



2015 HIV AND HUMAN RIGHTS MITIGATION REPORT



By **Fifa Rahman**

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Unless otherwise stated, the appearance of individuals in this publication gives no indication of HIV status, sexual orientation or gender identity.

FOREWORD KATA PENGANTAR



Thirty years into the AIDS epidemic in Malaysia, it saddens me to note that discrimination against people living with HIV and key affected populations remains at large. The complaints documented in this report reveal an even more deeply troubling reality. The vast majority of cases stemmed from the perpetrators' own lack of HIV knowledge and stigmatising personal beliefs and attitudes towards HIV.

The urgent need to address this knowledge gap, particularly in the workplace and business settings, cannot be overstated. In addition, employers need to recognise the negative impact of discrimination resulting from this gap in HIV knowledge on their business. Not only does HIV based workplace discrimination cost businesses productivity and profitability due to loss of talent, but also calls into question the employer's ability and commitment to protecting the rights of their employees.

The protection of basic human rights, particularly the rights to health and to be free from discrimination, is the cornerstone of an effective AIDS response. It has enabled us to make inroads in scaling up harm reduction services for people who use drugs and improving access to antiretroviral treatment, both of which have halved new HIV infections in the past decade in Malaysia. If discrimination continues to persist, not only will it undermine the progress we have achieved so far but also cause the AIDS epidemic to rebound. **Because of this, protecting the individuals' dignity is a cornerstone of our work.**

This report – the third publication in its series – is a call for a strengthened rights-based AIDS response and increased protection of rights for employees living with HIV. Achieving health equity and social justice for all is a pre-requisite for ending AIDS.

Setelah tiga puluh tahun epidemik AIDS melanda Malaysia, masih lagi berleluasa diskriminasi terhadap orang yang hidup dengan HIV dan populasi terkesan utama merupakan satu hakikat yang menyedihkan. Aduan-aduan yang didokumenkan dalam laporan ini mendedahkan realiti yang lebih membimbangkan. Kebanyakan kes diskriminasi ini berpunca daripada kurangnya pengetahuan HIV dan stigma si pelaku itu sendiri.

Pentingnya usaha untuk meningkatkan pengetahuan HIV, khasnya dalam konteks tempat kerja dan syarikat perniagaan, tidak dapat disangkal. Malahan, pihak majikan haruslah sedar akan kesan negatif terhadap perniagaan mereka sekiranya jurang pengetahuan ini tidak ditangani. Diskriminasi terhadap HIV di tempat kerja bukan sahaja merugikan perniagaan dari segi produktiviti dan pulangan keuntungan disebabkan kehilangan tenaga kerja, malah menimbulkan persoalan tentang keupayaan serta komitmen pihak majikan dalam melindungi hak-hak asasi pekerja mereka. Oleh hal yang demikian, usaha melindungi maruah seseorang individu menjadi teras dalam kerja-kerja kami.

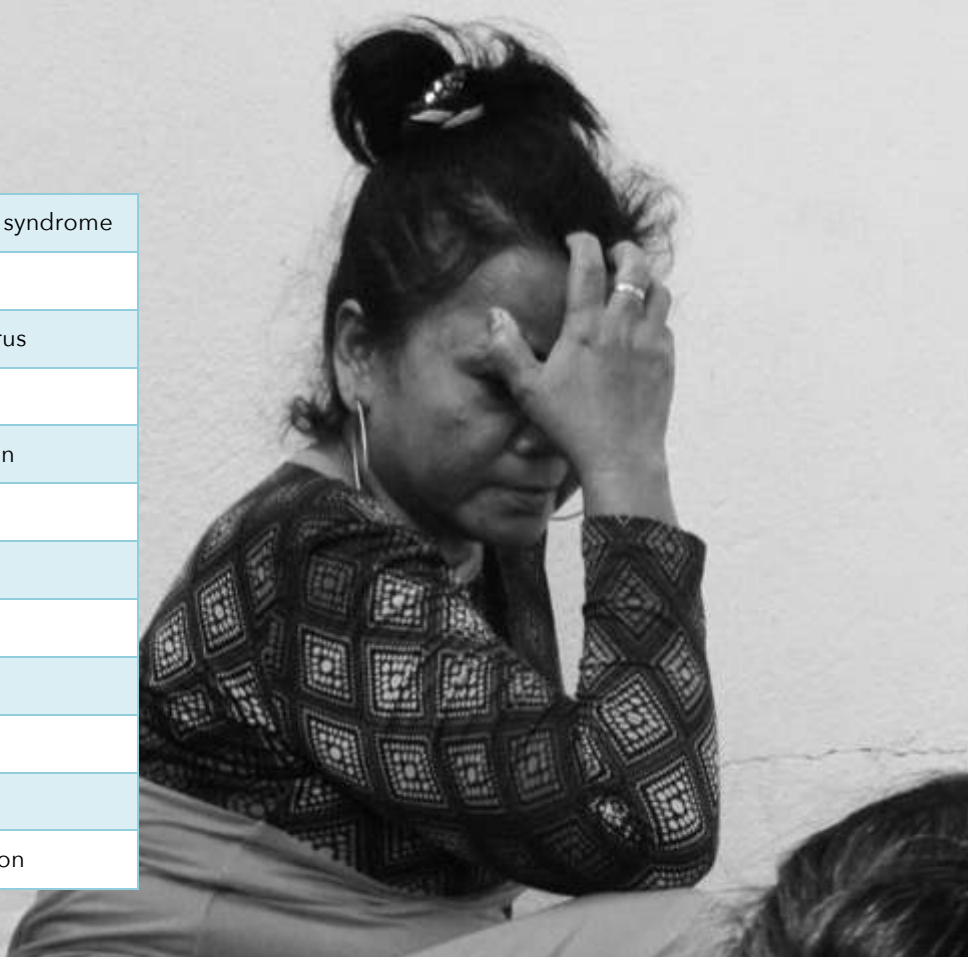
Perlindungan hak-hak asasi manusia, khasnya hak-hak kesihatan dan kebebasan daripada diskriminasi, merupakan asas kepada tindak balas respons AIDS yang berkesan. Berdasarkan prinsip ini, program pengurangan kemudaratan untuk orang yang menggunakan dadah dan peluasan akses rawatan antiretroviral dapat dilaksanakan di Malaysia sehingga berjaya mengurangkan jangkitan HIV baharu setinggi 50 peratus dalam tempoh satu dekad yang lalu. Jika tidak diendahkan, diskriminasi bukan sahaja akan menjejaskan pencapaian ini malah mungkin menyebabkan epidemik AIDS kembali melonjak naik.

Laporan ini yang telah masuk tahun ketiga penerbitan menggesa agar tindak balas respons AIDS yang berasaskan hak-hak asasi dapat diperkukuhkan dan perlindungan terhadap hak-hak asasi pekerja yang hidup dengan HIV dapat dipertingkatkan. Usaha ke arah mencapai kesaksamaan dalam kesihatan dan keadilan sosial untuk semua merupakan pra-syarat mengakhiri AIDS.

BAKHTIAR TALHAH
Presiden
Majlis AIDS Malaysia

ABBREVIATIONS

AIDS	Acquired immune deficiency syndrome
ARV	Antiretroviral
HIV	Human immunodeficiency virus
MAC	Malaysian AIDS Council
MMA	Malaysian Medical Association
MSM	Men who have sex with men
OST	Opioid substitution therapy
PLHIV	People living with HIV
PWUD	People who use drugs
SW	Sex worker
TG	Transgender
YKAP	Young Key Affected Population



EXECUTIVE SUMMARY RINGKASAN EKSEKUTIF

- Out of the 15 complaints received in 2015, five, or one-third of total cases were employment discrimination perpetrated by employers in the hospitality, tourism, and entertainment industry, including international hotel chains, entertainment outlets, and sporting and leisure venues.
- Six cases out of 15 involved stigma and discrimination in healthcare settings. All of these complaints occurred in public healthcare facilities.
- While we received no complaints from people who use drugs (PWUD) in 2015, this does not mean that cases of violence, deprivation from access to antiretroviral (ARV) and/or opioid substitution therapy (OST) in police custody, or other forms of human rights violations did not occur.
- From our small sample, HIV positive men who have sex with men (MSM) were disproportionately affected by stigma and discrimination.
- One transgender complainant was not addressed by her appropriate gender pronoun, resulting in embarrassment in healthcare settings.
- *Daripada 15 aduan yang diterima pada tahun 2015, lima atau satu pertiga daripada jumlah aduan merupakan diskriminasi di tempat kerja dalam sektor pelancongan, hospitaliti dan hiburan, termasuk rangkaian hotel antarabangsa, pusat hiburan, dan kelab sukan dan rekreasi.*
- *Enam daripada 15 aduan melibatkan stigma dan diskriminasi dalam sektor perkhidmatan kesihatan. Kesemua daripada aduan ini berlaku di fasiliti kesihatan awam.*
- *Walaupun kami tidak menerima sebarang aduan daripada orang yang menggunakan dadah pada tahun 2015, ini tidak bermakna bahawa kes keganasan, kes mereka tidak mendapat ubatan antiretroviral atau ubat gantian opioid ketika dalam tahanan, atau pelanggaran hak asasi manusia terhadap mereka tidak berlaku.*
- *Daripada keseluruhan jumlah aduan yang kecil ini, golongan lelaki yang mengadakan hubungan seks dengan lelaki yang juga hidup dengan HIV didapati lebih terjejas oleh stigma dan diskriminasi berbanding golongan yang lain.*
- *Salah seorang pengadu transgender tidak dipanggil dengan kata ganti nama yang gender-spesifik sewaktu dirawat di klinik kesihatan. Situasi ini telah menyebabkan pengadu terasa amat malu dan menimbulkan ketidakselesaan dalam dirinya.*



METHODOLOGY

The Malaysian AIDS Council (MAC) has compiled a total of 15 discriminatory cases that were reported by key populations affected by HIV and AIDS in 2015. These cases were reported to the MAC Policy Department who interacted with individuals directly to ensure accuracy of the accounts. Details were noted in a standardised form (see annexure). Employment cases that occurred in the Federal Territory of Kuala Lumpur were mitigated together with the Department of Occupational Safety and Health of the Ministry of Human Resources. The Ministry of Health were informed of all cases of discrimination within their facilities. When transmitted between MAC and government agencies, names and identification details were blacked out, unless where the complainant had given consent to disclose. Actions toward mitigation of each case were taken within two weeks of receipt.

KEY FINDINGS

Demographics

No.	Date of Complaint	Key Affected Population						Type of Complaint	Complaint made against:
		PLHIV	MSM	PWUD	YKAP	TG	SW		
1	3-Apr							Termination on ground of HIV status	Five-star Kuala Lumpur hotel - part of an international chain
2	21-Apr							Termination on ground of HIV status	Government-linked public transport company
3	28-Jun							Requirement of HIV test prior to employment as teacher & Refusal of admission to postgraduate university course on grounds of HIV status	Public university & Ministry of Education
4	21-Aug							Demotion on ground of HIV status & asked to undergo HIV test with panel doctor	Five-star Kuala Lumpur hotel - part of an international chain
5	20-Oct							Forced resignation on ground of HIV status	Medium-sized chemical company
6	28-Oct							Termination on ground of HIV status & stigmatising conduct by superiors	Five-star Kuala Lumpur hotel
7	13-Sep							Violently attacked by strangers - unsatisfactory police investigation	Royal Malaysian Police
8	6-Nov							Termination on ground of HIV status	Golf resort & country club
9	7-Nov							Termination on ground of HIV status	Entertainment venue
10	20-Nov							Discriminatory Service by Healthcare Staff	Government health clinic - Ministry of Health
11	6-Dec							Discriminatory Service by Healthcare Staff	Government health clinic - Ministry of Health
12	22-Dec							Discriminatory Service by Healthcare Staff	Government health clinic - Ministry of Health
13	24-Dec							Infectious disease not taken seriously, given general anaesthetic	Government health clinic - Ministry of Health
14	24-Dec							Refusal of Healthcare staff to use preferred gender marker	Government health clinic - Ministry of Health
15	29-Dec							Discriminatory Service by Healthcare Staff	Government health clinic - Ministry of Health

DISCRIMINATION IN HEALTHCARE SETTINGS



Six out of 15 complaints occurred in healthcare settings.

In one case, the complainant was a teenager seeking treatment for genital warts and anal discharge. He was given a topical cream and sent home. As his condition did not improve, he attempted to contact the nurse involved, but he was ignored. He complained that he did not feel that his condition was taken seriously, and that he was given a late appointment.

In another case, an HIV positive MSM complainant attended a community health clinic seeking treatment for a sore throat. He was coughing severely, and despite wearing a mask, was told by the doctor: "I have a wife and children. If you want to cough, cough elsewhere." In this case, an official apology was received from the Ministry of Health.

Discrimination also occurred in regard to dental health services in government clinics. A PLHIV complainant reported needing a tooth extraction, and upon informing the dentist that he was living with HIV, he was pushed to the end of the treatment queue, and told by the dentist, "Tooth extraction takes 45 minutes. This takes up my time." While extracting the tooth, the dentist complained to the nurse, "They just gave me this patient. Pushed him to me. Since they are free, they should do it. And they happily went to lunch." When the complainant asked for a follow-up appointment, the dentist refused. Hence, not only did the complainant have to undergo an unduly cumbersome waiting period to be treated, but also was subjected to unprofessional attitudes.

In the case of a transgender complainant, the healthcare worker refused to call the complainant by her appropriate gender marker, resulting in embarrassment in the waiting room. Stigmatisation of this nature can drive transgender people away from health services, and it is recommended that health facilities use the self-determined gender pronoun.

WORKPLACE DISCRIMINATION

Workplace discrimination overwhelmingly occurred in the tourism, hospitality, and entertainment industries.

In the case of a gym attendant working for a five-star hotel in Kuala Lumpur, after informing his human resources manager that he had contracted HIV, the human resources manager demanded he undergo a medical test, and stated that he would be demoted if he did not comply. The human resources manager also demonstrated his lack of knowledge of HIV transmission, erroneously stating that HIV could be spread through air and touch. The MAC responded by contacting the general manager, who not only ensured that the individual was retained in his job, but also approved the carrying out of a HIV sensitisation talk for all staff.

In another case involving a five-star hotel that was part of an international chain of hotels, the MAC contacted the headquarters in Europe informing them of the discrimination on the grounds of HIV status. Upon intervention from the headquarters, the individual was retained in his position.



Another case involved a server in a karaoke establishment who was terminated on grounds of HIV status, and on the grounds of 'deliberately concealing a known serious or contagious disease'. He had informed his line manager of his HIV status after requesting only morning shifts, as he had to take his ARV medications at night. The MAC responded by engaging his employer (the headquarters) and sensitising them on HIV knowledge, particularly modes of HIV transmission and advancements in HIV treatment. The employer then offered to reemploy the complainant, but by that time the complainant had obtained work elsewhere.

In the case of an MSM complainant working for a golf and country club, under a routine checkup he was diagnosed as HIV positive. His company's panel doctor broke confidentiality, and informed his employers of his medical condition. This is against what is prescribed by the Malaysian Medical Association (MMA)¹. Despite this, the respondent preferred that the MAC not report the doctor to the MMA and his wishes were respected. After the employer mandated leave upon the complainant on grounds of his HIV status, the MAC met with his employers and sensitised them on basic HIV knowledge and human rights implications of discriminatory practices. The Department of Occupational Safety and Health assisted MAC in sensitising the employers. Subsequently, the employer cancelled the mandated leave and the complainant was able to work as normal.

In the case of a teacher to be employed by a government tertiary education facility in East Malaysia, he was given a job offer letter which was subsequently revoked. This was pursuant to his medical examination returning with a HIV positive diagnosis. Letters and phone calls to the university were ignored.

¹ HIV/AIDS charter for doctors. Malaysian Medical Association [Internet]. [cited 2016 Nov 8]. Available from: <http://www.mma.org.my/hiv-aids-charter-for-doctors>



RIGHT TO EQUALITY BEFORE THE LAW

A transgender complainant reported being violently attacked near her home, and reported the injuries to the police. She reported to MAC that the investigating officer documented her case and did preliminary investigations, but did not follow up afterwards despite numerous calls. This gave her the impression that he did not take her case seriously. MAC assisted by contacting the Royal Malaysia Police headquarters in Bukit Aman, who had previously informed MAC that all persons, including transgender people, would be treated equally in police investigations. This is consistent with fundamental rights and liberties enshrined in Malaysia's Federal Constitution, that all persons are equal before the law and are entitled to the equal protection of the law.² After this intervention, the case was reassigned to a new investigating officer, and investigations were continued.

HUMAN RIGHTS AND DRUG POLICY

Malaysia continued to arrest, cane, and imprison people who use drugs in 2015. Compulsory detention of people who use drugs in Cure & Care Rehabilitation Centres³ also was continued, despite clear international scientific evidence⁴ that they exacerbate problematic drug use outcomes, and impinge on the right to health and the right to freedom from inhumane and degrading treatment⁵. On 18th October 2015, in the margins of the 24th International Harm Reduction Conference, a multi-stakeholder 'Sustainable Leadership in Harm Reduction'⁶ roundtable was held. Malaysian evidence was presented showing that there was an 80% higher risk of relapse in compulsory detention centres compared to voluntar methadone programs.⁷

² Federal Constitution, Malaysia. Article 8(1)

³ These are distinct from the Cure & Care Clinics or Service Centres, which have voluntary components.

⁴ Kerr T, Hayashi K et al. The impact of compulsory drug detention exposure on the avoidance of healthcare among injection drug users in Thailand. *International Journal of Drug Policy* 2014 Jan; 25(1): 171-174; Kamarulzaman A, McBrayer J. Compulsory drug detention centers in East and Southeast Asia. *International Journal on Drug Policy* 2015 Feb; 26(1): S33-S37.

⁵ UN calls to close compulsory drug detention and rehabilitation centres without delay. UN Office on Drugs and Crime (UNODC) [Internet]. 2012 Mar 9 [cited 2016 Nov 8]. Available from: <https://www.unodc.org/southeastasiaandpacific/en/2012/03/detention-centres/story.html>

⁶ Rahman F. Sustainable leadership in harm reduction: charting the harm reduction roadmap. Malaysian AIDS Council [Internet]. [cited 2016 Nov 8]. Available from: <http://www.mac.org.my/v3/a-call-for-sustainable-leadership-charting-the-harm-reduction-roadmap-a-report/>

⁷ Wegman M, Altice FL, Kaur S et al. Relapse to opioid use in opioid-dependent individuals released from compulsory drug detention centres compared with those from voluntary methadone treatment centres in Malaysia: a two-arm, prospective observational study. *The Lancet Global Health* 2016 Dec 7. DOI: [http://dx.doi.org/10.1016/S2214-109X\(16\)30303-5](http://dx.doi.org/10.1016/S2214-109X(16)30303-5)

RECOMMENDATIONS CADANGAN

TO PLHIV

- It is your right to keep your HIV status confidential.
- Doctors who disclose your HIV status to your employer can be reported to the MMA or the Malaysian Medical Council. You can do this yourself, via a private lawyer, or you may seek the assistance of the MAC.
- You have the right to freedom from inhumane and degrading treatment. This includes in healthcare settings. The Ministry of Health has done very well in collaborating with MAC to sanction doctors who are unprofessional towards PLHIV.

TO YOUNG PERSONS SEEKING HEALTH SERVICES

- The Malaysian AIDS Council is working towards reducing parental barriers for you to access the health services you need. The elimination of parental barriers is in line with WHO recommendations.⁸

TO GOVERNMENT

- Government must adopt a non-discrimination policy towards government employees living with HIV.
- Police at all levels need treat all complainants regardless of gender identity as equal before the law, in line with the Federal Constitution.
- To review and strengthen existing HIV confidentiality and ethics courses for persons studying to work in the health sector.
- To provide the financial resources for periodic training for persons working in the health sector on discriminatory practices.
- To eliminate criminal sanctions for drug use, and emphasise comprehensive evidence-based treatment, welfare, employment, and other support programmes.
- The Ministry of Tourism to coordinate with the Ministry of Health in convening a roundtable with major corporations and hotel chains to eliminate discrimination on the basis of HIV.

TO PRIVATE COMPANIES

- To sign on to the MAC Workplace Policy on HIV. Many notable companies have official policies against discrimination on the basis of HIV, including Petronas and Standard Chartered Bank.

KEPADA ORANG YANG HIDUP DENGAN HIV

- *Anda berhak untuk merahsiakan status HIV anda*
- *Doktor yang mendedahkan status HIV anda kepada majikan boleh dilaporkan kepada Persatuan Perubatan Malaysia ataupun Majlis Perubatan Malaysia. Anda boleh lakukan ini sendiri, melalui peguam persendirian ataupun dengan bantuan Majlis AIDS Malaysia.*
- *Setiap orang berhak untuk bebas daripada layanan yang tidak berperikemanusiaan dan menjatuhkan maruah, termasuk layanan dalam perkhidmatan kesihatan. Kementerian Kesihatan sering bekerjasama dengan Majlis AIDS Malaysia untuk meningkatkan disiplin doktor yang berkelakuan tidak profesional terhadap orang yang hidup dengan HIV.*

KEPADA GOLONGAN MUDA YANG INGIN AKSES KEPADA KESIHATAN

- *Majlis AIDS Malaysia sedang berusaha untuk mengurangkan sekatan umur terhadap orang muda yang ingin mendapatkan akses perkhidmatan kesihatan tanpa persetujuan ibu bapa. Langkah ini selari dengan cadangan Pertubuhan Kesihatan Sedunia.*

KEPADA KERAJAAN

- *Pihak kerajaan harus menggubal dan mengamalkan dasar anti-diskriminasi terhadap kakitangan kerajaan yang hidup dengan HIV.*
- *Anggota polis di setiap peringkat harus melayan setiap individu tanpa mengira identiti gender secara sama rata di sisi undang-undang, selari dengan Perlembagaan Persekutuan.*
- *Untuk mengkaji semula dan menambahbaik kursus etika dan kerahsiaan status HIV untuk mereka yang belajar untuk bekerja dalam sektor kesihatan.*
- *Untuk menyediakan sumber kewangan untuk latihan berkenaan amalan diskriminasi untuk mereka yang bekerja dalam sektor kesihatan.*
- *Untuk menghentikan hukuman jenayah atas kesalahan penggunaan dadah dan memberikan penekanan terhadap rawatan, kebajikan, pekerjaan dan program sokong bantu yang lain.*
- *Kerjasama diantara Kementerian Pelancongan dan Kementerian Kesihatan dalam mengadakan perbincangan mejabulat dengan syarikat besar dan rantaian hotel untuk menghapuskan diskriminasi atas dasar HIV.*

KEPADA SYARIKAT-SYARIKAT

- *Untuk menandatangani Dasar HIV di Tempat Kerja dengan Majlis AIDS Malaysia. Beberapa syarikat telahpun melaksanakan dasar anti-diskriminasi HIV termasuk Petronas dan Standard Chartered Bank.*

⁸ HIV and young men who have sex with men. UNAIDS & World Health Organisation (WHO) [Internet]. 2015 [cited 2016 Nov 8]. Available from: http://www.unaids.org/sites/default/files/media_asset/2015_young_men_sex_with_men_en.pdf



Majlis AIDS Malaysia

Laporan Insiden 事故投诉表格

No. Laporan 个案编号		Tarikh 日期	
Nama Penuh 姓名			
No. KP 身份证号码		Waktu 事故发生日期及时间	
Jantina 性别		No. HP 手机号码	
Pekerjaan 职业		Bangsa 种族	
Orientasi Seksual 性取向		Suntikan Dadah 注射吸毒	Pernah/Tidak Pernah 曾经使用/不曾使用

Laporan (Sila masukkan butiran seperti waktu insiden, dan butiran pihak yang terbabit)
报告 (请注明事故详情, 例如发生时间、涉案人员及相关细节)

Tarikh Jangkitan HIV 艾滋病毒感染日期		Tarikh Kejadian 事故发生日期及时间	

Note: This information is to be kept confidential. Particulars only to be disclosed upon written consent of the complainant. (Maklumat ini adalah rahsia. Butiran hanya boleh dilampirkan dengan persetujuan bertulis pelapor/pemberi laporan)

注：此信息将被保密。未经投诉人书面同意绝不向第三方泄露相关资讯。

Butir-butir Pemberi Laporan (Klien) 投诉 (当事人) 资料	Butir-butir Penerima Laporan (Atau PO yang Melaporkan) 接获投诉负责人 (或合伙组织) 资料
Tandatangan 签名: Nama 姓名: Tarikh 日期:	Tandatangan 签名: Nama 姓名: Tarikh 日期:

FOR INTERNAL USE ONLY

仅供内部使用

Actions Taken 采取行动	Date of Action Taken 采取行动日期	Complainant Informed of Action (YES/NO) 投诉人接获后续行动通知 (已经/未曾)

Annexed to this document is the MAC human rights incident form, which can be faxed through to 03-40474210. MAC maintains strict confidentiality of all details given on this form.

Note: This information is to be kept confidential. Particulars only to be disclosed upon written consent of the complainant. (Maklumat ini adalah rahsia. Butiran hanya boleh dilampirkan dengan persetujuan bertulis pelapor/pemberi laporan)

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