



CENTHRA SUBMISSION TO THE HUMAN RIGHTS COUNCIL FOR MALAYSIA'S 3RD CYCLE IN THE UNIVERSAL PERIODIC REVIEW, 2018

28th March 2018

INTRODUCTION

1. CENTHRA was formed as a research and advocacy group to provide an alternative global human rights perspective and to offer a more balanced view that is respectful of Abrahamic traditions.
2. CENTHRA strives towards the establishment of a more equitable human rights understanding where its implementation addresses conflicts with religious law, local customs and traditions, particularly with Islam, brought about by the existing Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, and the International Covenant on Economic and Social Rights (ICESR) 1966, which form the International Bill of Rights.
3. Since its establishment in 2014, CENTHRA has engaged with various human rights stakeholders, including Governmental agencies and functionaries, the Human Rights Commission of Malaysia (SUHAKAM) and Civil Society Organizations (CSOs) to promote as well as to conduct research and training on human rights understanding based on equity and compatibility with existing values and norms.
4. Within the UPR framework, CENTHRA was involved in consultative sessions with the Government, through the Ministry of Foreign Affairs, during which CENTHRA had given its comments and highlighted its concerns to the Government, including issues relating to the recommendations received in the last UPR Cycle, some of which are highlighted below.

STANDARDS IN INCARCERATION FACILITIES

Overcrowding in Prisons

5. Malaysia is facing an emerging prospect of prison overcrowding with over 50,000 prisoners currently serving imprisonment terms for various offences

across the country.¹ Though the prisons are at present are not operating at more than full capacity, this issue must be addressed effectively in the present to avoid a crisis of overcrowding in the future.

6. Overcrowding leads to other health issues,² caused by poor ventilation, poor hygiene, lack of food, as well as lack of recreational and leisure activities,³ causing adverse effects to be suffered by inmates who are supposed to be undergoing the rehabilitation process.
7. The Malaysia Prisons Department (PRIDE) has revealed that it has adopted Standard Operating Procedures (SOPs) to counter overcrowding in prisons.
8. These SOPs include PRIDE's initiatives to:
 - i. reallocate prisoners/detainees to the nearest prisons, which are below capacity;⁴
 - ii. conduct rehabilitation programmes outside prison walls such as the Community based Rehabilitation Programme (CRP) and parole probation system;⁵ and
 - iii. using Electronic Monitoring Devices (EMD), which allow for prisoners to serve sentences outside prisons.⁶
9. However, CENHRA believes these initiatives are poorly implemented and ineffective in reducing the number of inmates in prison.

Religious Instruction and Education

10. CENHRA is concerned with complaints regarding the implementation of the Prisons Regulations 2000, specifically regarding regulations under Parts 14 & 15 for religious instruction,⁷ and education in prisons.⁸

¹ Halim Said (27 Jan 2018) *With over 50,000 prisoners, M'sia faces impending jail overcrowding crisis*. Retrieved from <https://www.nst.com.my/news/nation/2018/01/329323/over-50000-prisoners-msia-faces-impending-jail-overcrowding-crisis>

² Dr Milton Lum (20 Jul 2014) *Incarcerated health: Effective healthcare does not top the priority list in prisons*. Retrieved from <https://www.thestar.com.my/lifestyle/health/2014/07/20/effective-healthcare-does-not-top-the-priority-list-in-prisons/>

³ Lisa Goh (25 Aug 2013) *Opening doors to better segregation*. Retrieved from <https://www.thestar.com.my/news/nation/2013/08/25/opening-doors-to-better-segregation/>

⁴ Interview conducted by CENHRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department on 13 March 2018.

⁵ New Straits Times (27 Sept 2017) *More than 17,000 prisoners completed parole since 2008 - Prison DG*. Retrieved from <https://www.nst.com.my/news/nation/2017/09/284493/more-17000-prisoners-completed-parole-2008-prison-dg>

⁶ Malay Mail Online (21 Dec 2015) *Over 200 under house arrest and strapped with electronic monitoring devices, says CID director*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/over-200-under-house-arrest-and-strapped-with-electronic-monitoring-devices>

⁷ Khairul Hamimah Mohamed Jodi, Mohd Afifuddin Mohamad & Mohammad Taquiuddin Mohamad (2015) The Effectiveness Of Religious Programme: Analysis Of Spirituality Programme In Prison Among Muslim Female Inmates. *Jurnal al-Tamaddun* 10 (2) 2015, 51-60.

⁸ Rebecca Rajaendram (9 Jul 2017) *Classes behind bars*. Retrieved from <https://www.thestar.com.my/news/education/2017/07/09/classes-behind-bars/>

11. Pursuant to Part 14 of the Prison Regulations 2000 enacted under section 67 of the Prison Act 1995 [Act 537], a prisoner has the right to receive religious instruction and education including access to religious books. Whereas under Part 15 of the Prison Regulations 2000, educational classes shall be arranged to accommodate prisoners, who wish to improve their education, and this includes the right to have access to suitable reading materials.
12. However, reports have revealed that Muslim prisoners are not getting adequate religious education,⁹ and prison libraries are not adequately stocked with reading materials.¹⁰

Legal Representation

13. A disproportionately high number of prisoners, namely 31%, are remand detainees who are awaiting trial. Of these, 82% of remand detainees are locals and 9 out of 10 remand detainees are male.¹¹
14. Although National Legal Aid Foundation (YBGK), Legal Aid Bureau (BBG) and Legal Aid Department (JBG) are assisting PRIDE in providing legal aid for the prisoners,¹² however, reports indicate that most detainees are not getting the legal assistance needed by them.¹³
15. There is shortage of legal counsels volunteering in the abovementioned programmes due to late payments to legal counsels resulting in fewer prisoners getting free legal aid from these schemes.¹⁴

Recommendations:

- i. To adopt and implement necessary measures to improve the condition of prisons and to protect the rights of prisoners in accordance with the relevant International Standards and Norms (e.g. Mandela Rules, Tokyo Rules, Bangkok Rules, Havana Rules, and Beijing Rules);
- ii. To improve and integrate the implementation of educational programs

⁹ V Anbalagan (2 Feb 2017) *Lawyer: Muslim prisoners don't get adequate religious education*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/02/02/lawyer-muslims-prisoners-get-insufficient-religious-education/>

¹⁰ Qishin Tariq (25 Dec 2015) *Reaching out, page by page*. Retrieved from <https://www.thestar.com.my/news/nation/2015/12/25/reaching-out-page-by-page-groups-collect-books-for-prison-libraries/>

¹¹ Interview conducted by CENHRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department on 13 March 2018.

¹² Interview conducted by CENHRA with the Rehabilitation & Treatment Section, Inmate Management Division, Malaysian Prison Department on 13 March 2018.

¹³ Ida Lim (18 Mar 2017) *Legal aid shrinking due to delayed payments, Malaysian Bar report says*. Retrieved from http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/legal_aid_shrinking_due_to_delayed_payments_malaysian_bar_report_says.html

¹⁴ V Anbalagan (26 Jan 2017) *Slow govt payment causes legal aid lawyers to refuse cases*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/01/26/slow-govt-payment-causes-legal-aid-lawyers-to-refuse-cases/>

facilitating rehabilitation of prisoners by ensuring adequate availability of religious classes and good reading materials in prison libraries; and

- iii. To ensure detainees' rights to legal counsel are monitored and protected by ensuring proper and prompt payment to legal counsels involved in legal aid, among other measures to be considered.

STATELESSNESS

16. It is estimated that currently there are nearly 300,000 stateless children residing in Malaysia.¹⁵ It is not uncommon to read about cases of stateless children who are not granted Malaysian citizenship due to various reasons.
17. The statelessness of children denies their rights to travel, access the public health system,¹⁶ and attend public schools.¹⁷ With no official status and documentation, they are at risk of detention and vulnerable to discrimination, abuse, exploitation and human trafficking.

Peninsular Malaysia - Indians & Orang Asli

18. Approximately 20,000 undocumented Indians were born in Malaysia without birth certificates.¹⁸ Various factors including lack of knowledge and understanding of the importance of having documents causes them to be stateless in Malaysia.¹⁹ Some have faced numerous obstacles such as errors in their applications.
19. Orang Asli (the aborigines) in Malaysia also suffer from the same problem. Some of the children were born to parents from Indonesia, Philippines, and Myanmar, who are refugees or illegal migrants in this country.²⁰
20. In the Royal Commission of Inquiry (RCI) report findings, it was noted that children of illegal immigrants and refugees do not have access to even basic education and are often seen as causing public nuisance.²¹

¹⁵ Free Malaysia Today (31 Oct 2016) *Almost 300,000 stateless children in Malaysia*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2016/10/31/almost-300000-stateless-children-in-malaysia/>

¹⁶ Chiew Hui-Yee (6 Jul 2017) *'An invisible jail' - stateless children in Malaysia*. Retrieved from <https://www.malaysiakini.com/news/387600>

¹⁷ Low Sock Ken and Ian McIntyre (10 Jan 2018) *Govt red tape stops stateless children from attending school*. Retrieved from <http://www.thesundaily.my/news/2018/01/10/govt-red-tape-stops-stateless-children-attending-school-updated>

¹⁸ R. Tikamdas (2006) *The Right to Identity and Citizenship under the Constitution and International Law*, Kuala Lumpur, Malaysia, Statelessness: An Obstacle To Economic Empowerment Seminar.

¹⁹ Yahya Awang (2010) *Studies on the Problems Relating to the Identification Documents Among the Orang Asli of Peninsular Malaysia*, *Centre for Malaysian Indigenous Studies*; and Centre for Malaysian Indigenous Studies (2008) *Seminar Report on the Development of the Orang Asli Community: Challenges and Successes in Celebrating International Day of the World's Indigenous Peoples*, *Centre for Malaysian Indigenous Studies*.

²⁰ Free Malaysia Today (13 Mar 2018) *Move to allow cross-border marriage amnesty welcomed*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2018/03/13/move-to-allow-cross-border-marriage-amnesty-welcomed/>

²¹ Predeep Nambiar (12 Jan 2018) *More stateless children turned away from school*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2018/01/12/more-stateless-children-turned-away-from-school/>

Sarawak

21. The children from the Penan tribe in Sarawak share the same fate of Orang Asli children in Peninsular Malaysia. These children are born out of wedlock to Penan women due to illicit sexual intercourse with lodgers in the rural areas of Sarawak,²² and their births are not registered.²³

Recommendations:

- i. To accede to the Convention Relating to the Status of Stateless Persons 1954;
- ii. To introduce universal birth certificates and ensure that all stateless children are granted birth certificates with no child left behind;
- iii. To form a Special Task Force under National Security Council to investigate and formulate appropriate mechanisms with the aim of granting citizenship to stateless persons; and
- iv. To respect and implement principles of international humanitarian law regarding access to education and healthcare to stateless children

REFUGEES

22. There are presently 154,400 refugees and asylum seekers from 59 countries registered with the UNHCR living in Malaysia.²⁴ The top ten originating countries of refugees and asylum seekers are as shown in TABLE below:

No.	Country	Amount
1.	Myanmar	133,725
2.	Pakistan	3,548
3.	Sri Lanka	2,328
4.	Yemen	2,095
5.	Somalia	2,062
6.	Syria	1,980
7.	Iraq	1,461
8.	Afghanistan	1,028
9.	Palestine	698
10.	Iran	440

23. The exodus of Rohingya refugees in May 2015 has contributed to more than

²² Sheith Khidhir Abu Bakar (29 Mar 2016) *Stateless Penans demand citizenship papers*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2016/03/29/stateless-penans-demand-citizenship-papers/>

²³ Borneo Post (9 Aug 2017) *Many children at day care centre stateless*. Retrieved from <http://www.theborneopost.com/2017/08/09/many-children-at-day-care-centre-stateless/>

²⁴ UNCHR (Accessed 23 Mar 2018) *Figures at a Glance in Malaysia*. Retrieved from <http://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html>

56,000 refugees seeking asylum in Malaysia.²⁵ They are currently living in a state of limbo as they have no access to basic rights including legal status, access to lawful employment and formal education.²⁶ They are at constant risk of arrest, detention, deportation and exploitation.²⁷

24. The repercussions of the absence of a legal and administrative framework to regulate and protect refugees were made apparent when it was reported that more than 100 died in Malaysian immigration detention centres.²⁸
25. Former detainees and rights groups blame overcrowding, insanitary conditions, and inadequate food, water and healthcare for contributing to the high death rate.²⁹ Many of the post-mortem revealed a series of illnesses including tuberculosis, pneumonia and leptospirosis.³⁰
26. Malaysia is lacking a legal framework for managing refugees, forcing the UNHCR to conduct all activities concerning the registration, documentation and status determination of refugees.
27. The government is in the midst of implementing a policy to allow Rohingya UNHCR cardholders to work in the plantation sector for three years beginning March 2017.³¹ However the initiative was not well received by the Rohingya refugees as they prefer to stay within their own community.³²

Recommendations:

- i. To accede to the Refugee Convention 1951 and Refugee Protocol 1967;
- ii. To provide free elementary education in public schools for children of refugees;
- iii. To enact a domestic law to regulate the registration and safeguard the basic rights of the refugees within the scope of the Refugee Convention; and

²⁵ Richard Towle (20 Mar 2017) *Challenges and way forward in handling Rohingya refugees in Malaysia*. Retrieved from <https://reliefweb.int/report/malaysia/challenges-and-way-forward-handling-rohingya-refugees-malaysia>

²⁶ Chan Xin Ying (31 Aug 2017) *Rohingya refugees in Malaysia: Time for policy rethink*. Retrieved from <http://www.straitstimes.com/opinion/rohingya-refugees-in-malaysia-time-for-policy-rethink>

²⁷ Yante Ismail (14 Feb 2018) *Rebuilding Hope and Opportunities for Refugees Through Self-Reliance*. Retrieved from <http://www.unhcr.org/5a839fdc4.html>

²⁸ A. Ananthalakshmi (30 Mar 2017) *Exclusive: More than 100 die in Malaysian immigration detention camps in two years*. Retrieved from <https://www.reuters.com/article/us-malaysia-detention-deaths/exclusive-more-than-100-die-in-malaysian-immigration-detention-camps-in-two-years-idUSKBN1710GR>

²⁹ Laignee Barron (16 May 2017) *Refugees describe death and despair in Malaysian detention centres*. Retrieved from <https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals>

³⁰ Malay Mail Online (1 June 2017) *Remand detainees run highest risk of contracting TB*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/remand-detainees-run-highest-risk-of-contracting-tb>

³¹ Malay Mail Online (19 Jan 2017) *Putrajaya to provide work permits, skills training for Rohingyas*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/putrajaya-to-provide-work-permits-skills-training-for-rohingyas>

³² Discussion with Chief Director, Malaysia National Security Council on 20 October 2017; **and** Zarina Othman, Bakri Mat and Salawati Mat Basir, *Humanitarian Issues: Survival of Ethnic Rohingyas in Malaysia*, Research Report GUP-2016-031, 2016-2018.

- iv. To provide resettlement programmes within Malaysia, as a host country, with cooperation from CSOs and the UNHCR.

HUMAN-TRAFFICKING VICTIMS

28. From January - July 2017, there are 254 trafficking in persons (TIP) related cases.³³ There are a total of 147 convictions for TIP in 2017.³⁴
29. In 2015, police uncovered 139 graves and rescued 28 persons abandoned by a human trafficking ring that targeted Rohingyas and Bangladeshis along the Malaysia-Thailand border (Wang Kelian).³⁵
30. 12 Royal Malaysia Police officers were arrested for possible collusion with the trafficking ring, but in March 2017 it was reported that all 12 officers were released.³⁶
31. The Thai Courts on the other hand, have handed down severe sentences to an army general, two provincial politicians, and 59 others, in the same case.³⁷ There is concern with the lack of seriousness shown by the Government in investigating the matter.

Recommendations:

- i. To coordinate among the enforcement offices to fully implement the law on human trafficking and migrant smuggling, namely the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670); and
- ii. To establish “Wang Kelian Royal Commission Inquiry” to reinvestigate the abovementioned human trafficking matter more thoroughly and investigate other instances of human trafficking.

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³³ Bernama (17 Jul 2017) *Human trafficking: 254 cases taken to court this year, 67 convictions*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2017/07/17/human-trafficking-254-cases-taken-to-court-this-year-67-convictions/>

³⁴ Rahmat Khairulrijal (19 Jan 2018) *Higher convictions of 147 for human trafficking cases last year*. Retrieved from <https://www.nst.com.my/news/crime-courts/2018/01/326846/higher-convictions-147-human-trafficking-cases-last-year>

³⁵ Dominique F. Fernandes (1 Sept 2017) *The Plight of Rohingyas in Malaysia*. Retrieved from <https://thediplomat.com/2017/09/the-plight-of-rohingyas-in-malaysia/>

³⁶ Malaysiakini (25 Mar 2017) *Cops nabbed in Perlis mass graves case released as no evidence*. Retrieved from <https://www.malaysiakini.com/news/376377>

³⁷ Oliver Holmes (19 Jul 2017) *Thailand convicts traffickers after 2015 mass graves discovery*. Retrieved from <https://www.theguardian.com/world/2017/jul/19/thailand-convicts-dozens-of-traffickers-after-mass-graves-discovery>