

**Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA)  
& GBM Coalition**

**Joint Submission to the UN Special Rapporteur on Freedom of Religion and  
Belief on Eliminating Intolerance and Discrimination Based on Religion or Belief  
and the Achievement of Sustainable Development Goal 16 (SDG 16)**

**Introduction**

This joint submission is submitted by MACSA and GBM Coalition to address the problems and difficulties faced by Muslims in Malaysia to profess and practise their religion in certain instances and cases. These problems and difficulties represent patterns and examples of discrimination against religious or belief communities in Malaysia in terms of restriction to freely manifest one's religion, religious inequality and the denial of religious and spiritual well-being of Muslims.

MACSA is a coalition made up of 54 individual civil society and non-governmental organizations.<sup>1</sup> Established in 2017, MACSA aims at providing analytical insights into some of the human rights infringements that are prevalent within Malaysian society and to offer humanitarian aid to various vulnerable groups through our individual members. Jointly under the banner of MACSA, our members work closely with persons with disabilities, stateless people, refugee groups, economically vulnerable women and children.

GBM Coalition is the secretariat arm of Gabungan Bertindak Malaysia (GBM). GBM is a network of 27 civil society organizations and is the largest independent and mix civil society coalition in Malaysia whose unique feature is the composition of its member organizations of various faith-based groups, human rights advocacy and interest groups, community service providers, think-tanks and educationist alliances.

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<sup>1</sup> For a full list of members of MACSA, see at the end of the document here.

We call on the Special Rapporteur on freedom of religion or belief in accordance with his mandate pursuant to Human Rights Council resolution 40/10, to present the discriminatory circumstances in this submission in his thematic report at the 75th Session of the General Assembly.

### **Muslims as Minority in East Malaysia**

MACSA has received reports that in the District of Penampang, Kota Kinabalu, Sabah, the Muslim community are in the minority, while the majority are from the Christian faith. Since the formation of the Federation of Malaysia, Muslims in the District had been trying to build Mosque for its community programs but were met with various objections by the non-Muslim community who forms the majority.

In the year 2008, an NGO in the District bought a plot of land with the intention of building an Islamic Community Centre. However, the community surrounding the area objected, citing that the area is their sacred ancestral heritage. Despite the NGO having complied with all legal requirements imposed by local laws, including in architectural plans, the consent for the construction of the Centre has been purposefully delayed by the State Government. In 2016, the State Land Authority approved the construction of the Islamic Community Centre. However, the Local Municipality Authority withheld the letter of approval from the Central Board, and thus, until today the Muslim community in Panampang still cannot initiate the construction of their own place of worship and/or community centre.

Other similar situations are bound across Sabah, where the Muslim community are in the minority and they are barred from building mosques or Islamic cemeteries even on their own lands. Often times, their efforts were stopped by the local Non-Muslim community with the support from the Non-Muslim politicians. Some of the examples are in Kampung Sungai Assap, Kapit, and Kampung Mongkos Dayak, Bario.

There are also reports that Muslim communities are not allowed to organise religious events even when the events are deemed to be appropriate and fitting with the local tradition. For example, they are only allowed to preach Islam by using English and Malay languages but not using other languages. Muslim students are denied of their

rights to have a prayer room in schools, especially where the majority within the school community is non-Muslims. Non-Malay Muslims are also denied of their rights to access religious teachers despite having high demands among the community. Muslim students face difficulties and sometimes are prohibited from studying Islamic subjects in their primary school.

### Usage of Customary Laws on Muslims

There are reports that many Muslims in Sabah and Sarawak are subjected to *adat* (customary law) for offences that are also provided for under state enactments on Islamic offences. This has created a situation whereby many Muslims are tried under *adat* which is governed under Customary Court (*Mahkamah Anak Negeri*) rather than under Syariah Court.<sup>2</sup>

This situation creates conflict of punishments for Muslims as some of the punishments provided under customary law are not in consonant with Syariah and therefore conflict with the belief of Muslims in Islam. This has caused many Muslims to be psychologically conflicted between adhering to their faith or their customs.

### Discrimination against *Muallaf*

*Muallafs* are non-Muslims who have embraced the religion of Islam. In Sabah and Sarawak of East Malaysia, there are reports that *tuai rumah* (community leaders) and other villagers imposed on *Muallaf* villages and members by prohibiting them from following Islamic lifestyle and routines while at the same time forbidding them from following their tribal traditions. *Muallafs* are also prohibited from using symbols, logos or names that represents or are associated with Islam. In this sense, they are barred from openly professing their religion by their families or fellow villagers.

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<sup>2</sup> Pg Ismail bin Pg Musa, Siti Zubaidah binti Ismail, & Narizan Abdul Rahman. *Undang-Undang Perlanggaran Adat Di Mahkamah Anak Negeri: Konflik Pemakaiannya Terhadap Orang Islam Dalam Kerangka Perundangan Plural Di Sabah*, E-Journal of Islamic Thought and Understanding Volume 1 (2020).

In Peninsular Malaysia, there are reports that Non-Muslims employers have gone as far as terminating employees who are found to have converted to Islam. These reports are especially true for *Muallafs* who worked in their family tradings.

### **Discrimination against Muslim Employees**

Article 11 of the Malaysian Constitution provides for freedom of religion and belief to practise one's religion. However, Malaysian Courts have also held that the fundamental rights to profess and practice one's religion under the Malaysian Constitution is only enforceable against a public body and not against private bodies like corporations. This has engendered levels of discrimination against Muslim employees at their workplace. While Malaysia is a Muslim majority country and Muslims make up the majority of Malaysian demography, there are cases of discrimination against Muslim employees at workplace as follows:

- Muslim women in particular suffer from discrimination in employment due to denial of their choice in wearing headscarves in accordance with their religious teachings.
- An NGO, WAFIQ, which carried out a research entitled “Discriminatory Practices and Sexual Harassment among Working Women in Malaysia” reported that 1 in 5 women experienced religious discrimination, which include inability to perform the obligatory prayer, prohibited from wearing headscarf and denied promotion. 60.9 % of these cases were from the private sector.
- Muslim employees are denied the right to perform Friday Prayers, and other daily prayers at their workplace during prayer times.<sup>3</sup>

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<sup>3</sup> New Straits Times. *NGOs want gov't to create anti-discrimination law*. Retrieved from <https://www.nst.com.my/news/nation/2017/11/304352/ngos-want-govt-create-anti-discrimination-law> (Accessed on 17 November 2017); and Malay Digest. *After Hijab Ban In Hotels, Shocking Confessions From Employees Reveal Religious Discrimination That Prohibits Them From Praying*. Retrieved from <http://www.malaysiandigest.com/frontpage/282-main-tile/723795-after-hijab-ban-in-hotels-shocking-confessions-from-employees-reveal-religious-discrimination-that-prohibits-them-from-praying.html> (Accessed on 20 February 2018).

## Denial of Religious Rights to LGBTQ Community

Studies in Malaysia have demonstrated that about 80% of transgender are Muslims.<sup>4</sup> Given the huge population of Muslim transgender, their needs must not be neglected. One critical need that is often neglected is the right for the transgender community to receive religious and spiritual inputs. The right to receive religious and spiritual inputs are deemed religious rights or the right to be associated or aligned with religious beliefs/spirituality. This right must never be dismissed summarily or rejected as irrelevant as they encompass moral values and ethical basis for strengthening individuals and community. Freedom of religion upholds and guarantee such rights.

However, we find that religious rights or right of the transgender community or LGBTQ persons to receive religious and spiritual inputs have been constantly denied and attacked by certain quarters in society as backward and non-progressive.<sup>5</sup> There have also been attacks against academics and institutions dedicated in studying and advocating religious and health rights of LGBTQ persons.<sup>6</sup>

These attacks and the denial of the religious rights of LGBTQ persons are contrary to freedom of religion and belief. We stressed that issues of sexual orientation and gender identity like all other issues of moral concern must be given the space to be addressed in accordance with religious beliefs and guidance. In this respect, it is rather unfortunate the initiative “Manual Islam and Mak Nyah” by the Islamic Development Department of Malaysia (JAKIM) was met with vehement criticism although its aim was to remove stigma and discrimination surrounding LGBTQ persons.<sup>7</sup>

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<sup>4</sup> Teh YK, HIV-Related Needs For Safety Among Male-To-Female Transsexuals (Mak Nyah) in Malaysia, *SAHARA: Journal of Social Aspects of HIV/AIDS Research Alliance*, 2008; and Wei CL, Baharuddin A, Abdullah R, Abdullah Z, Ern KPC, Transgenderism in Malaysia, *Journal of Dharma*, 2012.

<sup>5</sup> Malaysian Digest. *I Was A “Mak Nyah” And Rehab Made Me See How Far I Have Strayed Away From My Religion*. Retrieved from <http://malaysiandigest.com/frontpage/282-main-tile/577124-i-was-a-mak-nyah-and-rehab-made-me-see-how-far-i-have-strayed-away-from-my-religion.html> (Accessed on 8 March 2018).

<sup>6</sup> Malay Mail Online. *Public funds must not be used to create harmful educational environments — Justice for Sisters*. Retrieved from <http://www.themalaymailonline.com/what-you-think/article/public-funds-must-not-be-used-to-create-harmful-educational-environments-ju> (Accessed on 9 March 2018)

<sup>7</sup> Malay Mail Online. *Jakim’s ‘spiritual camp’ tried to ‘change’ us, lament Muslim transgenders*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/jakims-spiritual-camp-tried-to-change-us-lament-muslim-transgenders#fUwj104Ep7WdWkGm.97> (Accessed on 8 March 2018).

Such criticisms although understandable illustrates the growing trend to resist and object against the religious rights or the right of the transgender community or LGBTQ persons to receive religious and spiritual inputs.

While the aim of the JAKIM initiative is laudable, it however lacks guidelines and information on gender sensitization. Gender sensitization for Islamic authorities is important as it gives a clear picture on how transgender or the LGBTQ persons ought to be treated and regarded. The transgender or LGBTQ persons must be treated like any other human being vested with human dignity deserving to live and having access to all public goods. They should not be ostracized, rejected and condemned but deserving compassion, mercy and love in the plight they are going through. Such guidelines on gender sensitization are helpful as previous studies have suggested the fusion of religious elements could benefit the transgender community and LGBTQ persons in terms of psychological and physical health.<sup>8</sup>

## Conclusion and Recommendations

Article 2 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief provides that “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief.”<sup>9</sup>

Similarly, Article 22 of the ASEAN Human Rights Declaration provides that “every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated”.

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<sup>8</sup> McCullough ME, Willoughby BL., Religion, Self-Regulation, and Self-Control: Associations, Explanations, and Implications, *Psychological Bulletin*, 2009; **and** Elifson KW, Klein H, Sterk CE., Religiosity and HIV Risk Behavior Involvement Among “At Risk” Women, *Journal of Religion and Health*, 2003; **and** Miller WR, Thoresen CE., Spirituality, Religion, and Health: An Emerging Research Field, *American Psychologist*, 2003.

<sup>9</sup> UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55, available at: <https://www.refworld.org/docid/3b00f02e40.html> [accessed 26 May 2020]

The problems and difficulties faced by Muslims in Malaysia to profess and practice their religion as enumerated above represent patterns and examples of discrimination against religious or belief communities in Malaysia in terms of restriction to freely manifest one's religion, religious inequality and the denial of religious and spiritual wellbeing of Muslims.

In many of these instances where the bias and discrimination against Muslims becomes obvious, it has left the Muslim feeling excluded within wider society and consequently a conflict as to their religious and social identities. In the long run, the unequal treatment arising from religion or religious identity will only lead to reactions of marginalization and the feeling of under-siege from the non-Muslim community. At a deeper level this may invoke the collective memory of the Muslim community in their bitter experience of being overpowered, subdued and overrun by the transnational-industrial modernisation of the West that have left the community disempowered and feeling left behind.

Undoubtedly such a situation may only provoke further reactions leading to extremist tendencies and acts from both Muslims and non-Muslim communities in the long run. This is contrary to the aim and object in the right to freedom of religion and belief as provided in text of both the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and the ASEAN Declaration of Human Rights. It also goes against the core agenda and message of the UN's 2030 Sustainable Developments Goals, specifically goal 16 on the need of inclusive society and peace building.

We call on the Special Rapporteur and the General Assembly to urge the government of Malaysia to:

- I. Call on the relevant local authorities to act immediately to accord the necessary approvals to the Muslim community to build Mosques and Community Centres
- II. Call on higher authorities to take action, including by initiating disciplinary proceedings, against the officers of any Local Municipality Authority, who

deliberately refused to abide by the state authority's decision in granting approval for the building of places of worship

- III. Provide gender-sensitization and human rights training to religious authorities
- IV. Call on religious authorities to formulate guidelines on gender-sensitization
- V. Educate the Malaysian communities to respect the religious rights of the LGBT community
- VI. Extend the Constitutional protection to be enforceable against private entities and local legislation to protect employees who are denied their religious rights
- VII. Amend Act 265 by inserting a provision prohibiting any employers preventing Muslim workers to perform any prayer
- VIII. Fortify the existing Act 265, the Industrial Relations Act 1967 (Act 177), and Part VI of the Occupational Safety and Health Act 1994 (Act 514) by providing more protections against gender-based discrimination
- IX. Expedite the enactment of Anti-Discrimination Against Women Act in strict compliance with domestic law and taking into account of the cultural sensitivities in the Malaysian society
- X. Provide a more comprehensive support system for *Muallaf*





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