

**CENTHRA SUBMISSION TO THE HUMAN RIGHTS COUNCIL FOR  
MALAYSIA'S 4TH CYCLE IN THE UNIVERSAL PERIODIC REVIEW, 2023**

**3 July 2023**

**INTRODUCTION**

1. The Centre for Human Rights Research and Advocacy or CENTHRA was founded as a research and advocacy group with the aim of providing an alternative global human rights perspective, as well as to offer a more balanced approach that is respectful of the Abrahamic traditions.
2. CENTHRA strives towards an equitable human right understanding in addressing conflicts between religious laws, local customs and traditions particularly in Islam, brought about by existing instruments such as the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, as part of the International Bill of Rights.
3. Since its establishment in 2014, CENTHRA has continuously engaged with the relevant human rights stakeholders, including Governmental agencies and functionaries, the Human Rights Commission of Malaysia (SUHAKAM) as well as other Civil Society Organizations (CSOs).
4. Within the UPR framework, CENTHRA is also actively involved in various consultative sessions with the Government through the Ministry of Foreign Affairs, during which CENTHRA had provided inputs and highlighted its concerns on pertinent issues relating to the recommendations received during the previous UPR cycles, some of which are highlighted below.

**A. PRISON REFORMS TO SAFEGUARD DETAINEES' RIGHTS AND IMPROVING  
DETERIORATING STANDARDS OF INCARCERATION FACILITIES**

**Overcrowding in Prisons**

5. Malaysia is currently facing a dire prospect of prison overcrowding by over 6,675 inmates nationwide, which far exceeds the actual occupancy capacity of 65,762 people. As of February 2023, the Malaysian Prison Department's record indicate that there is a total of 78,236 prisoners<sup>1</sup> currently serving imprisonment terms for various offences across the country, of which 92.59% of inmates are placed in prison facilities while the remaining 7.41% serve outside the prison walls.

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<sup>1</sup> John Buyan (31 Mar 2023). Malay Mail: Prisons overcrowded by 6,000 inmates. Retrieved from <https://www.malaymail.com/prisons-dept-reveals-jail-congestion-at-36pc>

6. Overcrowded prison conditions are often associated with public health risk which indirectly leads to a series of health issues<sup>2</sup>, inter alia, increased prevalence of communicable and chronic diseases. These factors are attributed by poor ventilation and hygiene, as well as the lack of medical and recreational facilities, thus causing inmates to suffer from adverse effects whilst undergoing their rehabilitation process.
7. In an effort to combat overcrowding in prisons, the Malaysia Prisons Department has adopted several Standard Operating Procedures (SOPs). These include:
  - i. Reallocation of prisoners/detainees to the nearest prisons which are underutilised or below capacity;
  - ii. Conduct rehabilitation programmes beyond prison walls such as the Community-based Rehabilitation Programme (CRP)<sup>3</sup> and parole probation system for inmates by the year 2030;
  - iii. Usage of Electronic Monitoring Devices (EMD) which allow for prisoners to serve sentences outside prisons<sup>4</sup>.
8. It is noted that while these efforts are commendable, however, CENTHRA opines that the implementation of such initiatives remains inadequate, rendering it ineffective in addressing high influx of prison inmates. In light of the recent global pandemic, this pertinent issue should therefore be addressed promptly and effectively by all relevant agencies to avoid exacerbating a further crisis of prison overcrowding in the near future.

### **Access to Religious Instruction and Education**

9. CENTHRA is particularly concerned with complaints regarding the implementation of the Prisons Regulations 2000, particularly regulations under Part 14 for religious instruction<sup>5</sup> and Part 15 for education in prisons<sup>6</sup>.
10. Pursuant to Part 14 of the Prisons Regulations 2000 enunciated under Section 67 of the Prison Act 1995 [Act 537], a prisoner has a right to receive religious instruction and education including access to religious books. Whereas Part 15 of the said Regulation stipulates that educational classes shall be arranged to accommodate prisoners who wish to improve on their education, including their rights to access suitable reading materials where necessary.

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<sup>2</sup> Catherine Heard, Institute for Criminal Policy Research (17 Jul 2019). Prison overcrowding and the risks for public health: a global time-bomb? Retrieved from <https://www.fairtrials.org/prison-overcrowding-and-risks-public-health-global-time-bomb/>

<sup>3</sup> Audrey Dermawan (16 Mar 2022). 23,000 inmates under parole system, CRP by 2030. Retrieved from <https://www.nst.com.my/23000-inmates-under-parole-system-crp-2030>

<sup>4</sup> Hassan et. al. (2022). Theoretical Perspectives on Electronic Monitoring and Police Supervision Order as Crime Prevention Modalities in Malaysia. Retrieved from <https://hrmars.com/theoretical-perspectives-on-electronic-monitoring-and-police-supervision-order>

<sup>5</sup> Khairul Hamimah et. al. (2015). The Effectiveness Of Religious Programme: Analysis Of Spirituality Programme In Prison Among Muslim Female Inmates. Jurnal al-Tamaddun 10(2) 2015, 51-60.

<sup>6</sup> Faisal Asyraf (27 Feb 2023). 23 years behind bars and heading for a PhD. Retrieved from <https://www.freemalaysiatoday.com/23-years-behind-bars-and-heading-for-a-phd/>

11. However, feedback from Muslim prisoners have revealed that this group of prisoners generally do not receive sufficient religious education<sup>7</sup>, nor prison libraries are adequately stocked with reading materials for study purpose<sup>8</sup>.

### **Lack of Legal Representation**

12. Based on an interview conducted by CENTHRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department, there is a disproportionately high number of prisoners, of which 31% are remand detainees awaiting trial. Of these, 82% of remand detainees are locals, whereas 9 out of 10 remand detainees are male<sup>9</sup>.
13. This is further supported by the World Prison Brief's findings in mid-2021 wherein approximately 41.7% Malaysian prisoners had yet been tried, convicted or sentenced.
14. Most prison overcrowding cases could be resolved, if not all, should the majority of these pre-trial or remand detainees be released on bail pending the end of trial. Be that as it may, majority of them are the poor who simply cannot afford to pay bail<sup>10</sup>.
15. In this regard, despite the provision of legal aid for prisoners by the National Legal Aid Foundation (YBGK), Legal Aid Bureau (BBG) and Legal Aid Department (JBG) via the Prisons Department, however, a handful of detainees are not afforded with appropriate legal assistance needed by them. There is also a shortage of legal counsels volunteering in the abovementioned programmes resulting in fewer prisoners receiving free legal aid from these schemes.<sup>11</sup>

### **Recommendations:**

- i. To strengthen the effective monitoring mechanism and adopt necessary measures towards safeguarding the rights of prisoners and detainees, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules and Bangkok Rules);
- ii. To ensure decent detention conditions including provision of access to medical facilities under Rule 10 of the Lock-up Rules 1953, as well as legal

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<sup>7</sup> Faisal Asyraf (2 Feb 2017). Muslim prisoners do not get adequate religious education. Retrieved from <https://www.freemalaysiatoday.com/muslims-prisoners-get-insufficient-religious-education/>

<sup>8</sup> Vikneswari et. al. (3 Dec 2019). Juvenile Delinquents' Learning Experiences in School Prison: Narratives from Malaysian Context. Retrieved from [https://www.researchgate.net/338392675\\_Learning\\_Experiences\\_in\\_School\\_Prison](https://www.researchgate.net/338392675_Learning_Experiences_in_School_Prison)

<sup>9</sup> Interview conducted by CENTHRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department dated 13 March 2018.

<sup>10</sup> Aliran (9 Feb 2023). 30,000 'innocent' people languish in Malaysia's overcrowded prisons – Madpet <https://aliran.com/civil-society-voices/30000-innocent-people-languish-in-overcrowded-prisons-madpet>

<sup>11</sup> V Anbalagan (26 Jan 2017). Slow govt payment causes legal aid lawyers to refuse cases. Retrieved from <http://www.freemalaysiatoday.com/slow-govt-payment-causes-legal-aid-lawyers-refuse-cases/>

and judicial remedies in compliance with the international standards, in follow-up to recommendations in paragraph 115.114 of the Third Cycle;

- iii. To enhance domestic legislations through the enactment of Public Defender's Act for free legal services in criminal cases, thus ensuring detainees' rights to legal counsel and fair trial as well as prompt payment to legal counsels involved in legal aid, in follow-up to recommendations of the Second Cycle (Session 17); and
- iv. To integrate a holistic implementation of educational programs in prison and correctional facilities, inter alia, by organizing religious classes on a weekly basis and reading materials made available in prison libraries as part of inmates' rehabilitation and social reintegration.

## **B. STATELESS PERSONS IN MALAYSIA**

1. It is estimated that there are some 300,000 stateless children residing in Malaysia<sup>12</sup>. In light of CENTHRA's continuous engagements with its CSO partners on stateless children under the UPR initiative<sup>13</sup>, it is not uncommon to come across cases involving the plight of stateless children who are not granted Malaysian citizenship for various reasons.
2. Stateless children are often denied their rights to formal education, access to public health system<sup>14</sup> and being equal to the law. In the absence of official status nor proper documentation, they are clearly at risk of detention and vulnerability to exploitation and human trafficking.
3. Recently, the Malaysian Ministry of Education (MOE) had issued a directive regarding enrolment requirements for 2024/2025 academic session, wherein only Malaysian citizen's children born between 2.1.2017 and 1.1.2018 are eligible to apply for enrolment, thus implying the exclusion of non-Malaysian children from such right.
4. On the contrary, the Convention on the Rights of the Child (CRC) 1989 guarantees the right to access to education for all children, regardless of their legal status or nationality, towards building inclusive societies and achieving sustainable development.
5. While acknowledging the Malaysian government has taken steps to resolving some of the hardships faced by these stateless children, nonetheless the

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<sup>12</sup> Rhythm Foundation (11 Mar 2022). Position Paper Series: COVID-19 and Malaysia's Stateless Children. Retrieved from <https://www.rhythmfoundation.org/position-paper-series-of-covid-19-and-malysias-stateless-children>.

<sup>13</sup> Azril Md. Amin, CENTHRA (21 Nov 2021). Retrieved from <https://www.astroawani.com/protect-and-fight-rights-stateless-children>

<sup>14</sup> Dr. Amar-Singh (26 Jan 2023). Be humane and protect all children. Retrieved from <https://www.thesundaily.my/be-humane-and-protect-all-children>

implementation aspect as well regular monitoring and assessment of aid provided for stateless children, particularly remains a challenge.

### **Peninsular Malaysia - Orang Asli**

6. Undeniably, education gaps continue to persist between Orang Asli (the aborigines) and non-indigenous children despite various efforts being undertaken. The reality differs in terms of education attributed by factors such as abject poverty and the lack of awareness. In November 2021, it was found that around 42.29% of Orang Asli students did not complete their secondary education (Form Five)<sup>15</sup>.
7. The recent inspiring story of Susherrie Suki, who became the first Orang Asli from the Semai clan in Perak to graduate from a renowned University in the United Kingdom has proven that indigenous and stateless people can succeed in their studies, with the right amount of support and attention.

### **East Malaysia - Sabah and Sarawak**

8. Far east, stateless children in Sabah<sup>16</sup> and children from Penan tribe in Sarawak share a similar fate as Orang Asli children in the Peninsular, some of whom are born out of wedlock to parents who are refugees or migrants and their births are not registered.
9. Hence, to ignore this would mean to deprive the protection of fundamental human rights of those who need it most, and a reflection of our inability to protect and uphold the religious as well as social rights of these stateless children<sup>17</sup>.

### **Recommendations:**

- i. To establish a Special Task Force that gathers all data and information pertaining stateless and Orang Asli children and draws up necessary intervention plans that guarantees their rights to education and healthcare, irrespective of citizenship and immigration status, in follow-up to recommendations in paragraphs 151.260 of the Third Cycle;
- ii. To formulate appropriate mechanisms with the aim of granting citizenship to stateless persons, and enhance transparency in the registration process where there exists no discrimination;

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<sup>15</sup> Wan Ya Shin, IDEAS (Dec 2021). Retrieved from [Contextualising Education Policy to Empower Orang Asli Children](#)

<sup>16</sup> Loo, D. B. and Lagason, L. (2022). Framing the stateless children in Sabah: An examination through corpus analysis. *International Journal of Asia Pacific Studies* 18(2): 201–226. <https://doi.org/10.21315/ijaps2022.18.2.9>

<sup>17</sup> Adlin Z. Omar, CENTHRA (27 Mar 2021). Retrieved from <https://www.nst.com.my/stateless-need-remedy>

- iii. To accede to the Convention Relating to Status of Stateless Persons 1954; and
- iv. To ensure effective implementation of policies and measures on the well-being of the indigenous peoples to uplift their economic and social status and benefit from the country's economic development, in follow-up to recommendations in paragraphs 151.257 of the Third Cycle.

### C. RIGHTS OF REFUGEES

1. As of March 2023, there are approximately 185,760 refugees and asylum seekers registered with the UNHCR living in Malaysia<sup>18</sup>. The top originating countries of refugees and asylum seekers are illustrated below:

No.	Country	Number of refugees & asylum seekers	Remarks
1	Myanmar	160,320 (107,430 Rohingyas, 23,660 Chins, 29,230 other ethnic groups)	Some 66% of refugees and asylum-seekers are men, while 34% are women.  There are some 49,380 children below the age of 18.
2	Pakistan	7,100	
3	Yemen	3,460	
4	Afghanistan	3,440	
5	Somalia	3,160	
6	Syria	2,810	
7	Sri Lanka	1,510	
8	Iraq	750	
9	Palestine	640	

2. The exodus of Rohingya refugees had led to them seeking asylum in Malaysia, many of whom are currently living in a state of limbo with close to no access on basic rights such as legal documentations, lawful employment, routine healthcare and formal education,<sup>19</sup> while facing constant risks of arrest, deportation and threats of exploitation.

<sup>18</sup> UNCHR (March 2023). Figures at a Glance. Retrieved from <https://www.unhcr.org/figures-Malaysia>

<sup>19</sup> Richard Towle (20 Mar 2017). International Conference on Rohingya: Rohingya refugees in Malaysia. Retrieved from <https://reliefweb.int/challenges-and-way-forward-handling-rohingya-refugees-malaysia>

3. On 8 May 2023, the Malaysian government is said to be mulling over an agreement with UNHCR<sup>20</sup> on issues of refugees and asylum seekers, whilst urging for a greater responsibility on managing refugees alongside the government and the local community.
4. In this regard, repercussions of the absence of a comprehensive legal and administrative framework to regulate and protect refugees were made apparent following the deaths of six Rohingyas including two children in an escape attempt from a temporary immigration detention centre in northern Malaysia<sup>21</sup>.
5. As such, activities concerning the registration and documentation of refugees should be prioritized by the government. With a proper regularisation programme in place through a controlled gateway for registration, more efforts can be taken to strengthen the management of refugees and asylum seekers.
6. Notwithstanding concerns such as ‘pull factor’ where certain parties may seek to take advantage of these benefits for refugees, access procedures would be fairly and rigorously applied so that access to such schemes are given only to those deserving, and are entitled to UNHCR’s protection.
7. This in turn will not only provide refugees with better protection on formal employment, education and health in support of Sustainable Development Goals (SDGs) action plans, it will also greatly assist relevant government and international agencies so that welfare for the vulnerable population can be readily identified and tracked over time alongside health screening and biometric data.

**Recommendations:**

- i. To accede to the 1951 Convention on the Status of Refugees and its 1967 Protocol, in follow-up to recommendations in paragraph 151.40, 151.41 and 151.42 of the Third Cycle;
- ii. To intensify concerted efforts on management of refugees and asylum seekers through multi-agency collaboration, by strengthening its policies and strategies aimed at increasing the capacity of government agencies involved in determining their respective status; and
- iii. To further consolidate and improvise resettlement programmes within Malaysia as a host country, with cooperation from CSOs and UNHCR.

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<sup>20</sup> Malay Mail (8 May 2023). Govt mulling agreement with UNHCR. Retrieved from <https://www.malaymail.com/govt-mulling-agreement-with-unhcr-over-issue-of-refugees-asylum-seekers-in-malaysia/68252>

<sup>21</sup> A. Ananthalakshmi (22 Apr 2022) UN refugee agency ‘shocked’ at Rohingya deaths in Malaysia. Retrieved from <https://www.aljazeera.com/un-refugee-agency-shocked-at-rohingya-deaths-in-malaysia-escape>



#### **D. PROTECTING HUMAN-TRAFFICKING VICTIMS**

1. There has been a stark increase in trafficking in persons (TIP) related cases with over 115 cases reported in 2021, vis-a-vis, almost a five-fold rise from 17 cases in 2008<sup>22</sup>, whereas Malaysia remained at Tier 3 rank of the US TIP report 2022<sup>23</sup>.
2. The 2015 Wang Kelian tragedy came under the global spotlight where 139 graves were discovered in 28 migrant prison camps within close proximity of Malaysia-Thailand border, which implicates the inhumane and torturous tactics employed by the human trafficking syndicates<sup>24</sup>.
3. A Royal Commission of Inquiry (RCI) was then set up to look into the discovery of these transit camps and mass graves of victims believed to be migrants from Rakhine province of Myanmar. The RCI findings was only declassified in 2022<sup>25</sup> after several years of demands from various groups and CSOs.
4. More effective cross-border coordination between Malaysia and Thailand are crucial to combat trafficking cases along the common borders, and to prevent the recurrence of such human trafficking tragedy.

#### **Recommendations:**

- i. To strengthen coordination among enforcement offices in ensuring the effective implementation of anti-trafficking and migrant smuggling laws, namely the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670), in follow-up to recommendations in paragraph 151.125 of the Third Cycle;
- ii. To introduce a consolidated agency to facilitate and control the country's borders, thus ensuring a more thorough investigations on human trafficking incidents to curtail and mitigate the risk of trafficking in persons;
- iii. To establish a formal procedure to further provide physical, psychological and social integration assistance to trafficking in persons victims, in follow-up to recommendations in paragraph 151.124, 151.121 and 151.115 of the Third Cycle; and

*Prepared by:*

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<sup>22</sup> Gerard Gimino (4 Aug 2022). 'Look for signs of human trafficking'. Retrieved from ['Look for signs of human trafficking'](#)

<sup>23</sup> US Department of State (2022) Trafficking in Persons Report: Malaysia. Retrieved from <https://www.state.gov/2022-trafficking-in-persons-report/malaysia/>

<sup>24</sup> Dominique F. Fernandes (1 Sept 2017). The Plight of Rohingyas in Malaysia. Retrieved from <https://thediomat.com/the-plight-of-rohingyas-in-malaysia/>

<sup>25</sup> RCI Report 2019 on Wang Kelian (2022). Retrieved from [https://www.moha.gov.my/RCI\\_Report](https://www.moha.gov.my/RCI_Report)





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