

## MALAYSIA HUMAN RIGHTS REPORT 2022



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#### **FOREWORD**

#### **Building Stronger Foundations to Defend Our Rights**

No doubt our world has become more fragile, more insecure, more polarized and more divided over the past year.

After years of COVID-19, surges of peaceful protest and dissent movements were violently repressed across the world. At the same time, we are sleepwalking into a global climate crisis. All this together with a war in Europe are shaping 'a new normal' that divides countries into camps or zones of influence. One cannot help but feel that the world is moving from one emergency to another. For human rights advocates, this is alarming.

We know how dangerous an emergency rhetoric, mindset and law-making can be for our societies, for our rule of law, for democracy. We know the dangers of the 'us against them' narrative for human rights and for the freedom from torture.

Nobody will know this better than activists in Malaysia who successfully fought a campaign to end abusive emergency laws such as the Internal Security Act 1960 (ISA) when it was finally repealed in 2012.

This is the time to value our learnings of the past.

An uncertain world needs the respect for universal norms to guide and protect us irrespective of the politics of the day. If those protections fall or break, we would have to face a world without common rules – which is a dangerous proposition. Human rights represent a fundamental cornerstone that all states agreed upon. We need them more than ever.

Human rights were drafted not only for 'the sunny days' but also to safeguard our societies in times and environments of adversity. They are meant to be resilient.

In times of crisis, the foundations of human rights law are particularly important.

Firstly, the inherent respect for human dignity is expressed in the universal prohibition of torture that states pledged to uphold at all times. And secondly, there can be no rights when there is no space to defend rights, or more positively framed *the inherent right to defend rights*. Both are key guideposts when looking at the work of SUARAM in 2022, who is a member of the global "SOS-Torture Network" of the OMCT for over two decades.

States commit in principle to the prohibition of torture, whilst torture is still routinely practised in police custody and judicial remand, as well as increasingly in the context of street protests. In recent years around the globe, we have witnessed increasing levels of police abuse in response to peaceful protests - often qualifying as torture or cruel and inhuman treatment. Whilst this demonstrates that torture can happen anywhere outside

of detention facilities, it highlights, more importantly, the great need for state institutions to invest in policing reforms, to transform police forces to police services.

Torture can be political, it can be ordinary, but very often it affects the most vulnerable, for example migrant populations, a focus area of SUARAM and members of the global SOS-Torture Network have been working on in recent years. Torture destroys life, but equally importantly – and often less visibly – it destroys societies, communities, the rule of law and hampers development. It is akin to a form of cancer in our societies. In this sense, we need to change societal perceptions of torture and enhance multisectoral understanding of the broader societal costs of torture practices.

SUARAM has been a steadfast supporter of the anti-torture movement in not only Malaysia, but also in the region by co-leading the Asia Alliance Against Torture network. And yes, we do see progress over the years, starting with the repeal of the ISA or more recently with an abolition of crimes with mandatory death penalties. Yet, more remains to be done in order to realise the vision of Malaysia as a torture-free nation.

Today, Malaysia is one of the very few countries that has yet to formally accede to the UN Convention Against Torture. Over the last 10 years, as the list of countries that have ratified the UN Convention Against Torture (UNCAT) grows, questions are increasingly directed at nations that have yet to do so. Soon, Malaysia will risk becoming one of the 'last man standing' outside of the primary universal framework against torture. I often get asked why?

The Convention provides a unique blueprint to prevent, protect from and eradicate torture. In the daily work of the World Organization Against Torture (OMCT), we do see how it helps countries improve their own laws and policies, and we see the remedy that the Convention provides to survivors of torture. Since its founding in 1989, SUARAM has unfailingly demonstrated that persistence is key to achieving progress. Together we will work with the same determination towards the ratification of UNCAT and the implementation of effective anti-torture reforms in Malaysia.

Another foundation is equally important – the role of human rights defenders.

The one thing we learn again and again is that there are no rights without the women and men who are ready to defend them. For decades, advocates have built tools to protect activists under threat and today OMCT serves as a board member of the EU Human Rights Defenders Mechanism (protect.defenders.eu), delivering emergency protections to defenders around the world. Yet, over the last few years, a positive change of focus puts the emphasis on the right to defend rights rather than focusing only on the protection of defenders when they are threatened. The coming year marks the 25th anniversary of the UN Declaration on the Rights and Responsibilities of Human Rights Defenders - an event that we should use to amplify the fundamental contributions of human rights defenders to society.

The role and work of SUARAM is exceptional in this regard. Like few others, the organization is seen as a competent and effective human rights organization defending the right to defend. And while we globally speak about a shrinking civic space – across regions and continents – we should not forget that there has been over the last decades a significant growth of our movement. Today, there are more women and men out there defending rights than at any other point in time, and at no point in time have we been more united and more universal. This gives me hope.

Our work makes a difference. We deliver change, we do improve our societies and importantly, this improves the lives of ordinary people. We manage to change legislation and policies that impact institutional cultures. Contrary to the perception in many countries, human rights are not against the State – they are to make our states and societies better and more just and secure.

The work of SUARAM has and continues to inspire me, ever since I first got to know its work. It is one of the foundations we need for the future.

I am convinced SUARAM and this report will remain a crucial voice for change - principled, competent, steadfast.

#### In solidarity and admiration,



Gerald Staberock Secretary-General World Organisation Against Torture (OMCT)

#### **EXECUTIVE SUMMARY**

2022 was interspersed with a mix of 'stability' and uncertainty. Inflation, food and financial insecurity post-pandemic, as well as risk of displacement or losses of livelihoods due to intermittent floods, were among the pervasive issues that grappled Malaysians. Whilst the political climate within the first nine months of the year was dynamic, there was also broad support across both sides of the political divide and a political will for certain structural reforms in legislation and the public delivery system. Nearly 40 Bills were passed in Parliament under Ismail Sabri's leadership. Nevertheless, by October 2022, this transitional state of political 'stability' quickly slid into the dissolution of Parliament, paving the way for snap polls amidst spiking concerns of the already-anticipated monsoon floods that usually take place at the end of the year. The 15th General Election (GE) and their results were anything but predictable, keeping many Malaysians at the edge of their seats - from multi-cornered fights across multiple constituent seats among an unprecedented number of candidates, a hung Parliament, to the tussles over government formation prior to the 'coalition of coalitions' arrangement that now makes up the unity government.

Application and abuse of laws that violate the **right to fair trial**, specifically the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime Act 1960 (POCA), the Prevention of Terrorism Act 2015 (POTA) and the Dangerous Drugs (Special Preventive Measures) Act 1985, (DDA85) persist. Arrests under SOSMA and POCA remained significantly higher than those under POTA. Arrests for DDA85 were largely made in the context of the nationwide Ops Tapis Khas (Special Screening Op) 1 to 7 antinarcotics operation by the Royal Malaysian Police (PDRM). The operation was systematically implemented through raids that each lasted a few days in identified hot spots.

The political will to abolish the elements of detention without trial of SOSMA, POCA and POTA remained lacking. This was especially the case for SOSMA. The Perikatan Nasional administration extended Section 4(5) of SOSMA by another five years till 2027, albeit in a manner that contravenes the spirit of parliamentary democracy - the motion to extend the provision was tabled in the subsequent parliamentary session in July, when the same motion was voted down in March. 2022 came to a close with the newly appointed Home Minister Saifuddin Nasution from the unity government defending the application of SOSMA.

In the **Right to Justice** landscape, one significant development was the long-overdue passing of the Independent Police Conduct Commission (IPCC) Act in Parliament. This Act lacks disciplinary powers to compel action against police personnel with misconduct, making it a toothless tiger in upholding police accountability. On another note, deaths in custody remains a prickling issue. Whilst the Criminal Investigation Unit on Deaths in

Custody (USJKT) swiftly released press statements to inform the public about cases of death in custody, no information related to the investigation process and outcome of cases was provided. Whilst inquests constitute a crucial means of justice for family members, they are in most cases not conducted, and even if they are, inadequately. Little to no progress was also observed in rectifying longstanding gaps of case underreporting as well as systemic issues such as substandard hygiene conditions in detention facilities and unstandardised or poorly implemented health screening procedures. Police failure is also highlighted in documented **enforced disappearances** such as the Malaysian-Indonesian couple Joshua Hilmy and Ruth Sitepu, warranting reforms such as improving the standard operating procedures relating to investigations of missing persons as well as enhancing police personnel's forensic investigation capabilities - which are comprehensively explored in Feature 2 of this report.

Use of laws that curtail **freedom of expression**, especially the Sedition Act 1948 and Section 233 of the Communication and Multimedia Act 1998, continued. The number of investigations and arrests under these two legislations reduced compared to 2021. The Crackhouse Comedy Club case was among the high-profile ones in 2022. Bans were imposed on selected films due to LGBT elements. On the other hand, there were none imposed on publications under the Printing Presses Publications Act 1984 within the year - in fact, bans were lifted for two books.

The **freedom to assemble** continued to be exercised regularly by activists, and in some cases, politicians. Efforts to limit protest space were exercised by the police in public assemblies involving issues that were 'more sensitive', specifically the #TangkapAzamBaki protest that was held in response to alleged corrupt practices of the Malaysian Anti-Corruption Commission (MACC) Chief Commissioner, as well as the Walk for Judicial Independence organised by the Bar Council in response to the issue of interference with judicial independence and breaches of the principle of separation of powers.

The passing of the constitutional amendment to prevent party defection among elected members of Parliament was another very significant milestone in 2022, albeit with loopholes such as non-applicability to coalition hopping. Other positive developments included the lowering of the voting age and the implementation of automatic voter registration, which played a role in enhancing democratic participation. Nevertheless, more remains to be done in addressing key issues that impede the achievement of truly **free and fair elections** such as malapportionment and weak enforcement of election rules.

In 2022, the independence of the **Human Rights Commission of Malaysia (SUHAKAM)** was called into question, due to the yet-to-be-submitted 2020 and 2021 annual reports to Parliament as well as the controversial appointments of the new chairperson and SUHAKAM Commissioners.

Developments surrounding the rights, wellbeing and welfare of **women**, the **LGBTQ+ community**, as well as **migrants and refugees** are covered in this report.

- There were positive developments such as the passing of the Anti-Sexual Harassment Act 2022 and gender-responsive budgeting efforts. Nevertheless, progress was limited or slow in other areas such as child marriage, women political participation and citizenship rights of Malaysian mothers with overseasborn children.
- Criminalisation, stereotyping and violence were still heavily used by state (e.g., the Ministry of Education, state governments, JAKIM, politicians) and non-state (e.g., media) actors to marginalise, exclude and discriminate against the LGBTQ+ community.
- Malaysia's treatment of migrants and refugees continues to toe the line between tacit acceptance, neglect, outright hostility and xenophobia. Immigration raids and human rights abuses against migrant communities persisted, with no political will to accede to key conventions that recognise the status of refugees.

Promising strides were made by the government to abolish mandatory **death penalty**, leading to the first tabling of seven Bills in early October 2022, prior to the dissolution of Parliament. Discretionary death penalty will still, however, most likely be retained. Even then, Malaysia is still more progressive than its neighbour Singapore, where the death penalty remains a core pillar of its criminal punishment regime and drug policy. The city-state resumed its executions after a two-year pause, and among them the harrowing case of intellectually disabled Malaysian man Nagaenthran Dharmalingam who was on death row in Singapore since 2010.

The status of climate emergency in Malaysia is comprehensively explored in SUARAM's Annual Human Rights Report, recognising the universal human right to a clean, healthy and sustainable environment. Whilst our nation has begun undertaking an energy transition through use or exploration of sources such as large hydro and carbon capture and storage, energy security is prioritised at the expense of adverse environmental harm and increased vulnerability of local communities especially the Indigenous communities to negative effects of climate change.



## RIGHT TO FAIR TRIAL

#### **RIGHT TO FAIR TRIAL**

The right to fair trial is a right enshrined in Article 5 concerning the liberty of the person in the Federal Constitution of Malaysia. In accordance with the protections and fundamental liberties encompassed in clauses (2) to (4) under Article 5, Malaysians have civil rights such as the right to public hearing, the right to apply for *habeas corpus* for any unlawful detention, the right to be informed of the reason for arrest, and the right to be released within 24 hours of arrest if no case was produced before a magistrate.

However, these inalienable rights could be negated under Article 149 of the Federal Constitution where the government could enjoy extraordinary power to combat subversion, organised violence and crimes prejudicial to the public. Article 149(1) plainly states that laws that contravene fundamental liberties could be enacted to prevent subversion, organised violence, or acts prejudicial to public order. This clause thus allows Parliament to craft laws that would otherwise violate fundamental liberties and constitutional guarantees in Article 5, as well as Articles 9 (freedom of movement), 10 (freedom of speech, assembly and association) and 13 (right to property). Therefore, under Article 149, the safeguards for a fair trial of the accused are removed, and the constitutionality of detention without trial laws are unlikely to be challenged, even if the latter breaches Article 5 of the Federal Constitution. All four laws that permit detention without trial, namely the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime Act 1959 (POCA), the Prevention of Terrorism Act 2015 (POTA) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA) owed its existence to Article 149.

Aside from the momentary parliamentary defeat of the SOSMA, there has been no significant policy development and change regarding the use of detention without trial laws. All four laws that permit detention without trial continue to exist where there is not even the political will to address the abuses that exist within these laws, never mind abolishing it. The two conservative political coalitions, Barisan Nasional (BN) and Perikatan Nasional (PN) are adamant that these laws are here to stay given that they have voted in favour of retaining SOSMA in July 2022. The opposition coalition, Pakatan Harapan (PH), which has voted against reactivating SOSMA, did offer hope that they would take an entirely different stance on detention without trial laws once they are in power. Nevertheless, it appears that the hope was immediately dashed when the newly appointed PH Home Minister, Saifuddin Nasution, defended the application of SOSMA<sup>1</sup>.

<sup>1</sup> Mohamed Basyir, 'Saifuddin: Sosma necessary to manage organised crimes' (New Straits Times, 14 December 2022)

<a href="https://www.nst.com.my/news/nation/2022/12/860867/saifuddin-sosma-necessary-manage-organised-crimes">https://www.nst.com.my/news/nation/2022/12/860867/saifuddin-sosma-necessary-manage-organised-crimes</a> accessed 26

Having said that, the task of addressing issues surrounding detention without trial laws would also be complicated even for the current coalition government led by Anwar Ibrahim that enjoys two-thirds of the parliamentary majority. It would be difficult for some of the other coalition partners, such as BN, to come to an agreement to amend or abolish SOSMA. In short, the detention without trial law would be a political hot potato, making it politically impossible for the current coalition government to reach an agreement that might satisfy all its coalition partners. This may also explain why the Home Minister, being bound by collective responsibility, is now softening his stance on SOSMA.

Nevertheless, the fact remains that PH was seen to be unwavering in opposing SOSMA not once but twice in Parliament, and there were even Members of Parliament from PH who suffered under SOSMA for political expression. Despite political difficulties that exist within the coalition government, this sudden volte-face by PH is disappointing to many human rights organisations that have campaigned with PH on abolishing SOSMA throughout the years. It also raises legitimate questions on whether PH is ever sincere in safeguarding the right to fair trial in this country.

For the year 2022, SUARAM has documented a total of 116 cases under SOSMA and 133 cases under POCA from media monitoring. The numbers shown do not deviate from past SUARAM monitoring when SOSMA and POCA were mainly used to tackle human trafficking and organised crime.

Statistics on Detentions Without Trial from SUARAM's Documentation in 2022

	Terrorism	Trafficking/ Immigration	Organised Crime	Unidentified	Total
SOSMA	0	73	43	0	116
POCA	0	0	133	0	133
РОТА	0	0	0	0	0
Total	0	73	176	0	0

The government has again promised that SOSMA will be reviewed during the beginning of 2022<sup>2</sup> but any review thus far has only been concerned with the reactivation of section 4(5) of SOSMA with no amendments. The amendment of POCA and POTA that was

<sup>2 &#</sup>x27;Malaysia to review laws under home ministry including detention act' (The Straits Times, 13 January 2022)

<sup>&</sup>lt;https://www.straitstimes.com/asia/se-asia/malaysia-says-to-review-laws-under-home-ministry-including-detention-act> accessed 28 September 2022

promised under the 12<sup>th</sup> Malaysia Plan<sup>3</sup> also did not materialise as the need for greater national security and public safety were constantly cited to justify the continued existence of such laws.

As mentioned above, PH coming into power also did not herald a change of attitude on this matter. Nevertheless, the Home Minister along with the Deputy Law Minister, Ramkarpal Singh, has agreed to engage various stakeholders on the application of SOSMA<sup>4</sup>. According to the Deputy Law Minister, the discussion would touch on the aspect of the subversion of bail applications under SOSMA. Given that the coalition government was only formed in November 2022, the jury is still out on whether the coalition government, or more particularly the Home Ministry, would take into account the suggestions made by human rights organisations.

While there were no arrests under these laws in 2022 involving individuals being detained without trial for political activities or exercising their free speech under SUARAM's monitoring, nevertheless, the continued existence of SOSMA and its lack of safeguards remain a deterrent to such freedoms. This is more pertinent since historically, SOSMA had been prone to abuse when used against political dissenters.

Official Number of Individuals Arrested under Detention Without Trial Laws from 2015 - 2019<sup>5</sup>

	Citizenship			Total		
	Malaysian	Non- Malaysian	Terrorism	Trafficking/ Immigration	Organised Crime	
SOSMA	1,408	277	552	532	601	1,685
POCA	-	-	-	-	8,402	8,402
POTA	-	-	35	-	-	35
Total	-	-	587	532	9,003	10,122

<sup>3 &#</sup>x27;Sedition Act, Penal Code, Sosma among laws to be reviewed' (Malaysiakini, 27 September 2021)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/593036">https://www.malaysiakini.com/news/593036</a>> accessed 28 September 2022

<sup>4 &#</sup>x27;Saifuddin agrees to hold engagements on Sosma' (Free Malaysia Today, 23 December 2022)

<sup>&</sup>lt;a href="https://www.freemalaysiatoday.com/category/nation/2022/12/23/saifuddin-agrees-to-hold-engagements-on-sosma/">https://www.freemalaysiatoday.com/category/nation/2022/12/23/saifuddin-agrees-to-hold-engagements-on-sosma/</a> accessed 26 February 2023

<sup>5</sup> Written Answer in Parliament – Question 188, 3rd Meeting of the 3rd Session of the 14th Parliament

#### Combined Statistics of Individuals Arrested under Detention Without Trial Laws from 2015 – 2022<sup>6</sup>

SOSMA	POCA	POTA	Total
2683 <sup>7</sup>	11,3668	369	14,085

In 2020, the Home Ministry revealed in Parliament that the total number of arrested individuals from 2015 to 2019 under the three security laws stood at 10,122. It should be noted that this figure did not represent the total number of individuals arrested under SOSMA and POCA, since these two laws came into force much earlier<sup>10</sup>. However, the 35 individuals arrested under POTA could be inferred to be the total number of arrests under the said act since POTA has only been enforced since 2015.

During a 2021 parliamentary session, the Home Minister further revealed that 369 and 2,832 individuals had been arrested under SOSMA and POCA respectively, between 2020 and August 2021<sup>11</sup>. Based on the answers provided in these separate sessions, it may be surmised that from 2015 – 2021, at least 2,000 individuals were arrested under SOSMA, whereas over 10,000 individuals were arrested under POCA. In the short span of six years, successive governments in Malaysia maintained a record of using detention without trial laws to arrest more than 13,000 individuals.

For official case numbers for the year 2022, they were only furnished by the unity government in response to a parliamentary question in March 2023<sup>12</sup>. 624 arrests were made under SOSMA in 2022, with 401 sentenced, 71 charged in court, 140 released and 12 being investigated<sup>13</sup>. 132 individuals were arrested under POCA, whilst only one was arrested and issued a detention order under POTA<sup>14</sup>.

<sup>6</sup> For case numbers in the table by legislation, case numbers shared by the Government in replies to Parliamentary Questions were summed up. 2015-2019 case numbers provided in "Written Answer in Parliament - Question 188, 3rd Meeting of the 3rd Session of the 14th Parliament" were added to case numbers provided for time periods of (1) 2020-Aug/Sept 2021 and (2) 2022. 2022 case numbers for all three legislations were provided in "Oral Answer in Parliament – Question 28. 2 March 2023"

<sup>7</sup> This statistic excludes cases from October to December 2021, as it was not provided in parliamentary replies

<sup>8</sup> This statistic excludes cases from September to December 2021, as it was not provided in parliamentary replies

<sup>9</sup> This statistic excludes cases from September to December 2021, as it was not provided in parliamentary replies

<sup>10</sup> SOSMA was passed on April 2012 while POCA was passed on 1959 and was amended in 2014 and 2017

<sup>11</sup> Oral Answer in Parliament – Question 66, 15 September 2021 <a href="https://pardocs.sinarproject.org/documents/2021-september-december-parliamentary-session/oral-questions-soalan-lisan/2021-09-15%20parliamentary-replies/20210915-par14p4m1-soalan-lisan-64.pdf/view>

<sup>12</sup> Oral Answer in Parliament - Question 28, 2 March 2023

<sup>13</sup> Ibid

<sup>14</sup> Ibid

This also reflects the difficulty and challenge in documenting and monitoring human rights data, especially when the executive branch has not developed the culture of sharing information with the wider public; Parliament therefore remains the only avenue where such data could be obtained as it is mandatory and part of the parliamentary accountability process for the minister to answer questions posed by other MPs.

**How Detention Without Trial Laws Work** 

	Criminal Procedure Code (CPC)	SOSMA	POCA	РОТА	DDA
Remand period	4+3 days 7+7 days (For offences liable to more than 14 years' imprisonment)	1 + 28 days	1 + 28 days + 31 days	1 + 28 days + 31 days	60 days
Remand process	Magistrate	Police	Police	Police	Police
Trial process	Following CPC	CPC + SOSMA (Bail is through SOSMA)	POCA board	POTA board	Home Minister's detention order
Bail period	Depending on offence	No bail, except for women, children, or sick/infirm person	No bail	No bail	No bail
Sentence	Depending on offence	Depending on offence	2 years' imprisonm ent or house arrest	2 years' imprisonm ent or house arrest	2 years' imprisonme nt or house arrest

#### Security Offences (Special Measures) Act 2012

SOSMA is a procedural law that operates in lieu of the Criminal Procedure Code when an individual is detained for suspicion of offences under Chapter VI<sup>15</sup> and VIA<sup>16</sup> and VIB<sup>17</sup> of the Penal Code; Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007 (ATIPSOM); and Special Measures Against Terrorism in Foreign Countries Act 2015. In other words, SOSMA provisions allow the police to apply special measures which contravene the principles of right to fair trial, against a person believed to have been involved in a security offence. SOSMA itself is not a piece of legislation that is designed to deter any offence, rather, it was crafted to circumvent the rights of the arrested person spelled out under Section 28A of the Criminal Procedure Code.

Under SOSMA, an individual can be detained for no more than 28 days for investigation. Moreover, the person arrested and detained can be denied access to legal counsel and access to their family for up to 48 hours. By default, detainees are not granted bail unless, according to the provisions in Section 13(2), they are either under 18 years of age, a woman, sick or infirm. Aside from that, the court is not given discretionary powers to grant bail, and individuals arrested under SOSMA can potentially be incarcerated until the conclusion of all trial proceedings and all appeals are disposed of.

This is perhaps the most repressive feature of SOSMA, and it contravenes the remand procedure under the Criminal Procedure Code, which spells out that an individual who has committed an alleged crime can only be remanded for a period of 7 days or 14 days in total, depending on the severity of the offence, and may be granted bail depending on the nature of the charged offence. The key difference lies in the discretion afforded to the court to decide whether the offence should be regarded as bailable or non-bailable. Under SOSMA, there is a blanket removal of judicial discretion and instead, the public prosecution holds absolute power to determine whether a person should be granted bail.

Put in another way, it is the government that decides the detention period of an individual. In practice, this 'no-bail' policy does not just violate the detainee's right to fair trial, but also leaves them vulnerable to punitive detention, even before being declared guilty by the court. For instance, SUARAM had documented a case in which 32 individuals were arrested under SOSMA in June 2022 and they were still under detention in December 2022<sup>18</sup>. Little details are known about their arrest and according to their families, they were detained incommunicado for at least six months. Families of the detainees revealed that

<sup>15</sup> Chapter VI in the Penal Code encompasses offences against the state, some of which include assaulting member of Parliament with intent to compel or restrain the exercise of any lawful power, committing activities (or corresponding attempts) that are detrimental to parliamentary democracy, espionage, and aiding escape of or harbouring prisoners of State

<sup>16</sup> Chapter VIA in the Penal Code cover offences related to terrorism

<sup>17</sup> Chapter VIB in the Penal Code consists of organised crime offences, including assisting an organised crime group, harbouring and recruiting group members, participating in corresponding group activities etc

<sup>18</sup> Syhami Irfan, 'Isteri buntu, suami ditahan Sosma hampir enam bulan' (Malaysia Gazette, 7 December 2022)

<sup>&</sup>lt;a href="https://malaysiagazette.com/2022/12/07/isteri-buntu-suami-ditahan-sosma-hampir-enam-bulan/">https://malaysiagazette.com/2022/12/07/isteri-buntu-suami-ditahan-sosma-hampir-enam-bulan/</a> accessed 26 February 2023

the police did not even inform what alleged offence the former were arrested for or where they had been detained. The police merely told family members that the detainees would be remanded for 28 days under SOSMA.

There were also reports of SOSMA detainees being held for an unusually long period even though they had not been declared guilty. In a separate case, 33 individuals from Sungai Petani are still in remand detention after being first arrested two years ago under SOSMA <sup>19</sup> (refer to the first box below). The 'no-bail' policy under SOSMA legitimises the prolonged detention even though the 33 detainees had already been formally charged and were represented by lawyers.

#### 33 Men Still In Detention After Awaiting Trial for Two Years<sup>20,21</sup>

33 men, aged 22 to 60, were arrested by the police between 20 and 26 September 2020. They were subsequently charged under Section 130v (1) of the Penal Code for being members of Geng Sakai. Family members of detainees said that they were kept in the dark about the arrest and detention until more than two days later, after which they were informed that the detainees were held at Pendang police headquarters pending investigation. They were also given different reasons for their loved ones' arrest, until they were finally informed that the men were detained under SOSMA. These men are still in remand, with the first court hearing only taking place at the Sungai Petani High Court on 18 December 2022

In the 18 December court hearing, defence lawyers of detainees argued that the testimony of an investigating officer was irrelevant to the case trial, to which the judge instructed the filing of a joint submission and that a decision will be made on 6 February 2023 on whether or not the officer will be allowed to testify in court. The court also fixed 19 and 20 April, as well as 17, 24 and 25 May 2023 as dates for the hearing.

All detainees are also facing charges under the "Dangerous Drugs Act 1952". The court hearing for these charges were fixed on 13 July 2023.

#### 33 SOSMA Detainees Given Hearing Date Two Years Later in 2024<sup>22</sup>

28 men were arrested by the police and detained between 12am and 6am on 23 June 2022. These men were blindfolded throughout the journey to the police station.

<sup>19</sup> Arulldas Sinnappan, 'Nabbed under Sosma, 33 men still in detention after 2 years awaiting trial' (Malaysiakini, 17 December 2022) <a href="https://www.malaysiakini.com/news/648397">https://www.malaysiakini.com/news/648397</a> accessed 26 February 2023

<sup>21</sup> Arulldas Sinnappan, 'Sosma 33: Court to decide if investigating officer can testify' (Malaysiakini, 19 December 2022) <a href="https://www.malaysiakini.com/news/648703">https://www.malaysiakini.com/news/648703</a> accessed 6 April 2023

<sup>22</sup> This case is currently managed by SUARAM

At least seven out of 35 detainees had chronic health conditions such as asthma, chronic kidney disease and epilepsy. Two of these detainees also had OKU status and there were also young detainees aged 19 to 21 years old. It was later discovered that there were two others arrested before 23 June 2022, three others on 18 August 2022 and two more after 18 August 2022. Out of the 35 detainees, 33 were beaten by the police to extract false confessions.

Family members were not informed of the reason for the arrest as well as lockup location where their loved ones were detained. It was only 21 days later that they were allowed to meet the detainees, but only for 20 minutes at Travers and Sentul police stations with close police monitoring and 'inhumane treatment' by officers on duty.

On 19 July 2022, after the end of the 28-day remand period, 28 detainees were brought to the Kuala Kubu Bharu (KKB) Sessions Court on charges of involvement in organised crime group Geng 08 GST.

- No confession from detainees was recorded by the judge
- Bail applications for the 28 detainees were not allowed, on the grounds that such applications can only be made at the High Court
- Bail applications for detainees with health issues were rejected, except for one who was granted bail on 24 March 2023
- Whilst the matter of mental health issues among detainees was raised by the defence lawyer, no order was given by the court, and the lawyer was asked to refer it to the prison

Prior to the hearing date set for July to September 2024 for 33 detainees, delays took place between late August and early December 2022. The two remaining detainees were charged in KKB Sessions Court in September and October respectively.



Other human rights violations found in SOSMA which undermine principles relating to international standards of the right to fair trial include the extended pre-trial detention or

remand amounting to torture and degrading treatment as part of the standard operating procedure; denial of legal counsel and family access; restriction on the admissibility of evidence and documents deemed as sensitive; admissibility of protected witnesses who are questioned without the presence of the accused or their counsel; and several other issues of concern involving the use of agents provocateur and confessions.

When it was first drafted as a bill in 2012, SOSMA was touted by the government to counter terrorism and prevent subversive activities and national security threats. This rationale provided the justification to circumvent the Criminal Procedure Code. The government has also maintained that the supposedly limited scope of offences under SOSMA is what separates it from the discredited ISA. Yet the reach of SOSMA is clearly beyond combatting the specific threat of terrorism. Years of monitoring and documentation by SUARAM suggest that the broad definition of "security offences" under SOSMA has lent itself to increasing abuse by authorities, and unlimited application to other crimes. In stark contrast to the provision which states that no person shall be arrested and detained solely for their political beliefs or activities, SOSMA has been used many times to detain political dissidents such as Khairuddin Abu Hassan, Matthias Chang and Maria Chin. For the case of the former, he has since been awarded RM300,000 in damages for his detention under SOSMA by the High Court<sup>23</sup>. The judge presiding the case had come to a conclusion that the arrest was clearly unlawful as the actions of Khairuddin Abu Hassan, which had led to his arrest under SOSMA, was not 'an activity that is detrimental to parliamentary democracy'.

#### Court Cases Related to SOSMA In 2022

#### Two Individuals Granted Bail For Charge of Harbouring Undocumented Migrants<sup>24</sup>

M Vathanan (44 years old) and T Krishnaveni (55 years old) were jointly charged at the Butterworth Sessions Court on 13 July 2022 for sheltering undocumented migrants in Kepala Batas in June 2022. They were charged under Section 26H of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM) Act 2007, read together with Section 34 of the Penal Code, which provided a jail sentence of not more than 10 years and a fine, or both, upon conviction. No bail was offered at that time.

On 20 September 2022, both persons were granted bail, as Vathanan had health issues, and Krishnaveni is a woman. Vathanan was found to vomit blood several times during the

<sup>23 &#</sup>x27;Khairuddin wins suit over Sosma detention, awarded RM300k' (The Star, 25 August 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/08/25/khairuddin-wins-suit-over-sosma-detention-awarded-rm300k> accessed 26 February 2023

<sup>24 &#</sup>x27;Sheltering undocumented migrants: Court grants bail to two' (Malaysiakini, 21 September 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/636436">https://www.malaysiakini.com/news/636436</a> accessed 6 April 2023

proceedings. Both suspects were granted the exemption under Section 13<sup>25</sup> of SOSMA, with bail amounts of RM25,000 and RM20,000 respectively. The court also ordered them to surrender their passports and report to the police station once every two weeks.

#### Bail Bid by Contractor Facing Migrant Smuggling Charges Rejected by Apex Court<sup>26</sup>

Samat Yamin's (56 years old) application for bail under Section 13 of SOSMA was rejected by the Federal Court in October 2022. The court ruled that Samat failed to satisfy Section 13, despite statements by his lawyer Ramkarpal Singh that the accused has illnesses, including gout, heart disease, kidney disease and diabetes.

Samat was charged in the Klang High Court in 2020 for smuggling migrants and receiving proceeds from human trafficking in Setapak. His bail application pending the trial hearing was denied by the High Court in 2020. Another appeal to hear the merits of the bail application was rejected by the Court of Appeal in May 2022 with the ruling that it had no jurisdiction to hear the matter, prior to admission of this appeal by the Federal Court.

As a safeguard to potential abuse, the power to detain without trial under Section 4(5) of SOSMA is subject to a parliamentary vote for every 5 years. Under Section 4(11), Section 4(5) shall be reviewed every five years and shall cease to have effect unless, upon the review, a resolution is passed by both Houses of Parliament to extend the period of operation of the provision. This means that Parliament could vote against granting police the power to detain an individual for 28 days under SOSMA.

The extension was last renewed on 4<sup>th</sup> April 2017 and the power to detain without trial would expire by 31<sup>st</sup> July 2022. The first motion to reactivate SOSMA delivered an unexpected result where the government suffered a historic parliamentary defeat on 23<sup>rd</sup> March 2022<sup>27</sup>. The motion to extend Section 4(5) of SOSMA till the year 2027 was defeated with 86 votes against 85 votes. As things stood at that time, this power of detention under SOSMA would have lapsed after 31<sup>st</sup> July 2022.

However, during the next parliamentary session in July 2022, the government decided to table a motion to revoke the decision made on 23<sup>rd</sup> March. Essentially, the government tabled a new motion to replace the previous motion which had failed to be passed<sup>28</sup>. The

<sup>25</sup> Section 13 of SOSMA states that bail shall not be granted to a person who has been charged with a security offence except for persons who are below 18 years of age, a woman, or a sick or infirm person.

<sup>26 &#</sup>x27;Apex court rejects bail bid by contractor facing migrant smuggling charges' (Malaysiakini, 5 October 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/638348">https://www.malaysiakini.com/news/638348</a> accessed 6 April 2023

<sup>27 &#</sup>x27;Govt's Sosma amendment Bill defeated by one vote' (The Star, 25 March 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/03/25/govts-sosma-amendment-bill-defeated-by-one-vote> accessed 28 September 2022

<sup>28 &#</sup>x27;Govt succeeds in revoking failed vote to extend Sosma clause' (Malaysiakini, 20 July 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/629033">https://www.malaysiakini.com/news/629033</a> accessed 28 September 2022

new motion was passed with 105 votes against 83 votes on 20<sup>th</sup> July 2022, when the decision not to reactivate Section 4(5) was effectively revoked. The government wasted no time and in less than a week, the Home Minister swiftly introduced a 'new' motion – which was basically the same motion as the one on 23<sup>rd</sup> March – to reactivate Section 4(5). This time, the government managed to muster enough parliamentary votes and the motion was easily passed in the lower house with 111 members of Parliament supporting and 88 against, while the remaining 21 abstained from voting<sup>29</sup>. The motion was then brought before the unelected upper house and the result was a foregone conclusion as it was passed with a voice vote<sup>30</sup> on 27<sup>th</sup> July 2022, a mere four days before the expiry date.

It was unusual for the same Home Minister who had suffered a defeat of his motion to immediately re-table it in the next parliamentary session. SUARAM is of the view that the act of tabling the same motion by the executive in the short span of time contravenes the spirit of parliamentary democracy for it forces Parliament to reconsider a business that had already been decided at its previous sitting. On the issue of parliamentary independence, we are wary of the fact that the re-tabling of the SOSMA motion would only create the practice that the government would just keep tabling a defeated motion until Parliament obeys the wish of the executive.

The narrow defeat that the government suffered in March should not be construed as if there was a majority in the house prepared to vote down SOSMA; rather, it was more a political tussle between Barisan Nasional (BN) and Perikatan Nasional (PN) in the governing coalition and an ambush was hatched to weaken the Home Minister Hamzah Zainuddin. The Home Minister admitted that he was also shocked when some government MPs left the house and abstained from voting when the vote was called<sup>31</sup>. Therefore, the parliamentary votes of 111 for the motion to extend the power of SOSMA in July 2022 is a truer reflection of the parliamentary support for reactivating SOSMA at that time. Unfortunately, since the change of government, the 88 votes that had voted against the reactivation of SOSMA have now u-turned on their stance on the draconian law. It is indeed a sad day for human rights in Malaysia that even the PH coalition that had previously suffered under SOSMA, came to the conclusion that SOSMA is needed in the name of defending national security.

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<sup>29</sup> Martin Carvalho, 'Dewan Rakyat passes 28-day detention under Sosma' (The Star, 26 July 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/07/26/dewan-rakyat-passes-28-day-detention-under-sosma> accessed 28 September 2022

<sup>30 &#</sup>x27;Sidang Khas Dewan Negara lulus usul pelanjutan Subseksyen 4(5) SOSMA' (Sinar Harian, 27 July 2022)

<sup>&</sup>lt;https://www.sinarharian.com.my/article/213372/berita/nasional/sidang-khas-dewan-negara-lulus-usul-pelanjutan-subseksyen-45-sosma> accessed 28 September 2022

<sup>31 &#</sup>x27;Hamzah: MPs walked out because 'they don't like my face' (The Star, 26 March 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/03/26/hamzah-mps-walked-out-because-they-dont-like-my-face> accessed 28 September 2022



When the motion to extend the provision of SOSMA was first defeated in March 2022, the police released a statement stating that SOSMA would not be enforced beyond its expiry date<sup>32</sup>. Instead, the CPC and other relevant acts would be used for any potential arrest, detention and investigation pertaining to offences that fall under the purview of SOSMA. That statement had inadvertently exposed the fact that Malaysia's CPC is sufficient and equipped to address these offences without the need of a repressive SOSMA. In fact, it has been argued that without SOSMA, alleged security or organised crime offenders are more likely to cooperate with police because their liberties are safeguarded under the Federal Constitution and the CPC. Nicky Liow, an alleged offender of commercial crime, has spoken through his lawyer that the defeat of the motion to extend SOSMA provision in March was instrumental in his decision to come out of hiding to cooperate with the police<sup>33</sup>. Instead of combating organised crime, the draconian provisions of SOSMA have had the reverse effects of hampering investigations and preventing individuals from cooperating with the police.

It is highly probable that SOSMA is set to stay for at least another 5 years, given that even PH has now come to its defence. The statement by PH Home Minister Saifuddin Nasution has made it clear that this administration would not be abolishing SOSMA despite the fact most of them have voted against its reactivation recently<sup>34</sup>.

<sup>32 &#</sup>x27;No more detention without trial under Sosma after July 31, says IGP' (Free Malaysia Today, 23 March 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/03/23/no-more-detention-without-trial-under-sosma-after-july-31-saysigp/> accessed 28 September 2022

<sup>33</sup> Faisal Asyraf, 'Nicky Liow never part of any gang, says lawyer' (Free Malaysia Today, 12 April 2022)

<sup>&</sup>lt;a href="https://www.freemalaysiatoday.com/category/nation/2022/04/12/nicky-liow-never-part-of-any-gang-says-lawyer/">https://www.freemalaysiatoday.com/category/nation/2022/04/12/nicky-liow-never-part-of-any-gang-says-lawyer/</a> accessed 28 September 2022

<sup>34</sup> Mohamed Basyir, 'Saifuddin: Sosma necessary to manage organised crimes' (New Straits Times, 14 December 2022)

<sup>&</sup>lt;a href="https://www.nst.com.my/news/nation/2022/12/860867/saifuddin-sosma-necessary-manage-organised-crimes">https://www.nst.com.my/news/nation/2022/12/860867/saifuddin-sosma-necessary-manage-organised-crimes</a> accessed 26 February 2023

#### Prevention of Crime Act 1959 (POCA)

POCA is a law introduced to prevent organised crime, especially those relating to the triads, secret societies, and repeat offenders. It is comparable to the repealed Internal Security Act 1960 and circumvents the criminal justice system by denying detainees any opportunity to defend themselves in court. The Act was amended in 2014 and 2017 respectively with additional provisions, which are believed to have made the law even more draconian.

Under POCA, any individual arrested can be detained for up to 60 days by the police with a breakdown of remand hearings after the initial 24 hours, after 21 days and for a further extension of 38 days. After the initial remand period, individuals will either be sentenced to two years' detention or two years under house arrest. Moreover, the detention order is renewable every two years if the Crime Prevention Board deems it necessary for the person to remain incarcerated.

Despite the existence of a 'hearing' process by the Prevention of Crime Board to determine the detention order, the process for detention under POCA contradicts the principles of the right to fair trial and international human rights standards and has been widely criticised. There are serious concerns about the due processes of the Prevention of Crime Board, particularly with respect to the standard of evidence required for a detention order; the criteria for establishing when a person ought to be incarcerated and when electronic monitoring is sufficient; and the possibility of torture and ill-treatment by the police during detention.

House arrest under POCA is often referred to as 'banishment' 35, as those sentenced to house arrest are often sentenced to locations away from their homes and could require a person to stay in a different state within Malaysia. House arrest would also require the person in question to be fitted with an Electronic Monitoring Device, be restricted to a 5km radius, and subjected to checks by police officers. They would also have to report to a designated police station from time to time.

The use of POCA to arrest, detain or investigate individuals continues in 2022. According to SUARAM's documentation, a total of 133 individuals were arrested under POCA in 2022 with most of the arrests being targeted at organised and gang-related crimes. Nonetheless, the numbers that SUARAM have gathered do not represent the true picture of how widely POCA and its detention orders have been used. For instance, the police have revealed that 83 individuals have been either subjected to detention orders or house

<sup>35</sup> In Malay, this is often referred to as 'Buang Daerah'

arrest by the Crime Prevention Board<sup>36</sup>. Out of that number, 12 were subjected to detention orders while 71 were under house arrest.

Furthermore, as it has been noted in the 2021 report, the constitutionality of POCA especially with regards to its overreach of executive powers – continues to be reviewed by the judiciary. In a *habeas corpus* appeal, the apex court has made a landmark decision to declare Section 15(B) of the ouster clause in POCA as void<sup>37</sup>. In the same appeal, the federal court judges have concluded that Sections 4 and 15(B) of POCA are unconstitutional since they run afoul of Articles 4 and 121 of the Federal Constitution. Both the sections under POCA considered the role of the judiciary when it is adjudicating POCA cases, and it severely curtails effective judicial review against detentions under POCA. Under Section 15(B), judicial review is only limited to scrutinising the procedure of the detention such as the number of days for each stage of the procedure or whether a form has been produced in the court and signed by the detainee, rather than on the grounds of detention or elements of abuse and foul play during the detention. According to Federal Court judge Nallini Pathmanathan, the ouster clause has relegated the judicial review to nothing more than a clerical function<sup>38</sup>.

The case of social activist R Sri Sanjeevan was also another case where the constitutionality of Sections 4 and 15(B) of POCA were being challenged. The chairman of the Malaysian Crime Task Force (MyWatch) Sri Sanjeevan was initially arrested by police under POCA in July 2016 for an alleged extortion offence. He was detained for 16 days between 11<sup>th</sup> July and 26<sup>th</sup> July. However, after more than six years, the High Court ruled that Sanjeevan's arrest and subsequent detention under POCA was unlawful and in breach of his right to liberty under the Federal Constitution<sup>39</sup>. The court had also found that he had been tortured during his detention.

The High Court's ruling was based on the aforementioned apex court's judgement. The lower court also came to a similar conclusion that the court's ability to scrutinise the procedure of the detention was violated under POCA, which led to Sanjeevan's detention being considered unlawful.

<sup>36 &#</sup>x27;83 penjenayah tegar dikena tindakan di bawah POCA sejak Januari' (Astro Awani, 13 March 2022) <

https://www.astroawani.com/berita-malaysia/83-penjenayah-tegar-dikena-tindakan-di-bawah-poca-sejak-januari-351573> accessed 28 September 2022

<sup>37</sup> V Anbalagan, 'Poca ouster clause to restrict judicial inquiry void, rules Federal Court' (Free Malaysia Today, 14 April 2022)

<a href="https://www.freemalaysiatoday.com/category/nation/2022/04/14/poca-ouster-clause-to-restrict-judicial-inquiry-void-rules-federal-court/">https://www.freemalaysiatoday.com/category/nation/2022/04/14/poca-ouster-clause-to-restrict-judicial-inquiry-void-rules-federal-court/</a> accessed 28 September 2022

<sup>38</sup> V Anbalagan, 'Poca ouster clause to restrict judicial inquiry void, rules Federal Court' (Free Malaysia Today, 14 April 2022)

<a href="https://www.freemalaysiatoday.com/category/nation/2022/04/14/poca-ouster-clause-to-restrict-judicial-inquiry-void-rules-federal-court/">https://www.freemalaysiatoday.com/category/nation/2022/04/14/poca-ouster-clause-to-restrict-judicial-inquiry-void-rules-federal-court/</a> accessed 11 November 2022

<sup>39</sup> Hafiz Yatim, 'Govt, police found liable for unlawfully detaining MyWatch activist for 16 days' (The Edge Markets, 28 June 2022) <a href="https://www.theedgemarkets.com/article/govt-police-found-liable-unlawfully-detaining-mywatch-activist-16-days">https://www.theedgemarkets.com/article/govt-police-found-liable-unlawfully-detaining-mywatch-activist-16-days</a> accessed 26 February 2023

#### Prevention of Terrorism Act 2015 (POTA)

Both in form and function, POTA is largely like POCA. The only difference is the 'target' of this law. While POCA is allegedly meant to address threats posed by organised crimes, POTA has been specifically introduced to address the threat of terrorism as noted in the preamble to the Act<sup>40</sup>. Use of POTA also differs in scope of terrorism activities – it is primarily applied in cases of cross-border terrorism, unlike POCA and SOSMA, which are usually applied in cases of local terrorism. In terms of its powers, POTA is largely similar if not identical to POCA with its power to detain for 24 hours, followed by 21 days and further extension of 38 days. If found 'guilty' by the administrative board, an individual can be served with a two-year detention order or placed under house arrest.

Information about detention under POTA in the media and the rehabilitation that detainees undergo during detention is scarce. As of March 2022, the Prison department has revealed that 55 detainees had been placed at the prison for extremist activities, with one of them being detained under POTA<sup>41</sup>.

#### Dangerous Drugs (Special Preventive Measures) Act 1985

The least known law permitting detention without trial is the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA85). This law is very similar to the Internal Security Act 1960. While the sentencing power under POCA and POTA is afforded to a 'prevention board', DDA85 retains the old policy whereby detention orders are meted out by the home minister. Official statistics have revealed an alarming 997 individuals held under DDA85 for the first six months of 2022<sup>42</sup>. Nevertheless, statistics released by the police at the end of the year depicted a reduced number of arrested individuals – 848 – across a longer period of time from January to 10 December 2022<sup>43</sup>. Five civil servants, specifically senior officers from an enforcement agency in Pahang, were among individuals detained under Section 3(1) of DDA85<sup>44</sup>.

<sup>40</sup> An Act to provide for the prevention of the commission or support of terrorist acts involving listed terrorist organisations in a foreign country or any part of a foreign country and for the control of persons engaged in such acts and for related matters.

<sup>41 &#</sup>x27;Special unit to monitor those linked with radical, extremist groups' (Free Malaysia Today, 29 April 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/04/29/special-unit-to-monitor-those-linked-with-radical-extremist-groups/> accessed 26 February 2023

<sup>42</sup> Nor Azizah Mokhtar, 'Dadah RM2623 juta dirampas' (Berita Harian, 4 July 2022)

<sup>&</sup>lt;a href="https://www.bharian.com.my/berita/kes/2022/07/972815/dadah-rm2623-juta-dirampas">https://www.bharian.com.my/berita/kes/2022/07/972815/dadah-rm2623-juta-dirampas</a> accessed 19 October 2022

<sup>43 &#</sup>x27;More than 28,000 people arrested for drug offences since January' (New Straits Times, 10 December 2022)

<sup>&</sup>lt; https://www.nst.com.my/news/nation/2022/12/859522/more-28000-people-arrested-drug-offences-january> accessed 6 April 2023 access

<sup>44</sup> Rizalman Hammim, 'Five senior officers among 687 civil servants nabbed over drugs in 2022' (New Straits Times, 4 January 2023)

<sup>&</sup>lt;a href="https://www.nst.com.my/news/crime-courts/2023/01/867093/five-senior-officers-among-687-civil-servants-nabbed-over-drugs-accessed 6 April 2023">https://www.nst.com.my/news/crime-courts/2023/01/867093/five-senior-officers-among-687-civil-servants-nabbed-over-drugs-accessed 6 April 2023</a>

While this law denies an individual the right to a fair trial, detention under DDA85 is often seen as a 'reprieve' from the death penalty under Section 39B of the Dangerous Drugs Act 1952. SUARAM's media monitoring has recorded a total of 175 individuals detained under DDA85.

Compared to official case numbers on SOSMA, POCA and POTA, those on DDA85 are even more limited<sup>45</sup>.

Year (s)	Arrests
2013	869
2014	948
2015	854
2016	1015
2017	1237
2018	1186
2019	1405
2020 - June 2021	1814

<sup>45</sup> Case numbers are extracted from (1) Oral Question in Parliament - Question 15, 12 November 2018 (for case numbers from years 2013 to 2017); (2) statistics on arrests by contingent (https://www.data.gov.my/data/ms\_MY/dataset/statistik-tangkapan-di-bawah-sek-31-akta-dadah-berbahaya-llpk-1985-mengikut-kontijen); (3) Oral Question in Parliament - Question 66, 15 September 2021



## RIGHT TO JUSTICE

#### **RIGHT TO JUSTICE**

Cases of abuse of power by the police were regularly documented in 2022, following the patterns and issues that SUARAM had raised in previous years. Nevertheless, two important policy developments occurred during the year with regards to access to justice: the establishment of the Criminal Investigation Unit on Deaths in Custody (USJKT)<sup>46</sup> and the passing of the Independent Police Conduct Commission (IPCC) Bill in Parliament<sup>47</sup>. While both policies were enacted specifically to address the longstanding issues of police accountability, these policies did not go far enough in providing independent oversight over police conduct and offering a safeguard in terms of access to justice.

The much talked-about IPCC Bill, which replaced the Independent Police Complaints and Misconduct Commission (IPCMC) Bill<sup>48</sup>, was finally passed on 26<sup>th</sup> July 2022. Regrettably, the final version of the IPCC Bill remained unchanged and many of the issues raised by civil society remained unaddressed<sup>49</sup>. Therefore, SUARAM maintains the view that the IPCC would be an ineffective police misconduct commission and the institutional limitations would render it unable to investigate police complaints independently.

As we have written in previous reports, the omission of Section 33 (1) from its predecessor, the IPCMC Bill, has led to the lack of any disciplinary powers by the Commission to compel action against any police personnel found to have abused their power. Under the previous IPCMC Bill, officers who are found guilty of any abuse of power may be dismissed, but there is no provision under the current IPCC Act that grants the Commission any such power to enforce disciplinary actions.

Furthermore, the IPCC Act diminishes the power of the Commission to make any unannounced visit to police premises to discharge its functions. As opposed to the IPCMC Bill, Section 5 (2) of the IPCC Act has been amended in such a way that any visits to police premises are only possible after giving earlier notice to the relevant Head of Department. This would compromise the Commission's ability and efficacy in investigating police complaints through inspection visits.

<sup>46</sup> Safeek Affendy Razali , 'PDRM tubuh USJKT kendali kes kematian dalam tahanan, lokap' (Berita Harian, 6 December 2021)

<sup>&</sup>lt;a href="https://www.bharian.com.my/berita/nasional/2021/12/895890/pdrm-tubuh-usjkt-kendali-kes-kematian-dalam-tahanan-lokap-accessed 27 February 2023">https://www.bharian.com.my/berita/nasional/2021/12/895890/pdrm-tubuh-usjkt-kendali-kes-kematian-dalam-tahanan-lokap-accessed 27 February 2023</a>

<sup>47 &#</sup>x27;Independent Police Conduct Commission Bill passed in Parliament' (The Edge Markets, 26 July 2022)

<sup>&</sup>lt;https://www.theedgemarkets.com/article/independent-police-conduct-commission-bill-passed-parliament> accessed 27 February 2023

<sup>48</sup> It is noted that the bill introduced by Pakatan Harapan in 2019 was also titled the Independent Police Conduct Commission Bill, it is referred to as IPCMC in this context to make a distinction between it and the bill reintroduced in 2020

<sup>49 &#</sup>x27;Rights groups: If IPCMC is a coconut, PN's version is the husk' (Malaysiakini, 12 October 2021)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/595098">https://www.malaysiakini.com/news/595098</a> accessed 27 February 2023

There are also provisions by which the police may refuse to answer or provide documents to the Commission in specific circumstances. For example, there is an added provision of Section 27 (4)(a) which is not found in the previous IPCMC Bill which allows police the right to refuse to answer any questions that may expose other police officers to possible criminal charges or penalty. Furthermore, Sections 28 (5) and (6) also grant similar protection to the police who may refuse to produce any documents to the Commission if such documents fall under the purview of the Official Secrets Act 1972, or if the police officer deems that such documents contain information that is "prejudicial to national security or national interest" 50.



The memorandum by SUARAM and other CSOs to reject the Independent Police Conduct Commission (IPCC) Bill was received by Permatang Pauh MP Nurul Izzah and Kota Raja MP Mat Sabu on 22<sup>nd</sup> March 2022

Predictably, the IPCC Bill was also passed in the Upper House on 8<sup>th</sup> August 2022 with little opposition. The newly appointed Home Minister Saifuddin Nasution has since announced that the Commission will begin its operation in June 2023<sup>51</sup>, but the minister has stopped short of announcing the Commissioners.

<sup>50</sup> Independent Police Conduct Commission Act 2022 (MYR)

<sup>51</sup> Shahrin Aizat Noorshahrizam, 'IPCC Act to be in force June 2023, says home minister' (The Malay Mail, 13 December 2022)

<a href="https://www.malaymail.com/news/malaysia/2022/12/13/ipcc-act-to-be-in-force-june-2023-says-home-minister/44985">https://www.malaymail.com/news/malaysia/2022/12/13/ipcc-act-to-be-in-force-june-2023-says-home-minister/44985</a> accessed 27

February 2023

#### **Deaths in Custody**

Custodial deaths in Malaysia remain high in 2022 and information surrounding their deaths is often limited. Public fury against the spate of deaths in police custody has compelled the Home Ministry and the police to set up the Criminal Investigation Unit on Deaths in Custody (USJKT)<sup>52</sup>. This unit has been formed solely to investigate deaths in police custody and under the direct command of the Bukit Aman Department of Integrity and Standards Compliance (JIPS). It is managed by 13 police officers and one public official to investigate whether there is any element of crime or negligence regarding every death in police custody starting in 2022.

On paper, the move to set up a death in custody police unit should be commended especially when the Home Minister has made clear the unit was set up after listening to complaints of custodial deaths from the public and to improve the image and restore the integrity of the police. However, the unit remains under the jurisdiction of the Royal Malaysian Police, and the overrepresentation of police officers in the organisation structure brings transparency and impartiality of any investigation into question.

Under the supervision of USJKT, a press statement would be released when the unit receives a report on case(s) of deaths in police custody. This is important in terms of documentation and monitoring. Most importantly, what USJKT has done is an improvement compared to previous years, when information regarding deaths in police lock-ups were often withheld until the very last moment or when there was significant public pressure from the victim's family and civil society. Furthermore, to the credit of USJKT, the press statements have also revealed further information such as why the victims were arrested, how many days they spent in lock-up and the official cause of death. Having said that, the function of USJKT in dealing with each custodial death remains inadequate, as it is only confined to ascertaining that the deaths indeed occurred in police custody. The names of victims are also not revealed. This makes attempts by civil society stakeholders such as SUARAM to assist victims' families more challenging - from the stage of locating and identifying the victims' families, to providing legal counsel and assisting them with procedures such as demanding for an inquest and strategising for other public actions.

Among family members of the deceased in cases of deaths in custody, it is challenging to have a request for an inquest granted. The purpose of an inquest is two-pronged: it is not just to discover the apparent cause of death, but also to ascertain the manner of death and including whether unlawful act or its omission caused, contributed or accelerated the death of the deceased. In most instances, inquests on deaths in custody are not done. Even if inquests are conducted, they usually stop short upon determining the cause of death,

<sup>52</sup> Hilmi Malik, 'PDRM tubuh USJKT siasat kes kematian dalam tahanan - Hamzah' (Astro Awani, 6 December 2021)

<sup>&</sup>lt;https://www.astroawani.com/berita-malaysia/pdrm-tubuh-usjkt-siasat-kes-kematian-dalam-tahanan-hamzah-334824> accessed 27 February 2023

with no further attempts made to fulfil the second prong. In addition, provisions in the Criminal Procedural Code (CPC) are insufficient in clearly and comprehensively outlining the roles and duties of the Coroner in inquiries, as well as the two-pronged purpose of these procedures. Amendments to the CPC are necessary to safeguard the rights of the deceased, as well as the interest of their family members and legal representatives as they seek justice. A Coroners' Court Act, a solution also long propounded by the Bar Council, may be needed to empower Coroners in effectively and independently carrying out their mandate of determining cause of death.

Furthermore, there continued to be a lack of transparency surrounding information relating to the process and outcome of investigation of each death in custody. Thus, out of the 19 cases that were investigated by USJKT, there was only one case in Pengkalan Chepa Police Station on 16<sup>th</sup> January 2022 that led to the prosecution of two police officers and two detainees under Section 323 of the Penal Code for voluntarily causing hurt. While the public received little update on the other 17 cases, only one of these cases has been referred to the coroner while the rest are still under investigation. This information was summarised in a two-page press statement while the status of each investigation was withheld.

Cases of Deaths in Police Custody Documented by USJKT

No	Name	Ethnicity	Date of	Detention Location	
		/Nationality	Death		
1	Unnamed individual	Malay	13 January 2022	Taiping District Police Headquarters	
2	Unnamed individual	Malay	16 January 2022	Pengkalan Chepa Police Station	
3	Unnamed Individual	Malay	28 January 2022	Marang Police Station	
4	Unnamed Individual	Not Revealed	29 January 2022	Kuala Kangsar Hospital	
5	Unnamed Individual	Myanmar	2 February 2022	Kajang Hospital	
6	Unnamed Individual	Not Revealed	2 February 2022	Kuantan Hospital	
7	Unnamed Individual	Not Revealed	3 February 2022	Pandamaran, Klang Police Station	

8	Unnamed Individual	Malay	14 February 2022	Gombak Police Station	
9	Unnamed Individual	Malay	18 February 2022	Kota Tinggi Hospital	
10	Unnamed individual	Malay	19 February 2022	Johor Bahru District Police Headquarters	
11	Unnamed Individual	Myanmar	26 February 2022	Tanah Merah Hospital	
12	Unnamed Individual	Indonesia	5 March 2022	Bintulu Hospital	
13	Unnamed Individual	Chinese	23 March 2022	Seberang Perai Police Station	
14	Unnamed Individual	Malay	9 April 2022	Indera Mahkota Police Station	
15	Unnamed Individual	Malay	13 April 2022	Beranang Prison	
16	Unnamed Individual	Malay	8 May 2022	Seri Alam Police Station	
17	Unnamed Individual	Not Revealed	20 June 2022	Shah Alam Hospital	
18	Unnamed Individual	Malay	26 June 2022	Jasin Hospital	
19	Unnamed Individual	Malay	27 June 2022	Seberang Jaya Hospital	
20	Unnamed Individual	Thailand	8 August 2022	Sungai Bakap Hospital	
21	Unnamed Individual	Malay	11 September 2022	Shah Alam Police Station	

According to the reply by the Ministry of Home Affairs in Parliament, there was a total of 19 deaths in police custody documented and investigated by USJKT in the first 6 months

of 2022<sup>53</sup>. From those 19 deaths, the Ministry revealed that 15 deaths were related to COVID-19, heart disease, tuberculosis, and other health diseases, while the cause of the remaining five deaths has yet to be determined by the medical department.

From the same parliamentary reply, the number of custodial deaths in prison revealed was alarmingly high with 693 deaths occurring from January 2021 to 5<sup>th</sup> July 2022. Once again, there was gross data inconsistency from the Ministry of Home Affairs relating to prison deaths, as the number previously reported in SUARAM Human Rights Report 2021 was only 9 prison deaths in 2021<sup>54</sup> – indicating a large gap in public access information. The 693 deaths in year 2021 and the first 6 months of 2022 were more aligned with the numbers that were reported in 2020 when deaths in prison for January 2020 up to September 2020 was 296<sup>55</sup>.

All things considered, data inconsistency with regards to prison deaths will persist when there is little effort by the Ministry of Home Affairs and Prison Department to make the data readily available. The problem is undoubtedly compounded when Parliament is still the only avenue to compel the Ministry of Home Affairs to reveal the data of deaths in custody; these questions may not be necessarily picked up by Parliament and challenging the veracity of these figures is often difficult especially when the data is still monopolised by the Ministry of Home Affairs.

In the same vein, deaths and conditions under immigration custody remained problematic. After careful research and documentation, an Indonesian NGO revealed that 149 Indonesian citizens had died in Malaysia's detention centres over the past 18 months<sup>56</sup>. The report, which was prepared by the Coalition of Sovereign Migrant Workers (KBMB), gave a damning conclusion that there was a pattern of gross and violent mistreatment at a detention centre in the state of Sabah. The government's response to the report was extremely disappointing and callous; the Home Minister dismissed the 149 deaths by saying that people could die even while walking and deaths do not necessarily occur only in detention centres<sup>57</sup>. Nevertheless, the official reply from Parliament corroborated the findings of the report since the Home Ministry had revealed that there was a total of 154 deaths in Sabah's immigration detention centres from 2021 until 12<sup>th</sup> July 2022<sup>58</sup>. In total,

<sup>53</sup> Oral Answer in Parliament - Question 99, 19 July 2022

<sup>54</sup> Written Answer in Parliament – Question 220, 2nd Meeting of the 4th Session of the 14th Parliament

<sup>55</sup> Oral Answer in Parliament - Question 42, 24 November 2020

 $<sup>56\,</sup>Sebastian\,Strangio,\,'Report\,Reveals\,Inhumane\,Conditions\,in\,Malaysia's\,Immigration\,Detention\,Centers'\,(The\,Diplomat,\,28\,June\,Conditions)$ 

<sup>2022) &</sup>lt;a href="https://thediplomat.com/2022/06/report-reveals-inhumane-conditions-in-malaysias-immigration-detention-centers/">https://thediplomat.com/2022/06/report-reveals-inhumane-conditions-in-malaysias-immigration-detention-centers/</a> accessed 27 February 2023

<sup>57 &#</sup>x27;Hamzah downplays deaths in immigration centres' (Free Malaysia Today, 28 June 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/06/28/hamzah-downplays-deaths-in-immigration-centres/> accessed 27 February 2023

<sup>58</sup> Oral Answer in Parliament, Question 39, 19 July 2022

since 2021 there were 247 deaths in immigration custody in Malaysia, and there were four casualties involving youth under the age of 18.

As mentioned in SUARAM's 2021 report, the Ministry of Home Affairs under the Perikatan Nasional (PN) and Barisan Nasional (BN) government was suspected of underreporting the number of police custodial deaths; the primary reason being that the ministry only recognises deaths that occur in police lock-up as death in custody. The interpretation of death in custody by the government clearly does not meet the standard definition of death in custody as spelled out by various bodies. For example, SUHAKAM, in its 2016 report "Deaths in Police Custody: A Thematic Study on Lock-Up Conditions and Factors Contributing to The Death" <sup>59</sup>, defines death in custody as 'deaths that occur during arrests by the police, deaths in police detention, and deaths wherein detainees die on the way to receiving medical treatment as well as when they die at a medical facility, in cases where ward admission is necessary whilst still in police custody.'

It appears that the new government has rectified the mistake and the latest parliamentary replies by the new administration does suggest that the Ministry of Home Affairs under Saifuddin Nasution is now recognising deaths that occurred outside of police lock-up, so long as the victims remained under police custody. According to a parliamentary reply in early 2023, there were a total of 46 police custodial deaths in the whole of 2021 and 24 for the year 2022<sup>60</sup>. Naturally, the number of deaths would increase once deaths that occurred outside of police lock-up were taken into account. SUARAM believes the figures that are provided by the new government are more credible.

It is also worth noting that the USJKT has since stopped reporting on any deaths in police custody after September 2022 and the number of deaths as revealed by the new government does suggest that there is a discrepancy between the number of deaths that were reported by USJKT. Additionally, it remains to be seen whether USJKT would continue to function under the new government, as there has been no announcement regarding the role of USJKT by the new administration.

#### Deaths under Police Custody as provided by the New Government

Year	Deaths in Police lock-up	Deaths outside of Police lock-up	Total
2021	14	32	46
2022	11	24	35

<sup>59</sup> Suhakam, Deaths in Police Custody: A Thematic Study on Lock-Up Conditions and Factors Contributing to the Death (1st edn, Human Rights Commission of Malaysia 2016)

<sup>60</sup> Oral Answer in Parliament, Question 37, 27 February 2023

In a separate parliamentary reply<sup>61</sup>, the new government had also revealed that there were a total of nine deaths in prison where four of them were Malays; three were Chinese; and one Malaysian Indian and Vietnamese.

There were 150 deaths in immigration detention centres where 121 were male and 25 were female. It should be noted that the total number of foreign male and female deaths does not tally with the total number of 150 as disclosed by the Ministry of Home Affairs. Therefore, once again, this had led to questions about the veracity of the number of people who died in immigration detention centres. The ministry had also revealed there were seven children who died under immigration custody, five of whom were male and two were female.

Overall Statistics on Deaths in Custody<sup>62</sup>

Year	Police	Prison Department	Immigration
2011	17	-	-
2012	19	-	-
2013	13	-	-
2014	1863	-	4464
2015	12	252	87
2016	15	269	40
2017	10	31965	24
2018	8	266	32
2019	6	3	55
2020	13	13	37
2021	35 <sup>67</sup>	9	29

<sup>61</sup> Oral Answer in Parliament, Question 50, 21 February 2023

<sup>62</sup> Data before 2020 are collated from past SUARAM's Human Rights Reports

<sup>63</sup> Oral Answer in Parliament – Question 33, 15 March 2018

<sup>64</sup> Written Answer in Parliament - Question 468, April 2017

<sup>65</sup> Obtained through difference between reported death up to June 2017 and earlier reports -

https://pardocs.sinar project.org/documents/2017-march-april-parliamentary-session/oral-questions-soalan-lisan/2017-03-21-parliamentary-replies/soalan-30.pdf/view

<sup>66</sup> The only two known and reported cases, actual figure would likely to be higher based on preceding year's data

<sup>67</sup> Data for 2021's death in police custody has been updated to include deaths outside of police lock-up

2022	46	9	150

#### SUARAM-Documented Cases of Deaths in Custody in 2022

No	Name	Date of Death	<b>Detention Location</b>	Official Cause of
				Death
1	Khairol	13 April 2022	Sungai Udang	Ruptured
	Azman Bin		Prison	abdominal aortic
	Mohd Shafie			aneurysm
2	Kim Shih Keat	28 June 2022	Hospital Enche'	Unknown
			Besar Hajjah	
			Khalsom, Kluang	
3	Mohd Raman	3 August 2022	Cheras Police	Unknown
	Bin Albat		Station	

#### Khairol Azman Bin Mohd Shafie

Khairol Azman Bin Mohd Shafie was charged under Section 506 of the Penal Code on 17 October 2021. He was forced to remain under detention because he could not afford the RM3,000 bail. He was remanded in a prison in Malacca. Throughout detention, his family was neither informed nor contacted regarding the condition of Khairol Azman. It was only until 13 April 2022 that the family was contacted by the police to come to a Hospital in Malacca regarding the health of the detainee. When the family arrived at the hospital, the detainee was found to be unconscious and later pronounced dead by the hospital. The autopsy had also revealed that the detainee suffered from a ruptured abdominal aortic aneurysm (AAA), which ultimately led to his death.

#### Kim Shih Keat

Kim Shih Keat was found guilty of driving under the influence of alcohol, fined RM15,000 and then sent to Kluang Prison for seven days on 22<sup>nd</sup> June 2022. On 28<sup>th</sup> June, which was the last day of his detention, he was found unconscious and was later pronounced dead by Hospital Enche' Besar Hajjah Khalsom at Kluang. Bruises were found on various parts of the detainee's body, namely on both arms, the stomach and the back of his body. There were also scratch marks on his elbow, chest, and sexual organ. His family maintained that Shih Keat was in excellent physical condition prior to his imprisonment.

#### Mohd Raman Bin Albat

Mohd Raman Bin Albat and his brother Mohd Hassan bin Albat were stateless persons and were arrested and sent to the immigration detention centre in 2020. They were held at the centre for 2 years. On 27<sup>th</sup> July 2022, Raman complained to immigration officials that he was experiencing pain in his chest. However, he was only sent to a hospital on 2<sup>nd</sup> August and was unfortunately pronounced dead on 3<sup>rd</sup> August.

#### **Torture and Ill-Treatment in Custody**

Torture in custody has been and remains a well-documented and recurring issue in Malaysia. Incidents of physical violence inflicted upon detainees under remand or during investigations are prevalent especially when there is chain remand<sup>68</sup> or detention under security laws. In general, it is difficult to provide the appropriate medical evidence to ascertain that torture had been inflicted as detainees are often locked away until their court appearances and are subjected to threats of further violence by investigating officers if they were to reveal what had been inflicted upon them. While evidence of torture can be difficult to ascertain, the deaths in custody of Mohd Afis Ahmad, A. Ganapathy<sup>69,70</sup>, and other similar cases due to injuries sustained have exposed the extent of physical violence inflicted upon them while in police detention.

One case of alleged torture in 2022 was that of Kim Shih Keat who died in Kluang Prison on 28<sup>th</sup> June. Shih Keat was found guilty of driving under the influence of alcohol, fined RM15,000 and then sent to Kluang Prison for seven days from 22<sup>nd</sup> June. On 28<sup>th</sup> June, which was the last day of his detention, he was found unconscious and was later pronounced dead by Hospital Klang. Shih Keat's body was found to have bruise marks on both arms, stomach and the back of his body, as well as scratch marks on his elbow, chest, and sexual organ. His family has maintained that Shih Keat was in excellent physical condition prior to his imprisonment. Prison officials have since argued that Shih Keat's physical injuries were self-inflicted because of his attempt to climb the prison wall. However, there was no attempt to produce an independent forensic pathology report to support the claims made by prison officials.

 $<sup>68\,\</sup>mbox{Chain}$  remand is further described in following pages.

<sup>69</sup> Radzi Razak 'Family demands justice over youngest son's death while in Kedah police's custody' (The Malay Mail, 3 February 2021)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2021/02/03/family-demands-justice-over-youngest-sons-death-while-in-kedah-polices-cust/1946553> accessed 27 February 2023

 $<sup>70\</sup> Minderjeet\ Kaur\ 'Social\ media\ outrage\ over\ Ganapathy's\ death\ in\ police\ custody'\ (Free\ Malaysia\ Today,\ 30\ April\ 2021)$ 

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2021/04/30/social-media-outrage-over-ganapathys-death-in-police-custody/>accessed 27 February 2023



Family members of Kim Shih Keat passed a memorandum to MPs in Parliament on 5<sup>th</sup> August 2022, calling for swift & serious action by the Attorney-General's Chambers & the Home Ministry on deaths in custody in Kluang Prison

As noted in reports of the past, there is general concern that inadequate facilities, lack of appropriate training, absence of basic amenities and medical resources all contribute to an oppressive and abusive environment for detainees. Alleged torture and ill-treatment in custody have been further exacerbated by unconscionable standard operating procedures such as those observed under SOSMA<sup>71</sup> and the onerous remand process under POCA, POTA and DDA85. For example, the court ruled that the social activist Sri Sanjeevan was tortured and assaulted during his unlawful detention under POCA in 2016<sup>72</sup>. Previously, Sanjeevan accused the police of assaulting him while he was blindfolded and handcuffed. Furthermore, he was not provided with medicine or food and his requests for medical treatment were ignored<sup>73</sup>. Despite the ruling of the court, police remained defiant and maintained that the torture did not take place.

 $<sup>71\, \</sup>text{The practice of solitary confinement was practised and documented in SUARAM's earlier reports.}$ 

<sup>72</sup> V Anbalagan, 'Former anti-crime activist wins suit against govt for unlawful detention, assault' (Free Malaysia Today, 28 June 2022) <a href="https://www.freemalaysiatoday.com/category/nation/2022/06/28/former-anti-crime-activist-wins-suit-against-govt-for-unlawful-detention-assault/">https://www.freemalaysiatoday.com/category/nation/2022/06/28/former-anti-crime-activist-wins-suit-against-govt-for-unlawful-detention-assault/</a> accessed 27 February 2023

<sup>73</sup> Yiswaree Palansamy, 'Lawyer claims crime watch NGO chairman physically abused, tortured in prison' (The Malay Mail, 19 July 2016) <a href="https://www.malaymail.com/news/malaysia/2016/07/19/lawyer-claims-crime-watch-ngo-chairman-physically-abused-tortured-in-prison/1164871">https://www.malaymail.com/news/malaysia/2016/07/19/lawyer-claims-crime-watch-ngo-chairman-physically-abused-tortured-in-prison/1164871</a> accessed 27 February 2023

#### Chain Remand

Chain remand occurs when an individual's remand period granted by the Magistrate court expires, yet he or she gets re-arrested by the police for a different or similar offence upon the expiration of the initial remand order against them. In the past, SUARAM had documented cases in which individuals were detained in such a manner for up to three months (90 days) and then transferred to different lockups and detention centres in the country by the police.

As noted in SUARAM's reports from preceding years, the practice of rearrests and 'chain remand' through the concurrent application of SOSMA and POCA is seen to be relatively common in recent years and in limited cases, POTA is used as part of the chain remand process. In the cases that SUARAM have monitored and followed up on, we have found that chain remand is often used to ensure that the accused remains in "possession" of the police for either extended investigation of the case or to hold the accused in custody indefinitely.

It should be noted that the 2021 directive by Chief Justice Tengku Maimun Tuan Mat, which necessitated legal representation for any accused appearing in court for remand application<sup>74</sup>, may have reduced the reliance on chain remand by the police. Until now, SUARAM has not received reports of any case relating to the abuse of remand applications in 2022 and there are only one or two cases of chain remand found in established news media. While it is still too early to make any conclusion since the Chief Justice's directive was announced only a year ago, SUARAM's monitoring of this issue over the years does point to the fact that the application of chain remand would more likely be rejected if the accused is legally represented and ensured a fair hearing when they are brought before the court for their remand application.

#### **Police Shootings**

SUARAM monitors incidents of officers of the Royal Malaysian Police discharging their firearms while on duty whenever these are reported. Our documentation noted 10 such cases in 2021 with four corresponding deaths.

The Shah Alam Coroner's Court also recently delivered a ruling that there was abuse of power and criminal elements in the high-profile police shooting case which led to the deaths of S Mahendran, G Thavaselvan and J Vijayaratnam in 2019<sup>75</sup>. Empowered by the

<sup>74 &#</sup>x27;CJ issues new 'practice direction' on remand hearings' (Free Malaysia Today, 13 September 2021)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2021/09/13/cj-issues-new-practice-direction-on-remand-hearings/> accessed 27 February 2023

<sup>75 &#</sup>x27;Cops: Two individuals killed in Rawang shooting incident were 08 triad members' (The Malay Mail, 13 September 2021) <a href="https://www.malaymail.com/news/malaysia/2019/09/19/cops-two-individuals-killed-in-rawang-shooting-incident-were-08-triad-membe/1791957">https://www.malaymail.com/news/malaysia/2019/09/19/cops-two-individuals-killed-in-rawang-shooting-incident-were-08-triad-membe/1791957</a>> accessed 27 February 2023

court's ruling, families of the deceased are now planning to mount a civil suit against the police and government<sup>76</sup>.

Police Shooting Incidents Documented by SUARAM in 2022

No.	Date	Names	Location	State	No. of People Involved	Injured	Death
1	17 March	Unnamed	Kubang Pasu	Kedah	1		
2	5 April	Unnamed	Kuala Terengganu	Terengganu	2		2
3	11 April	Unnamed	Tanah Merah	Kelantan	2		
4	19 April	Unnamed	Kuantan	Pahang	1		
5	22 April	Unnamed	Johor Bahru	Johor	1		
6	11 May	Unnamed	Beaufort	Sabah	2		
7	1 June	Unnamed	Lumut	Perak	3		
8	20 June	Unnamed	Cheras	Kuala Lumpur	9		1
9	22 August	Unnamed	Sandakan	Sarawak	1		
10	22 September	Unnamed	Pasir Mas	Kelantan	1		1
	Total	•	23	0	4		

## **Enforced Disappearances**

SUHAKAM's inquiry into the disappearance of Joshua Hilmy and Ruth Sitepu has been completed and the findings were released on  $15^{th}$  April  $2022^{77}$ . The SUHAKAM

<sup>76 &#</sup>x27;Families to sue police over 2019 Rawang fatal shooting incident' (Malaysiakini, 1 June 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/623207">https://www.malaysiakini.com/news/623207</a>> accessed 27 February 2023

<sup>77 &#</sup>x27;Suhakam inquiry finds enforced disappearance of pastor, wife 'involuntary' but no evidence to show by 'agents of the state' (The Malay Mail, 15 April 2022) <a href="https://www.malaymail.com/news/malaysia/2022/04/15/suhakam-inquiry-finds-enforced-">https://www.malaymail.com/news/malaysia/2022/04/15/suhakam-inquiry-finds-enforced-</a>

disappearance-of-pastor-wife-involuntary-but/2053701> accessed 27 February 2023

investigation heard from 26 witnesses and reviewed 129 exhibits in over 22 days of hearing and thus concluded that the couple who went missing in 2016 were victims of enforced disappearance due to their religious activities.

However, the report also said that SUHAKAM found no evidence that state agents were directly involved in the couple's disappearance, unlike previously when SUHAKAM had namechecked the Special Branch of the Royal Malaysia Police as the perpetrators of the abduction of activist Amri Che Mat and pastor Raymond Koh<sup>78</sup>. While there is a distinct possibility that state agents were not initially involved or participated in the abduction of the couple, a detailed review of other findings in the report suggested that state agents have either participated or at the very least consented to the abduction.

There are a few findings within the report that suggest the state might be complicit in the deprivation of liberty of the couple. For instance, as stated in the report, the speech by CP (B) Dato' Awaluddin bin Jadid equating conversion out of Islam with terrorism coupled with the proximity of the disappearances of Pastor Joshua Hilmy, Ruth Sitepu, Pastor Raymond Koh and Amri Che Mat suggested a series of abduction of Christian converts between 2016 - 2017. Furthermore, it should be noted that there was only an interval of six days between the abduction of Amri Che Mat and the couples.

Secondly, it is also well noted in the report that the Royal Malaysian Police had failed to investigate the case in a diligent and professional manner. The report has revealed that the investigation officers were lackadaisical in their investigation and there were even attempts by the Investigation Officer to suppress the case from the knowledge of other agencies and members of the public.

Notably, the police were also not cooperative with SUHAKAM when it came to production of documents and information to assist with the public inquiry. SUHAKAM has revealed through the report that the police officers did not produce their investigation diary during the public inquiry upon request; without the investigation diary, SUHAKAM was denied an important piece of evidence to carry out their enquiring duty which may alter the findings of the public inquiry. All things considered, it can be surmised that the police have not performed their duty to investigate the case and have been unwilling to assist SUHAKAM in its duties.

Lastly, the report also made clear that the government of Malaysia has thus far not cooperated and given any information about the disappearance of the couple. It has been more than six months since the SUHAKAM findings were published, but the government and the police, the two bodies charged with the responsibility for the abduction, have remained tongue-tied and have not responded to the findings by SUHAKAM responsibly.

<sup>78</sup>Ida Nadirah Ibrahim, 'Special Branch behind pastor Raymond Koh's disappearance, says Suhakam' (The Malay Mail, 3 April 2019) <a href="https://www.malaymail.com/news/malaysia/2019/04/03/special-branch-behind-pastor-raymond-kohs-disappearance-says-suhakam/1739334">https://www.malaymail.com/news/malaysia/2019/04/03/special-branch-behind-pastor-raymond-kohs-disappearance-says-suhakam/1739334</a> accessed 11 October 2022

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# FREEDOM OF EXPRESSION

### FREEDOM OF EXPRESSION

The right of an individual, group or a community of people to freely express their beliefs, thoughts and ideas faced continuous erosion in 2022. Similar to the previous Perikatan Nasional government, the Ismail Sabri administration saw continued crackdowns on free speech using repressive laws such as the Sedition Act 1948 and Communications and Multimedia Act 1998 (CMA). Based on SUARAM-monitored cases, the number of investigations, arrests and charges under those two laws continued to be high in 2022. Following the pattern set in previous years, investigations and charges under these laws have mostly revolved around the politically sensitive issues of race, royalty and religion.

The government had at times used state apparatus to prohibit content or harass those who expressed ideas or beliefs that were presumably against the official government stance. For instance, both Disney movies 'Lightyear' and 'Thor: Love and Thunder' were banned from cinemas in 2022 after the producers of the movie refused to compromise on censoring lesbian, gay, bisexual or transgender (LGBT) elements<sup>79</sup> in the films. The government later proclaimed that 'Lightyear' would be allowed in cinemas if there were minor cuts and muting of specific dialogues that the film censorship board found to be against its guidelines<sup>80</sup>. In a parliamentary reply, the Deputy Communications and Multimedia Minister made it clear that action would be taken against any digital content that promotes LGBT<sup>81</sup> culture. The Chinese war movie 'The Battle at Lake Changjin' also did not meet the standards of Malaysia's film censorship board<sup>82</sup>. The board however did not officially release a statement explaining why the movie had not met the approval of the censorship authorities.

A comedy house was also banned because of a performance alleged to have insulted Islam. During an open mic skit at the Crackhouse Comedy Club, Siti Nuramirah claimed to be a Muslim and claimed to have memorised 15 chapters of the Quran. She then stripped off her headscarf and *baju kurung* although she still had a skirt on and a top beneath her *baju kurung*. She was investigated, detained and charged under Section 298A of the Penal Code

<sup>79</sup> Ians, "Beyond 'Thor', 'Lightyear', Malaysia Firm On Banning Films With 'LGBT Elements' (Outlook, 12 August 2022)

<sup>&</sup>lt;https://www.outlookindia.com/art-entertainment/beyond-thor-lightyear-malaysia-firm-on-banning-films-with-lgbt-elements--news-215943> accessed 2 March 2023

<sup>80 &#</sup>x27;We didn't ban 'Lightyear', we only wanted cuts, say censors' (Free Malaysia Today, 17 June 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/leisure/2022/06/17/we-didnt-ban-lightyear-we-only-wanted-cuts-say-censors/>accessed 2 March 2023

<sup>81</sup> Yap Wan Xiang, 'Government Reveals The Official Reason Why 'Thor: Love and Thunder' Was Banned In Malaysia' (SAYS, 11 August 2022) <a href="https://says.com/my/news/thor-love-and-thunder-banned-lgbt-elements-malaysia-government">https://says.com/my/news/thor-love-and-thunder-banned-lgbt-elements-malaysia-government</a> accessed 2 March 2023

<sup>82 &#</sup>x27;Malaysia bans Chinese war movie 'The Battle At Lake Changjin" (The Star, 23 November 2021)

<sup>&</sup>lt;a href="https://www.thestar.com.my/lifestyle/entertainment/2021/11/23/malaysia-bans-chinese-war-movie-039the-battle-at-lake-changjin039">https://www.thestar.com.my/lifestyle/entertainment/2021/11/23/malaysia-bans-chinese-war-movie-039the-battle-at-lake-changjin039</a> accessed 2 March 2023

for "causing disharmony, disunity, feelings of enmity, hatred or ill will... on grounds of religion"<sup>83</sup>. Crackhouse Comedy Club was also not spared - it was imposed a lifetime ban and its owners were also banned from opening other businesses in the future under their names<sup>84</sup>. Furthermore, co-founder Rizal Van Geyzel was also charged under Section 233 of CMA<sup>85</sup>.

#### Ex-UMANY President Entered Defence Over 'Undur VC' Convocation Protest

On 14 October 2019, upon receiving his graduation scroll on stage, former Universiti Malaya Association of New Youth (UMANY) President Wong Yan Ke opened his placard and chanted "Reject racism. VC resign. This is the land of Malaysia" ("Tolak rasisme. VC letak jawatan. Ini Tanah Malaysia"). Among reasons cited by Wong for his protest were that the varsity's then Vice Chancellor (VC) allegedly "promoted racism and hatred, infringed on academic freedom, served as a 'political puppet' and failed to solve UM's financial problems" The VC's allegedly "racist" speech during the Malay Dignity Congress held in University of Malaya on 6 October 2019 was also part of Wong's protest, whereby the former claimed that Malay privileges lost dominance and were being questioned as well as warned others not to challenge the social contract<sup>87</sup>.

On 5 April 2022, the Kuala Lumpur Magistrate Court ordered Wong to enter defence over the protest<sup>88</sup>. This was in light of the establishment of a *prima facie* case by the prosecution against him over a charge of insult with intent to provoke a breach of the peace as per Section 504 of the Penal Code<sup>89</sup>.

On 8 March 2023, it was reported that Wong appealed to secure witness statements under Section 112 of the Criminal Procedural Code to bolster his defence in the trial<sup>90</sup>. This appeal was against the Magistrate Court's refusal to allow his application for eight statements

88 Raveena Nagotra, 'Ex-Umany president ordered to enter defence over convocation protest' (Malaysiakini, 5 April 2022)

<sup>83 &#</sup>x27;Comedy club case: Siti Nuramira expected to be charged in Syariah Court' (The Star, 14 July 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/07/14/comedy-club-case-siti-nuramira-expected-to-be-charged-in-syariah-court>accessed 2 March 2023

<sup>84</sup> Yiswaree Palansamy, 'Lawyers condemn DBKL's lifetime ban on Crackhouse Comedy Club owners, say sets bad precedent for power abuse' (The Malay Mail, 19 August 2022) <a href="https://www.malaymail.com/news/malaysia/2022/08/19/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-lifetime-to-malaysia/2022/08/lawyers-condemn-dbkls-

ban-on-crackhouse-comedy-club-owners-say-sets-bad-precedent-for-power-abuse/23508> accessed 2 March 2023 85 Qistina Nadia Dzulgarnain, 'Rizal van Geyzel claims trial to inciting racial tensions online' (The Vibes, 22 July 2022)

<sup>&</sup>lt;https://www.thevibes.com/articles/news/66513/rizal-van-geyzel-pleads-not-guilty-to-inciting-racial-tensions-online> accessed 2 March 2023

<sup>86 &#</sup>x27;Graduation day protest, students chanted 'back VC' on stage' (Malaysiakini, 14 October 2019)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/495810">https://www.malaysiakini.com/news/495810</a> accessed 6 April 2023

<sup>87</sup> Ibid

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/616993">https://www.malaysiakini.com/news/616993</a> accessed 6 April 2023

<sup>89</sup> Ibid

<sup>90</sup> Hidir Reduan Abdul Rashid, 'Convocation protest: Activist appeals to obtain witnesses' police statements' (Malaysiakini, 8 March 2023) <a href="https://www.malaysiakini.com/news/657748">https://www.malaysiakini.com/news/657748</a> accessed 6 March 2023

recorded by the police<sup>91</sup>. The argument of objection provided by the prosecution was that these documents are "privileged" and that revealing these statements would "prejudice and jeopardise public interest" by deterring future potential witnesses of other cases from giving their statements to the police as part of an investigation<sup>92</sup>.

Wong withdrew his appeal on 28 March 2023 as the "matter has become academic"93.

Freedom of the press in Malaysia had also continued to decline in 2022. We saw whistleblowers and journalists being reprimanded for exposing leakages and holding those in power accountable. This was despite the fact that the Prime Minister had stated that his government completely adheres to the principle of press freedom<sup>94</sup>. Most notable was the case of investigative journalist Lalitha Kunaratnam, who had exposed the controversy of Malaysian Anti-Corruption Commission (MACC) chief Azam Baki, related to share ownership issues. Following her report, Lalitha was called for investigation by the police and was questioned for almost four hours under the notorious Section 233 of the CMA95. The icing on the cake was the MACC chief filing a defamation lawsuit against the whistleblower. Similarly, New Straits Times group editor Farrah Naz Karim was summoned by the police and questioned for hours%. Ms Farrah was interrogated following a news item involving a Mossad operation and the believed abduction of a Palestinian man in Malaysia. When the situation could have presented an opportunity for cooperation and collaboration between the press and police, the state force was instead more invested in controlling the press, grilling the editor on how the media were able to get a detailed account of the abduction plot.

#### The Sedition Act 1948

Since the abolition of the Internal Security Act (ISA), the Sedition Act 1948 has been the go-to law for successive Malaysian governments, in their attempt to silence political dissent. The perceived criminal act of sedition is of itself a colonial and archaic offence,

92 Ibid

<sup>91</sup> Ibid

<sup>93</sup> Hidir Reduan Abdul Rashid, 'Ex-UM activist to withdraw appeal to obtain witnesses' statements' (Malaysiakini, 28 March 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/660233">https://www.malaysiakini.com/news/660233</a> accessed 6 April 2023

<sup>94 &#</sup>x27;Putrajaya guarantees press freedom in Malaysia, says PM Ismail Sabri' (The Malay Mail, 7 September 2022)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2022/09/07/putrajaya-guarantees-press-freedom-in-malaysia-says-pm-ismail-sabri/26941> accessed 2 March 2023

<sup>95</sup> Faisal Asyraf, 'Cops grill whistleblower Lalitha for almost 4 hours' (Free Malaysia Today, 3 February 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/02/03/cops-grill-whistleblower-lalitha-for-almost-four-hours/> accessed 2 March 2023

<sup>96 &#</sup>x27;NST group editor summoned by police over Mossad abducting Palestinian man exposé' (New Straits Times, 19 October 2022)

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2022/10/841824/nst-group-editor-summoned-police-over-mossad-abducting-palestinian-man?fbclid=lwAR1NtEKrglzLXXLexVyvxv5yeTH4OvRW2DJ3oRzAgST4fuLE99s4Bai13sl> accessed 2 March 2023

considering that the existence of the law predates even the nation's independence<sup>97</sup>. The law itself has been amended on several occasions in the past. However, coming into the digital age, the government of Malaysia has not made any distinction in the application of the Sedition Act 1948, which—as archaic as it may look—has led to the law being applied to articles or posts written online by Human Rights Defenders or critics of the government. The fact that online posts and comments had increasingly fallen under the purview of the Sedition Act also contributed to the drastic increase in cases in 2020 and 2021, which include cases involving investigations, arrests, and prosecution.

The Ismail Sabri government has also repeatedly claimed that there are no adequate laws to address "offences" that implicate race, religion and the royalty, in order to justify the continued use of the Sedition Act". However, there have been suggestions to enact an alternative Race Relations Act to replace the repressive Sedition Act, but the idea was not entertained by the Ministry of National Unity. Ismail Sabri's administration has preferred to use Section 233 of the Communication and Multimedia Act 1998 and the Sedition Act to maintain racial harmony.

Thus, political artist Fahmi Reza was arrested and remanded for two days under the Sedition Act 1948 over artwork featuring the cartoon character Mojo Jojo from "The Powerpuff Girls" dressed in royal attire<sup>99</sup>. Fahmi's artwork was produced in response to a report at the time that the Selangor Sultan Sharafuddin Idris Shah had purchased a painting depicting members of parliaments as primates and frogs. As Fahmi had said on social media after posting the artwork: "If we can accept and not censor satirical art that makes others as apes, then we must also accept and not censor the satirical work that depicts us as apes." The Sedition Act was also used extensively as a political tool by the government of the day in 2022 to suppress dissent. The Prime Minister at the time, Ismail Sabri, had specifically namechecked former Attorney-General Tommy Thomas, alluding that the latter would be investigated under the Sedition Act<sup>100</sup>. The political party, UMNO, to which Ismail Sabri belongs, had insisted that Tommy Thomas must be investigated for his memoir which illustrated instances where the author tried to influence decisions related to the appointment of judges when he was the Attorney-General <sup>101</sup>. Tommy Thomas, along with the Former Prime Minister Mahathir Mohammad, had been alleged

<sup>97</sup> Sedition Act was passed in 1948 but Malaysia only achieved independence in 1957

<sup>98</sup> Written Answer – Question 357, 2nd Meeting of the 4th Session of the 14th Parliament

<sup>99</sup> Syed Jaymal Zahiid, 'Political artist Fahmi Reza arrested for sedition over satirical ape cartoon' (The Malay Mail, 14 April 2022)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2022/04/14/political-artist-fahmi-reza-arrested-for-sedition-over-satirical-apecartoo/2053547> accessed 2 March 2023

<sup>100</sup> Soo Wern Jun, 'PM orders criminal investigation against ex-AG Tommy Thomas' (The Malay Mail, 30 September 2022)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2022/09/30/pm-orders-criminal-investigation-against-ex-ag-tommy-thomas/30976>accessed 2 March 2023

<sup>101 &#</sup>x27;7 reasons why Asyraf Wajdi wants RCI into Thomas' book' (The Vibes, 5 February 2021)

<sup>&</sup>lt;a href="https://www.thevibes.com/articles/news/16637/7-reasons-why-asyraf-wajdi-wants-rci-into-thomas-book">https://www.thevibes.com/articles/news/16637/7-reasons-why-asyraf-wajdi-wants-rci-into-thomas-book</a> accessed 2 March 2023

to override the Judicial Appointment Commissions with regards to the appointment of top judges.

# List of Individuals Investigated under Sedition Act 1948 in 2022

No	Name	Alleged Offence	Date of Investigation
1	Fahmi Reza	Posted an edited image of the Pahang Coat of Arms with the words "House of Balak" on social media.	25 January 2022
2	Voon Lee Shan	Released a statement regarding Sarawak's right to seek independence.	1 April 2022
3	Hussein Abd Hamid	Wrote a defamatory article about the Pahang royal family.	13 May 2022
4	Zahid Hamidi	Gave special address to his party's delegates where he criticized the judiciary over Najib Razak's guilty verdict.	30 August 2022
5	Tommy Thomas	Sedition arising from the contents of his published memoir titled "My Story: Justice in the Wilderness".	30 September 2022
6	Hew Kuan Yew	Gave a speech that was considered to be provocative in a political event.	18 November 2022

# List of Individuals Arrested under Sedition Act 1948 in 2022

No	Name	Case Description
1	S Murugan	Arrested and remanded for three days on 11 April 2022 over a Facebook post allegedly urging Indians not to vote for the Malaysian Indian Congress (MIC) party.

2	Fahmi Reza	Arrested on 14 April 2022 for a digital illustration of cartoon character Mojo Jojo from "The Powerpuff Girls" dressed in royal attire. Released on police bail.
3	4 Nepali men	Arrested on 16 June 2022 in connection with viral video on TikTok showing a group of people in Batu Caves expressing support for politicians in India who made insulting statements against Prophet Muhammad.
4	Rizal Van Geyzel <sup>102</sup>	Arrested on 14 July 2022 over two videos recorded at the Crackhouse Comedy Club that were allegedly of a racially sensitive nature.
5	30-year-old man	Arrested on 21 August 2022 for allegedly criticizing and writing an online threat against the Chief Justice.
6	35-year-old man	Arrested on 22 November 2022 and remanded for three days for uploading a video on Instagram which allegedly challenged the reserve powers of the monarch.
7	Voon Lee Shan, Phang Aik Hua, Chan Chee Wei, Danny Voon and Lue Cheng Hing	Arrested on 23 November 2022 for a protest convoy allegedly calling for residents in Kuching, Sarawak to not vote for PAS. A remand order application was made, but then withdrawn, thus leading to the release of all 5 accused persons.
8	39-year-old man	Arrested on 24 November 2022 and remanded for three days to assist with investigations into a video with alleged racist elements on Twitter.
9	33-year-old man	Arrested on 15 December 2022 for allegedly insulting the monarch over the appointment of Anwar Ibrahim as Prime Minister on social media.

# List of Individuals Charged under Sedition Act 1948 in 2022

No	Name	Case Description
1	N Ganesparan	An arrest warrant was issued by the court for failure to attend a court hearing on the release of statements that

<sup>102</sup> On 22 July 2022, the three court charges against Rizal van Geyzel were made under Section 233 of the Communications and Multimedia Act 1998, to which he pleaded not guilty. He was granted bail at RM12,000.

allegedly	contained	elements	of	sedition	against	the
governme	nt and roya	l institutior	١.			

#### Individual Found Guilty under Sedition Act 1948 in 2022

No	Name	Case Description
1	Muhamad Basri Shah Rohani	Pleaded guilty to insulting the King of Perlis via social media on 22 June 2022. Sentenced to one year in prison and fined RM5000

# Number of cases documented by SUARAM that were either investigated, arrested, charged, or found guilty under the Sedition Act 1948

Year	Number of Cases
2016	15
2017	11
2018	10
2019	12
2020	24
2021	28
2022	17
TOTAL	113

Data released by the Unity Government during a parliamentary question and answer session<sup>103</sup> in February 2023 revealed that there was a total of 367 investigations initiated under the Sedition Act over the last five years. These statistics corroborate with SUARAM's past documentation, which found that the act was most widely used in 2020 and 2021, during which the country's political situation led to various forms of dissent and criticism. The alarming number of investigations in the year 2020 and 2021 exemplify that the government led by the 8th Prime Minister Muhyiddin Yassin was more prone to using

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<sup>103</sup> Oral Answer in Parliament – Question 53, 27 February 2023

the Sedition Act to stifle dissent and adverse speech - more so than any other administration.

Cases of Sedition Act 1948 2018 - 2022

Year	Investigations	Charges	Guilty Verdict
2018	66	1	1
2019	46	0	0
2020	117	0	0
2021	84	2	1
2022	54	2	1
TOTAL	367	5	3

#### Communications and Multimedia Act 1998

Apart from the liberal use of Section 233 of the Communications and Multimedia Act 1998 (CMA) on the grounds of addressing fake news, the law continued to be used to stifle political expressions made online. The CMA is also prone to abuse by authorities with the aim of harassing politicians. Examples include the case of Kulai Member of Parliament Teo Nie Ching, who was investigated in January 2022 for a social media posting dated April 2017<sup>104</sup>, as well as then PKR Deputy President Rafizi Ramli who was investigated in October 2022 for statements about the Minister in the Prime Minister's Department (Special Functions), regarding alleged involvement in the littoral combat ship (LCS) project scandal<sup>105</sup>. Activists were not exempted from clampdown, such as the investigation on Fahmi Reza for his social media post depicting an edited image of the Pahang Coat of Arms with the words "House of Balak"<sup>106</sup>.

Section 233 of the Act criminalises speech made with the intent to 'annoy, abuse, threaten or harass another person', including anonymous communications. The ambiguity of the language, the lack of clear definition of what is deemed 'offensive' and criminalizing the act of 'annoying people online' are among the many reasons why Section 233 is

<sup>104 &#</sup>x27;Why cops probing MP over 4-year-old social media post? - Kit Siang' (Malaysiakini, 13 January 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/606707">https://www.malaysiakini.com/news/606707</a>> accessed 2 March 2023

<sup>105</sup> Ilah Hafiz Aziz, 'Anwar urges police to stop pressuring Rafizi' (New Straits Times, 4 September 2022)

<sup>&</sup>lt;a href="https://www.nst.com.my/news/nation/2022/09/828375/anwar-urges-police-stop-pressuring-rafizi">https://www.nst.com.my/news/nation/2022/09/828375/anwar-urges-police-stop-pressuring-rafizi</a> accessed 1 February 2023

<sup>106 &#</sup>x27;Cops record statement from Fahmi Reza over 'House of Balak' post' (Malaysiakini, 26 January 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/608419">https://www.malaysiakini.com/news/608419</a> accessed 2 March 2023

problematic. It should be noted that unlike its Sedition Act 1948 counterpart, Section 233 of the CMA does not require the communication to be seditious, or to have the intention to incite violence or to instigate the commission of any offense.

List of Individuals Investigated under Section 233 of the Communications and Multimedia Act 1998 in 2022

No	Name	Alleged Offence	Date of Investigation
1	Unnamed Individual <sup>107</sup>	Uploaded an image and caption expressing dissatisfaction against Traffic Investigation and Enforcement Department personnel.	10 January 2022
2	Unnamed Individual	Posted a video alleging a motorcyclist was slapped by a traffic officer.	11 January 2022
3	Teo Nie Ching	Shared a post in 2017 by Fahmi Reza which included the caption "defend the freedom to express, freedom to be satirical" on her official Facebook account.	13 January 2022
4	Idris Sulaiman	Allegedly uploaded a video in his Facebook group page "Ilmu Salaf Dot Com", in which he denounced Muslims who cleaned up non-Islamic places of worship after the recent floods.	15 January 2022
5	Unnamed Individual	Insulted the former Sabah Chief Minister via Facebook profile.	19 January 2022
6	Adam Adli Abdul Halim	Published article in relation to the #TangkapAzamBaki protest.	20 January 2022
7	16 Unnamed Individuals	Posted about the upcoming #TangkapAzamBaki protest in alleged violation of S.504 of the	21 January 2022

107 All cases involving "Unnamed Individual(s)" are cases from SUARAM's media monitoring efforts, in which the alleged perpetrators are of unknown age.

		Penal Code for "intentional insult with intent to provoke a breach of the peace."	
8	Fahmi Reza	Posted an edited image of the Pahang Coat of Arms with the words "House of Balak" on social media.	25 January 2022
9	Shahili Abdan (Nam Ron)	Posted a photo in which Prime Minister Ismail Sabri was edited alongside a Malaysian influencer.	27 January 2022
10	3 Unnamed Individuals	The release of a YouTube video that depicted them breaking into Sunway Lagoon.	29 January 2022
11	3 news portals	Manipulated Prime Minister Ismail Sabri's statement.	31 January 2022
12	Lalitha Kunaratnam	Published statements "conducive to public mischief" related to MACC Chief Commissioner.	3 February 2022
13	Dr P. Ramasamy	Facebook post regarding the unilateral conversion of Loh Siew Hong's three children.	23 February 2022
14	Unnamed Individual	Posted on Facebook his dissatisfaction for getting fined by a traffic police officer.	4 March 2022
15	Unnamed Individual	Posted a video of a Civil Defence Force (APM) officer trespassing the site of a landslide on Facebook.	14 March 2022
16	Dr Michael Jeyakumar Devaraj	Facebook post on demanding the release of a farmer arrested in Perak and claiming that the police had encroached on the farmer's land.	11 April 2022
17	Chong Guang Ming	A viral video challenging another man to sever his finger to prove	12 April 2022

		that he was not involved in the death of his girlfriend.	
18	Unnamed Individual	Uploaded a false video about a person with disabilities being beaten and having their salary reduced by their employer.	21 April 2022
19	Unnamed Individual(s)	Involvement in Datuk Seri Aliff Syukri's Hari Raya video that depicted a group of male dancers in makeup who displayed "effeminate behaviour".	26 April 2022
20	Unnamed Individual	Comment on TikTok to a viral statement posted by a prominent figure in India about the prohibition of the use of loudspeakers for "azan".	27 April 2022
21	Unnamed Individual	Recorded video clip on Facebook showing two traffic policemen escorting his vehicle (known as MP's son).	18 May 2022
22	Unnamed Individual	WhatsApp audio message claiming a tiger sighting in the Kemensah Height area.	21 May 2022
23	Lim Kit Siang	Issued a statement "Will the Houses Of The Prime Minister and Ministers of Malaysia Be Set On Fire by Angry Protestors As Had Happened in Sri Lanka Last Week."	21 May 2022
24	Unnamed Individual	Posted a viral TikTok video that insulted Prophet Muhammad and politicians in India.	14 June 2022
25	Liana Rosli (Kak KM); Datuk Seri Hasmiza Othman; Ifa	Released an 'obscene' video in which they 'shook and slapped each other's derrieres'.	17 June 2022

	Raziah; Rozita Baharom		
26	Siti Aishah Shaik Ismail	Posted a TikTok video criticising the government over the removal of subsidies.	27 June 2022
27	Unnamed Individual	Posted on Facebook, threatening and intimidating Chief Judge Tengku Maimun.	19 August 2022
28	Tan Sri Abdul Hadi Awang	Stated that non-Muslims and non-Bumiputera as the root of corruption in the country.	29 August 2022
29	Unnamed Individual	Receival of threatening messages from fans of badminton player Lee Zhi Jia, after the complainant commented on the decline of the player in performance.	1 September 2022
30	Rafizi Ramli	Released statements and accusations against the Minister in the Prime Minister's Department (Special Functions) for his alleged involvement in the littoral combat ship (LCS) project scandal.	4 September 2022
31	Unnamed Individual	Took a video of a standing fan being aimed towards a detained police officer, which led to viral allegations on Telegram that detained police officers were accorded special treatment.	17 September 2022
32	Samarahan Edition & Cats FM	Shared fake news about a kidnapping incident of a SJK Chung Hua Batu 10 pupil.	27 September 2022
33	Unnamed Individual	Received threatening messages after releasing a viral video about a misunderstanding between the complainant and a food delivery rider.	27 September 2022

34	Unnamed Individual	Tweeted an allegation about the Chief Police Officer having stated that Jho Low was removed from the Interpol Red Notice as a means of enabling him to return to Malaysia.	7 October 2022
35	Tan Sri Tommy Thomas	Delivered a speech that allegedly consisted of elements of racism in the "Dark Forces Towards GE15" forum.	18 October 2022
36	Dr. Michael Jayakumar	Involvement as a panellist in the "Dark Forces Towards GE15" forum.	18 October 2022
37	Unnamed Individual	Uploaded 2 videos depicting violent behaviour, whereby one involved bullying by a driver towards another, and the other involved the act of damaging the driver's vehicle.	25 October 2022
38	2 Unnamed Individuals	Posted a prank video about bullying behaviour on Facebook.	26 October 2022
39	Razman Zakaria	Accused Pakatan Harapan Chairman of pursuing an LGBT agenda and wanting to legalise same-sex marriage.	8 November 2022
40	Shahiful Nasir	Said that those who vote for Pakatan Harapan and Barisan Nasional in the upcoming 15 <sup>th</sup> general election (GE15) would end up in Hell.	15 November 2022
41	Zul Huzaimy	Spoke of wish to slaughter enemies of Islam (kafir harbi) in his campaign speech, that these enemies are untrustworthy and will betray others when there is the opportunity to do so.	15 November 2022

42	1 Unnamed Individual	Did live broadcasting of their postal vote on TikTok.	16 November 2022
43	1 Unnamed Individual	Shared postal vote content including personal postal vote number on TikTok.	16 November 2022
44	Hew Kuan Yew	Made a speech that was considered to be racially provocative at a political event.	18 November 2022
45	Hassan Saad	Accused the Pakatan Harapan Chairman of being an Israeli agent.	29 November 2022
46	Badrul Hisham Shaharin	Posted allegations on Facebook about gold and sand mining and other matters in Mersing which negatively impacted residents.	30 November 2022
47	Tan Sri Abdul Hadi Awang	Made statements in his election speech that linked the Pakatan Harapan coalition with communist, anti-King and anti-God beliefs.	5 December 2022
48	Unnamed Individual	Uploaded a video on TikTok about allegations of kidnapping and the sale of human organs to hospitals in Johor.	11 December 2022
49	Unnamed Individual	Shared a video claiming that Manir Bridge will collapse as a result of floods, which led to disrupted traffic and corresponding challenges experienced by police officers in controlling traffic.	21 December 2022

# List of Individuals Arrested/Detained under Section 233 of Communication and Multimedia Act 1998 in 2022

No	Name	Case Description
1	3 Unnamed Individuals	Arrested on 12 January and remanded for three days to assist with investigations on a video in which a man was allegedly beaten by three other men.
2	Bryan Wee & Deacon Chai	Arrested on 18 February 2022 for photos of them allegedly cross-dressing and posing in front of Laman Mahkota. Also detained due to testing positive for ketamine.
3	Unnamed Individual	Arrested on 22 March 2022 and remanded for 6 days for allegedly insulting the Sultan of Perlis on Facebook.
4	Ain Singa	Arrested on 8 April 2022 for uploading a Facebook post allegedly insulting a traffic personnel and a photo of the said person.
5	Fahmi Reza	Arrested on 14 April 2022 for a drawing of cartoon character Mojo Jojo from "The Powerpuff Girls" dressed in royal attire. Released on 16 April 2022 after two-day remand.
6	Uthaya Sankar	Arrested on 11 April 2022 for a social media post allegedly about polygamy with Prophet Muhammad and criticising actor Iman Zulkarnain who was once polygamous. Was released from custody after the police failed to secure a four-day remand order.
7	5 Unnamed Individuals	Detained on 17 May 2022 and remanded for one day for a video about a birthday celebration with fireworks near the Setia Alam toll plaza.
8	Cik Lala	Detained on 29 May 2022 and remanded for three days to assist with investigations on a 27 May dance show that allegedly featured a man 'scantily dressed as a woman' and a firework show. Eventually released on police bail.
9	A 22-year-old man & a 24- year-old man	Arrested on 2 June 2022 and remanded for four days to assist with investigations on online fraud via impersonation as the Perlis police chief.

10	59-year-old man	Arrested on 20 July 2022 for audio messages that were allegedly created years ago that insulted Islam, and eventually released on police bail.
11	48-year-old woman	Arrested on 15 September and remanded for three days for investigations on a Facebook message allegedly claiming that the Private Secretary to the Prime Minister wore luxury jewellery and clothes.
12	22-year-old man	Arrested on 29 September 2022 for investigations on TikTok video allegedly insulting police officers.
13	A 20-year-old man & a 50- year-old man	Arrested on 9 November 2022 and remanded for three days for investigations on alleged distribution of postal vote papers via WhatsApp.
14	Hew Kuan Yew	Arrested on 23 November 2022 and remanded for four days for investigations over video of his speech during the election campaign period allegedly calling on the Chinese community to "take advantage of Malay disunity".
15	Voon Lee Shan, Phang Aik Hua, Chan Chee Wei, Danny Voon and Lue Cheng Hing	Arrested on 23 November 2022 for a protest convoy allegedly calling for residents in Kuching, Sarawak to not vote for PAS. A remand order application was made, but then withdrawn, thus leading to the release of all 5 accused persons.
16	39-year-old man	Arrested on 24 November 2022 and remanded for three days to assist with investigations on a video with alleged racist elements on Twitter.
17	Bangladeshi man in 30s	Arrested on 27 November 2022 for allegedly flying and continuing to fly the Jalur Gemilang flag upside down despite being advised not to do so.
18	A 28-year-old woman and a 41-year-old man	Arrested on 7 December and remanded for four days for allegedly uploading videos about unlicensed shooting at the Selangor Shooting Club range on TikTok and Instagram.
19	33-year-old man	Arrested on 16 December 2022 for allegedly insulting the monarch over the appointment of Anwar Ibrahim as Prime Minister on social media.

# List of Individuals Charged or Discharged under Section 233 of the Communications and Multimedia Act 1998 in 2022

No	Name	Case Description
1	N Ganesparan	An arrest warrant was issued by the court for failure to attend a court hearing on the release of statements that allegedly contained elements of sedition against the government and royal institution.
2	Ahmad Muazz Ishak	Pleaded not guilty to the charge of allegedly insulting the Johor Crown Prince and the Johor Royal Family on Twitter. Was granted bail of RM3000 on 13 January 2022.
3	Aemierulrizaki Rambli	Pleaded not guilty to the charge of allegedly making offensive comments about the proliferation in gambling in the South Klang Police District Headquarters after the change in police district chief. Was granted bail of RM3000 on 13 January 2022.
4	Mohammad Syafiq Iqbal Mohammad Helmi	Pleaded not guilty to the charge of making and initiating the transmission of allegedly offensive communications insulting religion on Facebook. Was granted bail of RM2500 on 21 January 2022.
5	Fahmi Reza	Pleaded not guilty to the charge of posting allegedly offensive content about the quarantine period for Cabinet ministers who return from official visits abroad. Was granted bail of RM5000 on 10 February 2022.
6	Fahmi Reza	Pleaded not guilty to the charge of making allegedly offensive communications on the ban of liquor sale in the country with the intent of insulting PAS. Was granted bail of RM3000 on 17 February 2022, followed by a discharge not amounting to an acquittal on 14 October 2022.
7	Muhammad Luqmanulhaki m Mohd Aziz	Pleaded guilty to the charge of initiating offensive communications on Twitter against the Agong and Prime Minister. Was granted bail of RM7000 on 28 February 2022.
8	Heidy Quah	Granted a discharge not amounting to an acquittal on 25 April 2022. This was in relation to a charge in July 2021 of posting about alleged ill treatment of refugees at immigration detention centres on Facebook in 2020.

9	Mohammad Hafizzul Anas Kamaruzaman	Pleaded not guilty on 15 June 2022 to the charge of allegedly selling pornographic pictures on Twitter in 2019. No updates on sentencing.
10	Amira Nur Afiqah Agus Salim	Pleaded not guilty to the charge of allegedly sharing pornographic pictures on Twitter with the intention of offending others in 2021. Was granted bail of RM3000 on 5 July 2022.
11	Alexander Navin Vijayachandran	Pleaded not guilty to two charges of allegedly making and initiating the transmission of offensive videos that insulted Islam on Instagram and YouTube. Was granted bail of RM20,000 on 13 July 2022.
12	Rizal van Geyzel	Pleaded not guilty to three charges of posting insulting remarks on social media platforms. Was granted bail of RM12,000 on 22 July 2022, and asked to have passport surrendered.
13	Datuk Lokman Noor Adam	Pleaded not guilty to two counts of allegedly making and initiating the transmission of offensive communications against Prime Minister Datuk Seri Ismail Sabri Yaakob and the government. Was granted bail of RM8000 on 1 September 2022, with gag order to not post any statement on the case on social media.
14	Wong Hong Mun	Pleaded not guilty to charges of making and initiating offensive posts against civil servants. Was granted bail of RM2000 on 19 September 2022.
15	Datuk Seri Aliff Syukri Kamarzaman	Pleaded not guilty to four charges of allegedly uploading offensive videos depicting a group of drag queen dancers. Was granted bail of RM20,000 on 4 October 2022.
16	Datuk Seri Hasmiza Othman (Dato' Sri Vida)	Pleaded not guilty to the charge of allegedly making and initiating an offensive video depicting a group of drag queen dancers on her YouTube channel. Was granted bail of RM5000 on 8 November 2022.
17	Norhakim Nordin	Pleaded not guilty to charges of creating and sending communications that threatened several doctors regarding the COVID-19 vaccine on Facebook. Was granted bail of RM5000 on 8 December 2022.

# List of Individuals Convicted under Section 233 of the Communications and Multimedia Act 1998 in 2022

No	Name	Case Description
1	Mohd Azri Zahari	Pleaded guilty on 10 January 2022 to selling obscene photographs of a woman for RM100 through Telegram, and was fined RM6,000 in default six months' jail.
2	Mustapa Mansor Amer Mohd Isa	Pleaded guilty on 25 January 2022 to uploading an offensive YouTube video in 2020 about undocumented migrants and criminal activity in Pasar Borong Selayang. Was fined RM1900.
3	Muhammad Faiz Zaini	Pleaded guilty on 26 January 2022 to sending an obscene WhatsApp message in 2014 to a female acquaintance. Was fined RM3000.
4	Amisyar Ashman Zamriyazu	Pleaded guilty on 10 February 2022 to the charge of sending obscene communications in 2019 via Twitter. Was fined RM5000.
5	Abdul Rahman Abdollah	Pleaded guilty on 10 February 2022 to the charge of uploading fake news on Facebook and his blog. Was fined RM10,000.
6	Mohd Razman Ramli	Pleaded guilty on 24 February 2022 to the charge of sending obscene communications through WhatsApp in 2020. Was fined RM6000 on 10 March 2022.
7	Muhammad Hakim Habibullah	Pleaded guilty on 24 February 2022 to twelve counts of sending obscene communications on WhatsApp and Facebook between 2018 and 2019. Was sentenced to three years' jail on 30 March 2022.
8	Nur Azira Azman	Pleaded guilty on 28 February 2022 to insulting the Yang di- Pertuan Agong and the police via Twitter. Was fined RM4,000 in default six months' jail.
9	Ahmad Tarmizi Mohd	Pleaded guilty on 14 March 2022 to two charges of uploading pornographic video content and pictures in 2017 with the intent to offend others. Was fined RM16,000.

10	Abdul Wahab Ismail	Pleaded guilty on 29 March 2022 to two charges of sending pornographic pictures via Facebook Messenger in 2019. Was fined RM10,000 in default six months' jail.
11	Muhammad Khair Ma'ani	Pleaded guilty on 19 June 2022 to two counts of sending pornographic pictures and videos via Instagram in 2020. Was fined RM10,000 in default six months' jail.
12	Wan Asshima Kamaruddin	Pleaded guilty on 25 May 2022 to charges of posting insulting comments on Christianity on Facebook in 2021. Was fined RM13,000 in default six months' jail on 27 June 2022. In addition, she also had a permanent injunction issued by the Kuching High Court, in light of her failure to be present at the court for a civil suit filed against her by three civilians representing Sarawakians of the Christian faith.
13	Mohd Nor' Muzil Mohd Razalli	Pleaded guilty on 16 July 2022 to uploading a video that insulted Islam on YouTube. Was fined RM50,000. Was fined RM50,000 on 21 July 2022.
14	Aspan Alias	Pleaded guilty on 22 July 2022 to posting an offensive comment against the Yang Di-Pertuan Agong on Facebook in 2021. Was fined RM4500 in default six months' jail.
15	Mohd Hairol Ahmad	Pleaded guilty on 7 September 2022 to making and sending offensive communications against the Sultan of Johor. Was fined RM21,000 in default 18 months' jail.
16	Zul Ariffin	Pleaded guilty on 4 October 2022 to posting online a sexually suggestive clip from a yet-to-air Malay drama series. Was fined RM30,000.
17	Tham Wai Yuen	Pleaded guilty on 4 November 2022 to knowingly creating and spreading communications insulting Islam on Facebook in 2020. Was fined RM12,000 in default six months' jail.

Apart from Section 233 of the CMA, Section 263 of the same Act also plays a substantial role in criminalizing the freedom of expression in Malaysia. Section 263 is targeted against network service providers and the law basically compels network service providers to follow government directives in enforcing the law and requires them to enforce all Malaysian laws as part of their services. While the law itself may be innocuous, the

provision is often cited by the government and utilized to compel internet service providers (ISP) to block websites that are deemed illegal<sup>108</sup>.

### Printing Presses and Publications Act 1984 (PPPA)

There has been no banning of any publications under the Printing Presses Publications Act 1984 in 2022. Furthermore, the court has continued to act judicially and overturned the banning of two publications. After years of court battle, the High Court has finally overturned the ban on the book "Gay is Okay! A Christian Perspective" with the prohibition order by the Home Ministry being effectively revoked<sup>109</sup>.

The ban on the comic book "Belt and Road Initiative (BRI) for Win-Winism" was also overturned when the Court of Appeal Putrajaya granted the appellant a *certiorari* order to quash the minister's instruction to ban the book, and a *mandamus* order compelling the Home Ministry to return copies of the book that had been seized<sup>110</sup>.

Published on 18 April 2019, the comic book positively depicted the historical backdrop of China's BRI. Six months later on 23 October 2019 and invoking Section 7(1) of the PPPA<sup>111</sup>, the Home Minister banned all three versions of the book in Malay, English and Mandarin, with all copies seized and confiscated nationwide. The Court of Appeal development followed from the High Court decision that dismissed a judicial review application to lift the ban and to "strike down the law under which it was made"<sup>112</sup>. Whilst the three-judge panel did not grant the appellant's argument that Section 7 of the PPPA is unconstitutional, the court decision was progressive. The corresponding key arguments are<sup>113</sup>:

• The High Court Judge's proposition that the Minister "cannot be guilty of an error in law" as he has absolute discretion under Section 7 of the PPPA is not tenable. The

<sup>108</sup> Ida Lim, 'Sarawak Report blockage shines light on 'abusive' MCMC powers' (The Malay Mail, 24 July 2015)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2015/07/24/sarawak-report-blockage-shines-light-on-abusive-mcmc-powers/938837>accessed 2 March 2023

<sup>109 &#</sup>x27;High court quashes ban on book 'Gay is Okay! A Christian Perspective' (The Sun Daily, 22 February 2022)

<sup>&</sup>lt;https://www.thesundaily.my/local/high-court-quashes-ban-on-book-gay-is-okay-a-christian-perspective-GA8882855> accessed 2 March 2023

<sup>110 &#</sup>x27;Superman Hew' wins appeal, gets order to quash book ban' (Free Malaysia Today, 6 July 2022)

<sup>&</sup>lt;a href="https://www.freemalaysiatoday.com/category/nation/2022/07/06/superman-hew-wins-appeal-gets-order-to-quash-book-ban/">https://www.freemalaysiatoday.com/category/nation/2022/07/06/superman-hew-wins-appeal-gets-order-to-quash-book-ban/</a> accessed 2 March 2023

<sup>111</sup> Section 7(1) of the PPPA states that the Home Minister can absolute discretion to prohibit, either absolutely or conditionally, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of a publication, if he deems that the said publication is or likely to be prejudicial to public order and alarm public opinion

<sup>112</sup> Hew Kuan Yau v. Menteri Dalam Negeri & ORS [2022] Court of Appeal Putrajaya W-01(A)-237-05-2021, [2022] 113 Ibid

exercise of the discretion of the Minister can be reviewed by the courts, if it falls within grounds of "illegality, irrationality, procedural impropriety and proportionality".

- There was no evidence to suggest prejudice to public order or its likelihood. In the Minister's affidavit, whilst comic book pages were mentioned to support his allegations<sup>114</sup>, no untoward incident took place within the six months prior to the ban when the book was in circulation for six months. Furthermore, one of the crucial reasons given by the Minister for the ban was the 81 police reports lodged. Evidence was provided by the appellant that the police reports were an orchestration by "interested parties from political parties", making it insufficient grounds for prejudice to public order to be considered. Equally importantly, using the number of police reports or adverse responses in social media (in this case, 81, and by "interested parties from political parties") as a key yardstick to make decisions on whether or not to ban publications is unacceptable, as curtailing of the fundamental right to freedom of expression can then be easily brought about on the basis of anyone "disgruntled person or group". Whilst the Minister may have reason to disagree with the appellant's interpretation of history, even if justified on the basis that the author misrepresented or misinterpreted facts, such disagreement should not be the basis for banning a book.
- The fairness of the discretion by the Minister is questionable. Whilst it was stated in
  the Minister's affidavit that the investigation report by the Ministry of Home Affairs
  was taken into consideration for the ban, the Minister not only failed to supply it, but
  also classified it under the Official Secrets Act 1972. To these actions, the Minister also
  did not furnish national security grounds.

<sup>114</sup> In short, the Minister claims that the book was published "with the intention to promote the ideology of communism and socialism", to "spread wrong and confusing facts about the communist while trying to raise support and sympathy towards the communist's struggle", and caused readers, especially the younger generation, to question the history of Malaysia and dispute the struggles of the past leaders/icons in fighting for independence and nation building". For a full description by the Minister on the comic book pages that support his allegations, please refer to pages 891 to 895 in Hew Kuan Yau v. Menteri Dalam Negeri & ORS [2022] Court of Appeal Putrajaya W-01(A)-237-05-2021, [2022]

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FREEDOM OF ASSEMBLY

### FREEDOM OF ASSEMBLY

Protests and spontaneous assemblies were held regularly in 2022 as the country slowly recovered from the COVID-19 pandemic, which had either prohibited or discouraged public gatherings. Most protests and assemblies have also adapted to COVID-19 social distancing guidelines. The balance between the right to peaceful assembly and public health concerns was well maintained, as activists and organisers exercised their right while taking precautionary measures to prevent COVID-19 infections.

#### Public Actions, Assemblies and Protests in 2022

#### 'Tangkap Azam Baki' Protest - 22 January 2022

More than 200 participants attended the 'Tangkap Azam Baki' (Arrest Azam Baki) Protest in Bangsar Kuala Lumpur, which was held in response to alleged corrupt practices of the Malaysian Anti-Corruption Commission (MACC) Chief Commissioner, Tan Sri Azam Baki. The protest was organised by civil society organisations, component parties from the Pakatan Harapan coalition, as well as Parti Sosialis Malaysia (PSM), MUDA and Pejuang. The government was accused of clamping down on the protest when they obtained a court order to prohibit any gathering at Dataran Merdeka, Sogo Shopping Complex and Masjid Jamek – which were deemed protest "hotspots". Organisers of the protest were thus forced to change the venue to Jalan Travers in Bangsar at the very last minute, which may have affected the number of participants of the protest. The police also proceeded to close all surrounding roads, placing Kuala Lumpur in a mini "lockdown" in the morning. Despite these measures by the government, the protest was conducted in a largely peaceful manner, whereby protesters began dispersing around 12.30pm with a round of the National Anthem.

#### Anti-War Assembly Solidarity for Ukraine "StandWithUkraine" - 3 March 2022

Around 50 Ukrainians assisted by SUARAM and other activists held a candlelight vigil at Dataran Merdeka in solidarity with their country and its people over the Ukraine-Russia conflict.

#### #RUUAntiLompat #TolakIPCC Assembly - 22 March 2022

A protest outside of Parliament was jointly organised by SUARAM and BERSIH against the proposed Independent Police Conduct Commission (IPCC) Bill and to expedite the tabling of the Anti-Hopping Bill in the legislative chamber.



#### Candlelight Vigil for Nagaenthran K. Dharmalingam - 26 April 2022

A spontaneous candlelight vigil was held by the Malaysian Bar outside the Singapore High Commission in Kuala Lumpur for Nagaenthran Dharmalingam, an intellectually disabled Malaysian death row inmate in Singapore. It took place on the eve of Nagaenthran's execution in Singapore.

#### Assembly of Army Veterans - 6 June 2022

Around 1,000 army veterans from all over Malaysia gathered at Tugu Negara to demand better protection of their welfare from the government. The protestors demanded that the army veterans' pension be standardised; that pension be offered to those who had not received it; and for a pardon for those who were not deemed a veteran and therefore not eligible to pension.

#### Walk for Judicial Independence - 17 June 2022

The Bar Council organised a 'Walk for Judicial Independence' as a peaceful protest against interference with the independence of the judiciary, and breaches of the principle of separation of powers. The protest was originally conceived to be a march from Padang Merbok to Parliament. However, there was heavy police presence restricting the movement of the assembly and the lawyers were confined to the parking lot in Padang Merbok.

#### #Turun Assembly - 23 July 2022

Around 500 people had gathered around Sogo Shopping Complex to protest against the rising cost of living. Police had subsequently formed a human barricade along Jalan Tuanku Abdul Rahman to deter participants from marching towards Dataran Merdeka.



### 'Where is the Littoral Combat Ship' Rally - 14 August 2022

Around 100 people had gathered around Sogo Shopping Complex to protest over the controversial RM9 billion littoral combat ship (LCS) project. The protest led to MUDA Secretary-General Amir Hadi being charged under the Peaceful Assembly Act 2012.

### Gathering of Najib's Supporters outside the Royal Palace – 24 August 2022

Around 200 supporters of former Prime Minister Najib Razak had gathered outside the royal palace to petition the Monarch, so that a pardon would be granted to the politician.

### 'Nyawa dulu, baru PRU' Rally - 24 September 2022

Around 50 participants took part in the protest organised by MUDA around Sogo Shopping Complex, demanding the government to prioritise flood mitigation over elections.

### Candlelight for Mahsa Amini – 25 September 2022

A candlelight vigil over the death of Mahsa Amini was held outside of the Iranian Embassy. Over 100 participants comprising Iranians and members of civil society organisations attended the assembly. The crowd was closely monitored by about 30 police officers and the protest ended peacefully.



### <u>Submission of Memorandum on Release of Detainees Under SOSMA - 20 December</u> 2022

Family members of SOSMA detainees, alongside representatives of SUARAM and Sebaran Kasih Malaysia, gathered in front of Parliament to submit a memorandum to members of Parliament. The memorandum called for the release of detainees.



### **Peaceful Assembly Act 2012**

Regrettably, the situation surrounding the right to peaceful assembly with regards to the Peaceful Assembly Act 2012 (PAA) worsened in 2022. Although amendments made to Section 9(1) of the PAA saw the reduction of prior required notice to hold assembly from 10 to five days, the law still poses obstructions to hold spontaneous or urgent assemblies. Police investigations opened against demonstrators in relation to the PAA were mostly made under Section 9(5), which provides that failure to provide a five-day notice is a punishable offence and liable to a fine not exceeding ten thousand ringgit.

In 2022, there were numerous investigations and even charges laid which served as a form of harassment against peaceful assemblers and a deterrent to political assemblies. Investigations and charges in 2022 involved the failure to provide a five-day notice to the authorities before any assembly as mentioned above. It needs to be stressed again that the amendment in 2019, which reduced the 10 days of notification of assembly to only five days, has unfortunately failed to provide for the possibility of spontaneous or urgent assemblies – a right safeguarded under Article 10 of the Federal Constitution. Therefore, the Act is still subject to abuse and the failure to provide notification of assembly has been used as a justification to investigate and prosecute assemblers.

Over the years, the PAA has been abused to investigate and harass human rights defenders and politicians. However, it should be noted that there were no criminal prosecutions for peaceful assemblies between 2017 to 2021. Therefore, the four prosecutions in 2022 were an alarming development and represent a further erosion of the right to peaceful assembly in Malaysia. The charge laid against Hasbie Muda pertained to a protest in Kampung Baru on 1st July; Lestari Yahya was charged for his involvement in a protest outside of Sogo

Shopping Complex on 9th July; Aliff Naif was a speaker at the Turun protest on 23rd July outside the Sogo Complex<sup>115</sup>, while Amir Hadi was the organiser of the protest outside of Sogo Complex on 14th August. All four of them were charged under Section 9(1) of the Peaceful Assembly Act 2012 for failing to notify the police five days before holding the assembly.

In addition to prosecutions under the Peaceful Assembly Act 2012, other activists and human rights defenders have also been subjected to prosecution under other offences for exercising the right to peaceful assembly under Article 10 of the Federal Constitution. This included Nalina Nair and Sujatra Jayanah under Section 90 of the Police Act (an offence for rioting and disorderly behaviour) on 26th August 2021<sup>116</sup>; Muhammad Sheith and Steven Tiw under the Prevention and Control of Infectious Diseases Act (Measures in Local Areas of Infection) on 29th July 2022 for the #KerajaanGagal protests<sup>117</sup>, and Lim Zheng Han under Section 14 of the Minor Offences Act on 13th June 2022 for a demonstration against former Prime Minister Najib Razak<sup>118</sup>.

### Policing Peaceful Assemblies in 2022

visit/> accessed 19 October 2022

Besides the restrictive Peaceful Assembly Act 2012, the police have continued to deter assemblies and protests with the use of executive actions, court orders and even intimidation tactics. During the #TangkapAzamBaki protest which was scheduled to be held in Dataran Merdeka, the police went as far as applying for a court order to prohibit any gatherings at the designated location and employing traffic police to divert incoming traffic<sup>119</sup>. Police officials also publicly warned the masses that the protest was a violation of the Prevention and Control of Infectious Diseases Act 1988 as well as the Peaceful Assembly Act 2012. Furthermore, train stations near the gathering areas were also closed to further discourage participants from gathering.

<sup>115</sup> Faisal Asyraf, '2 politicians, activist charged over protests against price hikes' (Free Malaysia Today, 18 August 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/08/18/2-politicians-activist-charged-over-protests-against-price-hikes/>accessed 19 October 2022

<sup>116 &#</sup>x27;PJ councillor and another charged with disorderly conduct at police station' (Free Malaysia Today, 26 August 2021)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2021/08/26/pj-councillor-and-another-charged-with-disorderly-conduct-at-police-station/> accessed 19 October 2022

<sup>117 &#</sup>x27;DAP, PKR leaders claim trial to flouting MCO SOPs last year' (Borneo Post Online, 29 July 2022)

<sup>&</sup>lt;https://www.theborneopost.com/2022/07/29/dap-pkr-leaders-claim-trial-to-flouting-mco-sops-last-year/> accessed 19 October 2022

<sup>118</sup> Predeep Nambiar, 'DAP Youth leader charged with insulting behaviour during Najib visit' (Free Malaysia Today, 13 July 2022) <a href="https://www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-behaviour-during-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-insulting-najib-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-leader-charged-with-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-www.freemalaysiatoday.com/category/nation/2022/06/13/dap-youth-www.freemalaysiatoday.com/category/nati

<sup>119</sup> Justin Ong, 'Police to reroute six KL roads ahead of #TangkapAzamBaki rally tomorrow' (The Malay Mail, 21 January 2022) <a href="https://www.malaymail.com/news/malaysia/2022/01/21/police-to-reroute-six-kl-roads-ahead-of-tangkapazambaki-rally-tomorrow/2036675">https://www.malaymail.com/news/malaysia/2022/01/21/police-to-reroute-six-kl-roads-ahead-of-tangkapazambaki-rally-tomorrow/2036675</a> accessed 19 October 2022

The roadblocks that were set up did prove to be an obstacle to the assembly, forcing the organisers to gather at the Bangsar LRT station instead of outside Sogo, Dataran Merdeka and Masjid Jamek<sup>120</sup>. Nevertheless, despite numerous restrictions, the protest was deemed one of the most attended assemblies in 2022 with an estimated 500-strong crowd. It remained largely peaceful and orderly <sup>121</sup>. Unfortunately, the protest also triggered a massive wave of police investigations into more than 50 individuals ranging from politicians, social activists, and ordinary citizens, who were summoned to the police station for questioning<sup>122</sup>.

A similar effort to limit protest space continued to be employed by police to control assemblies. During the Bar Council's Walk for Judicial Independence, a human barricade was formed by the police to obstruct hundreds of lawyers from marching to parliament and handing over a memorandum relating to judicial independence<sup>123</sup>. The police also formed two blockades at both the entrances which essentially confined the assembly to only within the parking station of Padang Merbok. In the end, the police only allowed 20 representatives to walk to the parliament building, but the Bar Council refused to accept this condition. The excessive policing happened even though the Bar Council had adhered to the restrictions placed under the Peaceful Assembly Act 2012, including notifying the authorities five days before the assembly.

SUARAM noted that the heavy presence of police and excessive policing during that day did not facilitate the protest but rather contributed to a hostile situation in which police were specifically stationed with the sole intention of stopping the lawyers from marching to Parliament. SUARAM also observed that the standoff between the police blockade and the marching lawyers, as well as the accompanying negotiation process, was particularly tense when the lawyers were aggrieved by the fact that they were denied the right to protest even though they had followed the letter of the law. The Bar Council contemplated

<sup>120</sup> Justin Ong, 'Lokasi himpunan #TangkapAzamBaki ditukar ke Bangsar' (Free Malaysia Today, 21 January 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/bahasa/tempatan/2022/01/21/himpunan-tangkapazambaki-berpindah-lokasi-di-bangsar/> accessed 19 October 2022

<sup>121</sup> Jason Thomas, '#TangkapAzamBaki rally organisers happy with 500-strong turnout' (Free Malaysia Today, 22 January 2022) <a href="https://www.freemalaysiatoday.com/category/nation/2022/01/22/tangkapazambaki-rally-organisers-happy-with-500-strong-turnout/">https://www.freemalaysiatoday.com/category/nation/2022/01/22/tangkapazambaki-rally-organisers-happy-with-500-strong-turnout/</a> accessed 19 October 2022

<sup>122</sup> Hakimie Amrie Hisamudin, '50 more expected to be questioned over anti-Azam rally' (Free Malaysia Today, 14 January 2022) <a href="https://www.freemalaysiatoday.com/category/nation/2022/01/24/50-more-expected-to-be-questioned-over-anti-azam-rally/accessed 31 March 2023">https://www.freemalaysiatoday.com/category/nation/2022/01/24/50-more-expected-to-be-questioned-over-anti-azam-rally/accessed 31 March 2023</a>

<sup>123</sup> Daniel Azhar , 'Bar slams cops after 'Walk for judicial independence' thwarted' (Free Malaysia Today, 17 June 2022)

<a href="https://www.freemalaysiatoday.com/category/nation/2022/06/17/bar-slams-cops-after-walk-for-judicial-independence-thwarted/accessed 19 October 2022">https://www.freemalaysiatoday.com/category/nation/2022/06/17/bar-slams-cops-after-walk-for-judicial-independence-thwarted/accessed 19 October 2022</a>

taking legal action against the police force for outrightly denying their right to peaceful assembly <sup>124</sup>.

This method was applied again in the #Turun assembly where a defiant police barricade essentially halted the protest and prevented protesters from marching to Dataran Merdeka<sup>125</sup>. As a result, organisers could only negotiate with the police for a sit-in protest and protesters dispersed swiftly thereafter.

### List of Individuals Charged under the Peaceful Assembly Act 2012

No.	Individual	Event	Date
1	Hasbie Muda	Protest outside of Kampung Baru	1 July 2022
2	Lestari Yahya	Protest outside of Sogo Shopping Complex	9 July 2022
3	Aliff Naif	#Turun Malaysia Assembly	23 July 2022
4	Amir Hadi	'Where is the Littoral Combat Ship' rally	14 August 2022

### List of Individuals/Groups Investigated under the Peaceful Assembly Act 2012

No.	Individual/Group	Event	Date
1	Akmal Nasir	#TangkapAzamBaki	22 January 2022
2	P. Prabakaran	#TangkapAzamBaki	22 January 2022
3	Thiban Subbramaniam	#TangkapAzamBaki	22 January 2022
4	Syukri Razab	#TangkapAzamBaki	22 January 2022
5	Adam Adli Abdul Halim	#TangkapAzamBaki	22 January 2022
6	Howard Lee	#TangkapAzamBaki	22 January 2022

<sup>124 &#</sup>x27;[UPDATED] Bar to take legal action against 'unconstitutional' cop barricade during walk' (The Vibes, 17 June 2022)

<sup>&</sup>lt;https://www.thevibes.com/articles/news/63649/bar-to-take-legal-action-against-unconstitutional-cop-barricade-during-walk-accessed 19 October 2022</p>

<sup>125</sup> Ho Kit Yen and Yasmin Abdul Latif, 'Cops stop 'Turun Malaysia' protesters from marching to Dataran Merdeka' (Free Malaysia Today, 23 July 2022) <a href="https://www.freemalaysiatoday.com/category/nation/2022/07/23/cops-stop-turun-malaysia-protesters-from-marching-to-dataran/">https://www.freemalaysiatoday.com/category/nation/2022/07/23/cops-stop-turun-malaysia-protesters-from-marching-to-dataran/</a> accessed 13 March 2023

7	Dr Thanussha Francis Xavier	#TangkapAzamBaki	22 January 2022		
8	Amira Aisya Abd Aziz	#TangkapAzamBaki	22 January 2022		
9	Dr. Abu Hafiz Salleh Huddin	#TangkapAzamBaki	22 January 2022		
10	Zubair Rahmi	#TangkapAzamBaki	22 January 2022		
11	Asmaalif Abdul Adam	#TangkapAzamBaki	22 January 2022		
12	48 activists	#TangkapAzamBaki	22 January 2022		
13	Wong Yan Ke	Anti-War Assembly Solidarity for Ukraine "StandWithUkraine"	5 March 2022		
14	Lidiya Murugan	Anti-War Assembly Solidarity for Ukraine "StandWithUkraine"	5 March 2022		
15	Oksana Teroshyna	Anti-War Assembly Solidarity for Ukraine "StandWithUkraine"	5 March 2022		
16	Wong Yan Ke	#RUUAntiLompat #TolakIPCC Assembly	22 March 2022		
17	Thomas Fann	#RUUAntiLompat #TolakIPCC Assembly	22 March 2022		
18	S. Arutchelvan	Labour Day Assembly	23 April 2022		
19	Kohila Yanasekaran	Labour Day Assembly	23 April 2022		
20	T. Mohan Ellen	Labour Day Assembly	23 April 2022		
21	Wong Yan Ke	Labour Day Assembly	23 April 2022		
22	Sivarajan Arumugam	Labour Day Assembly	23 April 2022		
23	New Sin Yew	Candlelight Vigil for Nagaenthran K. Dharmalingam	26 April 2022		
24	Yohendra Nadarajan	Candlelight Vigil for Nagaenthran K. Dharmalingam	26 April 2022		

25	Zaid Malek	Candlelight Vigil for Nagaenthran K. Dharmalingam	26 April 2022	
26	Mahajoth Singh	Candlelight Vigil for Nagaenthran K. Dharmalingam	26 April 2022	
27	Nabila Khairuddin	Candlelight Vigil for Nagaenthran K. Dharmalingam	26 April 2022	
28	Adam Adli	Quds Day rally outside of Embassy of United States of America	29 April 2022	
29	Sivaranjan Arumugam	Press Conference, Kempen Pemulihan Negara	22 May 2022	
30	Nalini Elumalai	Press Conference, Kempen Pemulihan Negara	22 May 2022	
31	5 Parti Sosialis Malaysia activists	Press Conference, Kempen Pemulihan Negara	22 May 2022	
32	6 army veterans	Gathering of army veterans RU6622	6 June 2022	
33	Karen Cheah	Walk for Judicial Independence	17 June 2022	
34	Roger Chan	Walk for Judicial Independence	17 June 2022	
35	Rajen Devaraj	Walk for Judicial Independence	17 June 2022	
36	Hasbie Muda	#Turun Malaysia Assembly	23 July 2022	
37	Aliff Naif	#Turun Malaysia Assembly	23 July 2022	
38	Lestari Yahya	#Turun Malaysia Assembly	23 July 2022	
39	Syefura Othman	#Turun Malaysia Assembly	23 July 2022	
40	Abbad Salimmini Che Adzmi	#Turun Malaysia Assembly	23 July 2022	
41	30 activists	#Turun Malaysia Assembly	23 July 2022	
42	Amir Abdul Hadi	'Where is the Littoral Combat Ship' rally	14 August 2022	
43	13 activists	'Where is the Littoral Combat Ship' rally	14 August 2022	

44	Pertubuhan Jalinan Perpaduan Negara	Gathering outside of Royal Palace for Najib's pardon petition	24 August 2022	
45	Nurainie Haziqah Shafii	#nyawadulubaruPRU	24 2022	September
46	Syed Saddiq	#nyawadulubaruPRU	24 2022	September
47	Amira Aisya Abdul Aziz	#nyawadulubaruPRU	24 2022	September
48	Nurafiqah Zulkifli	#nyawadulubaruPRU	24 2022	September
49	Lim Yi Wei	#nyawadulubaruPRU	24 2022	September
50	Howard Lee Chuan How	#nyawadulubaruPRU	24 2022	September
51	Mohd Sany Hamzan	#nyawadulubaruPRU	24 2022	September
52	Asri Balkis	#nyawadulubaruPRU	24 2022	September
53	Ashraff Fahmy	#nyawadulubaruPRU	24 2022	September
54	Wong Yan Ke	Candlelight Vigil for Mahsa Amani	25 2022	September
55	Liau Pin Chun	Candlelight Vigil for Mahsa Amani	25 2022	September
56	Davood Afkhami Zabol	Candlelight Vigil for Mahsa Amani	25 2022	September
57	Siti Kasim	Candlelight Vigil for Mahsa Amani	25 2022	September
58	30 individuals	Created a commotion (i.e., shouted as well as threw bottles and firecrackers) at the 'Malam Mesra Muo' programme organised by the	23 Oc	tober 2022

		Malaysian United Democratic Alliance (Muda)		
59	Sevan Doraisamy	Submission of memorandum to MPs outside Parliament calling for the release of several detainees under SOSMA	29 2022	December
60	Nik Azura Nik Nasron	Submission of memorandum to MPs outside Parliament calling for the release of several detainees under SOSMA	29 2022	December
61	Wong Yan Ke	Submission of memorandum to MPs outside Parliament calling for the release of several detainees under SOSMA	29 2022	December
62	S. Arutchelvan	Submission of memorandum to MPs outside Parliament calling for the release of several detainees under SOSMA	29 2022	December
63	Ranjith Kumar	Submission of memorandum to MPs outside Parliament calling for the release of several detainees under SOSMA	29 2022	December

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# FREE AND FAIR ELECTIONS

### FREE AND FAIR ELECTIONS

### Introduction

The year 2022 was a significant year for electoral democracy as Malaysia held the 15<sup>th</sup> General Election after a harrowing pandemic eclipsed by political unrest.

This chapter will highlight key electoral issues from a human rights perspective with the aim of shedding light on the state of human rights in Malaysia with regards to democratic participation.

### **Johor State Election**

Johor held a snap state election on 12<sup>th</sup> March 2022, following the footsteps of Melaka and Sarawak in 2021, and Sabah earlier in 2020. The early dissolution of the state assembly was triggered by the one-seat majority that the Barisan Nasional (BN) and Perikatan Nasional (PN) ruling coalition held after the death of Osman Sapian, the then Kempas assemblyperson, in December 2021. With the BN-PN coalition having 28 seats and the opposition Pakatan Harapan having 27 seats out of a total of 56 state seats, the election was poised to be fiercely contested.

The Johor state election was the first election to be conducted after the lowering of the voting age from 21 to 18 and the implementation of automatic voter registration. These changes led to a surge in the number of eligible voters in Johor from 1.85 million in the 14<sup>th</sup> General Election to 2.6 million in 2022, a remarkable increase of 41%. However, this increase in the number of voters had exacerbated the problem of malapportionment in the state, as its largest constituency, Kota Iskandar (116,415 voters), now has over five times more voters than the smallest constituency, Bukit Naning (22,594 voters). Unfortunately, the re-delineation of electoral boundaries is not due until 2026, as the Federal Constitution only allows the process to take place every eight years.

Another issue that marred the election was the exclusion of voters who tested positive for COVID-19. The Malaysian government and the Election Commission failed to provide any alternative means for infected voters to cast their ballots despite the feasibility of safe voting options exemplified by other countries that held elections during the pandemic. According to the Ministry of Health's statistics, there were 21,725 active cases in Johor on Election Day<sup>126</sup>, all of whom were required to undergo quarantine at home, at quarantine centres or at hospitals. This exclusion of infected voters raises questions about the

<sup>126</sup> Ministry of Health Malaysia, 'Daily recorded COVID-19 cases at state level' <a href="https://github.com/MoH-Malaysia/covid19-public/blob/main/epidemic/cases\_state.csv">https://github.com/MoH-Malaysia/covid19-public/blob/main/epidemic/cases\_state.csv</a> accessed 20 October 2022

government's commitment to ensuring that every eligible voter can exercise their right to vote.

The Coalition for Clean and Fair Elections (BERSIH), an electoral watchdog, observed more election offences in the Johor state election compared to the Melaka and Sarawak state elections.<sup>127</sup> BN and PN committed most of the offences among the political parties that contested, including treating voters with food and exploiting government resources for their campaign. The frequent occurrence of these behaviours in both current and past elections underscore the urgency for more stringent enforcement of the Election Offences Act 1954 and for electoral reforms to ensure a level playing field for all candidates and parties.

In the end, the election results were a triumph for BN, which secured a comfortable majority of 40 seats and a two-thirds supermajority. Pakatan Harapan (PH) and PN suffered significant losses, with 12 and three seats respectively. The Malaysian United Democratic Alliance (MUDA), a new entrant, secured one seat in its electoral debut.

### **Anti-Hopping Law**

In July 2022, Parliament passed a constitutional amendment, commonly referred to as the "Anti-Hopping Law," to prevent elected members of Parliament from defecting from their political parties. This was a significant development for the country's electoral democracy, as it aimed to address concerns about political instability caused by party-hopping.

This amendment, which came into effect on 5<sup>th</sup> October 2022, mandates that the seats of MPs who switch parties will be automatically vacated, and a by-election will be held. Similar legislations have also been passed at the state level in Perlis, Kedah, Penang, Perak, Selangor, Negeri Sembilan, Kelantan, and Sarawak state assemblies to prevent the defection of state assemblypersons.

While the amendment is a step forward for electoral democracy in Malaysia, it has a significant loophole: its anti-party-hopping clauses cannot be applied to coalition hopping, where a political party leaves a coalition or joins another coalition after the election. The exclusion is provided in the illustration for the new Article 49A in the explanatory statement, which reads:

"A member of Party A who is a member of the House of Representatives shall not cease to be a member of that House, if Party A, who is a member of a coalition of political parties, leaves that coalition whether or not Party A joins another coalition of political parties or forms a new coalition of parties."

<sup>127</sup> BERSIH, 'Laporan Pemerhatian Pilihan Raya Umum Dewan Negeri Johor ke-15' (BERSIH, 18 April 2022)

<a href="https://bersih.org/download/laporan-pemerhatian-pilihan-raya-umum-dewan-negeri-johor-ke-15/">https://bersih.org/download/laporan-pemerhatian-pilihan-raya-umum-dewan-negeri-johor-ke-15/</a> accessed 20 October 2022

Therefore, there is no legal barrier for a political party to switch alliances which would potentially change the electoral outcome, such as what PPBM did in 2020 that led to the downfall of the PH government. In such cases, all MPs in the party will retain their seats, and those who leave the party out of principle will have their seats vacated.

This loophole has raised concerns about the curtailment of freedom of association. In some cases, leaving a political party is not an act of betrayal, but rather an expression of integrity, especially when the party has deviated from its core values and principles. The legitimacy of an MP's decision to switch parties should ideally be determined by voters, such as through a recall election, rather than legislation.

Despite these concerns, civil society and the general public generally support the amendment, as it aims to prevent the manipulation of the electoral process by politicians who switch parties for personal gain. The anti-hopping law is a positive development for Malaysia's electoral democracy, but there is still room for improvement to ensure that it does not curtail individual freedoms or lead to unintended consequences.

### 15th General Election

Parliament was dissolved on 10<sup>th</sup> October 2022, paving the way for the 15<sup>th</sup> General Election despite objections from the opposition and civil society due to floods risk during the year-end monsoon season.

The General Election was held concurrently with Pahang, Perak and Perlis state elections alongside Sabah's Bugaya state seat by-election. In the past, general elections for all state legislative assemblies except Sarawak had been held concurrently. However, Sabah, Melaka and Johor had already held early elections due to political instability, while states under a Pakatan Harapan or Perikatan Nasional government (including Penang, Selangor, Negeri Sembilan, Kedah, Kelantan and Terengganu) decided not to dissolve their state assemblies to hold state elections concurrently.

The Election Commission (EC) fixed nomination day on 5<sup>th</sup> November and Election Day on 18<sup>th</sup> November, with a 14-day campaigning period. While there is no international standard on campaign period length, the EC should ensure to allocate an adequate period of time to allow all parties and candidates a reasonable length for campaigning, as well as ensure enough time for postal ballots to be mailed back from overseas by polling day. Both BERSIH and Global Bersih have long advocated for a 21-day campaign period.

The general election saw a decent turnout of 74.71%, lower in percentage terms compared to GE14 but higher in number due to the enlarged voter base resulting from automatic voter registration and the lowering of the voting age. The elections resulted in a hung parliament where Pakatan Harapan won 82 seats, Perikatan Nasional won 74, Barisan Nasional won 30, and others won 36 seats.

Despite the lack of a clear winner, Prime Minister Anwar Ibrahim managed to form the government with PH, BN, Gabungan Parti Sarawak (GPS), Gabungan Rakyat Sabah (GRS) and WARISAN with a two-thirds supermajority of 148 out of 222 seats. The leaders of the five political coalitions and parties signed a memorandum of understanding to support the Anwar Ibrahim-led unity government on 16th December 2022.

### Malapportionment

Article 2(6) of the Inter-Parliamentary Union (IPU)'s Declaration on Criteria for Free and Fair Elections emphasises that every voter should have an equal opportunity to exercise their right to vote, and that their vote should carry the same weight as others. In Malaysia, the Federal Constitution Thirteenth Schedule mandates that parliamentary seats should be "approximately equal" in size, but rural constituencies are granted some leeway due to their difficulty of access. However, this limit was increased from 15% to 33%, and ultimately eliminated in the 1970s.

The decision to lower the voting age and introduce automatic voter registration expanded the electorate by 42%, from 14.94 million in GE14 to 21.17 million in GE15. While these changes were meant to encourage more people to participate in the democratic process, they also perpetuated unequal representation between constituencies. The issue of malapportionment reached its highest level in history, making Malaysia the 13th most malapportioned country in the world. <sup>128</sup> In GE15, 41 constituencies had fewer voters than 0.67 times the national average, while 60 constituencies had more than 1.33 times the national average. The most malapportioned parliamentary seats in Malaysia are Bangi, with 303,430 voters, and Lenggong, with only 36,950 voters - a discrepancy of 8 times the number of voters between them.

The last review of constituency delineation was conducted in West Malaysia in 2018, while Sabah and Sarawak were reviewed in 2017/2019<sup>129</sup> and 2015 respectively. Constitutional restrictions dictate that a new review can only be conducted after an eight-year gap or when there is a constitutional amendment to alter the number of electoral seats. It is imperative that a thorough and independent review of the constituency boundaries is conducted before the next General Election to address the issues of malapportionment and gerrymandering. Without such a review, the problem of unequal representation could continue to worsen and undermine the credibility of the electoral process. It is important that the review is conducted in a transparent and fair manner to ensure that all voters are fairly represented in the democratic process.

<sup>128</sup> James Chai, 'The Paradox of Malaysia's Lowering of Voting Age - Expanded Enfranchisement Devalued by More Unequal Representation' (ISEAS-Yusof Ishak Institute, <a href="https://www.iseas.edu.sg/wp-content/uploads/2022/05/ISEAS\_Perspective\_2022\_63.pdf">https://www.iseas.edu.sg/wp-content/uploads/2022/05/ISEAS\_Perspective\_2022\_63.pdf</a>, accessed 1 March 2023

<sup>129</sup> The report was completed in 2017 but tabled in Parliament in 2019.

### **Local Election Restoration**

In December 2022, the newly appointed Minister of Local Government Development Nga Kor Ming stated that the restoration of local government elections was not his immediate priority. This echoed the sentiments of former minister Reezal Merican Naina Merican, who cited the high cost as a reason for not reviving local government elections in December 2021.

Malaysia's suspension of local elections since the 1960s, under the Proclamation of Emergency during the Indonesia-Malaysia Confrontation, has remained in force. The Local Government Act of 1976 abolished local government elections, leaving the roles of councillors to be filled by state government-appointed individuals.

Restoring local government elections has been a long-standing debate, with conflicting opinions and concerns from different parties. The restoration of local elections is crucial to promote democratic participation and ensure that the voices of the public are heard in matters of local governance. The absence of local elections has limited opportunities for the public to participate in the decision-making process at the local level. The appointment of councillors by state governments can lead to questions of accountability and transparency in the governance of local councils. The government must review the decision and take concrete steps to restore this important aspect of democratic participation.

### Conclusion

While Malaysia has seen positive developments in enhancing democratic participation through the lowering of the voting age, the implementation of automatic voter registration and the introduction of the anti-hopping law, there remain issues that need to be addressed. Voter rights need to be further safeguarded and a level playing field ensured for all candidates and parties. Malapportionment and the weak enforcement of election rules are among key issues in need of serious action.

The government and Election Commission must commit to significantly addressing these issues in the interest of strengthening democratic participation. The continued efforts of civil society organisations, such as BERSIH, are essential in monitoring the electoral process and holding those in power accountable. Malaysia's journey towards a truly free and fair electoral system and process is ongoing, but with sustained efforts from all stakeholders, the country can continue to progress towards a more democratic society.



# HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

# HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

SUHAKAM releases press statements from time to time commenting on potential human rights abuses in Malaysia, in a political context where the government is largely perceived to be ideologically conservative and less human rights-friendly. For instance, the rise in racism and xenophobia since the ease of COVID-19 restrictions as documented by civil society organisations<sup>130</sup> did not prevent SUHAKAM from speaking about protecting the rights of refugees and stateless citizens<sup>131</sup>. The SUHAKAM chairperson Professor Dato' Dr. Rahmat bin Mohamad mooted that a legal pathway for refugees is possible even when Malaysia is not a signatory to the 1951 Refugee Convention. He also stated that, ideally, SUHAKAM could be the intermediary to ease tension between Malaysians and refugees by disseminating relevant data to raise public awareness and foster understanding.

Nevertheless, SUHAKAM is still deemed to be very much dependent on the executive branch both institutionally and financially. Therefore, whether it can effectively carry out its functions of safeguarding human rights, advising the government on human rights legislation and ultimately holding the government to account in human rights issues, are very much in question. It is particularly concerning that since the political crisis that has engulfed the nation in 2020, SUHAKAM has not released its 2020 and 2021 annual reports as mandated by the Human Rights Commission of Malaysia Act 1999 (HRCMA).

According to Section 21(1) of the Human Rights Commission of Malaysia Act (HRCMA), SUHAKAM shall submit an annual report to the Parliament no later than the first meeting of the Parliament of the following year. Therefore, according to the letter of the law, the 2020 Annual Report should have been submitted to Parliament during the 2021 first parliamentary session at the latest. Similarly, the 2021 Annual Report should have been tabled in the first parliamentary session for 2022, which ended on 24 March 2022. Malaysians are neither informed nor did they receive any explanation regarding the non-release of the reports.

Equally, there have been no formal announcements or indication either by SUHAKAM or the new Government of Malaysia that the 2020, 2021 and 2022 SUHAKAM annual reports would be tabled during the parliamentary session in 2023. The long-delayed publication of SUHAKAM's annual reports may suggest an internal tussle with the executive since SUHAKAM is still equipped with the capacity and resources to produce an annual report

<sup>130</sup> Keertan Ayamany, 'Civil group notes rise in racism, xenophobia in 2021 as Malaysians ease up from COVID-19 lockdowns' (The Malay Mail, 21 March 2022) <a href="https://www.malaymail.com/news/malaysia/2022/03/21/civil-group-notes-rise-in-racism-xenophobia-in-2021-as-malaysians-ease-up-f/2048687">https://www.malaymail.com/news/malaysia/2022/03/21/civil-group-notes-rise-in-racism-xenophobia-in-2021-as-malaysians-ease-up-f/2048687</a> accessed 16 March 2023

<sup>131</sup> Yiswaree Palansamy, 'New Suhakam chief backs legal status for refugees, stateless people in Malaysia; calls for govt to be 'benevolent'' (The Malay Mail, 13 September 2022) <a href="https://www.malaymail.com/news/malaysia/2022/09/13/new-suhakam-chief-backs-legal-status-for-refugees-stateless-people-in-malaysia-calls-for-govt-to-be-benevolent/27947">https://www.malaymail.com/news/malaysia/2022/09/13/new-suhakam-chief-backs-legal-status-for-refugees-stateless-people-in-malaysia-calls-for-govt-to-be-benevolent/27947</a> accessed 16 March 2023

barring it being tabled in Parliament by the government. The government arguably should have allocated parliamentary time for the reports to be tabled as it would remain embargoed too long otherwise, which is currently the case. The failure of SUHAKAM to follow the provisions of its own founding act is worrying and raises concerns about how SUHAKAM is operating and fulfilling its mandate.

SUHAKAM was also thrown into a momentary limbo when the National Human Rights Institution (NHRI) was without a chairperson and commissioners for more than a month  $^{132}$ . This again called into question the efficacy of SUHAKAM in fulfilling its mandate, as it was essentially non-functional without its commissioners, unable to make public statements, advise the government on human rights issues nor inquire into human rights complaints. Additionally, the belated appointments of the new chairperson and batch of commissioners for the term 2022 - 2025 were also heavily criticised for failing to reflect the core values and impartiality that SUHAKAM was supposed to display.

For instance, SUARAM had expressed concern over the newly appointed SUHAKAM chairperson, Prof. Dato' Dr Rahmat bin Mohamad, questioning if he was fit to carry out his duties to fulfil SUHAKAM's mandate. He was reported to have opposed Malaysia ratifying the Rome Statute of the International Criminal Court, as he was one of the four academics who co-authored a paper which convinced the Conference of Rules to reject the Rome Statute <sup>133</sup>. The paper was instrumental in forcing the 2019 Pakatan Harapan government to pull out from ratifying the Rome Statute. While Prof. Dato' Dr Rahmat bin Mohamad is fully entitled to his academic views on international human rights treaties, holding these views as chairperson of SUHAKAM would certainly affect and potentially even impair SUHAKAM's mandate of making recommendations to the government with regards to accession of international human rights treaties.

Secondly, the two other new commissioners were publicly known to be strongly affiliated with the political party UMNO. At the time of appointment, Dato' Hasnal Rezua Merican bin Habib Merican was the Chairperson of UMNO Selayang Branch, and Puan Nazira binti Abdul Rahim was the Chairperson of the Women Division at UMNO Kulim and Bandar Baharu Branch and the local councillor appointed by her party for Bandar Baharu. These two appointments directly contravene Section 11A (4)(a) of the Human Rights Commission of Malaysia (Amendment) Act 2009. Both the chairperson and its commissioners should be politically neutral to ensure that SUHAKAM remains an institution independent from political influence and therefore would be able to discharge its duties without fear and favour.

<sup>132 &#</sup>x27;Suhakam in limbo with no new chairman, commissioners, say NGOs' (The Star, 27 May 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/05/27/suhakam-in-limbo-with-no-new-chairman-commissioners-say-ngos-accessed 16 March 2023</p>

<sup>133</sup> Reshna Reem Ganesan, 'New Suhakam chief faces flak over Rome Statute protest' (Free Malaysia Today, 2 July 2022)

<a href="https://www.freemalaysiatoday.com/category/nation/2022/07/02/new-suhakam-chief-faces-flak-over-rome-statute-protest/">https://www.freemalaysiatoday.com/category/nation/2022/07/02/new-suhakam-chief-faces-flak-over-rome-statute-protest/</a>

accessed 28 March 2023

By appointing two commissioners with substantial political influence, it is undoubtedly clear that SUHAKAM with its current composition could not be deemed truly independent or impartial of the government. For instance, if the coalition government, which UMNO is part of, is allegedly involved in human rights violations, questions would be rightly asked on SUHAKAM's ability to hold an independent inquiry and whether the findings would be credible in the eyes of the public and civil society.

The appointment of former director-general of the Islamic Development Department (JAKIM) Mohamad Nordin Ibrahim raised even more questions. JAKIM had previously demanded an answer from SUHAKAM regarding the recognition of a third-gender research project <sup>134</sup>. This called into question whether the appointment would again hamper SUHAKAM's ability in conducting research that aligns with its core objective in defending and promoting human rights in Malaysia, even if it may prove to be sensitive and controversial to the government.

The root of the controversial appointments stems from a lack of transparency and parliamentary oversight on the entire selection process of SUHAKAM commissioners. Throughout the selection process, the public and civil society were left in the dark and did not have means to provide input. According to Section 11A(1)(c) of the HRCMA, a committee must first be formed for consultation with regards to the appointment of commissioners, and three members of the Committee must come from civil society who have knowledge of or practical experience in human rights matters.

However, as far as SUARAM is concerned, we were unaware of the formation and composition of the committee, as well as the selection criteria and meritocratic basis of appointing this new batch of commissioners. It was only until the appointment process was announced publicly that the identities of the chairperson and commissioners were finally revealed, and the decision was presented as a *fait accompli*.

Therefore, the method of appointment of commissioners and the criteria for selection should be made more transparent to ensure the independence and public confidence of SUHAKAM. The Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institution (GANHRI), which recently re-accredited SUHAKAM as an A-status institution, has made it clear that the appointment process should include requirements such as: promoting broad consultation and/or participation in the application, screening, selection, and appointment process.

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<sup>134</sup> Maisarah Sheikh Rahim, 'Jakim tuntut penjelasan Suhakam' (Utusan Malaysia, 17 June 2021)

<https://www.utusan.com.my/terkini/2021/06/jakim-tuntut-penjelasan-suhakam/> accessed 16 March 2023

### Office of the Children's Commissioner

On 23 August 2019, the Prime Minister's Office appointed Universiti Kebangsaan Malaysia law lecturer professor Noor Aziah Mohd Awal as SUHAKAM's first Children Commissioner (CC) from 2019 to 2022<sup>135</sup>. These powers and functions encompass carrying out education and promotion efforts of child rights through outreach and research; advising and recommending to the Government on formulation of legislations, administrative directives, necessary measures that can be taken to uphold child rights as well as obligations under the Convention on the Rights of the Child and other related international agreements; as well as conducting inquiries into complaints on child rights infringements<sup>136</sup>. On 8 March 2023, Universiti Malaya law faculty senior lecturer Farah Nini Dusuki was appointed as the CC for a three-year term from 2023 to 2026<sup>137</sup>.

Whilst the meritocratic basis of both CCs were publicised, this was only done after the appointments were made. Similar to the appointment of the SUHAKAM Commissioners, selection criteria and appointment process were not communicated to the public. Whilst both CCs' knowledge and experience in child rights matters are extensive, current CC appointments lack a diversity in religious and ethnic backgrounds.

In January 2023, the unity government announced its decision to set up an independent Children's Commission<sup>138</sup>. A special Act to enable the establishment of this Commission is in the works, and is expected to be tabled within 2023<sup>139</sup>. This move may provide the CC and her office greater autonomy and independence in amplifying awareness of child rights, playing an instrumental role in further reforms to existing laws to protect children, as well as overseeing all aspects of children's wellbeing such as education and health<sup>140,141</sup>.

<sup>135</sup> This is in line with subsection 5(2) of the SUHAKAM Act 1999, whereby members of SUHAKAM shall be appointed by the Yang di-Pertuan Agong on the recommendation of the Prime Minister who shall consult a committee with regards to the appointment prior to tendering their advice

<sup>136</sup> SUHAKAM Act 1999, s4(1) and s4(2)

<sup>137 &#</sup>x27;Farah Nini Dusuki appointed Suhakam children's commissioner' (Free Malaysia Today, 10 March 2023)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2023/03/10/farah-nini-dusuki-appointed-suhakam-childrens-commissioner/>accessed 10 April 2023

<sup>138 &#</sup>x27;Cabinet agrees to set up independent children's commission' (Free Malaysia Today, 18 January 2023)

<sup>&</sup>lt; https://www.free malaysia to day.com/category/nation/2023/01/18/cabinet-agrees-to-set-up-independent-child-commission/saccessed 10 April 2023

<sup>139</sup> Martin Carvalho, Rahimy Rahim & Tarrence Tan, 'Govt looking to set up independent Children Commission Office, says Azalina' (The Star, 16 March 2023) <a href="https://www.thestar.com.my/news/nation/2023/03/16/govt-looking-to-set-up-independent-children-commission-office-says-azalina">https://www.thestar.com.my/news/nation/2023/03/16/govt-looking-to-set-up-independent-children-commission-office-says-azalina</a> accessed 10 April 2023

<sup>140 &#</sup>x27;Azalina outlines roles of children's commission' (Free Malaysia Today, 19 January 2023)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2023/01/19/azalina-outlines-roles-of-childrens-commission/> accessed 10 April 2023

<sup>141 &#</sup>x27;Azalina: Govt working on formation of fully independent Children's Commissioner's Office' (The Edge Markets, 16 March 2023) <a href="https://www.theedgemarkets.com/node/659461">https://www.theedgemarkets.com/node/659461</a>> accessed 10 April 2023

To concretise the CC's mandate in upholding child rights, it is imperative that enforcement and compliance authority be given instead of just an advisory role, as these powers can enable closer and more effective cooperation from all relevant government ministries and agencies to address critical child rights issues, such as abuse and violence, as well as welfare of children from marginalised communities such as refugees and asylum seekers<sup>142</sup>.

### Complaints and Response

In the cases documented by SUARAM in previous years, SUHAKAM's intervention in addressing complaints of human rights violations did help to deter further physical abuse of detainees, strengthened compliance of enforcement agencies to existing laws and, in rare cases, incited the police to act in correcting their misconduct.

Generally, inquiries by SUHAKAM on complaints by victims of human rights violations have also helped further publicise the human rights violations by garnering greater media attention. While it does not guarantee any reprieve or remedies for the victims, it still shows that SUHAKAM's intervention can have a positive impact.

After receiving a complaint, SUHAKAM would typically send officers to visit the alleged victims of torture or other abuses and interview or record a statement from the authorities. The Commission would usually do follow-ups after obtaining more information or after visiting a victim of human rights violations. SUHAKAM may get in touch with the family or the victim after their release to confirm that the violation has ceased. At the end of the investigation, SUHAKAM will prepare a full report of its findings and sets of recommendations to the authorities. For instance, SUHAKAM's inquiry into the disappearance of Joshua Hilmy and Ruth Sitepu has finally been completed and the findings were released on 15th April 2022<sup>143</sup>. The SUHAKAM investigation heard from 26 witnesses and reviewed 129 exhibits in over 22 days of hearing and concluded that the couple who went missing in 2016 were victims of enforced disappearance due to their religious activities.

### Conclusion

The non-release of SUHAKAM's annual reports coupled with the controversial appointment of its new chairperson and commissioners have undoubtedly brought

<sup>142</sup> John Bunyan, 'Give children's commissioner right of enforcement, says Suhakam' (The Malay Mail, 19 January 2023)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2023/01/19/give-childrens-commissioner-right-of-enforcement-says-suhakam/51012>accessed 10 April 2023

<sup>143 &#</sup>x27;Suhakam inquiry finds enforced disappearance of pastor, wife 'involuntary' but no evidence to show by 'agents of the state' (The Malay Mail, 15 April 2022) <a href="https://www.malaymail.com/news/malaysia/2022/04/15/suhakam-inquiry-finds-enforced-">https://www.malaymail.com/news/malaysia/2022/04/15/suhakam-inquiry-finds-enforced-</a>

SUHAKAM's independence into question in 2022, eroding the goodwill and confidence that SUHAKAM had gained since 2019. It is undoubtedly true that SUHAKAM's function as the NHRI has been made more difficult by successive governments, following the demise of the PH government in 2020. With the latest appointments made by former Prime Minister Ismail Sabri before the dissolution of Parliament, any modest gains that SUHAKAM was able to make during the first PH administration from 2018-2020 also seems to have been rolled back.

Nonetheless, SUHAKAM looks to be regaining its momentum at present. It is commendable that SUHAKAM moved swiftly to express its concern regarding the statement on SOSMA made by newly appointed Home Minister Saifuddin Nasution<sup>144</sup>. The reform of the HRCMA, which had apparently been stalled under the previous administration, seems to be back on the agenda<sup>145</sup>. The de facto law minister Azalina Othman Said had also said she will table a cabinet paper on empowering SUHAKAM and wished to see SUHAKAM's annual reports being tabled and debated in Parliament<sup>146</sup>. By allowing SUHAKAM's annual reports to see the light of day in Parliament, the new government would be making better strides than its predecessor in empowering SUHAKAM's function towards promoting and defending human rights.

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<sup>144 &#</sup>x27;Not reviewing Sosma a cause for concern, says Suhakam' (Free Malaysia Today, 16 December 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/12/16/not-reviewing-sosma-a-cause-for-concern-says-suhakam/>accessed 16 March 2023

<sup>145</sup> Kow Gah Chie, 'Azalina mulls law amendment to empower Suhakam' (Malaysiakini, 12 December 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/647795">https://www.malaysiakini.com/news/647795</a>> accessed 16 March 2023

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MIGRANTS
AND REFUGEES:
A YEAR OF
LIVING
DANGEROUSLY

## MIGRANTS AND REFUGEES: A YEAR OF LIVING DANGEROUSLY

It is a well-known, if not widely acknowledged, fact that migrants – both documented and undocumented – have contributed tremendously to Malaysia's economic growth over the past decades. According a World Bank report published in 2015<sup>147</sup>, a 10% net increase in low-wage migrant workers could raise Malaysia's GDP by 1.1%, create more employment opportunities, and increase wages for most Malaysians. This aside, research by the Institute for Democracy and Economic Affairs (IDEAS) in April 2019<sup>148</sup> estimated that granting refugees currently residing in Malaysia the right to work could "increase the country's annual GDP by more than RM3 billion by 2024 through higher spending, while the wider economic impact, including indirect effects such as lower business costs, could be substantially larger". Furthermore, the same research found that tax contribution by the refugee communities in Malaysia could increase to over RM50 million each year by 2024<sup>149</sup>.

Despite the positive impact of migrant communities on the national economy, Malaysia's treatment of migrants and refugees continues to toe the line between tacit acceptance, neglect, outright hostility and xenophobia. At the height of the COVID-19 pandemic in the first half of 2020, these communities became the government's favoured target of stigmatisation and persecution. Overall, these vulnerable populations have been nothing more than a bogeyman that is blamed for all that is wrong in the country.

On 20 April 2022, Channel News Asia reported that 528 Rohingya refugees fled the Sungai Bakap immigration detention depot in Penang<sup>150</sup>, resulting in the death of six of them, including two children who were killed on a highway. It was a human tragedy that could have been averted, and a complete failure on the part of the Malaysian authorities as well as a slap in the face of a country that sits on the United Nations Human Rights Council.

It has been widely reported that undocumented detainees are kept in overcrowded cells with insufficient room to move or to sleep, making communicable diseases spread even more easily, such as COVID-19 <sup>151</sup>. The massive and inhuman crackdowns on the undocumented population over the past three years have only aggravated the already dire

<sup>147</sup> World Bank, 'Malaysia Economic Monitor, December 2015 - Immigrant Labor' (World Bank, 2015)

<sup>148 &#</sup>x27;IDEAS: Refugees could contribute over RM3 billion to the Malaysian economy if granted the right to work,' (Institute for Democracy and Economic Affairs, 29 April 2019) <a href="https://www.ideas.org.my/ideas-refugees-could-contribute-over-rm3-billion-to-the-malaysian-economy-if-granted-the-right-to-work/">https://www.ideas.org.my/ideas-refugees-could-contribute-over-rm3-billion-to-the-malaysian-economy-if-granted-the-right-to-work/</a> accessed 13 March 2022

<sup>150</sup> Vincent Tan, 'More than 500 Rohingya detainees break out from detention centre in Malaysia, manhunt underway' (Channel News Asia, 20 April 2022) <a href="https://www.channelnewsasia.com/asia/malaysia-rohingya-detainees-escape-immigration-detention-centre-penang-kedah-2635416">https://www.channelnewsasia.com/asia/malaysia-rohingya-detainees-escape-immigration-detention-centre-penang-kedah-2635416</a> accessed 13 March 2023

<sup>151 &#</sup>x27;Malaysia: End Abusive Immigration Detention' (Human Rights Watch, 20 November 2020),

<sup>&</sup>lt;a href="https://www.hrw.org/news/2020/11/20/malaysia-end-abusive-immigration-detention">https://www.hrw.org/news/2020/11/20/malaysia-end-abusive-immigration-detention</a> accessed 13 March 2023

situation, as more and more detainees are being forced into cramped detention centres. As of late 2020, there were officially 12 such facilities in the peninsula and Sarawak, with Sabah having its own detention facilities; several temporary detention centres have since been added due to the continued influx of Rohingya refugees by boat, also because of the waves of arrests of undocumented persons across the country.

Both verbal and physical abuse against immigration detainees in Malaysia are well documented by various organisations and agencies including SUHAKAM (Malaysia's Human Rights Commission) and SUARAM. The 528 Rohingya refugees may well have been instigated by others to flee the detention centre, but it was little wonder that they chose to do so if one truly understood the plight and ordeal that they had to put up with daily. Khairul Dzaimee Daud, Director-General of Immigration, conceded that they had been detained in the overcrowded Wawasan Camp in Langkawi for over three years before they were relocated to Sungai Bakap<sup>152</sup>.

Still, the then Home Minister Hamzah Zainudin continued to issue statements with a view to further confuse the Malaysian public whose understanding of the refugee question is miniscule at best. Fully cognisant of the anti-immigrant and xenophobic sentiment within Malaysian society, the former Home Minister's claim that Rohingya refugees in Malaysia had been "treated well", with food and shelter provided, was pure fantasy, if not concoction, for the so-called shelter was nothing more than detention centres, where detainees are made to incessantly endure insults and even physical violence by officials, which the author has witnessed on multiple occasions during adjudication of asylum, along with the first-hand information gathered from the Rohingya community in Malaysia.

The failure of Malaysian authorities in tackling deaths resulting from immigration detention is blatantly demonstrated in Hamzah Zainudin's attempt to downplay such a serious situation. He was reported saying,

"If I knew someone was going to die and therefore should not be placed in an immigration detention centre, I would be great Sometimes people die even while walking... They don't even have to be in a depot. So, this should not be an issue<sup>153</sup>."

The lack of compassion on the part of a cabinet minister at the time was alarming. As Home Minister then, it would have been prudent to order a thorough investigation into whether any of the deaths were caused by ill treatment or even torture, and thereafter take remedial steps; instead of beating around the bush, sweeping the issue under the carpet or, worse,

<sup>152</sup> Khalis Kadir, 'Imigresen nafi kematian seorang tahanan punca insiden lolos depot', (Malaysia Gazette, 20 April 2022)

<sup>&</sup>lt;https://malaysiagazette.com/2022/04/20/imigresen-nafi-kematian-seorang-tahanan-punca-insiden-lolos-depot/> accessed 13 March 2023

<sup>153 &#</sup>x27;Hamzah downplays deaths in immigration centres', (Free Malaysia Today, 28 June 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/06/28/hamzah-downplays-deaths-in-immigration-centres/> accessed 13 March 2023

rubbing salt into the wound of the families of the deceased with thoughtlessly insensitive remarks.

Being held in detention does not justify subjecting detainees to a dehumanising environment where their basic human rights are stripped away – this is especially critical considering the nuances surrounding migrant and refugee communities. Access to a safe environment, clean water, decent food and healthcare should still be safeguarded, a responsibility that falls under government duty.

It would seem that authorities have deliberately created inhumane conditions as a punishment for detainees and to introduce a climate of fear to deter undocumented migrants, as rightly pointed out by the Indonesia-based Coalition of Sovereign Migrant Workers<sup>154</sup>; it was revealed in June 2022 that 149 people had died in detention across Sabah between 2021 and 2022. In a reply to a question by Raub Member of Parliament Chow Yu Hui, on 21st February 2023, the Home Ministry acknowledged that there were 150 deaths in immigration detention facilities nationwide, involving 121 men, 25 women, 5 boys and 2 girls.

In addition to the horrific conditions of immigration detention facilities, migrants and refugees often face hurdles in accessing justice in Malaysia. On 23 July 2022, the Star reported<sup>155</sup> on the wrongful detention of one Sabri Umar, an Indonesian migrant worker from South Sulawesi, who had pleaded guilty at the Tawau Sessions Court under Section 6(1)(c) of the Immigration Act 1959/63. It was believed he was under the impression that he would be deported. Instead, he was sentenced to 11 months' jail and five strokes of the cane, the absence of any legal representation notwithstanding. Lawyers from legal firm Jussary Kang, engaged by the Indonesian Consulate in Tawau, took up Sabri's case against wrongful imprisonment and punishment. During appeal, it turned out that Sabri had in his possession a valid Indonesian passport and had worked legally for Fu Yee Corporation, his former employer. Although Sabri's case was eventually acquitted by the high court, he chose to return to Indonesia in September 2022 as it was uncertain as to whether the special pass issued by the Malaysian immigration department, which was expiring in the same month, would be extended. The calls for a public inquiry into Sabri's miscarriage of justice fell on deaf ears.

Adding to the predicament of the migrant communities in Malaysia is the negative perception of the Malaysian public towards them. Research by the International Labour

<sup>154 &#</sup>x27;Seperti di Neraka: Kondisi Pusat Tahanan Imigrasi di Sabah, Malaysia', Koalisi Buruh Migran Berdaulat' (Migrant Berdaulat, 23 June 2022) <a href="https://migranberdaulat.org/seperti-di-neraka-kondisi-pusat-tahanan-imigrasi-di-sabah-malaysia">https://migranberdaulat.org/seperti-di-neraka-kondisi-pusat-tahanan-imigrasi-di-sabah-malaysia</a> accessed 13 March 2023

<sup>155</sup> Muguntan Vanar, 'High Court Frees Indonesian man who was canned while waiting for appeal' (The Star, 23 July 2022) <a href="https://www.thestar.com.my/news/nation/2022/07/23/high-court-frees-indonesian-man-who-was-caned-while-waiting-for-appeal-accessed">https://www.thestar.com.my/news/nation/2022/07/23/high-court-frees-indonesian-man-who-was-caned-while-waiting-for-appeal-accessed 13 March 2023

Organization in December 2019  $^{156}$  found that 47% of the Malaysian public surveyed believed that migrant workers were a drain on the economy and had an overall negative effect on the economy. Another 59% said that migrants committed a high number of crimes, and a staggering 83% considered that crime rates had increased due to migration.

There is no denying that the wave of online hate speech towards migrants, asylum-seekers and refugees, the massive crackdowns on the undocumented populations and the economic hardship resulting from the COVID-19 pandemic have all contributed to a climate of fear among these vulnerable communities. The spectre of immigration raids and ill-treatment at the hands of law enforcement officers as well as locals has aggravated the dire financial situation of those who are not allowed to work legally, driving many to desperation and depression.

In August 2022, a Chin refugee from Myanmar tossed his three children off an elevated highway before jumping himself. The man, his daughter and son were found dead at the scene, while another boy survived and was sent for immediate treatment in the intensive care unit of a public hospital. This tragic incident illustrates clearly how years of anxieties and hopelessness, coupled with fear of authorities in Malaysia, have taken their toll on the mental health of the refugee communities. There could not be a more urgent call for the government to facilitate a more humane environment so that asylum-seekers and refugees can live in safety and with dignity.

Refugees – unlike voluntary migration which is carried out after careful consideration and with well-thought-out plans – flee their homes as a last resort, often out of desperation following wars arising from ethnic, religious or political conflicts, or other forms of persecution. In Myanmar, the military coup of February 2021 was followed by brutal crackdowns on popular uprisings across the country, especially in ethnic minority areas such as Rakhine, Kachin and Chin States, causing up to 200,000 Myanmar nationals to be internally displaced, or forced to cross the borders into Bangladesh, Thailand and even all the way to Malaysia. Many of these refugees were also made to witness atrocious crimes committed by soldiers during the flight, and the pain of being forcibly separated from loved ones whom they may never see again will likely result in long-term emotional and psychological trauma.

Take Chin State of Myanmar for example – the Myanmar military, known as the Tatmadaw, continues to burn down villages and settlements around Thantlang, where the Chin ethnic insurgent group the Chinland Defense Force<sup>157</sup> has been gaining ground on the junta. The Chin Human Rights Organization estimates that more than 1,200 buildings have been destroyed while up to 10,000 Chin villagers had been forcibly displaced,

<sup>156</sup> International Labour Organization, 'Public attitudes towards migrant workers in Japan, Malaysia, Singapore and Thailand' (International Labour Organization 2019)

<sup>157</sup> ABS News In-Depth, 'On the Frontline of Myanmar's Forgotten Civil War; Foreign Correspondent' (18 August 2022) <a href="https://www.youtube.com/watch?v=abn9QqUAodM">https://www.youtube.com/watch?v=abn9QqUAodM</a> accessed 13 March 2023

including some who have made their way to Malaysia. Once in the country of asylum, their psychological problems stand to be further aggravated by discrimination, fear, and despondency that they experience from day to day.

In Malaysia, refugees are denied rights to employment and education, and must pay for public healthcare (albeit at a 50% discount on the standard fee for foreign nationals). Even then, the Ministry of Health Circular 10/2001 makes it compulsory for healthcare workers to report to authorities any such cases of undocumented persons seeking medical help, perpetuating the climate of fear. The dire circumstance faced by refugees and asylumseekers is only worsened by bureaucratic red tape which further impedes the basic human right to healthcare, becoming even more detrimental to mental health.

Government action aside, the lack of understanding and empathy culminating in rising xenophobia within Malaysian society is equally responsible for the heightened sense of vulnerability of the undocumented population. Case in point: the decision by the Selangor government to impose a 90-sen fare <sup>158</sup> on foreigners who use the free bus service in Petaling Jaya, won applause from the general public. Excluding migrant communities from the benefit of free bus services and monthly RapidKL passes is tantamount to emboldening, or even rewarding, Malaysians for xenophobic biases.

The fear of arrest and detention on the part of refugee communities is not unfounded. On 7th January 2023, the New Straits Times reported 159 that the Immigration Department "uncovered a syndicate issuing refugee cards to the ethnic Chin from Myanmar following a raid at a flat in Jalan Imbi (in Kuala Lumpur)." According to Immigration Director-General Khairul Dzaimee Daud, "Applicants were charged RM500 per person in membership fee, as well as other payments." The operation resulted in 544 migrants being detained in the Bukit Jalil Immigration Detention Depot for various immigration offences. The fact that there were 30 children, aged between one and 10, among them was shocking.

However, sources from the Chin refugee community revealed that applicants only paid RM50 as an annual membership fee in return for services by the community centre, not RM500 as alleged. Among the services provided are assistance in the event of emergency and attestation of the applicants' Chin identity to facilitate registration with the United Nations High Commissioner for Refugees (UNHCR). According to community leaders that the author spoke with, the Immigration Department had long been aware of the presence of the community centre, as well as the membership cards that were issued for accessing community services, not to mention refugee protection under UNHCR. The raid

<sup>158</sup> Fuad Nizam,"'MBPJ impose 90-sen fee on foreigners using free PJ bus service' (New Straits Times, 11 January 2023)

<a href="https://www.nst.com.my/news/nation/2023/01/869274/mbpj-impose-90-sen-fee-foreigners-using-free-pj-bus-service">https://www.nst.com.my/news/nation/2023/01/869274/mbpj-impose-90-sen-fee-foreigners-using-free-pj-bus-service</a> accessed 13

<sup>159 &#</sup>x27;Immigration Dept uncovers syndicate issuing refugee cards to ethnic Chin from Myanmar', (New Straits Times, 7 January 2023) <a href="https://www.nst.com.my/news/crime-courts/2023/01/868027/immigration-dept-uncovers-syndicate-issuing-refugee-cards-ethnic-accessed 13 March 2023">https://www.nst.com.my/news/crime-courts/2023/01/868027/immigration-dept-uncovers-syndicate-issuing-refugee-cards-ethnic-accessed 13 March 2023</a>

and the subsequent allegations of corruption truly caught them by surprise, with some considering all this as an attempt to paint the refugee community in a very bad light.

Internationally, Malaysia has been taking a relatively tough position on the worsening human rights situation in Myanmar by calling on fellow members of the Association of Southeast Asian Nations (ASEAN) to exert greater pressure on the junta. However, Putrajaya continues to deport Myanmar nationals back to the country despite the clear risk of persecution upon return. Human Rights Watch reported <sup>160</sup> that, between April and October 2022, Malaysian immigration authorities "returned over 2,000 Myanmar nationals, including military defectors, without assessing their asylum claims or other protection needs". On 23rd February 2023, Amnesty International issued a statement <sup>161</sup> condemning Malaysia's deportation of 114 people to Myanmar, including children, the month before. That the latter happened on the watch of the newly installed "reformist" government of Prime Minister Anwar Ibrahim is most ironic.

If anything, the change of government following the 15th General Election in November 2022 has not altered the parochial, intolerant and xenophobic discourse on migrants and refugees. Shortly after he was appointed Home Minister, Saifuddin Nasution, a senior member of the ruling Parti Keadilan Rakyat, came to the defence of the Immigration Department by urging the public not to jump to conclusions after a video clip and several pictures had emerged of male detainees at the Kimanis Immigration Depot in Sabah appealing for help<sup>162</sup>. Saifuddin also opined that the public should exercise caution so as not to overplay the issue, and questioned whether the detainees "adopt a healthy living lifestyle even before they were detained<sup>163</sup>. The strikingly similar language employed by both Saifuddin and Hamzah, his predecessor, in downplaying potential human rights violations in immigration detention facilities offers little hope for improvement, let alone reform.

In fact, immigration raids and human rights abuses against migrant communities continue unabated under the Anwar-led government. On  $1^{\rm st}$  February 2023, the Immigration Department arrested 67 undocumented Indonesian migrants – aged between two months and 72 - in Nilai Spring, Negeri Sembilan, and detained them at the Lenggeng Immigration

<sup>160 &#</sup>x27;Malaysia: Surge in Summary Deportations to Myanmar' (Human Rights Watch, 24 October 2022)

<sup>&</sup>lt;a href="https://www.hrw.org/news/2022/10/24/malaysia-surge-summary-deportations-myanmar">https://www.hrw.org/news/2022/10/24/malaysia-surge-summary-deportations-myanmar</a> accessed 13 March 2023

<sup>161 &#</sup>x27;Amnesty International Malaysia condemns deportation of more Myanmar nationals, including children', (Amnesty International,

<sup>23</sup> February 2023) <a href="https://www.amnesty.my/2023/02/23/amnesty-international-malaysia-condemns-deportation-of-more-myanmar-nationals-including-children/">https://www.amnesty.my/2023/02/23/amnesty-international-malaysia-condemns-deportation-of-more-myanmar-nationals-including-children/</a> accessed 13 March 2023

<sup>162</sup> Justin Zack, 'Don't jump to conclusions but weigh all the facts in claims on Kimanis issue, says Saifuddin', (The Star, 13 December 2022) <a href="https://www.thestar.com.my/news/nation/2022/12/13/don039t-jump-to-conclusions-but-weigh-all-the-facts-in-claims-on-kimanis-issue-says-saifuddin">https://www.thestar.com.my/news/nation/2022/12/13/don039t-jump-to-conclusions-but-weigh-all-the-facts-in-claims-on-kimanis-issue-says-saifuddin</a> accessed 13 March 2023

<sup>163</sup> Qistina Sallehuddin, Samantha Kuan, 'Home Ministry denies Kimanis detainees mistreated, says issue must not be "overplayed", (New Straits Times, 9 December 2022) <a href="https://www.nst.com.my/news/nation/2022/12/859235/home-ministry-denies-kimanis-detainees-mistreated-says-issue-must-not-be">https://www.nst.com.my/news/nation/2022/12/859235/home-ministry-denies-kimanis-detainees-mistreated-says-issue-must-not-be</a> accessed 13 March 2023

Detention Depot<sup>164</sup>. Among the detainees were 36 children, prompting Rahmat Mohamad, the SUHAKAM Chairperson, to issue a statement <sup>165</sup> on Malaysia's obligation in considering the welfare of minors under the Convention on the Right of the Child, urging authorities to provide immediate counselling support to the affected children and respond to their immediate needs.

Following this, Malaysiakini reported <sup>166</sup> that Migrant Care, a Jakarta-based migrant rights group, had refuted claims by the Immigration Department that the settlement raided in Nilai Spring was an "illegal colony," and clarified that it was a secluded area linked to employers who hired the Indonesian migrants concerned. Migrant Care added that, contrary to the depiction of them as "illegal migrants," all the men, women and children had obtained temporary travel documents issued by the Indonesian embassy in Kuala Lumpur while waiting to return to Indonesia.

The detention of Indonesian children provoked public outcry in Indonesia, with Komnas HAM, the Indonesian Human Rights Commission, condemning the violation of children's rights<sup>167</sup>. Following this, the Home Minister agreed to shift the children out of detention and place them under the care of social welfare organisations, conceding also that children do not belong in detention<sup>168</sup>. Be that as it may, many did not lose sight of the fact that the raids and detention of Indonesian migrants including children by Malaysian authorities came on the heel of Prime Minister Anwar Ibrahim's courtesy call on President Joko Widodo on 9th January 2023 <sup>169</sup>, during which he expressed profound gratitude to Indonesians who had supported him through his imprisonment and considered the two countries as "sharing the same roots" (serumpun).

### Conclusion

<sup>164 &#</sup>x27;Immigration Dept nabs 67 migrants in Nilai', (Malaysian Insight, 1 February 2023)

<sup>&</sup>lt;a href="https://www.themalaysianinsight.com/index.php/s/426137">https://www.themalaysianinsight.com/index.php/s/426137</a> accessed 13 March 2023

<sup>165 &#</sup>x27;SUHAKAM is Gravely Concerned with the Children Detention at the Lenggeng Immigration Depot', (SUHAKAM, 3 February 2023)

<sup>&</sup>lt;a href="https://suhakam.org.my/ms/2023/02/press-statement-no-3-2023\_suhakam-is-gravely-concerned-with-the-children-detention-at-the-detention-at-the-children-detention-at-the-d

the-lenggeng-immigration-depot-kenyataan-media-no-3-2023\_suhakam-bimbang-mengenai-tahanan-kanak-kanak-di-depoh/>accessed 13 March 2023

<sup>166</sup> Alyaa Alhadjri, 'Migrant Care: Raided settlement in Nilai not illegal', (Malaysiakini, 7 February 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/654235">https://www.malaysiakini.com/news/654235</a>> accessed 13 March 2023

<sup>167</sup> Alyaa Alhadjri, 'Suruhanjaya Indonesia kecam serbuan pekerja asing di Nilai Spring', (Malaysiakini, 4 February 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/653937">https://www.malaysiakini.com/news/653937</a>> accessed 13 March 2023

<sup>168 &#</sup>x27;Children do not belong in Immigration depots, says Saifuddin', (The Star, 16 February 2023)

<sup>&</sup>lt;a href="https://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation/2023/02/16/children-do-not-belong-in-immigration-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-says-chttps://www.thestar.com.my/news/nation-depots-sa

saifuddin#:~:text=KUALA%20LUMPUR%3A%20Children%20should%20not,Family%20and%20Community%20Development%20Ministr y> accessed 13 March 2023

<sup>169</sup> Buletin TV3, 'Sidang Media Bersama PM Anwar Ibrahim dan Presiden Jokowi', (9 January 2023)

<sup>&</sup>lt;a href="https://www.youtube.com/watch?v=Tt5PvtntOg0">https://www.youtube.com/watch?v=Tt5PvtntOg0</a> accessed 13 March 2023

Upon becoming Malaysia's 10th Prime Minister, Anwar Ibrahim unveiled his vision for Malaysia through the Malaysia Madani framework, the six core values of which are keMampanan (Sustainability), KesejAhteraan (Prosperity), Daya cipta (Innovation), hormAt (Respect), keyakiNan (Trust) and Ihsan (Compassion). However, it is disappointing to note that government actions toward refugees and other migrant communities thus far seem to fall short of these ideals. In view of this, the following recommendations are addressed to the Malaysian government to improve its treatment of migrant and refugee communities:

- Instead of arresting, detaining or forcibly repatriating refugees and asylum-seekers, the Malaysian government should aid these groups of people by granting them the right to work and to live without fear.
- The Health Circular 10/2001 should be repealed to enhance trust among undocumented migrants to come forward for all kinds of medical assistance, including for mental health.
- The Home Ministry must put in place a pilot programme to provide temporary foster
  care for unaccompanied and separated children, as well as skill-learning schemes for
  undocumented populations especially women as an alternative to detention, with a
  focus on mental health and counselling support for vulnerable groups including
  children.
- Malaysia must increase its collaboration with authorities in major source and transit countries, especially Bangladesh, Indonesia, Myanmar and Thailand, to ensure that the various legal and institutional frameworks, such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime <sup>170</sup> and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children<sup>171</sup>, are effective in bringing to justice the perpetrators of rights violations against migrants, particularly smugglers and state officials.
- The Malaysian government must review and improve its labour recruitment processes by vigorously strengthening regulation of recruitment agencies, while also addressing exploitation through increased labour inspection and protection for all migrants.
- Political leaders, lawmakers, and those in positions of authority, should refrain from making statements that normalise and perpetuate negative stereotypes of 'illegal immigrants,' or further stoke the already pervasive xenophobic sentiment in

<sup>170</sup> More details can be accessed at: https://www.iom.int/bali-process-people-smuggling-trafficking-persons-and-related-transnational-crime

<sup>171</sup> The convention can be accessed at: https://asean.org/asean2020/wp-content/uploads/2021/01/ACTIP.pdf

Malaysian society. Instead, authorities should encourage positive public attitudes towards migrant workers, stateless people, refugees, and asylum-seekers.

 Despite pressure by government officials to shut down the UNHCR office in Malaysia<sup>172, 173</sup>, the country is yet to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Thus, the UNHCR Office in Malaysia should continue to be tasked with refugee management and protection as Malaysian authorities simply lack the technical expertise and capability to handle, process and adjudicate asylum cases in accordance with international standards.

<sup>172 &#</sup>x27;UNHCR office here to be shut down, role to be taken over by govt', (The Star, 7 October 2022)

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2022/10/838165/unhcr-office-here-be-shut-down-role-be-taken-over-govt> accessed 13 March 2023

<sup>173 &#</sup>x27;Shut down UNHCR office in Malaysia, says security DG', (Free Malaysia Today, 6 September 2022)

https://www.freemalaysiatoday.com/category/nation/2022/09/06/shut-down-unhcr-office-in-malaysia-says-security-dg/ accessed 13 March 2023



GENDER AND SEXUALITY

### **GENDER AND SEXUALITY**

Though non-exhaustive, this chapter strives to provide an overview as comprehensive as possible of the developments in 2022 where gender and sexual orientation are concerned. The following areas will be covered in detail: legislations that were passed in Parliament, gender-responsive budgeting efforts, as well as developments in political participation, citizenship rights of Malaysian women with overseas-born children, violence against women and girls (including child marriage), violence against the LGBTIQ+ community, period poverty, and the case of Loh Siew Hong involving unilateral conversion of her children by her former spouse to Islam.

### **Legal Developments**

A few legislations or their amendments were passed in Parliament by the Ismail Sabri administration, albeit with gaps in legislative provision or implementation that need to be addressed:

1.0 The Employment (Amendment) Act 2022, which was passed in March 2022. Among the amendments were the extension of maternity leave from 90 to 98 days in line with standards by the International Labour Organisation<sup>174</sup>, the inclusion of a seven-day paternity leave to married male employees, and employers being mandated to conspicuously exhibit a notice to raise organisational awareness about sexual harassment<sup>175</sup>. Amendments will come into force on 1 January 2023<sup>176</sup>. Whilst the extension of maternity leave is expected to be beneficial for the wellbeing of women employees, a survey conducted by Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM) among Chinese employers from 761 businesses pointed to the contrary, whereby 41.3% of respondents chose to hire more men than women to compensate for lost hours as a result of the extended maternity leave <sup>177</sup>. Such gender-based discrimination is concerning, and measures by the government such as subsidising the additional eight days of maternity leave should be taken into consideration and implemented as soon as possible.

<sup>174</sup> Dineskumar Ragu, 'Maternity leave extended from 90 to 98 days' (Free Malaysia Today, 21 March 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/03/21/maternity-leave-extended-from-90-to-98-days/> accessed 10 April 2023

<sup>175</sup> Employment (Amendment) Act 2022 s12(b), s23 and s36

<sup>176</sup> Nor Ain Mohamed Radhi, 'Amendments to Employment Act comes into force Jan 1' (New Straits Times, 21 December 2022)

<a href="https://www.nst.com.my/news/nation/2022/12/863117/amendments-employment-act-comes-force-jan-1">https://www.nst.com.my/news/nation/2022/12/863117/amendments-employment-act-comes-force-jan-1</a> accessed 10 April 2023

177 'Asia Pacific – Chinese employers in Malaysia prefer to hire men to offset expanded maternity leave, survey finds' (Staffing Industry Analyst, 6 March 2023) <a href="https://www2.staffingindustry.com/row/Editorial/Daily-News/Asia-Pacific-Chinese-employers-in-Malaysia-prefer-to-hire-men-to-offset-expanded-maternity-leave-survey-finds-64784">https://www2.staffingindustry.com/row/Editorial/Daily-News/Asia-Pacific-Chinese-employers-in-Malaysia-prefer-to-hire-men-to-offset-expanded-maternity-leave-survey-finds-64784</a> accessed 7 March 2023

2.0 The Anti-Sexual Harassment Act 2022, which enables the establishment of an Anti-Sexual Harassment Tribunal to hear complaints of sexual harassment. The passing of this Act in July 2022 followed a series of engagements in March of the same year on the need for a comprehensive and survivor-centric anti-sexual harassment legislation 178 by the Anti-Sexual Harassment Advocacy Group with high-level stakeholders, specifically the Parliamentary Special Select Committee on Women and Children Affairs and Social Development 179, the Minister of Women, Family and Community Development 180 ("Minister of Women"), and representatives from the Attorney-General's Chambers 181. Among the commitments made by the then Minister of Women, Family and Community Development Rina Harun during the Bill's second reading in Parliament included setting up a multisectoral monitoring committee of the Act's implementation, issuing guidelines on operationalising the Act, implementing awareness programmes to increase public awareness about sexual harassment and corresponding rights under the Act, as well as expanding the Tribunal's operation to all states <sup>182</sup>. Within the first quarter of 2023, the current Minister of Women Nancy Shukri announced that enforcement of the Act will be in stages within the year 183, with awareness and advocacy programmes to be rolled out as soon as possible 184. The current Minister also indicated that her Ministry will "draft regulations and establish (the) tribunal" in 2023<sup>185</sup>.

<sup>178</sup> The Joint Action Group for Gender Equality, ENGENDER Consultancy & Young Women Making Change, 'Memorandom: Proposed amendments to the Anti-Sexual Harassment Bill 2021' (Women's Centre for Change, 28 February 2022)

<sup>&</sup>lt;https://www.wccpenang.org/wp-content/uploads/2022/08/Memorandum-Proposed-Amendments-to-the-Anti-SH-Bill-FINAL.pdf>accessed 10 April 2023

<sup>179</sup> All Women's Action Society (@awammalaysia), 'Such heartening news on #IWD2022...,' Instagram, 8 March 2022,

 $<sup>&</sup>lt;\!\!\text{https://www.instagram.com/p/Ca2TUFXhCAt/?utm\_source=ig\_web\_copy\_link}\!\!>\!\!\text{accessed 10 April 2023}$ 

<sup>180</sup> All Women's Action Society (@awammalaysia), 'The Anti-Sexual Harassment Bill is scheduled for second reading in Parliament in the next few weeks...,' Instagram, 15 March 2022, <a href="https://www.instagram.com/p/CbHyY38Jczi/?utm\_source=ig\_web\_copy\_link">https://www.instagram.com/p/CbHyY38Jczi/?utm\_source=ig\_web\_copy\_link</a> accessed 10 April 2023

<sup>181</sup> All Women's Action Society (@awammalaysia), 'On 23 March 2022, the Joint Action Group for Gender Equality...,' Instagram, 25 March 2022, <a href="https://www.instagram.com/p/CbhBWXohAb4/?utm">https://www.instagram.com/p/CbhBWXohAb4/?utm</a> source=ig web copy link> accessed 10 April 2023

<sup>182</sup> The Joint Action Group for Gender Equality, ENGENDER Consultancy & Young Women Making Change, 'Anti-Sexual Harassment law must be effectively implemented' (Women's Aid Organisation, 21 July 2022) <a href="https://wao.org.my/anti-sexual-harassment-law-must-be-effectively-implemented/">https://wao.org.my/anti-sexual-harassment-law-must-be-effectively-implemented/</a> accessed 10 April 2023

<sup>183</sup> Dineskumar Ragu, 'Enforcement of sexual harassment law to begin this year, says Nancy' (Free Malaysia Today, 09 March 2023) <a href="https://www.freemalaysiatoday.com/category/nation/2023/03/09/enforcement-of-sexual-harassment-law-to-begin-this-year-says-nancy/">https://www.freemalaysiatoday.com/category/nation/2023/03/09/enforcement-of-sexual-harassment-law-to-begin-this-year-says-nancy/</a> accessed 10 April 2023

<sup>184</sup> Nor Ain Mohamed Radhi, 'Women's ministry to set up tribunal for Anti-Sexual Harassment Act: Nancy' (The Vibes, 16 February 2023)

<sup>&</sup>lt;https://www.thevibes.com/articles/news/85398/womens-ministry-to-set-up-tribunal-for-anti-sexual-harassment-act-nancy-accessed 10 April 2023</p>

<sup>185 &#</sup>x27;Anti-Sexual Harassment Act: KPWKM to draft regulations, establish tribunal' (The Sun Daily, 16 February 2023)

3.0 The Housewives Social Security Act 2022, which was passed in Parliament by a voice note in July 2022<sup>186</sup>. This legislation offers voluntary insurance protection to female homemakers regardless of marital status below 55 years old, covering a range of medical benefits and compensation payments between RM300 and RM150,000, depending on the severity of the injuries sustained <sup>187</sup>. Whilst the government's efforts to recognise the unpaid work of female homemakers should be acknowledged, the Act is criticised to be unreflective of current realities of female homemakers. In the Third Schedule of the Act, the work value of a female homemaker is estimated at RM600 monthly, which is an "abomination" and does not encompass the range of domestic chores and caregiving responsibilities that a female homemaker usually has to undertake 188. In addition, women above 55 years old are not included in the Act, which disregards realities that homemaker is a lifetime 'vocation' and that older women are at greater risks of sustaining home injuries 189. The Housewives Social Security Scheme (SKSSR) was implemented from 1 December 2022 onwards, with the current Minister of Women Nancy Shukri encouraging female homemakers to register for this scheme<sup>190</sup>. The Social Security Organisation (SOCSO) set a target to have 500,000 female homemakers contribute to the SKSSR by the end of 2023<sup>191</sup>.

The Anti-Stalking Bill was tabled for first reading in Parliament in August 2022<sup>192</sup>. It was scheduled for second reading two months later, which did not take place due to the dissolution of Parliament for the 15<sup>th</sup> General Election (GE). The Bill entails amendments to the Penal Code and Criminal Procedure Code, which will criminalise

<https://www.thesundaily.my/local/anti-sexual-harassment-act-kpwkm-to-draft-regulations-establish-tribunal-LD10644609> accessed 10 April 2023

186 Arfa Yunus, 'Hana Naz Harun Housewives' Social Security Bill passed by Dewan Rakyat to provide insurance cover for 3 million' (New Straits Times, 25 July 2022)

187 Ibid

188 Esther Yap, 'Ask housewives for fair valuation of their worth, Putrajaya told' (Free Malaysia Today, 30 July 2022)

<https://www.freemalaysiatoday.com/category/nation/2022/07/30/ask-housewives-for-fair-valuation-of-their-worth-putrajaya-told/> accessed 10 April 2023

189 Iylia Marsya Iskandar, 'Plug gaps in Bill, govt told' (The Star, 30 July 2022)

<a href="https://www.thestar.com.my/news/nation/2022/07/30/plug-gaps-in-bill-govt-told">https://www.thestar.com.my/news/nation/2022/07/30/plug-gaps-in-bill-govt-told</a> accessed 10 April 2023

190 'Women Ministry encourages housewives to register as social security scheme contributors' (The Malay Mail, 31 January 2023) <a href="https://www.malaymail.com/news/malaysia/2023/01/31/women-ministry-encourages-housewives-to-register-as-social-security-scheme-contributors/52774">https://www.malaymail.com/news/malaysia/2023/01/31/women-ministry-encourages-housewives-to-register-as-social-security-scheme-contributors/52774</a> accessed 10 April 2023

191 'Socso targets 500,000 housewives contributing under social security scheme by end of year' (The Malay Mail, 11 March 2023) <a href="https://www.malaymail.com/news/malaysia/2023/03/11/socso-targets-500000-housewives-contributing-under-social-security-scheme-by-end-of-year/59118">https://www.malaymail.com/news/malaysia/2023/03/11/socso-targets-500000-housewives-contributing-under-social-security-scheme-by-end-of-year/59118</a>> accessed 10 April 2023

192 'Anti-stalking Bill to be tabled for second reading in October, says deputy minister' (The Star, 28 September 2022)

<a href="https://www.thestar.com.my/news/nation/2022/09/28/anti-stalking-bill-to-be-tabled-for-second-reading-in-october-says-deputy-minister">https://www.thestar.com.my/news/nation/2022/09/28/anti-stalking-bill-to-be-tabled-for-second-reading-in-october-says-deputy-minister</a> accessed 10 April 2023

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2022/07/816410/housewives-social-security-bill-passed-dewan-rakyat-provide-insurance>accessed 10 April 2023

stalking and empower the court to issue protection orders upon application against those who are investigated or charged with an offence of stalking.

On the other hand, the Terengganu Syariah Criminal Offences (Takzir) (Amendment) Enactment 2022 was passed by the Terengganu state government in December 2022, among which include the criminalisation of pregnancy out of wedlock as well as trans and gender-diverse persons. Criminalising pregnancy out of wedlock is especially appalling when it comes to girls, as it not only perpetuates but also increases child marriage, whilst further entrenching gendered socioeconomic inequalities via the vicious cycle of low education attainment and poverty. On a wider note, the heavy penalties entrench sociocultural norms that place disproportional responsibility and blame on women for consensual sex out of wedlock whilst discouraging help-seeking – when adoption of awareness-raising measures to address gaps in knowledge about sex, contraceptive methods and how to prevent unplanned pregnancies would have been a more effective approach<sup>193</sup>.

Trans and gender-diverse persons are also further marginalised as a result of Terengganu's Syariah amendments, through the outlawing of "females posing as males" and acts preparatory to *liwat* (sexual relations between men)<sup>194</sup>. "Males posing as females" and sexual relations between men are existing offences in Terengganu's state Syariah laws. These new sections will have a systemic impact on all areas of life for trans and gender-diverse persons in Terengganu, violating a constellation of fundamental rights from right to privacy and right to freedom of expression, to right to be free from gender-based discrimination and access to health and employment. Rights to privacy and freedom of expression are enshrined in Articles 5195 and 10(a) of the Federal Constitution respectively. Meanwhile, Article 8(2) of the Federal Constitution prohibits discrimination on the basis of gender; gender is not explicitly defined and the binary classification (i.e., male or female) is deeply rooted in laws, policies and sociocultural norms. These passed amendments are part of a concerning trend of increasing criminalisation by states of the LGBT community. Between 2019 and 2022, eight new anti-LGBT state Syariah laws were introduced in Negeri Sembilan and Kelantan including Terengganu, bringing the total number of anti-LGBT state

<sup>193</sup> UNICEF, Situation analysis of adolescents in Malaysia (UNICEF 2018)

<sup>&</sup>lt;https://www.unicef.org/malaysia/media/1521/file/Situation%20Analysis%20of%20Adolescents%20in%20Malaysia.pdf> accessed 10 April 2023

<sup>194</sup> Justice for Sisters, Sisters in Islam & Legal Dignity, Analysis: Terengganu Syariah Criminal Offences Enactment (2022)

https://sistersinislam.org/wp-content/uploads/2022/12/Analysis-of-Terengganu-Syariah-Criminal-Offences-Enactment.pdf> accessed 10 April 2023

<sup>195</sup> In Sivarasa v Badan Peguam Malaysia & Anor, the Federal Court of Malaysia held that the right to privacy is included in Article 5(1) of the Federal Constitution, which protects the right to life and personal liberties

Syariah laws to 55, criminalising a female person posing as a man (3), sexual relations between women (2), sexual relations between men (2) and changing gender (1)<sup>196</sup>.

#### **Gender-Responsive Budgeting**

There was commendable engagement between the Perikatan Nasional administration and civil society on gender-responsive budgeting<sup>197</sup> (GRB). On 18 July 2022, the Ministry of Finance and the Gender Budget Group<sup>198</sup> (GBG) launched a gender responsive budget-in-practice (GRBiP) programme, which aimed to build ministry capacity in the said budgeting approach<sup>199</sup>. The Ministry of Women, Family and Community Development (KPWKM) and the ministry of Entrepreneur Development and Cooperatives were the two key ministries with whom GRBiP was conducted. In addition, the government also appointed 45 officials as Gender Focal Points<sup>200</sup> (GFPs) for gender mainstreaming efforts in policy planning and implementation, with officials comprising deputy secretaries-general of ministries and deputy directors of government agencies<sup>201</sup>.

Nevertheless, it is noteworthy that Malaysia is not new to the GRB process. In 2004, in collaboration with the United Nations Development Programme (UNDP), KPWKM piloted the Gender Budget Pilot Project with four key ministries – Education, Human Resources, Health and Rural Development<sup>202</sup>. GFPs were also appointed in each ministry, with relevant GRB training provided to them. The Ministry of Finance also issued a directive in the Call Circular 2004 that all pilot ministries implement GRB for selected programmes for the year 2006-2007, whilst encouraging other ministries and agencies to

<sup>196</sup> Contribution to the List of Issues to be Compiled by CEDAW by Justice for Sisters et al

<sup>197</sup> Gender-responsive budgeting looks at the impact of a budget (in this case, national) on women, girls, men and boys. It notes the differences in situations, roles, contributions and needs of the aforementioned groups, and 'responds' accordingly by allocating resources and funds to these groups

<sup>198</sup> The Gender Budget Group (GBG) is a coalition spearheaded by ENGENDER Consultancy and Women's Aid Organisation. In 2022, GBG consists of 16 academics and 21 civil society organisations. The coalition analyses the national budget for its impact on gender equalities and advocates for adoption of policies that will ensure gender-equitable resource distribution and equal opportunities for all

<sup>199 &#</sup>x27;Ministry of Finance, Gender Budget Group launch gender-responsive budgeting training programme' (Aliran, 18 July 2022)

<a href="https://m.aliran.com/civil-society-voices/ministry-of-finance-gender-budget-group-launch-gender-responsive-budgeting-training-programme">https://m.aliran.com/civil-society-voices/ministry-of-finance-gender-budget-group-launch-gender-responsive-budgeting-training-programme</a> accessed 10 April 2023

<sup>200</sup> Gender Focal Points (GFPs) will lead Gender Focal Teams (GFTs) in each Ministry and agency. Each team will have at least 7 members to ensure that gender issues are accounted for in policy and programme development

<sup>201</sup> Rafidah Mat Ruzki, '45 deputy Sec-Gen, DG appointed as Gender Focal Points' (New Straits Times, 9 November 2022)

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2022/11/848662/45-deputy-sec-gen-dg-appointed-gender-focal-points> accessed 10 April 2023

<sup>202</sup> Ministry of Women, Family and Community Development (MWFCD) & United Nations Development Programme, Gender Budgeting in Malaysia (MWFCD 2005)

<sup>&</sup>lt;a href="https://www.kpwkm.gov.my/kpwkm/uploads/files/Muat%20Turun/Gender\_Budget\_Advocacy(1).pdf">https://www.kpwkm.gov.my/kpwkm/uploads/files/Muat%20Turun/Gender\_Budget\_Advocacy(1).pdf</a> accessed 10 April 2023

incorporate gender issues into their programme and activity plans. However, to date, there is no information available on the short, medium and long-term impact of the 2004 programme. Moreover, there are two other crucial questions to which answers are not known. Firstly, whether there is institutionalised and systematic training for all government officials, especially those within GFPs and GFTs, to ensure institutional memory of GRB regardless of who is the government or GFP/GFT official of the day. Secondly, whether there is adequate institutional support, resources and budgetary allocations for GFPs and GFTs to function effectively.

At the state level, Penang has already led the way nationally with its gender-responsive and participatory budgeting (GRPB) approach implemented by the Penang Women Development Corporation (PWDC). GRPB was first piloted as flagship community projects, before being institutionalised in state policy. The process of this approach entails a survey and focus group discussions with various groups within a community to first understand their needs whilst ensuring inclusivity in participation, before segueing to a community contract in which a community implements an agreed project according to processes and funding arrangements that are mutually agreed with the local government. An example would be that an apartment complex community undertakes apartment cleaning and security services to ensure cleanliness and safety within the complex, instead of having an external cleaning or security agency hired by the local government. All in all, the GRPB approach strives to bridge the gap between communities and local government, whilst promoting transparency, accountability and responsiveness especially by the latter in policy and budgeting processes. Penang's GRPB model received international recognition, specifically Special Mention of the International Jury of the International Observatory on Participatory Democracy Best Practice in Citizen Participation in 2014 and 2018203.

Recent developments seem to indicate the lacklustre progress of GRB efforts since the 2000s. In August 2022, the Prime Minister Ismail Sabri announced that the Ministry of Finance will work with women's groups to prepare a gender-responsive budget for the B40 community in 2023, in which gender-disaggregated data will be used to identify the target groups and distribute allocations by need<sup>204</sup>. This initiative, unfortunately, was not implemented with the dissolution of Parliament for the 15<sup>th</sup> GE. Whilst this effort should be acknowledged, gender-disaggregated data being comprehensively covered in the 2005

presented the GRPB model

<sup>203</sup> One of the authors was able to write this paragraph, as she was a rapporteur for a series of GRB webinar events and online discussions funded by the Westminster Foundation for Democracy, in which the Chief Executive Officer of PWDC, Ms. Ong Bee Leng,

<sup>204 &#</sup>x27;Finance Ministry, women's NGOs to prepare gender-responsive budget from 2023, says PM' (The Star, 25 August 2022) <a href="https://www.thestar.com.my/news/nation/2022/08/25/finance-ministry-women039s-ngos-to-prepare-gender-responsive-budget-from-2023-says-pm">https://www.thestar.com.my/news/nation/2022/08/25/finance-ministry-women039s-ngos-to-prepare-gender-responsive-budget-from-2023-says-pm</a> accessed 10 April 2023

GRB manual co-developed by KPWKM and UNDP<sup>205</sup>, would have been undertaken already, had there been systematic efforts to make it a part of standard data collection and/or budget analysis efforts across government ministries and agencies. Under the current unity government, no similar commitment to adopting a gender-responsive approach to the budget was made.

Another indicator that points to the disconnect between past and present GRB efforts is longstanding gaps that are perpetuated across consecutive national budgets, including Budget 2023 that was tabled by the unity government in February 2023. Such gaps include the lack of 'cross-cutting' focus on gender in the allocations for various ministries<sup>206</sup>, and the carry-over of allocations from older budgets without disclosure of monitoring and evaluation efforts of impact of allocations. A few examples of budget allocations will be included in the relevant subsections by focus area.

With GRBiP (re-)implemented, it is pivotal that the government reevaluates performance of previous government administrations in GRB efforts and invests resources to build long-term structures and processes that ensure the institutionalisation of GRB. Quoting the GBG's statement, "policymaking must be viewed through the gender lens from the beginning, and not appended as an afterthought" <sup>207</sup>.

#### **Political Participation**

It has been almost 28 years since Malaysia signed the Beijing Platform for Action $^{208}$ , and yet there is limited progress in achieving the 30% target of women political representation. Over the last 10 years, there has been a meagre increase in proportion of women members of Parliament in the Dewan Rakyat by 3.5%; in fact, between the previous Perikatan Nasional and current unity government administrations, there was a decline in proportion by  $1\%^{209}$ .

208 The Beijing Platform of Action (BPfA) was adopted and signed by 189 governments on 15 September 1995. It is a visionary agenda for women empowerment, and also a reference framework by which the situation of women globally can be analysed and the efforts by States to empower women assessed. For further information about the 12 critical areas of concern outlined in BPfA, please refer to (UN Women's website)

209 In 2013, women members of Parliament made up 10.4% (23 out of 222). In 2022 after the 15th General Election, the proportion was 13.5% (30 out of 222). The highest proportion of women members of Parliament that Malaysia has achieved is 14.9% (33 out of 222) in years 2020 and 2021

<sup>205</sup> Ministry of Women, Family and Community Development (MWFCD) & United Nations Development Programme, Manual on Gender Budgeting in Malaysia (MWFCD 2005)

<sup>&</sup>lt;a href="https://www.undp.org/sites/g/files/zskgke326/files/migration/my/Gender\_Manual\_Eng\_May06.pdf">https://www.undp.org/sites/g/files/zskgke326/files/migration/my/Gender\_Manual\_Eng\_May06.pdf</a> accessed 10 April 2023

<sup>206 &#</sup>x27;Rights group: Budget not progressive enough on gender issues' (Malaysiakini, 25 February 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/656403">https://www.malaysiakini.com/news/656403</a> accessed 10 April 2023

<sup>207</sup> Ibid

Coalition / Political Party	No. of Elected Women Member of Parliament
Pakatan Harapan (PH)	17
Gerakan Parti Sarawak (GPS)	5
Perikatan Nasional (PN)	7
Barisan Nasional (BN)	3
Warisan	1
Total	33

The number of women in the cabinet of the unity government is 13 out of 55 (23.6%), which was a significant increase compared to the Ismail Sabri administration (7 out of 69; 10.1%).

Over the last three years, the proportion of women senators in Dewan Negara hovered at close to 20%<sup>210</sup>. To date, Malaysia has yet to have a woman as Prime Minister.

Since the Pakatan Harapan administration's expressed non-intention to make the 30% quota for women political participation mandatory in Parliament and state assemblies in 2018<sup>211</sup>, no statements have been released by subsequent government administrations, including the unity government, furnishing their position on this matter.

Political parties are one of the key players in enabling women to equally contribute to nation-building as political agents of change, as they decide which candidates to field and which to place in various leadership positions within the party machinery. Commitment by political parties to institutionalise or implement the 30% target, specifically via the use of quotas, has been lacklustre. Among component parties in the current unity government, only Democratic Action Party (DAP) has a 30% quota for women within its Central Executive Committee, whilst People's Justice Party (PKR) created history as the first political party in Malaysia to have a 30% quota for women in leadership positions in general. During the 15th GE, despite prior commitments made by leaders from major

<sup>210</sup> From the years 2020 to 2022 prior to the 15th General Election, the proportion of women senators in Dewan Negara was 19.7% (12 out of 61). After the establishment of the unity government, the proportion declined slightly to 19.6% (10 out of 41)

<sup>211</sup> Hidir Reduan Abdul Rashid, 'Not mandatory to have 30 per cent women representation in politics, says Hannah Yeoh' (New Straits Times, 26 November 2018)

<sup>&</sup>lt;https://www.nst.com.my/news/politics/2018/11/434660/not-mandatory-have-30-cent-women-representation-politics-says-hannah> accessed 10 April 2023

political parties to field 30% women candidates<sup>212</sup>, none of these political parties met these targets. In fact, the only political party that not only met but also exceeded the target was Parti Bangsa Malaysia, in which four out of its seven (57.6%) candidates were women<sup>213</sup>. Overall, women made up a meagre 13.5% of political candidates (187 out of 1386).

In terms of diversity, progress remains largely limited in improving political participation of women from marginalised groups. Only indigenous women from Sabah and Sarawak have been elected. No transgender women or Orang Asli women have yet to be fielded as candidates nor elected to office. One noteworthy achievement, though long overdue, is the fielding of a disabled woman candidate, Dr. Noraishah Mydin Abdul Aziz, by PKR during the 15th GE for the Putrajaya seat<sup>214</sup>. Dr. Noraishah was born with spina bifida and is wheelchair-bound. A scientist and a lecturer by profession as well as a patient advocate, she is also the only person in Malaysia with functioning laboratories and regular research publications on neural tube defects<sup>215</sup>.

Aside from lack of resources and funds due to lesser political influence, other significant barriers that women politicians still have to contend with are patriarchal stereotypes that women cannot and should not be leaders, traditional gender roles of homemaking and caregiving, as well as vulnerability to being targets of gender-based violence. These were apparent in the campaigning period for the 15th GE, as depicted by the following instances:

• On 6 and 8 November, Berita Harian<sup>216</sup> and Utusan Malaysia<sup>217</sup> published articles about young women political candidates, using headlines and descriptions such as 'beauty with brains' (*jelitawan*) and complete package (*pakej lengkap*) that focus on these candidates' physical appearances and perpetuate the misconception that competence among women is a rarity, with minimal to no coverage of their policy

<sup>212 &#</sup>x27;Political leaders commit to 30pc women representation in elections' (The Malay Mail, 5 October 2022)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2022/10/05/political-leaders-commit-to-30pc-women-representation-in-elections/31914> accessed 10 April 2023

<sup>213</sup> Fatimah Zainal, 'More political will required to meet 30% women candidates quota' (The Star, 14 November 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/11/14/more-political-will-required-to-meet-30-women-candidates-quota-accessed 10 April 2023</p>

<sup>214</sup> Zunaira Saieed, 'Malaysia GE: Used to challenges, disabled candidate Noraishah takes on Putrajaya' (The Straits Time, 11 November 2022)

<sup>&</sup>lt;https://www.straitstimes.com/asia/se-asia/malaysia-election-used-to-challenges-disabled-candidate-noraishah-takes-on-putrajaya>accessed 10 April 2023

<sup>215 &#</sup>x27;Scientist With Spina Bifida Contesting GE15 Under PKR In Historic First' (CodeBlue, 27 October 2022)

<sup>&</sup>lt;https://codeblue.galencentre.org/2022/10/27/scientist-with-spina-bifida-contesting-ge15-under-pkr-in-historic-first> accessed 10 April 2023

<sup>216</sup> Sudirman Mohd Tahir, 'PRU15: Tujuh calon jelitawan, 'beauty with brain' curi perhatian' (Berita Harian, 6 November 2022) <a href="https://www.bharian.com.my/berita/nasional/2022/11/1021933/pru15-tujuh-calon-jelitawan-beauty-brain-curi-perhatian">https://www.bharian.com.my/berita/nasional/2022/11/1021933/pru15-tujuh-calon-jelitawan-beauty-brain-curi-perhatian</a> accessed 10 April 2023

<sup>217</sup>Hakimi Ismail, 'Jelitawan PRU15' (Utusan Malaysia, 8 November 2022)

<sup>&</sup>lt;a href="https://www.utusan.com.my/nasional/2022/11/jelitawan-pru15/">https://www.utusan.com.my/nasional/2022/11/jelitawan-pru15/</a> accessed 10 April 2023

positions. All in all, such gender-insensitive reporting legitimises the age-old sexist use of physical appearance as a primary measure of a woman's value, whilst severely undermining the credibility of these young women candidates.

- Malaysian Chinese Association (MCA) political candidate Nicole Wong's campaign board was vandalised with banners that read "you are an outsider, go back and take care of your children" and "politics is no place for a woman"<sup>218</sup>. With regards to the former remark, she received a similar one in the form of an online comment from a netizen, when she was on Facebook Live promoting a song about unity adapted by a local artist<sup>219</sup>.
- During a livestream campaign, Pakatan Harapan candidate for Kuantan Fuziah Salleh received an online comment on TikTok that was ageist and also sexual "You are old. Just stay at home and play with your man, makcik. No need to bother trying to be a minister"<sup>220</sup>. She lodged a police report over this unsolicited comment. The Pahang police chief commissioner confirmed receipt of this complaint, and investigation of this case took place under Section 509 of the Penal Code for insulting the modesty of a person.
- Cropped and photoshopped images of young women candidates were circulated on WhatsApp and social media platforms such as Facebook. These images were accompanied by sexually objectifying captions and/or comments<sup>221</sup>.
- In his campaign speech in Sik, Kedah, Parti Islam Se-Malaysia (PAS) political candidate and Kedah Menteri Besar Datuk Seri Muhammad Sanusi Md Nor disparaged women candidates by labelling them as 'betina' and questioning (with traditional stereotyping) their capability of dealing with constituents ('...but when you have constituents calling you at all hours of the day in the day, at night, in the early hours of the morning with all sorts of problems, can women handle this? At 3am? We can only

<sup>218</sup> China Press, "<sup>工民院庭外来者</sup>,滚回家顾孩子…' Facebook, 13 November 2022,

 $<sup>&</sup>lt; https://m.facebook.com/story.php?story_fbid=5839870666105330\&id=100366473389140\&p=9\&locale=ms\_MY\&\_rdr> accessed 10 \\ April 2023$ 

<sup>219 &#</sup>x27;全国大选 直播招网民呛""回家看孩子" 王晓庭: 孩子当然要看!' (The China Press, 16 November 2022)

<sup>&</sup>lt;https://johor.chinapress.com.my/20221116/%E2%97%A4%E5%85%A8%E5%9B%BD%E5%A4%A7%E9%80%89%E2%97%A2%E7%9B%B4%E6%92%AD%E9%81%AD%E7%BD%91%E6%B0%91%E5%91%9B%E5%9B%9E%E5%AE%B6%E7%9C%8B%E5%AD%A9%E5%AD%90-%E7%8E%8B%E6%99%93%E5%BA%AD/> accessed 10 April 2023

<sup>220</sup> Ashley Yeong, 'Report: Kuantan defender Fuziah Salleh calls in cops after ageist, sexist comment on TikTok livestream' (The Malay Mail, 11 November 2022)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2022/11/11/report-kuantan-defender-fuziah-salleh-calls-in-cops-after-ageist-sexist-comment-on-tiktok-livestream/38912> accessed 10 April 2023

<sup>221</sup> One of the authors, as a part of the Pantau PRU15 coalition that monitored not just the proportion of women candidates fielded but also the stereotyping and violence that women candidates experienced, came across screenshots of Facebook posts with those cropped photos. She also came across heavily-forwarded posters in which photos of young women candidates were placed side by side and ranked.

imagine women getting up at that hour with their hair all over the place')<sup>222</sup>. These sexist remarks were called out by netizens, women's rights experts <sup>223</sup> and women politicians<sup>224</sup>, with demands for an apology from the opposition party. Nevertheless, Sanusi maintained that he is "not sexist", claiming that his statement was "taken out of context" and he was just speaking in "village lingo" to address the Sik constituents<sup>225</sup>. He also outrageously opined that a male candidate is more suitable to be voted in Sik, "considering the geographical, socioeconomic and cultural setting, and the attitude of rural folks"<sup>226</sup>.

## Citizenship Rights of Malaysian Women with Overseas-Born Children

To this day, the Federal Constitution still denies the right of "legally" married Malaysian women to confer nationality 'by operation of law' on their overseas-born children. These women have to go through a citizenship registration process for their children that is not only arduous but also highly discretionary with a high likelihood of rejection. The negative impact of such gender-discriminatory citizenship laws on Malaysian women and their families requires no further introduction – from barriers to accessing healthcare and education for their children, heightened risk to domestic violence due to the children's forced dependence on their non-Malaysian father's nationality, to family separation and even statelessness. Women's inability to confer citizenship on their children not only further entrenches patriarchal stereotypes regarding the primacy of the male spouse's nationality in their children's legal identity, but also perpetuates existing inequalities in

<sup>222</sup> Adeline Leong, '[Watch] Kedah Mentri Besar Sanusi Called Out For Sexist Remarks Regarding Women Candidates' (The Rakyat Post, 12 November 2022)

<sup>&</sup>lt;https://www.therakyatpost.com/news/2022/11/12/watch-kedah-mentri-besar-sanusi-called-out-for-sexist-remarks-regarding-women-leaders/> accessed 10 April 2023

<sup>223</sup> Lilyana Rizal, 'Why field women candidates if they're not good, experts ask Pas over sexist remarks' (Sinar Daily, 13 November 2022)

<sup>&</sup>lt;https://www.sinardaily.my/article/183854/malaysia/politics/why-field-women-candidates-if-theyre-not-good-experts-ask-pas-over-sexist-remarks> accessed 10 April 2023

<sup>224</sup> Anisa Aznan, 'Female politicians demand Kedah MB Sanusi to apologise over sexist remarks' (Sinar Daily, 12 November 2022)

<a href="https://www.sinardaily.my/article/183814/malaysia/female-politicians-demand-kedah-mb-sanusi-to-apologise-over-sexist-remarks-accessed 10 April 2023">https://www.sinardaily.my/article/183814/malaysia/female-politicians-demand-kedah-mb-sanusi-to-apologise-over-sexist-remarks-accessed 10 April 2023</a>

<sup>225</sup> Ahmad Mukhsein Mukhtar, 'Kedah MB says he is not a sexist, maintains Sik needs a male rep' (New Straits Times, 13 November 2022)

<sup>&</sup>lt;https://www.nst.com.my/news/politics/2022/11/850039/kedah-mb-says-he-not-sexist-maintains-sik-needs-male-rep> accessed 10 April 2023

<sup>226</sup> Ian McIntyre, 'GE15: I'm not sexist, I just spoke in 'village lingo', says Sanusi' (The Vibes, 13 November 2022)

<a href="https://www.thevibes.com/index.php/articles/news/77167/ge15-im-not-sexist-i-just-spoke-in-village-lingo-says-sanusi">https://www.thevibes.com/index.php/articles/news/77167/ge15-im-not-sexist-i-just-spoke-in-village-lingo-says-sanusi</a> accessed 10

April 2023

family rights such as guardianship, freedom of choice of spouse and children's inheritance of family property.

The Perikatan Nasional government's position in the years 2021 and 2022 was nowhere near its claims of "continuous efforts to address the issue of citizenship" <sup>227</sup> in its sixth periodic report that was submitted to the CEDAW Committee in April 2022.

- In 2021, the Government appealed against the progressive Kuala Lumpur High Court's September 9 judgement, which ruled that 'father' must be read to include mothers and that their children are citizens by 'operation of law'<sup>228</sup>. An order was also issued to the authorities to issue citizenship documents to the children of the six Malaysian mothers and others caught in similar circumstances. In response to this, a stay of execution was also filed to halt the implementation of the High Court's decision pending appeal<sup>229</sup>.
- Whilst the Court of Appeal unanimously dismissed the Government's application of stay execution in December 2021, it changed its position in August 2022 in a 2-1 decision that overturned the landmark 2021 High Court ruling<sup>230</sup>. This development was also denounced by a number of UN experts, including the Working Group on discrimination against women and girls, the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, and the Special Rapporteur on the human rights of migrants<sup>231</sup>.
- The Government's arguments as it presented its merits of the case in June prior to the Court of Appeal's decision in August 2022 blatantly disregarded gender equality. The

https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FMYS%2F6&Lang=en 228 Ida Lim, 'Explainer: How the High Court decided Malaysian mothers' overseas-born children can be citizens too' (The Malay Mail, 20 October 2021)

<https://www.malaymail.com/news/malaysia/2021/10/20/explainer-how-the-high-court-decided-malaysian-mothers-overseas-born-childr/2014564> accessed 10 April 2023

229 For further information about developments in 2021 about Family Frontiers' case, please refer to Annex A in "Malaysia CSO Submission to the Development of Critical Issues and Questions for the CEDAW 86th Pre-Sessional Working Group: Joint CSO Submission":

 $https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT\%2FCEDAW\%2FICO\%2FMYS\%2F51824\&Lang=en$ 

230 Ida Lim, 'In 2-1 decision, Court of Appeal rules Malaysian mums cannot pass citizenship to overseas-born kids' (The Malay Mail, 5 August 2022)

<https://www.malaymail.com/news/malaysia/2022/08/05/in-2-1-decision-court-of-appeal-rules-malaysian-mums-cannot-pass-citizenship-to-overseas-born-kids/21229> accessed 10 April 2023

231 'Malaysia: UN experts denounce gender-discriminatory citizenship law' (United Nations, 5 September 2022)

<a href="https://www.ohchr.org/en/press-releases/2022/09/malaysia-un-experts-denounce-gender-discriminatory-citizenship-law">https://www.ohchr.org/en/press-releases/2022/09/malaysia-un-experts-denounce-gender-discriminatory-citizenship-law</a> accessed 10 April 2023

<sup>227</sup> Sixth periodic report submitted by Malaysia, CEDAW/C/MYS/6, May 16 2022, available at:

Attorney-General's Chambers (AGC) contended that all provisions in Part II (which contains Article 8(2) about non-discrimination) and also all citizenship provisions are non-amendable basic features of the Federal Constitution. Citing a recent Federal Court judgement, the representative further elucidated that the 2001 amendment to include gender within Article 8(2) is invalid, and on that basis, citizenship provisions in Article 14(1)(b) in the Federal Constitution also cannot be improved to enable conferral of citizenship to overseas-born children by Malaysian mothers<sup>232</sup>. The AGC's argument drew flak from other lawyers who maintain that Article 8 is an "allpervasive" provision that has to be accounted for when looking at other constitutional provisions, thus permitting the harmonious interpretation of Article 8(2) and the citizenship provisions by reading 'fathers' to include mothers<sup>233</sup>. More broadly, such a rationale can be interpreted to mean that the Government allows for and endorses the existence of gender-based discrimination - that women and their basic right to equality can be supported or trampled on as and when the need arises. In addition, it nullifies not only decades of efforts by civil society and especially women's groups to eradicate gender-based discrimination, but also the very basis of accession to CEDAW and BPfA to which Malaysia committed in 1995234.

All Private Members' Bills submitted by 17 members of Parliament<sup>235</sup> in October 2022 were rejected on grounds that these amendments cannot be passed without the consent of the Conference of Rulers<sup>236</sup>. The said Bills proposed the inclusion of the word "mother" in Clauses 1(b) and 1(c) of Part 2 of the Second Schedule of the Federal Constitution<sup>237</sup>.

<sup>232</sup> Ida Lim, 'Arguing against automatic citizenship for Malaysian mothers' overseas-born children, AGC claims 2001 constitutional amendment to stop gender discrimination in Malaysia invalid' (The Malay Mail, 22 June 2022)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2022/06/22/arguing-against-automatic-citizenship-for-malaysian-mothers-overseas-born-children-agc-claims-2001-constitutional-amendment-to-stop-gender-discrimination-in-malaysia-invalid/13607> accessed 10 April 2023

<sup>233</sup> Ihid

<sup>234</sup> Junaid Ibrahim, 'NGOs question AGC's 'impermissible' amendment argument in M'sian mothers citizenship case' (The Star, 24 June 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/06/24/ngos-question-agc039s-039impermissible039-amendment-argument-in-m039sian-mothers-citizenship-case> accessed 10 April 2023

<sup>235</sup> The MPs were Azalina Othman Said (Pengerang), Nurul Izzah Anwar (Permatang Pauh), Lim Guan Eng (Bagan), Syed Saddiq Syed Abdul Rahman (Muar), Hasanuddin Yunus (Hulu Langat), Dr. Kelvin Yii (Bandar Kuching), Alice Lau (Lanang), Dr. Wan Azizah Wan Ismail (Pandan), Hannah Yeoh (Segambut), Fuziah Salleh (Kuantan), Fahmi Fadzil (Lembah Pantai), Maria Chin Abdullah (Petaling Jaya), Mohd Hatta Ramli (Lumut), M Kulasegaran (Ipoh Barat), Tan Kok Wai (Cheras), Sim Chee Keong (Bukit Mertajam) and Tan Yee Kew (Wangsa Maju)

<sup>236 &#</sup>x27;Speaker rejects 17 private member's bills on overseas-born children' (MalaysiaKini, 5 October 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/638245">https://www.malaysiakini.com/news/638245</a> accessed 10 April 2023

<sup>237 &#</sup>x27;Private Member's Bills to amend law on citizenship: Clear message to government — Hafiz Hassan' (The Malay Mail, 20 September 2022)

In January 2023, the unity government committed to address this issue of citizenship conferral by Malaysian mothers to their overseas-born children<sup>238</sup>. Consequent updates on progress have been timely. Draft constitutional amendments were approved by the Cabinet in February 2023<sup>239</sup>. The said draft amendments entail replacing the word "their father" in Parts I and II of Schedule Two in the Federal Constitution with the phrase "at least one of the parents", with other amendments related to citizenship especially Part III to be first studied and consulted prior to being tabled before the Cabinet. In March 2023, the Minister in the Prime Minister's Department for Law and Reforms announced that the proposed amendments are only expected to be tabled in June, due to the need for time to finalise issues related to the Bill such as its implementation and to obtain royal consent prior to tabling the Bill in Parliament<sup>240</sup>. In the meantime, the current Home Minister Saifuddin Nasution Ismail stated that 4,294 citizenship applications have been processed since his appointment in December 2022, with almost 67% of them being approved<sup>241</sup>. He also announced his Ministry's target of processing at least 10,000 applications in 2023.

It is imperative that the Government ensures that families and especially overseas-born children can access their fundamental economic and social rights, until amendments to the citizenship provisions in the Federal Constitution are fully made<sup>242</sup>.

<sup>&</sup>lt;https://www.malaymail.com/news/what-you-think/2022/09/20/private-members-bills-to-amend-law-on-citizenship-clear-message-to-government-hafiz-hassan/29099> accessed 10 April 2023

<sup>238</sup> Ahmad Suhael Adnan, 'Azalina: Constitution to be amended to allow mothers to grant citizenship' (New Straits Times, 4 January 2023)

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2023/01/867215/azalina-constitution-be-amended-allow-mothers-grant-citizenship>accessed 10 April 2023

<sup>239 &#</sup>x27;Cabinet agrees to citizenship for children born overseas to Malaysian mothers' (The Sun Daily, 18 February 2023)

<sup>&</sup>lt;https://www.thesundaily.my/local/cabinet-agrees-to-citizenship-for-children-born-overseas-to-malaysian-mothers-IC10653391> accessed 10 April 2023

<sup>240</sup> Ida Lim, 'Azalina: Bill for automatic citizenship of kids born abroad to Malaysian women now set for June' (The Malay Mail, 11 March 2023)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2023/03/11/azalina-bill-for-automatic-citizenship-of-kids-born-abroad-to-malaysian-women-now-set-for-june/58994> accessed 10 April 2023

<sup>241 &#</sup>x27;Home ministry aims to process 10,000 citizenship applications this year' (Malaysia Now, 23 February 2023)

<sup>&</sup>lt;https://www.malaysianow.com/news/2023/02/23/home-ministry-aims-to-process-10000-citizenship-applications-this-year-accessed 10 April 2023</p>

<sup>242</sup> Family Frontiers, Equality Now, the Institute on Statelessness and Inclusion, and the Global Campaign for Equal Nationality Rights, 'Malaysia – 86th Pre-Sessional Working Group (27 Feb 2023 – 3 March 2023)' (Office of the United Nations High Commissioner for Human Rights, 30 January 2023)

<sup>&</sup>lt;https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FICO%2FMYS%2F51481& Lang=en> accessed 10 April 2023

# Violence Against Women and Girls

#### Gender Stereotyping, Victim-Blaming and Stigma

One of the significant barriers to access to redress by women and girl survivors of gender-based violence is a deeply entrenched culture of victim-blaming, traditional gender stereotypes that legitimise violence, as well as the stigma of disclosing and seeking external help for experiences of violence. This culture remains pervasive<sup>243</sup> and actively perpetuated at all levels.

One such stakeholder is law enforcement. In just three months from March to May 2022, there were media reports about police officers refusing to accept reports from domestic violence survivors<sup>244</sup>, trivialising the experience of a survivor of intimate partner violence whilst unsolicitedly commenting on the lack of "intention" by the perpetrator to physically batter her<sup>245</sup>, as well as victim-blaming a survivor of stalking<sup>246</sup>. Whilst gender insensitivity among police officers is a longstanding issue, the response of the Royal Malaysian Police (PDRM) on this matter has been short-sighted at best, which is to just investigate the said officers over the allegations, and in the case of domestic violence, to also reiterate the issuance of case management and disciplinary action instructions for domestic violence cases<sup>247</sup>. Whether PDRM is undertaking institutionalised efforts, such as implementing regular gender sensitivity training among all police officers to ensure that they are aware of gender-based violence as well as are competent and empathetic in managing corresponding cases and interacting with survivors, remains to be clarified. Gender sensitivity training was conducted by women's groups such as the All Women's Action Society with the Sexual, Women, and Child Investigation Division (D11) approximately a decade ago<sup>248</sup>, though it is unsure as to whether this training had been carried out with police officers from other divisions and especially, frontline officers. Gender sensitivity is a crucial preventive measure to combat not just gender biases and stereotyping that

<sup>243</sup> A study published by Women's Aid Organisation in 2021 on Malaysian public attitudes and perceptions towards violence against women highlights the prevalence of various violence-endorsing attitudes

<sup>244 &#</sup>x27;Police to act against personnel who refused to accept report on domestic violence' (The Star, 30 March 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/03/30/police-to-act-against-personnel-who-refused-to-accept-report-on-domestic-violence> accessed 10 April 2023

<sup>245</sup> Danial Azhar, 'Lovers' spat or not, cops must probe, says NGO' (Free Malaysia Today, 10 April 2022)

<sup>&</sup>lt; https://www.freemalaysiatoday.com/category/nation/2022/04/10/lovers-spat-or-not-cops-must-probe-says-ngo/> accessed 10 April 2023

 $<sup>246\ &#</sup>x27;Cop\ under\ probe\ for\ 'victim-blaming'\ in\ cosplay\ stalking\ case'\ \ (Free\ Malaysia\ Today,\ 17\ May\ 2022)$ 

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/05/17/cop-under-probe-for-victim-blaming-in-cosplay-stalking-case/>accessed 10 April 2023

<sup>247</sup> Whilst the specific press statements released by PDRM could not be retrieved, this was based on the observation of one of the authors of this chapter via her past work of drafting and releasing press statements to address PDRM's response to instances of victim-blaming of survivors by its police officers

<sup>248</sup> This was shared with one of the authors of this chapter by one of the founding members of All Women's Action Society, who conducted gender sensitivity training with D11 officers sometime between 2010 and 2015

impede police officers from effectively carrying out their roles in ensuring public safety and access to redress, but also the perpetration of sexualised violence such as the rape of a 16-year-old girl on 28 December 2022 by a police inspector during questioning in a district police headquarters near Alor Setar in Kedah<sup>249</sup>.

State actors in government also normalise violence and stigma. Higher leadership from key ministries such as KPWKM that are entrusted with the mandate of protecting and upholding the wellbeing and rights of women and girls is a key example.

- In February 2022, Deputy Minister of Women Siti Zailah triggered a social media storm shortly after the release of her Instagram video, in which she advised her account followers on how to deal with difficult marital partners. Among the problematic "advice" given to female spouses is that a male spouse can apply a "gentle but firm physical touch" on their female spouse if they "still do not listen," and that a female spouse should be quiet when her partner is angry<sup>250</sup>. Through euphemized language, the Deputy Minister thus legitimises still-prevalent sociocultural norms of policing a woman's behaviour, whilst further entrenching the traditional gender role of subservience.
- In September 2022, the Minister of Women Rina Harun also came under fire by politicians and women's groups for normalising violence against women. In a promotional video, she and her officers stood by the side "with smiles on their faces," as the actor Datuk Rosyam Nor berated women for "always being late" and urged women to attend a KPWKM event or he "would smack them on the head" 251.

Victim-blaming was also perpetrated by religious officials and members of the public, such as in the case of the 15-year-old actress Puteri Balqis. Balqis publicly disclosed her experience of allegedly being sexually abused by her father. In response to her disclosure, not only did she receive remarks from the then Minister in the Prime Minister Department (Religious Affairs) Idris Ahmad that she should not have done so<sup>252</sup>, but was also name-called, shamed and rebuked by members of the public with comments such as "looking for publicity by exposing your own father's wrongdoings. Stupid," "be thankful to her

<sup>249</sup> Hariz, 'Law Minister Condemns Kedah Police Inspector For Allegedly Raping 16yo Rape Victim' (World Of Buzz, 3 January 2023)

<a href="https://worldofbuzz.com/law-minister-condemns-kedah-police-inspector-for-allegedly-raping-16yo-rape-victim/">https://worldofbuzz.com/law-minister-condemns-kedah-police-inspector-for-allegedly-raping-16yo-rape-victim/</a> accessed 10 April

<sup>250</sup> Farah Solhi, 'Siti Zailah urged to resign over her marital advice videos' (New Straits Times, 14 February 2022)

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2022/02/771384/siti-zailah-urged-resign-over-her-marital-advice-videos> accessed 10 April 2023

<sup>251</sup> Benjamin Lee, 'Rina 'smacked' over video' (The Star, 15 September 2022)

<sup>&</sup>lt;a href="https://www.thestar.com.my/news/nation/2022/09/15/rina-smacked-over-video">https://www.thestar.com.my/news/nation/2022/09/15/rina-smacked-over-video</a> accessed 10 April 2023

<sup>252 &#</sup>x27;Idris slammed for saying child actor shouldn't 'shame' self in exposing abuse' (Malaysiakini, 7 September 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/635000">https://www.malaysiakini.com/news/635000</a> accessed 10 April 2023

father for bringing her into this world and remember that she would be given something by Allah for insulting her father"<sup>253</sup>.

#### Initiatives, Policies and Allocations by the Government in 2022

In October 2021, KPWKM launched 'Skuad Waja,' a programme that enables its members to provide basic psychosocial support to gender-based violence survivors within their respective communities and refer them to the relevant channels of support <sup>254</sup>. Squad members have to undergo "structured training" using Skuad Waja modules that were developed by the Department of Women's Development (JPW) <sup>255</sup>. By 31 August 2022, 326,500 individuals had registered as Skuad Waja volunteers (comprising 252,139 women and 74,361 men) <sup>256</sup>, with the Ministry of Women aiming to have one million members join this squad by December 2022 <sup>257</sup>. From 2021 to 31 July 2022, 71,718 members underwent the psychosocial programme <sup>258</sup>. According to the JPW deputy director-general Norshahidawati Abdullah, among efforts by squad members included referring survivors to counselling sessions with JPW Psychology Officers, and assisting survivors in making police reports, etc. Statistics on the outcome of the programme were limited – from January to 20 October 2022, Skuad Waja "successfully" counselled and assisted 826 female survivors <sup>259</sup> – making it challenging to evaluate the programme's actual impact.

Another initiative of note is the one-stop social support centre (PSSS) that aims to provide counselling and welfare services to domestic violence survivors, as well as other vulnerable groups such as children, the elderly and persons with disabilities. To date, PSSS has received allocations from Budget 2021 and Budget 2022, at RM21 million and RM4.5

<sup>253</sup> Renushara, '15yo M'sian actress shares how she was violated, gets condemned for 'exposing own father' (World Of Buzz, 5 September 2022)

<sup>&</sup>lt;https://worldofbuzz.com/15yo-msian-actress-shares-how-she-was-violated-gets-condemned-for-exposing-own-father/> accessed 10 April 2023

<sup>254</sup> Kalbana Perimbanayagam, 'Women's ministry launches 'Skuad Waja" (New Straits Times, 17 October 2021)

<sup>&</sup>lt;a href="https://www.nst.com.my/news/nation/2021/10/737322/womens-ministry-launches-skuad-waja">https://www.nst.com.my/news/nation/2021/10/737322/womens-ministry-launches-skuad-waja</a> accessed 10 April 2023

<sup>255</sup> Chok Sim Yee, 'Domestic violence cases up in Sabah' (The Borneo Post, 5 June 2022)

<sup>&</sup>lt;a href="https://www.theborneopost.com/2022/06/05/domestic-violence-cases-up-in-sabah/">https://www.theborneopost.com/2022/06/05/domestic-violence-cases-up-in-sabah/</a> accessed 10 April 2023

<sup>256 &#</sup>x27;Waja Squad intensifies psychosocial, outreach programmes to get closer to the community' (The Sun Daily, 19 October 2022)

<sup>&</sup>lt;https://www.thesundaily.my/local/waja-squad-intensifies-psychosocial-outreach-programmes-to-get-closer-to-the-community-BB10006373> accessed 10 April 2023

<sup>257 &#</sup>x27;KPWKM targets WAJA Squad to have one million members by year-end' (Astro Awani, 11 September 2022)

<sup>&</sup>lt;a href="https://www.astroawani.com/berita-malaysia/kpwkm-targets-waja-squad-have-one-million-members-yearend-380538">https://www.astroawani.com/berita-malaysia/kpwkm-targets-waja-squad-have-one-million-members-yearend-380538</a> accessed 10 April 2023

<sup>258 &#</sup>x27;Waja Squad intensifies psychosocial, outreach programmes to get closer to the community' (The Sun Daily, 19 October 2022)

<sup>&</sup>lt;https://www.thesundaily.my/local/waja-squad-intensifies-psychosocial-outreach-programmes-to-get-closer-to-the-community-BB10006373> accessed 10 April 2023

<sup>259 &#</sup>x27;Skuad Waja successfully helped 826 victims of violence, says Rina' (The Star, 23 October 2021)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2021/10/23/skuad-waja-successfully-helped-826-victims-of-violence-says-rina> accessed 10 April 2023

million respectively. Nevertheless, there has been a disappointing track record, when it comes to updates on the progress in set-up and operation of PSSS, as well as the impact of the initiative.

- RM21 million from Budget 2021 was used to set up three PSSS one each in Kelantan, Selangor and Johor<sup>260</sup>. Whilst the PSSS location in Kelantan was disclosed during the press-covered site visit, no timely updates were provided about the PSSS locations in the two other states.
- Incomplete updates on the status of mobile PSSS were furnished by the Ministry of Women. Alongside the four mobile PSSS that were set up in Selangor, Kuala Lumpur and Putrajaya, the Minister of Women Rina Harun announced the setup of three more in 2022<sup>261</sup>. No updates were provided about the latter, which was to be undertaken using the allocation under Budget 2022.
- There is a paucity of publicly available statistics on the impact of both PSSS in states and mobile PSSS, including the number of clients and their outcomes as a result of accessing PSSS. In October 2021, the Minister of Women stated that 30 complaints "related to emotional problems and stress due to the economy" were received when PSSS begun operating for less than a month<sup>262</sup>. The only other source that the author was able to retrieve was Bernama's coverage of the 3-day Jelajah Aspirasi Keluarga Malaysia event in Perlis, in which the mobile PSSS was frequented by over 400 visitors<sup>263</sup>. It was also reported that 100 cases were "successfully resolved," though what the nature of those cases were and what "successfully resolved" meant were not elaborated.

Under Budget 2023, RM8 million was allocated to improve the existing PSSS whilst ensuring the efficiency of current services provided such as mobile counselling services<sup>264</sup>.

<sup>260 &#</sup>x27;3 one-stop social support centres to open next year [NSTTV]' (New Straits Times, 26 September 2021)

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2021/09/730953/3-one-stop-social-support-centres-open-next-year-nsttv> accessed 10 April 2023

<sup>261 &#</sup>x27;4 mobile centres to address Klang Valley psychosocial problems' (Free Malaysia Today, 31 October 2021)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2021/10/31/4-mobile-centres-to-address-klang-valley-psychosocial-problems/> accessed 10 April 2023

<sup>262</sup> Ibid

<sup>263</sup> Bernama TV, '#BuletinBernama: Pusat Sokongan Sosial Setempat (PSSS) yang diwujudkan pada tahun lalu diperluas ke Jelajah Aspirasi Keluarga Malaysia (JAKM) Perlis...', Facebook, 27 March 2022 <a href="https://www.facebook.com/BernamaTV/videos/jelajah-aspirasi-keluarga-malaysia-perlis-pusat-sokongan-sosial-setempat-tawar-k/1001008763954158/?locale=ms\_MY> accessed 10 April 2023

<sup>264</sup> Benjamin Lee, 'Budget 2023: One-stop social support centres get RM8mil lifeline, says Nancy' (The Star, 25 february 2023)
<a href="https://www.thestar.com.my/news/nation/2023/02/25/budget-2023-one-stop-social-support-centres-get-rm8mil-lifeline-says-nancy">https://www.thestar.com.my/news/nation/2023/02/25/budget-2023-one-stop-social-support-centres-get-rm8mil-lifeline-says-nancy</a> accessed 10 April 2023

It is hoped that these improvement efforts are informed by streamlined monitoring and evaluation efforts on gaps in PSSS implementation.

It is also pivotal that PDRM, and especially D11, be allocated adequate resources to investigate and manage cases of violence and abuse. In May 2022, D11's principal assistant director Siti Kamsiah Hassan revealed that only 103 (a meagre 0.11%) out of the 93,359 IP addresses received from 2017 to March 2022<sup>265</sup> were investigated, leading to the arrest of 50 individuals – and this was due to the lack of trained personnel to analyse the IP addresses received<sup>266</sup>. The Malaysia Internet Crime Against Children (MICAC) in D11 in Bukit Aman that was tasked to investigate these IP addresses only had three officers with the rank of inspector.

In addition, Siti Kamsiah revealed that D11 has yet to receive the RM13 million allocation from Budget 2022, which included 100 new vacancies. She also submitted a proposal in March 2022 that contained plans to establish a MICAC in each police contingent with a minimum of one investigating officer, so as to expand investigating capacity in light of a spike in crimes against children, especially child sexual exploitation and abuse<sup>267</sup> (CSEA). Not only is there the question of whether RM13 million is sufficient to create 100 vacancies on top of purchasing needed equipment and vehicles, but also whether there are other important considerations such as how the D11 officers would be distributed among the states in light of geographical size and population density disparities, as well as whether there are more feasible solutions to improve MICAC efficiency such as streamlining the reporting system instead of setting up MICAC in each state<sup>268</sup>.

Under Budget 2023, the unity government announced that a special team to combat CSEA will be set up under D11<sup>269</sup>. Though a commendable commitment to tackle CSEA, no budget allocation to set up this team was stated. It is hoped that sufficient funds will be allocated to build medium or long-term resources and infrastructure to ensure effective functioning of the special team, including a streamlined system of communication and

<sup>265</sup> The information was shared with Malaysian authorities by Interpol, the United States of America's Federal Bureau of Investigation, and the National Centre for Missing and Exploited Children

<sup>266 &#</sup>x27;Police receive nearly 100,000 child pornography IPs' (The Vibes, 15 May 2022)

<sup>&</sup>lt;https://www.thevibes.com/articles/news/60921/police-receive-thousands-of-ip-addresses-suspected-of-sharing-child-pornography-accessed 10 April 2023</p>

<sup>267 &#</sup>x27;KPWKM views rise in IP addresses sharing child pornography seriously: Rina' (The Sun Daily, 4 September 2022)

<sup>&</sup>lt;https://www.thesundaily.my/local/kpwkm-views-rise-in-ip-addresses-sharing-child-pornography-seriously-rina-XF9777707> accessed 10 April 2023

<sup>268</sup> Zarrah Morden, 'Where has the RM13m budgeted for investigating sexual crimes against children gone? DAP MP asks' (The Malay Mail, 28 September 2022)

<sup>&</sup>lt;a href="https://www.malaymail.com/news/malaysia/2022/09/28/where-has-the-rm13m-budgeted-for-investigating-sexual-crimes-against-children-gone-dap-mp-asks/30514">https://www.malaymail.com/news/malaysia/2022/09/28/where-has-the-rm13m-budgeted-for-investigating-sexual-crimes-against-children-gone-dap-mp-asks/30514</a> accessed 10 April 2023

<sup>269 &#</sup>x27;Anwar: Special PDRM team to be formed to combat child pornography' (The Sun Daily, 24 February 2023)

<sup>&</sup>lt;https://www.thesundaily.my/local/anwar-special-pdrm-team-to-be-formed-to-combat-child-pornography-LA10678928> accessed 10 April 2023

reporting involving the special team and the government agencies that it will work with. The role of MICAC in investigating CSEA, in light of the existing MICAC mandate, should also be addressed to optimise allocation of institutional capacity and resources.

On the issue of sexual harassment in educational institutions, there have been developments since the viral video by a secondary school student about the rape joke that her teacher made in class<sup>270</sup> and the hundreds of testimonies on sexual harassment, period spot checks<sup>271</sup> and bullying by current and former students<sup>272</sup>.

- Seven months later in November 2021, a circular was allegedly sent by the Ministry of Education instructing all state education departments and district education officers to be alert and carry out frequent checks to prevent the occurrence of period spot checks. All Women's Action Society <sup>273</sup> and Sisters in Islam <sup>274</sup> highlighted multiple gaps in the circular, which included the lack of clear directives on reporting mechanisms for period spot checks, the lack of clarification on whether this circular will apply to schools outside the jurisdiction of the Ministry of Education, as well as the paucity of information on the types of actions that will be taken against perpetrators and redress mechanisms available to survivors. Whether these gaps were acknowledged and addressed by the Ministry of Education is not known.
- In May 2022, the Education Ministry set up a multisectoral eight-member special committee to improve procedures in managing cases of sexual harassment and bullying in educational institutions <sup>275</sup>. In March 2023, the current Minister of Education Fadhlina Sidek stated that her Ministry is looking into and will finetune

<sup>270 &#</sup>x27;BBC highlights Ain Husniza's cause as she reiterates rape is someone's trauma and not a joke' (The Star, 18 May 2021) <a href="https://www.thestar.com.my/news/nation/2021/05/18/bbc-highlights-ain-husniza039s-cause-as-she-reiterates-rape-is-someone039s-trauma-and-not-a-joke">https://www.thestar.com.my/news/nation/2021/05/18/bbc-highlights-ain-husniza039s-cause-as-she-reiterates-rape-is-someone039s-trauma-and-not-a-joke</a> accessed 10 April 2023

<sup>271</sup> Young women and girls in educational institutions are told to physically prove that they are on their periods through means that violate their bodily autonomy, dignity and privacy. Aforementioned means include being groped by figures of authority (i.e., teachers, wardens, prefects) to feel if they are wearing sanitary pads, being instructed to show their sanitary pads, or being given cotton buds or tissue to do swabs from their pads to ascertain the presence of menstrual blood

<sup>272</sup> All Women's Action Society conducted an analysis on 770 such testimonies. To read this report: https://www.awam.org.my/wp-content/uploads/2021/11/STS-Report-FULL-2021-1.pdf

<sup>273</sup> Martin Vengadesan, 'Period spot checks: Awam calls for clarity on punitive action, survivor redress' (Malaysiakini, 11 November 2021) <a href="https://www.malaysiakini.com/news/598752">https://www.malaysiakini.com/news/598752</a> accessed 10 April 2023

<sup>274 &#</sup>x27;Circular to end period spot check 'progress' but lacks details - SIS' (Malaysiakini, 9 November 2021) <a href="https://www.malaysiakini.com/news/598555">https://www.malaysiakini.com/news/598555</a> accessed 10 April 2023

<sup>275</sup> Sandhya Menon, 'Education Ministry sets up special committee for sexual harassment, bullying cases' (The Star, 19 May 2022) <a href="https://www.thestar.com.my/news/nation/2022/05/19/education-ministry-sets-up-special-committee-for-sexual-harassment-bullying-cases">https://www.thestar.com.my/news/nation/2022/05/19/education-ministry-sets-up-special-committee-for-sexual-harassment-bullying-cases</a> accessed 10 April 2023

recommendations put forward by the said special committee<sup>276</sup>, with no timeline given on when the recommendations will be enacted in schools.

#### Child Marriage

Malaysia's road to eradicating child marriage remains protracted. At the state level, in July 2022, Kedah followed Selangor's<sup>277</sup> footsteps in amending its state Syariah laws to increase the minimum age of marriage to 18<sup>278</sup>. Nevertheless, this raise in minimum age is with certain exceptions – Muslim girls who are below 18 can still get married as long as they have obtained permission from the Syariah court<sup>279</sup>. As for states and federal territories that were disclosed by then Minister of Women Datuk Seri Dr. Wan Azizah Wan Ismail in 2019 that agreed to amend their state legislations to prohibit child marriages<sup>280</sup>, there have been no updates. Kedah, Kelantan, Negeri Sembilan, Pahang, Sarawak and Terengganu have not revised their positions against amending their state laws to prohibit child marriages for both Muslims and natives.

At the federal level in March 2022, replying in writing to a question from Permatang Pauh MP Nurul Izzah Anwar, the Minister of Women Rina Harun indicated that the government "does not have any plans to ban" child marriages, though it remains "committed" to preventing them through education, advocacy as well as strengthening socioeconomic support and the family institution <sup>281</sup>. Rina Harun's statements were criticised to have not been proactive enough in putting an end to child marriage <sup>282</sup>,

<sup>276 &#</sup>x27;MoE looking into recommendations to address sexual harassment, bullying in schools '(The Sun Daily, 12 March 2023) <a href="https://www.thesundaily.my/local/moe-looking-into-recommendations-to-address-sexual-harassment-bullying-in-schools-FC10742502">https://www.thesundaily.my/local/moe-looking-into-recommendations-to-address-sexual-harassment-bullying-in-schools-FC10742502</a> accessed 10 April 2023

<sup>277</sup> Wani Muthiah, 'Statutory amendments to raise minimum age for Muslims to marry in Selangor passed' (The Star, 5 September 2018) <a href="https://www.thestar.com.my/news/nation/2018/09/05/statutory-amendments-to-raise-minimum-age-for-muslims-to-marry-in-selangor-passed/">https://www.thestar.com.my/news/nation/2018/09/05/statutory-amendments-to-raise-minimum-age-for-muslims-to-marry-in-selangor-passed/</a> accessed 10 April 2023

<sup>278</sup> Liiew Jia Xian, 'Minimum age for women to marry increased to 18 in Kedah, one year jail for polygamy without permission' (The Star, 18 July 2022) <a href="https://www.thestar.com.my/news/nation/2022/07/18/minimum-age-for-women-to-marry-increased-to-18-in-kedah-one-year-jail-for-polygamy-without-permission">https://www.thestar.com.my/news/nation/2022/07/18/minimum-age-for-women-to-marry-increased-to-18-in-kedah-one-year-jail-for-polygamy-without-permission</a> accessed 10 April 2023

<sup>279</sup> Vinodh Pillai, "No exceptions, 18 minimum age for marriage": UNICEF welcomes Kedah's move' (Focus Malaysia, 21 July 2022) <a href="https://focusmalaysia.my/no-exceptions-18-minimum-age-for-marriage-unicef-lauds-kedah/">https://focusmalaysia.my/no-exceptions-18-minimum-age-for-marriage-unicef-lauds-kedah/</a> accessed 10 April 2023

<sup>280</sup> Jerry Choong, 'With seven states refusing child marriage ban, onus on Putrajaya to convince Islamic authorities' (The Malay Mail,

<sup>22</sup> November 2019) <a href="https://www.malaymail.com/news/malaysia/2019/11/22/with-seven-states-refusing-child-marriage-ban-onus-on-putrajaya-to-convince/1812193">https://www.malaymail.com/news/malaysia/2019/11/22/with-seven-states-refusing-child-marriage-ban-onus-on-putrajaya-to-convince/1812193</a> accessed 10 April 2023

<sup>281 &#</sup>x27;No plans to ban child marriages, says minister' (Free Malaysia Today, 22 March 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/03/22/no-plans-to-ban-child-marriages-says-minister/> accessed 10 April 2023

<sup>282</sup> Jananey Ramachandran, 'Reconsider stand on child marriages, govt told' (Free Malaysia Today, 23 March 2022)

<a href="https://www.freemalaysiatoday.com/category/nation/2022/03/23/reconsider-stand-on-child-marriages-govt-told/">https://www.freemalaysiatoday.com/category/nation/2022/03/23/reconsider-stand-on-child-marriages-govt-told/</a> accessed 10

April 2023

especially when many Malaysians already oppose child marriage in any and all forms<sup>283</sup> and the lack of legal provisions that make child marriages illegal can still perpetuate perceptions of its permissibility<sup>284</sup>. The Minister also stated that the National Strategic Plan in Handling the Causes of Child Marriages<sup>285</sup> is being implemented, with a steering committee already formed to "monitor the implementation and development of the programmes that have been planned"<sup>286</sup>. More thorough updates on the implementation of the strategic plan were only provided half a year later, whereby 41 out of the 58 programmes have commenced and that the steering committee has held two meetings for monitoring of and reporting on strategic plan implementation<sup>287</sup>.

Among the "current achievements" mentioned that were especially interesting were examining the gaps in the "Sexual and Reproductive Health education curriculum, providing health education materials suitable for teenagers in the form of infographics for digital media channels, and extending SRH education to students (and training for educators) through programmes in schools<sup>288</sup>." Gaps in existing sexual and reproductive health education, PEERS, are well-known among experts, such as challenges among teachers in delivering the curriculum be it due to sociocultural stigma or a lack of knowledge about sexual and reproductive health, as well as insufficient time and resources given to deliver the curriculum.<sup>289</sup> It is hoped that timely and comprehensive updates on the progress and impact of the aforementioned actions will be provided by the unity government administration in 2023.

283 Fazleena Aziz, 'Many oppose child marriage' (The Star, 24 March 2022)

<sup>&</sup>lt;a href="https://www.thestar.com.my/news/nation/2022/03/24/many-oppose-child-marriage">https://www.thestar.com.my/news/nation/2022/03/24/many-oppose-child-marriage</a> accessed 10 April 2023

<sup>284</sup> Jananey Ramachandran, 'Reconsider stand on child marriages, govt told' (Free Malaysia Today, 23 March 2022)

<sup>&</sup>lt;a href="https://www.freemalaysiatoday.com/category/nation/2022/03/23/reconsider-stand-on-child-marriages-govt-told/">https://www.freemalaysiatoday.com/category/nation/2022/03/23/reconsider-stand-on-child-marriages-govt-told/</a> accessed 10 April 2023

<sup>285</sup> The National Strategic Plan in Handling the Causes of Child Marriages was launched by the Pakatan Harapan administration in 2020. It is a five-year strategy plan (2020-2025) to end child marriage, consisting of 7 objectives, 17 strategies, 58 programmes and actions. The plan will involve 61 agencies in stages, including agencies from the federal government and state governments, NGOs and international organisations. The plan encompasses Muslim marriages conducted under Syariah laws, non-Muslim marriages under civil laws and adat marriages conducted under native laws.

<sup>286 &#</sup>x27;No plans to ban child marriages, says minister' (Free Malaysia Today, 22 March 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/03/22/no-plans-to-ban-child-marriages-says-minister/> accessed 10 April 2023

<sup>287</sup> Fazleena Aziz, 'Plans afoot to tackle child marriage' (The Star, 3 September 2022)

<sup>&</sup>lt;a href="https://www.thestar.com.my/news/nation/2022/09/03/plans-afoot-to-tackle-child-marriage">https://www.thestar.com.my/news/nation/2022/09/03/plans-afoot-to-tackle-child-marriage</a> accessed 10 April 2023 288 Ibid

<sup>289</sup> Dr Rebecca Lee Pei Ern & Dr Khor Swee Kheng, 'Letter: Empower teachers to teach sexuality education' (Malaysiakini, 30 April 2021) <a href="https://www.malaysiakini.com/letters/572815">https://www.malaysiakini.com/letters/572815</a> accessed 10 April 2023

# Violence and Discrimination Against the LGBTQ+ Community

Problematic stereotyping and pathologization of the LGBTQ+ community is still prevalent and actively perpetrated by the state, as well as religious authorities and the media.

- The Department of Islamic Development Malaysia (JAKIM) promoted its conversion therapy app<sup>290</sup> in March 2022, which received backlash from the public<sup>291</sup>. This app was launched on Google Play Store as early as 2016, and was appallingly rated 'E' by the platform which meant that the app was "suitable for all ages<sup>292</sup>." Google Play Store only removed the app from its platform<sup>293</sup> which took six years. Called 'Hijrah Diri Homoseksualiti,' the app includes "suggestions, ideas, explanations and interpretations" to help users "overcome the problem of homosexuality<sup>294</sup>." It also contains an e-book written by an 'ex-gay' Muslim man and his alleged experiences of recognising and coming to terms with "some of the things that provoke him to commit this sin."
- On 16 December 2022, Sinar Harian aired an episode 'PrEP buat Komuniti Songsang Lega @ Bencana' as a part of their regular series Di Sebalik Isu bersama FY, stigmatising the LGBTQ+ community via phrases such as 'komuniti songsang' and exacerbating misinformation related to PrEP<sup>295</sup> and the said community<sup>296</sup>. Another episode in September 2022 allegedly explored the 'truth' behind HIV, Malay and gay men, stigmatising and perpetuating inaccurate messages about the LGBTQ+ community. Similarly biassed views on HIV were also exchanged between the host and panellists. Leading up to voting day during the 15th GE, the same media portal also featured a Universiti Sains Islam Malaysia lecturer Prof Madya Dr Ahmad Sanusi Azmi who urged viewers not to vote for LGBTQ+-friendly political candidates.

<sup>290</sup> According to JAKIM, the app was developed in collaboration with Ihtimam Malaysia Foundation, a Putrajaya-based social foundation that has the Raja Permaisuri Agong as its patron

<sup>291</sup> Keertan Ayamany, 'Jakim-endorsed LGBT conversion therapy 'app' yanked off Google Play Store' (The Malay Mail, 17 March 2023) <a href="https://www.malaymail.com/news/malaysia/2022/03/17/jakim-endorsed-lgbt-conversion-therapy-app-yanked-off-google-play-store/2047998">https://www.malaymail.com/news/malaysia/2022/03/17/jakim-endorsed-lgbt-conversion-therapy-app-yanked-off-google-play-store/2047998</a> accessed 10 April 2023

<sup>292</sup> Lily Wakefield, 'Cruel conversion therapy app 'suitable for all ages' available on Google Play Store' (The Pink News, 13 March 2022) <a href="https://www.thepinknews.com/2022/03/13/malaysia-google-play-store-conversion-therapy-app/">https://www.thepinknews.com/2022/03/13/malaysia-google-play-store-conversion-therapy-app/</a> accessed 10 April 2023 293 Keertan Ayamany, 'Jakim-endorsed LGBT conversion therapy 'app' yanked off Google Play Store' (The Malay Mail, 17 March 2023) <a href="https://www.malaymail.com/news/malaysia/2022/03/17/jakim-endorsed-lgbt-conversion-therapy-app-yanked-off-google-play-store/2047998">https://www.malaymail.com/news/malaysia/2022/03/17/jakim-endorsed-lgbt-conversion-therapy-app-yanked-off-google-play-store/2047998</a> accessed 10 April 2023

<sup>294</sup> Lily Wakefield, 'Cruel conversion therapy app 'suitable for all ages' available on Google Play Store' (The Pink News, 13 March 2022) <a href="https://www.thepinknews.com/2022/03/13/malaysia-google-play-store-conversion-therapy-app/">https://www.thepinknews.com/2022/03/13/malaysia-google-play-store-conversion-therapy-app/</a> accessed 10 April 2023 295 PrEP (pre-exposure prophylaxis) is medication that reduces the likelihood of getting HIV from sex or injection drug use. 296 Justice for Sisters, 'Sinar Harian must reconsider its 'PrEP buat komuniti songsang lega @ bencana?' episode in order to prevent misinformation & stigma against LGBT people' (Justice for Sisters, 16 December 2022)

<sup>&</sup>lt;https://justiceforsisters.wordpress.com/2022/12/16/sinar-harian-must-reconsider-its-prep-buat-komuniti-songsang-lega-bencana-episode-in-order-to-prevent-misinformation-stigma-against-lgbt-people/> accessed 10 April 2023

• In the sexual and reproductive health education guidance for 14-year-old students in the public education system, sexual identity was depicted in binary terms and sexual orientation outside of heterosexuality implied to be abnormal<sup>297</sup>. In addition, the curriculum explicitly propagates the heavily stigmatised notion of "confusion in sexual identity and orientation that are inconsistent with religion and culture" along with the misconception that this "confusion" can be "dealt with."

In January 2022, the mufti's office in the Federal Territories released a *hukum* about supporting football clubs that accept LGBT people. The ruling states that whilst Muslim persons can still support such football clubs, they are not allowed to wear football club jerseys that contain symbols that support the LGBTQ+ movement such as the rainbow image on the jersey sleeve, nor can they share LGBT-promoting content by these football clubs on their social media accounts<sup>298</sup>.

In August 2022, a video was shared on Twitter depicting an allegedly Malaysian woman dressed in male ihram clothing performing umrah in Mecca. The video went viral, garnering over 20,000 retweets and one million views<sup>299</sup>. Shortly after, the then Minister in the Prime Minister's Department (Religious Affairs) Datuk Idris Ahmad released a statement, saying that action will be taken and he had contacted the Home Ministry so as to carry out further investigations once the said woman is back in Malaysia<sup>300</sup>. The Tourism, Arts and Culture Ministry was also instructed to check on the tour agency that provided services to the woman in the video, and to take necessary action if the matter was verified to be true. A month later, Datuk Idris Ahmad urged the woman in the video to turn herself in to assist with investigations, since she "dared to show a picture of herself dressed in ihram there (in Mekah) as if to provoke<sup>301</sup>." Other muftis such as Penang Mufti Datuk Seri Wan Salim Wan Mohd Noor and Pahang Mufti Datuk Seri Dr Abdul Rahman Osman also

<sup>297</sup> Kementerian Pendidikan Malaysia, Kurikulum Standard Sekolah Menengah Pendidikan Jasmani dan Pendidikan Kesihatan Dokumen Standard Kurikulum dan Pentaksiran Tingkatan 2, page 89 <a href="https://anyflip.com/pvoey/wgzk/basic/51-100">https://anyflip.com/pvoey/wgzk/basic/51-100</a> accessed 10 April 2023

<sup>298</sup> Luqman Tarmizi, 'Irsyad Al-Fatwa Siri ke-660: Hukum menyokong kelab bola sepak yang mengiktiraf LGBT' (Pejabat Mufti Wilayah Persekutuan, 15 January 2022) <a href="https://www.muftiwp.gov.my/artikel/irsyad-fatwa/irsyad-fatwa-umum/5096-irsyad-al-fatwa-siri-ke-660-hukum-menyokong-kelab-bola-sepak-yang-mengiktiraf-lgbt">https://www.muftiwp.gov.my/artikel/irsyad-fatwa-irsyad-fatwa-umum/5096-irsyad-al-fatwa-siri-ke-660-hukum-menyokong-kelab-bola-sepak-yang-mengiktiraf-lgbt</a> accessed 10 April 2023

<sup>299</sup> May Vin Ang, 'Minister calls for investigation of alleged M'sian woman in male Ihram attire in Mecca' (SAYS, 15 August 2022)

<a href="https://says.com/my/news/minister-calls-for-investigation-of-msian-woman-in-male-ihram-attire-in-mecca">https://says.com/my/news/minister-calls-for-investigation-of-msian-woman-in-male-ihram-attire-in-mecca></a> accessed 10 April 2023

300 'Idris: Stern action awaits woman who performed umrah in men's clothes' (The Star, 13 August 2022)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2022/08/13/idris-stern-action-awaits-woman-who-performed-umrah-in-mens-clothes>accessed 10 April 2023

<sup>301 &#</sup>x27;Woman who performed umrah in men's clothes urged to turn herself in' (The Star, 18 September 2022)
<a href="https://www.thestar.com.my/news/nation/2022/09/18/woman-who-performed-umrah-in-men039s-clothes-urged-to-turn-herself-in-accessed 10 April 2023">https://www.thestar.com.my/news/nation/2022/09/18/woman-who-performed-umrah-in-men039s-clothes-urged-to-turn-herself-in-accessed 10 April 2023</a>

chimed in, criticising the committal of such an act as "a deliberate act to mock Islam" (whilst going as far as labelling the doer an infidel)<sup>302</sup> or "an insult to Islam<sup>303</sup>."

On 29 October 2022, a private drag queen Halloween party at REXKL was raided by approximately 40 officers from the Federal Territory Islamic Religious Department (JAWI) backed by PDRM<sup>304</sup>. JAWI and PDRM divided the audience by gender, and then by religious beliefs, before individually checking each person to see if they were crossdressing<sup>305</sup>. At least 24 individuals were arrested on various grounds, including 18 gender-diverse persons who were investigated for male person posing as a woman; two for 'encouraging vice,' two for indecent acts in a public space, and two who tested positive for THC which is found in marijuana or cannabis<sup>306</sup>. These individuals were transported in a Black Maria truck to JAWI's office, where they were detained and thereafter released after activists helped secure lawyers to bail them out <sup>307</sup>, and the Magistrate rejected requests to remand them<sup>308</sup>. Such violations of fundamental rights to privacy, equality and freedom of expression were strongly criticised by activists, rights groups, netizens, artists and politicians such as then Klang member of Parliament Charles Santiago<sup>309</sup>.

Hate speech monitoring by Justice for Sisters during the 15th GE highlighted extensive LGBTphobia<sup>310</sup> perpetrated by political parties and figures across both sides of the political

302 'Woman on umrah in men's ihram clothes deliberately mocking Islam: Penang mufti' (The Vibes, 13 August 2022)

<https://www.thevibes.com/articles/news/68408/woman-on-umrah-in-mens-ihram-clothes-deliberately-mocking-islam-penang-mufti> accessed 10 April 2023

303 May Vin Ang, 'Minister calls for investigation of alleged M'sian woman in male Ihram attire in Mecca' (SAYS, 15 August 2022)

<a href="https://says.com/my/news/minister-calls-for-investigation-of-msian-woman-in-male-ihram-attire-in-mecca">https://says.com/my/news/minister-calls-for-investigation-of-msian-woman-in-male-ihram-attire-in-mecca></a> accessed 10 April 2023

304 'Malaysian authorities raid LGBT Halloween party' (New Straits Times, 30 October 2022) <a href="https://www.nst.com.my/news/crime-courts/2022/10/845036/malaysian-authorities-raid-lgbt-halloween-party">https://www.nst.com.my/news/crime-courts/2022/10/845036/malaysian-authorities-raid-lgbt-halloween-party></a> accessed 10 April 2023

305 Aqasha Nur'aiman, "It was traumatising" – PDRM & JAWI raid private drag queen Halloween party at RexKL' (SAYS, 31 October 2022) <a href="https://says.com/my/news/it-was-traumatising-pdrm-jawi-raided-a-private-drag-queen-halloween-party-at-rexkl">https://says.com/my/news/it-was-traumatising-pdrm-jawi-raided-a-private-drag-queen-halloween-party-at-rexkl</a> accessed 10 April 2023

306 Justice for Sisters, with endorsement from 19 other civil society organisations released a press statement in response to the REXKL Raid. The quoted number of arrested individuals was extracted from this press statement. A good overview of the landscape of LGBTphobia in the country and use of discriminatory and vague laws by authorities for moral policing on the basis of gender identity and expression can also be found in this press statement: https://www.thevibes.com/articles/opinion/75858/rexkl-halloween-raid-warrants-review-of-discriminatory-laws-justice-for-sisters

307 Ibid

308 'Halloween raid at RexKL. What went down' (Gempak, 1 November 2022) <a href="https://gempak.com/rojakdaily/news/halloween-raid-rexkl-what-went-down-76173">https://gempak.com/rojakdaily/news/halloween-raid-rexkl-what-went-down-76173</a> accessed 10 April 2023

309 Fernando Fong, 'Netizens, politicians and artists express regret on Halloween party raid at RexKL' (The Rakyat Post, 30 October 2022) <a href="https://www.therakyatpost.com/news/malaysia/2022/10/30/netizens-politicians-and-artists-express-regret-on-halloween-party-raid-at-rexkl/">https://www.therakyatpost.com/news/malaysia/2022/10/30/netizens-politicians-and-artists-express-regret-on-halloween-party-raid-at-rexkl/</a> accessed 10 April 2023

310 LGBTphobia refers to "the expression of anti-LGBT position, narrative and sentiments targeting LGBTIQ people, people who are perceived as 'LGBT supporters' and non-LGBTIQ people. It also refers to mistreatment and discrimination against LGBTIQ+ people based on their sexual orientation, gender identity, gender expression and sex characteristics". Definition is extracted from: https://justiceforsisters.wordpress.com/2022/11/19/preliminary-analysis-lgbtphobia-in-malaysia-15th-general-elections-ge15/

divide. Some examples included anti-LGBTQ+ elements in campaign materials <sup>311</sup> and discriminatory remarks against the LGBTQ+ community by political candidates in their speeches <sup>312,313</sup>. Pakatan Harapan and Parti Muda were subjected to LGBTphobia online and offline by Perikatan Nasional, Barisan Nasional and Pejuang, to whom the former's response was pre-emptive disassociation from LGBTQ+ issues, which can only exacerbate LGBTQ+ exclusion<sup>314</sup>. Examples of such pre-emptive disassociation was Anwar's lawsuit against Perak PAS Commissioner Razman Zakaria's "defamatory" speech that allegedly linked the prime minister with "LGBT and support of communist ideology" <sup>315</sup>, as well as the letter of demand from Parti Amanah Negara vice-president Mujahid Yusof Rawa against PAS over the latter's allegation that he is a supporter of the LGBT community <sup>316</sup>. Under the current unity government, anti-LGBT narratives intensify and are actively perpetuated by various key figures including the current Prime Minister Anwar Ibrahim – which will be analysed in extensive detail in the Annual Human Rights Report for the year of 2023.

#### **Period Poverty**

Although a longstanding issue<sup>317</sup>, period poverty<sup>318</sup> surfaced in mainstream discourse more prominently during COVID-19. During the pandemic, women from the urban poor were not able to afford sanitary pads ("pads") due to financial insecurity, and thus had to

<sup>311</sup> Justice for Sisters, 'Preliminary analysis: LGBTphobia in Malaysia 15th General Elections (GE15)' (Justice for Sisters, 19 November 2022) <a href="https://justiceforsisters.wordpress.com/2022/11/19/preliminary-analysis-lgbtphobia-in-malaysia-15th-general-elections-ge15/">https://justiceforsisters.wordpress.com/2022/11/19/preliminary-analysis-lgbtphobia-in-malaysia-15th-general-elections-ge15/</a> accessed 10 April 2023

<sup>312</sup> Radzuan Hassan, 'Aminuddin mahu bawa suara NGO ke Dewan Rakyat' (MalaysiaGazette, 6 November 2022)

<sup>&</sup>lt;a href="https://malaysiagazette.com/2022/11/06/aminuddin-mahu-bawa-suara-ngo-ke-dewan-rakyat/">https://malaysiagazette.com/2022/11/06/aminuddin-mahu-bawa-suara-ngo-ke-dewan-rakyat/</a> accessed 10 April 2023

<sup>313</sup> Tham Jia Vern (@jiavern\_), 'Hulu Langat PH candidate Mohd Sany Hamzan just threw LGBT under the bus coupled w homophobic chants at a rally and the crowd was silent...' Twitter, 16 November 2022,

<sup>&</sup>lt;a href="https://twitter.com/jiavern\_/status/1592882618689007616?s=20">https://twitter.com/jiavern\_/status/1592882618689007616?s=20</a>> accessed 10 April 2023

<sup>314</sup> Justice for Sisters, 'Preliminary analysis: LGBTphobia in Malaysia 15th General Elections (GE15)' (Justice for Sisters, 19 November 2022) <a href="https://justiceforsisters.wordpress.com/2022/11/19/preliminary-analysis-lgbtphobia-in-malaysia-15th-general-elections-ge15/">https://justiceforsisters.wordpress.com/2022/11/19/preliminary-analysis-lgbtphobia-in-malaysia-15th-general-elections-ge15/</a> accessed 10 April 2023

<sup>315 &#</sup>x27;Anwar sues Perak PAS commissioner over defamatory statement linking him to LGBT culture, communist ideology' (The Malay Mail, 5 December 2022) <a href="https://www.malaymail.com/news/malaysia/2022/12/05/anwar-sues-perak-pas-commissioner-over-defamatory-statement-linking-him-to-lgbt-culture-communist-ideology/43677">https://www.malaymail.com/news/malaysia/2022/12/05/anwar-sues-perak-pas-commissioner-over-defamatory-statement-linking-him-to-lgbt-culture-communist-ideology/43677</a> accessed 10 April 2023

<sup>316 &#</sup>x27;Mujahid takes legal action against PAS' (Malaysiakini, 28 October 2022) <a href="https://www.malaysiakini.com/news/641407">https://www.malaysiakini.com/news/641407</a> accessed 29 October 2022

<sup>317</sup> Underprivileged women and girls from especially the Orang Asli and East Malaysia's indigenous communities who cannot afford pads use coconut husks, newspaper sheets and banana leaves to get by during periods

<sup>318</sup> Period poverty entails a lack of access to either of, a combination of, or all of three areas: (1) use of clean materials for menstruation that can be changed in private for as often as necessary; (2) use of soap and water to wash the body as required, with access to safe and convenient sanitary product disposal facilities; (3) basic information about menstruation and how to manage it with dignity without fear or discomfort

resort to measures such as using rags, borrowing pads from neighbours or cutting old towels into small pieces to get by during periods<sup>319,320</sup>. Whilst there is no systematic data available on all dimensions of period poverty, independent research studies and surveys do look into the phenomenon, albeit primarily focusing on either accessibility to pads or knowledge/attitude/perception levels towards menstruation and/or menstrual disorders<sup>321,322,323</sup>.

In 2021 and 2022, there have been a mix of commendable and to-be-improved actions by the government to address period poverty.

- Under Budget 2022, RM10 million was allocated for the provision of free hygiene kits to 130,000 female adolescents from the B40 community<sup>324</sup>. It was unknown as to how the beneficiaries were selected and the corresponding selection criteria used, as well as whether there was diversity in demographic factors such as state (e.g., East Malaysia) and ethnicity (e.g., indigenous, Orang Asli) among the beneficiaries. Furthermore, no information was available on the initiative's impact on beneficiaries, especially whether these adolescents were able to afford pads after the initiative concluded. This initiative was not carried forward to Budget 2023.
- In December 2022, Selangor made a commendable allocation of RM200,000 in its state budget to address period poverty, making it the first state in Malaysia to do so<sup>325</sup>. The allocation will be used to provide free pads to students from low-income families and also to conduct a study to gauge the prevalence of period poverty in the state.
- In July 2022, in response to a question by then Klang member of Parliament Charles Santiago on whether workplace menstrual leave policies will be drafted and enforced in public and private sectors, the Deputy Minister of Women replied that "there are

<sup>319</sup> Nur Hasliza Mohd Salleh, 'Period poverty continues despite naysayers' (MalaysiaNow, 5 August 2022)

<sup>&</sup>lt;a href="https://www.malaysianow.com/news/2022/08/05/period-poverty-continues-despite-naysayers">https://www.malaysianow.com/news/2022/08/05/period-poverty-continues-despite-naysayers</a> accessed 10 April 2023

<sup>320</sup> Nur Hasliza Mohd Salleh, 'Period poverty afflicts urban poor as pandemic continues' (MalaysiaNow, 14 January 2021)

<sup>&</sup>lt; https://www.malaysianow.com/news/2021/01/14/period-poverty-afflicts-urban-poor-as-pandemic-continues> accessed 10 April 2023

<sup>321 &#</sup>x27;1 In 2 girls report wanting to skip school when menstruating' (Kotex, 25 May 2022) <a href="https://www.kotex.com.my/education/1-in-2-girls-report-wanting-to-skip-school-when-menstruating">https://www.kotex.com.my/education/1-in-2-girls-report-wanting-to-skip-school-when-menstruating</a> accessed 10 April 2023

<sup>322</sup> Y Nor Asyikin, D Nani, Y Nor Azwany, A Shamsul Kamal, A Imran, I Shaiful Bahari & M Rosediani, 'Knowledge of and attitudes towards of menstrual disorders adults in north-eastern state of Peninsular Malaysia' (2015) 15 Malays Fam Physician 2 <a href="https://pubmed.ncbi.nlm.nih.gov/27570602/">https://pubmed.ncbi.nlm.nih.gov/27570602/</a> accessed 10 April 2023

<sup>323</sup> Wong Li Ping & Khoo Ee Ming, 'Menstrual-related attitudes and symptoms among multi-racial Asian adolescent females' (2010) 18 Int J Behav Med 246 <a href="https://pubmed.ncbi.nlm.nih.gov/20440593/">https://pubmed.ncbi.nlm.nih.gov/20440593/</a> accessed 10 April 2023

<sup>324 &#</sup>x27;130k teenage girls to receive free monthly personal hygiene kits' (Malaysiakini, 29 October 2021)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/597243">https://www.malaysiakini.com/news/597243</a> accessed 10 April 2023

<sup>325</sup> Wani Muthiah, 'Selangor first state to address period poverty with RM200,000 allocation' (The Star, 1 December 2022) <a href="https://www.thestar.com.my/news/nation/2022/12/01/selangor-first-state-to-address-period-poverty-with-rm200000-allocation-accessed 10 April 2023">https://www.thestar.com.my/news/nation/2022/12/01/selangor-first-state-to-address-period-poverty-with-rm200000-allocation-accessed 10 April 2023</a>

no plans" to do so<sup>326</sup>. The reason given was "there is no demand for it," in that women employees do not request for menstrual leave due to embarrassment and fears of being perceived as unproductive. To introduce menstrual leave, further study is needed on its feasibility, as well as corresponding discussions with relevant parties such as the Human Resources and Finance ministries, trade unions and employers' organisations. Period pain does affect Malaysian women, and this is demonstrated in YouGov's study in 2017 which showed that 86% of sampled working women experienced period pain, and among these women, 81% of them reported that dysmenorrhoea affected their ability to work <sup>327</sup>. For women to contribute productively to the economy, their needs, including menstrual health needs, should be prioritised. As such, the government should strive to conduct the aforementioned feasibility study and stakeholder consultations as soon as possible.

• In December 2022, the new Health Minister Dr. Zaliha Mustafa announced that her Ministry will provide free sanitary pads, beginning with the toilets in the Minister's office<sup>328</sup>. This initiative drew mixed reactions from the public<sup>329</sup> and politicians<sup>330</sup>. In response to criticisms received, the Health Minister clarified that the free sanitary pad initiative would first be implemented at the Minister's office to gauge impact, with evaluation results informing the decision of whether or not the initiative would be expanded to strategic health facilities and the wider public<sup>331</sup>. Whilst concerns that the Ministry should target women and girls from underprivileged communities as beneficiaries to begin with should be acknowledged, it is equally important to recognise the significance of the Health Minister's action in two ways. Firstly, the initiative is a small but key step in the direction of normalising periods, when period

<sup>326</sup> Nur Hasliza Mohd Salleh, 'No plans to introduce menstrual leave, says deputy minister' (MalaysiaNow, 20 July 2022)

<sup>&</sup>lt;a href="https://www.malaysianow.com/news/2022/07/20/no-plans-to-introduce-menstrual-leave-says-deputy-minister">https://www.malaysianow.com/news/2022/07/20/no-plans-to-introduce-menstrual-leave-says-deputy-minister</a> accessed 10 April 2023

<sup>327</sup> Tasnim Lokman, 'Period pain can affect work performance, some countries allow time off work to cope' (New Straits Times, 12 October 2017) <a href="https://www.nst.com.my/news/nation/2017/10/290253/period-pain-can-affect-work-performance-some-countries-allow-time-work">https://www.nst.com.my/news/nation/2017/10/290253/period-pain-can-affect-work-performance-some-countries-allow-time-work</a> accessed 10 April 2023

<sup>328 &#</sup>x27;Zaliha launches period poverty programme in MOH with free pads' (CodeBlue, 12 December 2022)

<sup>&</sup>lt; https://codeblue.galencentre.org/2022/12/12/zaliha-launches-period-poverty-programme-in-moh-with-free-period-poverty-perio

pads/#:~:text=By%20CodeBlue%20%7C%2012%20December%202022,country%20with%20period%20poverty%20policies.> accessed 10 April 2023

<sup>329</sup> Fazleena Aziz, 'Multi-ministry effort needed for period poverty' (The Star, 15 December 2022)

<sup>&</sup>lt; https://www.thestar.com.my/news/nation/2022/12/15/multi-ministry-effort-needed-for-period-poverty> accessed 10 April 2023 and the state of the s

<sup>330</sup> Jasmine Chea, 'New Health Minister chastised for giving free pads to Ministry first instead of B40 women' (SAYS, 13 December

<sup>2022) &</sup>lt;a href="https://says.com/my/news/new-health-minister-chastised-for-giving-free-pads-to-ministry-first-instead-of-b40-women-accessed 10 April 2023">https://says.com/my/news/new-health-minister-chastised-for-giving-free-pads-to-ministry-first-instead-of-b40-women-accessed 10 April 2023</a>

<sup>331 &#</sup>x27;Dr Zaliha clarifies Health Ministry's free sanitary pad initiative' (The Malay Mail, 13 December 2022)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2022/12/13/dr-zaliha-clarifies-health-ministrys-free-sanitary-pad-initiative/45076> accessed 10 April 2023

stigma is still largely the norm<sup>332</sup>. Secondly, this move is indicative of cultivating gender sensitivity and constitutes a positive step towards gender mainstreaming, and this is especially significant in the current context whereby KPWKM is still perceived to be the sole, if not primary, bearer of the mandate of upholding women's rights and bringing about gender equality.

To ensure a holistic response to period poverty, resources should be invested in collecting systematic and comprehensive data <sup>333</sup> on all dimensions of period poverty. Having accurate data reflecting true prevalence of the phenomenon will enable the development of responsive policies and programmes that address the diverse needs of women and girls from various communities. It is also imperative that women and girls from vulnerable groups especially, such as those with disabilities and those from the Orang Asli and East Malaysian indigenous communities, are prioritised in period poverty eradication efforts. Other government ministries and agencies should also emulate the Health Minister's initiative by addressing relevant dimensions of period poverty that their female beneficiaries experience, and inter-ministerial collaborations with KPWKM can significantly facilitate these efforts.

# The Case of Loh Siew Hong: Rights of Mothers Whose Children Were Unilaterally Converted to Islam

In February 2022, Loh Siew Hong filed a police report to seek the return of her three children (two 14–year-old girls and one ten-year-old boy), who were then allegedly held by an *ustazah* attached to the Hidayah Foundation Centre in Penang<sup>334</sup>. Loh did not see her children for three years by then, despite being granted sole custody to them by the Kuala Lumpur High Court on 31 March 2021. The *ustazah* established contact with Loh in January 2022 after the latter's months of futile search for her children's whereabouts. The woman preacher refused Loh's requests to return her children to her, nor did she allow Loh to speak to them.

For years, Loh was psychologically, emotionally and financially abused by her then spouse Nagahswaran Muniandy, before he started physically abusing her from 2017 onwards. The physical and psychological violence were horrendous when he learned of her plan to escape – "He was so angry that he dragged me to a forest near the house, pulled my hair, cut it with a knife, and broke my legs and arm. He brought my children along and threatened that he

<sup>332 &#</sup>x27;1 In 2 girls report wanting to skip school when menstruating' (Kotex, 25 May 2022) <a href="https://www.kotex.com.my/education/1-in-2-girls-report-wanting-to-skip-school-when-menstruating-accessed 10 April 2023">https://www.kotex.com.my/education/1-in-2-girls-report-wanting-to-skip-school-when-menstruating-accessed 10 April 2023</a>

<sup>333</sup> To date, to the best of knowledge of one of the authors, the only study conducted by the government was by KPWKM in 2022 with young women and girls aged 13 to 24 in 13 PPR communities and two Social Welfare Department institutions in Kuala Lumpur.

The study found that 13.1% of participants could not afford to buy sanitary pads.

<sup>334</sup> Alyaa Alhadjri, 'Mother seeks police's help to reunite with three children' (Malaysiakini, 14 February 2022) <a href="https://www.malaysiakini.com/news/610621">https://www.malaysiakini.com/news/610621</a> accessed 10 April 2023

would burn us all alive. My children were terrified." The physical violence reached its height upon her return to her spouse with her children, following her successful escape attempt – he hit her with a hammer and broke her legs for the second time, which led to her being hospitalised and receiving 27 stitches on her head. She subsequently went to recuperate in a domestic violence shelter and began working again to gain financial independence. In her absence, her spouse allegedly abducted her children and registered them as Muslim converts without her consent in 2020 – by then, Loh already obtained interim custody of her children, as well as filed for divorce and full custody.

On 14 February 2022, Loh reunited with her children at the Kangar district police headquarters in Perlis<sup>335</sup>. Nevertheless, the children were to be under the care of the Perlis Welfare Department until 21 February 2022, pending the outcome of a *habeas corpus* application filed at Kuala Lumpur High Court. Within that week, Loh shared that she was prevented by the Welfare Department multiple times from seeing her children<sup>336,337</sup>, as per the agreed arrangement of one hour daily. On the other hand, as early as 13 February 2022, the Perlis Mufti Datuk Mohd Asri Zainul was able to gain access to the children before Loh did, going as far as asking them without consulting her whether they wanted to remain as Muslims, and whether they were coerced to embrace Islam and sharing the recorded video (without measures taken to protect their identities) on social media<sup>338</sup>.

On 16 February 2022, a letter of demand was issued by Loh's lawyers to the three registrars of converts in Penang, Kedah and Perlis, whereby the said registrars were given seven days till 21 February to prove that Loh had agreed to register her children as Muslims or provide written confirmation of removal of the children's names from the converts' register, failing which Loh will file an application for a judicial review without further notice<sup>339</sup>. No reply was received from all three registrars<sup>340</sup>.

On 21 February 2022, the Kuala Lumpur High Court allowed Loh's *habeas corpus* application against the Social Welfare Department and the *ustazah*, enabling her to finally

<sup>335 &#</sup>x27;Mother reunites with her three children after alleged unilateral conversion' (Malaysiakini, 15 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610749">https://www.malaysiakini.com/news/610749</a> accessed 10 April 2023

<sup>336</sup> Geraldine Tong, "I just want to cry': Single mom barred from seeing kids after reunion' (Malaysiakini, 15 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610862">https://www.malaysiakini.com/news/610862</a> accessed 10 April 2023

<sup>337</sup> Susan Loone, 'Single mum barred from meeting kids again, 'higher' permission needed' (Malaysiakini, 17 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611112">https://www.malaysiakini.com/news/611112</a> accessed 10 April 2023

<sup>338</sup> Datuk Mohd Asri Zainul (@drmaza\_official), 'Kepada pemimpin-pemimpin politik Pakatan Harapan (PH)...,' Instagram, 13 February 2022, <a href="https://www.instagram.com/p/CZ5jYAJAHU3/?utm\_source=ig\_embed&ig\_rid=212c02ec-9c3d-4537-899f-22bba13cf25c">https://www.instagram.com/p/CZ5jYAJAHU3/?utm\_source=ig\_embed&ig\_rid=212c02ec-9c3d-4537-899f-22bba13cf25c</a> accessed 10 April 2023

<sup>339 &#</sup>x27;Mum demands authorities prove she consented to children's conversion' (Malaysiakini, 16 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610922">https://www.malaysiakini.com/news/610922</a> accessed 10 April 2023

<sup>340 &#</sup>x27;Single mum intends to challenge children's unilateral conversion' (Malaysiakini, 20 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611426">https://www.malaysiakini.com/news/611426</a>> accessed 10 April 2023

reunite with her children<sup>341</sup>. On 7 March 2022, the Perlis Islamic Religious and Malay Etiquette Council (MAIPS) filed an intervener application with the Kuala Lumpur High Court, which if allowed, would permit MAIPS to apply to be allowed to provide Islamic education to the children whilst they are under their mother's care<sup>342</sup>. On 15 June 2022, the Kuala Lumpur High Court dismissed MAIPS' application, on the grounds that MAIPS failed to prove itself as an "interested party" to the betterment of the lives of Loh's children<sup>343</sup>. In response, MAIPS appealed at the Court of Appeal, leading to the overruling of the 15 June High Court decision<sup>344</sup>. On 6 July 2023, the Federal Court will hear Loh's leave application appeal to remove MAIPS from her custody case<sup>345</sup>.

Within the same month as MAIPS' intervener application on 25 March 2022, Loh filed a judicial review leave application at the High Court to nullify her children's unilateral conversion, naming the Perlis State Registrar of Converts, the MAIPS, the Perlis mufti, and the Perlis state government<sup>346</sup> as respondents. Through the application, Loh sought to overturn the Perlis State Registrar of Converts' registration of her children's conversion and also the declaration that Section 117 (b) of the Administration of the Religion of Islam Enactment 2006 <sup>347</sup> is constitutionally invalid. On 17 May 2022, Loh submitted an application for time extension in her judicial review application<sup>348</sup>, which was heard and granted on 1 August by the Kuala Lumpur High Court<sup>349</sup>. Arguments on the merits of the judicial review by Loh's counsel as well as lawyers representing the four respondents were

341 Hidir Reduan Abdul Rashid, 'Court allows Loh to reunite with her three children' (Malaysiakini, 21 February 2022)

<a href="https://www.malaysiakini.com/news/611470">https://www.malaysiakini.com/news/611470</a>> accessed 10 April 2023

unilateral-conversion-case> accessed 10 April 2023

<sup>342</sup> Hidir Reduan Abdul Rashid, 'Maips seeks court order to safeguard Islamic education of Loh's children' (Malaysiakini, 8 March

<sup>2022) &</sup>lt;a href="https://www.malaysiakini.com/news/613541">https://www.malaysiakini.com/news/613541</a> accessed 10 April 2023

<sup>343</sup> Hidir Reduan Abdul Rashid, 'Court blocks Maips from intervening in Loh's divorce case' (Malaysiakini, 15 June 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/624801">https://www.malaysiakini.com/news/624801</a>> accessed 10 April 2023

<sup>344</sup> Isabelle Leong, 'Appeals court allows Maips to intervene in Loh's custody case' (Malaysiakini, 7 February 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/654220">https://www.malaysiakini.com/news/654220</a> accessed 10 April 2023

<sup>345</sup> Hidir Reduan Abdul Rashid, 'July 6 hearing of Loh's bid to remove Maips from custody case' (Malaysiakini, 6 April 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/661293">https://www.malaysiakini.com/news/661293</a> accessed 10 April 2023

 $<sup>346\,</sup>Hidir\,Reduan\,Abdul\,Rashid,\,'Loh\,files\,to\,nullify\,children's\,unilateral\,Islamic\,conversion'\,(Malaysiakini,\,25\,March\,2022)$ 

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/615873">https://www.malaysiakini.com/news/615873</a> accessed 10 April 2023

<sup>347</sup> Section 117 (b) of the Administration of the Religion of Islam Enactment 2006 empowers the Perlis State Registrar of Converts to register a child as a convert only with the consent of the mother or father of the child, even if both of them are still alive.

<sup>348</sup> Nurbaiti Hamdan, 'Court sets Aug 1 to decide on Loh's time extension application in unilateral conversion case' (The Star, 17 May 2022) <a href="https://www.thestar.com.my/news/nation/2022/05/17/court-sets-aug-1-to-decide-on-time-extension-application-in-decide-on-time-extension-application-application-in-decide-on-time-extension-application-in-decide-on-time-extension-application-in-decide-on-time-extension-application-in-decide-on-time-extension-application-in-decide-on-time-

<sup>349</sup> Kenneth Tee, 'High Court grants Hindu mum Loh Siew Hong leave to challenge kids' unilateral conversion to Islam' (The Malay Mail, 1 August 2022) <a href="https://www.malaymail.com/news/malaysia/2022/08/01/high-court-grants-hindu-mum-loh-siew-hong-leave-to-challenge-kids-unilateral-conversion-to-islam/20351">https://www.malaymail.com/news/malaysia/2022/08/01/high-court-grants-hindu-mum-loh-siew-hong-leave-to-challenge-kids-unilateral-conversion-to-islam/20351</a>> accessed 10 April 2023

heard on 21 March 2023, with the High Court's decision expected to be delivered on 11 May 2023<sup>350</sup>.

On 20 September 2022, the Kuala Lumpur High Court granted an *ex-parte* application for leave by Loh to initiate committal proceedings against her former spouse, based on allegations of abduction and unilateral conversion of her children<sup>351</sup>. On 5 April 2023, a RM20,000 fine was imposed on Muniandy for failure to comply with the court order whereby Loh was granted sole custody of the children. Should he fail to pay the fine within 14 days, he would be jailed for 14 days<sup>352</sup>. On the same day, Muniandy's counsel filed an application on behalf of his client to stay the verdict, pending their appeal to the Court of Appeal – a hearing date for the stay application has yet to be fixed.

Throughout the year of 2022 since Loh filed the police report seeking for her children to be returned to her, investigations were carried out against Penang Deputy Minister P Ramasamy<sup>353</sup> and Indira Gandhi Action Team (INGAT) chairperson Arun Dorasamy<sup>354</sup>, regarding allegations that they respectively "made provocative statements" and "spread postings with the intent of causing public outrage and disturbance of public tranquillity." Both men were probed under Section 233 of the Communications and Multimedia Act 1998 and differing subsections under Section 505 of the Penal Code.

Whilst statements were released by muftis, religious officials and PAS in response to Loh's case, they consisted of either urges to let Loh see her children as much as possible<sup>355</sup> or calls to ensure that these children's conversion is upheld<sup>356,357</sup>. Even when the unilateral nature of the conversion was (implicitly) recognised, it was with the assertion that it should not be reversed<sup>358</sup>. The Perikatan Nasional administration was tight-lipped in their

<sup>350</sup> Hidir Reduan Abdul Rashid, 'May 11 verdict on Loh's bid to quash children's unilateral conversion' (Malaysiakini, 21 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/659436">https://www.malaysiakini.com/news/659436</a> accessed 10 April 2023

<sup>351 &#</sup>x27;Court allows Loh to initiate committal proceeding against ex-husband' (Malaysiakini, 20 September 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/636409">https://www.malaysiakini.com/news/636409</a> accessed 10 April 2023

<sup>352</sup> Hidir Reduan Abdul Rashid, 'Ex-husband in conversion case fined RM20k for contempt of court' (Malaysiakini, 5 April 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/661136">https://www.malaysiakini.com/news/661136</a> accessed 10 April 2023

<sup>353</sup> Martin Vengadesen, 'Ramasamy hauled up by Bukit Aman over comments on Loh custody case' (Malaysiakini, 3 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/612852">https://www.malaysiakini.com/news/612852</a> accessed 10 April 2023

<sup>354</sup> Raveena Nagotra, 'Cops question activist over video on unilateral conversion' (Malaysiakini, 17 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/614837">https://www.malaysiakini.com/news/614837</a>> accessed 10 April 2023

<sup>355</sup> Yasmin Ramlan, 'Penang Mufti wants separated children to see parents as often as possible' (Malaysiakini, 17 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611058">https://www.malaysiakini.com/news/611058</a> accessed 10 April 2023

<sup>356 &#</sup>x27;Respect state laws - deputy minister on unilateral conversion' (Malaysiakini, 21 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611562">https://www.malaysiakini.com/news/611562</a> accessed 10 April 2023

<sup>357 &#</sup>x27;PAS: Govt must ensure Loh's children don't leave Islam' (Malaysiakini, 22 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611637">https://www.malaysiakini.com/news/611637</a>> accessed 10 April 2023

<sup>358 &#</sup>x27;Single mum intends to challenge children's unilateral conversion' (Malaysiakini, 20 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611426">https://www.malaysiakini.com/news/611426</a>> accessed 10 April 2023

position on this issue of unilateral conversion<sup>359</sup>. The then Padang Rengas member of Parliament, Nazri Abdul Aziz, was the outlier in this case, whereby he argued in Parliament that unilateral conversion is unrighteous and asked the Perikatan Nasional administration if they will amend the Federal Constitution to put a stop to such conversions<sup>360</sup>.

A detailed chronology of Loh Siew Hong's case can be found in the subsequent pages of this chapter.

## Chronology of Loh Siew Hong's Unilateral Conversion Case

July 2019	Loh obtained interim custody of her children. She also filed for divorce and child custody.
20 December 2019	Loh was granted an interim <i>ex-parte</i> order to have "sole custody, care and control over her children" <sup>361</sup> .
2020	Court case for guardianship was postponed due to COVID-19 lockdown <sup>362</sup> .  In July, whilst Loh was absent, her former spouse allegedly abducted her children and brought them to the Perlis Religious Department to be converted to Islam <sup>363</sup> .
31 March 2021	Loh was granted sole custody to her children by the Kuala Lumpur High Court <sup>364</sup> . The court order stated that the police must take all necessary steps against her former spouse or any other party to unite Loh with her children.

<sup>359</sup> Shakira Buang, 'PN yet to formulate position on unilateral conversion - Muhyiddin' (Malaysiakini, 2 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/612820">https://www.malaysiakini.com/news/612820</a> accessed 10 April 2023

<sup>360</sup> Kow Gah Chie, 'Will govt amend Constitution to stop unilateral conversion? - Nazri' (Malaysiakini, 2 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/612808">https://www.malaysiakini.com/news/612808</a> accessed 10 April 2023

<sup>361</sup> Martin Vengadesan, 'Top psychiatrist warns of impact on Loh's children' (Malaysiakini, 23 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611706">https://www.malaysiakini.com/news/611706</a>> accessed 10 April 2023

<sup>362</sup> Susan Loone, 'Single mum claims kids 'brainwashed, blackmailed' to reject her' (Malaysiakini, 18 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611166">https://www.malaysiakini.com/news/611166</a>> accessed 10 April 2023

<sup>363</sup> Radzi Razak, 'Mufti admits kids brought to Perlis to be unilaterally converted, didn't check where mother was (VIDEO)' (The Malay Mail, 17 February 2022) <a href="https://www.malaymail.com/news/malaysia/2022/02/17/mufti-admits-kids-brought-to-perlis-to-be-">https://www.malaymail.com/news/malaysia/2022/02/17/mufti-admits-kids-brought-to-perlis-to-be-</a>

unilaterally-converted-didnt-both/2042233> accessed 10 April 2023

<sup>364</sup> Alyaa Alhadjri, 'Mother seeks police's help to reunite with three children' (Malaysiakini, 14 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610621">https://www.malaysiakini.com/news/610621</a> accessed 10 April 2023

2021 - 10 January 2022	Loh continued searching for her children, though her efforts were futile. Her efforts included going to the Ministry of Education in Putrajaya to find out where her children were studying, as well as the police in Bukit Aman, Sungai Petani (Kedah) and Machang (Kelantan) <sup>365</sup> .
10 January 2022	Loh received a message via Facebook from the <i>ustazah</i> from Hidayah Foundation in Penang <sup>366</sup> .
10 January 2022	Loh read the <i>ustazah</i> 's message and reached out to her via WhatsApp <sup>367</sup> . The <i>ustazah</i> admitted that she had Loh's children and shared photos as evidence. Nevertheless, the woman preacher refused Loh's requests to return her children to her, nor was Loh allowed to speak to them. Loh was still not aware at the time that her children were converted to Islam.
6 February 2022	Her son, who was then in a tahfiz school in Tasek Gelugor in Penang, sent word to Loh via a friend on Facebook <sup>368</sup> . It was then that Loh learned of her children's whereabouts and that her son went by the name 'Irfan'.
11 February 2022	Loh went to the tahfiz school to look for her children, only to be informed by a student that they were moved out just the day before <sup>369</sup> .
	The <i>ustazah</i> called Loh with instructions to travel to a <i>madrasah</i> in Perlis alone on 12 February, if she wished to see her children.

 $<sup>365\,</sup>Susan\,Loone,\,'Single\,mum\,claims\,kids\,'brainwashed,\,blackmailed'\,to\,reject\,her'\,(Malaysiakini,\,18\,February\,2022)$ 

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611166">https://www.malaysiakini.com/news/611166</a> accessed 10 April 2023

<sup>366</sup> Alyaa Alhadjri, 'Mother seeks police's help to reunite with three children' (Malaysiakini, 14 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610621">https://www.malaysiakini.com/news/610621</a> accessed 10 April 2023

<sup>367</sup> Ibio

<sup>368</sup> Susan Loone, 'Single mum claims kids 'brainwashed, blackmailed' to reject her' (Malaysiakini, 18 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611166">https://www.malaysiakini.com/news/611166</a>> accessed 10 April 2023

<sup>369</sup> Alyaa Alhadjri, 'Mother seeks police's help to reunite with three children' (Malaysiakini, 14 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610621">https://www.malaysiakini.com/news/610621</a> accessed 10 April 2023

12 February 2022	Loh lodged a police report at Kepala Batas, Penang, with the assistance of Bagan Dalam assemblyperson Satees Muniandy and Tamilar Kural Malaysia president David Marshel <sup>370</sup> .
13 February 2022	Perlis Mufti Datuk Mohd Asri Zainul visited Loh's children. He asked them if they wanted to remain Muslims and whether they were coerced to embrace Islam <sup>371</sup> . In the video, after being told by the children that they wanted to remain Muslims, the Perlis Mufti said that he would strive to fulfil their wish. The aforedescribed segment of the visit was recorded and shared by the Mufti on social media, with no measures taken to protect the identities of Loh's children.
14 February 2022	Loh finally reunited with her children at the Kangar district police headquarters in Perlis – for the first time after three years <sup>372</sup> . During the reunion, documents "purporting that the children had been converted to Islam" were shown to Loh. It was decided that the children would be under the care of the Perlis Welfare Department until 21 February, pending the outcome of a <i>habeas corpus</i> application filed in the Kuala Lumpur High Court.
15 February 2022 - 20 February 2022	According to news reports, Loh was prevented from visiting her children by the Perlis Welfare Department twice. The first time was on 15 February, with the reason of an "increase in COVID-19 cases" given. The second time was on 17 February and the reason unknown as it was not reported – and she was asked to return on 18 February to see her children on 18 February to see her children.

<sup>370 &#</sup>x27;Mother reunites with her three children after alleged unilateral conversion' (Malaysiakini, 15 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610749">https://www.malaysiakini.com/news/610749</a> accessed 10 April 2023

<sup>371</sup> Datuk Mohd Asri Zainul (@drmaza\_official), 'Kepada pemimpin-pemimpin politik Pakatan Harapan (PH)...,' Instagram, 13 February 2022, <a href="https://www.instagram.com/p/CZ5jYAJAHU3/?utm\_source=ig\_embed&ig\_rid=212c02ec-9c3d-4537-899f-22bba13cf25c">https://www.instagram.com/p/CZ5jYAJAHU3/?utm\_source=ig\_embed&ig\_rid=212c02ec-9c3d-4537-899f-22bba13cf25c>accessed 10 April 2023

<sup>372 &#</sup>x27;Mother reunites with her three children after alleged unilateral conversion' (Malaysiakini, 15 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610749">https://www.malaysiakini.com/news/610749</a> accessed 10 April 2023

<sup>373</sup> Geraldine Tong, "I just want to cry': Single mom barred from seeing kids after reunion" (Malaysiakini, 15 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610862">https://www.malaysiakini.com/news/610862</a> accessed 10 April 2023

 $<sup>374\,</sup>Susan\,Loone,\,'Single\,mum\,barred\,from\,meeting\,kids\,again,\,'higher'\,permission\,needed'\,(Malaysiakini,\,17\,February\,2022)$ 

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611112">https://www.malaysiakini.com/news/611112</a> accessed 10 April 2023

<sup>375</sup> Susan Loone, 'Single mum claims kids 'brainwashed, blackmailed' to reject her' (Malaysiakini, 18 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611166">https://www.malaysiakini.com/news/611166</a>> accessed 10 April 2023

	On 16 February, whilst Loh was able to spend an hour with her
	children, it came with three other conditions – no photos were to be taken with the children, her car had to be parked outside the premises and she would have to take a COVID-19 test <sup>376</sup> . On that day, she asked the Welfare Department Officer whether she would be allowed to visit her children again after that, but was informed that "it would require approval" from the higher-ups.
	The initial arrangement was that Loh was able to see her children every day for one hour, on the condition that she did a COVID-19 test each time prior to the visit.
16 February 2022	A letter of demand was sent by Loh's lawyers to the three registrars of converts in Penang, Kedah and Perlis <sup>377</sup> . The said registrars were given seven days till 21 February 2022 to prove that Loh had agreed to register her children as Muslims or provide written confirmation of removal of the children's names from the register of converts. Should the registrars fail to furnish the said proof, Loh will file an application for a judicial review without further notice.
16 February 2022	The Perlis Mufti admitted to the state's unilateral conversion of Loh's children without her "knowledge nor presence <sup>378</sup> ." He also admitted that the religious department proceeded to convert Loh's children to Muslims without verifying Muniandy's claims of lack of knowledge of Loh's whereabouts.
	At the same time, the Perlis Mufti also claimed that the children were "unwilling" to return to their mother <sup>379</sup> . He reiterated that the children wanted to be Muslims and to go to a religious school. Describing his first meeting with Loh's children, he used phrases such as "their mother did not show up." The mufti also questioned Penang Deputy Chief Minister II P Ramasamy's statement about

<sup>376 &#</sup>x27;Mum demands authorities prove she consented to children's conversion' (Malaysiakini, 16 February 2022)

378 Radzi Razak, 'Mufti admits kids brought to Perlis to be unilaterally converted, didn't check where mother was (VIDEO)' (The Malay Mail, 17 February 2022) <a href="https://www.malaymail.com/news/malaysia/2022/02/17/mufti-admits-kids-brought-to-perlis-to-be-unilaterally-converted-didnt-both/2042233">https://www.malaymail.com/news/malaysia/2022/02/17/mufti-admits-kids-brought-to-perlis-to-be-unilaterally-converted-didnt-both/2042233</a> accessed 10 April 2023

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/610922">https://www.malaysiakini.com/news/610922</a> accessed 10 April 2023

<sup>377</sup> Ibid

 $<sup>379\</sup> Yasmin\ Ramlan,\ 'Mufti:\ Loh's\ children\ don't\ want\ to\ return\ to\ their\ mum'\ (Malaysiakini,\ 17\ February\ 2022)$ 

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611084">https://www.malaysiakini.com/news/611084</a> accessed 10 April 2023

	the children's abduction and forced conversion, claiming that "his methods, language, speech and attitude show(ed) his hostility to the Muslim society." In response to the Mufti's allegations that her children refused to see her, Loh clarified two days later on 18 February 2022. She claimed that her children were "brainwashed" by certain quarters including her former spouse's family to think that she abandoned them and that she was responsible for their father being sent to prison <sup>380</sup> , hence the hostility towards her.
17 February 2022	Penang Mufti Wan Salim Wan Mohd Noor emphasised the importance of prioritising the mother-child relationship, and urged the authorities to enable Loh to meet her children "as often as possible <sup>381</sup> ."
18 February 2022	INGAT chairperson Arun Dorasamy questioned the government's failure in setting up an agency to enforce the 2018 Federal Court order <sup>382</sup> . He also suggested that Loh's first priority should be to quash her children's unilateral conversion, and that this requires filing a case against the Perlis Islamic Department.
20 February 2022	No reply was received from the three registrars of converts in Penang, Kedah and Perlis <sup>383</sup> .
20 February 2022	In response to Dorasamy's calls for the children's conversion to be cancelled, the Penang Mufti stated that the conversion should not be reversed, as it would be "impractical 384." The Mufti also claimed that cancelling the conversion would "muddy the good ties that the Hindus have with Muslims in the country," and that it would be "for the good of all of them to remain as Muslims."

<sup>380</sup> Susan Loone, 'Single mum claims kids 'brainwashed, blackmailed' to reject her' (Malaysiakini, 18 February 2022)

384 Ibid

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611166">https://www.malaysiakini.com/news/611166</a>> accessed 10 April 2023

<sup>381</sup> Yasmin Ramlan, 'Penang Mufti wants separated children to see parents as often as possible' (Malaysiakini, 17 February 2022) <a href="https://www.malaysiakini.com/news/611058">https://www.malaysiakini.com/news/611058</a> accessed 10 April 2023

<sup>382</sup> The landmark 2018 Federal Court decision ruled that the conversion of minors can only be allowed with the expressed consent of both parents. This decision was made on Indira Gandhi's unilateral conversion case. Gandhi's daughter, Prasana, was an infant when her father (a Muslim convert) Muhammad Riduan Abdullah took her away in 2009 after converting to Islam. Riduan went on to convert their two other children to Islam. Gandhi still has yet to see her daughter Prasana.

<sup>383 &#</sup>x27;Single mum intends to challenge children's unilateral conversion' (Malaysiakini, 20 February 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611426">https://www.malaysiakini.com/news/611426</a> accessed 10 April 2023

	Proposals such as sending the children to boarding schools were also suggested, so that "no parties are taken advantage of and, at the same time, protect the sensitivities of Muslims who believe that hidden hands are pushing to revoke the children's conversion to Islam."			
21 February 2022	The Kuala Lumpur High Court allowed Loh's <i>habeas corpus</i> application against the Social Welfare Department and the <i>ustazah</i> <sup>385</sup> . This was on the basis of the still-valid High Court order issued on 31 March 2021 that granted sole custody and control of the three children to Loh.			
21 February 2022	The Deputy Minister in the Prime Minister's Department (Religious Affairs) Ahmad Marzuk Shaary urged all parties to respect the relevant state laws on the matter of religious conversion <sup>386</sup> . About Loh's case, Marzuk asserted that Muniandy's unilateral conversion of the children to Islam was in line with Perlis' state laws, under Section 117(b) of the Administration of Islam Enactment 2006 which only required the consent of one parent.			
22 February 2022	PAS' Ulama Wing urged the government to prioritise the welfare of Loh's children and ensure that they are not forced to become apostates <sup>387</sup> . The party wing claimed that the children are "throwing negative accusations that there is coercion on them to embrace Islam" when the conversion was done with their and their father's consent. In addition, Ulama Wing also urged all state religious authorities to amend the conditions of religious conversion, so that only the consent of one parent is needed. Respect of the "position of Islam as a federal religion and the jurisdiction of the states in the administration of Islamic affairs" were also called for.			

 $<sup>385\</sup> Hidir\ Reduan\ Abdul\ Rashid,\ 'Court\ allows\ Loh\ to\ reunite\ with\ her\ three\ children'\ (Malaysiakini,\ 21\ February\ 2022)$ 

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611470">https://www.malaysiakini.com/news/611470</a> accessed 10 April 2023

<sup>386 &#</sup>x27;Respect state laws - deputy minister on unilateral conversion' (Malaysiakini, 21 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611562">https://www.malaysiakini.com/news/611562</a> accessed 10 April 2023

<sup>387 &#</sup>x27;PAS: Govt must ensure Loh's children don't leave Islam' (Malaysiakini, 22 February 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/611637">https://www.malaysiakini.com/news/611637</a>> accessed 10 April 2023

2 March 2022	Perikatan Nasional has not yet formulated a "common position" on the issue of unilateral conversion <sup>388</sup> . Chairperson Tan Sri Dato' Haji Mahiaddin bin Md. Yasin stated that whilst there is freedom of religion, "Islam has, in particular, laws governing their believers."
2 March 2022	Padang Rengas member of Parliament Nazri Abdul Aziz elaborated on the unrighteousness of unilateral conversions in Parliament, whilst questioning if the government had plans to amend the Federal Constitution to put an end to this issue 389: whilst the English version of the Federal Constitution uses the term "parent or guardian" in Article 12(4), whilst the Malay version of the Federal Constitution reads as "ibu atau bapa" (mother or father).  "Malaysia which (recognises) Islam as its official religion has the responsibility to take care of the rights of the minority. We actually oppress the minority if we do nothing about it."
3 March 2022	Penang Deputy Minister II Ramasamy was summoned by Bukit Aman to assist in investigations regarding allegations that he made "provocative statements" on Loh's child custody case <sup>390</sup> . The allegations were based on his Facebook post on 13 February 2022, in which Ramasamy detailed Loh's unilateral conversion case in full and compared it to Indira Gandhi's case <sup>391</sup> . Ramasamy was probed under Section 233 of the Communications and Multimedia Act 1998 and also Section 505(c) <sup>392</sup> of the Penal Code.

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<sup>388</sup> Shakira Buang, 'PN yet to formulate position on unilateral conversion - Muhyiddin' (Malaysiakini, 2 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/612820">https://www.malaysiakini.com/news/612820</a> accessed 10 April 2023

 $<sup>389\</sup> Kow\ Gah\ Chie,\ 'Will\ govt\ amend\ Constitution\ to\ stop\ unilateral\ conversion?-Nazri'\ (Malaysiakini,\ 2\ March\ 2022)$ 

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/612808">https://www.malaysiakini.com/news/612808</a> accessed 10 April 2023

<sup>390</sup> Martin Vengadesan, 'Ramasamy hauled up by Bukit Aman over comments on Loh custody case' (Malaysiakini, 3 March 2022) <a href="https://www.malaysiakini.com/news/612852">https://www.malaysiakini.com/news/612852</a> accessed 10 April 2023

<sup>391</sup> Gandhi's daughter, Prasana, was an infant when her father (a Muslim convert) Muhammad Riduan Abdullah (previously K. Pathmanathan) took her away in 2009 after converting to Islam. Riduan went on to convert their two other children to Islam. Gandhi still has yet to see her daughter Prasana.

<sup>392</sup> Section 505(c) of the Penal Code: "Whoever makes, publishes or circulates any statement, rumour or report...(c) with intent to incite or which is likely to incite any class or community of persons to commit any offence against any other class or community of persons, shall be punished with imprisonment which may extend to two years or with fine or with both."

#### 7 March 2022

The Perlis Islamic Religious and Malay Etiquette Council (MAIPS) filed the intervener application, which if successful, would enable MAIPS to apply to be allowed to provide Islamic education to Loh's children <sup>393</sup>. The assistance would include guidance on Islamic teachings, as well as financial support via zakat and other aid channelled to the children through Loh. MAIPS emphasised that they only seek to ensure the welfare and *aqidah* (belief) of the children, whilst citing instances that demonstrate the children's desire and wish to remain in Islam (e.g., perform *subuh*, wish to become a Syariah lawyer).

Loh's lawyers responded to MAIPS' statement two days later, cautioning that the Council's application may contain "premature assumptions" about the children's religious status<sup>394</sup>. In light of the 2018 Federal Court ruling necessitating the expressed consent of both parents in a child's conversion which was upheld in the case of *Federal Territory Registrar of Muallaf vs LCY* (2022), the religious status of Loh's children has to be decided by the courts first.

#### 17 March 2022

INGAT chairperson Dorasamy was summoned to Bukit Aman for investigations over his 25 February video commenting that Loh's children were rightfully Hindus instead of Muslims<sup>395</sup>. Dorasamy was questioned under Section 233 of the Communication and Multimedia Act 1998 and also Section 505(b)<sup>396</sup> of the Penal Code.

"It is indeed sad and outrageous that my right to freedom of speech is being limited even though I am quoting the law and its position as interpreted by the honourable courts. It is also nonsensical that I am being investigated for disturbing the peace when I had specifically stated

<sup>393</sup> Hidir Reduan Abdul Rashid, 'Maips seeks court order to safeguard Islamic education of Loh's children' (Malaysiakini, 8 March 2022) <a href="https://www.malaysiakini.com/news/613541">https://www.malaysiakini.com/news/613541</a> accessed 10 April 2023

<sup>394 &#</sup>x27;Lawyers: Premature for Maips to assume Loh's children are 'converts' (Malaysiakini, 9 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/613660">https://www.malaysiakini.com/news/613660</a> accessed 10 April 2023

<sup>395</sup> Raveena Nagotra, 'Cops question activist over video on unilateral conversion' (Malaysiakini, 17 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/614837">https://www.malaysiakini.com/news/614837</a>> accessed 10 April 2023

<sup>396</sup> Section 505(b) of the Penal Code: "Whoever makes, publishes or circulates any statement, rumour or report...(b) with intent to cause, or which his likely to cause, fear or alarm to the public, or to any section of the public where by any person may be induced to commit an offence against the State or against the public tranquillity...shall be punished with imprisonment which may extend to two years or with fine or with both."

	in my video that matters should be left to the honourable courts and not be politicised or racialised. Constitutional freedom must prevail."			
25 March 2022	Loh filed a judicial review leave application at the Kuala Lumpur High Court, naming the Perlis State Registrar of Converts, the MAIPS, the Perlis mufti, and the Perlis state government as respondents <sup>397</sup> . Among the declarations that Loh sought were:			
	Her children are Hindus			
	Her former spouse was legally unfit to allow the Perlis State Registrar of Converts to register their children as converts without her consent			
	Her three children do not have the legal capacity to convert to Islam without her consent			
	Section 117(b) of the Administration of the Religion of I Enactment 2006 is constitutionally invalid			
	Loh applied for an order of <i>ceriatori</i> to revoke the Declaration of Conversion to Islam, dated July 7, 2020, issued by the Perlis State Registrar of Converts in the name of her three children, and also other cards on their conversion to Islam that have been issued by other parties, and also prevent any party from issuing such a card <sup>398</sup> . In addition, Loh applied for an order of <i>mandamus</i> to compel the Perlis State Registrar of Converts to cancel the names of her three children or their Muslim names in their registrar, as well as a prohibition order to prevent the Perlis Mufti (including through officers or the Perlis Religious Department) from issuing statements that imply that her children are converts.			
29 March 2022	In response to Loh's judicial review application, PAS "sternly" warned against anyone who tried to nullify the conversion of			

<sup>397</sup> Hidir Reduan Abdul Rashid, 'Loh files to nullify children's unilateral Islamic conversion' (Malaysiakini, 25 March 2022) <a href="https://www.malaysiakini.com/news/615873">https://www.malaysiakini.com/news/615873</a> accessed 10 April 2023

<sup>398</sup> Nurbaiti Hamdan, 'Court sets Aug 1 to decide on Loh's time extension application in unilateral conversion case' (The Star, 17 May 2022) <a href="https://www.thestar.com.my/news/nation/2022/05/17/court-sets-aug-1-to-decide-on-time-extension-application-in-unilateral-conversion-case">https://www.thestar.com.my/news/nation/2022/05/17/court-sets-aug-1-to-decide-on-time-extension-application-in-unilateral-conversion-case</a> accessed 10 April 2023

Loh's children<sup>399</sup>. PAS Information Chief Khairil Nizam Khirudin said that the children's conversion was based on their "understanding, awareness and willingness (as free human beings)." He also claimed that the High Court decision in February only concerned the children's welfare and not religious matters, thus making ordering or allowing the children to leave Islam out of the question.

On the same day, Loh's lawyers labelled PAS' warning as "a serious interference with the administration of justice" and "contempt of court<sup>400</sup>," as the matter of unilateral conversion is already pending before the Kuala Lumpur High Court. "We hope that this case will not be politicised and the legal process be allowed to take its own course. We believe in the legal process and we place our trust in the judiciary to resolve the dispute between the parties amicably."

#### 30 March 2022

In response to PAS' warning, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) called it "extreme and seditious <sup>401</sup>." The joint statement was signed by president Jagir Singh Arjan Singh, deputy president Daozhang Tan How Chieow and three vice-presidents RS Mohan Shan, Archbishop Julian Leow Beng Kim, and the Venerable Seet Lee Terk.

"It is the constitutional right of the mother to file an application in the High Court to seek remedy for the alleged illegal conversion of her three children by the father to Islam. Thus, this is purely a civil matter between mother and father of the three children...Khairil Nizam is unlawfully and unconstitutionally imposing his view of the matter and trying to usurp the power of the courts." In the statement, MCCBCHST also asserted that by issuing the warning to Loh, Khirudin contravened Article 121(1)<sup>402</sup> in the Federal Constitution, as well

<sup>399 &#</sup>x27;PAS issues 'stern warning' against moves to nullify conversion of Loh's children' (Free Malaysia Today, 29 March 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/03/29/pas-issues-stern-warning-against-moves-to-nullify-conversion-of-lohs-children/> accessed 10 April 2023

<sup>400 &#</sup>x27;PAS in contempt by warning Loh of children's conversion: Lawyers' (Malaysiakini, 29 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/616261">https://www.malaysiakini.com/news/616261</a> accessed 10 April 2023

<sup>401 &</sup>quot;PAS leader's statement on Loh's children conversion issue 'seditious" (Malaysiakini, 30 March 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/616320">https://www.malaysiakini.com/news/616320</a> accessed 10 April 2023

<sup>402</sup> Article 121(1) in the Federal Constitution states that there shall be two high courts (the High Court in Malaya, as well as the High Court in Sabah and Sarawak) of co-ordinate jurisdiction and status, and they shall have jurisdiction and powers as may be conferred by

	as Sections 298A <sup>403</sup> , 504 <sup>404</sup> , 505 <sup>405</sup> , 506 <sup>406</sup> of the Penal Code.		
1 April 2022	Loh lodged a police report at Sentul police station against PAS' Ulama Wing's statement, contending that it was "a form of criminal threat, incitement, and misuse of multimedia intended to prevent (her) from obtaining the orders sought in the judicial review application <sup>407</sup> ."		
29 April 2022	The Kuala Lumpur High Court heard MAIPS' locus standi application. Loh's lawyers submitted that MAIPS acted outside its state territorial jurisdiction in its bid to intervene in Loh's divorce proceedings 408. The said divorce proceedings are a civil court matter that is under the Law Reform (Marriage and Divorce) Act 1976, thus MAIPS should not be involved. MAIPS, on the other hand, claimed that it is merely carrying out its "legal duty" to ensure the welfare of Loh's children, and that the state enactment empowers it with the jurisdiction to provide for the religious education of any convert that is registered in Perlis. Heated arguments emerged from both sides when both legal teams touched on the issue of unilateral conversion, but this was halted by the judge with a reminder that the present case only involved the interest and welfare of the children.  June 15 was fixed as a date for the court decision on whether to		

or under federal law. In their statement, MCCBCHST contended that in his warning, PAS Information Chief Khairil Nizam Khirudin challenged the jurisdiction vested in the High Courts.

<sup>403</sup> Section 298A pertains to causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion

<sup>404</sup> Section 504 of the Penal Code: "Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment for a term which may extend to two years or with fine or with both."

 $<sup>405\,\</sup>mbox{Section}\,505$  of the Penal Code pertains to statements conducing to public mischief.

<sup>406</sup> Section 506 of the Penal Code: "Whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to two years or with fine or with both; if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both."

<sup>407 &#</sup>x27;Loh makes police report against PAS for remarks on her kids' faith' (Malaysiakini, 1 April 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/616631">https://www.malaysiakini.com/news/616631</a> accessed 10 April 2023

<sup>408</sup> Hidir Reduan Abdul Rashid, 'Loh's lawyers: 'Busybody' Maips wants to intervene in divorce proceedings' (Malaysiakini, 29 April 2022) < https://www.malaysiakini.com/news/619727> accessed 10 April 2023

	grant leave to MAIPS to intervene in the divorce proceedings.	
17 May 2022	The Kuala Lumpur High Court received Loh's application for time extension in her judicial review application in her bid to challenge her children's unilateral conversion to Islam <sup>409</sup> . Loh's application was objected to by the four respondents, on grounds that she had exceeded the permitted timeline (i.e., 90 days after the three children were converted to Islam on 7 July 2020). Loh's lawyer argued that there was no such delay, as she only found out about her children's conversion on 10 March 2022 <sup>410</sup> , and the judicial review application was filed 15 days later on 25 March 2022.  August 1 was fixed as a date for the court decision on whether to grant the said application.	
15 June 2022	MAIPS' application to intervene in Loh's divorce proceedings was dismissed by the Kuala Lumpur High Court, with an order to MAIPS to pay RM8,000 in costs to Loh <sup>411</sup> . This thus meant that MAIPS was not able to apply to be allowed to provide Islamic education to the children. The Judge ruled that MAIPS failed to prove itself as an "interested party" in relation to the betterment of the children's lives, and that her ruling would be the same regardless of the children's religious status. The Judge asserted that MAIPS only has jurisdiction for Muslims in Perlis, and the children's connection to Perlis was only "transitory" as they live in Selangor. Furthermore, with the children now under Loh's full custody and care, MAIPS also failed to prove that the single mother did not ensure that her children continued to receive religious education. The Judge also noted that MAIPS also failed to seek Muniandy's views in relation to the bid to vary Loh's full custody order.	

<sup>409</sup> Nurbaiti Hamdan, 'Court sets Aug 1 to decide on Loh's time extension application in unilateral conversion case' (The Star, 17 May 2022) <a href="https://www.thestar.com.my/news/nation/2022/05/17/court-sets-aug-1-to-decide-on-time-extension-application-in-unilateral-conversion-case">https://www.thestar.com.my/news/nation/2022/05/17/court-sets-aug-1-to-decide-on-time-extension-application-in-unilateral-conversion-case</a> accessed 10 April 2023

<sup>410</sup> Loh's lawyers wrote to the Perlis State Registrar of Converts to ascertain her children's conversion to Islam
411 Hidir Reduan Abdul Rashid, 'Court blocks Maips from intervening in Loh's divorce case' (Malaysiakini, 15 June 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/624801">https://www.malaysiakini.com/news/624801</a> accessed 10 April 2023

1 August 2022	Kuala Lumpur High Court granted leave to Loh for her time extension application for her judicial review <sup>412</sup> . The Judge ruled that Loh did not exceed the time limit as set in Order 53, Rule 3(6) of the Rules of Court <sup>413</sup> .  March 21, 2023, was set as the hearing date.
20 September 2022	The Kuala Lumpur High Court granted an <i>ex-parte</i> application leave by Loh to initiate committal proceedings against her former spouse, based on allegations of abduction and unilateral conversion of her children <sup>414</sup> . Loh's counsel argued that Muniandy carried out those actions with full awareness of Loh's sole custodyship of the children.
7 February 2023	In a unanimous decision, the Court of Appeal allowed MAIPS to intervene and vary Loh's custody order, thus quashing the June 15 Kuala Lumpur High Court decision <sup>415</sup> . The Court of Appeal ruled that a reading of Order 15 Rule 6(2) of Court 2012 with Section 96 of the Law Reform (Marriage and Divorce) Act 1976 would confer upon MAIPS a legal right to intervene. MAIPS indicated that they will file the variation application. Loh has also stated that she filed a stay for the said application <sup>416</sup> .
21 March 2023	The Kuala Lumpur High Court (Appellate and Special Powers) heard arguments on the merits of Loh's judicial review application <sup>417</sup> . Loh's lawyer contended that the express consent of both parents is needed before a child can be converted to Islam in light of the 2018 Federal Court ruling. In the same ruling, the

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<sup>412</sup> Kenneth Tee, 'High Court grants Hindu mum Loh Siew Hong leave to challenge kids' unilateral conversion to Islam' (The Malay Mail, 1 August 2022) <a href="https://www.malaymail.com/news/malaysia/2022/08/01/high-court-grants-hindu-mum-loh-siew-hong-leave-to-challenge-kids-unilateral-conversion-to-islam/20351">https://www.malaymail.com/news/malaysia/2022/08/01/high-court-grants-hindu-mum-loh-siew-hong-leave-to-challenge-kids-unilateral-conversion-to-islam/20351</a>> accessed 10 April 2023

<sup>413</sup> Order 53, Rule 3(6) of the Rules of Court requires judicial review applications to be made within three months from the date when the grounds of the application is first made available.

<sup>414 &#</sup>x27;Court allows Loh to initiate committal proceeding against ex-husband' (Malaysiakini, 20 September 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/636409">https://www.malaysiakini.com/news/636409</a> accessed 10 April 2023

<sup>415</sup> Isabelle Leong, 'Appeals court allows Maips to intervene in Loh's custody case' (Malaysiakini, 7 February 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/654220">https://www.malaysiakini.com/news/654220</a> accessed 10 April 2023

<sup>416 &#</sup>x27;Judge recuses herself from hearing MAIPs' bid to vary Loh's custody order' (Malaysiakini, 7 April 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/661439">https://www.malaysiakini.com/news/661439</a> accessed 10 April 2023

<sup>417</sup> Hidir Reduan Abdul Rashid, 'May 11 verdict on Loh's bid to quash children's unilateral conversion' (Malaysiakini, 21 March 2023)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/659436">https://www.malaysiakini.com/news/659436</a>> accessed 10 April 2023

Federal Court also sided with Gandhi, agreeing that the English version of Article 12(4) prevails over the Malay edition<sup>418</sup>, thus making the unilateral conversion by Gandhi's former spouse unlawful. The lawyer also argued that there was no successful attempt by the Attorney-General in making the Malay version of the Federal Constitution the authoritative text over the English version<sup>419</sup>. In rebuttal, the respondents' lawyer submitted that the Yang di-Pertuan Agong's attendance during the launch event<sup>420</sup> confers the authoritativeness on the Malay version of the Federal Constitution without the need for actual gazettement.

May 11, 2023, was fixed as the date of the court decision about the unilateral conversion case.

#### 5 April 2023

The Kuala Lumpur High Court imposed a RM20,000 fine on Muniandy for contempt of court<sup>421</sup>. The Judge ruled that in light of the history of the case and relevant case documents, Muniandy was demonstrated to be aware of his actions (i.e., abduction of his children and unilaterally converting his children to Islam), and that he went missing to evade the court order that granted Loh sole guardianship of the children. "By not complying with the court order, [Muniandy] has triggered a chain of events resulting in the petitioner running around and filing various court applications to be reunited with her children, who were deprived of their mother when they were passed from one person to another." Muniandy was ordered to pay the fine within 14 days, failing which he would be jailed for 14 days.

Muniandy's counsel filed an application on behalf of his client to stay the verdict, pending their appeal to the Court of Appeal - a hearing date for the stay application has yet to be fixed.

<sup>418</sup> Whilst the English version of the Federal Constitution uses the term "parent or guardian" in Article 12(4), whilst the Malay version of the Federal Constitution reads as "ibu atau bapa" (mother or father)

<sup>419</sup> Loh's lawyer was referring to the Opening of Legal Year launch event at Putrajaya on 9 January 2023, in which Attorney-General Idris Harun gave a speech where he said that the Attorney-General's Chambers (AGC) is proposing to the federal government for the Malay version of the Federal Constitution to be made the authoritative version.

<sup>420</sup> Refer to the previous footnote about the Opening of Legal Year launch event

<sup>421</sup> Hidir Reduan Abdul Rashid, 'Ex-husband in conversion case fined RM20k for contempt of court' (Malaysiakini, 5 April 2023) <a href="https://www.malaysiakini.com/news/661136">https://www.malaysiakini.com/news/661136</a> accessed 10 April 2023

-	The Federal Court fixed 6 July to hear Loh's leave application to remove MAIPS from her custody case <sup>422</sup> .
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422 Hidir Reduan Abdul Rashid, 'July 6 hearing of Loh's bid to remove Maips from custody case' (Malaysiakini, 6 April 2023) <a href="https://www.malaysiakini.com/news/661293">https://www.malaysiakini.com/news/661293</a> accessed 10 April 2023



# DEATH PENALTY

#### **DEATH PENALTY**

In December 2022, the United Nations General Assembly adopted the 9<sup>th</sup> resolution for a moratorium on the use of the death penalty, with almost two-thirds majority in favour of the resolution, including Malaysia<sup>423</sup>. Nonetheless, Malaysia's death row population was sizable in 2022: 1,337<sup>424</sup> compared to 1,366<sup>425</sup> in 2021. Convictions under the offence of drug trafficking continued to be the highest: 891 out of the 1,337 prisoners on death row. Other prisoners were convicted of offences such as murder (415 persons), discharging and trafficking firearms (17 persons), and waging war against the Yang di-Pertuan Agong (7 persons) to name a few. Meanwhile, the moratorium on the death penalty in Malaysia remains in place, and according to the Home Ministry in a recent parliamentary reply<sup>426</sup>, 198 prisoners on death row have been considered for either a reduced sentence or pardon since 2009.

By the end of 2021, more than two thirds of the world's countries (approximately 170<sup>427</sup>) abolished the death penalty in law or practice<sup>428</sup>. 55 countries, among which included Malaysia, still retained the death penalty<sup>429</sup>.

Against that backdrop, administrations since Pakatan Harapan, including the Muafakat Nasional<sup>430</sup> then the Perikatan Nasional cabinet, have displayed abolitionist intentions. Throughout 2022, further developments toward abolition in Malaysia rode on the back of harrowing executions in Singapore. The city-state resumed executions<sup>431</sup> in March 2022 after a two-year pause, with five hanged within less than four months. Among them is the

<sup>423 &#</sup>x27;9th Resolution for a moratorium on the death penalty: the trend is growing' (World Coalition Against the Death Penalty, 20

December 2022) <a href="https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-a-moratorium-on-the-death-penalty-the-deat

growing/#:~:text=By%20World%20Coalition%20Against%20the,22%20abstentions%20and%209%20absent> accessed 9 March 2023

<sup>424</sup> Written Answer in Parliament - Question 12, 3rd Meeting of the 5th Session of the 14th Parliament

 $<sup>425\</sup> Written\ Answer\ in\ Parliament\ -\ Question\ 143,\ 1st\ Meeting\ of\ the\ 4th\ Session\ of\ the\ 14th\ Parliament$ 

<sup>426</sup> Written Answer in Parliament - Question 12, 3rd Meeting of the 5th Session of the 14th Parliament

<sup>427 &#</sup>x27;Death penalty' (United Nations Human Rights Office of the High Commissioner) <a href="https://www.ohchr.org/en/topic/death-penalty">https://www.ohchr.org/en/topic/death-penalty</a> accessed 9 March 2023

<sup>428 &#</sup>x27;Death penalty 2021: Facts and figures' (Amnesty International, 24 May 2022)

<sup>&</sup>lt;a href="https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/">https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/</a> accessed 9 March 2023 429 Ibid

<sup>430</sup> Rajvinder Singh, 'Cabinet to discuss report on abolishing capital punishment - Takiyuddin' (The Sun Daily, 13 August 2020)

<sup>&</sup>lt;https://www.thesundaily.my/local/cabinet-to-discuss-report-on-abolishing-capital-punishment-takiyuddin-KH3458873> accessed 9 March 2023

<sup>431 &#</sup>x27;Singapore carries puth fifth execution since March', (Aljazeera, 22 July 2022)

<sup>&</sup>lt;a href="https://www.aljazeera.com/news/2022/7/22/singapore-carries-out-fifth-execution-since-march">https://www.aljazeera.com/news/2022/7/22/singapore-carries-out-fifth-execution-since-march</a> accessed 9 March 2023

high-profile case of Nagaenthran Dharmalingam<sup>432</sup>, an intellectually-disabled Malaysian convicted of trafficking just over 40 grams of heroin.



Moment of silence for Nagaenthran during the Human Rights Report 2021 Launch. The Launch was held on the same day as Nagaenthran's execution on 27<sup>th</sup> April 2022.

Nagaenthran's case sparked a wave of events on both sides of the strait. Hundreds<sup>433</sup> of protesters gathered in Singapore, while former Prime Minister Ismail Sabri, former Foreign Minister Saifuddin Abdullah and the Yang Di-Pertuan Agong asked the Singapore government for clemency <sup>434</sup> prior to Nagaenthran's execution. After the former administration displayed allyship <sup>435</sup> with anti-death penalty advocates upon Nagaenthran's death in April, calls for Malaysian policymakers to abolish the death penalty once and for all grew stronger<sup>436</sup>.

 $<sup>432\ &#</sup>x27;Malaysia\ Nagaenthran\ executed\ on\ drugs\ charges\ in\ Singapore'\ (Aljazeera,\ 27\ April\ 2022)$ 

<sup>&</sup>lt;a href="https://www.aljazeera.com/news/2022/4/27/holdnagaenthran-hanged-at-dawn-in-singapore">https://www.aljazeera.com/news/2022/4/27/holdnagaenthran-hanged-at-dawn-in-singapore</a> accessed 9 March 2023

<sup>433</sup> Suranjana Tewari, 'How a Singapore execution set off a wave of protest' (BBC News, 28 May 2022)

<sup>&</sup>lt;a href="https://www.bbc.com/news/world-asia-61403692">https://www.bbc.com/news/world-asia-61403692</a> accessed 9 March 2023

<sup>434 &#</sup>x27;Foreign Ministry thanks those who tried to save Nagaenthran' (Malaysiakini, 27 April 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/619459">https://www.malaysiakini.com/news/619459</a>> accessed 9 March 2023

<sup>435 &#</sup>x27;Foreign Ministry thanks those who tried to save Nagaenthran' (Malaysiakini, 27 April 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/619459">https://www.malaysiakini.com/news/619459</a>> accessed 9 March 2023

<sup>436</sup> Linda Lakhdhir, Malaysia's Death Penalty Hypocrisy' (Human Rights Watch, 28 April 2022)

<sup>&</sup>lt;a href="https://www.hrw.org/news/2022/04/28/malaysias-death-penalty-hypocrisy">https://www.hrw.org/news/2022/04/28/malaysias-death-penalty-hypocrisy</a> accessed 9 March 2023

Signs of positive policy development followed. In June, the Cabinet agreed in principle with abolishing the mandatory death penalty<sup>437</sup>, with an eye on formulating alternative punishments for offences that warranted the punishment. This was later reported to be applicable to 11 offences carrying the mandatory death penalty, as well as 23 other offences that carry the discretionary death penalty<sup>438</sup>. As part of an intention to reform the criminal justice system, the Cabinet also acknowledged the need to strengthen judicial discretion in sentencing offenders.

Seven bills, including abolishing the mandatory death penalty, were tabled in Parliament early October 2022<sup>439</sup>. Among them included a proposal to introduce discretionary death penalty alongside natural life imprisonment, where a person would be subjected to natural life imprisonment for offences such as murder and terrorism-related crimes:

- (a) Criminal Procedure Code (Amendment) (No. 3) Bill 2022
- (b) Dangerous Drugs (Amendment) Bill 2022
- (c) Kidnapping (Amendment) Bill 2022
- (d) Criminal Justice (Amendment) Bill 2022
- (e) Arms (Amendment) Bill 2022
- (f) Penal Code (Amendment) (No.2) Bill 2022
- (g) Firearms (Increased Penalties) (Amendment) Bill 2022

These bills, however, were put on hold following the dissolution of the Parliament on 10<sup>th</sup> October. The introduction of natural life imprisonment alongside the discretionary death penalty also attracted swift criticism from civil society, as it was deemed "a regressive type of penal sanction" that is unaligned with rehabilitative principles<sup>440</sup>. It could also have exacerbated a preference for retribution rather than rehabilitation in sentencing offenders; in the event the bills were to be passed, those in vulnerable socioeconomic circumstances could possibly escape the gallows, but still be faced with a 'slow death' from natural life

<sup>437 &#</sup>x27;Malaysia agrees to abolish mandatory death penalty' (AP News, 10 June 2022) <a href="https://apnews.com/article/malaysia-government-and-politics-8dd4dcb423c4e7049393e87a400d1438">https://apnews.com/article/malaysia-government-and-politics-8dd4dcb423c4e7049393e87a400d1438</a>> accessed 9 March 2023

<sup>438</sup> Danial Kadir, 'Judicial independence crucial for judges to make rulings, says minister' (Free Malaysia Today, 14 October 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/10/14/judicial-independence-crucial-for-judges-to-make-rulings-says-minister/> accessed 9 March 2023

<sup>439 &#</sup>x27;7 bills tabled over abolition of mandatory death sentence' (Free Malaysia Today, 6 October 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/10/06/7-bills-tabled-over-abolition-of-mandatory-death-sentence/>accessed 9 March 2023

 $<sup>440\ &#</sup>x27;Human\ Rights\ Activists\ Urge\ Move\ Forward\ Toward\ Abolishing\ Death\ Penalty'\ (The\ Sun\ Daily,\ 20\ January\ 2023)$ 

<sup>&</sup>lt;https://www.thesundaily.my/local/human-rights-activists-urge-move-toward-abolishing-death-penalty-CG10529931> accessed 9 March 2023

imprisonment. Based on a study by local think tank The Centre<sup>441</sup>, the Malaysian public might be against the idea of natural life imprisonment; for the case of a domestic abuse victim found guilty of murdering her husband, there was more support for a jail term as a proportionate punishment (39%) compared to a life sentence (34%) or the discretionary death penalty (23%).

Moreover, issues with the application of the death penalty in Malaysia remain even beyond abolishing the mandatory aspect of it. For one, there is still a lack of limitations on using the death penalty in Malaysia on vulnerable groups. As it stands, only offenders who are (i) under the age of 18, (ii) pregnant, or (iii) have young children are excluded from the application of the death penalty<sup>442</sup>. There has yet to be any explicit prohibition on meting out the death penalty against those who either suffer from mental health issues or are elderly in Malaysia — contrary to recommendations by the UN<sup>443</sup>.

On top of that, the focus on 'small fish' by enforcement agencies continues. Bukit Aman's Narcotics Crime Investigation Department (NCID) proposed to lower the weight threshold for the drug trafficking offence<sup>444</sup>. The proposal has received support from Alliance for Safe Community chairman Tan Sri Lee Lam Thye, who called for it to be tabled in the Dewan Rakyat as soon as possible<sup>445</sup>. If passed, the move could allow the death penalty to be applied more widely than before.

Beyond drug offences, persons facing vulnerabilities such as PTSD and battered wife syndrome also face a lack of protection against the application of the death penalty in Malaysia<sup>446</sup>.

Nonetheless, the current cabinet shows signs of moving towards reducing the use of the death penalty, but aims to retain the discretionary death penalty for the foreseeable future. The bills aforementioned are to be re-tabled by deputy law minister Ramkarpal Singh by April 2023, alongside another bill which would allow affected prisoners to file applications

<sup>441</sup> Jia Vern Tham, 'Part 2: When Do Malaysians Support the Death Penalty?' (The Centre, 18 June 2022)

https://www.centre.my/post/when-do-malaysians-support-the-death-penalty accessed 9 March 2023

<sup>442</sup> Full report can be accessed at: https://www.monash.edu/\_\_data/assets/pdf\_file/0016/2220622/MU\_ADPAN\_report\_v7.pdf 443 Full report can be accessed at:

https://www.ohchr.org/Documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/CCPR/Discussion/2015/PenalReformInternational.documents/HRBodies/PenalReformInternational.documents/HRBodies/PenalReformInternational.documents/HRBodies/PenalReformInternational.documents/HRBodies/PenalReformInternational.documents/HRBodies/PenalReformInternational.documents/HRBodies/PenalReformInternational.documents/HRBodies/PenalReformInternational.documents/HRBodies/PenalReformInternational.documents/HRBodies/PenalReformInternationalPenalReformInternationalPenalReformInternationalPenalReformInternat

<sup>444 &#</sup>x27;Dangerous Drugs Act Needs More Teeth: Bukit Aman' (The Vibes, 2 October 2021)

<sup>&</sup>lt;https://www.thevibes.com/articles/news/43311/Need-for-Dangerous-Drugs-Act-to-have-more-teeth-Bukit-Aman> accessed 9
March 2023

<sup>445 &#</sup>x27;Table proposed amendments to Dangerous Drugs Act soon, says Lee Lam Thye' (New Straits Times, 3 October 2021)

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2021/10/733202/table-proposed-amendments-dangerous-drugs-act-soon-says-lee-lam-thye> accessed 9 March 2023

<sup>446</sup> Jacob Thorburn, 'British woman, 55, who escaped the death penalty in Malaysia for killing her abusive husband returns to the UK

<sup>- &#</sup>x27;wearing ring on wedding finger' (Mail Online, 18 September 2021) https://www.dailymail.co.uk/news/article-10004391/British-woman-escaped-Malaysia-death-penalty-returns-UK-ring-wedding-finger.html accessed 9 March 2023

at the Federal Court with "help from lawyers and the Prisons Department" 447. Ramkarpal also participated in a dialogue with death-row and life-sentenced prisoners on the issue of abolishing the mandatory death penalty in February 2023 448. The Legal Affairs Division also touted the formation of a Sentencing Council during a workshop with civil society organisations in January 2023. These instances portray a general willingness to consider progressive reforms to the criminal justice system.

Pro-abolition advocacy in Malaysia remains prominent and creative. Throughout 2022, non-governmental organisations such as Sebaran Kasih and the Anti-Death Penalty Asia Network (ADPAN) have actively organised press conferences 449, protests 450, and exhibitions 451 to continue raising awareness on issues of access to justice and disproportionate sentencing involving the death penalty in the country. Academics, including the Centre of Excellence for Research in AIDS (Ceria), and lawyers have continued to voice against the use of the death penalty specifically for the offence of drug trafficking 452. It is hoped that more legal reforms will be considered and implemented alongside the abolition of the mandatory death penalty — with a view towards a total abolition in Malaysia.

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<sup>447 &#</sup>x27;Ramkarpal: Bill related to abolition of mandatory death penalty to be table at Parliament next month' (The Malay Mail, 22 February 2023) https://www.malaymail.com/news/malaysia/2023/02/22/ramkarpal-bill-related-to-abolition-of-mandatory-death-penalty-to-be-tabled-at-parliament-next-month/56250 accessed 9 March 2023

<sup>449</sup> S Vinothaa, 'Di Sebalik Pintu Besi' - inmate's last song from S'pore death row' (Yahoo News, 26 February 2022)

<sup>&</sup>lt;a href="https://malaysia.news.yahoo.com/di-sebalik-pintu-besi-inmate-005403571.html">https://malaysia.news.yahoo.com/di-sebalik-pintu-besi-inmate-005403571.html</a> accessed 9 March 2023

<sup>450 &#</sup>x27;Kalwant's family rushes to halt hanging without legal help in Singapore' (The Vibes, 4 July 2022)

<sup>&</sup>lt;https://www.thevibes.com/articles/news/65026/kalwants-family-rushes-to-halt-hanging-without-legal-help-in-singapore> accessed 9 March 2023

<sup>451 &#</sup>x27;ADPAN Co-Organises Death Penalty and Torture Exhibiton from 14th' (China Press, 10 October 2022)

<sup>&</sup>lt;a href="https://www.chinapress.com.my/20221010/adpan-">https://www.chinapress.com.my/20221010/adpan-</a>

<sup>14%</sup>E6%97%A5%E8%B5%B7%E8%81%94%E5%8A%9E-%E6%AD%BB%E5%88%91%E4%B8%8E%E9%85%B7%E5%88%91%E5%B1%95%E8%A7%88/> accessed 9 March 2023

<sup>452</sup> Reshna Reem Ganesan, 'Don't jail addicts, send them for treatment, says expert' (Free Malaysia Today, 25 July 2022) <a href="https://www.freemalaysiatoday.com/category/nation/2022/07/25/dont-jail-addicts-send-them-for-treatment-says-expert/">https://www.freemalaysiatoday.com/category/nation/2022/07/25/dont-jail-addicts-send-them-for-treatment-says-expert/</a> accessed 9 March 2023



# THE STATE OF CLIMATE EMERGENCY IN MALAYSIA: A BACKGROUND

### THE STATE OF CLIMATE EMERGENCY IN MALAYSIA: A BACKGROUND

#### 1.0 Introduction

The escalating climate emergency<sup>453</sup> is putting the right to life for millions of people, both present and future generations, at risk. This crisis reveals a striking injustice in which developed economies and large corporations have disproportionate impact on the poorest and most vulnerable communities, who caused the least but struggle the most to cope with the consequences. It is imperative to address this growing crisis and work towards safeguarding human rights without further delay. The universal recognition of the human right to a clean, healthy and sustainable environment provides a powerful response to the triple planetary crisis of climate change, biodiversity loss and pollution. In a resolution in July 2022, the Human Rights Council and the United Nations General Assembly (UNGA) recognised this right and urged various stakeholders to intensify efforts to ensure a healthy and sustainable environment for all<sup>454,455</sup>. This resolution also affirms that the promotion of this right "requires the full implementation" of the multilateral environmental agreements (MEAs) "under the principles of international environmental law." To further address climate emergency, UNGA adopted another resolution in March 2023, empowering it to seek International Court of Justice (ICJ) advisory opinions on the obligations of governments to address climate change<sup>456</sup>. Whilst not legally binding, ICI advisory opinions "carry legal authority and moral weight", which can serve as a catalyst for stronger climate action by States.

The human rights implications of climate change primarily involve three duties for governments. Firstly, to respect human rights by refraining from actions that would interfere with or curtail the enjoyment of human rights (procedural obligations). Secondly, to protect human rights against violations by third parties, such as non-state actors (substantive obligation). Thirdly, to fulfil human rights by taking measures that ensure the realisation of rights for all members of society (obligations to specific groups). These three obligation categories are derived from the overarching framework of the UN Special

<sup>453</sup> The British daily newspaper The Guardian changed their editorial guidelines for certain language pertaining to climate.

Conventional terms such as "climate change" or "global warming", they decided, don't do justice to the dramatic research findings of climate scientists. Instead, in future, they will refer to these as "climate crisis" or "climate emergency":

https://www.theguardian.com/environment/2019/oct/16/guardian-language-changes-climate-environment

<sup>454</sup> United Nations, 'UN General Assembly Declares Access to Clean and Healthy Environment a Universal Human Right' (United Nations, 28 July 2022) <a href="https://news.un.org/en/story/2022/07/1123482">https://news.un.org/en/story/2022/07/1123482</a> accessed 31 March 2023

<sup>455</sup> United Nations Environment Programme, 'Landmark UN Resolution Confirms Healthy Environment is a Human Right' (United Nations Environment Programme, 6 December 2021) <a href="https://www.unep.org/news-and-stories/story/landmark-un-resolution-confirms-healthy-environment-human-right">https://www.unep.org/news-and-stories/story/landmark-un-resolution-confirms-healthy-environment-human-right</a> accessed 31 March 2023

<sup>456</sup> United Nations, 'General Assembly votes to seek World Court's Opinion, In Quest for 'Bolder' Climate Action' (United Nations, 29 March 2023) <a href="https://news.un.org/en/story/2023/03/1135142">https://news.un.org/en/story/2023/03/1135142</a> accessed 31 March 2023

Rapporteur Office for Human Rights and Environment<sup>457,458</sup> and will be guiding the rest of this chapter.

(a) Procedural Obligations		(b) Substantive Obligations		(c) Obligations to Specific Groups
II.	Ensuring Access to Information and Conducting Environmental Assessments; Public Participation in Environmental Decision-making; Access to Administrative, Judicial, and Other Remedies	II. III. IV.	Adaptation Obligations: Protecting Human Rights from Climate- Related Harms; Domestic Mitigation Obligations; International Cooperation Obligations; Obligations to Address Transboundary Harm; Safeguarding Human Rights in Mitigation and Adaptation Activities	I. Women; II. Youth; III. Indigenous People, among others

#### 2.0 Malaysia's Key International Climate Change Obligations

Malaysia has committed to various international agreements and frameworks aimed at addressing climate change and promoting sustainable development. These commitments are:

A State Party to the Rio Declaration and Convention on Biological Diversity. This
means that Malaysia endorses the precautionary principle 459 and recognises the
importance of environmental rights;

457 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment - https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/017/26/PDF/G1501726.pdf?OpenElement

<sup>458</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment - https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf?OpenElement 459 The precautionary principle enables decision-makers to adopt precautionary measures when there is uncertain scientific evidence

<sup>459</sup> The precautionary principle enables decision-makers to adopt precautionary measures when there is uncertain scientific evidence about a health or human hazard and corresponding stakes are high. This principle is enshrined in a number of international treaties on climate change.

- Ratification of the Paris Agreement under the United Nations Framework Convention
  on Climate Change (UNFCCC), which sets targets to limit global warming to 1.5°C
  above pre-industrial levels (or well below 2°C), and also to consider human rights
  when taking action to address climate change;
- Implementation of the Hyogo and Sendai Framework for disaster risk reduction;
- Adoption of the 2030 Agenda for Sustainable Development, which includes the Sustainable Development Goals (SDGs).

Malaysia is currently in negotiations for the global plastic treaty under the United Nations Environment Programme (UNEP), which will be legally binding for signatories.

#### 3.0 Malaysia's Climate Governance: Key Actions and Targets

Malaysia's relative share of cumulative carbon dioxide emissions is  $0.37\%^{460}$ . At the regional level, the country's carbon emissions per capita of 7.63 tonnes are higher than those of Thailand and Singapore.

The highest level of decision-making is helmed by the National Steering Committee on Climate Change<sup>461</sup> and the Malaysian Climate Change Action Council (MyCAC)<sup>462</sup>. These bodies are tasked with addressing climate change at various levels of climate governance, from adaptation and mitigation to driving green and low carbon economic growth, to catalysing green technology. The National Climate Change Policy 2009 is currently under review<sup>463</sup> to be replaced by its updated iteration.

At the state level, key actions include international funding secured by Thinkcity<sup>464</sup>, with UN Habitat as implementing partner to operate the Penang Nature Based Climate Adaptation Programme<sup>465</sup>. The Selangor state government set up an adaptation council under the Selangor Climate Plan<sup>466</sup>, while a climate fund was established in Kuala Lumpur

<sup>460</sup> IRENA, Malaysia Energy Transition Outlook (International Renewable Energy Agency 2023)

<sup>461 &#</sup>x27;Malaysia Third Biennial Update Report to the UNFCCC' (2020) [page 24]

<sup>&</sup>lt;a href="https://unfccc.int/sites/default/files/resource/MALAYSIA">https://unfccc.int/sites/default/files/resource/MALAYSIA</a> BUR3-UNFCCC Submission.pdf> accessed 31 March 2023

<sup>462 &#</sup>x27;Statement by Mr. Azril Abd Aziz Deputy Permanent Representative of Malaysia to the United Nations. Agenda Item 20:

Sustainable Development' (Ministry of Foreign Affairs, 11 October 2021) <a href="https://www.kln.gov.my/web/usa\_un-new-york/news-new-york/

 $from-mission/-/blogs/statement-2c-sustainable-development-agenda-item-20-11-october-2021>\ accessed\ 31\ March\ 2023$ 

<sup>463 &#</sup>x27;Asila Jalil, Climate change governance to be strengthened' (The Malaysian Reserve, 23 March 2023)

<a href="https://themalaysianreserve.com/2022/03/23/climate-change-governance-to-be-strengthened/">https://themalaysianreserve.com/2022/03/23/climate-change-governance-to-be-strengthened/</a> accessed 31 March 2023

<sup>464</sup> ThinkCity, 'The Penang Nature-Based Climate Adaptation Programme (PNBCAP)' (ThinkCity, 2022)

<sup>&</sup>lt;a href="https://thinkcity.com.my/PNBCAP">https://thinkcity.com.my/PNBCAP</a> accessed 31 March 2023

<sup>465 &#</sup>x27;Nature-based Climate Adaptation Programme for the Urban Areas of Penang Island' (Adaptation Fund, 2021)

<sup>&</sup>lt;https://www.adaptation-fund.org/project/nature-based-climate-adaptation-programme-for-the-urban-areas-of-penang-island-2/>accessed 31 March 2023

<sup>466 &#</sup>x27;Selangor readies climate action plan' (The Star, 30 November 2022)

to invest in green technology<sup>467</sup>. In Johor, the state assembly has established a bipartisan Climate Change and Disaster Management Committee for the region<sup>468</sup>. Meanwhile in East Malaysia, Sarawak is the first state to enact a carbon law, and plans to establish a Climate Change Centre to oversee climate change and carbon trading as well as formulate a State Climate Change Policy<sup>469</sup>.

Malaysia's latest Nationally Determined Contribution (NDC)<sup>470</sup> aims to reduce carbon intensity against gross domestic product (GDP) by 45% by 2030, relative to 2005 levels as a baseline, with more ambitious net-zero greenhouse gas (GHG) emissions by 2050 as announced in the 12th Malaysia Plan. Achieving this goal needs an estimated RM350 to RM450 billion investment from 2030 to 2050<sup>471</sup>, with 60% from the private sector, 25% from carbon pricing (RM200 per tonne), and 15% from combined public-private financing. Malaysia has announced sectoral targets through the Low Carbon Nation Aspiration 2040 (LCNA), supported by the formation of an energy roadmap, Long-Term Low Emission Development Strategies (LT-LEDS), and the NDC Roadmap<sup>472</sup>. The energy transition will be largely into natural gas, large hydro, and the proliferation of technology like carbon capture storage (CCS), and supported by rare earth elements (REE) mining and carbon pricing mechanisms.

Large hydro is the largest contributor to Malaysia's renewable energy mix, with an installed capacity of 5,692 MW and an additional 1,777 MW expected to operate commercially from 2026 to 2035<sup>473</sup>. Malaysia has the potential to generate 13.6 GW of electricity from large hydro projects, with 3.1 GW identified in Peninsular Malaysia, 493

<sup>&</sup>lt;https://www.thestar.com.my/metro/metro-news/2022/11/30/selangor-readies-climate-action-plan> accessed 31 March 2023 467 Farid Wahab, 'DBKL introduces climate fund to invest in green tech' (The Star, 4 January 2023)

<sup>&</sup>lt;https://www.thestar.com.my/news/nation/2023/01/04/dbkl-introduces-climate-fund-to-invest-in-green-tech> accessed 31 March 2023

<sup>468</sup>Yee Xiang Yun, 'Johor assembly agrees to form committee on climate change and disaster management' (The Star, 27 March 2023) <a href="https://www.thestar.com.my/news/nation/2023/03/27/johor-assembly-agrees-to-form-committee-on-climate-change-and-disaster-management">https://www.thestar.com.my/news/nation/2023/03/27/johor-assembly-agrees-to-form-committee-on-climate-change-and-disaster-management</a> accessed 31 March 2023

<sup>469 &#</sup>x27;Sarawak to set up climate change centre, says Abang Jo' (Daily Express, 15 March 2023)

<sup>&</sup>lt;a href="https://www.dailyexpress.com.my/news/209359/sarawak-to-set-up-climate-change-centre-says-abang-jo/">https://www.dailyexpress.com.my/news/209359/sarawak-to-set-up-climate-change-centre-says-abang-jo/</a> accessed 31 March 2023

<sup>470</sup> United Nations Climate Change, 'Nationally Determined Contributions (NDCs): The Paris Agreement and NDCs' (United Nations Climate Change) <a href="https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs">https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs</a> accessed 31 March 2023

<sup>471</sup> Shazni Ong, 'RM350b-RM450b Investment Needed for Malaysia to be Net Zero GHG Emission Nation by 2050' (The Edge Markets, 9 June 2022) <a href="https://www.theedgemarkets.com/article/rm350brm450b-investment-needed-malaysia-be-net-zero-ghg-emission-nation-2050">https://www.theedgemarkets.com/article/rm350brm450b-investment-needed-malaysia-be-net-zero-ghg-emission-nation-2050</a> accessed 31 March 2023

<sup>472</sup> Ministry of Environment & Water, 'Environmental Sustainability in Malaysia: 2020-2030' (2020)

 $<sup>&</sup>lt; https://www.kasa.gov.my/resources/rujukan/Roadmap\_KASA\_2020-2030-en.pdf > accessed 31 \ March \ 2023 \ Accessed 31 \ March \ 2023 \ Accessed 32 \ March \ 2020-2030-en.pdf > accessed 32 \ March \ 2020-en.pdf > accessed 32 \ March \ 2020-2030-en.pdf > accessed 32 \ March \ 2020-20$ 

<sup>473</sup> Sustainable Energy Development Authority Malaysia, 'Malaysia Renewable Energy Roadmap: Pathway Towards Low-Carbon Energy System' (2021) <a href="https://www.seda.gov.my/reportal/wp-content/uploads/2021/12/MyRER\_webVer-1.pdf">https://www.seda.gov.my/reportal/wp-content/uploads/2021/12/MyRER\_webVer-1.pdf</a> accessed 31 March 2023

MW in Sabah, and 10 GW in Sarawak. The country aims to increase its share of renewable energy to 31% or 12.9 GW in 2025 and 40% or 18.0 GW in 2035; large hydro is projected to be the largest renewable energy source between 2025 and 2040.

Malaysia is the world's fifth-largest exporter of liquefied natural gas (LNG) in 2021<sup>474</sup>. Malaysia also heavily relies on LNG for domestic use, particularly in its industrial sector with natural gas fulfilling about 43% of that demand<sup>475</sup>. In 2018, the industrial sector consumed nearly 30% of Malaysia's total energy consumption. The Gas Association Malaysia reveals that natural gas currently meets 40% of the nation's energy needs<sup>476</sup> and given current production rates, these natural gas reserves<sup>477</sup> should last for at least another 36 years. However, it's essential to note that natural gas is primarily composed of methane, a potent GHG. In 2016, methane emissions accounted for 17% of Malaysia's greenhouse gas emissions, with the primary source being fugitive emissions from the oil and gas industries<sup>478</sup>.

We look into some net-zero pledges by important state and non-state actors in Malaysia which have seen a flow of billions of ringgit investment deals. Petronas set to achieve net-zero GHG by 2050 by increasing renewable energy (RE) investments and advancing carbon capture storage (CCS) technology on their gas facilities. The company's GHG Reduction Targets (Scope 1 and Scope 2) and Ambitions<sup>479</sup> have set targets to cap emissions at 49.5 MtCO2e in Malaysia operations by 2024 and reduce group-wide emissions by 25% by 2030, including methane emissions. However, the bulk of emissions across the value chain, Scope 3 emissions, are not yet addressed in its net-zero journey.

CIMB, a member of the Net-Zero Banking Alliance, has committed to phasing out coal from its portfolio by 2040<sup>480</sup> and halving its exposure to the thermal coal mining sector by 2030. The bank has implemented an internal carbon price of RM70 per tonne for 2023, which will rise to RM275-RM335 per tonne by 2030 for Scope 1 and 2 emissions exceeding divisional targets, with proceeds earmarked for green capital expenditure to curb Scope 1

<sup>474 &#</sup>x27;Malaysia retains position as world's 5th largest LNG exporter in 2021 — MGA' (Malaysian Investment Development Authority, 7 July 2022) <a href="https://www.mida.gov.my/mida-news/malaysia-retains-position-as-worlds-5th-largest-lng-exporter-in-2021-mga/">https://www.mida.gov.my/mida-news/malaysia-retains-position-as-worlds-5th-largest-lng-exporter-in-2021-mga/</a> accessed 31 March 2023

<sup>475</sup> IRENA, Malaysia Energy Transition Outlook (International Renewable Energy Agency 2023)

<sup>476</sup> Malaysian Gas Association, 'Gas industry in Malaysia: A complete value chain' (Malaysian Gas Association, 2023)

<sup>&</sup>lt;a href="https://malaysiangas.com/gas-industry-in-malaysia/">https://malaysiangas.com/gas-industry-in-malaysia/>

<sup>477</sup> The country's estimated natural gas reserves comprise 9.9 trillion standard cubic feet (tscf) of associated gas and 69.3 tscf of non-associated gas

<sup>478</sup> Ibid

<sup>479</sup> Petronas, 'Petronas' Pathway to Net Zero Carbon Emissions 2050: Delivering Energy in a Responsible and Sustainable Manner' (2023)

<sup>&</sup>lt;a href="https://www.petronas.com/sites/default/files/uploads/downloads/PDF%20Files/PETRONAS%20NZCE%202050%20Pathway%20Second%20Issue%20Feb%202023%20(Online%20Version).pdf">https://www.petronas.com/sites/default/files/uploads/downloads/PDF%20Files/PETRONAS%20NZCE%202050%20Pathway%20Second%20Issue%20Feb%202023%20(Online%20Version).pdf</a> accessed 31 March 2023

<sup>480 &#</sup>x27;CIMB committed to advancing sustainable practices across all sectors involved' (Bernama, 20 September 2022)

<sup>&</sup>lt;a href="https://bernama.com/en/business/news.php?id=2122149">https://bernama.com/en/business/news.php?id=2122149</a> accessed 31 March 2023

and 2 emissions. Maybank<sup>481</sup> and CIMB<sup>482</sup> have established baseline Scope 3 financed emissions, with CIMB setting 2030 sector-specific climate targets for industries like palm oil, forestry, construction, infrastructure, oil and gas, coal, mining and quarrying, and manufacturing.

TNB has announced its aspirations to become net-zero by 2050 by reducing its emission intensity by 35% and halving its coal generation capacity by 2035<sup>483</sup>. The company pledged to invest RM20 billion annually over the next three years (2022-2024) to accelerate the transition to responsible energy such as the expansion of large-scale solar (LSS) and hydropower including large hydro, and growing Carbon Capture Utilisation & Storage (CCUS) technology. The national investment arms Permodalan Nasional Berhad (PNB) and Khazanah Nasional<sup>484</sup> have committed to net-zero targets by 2050, aiming for greener portfolios and investments. PNB through its Sustainability Framework will allocate RM10 Billion for green transition<sup>485,486</sup>.

In light of the climate emergency, the sluggish progress in developing the National Adaptation Plan and funding adaptation initiatives hamper efforts to enhance community resilience and safeguard human rights. The absence of a Climate Change Act and a dedicated parliamentary select committee for climate change obstructs the creation of a robust legal framework, which is crucial for embedding human rights in climate governance and elevating the climate crisis as a priority in the nation's policy-making process. Additionally, Malaysia's National Human Rights Commission (SUHAKAM) has yet to take concrete steps on a rights-based approach 487 for climate action except for

<sup>481 &#</sup>x27;Maybank becomes first bank in Malaysia to set up Scope 3 financed emissions baseline' (The Edge Markets, 22 August 2022)
<a href="https://www.theedgemarkets.com/article/maybank-becomes-first-bank-malaysia-set-scope-3-financed-emissions-baseline">https://www.theedgemarkets.com/article/maybank-becomes-first-bank-malaysia-set-scope-3-financed-emissions-baseline</a>
accessed 31 March 2023

<sup>482</sup> Elizabeth Yee, 'CIMB first Malaysian bank to announce sector targets for net zero goal' (Business Today, 28 September 2022) <a href="https://www.businesstoday.com.my/2022/09/28/cimb-first-malaysian-bank-to-establish-scope-3-financed-emissions-baseline/">https://www.businesstoday.com.my/2022/09/28/cimb-first-malaysian-bank-to-establish-scope-3-financed-emissions-baseline/</a> accessed 31 March 2023

<sup>483</sup> Tenaga Nasional Berhad, 'Net Zero 2050: Sustainability Report 2021'

 $<sup>&</sup>lt; https://www.tnb.com.my/assets/annual\_report/TNB\_Sustainability\_Report\_2021.pdf > accessed 31 \ March 2023 + accessed 32 \ Mar$ 

<sup>484 &#</sup>x27;Khazanah launches sustainability framework and targets' (Khazanah, 10 June 2022)

<sup>&</sup>lt;https://www.khazanah.com.my/news\_press\_releases/khazanah-launches-sustainability-framework-and-targets/> accessed 31
March 2023

<sup>485</sup> Permodalan Nasional Berhad, 'Sustainability' (2019) <a href="https://www.pnb.com.my/11\_0Sustainability\_EN.php">https://www.pnb.com.my/11\_0Sustainability\_EN.php</a> accessed 31 March 2023

<sup>486 &#</sup>x27;PNB Launches Sustainability Framework Allocates RM10 Billion For Green Transition' (Business Today, 21 April 2022) <a href="https://www.businesstoday.com.my/2022/04/21/pnb-launches-sustainability-framework-allocates-rm10-billion-for-green-transition/">https://www.businesstoday.com.my/2022/04/21/pnb-launches-sustainability-framework-allocates-rm10-billion-for-green-transition/</a>> accessed 31 March 2023

<sup>487</sup> A rights-based approach in climate governance should include the primary goal of upholding human rights when formulating policies and programs, as well as identifying rights-holders, their entitlements, and the corresponding duty-bearers and their obligations. This approach necessitates empowering rights-holders to assert their claims and enabling duty-bearers to fulfil their responsibilities such as through developing human rights-based targets or indicators for climate governance. Simultaneously, Malaysia must promptly ratify other human rights conventions and treaties it has neglected, using principles and standards from international

advocacy and awareness within the SDG and Business and Human Rights (BHR) framework, leaving a gap in addressing the country's human rights implications of climate change.

#### 4.0 Right to Development: Extractivism, Maladaptation and False Solutions

Malaysia's neoliberal policies <sup>488</sup> since the '90s have promoted deregulation, private investment, and extractivism, with concessions granted to foreign corporations and politically connected elites that extract value from nature <sup>489</sup>. The national narrative emphasises extractivism, such as oil, gas, mining, cement, timber, and large hydro, as a means to fund public services <sup>490</sup> and create jobs. Today's narrative promotes large-scale extractivism for a greener, safer world to achieve climate targets, repackaged as "sustainability" in industries like mining, forest and water management. Human rights concerns arise when extractive activities take place on protected areas and Indigenous territories, failing to bring the promised economic and social benefits to these vulnerable populations. The uneven costs of extractivism are rooted in colonial and racial hierarchies <sup>491</sup>. The resulting environmental degradation disproportionately impacts vulnerable communities while enriching distant shareholders, states, and CEOs.

Projects that disregard the social, ecological, and environmental dimensions of sustainable development cannot be considered genuinely sustainable, and policies that destroy the natural environment to the extent that is irreversible, such as large hydro, mining, and forest plantations, have created significant socio-environmental conflicts. Transformative action is needed to holistically address all the structural flaws of our current development pathway, tackling issues of social exclusion and discrimination, as well as ensuring greater accountability of governments and private actors for their inaction. The government's use of the "right to development" to justify green extractivism neglects the full human rights implications. Allowing industries to avoid taking responsibility for

human rights law, such as the Universal Declaration of Human Rights and core universal human rights treaties, to guide all aspects of policy and program development.

<sup>488</sup> Bonn Juego, 'The Institutions of Authoritarian Neoliberalism in Malaysia: A Critical Review of the Development Agendas Under the Regimes of Mahathir, Abdullah, and Najib' (2018) 11 Advances in Southeast Asian Studies

<sup>&</sup>lt;a href="https://aseas.univie.ac.at/index.php/aseas/article/view/2683">https://aseas.univie.ac.at/index.php/aseas/article/view/2683</a> accessed 31 March 2023

<sup>489</sup> Teck Chee Wong & Garry Rodan, 'Malaysia's new struggle over state power' (New Mandala, 30 November 2022)

<sup>&</sup>lt;a href="https://www.newmandala.org/malaysias-new-struggle-over-state-power/">https://www.newmandala.org/malaysias-new-struggle-over-state-power/</a> accessed 31 March 2023

<sup>490</sup> Pritish Bhattacharya & Francis E. Hutchinson, 'Malaysia's Oil and Gas Sector: Constant Expectations Despite Diminishing Returns' (2022) 21 Yusof Ishak Institute <a href="https://www.iseas.edu.sg/wp-content/uploads/2022/01/ISEAS\_Perspective\_2022\_21.pdf">https://www.iseas.edu.sg/wp-content/uploads/2022/01/ISEAS\_Perspective\_2022\_21.pdf</a> accessed 31 March 2023

<sup>491</sup> Global extractivism and racial equality\* Report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: https://daccess-ods.un.org/tmp/3496973.81258011.html

negative externalities, such as environmental harm and displacement, breaches the government's duty as a duty bearer.

The Intergovernmental Panel on Climate Change (IPCC) report<sup>492</sup> warns that measures focusing on short-term gains, such as land based mitigation, mega infrastructure projects and relocation, and not addressing vulnerabilities with an inclusive and flexible approach, could result in maladaptation. In Malaysia, many development projects such as mega dams, coastal reclamation, and forest plantation under sustainable forest management have been implemented with poor design of safeguards and misalignment with SDG targets and other national targets, resulting in negative consequences. Examples include a higher risk of insecurity and conflict and a shift of burden to the most vulnerable, which raise issues of environmental justice and a just transition. Additionally, Malaysia's shift towards gas still relies on fossil fuels and poses risks, making it an expensive burden for future generations. Shallow understanding of community vulnerabilities and failure to engage equitably with affected populations can cause climate-proofing and energy transition efforts to fall short. The lack of a comprehensive National Adaptation Plan<sup>493,494</sup> and national legislation on climate change can exacerbate these issues<sup>495,496</sup>.

#### Maladaptation

The 2022 IPCC report highlights the issue of maladaptation, which occurs when climate adaptation actions inadvertently increase vulnerability and risk. Maladaptation can occur in three ways: by reinforcing existing vulnerability, redistributing vulnerability, or creating new sources of vulnerability<sup>497</sup>.

Adopting a social approach<sup>498</sup> to climate adaptation is crucial in mitigating climaterelated security risks and reducing vulnerability patterns that have been produced by

<sup>492 &#</sup>x27;Climate Change 2022: Impacts, Adaptation and Vulnerability' <a href="https://www.ipcc.ch/report/ar6/wg2/">https://www.ipcc.ch/report/ar6/wg2/</a> accessed 31 March 2023 493Rozanna Latiff, 'Malaysia Seek U.N climate adaptation funds amid deadly floods' (Reuters, 27 December 2021)

<sup>&</sup>lt;https://www.reuters.com/markets/commodities/malaysia-seeks-un-climate-adaptation-funds-amid-deadly-floods-2021-12-27/>accessed 31 March 2023

<sup>494</sup> United Nations Climate Change, 'Overview - National Adaptation Plans' (United Nations Climate Change)

<sup>&</sup>lt;a href="https://unfccc.int/topics/resilience/workstreams/national-adaptation-plans/overview">https://unfccc.int/topics/resilience/workstreams/national-adaptation-plans/overview</a> accessed 31 March 2023

<sup>495</sup> Soo Wern Jun, 'Three years to develop Malaysia's climate change Bill, says Nik Nazmi' (The Malay Mail, 23 February 2023)

<sup>&</sup>lt;https://www.malaymail.com/news/malaysia/2023/02/23/three-years-to-develop-malaysias-climate-change-bill-says-nik-nazmi/56385> accessed 31 March 2023

<sup>496 &#</sup>x27;What is climate change legislation?' (The London School of Economics and Political Science, 4 October 2022)

 $<sup>&</sup>lt;\!\!\text{https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation/}\!\!>\!\!\text{accessed 31 March 2023}$ 

<sup>497</sup> Siri Eriksen, E. Lisa F. Schipper, Morgan Scoville-Simonds, Katharine Vincent, Hans Nicolai Adam, Nick Brooks, Brian Harding, Dil

Khatri, Lutgart Lenaerts, Diana Liverman, Megan Mills-Novoa, Marianne Mosberg, Synne Movik, Benard Muok, Andrea Nightingale,

Hemant Ojha, Linda Sygna, Marcus Taylor, Coleen Vogel & Jennifer Joy West, 'Adaptation interventions and their effect on

vulnerability in developing countries: Help, hindrance or irrelevance?' (2021) 141 World Development 105383

<sup>&</sup>lt;a href="https://www.sciencedirect.com/science/article/pii/S0305750X20305118">https://www.sciencedirect.com/science/article/pii/S0305750X20305118</a> accessed 31 March 2023

<sup>498</sup> Dr Farah Hegazi & Katongo Seyuba, 'The Social Side of Climate Change Adaptation: Reducing Conflict Risk' (September 2022)

existing social and political dynamics. The failure of adaptation policies to address these dynamics can further entrench power relations, silencing marginalised voices and exacerbating existing inequalities. A human rights-based approach to climate adaptation is essential to ensure that adaptation efforts foster participation and social inclusion and prioritise the rights and needs of affected communities in decision-making processes.

#### 4.1 Coastal Reclamation

Coastal sand mining in northern Perak<sup>499</sup> is reported to provide the lifeline for the reclamation project in southern Penang, threatening to significantly increase carbon emissions<sup>500</sup> through the supply chain of these massive infrastructures, claimed as a line of defence<sup>501</sup> against climate change-related coastal erosion and flooding. Most importantly, this burden disproportionately affects thousands of coastal communities, including fisherfolk in northern Perak and Penang. Despite multiple EIAs being rejected by the Department of Environment (DOE), including one due to carbon information issues<sup>502</sup>, project proponents continue to submit new EIAs. The repeated rejections indicate that the proposal involves sensitive environmental and social concerns. Yet, the Malaysian Green Technology and Climate Change Corporation (MGTC) has awarded the project to the Penang State Government for its low-carbon city plan<sup>503</sup>, raising concerns over corporate capture, human rights, the livelihood of vulnerable coastal populations and food security.

#### 4.2 Protecting our Carbon Sink: Forest Plantations

Sustainable Forest Management policies, such as large-scale forest plantations, can create "perverse incentives" that threaten existing carbon sinks and local

<sup>&</sup>lt;https://www.sipri.org/publications/2022/sipri-policy-briefs/social-side-climate-change-adaptation-reducing-conflict-risk> accessed
31 March 2023

<sup>499 &#</sup>x27;Hundereds Of Traditional Fishermen Reject The Penang South Reclamation Project And Perak Sand Mining' (Consumer's Association of Penang, 11 July 2019) <a href="https://consumer.org.my/hundreds-of-traditional-fishermen-reject-the-penang-south-reclamation-project-and-perak-sand-mining/">https://consumer.org.my/hundreds-of-traditional-fishermen-reject-the-penang-south-reclamation-project-and-perak-sand-mining/</a> accessed 31 March 2023

<sup>500</sup> Predeep Nambiar, 'Reclamation can help overcome coastal erosion, says Nik Nazmi' (Free Malaysia Today, 8 March 2023) <a href="https://www.freemalaysiatoday.com/category/nation/2023/03/08/reclamation-can-help-overcome-coastal-erosion-says-nik-nazmi/">https://www.freemalaysiatoday.com/category/nation/2023/03/08/reclamation-can-help-overcome-coastal-erosion-says-nik-nazmi/</a> accessed 31 March 2023

<sup>501</sup> Predeep Nambiar, 'Reclamation can be answer to climate change, says Penang exco man' (Free Malaysia Today, 21 October 2019) <a href="https://www.freemalaysiatoday.com/category/nation/2019/10/21/reclamation-can-be-answer-to-climate-change-says-penang-exco-man/">https://www.freemalaysiatoday.com/category/nation/2019/10/21/reclamation-can-be-answer-to-climate-change-says-penang-exco-man/</a> accessed 31 March 2023

<sup>502</sup> Ihid

<sup>503 &#</sup>x27;Penang South Islands project wins award for low-carbon city plan' (Malaysian Green Technology And Climate Change Corporation, 21 February 2023) <a href="https://www.mgtc.gov.my/2023/02/penang-south-islands-project-wins-award-for-low-carbon-city-plan/">https://www.mgtc.gov.my/2023/02/penang-south-islands-project-wins-award-for-low-carbon-city-plan/</a> accessed 31 March 2023

communities. Establishing these plantations within Permanent Forest Reserves undermines climate targets and biodiversity conservation, resulting in human rights violations. Natural forests serve as significant carbon sinks (237,008.39 CO2 eq in 2019, according to the fourth Biennial update report (BUR4)). The monoculture forest plantations<sup>504</sup> focusing primarily on Rubberwood and Acacia cannot replicate the same ecosystem functions or carbon stocks of a natural forest. In 2012, the National Land Council approved 439,189 ha of forest plantation zones within Peninsular Malaysia's forest reserves<sup>505</sup>, with state forestry departments overseeing the approval and regulation process. A non-binding 15-year moratorium on new forest plantations in Peninsular Malaysian reserves was set in 2021.

In 2007, the Malaysian Timber Industry Body (MTIB) introduced the Forest Plantation Development Programme to distribute RM1.2 billion in government loans to attract planters, aiming to support domestic wood industries, replace degraded forests, and provide alternative revenue streams for state governments to reduce reliance on logging natural forests 506. Managed by Forest Plantation Development Sdn. Bhd. (FPDSB), a subsidiary of MTIB, the program oversees loan disbursement, plantation auditing, and technical support and training. By 2016, the program had developed 114,355.43 hectares with the participation of 50 companies<sup>507</sup>, but a public list of borrowers or reviews remains unavailable. Issues such as non-compliance with planting contracts, EIA irregularities, outdated forestry data, and enforcement and capacity gaps have been highlighted in forest plantations 508. A review 509 of 52 cases of alleged illegal forest clearance for plantations, including 38 with corruption allegations, suggests the involvement of political patronage, cronyism, and nepotism in land grants and licence issuance typically overseen by the chief ministers in respective states. The MACC has opened files on these cases, which are still unresolved.

This malpractice and alleged corruption adversely affect Indigenous peoples and local communities who risk losing access to ancestral lands, leading to displacement and threats to their cultural heritage and livelihoods. Environmental degradation

<sup>504</sup> Forestry Department of Peninsular Malaysia, 'Plantation Species' (2016) <a href="https://www.forestry.gov.my/en/spesies-ladang">https://www.forestry.gov.my/en/spesies-ladang</a> accessed 31 March 2023

<sup>505 &#</sup>x27;Plantations are not forests' (Sahabat Alam Malaysia, 9 December 2022) <a href="https://foe-malaysia.org/articles/plantations-are-not-forests-2/">https://foe-malaysia.org/articles/plantations-are-not-forests-2/</a> accessed 31 March 2023

<sup>506</sup> Malaysian Timber Council, 'Forest Plantations in Malaysia' (Malaysian Timber Council) <a href="http://mtc.com.my/resources-ForestPlantationsinMalaysia.php">http://mtc.com.my/resources-ForestPlantationsinMalaysia.php</a> accessed 31 March 2023
507 Ibid

<sup>508</sup> YH Law and SL Wong, 'Forest Plantations In Reserves: Quick To Cut, Slow To Grow' (Macaranga.org, 2 March 2022) <a href="https://www.macaranga.org/forest-plantations-in-reserves-quick-to-cut-slow-to-grow/">https://www.macaranga.org/forest-plantations-in-reserves-quick-to-cut-slow-to-grow/</a> accessed 31 March 2023

<sup>509</sup> Lim Teck Wyn, Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations (Forest Trends)

<sup>&</sup>lt;a href="https://www.forest-trends.org/wp-content/uploads/imported/for155-malaysia-white-paper-letter-14-0121-hr-pdf.pdf">https://www.forest-trends.org/wp-content/uploads/imported/for155-malaysia-white-paper-letter-14-0121-hr-pdf.pdf</a> accessed 31 March 2023

caused by deforestation can undermine surrounding communities' rights to clean water, food, and a healthy environment, restricting access to essential resources like land, valuable plants, and clean water sources. Additionally, the escalation of human-wildlife conflicts 510 heightens safety risks for local and Indigenous communities. Furthermore, extreme weather events can exacerbate these vulnerabilities.

#### 4.3 Malaysia's Energy Transition for Net-Zero 2050

Access to energy is a fundamental human right that has propelled billions of people toward prosperity and is essential to modern life. However, the current global energy system is inadequate in addressing the needs of the most vulnerable populations. In many cases, it has harmed the ecosystems that local communities and Indigenous Peoples rely on for their livelihoods. This has led to significant climate and socio-economic challenges for those who have reaped the least benefits from the surge in energy production. In this section, we will explore some of the key issues related to Malaysia's energy transition, with a focus on incorporating human rights elements for just transformation.

#### 4.3.1 Natural Gas is Fossil Gas: Carbon Lock-In

Malaysia's national and business discourse often portrays natural gas as a cleaner fossil fuel alternative to coal, suggesting that it is an "ideal partner of renewables" and a transition fuel <sup>511</sup>. However, this perception may be misleading, as the global warming potential of methane can be up to 87 times higher than that of CO2 within the first 20 years after emission <sup>512</sup>. Consequently, using natural gas as a substitute for coal could potentially result in a short-term temperature spike, risking abrupt and irreversible climate change, and possibly triggering a cascade of global tipping points.

Malaysia's pursuit of natural gas infrastructure expansion as a transitional energy source could undermine the nation's shift toward renewables and decarbonisation, leading to carbon lock-in and stranded assets, ultimately making it an unsustainable approach for a zero-emission future. Carbon lock-in mechanisms, which include infrastructural, institutional, and behavioural barriers, can hinder the phase-out of fossil fuels and slow down the adoption of renewable technologies. Investing in new fossil fuel infrastructure poses

 $<sup>510\,</sup>Rachel\,Donald,\,'Malaysian\,officials\,deny\,deforestation\,drives\,deadly\,human-wildlife\,conflict'\,(Mongabay,\,31\,January\,2022)$ 

<sup>&</sup>lt;https://news.mongabay.com/2022/01/malaysian-officials-deny-deforestation-drives-deadly-human-wildlife-conflict/> accessed 31 March 2023

<sup>511 &#</sup>x27;Malaysia's Approach Towards Renewable Energy' (Bernama Thoughts, 22 February 2023)

<sup>&</sup>lt;a href="https://www.bernama.com/en/thoughts/news.php?id=2166297">https://www.bernama.com/en/thoughts/news.php?id=2166297</a> accessed 31 March 2023

<sup>512</sup> International Energy Agency, 'Methane and climate change' (International Energy Agency)

<sup>&</sup>lt;a href="https://www.iea.org/reports/methane-tracker-2021/methane-and-climate-change">https://www.iea.org/reports/methane-tracker-2021/methane-and-climate-change</a> accessed 31 March 2023

considerable economic risks, as assets could become stranded<sup>513</sup> due to falling demand, wider adoption of low-emission technologies, and stricter climate and methane leakage regulation<sup>514</sup>. These stranded assets, a crucial climate-related financial risk, can result in substantial losses amid the global shift towards net-zero emissions.

Developing timely monitoring and reporting approaches is crucial for regulating methane emissions. Malaysia's commitment to the Global Methane Pledge and Petronas' net-zero carbon emissions goal by 2050 reflect the drive to regulate methane leakages. Petronas has joined the Zero Routine Flaring initiative<sup>515</sup> and the Oil & Gas Methane Partnership 2.0<sup>516</sup>, aiming to improve reporting accuracy and transparency. However, their ambitious target for methane emission reduction by 2030 also includes CCS technology. Despite these efforts, leakage control alone cannot replace a substantial reduction in natural gas consumption. As a fossil fuel, natural gas still emits significant amounts of CO2. For a just energy transition, Malaysia must hasten the adoption of renewables and phase out natural gas. This will require ending the ongoing use of natural gas before technical lifetimes expire <sup>517</sup> and avoiding further investments in fossil fuel infrastructure.

#### 4.3.2 Large Hydro: Renewable but Not Responsible

Malaysia's reliance on large hydro dams to achieve the RE target, as statistics have shown, could be problematic. The national argument for large hydro is that it is "clean energy" and cheap in helping to meet Malaysia's energy security needs by weaning off coal, and achieving its net-zero target and climate commitments, must be revisited and assessed. Large hydro can cause ecosystem and biodiversity collapse, resulting in damage to forests and

https://ogmpartnership.com/our-member-companies/

<sup>513</sup> Claudia Kemfert, Fabian Präger, Isabell Braunger, Franziska M. Hoffart & Hanna Brauers, 'The expansion of natural gas infrastructure puts energy transitions at risk' (2022) 7 Nature Energy 582 <a href="https://www.nature.com/articles/s41560-022-01060-3">https://www.nature.com/articles/s41560-022-01060-3</a> accessed 31 March 2023

<sup>514</sup> Hanna Brauers, 'Natural gas as a barrier to sustainability transitions? A systematic mapping of the risks and challenges' (2022) 89 Energy Research & Social Science 102538

<sup>&</sup>lt;a href="https://www.sciencedirect.com/science/article/pii/S2214629622000457">https://www.sciencedirect.com/science/article/pii/S2214629622000457</a>> accessed 31 March 2023

 $<sup>515\ &#</sup>x27;Petronas\ promotes\ transparency\ on\ climate-related\ disclosures'\ (Petronas,\ 4\ November\ 2021)$ 

<sup>&</sup>lt;https://www.petronas.com/media/media-releases/petronas-promotes-transparency-climate-related-disclosures> accessed 31 March 2023

 $<sup>516\,</sup>Petronas\,is\,among\,other\,international\,partners\,in\,the\,Oil\,\&\,Gas\,Methane\,Partnership\,2.0\,initiative:$ 

<sup>517</sup> Julie Joly, 'Asia's investment in natural gas to wean off fossil fuels is a false solution' (South China Morning Post, 18 April 2022)

<a href="https://www.scmp.com/comment/opinion/article/3174409/asias-investment-natural-gas-wean-fossil-fuels-false-solution">https://www.scmp.com/comment/opinion/article/3174409/asias-investment-natural-gas-wean-fossil-fuels-false-solution</a> accessed 31 March 2023

fisheries as well as issues with human rights. Large hydro also stands to be affected by climate impacts such as drought and flood<sup>518</sup>.

The Nenggiri mega-dam project, like many other large hydro projects, represents the missing energy justice in the pursuit of a balance between energy security, sustainability, and climate targets. It emphasises the importance of protecting ecosystems and human rights through meaningful and effective consultation and collaboration with local communities and rights holders, including understanding the concept of consent within the Free, Prior and Informed Consent (FPIC) principle for Indigenous Peoples. To prevent climate injustice and the shifting of mitigation burdens to the most marginalised and vulnerable, transparency, long-term fair compensation, strict adherence to FPIC, and legal recognition of Indigenous lands cannot be viewed separately but key to energy justice.

The project entails the construction of Malaysia's fourth-largest mega-dam, boasting a 300MW installed capacity designed for multipurpose functions, including flood mitigation, clean water supply, energy security, ecotourism, and achieving climate targets <sup>519</sup>. Hydroelectric dams aimed at regulating floods in lowland areas at first seemed beneficial for the people. However, a closer look reveals these policies undermined access to land and forest resources for upstream communities and introduced resettlement issues. Consequently, these interventions leave these communities more vulnerable to climate change impacts, particularly when social protection measures fall short. This dilemma is prevalent in other jurisdictions and documented in regions like Vietnam<sup>520</sup>, the Amazon<sup>521</sup>, and Sarawak<sup>522</sup>.

The dam is funded by RM2 billion in sustainability sukuk wakalah<sup>523</sup> issued by TNB with CIMB Investment Bank Bhd and Maybank Investment Bank Bhd

<sup>518</sup> Jacques Leslie, 'As Warming and Drought Increase, A New Case for Ending Big Dams' (Yale Environment 360, 4 November 2021) <a href="https://e360.yale.edu/features/as-warming-and-drought-increase-a-new-case-for-ending-big-dams">https://e360.yale.edu/features/as-warming-and-drought-increase-a-new-case-for-ending-big-dams</a> accessed 31 March 2023 519 'A Reservoir of Opportunity with TNB's Nenggiri Dam Project' (Energy Watch, 5 August 2022)

<sup>&</sup>lt;https://www.energywatch.com.my/blog/2022/08/05/a-reservoir-of-opportunity-with-tnbs-nenggiri-dam-project/> accessed 31 March 2023

<sup>520</sup> Malin Beckman, 'Converging and conflicting interests in adaptation to environmental change in central Vietnam' (2011) 3 Climate and Development 32 <a href="https://www.tandfonline.com/doi/abs/10.3763/cdev.2010.0065">https://www.tandfonline.com/doi/abs/10.3763/cdev.2010.0065</a> accessed 31 March 2023

<sup>521</sup> Aniesh S. Bro, Emilio Moran & Miquéias Freitas Calvi, 'Market Participation in the Age of Big Dams: The Belo Monte Hydroelectric Dam and Its Impact on Rural Agrarian Households' (2018) 10 Sustainability 1592 <a href="https://www.mdpi.com/2071-1050/10/5/1592">https://www.mdpi.com/2071-1050/10/5/1592</a> accessed 31 March 2023

<sup>522</sup> Fadzilah Majid Cooke, Johan Nordensvard, Gusni Bin Saat, Frauke Urban & Giuseppina Siciliano, 'The Limits of Social Protection: The Case of Hydropower Dams and Indigenous Peoples' Land' (2017) 4 Asia & The Pacific Policy Studies 437 <

https://onlinelibrary.wiley.com/doi/full/10.1002/app5.187> accessed 31 March 2023

<sup>523</sup> Peter Godwin, Sophie Lenox & Azlin Ahmad, 'Green Sukuk – Current issues and the way forward' (Herbert Smith Freehills, 24 May 2021) <a href="https://hsfnotes.com/malaysia/2021/05/24/green-sukuk-current-issues-and-the-way-forward/">https://hsfnotes.com/malaysia/2021/05/24/green-sukuk-current-issues-and-the-way-forward/</a> accessed 31 March 2023

as joint lead managers and bookrunners, and received a "Gold" rating by MARC Ratings Bhd<sup>524</sup>. Despite Tenaga Nasional Berhad's (TNB) claims that the Nenggiri mega-dam project aligns with the Sustainable Development Goals (SDG)<sup>525</sup>, critics argue that the project threatens the livelihoods, rights, and identities of the 5,000 Orang Asli residing in surrounding Indigenous territories.

The project is anticipated to submerge approximately 5,834 hectares of customary forest lands belonging to the Temiar tribe, leading to concerns that it will erase both the community's and Malaysia's prehistorical heritage<sup>526,527</sup>. The dam will directly affect the three villages of Kampung Kuala Wias, Pos Pulat, and Pos Tohoi, while indirectly impacting 18 other nearby villages or posts whose "kawasan hutan rayau" will be submerged without effective remedy or fair compensation<sup>528</sup>. The Jaringan Kampung Orang Asli Kelantan (JKOAK) contends that the Environmental Impact Assessment (EIA) and Social Impact Assessments (SIA) conducted for the project lacked transparency and accessibility for the affected communities. They argue that alternative solutions, such as smaller dams, could address the same issues without infringing upon the rights and livelihoods of Indigenous communities<sup>529</sup>.

Although a public acceptance study indicated 80% support for the project among residents in three affected villages<sup>530</sup>, a memorandum signed by 3,000 villagers from 17 Temiar territories demanded its cancellation due to adverse

528 Ibid

<sup>524</sup> Izzul Ikram, 'TNB's RM2 bil sustainability sukuk for Nenggiri dam oversubscribed by two times' (The Edge Markets, 29 March 2023) <a href="https://www.theedgemarkets.com/node/661319">https://www.theedgemarkets.com/node/661319</a>> accessed 31 March 2023

<sup>525 &#</sup>x27;TNB: Nenggiri dam meets sustainable goals, facilities for Orang Asli' (Malaysiakini, 13 June 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/624453">https://www.malaysiakini.com/news/624453</a> accessed 31 March 2023

<sup>526</sup> A nearly complete prehistoric human skeleton estimated at 6,000 to 8,000 years ago and other artefacts was discovered across 13 caves in the Nenggiri Valley, deem a significant and important discovery for the country's archaeology as it provides new facts on prehistoric funerals and practices in Malaysia. The Heritage Impact Assessment (HIA) found all artefacts need to be removed as the Nenggiri dam will flood all 13 caves and the evacuation process of these Orang Asli artefacts to a gallery will take two years. https://www.malaymail.com/news/malaysia/2022/06/14/tnb-to-build-mini-gallery-to-house-orang-asli-artifacts-found-at-site-of-nenggiri-dam-project/12268, https://thepetridish.my/2019/01/22/ukm-researchers-discover-the-8000-years-old-prehistoric-human-skeleton/

<sup>527</sup> Ibid

<sup>529</sup> Danial Dzulkifly, 'Temiar history threatened: Orang Asli protest Nenggiri Dam project on Gua Musang rainforest' (The Vibes, 7 June 2022) <a href="https://www.thevibes.com/articles/news/62704/temiar-history-threatened-orang-asli-protest-nenggiri-dam-project-on-gua-musang-rainforest">https://www.thevibes.com/articles/news/62704/temiar-history-threatened-orang-asli-protest-nenggiri-dam-project-on-gua-musang-rainforest</a> accessed 31 March 2023

<sup>530 &#</sup>x27;Construction of Nenggiri hydropower project to continue, says Takiyuddin' (The Malaysian Insight, 1 August 2022) <a href="https://www.themalaysianinsight.com/index.php/s/394057">https://www.themalaysianinsight.com/index.php/s/394057</a>> accessed 31 March 2023

environmental impacts and threats to the safety <sup>531</sup> and livelihoods of surrounding communities<sup>532</sup>, who also face pressures from large-scale forest plantations <sup>533,534</sup>. Although TNB claims the situation has been remediated through cooperation with the Kelantan government, SUHAKAM, and JAKOA<sup>535</sup>, the conflict persists as communities seek litigation to assert their rights <sup>536</sup>. This ongoing struggle highlights climate injustice, maladaptation, and the ambiguity of Kelantan state laws concerning Indigenous land rights and FPIC.

The Malaysia Renewable Energy Roadmap (MyRER) highlights that gaining public acceptance and addressing lack of awareness are challenges for utilities in large hydro projects, with consensus seen as a way to improve public acceptance<sup>537</sup>. However, TNB has disregarded the thousands of Temiar voices opposing the project, undermining the principle of FPIC. Communities are blamed for not understanding Malaysia's energy and climate goals, but sustainable energy policy should not lead to social disintegration or cultural extinction. The question remains: is large hydro a responsible energy source for the future?

### 4.3.3 Carbon Capture and Storage (CCS) and Carbon Capture Storage Utility (CCSU)

Carbon Capture and Storage (CCS) and Carbon Capture Storage Utility (CCSU) technologies are viewed as a crucial tool whichmany dub a "magic bullet" to mitigate climate change by removing carbon dioxide (CO2) from the atmosphere. However, there is ongoing debate about their effectiveness and risks, with many experts cautioning against overreliance on the

<sup>531</sup> Rachel Donald, 'Malaysian officials deny deforestation drives deadly human-wildlife conflict' (Mongabay, 31 January 2022)
<a href="https://news.mongabay.com/2022/01/malaysian-officials-deny-deforestation-drives-deadly-human-wildlife-conflict/">https://news.mongabay.com/2022/01/malaysian-officials-deny-deforestation-drives-deadly-human-wildlife-conflict/</a> accessed 31 March 2023

<sup>532</sup> Maisarah Sheikh Rahim, 'Kehidupan 3,000 komuniti Orang Asli bakal terjejas akibat pembinaan empangan Nenggiri' (Utusan Malaysia, 7 June 2022) <a href="https://www.utusan.com.my/nasional/2022/06/empangan-nenggiri-3000-komuniti-orang-asli-bakal-terjejas/">https://www.utusan.com.my/nasional/2022/06/empangan-nenggiri-3000-komuniti-orang-asli-bakal-terjejas/</a> accessed 31 March 2023

<sup>533</sup> YH Law, 'Losing trees and identities' (Macaranga, 16 March 2022) <a href="https://www.macaranga.org/orang-asli-losing-trees-and-identities/">https://www.macaranga.org/orang-asli-losing-trees-and-identities/</a> accessed 31 March 2023

<sup>534</sup> Mustafa Along, Nora Kantin & Axcii Along, 'Loggers with cash in hand divide Kelantan Orang Asli community' (Malaysiakini, 24 June 2022) <a href="https://www.malaysiakini.com/news/625886">https://www.malaysiakini.com/news/625886</a>> accessed 31 March 2023

 $<sup>535\ &#</sup>x27;Nurfarahin\ Hussin,\ Libat\ urus\ pembangunan\ empangan\ Nenggiri\ lancar-TNB'\ (Utusan\ Malaysia,\ 19\ April\ 2021)$ 

<sup>&</sup>lt;a href="https://www.utusan.com.my/terkini/2021/04/libat-urus-pembangunan-empangan-nenggiri-lancar-tnb/">https://www.utusan.com.my/terkini/2021/04/libat-urus-pembangunan-empangan-nenggiri-lancar-tnb/</a> accessed 31 March 2023

<sup>536</sup> Danial Dzulkifly, 'Temiar history threatened: Orang Asli protest Nenggiri Dam project on Gua Musang rainforest' (The Vibes, 7 June 2022)

<sup>&</sup>lt;https://www.thevibes.com/articles/news/62704/temiar-history-threatened-orang-asli-protest-nenggiri-dam-project-on-guamusang-rainforest> accessed 31 March 2023

<sup>537</sup> Ibid. pg 34

technology, as it could provide an excuse to avoid deep emissions cuts, delays and inaction needed to tackle climate change leading to more carbon lockin, where critics have termed this a false solution.

IPCC's Synthesis Report under the Sixth Assessment Report (AR6) highlights that CCS is an expensive and ineffective climate change mitigation option compared to other solutions such as renewables and energy efficiency 538, highlighting the barriers: technological, economic, institutional, ecological, environmental and socio-cultural. The report emphasises the need for immediate and deep greenhouse gas emission reductions in all sectors, primarily through cuts to fossil fuel use. Although CCS has been in development for decades, it is still expensive, and no single project worldwide has delivered on time, on budget, and captured the agreed amount of carbon. The largest CCS project, Chevron's Gorgon Gas Plant in Western Australia, has captured only about 12% of its total emissions, costing around \$3.1 billion<sup>539</sup>. Many high-profile CCSU projects and developments have failed to deliver, or have been cancelled, in the past decade. The power sector demands an estimated USD 22.5 trillion investment in new RE installed capacity by 2050<sup>540</sup>. Simultaneously, CCS and CCSU projects need substantial funding. Critics argue that such resources could be redirected toward RE instead, now that wind and solar energy have become cheaper and are now the cheapest type of new energy build.

A proliferation of CCS projects are being developed worldwide. In Malaysia, Petronas Carigali's Kasawari phase 2 project in Sarawak expected to capture 4 million tonnes of CO2 annually, making it the world's largest offshore CCS project when the facility is fully operational in 2025<sup>541</sup>. Petronas plans to make excess storage capacity available to third parties, establishing Malaysia as a regional CCS hub<sup>542</sup>. However, there are currently no laws governing carbon capture, storage, or injection in Malaysia. Similarly, TNB seeks to grow Carbon Capture Utilisation & Storage (CCUS), another variation of carbon

<sup>538</sup> June Sekera, 'Carbon capture won't fix our climate problem.' (Canada's National Observer, 20 March 2023)

<sup>&</sup>lt;a href="https://www.nationalobserver.com/2023/03/20/opinion/carbon-capture-wont-fix-our-climate-problem">https://www.nationalobserver.com/2023/03/20/opinion/carbon-capture-wont-fix-our-climate-problem</a> accessed 31 March 2023

<sup>539 &#</sup>x27;What is Carbon Capture and Storage?' (Climate Council, 8 February 2023) <a href="https://www.climatecouncil.org.au/resources/what-is-carbon-capture-and-storage/">https://www.climatecouncil.org.au/resources/what-is-carbon-capture-and-storage/</a> accessed 31 March 2023

<sup>540</sup>https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2019/Sep/IRENA\_Transforming\_the\_energy\_system\_2019.pdf
541 Intan Farhana Zainul, 'Petronas aims big in carbon capture and storage ambition' (The Edge Markets, 7 February 2023)
<a href="https://www.theedgemarkets.com/node/653392">https://www.theedgemarkets.com/node/653392</a> accessed 31 March 2023

<sup>542</sup> Amanda Battersby, 'Malaysia revs up carbon, capture and storage developments' (Upstream, 1 February 2022)

<sup>&</sup>lt;a href="https://www.upstreamonline.com/field-development/malaysia-revs-up-carbon-capture-and-storage-developments/2-1-1159919">https://www.upstreamonline.com/field-development/malaysia-revs-up-carbon-capture-and-storage-developments/2-1-1159919</a> accessed 31 March 2023

capture technology with the addition of utilisation factor. Both TNB and Petronas have signed an MOU to develop carbon capture technologies<sup>543</sup>.

Carbon capture technologies have been rigorously lobbied by many fossil fuel economies<sup>544</sup> for its potential<sup>545</sup>. However, it has not yet been tested at the scale required to significantly reduce global emissions. The responsible approach is to quickly phase out all fossil fuel sources including fossil gas, as CCS is expensive and cannot achieve zero emissions. Instead, scaling up proven solutions like renewables, energy efficiency, and reducing energy and resource use is the better path to limiting global warming to 1.5°C.

#### 4.3.4 Rare Earth Element Mining

As the demand for green energy like solar grows to wean off coal, Malaysia's substantial reserves of Rare Earth Elements (REE) – amounting to 30,000 to 43,000 tonnes – are increasingly sought after by mining companies and investors. The mining of REEs, such as copper, nickel, and zinc, which are essential for green tech industries such as battery production<sup>546</sup> and energy efficiency, can have severe human rights and environmental implications. Local communities often experience decreased access to water, increased rates of long-term mining-related illnesses, and environmental pollution<sup>547,548</sup>.

Recently, several REE mining projects have been announced in Pahang, Perak, and Kedah, namely lanthanide mining at Ulu Jelai forest reserve in Kuala

<sup>543 &#</sup>x27;Petronas, TNB join forces to advance Malaysia's carbon neutral aspirations' (Petronas, 19 August 2022)

<sup>&</sup>lt;https://www.petronas.com/media/media-releases/petronas-tnb-join-forces-advance-malaysias-carbon-neutral-aspirations>accessed 31 March 2023

<sup>544</sup> Chloé Farand, 'Saudi Arabia dilutes fossil fuel phase out language with techno fixes in IPCC report' (Climate Home News, 4 April 2022) <a href="https://www.climatechangenews.com/2022/04/04/saudi-arabia-dilutes-fossil-fuel-phase-out-language-with-techno-fixes-in-ipcc-report/">https://www.climatechangenews.com/2022/04/04/saudi-arabia-dilutes-fossil-fuel-phase-out-language-with-techno-fixes-in-ipcc-report/</a> accessed 31 March 2023

<sup>545</sup> International Energy Agency, 'How Carbon Capture Technologies Support the Power Transition' (2020)

<sup>&</sup>lt;https://www.iea.org/reports/the-role-of-ccus-in-low-carbon-power-systems/how-carbon-capture-technologies-support-the-power-transition#abstract> accessed 31 March 2023

<sup>546</sup>Farezza Hanum Rashid, 'Malaysia set to be rare earth elements powerhouse' (The Malaysian Reserve, 5 August 2022)

<sup>&</sup>lt;a href="https://themalaysianreserve.com/2022/08/05/malaysia-set-to-be-rare-earth-elements-powerhouse/">https://themalaysianreserve.com/2022/08/05/malaysia-set-to-be-rare-earth-elements-powerhouse/</a> accessed 31 March 2023

<sup>547</sup> Noor Hisham Abdullah, Norlen Mohamed, Lokman Hakim Sulaiman, Thahirahtul Asma Zakaria & Daud Abdul Rahim, 'Potential Health Impacts of Bauxite Mining in Kuantan' (2016) 23 Malays J Med Sci 1

<sup>&</sup>lt;a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4934713/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4934713/</a> accessed 31 March 2023

<sup>548 &#</sup>x27;Malaysia: Concerns over health & environmental impacts of Lynas rare earths mining & refinery' (Business & Human Rights Resource Centre, 9 September 2014) <a href="https://www.business-humanrights.org/en/latest-news/malaysia-concerns-over-health-environmental-impacts-of-lynas-rare-earths-mining-refinery/">https://www.business-humanrights.org/en/latest-news/malaysia-concerns-over-health-environmental-impacts-of-lynas-rare-earths-mining-refinery/</a> accessed 31 March 2023

Lipis, Pahang (660 ha)<sup>549,550</sup>; REE mining in Kenering Ulu Perak (2,161 ha)<sup>551</sup>; and a memorandum of understanding signed by Menteri Besar Kedah Incorporated with Jangka Bakat Minerals Sdn Bhd and China's Xiamen Tungsten Co Ltd to commence REE mining in Kedah <sup>552</sup>. However, environmental and Indigenous activists <sup>553</sup> are concerned about the greenwashing of REE mining as sustainable mining, given the industry's poor and long history of social and environmental conflict. Akademi Sains Malaysia recently held a stakeholder meeting to obtain views on their Business Model for the non radioactive rare earth elements NR-REE Industry proposal <sup>554</sup>, which raises concerns that the government is determined to exploit REE resources. The government as duty bearers must ensure mining companies and investors commit to safeguarding environmental and human rights through due diligence, transparency and accountability<sup>555</sup>.

#### 4.3.5 The Right to Better Development: Green Is Not Enough

While the energy transition into fossil gas using unproven technologies to reach net-zero targets increases the risk of climate collapse, the RE sector must also consider the adverse environmental and social impacts across its value chain. Examples include labour and human rights abuses during the production and end-of-life stages of RE technologies, harm on local biodiversity and increased vulnerability of local communities as a result of changes in land use, conflicts over water resources such as those due to solar panel operations, as well as discrimination in access to electricity and unfair compensation. To avoid an unjust transition that creates or exacerbates social and environmental risks, it is crucial to prioritise a rights-based approach in

549 Hariz Mohd, 'Rare earth mining: Activists launch online petition to save Pos Lanai Orang Asli' (Malaysiakini,1 July 2021)

550 Choy Myn, 'Rare earth mining in Malaysia's Perak forest raises environmental and health concerns' (Eco-Business, 29 June 2022) <a href="https://www.eco-business.com/news/rare-earth-mining-in-malaysias-perak-forest-raises-environmental-and-health-concerns/">https://www.eco-business.com/news/rare-earth-mining-in-malaysias-perak-forest-raises-environmental-and-health-concerns/</a> accessed 31 March 2023

551 'Rare earth mining project in Hulu Perak receives approval from authorities' (The Star, 13 September 2022)

<https://www.thestar.com.my/news/nation/2022/09/13/rare-earth-mining-project-in-hulu-perak-receives-approval-from-authorities> accessed 31 March 2023

552 'MBI Kedah inks MoU on rare earth mining with China's Xiamen Tungste' (The Malay Mail, 10 Jan 2023)

<https://www.malaymail.com/news/money/2023/01/10/mbi-kedah-inks-mou-on-rare-earth-mining-with-chinas-xiamen-tungste/49464> accessed 31 March 2023

553 'The lives and livelihood of the Semai Orang Asli Community in Jelai Pahang are in danger.' (Save Pos Lanai, 2021) <a href="https://saveposlanai.wixsite.com/website">https://saveposlanai.wixsite.com/website</a> accessed 31 March 2023

554 'Capitalising on Non-radioactive Rare Earth Elements in Malaysia' (Akademi Sains Malaysia, 9 March 2023)

<https://www.akademisains.gov.my/asm-focus/capitalising-on-non-radioactive-rare-earth-elements-in-malaysia/> accessed 31 March 2023

555 Malaysian Investment Development Authority (MIDA), 'Gearing Malaysia as a rare earth elements (REES) powerhouse' (MIDA, February 2022) <a href="https://www.mida.gov.my/gearing-malaysia-as-a-rare-earth-elements-rees-powerhouse/">https://www.mida.gov.my/gearing-malaysia-as-a-rare-earth-elements-rees-powerhouse/</a> accessed 31 March 2023

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/581262">https://www.malaysiakini.com/news/581262</a> accessed 31 March 2023

the RE sector to ensure a sustainable and just transition to responsible RE. This encompasses the need to rethink what development means.

#### 4.4 Carbon Pricing

Carbon pricing is a market-based policy tool used to reduce greenhouse gas emissions. It puts a price on carbon emissions, whether through a tax or a cap-andtrade system, and encourages industries and individuals to reduce their carbon footprint by making it more costly to emit greenhouse gases. The goal is to encourage the transition to a low-carbon economy. Malaysia is taking steps to address carbon emissions through carbon pricing via the Bursa Carbon Exchange (BCX), a voluntary carbon market (VCM), to increase export competitiveness. The BCX recently held its first auction and sold around RM7.7 million in carbon credits from greenhouse gas reduction projects in Cambodia and China<sup>556</sup>. The country also considers a domestic emission trading scheme (DETS) and a carbon tax. The national guideline on the VCM has been released but lacks statutory guidelines on reporting, public participation, effective remedy and consultation with local communities and Indigenous Peoples<sup>557</sup>. Malaysia is finalising long-term lowemissions development strategies to reach Net Zero 2050, and some banking sectors have started to impose internal carbon pricing<sup>558</sup>. This section will only focus on carbon offset specific to forest carbon offset and the carbon market.

Carbon offsetting involves compensating for one's greenhouse gas emissions by reducing emissions elsewhere. These projects encompass a broad spectrum, from forestry sequestration that removes CO2 through tree growth, to initiatives focused on energy efficiency and renewable energy that prevent emissions from occurring in the first place<sup>559</sup>. Why is the carbon market and trade considered a false solution?

Ex-ante carbon credits, based on uncertain predictions, undermine the human
right to a healthy environment by delaying real emission reductions. These
credits are often sold for future sequestration projects, such as at the start of
planting forests, which can take decades to fully offset current emissions. By
relying on future compensation rather than immediate action, we jeopardise
our ability to achieve the goals of the Paris Agreement. In other words, the

<sup>556</sup> Anis Hazim, 'Bursa Malaysia completes inaugural carbon credit auction with a total of 150,000 Verra credits' (The Edge Markets, 17 March 2023)

<sup>&</sup>lt;a href="https://www.theedgemarkets.com/node/659597">https://www.theedgemarkets.com/node/659597</a>> accessed 31 March 2023

<sup>557</sup> Ministry of Environment & Water, 'National Guidance on Voluntary Carbon Market Mechanisms'

<sup>&</sup>lt;https://www.kasa.gov.my/resources/alam-sekitar/National-Guidance-on-Voluntary-Carbon-Market-Mechanisms.pdf> accessed 31 March 2023

<sup>558</sup> Tan Zhai Yun, 'Cover Story: Getting ready for carbon pricing' (The Edge Markets, 20 October 2022)

<sup>&</sup>lt;a href="https://www.theedgemarkets.com/article/cover-story-getting-ready-carbon-pricing">https://www.theedgemarkets.com/article/cover-story-getting-ready-carbon-pricing</a> accessed 31 March 2023

<sup>559</sup> For further information about types of carbon offset projects: https://cdn.odi.org/media/documents/6085.pdf

"Burn Now, Pay Later" rationale will undermine the rights of present and future generations to a safe and sustainable environment.

• Carbon markets can perpetuate injustice, as large emitters in the Global North can buy carbon credits from vulnerable countries in the Global South to offset their high emissions. This allows countries with combustion-based economies to compensate for their over-consumption and production. Carbon markets can exacerbate social and environmental injustices by allowing companies to maintain their polluting activities in certain areas while buying offsets or credits from other locations. This can disproportionately impact marginalised groups living in the areas where the pollution occurs, subjecting them to harmful consequences of the pollution while the companies responsible avoid taking immediate action to reduce their emissions.

In this section, we focus on forest carbon credits, which are relevant to Malaysia and more abundant than other rural offset projects globally. These credits involve offsetting emissions through forest conservation, reforestation, and avoided deforestation initiatives like the United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN REDD+). Forest carbon credits are increasingly viewed as a panacea for companies and governments to offset emissions and achieve climate goals. The rising interest in carbon markets is evident, with 83% of NDCs<sup>560</sup> indicating plans to employ international market mechanisms for GHG reduction, with the global carbon credit trading platform market expected to reach USD 200.6 billion by 2027 from an estimated USD 67.3 billion in 2022<sup>561</sup>. This includes countries like China, Japan and India.

However, trees cannot perpetually offset society's carbon emissions. Even if we maximised the Earth's vegetation capacity, it would only offset roughly ten years of GHG at current rates, after which carbon capture could no longer increase<sup>562</sup>. Other key issues are concerns over the lack of transparency and accountability in the forest carbon credit market <sup>563</sup>, as well as potential

 $<sup>560\,</sup>Taryn\,Frensen,\,'Making\,sense\,of\,countries'\,Paris\,Agreement\,climate\,pledges'\,(World\,Resources\,Institute,\,22\,October\,2021)$ 

<sup>561 &#</sup>x27;Global Carbon Credit Trading Platform Market Analysis Report 2022 - Strategies Driving Net-Zero Goals to Boost Carbon Credit

Trading Platform Market Between 2022-2027' (GlobeNewswire, 24 January 2023) <a href="https://www.globenewswire.com/en/news-nd/4">https://www.globenewswire.com/en/news-nd/4</a>

release/2023/01/24/2593942/28124/en/Global-Carbon-Credit-Trading-Platform-Market-Analysis-Report-2022-Strategies-Driving-Net-Analysis-Report-2022-Strate

Zero-Goals-to-Boost-Carbon-Credit-Trading-Platform-Market-Between-2022-2027.html> accessed 31 March 2023

<sup>562</sup> Bonnie Waring, Mathias Neumann, Iain Colin Prentice, Mark Adams, Pete Smith & Martin Siegert, 'Forests and Decarbonization – Roles of Natural and Planted Forests' (2020) 3 Front. For. Glob. Change

<sup>&</sup>lt;a href="https://www.frontiersin.org/articles/10.3389/ffgc.2020.00058/full">https://www.frontiersin.org/articles/10.3389/ffgc.2020.00058/full</a> accessed 31 March 2023

<sup>563</sup> Patrick Greenfield, 'Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows' (The Guardian, 18 January 2023)

negative impacts on local communities and Indigenous Peoples <sup>564</sup>. Most importantly, critics argue that forest carbon credits have heavy corporate interest, and may not provide a real reduction in emissions <sup>565,566</sup> or may be used to greenwash unsustainable forest management practices <sup>567</sup>, termed as "carbon colonialism" <sup>568</sup>. Additionally, there are concerns about the complex and opaque nature of carbon credit standards and certification schemes <sup>569</sup>. Below are specific issues relevant to Malaysia.

- Carbon rights refer to the legal entitlements related to the ownership, management, and benefits associated with the carbon sequestration and storage capacity of land, particularly relevant to Indigenous Peoples and local communities. Civil society has criticised the Sarawak land code amendments on carbon jurisdiction for the lack of effective public consultations, raising concerns that new "green and clean" development projects may continue with business as usual. In response, civil society has requested stakeholder engagement <sup>570</sup> on Sarawak climate change policy and the carbon market handbook. Carbon markets can adversely affect human rights, particularly for marginalised or low-income communities such as Indigenous Peoples, as carbon offset projects may displace them or threaten their livelihoods, violating their rights to land, water, and food.
- The Sabah Nature Conservation Agreement (NCA) highlights the risks in the carbon market due to a lack of safeguards for financial integrity, insufficient due diligence, and inadequate community consultation. The NCA, a profit-

<sup>&</sup>lt;https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>accessed 31 March 2023

<sup>564 &#</sup>x27;Forest equity: What Indigenous People want from carbon credits' (Yale Environment360, 15 December 2022)

<sup>&</sup>lt;a href="https://e360.yale.edu/features/levi-sucre-romero-indigenous-lands-carbon-credits">https://e360.yale.edu/features/levi-sucre-romero-indigenous-lands-carbon-credits</a> accessed 31 March 2023

<sup>565 &#</sup>x27;Why can't we simply plant more trees to clean carbon dioxide from the air?' (Phys.org, 8 July 2023)

<sup>&</sup>lt;a href="https://phys.org/news/2022-07-simply-trees-carbon-dioxide-air.html">https://phys.org/news/2022-07-simply-trees-carbon-dioxide-air.html</a> accessed 31 March 2023

<sup>566</sup> Kate Dooley, Zebedee Nicholls & Malte Meinshausen, 'Carbon Removals From Nature Restoration Are No Substitute for Steep Emission Reductions' (2022) 5 One Earth 812 <a href="https://www.sciencedirect.com/science/article/pii/S2590332222003232">https://www.sciencedirect.com/science/article/pii/S2590332222003232</a> accessed 31 March 2023

<sup>567</sup> Roshan Krishnan, Sofia Jarrin Hidalgo & Marianna Fuchs, 'The Problem with Carbon Offsets' (2023)

<sup>&</sup>lt;a href="https://ssir.org/articles/entry/the\_problem\_with\_carbon\_offsets#">https://ssir.org/articles/entry/the\_problem\_with\_carbon\_offsets#</a> accessed 31 March 2023

<sup>568</sup> Stephen Long, Meghna Bali, and Max Murch, 'Carbon colonialism' (ABC News, 14 February 2023)

<sup>&</sup>lt;https://www.abc.net.au/news/2023-02-14/carbon-credits-projects-papua-new-guinea-logging-four-corners/101936714> accessed 31 March 2023

<sup>569</sup>Patrick Greenfield, 'Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows' (The Guardian, 18 January 2023)

<sup>&</sup>lt;https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>accessed 31 March 2023

<sup>570</sup> CSO letters to Permanent Secretary, Ministry of Energy & Environmental Sustainability Sarawak to request for Stakeholder Consultation on Sarawak climate change policy and the carbon market handbook (see Annex).

sharing agreement between the Sabah state government and Singapore-based Hoch Standard Pte Ltd<sup>571</sup>, involves carbon trading and monetising Sabah's forest reserves under the framework of the Carbon Impact Exchange in Singapore. However, due to insufficient due diligence and transparency, the State Attorney General of Sabah deemed the project legally void<sup>572</sup>, citing unresolved issues such as due diligence reports on Hoch Standard's representations, finance audit, and capability<sup>573</sup>. In a letter from civil society organisations, locally and regionally to the UN Special Rapporteur on the Rights of Indigenous Peoples, UN Special Rapporteur on Human Rights and the Environment and OHCHR's Working Group on Business and Human Rights, communities were not consulted according to FPIC principles 574. Adrian Lasimbang, a former Sabah senator, has filed a lawsuit seeking access to the agreement and other relevant documents<sup>575</sup>. The Sabah Foundation, a state subsidiary responsible for carbon exchange deals, also made a carbon offset deal for 83,391 hectares of forest land in the Kuamut Rainforest Conservation Project<sup>576</sup>. However, payment made by a UK-based partner to the state government has not been disclosed to the public due to "business considerations," raising transparency and corporate accountability concerns.

• In Malaysia's land use and forestry sector, the history of compliance has been marked by poor enforcement, allegations of corruption, transparency and implementation issues, related to Environmental Impact Assessments (EIAs), Social Impact Assessments (SIAs), Free, Prior and Informed Consent (FPIC), certifications and ratings methodologies, effective remedies, and legal recognition of land rights. Ambiguity in forest definitions further exacerbates injustice and inequity. Moreover, there is currently no market-based

<sup>571</sup> Brad Adams, 'HRW Letter to Hajiji Noor Re: Nature Conservation Agreement with Hoch Standard PTE Ltd.' (Human Rights Watch, 28 February 2022) <a href="https://www.hrw.org/news/2022/04/25/hrw-letter-hajiji-noor-re-nature-conservation-agreement-hoch-standard-pte-ltd">https://www.hrw.org/news/2022/04/25/hrw-letter-hajiji-noor-re-nature-conservation-agreement-hoch-standard-pte-ltd</a> accessed 31 March 2023

<sup>572</sup> Ian Neubauer, 'Malaysian state's top lawyer declares Borneo carbon deal dead' (Al Jazeera, 24 February 2022)

<a href="https://www.aljazeera.com/economy/2022/2/24/malaysian-states-top-lawyer-declares-borneo-carbon-deal-dead">https://www.aljazeera.com/economy/2022/2/24/malaysian-states-top-lawyer-declares-borneo-carbon-deal-dead</a> accessed 31

March 2023

<sup>573 &#</sup>x27;NCA not enforceable, says AG' (Daily Express, 10 February 2022) <a href="https://www.dailyexpress.com.my/news/186731/nca-not-enforceable-says-ag/">https://www.dailyexpress.com.my/news/186731/nca-not-enforceable-says-ag/</a> accessed 31 March 2023

<sup>574</sup> Francisco Cali Tzay, 'Communication regarding a Nature Conservation Agreement granting monopoly rights on 2 million hectares of Sabah's forested lands to a private company – Extremely Urgent' (8 March 2022) <a href="https://sarawakreportdocs.s3.eu-west-">https://sarawakreportdocs.s3.eu-west-</a>

 $<sup>2.</sup> a mazon a ws.com/UN+Special+Rapporteur+Letter+-+Final\_Revised.pdf > accessed 31 \ March \ 2023$ 

<sup>575</sup> Julia Chan, 'Suit against controversial carbon credit deal in Sabah postponed' (The Malay Mail, 3 January 2022)

<sup>&</sup>lt;a href="https://www.malaymail.com/news/malaysia/2022/01/03/suit-against-controversial-carbon-credit-deal-in-sabah-postponed/2032711">https://www.malaymail.com/news/malaysia/2022/01/03/suit-against-controversial-carbon-credit-deal-in-sabah-postponed/2032711</a>> accessed 31 March 2023

<sup>576 &#</sup>x27;Sabah to have carbon exchange laws within a year' (Free Malaysia Today, 15 August 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/08/15/sabah-to-have-carbon-exchange-laws-within-a-year/> accessed 31 March 2023

regulation at the national level to regulate forest carbon credits. While Malaysia has a National REDD+ Strategy, data on these initiatives, particularly reviews, are not publicly available and there have been no updates or reviews on safeguards at the UNFCCC REDD+ platforms since 2017<sup>577</sup>. These issues highlight the need for a stronger human rights-based approach to address the challenges faced in the land use and forestry sector.

#### 5.0 Disaster Risk Reduction: Economic and Non-Economic Loss of Climate Disasters

The 2021 nationwide flooding resulted in RM6.1 billion in losses<sup>578</sup>, including damage to homes, vehicles, businesses, agriculture, factories, and public assets, according to the Department of Statistics Malaysia (DOSM). Safeguarding places at risk of flooding involves both hard and soft measures. Hard measures, like dams, seawalls, levees, and engineering tools, require significant federal funding, with over RM300 billion needed in the next 50 years for long-term solutions<sup>579</sup>, including flood mitigation systems and coastal erosion prevention. Meanwhile, soft measures are policies regulating human activities involving social processes, such as strengthening institutional mechanisms and community resilience, developing risk transfer tools such as bank moratorium and insurance <sup>580</sup>, and implementing early warning systems and community-based risk reduction management. Although both measures are essential for preparing the government and citizens for disasters, soft measures are critical to addressing risks and building adaptive capacity.

The government finances disaster reduction efforts in Malaysia through the National Disaster Relief Trust Fund. Funds are coordinated by the Prime Minister's Department and the National Disaster Management Agency (NADMA), while public donations are also accepted through Surat Ikatan Amanah Kumpulan Wang Amanah Bantuan Bencana Negara (KWABBN)<sup>581</sup>. In 2021, the Ministry of Finance provided RM300 million for the northeast monsoon through the National Disaster Relief Trust Fund<sup>582</sup>. However, most of

<sup>577</sup> All related information about Malaysia's initiatives can be found here: https://redd.unfccc.int/submissions.html?country=mys 578 'December, January flood disasters cost RM6.1b losses' (The Malaysian Reserve, 17 March 2022)

<sup>&</sup>lt;a href="https://themalaysianreserve.com/2022/03/17/december-january-flood-disasters-cost-rm6-1b-losses/">https://themalaysianreserve.com/2022/03/17/december-january-flood-disasters-cost-rm6-1b-losses/</a> accessed 31 March 2023

<sup>579 &#</sup>x27;Over RM300bil needed for long-term flood management, says minister' (Free Malaysia Today, 20 January 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/01/20/over-rm300bil-needed-for-long-term-flood-management-says-minister/> accessed 31 March 2023

<sup>580</sup> Jamil A Ghani, 'Why throwing billions at floods no longer a 'solution'' (Institute Of Strategic & International Studies Malaysia, 27 March 2023) <a href="https://www.isis.org.my/2023/03/27/why-throwing-billions-at-floods-no-longer-a-solution/">https://www.isis.org.my/2023/03/27/why-throwing-billions-at-floods-no-longer-a-solution/</a> accessed 31 March 2023

<sup>581</sup> National Disaster Management Agency, 'Kumpulan Wang Amanah Bantuan Bencana Negara (KWABBN) (2023)

<sup>&</sup>lt;a href="https://www.nadma.gov.my/en/corporate/perkhidmatan-teras/kumpulan-wang-amanah-bantuan-bencana-negara-kwabbn-accessed 31 March 2023">https://www.nadma.gov.my/en/corporate/perkhidmatan-teras/kumpulan-wang-amanah-bantuan-bencana-negara-kwabbn-accessed 31 March 2023</a>

<sup>582</sup> Asila Jalil. 'Govt aid for flood victims to rise to RM2b' (The Malaysian Reserve, 21 January 2022)

<sup>&</sup>lt;a href="https://themalaysianreserve.com/2022/01/21/govt-aid-for-flood-victims-to-rise-to-rm2b/">https://themalaysianreserve.com/2022/01/21/govt-aid-for-flood-victims-to-rise-to-rm2b/</a> accessed 31 March 2023

the funds are intermittent, short-term and location specific<sup>583,584,585</sup>. At present, there is no legislation addressing disaster risk reduction (DRR) and the long-term and full scope of climate impacts.

The NADMA website details the Malaysian Family Flood Relief Mechanism for Northeast Monsoon 2021/2022<sup>586</sup>, but it is unclear whether this applies to all state flood disasters or if there are standard compensation mechanisms for other climate disasters like heat waves, which are not publicly available. Despite the DRR's emphasis on water-related disasters like floods, there is still uncertainty surrounding long-term strategies for managing other climate disasters, such as heat waves, sea-level rise, landslides, and coastal erosion. The delayed National Adaptation Plan raises human rights concerns as it remains uncertain how long-term actions and planning will address climate disasters beyond NADMA's mandate, which currently focuses on floods, industrial incidents, haze, petrochemical incidents, earthquakes, tsunamis, and drought<sup>587</sup>.

Access to aid during floods has been documented to be inadequate, especially on women's and children's needs. The right to life, health, and food security are all affected by the availability and accessibility of aid<sup>588</sup>. Governments have a responsibility to ensure that aid is provided without discrimination, particularly to vulnerable and marginalised groups. Access to aid should be timely, sufficient, and tailored to the needs of those affected by floods <sup>589</sup> in the short- and long-term scales. Upholding participation,

<sup>583</sup> Dawn Chan, 'Households affected by northeast monsoon to get RM1,000 aid' (New Straits Times, 16 September 2021)

<sup>&</sup>lt;https://www.nst.com.my/news/nation/2021/09/727808/households-affected-northeast-monsoon-get-rm1000-aid> accessed 31 March 2023

<sup>584 &#</sup>x27;RM1,000 aid will be given to disaster victims on urgent basis, says minister' (The Edge Markets, 4 March 2023)

<sup>&</sup>lt;a href="https://www.theedgemarkets.com/node/657809">https://www.theedgemarkets.com/node/657809</a> accessed 31 March 2023

<sup>585</sup> Perak State Government. 'RM1.58 Million allocated to assist storm victims around Perak' (27 April 2022)

<sup>&</sup>lt;https://www.perak.gov.my/index.php/en/berita-utama-en/2297-rm1-58-million-allocated-to-assist-storm-victims-around-perak-27-april-2022> accessed 31 March 2023

<sup>586</sup> National Disaster Management Agency, 'Mekanisme Bantuan Banjir Keluarga Malaysia Monsun Timur Laut 2021/2022' (2023)

<sup>&</sup>lt;https://portalbencana.nadma.gov.my/portal/en/public/assistance/bencana-banjir/mekanisme-bantuan-banjir-keluarga-malaysia>accessed 31 March 2023

<sup>587</sup> United Nations Officer for Disaster Risk Reduction, 'Disaster Risk Reduction

in Malaysia: Status Report 2020' <a href="https://www.undrr.org/media/48531/download">https://www.undrr.org/media/48531/download</a> accessed 31 March 2023

<sup>588</sup> ASEAN, 'ASEAN Framework on Anticipatory Action in Disaster Management' (2022) <a href="https://asean.org/wp-page-422">https://asean.org/wp-page-422</a> <a href="https://asean.org/wp-page-422">

content/uploads/2022/06/ASEAN-Framework-on-Anticipatory-Action-in-Disaster-Management.pdf> accessed 31 March 2023

<sup>589</sup> International Federation of Red Cross and Red Crescent Societies, 'World Disasters Report 2020' (2020)

<sup>&</sup>lt;a href="https://www.ifrc.org/sites/default/files/2021-09/IFRC\_WDR\_ExecutiveSummary\_EN\_Web.pdf">https://www.ifrc.org/sites/default/files/2021-09/IFRC\_WDR\_ExecutiveSummary\_EN\_Web.pdf</a> accessed 31 March 2023

transparency, and accountability principles can help involve communities in decision-making and promote fair and efficient aid distribution<sup>590,591</sup>.

Intimidation cases against Environmental Human Rights Defenders (EHRDs) and media have also emerged following the December 2021 floods in Malaysia. The defamation suit by the Pahang state government against PEKA president Shariffa Sabrina Syed Akil<sup>592</sup> infringes on the right to freedom of speech and expression, protected by Article 10(1)(a) of the Federal Constitution. Shariffa's critique of the state's logging activities and alleged role in floods should be considered fair comment based on facts and open to public criticism<sup>593</sup>. Likewise, the investigation of FMT reporter Sean Augustin for reporting on the government's slow response to flooding in Selangor represents harassment and intimidation. Journalists have a duty to hold governments accountable, particularly during crises, while ensuring accurate and timely reporting<sup>594</sup>. These cases highlight the need to protect the rights of EHRDs and journalists to express their opinions freely and report on public interest issues, especially on the environment and climate change, without fear of retaliation. Governments must respect and uphold freedom of expression, allowing open criticism and debate.

Presently, victims of environmental harm can only seek legal recourse through common law tort actions, which do not mandate wrongdoers to undertake environmental remediation. With no legal protection against strategic lawsuits against public participation (SLAPP) and the absence of a federal ombudsman and grievance mechanism for environmental concerns, people are deterred from critiquing corporations and governments on their environmental practices. Climate impacts, such as floods, have prompted citizens to file lawsuits seeking damages and legal action against governments for inadequate disaster plans. However, no legislation addresses grievance mechanisms and the protection of citizens' rights in climate and disaster situations. Human rights laws are increasingly employed to hold governments and corporations accountable for the impact of climate change on citizens' fundamental rights. For instance, fifty residents in

<sup>590 &#</sup>x27;Final research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations' (February 2015)

<sup>&</sup>lt;https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/PostDisaster/A-HRC-28-76\_en.doc>accessed 31 March 2023

<sup>591</sup> United Nations Development Programme, 'Guidelines for Community Participation in Disaster Recovery' (March 2020)

<sup>&</sup>lt;https://www.gfdrr.org/sites/default/files/Guidelines%20for%20Community%20Participation%20in%20Disaster%20Recovery.pdf>accessed 31 March 2023

<sup>592</sup> Hidir Reduan Abdul Rashid, 'Pahang govt sues activist for defamation over logging issue' (Malaysiakini, 18 June 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/625154">https://www.malaysiakini.com/news/625154</a>> accessed 31 March 2023

<sup>593</sup> Ainin Wan Salleh, 'Activist to strike out defamation suit by Pahang govt' (Free Malaysia Today, 19 June 2022)

<sup>&</sup>lt;https://www.freemalaysiatoday.com/category/nation/2022/06/19/activist-to-strike-out-defamation-suit-by-pahang-govt/> accessed 31 March 2023

<sup>594 &#</sup>x27;Groups condemn police questioning over reporter's flood report' (Malaysiakini, 4 January 2022)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/605612">https://www.malaysiakini.com/news/605612</a> accessed 31 March 2023

Taman Sri Muda, Shah Alam, filed a suit against the government and nine other parties, seeking over RM3.7 million in damages over the 2021 floods<sup>595</sup>. Similarly, a group of lawyers and Kuala Lumpur citizens sued the DBKL for insufficient flood plans<sup>596</sup>.

The inadequate disaster preparedness and education in Malaysia across rural and urban areas has resulted in a failure to effectively protect human rights during natural disasters, as seen during the December 2021 flood. The absence of centralised Disaster Resilience Education (DRE) limits public knowledge and understanding of disaster risk reduction, hindering community-based initiatives (CBDRM) and early warning system effectiveness. The government's geography curriculum on disaster risk reduction education is limited in scope, differentiation, and depth <sup>597</sup>, failing to prioritise investments in resilience and strengthening disaster risk governance. Consequently, this undermines the right to life, security, and protection against natural disasters, as well as access to information and education necessary for disaster preparation and response. It is imperative for the government to implement comprehensive disaster preparedness measures and education programmes to protect the fundamental human rights of its citizens.

#### 6.0 Gender and Women's Empowerment

Mainstreaming women's rights and gender equality in climate action is crucial, as emphasised in The Convention on the Elimination of All Forms of Discrimination against Women's (CEDAW) General Recommendation No. 37 (GR37). However, Malaysia's CEDAW reports have overlooked disaster risk and Indigenous women's cases, neglecting the unique challenges and vulnerabilities these women face due to climate change. Additionally, international human rights laws and the Paris Agreement (Article 7) mandate gender mainstreaming in climate action, particularly within NDCs. Despite this, Malaysia lacks strong commitment and faces structural gaps, such as the absence of gender-disaggregated data and gender-responsive budgeting, which hinder the assessment of differential impacts of climate change on men and women. There is also no clear role for gender equality frameworks, focal points, or coordination mechanisms in implementing NDCs, contrary to decision 3/CP.25 <sup>598</sup>. Unlike other Southeast Asian

<sup>595</sup> Tarani Palani, '50 Taman Sri Muda flood victims sue Nadma, Putrajaya, eight others for RM3.7 mil' (The Edge Markets, 27 June 2022) <a href="https://www.theedgemarkets.com/article/50-taman-sri-muda-flood-victims-sue-nadma-putrajaya-eight-others-rm37m">https://www.theedgemarkets.com/article/50-taman-sri-muda-flood-victims-sue-nadma-putrajaya-eight-others-rm37m</a> accessed 31 March 2023

 $<sup>596\ &#</sup>x27;KL\ residents\ to\ sue\ DBKL\ over\ flood\ mitigation\ plans'\ (The\ Star,\ 25\ September\ 2022)$ 

<sup>&</sup>lt;https://www.thestar.com.my/metro/metro-news/2022/09/25/kl-residents-to-sue-dbkl-over-flood-mitigation-plans> accessed 31 March 2023

<sup>597</sup> Nabila Nurul Hawa, Sharifah Zarina Syed Zakaria, Muhammad Rizal Razman, Nuriah Abd Majid, Aizat Mohd Taib & Emrizal,

<sup>&#</sup>x27;Element of Disaster Risk Reduction in Geography Education in Malaysia' (2023) 15 Sustainability 1326

<sup>&</sup>lt;a href="https://doi.org/10.3390/SU15021326">https://doi.org/10.3390/SU15021326</a> accessed 31 March 2023

<sup>598</sup> United Nations Climate Change, "National Gender & Climate Change Focal Points' (United Nations Climate Change)

<sup>&</sup>lt;a href="https://unfccc.int/topics/gender/resources/list-of-gender-focal-points-under-the-unfccc">https://unfccc.int/topics/gender/resources/list-of-gender-focal-points-under-the-unfccc> accessed 31 March 2023</a>

countries, Malaysia has not appointed a National Gender & Climate Change Focal Point under UNFCCC or participated in its gender stream.

The Lima Work Programme on Gender (LWPG) was established in 2014 to integrate gender considerations into climate action under the UNFCCC and the Paris Agreement. COP25 expanded the programme, introducing five priority areas: capacity-building, gender balance and women's leadership, coherence, gender-responsive implementation, and monitoring and reporting. These efforts aim to address the disproportionate impacts of climate change on women and girls, promote their participation in the UNFCCC process, and support their employment and leadership in a just transition. Capacity building initiatives for women delegates, including young, Indigenous, and local women, are encouraged through webinars and in-session training. Furthermore, Parties have adopted a decision to implement the Glasgow Work Programme on Action for Climate Empowerment (ACE) in a manner that respects human rights, promotes gender equality, and empowers women<sup>599</sup>, calling for the effective integration of human rights within the ACE action plan.

During the 27th United Nations Climate Change Conference (COP27), participation from Indigenous women from Malaysia reached a milestone. Four Indigenous women from local communities in Malaysia, including two Jakun Indigenous youth leaders<sup>600</sup>, a Kayan Indigenous leader, and a Kadazan political leader, participated and showed leadership in the Indigenous caucus. However, they received no assistance and recognition, nor attended any stakeholder consultation and capacity building from the federal government of Malaysia concerning COP27.

#### 7.0 Climate Negotiations at the UNFCCC

Article 12 of the Paris Agreement highlights the importance of cooperation in enhancing climate change education, training, public awareness, participation, and access to information. Parties have a human rights obligation to ensure meaningful involvement and safety in all climate actions, including negotiations. In the lead-up to negotiations, Malaysia has not prioritised effective public participation, especially for civil society. Big businesses have been consulted and given significant space and visibility at the Malaysian Pavilion. Civil societies and vulnerable communities, whose human rights should be considered, have been largely excluded from decision-making related to COP negotiations, while business elites with interests in fossil fuel and carbon-intensive industries enjoy disproportionate access to decision-makers.

<sup>599</sup> United Nations Climate Change, 'ACE Negotiations' (United Nations Climate Change) <a href="https://unfccc.int/topics/education-and-outreach/the-big-picture/education-and-outreach-in-the-negotiations">https://unfccc.int/topics/education-and-outreach-in-the-negotiations</a> accessed 31 March 2023

<sup>600</sup> Klima Action Malaysia, 'COP27: KAMY's Participation and Learnings' (Medium, 20 February 2023)

<sup>&</sup>lt;a href="https://medium.com/klimaaction/cop27-kamys-participation-and-learnings-37394f04dd03">https://medium.com/klimaaction/cop27-kamys-participation-and-learnings-37394f04dd03</a> accessed 31 March 2023

To address this disconnect, six civil society groups, including Indigenous groups from Borneo and Peninsular Malaysia, submitted their COP27 demands to the Malaysian delegation in Sharm El Sheikh<sup>601</sup>. Transparent negotiations with meaningful civil society participation, particularly from groups impacted by climate change, are essential. Stakeholder consultations should be ongoing throughout strategy planning, implementation, and monitoring phases. The lack of civil society consultation before COP27 has led to public confusion on Malaysia's national negotiation position where Article 6 of the Paris Agreement is concerned, as well as loss and damage<sup>602</sup>. Moreover, negotiation outcomes were only shared with select groups during an official COP27 debrief and not publicised.

#### 8.0 Business: ESG, Disclosure and Due Diligence Reporting, and Greenwashing

#### 8.1 What is the trend right now?

A majority of Malaysia's top 50 listed companies have implemented ESG strategies and policies to reduce emissions<sup>603</sup>. Regulatory authorities established the Joint Committee on Climate Change (JC3)<sup>604</sup> to introduce guidelines and regulations concerning climate change and sustainability reporting, as well as disclosure obligations for businesses to foster climate resilience in the nation's financial sector. These guidelines and regulations include the BNM Climate Change and Principle-based Taxonomy <sup>605</sup>, Bursa's Sustainability Reporting Guide <sup>606</sup>, Stakeholder

<sup>601</sup> Klima Action Malaysia, 'Malaysian civil society demands COP27' (Medium, 16 November 2022)

<sup>&</sup>lt;a href="https://medium.com/klimaaction/malaysian-civil-society-demands-cop27-6a01e964cc6f">https://medium.com/klimaaction/malaysian-civil-society-demands-cop27-6a01e964cc6f</a> accessed 31 March 2023

<sup>602</sup> United Nations Climate Change, 'COP27 reaches breakthrough agreement on new "Loss and Damage" fund for vulnerable countries'

<sup>(</sup>United Nations Climate Change, 20 November 2022) <a href="https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries">https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries</a> accessed 31 March 2023

<sup>603</sup> Tan Zhai Yun, 'Honouring Malaysia's best performers in ESG excellence: The Edge to roll out Malaysia's first ESG awards' (The Edge Markets, 27 June 2022) <a href="https://www.theedgemarkets.com/article/honouring-malaysias-best-performers-esg-excellence-edge-roll-out-malaysias-first-esg-awards">https://www.theedgemarkets.com/article/honouring-malaysias-best-performers-esg-excellence-edge-roll-out-malaysias-first-esg-awards</a> accessed 31 March 2023

<sup>604</sup> Bank Negara Malaysia, 'Joint statement by Bank Negara Malaysia and Securities Commission Malaysia: Updates at the 9th Joint Committee on Climate Change (JC3) Meeting' (Bank Negara Malaysia, 7 December 2022) <a href="https://www.bnm.gov.my/-/jc3-9th-meeting-en">https://www.bnm.gov.my/-/jc3-9th-meeting-en</a> accessed 31 March 2023

<sup>605</sup> Bank Negara Malaysia, 'Climate Change and Principle-Based Taxonomy' (April 2021)

<sup>&</sup>lt;https://www.bnm.gov.my/documents/20124/938039/Climate+Change+and+Principle-based+Taxonomy.pdf> accessed 31 March 2023

<sup>606</sup> Bursa Malaysia, 'Sustainability Reporting Guide and Toolkits (3rd Edition)' (September 2022)

<sup>&</sup>lt;https://bursasustain.bursamalaysia.com/droplet-details/resources/sustainability-reporting-guide-3rd-edition> accessed 31 March 2023

Engagement Toolkit 607 and ESG Index 608, SC's Malaysian Code on Corporate Governance 609, and JC3's Task Force on Climate-Related Financial Disclosures (TCFD) Application Guide and Climate Disclosure Guide for Malaysian Businesses 610. Furthermore, the implementation of the EU Carbon Border Adjustment Mechanism (CBAM)<sup>611</sup> has hastened carbon pricing in Malaysia. Other EU directives, such as the Corporate Sustainability Due Diligence Directive (CSDDD)<sup>612</sup> and the EU Deforestation Regulation (EUDR)<sup>613</sup>, are anticipated to affect the forest-linked commodities sector in Malaysia, including timber 614 and oil palm<sup>615</sup> industries. Trade is emerging as a crucial external driver shaping the ESG landscape. Several business associations, law firms, and management consultancies, including the Business Council for Sustainable Development (BCSD), UN Global Compact, and Climate Governance Malaysia (GCM), offer services to help companies become more socially and environmentally responsible. The Malaysia Platform for Business and Biodiversity (MPBB) has committed to adopting mandatory requirements for businesses to disclose their impacts on biodiversity by 2030 within the Global Biodiversity Framework (GBF)<sup>616</sup>.

607 Bursa Malaysia, 'Sustainability Toolkit: Stakeholder Engagement' (December 2018)

<https://bursasustain.bursamalaysia.com/droplet-details/resources/sustainability-toolkit-stakeholder-engagement> accessed 31 March 2023

608 Bursa Malaysia, 'FTSE4Good Bursa Malaysia (F4GBM) Index' (Bursa Malaysia, 2023)

<a href="https://www.bursamalaysia.com/trade/our\_products\_services/indices/ftse4good-bursa-malaysia-f4gbm-index">https://www.bursamalaysia.com/trade/our\_products\_services/indices/ftse4good-bursa-malaysia-f4gbm-index</a> accessed 31 March 2023

609 Securities Commission Malaysia, 'Malaysian Code on Corporate Governance' (April 2021)

<https://www.sc.com.my/api/documentms/download.ashx?id=239e5ea1-a258-4db8-a9e2-41c215bdb776> accessed 31 March 2023 610 Joint Committee on Climate Change, 'Task Force on Climate-Related Financial Disclosures (TCFD): Application Guide for Malaysian Financial Institutions' (June 2022) <a href="https://www.bnm.gov.my/documents/20124/3770663/TCFD\_Application\_Guide.pdf">https://www.bnm.gov.my/documents/20124/3770663/TCFD\_Application\_Guide.pdf</a> accessed 31 March 2023

611 European Commission, 'Carbon Border Adjustment Mechanism' (European Commission) <a href="https://taxation-customs.ec.europa.eu/green-taxation-0/carbon-border-adjustment-mechanism\_en">https://taxation-customs.ec.europa.eu/green-taxation-0/carbon-border-adjustment-mechanism\_en</a> accessed 31 March 2023

612 European Commission, 'Corporate sustainability due diligence: Fostering sustainability in corporate governance and management systems' (European Commission) <a href="https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\_en">https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\_en</a> accessed 31 March 2023

613 Preferred By Nature, 'EU Deforestation Regulation' (Preferred by Nature) <a href="https://preferredbynature.org/EUDR">https://preferredbynature.org/EUDR</a> accessed 31 March 2023

 $614\,Anis\,Hazim.,\,'Timber\,industry\,needs\,to\,address\,future\,challenges'\,(The\,Malaysian\,Reserve,\,28\,February\,2023)$ 

<a href="https://themalaysianreserve.com/2023/02/28/timber-industry-needs-to-address-future-challenges/">https://themalaysianreserve.com/2023/02/28/timber-industry-needs-to-address-future-challenges/</a> accessed 31 March 2023

615 Priyatharisiny Vasu & Hailey Chung, 'EU deforestation rules may hurt palm oil exports beyond Europe, warns minister' (The Edge Markets, 7 March 2023) <a href="https://www.theedgemarkets.com/node/658099">https://www.theedgemarkets.com/node/658099</a> accessed 31 March 2023

616 Soon Li Wei, 'Malaysia Pledges to Adopt Mandatory Requirements on Biodiversity Assessment in Business During UN CBD Meeting' (Earth Journalism Network, 27 June 2022) <a href="https://earthjournalism.net/stories/malaysia-pledges-to-adopt-mandatory-requirements-on-biodiversity-assessment-in-business">https://earthjournalism.net/stories/malaysia-pledges-to-adopt-mandatory-requirements-on-biodiversity-assessment-in-business> accessed 31 March 2023

## 8.2 Also Trending are Greenwashing Risks with the Rise of ESG and Net-Zero Claims.

At COP27, a report<sup>617</sup> by the High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities under the United Nations Secretary-General criticised greenwashing, the act of misleading the public "to believe that a company or entity is doing more to protect the environment than it is" such as weak net-zero<sup>618</sup> pledges. The report also offered a roadmap to ensure credible and accountable net-zero commitments by industry, financial institutions, cities, and regions. The European Commission published the "Green Claims Directive"<sup>619</sup>, a proposal for an EU-wide methodology to clean up the environmental claims marketplace. The EU announced new measures to prevent companies from making unsubstantiated environmental claims about their products and warned firms that they could face penalties amounting to at least 4% of their annual revenue for greenwashing<sup>620</sup>. Similarly, the UK's Green Claims Code<sup>621</sup> aims to help businesses with consumer-facing products and services determine if their environmental claims could be considered misleading under British consumer law.

While greenwashing is a growing issue regionally<sup>622</sup> and globally, Malaysia does not have a legal definition of greenwashing. The Minority Shareholders Watchdog Group (MSWG) <sup>623</sup> anticipates an increase in greenwashing. The prevailing business narrative suggests that market forces will self-correct and improve over time, and that an institutionalised body monitoring greenwashing would create unnecessary bureaucracy<sup>624</sup>. However, Malaysia has a history of corporate fraud, such as the 1MDB case and the more recent Serba Dinamik Holdings Bhd, which

<sup>617</sup> United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' (November 2022)

<sup>&</sup>lt;a href="https://www.un.org/sites/un2.un.org/files/high-level\_expert\_group\_n7b.pdf">https://www.un.org/sites/un2.un.org/files/high-level\_expert\_group\_n7b.pdf</a> accessed 31 March 2023

<sup>618</sup> United Nations, 'For a livable climate: Net-zero commitments must be backed by credible action' (United Nations)

<sup>&</sup>lt;a href="https://www.un.org/en/climatechange/net-zero-coalition">https://www.un.org/en/climatechange/net-zero-coalition</a> accessed 31 March 2023

<sup>619</sup> Directorate-General for Environment, Proposal for a Directive on Green Claims

Details (March 2023) <a href="https://environment.ec.europa.eu/publications/proposal-directive-green-claims\_en">https://environment.ec.europa.eu/publications/proposal-directive-green-claims\_en</a> accessed 31 March 2023

<sup>620</sup> Anmar Frangoul, 'Big business likes to trumpet ESG credentials. But a 'greenwashing' reckoning could be on the horizon' (CNBC,

<sup>21</sup> September 2022) <a href="https://www.cnbc.com/2022/09/21/big-businesses-trumpet-esg-credentials-scrutiny-is-on-the-rise.html">https://www.cnbc.com/2022/09/21/big-businesses-trumpet-esg-credentials-scrutiny-is-on-the-rise.html</a> accessed 31 March 2023

 $<sup>621\,</sup>HM\,Government,\,'Green\,Claims'\,(HM\,Government)\,< https://greenclaims.campaign.gov.uk/>\,accessed\,31\,March\,2023$ 

<sup>622</sup> Sheryl Tian Tong Lee & Stephen Stapczynski, 'Top-performing Singapore firm accused of greenwashing in India coal sale'

 $<sup>(</sup>Bloomberg, 9\ November\ 2022) < https://www.bloomberg.com/news/articles/2022-11-09/top-performing-singapore-stock-with-temasek-backing-is-accused-of-greenwashing\#xj4y7vzkg> accessed 31\ March\ 2023$ 

<sup>623</sup> Daljit Dhesi, 'Preventing an ESG washout' (The Star, 18 July 2022) <a href="https://www.thestar.com.my/business/business-news/2022/07/18/preventing-an-esg-washout">https://www.thestar.com.my/business/business-news/2022/07/18/preventing-an-esg-washout</a> accessed 31 March 2023
624 Ibid

was charged by the Securities Commission<sup>625</sup> for falsifying its financial statement. The transition to better business conduct, such as reporting or due diligence, is complex and costly, requiring monitoring. Therefore, human rights should be a central consideration to reduce inequitable practices, prevent greenwashing, and ensure the integrity of ESGs and net-zero claims. Companies must respect human and environmental rights in accordance with existing human rights agreements, obligations, standards, and principles.

Other key institutional barriers in Malaysia include the absence of a Freedom to Information Act and Government Procurement Act, weak Whistleblower Protection Act 2010 and the presence of the Official Secrets Act 1972 - all of which hinder disclosure and due diligence of government business operations, such as GLCs and GLICs. An example that stands out is the he 2021 National Auditor-General Report (LKAN)626 which identified several issues with DBKL's inefficient RM329.33 million flood mitigation management, concluding that it failed to achieve its objectives, and three flood mitigation projects worth RM 27.68 million did not comply with procurement principles outlined in the regulations.

#### 8.3 Corporate Environmental Crime

The weak legal framework in Malaysia has contributed to the rise of corporate environmental crimes. Corporations prioritise profit over environmental consequences, and the penalties for violations are often significantly less than potential damages<sup>627</sup>. The current laws have limitations such as minimal statutory punishment, lengthy prosecution processes and the uncertain outcome of the prosecution that may discriminate against the victims of corporate crime, resulting in repeated environmental violations by corporations. The Department of Environment Malaysia (DOE) recorded 30 court cases from January 2022 until April 2022 and approximately 60 court cases in 2021 against corporations for violating various environmental laws 628, 629. Despite the Malaysian Anti-Corruption Commission (MACC) focusing on illegal logging and arresting corrupt forest officials, corruption persists, especially regarding land concessions

<sup>625</sup> Securities Commission Malaysia, 'SC charges Serba Dinamik, its directors and officers for false information in its financial statement' (Securities Commission Malaysia, 28 December 2021) <a href="https://www.sc.com.my/resources/media/media-release/sc-tatement">https://www.sc.com.my/resources/media/media-release/sc-tatement</a> charges-serba-dinamik-its-director-and-officers-for-false-information-in-its-financial-statement> accessed 31 March 2021 626 Auditor-General's Office, 'Ministry of Federal Territories Kuala Lumpur City Hall: Kuala Lumpur flood mitigation management' (2021) 4-3 <a href="https://lkan.audit.gov.my/laporan/downloads/1104?document=1217">https://lkan.audit.gov.my/laporan/downloads/1104?document=1217</a>> accessed 10 April 2023 627 Maizatun Mustafa & Nurah Sabahiah Mohamed, 'The development of environmental crime and sanction in Malaysia' (2015) European Scientific Journal 29 <a href="https://core.ac.uk/download/pdf/236406861.pdf">https://core.ac.uk/download/pdf/236406861.pdf</a> accessed 31 March 2023 628 Muhammad Amry Abdul Hapiz, Zeti Zuryani Mohd Zakuan, Anida Mahmood & H. Syafriadi, 'Deferred prosecution agreement: A tool to deter environmental crime by corporations in Malaysia' (2022) E-B 103 <a href="https://ebpj.e-">https://ebpj.e-</a> iph.co.uk/index.php/EBProceedings/article/download/4158/2309> accessed 31 March 2023 629 The court cases can be found here: https://www.doe.gov.my/en/court-case-list/

granted by state governments <sup>630</sup>. Studies indicate that political figures, their relatives, proxies, cronies, and influential businessmen often benefit from these concessions through illicit payments to state officials and political parties. While the Anti-Corruption Commission Act 2009 enforces strict penalties, successful prosecution of logging-related cases remains limited.

#### 9.0 Conclusion

In summary, a rights-based approach and enhanced procedural rights in climate governance are imperative. Human rights, as part of international law, demand transformative structural change to address disparities and power imbalances, correct historical injustices, and ensure that development frameworks like the SDGs address inequalities holistically and sustainably in pursuit of climate targets. For example, the recommendation of the National Inquiry of Indigenous People in 2018 must be prioritised to guarantee United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>631</sup> legal implementation of FPIC and the affirmative protection of Indigenous land rights in light of many "green developments." Accountability measures, such as disclosures, due diligence and effective remedy promote transparency in decision-making processes. It is crucial to urgently address the participation disconnect in national and international climate decision-making fora, enabling people to adapt and governments to re-prioritise and scale up efforts to strengthen resilience.

<sup>630</sup> Lim Teck Wyn, Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations (Forest Trends)

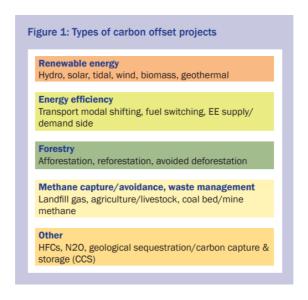
<sup>&</sup>lt;a href="https://www.forest-trends.org/wp-content/uploads/imported/for155-malaysia-white-paper-letter-14-0121-hr-pdf.pdf">hr-pdf.pdf</a> accessed 31 March 2023

<sup>631.3</sup> principles of UNDRIP: (1) Collective and individual rights; (2) Right to self determination; (3) Free, Prior and Informed Consent (FPIC)

#### Annex



Institutional Arrangement and Thematic Working Groups for Climate Change from Malaysia's Third Biennial Update Report to the UNFCCC (BUR 3), page 24



Types of Carbon Offset Projects









#### Permanent Secretary,

Ministry of Energy & Environmental Sustainability Sarawak, Level 3, Bangunan Baitulmakmur 1, Medan Raya, Petra Jaya, 93050 Kuching, Sarawak.

6th FEB 2023

### RE: REQUEST FOR STAKEHOLDER ENGAGEMENT ON SARAWAK CLIMATE CHANGE POLICY AND THE CARBON MARKET HANDBOOK

Dear Sir,

We, the collective CSO/NGOs in Sarawak would like to inquire on the progress of the Sarawak Climate Change Policy. Specifically, we would like to receive materials and/or handbooks that pertain to Sarawak's carbon market, its management and legal parameters/repercussions.

The Sarawakian public are direct stakeholders to this recent rapid development of the carbon market in the state. Therefore, it is crucial that we receive a clear explanation of the comprehensive framework and guidelines that regulate this industry.

We would also appreciate having a town hall or stakeholders session/s between the ministry and the various social and environmental CSO/NGOs as part of a due diligence process in any colossal industry/development project such as this. We welcome this engagement wholly as it shows the commitment of the state government in engaging with direct stakeholders that are Sarawak's added talent in framing a truly holistic and effective Climate Change Policy.

We are the undersigned CSOs/NGOs members of this letter and its content;

- 1. SAVE Rivers
- 2. Lawyer Kamek
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Letter from CSOs from Sarawak to the Permanent Secretary of Ministry of Energy & Environmental Sustainability Sarawak to Request for Stakeholder Consultation

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# MALAYSIANS ON DEATH ROW IN SINGAPORE

# FEATURE 1: MALAYSIANS ON DEATH ROW IN SINGAPORE

In a letter dated 26 October 2021 addressed to his mother, the Singapore Prison Service delivered terrible news to the family of Nagaenthran K Dharmalingam: "Please be informed that the death sentence passed on your son, Nagaenthran A/L K Dharmalingam, will be carried out on 10 November 2021 (Wednesday)."

The family had been given fourteen days' notice so they could make the necessary arrangements to travel from Ipoh to Singapore to visit him in his final days. It was double the usual notice given to families but was not very helpful. At that time, the border between Singapore and Malaysia was still generally closed, and there were no vaccinated travel lanes. Travelling to Singapore involved an onerous process of applying for entry approval, buying travel insurance, organising COVID-19 tests, booking a hotel that could accommodate their need to serve a quarantine period, and more. Apart from visits to the prison, family members were confined to their hotel rooms — even their meals had to be delivered to them.<sup>632</sup>

The execution notice sent to Nagaenthran's family was posted on social media and shared widely. People expressed shock and anger at the clinical language and callous timing of the letter; his execution date had been scheduled for a mere week after Deepavali, a holy Hindu festival celebrated by his family. The fact that his family were expected to navigate all the COVID restrictions — and bear all expenses themselves — also received sympathy. An online crowdfunding campaign to help them cover their expenses exceeded its goal in less than 24 hours.

For many Singaporeans and Malaysians, it was their first encounter with the cruelty of the capital punishment regime. But for abolitionist activists and family members of people on death row, the situation was all too familiar. There had been a two-year hiatus in executions; the notice sent to Nagaenthran's family was an unwelcome reminder to everyone on death row of how at risk they were.

#### Singapore's Love Affair with the Death Penalty

The death penalty is a core pillar of Singapore's criminal punishment regime and drug policy. Although capital punishment is provided for a variety of offences, it is mainly used for drug trafficking, murder, and firearms offences. Nonviolent drug offences make up an overwhelming majority of capital cases in Singapore. Based on information collected by the Transformative Justice Collective, a Singaporean abolitionist group, the vast majority

<sup>632</sup> Han K, "Death by Bureaucracy" (We, The Citizens, October 31, 2021) <a href="https://www.wethecitizens.net/death-by-bureaucracy/">https://www.wethecitizens.net/death-by-bureaucracy/</a> accessed March 6, 2023

of more than 50 prisoners on death row in the country were convicted for drug trafficking. Only three prisoners were sentenced to death for murder.<sup>633</sup>

Successive People's Action Party governments have asserted over decades that the death penalty is a necessary element of the country's 'War on Drugs'. It was first introduced into the Misuse of Drugs Act in 1975. Today, the law stipulates thresholds for specific drugs — such as 15g for diamorphine or 500g for cannabis — that would attract the mandatory death penalty in the event of a conviction.<sup>634</sup> There are only narrow circumstances in which the courts will be allowed to sentence a convicted person to life imprisonment with caning instead: if the individual's role was found to have been confined solely to that of a courier, and if the prosecution certified that they had provided "substantive assistance" to law enforcement efforts to disrupt the illicit drug trade. Another criteria is if the courier was found to be suffering from an "abnormality of mind" that affected their "mental responsibility" for the act — in such a case, the court can sentence them to life imprisonment without caning.<sup>635</sup>

These carve-outs have been criticised as still being stacked against the accused. For instance, the prosecution has a wide amount of discretion in deciding whether or not to grant a Certificate of Substantive Assistance to the accused; in the case of Pannir Selvam Pranthaman, he was deemed ineligible for such certification despite cooperating with the authorities because the police claimed that they had not used the information he had shared.<sup>636</sup> Groups working on the rights of people with disabilities have also taken issue with the way Singapore has handled cases involving people with disabilities.<sup>637</sup>

K Shanmugam, Singapore's minister for both home affairs and law, has insisted that the death penalty for drug offences actually *saves* people<sup>638</sup>; the authorities have sometimes gone as far as describing it as part of a "comprehensive harm prevention strategy".<sup>639</sup> The dominant narrative pushed by the government is one of cynical drug traffickers looking to profit off the suffering of others, and drug users whose consumption inevitably places them on a path to personal and familial ruin. The government claims that the use of the death penalty on those in the former category safeguards those in the latter, as well as society at large. This is premised on the assumption that the death penalty is an effective

<sup>633</sup> From ongoing research done by the Transformative Justice Collective in Singapore

<sup>634</sup> Misuse of Drugs Act 1973, Second Schedule

<sup>635</sup> Misuse of Drugs Act 1973, Section 33B

<sup>636</sup> Pannir Selvam a/l Pranthaman v Attorney-General [2022] SGCA (2022) 35

<sup>637</sup> We Who Witness 'Call from Persons with Disabilities to Halt the Imminent Execution of Nagaenthran a/I K Dharmalingam' (Wordpress, 6 November 2021) <a href="https://wewhowitness.wordpress.com/2021/11/06/joint-statement-nagaenthran/">https://wewhowitness.wordpress.com/2021/11/06/joint-statement-nagaenthran/</a> accessed 30 March 2023

<sup>638</sup> David Sun, 'S'pore's Death Penalty for Drug Trafficking Saves Lives, Shanmugam Tells BBC' (The Straits Times, 29 Juned 2022)

<a href="https://www.straitstimes.com/singapore/singapores-mandatory-death-penalty-for-drug-trafficking-saves-lives-protects-its-people-shanmugam-tells-bbc">https://www.straitstimes.com/singapore/singapores-mandatory-death-penalty-for-drug-trafficking-saves-lives-protects-its-people-shanmugam-tells-bbc</a> accessed 6 March 2023

<sup>639 &#</sup>x27;Statement in Response to Media Queries' (Central Narcotics Bureau, 7 October 2022)

<sup>&</sup>lt;a href="https://www.cnb.gov.sg/NewsAndEvents/News/Index/statement-in-response-to-media-queries-70ct">https://www.cnb.gov.sg/NewsAndEvents/News/Index/statement-in-response-to-media-queries-70ct</a>> accessed 6 March 2023

deterrent against the drug trade — an assumption not substantiated by independent, rigorous, or peer-reviewed research. Although the government claims they can prove that the death penalty works, the data they cite only shows that the majority of survey respondents are of the *opinion* that the death penalty is an effective deterrent.<sup>640</sup>

Furthermore, it is now a matter of record that big drug lords are not the ones who are getting arrested and sent to the gallows. In an interview with the *Sydney Morning Herald* on 15 September 2022, Shanmugam acknowledged this fact:

Shanmugam said Singapore had no power to catch drug lords, who capitalised on the flood of illicit substances pouring out of the Golden Triangle region on the borders of Thailand, Laos and Myanmar but were unlikely to dare venturing to the city-state themselves.

"So what are we supposed to do about that? Now, if I say I don't catch traffickers and wait for the kingpins, basically my drug policy will be out of the window," he said.

"Are we only catching the small guys and not the big guys? It's a non-question because, you know, the big guys don't come into Singapore for good reasons. Imagine if they were in Singapore, Singapore would be a very different place. That's why they don't come in "641

The lack of clear evidence of the soundness of their approach has not stopped the Singapore government from exerting significant effort to defend its use of the death penalty both domestically and internationally. Singapore punches above its weight when it comes to taking the lead on asserting a pro-death penalty stance and opposing moves towards abolition in international spaces. During the United Nations General Assembly vote on a resolution related to a moratorium on the death penalty in 2022, Singapore proposed an amendment about the sovereignty of countries to determine legal punishments.<sup>642</sup>

<sup>640</sup> David Sun, 'Budget Debate: Over 80% of S'poreans Polled Believe Death Penalty Has Deterred Offenders, Says Shanmugam' (The Straits Times, 3 March 2022) <a href="https://www.straitstimes.com/singapore/more-than-80-of-sporeans-surveyed-believe-death-penalty-has-deterred-offenders-shanmugam">https://www.straitstimes.com/singapore/more-than-80-of-sporeans-surveyed-believe-death-penalty-has-deterred-offenders-shanmugam</a> accessed 6 March 2023

<sup>641</sup> Chris Barrett, 'Tell Us a Better Solution, We Will Listen': Singapore Defends Spate of Executions' (The Sydney Morning Herald, 19 September 2022) <a href="https://www.smh.com.au/world/asia/tell-us-a-better-solution-we-will-listen-singapore-defends-spate-of-executions-20220916-p5biqf.html">https://www.smh.com.au/world/asia/tell-us-a-better-solution-we-will-listen-singapore-defends-spate-of-executions-20220916-p5biqf.html</a> accessed 6 March 2023

<sup>642 &#</sup>x27;One-Pager on Sovereignty Amendment' (The Advocates for Human Rights, 11 November 2022)

<sup>&</sup>lt;a href="https://www.theadvocatesforhumanrights.org/Publications/sovereignty-amendment-response">https://www.theadvocatesforhumanrights.org/Publications/sovereignty-amendment-response</a> accessed 6 March 2023

#### Lack of Transparency on the Death Penalty Regime and Conditions on Death Row

Although Singapore had accepted the recommendation made during the 2011 Universal Periodic Review to make information about the use of the death penalty available <sup>643</sup>, official data about the capital punishment regime is difficult to come by. Neither the Singapore Government nor the local mainstream press reports on imminent executions. Information on upcoming hangings come instead from activists, who in turn rely on the relatives of death row prisoners to relay information from the prison. The official number of hangings will only be known when the Singapore Prison Service publishes its annual report, released in the first quarter of every year. <sup>644</sup>

Prison staff and counsellors who interact with death row prisoners are bound to silence about their work by the Official Secrets Act 1935. Much of what is known about the death penalty, from the number of prisoners on death row to their living conditions, have been gathered by activists and family members of death row prisoners *despite* the barriers and obstacles set up by the state.

Singapore's Prisons Regulations stipulate that people with death sentences "must be confined apart from all other prisoners" and "under close supervision of a prison officer"<sup>645</sup>. Death row prisoners are confined to single cells. They are allowed 'yard time' for about an hour every weekday, but, from what activists have been able to gather from family members, this time is still spent in an indoor space, and they are largely by themselves. Some families say that two prisoners might be allowed to go for their 'yard time' at the same time, but they will still be separated by a screen.

Prisoner correspondence is monitored by the prison authorities. In 2021, it was confirmed that the private correspondence of 13 death row prisoners (including Gobi Avedian, a Malaysian whose death sentence was set aside in 2020<sup>646</sup>) had been copied and forwarded to the Attorney-General's Chambers (AGC) without authorisation. <sup>647</sup> Proceedings for a civil suit filed by the thirteen prisoners are still underway, with the appeal hearing fixed for some time in April 2023. This is following an adjournment after an earlier hearing on 20 January 2023, pending further clarification from the AGC on the reason behind copying and forwarding the private correspondences to the prosecutors of the suit.

<sup>643 &#</sup>x27;Responses to Recommendations: Singapore' (UPR-info.org) <a href="https://www.upr-info.org/sites/default/files/documents/2013-10/recommendationstosingapore2011.pdf">https://www.upr-info.org/sites/default/files/documents/2013-10/recommendationstosingapore2011.pdf</a> accessed 6 March 2023

<sup>644 &#</sup>x27;Annual Reports' (Singapore Prison Service) <a href="https://www.sps.gov.sg/resource/annual-reports/">https://www.sps.gov.sg/resource/annual-reports/</a> accessed 6 March 2023

<sup>645</sup> Prisons Regulations, Part X Treatment of Prisoners Awaiting Capital Punishment

<sup>646</sup> Kirsten Han, 'Singapore Escapes a Wrongful Execution' (We, The Citizens, 25 March 2021)

<sup>&</sup>lt;a href="https://www.wethecitizens.net/singapore-escapes-a-wrongful-execution/">https://www.wethecitizens.net/singapore-escapes-a-wrongful-execution/</a> accessed 6 March 2023

<sup>647 &#</sup>x27;Respect Prisoners' Right to Privacy and Fair Trials' (Transformative Justice Collective, 17 March 2021)

<sup>&</sup>lt;https://transformativejusticecollective.org/2021/03/17/on-forwarding-prisoners-correspondence-without-consent/> accessed 6 March 2023

There is a lack of independent oversight over the Singapore Prison Service, making it difficult for prisoners — regardless of whether they are on death row or not — to file complaints or prompt independent investigations into alleged mistreatment.<sup>648</sup> Activists have been told by family members about conflicts between death row prisoners and prison officers, or issues with receiving timely and adequate medical attention. But apart from complaining to the prison authorities themselves, prisoners and their families have very limited options to seek redress.

#### Malaysians on Death Row in Singapore

The Singapore Government does not release detailed information about the people on death row. Based on research done by the Transformative Justice Collective, there are, at the time of writing, eight Malaysians known to be on death row in Singapore, all of whom were convicted of drug trafficking. There is an over-representation of people from marginalised communities. The majority of known Malaysian drug mules on death row are ethnic minorities, mostly Indian Malaysians from working class backgrounds. Malaysians form the biggest group of non-Singaporeans on death row in Singapore.<sup>649</sup>

All death row prisoners live in conditions of severe isolation, but non-Singaporean death row prisoners face even more challenges. Unlike other prisoners, people on death row are not allowed to send or receive e-letters. During the COVID-19 pandemic, the border between Malaysia and Singapore was closed for a substantial amount of time. That, coupled with periods when Changi Prison went into lockdown, meant that many Malaysian death row prisoners were unable to receive visits from their families. In place of visits, they were allowed a phone call every week. However, these phone calls were discontinued once the border reopened, even though the relaxation of travel restrictions did not mean that Malaysian families immediately had the ability or means to travel. It is unclear why the Singapore Prison Service has adopted this policy and refuses to continue facilitating phone calls.

The primary point of contact that death row prisoners have with the outside world is weekly family visitation slots of about 40 minutes to an hour. However, it is often difficult for Malaysian families to travel so regularly to Singapore, especially if they live further away than Johor. For many, the cost of transport, accommodation and expenses is a heavy financial burden, especially when considering the currency exchange between the Malaysian ringgit and Singapore dollar.

<sup>648</sup> Kirsten Han, 'WTC Long Read: A Mother's Concerns in a Time of POFMA' (We, The Citizens, ( November 2020) <a href="https://www.wethecitizens.net/wtc-long-read-a-mothers-concerns/">https://www.wethecitizens.net/wtc-long-read-a-mothers-concerns/</a> accessed 6 March 2023

<sup>649</sup> From ongoing research done by the Transformative Justice Collective in Singapore

On most weekends, at least one or both of Pannir Selvam Pranthaman's sisters — Sangkari and Angelia — make the journey from Kuala Lumpur to Singapore to see him.<sup>650</sup> This involves taking an overnight bus on Friday after work, before taking a public bus in Singapore to Changi Prison. After their hour-long visit, they do the whole journey in reverse. It is a long, exhausting trip to be doing so frequently, but flights or overnight hotel stays are generally out of the question due to cost.

After Kalwant Singh's arrest in 2013, his father, a taxi driver, would drive the family all the way from Cameron Highlands down to Singapore so they could see him. The family — Kalwant's father, sister Sonia, and niece Kellvina — would often sleep in the car at Changi Village, not far from the prison.<sup>651</sup> These visits came to an end during the pandemic, and Kalwant's father died in 2021, just three months after being diagnosed with cancer, without being able to see his son in Singapore one last time. After the border between Malaysia and Singapore reopened, Sonia still struggled to travel down south due to health issues. When she and Kellvina finally managed the journey to Singapore, they appealed to the Singapore Prison Service to be granted an extra visit with Kalwant given how difficult it was for them to travel. The prison authorities refused.<sup>652</sup> The next time Sonia and Kellvina visited Kalwant, it was in the week before he was hanged on 7 July 2022.

#### Challenges with Access to Justice and Consular Support

Over the course of 2022, as the state sped up the rate of executions and death penalty gained more domestic and international attention, families and activists found that it became increasingly difficult to find local lawyers who are willing to step forward and take on capital cases at a "late stage" — referring to prisoners who have already exhausted the standard legal process of trial and appeal.

Lawyers who take on such cases pro bono are likely taking a risk. In multiple post-appeal applications filed in 2022, the prosecution took the position that the applications were an "abuse of court process" and sought cost orders. Such orders have been granted by the courts, resulting in lawyers having to pay tens of thousands of dollars to the Attorney-General's Chambers. In a statement published on 9 August 2022, the International Commission of Jurists (ICJ) said:

"Imposing punitive cost orders based on overbroad and impermissible readings of "lack of merit" or "abuse of process" violates the Rule of Law and international standards on

<sup>650 &#</sup>x27;Singapore's Deadly Drug War' (Al Jazeera English, 19 January 2023) <a href="https://www.aljazeera.com/program/101-east/2023/1/19/singapores-deadly-drug-war">https://www.aljazeera.com/program/101-east/2023/1/19/singapores-deadly-drug-war</a> accessed 6 March 2023

 $<sup>651\</sup> Kokila\ Annamalai,\ 'I\ Will\ Fight\ till\ the\ Noose\ Is\ around\ My\ Neck'\ (Learning\ from\ the\ Margins,\ 4\ July\ 2022)$ 

<sup>&</sup>lt;a href="https://learningfromthemargins.substack.com/p/i-will-fight-till-the-noose-is-around">https://learningfromthemargins.substack.com/p/i-will-fight-till-the-noose-is-around</a> accessed 6 March 2023

<sup>652</sup> Transformative Justice Collective (Twitter, 9 June 2022) <a href="https://twitter.com/tjc\_singapore/status/1534872291976581120">https://twitter.com/tjc\_singapore/status/1534872291976581120</a> accessed 6 March 2023

the independence of lawyers, such as the UN Basic Principles on the Role of Lawyers, which make clear that lawyers must be able to perform their professional functions without intimidation, hindrance, harassment or improper interference."<sup>653</sup>

ICJ and the International Bar Association's Human Rights Institute also wrote an open letter to Minister for Home Affairs and Law K Shanmugam in October 2022 expressing concern over punitive cost orders:

"While the Court of Appeal has held that a high threshold must be met before adverse cost orders may be imposed, there have also been troubling instances where the courts appear to have adopted an overly expansive and impermissible interpretation of what constitutes "lack of merit" or "abuse of process" to impose adverse cost sanctions on lawyers representing death row inmates." 654

Although the families of Malaysians on death row in Singapore might appoint Malaysian counsel to represent them, Singapore does not recognise these lawyers. Malaysian lawyers are therefore not allowed to enter Changi Prison to speak directly with their clients on death row and can only work with family members who will then pass on messages during their visits. Responding to a parliamentary question on 9 March 2022, Muhammad Faishal Ibrahim, Minister of State for the Ministry of Home Affairs and the Ministry of National Development, accused the Malaysian NGO Lawyers For Liberty (LFL) of trying to "intervene in our criminal justice process", characterising the matter as an issue of "foreign interference". 655 What was not acknowledged was that lawyers at LFL had been appointed as Malaysian counsel for many of the Malaysian death row prisoners, and were therefore entitled access to cause papers related to their clients.

In July 2022, after Malaysian Kalwant Singh received an execution notice, LFL member Zaid Malek travelled to Singapore to provide assistance with an application for a stay of execution. He was detained at the airport upon arrival and, after waiting for hours, was informed that there was an open police investigation against him for alleged contempt of court.<sup>656</sup> The investigation had to do with comments that he had made in relation to cases involving Malaysian death row prisoners in Singapore, which were published in *The Malay* 

<sup>653 &#</sup>x27;Singapore: Halt Executions and Cease Punitive Cost Orders against Death-Row Lawyers' (International Commission of Jurists, 9 August 2022) <a href="https://www.icj.org/singapore-halt-executions-and-cease-punitive-cost-orders-against-death-row-lawyers/">https://www.icj.org/singapore-halt-executions-and-cease-punitive-cost-orders-against-death-row-lawyers/</a> accessed 6 March 2023

<sup>654 &#</sup>x27;Singapore: IBAHRI and ICJ Respond to Ministry of Law and Ministry of Home Affairs on the Death Penalty and Cost Sanctions' (International Bar Association, 27 October 2022) <a href="https://www.ibanet.org/Singapore-IBAHRI-and-ICJ-respond-to-Ministry-of-Law-and-Ministry-of-Home-Affairs-on-the-death-penalty-and-cost-sanctions">https://www.ibanet.org/Singapore-IBAHRI-and-ICJ-respond-to-Ministry-of-Law-and-Ministry-of-Home-Affairs-on-the-death-penalty-and-cost-sanctions</a> accessed 6 March 2023

<sup>655 &#</sup>x27;Oral Reply to Parliamentary Question on Application Made Against the Attorney-General by 17 Prisoners Awaiting Capital Punishment' (Ministry of Home Affairs, 9 March 2022) <a href="https://www.mha.gov.sg/mediaroom/parliamentary/oral-reply-to-pq-on-application-made-against-the-attorney-general-by-17-prisoners-awaiting-capital-punishment">https://www.mha.gov.sg/mediaroom/parliamentary/oral-reply-to-pq-on-application-made-against-the-attorney-general-by-17-prisoners-awaiting-capital-punishment</a> accessed 6 March 2023 656 'Singapore Cops Confirm AGC's Order to Investigate M'sian Lawyer Zaid Malek over Contempt' (The Star, 9 July 2022) <a href="https://www.thestar.com.my/news/nation/2022/07/09/singapore-cops-confirm-agc039s-order-to-investigate-m039sian-lawyer-zaid-malek-over-contempt">https://www.thestar.com.my/news/nation/2022/07/09/singapore-cops-confirm-agc039s-order-to-investigate-m039sian-lawyer-zaid-malek-over-contempt</a> accessed 6 March 2023

*Mail* in February 2020. Zaid was eventually issued a 24-month conditional warning for contempt of court before he returned to Malaysia.<sup>657</sup>

The difficulty in finding local lawyers willing to take on post-appeal death row cases has left multiple prisoners with no choice but to represent themselves in court, even for urgent or complex legal arguments. This is made even more challenging in situations where legal proceedings are expedited because the prisoner had already been issued an execution notice.

Datchinamurthy Kataiah had to represent himself in April 2022 after his execution date was set despite him still being party to ongoing proceedings in a civil case related to the unauthorised disclosure of prisoners' private correspondence to the prosecution. On 28 April 2022, the High Court ruled in his favour and granted him a stay of execution just a day before he was scheduled to hang. The Attorney-General's Chambers (AGC) filed an appeal *immediately*, which was heard by the Court of Appeal that afternoon.<sup>658</sup> Although the AGC's appeal was dismissed, the speed at which a hearing had been set was surprising.<sup>659</sup>

In August 2022, a civil suit filed by twenty-four death row prisoners regarding their right to access to justice was dealt with, from application to appeal, within a week — such proceedings would usually have taken months, but one of the twenty-four prisoners had already been issued an execution notice for the Friday of that week. The prisoners, who had to appear in court via Zoom as litigants-in-person, argued that the AGC's practice of seeking cost orders has deterred lawyers in Singapore from taking on post-appeal capital cases, thus undermining their right to access to justice. The Court of Appeal deliberated for seven hours before delivering their judgement at around midnight, just hours before Abdul Rahim bin Shapiee's scheduled execution. The amount of time the court stood down to wait for the judges to return deprived Rahim of precious time with his family before he and his co-accused were hanged.<sup>660</sup>

According to family members of Malaysian death row prisoners in Singapore, the Malaysian High Commission in Singapore is not very proactive when it comes to providing support or maintaining regular contact with families about their loved ones'

<sup>657 &#</sup>x27;Malaysian Lawyer Issued Conditional Warning in Singapore for Contempt of Court over Comments on Drug Traffickers' (CNA, 9 July 2022) <a href="https://www.channelnewsasia.com/singapore/malaysian-lawyer-zaid-abd-malek-contempt-court-singapore-police-agc-lawyers-liberty-2799091">https://www.channelnewsasia.com/singapore/malaysian-lawyer-zaid-abd-malek-contempt-court-singapore-police-agc-lawyers-liberty-2799091</a> accessed 6 March 2023

<sup>658</sup> Selina Lum, 'Court Grants Stay Of Execution For Inmate Who Has Civil Case Pending Against A-G' (The Straits Times, 28 April 2022) <a href="https://www.straitstimes.com/singapore/courts-crime/court-grants-stay-of-execution-for-inmate-who-has-civil-case-pending-against-a-g">https://www.straitstimes.com/singapore/courts-crime/court-grants-stay-of-execution-for-inmate-who-has-civil-case-pending-against-a-g</a> accessed 6 March 2023

<sup>659 &#</sup>x27;The AGC's Appeal Proceedings Against Datchinamurthy Kataiah's Stay Of Execution' (Transformative Justice Collective, 29 April 2022) <a href="https://transformativejusticecollective.org/2022/04/29/the-agcs-appeal-proceedings-against-datchinamurthy-kataiahs-stay-of-execution/">https://transformativejusticecollective.org/2022/04/29/the-agcs-appeal-proceedings-against-datchinamurthy-kataiahs-stay-of-execution/</a> accessed 6 March 2023

<sup>660</sup> Kirsten Han, 'WTC Long Read: The Death Row Prisoners' Zoom Meeting' (We, The Citizens, 6 August 2022)

<a href="https://www.wethecitizens.net/wtc-long-read-the-death-row-prisoners-zoom-meeting/">https://www.wethecitizens.net/wtc-long-read-the-death-row-prisoners-zoom-meeting/</a> accessed 6 March 2023

cases. Most of the support given to families in need of help comes from Singaporean activists or volunteers who crowdfund to raise money for expenses.

#### Singapore's Anti-Death Penalty Movement

There is a small but growing anti-death penalty movement in Singapore. Apart from public advocacy, education and organising work, Singaporean activists also provide support to the loved ones of death row prisoners, regardless of nationality. Such support, depending on the family and the prisoner's wishes, could include accompanying relatives to court hearings, assisting with the drafting and delivery of clemency appeals, arranging travel, or putting together public campaigns.

Given the overall suppression of civil liberties in Singapore, anti-death penalty activists operate in an environment hostile to their work. In social media posts and public statements, government officials have referred to activists as "narco liberals and apologists for drug traffickers" or suggested that they have their "own agendas". 661, 662 Activists have also been subject to police investigations. In June 2022, two members of the Transformative Justice Collective, Kirsten Han and Rocky Howe, were summoned by the police for questioning over alleged "illegal assemblies" 663: instances in which they had been outside Changi Prison late at night, causing no disruption or disturbance. In September 2022, the police issued a written advisory to Luke Levy, who had held up a sign calling for the abolition of the death penalty during his graduation ceremony at the National University of Singapore. 664

In January 2023, the UN Special Rapporteur on Human Rights Defenders published her November communication to the Government of Singapore, stating:

"In the communication we express our deep concern at the questioning and investigations against the peaceful human rights work of Ms. Kirsten Han and Mr. Rocky Howe. We are concerned by what appears to be an attempt to criminalise and intimidate the two human rights defenders for defending the rights of others and exercising their

<sup>661</sup> Shanmugam K, 'K Shanmugam Sc' (Facebook, 11 October 2022)

<sup>&</sup>lt;a href="https://www.facebook.com/k.shanmugam.page/posts/pfbid028v7vGnA5KeoGHbRVY6jBwCXQGDaP6VWKPsoaZatjzxwMwzFpfFh4aMh2mtQpX3ZNl">https://www.facebook.com/k.shanmugam.page/posts/pfbid028v7vGnA5KeoGHbRVY6jBwCXQGDaP6VWKPsoaZatjzxwMwzFpfFh4aMh2mtQpX3ZNl</a> accessed 6 March 2023

<sup>662 &#</sup>x27;Ministry of Home Affairs' Response to Sir Richard Branson's Blog Post on 10 October 2022' (Ministry Of Home Affairs, 22 October 2022) <a href="https://www.mha.gov.sg/mediaroom/press-releases/ministry-of-home-affairs-response-to-sir-richard-branson-blog-post-on-10-october-2022/">https://www.mha.gov.sg/mediaroom/press-releases/ministry-of-home-affairs-response-to-sir-richard-branson-blog-post-on-10-october-2022/</a> accessed 6 March 2023

<sup>663</sup> Kok Yufeng, 'Kirsten Han, Rocky Howe Under Investigation For Public Assemblies, Say Police, Not For Anti-Death Penalty T-Shirts' (AsiaOne, 27 June 2022) <a href="https://www.asiaone.com/singapore/kirsten-han-rocky-howe-under-investigation-public-assemblies-say-police-not-anti-death">https://www.asiaone.com/singapore/kirsten-han-rocky-howe-under-investigation-public-assemblies-say-police-not-anti-death</a> accessed 6 March 2023

<sup>664 &#</sup>x27;Police Issue Written Advisory to NUS Grad Who Held up Anti-Death Penalty Sign' (CNA, 10 September 2022)

<a href="https://www.channelnewsasia.com/singapore/luke-levy-death-penalty-sign-police-nus-graduation-ceremony-advisory-2930126">https://www.channelnewsasia.com/singapore/luke-levy-death-penalty-sign-police-nus-graduation-ceremony-advisory-2930126</a>

accessed 6 March 2023

internationally recognised rights to freedom of peaceful assembly and freedom of expression."665

Despite such difficulties, there was a significant growth in momentum for Singapore's anti-death penalty movement in 2022, as the accelerated rate of executions after a two-year hiatus attracted public attention. Two public protests against the death penalty in April 2022 saw a turn-out of about 400 people each time. An unprecedented number of Singaporeans also signed public petitions, wrote clemency appeals to the President of Singapore, and donated to crowdfunding campaigns for families like Nagaenthran K Dharmalingam.

The government has so far responded by doubling down on its commitment to the death penalty and its war on drugs. Although developments in Malaysia in relation to the mandatory death penalty drew some public attention and comment, there is no sign of the Singapore Government going down a similar path in the near future.

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<sup>665 &#</sup>x27;Singapore: Investigation Into HRDs Kirsten Han & Rocky Howe Allegedly In Connection With Their Advocacy Against Death Penalty (Joint Communication) - UN SR Human Rights Defenders' (UN SR Human Rights Defenders, 31 January 2023) <a href="https://srdefenders.org/singapore-investigation-into-hrds-kirsten-han-rocky-howe-allegedly-in-connection-with-their-advocacy-against-death-penalty-joint-communication/">https://srdefenders.org/singapore-investigation-into-hrds-kirsten-han-rocky-howe-allegedly-in-connection-with-their-advocacy-against-death-penalty-joint-communication/</a> accessed 6 March 2023

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ENFORCED
DISAPPEARANCES
IN MALAYSIA:
PERPETUATING
SIMILAR
POLICE FAILURES

# FEATURE 2: ENFORCED DISAPPEARANCES IN MALAYSIA: PERPETUATING SIMILAR POLICE FAILURES

Synopsis. In this chapter, we recount the 2022 decision of the National Human Rights Commission of Malaysia (SUHAKAM) on the disappearance of the Malaysian-Indonesian couple Joshua Hilmy and Ruth Sitepu. We highlight the fourteen reasons SUHAKAM gave as the grounds for its decision and discuss briefly how this couple's disappearance was misreported in the media. Then, we recall SUHAKAM's findings in the cases of enforced disappearances of Shiite social activist Amri Che Mat and Christian Pastor Raymond Koh. Next, we examine the response and non-response of Malaysian governments over the past six years, give an overview of the actions initiated by the families of two of the victims, and outline some of the results. Finally, we show that while the enforced disappearances of Amri, Raymond, Joshua and Ruth were connected by religious threads, another thread has been consolidated in SUHAKAM's report on Joshua and Ruth: the way in which the Royal Malaysian Police handles reports of missing persons. We do this by highlighting similar police failures in documented cases of enforced disappearances, specifically in the case of Annapuranee Jenkins, the 65-year-old Australian grandmother who was reported missing in Penang and whose remains were found eighteen months later.

#### The Missing Person Report

On 15 April 2022, the Human Rights Commission of Malaysia (SUHAKAM) published its final report<sup>666</sup> on the disappearance of the Malaysian-Indonesian couple Joshua Hilmy and Ruth Sitepu.

A complainant reported the couple missing on 6 March 2017. He said in his police report that they had not been heard from since 30 November 2016. At that time, the couple had been married for 13 years<sup>667</sup>.

The complainant said he did not report the couple missing earlier because they had in the past disappeared and then reappeared. We surmise that when the complainant learned of the abduction of Pastor Raymond Koh,<sup>668</sup> and the possible link with State authorities, he decided to make the report.

<sup>666</sup> The full report can be accessed at: <a href="https://SUHAKAM.org.my/ms/publications/national-public-inquiry-reports/">https://SUHAKAM.org.my/ms/publications/national-public-inquiry-reports/</a> accessed 7 March 2023

<sup>667</sup> SUHAKAM, Public Inquiry Into the Disappearances of Joshua Hilmy & Ruth Sitepu Final Decision (SUHAKAM 2022) para 203.
668 Viral video of Raymond Koh's abduction: <a href="https://www.youtube.com/watch?v=XWSXqPf32Ql">https://www.youtube.com/watch?v=XWSXqPf32Ql</a> accessed 7 March 2023

#### Three Similarities

The "possible link" is that like Koh, Hilmy and Sitepu engaged in "proselytization, healing ceremonies, blessings and baptisms" of Muslims. Based on evidence, SUHAKAM concluded that Hilmy "practised evangelism." 669 Like Koh, the couple were pastors who interacted with Muslims.

That is the first similarity.

A second similarity is that a NGO had previously reported Hilmy for provocative activity. In Koh's case, NGOs alleged that he engaged in proselytization of Muslims.  $^{670}$  In Hilmy's case, a NGO reported a post on Hilmy's Facebook page which was insulting to the Prophet of Islam  $^{671}$ 

A third similarity is that Hilmy received threats. Pastor Koh received live bullets in his letterbox, accompanied by a death threat written in red ink.<sup>672</sup> Hilmy received threats in the form of emails and phone calls.<sup>673</sup>

#### Fourteen Grounds for SUHAKAM's Decision

The police alleged that Hilmy and Sitepu could have left the country via an ungazetted route, <sup>674</sup> and met an untimely end. To test the allegation, SUHAKAM reviewed immigration records, and adduced evidence from an immigration officer. SUHAKAM concluded the allegation was unfounded.

Further, SUHAKAM concluded that the police claim of having investigated the disappearance of Hilmy and Sitepu was questionable due to a lack of urgency, incompetency and a lack of seriousness, failure to prioritise missing persons cases, lack of coordination, and unwillingness to divulge documents and information.<sup>675</sup>

In the following fourteen paragraphs, we summarise SUHAKAM's grounds.

<sup>669</sup> Hilmy/Sitepu Report, para 203 and para 207.

<sup>670</sup> Azril Annuar, 'No proselytisation in Pastor Raymond Koh's welfare organisation, wife tells SUHAKAM inquiry' (The Malay Mail, 20 October 2017) <a href="https://www.malaymail.com/news/malaysia/2017/10/20/no-proselytisation-in-pastor-raymond-kohs-welfare-organisation-wife-tells-s/1491399">https://www.malaymail.com/news/malaysia/2017/10/20/no-proselytisation-in-pastor-raymond-kohs-welfare-organisation-wife-tells-s/1491399</a> accessed 7 March 2023

<sup>671</sup> Hilmy/Sitepu Report, para 209.

<sup>672</sup> Leslie Lopez, 'Pastor's abduction highlights violent nature of intolerance in Malaysia': Elements of case echo slaying of Christian politician in 2000 (The Straits Times, 19 April, 2017)<a href="https://www.straitstimes.com/asia/se-asia/pastors-abduction-highlights-violent-nature-of-intolerance">https://www.straitstimes.com/asia/se-asia/pastors-abduction-highlights-violent-nature-of-intolerance</a> accessed 7 March 2023

<sup>673</sup> Hilmy/Sitepu Report, para 216-221.

<sup>674</sup> Hilmy/Sitepu Report para 237.

<sup>675</sup> Hilmy/Sitepu Report, pages 63-71.

ONE, the first Investigation Officer (IO), Sergeant (Sgt) Sibee, allowed one month to pass before he recorded a statement from the complainant. Sibee claimed the delay was due to the complainant not picking up phone calls. Yet, within a week of the complainant's report, the Senior IO (also IO in the Raymond Koh case) had successfully connected with the complainant.<sup>676</sup> Therefore, the panel rejected Sgt Sibee's claim.

TWO, the police allowed more than three months to pass before broadcasting a Missing Persons Alert (*semboyan* also known as *kod utusan polis*) to all police stations and immigration checkpoints. A police witness said issuance of a *semboyan* is not required by the applicable Standard Operating Procedure (SOP).<sup>677</sup>

THREE, Sgt Sibee allowed more than seven months to pass before he visited the couple's home. As a result of this delay, information vital to the investigation may have been irrecoverably lost.<sup>678</sup>

FOUR, the police allowed nine months to elapse before they displayed flyers in public places such as petrol stations and convenience stores. (This was done by ASP Zulfadhly, when he took over the case.) SUHAKAM noted in its report that the posting of flyers "is not mandatory under the police SOP." 679

FIVE, Sgt Sibee failed to obtain critical information from the complainant. He did not interview the complainant's two children who were residing at Hilmy's home, and – as they testified before SUHAKAM – had information which could assist the investigation:

[The children's] testimonies were crucial. This was because among the witnesses, they were the closest in terms of proximity with Joshua Hilmy and Ruth Sitepu, before the couple went missing. There was evidence that on the night of 30 November 2016 Joshua Hilmy had received a call from an unknown individual and there was a heated conversation between them before the couple left the house that night itself. The conversation was heard by [a guest in the home] and the information was later passed on to [the children]. Yet their statements were only recorded by the Investigation Officer on 11 February 2020, one week before SUHAKAM's public inquiry commenced. 680 (Underlining not in original.)

**SIX**, the police failed to obtain the phone records of Hilmy and Sitepu. A police witness told SUHAKAM the phone service provider informed the police the couple had subscribed to prepaid plans, and that it was common practice for records of prepaid numbers to be discarded upon deactivation of the numbers. Hence, the records were no

<sup>676</sup> Hilmy/Sitepu Report, para 243.

<sup>677</sup> Hilmy/Sitepu Report, para 247.

<sup>678</sup> Hilmy/Sitepu Report, para 245-246.

<sup>679</sup> Hilmy/Sitepu Report, para 250.

<sup>680</sup> Hilmy/Sitepu Report, para 253.

longer available.  $^{681}$  However, a witness from the service provider testified before SUHAKAM that records are retained for seven years  $^{682}$  – and provided them to SUHAKAM. SUHAKAM identified and even contacted the person who made the last call to Hilmy's number.  $^{683}$ 

SEVEN, the police failed to probe a transaction in Hilmy's bank account about three months after Hilmy disappeared. SUHAKAM officers did so, and they recorded "a statement from the account holder who is a friend of Joshua Hilmy." 684

EIGHT, the police failed to thoroughly probe threats allegedly received by Hilmy via email, including some which displayed national insignia. 685 An officer from the Malaysian Communications and Multimedia Commission testified that the police could have compelled the email service provider to reveal traceability information. SUHAKAM noted somberly that:

"Even until the end of the Public Inquiry these proactive measures were not taken by the Investigating Officers.<sup>686</sup>"

#### NINE, the police made no effort to obtain CCTV recordings. SUHAKAM noted:

"Joshua Hilmy and Ruth Sitepu left their house on 30 November 2016 in a red Perodua Kancil. The Royal Malaysian Police as an enforcement agency with powers of investigation could have taken the initiative to acquire CCTV footage from various strategic locations. But they failed to do so.<sup>687</sup>"

TEN, the police made no effort to treat as a possible lead the fact that a police report had been made against Joshua Hilmy by the head of a branch of Perkasa (a Malay-Muslim nationalist group with a track record of employing in-your-face extreme tactics including Bible burning<sup>688</sup>.)

ELEVEN, Sgt Sibee, the IO, advised the siblings of Ruth Sitepu not to inform the Embassy of the Republic of Indonesia about a police report they made as part of their efforts to plead for official action to find her. SUHAKAM viewed this as an attempt by Sgt Sibee to "suppress the case."

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681 Hilmy/Sitepu Report, para 109, 123.
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<sup>682</sup> Hilmy/Sitepu Report, para 125.

<sup>683</sup> Hilmy/Sitepu Report, para 126.

<sup>684</sup> Hilmy/Sitepu Report, para 259.

<sup>685</sup> Hilmy/Sitepu Report, para 151.

<sup>686</sup> Hilmy/Sitepu Report, para 260-261.

<sup>687</sup> Hilmy/Sitepu Report, para 263.

<sup>688</sup> Ibrahim Ali's Bible-burning defence is even more incendiary' (The Edge Markets, 14 October 2014)

<sup>&</sup>lt;https://www.theedgemarkets.com/article/ibrahim-ali%E2%80%99s-bible-burning-defence-even-more-incendiary> accessed 7 March 2023

TWELVE, the police failed to prioritise the "missing person" case of Joshua Hilmy, even though Sgt Sibee knew he had been "investigated" in 2014 under the Sedition Act 1948.

**THIRTEEN**, the police failed to monitor and coordinate the investigation of the couple's disappearance. This, despite the fact that the public grouped the couple's disappearance together with the abductions of Amri Che Mat and Raymond Koh. After reviewing the evidence, SUHAKAM noted:

"... the case was not seriously and efficiently supervised by the management in the Royal Malaysian Police. $^{689}$ "

FOURTEEN, the police, with the backing of the Attorney General's Chambers, failed to cooperate with SUHAKAM to the extent required by the SUHAKAM Act. After lamenting the refusal of the police to share vital information contained in police investigation diaries, SUHAKAM said:

"The Panel had requested the Royal Malaysian Police to share their Investigation Diary so as to assist the Public Inquiry. This request is in line with Section 14(1) of [the SUHAKAM Act] where the Commission is empowered to procure and receive all such evidence, written and oral, for the purpose of the Public Inquiry. However, the Royal Malaysian Police refused to do so. The reason given was that they had referred our request to the Attorney General's Chambers (AGC) and were given the advice that the Investigation Diary is classified as a confidential document and falls under the Official Secrets Act 1972 ... With respect, we strongly disagree with the views of the AGC. 690" (Underlining not in original.)

#### SUHAKAM's Decision and Media Reports

Based on the above and other considerations, SUHAKAM answered the question upon which it launched its investigation: Are Joshua Hilmy and Ruth Sitepu victims of enforced disappearance? In other words, is the State complicit in their disappearance?

SUHAKAM's answer was "YES!" But this was not borne out in the headlines. Reporters and editors either missed or chose to ignore SUHAKAM's remarks that evidence adduced showed:

"... there is a refusal on the part of the Royal Malaysian Police to acknowledge the deprivation of liberty of Joshua Hilmy and Ruth Sitepu, and such refusal to acknowledge has placed them outside the protection of the law.<sup>691</sup>

"... the State has given zero information about the disappearances and/or the progress of the case of Joshua Hilmy and Ruth Sitepu.<sup>692</sup>"

The media falsely reported SUHAKAM's supposed "exoneration" of the State.

The Star headlined "State agents not involved in 'enforced disappearances' of Joshua Hilmy and wife, says SUHAKAM." 693

Benar News headlined "Malaysian human rights body: No evidence State involved in pastor-couple's abduction." <sup>694</sup>

Malaysia Gazette headlined "Tiada bukti Joshua, Ruth diculik ejen kerajaan" <sup>695</sup> (No evidence Joshua and Ruth were abducted by state agents.)

Yet, this is what SUHAKAM actually concluded:696

"The disappearances of Joshua Hilmy and Ruth Sitepu are cases of enforced disappearances as defined under Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The Government of Malaysia has breached the principle of Article 2 ... which has been recognised as having developed and crystallised into customary international law; and

"The disappearances of Joshua Hilmy and Ruth Sitepu are cases of involuntary disappearances in breach of the criminal and/or civil law and/or applicable human rights laws.

"The enforced disappearances of Joshua Hilmy and Ruth Sitepu were carried out by person or persons unknown with the acquiescence of the Royal Malaysian Police as the agent of the State followed by a refusal on the part of the Royal Malaysian Police to acknowledge the deprivation of their liberty, and such refusal has placed these two persons outside the protection of the law.

"The highly unsatisfactory conduct of the Royal Malaysian Police has contributed to [the] breach."

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<sup>692</sup> Hilmy/Sitepu Report, para 281.

<sup>693 &#</sup>x27;State agents not involved in 'enforced disappearances' of Joshua Hilmy and wife, says SUHAKAM' (The Star, 15 April 2022)

<a href="https://www.thestar.com.my/news/nation/2022/04/15/state-agents-not-involved-in-enforced-disappearances-of-joshua-hilmy-and-wife-says-SUHAKAM">https://www.thestar.com.my/news/nation/2022/04/15/state-agents-not-involved-in-enforced-disappearances-of-joshua-hilmy-and-wife-says-SUHAKAM</a> accessed 7 March 2023

<sup>694</sup> Suganya Lingan, 'Malaysian human rights body:No evidence state involved in pastor-couple's abduction' (Benar News, 15 April 2022)

<sup>&</sup>lt;https://www.benarnews.org/english/news/malaysian/enforced-disappearance-04152022145124.html> accessed 7 March 2023 695 Mohd Zaini Samsu Hadi, 'Tiada bukti Joshua, Ruth diculik ejen kerajaan – SUHAKAM' (Malaysia Gazette, 15 April 2022)
<https://malaysiagazette.com/2022/04/15/tiada-bukti-joshua-ruth-diculik-ejen-kerajaan-SUHAKAM/> accessed 7 March 2023 696 Hilmy/Sitepu Report, para 287.

#### Acquiescence

Despite the misleading headlines, the conclusion is clear: the fourteen points strongly support the conclusion. The State is responsible. The operative word is "acquiescence."

In context, "acquiescence" signals that the police either could not be bothered to do anything more than a cursory investigation ("marking checkboxes," as SUHAKAM put it) or regarded the disappearance of Joshua who is alleged to have insulted Islam/Muslims as a good thing, perhaps treating the disappearance of Ruth Sitepu as collateral damage.

#### Recommendations

In fulfilling its statutory duty, SUHAKAM offered ten recommendations to the State to eliminate the grave human rights violations it had uncovered.

The response of the State was silence. To date, despite the third finding of the National Human Rights Commission that the State is complicit in the disappearance of persons, the State has been silent. Silent in the cases of Shiite activist Amri Che Mat, and of Pastor Raymond Koh, whose enforced disappearances were confirmed by SUHAKAM in April 2019<sup>697</sup>.

What the cases of Amri, Raymond, Joshua and Ruth have revealed is that the police are prone to using extra-judicial methods to accomplish what they consider "good outcomes" in cases involving members of minority religious faiths – of Shiite Muslims and of Christians.

Based on the non-response of the State to these heinous crimes of enforced disappearance, it is hard to avoid concluding that the State thinks the best thing to do with those who are instrumental in "disturbing the claims of mainstream Islam" is to quietly disappear them – whether by direct or indirect actions taken by the State.

#### Common Thread: Special Branch Threat Assessment of Christians

During the SUHAKAM inquiries into the disappearances of Amri, Raymond, Joshua, and Ruth, it became very evident that there was a common thread between the cases.

The common thread was the active propagation, by the religious extremism division (E12) of the Special Branch of the Royal Malaysian Police – in the person of Deputy

<sup>697</sup> The full report can be accessed at:https://SUHAKAM.org.my/publications/national-public-inquiry-reports/ Public Inquiry into the Disappearance of Pastor Raymond Koh, Final Decision

Commissioner of Police Datuk Awaluddin Jadid – of the premise that those who engage in "Christianisation" are a threat to national security. 698

Awaluddin is on record as saying that the public should take action against "Christianisers" because the police could no longer do so legally, since the Internal Security Act 1960 had been abolished. Videos of his speeches at government-funded events can still be viewed online.

There have been three SUHAKAM reports. The reports are about the disappearances of (1) Shiite activist Amri Che Mat, (2) Christian Pastor Raymond Koh and (3) the Malay-Indonesian couple, pastors Joshua Hilmy and Ruth Sitepu.

#### Responses and Non-Responses to the SUHAKAM Reports

The reports are damning indictments of the Malaysian State, and are calls to action. Yet, the State has done little in response.

The State formed a "special task force" <sup>699</sup> to look into the "allegations" made by SUHAKAM in the case of Amri Che Mat. (This is a surmise, because the State never published the Terms of Reference of the task force.) There were many issues with the composition of the task force. The State responded with some changes, which most consider inadequate.

The report of the task force, probably dated January 2020, has been classified an official secret.

The families of Amri and of Raymond filed civil suits against the police and the State in respect of the disappearances of their loved ones.

Amri's family requested that the State provide them with a copy of the task force report to use in their case. The State denied their request. The family have pleaded with the judiciary to order release of the report. A decision is expected on 9 May 2023.<sup>700</sup>

Amri's family also requested that the State provide them with a copy of the police SOP on investigations of cases of missing persons. The State denied the request. The family

700 Hidir Reduan Abdul Rashid, 'May 9 verdict on bid to declassify report into Amri's enforced disappearance' (Malaysiakini, 16 January 2023) <a href="https://www.malaysiakini.com/news/651753">https://www.malaysiakini.com/news/651753</a> accessed 7 March 2023

<sup>698</sup> SUHAKAM, Public Inquiry into the Disappearance of Pastor Raymond Koh (SUHAKAM 2019) para 94.

<sup>699 &#</sup>x27;Who are the members of task force probing Koh, Amri disappearances?' (Malaysiakini, 26 June 2019)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/481328">https://www.malaysiakini.com/news/481328</a> accessed 7 March 2023

appealed to the courts, after which the courts ordered the State to submit the SOP.<sup>701</sup> The State complied.

The Koh family's suit was first heard in open court on December 19, 2022. However, the family asked the court for a deferral, in order to "resolve the lawsuit" which called for "the authorities to be held liable for Koh's unlawful abduction and for misfeasance in public office "<sup>702</sup>

Amri's family are suing the State for aggravated  $^{703}$  and exemplary  $^{704}$  damages. They have named 21 entities and individuals as defendants.  $^{705}$  Koh's family have named 13 defendants.  $^{706}$ 

The families of Hilmy and Sitepu did not file similar cases against the government. They have missed the three-year statutory limit imposed by the Public Authorities Protection Act 1948, Section 2(a) which reads:

"the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next after the ceasing thereof;"

Beyond the appointment of an investigation task force in the case of Amri, the government (State) has said nothing of any actions it has taken in response to the three SUHAKAM reports. The reports have been debated in Parliament.

The State has made no statements about any police officers being held to account for the falsehoods they aired before SUHAKAM. This paragraph in the SUHAKAM Report on Raymond Koh is pertinent:

"The Panel finds that the evidence given by the several police officers on the seizure of the items allegedly related to Pastor Raymond Koh to be full of inconsistencies and material contradictions. The convoluted accounts of how the items allegedly relating to Pastor Raymond Koh were seized seemed incredulous and an affront to common sense and logic. What should have been a straightforward account of who did what and when leading up

<sup>701</sup> Hidir Reduan Abdul Rashid, 'Court orders cops to hand SOP documents to wife of missing activist' (Malaysiakini, 7 October 2022) <a href="https://www.malaysiakini.com/news/651753">https://www.malaysiakini.com/news/651753</a> accessed 7 March 2023

<sup>702</sup> Ho Kit Yen, 'Govt, Pastor Koh's family seeking to resolve suit over disappearance' (Free Malaysia Today, 19 December

 $<sup>2022 \ | \</sup> https://www.free malaysia to day.com/category/nation/2022/12/19/govt-pastor-kohs-family-seeking-to-resolve-suit-over-disappearance/$ 

<sup>703</sup> Aggravated damages are for non-pecuniary loss or injury, including pride and dignity.

<sup>704</sup> Exemplary damages are to serve as a lesson to defendants for their outrageous conduct.

<sup>705</sup> Hariz Mohd, 'Amri's wife sues police, 20 others over activist's disappearance' (Malaysiakini, 18 November 2019)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/500291">https://www.malaysiakini.com/news/500291</a>> accessed 7 March 2023

<sup>706 &#</sup>x27;Pastor Koh's wife sues gov't and 12 others over disappearance' (Malaysiakini, 13 February 2020)

<sup>&</sup>lt;a href="https://www.malaysiakini.com/news/510625">https://www.malaysiakini.com/news/510625</a> accessed 7 March 2023

to the seizure of the items has been so distorted that the evidence simply cannot be accepted as being credible. So much time and evidence has been wasted just trying to make sense of the evidence adduced. (Para 138)<sup>707"</sup>

The cases of Amri, Raymond, Joshua and Ruth have spanned governments headed by coalitions headed by five prime ministers: Najib Tun Razak, Mahathir Mohamad, Ismail Sabri, Muhyiddin Yassin and Anwar Ibrahim. There has been nothing but a commitment to secrecy in the name of national security.<sup>708</sup>

#### Common Thread: Police Failures in Missing Person Investigations

Clearly the State is belligerent. But are these cases "special" because they involve victims whose actions are alleged to be detrimental to Islam? Yes, but there's more to it. Because these cases have provided insight into a greater national problem: police failures in cases of missing persons.

The same failures noted in the three reports by SUHAKAM elaborated above, also emerged during the inquest into the death of Annapuranee Jenkins,<sup>709</sup> the 65-year-old Australian grandmother who was reported missing in Penang in 2017.

The police failed to record a statement from the complainant, her husband Frank Jenkins. The police failed to obtain phone records from the hotel in which she was staying with Frank.

The police also failed to obtain records of both spouse's cell phones – though in the husband's report he said his wife had called him and told him she was being held against her will and would be released only when her abductors received her passport as ransom.

The police failed to issue a Missing Persons Alert (*semboyan*). They further failed to obtain CCTV recordings and showed an utter lack of urgency. When the bones of Annapuranee and her belongings were discovered, they showed a lack of care in investigating the cause of her death.

The police treated Annapuranee's disappearance as an exercise of her "right" to voluntarily disappear – with no evidence to offer SUHAKAM.

<sup>707</sup> SUHAKAM, Public Inquiry into the Disappearance of Pastor Raymond Koh (SUHAKAM 2019) page 55.

<sup>708</sup> L Loheswar, 'Family of missing Amri Che Mat denied govt's report on disappearance, told it's 'secret', release against 'national interest' (Malay Mail, 24 November 2021) <a href="https://www.malaymail.com/news/malaysia/2021/11/24/family-of-missing-amri-che-mat-denied-govts-report-on-disappearance-told-it/2023279">https://www.malaymail.com/news/malaysia/2021/11/24/family-of-missing-amri-che-mat-denied-govts-report-on-disappearance-told-it/2023279</a> accessed 7 March 2023

<sup>709</sup> Personal observations by the present author. The chapter author attended all the hearings. The details will be in the Notes of Proceedings, which have not been released by the coroner.

In the Koh case, the police alleged<sup>710</sup> that the aged pastor may have been the victim of a human smuggling ring – with no evidence.

In the Che Mat case, the police implied that Amri may have been evading the consequences of his activities as a currency trader – with no evidence.

In the Hilmy case, the police alleged Joshua may have been evading police investigation for alleged offences – with no evidence. (But SUHAKAM heard evidence that the authorities decided not to charge him.)

In the Annapuranee case, the police alleged that Annapuranee was either seeking to escape her family or investigation for drug-related offences.

For all of the allegations the police pronounced against Amri, Raymond, Joshua, and Annapuranee, they did not offer a shred of evidence.

It is unlikely that the coroner hearing the Annapuranee case will make any reference to the enforced disappearances discussed in this chapter.

But the connection is clear when we read some of the recommendations SUHAKAM made in the case of Joshua Hilmy and Ruth Sitepu:

#1 Strengthen and Improve the Standard Operating Procedures of the Police relating to the Investigations of Missing Persons, Abductions and Disappearances.<sup>711</sup>

#4 Enhance forensic investigation capabilities [of police personnel].712

#10 Independent Police Complaints and Misconduct Commission ... the Royal Malaysian Police be (b) transparent and accountable to the public ... (c) subject to a credible external oversight mechanism.<sup>713</sup>

#### Conclusion

It is now over six years since Amri Che Mat, Raymond Koh, Joshua Hilmy and Ruth Sitepu became victims of enforced disappearance. The National Human Rights Commission of Malaysia, SUHAKAM, a statutory body established by Malaysia's Parliament, has made many recommendations.

<sup>710</sup> SUHAKAM, Public Inquiry into the Disappearance of Pastor Raymond Koh (SUHAKAM 2019) page 15 (para 31.2); page 44 (para 114)

<sup>711</sup> Hilmy/Sitepu Report, page 76.

<sup>712</sup> Hilmy/Sitepu Report, page 77.

<sup>713</sup> Hilmy/Sitepu Report, page 80.

None of the recommendations have been implemented. No police officers have been charged with any offences.

Five governments (Najib, Mahathir, Muhyiddin, Ismail Sabri, Anwar Ibrahim) and three Attorneys General (Apandi Ali, Tommy Thomas, Idrus Harun) – are complicit in hampering or ignoring investigations by SUHAKAM, a statutory body.

The case of Annapuranee Jenkins shows that the issue is more than "religious factors" – though these are key in the cases of Enforced Disappearances.

The issue is exacerbated by failure of the police to organise themselves to respond effectively to reports of missing persons. The issue is likely to result in Malaysia ranking as an unsafe country for tourists.

The cases of Amri, Raymond, Joshua and Ruth, taken together with the case of Annapuranee, show that there is an urgent need to invest in establishing resources within the police force to respond effectively to reports of missing persons.

Sadly, no minister in the present government shows any interest in addressing this glaring deficiency.

As an unfortunate by-product, the public has no reason to believe SUHAKAM is actively holding the Government of Malaysia to account for acting on the recommendations contained in the SUHAKAM reports on enforced disappearances.

### MALAYSIA HUMAN RIGHTS REPORT 2022

"Our work makes a difference. We deliver change, we do improve our societies and importantly, this improves the lives of ordinary people. We manage to change legislation and policies that impact institutional cultures. Contrary to the perception in many countries, human rights are not against the State – they are to make our states and societies better and more just and secure....! am convinced SUARAM and this report will remain a crucial voice for change - principled, competent, steadfast."

Gerald Staberock, Secretary-General of World Organisation Against Torture (OMCT)

Under the Ismail Sabri administration in 2022:

- The power to detain without trial under SOSMA (Security Offences (Special Measures)
  Act 2012) was extended by another five years in an unparliamentary manner, as the
  motion to extend the corresponding provision was retabled and passed four months
  later to revoke the previous decision.
- · Clampdowns on freedom of expression and freedom of assembly continued.
- Some legislations that were long overdue such as the Anti-Sexual Harassment Bill, the Employment (Amendment) Act 2022 and the Anti-Hopping Law were passed in Parliament. Nevertheless, the national budget and other bills such as those on the abolishment of mandatory death penalty and criminalisation of stalking did not make it past the first tabling, due to the dissolution of Parliament to make way for the 15th General Election (GE). Amidst the political tussle, the 15th GE was also marred with racist, sexist and homophobic language propagated by politicians across the political divide and members of the public.

Aside from socioeconomic and political uncertainties, the nation also had to grapple with the execution of two Malaysians in Singapore who were previously on death row in the city-state since 2010 and 2013 respectively. Climate change also came more prominently to the forefront, especially in light of the detrimental impacts of continuous floods experienced by various communities.

Since its first inception in 1999, for 23 years, SUARAM's annual Malaysia Human Rights Report strives to provide a comprehensive and insightful examination of the progress made and challenges facing human rights in Malaysia.



