ministries and agencies are still passed with very short notice, with no or very little consultation, and hardly any debate in Parliament. Between 2013 and 2018, two bills were passed: the Prevention of Terrorism Act 2015 (*POTA*) and the National Security Council (*NSC*) Act 2016. An amendment was also quickly passed on the Prevention of Crime Act 1959 (*POCA*) in 2015 to include terrorism as an offence, despite having *POTA*.²⁹ The recent Anti-Fake News Bill is too broad with no clear checks and balances.^{30,31} Despite protests, the redelineation motion was similarly rushed in Parliament.³²

2.3 The conflict between civil and sharia laws are yet to be adequately addressed. Malaysia rejected Austria's recommendation 146.50 and claimed that demarcation of the two legal systems is not in conflict pursuant to Article 121(1A) of the *FC*. Conflicts arise when overemphasis is given to Article 3(1) of the *FC* which states, "Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation". Issues of jurisdiction and criminalisation based on personal laws contravene the rights protected under the *FC*. Furthermore, Article 3(4) of the *FC* states "nothing in this Article derogates from any other provision of this Constitution" remains ignored.

2.4 Additionally, attempts to increase punitive measures through amendment to the Syariah Court (Criminal Jurisdiction) Act 1965 (*Bill 355*) are underway.³³ The amendments, if passed, will predictably bring more damage to the administration of Islamic laws, and further exacerbate the deterioration of human rights situation in Malaysia, especially towards Muslim women, children, LGBT persons and even affect non-Muslim.^{34, 35, 36,37, 38, 39}

Recommendations:

2.5 Repeal all laws that contravene Article 3(4) of the *FC*, and which allow for arbitrary application of the law and overlapping provisions in criminalisation.

3. NATIONAL INSTITUTIONAL AND HUMAN RIGHTS INFRASTRUCTURES, AND POLICY MEASURES

- 3.1 Despite Malaysia's full acceptance of 3 recommendations on strengthening the Human Rights Commission of Malaysia (*SUHAKAM*) and to increase cooperation,⁴⁰ *SUHAKAM*'s annual reports that are submitted to Parliament are yet to be debated. It was not consulted on the *NSC* Act 2015.
- 3.2 Of the 4 fully accepted UPR recommendations, one spoke directly to the need to adopt the National Human Rights Action Plan (*NHRAP*), while three others spoke specifically to strengthening national human rights protection mechanisms and for a comprehensive policy to be coordinated and implemented by a national institution.⁴¹ The *NHRAP* that was launched on 1st March 2018 saw none of the credible human rights organisations invited.
- 3.3 The *NHRAP* does not address systemic human rights issues and root causes of inequality. It also lacks a gender perspective.⁴²
- 3.4 The *NHRAP* selectively upholds the UDHR but embraces the Cairo Declaration, and includes consideration too for the political and sociocultural context of Malaysia which is currently not conducive for the right of enjoying equality before the law (Article 8(1) of the *FC*).
- 3.5 Highly questionable in integrity are action items to re-explore the need for the indigenous people of Peninsular Malaysia (*Orang Asli*) to be involved in the decision-making process under the 1954 Orang Asli Act (*Act 134*); to re-evaluate the need for laws mandating equal pay between genders, to re-evaluate the need for specific laws with regards to sexual harassment at the workplace, and to continue studying the ratification of international human rights conventions.

Recommendations:

- 3.6 Debate *SUHAKAM*'s reports in Parliament.
- 3.7 Stop the implementation of action items under the *NHRAP* that undermine freedom from racism, the promotion of gender equality, women's rights, the rights of indigenous peoples, the rights of the *LGBTIQ* and other marginalised and vulnerable groups, until these are aligned with the UDHR and international human rights standards of the UN.
- 3.8 Appoint *SUHAKAM* as the coordinating, monitoring and evaluating institution for the *NHRAP*, and provide the resources to do so.

B. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS, TAKING INTO ACCOUNT APPLICABLE INTERNATIONAL HUMANITARIAN LAW

4. EQUALITY AND NON-DISCRIMINATION

4.1 Gender Equality⁴³

4.1.1 **Discrimination in law, policy and practice**

4.1.1.1 CEDAW has not been domesticated into law and public commitments to enact a gender equality law is not accompanied by a timeline.⁴⁴ Efforts to enshrine gender equality through case law were undermined in the appeals process, some of which were initiated by the *GoM*, resulting in award for damages against pregnancy discrimination was reduced by 90%,⁴⁵ reversal of CEDAW as a binding treaty,⁴⁶ reversal of a progressive decision for the rights of transgender people.^{47, 48}

4.1.2 **Rights to Citizenship**

4.1.2.1 Provisions in the law discriminate against Malaysian women in conferring citizenship on their children born outside the country⁴⁹ and on their non-citizen husbands.⁵⁰ Married migrants are completely dependent on their Malaysian spouses to maintain their legal status in the country, which disproportionately affects women⁵¹ and penalises children.⁵² The Malaysian spouse is required to be present for frequent visa renewals and for Permanent Residence and Citizenship applications, a process that could span over a decade. The visa of spouses prohibits them from employment.⁵³

4.1.3 **Political Participation**

4.1.3.1 The political environment is hostile to women,^{54,55,56,57} and in 2016, women's political participation remains poor, between 8% and 11% at the top most decision-making levels.^{58,59} No transgender or *Orang Asli* women (unlike their counterparts in east Malaysia) have ever been political candidates or elected to office.⁶⁰ This low representation of women includes the judiciary.⁶¹

4.1.4 **Workforce**

4.1.4.1 Labour force participation of women is only 53.6% compared to 80.7% for men.⁶² The type of work women are engaged in tends to be lower waged, in the informal sector, and less opportunities for advancement.⁶³

4.1.4.2 Migrant workers are prohibited from becoming pregnant. Typically, their contracts state that if they become pregnant, they will lose their jobs and be sent home.⁶⁴ Female foreign workers are tested for pregnancy when they enter the country for work or are seeking to renew their work permits; if they are pregnant, they will typically be deported.^{65,66}

4.1.4.3 The informal sector is dominated by women domestic workers. They are prone to multiple abuses and slave like living conditions.⁶⁷

4.1.5 **Sexual and Gender-based Violence**

4.1.5.1 Protections under the Domestic Violence Act 1994 (*DVA*)⁶⁸ do not extend to unmarried intimate partners, and marital rape is not a criminal offence. Stalking is not criminalised.⁶⁹

4.1.5.2 Since 2015, there have been no public updates to expand the definition of rape to include penetration by organs other than genitals.⁷⁰ Victims of statutory rape have been encouraged to marry their rapists.⁷¹

4.1.5.3 Provisions under the Employment Act 1955 offer extremely limited protections against sexual harassment and excludes women in informal work. A Federal Court case recognised and defined the tort of sexual harassment.⁷² However, there is still a need for a comprehensive standalone law to define, address, and provide additional remedies for sexual harassment.⁷³

4.1.5.4 In Malaysia's recent CEDAW review, government representatives defended the practice of FGM on the basis of religion despite ample evidence showing it is not an Islamic practice.⁷⁴

4.2 Freedom of Religion⁷⁵

4.2.1 A landmark 2018 Federal Court decision nullified the unilateral conversion of three minor children into Islam by their estranged father, after an eight-year legal battle.⁷⁶ The judgment sets out clearly the position of the *Sharia* Court within the Malaysian legal system: that matters relating to *sharia* laws can only be heard if the statute provides for it.⁷⁷ However, enforcement is weak and state-level *Sharia* enactments enabling unilateral conversions of minor children by their Muslim parent remain a concern.⁷⁸

4.2.2 "Forced" conversions to Islam continue to take place through error in identity card issuance,⁷⁹ made worse by laws disallowing apostasy.^{80,81} State-sponsored persecution of non-Sunni Muslims especially Ahmadi and Shia persists,^{82,83,84} and the use of 'Allah' is still restricted to Muslims only. Additionally, Islamic intellectual discourse is under attack. Incidents include the arbitrary arrest and detention of Turkish columnist and author, Mustafa Akyol,⁸⁵ and the banning of several books on Islam under Section 7 of the Printing Presses and Publications Act 1984 (*PPPA*).^{86,87,88,89,90} Atheists are also 'hunted'.⁹¹

4.3 SOGIESC^{92, 93}

4.3.1 Malaysia rejected all recommendations pertaining to the rights of *LGBTIQ* persons. Yet, UPR recommendations in relation to promoting national unity and protecting rights to education and health that were fully accepted, equally speak to the rights of *LGBTIQ* persons.

4.3.2 Malaysia not only refuses to recognise SOGIESC rights as human rights, but have sponsored anti-LGBT efforts led by *JAKIM*.⁹⁴ *LGBTIQ* are vilified, face violence and are subjected to constant harassment by state and non-state actors alike.^{95,96}

4.3.3 Malaysia criminalizes consensual sexual relations between adult persons of the same sex, "posing as a woman", "posing as a man", and consensual sexual acts between adults through the Penal Code^{97,98,99} and sharia laws. In April 2017, the Penal Code 377B¹⁰⁰ was also amended to carry mandatory whipping.¹⁰¹

4.4 **Racism**

- 4.4.1 Malaysia had accepted in full, all recommendations related to the promotion of national unity. However, minimal progress was made.¹⁰²
- 4.4.2 The Government established a National Unity Consultative Council (*NUCC*) in 2013 to reduce racial polarization. The *NUCC* discussed issues such as the use of “Allah” by non-Muslims and various human rights issues to promote equality.¹⁰³ However, all their proposals including three bills proposed to reduce racial polarization were neither adopted nor made public. Instead, a new version of the National Harmony Bill was drafted by the government.¹⁰⁴
- 4.4.3 The government’s efforts to promote National Unity such as the “Moments of Unity” to bring together people of different races together¹⁰⁵ and responding to incidences of Racial Discrimination in schools and universities^{106,107} were largely symbolic and reactionary. Many high Government officials were found to have uttered and promoted racism.^{108,109,110} Ministers in the Government were also often found to openly endorse racially discriminatory practices.¹¹¹ Additionally, racial politics continue to be exploited for political gain.^{112,113}

4.5 **Rights of Indigenous Peoples**¹¹⁴

- 4.5.1 In 2013, 3 of the 8 recommendations concerning the rights of Indigenous Peoples were fully accepted by *GoM*. The rejected recommendations are all in relation to native land rights. The excuse given was that a Task Force had been set up to investigate the issues. The Government accepted 17 of the 18 recommendations made by *SUHAKAM* in its report.¹¹⁵ However, native land rights have not been upheld.
- 4.5.2 The non-recognition of *Orang Asli* customary land rights has led to many problems including encroachments and the loss of livelihood.^{116,117,118,119,120}
- 4.5.3 In 2016, the Cabinet decided to implement 7 recalibrated recommendations in relation to Indigenous land rights, including a review of the concept of customary land.¹²¹ There are serious concerns whether the ultimate definition of *Orang Asli* customary lands will justly reflect areas inhabited, occupied, used or enjoyed by the *Orang Asli* and, pending the outcome of this process, that large tracts of *Orang Asli* lands will be grabbed or encroached upon by others.¹²² Through community land mapping, *Orang Asli* communities have realised that that gazetted or approved areas only consist of settlement areas and do not cover the actual customary land areas.¹²³
- 4.5.4 Despite accepting in full recommendations to alleviate poverty and ensure the economic and social welfare of Indigenous Peoples, *Orang Asli* communities have not seen any significant changes in terms of access to infrastructure, education,¹²⁴ provision of basic amenities and the non-transparency of income-generating programmes for the *Orang Asli* community¹²⁵ during the review period. Villages in Perak, Pahang and Kelantan reported that housing assistance provided by the government was of poor quality, raising questions about the management of funds received by Government which are supposed to benefit the *Orang Asli*.^{126,127,128}

4.6 Rights of Persons with Disabilities

- 4.6.1 Despite accepting all 5 recommendations in full on the rights of persons with disabilities, there still remains no single government agency that oversees all disability-related issues, thus making it difficult for disability issues to be dealt with comprehensively. The Persons with Disabilities Act 2008 (*PWD Act*) does not provide for any recourse for breaches and does not ensure that the persons with disabilities are not discriminated. Additionally, the majority of public transportation in the country is not disabled-friendly and some are dangerous for persons with disabilities to use. Paltry financial aid for unemployed persons with disabilities speak volumes to the lack of practical measures to concretely address the human rights issues of persons with disabilities by the government. According to the Department of Statistics, there is an estimated 2.7 million senior citizens (aged 60 and above) as of 2014, and there are up to 400,000 disabled Malaysians registered, a growing proportion of which are aged above 50. Many of the disabled who are ageing have no form of social support,¹²⁹ further exacerbated by the poor political participation and representation of persons with disabilities.

Recommendations:

- 4.7 Address sexual and gender-based violence and gender-based discrimination at all levels and in all forms for both citizens and non-citizens by enacting a Gender Equality Act, a Sexual Harassment Act, and stalking laws drawing definitions, principles and values from CEDAW and the CEDAW Committee's General Recommendations.
- 4.8 Amend Section 375 of the Penal Code and all other related legislations, like the Domestic Violence Act (DVA), to recognise stalking and rape and other forms of coercive sexual relations between married partners and unmarried intimate partners as crimes.
- 4.9 Develop and implement plans to increase the number of women in political positions, particularly in high-level decision-making roles, by establishing a transparent framework that includes, but is not limited to, reserved seat quotas in office, funding, and promoting local women in political parties.
- 4.10 Ratify International Labour Organisation (ILO) Domestic Workers Convention 189, 2011.
- 4.11 Amend government rhetoric and policy to focus on encouraging employers to adopt flexible work arrangements for parents, and adopt adequate paternity leave for both public and private sectors.
- 4.12 Amend all laws and legal provisions that discriminate against foreign spouses with Malaysian children.
- 4.13 Mandate public servants, especially those who work in critical areas like the police force, to not only undergo gender sensitisation training, but to practise what is learnt from these trainings in the field to reduce gender-based discrimination.

- 4.14 Revise or carry out a reform on the powers of state religious departments to avoid abuse of power.
- 4.15 Amend the Law Reform (Marriage and Divorce) Act 1976 to prohibit unilateral conversion of a child by a parent as statutory incorporation of the Federal Court decision on 29 January 2018.
- 4.16 Take all legal and other necessary steps to end the politicisation of Islam and ensure that all governmental agencies, particularly the National Registration Department, exercise professionalism and prudence instead of arbitrarily registering a person as a Muslim.
- 4.17 Revise all laws and policies with respect to the renunciation of Islam and/or change of religion by decriminalising such applications and repealing the need for the rehabilitation process.
- 4.18 Repeal all laws that criminalize consensual sexual relations between adults, and transgender persons on the basis of gender expression and gender identity.
- 4.19 End all discriminatory and harmful and anti-LGBT speech and activities.
- 4.20 Enact a comprehensive anti-discrimination law.
- 4.21 Sanction hate speech and stop all forms of racial politics in the nation through substantive equality provisions which are in line with international human rights standards.
- 4.22 Consult all stakeholders in any efforts in legislating the National Harmony Bill and the promotion of national unity in an open and transparent manner.
- 4.23 Release immediately the findings and recommendations made in the National Unity Blueprint put forth by the *NUCC*.
- 4.24 Publicise details of annual Auditor General's report on the expenditures of the Department of Orang Asli Development (JAKOA).
- 4.25 Impose an immediate moratorium to ensure *Orang Asli* customary lands are not encroached, alienated, appropriated and destroyed pending the official demarcation.
- 4.26 Ensure official demarcation of *Orang Asli* customary lands are in accordance with the actual customary area claimed by the local *Orang Asli* community through statewide community mapping exercises and consultation with the relevant *Orang Asli* villages or communities.
- 4.27 Ensure implementation of recommendations concerning the *Orang Asli*, applies the *UNDRIP*¹³⁰ and the 18 recommendations contained in the 2013 SUHAKAM Report, as a principle term of reference.

4.28 Submit and make public the government's report to the CRPD Committee.

5. RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON

5.1 State-sanctioned Violence

5.1.1 The government's position on *LGBTIQ* persons has manifested in an increase of anti-LGBT groups and rhetoric by non-State actors. Gender based violence and hate crime towards trans women and gender non-conforming people are largely unreported, and often dismissed.¹³¹ Many anti-LGBT groups out or disclose personal details¹³² online, including *SOGI*¹³³ of *LGBTIQ* persons; use pejorative terms; posts varying degrees of hateful, violent and harmful messages in online spaces.^{134,135}

5.1.2 Menara.my, a government-linked media website established in 2017, promotes anti plural, anti-liberal and anti-LGBT themes and messages and targets human rights defenders (*HRDs*) and groups, especially those working in the area of freedom of religion, interfaith, LGBT rights, women's rights, or those seeking institutional reforms, especially in relation to sharia laws, gender equality and human rights.

5.1.3 On 10 March 2018, four men from "pro-governmental" NGOs hurled verbal slurs at the Women's March participants, chased them across the street from the Dang Wangi Police station and grabbed their placards, accusing them of being liberals and LGBT supporters.¹³⁶

5.2 Human Rights Defenders¹³⁷

5.2.1 The government failed to uphold the principles and values of The Declaration on Human Rights Defenders,¹³⁸ and has tried to politicise the human rights situation on the ground and demonise *HRDs*.

5.2.2 COMANGO's involvement in Malaysia's previous UPR resulted in the Home Ministry declaring COMANGO 'illegal', while Muslim-based groups in The Coalition of Muslim Organisations in the UPR Process (MuslimUPRo) organised hate and smear campaigns against COMANGO.¹³⁹

5.2.3 State-sanctioned Friday sermons in mosques have openly called for "jihad" against liberal Muslims, LGBT individuals, and *HRDs* to "defend" Islam, lumping them together with terrorist groups such as the Daesh.^{140,141,142} A programme by *IKSIM* characterised secularism, liberalism and cultural diversity as elements that undermine Islam, and named several individuals as alleged proponents.¹⁴³

5.2.4 In 2014, the Selangor Fatwa Council issued a fatwa declaring that Sisters in Islam (*SIS*)¹⁴⁴ and other organisations or individuals that "subscribe to liberalism and pluralism" are "deviant from the teachings in Islam."¹⁴⁵ The fatwa enabled the authorities to seize their publications and block their social media accounts.^{146,147, 148}

5.2.5 LGBT *HRDs* and *HRDs* in general face multiple forms of reprisals from various actors for upholding rights of the LGBT.^{149,150}

- 5.2.6 Provisions of *SOSMA* were used to limit and restrict the work of human rights defender, Maria Chin Abdullah, President of Bersih 2.0. She was placed in “oppressive, inhumane and degrading” detention arbitrarily.¹⁵¹

Recommendations:

- 5.3 Home Ministry and *SUHAKAM* to acknowledge, promote and protect HRDs in line with UN Resolution on HRDs, including on women HRDs.
- 5.4 End impunity of certain groups by introducing complaints mechanisms which will investigate claims and require groups to improve conduct based on principles of restorative justice rather than punitive justice.
- 5.5 Train all government personnel, especially uniformed personnel, in all levels on human rights in line with the principles and values of the UDHR.

6. FREEDOM OF EXPRESSION

- 6.1 The Sedition Act 1948, the Communications and Multimedia Act 1998 (*CMA*),¹⁵² the *PPPA* and other laws impacting Freedom of Expression have been actively used against human rights defenders and other individuals, including politicians and laypersons.

6.2 The Sedition Act 1948

Although two recommendations were accepted partially/in principle, Malaysia reneged on its promises to repeal the Sedition Act 1948 but instead, strengthened the Act with an amendment.¹⁵³ The amendments made a token removal of subject matters that used to be deemed seditious but substantially increased punitive measure against offenders.

6.3 Printing Presses and Publications Act 1948 (PPPA)

The *PPPA* is actively used to regulate and curtail media freedom. The newspaper “The Star”, was investigated under the Sedition Act 1948¹⁵⁴ and issued a show cause letter by the Home Ministry under *PPPA* for a cover page.¹⁵⁵ The *PPPA* continues to plague book publishers, authors and *HRDs*. Notable bans include publications on religious minority, “Breaking the Silence: Voices of Moderation—Islam in a Constitutional Democracy” by G25; books by Shia Muslim writer, Faisal Tehrani.

6.4 Press and Media Freedom

The rights of journalist and bloggers have further deteriorated. In 2016, the Official Secrets Act 1972 was reviewed to include life imprisonment and ten strokes of the cane as punishment for whistle-blowers and journalists who refuse to give up their sources of information. A notable incident would be of Parliamentary member Rafizi Ramli being officially charged with 2 offences under the Official Secrets Act 1972 on November 14, 2016. He was charged for exposing Page 98 of the 1Malaysia Development Bhd (*1MDB*) audit report without approval on March 28 of that year. He is to serve concurrently the 18 months’ prison sentence for each of the offences.¹⁵⁶

Recommendations:

- 6.5 Repeal the Sedition Act, and Section 5 (permit for print media to distribute) and Section 7 (minister power to prohibit publications) of the *PPPA*.
- 6.6 Enact at Federal level, a Freedom of Information Act that ensures that once available information remains public and limits the unjustified application of the Official Secrets Act 1972.
- 6.7 Regulate hateful/dangerous speech based on guidelines and recommendations from the Rabat Plan of Action and by the OHCHR Special Rapporteur.
- 6.8 Repeal Section 233 of the *CMA* and develop an alternative law on harassment, including cyber harassment, in line with international human rights standards.
- 6.9 Investigate and take action against the intimidation, harassment, violence, and arbitrary detention of *HRDs*, NGO groups, and journalists and provide guarantees for the rights to freedom of expression and peaceful assembly.

7. FREEDOM OF ASSOCIATION AND OF ASSEMBLY

- 7.1 The exercise of freedom of assembly has been gradually improving between 2013 to 2017 but organisers are often investigated after the rallies. Freedom of association is still heavily controlled by the government of Malaysia.

7.2 Peaceful Assembly Act 2012

The violation of the freedom of assembly under the Peaceful Assembly Act 2012 continues from 2013 to 2018. Arrests of activists and participants of peaceful assemblies took place in 2015, where organizers of peaceful assemblies were arrested during #KitaLawan rallies and the rally against the implementation of the goods and services tax. The practice of mass arrests shifted in 2016 to a ‘softer’ approach, where organizers of peaceful assemblies, such as Bebas Maria and the Women’s March 2018 were called for questioning by the Police.

7.3 Freedom of Association

Rights-based NGOs are still subjected to harassment by the State. This includes the public witch-hunt by the government and high-ranking ministers with regards to foreign funding received by human rights NGOs operating in Malaysia; the sacking of a central bank employee for her affiliation with a political party and the constant denial of rights-based NGOs intent to register as a society under Malaysian law.¹⁵⁷

Recommendations:

- 7.4 Repeal the Peaceful Assembly Act 2012
- 7.5 End the practice of harassment against organizers of peaceful assemblies and drop all criminal charges against human rights defenders and members of civil society for peaceful assembly.

- 7.6 Cease all harassment against rights-based NGOs on foreign funding.
- 7.7 Protect and promote the right to freedom of association in relation to job security of civil servants and employees of quasi-state agencies engaging in political activities.

8. ACCESS TO JUSTICE

8.1 Detention without Trial

Arbitrary detention and denial of the right to fair trial remains prevalent despite the abolition of the Internal Security Act 1960 in 2012: Security Offences (Special Measures) Act 2012 (*SOSMA*), *POCA*, *POTA*, Dangerous Drugs (Special Preventive Measures) Act 1985 (*DDA*) are all laws introduced or amended during the review period to provide similar power to the Internal Security Act 1960 (upwards of 60 days detention orders by police, and 2 years detention order by government appointed Board). The *NSC* grants the Prime Minister of Malaysia power to declare a quasi-state of emergency where individuals can be detained without cause. According from reports by the Prison Department, 2,787 people are currently detained under these laws. Parliament reply by the Home Ministry in 2017 highlights that there has been a total of 989 cases of detention under *SOSMA* since its enactment in 2012 (a period of 5/6 years).

8.2 Chain Remand and Arbitrary Detention

The practice of chain remand remained in use. Chain remand occurs when police re-arrest the same individual for a similar offence immediately upon the conclusion of his or her remand order. The practice has even been applied against minors and youth. Known cases of chain remand has witnessed individuals detained without any criminal charges made for upwards of 80-days.¹⁵⁸

Recommendations:

- 8.3 Repeal all laws that permit detention without trial including *SOSMA*, *POCA*, *POTA* and *DDA*.
- 8.4 Take all necessary measures to put an end to arbitrary arrests and prolonged pre-trial detention.¹⁵⁹

9. DEATH PENALTY

- 9.1 The mandatory death sentence is still meted out on those, convicted of murder, treason, possession of firearms and certain drug offences. New amendments have provided some discretion for the death sentence for drug mules but the amended Act did not address the concern on what will happen to the 800 or more individuals who are still on death row for drug trafficking.

Recommendations:

- 9.2 Abolish the death penalty and in the interim implement a moratorium on the death penalty.

10. TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

- 10.1 Corporal punishment is a form of punishment provided under existing laws in Malaysia. It is only imposed on serious offences and is only carried pursuant to the order of the courts. However, the situation on the ground has shown that the use of torture and other forms of cruel, inhuman and degrading treatment was carried out without a court order. Supporting corporal punishment, in July 2017, an amendment was passed to the Kelantan Syariah Criminal Procedure Enactment 2002, which, among other things, would allow sharia offenders to be whipped publicly.

10.2 Use of Torture in Detention

Despite the high profile cases of A. Kugan, N. Dharmendran and many others, allegations of torture against enforcement agencies remain prevalent. In February 2016, Suara Rakyat Malaysia (*SUARAM*) received 13 allegations of torture by those detained under *SOSMA*. S. Balamurugan was vomiting blood during a remand hearing and was ordered for immediate medical treatment.¹⁶⁰ The police failed to fulfil the order and kept him in detention until his death.

10.3 Death in Custody

SUARAM documented 15 cases of custodial death in 2017. Of the 15, 8 deaths occurred in police custody, 5 were in prisons. S. Balamurugan died in Klang Utara Police Station on 8 February 2017. The Enforcement Agency Integrity Commission (*EAIC*) conducted a preliminary investigation in an open tribunal and exposed the active and passive participation in the use of torture by the Police. Although civil actions were filed against the government for custodial death, progress has been mixed. In the case of A. Kugan the Federal Court ruled that family members of the deceased were not entitled to exemplary damages over his death. It was reported by the Human Rights Commission for the year 2015 and 2016, there was 521 deaths reported in prison and 117 in immigration detention.

Recommendations:

- 10.4 Ratify and accede to UNCAT
- 10.5 Eliminate all forms of cruel, inhuman or degrading treatments or punishment in the criminal justice system including the practice of whipping and caning.
- 10.6 Review the functioning of the penitentiary system in order to ensure that it complies with international standards in line of the Nelson Mandela Rules.

11. ENFORCED DISAPPEARANCES

- 11.1 Investigations into the high-profile kidnapping and disappearance of Raymond Koh, Amri Che Mat, Joshua Hilmy and Ruth Hilmy that took place between late 2016 and early 2017 has not yielded any results with allegations of enforced disappearances surfacing following the disclosure of CCTV images of the kidnapping.
- 11.2 Investigation by the state has been met with claims by witness that the official Police report has missing elements from his official statement and that the police appeared more interested in the allegations made against those who disappeared as opposed to the perpetrators behind their kidnapping.
- 11.3 In January 2018, *SUHAKAM* conducted an inquiry and public hearing into the allegations of enforced disappearances but part of the investigation has been halted due to a criminal case against an alleged kidnapper who was previously cleared by the Police.¹⁶¹ Activists advocating on the issue and conducting candlelight vigils have also been called for statements and investigated by the Police.¹⁶²

Recommendations:

- 11.4 Establish a Royal Commission of Inquiry to investigate the inaction, inconsistencies and incompetencies of the Royal Malaysian Police in conducting investigations into the possible cases of enforced disappearances.

¹ The Coalition of Malaysian NGOs in the UPR Process (COMANGO) was formed by civil society organisations in 2008 to engage in the Universal Periodic Review (UPR) of the United Nations. It is the biggest local civil society coalition of its kind in Malaysia's UPR process, comprising of over 50 organisations. Persatuan Kesedaran komuniti Selangor (EMPOWER) and Suara Rakyat Malaysia (SUARAM) acts as co-secretariat for COMANGO. Find out more about the coalition here: <https://uprmalaysia.com/>.

² COMANGO (2016). *Malaysia's 2016 UPR Mid-Term Review*. https://www.upr-info.org/sites/default/files/document/malaysia/session_17_-_october_2013/comango-malaysia-mid-term.pdf

³ Convention on the Elimination of All Forms of Discrimination Against Women, with reservations on Articles 9(2), 16(1) (a), (c), (f), and (g), and a declaration on Article 11

⁴ Convention on the Rights of the Child, with reservations on Articles 2, 7, 14, 28(1)(a), and 37. The 2 optional protocols to which Malaysia acceded are the Optional Protocol on the Involvement of Children in Armed Conflict, and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

⁵ Convention on the Rights of People with Disabilities with reservations on Articles 15 and 18

⁶ A/HRC/25/10 para 146 second cycle UPR of Malaysia. Recommendations 146.1 (Spain), 146.5 (Latvia), 146.7 (Maldives), 146.9 (Uruguay), 146.11 (Algeria), 146.14 (Afghanistan), 146.20 (Tanzania), 146.22 (Egypt), 146.23 (Bolivia), 146.24 (Slovakia), 146.26 (Slovakia) and 146.27 (Botswana).

⁷ The High Court's decision in *Beatrice AT Fernandez v Sistem Penerbangan Malaysia & Anor* that the non-discrimination principle in Article 8(2) of the Federal Constitution only applies to public bodies.

⁸ Note the strong similarity to COMANGO's full name.

⁹<http://www.themalaymailonline.com/what-you-think/article/focussing-on-pressing-and-urgent-womens-issues-macsa>

¹⁰ Summary record of the 1572nd meeting, 69th CEDAW session. CEDAW/C/SR.1572.

¹¹ CEDAW Committee Concluding Observations, Paragraph 14. See: <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aaa/fc56cb848775733ec12571950031a010?OpenDocument>

¹² For a fuller report on child rights, see the report by the Child Rights Coalition Malaysia (*the CRC Malaysia Report*) submitted to the OHCHR for the 2nd cycle of the UPR. There has unfortunately been no further updates from child rights groups for this 3rd cycle of the UPR.

¹³ Convention relating to the Status of Refugees

¹⁴ Including their access to health, education and basic needs.

¹⁵ For more information on refugees and refugee children, refer to **AAM** and **APRRN's** Joint Submission for 31st Session of the UPR Working Group on the **rights of refugees, asylum seekers, and victims of trafficking**.

¹⁶ Lesbians, gays, bisexual and transgender, intersex and queer persons. Sometimes shortened to LGBT, or LGBTI.

¹⁷ Read preliminary observations and recommendations at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15370&LangID=E>.

¹⁸ Read end of mission statement at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15633&LangID=E>, and full report at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/125/73/PDF/G1512573.pdf?OpenElement>.

¹⁹ Read preliminary observations and recommendations at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22121&LangID=E>; and press release at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22139&LangID=E>.

²⁰ A/HRC/25/10 para 146 second cycle UPR of Malaysia. Recommendations 146.37 (Sierra Leone), 146.38 (Turkmenistan), 146.44 (Brazil) and 146.45 (Bulgaria).

²¹ See <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en>

²² International Covenant on Civil and Political Rights

²³ International Covenant on Economic, Social and Cultural Rights

²⁴ Convention on the Elimination of All Forms of Racial Discrimination

²⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

²⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

²⁷ International Convention for the Protection of All Persons from Enforced Disappearance

²⁸ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

²⁹ See section 8, *Access to Justice*.

³⁰ Refer Joint Submission of UPR Stakeholders' Report for the 31st Session in the 3rd Cycle of the HRC's Universal Periodic Review on the Status of Internet Rights in Malaysia.

³¹ Malaysia: Proposed "fake news" bill is a threat to freedom of expression <https://www.article19.org/resources/malaysia-proposed-fake-news-bill-threat-freedom-expression/>

³² "Electoral maps for upcoming Malaysia election passed in Parliament" <http://www.straitstimes.com/asia/se-asia/malaysian-premier-najib-razak-presents-highly-criticised-new-electoral-maps>

³³ The Bill proposes to increase disproportionately the current limitations of the 3 years of imprisonment, RM5000 fine and 6 lashes to 30 years of imprisonment, RM100,000 fine and 100 lashes.

³⁴ RUU355 will affect all Malaysians, says activist <https://www.thestar.com.my/news/nation/2017/02/18/ruu355-will-affect-all-malaysians-says-activist/#rVgFGcjIaMBD3zHW.99>

³⁵ RUU 355 - Will it affect the non-Muslims? <http://english.astroawani.com/malaysia-news/ruu-355-will-it-affect-non-muslims-135896>

³⁶ Hadi's bill will affect non-Muslims, says Kelantan lawyer <http://www.freemalaysiatoday.com/category/nation/2017/03/08/hadis-bill-will-affect-non-muslims-says-kelantan-lawyer/>

³⁷ RUU355: Don't worry non-Muslim friends, it has got nothing to do with you — Wan Md. Hazlin Agyl <http://www.themalaymailonline.com/what-you-think/article/ruu355-dont-worry-non-muslim-friends-it-has-got-nothing-to-do-with-you-wan>

³⁸ 'Only the ignorant will reject amendments to RUU355' <https://www.beritadaily.com/only-the-ignorant-will-reject-amendments-to-ruu355/>

³⁹ After the Democratic Action Party (DAP) objected to the proposed bill to amend *Act 355*, the Mufti of Pahang declared them as *kafir harbi*. A term used for "belligerent" non-Muslims whom some scholars believe can be killed, which he later clarified to be applicable to anyone who "opposes Islam" and not just DAP. See: <http://www.themalaymailonline.com/malaysia/article/after-backlash-pahang-mufti-says-any-who-oppose-islam-is-kafir-harbi>

⁴⁰ A/HRC/25/10 para 146 second cycle UPR of Malaysia. Recommendations 146.53 (Russian Federation), 146.54 (Turkey) and 146.55 (Azerbaijan).

⁴¹ A/HRC/25/10 para 146 second cycle UPR of Malaysia. Recommendations 146.51 (Nepal), 146.52 (Uzbekistan), 146.57 (Kazakhstan), and 146.60 (Colombia).

⁴² <http://www.themalaymailonline.com/what-you-think/article/nhrap-falls-short-of-addressing-systemic-inequalities-in-malaysia-comango>

⁴³ Based on the joint NGO submission to the CEDAW Committee for the 69th CEDAW session:

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_NGO_MYS_30011_E.pdf

⁴⁴ "A better future for women." The Star. 9 March 2018. Available at: <https://www.thestar.com.my/news/nation/2018/03/09/a-better-future-for-women-govt-set-to-propose-bill-to-address-gender-discrimination/>

⁴⁵ Noorfadilla bt Ahmad was offered a job as a temporary relief teacher, only to have the offer revoked by the Hulu Langat district education officers upon their learning of her pregnancy. *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors* [2012] 1 MLJ 832, HC.

⁴⁶ *Malayan Law Journal Reports/2014/Volume 5/AirAsia Bhd v Rafizah Shima bt Mohamed Aris-* [2014] 5 MLJ318 – 3 July 2014. The Court of Appeal relied on the Federal Court’s decision in *Beatrice AT Fernandez v Sistem Penerbangan Malaysia & Anor* [2005] 2 CLJ 713

⁴⁷ *Muhamad Juzaili bin Mohd Khamis & 2 Ors v State Government of Negri Sembilan & 4 Ors*. See also Human Rights Watch, <https://www.hrw.org/news/2015/10/08/malaysia-court-ruling-sets-back-transgender-rights>.

⁴⁸ NRD wins appeal bid to stop transgender from changing IC details
<http://www.themalaymailonline.com/malaysia/article/nrd-wins-appeal-bid-to-stop-transgender-from-changing-ic-details>

⁴⁹ Joint NGO submission to the CEDAW Committee for the 69th CEDAW session. Extracted from Article 9.1 and footnotes 79,81.

⁵⁰ CEDAW – Concluding Observations on the combined third to fifth periodic reports of Malaysia. Pg. 33.

⁵¹ “Survival manual for foreign spouses of Malaysian citizens.” Aliran. 23 March 2016. Available at: <https://aliran.com/civil-society-voices/2016-civil-society-voices/survival-manual-foreign-spouses-malaysian-citizens/>

⁵² This lack of the right to citizenship has resulted in the problem of undocumented or stateless children, who are denied basic access to education within the public school system of Malaysia.

⁵³ Joint NGO submission to the CEDAW Committee for the 69th CEDAW session.

⁵⁴ Malaysia bans sexist remarks in Parliament.” 27th November 2012. The Indian Express. Available at: <http://archive.indianexpress.com/news/malaysia-bans-sexist-remarks-in-parliament/1036991/>

⁵⁵ “When Malaysian MPs’ remarks in Parliament shocked Malaysians.” 7th April 2017. Today. Available at: <http://www.todayonline.com/world/asia/when-malaysian-mps-remarks-parliament-shockedmalaysians>

⁵⁶ “Time for Parliament to clean up its act.” 27th November 2016. Free Malaysia Today. Available at: <http://www.freemalaysiatoday.com/category/opinion/2016/11/27/time-for-parliament-to-clean-up-itsact/>

⁵⁷ Examples include the physical attack on transgender activist Nisha Ayub, sexist remarks against MP Teresa Kok, and misogynistic and homophobic comments against MP Azalina Othman Said pervasive on social media and online news sites. G25 spokesperson Datuk Noor Farida Affrin was threatened with rape via Facebook by Animal Action Group president Sharul Nizam Ab Rahim as a result of G25’s call for a review of shariah laws on khalwat (close proximity between an unmarried man and woman). Maria Chin Abdullah and Ambiga Sreenevasan, leaders of Bersih 2.0, a civil society movement for free and fair elections, have been vilified in the media and received death threats. Maria was arbitrarily arrested and detained under the Security Offences (Special Measures) Act in 2016.

⁵⁸ House of Representatives (*Dewan Rakyat*)

⁵⁹ Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016

⁶⁰ “International Women’s Day 2017: Being bold for systemic change — Janarthani Arumugam.” Malay Mail Online. 8 March 2017. Available at: <http://www.themalaymailonline.com/print/what-youthink/international-womens-day-2017-being-bold-for-systemic-change>

⁶¹ Only 3 out of 11 (27%)of Federal Court judges are women. 12 out of 26 (46%) Court of Appeal judges are women, while 27 out of 63 (43%) High Court judges are women (See Official Website of the Office of the Chief Registrar Federal Court of Malaysia. Available at: <http://www.kehakiman.gov.my/node/1637>)

⁶² 'Department Of Statistics Malaysia Official Portal' (Statistics.gov.my, 2016) <https://www.statistics.gov.my/dosm/index.php?r=column/cthem&menu_id=U3VP MIldoYUxzVzFaYmNkWXZteGduZz09&bul_id=NHUxTlk1czVzMGYwS29mOEc5 NUtOQT09.>

⁶³ “Report: More women joining workforce, but have low wages.” Malay Mail Online. 9 October 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/report-more-women-joiningworkforce-but-have-low-wages>

⁶⁴ See, for example, the case of Nirmala Thapa: <http://www.mtuc.org.my/nepalese-worker-first-woman-in-malaysia-jailed-for-terminating-pregnancy/>

⁶⁵ Ibid.

⁶⁶ And are not allowed to appeal for health checks: <http://www.fomema.com.my/index.php/2016-08-22-08-35-31/appeal-process>

⁶⁷ “After maid’s death, group demands law to protect migrant workers” <http://www.themalaymailonline.com/malaysia/article/after-maids-death-group-demands-law-to-protect-migrant-workers>

⁶⁸ http://www.wao.org.my/news_details.php?nid=413&ntitle=Domestic+violence+law+improved+Now+what

⁶⁹ The principle of stalking is already recognised in the DVA through protection orders; however, a person should not need to obtain a protection order to be protected from stalking. Furthermore, the DVA only covers violence between married partners.

⁷⁰ “Nancy Shukri: A-G’s Chambers reviewing definition of rape.” The Star Online. 16 June 2015. <http://www.thestar.com.my/news/nation/2015/06/16/rape-definition-review/>.

⁷¹ An MP and former Sharia judge went as far as to suggest that child victims of rape should marry their rapists to avoid social problems and lead a better life. “Rape victims should marry their rapists, Malaysian MP tells parliament.” The Guardian. 5th April 2017. Available at: <https://www.theguardian.com/world/2017/apr/05/victims-should-marry-their-rapistsmalaysian-mp-tells-parliament>

⁷² Mohd Ridzwan Bin Abdul Razak v Asmah Binti Hj. Mohd Nor. In The Federal Court Of Malaysia (Appellate Jurisdiction) Civil Appeal No: 01(F)-13-06/2013 (W). 2 June 2016. Available at: [http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20\(FC\).pdf](http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20(FC).pdf)

⁷³ Seeking redress through the tort of sexual harassment still requires an individual to go through the court process to access justice, which means going through a public, costly, and potentially lengthy procedure. An independent Sexual Harassment Act and tribunal would allow complainants to seek redress without going to court, and would reduce other barriers to accessing justice, including the time and expense involved in pursuing a court action.

⁷⁴ Summary record of the 1572nd meeting, 69th CEDAW session. CEDAW/C/SR.1572.

⁷⁵ For more information on the status of Freedom of Religion in Malaysia, refer **CFORB**'s UPR Report for the 31st Session in the 3rd Cycle of the HRC's Universal Periodic Review on the **Status of Freedom of Religion and Belief** in Malaysia.

⁷⁶ Federal Court: Unilateral conversion of Indira Gandhi's 3 children is null and void (updated) <https://www.thestar.com.my/news/nation/2018/01/29/federal-court-unilateral-conversion-of-indira-gandhis-3-children-is-null-and-void/>

⁷⁷ Federal Court judgment on Indira Gandhi case <https://www.themalaysianinsight.com/s/34948/>

⁷⁸ <http://www.freemalaysiatoday.com/category/nation/2016/12/11/meddling-in-islamic-laws-a-threat-to-muslims-says-pas/>

⁷⁹ Hindu Groups Claim 7,000 People Wrongly Documented as Muslims. February 23, 2016. <http://www.theedgemarkets.com/article/hindu-groups-claim-7000-people-wrongly-documented-muslims>

⁸⁰ <https://www.todayonline.com/world/malaysia-under-spotlight-freedom-thought-index-after-atheist-hunt>

⁸¹ This was echoed by a CEDAW Committee Member during Malaysia's CEDAW Review. See <https://www.thestar.com.my/opinion/columnists/sharing-the-nation/2018/03/04/doing-right-by-women-a-political-will-is-needed-to-treat-women-in-a-just-and-fair-manner/>

⁸² https://www.upr-info.org/sites/default/files/document/malaysia/session_17_-_october_2013/js1_upr17_mys_e.pdf

⁸³ Malaysian Shiites face growing persecution

<http://www.freemalaysiatoday.com/category/nation/2012/01/14/malaysian-shiites-face-growing-persecution/>

⁸⁴ Malaysia's Ahmadis living dangerously

<http://www.freemalaysiatoday.com/category/nation/2011/11/08/malaysias-ahmadis-living-dangerously/>

⁸⁵ Mustafa Akyol: Jawi didn't like my talk on commonalities between Islam, Christianity

<http://www.themalaymailonline.com/malaysia/article/mustafa-akyol-jawi-didnt-like-my-talk-on-commonalities-between-islam-christ>

⁸⁶ Titles include "Islam without Extremes: A Muslim Case for Liberty" by Mustafa Akyol and its Malay translation; "Assalamualaikum: Observations on the Islamisation of Malaysia" by Zaid Ibrahim (published in 2015); "Breaking the Silence: Voices of Moderation – Islam in a Constitutional Democracy", a compilation of articles written by the group G25 (published in 2015).

⁸⁷ Turkish journalist's book banned

<https://www.thestar.com.my/news/nation/2017/10/03/turkish-journalists-book-banned-ministry-also-prohibits-bahasa-malaysia-version-of-akyols-work/>

⁸⁸ Zaid's book on Islamisation of Malaysia banned

<http://www.freemalaysiatoday.com/category/nation/2017/12/28/zaid-book-on-islamisation-of-malaysia-banned/>

⁸⁹ 'Ban on G25 book utterly ridiculous'

<http://www.freemalaysiatoday.com/category/nation/2017/07/27/g25-hits-out-at-government-ban-on-its-book/>

⁹⁰ Court refuses church’s bid, says govt’s reasons for ‘Allah’ ban classified under OSA <http://www.themalaymailonline.com/malaysia/article/court-refuses-churchs-bid-says-govts-reasons-for-allah-ban-classified-under#L8C48LKij2Fxb4.99>

⁹¹ <https://www.todayonline.com/world/malaysia-under-spotlight-freedom-thought-index-after-atheist-hunt>

⁹² Sexual orientation, gender identity and expression, and sex characteristics.

⁹³ For more information regarding SOGIESC in Malaysia, kindly refer to The Coalition for SOGIESC Human Rights in Malaysia’s Stakeholder Report on Malaysia for The 31st Session in the 3rd Cycle of the HRC’s Universal Periodic Review in 2018.

⁹⁴ This includes the introduction of action plans, publications, videos, seminars, mobile applications, and provides resources and support to return to the right path or rehabilitate oneself. In July 2016, JAKIM introduced the *Pelan Tindakan Menangani Gejala Sosial (Perlakuan LGBT) 2017-2021* (Action Plan to Curb Social ills [LGBT behaviour] 2017-2021), a 5-year action plan in collaboration with 22 strategic partners, including government agencies.

⁹⁵ JAKIM: Statistics show that LGBT is #1 cause of HIV/AIDS spread in Malaysia <https://www.kinitv.com/video/5323608#eW4IxQdB4A5s4ZWE.99>

⁹⁶ LGBT fear mongering fuels AIDS epidemic <http://www.mac.org.my/v3/lgbt-fear-mongering-fuels-aids-epidemic/>

⁹⁷ **Carnal intercourse against the order of nature** 377A. Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.

Explanation — Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section.

⁹⁸ **Punishment for committing carnal intercourse against the order of nature** 377B. Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.

⁹⁹ **Outrages on decency** 377D. Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

¹⁰⁰ <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>

¹⁰¹ Bill expands definition of sexual assault <http://www.themalaymailonline.com/malaysia/article/bill-expands-definition-of-sexual-assault>

¹⁰² A/HRC/25/10 para 146 second cycle UPR of Malaysia. Recommendations 146.87 (China), 146.88 (Russian Federation); 146.89 (Zimbabwe); 146.90 (South Africa); 146.91 (Islamic Republic of Iran); 146.92 (Democratic People’s Republic of Korea); and 146.93 (Democratic People’s Republic of Korea)

¹⁰³ “Call to adopt unity council’s proposal”, New Straits Times on 30 November 2017. <https://www.nst.com.my/news/2015/11/114628/call-adopt-unity-councils-proposals>

¹⁰⁴ “New Harmony Bill draft in the works”, The Star Online on 6 October 2017. <https://www.thestar.com.my/news/nation/2017/10/06/new-harmony-bill-draft-in-the-works-kurup-proposed-law-not-shelved/>

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- ¹⁰⁵ “Najib to launch ‘Moments of Unity’ for racial harmony Jan 21”, Malay Mail Online on 13 January 2017.
<http://www.themalaymailonline.com/malaysia/article/najib-to-launch-moments-of-unity-for-racial-harmony-jan-21#6DTjrlTmTxxHjtJ8.97>
- ¹⁰⁶ “UTM lecturer sacked over derogatory TITAS slides”, New Straits Times on 14 July 2016. <https://www.nst.com.my/news/2016/07/158173/utm-lecturer-sacked-over-derogatory-titas-slides>
- ¹⁰⁷ “Kamalanathan: Racist UPSR question is fake”, Free Malaysia Today on 8 September 2016.
<http://www.freemalaysiatoday.com/category/nation/2016/09/08/kamalanathan-racist-upsr-question-is-fake/>
- ¹⁰⁸ “Ismail Sabri: United so we don’t lose PM post to non-Malays”, KiniTV on 21 May 2016. <http://www.kinitv.com/video/3390408>
- ¹⁰⁹ Annuar Musa: I am racist, Islamically”, Malay Mail Online on 16 September 2015.
<http://www.themalaymailonline.com/malaysia/article/annuar-musa-i-am-racist-islamically#omhP2x3xJ2lbHuTx.97>
- ¹¹⁰ “Colour-coded racial tensions grow with Malaysia rallies”, AlJazeera on 15 September 2016. <http://www.aljazeera.com/indepth/features/2015/09/colour-coded-racial-tensions-grow-malaysia-rallies-150915100610235.html>
- ¹¹¹ “Minister says #Merah169 rally a ‘great success’, downplays racial insults, unrest”, 17 September 2015.
<http://www.themalaymailonline.com/malaysia/article/minister-says-merah169-rally-a-great-success-downplays-racial-insults-unres#QDQjCOPuIBQV37EA.97>
- ¹¹² “Adenan: Your choice – Chinese ministers in state cabinet or DAP”, Malaysiakini on 1 May 2016. <http://www.malaysiakini.com/news/340437>
- ¹¹³ “CM: Opposition not keen to see Bidayuh grow stronger”, Malaysiakini on 3 May 2016. <http://www.malaysiakini.com/news/340125>
- ¹¹⁴ For more information regarding the status of The Rights of Indigenous Peoples in Malaysia, kindly refer to JOAS and AIPP’s Human Rights Situation of the Indigenous Peoples (Orang Asal) in Malaysia: Submission on the 3rd Cycle Universal Periodic Review of Malaysia 2018.
- ¹¹⁵ <https://www.bharian.com.my/node/17603>
- ¹¹⁶ <https://www1.nst.com.my/news/nation/2018/02/336207/800-orang-asli-set-blockades-against-logging-durian-plantation-near-gua>
- ¹¹⁷ <https://www.themalaysianinsight.com/s/38336/>
- ¹¹⁸ <http://www.freemalaysiatoday.com/category/nation/2018/02/21/c4-kelantan-government-has-failed-the-orang-asli/>
- ¹¹⁹ <http://www.malaysiandigest.com/frontpage/29-4-tile/722347-orang-asli-to-stage-blockade-against-logging-activities.html>
- ¹²⁰ <http://www.thesundaily.my/news/2018/02/25/undeterred-orang-asli-prolong-blockade-ninth-day-protest-logging>
- ¹²¹ Maklum Balas Kerajaan Laporan Tahunan Suhakam 2016; pp. 5
- ¹²² These fears are not without basis. Recently, Datuk Ismail Sabri, the Ministry of Rural and Regional Development (KKLW), stated that the entire area of Orang Asli land is 134,440.99 hectares. Of these officially-acknowledged lands, 32,779.37 hectares have been protected by written law. Another 19,870.08 hectares have been approved but have not yet been gazetted while the total amount of land pending application to be gazetted is 74,838.86 hectares. Occupied land without any official application was stated to be 5,142.73 hectares while 1,809.95 hectares of officially

acknowledged Orang Asli land have been granted individual property titles. See <http://www.bernama.com/bm/am/news.php?id=1441259>; also <https://www.bharian.com.my/berita/nasional/2018/02/385849/segera-warta-tanah-rizab-orang-asli-ismail-sabri>.

¹²³ In Perak, about 20 Orang Asli villages have prepared and notified the authorities of Community Maps prepared by themselves. But when the Department of Orang Asli Development (JAKOA) sends surveyors to demarcate Orang Asli areas, the surveyors measure much smaller areas compared to the actual area of Indigenous land that has been tagged in Community Maps. Therefore, government statistics of Orang Asli land usually refers to village settlements only and is far from the total Indigenous land area.

¹²⁴ Some Orang Asli children have less access to education due having no documentation, some face problems of access in terms of distance and the lack of teachers. See:

<https://www.thestar.com.my/lifestyle/family/features/2015/03/24/orang-asli-issues-access-to-education-still-difficult/>

¹²⁵ The main income generating activity organized by the Government for the Orang Asli community is the Palm Oil Replanting Project (TSK). JKOASM receives similar feedback from the Orang Asli communities involved with the TSK projects, including poor and non-transparent management by relevant agencies such as JAKOA and RISDA. In addition, the profits or dividends received by the Orang Asli participants of the TSK project are below the poverty level (about RM200 - 300 per month). These figures suggest that the TSK has failed as a government measure to increase Orang Asli income and eradicate Orang Asli poverty. There are Orang Asli villages that have voiced the TSK issue but they are yet to see effective government action.

¹²⁶ <http://www.utusan.com.my/berita/wilayah/negeri-sembilan/penduduk-orang-asli-rayu-kemudahan-asas-lengkap-1.575990>

¹²⁷ <https://www.malaysiakini.com/news/175498>

¹²⁸ <http://www.sinarharian.com.my/nasional/orang-asli-bakal-terima-infrastruktur-lengkap-1.706507>

¹²⁹ "Twice As Hard For The Disabled - Nation | The Star Online" (Thestar.com.my, 2015) <<http://www.thestar.com.my/news/nation/2015/08/16/twice-as-hard-for-the-disabled-more-preparation-is-needed-to-assist-the-elderly-disabled-in-malaysia/>> accessed 30 April 2016.

¹³⁰ United Nations Declaration on the Rights of Indigenous Peoples. A/RES/61/295.

¹³¹ Cops: Transgender's murder not a hate crime

<https://www.thestar.com.my/news/nation/2017/02/26/cops-transgenders-murder-not-a-hate-crime/>

¹³² "Wow..Mantop..Saya Suka" - Kunyit Kerumun Gambar Abang Sado Pakai Seluar Dalam

<http://www.kakishare.tv/2017/10/wowmantopsaya-suka-kunyit-kerumun.html>

¹³³ Sexual orientation and gender identity

¹³⁴ As world grieves over Orlando shooting, some Malaysians welcome killings

<http://www.themalaymailonline.com/malaysia/article/as-world-grieves-over-orlando-shooting-some-malaysians-welcome-killings>

¹³⁵ These Malaysians Think That The Orlando Shooting Victims 'Deserve It' Because They Are Gay

<http://says.com/my/news/some-malaysians-approve-of-the-orlando-nightclub-shooting>

¹³⁶<http://www.freemalaysiatoday.com/category/nation/2018/03/11/group-urges-action-after-thugs-attack-women-in-kl-event/>

¹³⁷ For more information on the status of Freedom of Religion in Malaysia, refer **CHRD**'s UPR Stakeholders' Report for the 31st Session in the 3rd Cycle of the HRC's Universal Periodic Review on the **Status of Human Rights Defenders** in Malaysia.

¹³⁸ A/RES/53/144 - Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

¹³⁹ Such as "One Million Ummah (People) Against COMANGO" focused on garnering support of that number of Malaysians to reject COMANGO.

¹⁴⁰ In Friday sermon, Jakim calls for 'jihad' against liberals, IS
<http://www.themalaymailonline.com/malaysia/article/in-friday-sermon-jakim-calls-for-jihad-against-liberals-is>

¹⁴¹ Jais: Muslims forsaking scholars for liberalism, pluralism, secularism
<http://www.themalaymailonline.com/malaysia/article/jais-muslims-forsaking-scholars-for-liberalism-pluralism-secularism>

¹⁴² 'Liberalism is a toxin to Islam' <http://e-masjid.jais.gov.my/uploads/uploads/MANUAL%2013.10.2017%20LIBERALISME%20PEROSAK%20ISLAM.pdf>

¹⁴³ Mujahid fumes over 'character assassination' by religious body
<http://www.freemalaysiatoday.com/category/nation/2017/11/14/mujahid-fumes-over-character-assassination-by-religious-body/>

¹⁴⁴ SIS is a Muslim women's group that promotes an understanding of Islam that recognises the principles of justice, equality, freedom, and dignity within a democratic nation state.

¹⁴⁵ <http://sistersinislam.org.my/news.php?item.1490.50>

¹⁴⁶ <http://sistersinislam.org.my/news.php?item.1300.50>

¹⁴⁷ SIS subsequently filed a judicial review challenging the fatwa on constitutional grounds.

¹⁴⁸ In 2017, the Federal Court granted leave to the Fatwa Council and the Selangor State Government to appeal the decision by Court of Appeal that the civil court had the jurisdiction to hear the case. <http://sistersinislam.org.my/news.php?item.1490.50>

¹⁴⁹ KRYSS & Outright International, *On the Record: Violence against lesbian, bisexual and trans people in Malaysia*, (New York: 2014), page 22

¹⁵⁰ Jawi urged to probe Marina Mahathir over LGBT 'like'

<http://www.mysinchew.com/node/118101>

¹⁵¹ Maria's arrest took place one day before the Bersih 5 rally for clean and fair elections took place in Kuala Lumpur

¹⁵² For example, In 2015, Khalid Ismath faces 11 charges under the CMA for allegedly offending a member of the royal family. See more: Wei Hoong, L. (2015). *Activist slapped with 14 charges for posting on Johor royalty*. [online] Malaysiakini. Available at: <https://www.malaysiakini.com/news/315569> [Accessed 1 Mar. 2018].

¹⁵³ A/HRC/25/10 para 146 second cycle UPR of Malaysia. Recommendations 146.48 (United Kingdom) and 146.49 (Australia)

¹⁵⁴ 'Causing, etc., disharmony, disunity, or feeling of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion'

¹⁵⁵ 'Two top The Star editors suspended' (*The Star Online*, 30 May 2017)

<https://www.thestar.com.my/news/nation/2017/05/30/two-top-editors-from-the-star-suspended/>

¹⁵⁶ 18 months' jail for Pandan MP Rafizi Ramli under Official Secrets Act' (Borneo Online 15 November 2016 <http://www.theborneopost.com/2016/11/15/18-months-jail-for-pandan-mp-rafizi-ramli-under-official-secrets-act/>)

¹⁵⁷ Pelangi, a member of COMANGO and a CSO working on LGBTIQ rights attempted to register as a society, but its registration was handed over to the Home Ministry.

¹⁵⁸ *Salah Guna Kuasa Polis : Penangkapan Berantai (tukar gari) dan Penyiksaan Dalam Tahanan Tanpa Bicara Selama 27 Hari. (SUARAM, 14 June 2017)*
<http://www.suaram.net/?p=8452>

¹⁵⁹ Including the arbitrary arrests of *HRDs*, children, refugees, non-citizens,

¹⁶⁰ Balamurugan's custody death: Cops aware of breach of SOPs, EAIC hearing told (online The Star 16 May 2017)

<https://www.thestar.com.my/news/nation/2017/05/16/balamurugan-custody-death-cops-aware-of-breach-of-sops-eaic-hearing-told/#y0xRcFuTaEIIJL5.99>

¹⁶¹ <https://www.thestar.com.my/news/nation/2018/01/17/sudden-halt-to-inquiry-crushes-pastor-kohs-family/>

¹⁶² Achariam, N. (2017). *Police quiz activists over foreign interference in Caged*.

[online] Themalaysianinsight.com. Available at:

<https://www.themalaysianinsight.com/s/3659/> [Accessed 20 Feb. 2018].