



SPOTLIGHT REPORT
LEAVE NO ONE BEHIND
MALAYSIAN TRANSGENDER AT RISK

Leave No One Behind: Malaysian Transgender at Risk

**A Spotlight Report on SDGs
Implementation in Malaysia
(Drafted by a Coalition of Transgender
and Cisgender Individuals)**

SUPPORTED BY



ASIA PACIFIC
TRANSGENDER NETWORK



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Executive Summary

Ministerial declaration of the 2020 High-level Political Forum (HLPF) on sustainable development, which convened on the 27th May 2020, stated that “the COVID-19 crisis has revealed more than ever our world’s vulnerabilities.”¹ They further declared that “*recognizing the poor and the most vulnerable are the most affected by the COVID-19 crisis, we will undertake every effort to leave no one behind and to reach the furthest behind first,*”² and that they “... *intend to see the Goals and targets are met for all ... peoples and for all segments of society*”.³

Malaysia’s plan and strategies on development have always been about promoting and ensuring environmental balance between development needs and the environment, often overlooking that social development is an integral aspect of development. In ensuring that we ‘Leave No One Behind’, Malaysia needs to look at all its citizens as agents of change, to shape societies so that they empower, include, and provide equal opportunities for all.

Malaysia has made great strides in the last few decades, yet the lack of inclusion of the marginalized in strategic implementation of activities and programmes, will ultimately hinder Malaysia’s full potential in achieving the Agenda 2030.

All over the world, transgender persons are ostracised by society just for transgressing gender barriers. The situation for Malaysian transgender persons are even more dire as they have become targets of violence not only by public officials but also private citizens via the Malaysian authorities’ relentless attempts to construct transgender bodies as abnormal and transgender persons as deviants and criminals. Therefore, it is more accurate to say that the transgender community face active exclusion from Malaysia’s development plans, rather than a passive lack of inclusion as compared to other marginalised groups.

Sustainable development involves the development of better future for the society, economy and environment and this Spotlight Report is a call for balanced development to ensure that Malaysia achieves Agenda 2030 with comprehensive participation and inclusion of all stakeholders in the process, especially the transgender community, to ensure effective implementation of goals, targets and indicators of the SDGs as pledged during the UN Sustainable Development Goals Summit, in 2015, New York.

¹ Ministerial declaration of the high-level segment of the 2020 session of the Economic and Social Council and the annual theme “Accelerated action and transformative pathways: realizing the decade of action and delivery for sustainable development” (27 May 2020) [2].

² *ibid* [5].

³ *ibid* [9].

Introduction

For the first time in the country's history, Malaysia experienced a change of government in 2018. Hailed as a story of 'democracy's triumph', voters ousted the Barisan Nasional (BN) ruling coalition during a national election, ending its six decades' grip of power. The Pakatan Harapan (PH) coalition, otherwise known as the Alliance of Hope, formed the new government under the leadership of Prime Minister Tun Dr. Mahathir Mohamad on the 10th of May 2018.

Unfortunately, in February 2020, Pakatan Harapan (PH) collapsed after a course of high stakes political conflicts. A new government ascended to power on the 1st of March 2020, with Tan Sri Muhyiddin Yassin sworn in as the head of government. The new coalition, the Perikatan Nasional (PN), also known as the National Alliance, a predominantly mono-ethnic Malay union include the United Malays National Organization (UMNO), a constituent party voted out two years earlier, and the Malaysian Islamic Party (PAS).

Malaysia is in a unique position as since the introduction of the 2030 Agenda⁴ to the date of writing this report (August 2020), has seen three different governments in power. Though there are volatile changes in the political landscape of Malaysia, one thing remains true, all three governments, in their pursuit to realise the 2030 Agenda, have failed by their willful exclusion of the transgender community of Malaysia.

Background and context

**For the purposes of this report, 'transgender persons' is understood as an umbrella term which includes male-to-female and female-to-male transgender persons who may or may not have gone through transition (gender affirmation surgery) or may or may not have the intention to do so.*

Transgender persons around the world are ostracised by society and suffer various forms of violence just for transgressing gender barriers. Malaysia, through a series of legislative initiatives that started in the 1980's, have criminalized and forced many transgender persons to go into hiding. From a community that enjoyed a degree of acceptance, the transgender community became the outcasts of the society.

The climate of hostility towards transgender persons extends to the top of the country's leadership regardless of which government of the day it is. Malaysian Islamic development authorities and universities continue to organize 'camps', 'seminars' and retreats designed to get participants to 'abandon the practice of unnatural sex', which are thinly veiled conversion therapy practices.

The laws, whether shariah or secular, which blatantly discriminate against LGBT people, are justified in the name of Islam, and as such, those who challenge them are demonised and attacked as being anti-Islam, secular, liberal and Western. This is also complicated by the close link between royalty and Islam, where there is an added risk of being painted as an attack and insult against the royal institution.

⁴ UNGA, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E>

The push-back from anti-rights groups also takes on a religious flavour, and these groups are often state-funded. Oftentimes, the attacks against pro-LGBT rights groups and persons are led by these state-linked / state-funded groups, and state religious authorities use the outcry as an opportunity to respond and take action against human rights defenders (HRD). Groups like MACSA (an alliance of Malaysian NGOs in the Universal Periodic Review (UPR) process) often co-opt human rights language, and position the attempts by HRDs to challenge discriminatory laws, policies and practices justified in the name of Islam as an attempt to restrict the religious rights of LGBT Muslims to practice Islam. Moreover, they are among the key mobilisers that unite interfaith groups, arguing that all faiths oppose LGBT rights. Such efforts raise some concerns akin to the situation in Singapore, where conservative faith groups present a united front against PinkDot, an annual LGBTQ event.

The only recognition of transgender women by the government is in the fight against HIV, where they are categorized as 'most at-risk population'. The Ministry of Health has reported that prosecutions of transgender persons obstruct the fight against HIV by driving them underground, albeit the Ministry has not undertaken any efforts to reform those laws.⁵ While many Muslim nations are progressing, Malaysia has taken steps back, especially for transgender persons' rights in Malaysia, which the Human Rights Watch called 'one of the worst countries in the world to be a transgender person',⁶ as they face discriminatory laws, state-sanctioned arbitrary arrests, mental and physical abuse from law enforcement and the public, denied access to basic necessities and violation of their basic human rights, all of which will be discussed in detail in the following sections.

The Human Rights Commission of Malaysia, SUHAKAM, published a study in 2019 involving 100 transgender respondents between the age of 18 - 70 years old based in Kuala Lumpur and Selangor where 93 respondents shared that they experienced violence because of their gender identity and expression by different actors including authorities, family members, intimate partners and members of the public.⁷ Transgender persons are not legally recognized thus it is harder for the community to report to the authorities as there is fear of being arrested for 'cross-dressing'. The lack of inclusion and the systemic discrimination faced by transgender community in Malaysia are some of the reasons why this marginalized community have been left behind in the country's pursuit of sustainable development.

2030 Agenda

The 2030 Agenda is a set of 17 Sustainable Development Goals (SDGs) that have been adopted by world leaders at the United Nations Sustainable Development Summit on 25 September 2015. It is the blueprint and a universal call to action to address the global challenges faced by the people, and it includes those related to poverty, inequality, health, education, peace and justice, by 2030. The 17 SDGs are integrated - to achieve success, we

⁵ --, 'Malaysia among worst countries in world for transgenders: report' (*Reuters*, 2014) <<https://www.reuters.com/article/us-malaysia-transgender/malaysia-among-worst-countries-in-world-for-transgenders-report-idUSKCN0HK07X20140925>>

⁶ *ibid.*

⁷ SUHAKAM, *Study on discrimination against transgender persons based in Kuala Lumpur and Selangor (Right to education, employment, healthcare, housing and dignity)* (Human Rights Commission of Malaysia, 2019) <<https://drive.google.com/file/d/1wEJ2pVGheprNhqFquoQtMNV01nmfbK48/view>>

must recognize that the action in one area will affect the outcome in other areas, and the development MUST ensure to include those hardest to reach.

The overarching principle of the 2030 Agenda is to “leave no one behind”⁸ and “reach the furthest behind first”,⁹ so that all lives can thrive.¹⁰ Even though the Agenda makes no reference to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC), inclusive terms such as “leave no one behind” has opened up new entry points for protecting the rights of LGBTI people who have often been overlooked within development initiatives.¹¹ However, it must be noted that consultants of this report have prominently criticised how the Agenda, which is drafted with inclusivity in mind, pervasively uses exclusive terms. The lack of mention of SOGIESC was constantly brought up by the consultants.

Included in the SDGs are goals to end poverty and inequality, ensure access to necessities and tackle the climate crisis. It is universal in nature and it applies to all countries.¹² Its goals are integrated and indivisible, which means failure to meet a certain goal would result in failure to meet other goals. The instrument is also grounded in human rights,¹³ compelling countries to comply with international human rights instruments.¹⁴ This position was reaffirmed in the Resolution adopted by the General Assembly on 15 Oct 2019.¹⁵

There is significant emphasis on peace, stating that there can be “no sustainable development without peace” in the Preamble. For it is only possible to permit the full realisation of human potential and the full participation of all people when there is a peaceful, just, and inclusive society where people are free from fear and violence. Therefore, the main SDG that this report will be looking at is SDG 16, which calls for the promotion of peaceful and inclusive societies for sustainable development, provision of access to justice for all and building of effective, accountable and inclusive institutions at all levels.¹⁶ For it is also with strong institutions that Malaysian transgender rights and Malaysia’s sustainable development can be ensured. Other SDGs that will be discussed are: Goal 1, 3, 4, 5, 8, 10 and 11.

As mentioned above, this report notes that the 2030 Agenda is drafted without explicit reference to SOGIESC and instead uses terms such as “sex”, “men and women”, which has been questioned as to why a document of inclusivity uses such exclusionary terms. Vague expressions such as “other status”, and “all” have fortunately created an entry point for the inclusion of marginalised communities not explicitly written in the document but

⁸ 2030 Agenda (n 4) [4].

⁹ *ibid.*

¹⁰ *ibid* [7].

¹¹ Written Submission to OHCHR by the LGBTI Stakeholder Group, (23 January 2019) <<https://www.ohchr.org/Documents/Issues/SDGS/2030/LGBTI%20Stakeholder%20Group.pdf>> accessed 9 June 2020

¹² 2030 Agenda (n 4) [5].

¹³ *ibid* [19].

¹⁴ *ibid* [18].

¹⁵ UNGA, Political declaration of the high level political forum on sustainable development convened under the auspices of the General Assembly, A/RES/74/4 <<https://undocs.org/en/A/RES/74/4>>

¹⁶ 2030 Agenda (n 4) Goal 16.

it has also, to the transgender community's disadvantage, been interpreted by the Malaysian government as allowing the exclusion of transgender persons in Malaysia.

It must also be noted that we are stepping into the final decade of realising the SDGs, therefore accelerated actions must be taken. This compels the government to implement policies that could work efficiently and effectively to realise multiple goals. The importance of Goal 16 has been repeatedly emphasised by both the former and current UN Resident Coordinators.¹⁷ This report looks at the many ways transgender Malaysians have been excluded by the government and the exclusion of their participation has been nothing but disadvantageous to the development of the country, as succinctly put by the ASEAN SOGIE Caucus: "*Why exclude them? They are productive members of the ASEAN community too!*".¹⁸

Reflections on 2017 VNR

Reporting on the implementation of Agenda 2030 is optional. On a positive note, Malaysia opted to submit its first Voluntary National Report (VNR) in 2017. In the 2017 report, focus was given to 8 SDGs, which were, SDGs 1, 2, 3, 5, 9, 14, 15 and 17, none of which involved the assessment of how the implementations have affected transgender persons.

The report highlighted Malaysia's efforts in aligning key elements of the SDGs with the Eleventh Malaysia Plan 2016-2020 (11MP), showcased achievements of the selected SDGs and provided the context of the nation's development journey, and lessons learned. The 11 MP is the last five-year national development plan before Malaysia completes the journey to become a developed nation by 2020 and *six strategic thrusts* identified to address the nation's challenges and opportunities.¹⁹

They also aim to comprehensively address the end-to-end needs of the people and the nation with statements that ensure *ALL* Malaysians will benefit from the economic growth and prosper, regardless of gender, ethnicity, socio-economic status, and/or geographic location. Malaysia's effort and commitment towards the SDGs is commendable BUT development is NOT just about economic growth or infrastructure.

A sustainable development plan must include inclusive community development strategies and policies that are dedicated in shaping and improving environmentally sound, economically productive and socially just public health outcomes so that citizens can

¹⁷ Michelle Gyles McDonnough, 'HR and SDGs: Realising the Global 2030 Agenda in the Context of the Asean Human Rights Declaration' (23 Sept 2016)

<<http://www.un.org.my/Images/articles/RC's%20Panel%20Speech%20-%20AICHR%20Youth%20Debate%20-%2023%20Sept%202016%20final.pdf>>; Stefan Priesner. 'The Celebration of International Day of Tolerance 2017' (16 Nov 2017)

<<http://www.un.org.my/Images/articles/RC's%20Panel%20Speech%20-%20AICHR%20Youth%20Debate%20-%2023%20Sept%202016%20final.pdf>>

¹⁸ Andrew Potts, 'ASEAN SOGIE Caucus highlights exclusion of LGBTIQs from ASEAN Anti-Violence Declaration' (17 October 2013) <[ASEAN SOGIE Caucus highlights exclusion of LGBTs from ...www.gaystarnews.com > article > asean-sogie-caucus-highlights-exclu...](http://www.gaystarnews.com/article/asean-sogie-caucus-highlights-exclu...)>

¹⁹ Malaysia Sustainable Development Goals Voluntary National Review 2017 <<https://sustainabledevelopment.un.org/content/documents/15881Malaysia.pdf>>

contribute to creating an environment that is healthy and rewarding throughout their life cycle.

For example, the UN World Commission on the Environment and Development defined sustainable development as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”. Each community must develop its own vision and plan of action, identifying its own unique characteristic and challenges, and recognizing that their economic, social structures and the health of the local environment are intertwined.

A sustainable and developed society understands that programs and policies that foster only one aspect of development while excluding others; be it human, social, or physical capital capacity, will not be able to maintain their progress. As such, ensuring the inclusion of the most marginalized and hardest to reach in the development process of a nation, believing that they have the capacity to resolve their problems and shape their own future is key to increase community cohesion and resilience towards a developed and innovative nation.

To date, there has been no indication of when the next Malaysia VNR would be submitted.

Methodology

This report is produced by reviewing existing legislation, policies, literature, news articles, secondary qualitative and quantitative data. The utilisation of secondary data is due to the lack of resources. Transgender persons and key figures of transgender rights activists in Malaysia were also consulted. ***It must be noted that the names of contributors and editors are not listed as there is fear of retributive investigation and/or punishment by authorities, just as how the Malaysian Department of Islamic Development (JAKIM) had reported an activist to the police over tweets questioning its conversion therapy exercises.²⁰ Malaysia’s excessive use of the Sedition Act 1948 to silence critics of its government also instills the fear of disclosure.***

This report is made up of three key assessments of the achievement of SDGs in Malaysia, particularly when the subject is transgender Malaysians. The report looks at the legal and legislative framework, how its implementation by other institutions has affected transgender citizens, and how it affects the achievement of the relevant SDGs.

Initial introduction and review of current government commitments to the SDG

In 2018, the Department of Statistics Malaysia published The Initial Assessment of the Sustainable Development Goals Indicators for Malaysia,²¹ in which they assessed the

²⁰ Emmanuel Santa Maria Chin, ‘False claims? You took conversion therapy tweets out of context, groups tell Jakim’ (*The Malay Mail Online*, 5 August 2020) <<https://www.malaymail.com/news/malaysia/2020/08/05/false-claims-you-took-lgbtq-conversion-therapy-tweets-out-of-context-groups/1891351>>

²¹ Department of Statistics, Malaysia, ‘The Initial Assessment of the Sustainable Development Goals Indicators for Malaysia 2018’ (December 2018) <https://www.dosm.gov.my/v1/uploads/files/4_Portal%20Content/2_%20Statistics/SDG/HTML/The%20Initial%20Assessment%20of%20The%20SDG%20Indicators%20for%20Malaysia%202018.pdf>

availability of data for the 244 indicators of the SDG and supplemented another 112 indicators that are contextual to Malaysia. However, no further activities in relation to the SDGs have been reported by the Department of Statistics.²²

With the pace of how quickly the governments have changed in the past three years since the production of its VNR and with the current government focusing on the relief of the COVID-19 pandemic, its follow up work since the VNR has been hard to access and assess.

²² Department of Statistics, Malaysia, 'Department's Activities in SDGs'
<https://www.dosm.gov.my/v1/index.php?r=column/cone&menu_id=bkU2MnUvOUNrVmZBRIZEjdXVXlzQT09>

“HUMANITY HAS THE ABILITY TO MAKE DEVELOPMENT SUSTAINABLE”²³

Review of Legal and Legislative Framework and Policies

Central to the realisation of the various SDGs is having a robust legal and legislative framework. In Malaysia, even though all citizens are subject to the same federal laws, the implementation of Syariah law (Islamic Law) means that Muslim citizens are subject to additional religious laws with regard to personal and family matters.²⁴ This section outlines various categories of laws that affect transgender Malaysians and its effects. The relevant discussion concerns: (a) the *fatwa* that prohibits sex reassignment surgery (‘SRS’); (b) the lack of gender recognition; (c) the ‘anti-cross-dressing’ laws; and (d) the lack of protective laws.

Sex Reassignment Surgery

Although there are prohibitions in Malaysia for Muslim transgender individuals to undergo sex reassignment surgery (SRS) several transgender persons underwent sex reassignment surgeries at their own will outside of Malaysia. This prohibition is the result of a *fatwa* (official legal opinion of Islamic Law) issued in 1982, which is not binding since it was not gazetted in any state.²⁵ Theoretically, it would mean there is no barrier for transgender persons to undergo SRS, however the issuance of the *fatwa* was enough to deter healthcare providers from providing such services. As a result, the lack of access to SRS affects both Muslim and non-Muslim transgender Malaysians.

The further implications of this law will be discussed in the following chapter discussing institutional trans-prejudice in Malaysia.

Gender Recognition

In Malaysia, both non-Muslim and Muslim transgender persons are unable to update their gender status on their National Registration Identity Card (NRIC) to reflect their self-identified gender. On the Malaysian identity card, there is a unique National Registration Identity Card Number which is used for identification and indexing purposes. The last number of the code represents the card-holders’ gender, with an odd number representing ‘male’ and an even number representing ‘female’.

According to a transgender activist, name changing for post-SRS transgender persons was available before 1996. In 1996, a policy was introduced stating that instead of changing their name, they could only add a new name in front of their birth name, resulting in two names representing different genders on the NRIC. According to the Registry

²³ UNGA, Report of the World Commission on Environment and Development: Our Common Future (1987) A/42/427 <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>>

²⁴ Che Omar bin Che Soh v Public Prosecutor (1988) 2 MLJ 55 [56E].

²⁵ Razak Ahmad, Hemananthani Sivanandam and Rahimy Rahim, ‘Islamic law expert: Fatwa valid only if states gazette it’ (*The Star*, 23 December 2015) <<https://www.thestar.com.my/news/nation/2015/12/23/islamic-law-expert-fatwa-valid-only-if-states-gazette-it/>>

Department, this was to prevent transgender women from marrying men as they were, in the eyes of the law, still men, and marriage between the same gender is prohibited.²⁶

The lack of legal gender recognition does not only mean everyday inconvenience but affects broader issues such as creating daily anxiety due to everyday harassment, application for bank loans, even buying a SIM card²⁷ and so on. The broader extent to which the lack of legal gender recognition affects transgender persons will be discussed later.

Anti-cross-dressing Laws

Transgender bodies are criminalised by the Malaysian legislature under both Federal law and Syariah state law. Non-Muslim transgender persons are subject to **s.21 of the Minor Offences Act 1995** which prohibits 'indecent behaviour'.²⁸ 'Indecent behaviour' is not defined in the statute, therefore allowing authorities discretionary powers for arbitrary arrests. Meanwhile, under the Islamic law, Muslim transgender persons are subject to anti-cross-dressing laws which exist in all 13 states that prohibit 'male person posing as a woman' and where three states also prohibit 'female person posing as man', all of which carry sentences of up to 3 years in jail and RM5,000 in fines.²⁹

Lack of protective laws

There is no Federal Law that punishes discriminatory behaviours against transgender persons in Malaysia. Even though the Federal Constitution which is the supreme law of the Federation³⁰ protects the fundamental human rights of the people, the Federal Court in 2015 decided that these protections for transgender citizens are inferior to procedural fairness,³¹ which will be explored further in discussing the institutional transgender prejudices in Malaysia.

Challenges

At present the new Malaysian government is largely a Muslim Malay-based coalition which clearly presents a stark lack of minority representation therefore the question begets – ***will the Malaysian Government be an all-inclusive government including her transgender citizens, despite the influence of Islam?***

In a statement made on March 7, 2018 on International Women's Day, SUHAKAM - the Human Rights Commission of Malaysia reiterated the need for the government to take concrete steps to fully advance women's rights in Malaysia and to treat gender mainstreaming as a matter of national priority, which the government delegation indicated is not the situation during Malaysia's recent review by the United Nations Committee on the

²⁶ Khartini Slamah, 'Mak Nyahs in Malaysia' in Geetanjali Misra and Radhiki Chandiramani, 'Sexuality, Gender and Rights: Exploring theory and practice in South and South East Asia' (Sage Publications, 2005) (110).

²⁷ Chiam, Z., Duffy, S., and González Gil, M., 'Trans Legal Mapping Report 2017: Recognition before the law' (Geneva: ILGA, November 2017).

²⁸ Minor Offences Act 1995, s.21.

²⁹ Justice for Sisters, 'Laws that criminalize gender identity and expression in Malaysia' <<https://justiceforsisters.wordpress.com/laws/>>

³⁰ Federal Constitution, Article 4(1).

³¹ Muhammad Juzaili Bin Mohd Khamis & others v State Government of Negeri Sembilan & others [2012].

Elimination of Discrimination against Women (CEDAW), despite gender equality being a key component of the Agenda on Sustainable Development.³²

Weak human rights structure is at the forefront of Malaysia's challenge in strengthening the country and her people. Malaysia has seen three different political parties in power since the adoption of the SDGs, however, what is consistent is that 'upholding' the rule of law is only at their convenience. The appalling disregard of transparency and the endorsement of double standards that have been in practise in all the ruling political parties leave Malaysians in dismay and frustration.

The Malaysian government's rejection of universal human rights is based on the belief that it is a Western concept and that the over-emphasis on the rights of the individual as opposed to the rights of the community³³ are alien to Malaysian traditions and cultures. Thus, the Malaysian government is of the view that the issue of protection of any other human rights in general, is a domestic issue within its exclusive control and that 'human rights are a new form of colonialism with the potential to destroy the inherent diversity of cultures and move global society towards cultural homogenization.'³⁴

Less than a decade away to 2030 it is essential that the government is honest and transparent with their weaknesses to achieve Agenda 2030. Critically significant progress can only be achieved through inclusion of minority groups, including transgender persons. The government must dispel disinformation and misinformation that can cause harm and approach the identified challenges through consultative rights-based approach policies and programming.

Recommendations

The new government should focus on promoting an inclusive Malaysia to ensure that the growth and development includes all Malaysians regardless of race, ethnicity, gender identity and expression, religion, socio-economic background, and other identity markers. What is most fundamental is to ensure that the government reaches out to the community that is most left behind in terms of acceptance and progress - the transgender community.

Policy makers must admit that transgender persons exist and that public attitudes towards transgender persons play an important role in determining the inclusion of transgender persons in the realm of public policy. We must remember that human rights are essential to achieve sustainable development as the principles and standards are strongly reflected in the 2030 Agenda for Sustainable Development. To be able to achieve Agenda 2030, we need to hold all national stakeholders accountable. Tokenism and superficial efforts cannot be condoned. The lack of gender diversity in the SDGs which translates into lived reality by the state governments need to be addressed as not only is it unethical BUT it undermines the notion that SDGs are about 'leaving no one behind'. A comprehensive and

³² Tan Sri Razali Ismail, 'Appeal to advance women's rights in Malaysia - Suhakam' (The Malay Mail Online, 7 March 2018)

<<https://www.malaymail.com/news/what-you-think/2018/03/07/appeal-to-advance-womens-rights-in-malaysia-suhakam/1592381>>

³³ Rohaida Nordin, 'Malaysian Perspective on Human Rights' (2018)

<<http://ejournal.ukm.my/juum/article/viewFile/7506/3028>>

³⁴ ibid 20.

holistic make-over of the policies and programs need to be introduced to ensure inclusivity and remove barriers that lead to segregation and disparities of any one community or society.

Inclusivity is crucial not only for a fairer society but also for a stronger economy. Most importantly, to include transgender persons in the consultation and decision-making process, 'Nothing About Us; Without Us'.

Review of Implementation

In 2015, the BN government promised to incorporate the SDGs into the national development plans. The BN government produced the first Voluntary National Report (VNR) in 2017³⁵ with an emphasis on eight SDGs and the aspect of 'eradicating poverty, promoting prosperity', and establishing the roadmap to implementation. The implementation of the 2030 Agenda is divided to three phases: Phase 1 (2016-2020), prioritising SDGs according to the 11th Malaysia Plan; Phase 2 (2021-2025), focusing on post-2020 goals and targets; and Phase 3 (2026-2030), remaining goals and targets in line with Malaysia's capacity and global role.³⁶ These phases are described in vague terms and any comprehensive report of the advancement of SDGs remains to be seen.

The governance structure was as follows, the Prime Minister chairs the National SDG Council which plans and monitors the implementation of SDGs, supported by the National Steering Committee (NSC) which is chaired by the Director General of the Economic Planning Unit (EPU). The NSC is composed of five Cluster Working Committees (CWCs), each having their own Task Force for each SDG. Each CWC includes a Section Head from the EPU, representatives from government ministries/ agencies, UN agencies, academics, civil society, youth representatives and the private sector.³⁷ The SDGs are incorporated into Malaysia's own five year development plan, the 11th Malaysia Plan. Due to the unavailability of information regarding the Committees, it is hard to ascertain if it includes any engagement of transgender Malaysians.

However, after the transition of power to the PH government in 2018, the EPU was dissolved and replaced with the Ministry of Economic Affairs (MEA). Before any concrete plans for the integration of SDGs into national development was announced or published by the MEA, the government had again switched governing parties. To date, there are no detailed plans regarding the integration of SDGs post 2018. The 12th Malaysia Plan (2021-2025) has yet to be tabled but it was revealed by the PH government MEA that it includes three dimensions, namely, Economic Empowerment, Environment Sustainability and Social Reengineering, and will be in line with the government's efforts to attain the SDGs by 2030.³⁸

It should be commended that an All-Party Parliamentary Group (APPG) on SDGs was formed and approved by the PH-led government in October 2019. This sparked a small hope for bipartisan cooperation in localising SDGs.³⁹ The APPG had also made the National CSO-SDG Alliance, an informal group of CSOs formed in 2015 committed to the achievement of SDGs, the secretariat. However, as mentioned above, the ruling party of Malaysia was changed in the mere five months since the APPG's conception therefore the status and activities of the APPG remains unclear.

³⁵ Voluntary National Report (n 19).

³⁶ *ibid* 44

³⁷ *ibid* 43.

³⁸ Keynote address by YB Dato' Seri Mohamad Azmin Ali (Minister of Economic Affairs), Kick-Off Conference of the Twelfth Malaysia Plan (2021-2025) (1 July 2019) <<https://www.mea.gov.my/sites/default/files//Kick%20Off%20Conference%20Of%20The%20Twelfth%20Malaysia%20Plan%202021-2025.pdf>>

³⁹ Denison Jayasooria, 'A small spark of hope for bipartisan cooperation in SDGs' *Malaysiakini* (3 January 2020) <<https://www.malaysiakini.com/news/505817>>

In relation to the National CSO-SDG Alliance, it is unclear which organisations are members of the Alliance since there is a lack of accessible information. However, upon consultation with transgender-led and transgender rights advocacy groups, it is clear that they were not included. This report will look at the limited official reports on the achievements of SDGs, secondary quantitative and qualitative data produced by non-governmental groups, each institutions' progress in realising the SDGs for transgender persons in Malaysia.

“NO ONE IS FREE UNTIL WE ARE ALL FREE”
- Dr Martin Luther King Jr

Institutional Trans-prejudice in Malaysia

Goal 16 has been deemed as the foundation to sustainable development as it is seen as truly transformative, formally linking, for the first time at the United Nations, development, peace, justice, and good governance. Some of the targets include significantly reducing all forms of violence, ending abuse and violence against children, promoting the rule of law in developing accountable and transparent institutions.

Transgender persons in Malaysia have always been excluded in any form of activities or development programs conducted by the government. In fact, in a recent development on the 12th of July 2020, the minister of religious affairs gave a ‘full licence’ to the Islamic authorities to ‘arrest’ and ‘educate’ the already oppressed gender minority.⁴⁰

That statement itself constituted a domino effect of fear among the transgender community and stigmatization by society, especially since it seems to embolden vigilante groups that seek to rid of transgender persons from the streets. Transgender persons are forced into invisibility with limited space to be seen or heard. This latest strategy to further demonise transgender persons seems to be succeeding hence there is considerable doubt that SDG 16 can be achieved at its current rate.

Former UN Special Rapporteur Philip Alston also acknowledged the possibility of long-term socioeconomic implications on transgender Malaysians due to the rejection and discrimination of transgender persons by institutions working in tandem.⁴¹ Therefore, it is of utmost importance that institutional trans-prejudice in Malaysia is addressed.

Judiciary

Since legislation is given meaning by the interpretation of the courts, the role of the judiciary in protecting transgender persons’ rights are important to review. Legal gender recognition requires a declaration from the High Court confirming the gender of the applicant. However, the Courts have continuously relied on the test laid out in **Corbett v Corbett**⁴² even when it has been overruled by the implementation of the **Gender Recognition Act 2004**. In relation to ‘anti-cross-dressing’ laws, the Court of Appeal in 2012⁴³ had declared them to be in breach of fundamental personal rights under the Federal Constitution and should therefore be declared void. However, at the Federal Court,⁴⁴ the apex Court, the Court was of the opinion that procedural fairness takes precedence over justice as the case was overruled on grounds of technicality with no mention of the rights breached.

⁴⁰ --, ‘Minister gives ‘full licence’ for authorities to act against transgenders’ *Malaysiakini* (10 July 2020) <<https://www.malaysiakini.com/news/533801>>

⁴¹ UNGA, “Visit to Malaysia: Report of the Special Rapporteur on extreme poverty and human rights” A/HRC/44/40/Add.1 <<https://undocs.org/en/A/HRC/44/40/Add.1>>, 16 [73]

⁴² Corbett v Corbett [1971].

⁴³ Muhammad Juzaili (n 31).

⁴⁴ State Government of Negeri Sembilan & others v Muhammad Juzaili Bin Mohd Khamis & others [2015].

Law Enforcement

With laws that criminalise transgender persons in place, the police and religious officers are essentially sanctioned by the State to abuse a transgender person. Federal Territory Islamic Religion Department (JAWI) officers often conduct raids on places where transgender persons gather. Transgender persons have been arrested for attending weddings,⁴⁵ beauty contests⁴⁶ and simply taking space in the public sphere.⁴⁷ In the SUHAKAM report, respondents accounted physical, verbal, emotional and sexual violence from law enforcement and members of the public.⁴⁸ This indicates that law enforcement has not only perpetrated abuse but also failed to protect transgender persons from violence from others.

Healthcare

Without proper identification, it has been a challenge for transgender persons to access basic health care necessities such as insurance, health cards and so on. Due to the stigmatisation, transgender persons are also subjected to unnecessary hostility from health care providers, such as deadnaming, being laughed at and called derogatory terms by hospital staff.⁴⁹ What is most alarming is that in the 2019 report published by the Human Rights Commission of Malaysia, 12 out of 100 transgender and intersex participants noted they were refused to be examined by healthcare professionals at least once.⁵⁰ Not only so, healthcare professionals have been reported to ask intrusive and irrelevant questions regarding transgender persons' sex life and suggesting conversion therapy.⁵¹ This greatly deters transgender persons from seeking healthcare and would cause irreparable damage as there are reported cases of transgender persons performing self-diagnosis and self-medicalisation, causing overdose and various side effects. One consultant shared their personal experience with self-prescribing hormone blockers that led to depression. What the healthcare industry has caused is that transgender persons are pushed further into the corner and left alone.

Education

Transgender persons are either fully restricted from accessing education or reduced to being targets of abuse just because their NRIC does not align with their gender expression. In the SUHAKAM report, 55 of 100 respondents admitted to having felt fearful and 72 respondents reported to have suffered bullying while attending educational institutions.⁵² Respondents also detailed violence suffered from peers, administrators, and lecturers. These incidents no doubt traumatise transgender persons and make them lose interest in further education causing transgender persons to be unfairly and involuntarily

⁴⁵ --, 'Sixteen transgender women has been jailed in Malaysia' (*Pink News*, 11 June 2014) <<https://www.pinknews.co.uk/2014/06/11/malaysia-16-trans-women-jailed-after-arrest-at-wedding/>>

⁴⁶ Boo Su Lyn, 'JAWI raids 'transgender 'beauty pageant' for breaking fatwa' (*Malay Mail Online*, 4 April 2016) <<https://www.malaymail.com/news/malaysia/2016/04/04/jawi-raids-transgender-beauty-pageant-for-breaking-fatwa/1093293>>

⁴⁷ SUHAKAM (n 7) 89.

⁴⁸ *ibid* 87.

⁴⁹ *ibid* 71.

⁵⁰ *ibid* 72.

⁵¹ *ibid* 73.

⁵² *ibid* 43.

excluded from the educational system. This exclusion would also mean an exclusion from potentially better job opportunities and career prospects. It must be noted that 97 out of 100 respondents from the SUHAKAM report stated that they were either already aware or were questioning their gender identity and/ or sexual orientation while in educational systems,⁵³ of which 87 respondents started being aware before secondary school. This clearly dictates how important it is to have a safe and non-judgmental education environment for transgender youth from the beginning of their education journey.

Employment

Due to Malaysia's legislative framework as discussed above, transgender persons are driven into the shadows and have inevitably become unemployable, not based on their skills but purely because of their gender identity. According to the SUHAKAM report, 64 transgender persons are employed full time with a portion also taking part time jobs and ten respondents were unemployed.⁵⁴ Of the persons working full time jobs, only four were employed in the public sector, while 25 were employed in the private sector and 20 were sex workers.⁵⁵ This indicates that government sectors, which potentially provide more stable benefits, are less willing to employ transgender persons and as such, transgender persons have to seek employment in the private sector or more precarious work. Respondents have also expressed that to avoid discrimination, they have chosen to be self-employed.⁵⁶

It should also be mentioned that 34 respondents have an average monthly income of under RM1,501,⁵⁷ which is lower than the current National Poverty Line Income (PLI).⁵⁸

Media

There has been a rising tide of conservatism in Malaysia especially so at present with the current coalition consisting of an Islamist political party. The media also contributes to the continued dehumanisation and demonisation of the transgender community in Malaysia using religion as the basis of the discrimination. When reporting about transgender persons, news outlets continue to use incorrect or demeaning labels such as "man in woman's clothing" and other derogatory terms, deadnaming said person, publishing irrelevant facts, highlighting and sensationalising "the transgender lifestyle" as a social problem that needs to be addressed thereby increasing hatred towards the transgender community. This mischaracterisation of transgender persons as cross-dressers further fuels the belief that transgender identity is something that can be cured, and that one can be convinced to stop being transgender.

Conclusion

Transgender persons are excluded from their full participation in and contribution to society as they are considered to be 'deviant' and need to be 'corrected'. Despite the growing global awareness of the struggles transgender persons face, for transgender

⁵³ ibid 42.

⁵⁴ ibid 50.

⁵⁵ ibid.

⁵⁶ ibid 52.

⁵⁷ ibid 53.

⁵⁸ --, 'Govt revises poverty line income from RM908 to RM2,208' (*The Star*, 10 July 2020)

<<https://www.thestar.com.my/news/nation/2020/07/10/govt-revises-poverty-line-income-from-rm980-to-rm2208>>

persons in Malaysia, that growing awareness in the country has led to further stigmatization, discrimination and harassment.

Failure of the state to recognize the existence of this community and constant public demonisation and humiliation targeted towards transgender persons have made the Malaysian society decide that transgender persons are of no value and should be ostracized.

Progress in SDGs

Goal 1: End poverty in all its forms everywhere

The government announced the Movement Control Order (MCO) on 18th March 2020 and Conditional Movement Control Order (CMCO) on 4th May 2020, to help stem the spread of COVID-19. Subsequently on 10th June 2020, the Recovery Movement Control Order (RMCO) was put in place to ease into the recovery of the economy. The MCO prevented travel of more than 10km from one's home. Residents were only allowed to go out in an emergency or to buy groceries, food, or medicine. No more than one person was allowed in a car at one time. Only essential businesses or services - banks, selected restaurants, pharmacies, and supermarkets - could open until 7 pm nightly. They were only allowed to operate with skeletal staff, while the rest were told to take a no-pay leave or work-from-home.

The raft of measures announced by the Malaysian government during COVID-19 crisis however continued to have a huge impact on the country's poor. Stores and morning markets which were often a mainstay of the poorest population's income, were ordered shut. Some industries and factories were forced to terminate their employees or part-time workers who mainly consisted of Malaysia's bottom 40 percent (B40) as a result of the MCO restrictions.

We have seen an increase of Malaysians seeking assistance in the form of daily meals or food provisions from NGOs in Malaysia. NGOs have been scrambling to get resources to provide the said demand. For transgender persons, two local NGOs set up a fund-raising call to assist with provisions and residential (home/apartment room) rental payments for those in multiple areas since the government's aid proved to be insufficient.

What we need to understand is that, regardless of the different Orders in place, transgender persons have suffered tremendously. Self-employed transgender persons, wedding planners and make-up artists, lost earning opportunities; the employed few lost jobs; all unable to make ends meet.

In July 2020 Malaysia was commended for raising its Poverty Line Income from RM908 to RM2,208.⁵⁹ The cause of the dramatic increase in the figure was that previously the configuration was done employing a method from 2005. The outdated method, resulting in an unrealistic figure, has already caused much damage, since the study for a new PLI methodology only started in March 2019.⁶⁰ Former UN Special Rapporteur noted on extreme poverty and human rights that the use of unrealistic poverty line "obscures the more troubling reality that millions of people scrape by on very low incomes with tenuous access to food, shelter, education and health care, and limited ability to exercise civil and political rights."⁶¹ He also noted that it aggravates problems by the government justifying underinvestment in poverty reduction, analysis of catalysts of poverty and allowing a "...

⁵⁹ Bernama, 'Malaysia praised by ex-UN official for raising poverty line' (*New Straits Times*, 12 July 2020) <<https://www.nst.com.my/news/nation/2020/07/607944/malaysia-praised-ex-un-official-raising-poverty-line>>

⁶⁰ Joseph Kaos and Fatimah Zainal, 'National poverty line revised' (*The Star*, 11 July 2020) <<https://www.thestar.com.my/news/nation/2020/07/10/govt-revises-poverty-line-income-from-rm980-to-rm2208>>

⁶¹ Visit to Malaysia (n 41) [7].

poorly targeted, inadequately funded social protection system to limp haplessly along.”⁶² He also stated that millions in poverty were systematically excluded from official poverty figures, neglected by policymakers and often barred from access to basic services.⁶³ As we have discussed, transgender persons do not have legal identity as their identified gender, therefore, transgender Malaysians’ needs are always overlooked by officials.

Goal 1.3 *implores the implementation of “nationally appropriate social protections systems and measures for all”*. The importance of such measures are highlighted in times like these, as due to the abovementioned systemic trans-prejudice, most transgender Malaysians do not have sufficient savings to support themselves during unforeseen circumstances and income shocks such as those caused by the current global pandemic.

Even though Malaysia’s expenditure on social protection in 2017 was lower than all SEA countries for which data was available,⁶⁴ there are myriads of social protection systems available, for example the Social Security Organisation (SOCSO), Employees Provident Fund (EPF), Armed Forces Board Fund (LTAT), Public Service Pension Fund (KWAP) and Private Retirement Schemes (PRS).⁶⁵ As suggested by their names, the eligibility of such protections are dependent on the status of employment of the person, with the exception of PRS, which is voluntary.

Transgender persons are unable to access such protections due to priorly mentioned trans-prejudice in the employment sector. Even for those who do participate in the labour market, most are self-employed or in the informal sector where they have lower rates of EPF coverage and lower balances compared to their cisgender counterparts.

In response to the COVID-19 crisis, additional social protection measures were put in place such as the Prihatin package and Penjana plan. It was stated by our consultants that even though application to these stimulus packages were online, which did not seem to pose a problem for transgender persons, the provision packages provided by welfare agencies required the presence of persons seeking help, and the prospect of an in-person interaction may deter transgender persons from seeking help. Our consultants also mentioned that there are no specific governmental departments catering to transgender persons’ needs, even though there were departments in charge of other minority groups such as differently abled persons and the homeless.

The Department of Social Welfare (JKM), under the Ministry of Women, Family and Community Development (KPWKM), have various financial assistance schemes available for Malaysian citizens according to their needs and eligibility based on whether they are part of JKM’s target group. The scheme most likely applicable for transgender persons is the Public Assistance (Bantuan Am) scheme. The objective of said scheme is to assist

⁶² *ibid* [8].

⁶³ *ibid* [13].

⁶⁴ *ibid* [33].

⁶⁵ World Bank, *Malaysia Economic Monitor: Surviving the Storm* (June 2020)

<<https://openknowledge.worldbank.org/bitstream/handle/10986/33960/149872.pdf?sequence=4&isAllowed=y>> 60.

underprivileged target groups and lighten their financial burden.⁶⁶ However, JKM does not specify transgender persons as part of this target group⁶⁷ even though there is without doubt that transgender persons are an underprivileged group. Our consultants have also raised the issue that JKM has different divisions that handle specific target groups such as the Children Division, Elderly Division and so on, but do not have a division for transgender persons. This clearly shows how the Malaysian government has failed to recognise its transgender citizens need in relation to social insurance measures. It must also be noted that the World Bank found that it does not provide enough foundation to provide a guaranteed minimum of protection to all those in need.⁶⁸

An alternative and voluntary fund controlled by the State Islamic Religious Councils (SIRCs) is Zakat, a main tenet of Islam.⁶⁹ There are limited categories of people who are eligible beneficiaries, among them are the people that are oppressed (al-Riqab). However, it seems that no transgender Muslims have received such assistance and it is unlikely SIRCs would be willing to assist transgender persons since Islamic authoritative figures have continuously made their disapproval toward the transgender community publicly known.

It must also be mentioned that social protection deliveries may require nine phases, from outreach to registration, assessments and eventually the delivery.⁷⁰ Transgender persons might be deterred as this would mean there will be need for unnecessary intrusive scrutiny by officials. In short, the Malaysian government has not considered transgender persons while planning their social protections systems and it seems highly unlikely that it will meet **Goal 1.3** by 2030.

***Goal 1.4** provides that States should ensure that all persons, in particular the poor and vulnerable, have equal rights to economic resources and access to “...basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.”*

Economic resources encompass various forms of resources including human and non-human resources. In terms of labour, it has been proven that many transgender persons are not able to access employment due to the incongruence of their gender expression and their NRIC. Without employment, access to economic resources are scarce and most transgender persons are not able to purchase basic goods and access basic services. In terms of property, many are not able to afford housing. Low-cost housing is available in Malaysia, but many transgender persons are deterred since application would mean they have to endure scrutiny because of their NRIC.

In relation to microfinance, our consultants have pointed out there is no access to loans unless using deadname as per their NRIC.

⁶⁶ Department of Social Welfare, Bantuan Am
<<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=cWZzb0pFRys1M0RoMktqUW5va0NVZz09>>

⁶⁷ Department of Social Welfare, Target Group
<<http://www.jkm.gov.my/jkm/index.php?r=portal/full&id=K3grQ3pRNVJUNGo2L2J4c1NKeXlxUT09>>

⁶⁸ World Bank, *Surviving the Storm* (n 65) 77.

⁶⁹ *ibid* 70.

⁷⁰ *ibid* 78.

Goal 1.5 implores States to build the resilience of the poor and vulnerable and reduce their vulnerability to different shocks and disasters. It is evident that Malaysia has failed by looking at the current COVID-19 crisis. This Goal is very much interlinked with **Goal 1.3** and significant discussion can be referred above. Without proper protective measures and employment opportunities in place, citizens will only suffer in face of unforeseeable shocks and disasters.

Recommendations

As provided by **Goal 1.b**, the Malaysian government should *create sound policy frameworks at all levels, based on pro-poor and gender sensitive development strategies, to support accelerated investment in poverty eradication actions*. In Alston's report, he suggested that there should be better targeted and implemented fiscal policies that would ensure the Malaysian government to create a "...comprehensive and integrated social protection policy that will provide for all Malaysians..."⁷¹ To be able to do so, Malaysia must first recognise that the transgender community have been left behind in the social protection development process by not including them in official data and studies. Funding must be provided to expand research on transgender-specific hardships and needs.

The World Bank report noted that there was no national social protection masterplan available in Malaysia and suggested to develop said plan which provides actionable steps to increase its coverage and depth of social assistance.⁷² The objective should be to move towards a guaranteed minimum for those in need. The masterplan must set sufficient benefit levels, incentivise work and, most importantly be responsive to changing circumstances by being fiscally sustainable. Suggested ways to develop an equitable and effective social assistance system include better coordination of programme design, targeted approaches, front-end service delivery and promotion of productive employment.⁷³

Noting that transgender persons are less likely to seek help from governmental authorities due to their hostility, it is also suggested that the Malaysian government should increase funding for grassroot organisations which already provide support to the transgender community.

Goal 3: Ensure healthy lives and promote well-being for all at all ages

While Malaysia has made great strides in controlling communicable diseases for the past few years,⁷⁴ efforts to control COVID-19 remains shameful, results of "second tier" health issues and health financing that the previous government have committed to improving⁷⁵ have yet to be seen. In its commitment to "better delivery of healthcare services for vulnerable groups" which seems to be an exhaustive list there is no mention of transgender persons.

⁷¹ Visit to Malaysia (n 41) [34].

⁷² *Surviving the Storm* (n 65) 91.

⁷³ *ibid.*

⁷⁴ Voluntary National Review (n 19) 19.

⁷⁵ *ibid.*

Goal 3.4 declared that by 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being.⁷⁶ Mental health crosscuts most SDGs and has been given explicit focus in two SDG targets. Malaysia will not be able to achieve the target with the criminalisation of attempted suicide still in place.⁷⁷ This law has proven to be damaging as being prosecuted often leads to more stress. WHO has also reported that a previous suicide attempt is one of the strongest risk factor for suicide.⁷⁸ Though the law is applicable to all Malaysians, it disproportionately affects transgender persons who are more susceptible to abuse due to stigmatisation and less likely to be able and/or willing to seek help due to hostility from the health care sector. According to the SUHAKAM report, over 70% of transgender respondents experience anxiety and stress; 31% have suicidal ideation and 21% have attempted suicide.⁷⁹

To achieve the goal intended, Malaysia must destigmatize transgender identities and mental illnesses while promoting and providing accessible and quality mental health care for everyone. They must invest in mental health campaigns to prevent suicides, reduce stigma, and improve treatment pertaining to mental health and well-being.

On the topic of mental health, our consultants have also pointed out that transgender youths' well-being must be guaranteed as well. Many transgender persons face mental anguish as they start questioning their gender identity in their youth, and gender identity is associated with negative discourse and bullying for gender-non-conforming behaviour. There is no doubt non-judgmental sex education can reduce such anguish, but with Malaysia's track record in sex education, it is highly doubtful that the Malaysian government can provide such a change.

Goal 3.7 demands Member States to integrate reproductive health into national strategies and programmes and ensure universal access to sexual and reproductive healthcare (SRHC) services, including family planning, by 2030. The success of the goal is supposed to be partly indicated by the "proportion of women of reproductive age ... who have their need for family planning satisfied with modern methods"⁸⁰ but sexual and reproductive health-care services should not be confined to the binary. Communities in each country should identify and develop strategies and programmes based on their own community priorities as each community has different needs with regards to SRHC.

What is most concerning in Malaysia is the utter lack of interest in understanding and developing a comprehensive and culturally competent reproductive care system for transgender persons. Transgender persons are quite diverse in their need for gender transition-related services, not all want to go through hormone therapy or surgery. The reproductive and sexual health needs of transgender men are often ignored due to the lack of understanding of the need of transgender persons. Some transgender men may elect to

⁷⁶ Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development (2015) A/RES/71/313, 3.4.2.

⁷⁷ Penal Code, s.309.

⁷⁸ Preeti Jha, 'Will Malaysia End Its Archaic Suicide Law?' (26 June 2019) <<https://thediomat.com/2019/06/will-malaysia-end-its-archaic-suicide-law/>>

⁷⁹ SUHAKAM (n 7) 75.

⁸⁰ Global indicator (n 76) 7.3.1

have the female reproductive organs intact and choose to get pregnant but due to the fear of prejudice and social stigma, seeking consultation on healthcare becomes irrelevant.

What we fail to realize is that, in order to ensure universal access to sexual and reproductive healthcare services, we have to admit that we need to overcome the prejudice and social stigma that are aimed at transgender persons resulting in stress and trauma that is not commonly experienced by most heterosexual, gender conforming people.

Goal 3.8 strives for universal health coverage, with financial risk protection and access to quality essential healthcare services and safe, effective, quality, and affordable essential medicines and vaccines. Although there are no laws prohibiting health insurance plans from covering transgender persons but the reality that the appearance of a transgender person does not correspond with their identification becomes the ultimate barrier in getting a health coverage.

For insurance agencies a transgender person is considered high risk therefore more stringent tests need to be conducted before approval of the insurance coverage. According to the study by SUHAKAM, out of 100 respondents, 60% who chose not to subscribe to insurance schemes because it does not cover transgender specific health care needs, they are concerned about disclosing their gender identity or they experience financial problems.⁸¹

Recommendations

Leaving no one behind is both an overarching objective of the 2030 Agenda and is a prerequisite for achieving the 17 SDGs. The principle implies targeting efforts at populations that are experiencing multiple, intersecting disadvantages linked to socio-economic conditions, governance mechanisms and discriminatory policies as well as reaching the furthest behind first.

The focus of HIV prevention efforts with the transgender community in Malaysia has been on condom distribution and promotion and increasing HIV knowledge however there is a need to develop innovative intervention strategies that build upon existing efforts to respond to the unique reality of transgender persons and to address the social and structural context of stigma and discrimination around “non-normative” sexual and gender identities.

A comprehensive research needs to be conducted to have better understanding of the context surrounding transgender vulnerability and the design of such strategies must address the social marginalization and provide access to comprehensive transgender health-care services.

As **Goal 3.c** suggests, there must be substantial increase in health financing, development, and training in the health workforce therefore better understanding of transgender specific needs must be integrated into the training programmes of health workers. International documents of recommended guidelines should be considered, for example the Standards of Care document published by the World Professional Association

⁸¹ SUHAKAM (n 7) 81.

for Transgender Health.⁸² As for health financing, due to the hostile climate that exists, financing should be made to community-based and LGBTI-led organisations that the transgender community trusts. Also, increasing financing for specifically training transgender health workers not only benefits the transgender community seeking for help but also helps build career prospects for transgender persons, who we have established suffers from systemic discrimination.

Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

In June 2017, an 18-year-old boy was allegedly assaulted for being effeminate by 8 teenagers. He died.⁸³ In 2011, 25-year-old Aleesha Farhana expressed her desire to further her studies and for this reason, she went to court to change her name and gender, unfortunately the court dismissed her application. She died.⁸⁴

All government schools and most higher education facilities in Malaysia enforce and promote gender stereotypes and conformity through dress codes, gender specific facilities and even in textbooks. Women are shown or seen to be mostly involved in domestic and indoor activities and the characters are predominantly introverted and passive while men have a higher presence in professional roles. This type of indoctrination without giving room to those who are different leads to many cases of bullying and harassment for many transgender students. Discriminatory school environments disrupt the future of a transgender student's education and bullying in that environment affects the mental and emotional development.

Tying in with **Goal 1**, education is crucial to lifting people out of poverty. In 2018, the Department of Statistics reported that the median monthly income for people without formal education was RM1,100 while for people with tertiary education was RM3,400.⁸⁵

Goal 4.3 demands equal access to quality education. As we have seen in Aleesha's case, she was denied access and died of a heartbreak, showing just how important access to education is to people. To allow access should also mean that one can be themselves while pursuing their education, constant deadnaming and being forced to suppress one's true gender identity can only lead to harmful effects on one's mental health. Quality

⁸² The World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender and Gender Nonconforming People* <https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf>

⁸³ Sadho Ram, '4 chilling facts about the 18-year-old Penang boy who was tortured by former schoolmates' (Says, 12 June 2017) <<https://says.com/my/news/chilling-facts-about-the-18-year-old-boy-who-was-tortured-by-former-schoolmate>> <<https://www.thestar.com.my/news/nation/2017/06/16/teen-bully-victim-nhaveen-dies-family-and-friends-fill-hospital-grounds-grieving-and-fuming-over-boy/>>

⁸⁴ --, 'The Star: Aleesha and the Sex Change Case' (LoyarBurok, 1 August 2011) <<https://www.loyarburok.com/2011/08/01/court-aleesha-farhana-change-gender>>

⁸⁵ Department of Statistics, *Press Release: Salaries and Wages Survey Report, Malaysia, 2017* (8 May 2018) <https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=157&bul_id=NzFoZURoenJHeFBhdCt0bXJFOWY3dz09&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09>

education cannot be achieved when the education system is hostile against gender non-conforming individuals and violence is pervasive against them every day.

Recommendations

As stated in **Target 4.5 and 4.a** - Eliminating gender disparities and achieving inclusive and quality education for all is one of the most powerful and proven strategies for development. Children are more likely to thrive and reach their full potential when they feel safe, included, and understood. By creating an inclusive curriculum, students learn the importance of acceptance. This approach of inclusion will ensure that our young will thrive, regardless of their sexual orientation or gender.

Teachers are the nutrients to provide a healthy growth for the children and increasing the supply and capability of teachers through training and exchange programs would create a pool of empathetic, thoughtful and authentic teachers who will guide our children to a better future as stated in **4.c**.

Goal 5: Achieve gender equality and empower all women and girls

This goal was agreed upon and it should apply to ALL women and girls everywhere. Unfortunately, Malaysia's strict conformity to the binary classification, that is, male or female, leaves no room for compromise which leads to discrimination towards those who do not conform to gender norms. With the exclusion of the mere mention of "LGBT" in the SDGs, it allows the state and the society to ostracize the transgender community by not acknowledging our specific needs and not providing equal opportunities in all aspect of live which are holding transgender persons back.

Goal 5.2 calls for Member States to eliminate all forms of violence against all women and girls in the public and private spheres including sexual and other exploitations. In the SUHAKAM report, 93 out of 100 respondents reported that they experienced violence because of their gender identity and expression. Aggravators include authorities, family members, intimate partners, and members of the public.⁸⁶ It has been established that transgender persons are targeted in public due to implemented laws. Transgender persons also face harassment in everyday life, not only by law enforcement but by the others as well. In private spheres, transgender persons who are victims of domestic abuse are unlikely to come forward due to hostility from police as it is highly likely they will be ridiculed rather than assisted by the police. Also, as many transgender persons are sex workers, they are unlikely to report abuse from clients due to Malaysia's conservative view of sex work. Transgender sex workers are also likely to be exploited by employers ("pimps") and have no avenue for support.

Goal 5.5 is to ensure all women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic, and public life. Indicators for the goal include the proportion of seats held by women in public offices and women in managerial positions. In Malaysia, women are greatly underrepresented in

⁸⁶ SUHAKAM (n 7) 87.

parliament, holding only 14.41 per cent of seats,⁸⁷ and are all cisgender women. Transgender women are not recognised by Malaysia as women let alone be allowed to run for parliamentary seats. The closest to a transgender Malaysian came to holding a public office was Hazreen Shaik Daud, who was the political secretary to a Malaysian political party assemblyman.⁸⁸ In terms of managerial positions, transgender women's access to basic employment opportunities are already barred by systemic and societal barriers, therefore it is incredibly hard for transgender women to reach managerial positions.

There is much to be done in tackling harmful gender stereotypes which requires an approach that is consultative and inclusive with the whole community and prioritising those excluded especially the transgender population.

Recommendations

To advance gender equality in Malaysia, measures should be taken to expand the definition of 'gender' used in policies and programmes to be 'trans-inclusive' and to address gender stereotyping, sexual harassments, equal opportunities among other pressing issues.

Capturing these changes requires not just a vision and a will but also proactive and focused measures by the governments, companies, and societies. Education and awareness are crucial to remove gender bias and encourage a change in attitude among policymakers, business leaders and the society to smooth the path towards gender parity.

Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

The SDGs provide a universal framework for countries 'to promote prosperity while protecting the planet'. Malaysia aligned its 2016-2020 country development plan with the SDGs and are committed to ensuring solid economic growth and equitable opportunities for all segments of the society. However, these commitments were made before COVID-19 global pandemic erupted.

On March 18, 2020, Malaysia entered a partial lockdown. The movement Control Order (MCO) has now entered phase four, preventing an exponential rise of cases. The impact of the pandemic is clear. Many businesses had to suspend their operations, facing severe cash flow problems and imminent closure. Transgender persons who are employed or self-employed face the possibility of job losses and are forced to dig deep into their meagre savings.

Goal 8.5 asks for the achievement of full and productive employment and decent work for all women and men and equal pay for work of equal value while **Goal 8.8** calls for protection of labour rights and promotion of safe and secure working environments for all and in particular those in precarious employment. In relation to existing conditions for transgender workers, many have a hard time to access secure employment and many more

⁸⁷ World Bank, 'Proportion of seats held by women in national parliaments' <<https://data.worldbank.org/indicator/SG.GEN.PARL.ZS>>

⁸⁸ Mong Palatino, 'Hazreen Shaik Daud: Malaysia's First Transgender in Politics' (*Global Voices*, 28 July 2013) <<https://globalvoices.org/2013/07/28/hazreen-shaik-daud-malaysias-first-transgender-in-politics/>>

are driven to sex work. In the SUHAKAM report, sex work was the second most frequent full-time and part-time job for respondents.⁸⁹ When the Agenda calls for decent work, would that include sex work as well? As an Agenda that calls for universal inclusivity, sex work should not be excluded. To create a safe environment for sex work would be to decriminalise sex work, cease needless police raids and destigmatise sex work. Criminalisation of sex work only allows continued exploitation of sex workers whilst abusive clients and pimps remain “unharmred”.

In relation to sustainable employment opportunities, especially during these trying times of the COVID-19 pandemic, the World Bank reports that businesses will move to a more sustainable model where digital presence is the new normal, therefore, a likely increase in demand for digital skills.⁹⁰ Also, due to the increased and urgent need for reemployment of displaced workers, there is increased demand for skills-building programs that can enhance workers’ digital and also socio-economic skills.⁹¹

Recommendations

The government needs to recognize the existing linkages among poverty eradication, full and productive employment, and decent work for all. It is pivotal to highlight and include in the economic policies the importance of providing assistance to increase income-generating employment and generate employment especially for those who are left behind. Just and democratic policies are essential in ensuring and sustaining economic growth, poverty eradication and employment creation.

To ensure an inclusive, sustainable workforce, there is a pressing need for the Malaysian Parliament to implement and enforce an anti-discrimination legislation. A federal legislation with robust enforcement could protect employees against discrimination due to any identity markers, including gender identity and expression.

Goal 10: Reduce inequality within and among countries

This goal came at a time where inequalities and large disparities remain in income and wealth, and in access to healthcare, food, education, land, clean water and other assets and resources essential for living a full and dignified life. The 10 targets within SDG 10 cast a wide net to capture multiple causes of inequality and to ensure that no group or individual is left behind.

Inequality has the effect of limiting a group’s social status, class, and circle. It emerges through a society’s understanding of ‘appropriate’ gender roles, or through the prevalence of social stereotyping. It is also established through discriminatory legislation, between ethnicities, groups, and countries. The disparities in the distribution of economic assets and income as well as between the overall quality and luxury of an individual’s existence within a society are also part inequality. As transgender persons are excluded from or receive limited access to healthcare, food, education, employment, housing and

⁸⁹ SUHAKAM (n 7) 51.

⁹⁰ Surviving the Storm (n 65) 89.

⁹¹ *ibid.*

other basic needs, inclusive development strategies should be formalised as to ensure that they are part of the development of the country.

Goal 10.2 is to empower and promote the social, economic, and political inclusion for all. Malaysia continues to publicly call for exclusion of transgender persons. Even though Islamic authoritative figures and former ministers have made attempts to listen to the transgender community's needs,^{92 93} all have later turned their backs on their promises and called for exclusion, giving 'full licence' to act against transgender persons and stating that actions taken by religious authorities against transgender persons would safeguard the interest of Islam,⁹⁴ thereby painting transgender individuals as criminals, deviants and sinners who have strayed from the teachings of Islam. Such a narrative only continues to perpetrate the negative discourse around transgender bodies and encourage social exclusion. When transgender persons' rights to occupy public space are already seen as a threat and worthy of exclusion, what more the economic and political exclusion.

Recommendations

Goal 10.3 and 10.4 calls for legislative reforms and the adoption of fiscal, wage and social protection policies to ensure greater equality. One of the most important challenges in Malaysia with regards to transgender persons is the lack of national data on social exclusion based on gender and sexual orientation. To achieve Goal 10, local national development actors can lobby national governments to include disaggregated data of transgender persons appropriately and safely. Consult transgender activists within the country and work together according to their needs and strategies.

Also, the government must establish programmes and projects that explicitly integrate issues of transgender persons and does not discriminate one's gender and sexual orientation, in all spheres of development. Sensitize stakeholders, partners, and staff to the 'leave no one behind' principles on how it applies to everyone including transgender persons and other minorities.

Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable

Transgender persons face discrimination and ostracization in almost all aspect of their lives. The inability to access safe and gender sensitive education led many to drop out and this becomes an obstruction for them to gain employment. Even when they do get the opportunity to work, not having their gender legally recognized creates other challenges from within the company. This situation may cause unemployment which may cause homelessness or poverty and reduce the financial independence of transgender persons.

The cost of housing directly affects one's ability to cope with other household expenditures such as food, health, education and so on. When the cost of housing is too

⁹² Jonathan Edward, 'FT Mufti backs call to revisit edict against transgenders' (The Malay Mail Online, 15 Feb 2018) <<https://www.malaymail.com/news/malaysia/2018/02/15/ft-mufti-backs-call-to-review-edict-against-transgenders/1578347>>

⁹³ Joseph Kaos Jr, 'Mujahid: Stop picking on transgenders' (The Star, 11 Aug 2018) <<https://www.thestar.com.my/news/nation/2018/08/11/mujahid-stop-picking-on-transgenders/>>

⁹⁴ --, 'Action against Nur Sajat will be to safeguard Islam, says Mujahid' (FMT, 9 Feb 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/02/09/action-against-nur-sajat-will-be-to-safeguard-islam-says-mujahid/>>

high, citizens are forced to compromise other expenditures to remain sheltered. Housing costs rose 87 per cent between 2010 and 2018, outpacing the 59 per cent rise in wages.⁹⁵ Housing in Malaysia is overall categorised as “seriously unaffordable” with several states being “severely unaffordable”.⁹⁶ Even if housing has become affordable, transgender persons are also barred from access due to the incongruity of their NRIC and gender expression.⁹⁷ Some have recounted that while looking for places to rent, landlords have given the initial agreement but when they meet the applicant, the offer to rent was rescinded. Transgender women are also told to pay higher rent as the landlord believes the property might be used for “sex trade activities”,⁹⁸ an unfair and dehumanising assumption against transgender women. It is highly unlikely that, with current policies, Malaysia will be able to meet **Goal 11.1**.

Sustainability in human settlements is vital for improving living conditions and decreasing disparities in their quality of lives by creating an environment beneficial to human health and well-being. To have a sustainable human settlement is to be livable, and livability depends on safety. To ensure such livability, Malaysia has implemented the Safe City Program since 2004 which contains 23 steps of crime prevention elements. However, there is no recent data or studies regarding the success of the programme. Looking at the experience of transgender persons alone, it can be deduced that Malaysia has not cultivated a safe environment or reduced trans-targeted crimes. **Goal 11.7** calls for universal safe access to safe, inclusive, and accessible public spaces. As mentioned, trans-targeted violence is rampant, not only by the public but also by the authorities who are sanctioned by law to do so. Therefore, Malaysia is far from achieving **Goal 11.7**.

Goal 11 is not just about ensuring affordable and safe housing; it is also about ensuring that everyone has convenient access to public transportation and Disaster Risk Reduction (DRR). COVID-19 is a good example of how a disaster affected the population as a whole. The pandemic slowed down economic growth, increased unemployment and raised poverty and hunger.⁹⁹ Transgender persons are already marginalized and ostracized, imagine the additional impact these destitutions has on them on top of their hardship.

Recommendations

Transgender homelessness is mostly related to discrimination - rejection by family, unemployment, prejudice by landlords and shunned by society. The government needs to take account the importance of safe housing for transgender persons. Focus should be to provide shelters or safe houses for homeless transgender persons, and to integrate non-discrimination policies and affordable housing options to allow transgender persons to purchase or rent houses. Legislation that protects transgender bodies at the Federal level must also be implemented to rectify State sanctioned abuse.

⁹⁵ World Bank, *Malaysia Economic Monitor: Making Ends Meet* (December 2019) <<https://openknowledge.worldbank.org/bitstream/handle/10986/32810/144194.pdf?sequence=4&isAllowed=y>> 81.

⁹⁶ *ibid* 80.

⁹⁷ SUHAKAM (n 7) 87.

⁹⁸ *ibid*.

⁹⁹ UN Department of Economic and Social Affairs, ‘Sustainable Development Outlook 2020 - Achieving SDGs in the wake of COVID-19: Scenarios for policymakers’ <https://sdgs.un.org/sites/default/files/2020-07/SDO2020_Book.pdf>

Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Goal 16 is the outcome of the global government acknowledgement that peace is a fundamental aspect to development. The inequality and exclusion faced by marginalized communities including transgender persons make this goal seem difficult to achieve. The government needs to win the votes and deliver on the expectations of the majority thus the need of the minority becomes secondary. The ‘inclusive’ society’s aspect of the goal seems gloomy as declining civil liberties and restriction of voices is visible in the country since the new government took over in March 2020. The investigation on Al-Jazeera’s broadcaster, the arrest of a Bangladeshi migrant who appeared in the Al-Jazeera documentary, a police report made against a ‘Twitter’ posting, an investigation of a journalist from South China Morning post and several other incidents raises the alarm pointing towards a rapid decline in civil liberties.

“Malaysians should be able to criticize their government and its policies without fear of facing police questioning and possible criminal charges,” said Phil Robertson, deputy Asia director at Human Rights Watch.¹⁰⁰ The Government must acknowledge that integration, engagement and inclusion efforts in addressing inequality are pivotal in achieving Agenda 2030. Malaysia needs to have a radical change in the development agenda by incorporating and identifying the issues of all marginalized communities to ensure that they enjoy their rights as citizens. Strengthening institutional governance and holding public officials accountable is essential in ensuring effective and transparent institutions thus criticisms must be valued as ‘constructive’, and to work together towards an improved and learned society.

Malaysia cannot achieve **Goal 16.1** when it continues to enforce discriminatory laws, sanctioning abuse, publicly dehumanising transgender people and perpetuating the narrative that transgender persons are deviants. **Goal 16.2** cannot be achieved as well when transgender youth suffer from physical and mental abuse by authorities and peers.

Goal 16.3 encourages the promotion of the rule of law at national and international levels and ensure equal access to justice for all. In relation to the former, our consultants’ critique was that the State only promotes the “rule of *their* law”, that is, not accounting the rights of the marginalised group and ruling on the basis that upholds the rule of the majority. An example of this is mentioned under the “Judiciary” part on our analysis of institutional trans-prejudice where the case of *Muhammad Juzaili* was discussed. As for the latter, access to justice for all, Malaysia has also failed transgender citizens as the many who are prosecuted are impoverished and unable to access legal aid.

To achieve **Goal 16.6**, the Malaysian government must ensure concerns regarding institutional trans-prejudice are heard and considered when developing and transforming institutions to be effective, accountable, and transparent. The current and historical trend

¹⁰⁰ --, ‘Malaysia: New government backslides on free speech’ (Human Rights Watch, 10 June 2020) <<https://www.hrw.org/news/2020/06/10/malaysia-new-government-backslides-free-speech>>

appears to be that the Malaysian government does not care about their transgender citizens and achievement of **Goal 16.6** seems unlikely unless the government takes the initiative to ensure that they need to protect ALL citizens.

“Nothing about us without us.” To truly be inclusive and understand the needs of transgender citizens, the Malaysian government must ensure *responsive, inclusive, participatory, and representative decision-making at all levels* as provided by **Goal 16.7**. Currently, there are no transgender lawmakers, policymakers, transgender judges and transgender persons in public service. This is caused by different barriers put against transgender persons’ participation in any decision-making process.

Without proper updated official documents that reflect transgender persons’ identified gender nor any legal avenue to do so, transgender persons are rendered without legal identity as provided by **Goal 16.9**. Malaysia’s failure to align with **Goal 16.10**, that is to *protect fundamental freedoms in accordance with national legislation and international agreements*, is evident in the cases such as *Muhammad Juzaili*, where there was a clear breach of fundamental rights under the Federal Constitution, the supreme law of the Federation, yet it still ruled against its transgender plaintiffs. Its non-compliance with international agreements is discussed in further detail under “Review of International Commitments”.

Recommendations

The ministerial declaration issued by the HLPF on 27 May 2020 strongly emphasises that “peace and security are a prerequisite for sustainable development”¹⁰¹ and we applaud Malaysia’s government initiative to include some common policy and programme focus in Malaysia’s National Strategic Plan. We believe with cohesive and inclusive development planning, Malaysia can and will be able to achieve all the indicators of the SDGs as pledged.

In order to do that, we hope the government will engage with more diversified and inclusive Civil Society Organizations (CSOs) at the planning, delivery, implementation, monitoring and evaluation process of the agenda in all formal channels and mechanisms - Local, State and Federal level. There is also a need to establish a comprehensive monitoring and evaluation mechanism to ensure inclusive development across the dimension so that no one is left behind.

¹⁰¹ Ministerial declaration (n 1) [11].

Review of International Commitments

Malaysia is a signatory to multiple international conventions and treaties. For the purposes of this report, we will focus on the Malaysian government's commitment to the Universal Declaration of Human Rights (UDHR) and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

UDHR

The UDHR was adopted by the UN General Assembly in 1948. It sets out 30 articles of fundamental human rights which set a "common standard of achievement for all peoples and all nations".¹⁰² It acknowledges that the inherent dignity and equal rights of all are the fundamentals of justice, peace, and freedom in the world.¹⁰³ In Malaysia's failure to achieve SDG 16 and other relevant SDGs, it has also failed to adhere to Articles 1, 2, 3, 5, 7, 8, 9, 12, 13, 19, 21, 23, 25, 26, 30.

Articles 1 and 2 dictates that all persons are born free and equal in dignity, and are entitled to all rights provided by the Declaration without distinction of any kind. As evident above, Malaysia constantly demonises, dehumanises and treats transgender citizens as second-class citizens by not recognising their gender identity and allowing state-sanctioned violence, therefore, it has not adhered to Articles 1 and 2.

State-sanctioned arbitrary arrests by authorities directly breaches Articles 9¹⁰⁴ and 3, transgender Malaysians' right to life, liberty, and security of person. Well documented abuse such as shaving transgender women's hair and putting them in men's prison facilities shows Malaysia's failure in prohibiting cruel, inhuman, and degrading treatment¹⁰⁵ of transgender Malaysians. These also show that transgender citizens do not have equal protection against such discriminatory acts that violate the UDHR¹⁰⁶ as their cisgender counterparts.

JAWI raids mean that Article 12 has not been complied with since that is arbitrary interference of transgender person's privacy. Various public speeches by authorities which dehumanise transgender persons also constitutes attacks upon their honour and reputation. The anti-cross-dressing laws as mentioned above violates transgender Malaysians' right to freedom of movement as provided by Article 13 and Article 19, their freedom of expression.

The lack of legal gender recognition and with the anti-cross-dressing law in force would also mean transgender persons are restricted from performing their civic duties such as voting and therefore would breach Article 21, the right to take part in the government through freely chosen representatives.

Lack of legislation and institutionally enforced discrimination violates transgender Malaysians' right under Article 23 and 25, which are, their right to free choice of employment, protection against unemployment, right to just remuneration ensuring an existence worthy of

¹⁰² UDHR, Preamble.

¹⁰³ *ibid*.

¹⁰⁴ *ibid* Article 9 provides that "No one shall be subjected to arbitrary arrests..."

¹⁰⁵ *ibid* Article 5.

¹⁰⁶ *ibid* Article 7.

human dignity and right to standard of living adequate for the health and well-being of themselves.

Also, the Malaysian education system fails to implement schemes and syllabus that are aimed at strengthening respect for human rights and fundamental freedoms.¹⁰⁷ Brochures distributed publicly at school that condemn variant gender expression fail to promote understanding, tolerance and friendship.¹⁰⁸

Lastly, Article 30 provides that the State has no right to treat transgender persons in ways that infringe their rights set forth in the UDHR. Evidently, from above mentioned instances, the Malaysian government has failed.

CEDAW

At the general debate of the HLPF on Sustainable Development 2017, Malaysia's representative cites the ratification of CEDAW as evidence of its commitment to SDG 5,¹⁰⁹ showing the influence of CEDAW in the governing structure. Before reviewing Malaysia's compliance to the CEDAW, it is noted that it is not drafted with reference to SOGIESC. However, seeing that it has been 29 years since the drafting of the document and that recent Concluding Observations include recommendations to protect transgender rights, it can safely be said that CEDAW Articles should be interpreted with transgender women in mind. Not only has the Malaysian government failed to protect transgender women's rights, they have neglected to protect transgender men 'who are assigned female at birth', under CEDAW.

The importance of gender equality in the "full and complete development of a country"¹¹⁰ is emphasised in the preamble. Article 1 provides the interpretation of "discrimination against women" intended under CEDAW, which is any "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Again, it is noted that "on the basis of sex" should be, and is, interpreted as based on gender.

In Malaysia's attempt to achieve sustainable development, it has failed to abide by Article 2, 3, 5, 6, 7, 10, 11, 12, 13, 15, 16, 24. Article 2 refers to the duty to implement policies of eliminating discrimination against women. Article 2(a) requires the State to adopt appropriate means, to ensure the practical realisation of the equality of men and women. Which would include social support for transgender Malaysians. It is evident that the State has not done so. With the lack of gender recognition laws and anti-discrimination laws, the State has failed to comply with Article 2(b), (c) and (e). States are to ensure that public authorities and institutions do not discriminate against women as per Article 2(d), by allowing JAWI raids, the State has failed again. The continued existence of anti-cross-dressing laws

¹⁰⁷ *ibid* Article 26.

¹⁰⁸ *ibid*.

¹⁰⁹ Statement by H.E. Datuk Seri Abdul Rahman Dahlan Minister in the Prime Minister's Department, At the General Debate of the High-Level Political Forum on Sustainable Development 2017 (18 July 2017) <<https://sustainabledevelopment.un.org/content/documents/25758malaysia.pdf>>

¹¹⁰ CEDAW, Preamble.

despite being declared void by the Court of Appeal means Article 2(f) and (g) are not followed as well.

Transgender persons, especially Muslim transgender women, are subject to discriminatory laws that cisgender Malaysians are not subject to. As the Malaysian government has failed to adopt any measure to protect transgender persons' rights, or abolish discriminatory laws, the State has failed to ensure the full development and advancement of transgender women for the purpose of guaranteeing them the enjoyment of human rights on the basis of equality with cisgender men, as provided by Article 3. Article 5 provides that the State shall modify the social and cultural patterns of conduct of men and women. As the society progresses, what makes up the conventional sense of "patterns of conduct of men and women" has become more fluid, yet the Malaysian State continues to enforce the outdated "patterns" as can be seen by the anti-cross-dressing laws.

Article 6 provides that the State shall adopt appropriate measures to suppress the exploitation of prostitution of women. Even though it is recognised that sex work is legitimate work, transgender women of Malaysia are often engaged in sex work due to institutionally enforced precarity by which they are unable to seek other jobs. The State has not taken any measures but instead have frequently conducted raids against transgender sex workers and therefore has failed to comply with Article 6. States shall ensure women's right to vote¹¹¹ and to participate in the "formulation of government policy and implementation thereof...", as mentioned above, the non-recognition of transgender women's gender prohibits their freedom of movement and would hinder their right to vote on voting days, disabling them to participate in the process of democracy. Articles 10, 11 and 12 provide that States shall eliminate discrimination against women in the fields of education, employment, and health care, respectively. As mentioned, due to various institutions enforcing State-sanctioned trans-prejudice, transgender women face harassment in education institutions, discrimination in employment and inaccessibility to quality health care, therefore Articles 10 to 12 are not complied with by the State.

Article 13 provides for the elimination of discrimination in "other areas of economic and social life", encapsulating issues such as right to bank loans and other forms of financial credit as well as right to participate in recreational activities and all aspects of cultural life. Due to the incongruity of transgender women's appearance and their NRIC, many have been rejected bank loans. Also, transgender women are not even allowed to exist in public space, let alone participate in "all aspects of cultural life". Article 15(4) dictates that the State shall accord the same rights relating to the movement of persons to men and women, as expressed many times in this report, this right is not guaranteed for transgender persons.

Article 16 provides for non-discrimination in matters relating to marriage. Malaysia has reservation over Article 16(1)(a) which provides the same right to enter into marriage but not Article 16(1)(b), where it states that men and women are to be awarded the same right to freely choose a spouse and to enter into marriage with their free and full consent. As same-sex marriage is unavailable in Malaysia, transgender women, recognised by the government as men, are not able to marry cisgender men, even though they would be in a heterosexual marriage. The same applies to transgender men who intend to marry cisgender women.

¹¹¹ *ibid* Article 7(a).

Article 24 provides that the State shall undertake to adopt all necessary measures aimed at achieving the realisation of rights recognised in the Convention. The inaction of the Malaysian government in implementing any sort of measure clearly shows its violation.

In addition, the CEDAW Concluding Observations 2018 has provided criticisms and recommendations to the implementation of CEDAW. In relation to education, the Committee is aware of the bullying of LGBTI students¹¹² and recommends the introduction of human rights-based sex education¹¹³ and adopt anti-bullying policies based on positive discipline and undertake awareness-raising measures to foster equal rights for LGBTI students.¹¹⁴ As for health care, the Committee notes that the obstacles faced by transgender women block their access to health-care services¹¹⁵ but made no relevant recommendations. The CEDAW Committee is well aware and concerned at reports of discrimination and attacks against LGBTI persons by state authorities and how the situation is exacerbated by discriminatory laws and policies.¹¹⁶ The recommendation given includes: the State to undertake awareness-raising measures to eliminate discrimination and negative stereotypes against LGBTI persons; amend all laws that discriminate LGBTI persons; apply zero tolerance policy by prosecuting and adequately punishing perpetrators; and to cease all policies and activities that aim to “correct” or “rehabilitate” LGBTI persons.

At the presentation of the Periodic Reports at the 69th Session, the response of the Ministry of Women, Family and Community Development with regard to the “*alleged cases of discrimination against LGBTI*”, “*Malaysia upholds the rights and dignity of all persons in accordance with the Malaysian law. On any case of discrimination, due process of the law will be exercised accordingly.*”¹¹⁷ With the use of the term “alleged” when discrimination is well documented and using LGBTI as noun instead of adjective, it shows the ministry’s ignorance of LGBTI issues. Also, the response is evasive in nature, providing no supporting evidence.

Since the SDGs are rooted in human rights, Malaysia’s failure to meet international human rights commitments would mean that they have failed to align with the 2030 Agenda.

Challenges and recommendations

As mentioned above, Malaysia has a weak human rights infrastructure. The Heads of State, regardless of which government, have all been vocal about their rejection with regards to protecting the rights of LGBTI people and consider them to be a ‘lifestyle’ shift in

¹¹² UN Committee on the Elimination of Discrimination against Women, ‘Concluding observations on the combined third to fifth periodic reports of Malaysia’ CEDAW/C/MYS/CO/3-5 (14 March 2018) [35].

¹¹³ *ibid* [36(c)].

¹¹⁴ *ibid* [36(e)].

¹¹⁵ *ibid* [39].

¹¹⁶ *ibid* [47].

¹¹⁷ Ministry of Women, Family and Community Development - Press Release, ‘Malaysia successfully presented reports on the Convention on the Elimination of All Forms of Discrimination Against Women’ (22 February 2018)

<https://www.kpwkm.gov.my/kpwkm/uploads/files/KenyataanMedia/SIARAN%20MEDIA%202018/PR_ESS%20RELEASE_CEDAW.pdf>

Westerners' moral values, and that Malaysia is free to reject 'practices that are unsuitable' for Malaysians.¹¹⁸

There are also issues of conflicting international commitments, namely the Asean Human Rights Declaration¹¹⁹ (AHRD) and the Cairo Declaration on Human Rights.¹²⁰ The AHRD was not drafted with LGBTI persons in mind, while the Cairo Declaration demands human rights to be read in an Islamic context, that is, the protection of the human rights of all citizens, regardless of ethnicity or faith, are to be subject to the interpretation of religious authorities.

The Malaysian government states that the National Human Rights Action Plan (NRHAP) was developed with four issues in mind: The Federal Constitution, the UDHR, Malaysian politics and socio-culture and the Cairo Declaration.¹²¹ It claims that the absence of Islamic teachings would "bring about moral ruin among the society". Azril Mohd Amin of the Centre for Human Rights Research and Advocacy (CENTHRA), a coalition of Islamic NGOs, claims that the Federal Constitution recognises that the "greater good of society takes precedence over the individual exercise of rights, and that any right must consider local values and norms" and that LGBT persons do not have the "right to disrupt society, to offend the values of the culture and the religion of the federation."¹²² One must once again be reminded that while the Federal Constitution recognises Islam as religion of the Federation, freedom of religion is also guaranteed, to treat all citizens as homogenous would be unjust.

¹¹⁸ Bernama, 'We are free to reject LGBT, other unsuitable Western influences - Dr Mahathir' (New Straits Times, 18 June 2019) <<https://www.nst.com.my/news/nation/2019/06/497206/we-are-free-reject-lgbt-other-unsuitable-western-influences-dr-mahathir>>

¹¹⁹ ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD) <https://www.asean.org/wp-content/uploads/images/2013/resources/publication/2013_ASEAN%20Human%20Rights%20Declaration.pdf>

¹²⁰ Cairo Declaration on Human Rights in Islam <<http://hrlibrary.umn.edu/instree/cairodeclaration.html>>

¹²¹ --, 'In action plan, Putrajaya wants human rights balanced with Islam' (Malay Mail Online, 12 March 2018) <<https://www.malaymail.com/news/malaysia/2018/03/12/in-action-plan-putrajaya-wants-human-rights-balanced-with-islam/1596489>>

¹²² Azril Mohd Amin, 'LGBT rights are western imports' (New Straits Times, 12 June 2019) <<https://www.nst.com.my/opinion/letters/2019/06/495844/lgbt-rights-are-western-imports>>

Civil Society participation in SDG implementation / Follow-up

In the 2017 VNR, it was suggested that “moving forward”, the government would be partnering with private sectors, NGOs and CSOs to reach out to the needy.¹²³ However, on consultation with transgender rights organisations, there seems to be no attempt of contact from the government.

In relation to SDG-focused NGO and CSO engagement, national alliances have been formed such as the National SDG-CSO Alliance and the All-Party Parliamentary Group¹²⁴ (‘APPG’). The membership and activities of both these groups lack transparency, are unclear and therefore its progress hard to assess.

However, having consulted with local trans-led organisations and transgender individuals, it is revealed that there has been no consultation regarding transgender issues by the APPG nor the National SDG-CSO Alliance.

¹²³ Voluntary National Report (n 19).

¹²⁴ --, ‘Malaysian parliamentary group to engage with local communities to achieve sustainable development goals’ (*The Malay Mail Online*, 7 Nov 2019)
<<https://www.malaymail.com/news/malaysia/2019/11/07/malaysian-parliamentary-group-to-engage-with-local-communities-to-achieve-s/1807829>>

Recommendations

The global community at the United Nations agreed to the 2030 Global Agenda entitled “Transforming our World: The 2030 Agenda for Sustainable Development” on September 25, 2015.

As a group of Malaysian citizens who are marginalized and ostracized, we are looking forward to being part of the community who are working together towards the achievement and success of our beloved country and that Agenda 2030 will place Malaysia as an exemplary country globally.

We recognize the gaps and shortcomings in the Government’s development planning, priorities and implementation and we look to working together to identify clear directions for both policy and delivery in Malaysia's development program.

We call upon the Government of Malaysia to ensure the effective implementations of goals, targets, and indicators of the SDGs and to take note of our recommendations.

1. A comprehensive and holistic makeover of sound policy frameworks at all levels to ensure inclusivity and removal of barriers that lead to disparities of any one community or society.
 - a. Pro-poor and gender sensitive development strategies
 - b. Non-judgmental sex education - create an inclusive curriculum to learn acceptance
 - c. Health financing
2. Funding must be provided for:
 - a. Comprehensive Research surrounding trans-vulnerability, trans-specific hardship and needs and addressing the social marginalization.
 - b. Grassroot organizations that provide support to the transgender community
 - c. Mental health campaigns destigmatizing transgender identities, reduce stigma and prevent suicides
 - d. Improving treatment pertaining to mental health and well-being.
3. Provide access to comprehensive transgender health-care services
4. Increase supply and capacity of:
 - a. Teachers through training and exchange programmes
 - b. Health care providers
 - c. Transgender health workers
5. Expand the definition of gender used in policies and programmes to be ‘trans-inclusive’ and address gender stereotyping among other pressing issues.
6. Provide assistance to:
 - a. companies giving employment to transgender persons
 - b. Income-generating employment
7. Create, implement, and enforce an anti-discrimination legislation with robust enforcement that protect employees against discrimination of any kind, including gender identity and expression.
8. Include disaggregated data of transgender persons appropriately and safely.

9. Consult transgender activist within the country and work together according to the needs and strategies.
10. Establish programmes and projects that explicitly integrate issues of transgender persons in all spheres of development.
11. Provide shelters or safe houses for homeless transgender persons.
12. Integrate nondiscrimination policies and affordable housing options to allow transgender persons the options to purchase or rent houses.
13. Build peaceful, just, and inclusive societies through:
 - a. Reducing inequalities
 - b. Enhancing our ability to prevent and resolve conflicts
 - c. Protecting and fulfilling human rights for all
 - d. Ensuring equal access to justice
 - e. Achieve gender equality
 - f. Build and strengthen more effective, accountable and transparent institutions
 - g. Establish a comprehensive monitoring and evaluation mechanism to ensure inclusive development across the dimension
14. Legal Gender Recognition - protect the rights of transgender people across the constitution.
15. Abolish all state-level 'anti cross-dressing laws'
16. Separation of religion
 - a. All the above cannot be done if it is continually being touted by religious authorities that they are infringing the sanctity of Islam
 - b. Undermine the State as a secular state for all citizens of different faiths