



**UNODC**

United Nations Office on Drugs and Crime

**Country/Organisation:** Malaysia – Hayat

**What are the primary challenges your country faces in ensuring equal access to justice within your criminal justice system? How do these challenges impact groups in vulnerable situation in your society? Please provide a thorough and detailed response.**

Three key issues in ensuring equal access to justice revolve around the lack of adequate legal representation at all stages of a criminal investigation and trial process. Presently, persons accused are not provided and given legal representation during an investigation, creating gaps in which illegal or inappropriate interrogation techniques may be applied to solicit confession. Accused are only provided lawyers at the prosecution stage at which point it is often too late for an innocent person to seek and develop key evidence necessary to defend themselves in court. Standards of legal services received from government-funded legal aid are also challenging as there are no common rules of engagement which may result in significant differences in the quality of legal services received (i.e some may have extensive interviews and interaction whereas others would not meet their lawyers until the trial date itself).

Mandatory sentencing has also been shown to disproportionately affect vulnerable communities. Mandatory whipping has historically been applied to persons committing immigration offences, this also applies to economic migrants who may also be victims of human trafficking that were caught but not given adequate protection and assistance. Post-whipping treatment would also differ significantly with poorer communities often left with treatment by government services which often lack follow-up care due to resource limitations resulting in further complications. The former use of mandatory death penalty, while abolished, still has its lingering impact on death row populations with a number of individuals having their sentence maintained despite significant mental health issues.

Existing laws also lack significant safeguards for persons with mental health illness, intellectual or learning disabilities and physical illness. Persons suffering from these conditions are still routinely sentenced to death or prison sentences in spite of their conditions and in selected cases, an immediate danger to their right to life in prison due to deteriorating health conditions.

**Can you provide examples of initiatives or policies that have been successful in addressing access to justice issues in your country? What key lessons have been learned from these initiatives or policies? Please provide a thorough and detailed response.**

The National Legal Aid Foundation was introduced in 2012 to address the need for greater legal representation for those who are unable to afford legal services. This has helped alleviate some of the concerns around legal representation but the assistance offered still falls short in critical areas mentioned before. Sufficient financial resources remain a challenge as more individuals are accessing legal services under the foundation and lawyers offering their services are often undercompensated for the work done. Furthermore, the funds for the operation of the foundation are tied to the Attorney-General, a clear conflict of interest as a government institution leading criminal prosecution. In the past, disputes between the Attorney-General and private practitioners from the Bar Council have led to the suspension of funds that significantly hampered the delivery of legal aid services.

**What are the best practices currently being implemented in your criminal justice system to enhance access to legal aid and fair trials? How do these best practices improve outcomes for individuals involved in the criminal justice system? Please provide a thorough and detailed response.**

Judicial officers undertake training with the National Human Rights Institution which provides greater awareness of fundamental rights under International Human Rights treaties which Malaysia is obliged to and also a greater understanding of rights enshrined within the Federal Constitution.

**What factors have been crucial in enabling successful reforms or improvements in your criminal justice system? How can these enabling factors be replicated or adapted in other contexts or regions to ensure equal access to justice for all? Please provide a thorough and detailed response.**

Political will and strategic communication of policies remain the key factors enabling significant legislative reform to improve the criminal justice system. The abolition of the mandatory death penalty reflects the successful integration of both factors, enabling a significant policy change that provides justice for marginalised communities disproportionately affected by the death penalty.

Adoption of international human rights principles at all levels of government has also provided a greater degree of improvement with regard to criminal justice but significant changes are still slow in developing due to the lack of clear legislation acknowledging or successful litigation at the Federal Court empowering these principles when compared to other spheres (i.e. gender discrimination and CEDAW).

Open participation of CSO and NGOs in government policy development also provides a stronger basis for the government to develop effective policies that would address existing faults or weak points in criminal justice policies, enabling a development of a more robust system that has support from all stakeholders.