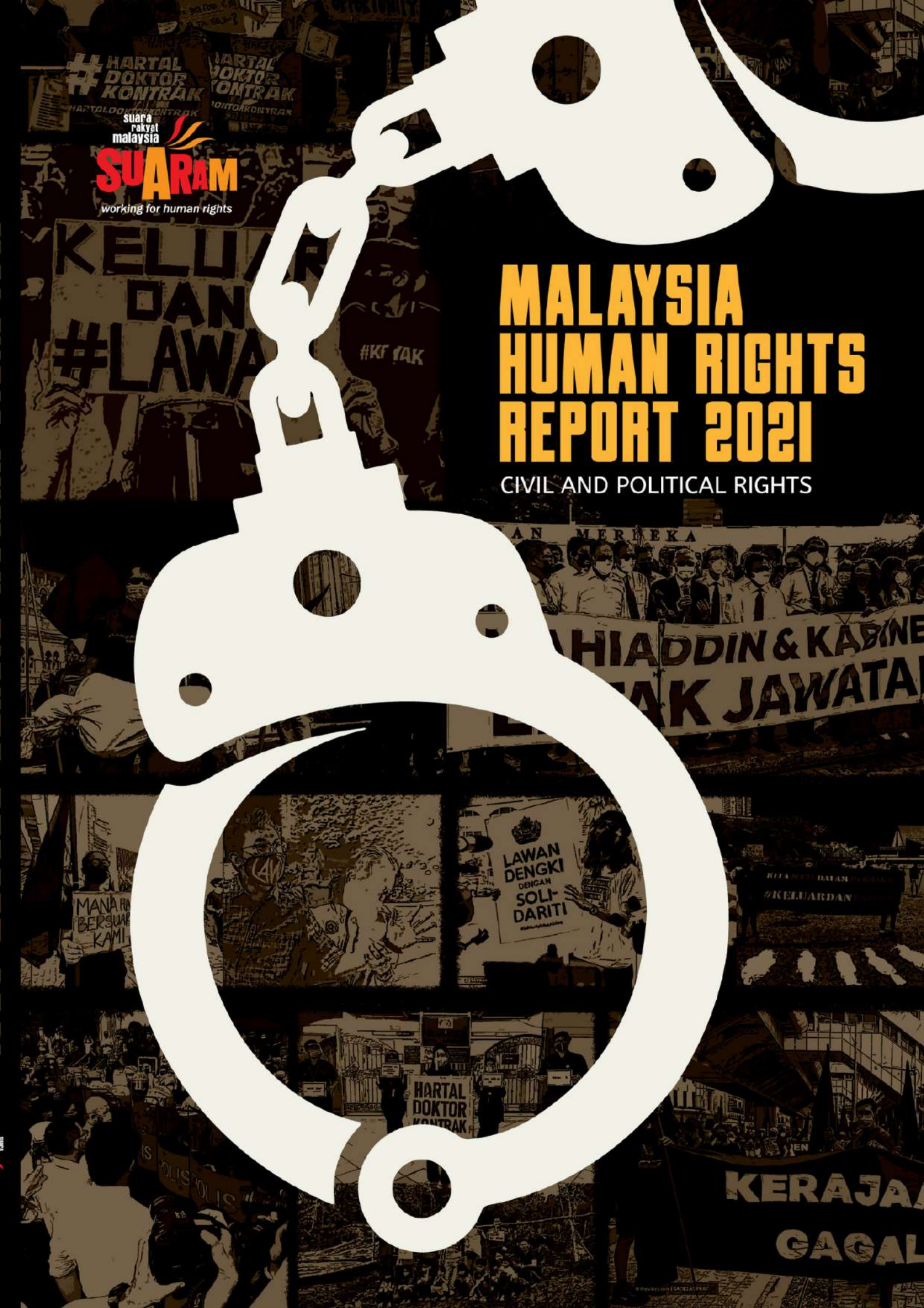


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# MALAYSIA HUMAN RIGHTS REPORT 2021

CIVIL AND POLITICAL RIGHTS



# MALAYSIA HUMAN RIGHTS REPORT 2021



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Finally, our deepest appreciation and gratitude to all individuals and organizations who have tirelessly supported the human rights cause and SUARAM throughout the year. Human rights for all!

# FOREWORD

by Shazeera Ahmad Zawawi

I migrated to Switzerland in 2013 to accept a job offer with a small Swiss human rights organisation based in Geneva. In my new capacity, I continued to cooperate with and support the work of civil society organisations in the Asia Pacific region. Over the last 8 years, it was such an eye-opening experience to interact and learn from leading human rights advocates in the region on how they prevent torture and ill-treatment in detention places. Their work left a lasting impact not only on the family members of the victims or communities they live in, but the state organs and authorities also found their status quo challenged.

The human rights defenders I know face life-changing or threatening reprisals from time to time for their belief and passion in truth and justice. Their experience also left a mark in my heart and evoked my own memories being part of the human rights movement in Malaysia. I was a by-product of “reformasi” and during that 1998-1999 period in Malaysia, political dissidents, student activists and advocates were jailed or slapped with charges for their activism. Marches of protest take place on Fridays in front of Masjid Negara or during Saturdays in the city centre, mobilising people from all walks of life to go to the street to demonstrate their frustration and anger. I recall how I was also subjected to university hearing at that time, for calling out a certain politician in an opposition newspaper. My family was astonished at how rebellious I had become; they had forgotten that in my blood flows the spirit of my grandparents who migrated way from Sumatera to settle in Arau and joined the national freedom fighting movement. Thus, I learned about myself from this invaluable experience of activism. I found the fighting spirit or DNA in my blood from our own history and learnt to own my voice and preserve our stories.

I was reconnected with SUARAM in 2015 when the National Human Rights Commission of Malaysia (SUHAKAM) launched a national committee to encourage Malaysia to ratify the United Nations Convention on Torture, Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) called Act4Cat. SUARAM, alongside other national human rights organisations such as Lawyers for Liberty, Amnesty international Malaysia and Bar Council were the key members of this committee. Since its inception, Act4Cat has been actively promoting the benefits of ratifying UNCAT to government agencies, different groups and communities of people including faith-based organisations. Experts from the U.N Committee against Torture came to Malaysia to engage with various public institutions and even the Mufti of Wilayah Persekutuan. At one point, the Malaysian media were reporting how UNCAT was the “low hanging fruit” for ratification or how “UNCAT is compatible with Islam”. These were small ripples of progress but still the much-needed wave to strengthen the rakyat’s understanding and acceptance of human rights.

The same could not be said anymore about the vibrant movement towards UNCAT ratification in Malaysia since the country was confronted with one political transition after another. We suffer from the never-ending fatigue of trying to make sense of the power-grabbing events that have tarnished

our democratic institutions. The COVID-19 pandemic added to these challenges. And during these challenging times, the work of civil society organisations such as SUARAM has been even more energetic and needed than ever before.

Since 2021, I have been back again in Malaysia to collaborate with the organisation through our 3.5-year cooperation to combat unjust practices such as forced confessions and incommunicado detention in police custody. My organization, the Association for Prevention of Torture (APT) finds it a privilege to cooperate with SUARAM on this project. SUARAM is one of the prominent organisations in Malaysia that work steadfastly to uphold rule of law, social justice, and human rights in the country. Their Annual Human Rights Reports provide important developments about the state of human rights in Malaysia, particularly concerning issues that are yet to be properly addressed by the government such as death in custody. Their outreach work with torture victims and families, youths, lawyers, and other civil society organisations in Malaysia continues to sustain the momentum for change in civil & political rights. Through our cooperation, we explore new ways of advocacy, challenge existing assumptions and perceptions that justify the necessity of torture or violence in the name of public safety or security and cultivate more efforts to build hope and empathy in our work.

The path to cooperation is never straight forward and working together as a team is a steep learning curve but ultimately, we have learned so much from one another and our cooperation has revived our motivation to continue this fight. In my view, it is important to join forces; be it international or local organisations, multidisciplinary fields, individuals with different expertise or communities of different backgrounds. In our current efforts to uphold human rights, everyone has a role to play, and it is crucial for us to support one another. I am also pleased that through this opportunity for cooperation, APT and SUARAM can explore new human rights perspectives and approaches in our work, which are essential for us to build connections and trust.

I want to warmly congratulate SUARAM for their courage, tenacity, and empathy for the suppressed and the voiceless in our society. This Annual Report is a strong testimony of SUARAM's unnerving spirit and passion to drive further democratic change in Malaysia and to expose and combat the culture of impunity by making information accessible and available to everyone.

I hope SUARAM's dedication and spirit will inspire others, especially our young generation on the importance of dissent, creativity, and courage in our fight for change.

Shazeera Ahmad Zawawi  
Senior Adviser, Research and Innovation  
Association for the Prevention of Torture



# EXECUTIVE SUMMARY

In 2021, Malaysia continued to grapple with political turmoil arising from the notorious ‘Sheraton Move’ and the concomitant resurgence of Covid-19. The political crisis, which stemmed from the alleged loss of parliamentary majority by former Prime Minister Muhyiddin Yassin, resulted in the country being put under abrupt emergency rule and haphazard lockdowns. The nationwide emergency, announced on 12 January 2021 purportedly to curb the Covid-19 pandemic, was widely regarded as a political move by the embattled Prime Minister to suspend parliament when his parliamentary support was on the brink of collapse. For much of the year, the Perikatan Nasional government managed to govern without any parliamentary scrutiny. In early August, political stability was tentatively restored with Muhyiddin’s resignation. His successor, Ismail Sabri, swiftly negotiated with the opposition bloc for a political ceasefire and a bi-partisan memorandum was signed between both parties. The new government was held accountable to deliver on several promises, including the implementation of the voting right of 18-year-old, the tabling of an anti-hopping bill and various parliamentary reforms in return for conditional support from the opposition.

Within the span of unfolding political uncertainty and suspension of parliamentary democracy, the resurgence of Covid-19 in 2021 wrecked serious damage upon the nation’s economy and public health. The government re-introduced its movement control order (MCO) at the beginning of the year, in response to the unprecedented surge in daily Covid-19 cases and deaths. Consequently, outdoor activities were restricted to curb the spread of the Covid-19 virus. Compared to the previous year, the economic and social impact of the lockdown in 2021 was purportedly much more severe, reflected in the reported increase in suicides and distress calls while unemployment figures continued to escalate. The economic hardships in 2021 even led to the launching of an unofficial “white flag movement” by Malaysian citizens, where individuals and families facing financial difficulties would raise white flags outside their residences as a cry for financial and food assistance.

Malaysia’s human rights situation deteriorated further in 2021, with the government clamping down on freedom of expression and assembly to stifle dissent, amid worsening political instability in the first half of the year. Security laws that violate the **right to fair trial** continued to be abused throughout the year where SUARAM’s media monitoring has tallied 146 individuals arrested under SOSMA, and 245 under POCA in 2021 while government’s official data revealed an alarming total of 369 and 2,832 individuals arrested under SOSMA and POCA from 2020 – 2021.

Therefore, the pandemic and the restriction of movement did not diminish the use of such laws, but instead provided a ‘rationale’ for the government to continue manipulating these laws on the grounds of ‘crime-prevention’ especially during pandemic times. SUARAM has also noted that the security laws were mainly used to tackle organised crime. While there had been occasional court judgements



ruling in favour of the right to fair trial as opposed to the use of security laws, overall, there was very little political will to abolish the elements of detention without trial of such laws.

The situation pertaining to the **right to justice** was equally concerning in 2021. Incidents related to police abuse of power showed no sign of decreasing, while cases of deaths in police custody were periodically reported. Between April and May, the series of reported deaths in police custody drew public outrage and shock. The 21 deaths in custody documented by SUARAM in 2021 is a cause of concern when there were only 8 deaths documented in 2020. Furthermore, throughout 2021, issues involving chain remand and torture continued to occur, with no accountability and oversight.

**Freedom of expression** suffered a major setback in Malaysia when the government manipulated its emergency powers to enact a fake news ordinance. Although the ordinance was purportedly meant to deter the creation and circulation of 'fake news' related to Covid-19 and the emergency proclamation, the lack of parliamentary oversight and the law's resemblance to the repealed Anti-Fake News Act 2018, indicates a high potential for it to be abused as a tool to silence political dissent. 12 individuals have been found to be charged under the fake news ordinance when it was enforced from March 2021 – October 2021. Besides the fake news ordinance, other repressive laws, namely the Sedition Act 1948 and Communications and Multimedia Act 1998, were frequently used to investigate social activists such as Fahmi Reza, Mohammad Alshatri, Mohammad Asraf for creating 'political dissent' against the government.

While the **freedom to assemble** was exercised regularly by activists in 2021, they were not spared from police intimidation. Many individuals who took part in these assemblies were investigated under the Peaceful Assembly Act 2012. Likewise, Human Rights Defenders and political activists continued to be called up, and at least 87 individuals were investigated under the act, according to SUARAM's monitoring.

SUARAM's **people before profit** desk has noted that various state and non-state actors in 2021 were complicit in various human rights violations under the guise of development, despite the pandemic. Notable cases had included the Selangor state government's attempt to de-gazette the North Kuala Langat Forest Reserve and the Penang South Reclamation Project which aims to create three artificial islands.

**Electoral democracy** was suspended in the first half of 2021, due to the emergency order and Covid-19 pandemic. Following the lifting of the emergency, two state elections in Malacca and Sarawak were held in the second half of the year. The government also dragged its feet over the implementation of reforms to lower the voting age. Together with the rather dubious registration process of new political parties, these delays resulted in the derailing of the right of political participation for Malaysians.

**Women and LGBTIQI** communities living in Malaysia continued to face severe human rights challenges in 2021. Certain politicians and right-wing organisations harped on gender and sexuality

issues to gain political mileage. Of particular concern are the proposed amendments to the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355). If passed, the amendments will amount to an increase in sentencing limits under Syariah courts' criminal jurisdiction, on the grounds of "resolving the LGBT issues". The only bright spot was a landmark judicial victory for women rights when the High Court ruled in favour of granting Malaysian women married to foreign spouses' equal rights in conferring automatic citizenship to their children born abroad.

The situation pertaining to **migrants and refugees** in Malaysia remained dire, with these communities continuing to face hostility and prejudice during the Covid-19 crisis. On top of ongoing systematic discrimination in migrant policies, the government had also on occasion used migrant workers as a convenient scapegoat to cover up their inefficacies in controlling the pandemic.

The Human Rights Commission of Malaysia, **SUHAKAM** faced substantial operational challenges due to the government instability and Covid-19. During its short-lived tenure, the Perikatan Nasional government led by Prime Minister Muhyiddin Yassin decided not to allocate time for SUHAKAM's annual report to be debated in parliament, while the pandemic limited the commission's capacity to address and investigate human rights complaints.

Lastly, the application of the **death penalty** continued unabated in the country throughout 2021, despite the government's recent vote in support of a United Nations (UN) resolution favouring a moratorium on the use of the death penalty. Cases of drug trafficking remain the most significant on Malaysia's death row, topping the list of offences involving the death penalty, and these cases continue to be plagued by injustices and inequities. This was clearly illustrated in the case of Hairun Jalmani, a 55-year-old single mother of nine, who was sentenced to death in October 2021 for possessing 113.9g of methamphetamine. Malaysia's strict drug trafficking laws continue to influence the widespread application of the death penalty in the country, with no regard for the often-vulnerable socioeconomic realities of its victims.





**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 protection and fundamental liberties contained in this subsection of the Constitution, 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.

To prevent subversion, organised violence or acts prejudicial to the public, Article 149 of the Constitution allows the Parliament to craft laws that would otherwise violate fundamental liberties and constitutional guarantees in Article 5, as well as Article 9 (freedom of movement), Article 10 (freedom of speech, assembly, and association) and Article 13 (right to property). 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.

In 2021, the laws permitting detention without trial have continued to be applied by the state and there has not been any perceptible indication to abolish or amend it. These laws, namely, the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime Act 1959 (POCA) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA85) were applied against alleged offenders of financial fraud, terrorism, organised crime, and human trafficking. Public information on cases related to detention without trial laws is limited, and the most accessible sources remain the media and parliamentary records. SUARAM's media monitoring has tallied 146 individuals arrested under SOSMA, and 245 under POCA, in 2021.

**Statistics on Detention Without Trial Laws from SUARAM's Monitoring in 2021**

	<b>Terrorism</b>	<b>Trafficking/Immigration</b>	<b>Organised Crime</b>	<b>Others</b>	<b>Total</b>
<b>SOSMA</b>	1	63	81	1	146
<b>POCA</b>	0	3	239	3	245
<b>POTA</b>	0	0	0	0	0
<b>Total</b>	1	66	320	4	391

In terms of policy development, although the government had promised that SOSMA, POCA and POTA would be amended to ensure relevancy and effectiveness in improving public safety and security in its 12th Malaysian Plan<sup>1</sup>, no further elaboration was provided as to what these potential amendments would be. Instead, the government has defended the necessity of enforcing these laws on several occasions in the name of safeguarding national security<sup>2</sup>. This has also been the official stance taken by the Perikatan Nasional government since it came into power in 2020. Based on SUARAM's monitoring in 2021, the government failed to actively consult different stakeholders to either review or amend such laws, as they had promised. This silence raises concern over the intended nature of the promised amendments. Thus, instead of ensuring an individual's right to fair trial is protected, the amendments may do the opposite, and strengthen the detention-without-trial nature of such laws.

There also appears to be an inherent belief within the government that detention without trial laws such as SOSMA serves the purpose of deterring free speech. Following the collapse of Perikatan Nasional and change of leadership in Putrajaya, the new Home Minister Datuk Seri Hamzah Zainudin had suggested that SOSMA could be used if individuals were found to be issuing statements which could incite others to the point of causing public fear<sup>3</sup>, even though the law should only be used against individuals involved in security offences<sup>4</sup>.

While there were no arrests under detention without trial laws in 2021 where individuals were detained for exercising their free speech under SUARAM's monitoring, the Home Minister's statement nevertheless raises concerns that SOSMA could potentially be used to silence political dissenters, harking back to the years when the now-abolished Internal Security Act 1960 (ISA) was widely abused for political reasons.

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

	Citizenship		Alleged Crime			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
<b>Total</b>	-	-	587	532	9,003	10,122

#### Official Number of Individuals Arrested under Detention Without Trial Laws from 2020 – 2021<sup>6</sup>

SOSMA	POCA	POTA	DDA85	Total
369	2,832	0	1,814	5,015

1 'Sedition Act, Penal Code, Sosma among laws to be reviewed' (Malaysiakini, 27 September 2021) <<https://www.malaysiakini.com/news/593036>> accessed 24 October 2021

2 Oral Answer in Parliament – Question 49, 4 October 2021

3 'Hamzah: Action under SOSMA against individuals who incite, create public fear' (The Edge Markets, 01 September 2021) <<https://www.theedgemarkets.com/article/hamzah-action-under-sosma-against-individuals-who-incite-create-public-fear>> accessed 24 October 2021

4 Under Section 4(3) of SOSMA, no person shall be arrested and detained for his political belief or political activity

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

6 Oral Answer in Parliament – Question 66, 15 September 2021

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 does not represent the total number of individuals arrested under SOSMA and POCA, since these two laws came into force much earlier<sup>7</sup>. However, the 35 individuals arrested under POTA can 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>8</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.

### **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 suspected internal security offences described under Chapters VI (against the State), VIA (terrorism related) and VI B (organised crime) of the Penal Code; the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM); and the Special Measures Against Terrorism in Foreign Countries Act 2015. In other words, the Act's provisions allow the police to apply special measures 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 is 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 Criminal Procedure Code, whereby 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 him or her vulnerable to punitive detention, even before being declared guilty by the court.

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<sup>7</sup> SOSMA was passed on April 2012 while POCA was passed on 1959 and was amended in 2014 and 2017

<sup>8</sup> Oral Answer in Parliament – Question 66, 15 September 2021 <<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>>

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. As noted in SUARAM's reports over the years, a major prevailing concern has been that detainees are also often subjected to mental and physical abuse during the preliminary 28-day detention. As of November 2021, a total of 283 detainees were still being held in detention under SOSMA<sup>9</sup>.

The effect of SOSMA in undermining several principles of the right to trial was evident in several cases in 2021. For instance, family members of taxi driver Mohammad Saiful only discovered that he had been arrested and detained under SOSMA after they had made a police report regarding his sudden 5-day disappearance<sup>10</sup>. The right to family access, guaranteed under Section 28A of the CPC, was clearly infringed as his family members would not even have been informed about the arrest, had they not reported the detainee's disappearance to the police. The family members also revealed that Mohammad Saiful had been denied legal counsel while under arrest. Though Mohammad Saiful was subsequently released and cleared of suspicion of drug trafficking, the clandestine nature of his arrest and ensuing detention shows how the law, in its application, threatens fundamental liberties, by exposing detainees to arbitrary arrest and possible incommunicado detention.

In early April 2021, the family members of 22 SOSMA detainees spoke out on behalf of their kin that suffering physical and mental abuse under incarceration<sup>11</sup>. The detainees had been arrested in 2019 under SOSMA for alleged organised crime. During their pre-trial detention period at the Jelebu prison, they claimed that they had been physically assaulted with plastic pipes and chairs, and their private parts sprayed with chilli oil. The Jelebu case illustrates how extended pre-trial detention under SOSMA can potentially lead to abuse of power amounting to physical abuse against detainees.

Lim Kian Aik and R. Nathan were detained under SOSMA in November 2020 for allegedly sabotaging water services in Selangor<sup>12</sup>. According to the authorities, the rationale for the decision to classify sabotaging water services as a chargeable offence under SOSMA was apparently that the charge was framed under Section 124K of the Penal Code, which falls under Chapter VI (Offences against the State) under the purview of SOSMA. Following the detention of the two individuals under SOSMA, the Environment and Water Minister even boasted about the government's commitment to refrain from compromising on environmental crimes. After being jailed for over six months, Lim was granted bail by the court due to ill health, in accordance with one of the bailable conditions under Section 13(2) of SOSMA<sup>13</sup>. Subsequently, in a landmark decision made by the Court of Appeal in August 2021, the court ruled that sabotaging water services was not a classifiable security offence under SOSMA and ordered that the charges against the accused be dropped<sup>14</sup>. This again speaks to the wide power that SOSMA enjoys. While its intended purpose may have been to combat security issues including terrorism, threatening national security, or trafficking, the acceptance of SOSMA as a law to showcase the government's toughness in fighting crimes only leads to it being abused.

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9 Oral Answer in Parliament – Question 17, 23 November 2021

10 Manzaidi Mohd Amin, 'Pemandu teksi disangka hilang, rupanya kena tahan bawah SOSMA' (Malaysia Gazette, 06 April 2021) <<https://malaysiagazette.com/2021/04/06/pemandu-teksi-disangka-hilang-rupanya-kena-tahan-bawah-sosma/>> accessed 24 October 2021

11 Yiswaree Palansamy, 'Fearing Ganapathy's fate, families beg for mercy, justice for 22 loved ones allegedly tortured in Jelebu Prison' (The Malay Mail, 2 May 2021) <<https://www.malaymail.com/news/malaysia/2021/05/02/fearing-ganapathys-fate-families-beg-for-mercy-justice-for-22-loved-ones-al/1970964>> accessed 10 March 2022

12 'Duo first to be charged under Sosma 2012 with sabotage on water services' (The Vibes, 23 November 2020) <<https://www.thevibes.com/articles/news/7064/duo-first-to-be-charged-under-sosma-2012-with-sabotage-on-water-services>> accessed 10 March 2022

13 'Man held under Sosma for sabotage on water services granted RM50,000 bail' (New Strait Times, 16 April 2021) <<https://www.nst.com.my/news/crime-courts/2021/04/682896/man-held-under-sosma-sabotage-water-services-granted-rm50000-bail>> accessed 10 March 2022

14 V Anbalagan, 'Sabotage of water service not a security offence, rules court' (Free Malaysia Today, 26 August 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/08/26/sabotage-of-water-service-not-a-security-offence-rules-court/>> accessed 10 March 2022



An increased number of arrests related to human trafficking took place under SOSMA in 2021, including arrests of teenagers. In July 2021, two teenagers, aged 17 and 18, were arrested under SOSMA for alleged human trafficking in Lundu, Sarawak<sup>15</sup>. On the number of juveniles arrested and held under SOSMA, the Home Minister's answers in Parliament have largely been inconsistent and contradictory. On 15 September 2021<sup>16</sup>, in an oral reply, he stated that there no arrests had been made against juveniles under SOSMA, only to give a different answer on 29 November 2021<sup>17</sup> that 13 juveniles had been arrested in 2020. The inconsistency casts doubts on the veracity of official government data with regards to SOSMA-related arrests, and how it potentially masks the reality of its use against juveniles.

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, as seen through the case of sabotaging water services, 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 the 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<sup>18</sup> and Maria Chin<sup>19</sup>. The Home Minister's recent announcement that SOSMA can be used to deter free speech in the name of protecting public order reinforces the notion that SOSMA is viewed by the authorities as a tool to be utilised for matters beyond national security.

SOSMA will be subjected to a parliamentary debate and vote in 2022 under its mandatory sunset clause. From SUARAM's observations, the law will most likely be retained and passed with a simple parliamentary majority. The new Barisan Nasional and Perikatan Nasional coalition government has on several occasions defended the Act, whereas the opposition has not mustered the political will to abolish SOSMA, instead remaining mostly silent on SOSMA and other similar laws which allow detention without trial. If successful, the renewal would extend SOSMA's lifespan for another five years, leaving room for greater misapplication and abuse.

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15 Jeremy Lanson, 'Teens caught in Lundu for allegedly acting as ground coordinators for illegal immigrants' (The Borneo Post, 2 July 2021) <<https://www.theborneopost.com/2021/07/02/teens-caught-in-lundu-for-allegedly-acting-as-ground-coordinators-for-illegal-immigrants/>> accessed 10 March 2022

16 Oral Answer in Parliament – Question 66, 15 September 2021

17 Oral Answer in Parliament – Question 20, 29 November 2021

18 V anbalagan, 'Lawyer Matthias Chang arrested under Sosma' (The Edge Markets, 8 October 2015) <<https://www.theedgemarkets.com/article/lawyer-matthias-chang-arrested-under-sosma>> accessed 25 February 2021

19 Victoria Brown, 'Bersih 5: Maria Chin detained under Sosma' (The Star, 19 November 2016) <<https://www.thestar.com.my/news/nation/2016/11/19/bersih-5-maria-chin-detained-under-sosma>> accessed 25 February 2021

## Prevention of Crime Act 1959

Unlike SOSMA, POCA is a law that was introduced mainly to prevent organised crime, especially crimes relating to triads, secret societies and repeat offenders. It has been likened to the repealed ISA and circumvents the criminal justice system by denying detainees any opportunity to defend themselves in court. The Act was amended in 2014 and 2017 to include additional provisions that reinforced its draconian nature.

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' as those sentenced are often sent to locations other than their homes, sometimes even to different states. Under house arrest, detainees are fitted with an Electronic Monitoring Device to monitor their movements and restricted to a 5km radius of their place of detention. They are also subjected to regular checks by police officers and made to report to a designated police station from time to time.

POCA was actively used in 2021, with the police mainly targeting individuals involved in illegal organised activities such as cryptocurrency fraud, online scam, prostitution and sex trade, illegal use of firearms and gang extortion. SUARAM's monitoring of parliamentary answers also revealed a trend of the Home Ministry utilising POCA to address all types of criminal activity<sup>20</sup>. As noted in previous SUARAM Human Rights Reports, the government has admitted that some individuals were detained under POCA due to inadequate evidence or the lack of strong evidence against them. Despite a decline in criminal activity during the lockdown due to the COVID-19 pandemic<sup>21</sup>, there were still a total of 2,264 arrests made under POCA during the same period.

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<sup>20</sup> Written Answer in Parliament – Question 231, 2nd Meeting of the 4th Session of the 14th Parliament

<sup>21</sup> 'Kes Kesalahan seksual kanak-kanak, keganasan rumah tangga meningkat' (Sinar Harian, 4 May 2021) <<https://www.sinarharian.com.my/article/136841/BERITA/Sema-sa/Kes-kesalahan-seksual-kanak-kanak-keganasan-rumah-tangga-meningkat>> accessed 10 March 2022

### Sritharan Kukaneson

Sritharan Kukaneson was arrested under POCA on 24 February 2021 and claimed that he had been assaulted by police during his detention. He was denied access to legal counsel and the police did not inform his family members about his arrest. He was chain-remanded for approximately 41 days and was only able to contact his wife on 4 April 2021. Under POCA, Sritharan's remand was extended twice by the magistrate's court, once on 5 April by 21 days allowed under Section 4(1), followed by another 38 days on 23 April. As of 7 May 2021, he would have been behind bars for 72 days without having been found guilty in court for any offence<sup>22</sup>.

### Mitheswaran A/L Kumar

Despite the fact that preventive detention is against the Convention on the Rights of the Child and transgresses the rights and interests of the child in juvenile justice processes, POCA has often been used to detain children and minors. One such case involves 18-year-old Mitheswaran A/L Kumar, whom the police had targeted on suspicion of possession of methamphetamine in February 2021. The police initially visited his house intending to arrest Mitheswaran but instead handcuffed and arrested his brother Nisant Raj A/L Kumar. The brother was brought to a random location by the police, from where they called Mitheswaran, instructing him to come over. Mitheswaran arrived and was subsequently handcuffed, arrested and brought to Bukit Mertajam Police Station along with his brother. Mitheswaran was initially remanded for three days under Section 12(2) of the Dangerous Drugs Act 1952 for drug possession. The basis for his remand was that 5 grammes of methamphetamine had allegedly been found in his possession. However, when family members queried further, the police revised their claim and stated the weight of the drugs was only 0.5 grammes.



Figure 1 Priscilla Devi Thurai, Mitheswaran's mother, along with SUARAM, submitted a memorandum to Human Rights Commission of Malaysia (SUHAKAM) to investigate the process of chain remand against her own son.

At the end of the three-day remand period, Mitheswaran was re-arrested, and the investigation changed from possession of drugs to one of housebreaking. He was further remanded for 6 days under Section 457 of the Penal Code. The two remands made in succession constitute a 'chain remand', and even after that, Mitheswaran was once again arrested under POCA. After spending a total 60 days of detention under POCA, he was banished to another state for another two years.

<sup>22</sup> Jason Thomas, 'After 72 days, man arrested with Ganapathy still behind bars' (Free Malaysia Today, 7 May 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/05/07/after-72-days-man-arrested-with-ganapathy-still-behind-bars/>> accessed 10 March 2022

## Surendran Shanker

In June 2020, 21-year-old Surendran Shanker was arrested in Petaling Jaya and spent almost a year in detention under POCA until his untimely death in Simpang Renggam prison on 27 May 2021. According to his family, he was first sent to Muar Rehabilitation Centre in August 2020, where they last saw him and was subsequently transferred to Simpang Renggam Prison on 25 April 2021. Around a month later, the family was informed by the prison that Surendran had complained of severe pain in his stomach and had been admitted to Kluang Hospital. There, his health condition deteriorated, and when the family contacted the hospital to follow up, they were told that he had died of septic shock with multiple organ failure.

The constitutionality of POCA, especially with regards to its overreach of executive powers, has been fiercely debated in 2021. The judiciary has taken an active role in ruling against the application of POCA to crimes that are not organised violence per se, and which may be seen to infringe upon the individual's rights under Article 5 of the Federal Constitution. For example, a former waiter, Tan Chin Kiat, who previously had been remanded for online gambling under POCA for 21 days, was set free<sup>23</sup> after the High Court found that there was indeed merit in the submission made by the detainee's lawyer that the alleged offence of unlawful gaming should not be categorised as organised violence as stated in Article 149(1)(a) of the Federal Constitution. While Tan's victory in court succeeded in setting a precedent, the question remains as to why the police had used POCA to charge unlawful gaming in the first place and subjecting him to an extended pre-trial detention.

In a separate high-profile case, the apex court ordered the release of Zaidi Kanapiah and two police officers who were detained under POCA in connection with an illegal online gambling syndicate<sup>24</sup>. In deciding the release of the three POCA detainees, ground-breaking judgement was made, whereby the magistrate court did not adhere to the remand guidelines pursuant to Section 4(1) of POCA. The landmark case may prove decisive in challenging POCA's 60 days' remand application because the judgement effectively overturns previous presumptions that a remand application would be 'automatically' granted by a magistrate upon production of a statement by a police officer under POCA. The ruling has also emphasised that magistrates must comply with the Federal Constitution even when deciding to grant or refuse remand applications for detainees arrested under POCA.

Chief Justice Tun Tengku Maimun Tuan Mat, who chaired the five-member panel of the hearing, also spoke out against the constitutionality of POCA. Aside from affirming the ruling made during Tan's case whereby gaming offences should not be construed as organised violence, the Chief Justice also stated that the detention of Zaidi and the two police officers were unlawful because under Sections 4(1) and 4(2) of POCA, the courts are not afforded the discretion to determine whether a remand application should be granted. In the view of the Chief Justice, these subsections, which bind the magistrate to the dictates of the executive in the police and the public prosecutor, have effectively eroded the doctrine of separation of power between the executive and judiciary and are therefore inconsistent with the Federal Constitution.

<sup>23</sup> 'Ex-waiter held under Poca for gambling walks free' (Free Malaysia Today, 5 February 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/02/05/ex-waiter-held-under-poca-for-gambling-walks-free/>> accessed 10 March 2022

<sup>24</sup> 'Federal court orders Addy Kana, two cops be released from POCA detention' (The Sun Daily, 4 April 2021) <<https://www.thesundaily.my/home/federal-court-orders-addy-kana-two-cops-be-released-from-poca-detention-NF7799593>> accessed 10 March 2022

Like SOSMA, the main issue with POCA is the inability of detainees to challenge the legality of their suspension of liberty. By excluding judicial review in the process of arrest and detention, the detainees have no other recourse to challenge the legality of their arrest and detention, and thus there are no checks and balances to safeguard against abuse of power by the authorities. As pointed out by the recent ruling by the judiciary, the right to fair trial does not exist under POCA, and until it, along with other detention without trial laws are abolished, Malaysians will not be able to enjoy fully the right to fair trial as enshrined in the Federal Constitution.

### **Prevention of Terrorism Act 2015**

Both in its form and function, the provisions of POTA are largely like POCA, in that both promote preventive detention. The only difference is the ‘target’ of this law. While POCA is allegedly meant to address threats posed by organised crime, POTA was specifically introduced to address the threat of terrorism as noted in the preamble to the Act<sup>25</sup>. 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 a 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.

In general, information about detention under POTA and the rehabilitation process that detainees undergo during detention is scarce. Based on SUARAM’s media monitoring and study of parliamentary answers, no arrests were made under POTA in 2021<sup>26</sup>.

On the issue of combating terrorism, the government is currently developing a National Action Plan to Prevent and Counter Violent Extremism (NAPPCVE) to address the ever-evolving threats of violent extremism. However, the zero draft of the NAPPCVE has so far ignored the concerns of how detention without trial laws such as POTA may lead to further abuse<sup>27</sup>. For instance, the definition of ‘violent extremism’ (VE) by the government is too broad and ambiguous. This is in stark contrast to international standards, where the definition of VE is specific and not associated with a particular religious or political belief. These concerns should be addressed to prevent POTA from being abused in the name of safeguarding national security or deterring terrorism. SUARAM recommends that the government establish an outline for the NAPPCVE framework and provide a clear definition of VE. The NAPPCVE must also include the establishment of an independent committee to review the arrest-and-detention power against alleged terrorists to ensure international human rights standards are met. Ideally the committee should comprise representatives from civil society organisations, the Human Rights Commission of Malaysia (SUHAKAM) and Members of Parliament from both the opposition and government bench.

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25 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.

26 Oral Answer in Parliament, Question 66, 15 September 2021

27 Full report can be accessed at: <https://initiate.my/wp-content/uploads/2022/02/NAPPCVE-CSO-Report.pdf>

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

Out of all the detention without trial laws, one that is least known, but most like the abolished ISA, is the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA85). Whereas the sentencing power under POCA and POTA is afforded to a 'prevention board', DDA85 follows ISA mechanisms, whereby detention orders are meted out by the Home Minister himself. On one hand, this law denies an individual the right to fair trial; on the other, detention under DDA85 provides a 'reprieve' from the death penalty under Section 39B of the Dangerous Drug Act 1952.

Information on DDA85 remains limited in media. From SUARAM's media monitoring, a total of 199 recorded arrests were made under DDA85 for the year 2021. However, based on parliamentary monitoring, the government revealed that a staggering 1,814 individuals were arrested from 2020 till June 2021<sup>28</sup>.

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28 Oral Answer in Parliament, Question 66, 15 September 2021





**ACCESS TO JUSTICE**



# ACCESS TO JUSTICE

Cases of abuse of power by the police continued in 2021, following the pattern of prevailing issues documented through the years by SUARAM. Police abuse of power, including deaths in custody with alleged torture and ill-treatment, are still regularly reported and documented. Yet, there remains very little public discussion of these issues, and policymakers have not addressed these human rights violations in a concrete manner.

In terms of policy development, the tabled 'new' Independent Police Conduct Commission (IPCC) bill, which was introduced in 2020 to replace the Independent Police Complaints and Misconduct Commission (IPCMC) bill<sup>29</sup>, has experienced delayed progress due to the suspension of Parliament during the emergency. The bill is only expected to be tabled for a second reading in 2022, even though the first reading was completed in August 2020. Nevertheless, there are issues of accountability and independence related to the bill. It is SUARAM's view that the bill is a watered-down version of its predecessor and does not genuinely empower commissioners to investigate police complaints independently.

The omission of Section 33 (1) of the IPCMC in the current bill has weakened the commission's disciplinary powers to compel actions against any police personnel who are found to have abused their power. Whereas the IPCMC had granted powers to the commission to enforce disciplinary actions such as dismissal of officers found guilty of abuse of power, the IPCC bill lacks such provisions.

Furthermore, the IPCC bill also diminishes the power of the commission to make any unannounced visit to police premises to discharge its functions. Compared to the original provision in the IPCMC bill, section 5 (2) of the IPCC bill has been amended in such a way that any visits to police premises are only possible by giving early notice to the relevant Head of Department. This would compromise the commission's ability and efficacy to investigate police complaints through inspection visits.

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

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<sup>29</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

SUARAM is of the view that if IPCC were to be passed in its current form, it would not be able to effectively hold the police accountable for their actions. Worse still, the introduction of IPCC would also likely diminish the current accountability mechanism provided by the Enforcement Agency Integrity Commission (EAIC), given that the commission's power to perform visits, search and seizure and its scope of power under the IPCC is even weaker compared to what was originally established by the integrity commission in 2009.

Apart from the issue of abuse of power, the establishment of the IPCMC is also crucial as an oversight body to reduce police corruption and restore public trust toward the institution. Public allegations made by retired Inspector-General Police, Abdul Hamid Bador of the existence of a cartel within the police force<sup>30</sup> and his description of the police's own disciplinary committee as being guilty of cover-ups, suggest that police corruption and misconduct is still rampant. Therefore, genuine police reform is urgently needed, and this can only be realised with the establishment of a truly independent oversight body, with sufficient powers to effectively investigate and act against officers guilty of abusing their positions of power and responsibility.



Figure 2 SUARAM along with civil society organisation and supporting MPs protested in front of the Parliament to urge Members of Parliament to reject the IPCC bill.

30 'IGP turns guns on his own integrity dept over 'cover-ups' (Free Malaysia Today, 15 April 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/04/15/igp-turns-guns-on-his-own-integrity-dept-over-cover-ups/>> accessed 10 March 2022

## Deaths in Custody

Custodial deaths in Malaysia remain an issue of grave concern. According to the official written reply given by the Ministry of Home Affairs in Parliament, 13 and 10 deaths occurred in police custody for the years 2020 and 2021 respectively<sup>31</sup>. In the same reply, the number of custodial deaths in prisons was reported to stand at 13 and nine for the year 2020 and 2021. However, these figures are largely inconsistent with those that the Home Minister had previously provided during an earlier sitting in 2020. As documented in SUARAM's 2020 Human Rights Report, the minister's Oral Answer to question no. 42 dated 24 November 2020 stated that custodial deaths in prisons for that year was 296<sup>32</sup>. The discrepancy in figures for prison custodial deaths contained in the official replies from the Home Ministry is deeply worrying, given that the difference amounts to over a hundred lives.

As for deaths in immigration custody, the same written reply in 2021 revealed that 37 such deaths occurred in 2020 while deaths in 2021 stood at 29, bringing total deaths to 66. Shockingly, out of this number, four casualties were youths aged under 18<sup>33</sup>. The government has also stopped short of revealing more details other than attributing these deaths to physiological causes including bacterial infections, arterial problems, and heart failure. The apparent reluctance to disclose specific details on every death in custody is disappointing, given that this information had been specifically requested by a Member of Parliament during the ministerial question time in parliament.

Aside from the questionable data on prison deaths and lack of data transparency, SUARAM has reason to believe that the official figures on police custodial deaths have been severely underrepresented when compared to those deaths that were documented by SUARAM or reported by the media. For instance, according to the Home Ministry, only one individual of Indian ethnicity had died in police custody in 2021<sup>34</sup>. This does not tally with the deaths of A. Ganapathy<sup>35</sup> and Sivabalan Subramaniam<sup>36</sup>, two Indian men who had died while being held in custody at the Gombak police station. Their deaths, which occurred within a month of each other, had given rise to public outrage on a national scale. The death of A. Ganapathy in Selayang Hospital was due to injuries sustained while he was under the Gombak police custody, and Sivabalan Subramaniam died as soon as he was arrested by the police from Gombak police station. Despite being covered extensively by the media, theirs are examples of cases that have been omitted in the official records, presumably because the Home Ministry or police only recognize deaths that occur in police lock-up as deaths 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>37</sup>, defines deaths 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'.

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31 Written Answer in Parliament – Question 220, 2nd Meeting of the 4th Session of the 14th Parliament

32 Oral Answer in Parliament – Question 42, 24 November 2020

33 Written Answer in Parliament – Question 221, 2nd Meeting of the 4th Session of the 14th Parliament

34 Oral Answer in Parliament – Question 50, 1st Meeting of the 4th Session of the 14th Parliament

35 Minderjeet Kaur, 'Social media outrage over Ganapathy's death in police custody' (Free Malaysia Today, 30 April 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/04/30/social-media-outrage-over-ganapathys-death-in-police-custody/>> accessed 11 October 2021

36 G Surach, 'Another death in police custody, involves same station as Ganapathy' (The Vibes, 21 May 2021) <<https://www.thevibes.com/articles/news/28112/Another-death-in-police-custody-involves-same-station-as-Ganapathy>> accessed 11 October 2021

37 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)

Certain overseas jurisdictions also adopt a wide scope to define deaths in custody, including the deaths of persons from the moment of arrest, during transportation to a detention facility or hospital, and whilst they are still under arrest, regardless of the location. For example, the Independent Police Complaint Commission (IPCC) United Kingdom defines deaths in and following police custody as deaths that occur whilst a person is arrested or brought to a detention facility, including the deaths of an arrested person or those that occur following an arrest<sup>38</sup>. Based on the definitions supplied by SUHAKAM and the IPPC, the deaths of A. Ganapathy and Sivabalan Subramaniam would certainly be categorised as deaths in police custody. However, this has not been the case due to the government's narrow view of what defines a custodial death. SUHAKAM strongly believes that this definition should be reviewed and overhauled; deaths in custody should not be limited to only deaths in a lock-up or detention centre but also include those that happen on police premises, private or medical premises, in a public premise, or in a vehicle.

As for measures to reduce deaths in custody, the government has publicly announced a raft of reforms, which includes forming a Criminal Investigation Unit on Deaths in Custody - also known as Unit Siasatan Jenayah Dan Kematian Dalam Tahanan (USJKT) – to handle all deaths in police custody. The USJKT will commence its operations starting January 2022. While the objectives of setting up this unit appear to be to install accountability and address the ever-increasing numbers of death in police custody, USJKT is still operating under the ambit of Bukit Aman's very own Integrity and Standard Compliance Department (JIPS), a unit historically notorious for covering up police misconduct and which has been severely discredited on many occasions<sup>39</sup>. Even more concerning is the fact that the USJKT remains part of the police institution; thus, any findings on its part would not be seen as to be impartial or independent.

#### Overall Statistics on Deaths in Custody<sup>40</sup>

Year	Police	Prison Department	Immigration
2011	17	-	-
2012	19	-	-
2013	13	-	-
2014	18 <sup>41</sup>	-	44 <sup>42</sup>
2015	12	252	87
2016	15	269	40
2017	1	319 <sup>43</sup>	24
2018	8	2 <sup>44</sup>	32
2019	6	3	55
2020	13	13	37
2021	10	9	29

38 Giles Lindon and Stephen Roe, *Deaths in Police Custody: A Review of The International Evidence* (1st edn, Home Office UK 2017)

39 'No internal probe, I want dirty cops charged, says Ayob Khan' (Free Malaysia Today, 14 April 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/04/14/no-internal-probe-i-want-dirty-cops-charged-says-ayob-khan/>> accessed 10 March 2022

40 Data before 2020 are collated from past SUARAM's Human Rights Report

41 Oral Answer in Parliament – Question 33, 15 March 2018

42 Written Answer in Parliament – Question 468, April 2017

43 Obtained through difference between reported death up to June 2017 and earlier reports -

<https://pardocs.sinarproject.org/documents/2017-march-april-parliamentary-session/oral-questions-soalan-lisan/2017-03-21-parliamentary-replies/soalan-30.pdf>

44 The only two known and reported cases, actual figure would likely to be higher based on preceding year's data

### SUARAM Documented Cases of Deaths in Custody in 2021

No	Name	Date of Death	Detention Location	Official Cause of Death
1	Muhammad Afis Ahmad	28 January 2021	Yan Police Station	Injuries
2	Rafi Ullah	17 February 2021	Tapah Prison	Injuries
3	Unnamed Individual	8 March 2021	Cheras Police Station	Suicide
4	A Ganapathy	18 April 2021	Gombak Police Station	Medical
5	Unnamed Individual	12 May 2021	Not Reported	Suicide
6	Sivabalan Subramaniam	21 May 2021	Gombak Police Station	Medical
7	Surendran Shanker	27 May 2021	Simpang Renggam Prison	Medical
8	Unnamed Individual	31 May 2021	Kluang Prison	Suicide
9	Umar Faruq Abdullah	3 June 2021	South Klang Police Headquarters	Injuries
10	Unnamed Individual	23 June 2021	Kota Bharu Police Station	Medical
11	Mohd Iqbal Abdullah	28 June 2021	Sungai Buloh Prison	Medical
12	Roopan Karnagaran	21 June 2021	Kajang Prison	Medical
13	Unnamed Individual	4 July 2021	Kuala Selangor Police Headquarters	Medical
14	Zahari Ayub	20 July 2021	Not Reported	Not Reported
15	Mohd Ali Othman	29 July 2021	Kluang Prison	Medical
16	Vinaiyagar K Thinpathy	13 September 2021	Kuala Langat District Police Headquarters	Medical
17	Azlan Nordin	5 October 2021	Sentul Police Station	Medical
18	Muhammad Hidayat Bin Abdul Halim	11 October 2021	Pekan Police Headquarter	Medical
19	Unnamed Individual	4 November 2021	Kubang Pasu Drug Rehabilitation Centre	Injuries
20	Unnamed Individual	16 November 2021	Kota Bharu Police Headquarter	Unknown
21	Kumar Selvadurai	13 December 2021	Kepala Batas Police Headquarter	Medical

### **Muhammad Afis Ahmad**

On January 28, Muhammad Afis Ahmad, aged 31, was found unconscious in police lock-up and rushed to the Yan Hospital. On the same day, he was pronounced dead. He had been arrested the day before, under Sections 379 and 170 of the Penal Code, in connection with theft and impersonating as a policeman. The police clarified that the deceased had put up a struggle during his arrest, which caused him to suffer injuries in the face, ear, and forehead. Following his arrest, the deceased was later taken to his house in Kampung Kilang Papan, Gurun for further investigation, and the police conducted an inspection witnessed by his family members.

It was to be the last time that the family saw the victim, with injuries described above.

A post-mortem conducted the following day revealed that Muhammad Afis had died of blunt force trauma to the head. Some 47 witnesses had had their statements taken, including family members, the officer and personnel involved in the victim's arrest, other detainees inside the same lock-up and medical officers from both Yan Hospital in Yan and Sultanah Bahiyah Hospital in Alor Setar.

### **Rafi Ullah**

On 27 September 2020, Rafi Ullah, a United Nations High Commission for Refugees (UNHCR) cardholder and 63-year-old Pakistani man seeking asylum in Malaysia, was arrested after getting involved in a fight with his neighbour over a cat. Rafi was brought to the Kuala Kubu Baru magistrates court for a remand order before being transferred to Tapah Prison and later to the Sg Buloh Prison. Following his arrest and detention, Rafi was cut off from all communication with his family members. His brother-in-law, Azhar alleged that attempts by the family to meet Rafi were rejected, and they did not receive any calls or updates from him or the authorities. Rafi's son, Hassan further testified that he and his mother had visited Tapah Prison on December 8 in a further attempt to see his father but had been told to leave. Then, on February 17, Rafi was found dead in Sungai Buloh Prison. On February 19, the family received news from a friend that Rafi had died two days earlier, with his body being held at the Sungai Buloh Hospital mortuary. He added that the family had gone to the hospital seeking a post-mortem, but their request was rejected by the authorities, who insisted Rafi had died of Covid-19. After filing a police report demanding an autopsy, the post-mortem finally took place at the Kuala Lumpur Hospital. Preliminary results of the autopsy found that Rafi had died of a heart attack and there were also injuries to his hands and feet.

### **A. Ganapathy**

A. Ganapathy was arrested and placed under police custody on 24 February 2021. Less than two weeks later 7 March, he was rushed to the Selayang Hospital for unexplained injuries. Within 24 hours, the department confirmed the appearance of necrotising fasciitis on the right ankle, which caused Ganapathy's breathing difficulty. On 8 March, his family received a call from the police informing them that Ganapathy had been released from custody and admitted to Selayang Hospital's Intensive Care Unit. Over the following days, a decision was made to amputate Ganapathy's right leg just above the knee to save his life. Tragically, on 18 April, the victim was confirmed to have died at Selayang Hospital's ICU after being treated for 43 days.

### **Sivabalan Subramaniam**

On 20 May 2021, 42-year-old security guard Sivabalan Subramaniam died less than an hour after being arrested. He had been taken in to assist in a police investigation and began to experience shortness of breath upon his arrival at the police station at 11.40am. The police report declared the timing of his death at 12.25pm. On May 21, the Selangor police chief said that an autopsy conducted on the victim confirmed that the 43-year-old had died of a heart attack. The post-mortem also found that Sivabalan did not suffer from any physical injuries. The case was subsequently classified as a sudden death.

### **Surendran Shanker**

On 27 May 2021, Surendran Shanker, aged 21, died at the Kluang hospital after complaints of severe abdominal pain. He had been arrested in Petaling Jaya a year ago in June 2020 and remanded for four days before being detained under the detention without trial law (POCA). He was sent to the Muar rehabilitation centre in August (the last time that his family saw him) and had spent nearly 8 months there before being transferred to the Simpang Renggam prison on 25 April 2021.

On 26 May, around 4.30 pm, Surendran's mother received a call from a Simpang Renggam prison official who informed her that her son was having "severe pain in his stomach". The family then called the hospital but were only told that Surendran was in "critical condition". They were asked to call back later in the night to speak to a doctor who could provide more details. Following these instructions, around 8pm, Surendran's cousin, Surenthar Richard, called the Kluang hospital, only to be told that Surendran's condition had worsened. On their next call, at around 1.15am on 27 May, a police officer informed Surendran's cousin that he had died at around 12.30am.

A postmortem police report lodged by a prison official cited a doctor at the Kluang hospital linking the cause of Surendran's death to "septic shock with multiple organ failure". Despite this, Surendran's family suspected foul play involved in his death as he had no pre-existing health issues.

### **Umar Faruq Abdullah**

On 3 June 2021, 36-year-old lorry driver Umar Faruq Abdullah died at the South Klang District Police Headquarters (IPD). According to police, Umar had jumped to his death from the second floor of the IPD where he was being questioned, with an initial report stating that he passed away due to “severe facial injuries”. He had been brought in on 2 June, after allegedly stealing a gas cylinder and was remanded for four days to assist with the investigation.

According to the police’s initial report, the incident occurred at about 1.50pm, as the investigating officer was escorting Umar to the lockup after recording his statement. Umar’s hands were handcuffed behind his back. A scuffle with a policeman ensued on the second floor, with Umar then jumping through the window at the staircase.

The Selangor police headquarters are currently investigating the incident under Section 223 of the Penal Code and sudden death report. The investigation will focus on whether there had been breach in police standard operating procedure (SOP), negligence and duty of care on the part of the investigating officer, who is a sergeant.

### **Mohd Iqbal Abdullah**

On the morning of 28 June 2021, Mohd Iqbal Abdullah, aged 29, died in the Tanjung Karang Hospital while waiting for a specialist appointment to treat his stomachache. Nine months ago, on 28 September 2020, Iqbal, along with his two brothers, had been arrested under the Prevention of Crime Act 1959 (POCA). He was subsequently charged with murder under Section 302 of the Penal Code, along with two other minor offences and placed on remand in Sungai Buloh Prison. Though he had been granted a trial hearing, the trial was deferred multiple times for unknown reasons, and he was also denied bail. Iqbal’s wife claimed that he had always been healthy before his arrest, but during his final court appearance in February, he appeared very thin and had suffered from health issues such as diarrhoea and vomiting. His lawyer asserted that Iqbal’s demise had been caused by the authority’s negligence towards his worsening condition.



### **Roopan Karnagaran**

On 21 June 2021, Roopan Karnagaran, aged 25, was found dead in Kajang Prison, eight days before he was due to appear in court. He had been imprisoned for almost four years, since 2017, for murder. Maintaining his innocence, he filed an appeal and was awaiting the hearing on 29 June. After having complained of breathing difficulties for a week, he was finally admitted to the Kajang Hospital on June 17. The prison withheld this information, even as the hospital confirmed his admission. Upon visiting him in hospital, the family found him looking tired and wearing an oxygen mask; they were not allowed to speak with him. The following day, a prison warden informed them that Roopan did not have COVID-19.

Following his discharge from the hospital on 20 June, Roopan was isolated in the prison's rehabilitation room, instead of being placed in the prison hospital. The next day, at around 11.30am, Roopan was transferred to Kajang Hospital again. At this point, he was unconscious and there was a possibility that he had already passed away. The prison asserted that he had died while in transit to the hospital and not within the prison's premises. The post-mortem revealed that Roopan had died of a bloodclot in his leg. The prison informed his family that he had tested positive for COVID-19, although the hospital has previously said otherwise, and denied them access to Roopan's body on those grounds.

### **Zahari Ayub**

On 20 July, around 1.30pm, Zahari Ayub, aged 24, died in the Sultan Abdul Halim Hospital after failing to revive from a critical condition. Two days prior to his death, he had been arrested by officers from the National Anti-Drugs Agency (AADK). A report by the AADK regarding Zahari's arrest stated that he had sustained injuries from a scuffle during his arrest. His family further claimed that the officers had beaten him using a baton while he was being handcuffed.

On 25 July, Zahari's family identified two suspects during an identification parade conducted at the Sungai Petani Police Station. On September 21, AADK officer Md Ilyas Syahmi Ibnu was charged with intentionally causing the death of Zahari Ayub in front of the Kuala Muda AADK office building, an offence under Section 302 of the Penal Code.

### **Mohd Ali Othman**

On 29 July 2021, Mohd Ali Othman, aged 44, died at the Kluang Prison at 6.50pm. He had earlier been jailed on February 3 for drug use and possession. His family claimed that he was healthy before his imprisonment, but that his health had worsened significantly since being placed in jail. Prison authorities reported that he died of Category 4 COVID-19. However, they had not notified Ali's family of his illness.

In mid-May, Ali's wife learnt from her phone calls with him that he suffered from scabies (a skin condition) but was only able to receive treatment from the prison clinic a week later. When his wife contacted the prison, she was told to sign a consent form for an emergency operation to be performed on Ali in Kluang Hospital. However, details of his condition and type of disease were not disclosed to her. Later, before she had even given consent, prison officers called to inform her that the operation had already been performed. Upon inquiry, Siti Halijah, Ali's sister, was told by the hospital that Ali had undergone surgery due to a bacterial infection. On 17 June, the prison clinic contacted Siti to tell her that he had received treatment and was well. Despite that, in a phone call to his wife on 8 July, Ali complained that he was in excruciating pain, rendering him unable to walk. That was the last his wife heard of him. Following Ali's death on 29 July, a post-mortem was not carried out. Siti then lodged a police report. At 11pm on 5 August, the police called to arrange an appointment with her for 1pm the next day and said that she did not need to be accompanied by her lawyer.

### **Vinaiyagar K Thinpathy**

On 13 September 2021, Vinaiyagar K Thinpathy, aged 49, died of a burst stomach ulcer at the Kuala Langat District Police Headquarters. He was arrested on September 8, but the police have yet to disclose the reason for his arrest to his wife and refused inquiries from the media.

The autopsy at Kuala Lumpur Hospital (HKL) concluded that Vinaiyagar had died of a burst stomach ulcer. According to a pathologist at HKL, the victim's death could easily have been prevented, had he received medical treatment sooner. The same pathologist reported that Vinaiyagar had tested positive for COVID-19 upon arrival at the hospital, even though he had apparently tested negative in detention on 9 September. Vinaiyagar was healthy and had no pre-existing health issues prior to his arrest. A fellow detainee testified that he had been crying out loud while in lock up because of his pain but was ignored. Furthermore, his wife, who saw Vinaiyagar's body before the autopsy, observed multiple swellings covering his body, a fresh wound on his elbow and a blood stain near his moustache.

## Azlan Nordin

On 5 October, Azlan Nordin, aged 45, died during a police raid that took place at his house about 6pm. He was being apprehended by the Sentul police for drug trafficking charges. The police claimed that Azlan grew belligerent, grabbed a sickle, and assaulted the raiding officers, even though they had supposedly exercised minimal force to restrict and disarm him. Following his arrest, he experienced shortness of breath, collapsed unconscious and was soon declared dead by paramedics. The autopsy carried out by the Kuala Lumpur Hospital (HKL) found that he had died from asphyxiation. Azlan had a fractured neck, several injuries to his face, as well as injuries on his hands and legs, which indicate that a struggle had taken place. The deceased's niece subsequently filed a police report, claiming the police had used excessive force upon his arrest.

## Muhammad Hidayat bin Abdul Halim

On 11 October 2021, Muhammad Hidayat bin Abdul Halim, aged 44, died less than 48 hours after being taken into police custody in Pahang. He was arrested on 8 October, but the police neither disclosed the reason for his arrest nor the location of his detention to his family until approximately 10 hours later. It was later learned that he was arrested under Section 15(1) of the Dangerous Drugs Act and held in the Pekan District Police Headquarters. Prior to his arrest, Hidayat was in good health. However, just before passing away, he was vomiting severely and was given paracetamol. A post-mortem performed at the Tengku Ampuan Afzan Hospital confirmed that he had died of spontaneous intracranial bleeding. Regrettably, Hidayat did not receive adequate medical attention despite exhibiting signs of a stroke.



Figure 3 Muhammad Hidayat's family and civil society organisations submitted a memorandum to the Attorney General Chamber (AGC) to request for an court inquest to investigate the death of Muhammad Hidayat

### Kumar Selvadurai

On 13 December 2021, Kumar Selvadurai, aged 35, died in the Seberang Perai Hospital. On December 10, he was arrested for theft in Butterworth. His brother tried to visit him at the Kepala Batas Police Station but was turned away by the police. Kumar was to be charged the next day but was found absent from court. The police told Kumar's family that his whereabouts were unknown. Following a police officer's advice, Kumar's family went to the Seberang Perai Prison to search for him, yet Kumar was not found.

Kumar's family only came to know of his death two months later, after lodging a missing person's report on 4 February 2022. On that day, they learnt that he had died of cardiac arrest 52 days ago. The police explained that Kumar had been sent to the Kepala Batas Hospital due to a seizure a day after his arrest. He was afterwards referred to the Seberang Perai Hospital where he passed away. In addition, Kumar was reportedly on bail when the police brought him to the hospital. As nobody had come to claim the corpse, it was given to an unidentified NGO.

### Torture and Ill-Treatment in Custody

Torture has long been and remains a well-documented and recurring issue in Malaysia. Incidents of physical violence inflicted upon detainees under remand or during an investigation are prevalent, especially when there is chain remand<sup>45</sup> or when detainees are held under detention without trial laws. In general, it is difficult to provide appropriate medical evidence to ascertain that torture has been inflicted. Detainees are often locked away until their next court appearance and subjected to threats of further violence by investigating officers, if they choose to reveal what had been inflicted upon them. Aside from the sensitivity of the issue, incidences of torture are also mostly underreported because there are often little means to establish any facts pertaining to the human rights violation, other than statements from the victims. This also renders the task of documenting and monitoring torture cases in Malaysia extremely difficult.

While evidence of torture can be difficult to ascertain, the deaths in custody of Mohd Afis Ahmad, A. Ganapathy, and other similar cases due to sustained injuries have exposed the extent of physical violence inflicted upon them while they were under police detention. SUARAM's monitoring activities have also noted a visible trend throughout these cases, whereby detainees are at higher risk of suffering ill-treatment when their rights to legal representation and access to family members are denied by the police.

For instance, 20-year-old Lim Xiang Hui was assaulted by the police because of smuggling activities, an allegation which the former claimed to know nothing about<sup>46</sup>. Lim was initially arrested by police who did not identify themselves, before being handcuffed and beaten. He was subsequently driven to a jungle area and interrogated throughout the process with a gun pointed at his head. Moreover, Lim also testified that he was denied the right to contact his family members during the arrest and that his remand was instituted without legal representation.

<sup>45</sup> Chain remand is further described in following pages

<sup>46</sup> Amar Shah Mohsen, 'Man recounts night of terror at the hands of trigger-happy police' (The Vibes, 8 February 2021) <<https://www.thevibes.com/articles/news/16948/man-recounts-night-of-terror-at-the-hands-of-trigger-happy-police>> accessed 11 October 2021

Past reports have noted a general concern on inadequate facilities, lack of appropriate training and the absence of basic amenities and medical resources in police detention centres, all of which contribute to an oppressive and abusive environment for detainees, and ill-treatment for those who are held in custody. In some cases, these conditions have led to the rapid deterioration of the health of detainees, eventually contributing to their untimely demise. One example of such a case is that of Roopan Karnagaran, who passed away in Kajang Prison. Prior to his death, the convicted Roopan had complained about breathing difficulties, but his family has since alleged that he had failed to receive proper medical treatment by the police which could have prevented his death<sup>47</sup>.

The incidence of torture is also undoubtedly exacerbated by unconscionable standard operating procedures such as those observed under SOSMA<sup>48</sup> or the extended pre-trial detention under POCA, POTA and DDA85. The 22 detainees under SOSMA who suffered beatings and degrading treatment in the Jelebu Prison, and the case of Mitheswaran A/L Kumar, who was tortured by electrical shock<sup>49</sup> before being held under POCA, are some of the examples how torture is allegedly perpetrated against those held under detention without trial laws.

## Chain Remand

Chain remand occurs when an individual's remand period granted by the Magistrate court has expired, only for he or she to be re-arrested by the police for a different or similar offence. In the past, SUARAM has documented cases where individuals were detained in such a manner for up to three months (90 days) and placed in various lockups and detention centres in the country by the police. These actions to maximise the period of detention amount to a violation of an individuals' right to liberty. It is most often used to ensure that the accused remains under 'possession' of the police, either to facilitate an extended investigation of the case or to hold the accused under custody indefinitely.

As noted in SUARAM's reports from preceding years, the practice of re-arrests and 'chain remand' through the concurrent application of SOSMA and POCA is relatively common. In limited cases, POTA is also used as part of the chain remand process.

A recent case documented by SUARAM exemplifies how chain remand happens in practice. Mitheswaran Kumar was initially remanded for 3 days under section 12(2) of the Dangerous Drugs Act 1952 for possession of drugs. Mitheswaran's family was initially informed that 5 grammes of methamphetamine had been found in his possession, but the police later revised their claim to 0.5 grammes, when the family probed further. At the end of the 3-day remand period, the family was informed that Mitheswaran would be remanded for another six days for 'housebreaking', an offence completely unrelated to drugs, under section 457 of the Penal Code.

Recent directives to tighten the remand order issuance and proceedings by Chief Justice Tengku Maimun Tuan Mat has led to hopes of reversing the ill-practice of chain remand<sup>50</sup>. Under normal circumstances, a police officer may only arrest and detain a person for investigation purposes for a maximum of 24 hours, as spelled out under the Criminal Procedure Code. Beyond that, the police may only extend the detention period if a magistrate approves the remand. The prevalence

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47 Isabelle Leong, 'Week before court appeal, youth become another Malaysian to die in custody' (The Vibes, 9 July 2021) <<https://www.thevibes.com/articles/news/34089/week-before-court-appeal-youth-becomes-another-msian-to-die-in-custody>> accessed 11 October 2021

48 The practice of solitary confinement was practiced and documented in SUARAM's earlier reports.

49 Hakimie Amrie Hisamudin, 'Probe cops for 'chain remand' of juvenile, says rights group' (Free Malaysia Today, 14 April 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/04/14/probe-cops-for-chain-remand-of-juvenile-says-rights-group/>> accessed 10 March 2022

50 'CJ issues rules for remand' (The Star, 14 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/14/cj-issues-rules-for-remand>> accessed 10 March 2022

of chain remand in Malaysia's criminal justice system partly arose due to magistrates liberally approving any remand order requested by the police. However, recent directives by the Chief Justice have necessitated legal representation for any accused appearing in court for remand application. This is vital, for it not only affirms the principal right to legal access but also that the right itself is an important safeguard against police abuse of the remand process. Under the new directives, the accused's legal counsel may question or even challenge the magistrate regarding the necessity of a prolonged remand. Furthermore, the new directives also make clear the responsibility of the magistrate to notify suspects who are not represented by lawyers or are unable to appoint one of their rights to legal access, especially the right to obtain legal service from the legal aid department.

Perhaps the most important safeguard against chain remand arising from the new directives is that the magistrate is required to announce the status of the suspect's remand application, whether a new application or an extension of remand order once he or she appears in court. This is especially vital for preventing the practice of chain remand. If the remand period is deemed too long and there is a lack of reason to believe it will aid in the investigation, the magistrate may break the chain remand by rejecting the police's application, allowing the detainee to walk free.

While it is still early times and there is no supporting evidence so far to tell us whether there has been any significant reduction in the occurrence of chain remand, these directives are a undeniably positive development in respecting the principles of right to fair trial in our criminal justice system, and in clarifying the role of the magistrate to ensure balance between law and order and protection of the rights of the arrested.

## Police Shootings

SUARAM monitors and documents incidents of officers of the Royal Malaysian Police discharging firearms while on duty whenever these are reported. Our records show that 17 such cases took place in 2021, with 19 deaths attributed to these police shootings. The Batu Pahat shooting case<sup>51</sup> involved four suspected armed robbers caught in a gunfire exchange with the police, resulting in four fatalities. Six suspected members of the militant group Abu Sayyaf were also shot dead in separate locations of Beaufort<sup>52</sup> and Sandakan<sup>53</sup> in 2021.

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51 Essa Abu Yamin, 'Police shoot dead four suspected robbers in Batu Pahat [NSTTV]' (New Strait Times, 12 February 2021) <<https://www.nst.com.my/news/crime-courts/2021/02/665313/police-shoot-dead-four-suspected-robbers-batu-pahat-nsttv>> accessed 11 October 2021

52 'Five members of Abu Sayyaf shot dead by police in Beaufort (updated)' (The Sun Daily, 18 May 2021) <<https://www.thesundaily.my/local/five-members-of-abu-sayyaf-shot-dead-by-police-in-beaufort-updated-DL7872335>> accessed 11 October 2021

53 Stephanie lee, 'Two suspected Abu Sayyaf militants shot dead in Sandakan' (The Star, 20 August 2021) <<https://www.thestar.com.my/news/nation/2021/08/20/cops-shoot-two-men-believed-to-be-abu-sayyaf-in-sandakan>> accessed 11 October 2021

### Police Shooting Incidents Documented by SUARAM in 2021

No.	Date	Names	Location	State	No. People Involved	Injured	Death
1	24 January	Lim Xiang Hui	Chini	Pahang	1	-	-
2	12 February	Unnamed	Batu Pahat	Johor	4	-	4
3	26 February	Unnamed	Kepong	Selangor	1	-	-
4	2 April	Unnamed	Labuan	Sabah	1	-	
5	17 May	Mabar Binda	Beaufort	Sabah	5	-	5
6	27 May	Unnamed	Kulim	Kedah	1		1
7	15 June	Unnamed	Georgetown	Penang	1		
8	27 June	Unnamed	Bayan Lepas	Penang	1		1
9	22 July	Too Kim Young	Kajang	Selangor	1	-	-
10	17 August	Unnamed	Sungai Buloh	Selangor	1		1
11	20 August	Unnamed	Sandakan	Sabah	2		2
12	3 September	Unnamed	Brickfields	Kuala Lumpur	4	1	
13	16 September	Unnamed	Kubang Semang	Penang	2		2
14	5 November	Unnamed	Tumpat	Kelantan	1	-	-
15	16 November	Unnamed	Puchong	Selangor	1	1	-
16	15 December	Unnamed	Kuching	Sarawak	1	-	1
17	27 December	Unnamed	Gua Musang	Kelantan	2	-	2
	<b>Total</b>				<b>30</b>	<b>2</b>	<b>19</b>

## Enforced Disappearance

SUHAKAM's Public Inquiry into the Disappearance of Pastor Raymond Koh and Amri Che Mat<sup>54</sup> concluded that the two individuals were indeed victims of enforced disappearance and that the Bukit Aman Special Branch was involved in their abduction and disappearance. Despite the findings of the public inquiry, neither the government nor the police have taken any initiative to acknowledge, let alone act on the findings. Worse still, no police officers were held accountable for the enforced disappearance of the two victims.

The special taskforce that was formed in 2019 to investigate SUHAKAM's findings did not reveal its report findings and both SUHAKAM and other non-governmental bodies have urged the government to call for the report to be made public on separate occasions<sup>55</sup>. Given the government's reluctance to reveal the findings, the wife of Amri Che Mat has decided to file a legal challenge to declassify the report, and it is only during the legal challenge that the public only finds out that the report has been classified as an official secret under the Official Secrets Act 1972 (OSA)<sup>56</sup>. More alarmingly, the report was classified by government on the basis that the disclosure of the findings to the public would be deemed to be against national interest.

According to a parliamentary reply issued by the Home Minister, in response to a question posed by Member of Parliament Kasthuri Patto,<sup>57</sup> the case of Raymond Koh has been, and is still under investigation under Section 365 of the Penal Code since 13 February 2017. A male suspect was charged on 15 January 2018 in connection with the investigation, and at the time of writing, was expected to go on trial on 9 December 2021. In the same reply, the government also officially listed Joshua Helmi, Ruth Sitepu and Amri Che Mat as missing persons.

In June 2021, SUHAKAM's inquiry into the disappearance of Joshua Helmi and his wife Ruth Sitepu was resumed after a temporary suspension due to Covid-19<sup>58</sup>. SUHAKAM has since announced that it is almost reaching the end of the inquiry and expects to release its findings in 2022.

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54 The full report can be accessed at: <https://www.suhakam.org.my/pusat-media/sumber/laporan-siasatan-awam/>

55 Emmanuel Santa Maria Chin, 'On International Day of Enforced Victims Disappearance, Suhakam reminds govt to reveal investigation findings on Pastor Raymond Koh, Amri Che Mat' (The Malay Mail, 30 August 2021) <<https://www.malaymail.com/news/malaysia/2021/08/30/on-international-day-of-enforced-victims-disappearance-suhakam-reminds-govt/2001603>> accessed 21 March 2022

56 Hidir Reduan Abdul rashid, 'Activist's wife files to release task force report classified as official secret' (Malaysiakini, 14 December 2021) <<https://www.malaysiakini.com/news/603015>> accessed 21 March 2022

57 Oral Answer in Parliament - Question 12, 22 September 2021

58 Rashvinjeet S Bedi, 'Suhakam inquiry into Joshua Helmi, Ruth Sitepu's disappearance to resume on Friday (June 11)' (The Star, 10 June 2021) <<https://www.thestar.com.my/news/nation/2021/06/10/suhakam-inquiry-into-joshua-helmi-ruth-sitepu039s-disappearance-to-resume-on-friday-june-11>> accessed 11 October 2021



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# **MEMORANDUM**

## **REJECT THE INDEPENDENT POLICE CONDUCT COMMISSION (IPCC)**

### **Submitted to Members of Parliament on 12 October 2021**

The undersigned Malaysian civil society organizations firmly and unequivocally reject the Independent Police Conduct Commission (IPCC) bill which was tabled in August 2020 and is expected to be tabled for second reading during this session of parliament.

#### **1. Background**

In 2005 the Royal Commission of Inquiry to Enhance the Operation and Management of the Royal Malaysian Police (RCI) proposed an Independent Police Complaints and Misconduct Commission (IPCMC). The RCI prepared a bill which defined the IPCMC. The IPCMC was designed to receive and independently investigate complaints of misconduct and allegations of wrongdoing by the police. The IPCMC was also to propose measures to increase the integrity of the police force.

The Pakatan Harapan (PH) government tabled an IPCMC Bill in July 2019. Civil society was invited to review this Bill and criticised it severely, as it failed to provide the proposed commission with sufficient powers and independence to ensure its effectiveness. The government made 24 amendments and scheduled a second reading in October 2019.

In response to massive public outcry, the government deferred the second reading and referred the bill to the Parliamentary Special Select Committee for the Consideration of Bills (PSC), for further review. After conducting extensive public consultations, the PSC proposed a slew of amendments. These restored much of the original content proposed by the RCI. However, the government collapsed before the IPCMC bill could be tabled for second reading.

The Perikatan Nasional (PN) government introduced a fresh bill, to create an IPCC (Independent Police Complaints Commission), purportedly with the same intent as the IPCMC bill proposed by the RCI. The IPCC bill ignores the work of the PSC.

The IPCC bill is a regressive document. It undermines years of consultations. It is a naked attempt to subvert efforts to ensure police accountability. The IPCC has less power than the Enforcement Agency Integrity Commission (EAIC). The IPCC will be even less effective than the woefully inadequate EAIC. If the IPCMC proposed by the Royal Commission is a coconut, the IPCC is merely the husk.

## 2. Key areas of concerns<sup>59</sup>

The IPCC bill reintroduced fatal flaws that would undermine the functions of the proposed oversight body and render it completely irrelevant and a waste of public funds.

These include:

### 2.1 Limited investigation powers

The powers of the proposed IPCC are inadequate to conduct full and thorough investigations or to take sufficient action against police officers found to have committed misconduct or serious breaches of power.

**i. Limited scope:** The IPCC's powers are limited and ineffectual as it exempts the commission from investigating any act provided for in the Inspector-General Standing Orders (IGSO) (Section 96 & 97 of the Police Act 1967). The standing orders generally govern issues such as the conduct of arrests, the treatment of detainees, and on matters related to permissible use of weapons, amongst others.

#### *IPCC Bill 2020 [Section 22(2)]*

##### *Scope of misconduct*

*22. (1) Any conduct falling under any of the following descriptions shall amount to a misconduct:*

*(a) any act or inaction which is contrary to any written law.*

*(b) any act or inaction which is unreasonable, unjust, oppressive, or improperly discriminatory;  
and*

*(c) any act or inaction which is committed on improper motives, irrelevant grounds, or irrelevant consideration.*

*(2) Notwithstanding subsection (1), misconduct shall not include any act regulated under sections 96 and 97 of the Police Act 1967.*

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<sup>59</sup> This includes analyses by various individuals and civil society organisations.

ii. **Early notice requirements for site visits.** The IPCC can make site visits to police stations, quarters, detention centres and lockups and make necessary recommendations. However, unlike the EAIC, the IPCC would be required to provide early notice to the Head of Department before any such site visit. Early notice diminishes the efficacy of such site visits.

*IPCC Bill 2020 [Section 5(2)(b)]*

*Powers of Commission*

5. (1) *The Commission shall have the power and may do all things necessary for or in connection with, or incidental to, the performance of its functions under this Act.*

(2) *Without prejudice to the generality of subsection (1), the Commission may—*

(a) *advise the Government on the enhancement of the well-being and welfare of members of the police force.*

(b) *visit any place and premises such as police stations, police quarters, lockups and detention centres by giving early notice to the relevant Head of Department and to make any necessary recommendations;*

(c) *receive and assess any written complaint of misconduct from any person against any member of the police force and investigate the complaint.*

(d) *collect evidence relating to any written complaint and investigation of misconduct under this Act; and*

(e) *make a recommendation for disciplinary action against any misconduct committed by any member of the police force to the Police Force Commission.*

iii. **No powers to search and seize in the IPCC.** Such powers are crucial in conducting investigations into certain types of misconduct such as deaths in custody. The current EAIC has the powers of search and seizure and may do so without warrant in certain circumstances.

iv. **Task Forces.** The IPCC may set up task forces to conduct investigations. However, unlike the EAIC task force which has all the powers of investigation under the Criminal Procedure Code, no such powers exist under the IPCC.

*IPCC Bill 2020 [Section 31]*

*Task Force*

31. (1) *The Commission may establish several such Task Forces to assist the Commission in the investigation of any misconduct under this Act.*

(2) *The members of the Task Force may comprise the officers of the Commission and the consultants engaged under section 17.*

(3) *Sections 27, 28 and 29 and subsections 30(1) and (2) shall apply mutatis mutandis to the investigation conducted by the Task Force.*

v. Limited powers to summon witnesses and compel production of documents. While the proposed IPCC will have the authority to summon witnesses and compel the production of documents, a witness may refuse to answer any question or withhold the disclosure of documents in following situations:

- If it would expose the person to criminal charge/penalty/forfeiture.
- If certified by the Head of Department that its production is prejudicial to national security or national interest.
- If a document is classified under the Official Secrets Act; and/or
- If the person is of the view that the answer/document is prejudicial to national security and would require the Head of Department approval before release.

This undermines the current procedures under the EAIC where, a witness appearing before EAIC is not excused from answering questions or producing documents because they “may incriminate or tend to incriminate the witness, or on any other ground of privilege, duty of secrecy or other restriction on disclosure, or on any other ground.” These limited powers would make it even more difficult to break the “blue wall of silence”.

***IPCC Bill 2020 [Section 27(4)(a)(b)]***

***Power to examine persons***

***Section 27***

*(4) The member of the police force, officer of a public body or person examined under paragraph (1)(a) shall be legally bound to answer all questions put to him by the officer of the Commission, but the member of the police force, officer of a public body or*

*person examined—*

*(a) may refuse to answer any question the answer to which would have a tendency to expose the member of the police force, officer of a public body or person to a criminal charge or penalty or forfeiture; or*

*(b) may refuse to disclose sensitive information if certified by the Head of Department that the production of the sensitive information is prejudicial to national security or national interest.*

***IPCC Bill 202 [Section 28(5) &(6)]***

***Power to obtain documents or other things***

*28. (1) The Commission may, by notice served on any member of the police force or officer of a public body through his Head of Department, or any person, require the member of the police force, officer of a public body or person to produce any document or other things related to the investigation which in the opinion of the Commission are relevant.*

*(5) Where a document requested by the Commission is a classified document, such document shall be dealt with under the Official Secrets Act 1972 [Act 88].*

*(6) Where any member of the police force or officer of a public body is of the opinion that a document or other thing as requested by the Commission contains information prejudicial to national security or national interest, such member of the police force or officer of a public body shall obtain the approval of their respective Head of Department prior to producing such document or other thing to the Commission.*

## 2.2 Limited enforcement powers

The IPCC further deprives the Commission of enforcement powers as it removes disciplinary power or power to compel actions based on recommendations made by the Commission.

Upon conclusion of an investigation, and where the allegations of misconduct are determined, the Commission is only empowered to refer the findings to the 'relevant authority', Malaysian Anti-Corruption Commission (MACC), or the Police Force Commission.

The referral does not come with enforcement powers as the Commission would have no authority to compel that body to act, or even to require the MACC or the Police Force Commission to report back on its actions within a stipulated time frame.

Further, the Police Force Commission is chaired by the minister of home affairs and with a membership that includes the police inspector general, thus likely to have a conflict of interest.

### *IPCC Bill 2020 [Section 30(1)]*

#### *Action by Commission after considering findings and recommendations of Complaints Committee*

- 30. (1) After considering the findings and recommendations by the Complaints Committee under subsection 29(2), the Commission shall take the following actions:*
- (a) where the findings disclose any offence under Part IV of the Malaysian Anti-Corruption Act 2009, refer the findings to the Malaysian Anti-Corruption Commission.*
  - (b) where the findings disclose any criminal offence under any written law, refer the findings to the relevant authority.*
  - (c) where the findings disclose any misconduct, refer the findings of misconduct to the Police Force Commission with the recommendation for disciplinary action; and*
  - (d) where the findings disclose no misconduct, reject the complaint, and inform the relevant Head of Department.*

## 2.3 Lack of independence

Under the IPCC, the members of the Commission are still appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister and can be dismissed at any time without cause.

The Commission's secretary, who functions as the chief executive officer of the Commission, is appointed by the Minister of Home Affairs. This further dilutes the Commission's independence by bringing the Commission's administration effectively under the purview of the Ministry of Home Affairs. The EAIC currently appoints its own Secretary.

Further, unlike the previous IPCMC bill and the EAIC, the current bill does not bar the appointment of former police officers or current government officials to the commission.

Remuneration of Commission members is determined by the Prime Minister. There is no limit for Commissioners' terms, unlike in the EAIC where members cannot serve for more than two consecutive terms.

### *IPCC Bill 2020 [Sections 6, 7(3) & 8]*

#### *Members of Commission*

*6. (1) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint not more than seven members of the Commission, one of whom shall be appointed as the Chairman and another as the Deputy Chairman.*

#### *Term of office*

*7. (1) Subject to subsection (2), a member of the Commission shall hold office for a term not exceeding three years as may be specified in his instrument of appointment and he shall be eligible for reappointment.*

*(2) A member of the Commission may at any time resign his office by letter addressed to the Yang di-Pertuan Agong.*

*(3) The appointment of a member of the Commission may at any time be revoked by the Yang di-Pertuan Agong on the advice of the Prime Minister.*

#### *Remuneration*

*8. A member of the Commission shall be paid such remuneration and allowances as the Prime Minister may determine.*

## 3. Proposed elements of an oversight body<sup>60</sup>

The following must be upheld in the adoption of any legislation that will promote police accountability:

**3.1 Clear mandate to receive, initiate and to conduct investigations of serious abuses committed by police**, and not be limited to minor disciplinary misconducts. Cases such as deaths because of police actions, death in custody, various forms of torture, including rape, serious assault, serious corruption matters and complaints against discharge of an official firearm of a police officer, are to be prioritised.

<sup>60</sup> The recommendations are derived from analyses by Amnesty International Malaysia and other organisations.

**3.2 A commission which is impartial, independent, and transparent.** The appointment and removal of commissioners must be through an independent process, either through a parliamentary select committee or an independent panel appointed by said committee. There shall be no undue control or interference by the executive body. The appointment criteria and procedures must be transparent and disclosed as a matter of public interest.

The decisions of the independent commissions shall be impartial and must also be always made transparent, allowing for it to withstand public scrutiny and to develop trust in the system.

**3.3 Real powers to investigate and initiate action.** The oversight body should be empowered, through its mandate and with sufficient human and fiscal resources, to conduct inquiries into offenses committed by the police involving human rights violations. The powers, embedded with support of other bodies or technical experts, should include, amongst others, the ability to summon witnesses, enter and search premises, seize documents, carry out arrests, and execute warrants, as well as compel the full cooperation of the police.

Police should be compelled by law to cooperate with the oversight body.

Apart from powers to investigate, the independent commission should have the ability to follow up on its recommendations for further action and seek a review if dissatisfied with the actions or results of authoritative bodies mandated to follow up on the decisions of the independent commission.

#### **4. Conclusion**

It is evident that the IPCC bill had greatly strayed from the original spirit of an oversight body and if passed will weaken the already existing mechanisms in place. It will further place the credibility and integrity of the police at stake. The current government must withdraw the IPCC Bill and conduct further consultations with relevant stakeholders, including key civil society organisations to propose a bill that has the trust of the public and can withstand international standards and scrutiny.

This memorandum is sent by:

- 1. Amnesty International Malaysia**
- 2. Article 19**
- 3. Centre for Independent Journalism (CIJ)**
- 4. Citizens Against Enforced Disappearances (CAGED)**
- 5. Eliminating Death and Abuse in Custody Together (EDICT)**
- 6. Malaysian Centre for Constitutionalism and Human Rights (MCCHR)**
- 7. Persatuan Hak Asasi Manusia Malaysia (Proham)**
- 8. Suara Rakyat Malaysia (SUARAM)**

## Appendix 1

### The problem with the IPCC Bill

#### Background

1. The proposed Independent Police Conduct Commission Bill 2020 (IPCC) will set police accountability more than 10 years backwards. It establishes a commission to oversee police misconduct that has significantly **LESS** powers than the Enforcement Agency Commission, set up in 2009. It is unacceptable that after 12 years, the government is proposing a commission that does less, not more.
2. A chart comparison of the IPCC Bill with the IPCMC Bill proposed by the Pakatan Harapan government and the current EAIC Act is annexed. Some of the most problematic provisions are summarised below.

#### Lack of Independence

3. The Yang di-Pertuan Agong still appoints members of the Commission on the advice of the Prime Minister. They can be dismissed at any time without cause.
4. The Prime Minister determines the remuneration of Commission members.
5. The Commission's secretary, who functions as the Commission's chief executive officer, is appointed by the Home Affairs Minister.
  - 5.1 This further dilutes the Commission's independence by effectively bringing the Commission's administration under the Home Affairs Ministry's purview.
  - 5.2 The EAIC currently appoints its own Secretary.
6. Unlike in the EAIC, there is no prohibition for current or retired police officers to be members of the Commission.
7. There is no limit for Commissioners' terms, unlike in the EAIC, where members cannot serve for more than two consecutive terms.

#### Lack of powers

8. **Site visits.** The IPCC can make site visits to police stations, quarters, detention centres and lockups and make necessary recommendations.
  - 8.1 Unlike the EAIC, however, which does not need to give any notice, the IPCC would be required to provide early notice to the Head of Department before any such site visit.
  - 8.2 Early notice diminishes the efficacy of such site visits.
9. **Search and seizure.** The current EAIC has search and seizure powers and may do so without a warrant in certain circumstances.
  - 9.1 Such powers are crucial in conducting investigations into certain types of misconduct, such as deaths in custody.
  - 9.2 No such powers exist for the IPCC.



- 10. Powers of investigation.** Both the EAIC and the IPCC may set up task forces to conduct investigations. The EAIC task force, however, has all the powers of investigation under the Criminal Procedure Code. No such powers exist under the IPCC.
- 11. Powers to order protection.** The IPCMC Bill proposed by the PH government gave the Commission the power to direct the Inspector General of Police or any public body or officer to protect persons assisting the Commission.
- 11.1 While the IPCC Bill has a similar provision that allows the Commission to decide to protect persons assisting the Commission, it is silent on whether or not the Commission can direct the IGP or any public officer to provide that protection.

### **Narrower scope**

- 12. Misconduct.** The EAIC has the power to investigate misconduct including breaches of procedure, failure to give grounds where they should have been given, and situations where the officer is not on official duty. Not the IPCC
- 12.1 The IPCC expressly excludes the Commission from examining matters covered under the Inspector General's Standing Orders.

### **Withholding of evidence**

- 13. Exclusions.** The EAIC Act requires witnesses to answer questions and produce evidence regardless of privilege, secrecy, or self-incrimination. The IPCC, on the other hand, allows witnesses to refuse to answer questions or disclose documents in several situations:
- 13.1 If it would expose the person to criminal charge/penalty/forfeiture.
- 13.2 If certified by the Head of Department that its production is prejudicial to national security or national interest.
- 13.3 If a document is classified under the Official Secrets Act; and/or
- 13.4 If the person is of the view that the answer/document is prejudicial to national security and would require the Head of Department approval before release.

### **Disciplinary Authority**

- 14. Disciplinary Board.** The IPCMC Bill proposed by the Pakatan Harapan government would have established a Disciplinary Board upon a finding of misconduct.
- 14.1 The Board would consist of a combination of three IPCMC Commissioners, a Police Force Commission member and a member of the police force.
- 14.2 This was intended to rectify the current situation under the EAIC, where it may only refer cases of misconduct back to the appropriate authority and receive a report within 14 days of the action taken and the grounds.
- 14.3 Despite the EAIC having made several findings of serious misconduct, it is unknown whether any disciplinary action has been taken against the officers involved.
- 15. No disciplinary authority.** The IPCC has no provision for any disciplinary board and like the EAIC, must refer any cases of misconduct back to the police force. Unlike the EAIC, there is no provision for any report to be made back to the IPC within 14 days.

## 16. Conclusion

The IPCC Bill is inferior in every way to the current EAIC Act as well as PH's proposed IPCMC Bill. It does not advance police accountability in any way but instead sets it back by over 10 years. It should therefore be rejected in its entirety.

## Appendix 2

### Analysis of Enforcement Agency Integrity Commission, IPCMC (proposed under PH government), IPCC (proposed by PN government).

Categories	EAIC Act	IPCMC Bill (PH)*	IPCC Bill
<b>Appointment of Commission members</b>	Appointed by the YDPA, on advice of the Prime Minister	Appointed by the YDPA, on advice of the Prime Minister	Appointed by the YDPA, on the advice of the Prime Minister
<b>Number of Commissioners</b>	Not more than seven members	Not more than 10 members	Not more than seven members
<b>Expertise required</b>	Not specified	Not specified (Updated Jul 2019 bill states must have knowledge, skill, experience, or shown capacity and professionalism, in matters relating to law, administration, finance or any other matter relevant to the function of the Commission.)	Have knowledge, skill, experience, or shown capacity and professionalism, in matters relating to law, administration, investigation, finance, or any other matter relevant to the function of the Commission.
<b>Term of office</b>	Not exceeding three years, can be reappointed.  Not more than two consecutive terms.	Not exceeding three years, can be reappointed.  Not more than two consecutive terms.	Not exceeding three years, can be reappointed.  No prohibition on length of service.
<b>Remuneration</b>	Determined by the YDPA	Determined by the YDPA	Determined by Prime Minister
<b>Secretary of Commission</b>	CEO of the Commission, appointed by the Commission.	CEO of the Commission, appointed by the Commission.	CEO of the Commission, appointed by the Home Minister.
<b>Site visits</b>	Commission has power to make site visits to any enforcement agency, including police stations and lockups in accordance with any written laws and make necessary recommendations.	Power to visit any police station, quarters, lock-up and detention centres and to make necessary recommendations.	Power to visit police station, quarters, lockups, detention centres by giving early notice to the Head of Department and to make necessary recommendations.

Categories	EAIC Act	IPCMC Bill (PH)*	IPCC Bill
Delegation of powers		Commission can delegate function and powers to  - member of the Commission - officer of the Commission (updated bill) - any committee - any member of the police force	Commission can delegate function and powers to  - member of the Commission - officer of the Commission - committee - member of the police force
Dismissal	Can be dismissed at any time	Can be dismissed at any time	Can be dismissed at any time
Commission membership	No enforcement officers or retired enforcement officers.	No police officers or retired police officers	Police officers/retired police officers can be part of the Commission - no restriction
Coverage	All enforcement agency officers	Police officers only	Police officers only
Scope	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> <li>- act/inaction contrary to written law</li> <li>- non-compliance of police rules/SOP</li> <li>- act/inaction which is unreasonable, unjust, oppressive, improperly discriminatory</li> <li>- act/inaction committed on improper motives, irrelevant grounds or consideration</li> <li>- act/inaction based on mistake of law/fact</li> <li>- act/inaction where grounds should be given but were not given</li> <li>- failure to follow rules and procedures laid down by law/appropriate authority</li> <li>- commission of criminal offence</li> </ul> <p>Covers situations where others who are not enforcement officers are involved and when enforcement officer not on official duty.</p>	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> <li>- act/inaction contrary to written law</li> <li>- non-compliance of police rules/SOP</li> <li>- act/inaction which is unreasonable, unjust, oppressive, improperly discriminatory</li> <li>- act/inaction committed on improper motives, irrelevant grounds or consideration</li> <li>- omission to provide grounds where they should have been provided</li> <li>- commission of criminal offence</li> </ul> <p>(Updated bill) Prime Minister, on advice of Commission may prescribe what is minor misconduct which shall be dealt with by police force internally in terms of disciplinary action.</p>	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> <li>- act/inaction contrary to written law</li> <li>- act/inaction, which is unreasonable, unjust, oppressive, improperly discriminatory</li> <li>- act/inaction committed on improper motives, irrelevant grounds or consideration.</li> </ul> <p>Exclusion of matters covered under IGSOs (ss 96 &amp; 97 of Police Act)</p>

<b>Categories</b>	<b>EAIC Act</b>	<b>IPCMC Bill (PH)*</b>	<b>IPCC Bill</b>
<b>Investigation powers</b>	Search and seizure powers, without warrant in some circumstances.	No search and seizure powers	No search and seizure powers  No investigative powers akin to CPC
<b>Power to compel witnesses to attend and disclose evidence</b>	Witnesses can be compelled to attend, answer questions, and produce evidence, regardless of privilege, secrecy or self-incrimination.	Witnesses can be compelled to attend.  No provisions on being compelled to answer despite secrecy/self-incrimination	Witnesses can be compelled to attend. Can refuse to answer if tendency to expose the person to criminal charge/ penalty/ forfeiture.  Witness may refuse to disclose sensitive info if certified by Head of Dept that its production is prejudicial to national security or national interest.  Can refuse to disclose classified document under OSA.  Can refuse to answer/ produce if of the view it is prejudicial to national security and would require HOD's approval before release.
<b>Public hearings</b>	Power to hold public hearings	No provision on public hearing	No provision on public hearing
<b>Interested parties</b>	Power for 'interested parties' to question witnesses	No provision for 'interested parties' to intervene and ask questions	No provision for 'interested parties' to intervene and ask questions

Categories	EAIC Act	IPCMC Bill (PH)*	IPCC Bill
Delegation of powers		Commission can delegate function and powers to  - member of the Commission - officer of the Commission (updated bill) - any committee - any member of the police force	Commission can delegate function and powers to  - member of the Commission - officer of the Commission - committee - member of the police force
Dismissal	Can be dismissed at any time	Can be dismissed at any time	Can be dismissed at any time
Commission membership	No enforcement officers or retired enforcement officers.	No police officers or retired police officers	Police officers/retired police officers can be part of the Commission - no restriction
Coverage	All enforcement agency officers	Police officers only	Police officers only
Scope	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> <li>- act/inaction contrary to written law</li> <li>- non-compliance of police rules/SOP</li> <li>- act/inaction which is unreasonable, unjust, oppressive, improperly discriminatory</li> <li>- act/inaction committed on improper motives, irrelevant grounds or consideration</li> <li>- act/inaction based on mistake of law/fact</li> <li>- act/inaction where grounds should be given but were not given</li> <li>- failure to follow rules and procedures laid down by law/appropriate authority</li> <li>- commission of criminal offence</li> </ul> <p>Covers situations where others who are not enforcement officers are involved and when enforcement officer not on official duty.</p>	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> <li>- act/inaction contrary to written law</li> <li>- non-compliance of police rules/SOP</li> <li>- act/inaction which is unreasonable, unjust, oppressive, improperly discriminatory</li> <li>- act/inaction committed on improper motives, irrelevant grounds or consideration</li> <li>- omission to provide grounds where they should have been provided</li> <li>- commission of criminal offence</li> </ul> <p>(Updated bill) Prime Minister, on advice of Commission may prescribe what is minor misconduct which shall be dealt with by police force internally in terms of disciplinary action.</p>	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> <li>- act/inaction contrary to written law</li> <li>- act/inaction, which is unreasonable, unjust, oppressive, improperly discriminatory</li> <li>- act/inaction committed on improper motives, irrelevant grounds or consideration.</li> </ul> <p>Exclusion of matters covered under IGSOs (ss 96 &amp; 97 of Police Act)</p>

<b>Categories</b>	<b>EAIC Act</b>	<b>IPCMC Bill (PH)*</b>	<b>IPCC Bill</b>
<b>Investigation powers</b>	Search and seizure powers, without warrant in some circumstances.	No search and seizure powers	No search and seizure powers  No investigative powers akin to CPC
<b>Power to compel witnesses to attend and disclose evidence</b>	Witnesses can be compelled to attend, answer questions, and produce evidence, regardless of privilege, secrecy or self-incrimination.	Witnesses can be compelled to attend.  No provisions on being compelled to answer despite secrecy/self-incrimination	Witnesses can be compelled to attend. Can refuse to answer if tendency to expose the person to criminal charge/ penalty/ forfeiture.  Witness may refuse to disclose sensitive info if certified by Head of Dept that its production is prejudicial to national security or national interest.  Can refuse to disclose classified document under OSA.  Can refuse to answer/ produce if of the view it is prejudicial to national security and would require HOD's approval before release.
<b>Public hearings</b>	Power to hold public hearings	No provision on public hearing	No provision on public hearing
<b>Interested parties</b>	Power for 'interested parties' to question witnesses	No provision for 'interested parties' to intervene and ask questions	No provision for 'interested parties' to intervene and ask questions

<b>Categories</b>	<b>EAIC Act</b>	<b>IPCMC Bill (PH)*</b>	<b>IPCC Bill</b>
<b>Disciplinary Authority</b>	<p>Can only recommend disciplinary action to the appropriate authority.</p> <p>Appropriate authority to send back a report within 14 days to EAIC on the action taken and grounds.</p>	<p>Once finding of misconduct made, a Disciplinary Board is convened consisting of:</p> <ul style="list-style-type: none"> <li>a. Chairperson (IPCMC member)</li> <li>b. Two IPCMC members</li> <li>c. One Police Force Commission member</li> <li>d. One Police Force member</li> </ul> <p>Minor misconduct - sent back to police to be dealt with</p>	<p>Can only recommend to the Police Force Commission with recommendation for police action.</p> <p>No provision for Police Force Commission</p>
<b>Task Force</b>	<p>May establish task force.</p> <p>May comprise Commission officers and consultants.</p> <p>Shall have all the powers of investigation under the CPC, in addition to powers under EAIC Act.</p>	<p>May establish task force to assist Commission investigation.</p> <p>May comprise Commission officers and consultants.</p> <p>Task force members shall have all the powers of investigation as contained in the CPC, in addition to powers under the IPCMC Act.</p>	<p>May establish task force.</p> <p>May comprise Commission officers and consultants.</p> <p>No provision that taskforce members shall have powers of investigation as contained in the CPC.</p>
<b>Commence own investigation</b>	<p>Commission may commence investigation of its own initiative if satisfied it is in the public interest.</p>	<p>Commission may commence investigation of its own initiative if satisfied it is in the public interest.</p>	<p>Commission may commence investigation of its own initiative if satisfied it is in the public interest.</p>
<b>Regulations</b>	<p>Prime Minister may make regulations to give effect to the Act's provisions.</p>	<p>Prime Minister may make regulations to give effect to the Act's provisions.</p> <p>Updated bill states upon advice of the Commission.</p>	<p>Home Affairs Minister may make regulations to give effect to the Act's provisions.</p>

Categories	EAIC Act	IPCMC Bill (PH)*	IPCC Bill
Referral of grievous hurt or death in custody	No such clause.	Police force shall refer to the Commission any incident which has resulted in grievous hurt or death while in police custody.	No such clause.
Protection of person assisting the Commission	No provision on arrangements for protection of person assisting the Commission.	Commission may make arrangement for protection of person assisting the Commission.  May direct the IGP, public body, or officer to comply with the Commission's directions to provide protection.  Any person who contravenes an order made under this section commits an offence.	Commission may make arrangement for protection of person assisting the Commission.  No provision to direct the IGP or any public body to comply with the Commission's directions.
Threats against witnesses	Offence to hinder person from giving evidence or to threaten witnesses	Offence to hinder person from giving evidence or to threaten witnesses	Offence to hinder person from giving evidence or to threaten witnesses

\*Updates were made to the bill in July 2019 when the Bill was sent to Committee.

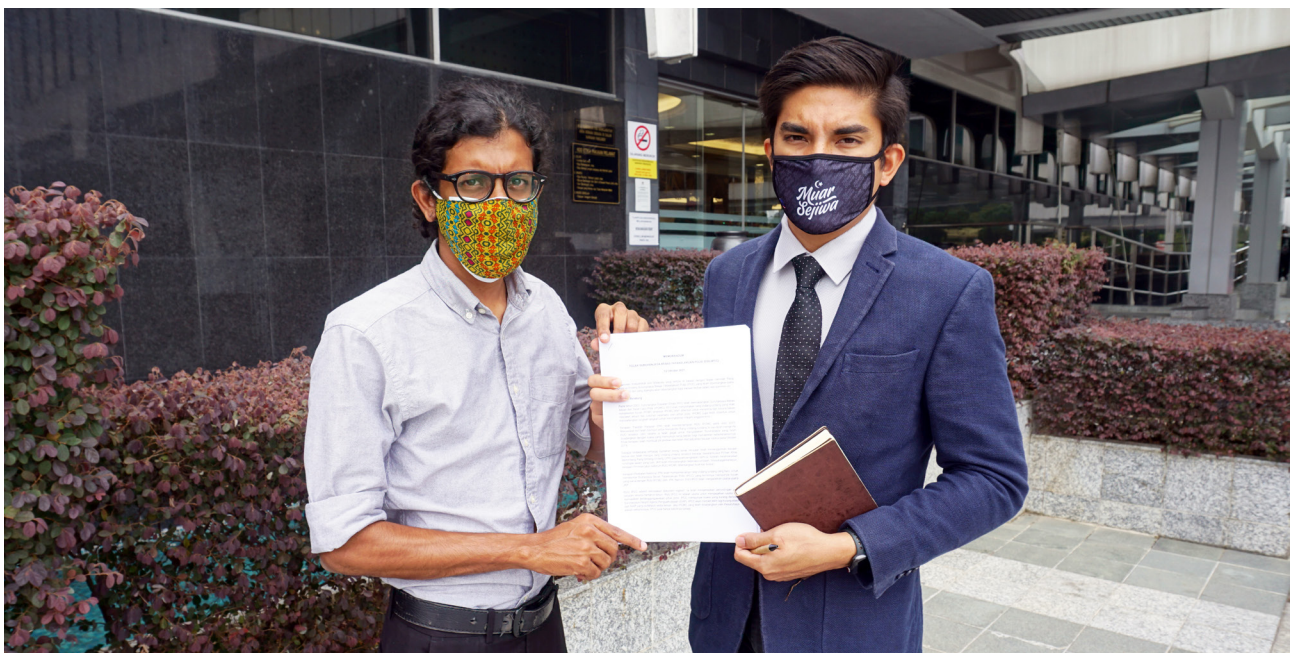


Figure 4 Mohammad Alshatri, SUARAM Right to Justice Coordinator passed a memorandum to reject the IPCC bill to Muar MP, YB Syed Saddiq.







**FREEDOM OF EXPRESSION**

# FREEDOM OF EXPRESSION

Since its takeover of power in 2020, the Perikatan Nasional administration has continued to apply repressive laws such as the Sedition Act 1948 and the Communications and Multimedia Act 1998 (CMA) to suppress freedom of expression. The number of police investigations conducted under these two repressive laws increased in 2021, when charges were laid against protest leaders and other critics of the government led by former Prime Minister Muhyiddin Yassin. The charges laid against social activists and Human Rights Defenders (HRDs) were largely related to their public actions and criticisms against the government's use of emergency powers and inability to curb the pandemic.

Following further criticism and backlash, the government made use of its emergency powers to enact the Malaysian Emergency (Essential Powers) (No.2) Ordinance 2021 (more commonly known as the Fake News Ordinance<sup>61</sup>) in March. Although purportedly enacted to combat 'fake news' related to Covid-19 or the emergency proclamation, the lack of parliamentary oversight during the passing of the ordinance, and the disproportionate powers it has conferred upon the government, is a cause for concern as it poses a threat to freedom of expression in Malaysia<sup>62</sup>.

Under the Fake News Ordinance, an individual can be fined up to RM100,000 or face a maximum imprisonment of three years for creating, offering, publishing, or circulating fake news. The ordinance also overrides the Evidence Act 1950, which upholds the right of the accused, by allowing every offence under the ordinance to be a seizable offence. Moreover, certain sections, such as the definition of 'fake news' and related offence are taken verbatim from the now repealed Anti-Fake News Act 2018. These elements raise concern that the ordinance could be used to censor speech or punish government critics rather than tackling the problem of misinformation.

On 1 June 2021, the Inspector-General of Police revealed that 10 people had been arrested under the Fake News Ordinance and out of these, three individuals were charged<sup>63</sup>. Although the Emergency officially ended on 1 August 2021, the Fake News Ordinance and other emergency ordinances are still enforceable – unless annulled by both chambers of parliament – for six months following the termination of the Emergency under Article 150 (7) of the Federal Constitution<sup>64</sup>. According to the Prime Minister's office, from March to October 2021, 30 investigations were opened, 12 cases were charged and five were found guilty under the Fake News Ordinance.<sup>65</sup>

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61 'Emergency Ordinance grants Putrajaya sweeping powers against 'fake news'' (Malaysiakini, 11 March 2021) <<https://www.malaysiakini.com/news/566220>> accessed 20 October 2021

62 'Malaysia: Emergency Fake News Ordinance has severe ramifications for freedom of expression' (Article 19, 23 June 2021) <<https://www.article19.org/resources/malaysia-fake-news-ordinance-severe-ramifications-freedom-expression/>> accessed 20 October 2021

63 '10 nabbed under fake news ordinance' (Free Malaysia Today, 1 June 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/06/01/10-nabbed-under-fake-news-ordinance/>> accessed 20 October 2021

64 Kenneth Tee, 'Law minister confirms Emergency ended in Aug, but says ordinances still apply until Feb 2022' (Malay Mail, 1 October 2021) <<https://www.malaymail.com/news/malaysia/2021/10/01/law-minister-confirms-emergency-ended-in-aug-but-says-ordinances-still-appl/2009806>> accessed 20 October 2021

65 Oral Answer in Parliament - Question 28, 16 November 2021



Figure 5 Spontaneous protest against the fake news ordinance in front of the Parliament.

### Malaysian Emergency (Essential Powers) (No.2) Ordinance 2021 (Fake News Ordinance)

	March 2021 – October 2021
Cases Investigated	30
Number of Charges	12
Cases Found Guilty	5

In terms of the reporting environment, press freedom in Malaysia came under attack in 2020, with the government carrying out a slew of repressive actions including targeting the media for their reporting on Covid-19<sup>66</sup> and charging an online media portal for comments made by its readers<sup>67</sup>. Malaysia dropped 18 ranks in the World Press Freedom Index 2021, falling from 101 in 2020 to 119, with 1 being the one that enjoys unrestricted press freedom<sup>68</sup>.

66 'Malaysian police raid Al Jazeera's office, seize computers' (Al Jazeera, 5 August 2020) <<https://www.aljazeera.com/news/2020/8/5/malaysian-police-raid-al-jazeeras-office-seize-computers>> accessed 20 October 2021

67 'AG files application to cite Mkini for contempt over readers' comments' (Malaysiakini, 16 June 2020) <<https://www.malaysiakini.com/news/530477>> accessed 16 February 2021

68 Surin Murugiah, 'Malaysia drops furthest in 2021 World Press Freedom Index to 119' (The Edge Markets, 23 April 2021) <<https://www.theedgemarkets.com/article/malaysia-drops-furthest-2021-world-press-freedom-index-119>> accessed 20 October 2021

In 2021, the authorities have continued to harass journalists, control press coverage, and restrict access to information. An example of legal action taken against the media was when the Federal Court found Malaysiakini guilty of contempt of court in relation to readers' comments that were deemed offensive to the judiciary. The online media portal was fined RM500,000, although its editor-in-chief Steven Gan was not found guilty of the same charge<sup>69</sup>. The apex court ruled that the online media organisation was fully responsible for publishing their readers' unsavoury comments. Despite the verdict, Malaysiakini has maintained that it should not be held responsible for comments posted by readers' comments that might be derogatory or critical of the judiciary. The harsh verdict delivered to Malaysiakini not only inhibits the scope of journalism and curtails the already limited freedom of press expression in Malaysia, but it might also set a worrying precedent for other news portals to start self-censoring readers' comments and opinions for fear of reprisal.

Malaysiakini's journalists were also not spared from being summoned by the government or threatened with action based on reports they published that were critical of the government. Malaysiakini Bahasa Malaysia desk editor Jimadie Shah Othman and KiniTV broadcast journalist Vivian Yap were called by the police for questioning in relation to their article on former Inspector-General of Police Abdul Hamdi Bador during a press conference, in which he raised allegations of political interference and corruption within the police force<sup>70</sup>. Similarly, two other Malaysiakini journalists Rusnizam Mahat and Aedi Asri Abudllah were also investigated under Section 505(b) of the Penal Code for 'spreading rumours that can cause fear and alarm among the public' for a report on a case of death in police custody<sup>71</sup>.

A broadcaster from established news agency Astro Awani was also investigated on 1 May 2021 for allegedly making slanderous remarks against the police in a 44-second clip, where the presenter had criticised an incident where the police had issued a RM 50,000 compound to a burger seller for breaching Covid-19 standard operating procedures<sup>72</sup>.

Lastly, several journalists were also probed by the police for entering a quarantine centre to document the strike initiated by junior doctors over their contract employment. According to the police, the act of entering without permission and making a live video recording inside the quarantine centre warranted a police investigation<sup>73</sup>.

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69 Hidir Reduan Abdul rashid, 'Malaysiakini fined RM500,000 for contempt of court' (Malaysiakini, 19 February 2021) <<https://www.malaysiakini.com/news/563554>> accessed 20 October 2021

70 'Cops summon Mkini reporters to help in probe on Hamid Bador revelations' (Malaysiakini, 10 May 2021) <<https://www.malaysiakini.com/news/574113>> accessed 20 October 2021

71 'Ganapathy's death: Cops summon two Mkini journalists for statements' (Malaysiakini, 18 May 2021) <<https://www.malaysiakini.com/news/575071>> accessed 20 October 2021

72 Rahimy Rahim, 'Police probing newscaster over comment on RM50,000 compound, confirms Astro Awani' (The Star, 1 May 2021) <<https://www.thestar.com.my/news/nation/2021/05/01/police-probing-broadcast-reporter-over-comment-on-rm50000-compound-confirms-astro-awani>> accessed 20 October 2021

73 'Malaysia police investigate reporters over doctors' strike at MAEPS' (Yahoo!news, 28 July 2021) <<https://malaysia.news.yahoo.com/malaysia-police-investigate-reporters-over-073147150.html>> accessed 20 October 2021

## The Sedition Act 1948

Since the abolition of the Internal Security Act 1960 (ISA), the Sedition Act 1948 has been the go-to law by successive Malaysian governments to silence political dissent. The Sedition Act first came into being during the colonial era and was originally designed to protect the government from any potential uprising. However, with passage of Independence and subsequent development of criminal and constitutional law in Malaysia, the act has widely been argued to be obsolete, and crime of sedition itself an archaic offence<sup>74</sup>. The law itself has been amended on several occasions in the past. However, in enforcing the law, the government has largely left the exact definition of speech that could be construed as seditious open-ended. This ambiguity has led to the Sedition Act being used to suppress political dissent and restrict press freedom on the Internet, including online articles or posts written by HRDs or critics of the government. The fact that online posts and comments have also fallen under the purview of the Sedition Act has contributed to the drastic increase in sedition cases in 2020 and 2021.

### Sedition Act 1948

	May 2018 – February 2020	March 2020 – October 2021
Cases Investigated	144	218
Number of Charges	15	31
Cases Found Guilty	4	13

### 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
TOTAL	100

<sup>74</sup> Sedition Act was passed in 1948 but Malaysia only achieved independence in 1957

Based on trends of documented cases by SUARAM, it appears that the increased use of Sedition Act against individuals coincided with the rise of the Perikatan Nasional government. As opposed to the previous Pakatan Harapan government, the PN government appeared to be more favourable towards retaining the Sedition Act as a tool to suppress political and public expression. Official government data also supports this observation; whereas there were only 144 cases of sedition investigated under the PH government, the number of cases being investigated, as well as charges and guilty verdicts under the Sedition Act during the rule of PN has significantly increased<sup>75</sup>.

In justifying the use of the Sedition Act, the PN or BN government has repeatedly claimed that there are no adequate laws to address “offences” made in connection to race, religion and the monarchy. A suggestion to enact an alternative Race Relations Act to replace the repressive Sedition Act was rebuffed by the Ministry of National Unity on the grounds that, along with Section 233 Communication and Multimedia Act 1998, the Sedition Act could still serve as an effective tool to maintain racial harmony<sup>76</sup>. Despite this, the use of the Act to open investigations against Sarah Irdina and other activists for participating in the #lawan protest strongly suggests that, as far as application is concerned, the ruling powers are still inclined to use the Act to censor speech and stifle political dissent.

There have been various other instances where the Sedition Act was used to send a strong warning to government critics. In February 2021, the ruling coalition UMNO’s Secretary- General, Ahmad Maslan lodged a police report against former attorney-general Tommy Thomas regarding his memoir<sup>77</sup>. In the police report, Ahmad Maslan stated that Tommy Thomas should be investigated under Sections 3 and 4 (1) of the Sedition Act, for the book’s apparent seditious and malicious content.

In the same month, Malaysiakini editor-in-chief Steven Gan and Klang MP Charles Santiago were summoned by the police for investigation under the Sedition Act, for comments made regarding the guilty verdict of Malaysiakini<sup>78</sup>. The police claimed that the investigations were due to the two separate police reports made against the 2 individuals.

Not long after these investigation cases were opened, graphic artist and social activist, Fahmi Reza, was arrested under the Sedition Act on April 23 for a Facebook post promoting his Spotify playlist titled “This Is Dengki Ke?”<sup>79</sup>. The playlist was created as a satirical response to an online comment by the Raja Permaisuri Agong.<sup>80</sup> According to Fahmi, the police had kicked a hole in his door and forced their way in, before arresting him and seizing his laptop and smartphone. Although the case was eventually dropped and classified as ‘no further action’<sup>81</sup>, the manner of arrest and investigation under the Sedition Act could be construed as an act of intimidation against a citizen for exercising his freedom of expression.

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75 Oral Answer in Parliament - Question 28, 16 November 2021

76 Written Answer – Question 357, 2nd Meeting of the 4th Session of the 14th Parliament

77 ‘Ahmad Maslan files police report over Tommy Thomas’ book’ (The Vibes, 6 February 2021) <<https://www.thevibes.com/articles/news/16704/ahmad-maslan-files-police-report-over-tommy-thomas-book>> accessed 10 March 2022

78 ‘Steven Gan, Charles Santiago summoned to Bukit Aman next Monday’ (Malaysiakini, 25 February 2021) <<https://www.malaysiakini.com/news/564360>> accessed 10 March 2022

79 ‘Cops confirm Fahmi Reza’s arrest over ‘Dengki Ke?’ Spotify playlist’ (The Vibes, 24 April 2021) <<https://www.thevibes.com/articles/news/25008/cops-confirm-fahmi-rezas-arrest-over-dengki-ke-spotify-playlist>> accessed 20 October 2021

80 “Dengki ke?': queen’s comment inspires Fahmi Reza’s 101-track Spotify playlist’ (The Vibes, 21 April 2021) <<https://www.thevibes.com/articles/news/24697/dengki-ke-queens-comment-inspires-fahmi-rezas-101-track-spotify-playlist>> accessed 20 October 2021

81 ‘Fahmi Reza’s ‘dengki ke’ sedition case dropped’ (Free Malaysia Today, 24 August 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/08/24/fahmi-rezas-dengki-ke-sedition-case-dropped/>> accessed 20 October 2021

Another example of a seemingly politically motivated arrest under the Section Act involved 20-year-old social activist Sarah Irdina, who was arrested and questioned for 10 hours, before getting released following much protest and public pressure<sup>82</sup>. Sarah's supposed 'seditious' remark was a tweet about the #lawan protest movement, demanding an end to the emergency, for Parliament to convene as soon as possible, and for the Prime Minister Muhyiddin Yassin to resign.

A 28-year-old housewife Nur Faizah Wahid pleaded guilty under the Sedition Act and fined RM10,000 for uploading insulting remarks against the Agong<sup>83</sup>. She remains the only case in 2021 documented by SUARAM where an individual has been found guilty under the Sedition Act.

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82 Alyaa Alhadjri, '#Lawan: Youth activist released at 1am, after 10-hour grilling for sedition' (Malaysiakini, 30 July 2021) <<https://www.malaysiakini.com/news/585162>> accessed 20 October 2021

83 Rahmat Khairulrijal, 'Housewife fined RM10,000 for posting seditious remarks against King' (New Strait Times, 24 August 2021) <<https://www.nst.com.my/news/crime-courts/2021/08/720794/housewife-fined-rm10000-posting-seditious-remarks-against-king>> accessed 10 March 2022



### List of Individuals Investigated under Sedition Act 1948 in 2021

No	Name	Alleged Offence	Date of Investigation
1	Tommy Thomas	Publication of memoir which allegedly defamed and insulted various parties such as the former Attorney General Apandi Ali and former Solicitor-General Mohamad Hanafiah Zakaria	7 February 2021
2	Steven Gan	Criticizing the Federal Court's decision that found Malaysiakini guilty of contempt and accompanying fine of RM500,000	22 February 2021
3	Charles Santiago	Criticizing the Federal Court's decision that found Malaysiakini guilty of contempt and accompanying fine of RM500,000	22 February 2021
4	Unnamed Individual	Posted a video on social media of a Muslim woman apostate	25 February 2021
5	Unnamed Individual	Posted a video that allegedly insulted Christians	16 March 2021
6	Voon Lee Shan	Uploaded a video stating his mission to seek Sarawak's independence from Malaysia	18 May 2021
7	Muhammad Aiman Hakim Zainal Ariffin	Arrested for a posting that allegedly insulted the Malay rulers	23 June 2021
8	N. Ganesparan	Allegedly made a seditious statement against the royal institution and the government	27 June 2021
9	Mohammad Asraf Sharafi bin Mohammad Azhar	Alleged plan to organize a protest on 21 August	13 August 2021
10	Mohammad Alshatri Bin Abdullah	Alleged plan to organize a protest on 21 August	13 August 2021
11	Nur Qyira Izzati Binti Yusri	Alleged plan to organize a protest on 21 August	13 August 2021
12	Tharma Pillai	Alleged plan to organize a protest on 21 August	13 August 2021
13	Dobby Chew	Alleged plan to organize a protest on 21 August	13 August 2021
14	Sevan Doraisamy	Alleged plan to organize a protest on 21 August	13 August 2021
15	Amir Hadi	Alleged plan to organize a protest on 21 August	13 August 2021
16	Sarah Irdina	Alleged plan to organize a protest on 21 August	16 August 2021
17	Numan Afiffi	Alleged plan to organize a protest on 21 August	16 August 2021
18	Nik Azura	Alleged plan to organize a protest on 21 August	16 August 2021
19	Siti Nurizzah	Alleged plan to organize a protest on 21 August	16 August 2021
20	Syazwani Mahmud	Alleged plan to organize a protest on 21 August	16 August 2021
21	Amir Hadi	Alleged plan to organize a protest on 21 August	17 August 2021
22	Adam Adli	Alleged plan to organize a protest on 21 August	17 August 2021

### List of Individuals Arrested under Sedition Act 1948 in 2021

No	Name	Description
1	Fahmi Reza	Arrested for creating “Dengki Ke?” playlist on 23 April 2021
2	Iswardy Morni	Arrested and charged for a issuing a statement on social media, in which he allegedly insulted the monarch on 30 May 2021; remanded for 2 days.
3	Unnamed individual	Arrested for uploading a video that allegedly insulted the Johor Crown Prince on 12 July 2021
4	Sarah Irdina	Arrested for MISI: SOLIDARITI post regarding #lawan campaign and planned protest on 31 July

### List of Individuals Found Guilty under Sedition Act 1948 in 2021

No	Name	Status
1	Nur Faizah Wahid	Fined RM2,000 for uploading a social media post containing seditious remarks insulting the monarch

## Communications and Multimedia Act 1998

Since 2021, Section 233 of the Communications and Multimedia Act 1998 (CMA) has often been used in conjunction with the Fake News Ordinance on the grounds of addressing fake news. The law has also been used to stifle political expression, especially during the proclamation of emergency and the period of political controversy concerning the legitimacy of change in premiership in 2021.

Section 233 of the CMA Act criminalises speech made with the intent to ‘annoy, abuse, threaten or harass another person’, including anonymous communications. The regulation has been criticised for its ambiguity of the language, lack of clear definition of what is deemed ‘offensive’ and its use by the authorities to criminalise the act of online political trolling and parody. Notably, 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 any offense commission, for charges to be laid against an individual.

On 2 July 2021, the police raided the Freedom Film Network (FFN) office and the house of cartoonist Amin Landak in connection with the production and online screening of his anti-torture animation feature “Chili Powder and Thinner”<sup>84</sup>. Together with FFN’s co-founder, Anna Har, he was subsequently investigated under Section 233 of CMA. Four days later, SUARAM’s executive director and senior programme officer Sevan Doraisamy and Mohammad Alshatry, along with Misi Solidariti’s Sharon Wah were also summoned to the police station for further questioning under the CMA<sup>85</sup>. They had served respectively as panelists and moderator during the post-screening discussion. Then SUARAM Director Dr Kua Kia Soong was also called in for questioning, despite having no role in the production and screening of the animation.

There appears to be a common trend among documented cases in 2020-2021, whereby Section 233 had been utilized as a catch-all law for all forms of alleged offences committed on the internet. This raises strong concerns that Section 233 is unjustly broad in its remit and prone to abuse by the authorities. Between 2018 – 2021, 564 cases were investigated under Section 233 of CMA, out of which 24 have been charged<sup>86</sup>.

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84 Alyaa Alhadjri, ‘Cops raid FFN office, cartoonist’s home in probe on police brutality animation’ (Malaysiakini, 2 July 2021) <<https://www.malaysiakini.com/news/581463>> accessed 10 March 2022

85 Jason Thomas, ‘Four more questioned over animation on police brutality’ (Free Malaysia Today, 6 July 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/07/06/four-more-questioned-over-animation-on-police-brutality/>> accessed 10 March 2022

86 Written Answer in Parliament - Question 24, 2nd Meeting of the 4th Session of the 14th Parliament

**List of individuals or groups arrested, investigated, charged, or found guilty under Section 233 of the Communication and Multimedia Act 1998 in 2021**

No	Name	Alleged Offence	Status
1	Unnamed Individual	An image of his restaurant containing communist themed images was found online	Investigated on 4 January 2021
2	Unnamed Facebook user	Posted an online statement with alleged insults and threats against the Police and Immigration Department regarding the Movement Control Order	Investigated on 13 January 2021
3	Hacker group 'Anonymous Malaysia'	Threatened to hack government websites	Investigated on 30 January 2021
4	K. Harridas	Shared a post titled 'Talk about GE14- Part 11 #Vote for PH #Kick out BN'; 'So Many Dummy Police Officers in Malaysia' from the website www.makklada.org on a Facebook page titled "Defend People's Rights Group".	Charged on 9 February 2021
5	Ramesh Rao	Uploaded offensive posting on social media	Charged on 10 February 2021
6	Jamal Md Yunos	Uploaded 2 videos with the intention to insult others	Charged on 18 January 2021
7	Dr Roland Victor	Uploaded a video about the function and effectiveness of the vaccine including the risks that may be encountered	Statement recorded on 18 February 2021
8	Steven Gan	Comments on Federal Court's decision that found Malaysiakini guilty of contempt	Investigated on 22 February 2021
9	Charles Santiago	Comments on Federal Court's decision that found Malaysiakini guilty of contempt	Investigated on 22 February 2021
10	Darren Chan	Uploaded a university list on the website Sugarbook of which he was the founder	Arrested on 17 February 2021
11	Anwar Ibrahim	Pakatan Harapan's press statement regarding the Emergency	Statement recorded on 26 February 2021
12	Fahmi Reza	Uploaded 2 caricatures deemed to be offensive	Statement recorded on 10 March 2021
13	Tamrin Abdul Ghafar	Posted an offensive article on Facebook against the Crown Prince of Johor	Charged on 10 March 2021
14	Lim Guan Eng	Pakatan Harapan's press statement regarding the Emergency	Statement recorded on 11 March 2021
15	Unnamed Individual	Posted a comment on social media inciting the public against the use of the word 'Allah' by Christians	Investigated on 15 March 2021
16	5 unnamed individuals	Posted a video which shows a van displaying a logo believed to be that of a Secret Society	Arrested on 16 March 2021
17	Unnamed individual	Posted an online comment threatening to shoot an assemblyman dead	Investigated on 23 March 2021

No	Name	Alleged Offence	Status
18	J Ramanaidoo	Posted a comment insulting Islam on facebook	Charged on 24 March 2021
19	Zamri Abdul Razak	Insulted Hinduism on Facebook	Found guilty on 24 March 2021 and fined RM15,000 on 2 April 2021
20	Joan Lee	Posted a video slandering and insulting another online personality	Arrested on 31 March 2021
21	Sufazrin Amin Ismail	Posted offensive remarks against the monarch	Found guilty and fined RM7,000 on 7 April 2021
22	Unnamed Individual	Uploaded a video of abuse against a three-year-old boy and five-year-old girl	Investigated on 15 April 2021
23	Unnamed Individual	Made a death threat against Deputy Chief Minister Datuk Amar Douglas Unggah Embas on social media	Arrested on 16 April 2021
24	Unnamed Individual	Uploaded a posting which contains a list of police personnel alleged to be colluding with various organised crime syndicates	Arrested on 18 April 2021
25	13 Unnamed Individuals	Produced and uploaded two Hari Raya-themed advertisements promoting online gambling	Arrested on 18 April 2021
26	Jonathan Tan Tee Hoe	Promoted online gambling that went viral on social media	Investigated on 23 April 2021
27	Unnamed Individual	Circulated a letter on social media condemning a Masjid and insulting the Malays	Arrested and remanded on 24 April 2021
28	J. Gajanayagam	Using messaging app to send sexually offensive contents	Charged on 23 April 2021
29	Fahmi Reza	Created a spotify playlist titled 'Dengki Ke'	Arrested on 23 April 2021
30	Ahmad Muazz Ishak	Made an offensive statement on social media against the Crown Prince of Johor	Charged on 26 April 2021
31	Unnamed Newscaster	Made online comments which purportedly slandered the police who imposed a fine on a burger seller in Kelantan	Investigated on 30 April 2021
32	Zulkiflee Anwar Alhaque	Uploaded a caricature depicting the Kedah Menteri Besar's decision to cancel the Thaipusam holiday	Investigated on 7 May 2021
33	Fahmi Reza	Uploaded 2 caricatures of the health minister and another on the logo of Universiti Kebangsaan Malaysia	Called for questioning on 7 May 2021
34	Neelofa Mohd Noor	Uploaded a video in which she was seen to be breaching the Conditional Movement Control Order	Investigated on 4 May 2021

No	Name	Alleged Offence	Status
35	Muhamma Haris Mohd Ismail	Uploaded a video in which she was seen to be breaching the Conditional Movement Control Order	Investigated on 4 May 2021
36	Unnamed Individual	Posted offensive content that purportedly insulted the government on its policy to implement a ban on passenger flights	Investigated on 5 May 2021
37	Unnamed Individual	Posted offensive content that contained harsh words and threats against police personnel	Arrested on 7 May 2021
38	Lokman Noor Adam	Posted fake news about Covid-19	Investigated on 12 May 2021
39	Unnamed Individual	Spreading fake news on the issuance of compounds for the violation of SOPs	Investigated on 13 May 2021
40	Voon Lee Shan	Uploaded a video on social media on his party's objective for Sarawak to seek independence from Malaysia	Investigated on 19 May 2021
41	Syed Saddiq	Uploaded a video regarding death in custody in his social media	Statement recorded on 23 May 2021
42	Unnamed Individual	Uploaded a video that claimed that Nilai 3 is in Selangor state	Investigated on 23 May 2021
43	Unnamed Individual	Uploaded a video which purportedly contained fake news on the Astrazeneca vaccine	Investigated on 24 May 2021
44	Ryzal Ibrahim	Uploaded a video that made fun of traditional iban clothing	Investigated on 29 May 2021
45	Iswardy Morni	Uploaded a video that had negative remarks against the monarch	Investigated on 30 May 2021
46	Unnamed Individual	Uploaded a video belittling Islam in social media	Investigated on 30 May 2021
47	Unnamed Individual	Uploaded a post in social media that allegedly criticised the Sultan of Johor	Investigated on 31 May 2021
48	D Arumugam	Spread false news regarding the loss of a gold ingot	Charged on 2 June 2021
49	R Thanalechimy	Spread false news regarding the loss of a gold ingot	Charged on 2 June 2021
50	Unnamed Individual	Uploaded defamatory statements regarding the compound officer	Investigated on 8 June 2021
51	Instagram user 'safeyillias94'	Uploaded video which contained sexual grooming and obscene communication with minors	Arrested on 11 June 2021
52	Facebook account 'Gabungan Pertubuhan-Pertubuhan Pembela Islam'	Uploaded a video launching a fund to pay bail when the police had denied the existence of the bail	Investigated on 13 June 2021
53	Fahmi Reza	Uploaded a caricature depicting Perak Menteri Besar Datuk Saarani Mohama	Investigated on 18 June 2021

No	Name	Alleged Offence	Status
54	Unnamed Individual	Uploaded a video of himself giving a baby an alcoholic drink	Arrested on 22 June 2021
55	Muhammad Aiman Hakim Zainal Ariffin	Uploaded a post that insulted the Malay Rulers	Arrested on 23 June 2021 and released on the following day
56	Unnamed Individual	Made online death and rape remarks against the supporters of student activist Ain Husniza	Arrested on 23 June 2021
57	N Ganesparan	Uploaded a video entitled 'Racist in Vaccine (sic) Malaysia'	Investigated on 27 June 2021
58	Azrul Mohd Khalib	Uploaded a tweet on the use of MySejahtera data in law enforcement	Statement recorded on 1 July 2021
59	Unnamed Individual	Uploaded a post on social media comparing the azan to dog howling	Arrested on 1 July 2021
60	Anna Har	Uploaded the video 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Investigated on 2 July 2021 and Freedom Film Network's office was raided
61	Amin Landak	Uploaded the video 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Investigated on 2 July 2021 and Amin's residence was raided
62	Kua Kia Soong	Uploaded the video 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Statement recorded on 6 July 2021
63	Sevan Doraisamy	Uploaded the video of 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Statement recorded on 6 July 2021
64	Mohammad Alshatri	Uploaded the video of 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Statement recorded on 6 July 2021
65	Unnamed Individual	Posted a video with insulting remarks against the Crown Prince of Johor	Arrested on 7 July 2021
66	Mahadi Mahbol	Made online offensive remarks against a political party and the Prime Minister's special officer	Charged on 13 July 2021
67	Dr Han@Gigi Han	Uploaded a video clip disputing the contractual appointment of doctors in the civil service	Investigated on 14 July 2021
68	Twitter user @zulhelmiismail	Uploaded a tweet alleging a policeman at a roadblock had solicited a bribe	Investigated on 14 July 2021
69	Unnamed Individual	Uploaded a live video on social media provoking the police	Investigated on 21 July 2021

No	Name	Alleged Offence	Status
70	Berallainitta Webley	Posted a remark on social media tarnishing the image of the police	Found guilty and fined RM5,000 on 21 July 2021
71	Heidy Quah	Uploaded a post on social media of mistreatment of refugees by the government	Charged on 27 July 2021
72	Boo Su-Lyn	Uploaded an article about hidden Covid-19 cases at the Setia City Convention Centre	Statement recorded on 26 July 2021
73	6 Media Practicioners	Made video recordings and reporting on the doctor striker in the Malaysia Agro Exposition Park Serdang	Investigated on 28 July 2021
74	Tharma Pillai	Shared the post promoting the #lawan protest	Called for questioning on 29 July 2021
75	Afiq Adib	Shared the post promoting the #lawan protest	Called for questioning on 29 July 2021
76	Mohammad Alshatri	Shared the post promoting the #lawan protest	Called for questioning on 29 July 2021
77	Sarah Irdina	Shared the post promoting the #lawan protest	Called for questioning on 29 July 2021
78	Unnamed Individual	Posted a live video of several individuals eating durians which allegedly violated the SOP of Movement Control Order	Investigated on 31 July 2021
79	Rosmawati Mohd Zain	Posted a remark on social media insulting the monarch	Found guilty and subsequently fined RM9,000 on 3 August 2021
80	Muhammad Zaki Omar	Posted offensive remarks regarding Covid-19 vaccination on social media	Charged on 6 August 2021
81	Unnamed Individual	Uploaded insulting or threatening remarks on social media against the Kedah Menteri Besar	Arrested on 9 August 2021
82	3 unnamed individuals	Uploaded insulting or threatening remarks on social media against the Kedah Menteri Besar	Arrested on 10 August 2021
83	Mohammad Asraf Sharafi bin Mohammad Azhar	Online posting promoting the #lawan protest 2.0	Called for questioning on 13 August 2021
84	Mohammad Alshatri Bin Abdullah	Online posting promoting the #lawan protest 2.0	Called for questioning on 13 August 2021
85	Nur Qyira	Online posting promoting the #lawan protest 2.0	Called for questioning on 13 August 2021



No	Name	Alleged Offence	Status
86	Tharma Pillai	Online posting promoting the #lawan protest 2.0	Called for questioning on 13 August 2021
87	Dobby Chew	Online posting promoting the #lawan protest 2.0	Called for questioning on 13 August 2021
88	Sevan Doraisamy	Online posting promoting the #lawan protest 2.0	Called for questioning on 13 August 2021
89	Amir Hadi	Online posting promoting the #lawan protest 2.0	Called for questioning on 13 August 2021
90	Sarah Irdina	Online posting promoting the #lawan protest 2.0	Called for questioning on 16 August 2021
91	Numan Afifi	Online posting promoting the #lawan protest 2.0	Called for questioning on 16 August 2021
92	Nik Azura	Online posting promoting the #lawan protest 2.0	Called for questioning on 16 August 2021
93	Siti Nurizzah	Online posting promoting the #lawan protest 2.0	Called for questioning on 16 August 2021
94	Syazwani Mahmud	Online posting promoting the #lawan protest 2.0	Called for questioning on 16 August 2021
95	Amir Hadi	Online posting promoting the #lawan protest 2.0	Called for questioning on 17 August 2021
96	Adam Adli	Online posting promoting the #lawan protest 2.0	Called for questioning on 17 August 2021
97	Nur Faizah Wahid	Posted insulting remarks on social media against the monarch	Fined RM8,000 on 24 August 2021
98	Sharil Mohd Sarif	Posted insulting remarks on social media against the monarch	Pleaded not guilty on 24 August 2021
99	2 unnamed individuals	Posted that they were dining out despite being prohibited to do so because they were not fully vaccinated	Arrested on 24 August 2021
100	Unnamed Individual	Posted several videos containing elements of deviant Islamic beliefs and teachings	Arrested on 4 September 2021
101	Prajiv Lionel Proctor	Posted insulting remarks against the religion Islam and the Monarch	Charged on 13 September 2021
102	Ahmad Mu'min Othman	Posted insulting remarks against the police through his Facebook profile	Found guilty on 17 September 2021

No	Name	Alleged Offence	Status
103	Unnamed Individual	Posted a picture eating at a restaurant despite not being vaccinated	Investigated on 23 September 2021
104	Borhanuddin Che Rahim	Made a racist remark against the national badminton player, S. Kisona	Investigated on 4 October 2021
105	Fahmi Reza	Posted a caricature of Prime Minister Ismail Sabri's 'Keluarga Malaysia' online	Arrested on 4 October 2021
106	Twitter user, Khalid@Khalids	Posted a tweet claiming 41 teachers had died due to Covid-19	Investigated on 9 October 2021
107	Twitter user, zion74rey@reymizion74	Posted a tweet allegedly insulting the Sultan of Johor	Arrested on 10 October 2021
108	Aspan Alias	Posted a Facebook remark allegedly insulting the monarch	Pleaded not guilty on 11 October 2021
109	S. Dayalan	Posted an online insulting remark against the former Prime Minister Tan Sri Muhyiddin Yassin	Pleaded not guilty on 12 October 2021
110	Mohd Alies Abd Manan	Posted a video in Facebook that insulted the Inland Revenue Board Advisory Board Member Tan Sri Rashpal Singh Randhay	Found guilty and fined RM3,000 on 20 October 2021
111	Ahmad Farhan Mohd	Posted an online offensive remark against religious leaders	Found guilty and fined RM10,000 on 1 November 2021
112	Miah Akas	Allegedly posted racist statement on social media	Arrested on 5 November 2021
113	19 unnamed individuals	Allegedly sold unrecognised state awards and titles online	Arrested on 18 November 2021
114	Unnamed individual	Uploaded a poster on Instagram regarding a fake program using the name and image of Kedah police chief, Datuk Kamarul Zaman Mamat	Called for investigation on 25 November 2021
115	Facebook user, Stibin Kuntai	Allegedly posted a online remark insulting the Penang community in Sarawak	Investigated on 25 November 2021
116	Unnamed individual	Posted an accusatory image against the police online related to fight in Ipoh which led to a death	Investigated on 26 November 2021
117	Lim Eng Seng	Allegedly posted an offensive online remark against the former Minister in the Prime Minister's Department, Datuk Seri Dr Zulkifli Mohamad Al-Bakri	Found guilty and fined RM8,000 on 6 December 2021
118	Wan Asshuma Kamruddin	Allegedly posted offensive remarks against Christianity on Facebook.	Charged on 6 December 2021
120	4 unnamed individuals	Allegedly posted online offensive remarks against persons with disabilities	Investigated on 11 December 2021

No	Name	Alleged Offence	Status
121	Unnamed individual	Engaged a woman through an international call and manipulated her into investing her money into Bitcoin, causing her to lose RM648,800	Investigated on 12 December 2021
122	Mohd Afif Ramlan	Allegedly sending obscene photographs to a woman via WhatsApp	Charged on 16 December 2021
123	Roshafeez Abdul Hamid	Allegedly uploaded a video insulting the government's Movement Control Order	Charged on 17 December 2021
124	Lai Yuet Ming	Allegedly making online offensive statements against the former Prime Minister Muhyiddin Yassin	Found guilty and fined RM10,000 on 21 December 2021
125	Unnamed individual	Allegedly making online comments related to Nurain Husniza Saiful Nizam	Investigated on 26 December 2021

In 2021, the Malaysian Communications and Multimedia Commission (MCMC) under the Ministry of Communications and Multimedia had also used Section 233 to police online expression on several occasions, such as banning a total of 8,141 pornographic or phishing websites<sup>87</sup> and proactively removing Twitter posts that were critical of the government's mishandling of the December Klang Valley's flash floods<sup>88</sup>. In the latter, the MCMC had reported several flood-related hashtags to Twitter, requesting the social network company to remove the posts on the grounds of ensuring compliance with Section 233 of CMA.

Aside from Section 233, Section 263 of the Act is also prone to misuse and abuse by the authorities, in suppressing freedom of expression in Malaysia. Section 263 is specifically targeted at network service providers. It basically compels network service providers to assist 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 used by the government to compel internet service providers (ISP) to block websites that are deemed illegal<sup>89</sup>.

87 Written Answer in Parliament - Question 25, 2nd Meeting of the 4th Session of the 14th Parliament

88 'CJ condemns MCMC's attempt to suppress online posts' (New Strait Times, 24 December 2021) <<https://www.nst.com.my/news/nation/2021/12/757544/cj-condemns-mcmcs-attempt-suppress-online-posts>> accessed 10 March 2022

89 Ida Lim, 'Sarawak Report blockage shines light on 'abusive' MCMC powers' (Malay Mail, 24 July 2015) <<https://www.malaymail.com/news/malaysia/2015/07/24/sarawak-report-blockage-shines-light-on-abusive-mcmc-powers/938837>> accessed 16 February 2021

## Printing Presses and Publications Act 1984

Although no banning of publications took place under the Printing Presses Publications Act 1984 in 2021, former attorney-general Tommy Thomas' memoir "My Story: Justice in the Wilderness", published in the same year, did ruffle the feathers of certain members of the present governing party UMNO, who accused the book of twisting historical facts<sup>90</sup>. On top of 134 police reports, investigation papers were opened against Thomas under the Official Secrets Act 1972 and Sedition Act 1948<sup>91</sup>.

In 2021, following online backlash, some bookstores in Malaysia were forced to remove publications that were deemed to promote homosexuality. The backlash materialized in the form of viral trends, starting with a prominent social activist/influencer uploading a picture of the publication being sold in a specific bookstore on their social media accounts, and urging their followers to make a direct complaint to the Home Ministry to act against the bookstore or publisher. The book "Heartstopper Volume One" was a prime example and it was removed by bookstores such as MPH and Kinokuniya after these online posts gained sufficient attention among the conservative groups.

Lastly, the publisher and author of the banned book "Gay is OK! A Christian Perspective" successfully obtained leave to legally challenge the book ban<sup>92</sup>. While awaiting the court's final verdict in 2022, the book is currently still under ban by the government, seven years after its publication, in the name of protecting public order<sup>93</sup>.

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90 Zahid Hamidi, 'Tommy Thomas book full of lies, incites hatred' (UMNO Malaysia, 04 February 2021) <<https://umno.org.my/en/2021/02/04/buku-tommy-thomas-ser-lah-sikap-tidak-bertanggungjawab-penuh-kebencian-ingin-publisiti/>> accessed 20 October 2021

91 '134 police reports lodged against Tommy Thomas' book' (NST, 08 February 2021) <<https://www.nst.com.my/news/nation/2021/02/663982/134-police-reports-lodged-against-tommy-thomas-book>> accessed 20 October 2021

92 Khairah N. Karim, 'Author, publisher of 'Gay is OK!' gets green light to challenge book ban' (New Strait Times, 30 March 2021) <<https://www.nst.com.my/news/crime-courts/2021/03/678186/author-publisher-gay-ok-gets-green-light-challenge-book-ban>> accessed 10 March 2022

93 Hidir Reduan Abdul Rashid, 'Gay is Okay' book could harm public order 7 years after publication: Filing' (Malaysiakini, 1 November 2021) <<https://www.malaysiakini.com/news/597579>> accessed 10 March 2022





**FREEDOM OF ASSEMBLY**

# FREEDOM OF ASSEMBLY

2021 witnessed several protests and spontaneous assemblies taking place, despite the resurgence of Covid-19 and the months-long national state of emergency issued by the government to curb its spread. Unlike the previous year, when such activities had been heavily curtailed, as information about the virus became more available and accessible in 2021, activists began to adapt their strategies to defend their right to assemble peacefully and effectively, even under unusual circumstances. In 2021, the assemblies observed by SUARAM mostly comprised of demonstrators wearing masks and organisers ensuring that social distancing rules were strictly adhered to. None of the rallies held in 2021 had yielded reports of Covid-19 infection, and even the year's biggest public protest had not led to a Covid-19 cluster<sup>94</sup>, as testified by the Health Director-General Dr Noor Hisham Abdullah. These facts suggest that the right to assemble freely can be exercised peacefully and safely even during pandemic times.

## Public actions, assemblies, and protests in 2021

### *Solidarity with Myanmar National – 5 March 2021*

*Several organisations organised a solidarity action and laid out 1,086 pairs of shoes in Taman Jaya Park on 5 March to show solidarity with the 1,086 Myanmar nationals that were forcefully deported by the Malaysian government back to Myanmar on 23 February. The deportation took place despite a stay of execution of the deportation issued by the Kuala Lumpur High Court. According to a statement issued by the organising members, the act violated the international legal principle of “non-refoulement. The following demands were listed as part of the solidarity action:*

- a) No cooperation with the Tatmadaw government.*
- b) Unequivocal access to immigration detention centres granted to the United Nations High Commission of Refugees (UNHCR).*
- c) Moratorium on deportations, end indefinite and arbitrary detention of all migrants.*
- d) Full transparency from the Immigration Department of Malaysia.*

*As part of the monitoring team for the solidarity action, SUARAM observed that the protest had been conducted peacefully without any reprisal.*

<sup>94</sup> Yiswarae Palansamy, 'Dr Noor Hisham: No reports of Covid-19 cluster from #Lawan rally' (Yahoo!news, 13 August 2021) <<https://malaysia.news.yahoo.com/dr-noor-hisham-no-reports-100815905.html>> accessed 1 October 2021

***Wait No More, Act Now! – 8 March 2021***

*In conjunction with International Women’s Day, Parti Sosialis Malaysia held a convoy in Brickfields, Kuala Lumpur, as part of its ‘Wait No More, Act Now!’ campaign calling for the enactment of the Sexual Harassment Act, the end of child marriage, the introduction of a modified universal basic income, and the end of discrimination towards LGBTIQ persons.*

***Candlelight vigil outside Myanmar Embassy – 10 March 2021***

*A group of 20 to 30 activists led by NGO Food Not Bombs (FNB) organised a candlelight vigil outside the Myanmar Embassy in Kuala Lumpur to show solidarity with the Myanmar people suffering oppression under the newly installed military dictatorship. The silent protest was conducted in a restrained manner, and there were no speeches and statements. Police were present throughout the protest and asked the organisers to disperse within 20 – 40 minutes. The police had also requested identification documents from a Myanmar student who attended the protest.*

***Protest at Parliament against the Emergency Proclamation and suspension of Parliament – 14 March 2021***

*Civil society organisations staged a spontaneous protest at Parliament against the Emergency Proclamation and the Emergency (Essential Powers) (No. 2) Ordinance 2021 also known as the Fake News Ordinance. The participating organisations had demanded an end to the country’s emergency proclamation and that the federal government lift the suspension on Parliament to allow the return of democratic decision making. Approximately 10 – 15 activists attended the protest, and police presence was also minor, presumably since no prior announcement about the protest had been made.*

***Protest at Tugu Negara for greater climate awareness – 19 March 2021***

*Environmental organisation Klima Action Malaysia (KAMY) organised a demonstration to urge greater awareness among the public and government towards the global climate crisis. The demonstration was conducted peacefully and around 15 activists were in attendance.*



### ***Undi18 protest – 27 March 2021***

*Over 200 university students and civil society members gathered outside Parliament and observed 18 minutes of silence to object to the delay in implementing the Undi18 bill. The rally was organised by Sekretariat Himpunan Tuntut Undi 18, a loose coalition of more than 20 youth civil groups and youth wings of opposition parties. Although the event was held peacefully, members of parliament and prominent activists who attended the protest were called by the police for investigation under the Peaceful Assembly Act and potential violations under Regulation 11 of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (Conditional MCO) (No.4) Regulations 2021.*

### ***Undi18 protest – 27 March 2021***

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### ***Solidarity for Fahmi Reza outside Dang Wangi police station – 23 April 2021***

*A spontaneous gathering was held outside of Dang Wangi police station to stand in solidarity with Fahmi Reza, a graphic designer who was arrested under the Sedition Act for creating a Spotify playlist that allegedly insulted the royalty. The gathering lasted two days and was attended by 20 people. Eight individuals were investigated under the Peaceful Assembly Act for participating in the solidarity gathering.*

### ***Protest calling for the end of EMCO near Kampung Muhibbah Raya, Tawau – 24 April 2021***

*Borneo Komrad, a Sabah non-government organisation, along with 30 residents of Kampung Muhibbah Raya, Tawau, Sabah held a protest calling for the end of Enhanced Movement Control Order (EMCO) in the village. The protest was conducted out of strong concerns about the economic impact and affected welfare of the villagers caused by the EMCO. Five men, including Borneo Komrad's activist leader Mukmin Nantang were detained by the police, and two more people were arrested to deter further protest. The seven individuals were remanded for two days for investigation under the Peaceful Assembly Act and Section 25 of the Emergency (Prevention and Control of Infectious Diseases) Ordinance 2021.*

### ***#BukaPuasaBukaParlimen protest – 30 April 2021***

*Sekretariat Solidariti Rakyat (SSR), a coalition comprised of myriad youth groups, organised the #BukaPuasaBukaParliamen protest which saw over 100 people marching 500m from Tugu Negara to the gates of the Parliament building to demand that Putrajaya reconvene Parliament, end the state of Emergency, enforce just and human laws, immediately implement the voting rights for 18 years old, strengthening the rights of Sabah and Sarawak, strengthening a safe education system for all Malaysians and the guarantee of a sustainable economy for the people. The physically distanced sit-in peaceful protest saw the participants breaking fast together for Ramadan. After the protest, the police announced that around 90 identified protesters would be called up for investigation under the Peaceful Assembly Act.*

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### ***May Day protest – 1 May 2021***

*A Labour Day protest was held by various workers organisations to urge the government to heed the plight of the working class who have been financially burdened by the mismanagement of the pandemic. The protest was conducted peacefully, and the police acknowledged that both organisers and participants had adhered to the pandemic Standard Operation Procedures (SOP). Nevertheless, five individuals were still summoned for questioning by the police.*

### ***Dataran Merdeka flash mob – 17 July 2021***

*Around twenty people took part in a Dataran Merdeka flash mob organised by SSR. Participants were seen bearing effigies of corpses to represent the increasing Covid-19 death toll at the time and carrying black flags to symbolise displeasure against the government. The flash mob's demands included the resignation of the Prime Minister Muhyiddin Yassin, reconvening of Parliament and the extension of automatic loan moratoriums. Police were present at the protest and three organisers of the flash mob were called in for investigation. They were each fined RM2,000 for the breach of Regulation 10 of Prevention and Control of Infectious Diseases Regulations (Measures within Infected Local Areas) (National Recovery Plan) 2021.*

### ***National convoy for #lawan protest, 24 July 2021***

*SSR organised and coordinated a nationwide vehicle convoy to drum up support ahead of the #lawan protest. The convoy of cars with black flags was held concurrently on streets of Kuala Lumpur and in nine other states. Police were present to control traffic and eventually intervened to disperse the event by cordoning off Dataran Merdeka, the planned convergence point of the convoy. According to media reports, more than 30 people were also summoned for police questioning. Prior to the event, the police had also warned the public against participating, with threats of compounds and fines. Founder of Misi Solidariti, Sarah Irdina was arrested under the Sedition Act in relation to the car convoy and #lawan protest.*

### ***Hartal Doktor Kontrak (Contract Doctors' Strike) – 26 July 2021***

*A protest was organised by a movement of contract medical officers to push for reforms of the government's contract system that was seen to withhold job security and hinder career progression. On the day of the strike, medical officers working in government hospitals wore black and walked out of their respective public healthcare facilities at 11am, stopping work briefly and leaving patients under the care of senior doctors. Police were stationed at the hospitals and protesting medical officers ended their strike without incident, returning to their duties afterwards. After the protest, the police confirmed that they did not open any investigation papers on medical practitioners who participated in the strike.*

### *'Keluar dan #Lawan' assembly (#lawan protest) – 31 July 2021*

*Almost 400 – 600 participants gathered outside of Dataran Merdeka to protest the Perikatan Nasional government's handling of the pandemic and to demand the resignation of then Prime Minister Muhyiddin Yassin. The police had repeatedly released statements prior to the protest warning people against joining the protest and erected barriers on the streets leading to Dataran Merdeka. Some reports have claimed that the authorities went as far as visiting the homes of activists at late hours for questioning and photo taking.*



*Despite being the largest public assembly conducted in 2021, the protest was largely peaceful, with participants maintaining social distance while protesting. Following the protest, 21 individuals were summoned by the police for questioning and there were allegations of intimidation during the probe. The police also called in several SUHAKAM commissioners and Bar Council representatives who were on duty to monitor the protest.*



*Figure 6 On July 31, hundreds of protesters in black gathered for the #Lawan protest organised by Sekretariat Solidariti Rakyat.*

### ***Opposition Members' march to Parliament – 2 August 2021***

*Around 107 opposition lawmakers gathered at the Merdeka Square to protest against the government's decision to postpone the final days of the special sitting of Parliament. The MPs had planned to march to Parliament two kilometres away but were prevented from doing so after police blocked the access roads leading to parliament. Further attempts to continue marching were thwarted by police in riot gear. Following the event, opposition MPs were called up for police questioning.*

### ***Candlelight Vigil at Dataran Merdeka – 19 August 2021***

*A candlelight vigil to commemorate Covid-19 victims organised by the SSR was met with forceful arrest by the police. The vigil was constantly disrupted by heavy police presence and subsequently, 31 participants were arrested without being informed that they were being placed under arrest nor the grounds for arrest. During the arrests, some participants were forcefully handled and dragged into police trucks. At the police station, while they were held under custody, the vigil participants had their identification cards and handphone confiscated and were also denied legal counsel. Following public pressure, all participants were eventually released and granted legal counsel, but they were also fined RM2,000 each for participating in a demonstration during the pandemic. Two participants, Nalina Nair and Sujatra Jayarah were charged for allegedly rioting, displaying disorderly behaviour, and hurling insults when they were in custody. On 30 December 2021, 16 participants decided to file a suit against the police, citing that their rights had been violated during the arrest.*

## Peaceful Assembly Act 2012

The restrictions to Malaysians' freedom to assembly remained largely unchanged throughout 2021. Although amendments made to Section 9(1) of the PAA saw the reduction of prior required notice to hold assembly from ten to 5 days, the law still poses obstructions to hold spontaneous or urgent assemblies. Police investigations opened against demonstrators in 2021 in relation to the PAA were mostly made under Section 9(5) which provides that failure to provide a 5-day notice is a punishable offence and liable to a fine not exceeding ten thousand ringgit. Although no notable charges nor prosecutions were made, the number of PAA-related investigations against demonstrators substantially increased under the Perikatan Nasional government in 2021, compared to 2020, underscoring the fact that the amended PAA fails to safeguard Malaysians' right to assemble.

For example, twelve activists and politicians were called in for investigation under Section 9(5) of PAA over the Undi18 protest staged outside parliament, which had drawn a crowd of around 200 participants on March 27 2021<sup>95</sup>. In response to the investigation, the then Housing and Local Government Minister Zuraida Kamaruddin surprisingly defended the protest and declared that peaceful assemblies should not be subjected to any police investigation<sup>96</sup>. She further claimed that the PAA would need to be amended so that police could better facilitate assemblies and that the matter would be raised in the cabinet. However, no further developments appear to have taken place following the minister's announcement.

Incidents of police intimidation and assault during arrests and investigations made under the PAA have also been reported. Activist Mukmin Nantang revealed that he had been assaulted by the authorities while en route to the police station for demonstrating against the Enhanced Movement Control Order (EMCO) in Tawau, Sabah<sup>97</sup>. Along with six other activists, he was remanded for two days for demonstrating against the government<sup>98</sup>.

In a separate incident on 19 August 2021, 31 protesters were detained for attending a candlelight vigil in remembrance of those who had passed away due to Covid-19<sup>99</sup>. One of the participants alleged that she was treated with force by the police and had suffered physical injuries during the arrest<sup>100</sup>. Furthermore, while in custody, the protesters were denied their right of access to lawyers. All of them were fined a RM2,000 compound for participating in demonstrations during the pandemic. The police have since denied that the 31 protesters were detained under arrest.

According to a parliamentary reply<sup>101</sup>, a total of 34 investigation papers were opened under the PAA in 2020. Of this, one case has been charged. Meanwhile, in 2021, there were 41 investigation papers and while no charges were pressed, 27 of them are still under active investigation by the police.

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95 A. Azim Idris, '[UPDATED] 11 called up over Undi18 rally freed, 8 quizzed by police' (The Vibes, 30 March 2021) <<https://www.thevibes.com/articles/news/22275/11-called-up-over-undi18-rally-freed-questioning-continues>> accessed 1 October 2021

96 'Undi18 protest probe: Minister says cops should facilitate peaceful assembly' (Malaysiakini, 3 April 2021) <<https://www.malaysiakini.com/news/569291>> accessed 1 October 2021

97 Rebecca Chong, 'Activist arrested over Tawau protest alleges abuse en route to police station' (The Vibes, 25 April 2021) <<https://www.thevibes.com/articles/news/25125/activist-arrested-for-tawau-protest-alleges-abuse-while-detained>> accessed 1 October 2021

98 Hidir Reduan Abdul Rashid, 'Lawyer confirms two-day remand for Tawau EMCO protesters' (Malaysiakini, 25 April 2021) <<https://www.malaysiakini.com/news/572086>> accessed 1 October 2021

99 Lancelot Theseira, 'Cops detain 31 people after Covid-19 victims' vigil at Dataran Merdeka' (The Vibes, 19 August 2021) <<https://www.thevibes.com/articles/news/38871/covid-19-victims-vigil-at-dataran-merdeka-under-tight-police-watch>> accessed 1 October 2021

100 Alyaa Alhadjri, 'SSR vigil participant alleges police violence, cites multiple bruises' (Malaysiakini, 21 August 2021) <<https://www.malaysiakini.com/news/588113>> accessed 1 October 2021

101 Written Answer in Parliament – Question 96, 2nd Meeting of the 4th Session of the 14th Parliament

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

<b>No</b>	<b>Individual/Group</b>	<b>Event</b>	<b>Date</b>
1	Khalid Samad	Undi18 Protest outside Parliament	27 March 2021
2	Young Syefura Othman	Undi18 Protest outside Parliament	27 March 2021
3	Shazni Munir	Undi18 Protest outside Parliament	27 March 2021
4	Amir Abdul Hadi	Undi18 Protest outside Parliament	27 March 2021
5	Maria Chin Abdullah	Undi18 Protest outside Parliament	27 March 2021
6	Maszlee Malik	Undi18 Protest outside Parliament	27 March 2021
7	Hannah Yeoh	Undi18 Protest outside Parliament	27 March 2021
8	Ambiga Sreenevasan	Undi18 Protest outside Parliament	27 March 2021
9	Chua Tian Chang	Undi18 Protest outside Parliament	27 March 2021
10	Howard Lee	Undi18 Protest outside Parliament	27 March 2021
11	Sharan Raj	Undi18 Protest outside Parliament	27 March 2021
12	Arveent Srirangan Kathirtchelvan	Undi18 Protest outside Parliament	27 March 2021
13	Fahmi Fadzil	Solidarity for Fahmi Reza	23 – 24 April 2021
14	S Arutchelvan	Solidarity for Fahmi Reza	23 – 24 April 2021
15	M Sivaranjani	Solidarity for Fahmi Reza	23 – 24 April 2021
16	Sevan Doraisamy	Solidarity for Fahmi Reza	23 – 24 April 2021
17	Wong Yan Ke	Solidarity for Fahmi Reza	23 – 24 April 2021
18	Nalini Elumalai	Solidarity for Fahmi Reza	23 – 24 April 2021
19	Khalid Ismath	Solidarity for Fahmi Reza	23 – 24 April 2021
20	Numan Afifi	Solidarity for Fahmi Reza	23 – 24 April 2021
21	Mukmin Nantang and 6 other Sabah activists	Protest near Kampung Muhibbah Raya, Tawau, Sabah	24 April 2021
22	90 unnamed activists	#BukaPuasaBukaParlimen assembly	30 April 2021
23	S Arutchelvan	May 1 rally	1 May 2021
24	Sivarajan Arumugam	May 1 rally	1 May 2021
25	Nik Aziz Afiq	May 1 rally	1 May 2021
26	Wong Yan Ke	May 1 rally	1 May 2021
27	Nalini Elumalai	May 1 rally	1 May 2021
28	Mohammad Alshatri	Dataran Merdeka Flash Mob	17 July 2021
29	Mohd Asraf Sharafi Mohd Azhar	Dataran Merdeka Flash Mob	17 July 2021
30	Muhammad Nur Taufiq Azhar	Dataran Merdeka Flash Mob	17 July 2021
31	Mohammad Alshatri	Protes Keluar dan Lawan assembly	31 July 2021

No	Individual/Group	Event	Date
32	Mohd Asraf Sharafi Mohd Azhar	Protes Keluar dan Lawan assembly	31 July 2021
33	Tharmelinggam Pillai	Protes Keluar dan Lawan assembly	31 July 2021
34	Nur Qyira Izzati binti Yusri	Protes Keluar dan Lawan assembly	31 July 2021
35	Sevan Doraisamy	Protes Keluar dan Lawan assembly	31 July 2021
36	Azura Nasron	Protes Keluar dan Lawan assembly	31 July 2021
37	Dobby Chew	Protes Keluar dan Lawan assembly	31 July 2021
38	Edylyn Beverly Joeman	Protes Keluar dan Lawan assembly	31 July 2021
39	Asheeq Ali	Protes Keluar dan Lawan assembly	31 July 2021
40	Siti Nurizzah	Protes Keluar dan Lawan assembly	31 July 2021
41	Syazwani Mahmud	Protes Keluar dan Lawan assembly	31 July 2021
46	Chua Tian Chang	Protes Keluar dan Lawan assembly	31 July 2021
47	Nashita Binti Mohd Noor	Protes Keluar dan Lawan assembly	31 July 2021
48	Bad Latif Mansur	Protes Keluar dan Lawan assembly	31 July 2021
49	Asma Binti Latiff	Protes Keluar dan Lawan assembly	31 July 2021
50	Teo Lee Ken	Protes Keluar dan Lawan assembly	31 July 2021
51	Mathen a/l Muniasupran	Protes Keluar dan Lawan assembly	31 July 2021
52	Thanussha a/p Francis Xavier	Protes Keluar dan Lawan assembly	31 July 2021
53	Amir Abdul Hadi	Protes Keluar dan Lawan assembly	31 July 2021
54	Numan Afifi Bin Saadan	Protes Keluar dan Lawan assembly	31 July 2021
55	Sharan Raj	Protes Keluar dan Lawan assembly	31 July 2021
56	107 Member of Parliaments	Dataran Merdeka gathering to enter Parliament	2 August 2021
57	Muhammad Shafiq Izrafil Bin Mohd Azramrizal	Candlelight Vigil for Covid-19 Victims	19 August 2021
58	Subatra Jayaraj	Candlelight Vigil for Covid-19 Victims	19 August 2021
59	Ahmad Syafiq Audi bin Ali	Candlelight Vigil for Covid-19 Victims	19 August 2021
60	Illaiya Bharathi Panner Selvam	Candlelight Vigil for Covid-19 Victims	19 August 2021
61	Chong Yee Shan	Candlelight Vigil for Covid-19 Victims	19 August 2021
62	Sarah Irdina Binti Mohamad Ariff	Candlelight Vigil for Covid-19 Victims	19 August 2021
63	Navin Innasi	Candlelight Vigil for Covid-19 Victims	19 August 2021
64	Muazz Ishak	Candlelight Vigil for Covid-19 Victims	19 August 2021



No	Individual/Group	Event	Date
65	Irfan Hafizuddin Zainal Abidin	Candlelight Vigil for Covid-19 Victims	19 August 2021
66	Nurul Rifayah Muhammad Iqbal	Candlelight Vigil for Covid-19 Victims	19 August 2021
67	Aliya Kamarulzaman	Candlelight Vigil for Covid-19 Victims	19 August 2021
68	Akeed Irfan Bin Ridwan Rajendran	Candlelight Vigil for Covid-19 Victims	19 August 2021
69	Addy Samsudin	Candlelight Vigil for Covid-19 Victims	19 August 2021
70	Mohammad Alshatri	Candlelight Vigil for Covid-19 Victims	19 August 2021
71	Nalina Nair a/p Ramakrishna	Candlelight Vigil for Covid-19 Victims	19 August 2021
72	Jit Lee Woon Kiat	Candlelight Vigil for Covid-19 Victims	19 August 2021
73	Tharmelinggem Pillai	Candlelight Vigil for Covid-19 Victims	19 August 2021
74	Iskandar Putra	Candlelight Vigil for Covid-19 Victims	19 August 2021
75	Loh Kar Mun	Candlelight Vigil for Covid-19 Victims	19 August 2021
76	Nur Qyira Izzati binti Yusri	Candlelight Vigil for Covid-19 Victims	19 August 2021
77	Alethea Wong Xhuan Jing	Candlelight Vigil for Covid-19 Victims	19 August 2021
78	Thulsi Manogaran	Candlelight Vigil for Covid-19 Victims	19 August 2021
79	Noor Suhana Ishak	Candlelight Vigil for Covid-19 Victims	19 August 2021
80	Wong Yan Ke	Candlelight Vigil for Covid-19 Victims	19 August 2021
81	Chong Kar Yan	Candlelight Vigil for Covid-19 Victims	19 August 2021
82	Kusaaliny Mahendran	Candlelight Vigil for Covid-19 Victims	19 August 2021
83	Khairi Zufadhli	Candlelight Vigil for Covid-19 Victims	19 August 2021
84	Mohammad Asraf Sharafi bin Mohammad Azhar	Candlelight Vigil for Covid-19 Victims	19 August 2021
85	Mohd Ezzuandi Bin Ngadi	Candlelight Vigil for Covid-19 Victims	19 August 2021
86	Sujatra Jayaraj	Candlelight Vigil for Covid-19 Victims	19 August 2021
87	Dinesh Venkitesan	Candlelight Vigil for Covid-19 Victims	19 August 2021

## Policing Peaceful Assemblies in 2021

Alongside the restrictive PAA, the Perikatan Nasional government has continued to use other laws to justify its actions to suppress freedom of assembly based on the need to curb the spread of Covid-19. Compared to 2020, the Prevention and Control of Infectious Diseases Act 1988 was used more liberally in 2021 to prohibit public assemblies or gatherings. SUARAM's Senior Coordinator Mohammad Alshatri, along with activists Mohd Asraf Sharafi Mohd Azhar and Muhammad Nur Taufiq Azhar, was fined RM2,000 for attending a flash mob held at Dataran Merdeka on 17 July 2021, an event which was in apparent breach of Regulation 10 of the Prevention and Control of Infectious Diseases Regulations (Measures within Infected Local Areas) (National Recovery Plan) 2021<sup>102</sup>. Similarly, the police warned the organisers of a vehicle convoy intended to drum up support for the #Lawan protest by specifically mentioning the use of compound actions under the Prevention and Control of Infectious Diseases Act 1988<sup>103</sup>.

The #Lawan Protest, held on 30 July 2021, was the largest public protest in Malaysia in 2021. The protest created a dismaying precedent where human rights observers were subjected to police harassment. Two SUHAKAM commissioners and a Bar Council representative were called in for investigation by the police for their presence at the protest, despite playing a monitoring role i.e., to monitor and ensure the protest was conducted in an orderly and peaceful manner. SUHAKAM has strongly condemned the police action, stating that its commissioners and officers had never been summoned for questioning for monitoring any event since its inception<sup>104</sup>.

Furthermore, the emergency ordinance invoked by the government has also granted the police additional powers to police assemblies and gatherings. For example, the Tawau protest which resulted in the arrest of 7 activists was alleged by the police to have violated the Emergency (Prevention and Control of Infectious Diseases) (Amendment) Ordinance 2021, on top of breaching the PAA<sup>105</sup>.

Aside from post-protest reprisal, the police also acted pre-emptively to deter public assembly, and this led to further violations of privacy against protest organisers and activists. Examples of such violations include sudden police visits to activists' home, police intimidation by way of asking for identification and repetitive public warnings whereby citizens would be arrested and compounded for attending a protest. Most alarmingly, in attempts to deter the second #lawan protest after the first event was called off by the organisers<sup>106</sup>, the police visited the homes of activists to personally deliver court orders restricting them from entering several potential protest areas in Kuala Lumpur. Public notices were also plastered around Dataran Merdeka and circulated widely on social media, listing the full names and identification card numbers of the activists. In response, organisers strongly voiced their objections, labelling the sharing of activists' personal information as a clear abuse of powers by the authorities.

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102 B Nantha Kumar, 'Three activists fined RM2k each for Dataran Merdeka flash mob' (Malaysiakini, 18 July 2021) <<https://www.malaysiakini.com/news/583598>> accessed 1 October 2021

103 Emmanuel Santa Maria Chin, 'Ahead of #Lawan protest convoy nationwide tomorrow, cops warns Malaysians against joining' (Yahoo!news, 23 July 2021) <<https://www.malaysiakini.com/news/583598>> accessed 1 October 2021

104 'Suhakam disappointed commissioners called by cops over #Lawan protest' (Malaysiakini, 8 August 2021) <<https://www.malaysiakini.com/news/586383>> accessed 1 October 2021

105 Avila Geraldine, '7 men remanded for protesting against MCO, EMCO in Tawau' (NST, 25 April 2021) <<https://www.nst.com.my/news/crime-courts/2021/04/685306/7-men-remanded-protesting-against-mco-emco-tawau>> accessed 1 October 2021

106 Zurairi Ar, 'In KL, barricades and police presence despite #Lawan rally cancelled days ago' (The Malay Mail, 21 August 2021) <<https://www.malaymail.com/news/malaysia/2021/08/21/in-kl-barricades-and-police-presence-despite-lawan-rally-cancelled-days-ago/1999309>> accessed 10 March 2022





**FREE AND FAIR ELECTIONS**

# FREE AND FAIR ELECTIONS

Electoral democracy in Malaysia continued to deteriorate in 2021 and the situation has been exacerbated by the extra obstacles posed by the COVID-19 pandemic.

## Elections under pandemic conditions

In January, two by-elections scheduled to be held simultaneously for the Bugaya state seat in Sabah and the Gerik parliamentary seat in Perak were postponed due to the proclamation of emergency in those areas. Another by-election for Batu Sapi parliamentary seat in Sabah scheduled for December 2020 was also postponed for the same reasons, making it a total of three by-elections that have not taken place to date.

The government also declared a national COVID-19 state of emergency from 12 January to 1 August, which essentially prevented any elections from taking place during the period. The state of emergency was extended to 2 February 2022 in Sarawak to avoid the state elections, as the Sarawak State Assembly was automatically dissolved on 7 June after reaching its full term. However, the state of emergency was lifted early on 2 November, leading to the Sarawak state elections on 18 December.

According to the Coalition for Clean and Fair Elections (BERSIH)'s observations in the Sarawak state elections, the caretaker chief minister and cabinet ministers abused the state government machinery and resources for their political gain. BERSIH also revealed that the Sarawak government machinery, like its social media platforms, was exploited for Gabungan Parti Sarawak (GPS)'s election campaigns.<sup>107</sup> Regrettably, there is no legislative framework for a caretaker administration during the election period.

Regarding voters' participation, the surge in airfares has deterred many Sarawakian voters who live and work in the Peninsula to return and vote. Almost all airlines charged a round-trip flight at a minimum of RM1,200 during the election period, while the normal fare for the route ranged only between RM200 and RM400. A special voting mechanism is much needed to expand voting opportunities for East Malaysian voters who live in the Peninsula and vice versa to facilitate the exercise of their voting rights.

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<sup>107</sup> Goh Pei Pei, 'Sarawak Polls: Bersih Urges GPS To Stop Using Govt's Machinery, Resources During Campaigns' (News Straits Time, 13 December 2021) <<https://www.nst.com.my/news/politics/2021/12/753911/sarawak-polls-bersih-urges-gps-stop-using-govts-machinery-resources>> accessed 1 February 2022

As a local coalition, GPS gained an unprecedented majority of 76 seats in the state legislature for the first time. The Parti Sarawak Bersatu (PSB) won four seats, making it the largest opposition party. Meanwhile, Pakatan Harapan (PH) suffered a humiliating setback, with the Democratic Action Party (DAP) obtaining only two seats, down from seven in 2016. The People's Justice Party (PKR) and the National Trust Party (AMANAH) did not win any seats.

In addition, a snap state election was held in Malacca on 20 November after the dissolution of the state assembly following the withdrawal of support for the incumbent chief minister by four state assemblypersons.<sup>108</sup> In the lead-up to the elections, Health Minister Khairy Jamaluddin banned all election-related gatherings or activities from 25 October to 27 November to reduce the risk of COVID-19 infections. The move quickly attracted criticism from the opposition parties and civil society organisations. BERSIH denounced the blanket ban as repression of democracy since it denied the candidates' right to campaign and the voters' right to make an informed decision.

The Malacca State Health Department announced the management of voters categorised as Persons Under Surveillance (PUS) and Persons Under Investigation (PUI) for COVID-19 less than 24 hours before Election Day. According to the announcement, PUS and PUI voters were only given a few hours to apply for permission from the district health offices to temporarily leave their homes to vote.<sup>109</sup> BERSIH also reported that the State Health Department issued a guideline to allow political parties to transport PUS and PUI voters to polling stations, which could be an offence under Section 20 of the Election Offences Act. It showed the lack of coordination among the Election Commission (EC) and related health authorities in organising the elections.

Two major coalition parties in the federal government, Barisan Nasional (BN) and Perikatan Nasional (PN), were pitted against each other in the state elections. As a result, BN scored a resounding victory, capturing 21 seats and a two-thirds majority, while PN received only two seats. Pakatan Harapan experienced a major defeat, winning only five seats.

### **Delayed implementation of Undi18 and automatic voter registration**

In July 2019, the Parliament revised the Federal Constitution to lower the voting age from 21 to 18, popularly known as Undi18. The government and the EC promised to implement it by July 2021. The EC, however, abruptly declared in March that it would postpone the implementation of Undi18 and automatic voter registration until 1 September 2022, citing limits imposed by the Movement Control Order. It was estimated that 1.2 million young people between 18 and 20 years old would be impacted.

In April, 18 youths representing the Undi18 movement filed a judicial review against the government and the EC following the announcement.<sup>110</sup> A group of five youths dubbed "Undi Sarawak" (Vote Sarawak) also filed a judicial review at the Kuching High Court to compel the government into implementing Undi18 by July, as the Sarawak state elections were set for August.<sup>111</sup> In September, the Kuching High Court ordered the Federal Government to implement Undi18 by 31 December, saying the delay was "unexplained, irrational and unreasonable."<sup>112</sup>

108 'Speaker: Melaka State Assembly Dissolved, Paving Way For State Election' (New Straits Times, 5 October 2021) <<https://www.nst.com.my/news/politics/2021/10/733829/speaker-melaka-state-assembly-dissolved-paving-way-state-election>> accessed 1 February 2022

109 'Jabatan Kesihatan Negeri Melaka' (19 November 2021) <[https://www.facebook.com/story.php?story\\_fbid=198625235778936&id=100068943828262](https://www.facebook.com/story.php?story_fbid=198625235778936&id=100068943828262)> accessed 1 February 2022

110 '18 Youths Haul PM, Govt To Court Over Undi18' (Malaysiakini, 2 April 2021) <<https://www.malaysiakini.com/news/569171>> accessed 1 February 2022.

111 Hariz Mohd, 'Sarawak Youths Take Govt To Court Over Undi18 Delay' (Malaysiakini, 4 May 2021) <<https://www.malaysiakini.com/news/573320>> accessed 1 February 2022.

112 Sharon Ling, 'Undi18: Kuching High Court Orders Federal Govt To Implement Lowering Of Voting Age By Dec 31' (The Star, 3 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/03/undi18-federal-govt-ordered-to-implement-lowering-of-voting-age-by-dec-31>> accessed 1 February 2022.

In response to the court decision, the EC held a pre-registration of automatic voters throughout October to let potential voters review their details for the electoral roll. During the period, 5.8 million unregistered voters aged 18 and above could check their information on the EC's online portal or at 604 verification centres across the country. Undi18 and automatic voter registration were finally implemented officially on 15 December after more than two years since the constitution change.<sup>113</sup>

### **Ambiguous and opaque party registration process**

The registration of political parties remains ambiguous and opaque. Under the Societies Act 1966, the registration of political parties is under the purview of the Registrar of Society (ROS), over which the home minister has full authority. The law also makes no provision for approving political party registrations within a specific time frame.

In January, the ROS rejected the registrations of both the newly established Malaysian United Democratic Alliance (MUDA) and Parti Pejuang Tanahair (PEJUANG). To be properly registered, both parties proceeded through the appeals procedure and initiated court actions. After a lengthy process, both parties were officially registered with the ROS.

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113 'Undi18, Automatic Voter Registration To Take Effect Dec 15' (The Star, 1 December 2021) <<https://www.thestar.com.my/news/nation/2021/12/01/undi18-automatic-voter-registration-to-take-effect-dec-15>> accessed 1 February 2022

114 Hidir Reduan Abdul Rashid, 'Muda To Challenge Ex-Minister's Refusal To Allow Registration Appeal' (Malaysiakini, 18 August 2021) <<https://www.malaysiakini.com/news/587695>> accessed 1 February 2022.

115 Hidir Reduan Abdul Rashid, 'Dec 14 Hearing Of Bid To Quash Home Minister's Refusal To Allow Muda Be Registered' (Malaysiakini, 12 October 2021) <<https://www.malaysiakini.com/news/595095>> accessed 1 February 2022.

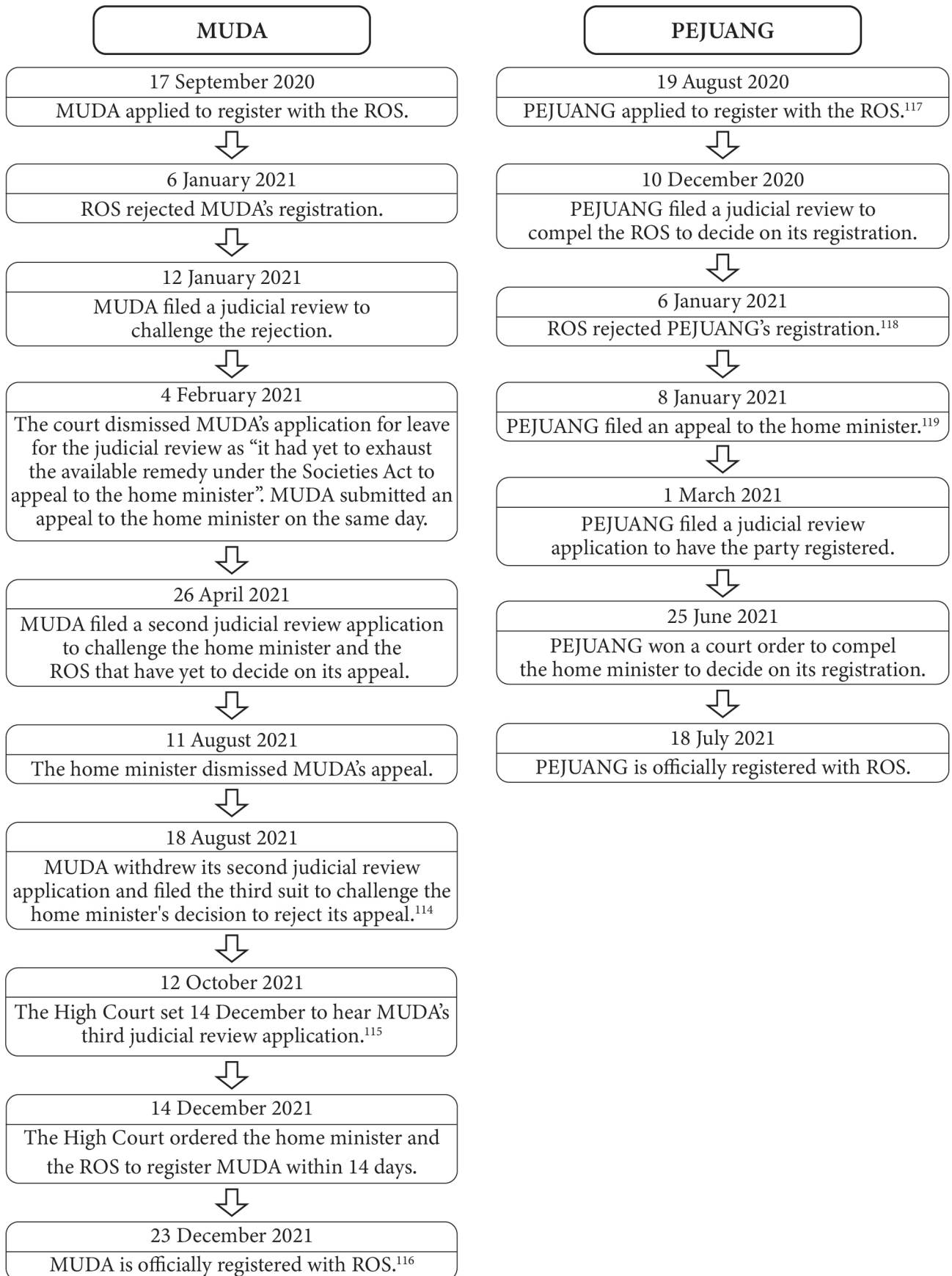
116 Yiswaree Palansamy, 'Syed Saddiq Says Muda Officially Registered' (Malay Mail, 29 December 2021) <<https://www.malaymail.com/news/malaysia/2021/12/29/syed-saddiq-says-muda-officially-registered/2031802>> accessed 1 February 2022

117 Rashvinjeet S. Bedi, 'Dr M's New Party Pejuang Submits Application To ROS' (The Star, 19 August 2020) <<https://www.thestar.com.my/news/nation/2020/08/19/dr-m039s-new-party-pejuang-submits-application-to-ros>> accessed 1 February 2022.

118 Hidir Reduan Abdul Rashid and Annabelle Lee, 'ROS Rejects Pejuang, Muda Applications For Registration' (Malaysiakini, 7 January 2021) <<https://www.malaysiakini.com/news/557935>> accessed 1 February 2022.

119 Hafiz Yatim, 'Pejuang Files Judicial Review Over Party Registration, Names Home Minister And Ros As Respondents' (The Edge Markets, 1 March 2021) <<https://www.theedgemarkets.com/article/pejuang-files-judicial-review-over-party-registration-names-home-minister-and-ros>> accessed 1 February 2022.

The timeline below summarises the tedious journey of the registration of the two parties:





Kamarazaman Yaakob, the elder brother of Prime Minister Ismail Sabri Yaakob, formed a new political party called Parti Kuasa Rakyat in October. The party has yet to apply for registration with the ROS, but it has indicated its intention to unite with an existing party and form a new leadership.<sup>120</sup>

On the other hand, Parti Aspirasi Sains Malaysia, which began as a satirical counterpoint to Islamist party PAS on Twitter, attempted to register with the ROS. The ROS rejected its application in January 2022 for no apparent reason.<sup>121</sup>

### Local elections restoration flouted

Local government elections were halted in 1965, and the suspension was never lifted since then. Instead, it was made permanent under the Local Government Act 1976, abolishing local elections, and allowing state governments to appoint local government members.

Although former Housing and Local Government Minister Zuraida Kamaruddin vowed to restore local elections by 2021 during PH administration, the promise did not materialise after the infamous Sheraton Move. In a written parliamentary reply in December, current Housing and Local Government Minister Reezal Merican said the government would not reinstate local government elections due to the high costs involved. According to him, holding local elections in all 151 local councils nationwide would cost at least RM302 million, and they may not necessarily guarantee good service to the public.<sup>122</sup>

### Anti-party hopping legislation developments

Since the Sheraton Move, which saw the PH government overthrown due to MPs crossover, there have been more discussions about anti-hopping laws.

Pengerang MP Azalina Othman introduced a Recall Elections Bill in September to implement a recall election system that would allow elected representatives to be sacked to prevent party-hopping.<sup>123</sup> However, the Bill was not debated during the September and October parliament sittings. MCA also introduced a recall measure that would allow people to recall members of parliament who have committed crimes or switched parties.<sup>124</sup>

In addition, BERSIH advocated a Recall Procedure Law at the state level, which would allow voters to petition to keep or dismiss an assembly member who had switched parties. The electoral watchdog also expressed support for Azalina's initiative and participated in discussion with MCA about their respective recall bills.

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120 'Kuasa Rakyat Launched Today, Offers To Be BN Component' (Astro Awani, 10 October 2021) <<https://www.astroawani.com/berita-malaysia/kuasa-rakyat-launched-today-offers-be-bn-component-324633>> accessed 1 February 2022.

121 'Ros Rejects Application By SAINS To Be Political Party' (Free Malaysia Today, 23 January 2022) <<https://www.freemalaysiatoday.com/category/nation/2022/01/23/ros-rejects-application-by-sains-to-be-political-party/>> accessed 1 February 2022.

123 Liew Jia Xian, 'Too Costly To Hold Local Council Elections, Says Reezal Merican' (The Star, 9 December 2021) <<https://www.thestar.com.my/news/nation/2021/12/09/too-costly-to-hold-local-council-elections-says-reezal-merican>> accessed 1 February 2022.

124 Tarrence Tan, 'Azalina Submits Motion To Introduce Recall Election Bill' (The Star, 3 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/03/azalina-submits-motion-to-introduce-recall-election-bill>> accessed 1 February 2022.

De facto Law Minister Wan Junaidi Tunku Jaafar revealed in October that the government was looking into anti-hopping laws at the state level and court cases addressing the enforcement of anti-hopping laws. He also stated that the government was studying related laws from India, Singapore, New Zealand, and the United Kingdom and will discuss the findings in a bipartisan engagement session.<sup>125</sup> Wan Junaidi later announced that the Bill to enact an anti-party hopping law is expected to be tabled in Parliament in July 2022.<sup>126</sup>

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125 'MCA Bill Committee Proposes To Introduce House Of Representatives Recall (HARR) Bill' (Malaysian Chinese Association, 6 September 2021) <[http://www.mca.org.my/2/Content/SinglePage?\\_param1=28-102021-181704-10-202128&\\_param2=TS](http://www.mca.org.my/2/Content/SinglePage?_param1=28-102021-181704-10-202128&_param2=TS)> accessed 1 February 2022.

126 'Govt Studying Laws Related To Anti-Hopping' (Malaysiakini, 18 October 2021) <<https://www.malaysiakini.com/news/595863>> accessed 1 February 2022  
'Bill To Enact Anti-Party Hopping Law Expected To Be Tabled In Parliament In July 2022, Says Wan Junaidi' (The Borneo Post, 29 December 2021) <<https://www.theborneopost.com/2021/12/29/bill-to-enact-anti-party-hopping-law-expected-to-be-tabled-in-parliament-in-july-2022-says-wan-junaidi/>> accessed 1 February 2022





**HUMAN RIGHTS COMMISSION  
OF MALAYSIA (SUHAKAM)**

# HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

From 2020 to 2021, SUHAKAM was affected by the double-barrelled impact of government change and Covid-19. Significantly, the political instability arising from takeover of government by Perikatan Nasional had forced the key human rights institution in Malaysia to recalibrate and adjust its expectations in dealing with a new government, one widely believed to be more conservative and less human rights friendly.

As part of its pledge to address the difficulties and limitations faced by human rights institutions, the previous PH government had promised greater independence and holistic reform to SUHAKAM's founding law, namely the Human Rights Commission of Malaysia Act 1999 (HRCMA).<sup>127</sup> Although most of the promises and proposed policies had not translated to any legislative reform and structural change, there was nevertheless greater appreciation for SUHAKAM's work under the PH government. For instance, the longstanding call for its annual report to be debated in parliament was finally realized when the PH government allocated time to debate the findings of the 2018 SUHAKAM Annual Report in the third sitting of Parliament in 2019 for the first time<sup>128</sup>.

The 2018 SUHAKAM report remains the only report that has been debated in Parliament. In the following year, the Pakatan Harapan government did not table a motion to debate SUHAKAM's 2019 annual report in Parliament due to 'insufficient time', according to the law minister Takiyuddin Hassan<sup>129</sup>. Even though SUHAKAM released a statement expressing its disappointment over the decision<sup>130</sup>, it does not seem likely that its reports will be tabled annually for discussions. At the time of writing, there is still no mention of the tabling nor debate of SUHAKAM's 2020 annual report.

The goodwill extended to SUHAKAM by the executive also appears to be deteriorating under the Perikatan Nasional government, which retaliated in a confrontational way when SUHAKAM exercised its legal mandate to research on legislation and policies. On June 2021, the Deputy Minister for Religious Affairs criticized SUHAKAM for a post on its social media channels announcing a call for researchers to study the feasibility of recognising a third gender in Malaysia through legislation<sup>131</sup>. The Islamic Development Department (JAKIM) - another statutory body like SUHAKAM -also weighed in the criticism and demanded an explanation from SUHAKAM over the study.

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127 Rashvinjeet S. Bedi & Nurbaiti Hamdan, 'Suhakam concerned over cut in Government allocation', The Star Online, 20 April 2016, available at: <https://www.thestar.com.my/news/nation/2016/04/20/suhakam-concerned-over-cut-in-government-allocation/>; An issue that was documented in ANNI Report 2016, available at: <https://www.forum-asia.org/uploads/wp/2016/11/ANNI-Report-2016-Full-Report.pdf>

128 Suhakam, 'Annual report debate fulfils Harapan manifesto's Promise 26' (Malaysiakini, 5 December 2019) <<https://www.malaysiakini.com/letters/502565>> accessed 23 March 2022

129 Radzi Razak, 'Minister: Suhakam report will not be debated in Parliament this year' (The Malay Mail, 1 December 2020) <<https://www.malaymail.com/news/malaysia/2020/12/01/minister-suhakam-report-will-not-be-debated-in-parliament-this-year/1927694>> accessed 23 March 2022

130 Rashvinjeet S. Bedi, 'Suhakam disappointed annual report not debated in Parliament' (The Star, 1 December 2020) <<https://www.thestar.com.my/news/nation/2020/12/01/suhakam-disappointed-annual-report-not-debated-in-parliament>> accessed 23 March 2022

131 'Deputy minister, Jakim take issue with Suhakam's 'third gender' study' (Malaysiakini, 17 June 2021) <<https://www.malaysiakini.com/news/579371>> accessed 23 March 2022

The new government has also disregarded SUHAKAM's role to advise and assist administration in formulating legislation that is in accordance with human rights principles. The human rights organisation had voiced concerns with the lack of independence and weakened functions of the Independent Police Conduct Commission (IPCC) bill, which was hastily tabled in 2020 and widely regarded as a watered-down version of its predecessor Independent Police Complaints and Misconduct Commission (IPCMC) bill. However, many of the recommendations made by SUHAKAM and other stakeholders to enhance police accountability and promote good governance were not realized in the IPCC bill. SUARAM has observed a similar recalcitrance from the government to cooperate with SUHAKAM on matters concerning other legislation that the latter has publicly opined should be amended and reviewed.

Despite this, SUHAKAM continued to speak out against government policies perceived to infringe human rights principles throughout 2021. This included objecting to the highhanded arrest of teenagers by police which potentially had violated the provisions of Child Act 2001 and the Convention on the Rights of Child (CRC)<sup>132</sup>, calling for a revision of the Societies Act to protect and enhance freedom of association<sup>133</sup>, urging the police to cease investigations on organisers and participants of the #lawan protest<sup>134</sup> and rebutting the Home Minister's argument defending the government's move to appeal against a decision granting automatic citizenship to children born abroad to Malaysian women with foreign spouses<sup>135</sup>.

## Complaints and Response

Based on past documented cases, SUARAM observes that SUHAKAM's interventions in matters of human rights violations by law enforcement agencies had helped deter further physical abuse of detainees, strengthened compliance with existing laws and, although seldom, incited the police to address and correct their misconduct.

By and large, inquiries by SUHAKAM on complaints by victims of human rights violations have also helped to put spotlight on human rights violations by garnering greater media attention. While the publicity itself may not guarantee any reprieve or remedies for the victims, it nevertheless signals that SUHAKAM's interventions can indeed create an impact.

The pandemic affected SUHAKAM's capacity to address human rights complaints, specifically in terms of its ability to receive and investigate complaints on alleged violation of human rights. For example, due to forced office closure during the MCO period (March 2020 – June 2020) and most staff working from home, most complaints lodged with SUHAKAM could only be addressed through its online complaint system. This physical barrier may have led to an overall reduction of complaint cases – in 2020, SUHAKAM received 756 cases, a significant reduction from 2019 which saw documented 1,154 cases. Besides this, on-site visits to detention centres to view the premises and engage with officials were also significantly reduced and limited to online meetings.

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132 Martin Carvalho, 'Suhakam: Police must follow child protection laws when arresting teens' (The Star, 20 May 2021) <<https://www.thestar.com.my/news/nation/2021/05/20/suhakam-police-must-follow-child-protection-laws-when-arresting-teens>> accessed 23 March 2022

133 Kenneth Tee, 'After Pejuang, Muda registration bids rejected, Suhakam tells Putrajaya to review Societies Act' (The Malay Mail, 9 January 2021) <<https://www.malaymail.com/news/malaysia/2021/01/09/after-pejuang-muda-registration-bids-rejected-suhakam-tells-putrajaya-to-re/1938778>> accessed 23 March 2022

134 'Stop probe into #Lawan protest, Suhakam tells cops' (Free Malaysia Today, 1 August 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/08/01/stop-probe-into-lawan-protest-suhakam-tells-cops/>> accessed 23 March 2022

135 'Suhakam rebuts home minister on citizenship ruling appeal' (Malaysiakini, 28 September 2021) <<https://www.malaysiakini.com/news/593059>> accessed 23 March 2022

While necessary measures were required at the time to curb the spread of Covid-19, the government's movement control orders and prohibition of interstate travelling delayed SUHAKAM's mandate to investigate human rights complaints. Due to the MCO, for example, SUHAKAM was forced to suspend its public inquiry into the disappearance of Joshua Hilmy and Ruth Sitepu, scheduled to begin on 18 February 2020. The inquiry has been resumed, and is only expected to officially conclude in the first half of 2022.

## **Conclusion**

Political upheavals and the pandemic crisis in 2020 have further complicated an already tenuous human rights situation in Malaysia, where SUHAKAM may once again have to navigate in an environment where the government does not prioritize human rights issues and potentially new human rights issues due to Covid-19.

The successors of the former PH government do not inspire confidence, judging by their demonstration of scant regard towards human rights issues and intimidation tactics against human rights defenders. The decision to not table the annual report of SUHAKAM in 2020 is a significant indication that SUHAKAM may need to revise its strategy in engaging with the current government, to carry on its work.

Despite facing challenges, SUHAKAM continued to exercise its mandate throughout 2020 and 2021, while maintaining its authority and influence as an independent statutory body. As the country's national human rights commission, it has played a key role in rejecting discrimination, while calling for a balanced approach between human rights issues and public health priorities throughout the pandemic. At times where the government was seen to have infringed human rights principles in the name of controlling the pandemic, SUHAKAM did not hesitate to remind the government that the fight against Covid-19 should not come at the expense of suppressing basic human rights.



**MIGRANTS AND REFUGEES:  
UNPROTECTED,  
MISUNDERSTOOD AND  
STIGMATIZED**



# MIGRANTS AND REFUGEES: UNPROTECTED, MISUNDERSTOOD AND STIGMATIZED

Strategically located and abundant in natural resources, Malaysia has been, and continues to be, a major destination country for migrants from Southeast Asia, South Asia, the Middle East, and African countries. The country's vibrant economy and multicultural and pluralistic society attracts large numbers of migrant labourers in search of employment. Aside from economic reasons, political, ethnic, and religious unrest has also accelerated immigration flows in recent years. Many irregular and vulnerable migrants flee their home countries seeking protection from violence, persecution, and violation. Upon arrival in Malaysia, many tend to seek asylum from the United Nations High Commissioner for Refugees (UNHCR) office in Kuala Lumpur.

This aside, Malaysia is also a destination and a transit country for human trafficking and smuggling of migrants. Over the decades, countless migrants have fallen prey to unscrupulous recruiters, leaving them stranded, undocumented and helpless. Irregular status and a lack of financial support have made these populations vulnerable to abuse by law enforcement agencies, particularly the immigration authorities and the police, as well as exploitation by employers and even members of the public.

In April 2021, Malaysiakini.com<sup>136</sup> reported that a 32-year-old Pakistani national UNHCR refugee cardholder was hospitalized after his genital was severed by a group of unknown men in Klang, Selangor.

In the same month, Shahzad Ahmed, another Pakistani migrant worker, posted a video of himself on social media, saying that he could no longer bear the burden caused by his unpaid wages of up to five months. He went on to commit suicide in Jalan Ampang, Kuala Lumpur, prompting the Labour Department to investigate the case under the Employment Act 1955. Two months later, in June 2021, the police classified the case as "No Further Action" and ceased further investigations<sup>137</sup>.

Based on the statistics shared by the Home Ministry in Parliament on 8 December 2021<sup>138</sup>, Malaysia had employed 1,138,370 migrant workers as of 31 October 2021 to work in seven sectors, ie. agriculture, construction, domestic work, manufacturing, mining, and quarrying, plantation and services.

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136 Yasmin Ramlan, 'Pakistani man's genital severed by group of strangers' (Malaysiakini, 7 April 2021) <[https://www.malaysiakini.com/news/569709?utm\\_source=dldr.it&utm\\_medium=facebook](https://www.malaysiakini.com/news/569709?utm_source=dldr.it&utm_medium=facebook)> accessed 22 March 2022

137 Soo Wern jun, 'Report: Police classify Pakistan worker's death as NFA' (The Malay Mail, 16 June 2021) <<https://www.malaymail.com/news/malaysia/2021/06/16/report-police-classify-pakistan-workers-death-as-nfa/1982567>> accessed 22 March 2022

138 Oral Answer in Parliament – Question 17, 8 December 2021

In March 2021, the number of estimated undocumented migrants in Malaysia ranged between 1.4 to 3 million<sup>139</sup> undocumented migrants, according to the International Organization for Migration (IOM). As of 31 January 2022, UNHCR Malaysia<sup>140</sup> had registered 181,510 asylum-seekers and refugees, of whom 155,610 were from Myanmar including 103,560 Rohingya. The IOM has recognized Malaysia as being the largest migrant-receiving country in Southeast Asia<sup>141</sup>.

Despite their large presence in Malaysia, migrants, especially those that are undocumented, continue to face discrimination and human rights violations. Vulnerability to harassment and mistreatment by law enforcement agencies, on top of a hostile living environment has led to many experiencing insecurity, anxiety, and fear. In a Parliamentary reply to a question posed by M. Kulasegaran, Member of Parliament for Ipoh Barat, the Ministry of Home Affairs stated that 19,742 undocumented migrants were in detention in various immigration detention facilities across Malaysia as of 11 October 2021<sup>142</sup>.

On a separate occasion, Ismail Mohamed Said, Deputy Home Minister, revealed in Parliament that from 2018 to 15 February 2022, 208 deaths had occurred in immigration detention centres nationwide. Of these, 25 were Covid-19 related deaths, while the rest were due to other physical illnesses, namely septic shock, tuberculosis, severe pneumonia, lung infection, heart complications, dengue, diabetes, shortness of breath and organ failure<sup>143</sup>.

In a further reply to Azalina Othman Said, Member of Parliament for Pengerang, the deputy Home minister assured that 25 medical officers had been stationed at all 18 detention centres across the country and that they had been instructed to perform a pre-medical check-up on the detainees before they are taken into custody, as well as a follow-up. In the case of an emergency, the detainee would be taken to the nearest district health office, accompanied by a medical officer and an immigration officer.

Regrettably, news as such the above rarely receives public attention. Instead, hostility and prejudice towards migrant communities seems to be the dominant public view. To an extent, this has largely been perpetuated by the state's demonisation of migrant communities and punishment of migrant rights advocates. For example, the late Irene Fernandez, founder of Tenaganita, was charged in 1996 with "publishing false information with malevolent intentions" under the notorious Printing Presses and Publications Act 1984, following the publication of a report detailing allegations of ill-treatment of migrant populations in the immigration detention camps. She was convicted in 2003, after seven years of trial, and sentenced to a year in prison. Fernandez was released on bail pending her appeal, but only vindicated years later, when the High Court set aside her conviction in 2008.

Another significant example of top-down migrant discrimination was when Malaysia was hit by the Asian financial crisis in 1997-98. Back then, the Mahathir Mohamad government launched massive operations against undocumented migrant workers, to detract attention from ongoing challenges to his political authority.

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139 'Infosheet 2021' (International Organization for Migration, March 2021) <[https://www.iom.int/sites/g/files/tmzbd486/files/country/docs/Malaysia/infosheet\\_2021\\_v6.pdf](https://www.iom.int/sites/g/files/tmzbd486/files/country/docs/Malaysia/infosheet_2021_v6.pdf)> accessed 22 March 2022

140 'Figures at a Glance in Malaysia' (United Nations High Commissioner for Refugees, January 2022) <<https://www.unhcr.org/figures-at-a-glance-in-malaysia.html>> accessed 22 March 2022

141 'Malaysia' (International Organization for Migration, 3 December 2021) <<https://www.iom.int/countries/malaysia#:~:text=Between%202018%20to%202020%2C%20the,migrant%2Dreceiving%20country%20in%20Southeast>> accessed 28 March 2022

142 Oral Answer in Parliament – Question 36, 23 November 2021

143 Aminah Farid, 'Figures at a 208 deaths in immigration depots from 2018 to February 2022 Glance in Malaysia' (The Malaysian Insight, 17 March 2022) <<https://www.themalaysianinsight.com/index.php/s/372143>> accessed 22 March 2022

## Scapegoating migrants continues

In retrospect, the discrimination in migrant policies and practices practised throughout the COVID-19 outbreak in Malaysia suggests that scapegoating migrant workers has been a convenient tool for the powers-that-be to cover up their inefficacy. At the start of the COVID-19 pandemic in early 2020, the Muhyiddin Yassin government began to arrest undocumented persons en masse while the entire country was on lockdown, ostensibly with a view to containing the spread of the virus. Ironically, instead of alleviating the situation<sup>144</sup>, the mass arrests drove migrant workers, including those who had potentially contracted the virus, into hiding, making tracing virtually impossible.

When Malaysia reported a sharp spike in COVID-19 cases in October 2020, the then Prime Minister Muhyiddin Yassin blamed undocumented migrants and prison inmates for the worsening situations in Sabah and Kedah in a publicly televised speech. In attributing the deepening crisis to these defenceless communities, his ill-placed rhetoric had the effect of instigating and fuelling public fear. In the same year, news reports on detained undocumented migrant workers showed that immigration officials had failed to adhere to the standard operating procedures (SOP) prescribed by the Health Ministry. For example, handcuffed detainees were made to sit closely together without proper social distancing, a dehumanising way to treat a group of people whose only crime was to contribute to the Malaysian economy without the right papers.

As for those who were arrested and detained, the overcrowded and unsanitary conditions in detention centres and prison cells turned out to be a perfect breeding ground for all kinds of diseases, including COVID-19. These neglectful practices resulted in a public health crisis on a greater scale, on top of widespread human rights violations as the Home Ministry conducted wave after wave of immigration raids against undocumented workers.

And more so when one considers the fact that Muhyiddin had practically done nothing to resolve the issues of overcrowding in prisons and detention centres, as well as deaths in custody throughout his 22-month stint as home minister under the Pakatan Harapan administration.

In April 2021, Home Minister Hamzah Zainuddin mocked human rights groups who questioned the government's appalling treatment of undocumented migrants in detention, telling them to "cover the daily cost to house and feed the immigrants in the detention centres"<sup>145</sup>. His remarks were deeply regrettable, showing a clear lack of respect on top of trivializing important political issues such as labour migration and refugee protection.

The condition of deported Indonesian migrants in Sabah deteriorated during the Covid-19 outbreak, based on a 2020 report by the Coalition of Sovereign Migrant Workers (Koalisi Buruh Migran Berdaulat), an Indonesian rights group. The report's findings revealed that children in detention in Sabah were made to collect rubbish and clean the premises, and the migrant population had been living under deplorable conditions ("up to 200 people were housed in a block measuring 10 by 15m, with just three toilet outlets that are dirty and clogged"; "the detainees recounted having to suck the pipes to get water out of them")

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144 Josh Hong, 'Illegal' label shouldn't apply amid virus crisis' (The Malaysian Insight, 8 June 2020) <<https://www.themalaysianinsight.com/s/251658>> accessed 22 March 2022

145 Ashman Adam, 'Cover their daily cost if you care so much about undocumented migrants, home minister tells human rights NGOs' (The Malay Mail, 8 April 2021) <<https://www.malaymail.com/news/malaysia/2021/04/08/cover-their-daily-cost-if-you-care-so-much-about-undocumented-migrants-home/1964956>> accessed 22 March 2022

Regrettably, certain members of political parties both sides of the divide have been guilty of making controversial and xenophobic statements against migrant workers, refugees, and asylum-seekers.

In March 2021, Tony Leong Tuck Chee, a member of the Democratic Action Party (DAP) and the state assemblyperson for Pandamaran, publicly blamed migrant workers for a fire that broke out and spread to several wooden houses in his constituency. Leong had called on the residents to “unite in refusing to rent out wooden houses to migrant workers”, who in his view were “reckless and trouble-prone”<sup>146</sup>. His divisive remarks would ostensibly have deepened public prejudice in the local community against migrant workers. Ironically, just days earlier, Leong had congratulated his own party for being one that championed “unity in diversity, racial fraternity and social justice” on its anniversary.

### Earning a living at one’s peril

On a different note, Malaysia is not completely bereft of mercy and empathy towards migrants and refugees. There have been occasions where those entrusted to uphold the law have taken the vulnerabilities of these communities into consideration. In July 2020, the Alor Setar High Court overturned a decision to cane 27 Rohingya refugees who entered Malaysia without valid papers. The UNHCR lauded the move as “a clear understanding of international refugee law in a mixed-migration context, and the need for upholding protection measures for refugees and asylum-seekers”<sup>147</sup>.

There are also Malaysian employers who actively hire undocumented migrants. While the motives for hiring migrants might stem from sympathy for their plight, most employers merely see them as a source of cheap labour. Whatever the reason, the fact remains that employers of undocumented migrants risk landing on the wrong side of the law for doing so.

In his answer to the question raised by Sivaras Rasiah, Member of Parliament for Sungai Buloh, the Home Minister Hamzah Zainudin stated that, as of 30 September 2021, a total of 37 employers had been taken to court for hiring undocumented workers. From this group, 21 employers had been fined or jailed, while the rest were pending legal proceedings<sup>148</sup>.

In another answer to a question raised by Mohd Fasiah, Member of Parliament for Sabak Bernam, the Home Minister revealed that law enforcement agencies had conducted as many as 3,389 operations, resulting in the arrest of 134 employers and 12,944 undocumented migrants from various countries<sup>149</sup>.

Such punitive actions by the authorities create great fear and anxiety among both the migrant communities as well as their employers. The chain of injustice starts when migrants are victimized by unscrupulous recruiting agents and the haphazard processes of labour recruitment in Malaysia, becoming undocumented through no fault of their own. As a consequence of being undocumented, many are unable to work and earn a decent living with peace of mind.

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146 Fion Yap, ‘DAP rep in discrimination controversy’ (Malaysiakini, 16 March 2021) <<https://www.malaysiakini.com/news/566738>> accessed 22 March 2022

147 ‘UNHCR Welcomes High Court Decision to Withdraw Caning Sentence for Rohingya refugees’ (United Nations High Commissioner for Refugees, 23 July 2020) <<https://www.unhcr.org/en-my/news/latest/2020/7/5f18f51b1/unhcr-lauds-high-court-decision-to-withdraw-caning-sentence-for-rohingya.html>> accessed 22 March 2022

148 Oral Answer in Parliament - Question 14, 11 November 2021

149 Oral Answer in Parliament - Question 23, 14 December 2021

## Differentiating human smuggling and trafficking in persons

The common perception that migrants who enter the country without proper documentation are “illegal immigrants” is not accurate; in fact, many may well have been victims of human trafficking. Over the years, countless Rohingya refugees have been forced to pay traffickers exorbitant sums to flee persecution in Myanmar, or to escape the appalling conditions at overcrowded refugee camps along the Bangladesh-Myanmar border.

There have also been cases where Rohingya women and children were lured by the false promise of being reunited with their families in Malaysia, unexpectedly cast into turbulent and distressful conditions. In its 2019 human trafficking report titled ‘Sold Like Fish: Crimes Against Humanity, Mass Graves and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015’, produced in collaboration with Fortify Rights, Suhakam revealed that “members of a syndicate tortured, killed, raped or otherwise abused untold numbers of men, women and children, buying and selling them systematically in many cases, in concert with government officials”<sup>150</sup>.

Although human smuggling and trafficking are often taken to be similar, they are two separate crimes. Human smuggling is connected to illegal border crossing and is largely a crime against the state, whereas human trafficking is an offence directed specifically at the individual, employing the threat or use of force, deception, and abuse of power.

In basic terms, human smuggling might be described as a form of “immigration service”, albeit one that is illegal and potentially harbours elements of exploitation. For instance, a citizen of Country A seeks help from an “agency” to facilitate their travel – often using false identification documents – to Country B for the purpose of illegal employment. The “contractual relationship” is dissolved upon the completion of the deal, and the “agency” is unlikely to harass the “client” later. In short, it is on a “willing buyer, willing seller” basis, with the major offence being illegal entry into Country B.

Under international law, governments are required to criminalise human smuggling, but not those who are smuggled, as they may be put in dangerous situations and suffer severe human rights violations at the hands of smugglers, especially during land or sea journeys.

When it comes to human trafficking, one key condition is that it must contain elements of deception. Refugees or asylum seekers are often victims of human trafficking practices.

For example, a Rohingya man living under conditions of unbearable oppression by the Myanmar military in his home state may be compelled to seek help from a middleman, who, in turn, promises “legal employment with high wages” in Malaysia, with no strings attached. Lured by this false promise, the Rohingya may then choose to board a boat arranged by the “agent”, embarking on a journey that, unbeknown to him, is fated to be rife with threats, physical violence and even torture. Meanwhile, the man’s family members and friends, already in Malaysia, are forced to pay tens of thousands of ringgit to secure his release. Under such perilous conditions, those who do manage to complete the journey are considered immensely fortunate.

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150 Full report can be accessed at: <https://www.fortifyrights.org/downloads/Fortify%20Rights-SUHAKAM%20-%20Sold%20Like%20Fish.pdf>

## The Story of Mohammad Shauki

In a first-hand interview with the author, Mohammad Shauki (not his real name), revealed that he had decided to make the journey to Malaysia in mid-2015, after being convinced by an “agent” that the country was a “land of milk and honey”. At the time, Mohammad had been enrolled on a distance-learning course in business administration in his home village in Maungdaw Township, northern Rakhine State, Myanmar. The escalating ethnic conflict, massive displacements of his people and fear of the Tatmadaw (the Myanmar military), had prompted him to seek opportunities to leave the country for a better life. Little did he know that he would end up in the hands of unscrupulous and brutal human traffickers, who incarcerated him in a jungle camp near the Thailand-Malaysia border for several weeks, extorting huge sums from him.

With the help of his relatives in Ampang, Kuala Lumpur, Mohammad was able to pay the human traffickers some RM6,000.00 to secure his release from the jungle camp. He then continued his journey across the border to Malaysia, only to be arrested by immigration officers and sent to the Simpang Renggam Prison in Johor, where he was detained for eight months. During his imprisonment, Mohammad was given minimal food and water, and was subjected to beatings by prison officers. Therefore, he suffered a weight loss of over 20kg and became extremely malnourished. It was only through successful registration with UNHCR Malaysia that he was eventually released and reunited with his relatives in Ampang. Mohammad’s starved-looking features, in the identification photo taken for use by the prison authorities during his imprisonment, were barely recognisable.

The above is an extreme example of how human trafficking exploits a person’s vulnerabilities, with the most despicable crimes committed against the individual (Rohingya) rather than the state (Malaysia).

It is a common scenario where foreigners are fooled into thinking Malaysia as a land of opportunities, as Mohammad had initially thought. Once they are brought into the country by deceitful “agents”, they are often made to work in harsh conditions with meagre pay. These categories of migrants may also be considered victims of human trafficking, especially if elements of forced labour or other kinds of exploitation are established. Worse still, extortion or physical abuse could continue even after they arrive in the destination country, particularly in the case of women and teenage girls, who might be forced into prostitution.

Aside from exploitation, another way of distinguishing between human smuggling and trafficking is that the former is always transnational in nature, while the latter can also occur within the country. In Sabah, school dropouts or street children have long been a target of human traffickers, who take advantage of their circumstances of poverty or lack of legal documentation to bait them into sexual exploitation.

The state’s efforts to combat human trafficking, whether in terms of prosecution, protection and prevention, are far from sufficient, as reflected in the long-entrenched trend of rampant human trafficking involving Malaysia as both a destination and source country.

In the wake of the shocking discovery of mass graves along the Malaysian-Thai border in May 2015, the Thai government took swift and stern action against those involved, leading to the prosecution and imprisonment<sup>151</sup> of several high-ranking officials. In stark contrast, none of the Malaysian officials implicated in the heinous crimes have been brought to justice, notwithstanding the change in administration following the “democratic change” in May 2018.

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151 Tan Hui Yee, ‘Thai army general gets 27 years jail for human trafficking’ (The Straits Times, 19 July 2017) <<https://www.straitstimes.com/asia/se-asia/verdict-due-in-major-thai-human-trafficking-trial>> accessed 22 March 2022

Malaysia continues to disregard its obligation under customary international law by forcibly returning refugees and asylum-seekers or any person to a frontier, country, or territory where there is a risk of persecution, torture, cruel, inhuman and degrading treatment or punishment, or risk to that person's life and liberty.

In May 2019, under allegedly progressive Pakatan Harapan coalition administration, Malaysia had forcibly deported Ms Praphan Pipithnamporn, an activist registered with the UNHCR Office in Kuala Lumpur, to Thailand where she could face persecution under the kingdom's extreme lese-majeste laws. The then Prime Minister Mahathir Mohamad defended the government's decision by saying Malaysia was a "good neighbour" (to Thailand)<sup>152</sup>.

In late February 2021, the Muhyiddin Yassin government repatriated 1,086 Myanmar nationals, barely a month after the military coup that toppled the democratically elected Aung San Suu Kyi government. Most staggeringly, Khairul Dzaimie Daud, director-general of the Immigration Department, revealed that the group of people had sent back on three ships belonging to Myanmar's navy, despite a Malaysian court order temporarily halting the repatriation amid concerns that these people could face harm upon return to military-ruled Myanmar<sup>153</sup>.

In both these incidents, separate sets of political leaders had refused to acknowledge the right of individuals to seek asylum from persecution and harm arising from race, religion, nationality, a political opinion, or membership in a particular social group, as defined under the 1951 UN Convention Relating to the Status of Refugees<sup>154</sup>. The failure of successive Malaysian governments to respect the principle of non-refoulement<sup>155</sup> has tarnished the country's reputation globally.

### Access to healthcare denied

At the height of the COVID-19 crisis in Malaysia, many migrant workers were invariably vulnerable to the risk of contracting the disease, being forced to live in congested, shared quarters, on top of working under conditions of poor hygiene. In February 2021, as a follow up to the first program of vaccine roll outs, the Health Ministry had announced vaccine eligibility for all in the country, including migrants, regardless of documentation status.

However, efforts to encourage migrants to come forward were seriously undermined by repeated raids on undocumented workers, conducted by the Immigration Department under the Home Ministry. These mixed messages forced the migrant population, already fearful of arrest and possible deportation, into hiding. If anything, it has largely allowed the real culprits, such as syndicates and corrupt officials, to get off scot-free, while the victims are made to bear the brunt of our frustrations, anxieties and even xenophobia during the lockdown.

Living in congested, shared quarters, and coupled with poor workplace hygiene, migrants are invariably vulnerable to the risk of contracting the disease. When stepping forward to get tested becomes a risky affair, containing COVID-19's spread is but an exercise in futility.

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152 'Thai woman extradited because Malaysia is a 'good neighbour', says PM Mahathir' (The Straits Times, 14 May 2019) <<https://www.straitstimes.com/asia/se-asia/thai-woman-extradited-because-malaysia-is-a-good-neighbour-says-pm-mahathir>> accessed 22 March 2022

153 'Malaysia departs 1,086 Myanmar nationals despite court order' (Al Jazeera, 23 February 2021) <<https://www.aljazeera.com/news/2021/2/23/malaysia-deports-1200-people-to-myanmar>> accessed 22 March 2022

154 'Convention and Protocol Relating to the Status of Refugees' (United Nations High Commissioner for Refugees, 1951) <<https://www.unhcr.org/3b66c2aa10>> accessed 22 March 2022

155 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol' (United Nations High Commissioner for Refugees, 1967) <<https://www.unhcr.org/4d9486929.pdf>> accessed 22 March 2022

In this regard, Malaysian laws contradict each other. Section 10(2) of the Prevention and Control of Infectious Diseases Act 1988 makes it mandatory for any medical practitioner who treats or becomes aware of the existence of any infectious diseases on any premises to notify the case with the least practicable delay to the nearest medical officer. In other words, hospitals and clinics should not turn away a person with suspected communicable diseases on account of them being “illegal”, for to do so potentially heightens the risk of contagion. However, Circular 10/2001 – issued by the Mahathir Mohamad government in 2001 and reiterated by the Najib Razak administration in 2014 – requires all healthcare providers to report “illegal immigrants” seeking healthcare services to police and the Immigration Department. The conflicting directives in Section 10(2) and the Circular 10/2001 have caused significant problems for medical practitioners when it comes to treating undocumented foreigners. To reduce confusion and establish greater trust with these vulnerable populations, the government should address this immediately by repealing Circular 10/2001.

Finally, exorbitant foreigner medical fees are another major hurdle affecting migrant workers, refugees, asylum seekers and stateless persons seeking to access medical treatment in public healthcare. Although Malaysia is widely credited with having achieved universal healthcare coverage for its citizens, non-citizens earning a low income still do not enjoy access to affordable medical services.

In 2018, despite having a lower per capita income, the Thai Public Health Ministry had registered an estimated 1.5 million undocumented migrants, in efforts to expand healthcare coverage regardless of citizenship<sup>156</sup>. Malaysia should follow the example set by its neighbours, in creating better conditions for health care equity for its non-citizen populations.

## Conclusion

Assigning blame to others during a crisis, especially those who are vulnerable and marginalised, has long been a feature of human society. When the need for certainty (such as a definite time frame that would indicate an end to the COVID-19 pandemic) or assurance (such as continued financial assistance as taxpayers) is unmet, human anxieties can all too easily be manipulated, and fanned into public fear or even hatred of the weak and invisible.

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<sup>156</sup> 'Migrant workers gain access to universal healthcare in Thailand' (Healthcare Asia, 2020) <<https://healthcareasiamagazine.com/healthcare/news/migrant-workers-gain-access-universal-healthcare-in-thailand>> accessed 22 March 2022



The following recommendations are addressed to Malaysian government, to improve its treatment of migrant communities:

- Instead of arresting, detaining or forcibly repatriating refugees and asylum-seekers, the Malaysian government should aid these vulnerable groups of people by granting them the right to work and to seek medical care without fear.
- The Health Circular 10/2001 should be repealed to create more trust among the undocumented migrants to come forward for all kinds of medical help.
- 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>157</sup> and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children<sup>158</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 normalize and perpetuate negative stereotypes of 'illegal immigrants', or harden further the already pervasive xenophobic sentiment in Malaysian society. Instead, they should encourage positive public attitudes towards migrant workers, stateless people, refugees, and asylum-seekers.

Human trafficking constitutes modern day slavery and is a regional and global problem that cannot be eliminated simply by punishing the victims. It is high time for Malaysians to truly understand the complexities of labour migration, human trafficking, and irregular movements, and increase pressure on the Malaysian authorities to address all of these issues in an earnest and holistic manner.

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

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



**GENDER AND SEXUALITY**

# GENDER AND SEXUALITY

In 2021, with the onset of the Covid-19 pandemic and political instability, women and LGBTQI communities faced extremely severe challenges. Job uncertainty and income instability brought about by the Covid-19 pandemic gave rise to economic hardship across all segments of society, with women and LGBTQI communities suffering disproportionately. At the same time, politicians and right-wing organizations took advantage of the ongoing political instability to target LGBTQI people and manipulate gender and sexuality issues, in the name of gaining political mileage.

In December 2020, Home Minister Hamzah Zainudin banned a book published by local publishing house Gerakbudaya. The book, titled “Gay is OK! A Christian Perspective”, was written by Ngeo Boon Lin, a well-known gay pastor<sup>159</sup> The Home Minister stated that the book’s prohibition came under the Printing Presses and Publication Act. He further stated that the decision to ban the book was because it contained elements of homosexuality and contained material that might be detrimental to public order, morals, and public interest, as the author had provided several justifications promoting LGBT culture in his book.

“Gay is OK! A Christian Perspective” was published seven years ago and, up until the Home Ministry’s prohibition order, had been on the market for years without any harassment . Claiming that the ban was a violation of the right to freedom of expression and equal treatment under the Federal Constitution, the book’s publisher and author initiated legal action to revoke the banning order and in March 2021, the High Court allowed their bid for leave to initiate a judicial review.<sup>160</sup>

In 2022, High court Judge Noorin Badaruddin ruled that the government had no right to ban the book under Section 7(1) of the Printing Presses and Publications Act.<sup>161</sup> In her judgement, Noorin Badaruddin said that the government had “failed to show evidence of actual prejudice to public order that had occurred” and that it was unlikely that the book was “prejudicial to public order”. On these grounds, the court had quashed the ban and awarded RM 5,000 in costs to the applicants.

In January 2021, a well-known transwoman cosmetic entrepreneur Nur Sajat was arrested by religious officers for wearing female clothing at a private religious event that took place three year ago, in 2018. Nur Sajat was charged under Section 10 (a) of the Shariah Crimes (State of Selangor) Enactment 1995, which criminalizes the act of insulting Islam or causing Islam to be insulted. Nur Sajat lodged a police report alleging violent treatment during the arrest, and later claimed she had been molested by at least three religious officers, who had kicked, pinned her down and fondled her.<sup>162</sup> In February,

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159 ‘Home Ministry bans two publications - ‘Gay is OK! A Christian Perspective’ and ‘Peichi’ (The Star, 18 December 2020) <<https://www.thestar.com.my/news/nation/2020/12/18/home-ministry-bans-two-publications---039gay-is-ok-a-christian-perspective039-and-039peichi039>> accessed 1 April 2022

160 Khairah N. Karim, ‘Author, publisher of ‘Gay is OK!’ gets green light to challenge book ban’ (New Strait Times, 30 March 2021) <<https://www.nst.com.my/news/crime-courts/2021/03/678186/author-publisher-gay-ok-gets-green-light-challenge-book-ban>> accessed 1 April 2022

161 Keertan Ayamany, ‘Court quashes Home Ministry’s ban on ‘Gay Is OK!’ book’ (The Malay Mail, 22 February 2022) <<https://www.malaymail.com/news/malaysia/2022/02/22/court-quashes-home-ministrys-ban-on-gay-is-ok-book/2043145>> accessed 1 April 2022

162 Keertan Ayamany, ‘In NYT, Nur Sajat alleges molest during Jais arrest, says officer told mum OK to sexually assault ‘man’ (The Malay Mail, 22 February 2022) <<https://www.malaymail.com/news/malaysia/2021/10/20/in-nyt-nur-sajat-alleges-molest-during-jais-arrest-says-officer-told-mum-ok/2014804>> accessed 1 April 2022

after failing to attend a Shariah High Court hearing in relation to her case, the court issued a warrant for Nur Sajat's arrest, and the Selangor Islamic Religious Department (JAIS) deployed 122 officers to track her whereabouts.<sup>163</sup> It was later reported that Nur Sajat had fled to Thailand, where she was briefly arrested by Immigration authorities before being released on bail. In October, she sought and received political asylum in Australia, where she also successfully changed her gender status.<sup>164</sup>

In January 2021, Deputy Minister in Prime Minister's Department (Religious Affairs) Ahmad Marzuk Shaary issued a statement alluding to the government's intention to amend the Syariah Courts Act 355 Act (RUU 355) to push for more severe punishments on LGBT communities to resolve the "LGBT problem". He later claimed that the law amendment was not anti-LGBT<sup>165</sup>, even when the law clearly discriminates against the LGBTIQ community by criminalising them based on their identity and personal choices. Imposing heavier punishments on LGBTIQ community has frequently been the ministry's trumpeted narrative, whenever the question of how resolve LGBT issues arises.<sup>166</sup> The newly appointed Prime Minister Ismail Sabri appears to be equally driven by this narrative, confirming that RUU 355 would be on track for tabling in parliament.<sup>167</sup>

A month later, in a landmark decision, the Federal Court ruled that Section 28 of the Shariah Criminal Offences (Selangor) Enactment 1995, which criminalizes unnatural sexual intercourse, was invalid and unconstitutional. The nine-member panel reached a unanimous judgment that the law was invalid on the grounds that unnatural sex is a matter which comes under Parliament's legislative powers, and not the state legislative assembly.<sup>168</sup>

In March, the government announced the development of an action plan to tackle a wide range of social problems in the Muslim community, including LGBT culture, which was perceived as 'going against the grain of Malaysia's faith, moral and culture'.<sup>169</sup> The action plan had been developed to tackle the LGBT phenomenon and to solve social problems created by LGBT culture in Malaysia. JAKIM, the Department responsible for developing the plan, had also mooted the revival of The National Steering Committee for Dealing with Deviants (Jawatankuasa Pemandu Menangani Ajaran Sesat Peringkat Kebangsaan, JAPAS) to tackle and solve deviant and LGBT activities nationwide.<sup>170</sup>

In a recent written Parliamentary reply, the Prime Minister revealed that, up until June 2021, a total of 1,733 LGBTQ persons had been sent to a three-day rehabilitation programme (Mukhyyam) organized by JAKIM<sup>171</sup> aimed at influencing LGBTQI individuals to abandon "unnatural" lifestyles.

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163 Soo Wern Jun, 'Report: Jais launches state-wide search for cosmetics entrepreneur Nur Sajat' (The Malay Mail, 25 February 2021) <<https://www.malaymail.com/news/malaysia/2021/02/25/report-jais-launches-state-wide-search-for-cosmetics-entrepreneur-nur-sajat/1952912>> accessed 1 April 2022

164 'It's official, Nur Sajat is now a woman' (Free Malaysia Today, 22 February 2022) <<https://www.freemalaysiatoday.com/category/nation/2022/02/22/its-official-nur-sajat-is-now-a-woman/>> accessed 1 April 2022

165 Siti Rohana Idris, 'Pindaan Akta 355 bukan tanda kebencian kepada LGBT' (Berita Harian Online, 24 January 2021) <<https://www.bharian.com.my/berita/nasional/2021/01/779451/pindaan-akta-355-bukan-tanda-kebencian-kepada-lgbt>> accessed 1 April 2022

166 Sharifah Mahsinah Abdullah, 'Government considers amending Act 355 for LGBT group' (New Strait Times, 19 January 2021) <<https://www.nst.com.my/news/nation/2021/01/658723/government-considers-amending-act-355-lgbt-group>> accessed 1 April 2022

167 Kenneth Tee, 'PM Ismail Sabri confirms controversial RUU 355 on track for tabling in Parliament this year' (The Malay Mail, 16 September 2021) <<https://www.malaymail.com/news/malaysia/2021/09/16/pm-ismail-sabri-confirms-controversial-ruu-355-on-track-for-tabling-in-parl/2005954>> accessed 1 April 2022

168 Ida Lim, 'Federal Court unanimously declares Selangor Shariah law criminalising 'unnatural sex' void, unconstitutional' (The Malay Mail, 25 February 2021) <<https://www.malaymail.com/news/malaysia/2021/02/25/federal-court-unanimously-declares-selangor-shariah-law-criminalising-unnat/1952701>> accessed 1 April 2022

169 Fatimah Zainal, 'Jakim has developed plan to tackle growing LGBT issues, says Minister' (The Star, 10 March 2022) <<https://www.thestar.com.my/news/nation/2022/03/10/jakim-has-developed-plan-to-tackle-growing-lgbt-issues-says-minister>> accessed 1 April 2022

170 Yusmiza Dolah Aling, 'JAPAS bakal diaktif semula' (Metro, 11 March 2021) <<https://www.hmetro.com.my/mutakhir/2021/03/683045/japas-bakal-diaktif-semula>> accessed 1 April 2022

171 Elill Easwaran, 'Lebih 1,700 individu LGBT dihantar ke kem Jakim tahun ini' (The Malaysian Insight, 15 September 2021) <<https://www.themalaysianinsight.com/bahasa/339385>> accessed 1 April 2022

In the past, Justice for Sisters, a CSO defending transgender rights, has criticized Mukhyyam as being a form of state-sponsored violence and discrimination against LGBTIQ persons in Malaysia,<sup>172</sup> and that the programme violated Article 10 of the Federal Constitution concerning freedom of expression. However, PAS leader Nik Abduh has called for more Mukhyyam programmes and rehabilitation courses to be boosted by the government, to “guide them (the LGBT community) back onto the correct path, instead of the opposite direction.”<sup>173</sup>

In April 2021, 17-year-old student Ain Husniza Saiful Nizam made a TikTok video to expose her teacher for making jokes about rape in class. In her video, she documented her teacher making inappropriate jokes about sexual harassment and making light of laws protecting minors from sexual assault and harassment, including telling the boys in class that if they were to commit rape, they should target those above 18.<sup>174</sup> After Ain’s TikTok video went viral on social media, she received multiple threats including rape threats from her fellow male students, a warning letter from her school<sup>175</sup>, and a legal letter from the teacher, claiming defamation and demanding, among others, an apology and monetary compensation of RM1 million from Ain<sup>176</sup>. Following a series of police investigations, the deputy public prosecutor declared no further action (NFA) on Ain’s teacher<sup>177</sup>.

In April 2021, a Twitter thread sharing women’s stories of their personal experience undergoing period spot checks in schools went viral on social media.<sup>178</sup> Around the same time, Malaysiakini report exposed testimonies of over a dozen women who shared how they had been forced to display their blood-stained sanitary pads during spot checks, or swab their vagina with cotton buds, tissues, or fingers, just to prove that they were menstruating, among other traumatising practices. The disturbing practice of period spot checks in school has persisted for many years, and is evidently still in place today, given that many interviewees who had left school over 20 years ago had shared similar stories with current students.

Ain’s case and the period spot check expose swiftly gave rise to a #MakeSchoolASafePlace campaign on social media to encourage and empower female students (both current and former) to share their stories of surviving sexual harassment, abuse, and rape culture in schools.<sup>179</sup> By the end of 2021, the campaign had collected 540 stories, with topics ranging from sexual harassment, rape, jokes involving sex / rape / periods, body shaming, moral policing, cyberbullying etc.

In April, Tharani Kutty, a trans woman hospital cleaner and unionist from National Union of Workers in Hospital Support and Allied Services (NUWHAS) entered public spotlight for her victory landmark industrial relations suit against UEM Edgenta and two subsidiaries over allegations of union-busting<sup>180</sup>, after being mistreated and discriminated against for her identity as a trans woman. With the aid of NUWHAS and Parti Sosialis Malaysia, Tharani filed a complaint to the Labour Department over unpaid overtime wages, after the management of UEM Edgenta had extended the staff’s working hours by one hour, without additional pay, starting February.” Though she had won the case, her employers appealed the decision and filed a motion for review in the High

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172 ‘EVIDENCE OF STATE-SPONSORED VIOLENCE AND DISCRIMINATION AGAINST LGBT PERSONS IN MALAYSIA’ (Justice for Sisters, 19 April 2019) <<https://justiceforsisters.wordpress.com/2019/04/19/458/>> accessed 1 April 2022

173 Emmanuel Santa Maria Chin, ‘PAS’ Nik Abduh calls for more LGBT Mukhyyam rehabilitation programmes’ (The Malay Mail, 21 September 2021) <<https://www.malaymail.com/news/malaysia/2021/09/21/pas-nik-abduh-calls-for-more-lgbt-mukhyyam-rehabilitation-programmes/2007307>> accessed 1 April 2022

174 ‘Teen claims teacher made rape jokes in class, Maszlee calls for probe’ (Malaysiakini, 24 April 2021) <<https://www.malaysiakini.com/news/572049>> accessed 1 April 2022

175 ‘Absent from school: Ain served with warning letter’ (Malaysiakini, 9 May 2021) <<https://www.malaysiakini.com/news/573957>> accessed 1 April 2022

176 Geraldine Tong, ‘Ain gets letter demanding RM1m over lewd jokes allegation’ (Malaysiakini, 4 August 2021) <<https://www.malaysiakini.com/news/585877>> accessed 1 April 2022

177 Hariz Mohd, ‘No further action against teacher who allegedly made rape joke in Ain’s class’ (Malaysiakini, 5 August 2021) <<https://www.malaysiakini.com/news/585953>> accessed 1 April 2022

178 Alyaa Alhadjri, ‘Schoolgirls ‘shamed, groped and violated’ in period spot checks’ (Malaysiakini, 22 April 2021) <<https://www.malaysiakini.com/news/571658>> accessed 1 April 2022

179 #MakeSchoolASaferPlace: <https://www.instagram.com/savetheschoolsmy/?hl=en>

180 ‘One Trans Woman’s Battle Against a Corporate Union-buster’ (Queer Lapis, 6 March 2021) <<https://www.queerlapis.com/tharanifrontliner/>> accessed 1 April 2022

Court. Tharani later released a video on social media, describing how she had been harassed and threatened by the management to the point of feeling suicidal and experiencing a mental breakdown in her workplace. In an example of abuse, she was forced to sign a counseling letter and warning letter related to an accusation by management that had happened months ago without domestic investigation. Under Section 14(1) of the Employment Act 1955, it is Employer duty to conduct a due inquiry to determine whether an employee is guilty of misconduct. Moreover, because of her gender identity, Tharani received more harassment compared to her fellow unionists and colleagues. Although the company's actions had clearly violated the provisions for workers' rights under the Industrial Relation Act and Article 10 of Federal Constitution safeguarding individual rights to freedom of expression, the Industrial Relation Department has not acted against the company for those transgressions.

Even though government hospital cleaners are part of the health workforce at the forefront of battling the Covid-19 pandemic, the government has neglected to provide them with the protection and benefits accorded to other frontline workers. Unlike doctors and nurses, government hospital cleaners were not part of the special Covid allowance for frontliners, nor did the government grant them wage increments even though they risk their lives equally by facing the threat of infection. Moreover, over 80% of government hospital cleaners are B40 women. Most of them are single mothers, family breadwinners, or elderly single women, often in need of welfare support and assistance. Freedom of assembly and association are always overlooked by the government and authorities.

The National Union of Workers in Hospital Support and Allied Services (NUWHSAS) has repeatedly called upon the government to recognize the rights of these workers, but their concerns have largely fallen on deaf ears. The authorities have remained silent, even in cases where hospital cleaner's basic rights were openly denied union protection by their employers. The government has so far refused to intervene in a complaint of alleged union busting by hospital contract workers, even though these contract workers their right to freedom of assembly and association had been transgressed.

In June 2021, SUHAKAM posted a research position on its social media channels to study the feasibility of having legislation to recognize a third gender in Malaysia.<sup>182</sup> The matter drew backlash from some right-wing groups and online netizens. The government also rebuffed SUHAKAM, with both Minister in the Prime Minister's Department (Religious Affairs) Datuk Dr Zulkifli Mohamad Al-Bakri and the department of Islamic development Malaysia (JAKIM) requesting the human rights institution reasons to explain its reasons for conducting such research. The Minister claimed that such research was against Islamic tenets and that the government does not support any LGBTQ campaign in the country.<sup>183</sup>

In September, another landmark decision was achieved when High Court ruled that Malaysian women should have the same right as Malaysian men, under the Federal Constitution, to pass on citizenship automatically to their children born overseas.<sup>184</sup> Before this, Malaysian woman married to foreigners had to apply for their children born overseas to become Malaysian citizens. According to Family Frontiers, application process would typically be long and arduous owing to unclear procedures, bureaucracy, and lack of SOPs.

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181 #Cleanerjugafrontliner – KPSHK: <https://twitter.com/KesatuanPSHK/status/1384906066346061825>

182 'No 'third gender' for Malaysia, says minister' (The Star, 26 June 2021) <<https://www.thestar.com.my/news/nation/2021/06/26/no-039third-gender039-for-malaysia-says-minister>> accessed 1 April 2022

183 'No 'third gender' for Malaysia, says minister' (The Star, 26 June 2021) <<https://www.thestar.com.my/news/nation/2021/06/26/no-039third-gender039-for-malaysia-says-minister>> accessed 10 April 2022

184 Hidir Reduan Abdul Rashid, 'Bayi wanita Malaysia lahir di luar negara berhak dapat kewarganegaraan' (Malaysiakini, 9 September 2021) <<https://www.malaysiakini.com/news/590610>> accessed 1 April 2022

Barely two weeks later, in an astonishing move, the government appealed against the High Court's decision and further made a stay application to suspend the order that required the issuing of citizenship-related documents for Malaysian mothers' children born abroad. While the Court of Appeal has since rejected the stay application, the government has declared that it will proceed with the appeal and await the court ruling on 23 March 2022 before making further decisions on the case.<sup>185</sup>

In September 2021, the Perlis state fatwa committee issued a fatwa to ban men who appear like women, such as transgender, feminine male and masculine female individuals, from entering mosques on the grounds that the presence of such individuals would "disturb the worship environment of the mosque".<sup>186</sup> After the fatwa was announced, the deputy minister in charge of Islamic affairs, Datuk Ahmad Marzuk Shaary, said that the federal government would not dispute this fatwa and that he would ensure that the state of Wilayah Persekutuan would emulate similar prohibitions. The Penang Mufti Datuk Seri Wan Salim Wan Mohd Noor had also welcomed the fatwa and advised trans persons to "change their appearance" if they want to enter mosques.

In September 2021, Women, Family and Community Development Minister Rina Harun stated in parliament that over 9,000 domestic violence cases had been recorded since the start of the movement control order in March 2020 until August 2021.<sup>187</sup> Despite the high spike in reported domestic violence cases, the Minister said that the ministry had several crisis hotlines in place such as the 24-hour hotline Talian Kasih 15999 and WhatsApp Number 0192615999 for victims of domestic abuse to seek help and emotional support. However, Talian Kasih 15999 only provides service in Bahasa Malaysia, making its reach limited to those who may not be fluent in the national language, especially individuals from the B40 community. Furthermore, a large part of the population remains unaware of the existence of the Talian Kasih 15999 service. Both the language barrier and lack of awareness were factors that compromised the availability and accessibility of help for domestic violence survivors during the time of the MCO. Unfortunately, the Ministry of Women, Family and Community Development had not taken charge in the way they should. In the past two years, the ministry had failed to provide effective solutions nor put in place policy measures to ensure that domestic abuse survivors will be well-protected.

In October 2021, national diver, and Olympic medallist Pandelega Rinong revealed on social media that she was bullied and sexually harassed by a former coach after she confronted him for his lewd jokes. She also said that her reason for sharing her story was to empower other victims to be brave and willing to speak up.<sup>188</sup> However, instead of supporting her actions, Youth and Sports Minister Datuk Seri Ahmad Faizal Azumu downplayed and questioned the timing of Pandelega's revelation when the incident happened had taken place many years ago. Pandelega has since lodged a police report and met with the Youth and Sports Minister, but up to today, the police have not taken action to probe the abuses further nor has there been any independent inquiry into the case by the Ministry of Youth and Sports.

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185 Yiswari Panlansamy, 'Deputy minister says govt will wait for March 23 court decision on appeal against Family Frontiers verdict before deciding next steps' (Malay Mail, 15 March 2020) <<https://www.malaymail.com/news/malaysia/2022/03/15/deputy-minister-says-govt-will-wait-for-march-23-court-decision-on-appeal-a/2047575>> accessed 1 April 2022

186 Danial Dzulkifly, 'Don't breach Constitution by banning transgender Muslims from entering mosques, religious authorities told' (The Malay Mail, 29 September 2021) <<https://www.malaymail.com/news/malaysia/2021/09/29/dont-breach-constitution-by-banning-transgender-muslims-from-entering-mosqu/2009382>> accessed 1 April 2022

187 Rahimy Rahim, 'Over 9,000 domestic violence cases recorded since MCO began, Rina Harun tells Parliament' (The Star, 23 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/23/over-9000-domestic-violence-cases-recorded-since-mco-began-rina-harun-tells-parliament>> accessed 1 April 2022

188 Emmanuel Santa Maria chin, 'I spoke up now because victims of abuse never forget, says Malaysian Olympic diver Pandelega' (The Malay Mail, 23 September 2021) <<https://www.malaymail.com/news/malaysia/2021/10/26/i-spoke-up-now-because-victims-of-abuse-never-forget-says-malaysian-olympic/2016012>> accessed 1 April 2022

In November, the Kelantan state government enforced the state's Syariah Criminal Code (I) Enactment 2019 (Enakmen Kanun Jenayah Syariah (I) 2019)<sup>189</sup>, a more stringent and targeted law compared to its predecessor. From the author's observations, there are three key components in this amendment. First, the enactment intends to impose stricter laws on the LGBTIQ community; second, the Syariah courts have been accorded greater powers; third, certain parts of the newly amended law have transgressed the jurisdiction of the Federal Constitution highest law of the land, as well as that of the Federal Constitution.

Out of the 53 laws contained in the Kelantan Syariah Criminal Code (I) Enactment 2019, there are 13 that target women and LGBTIQ persons:<sup>190</sup>

Section	How does it affect LGBTIQ and women?
Section 8. Takfir	Any Muslim who publicly identifies as an LGBTIQ person could be punished under this section.
Section 21. Indecent act or speech	Any female Muslim found wearing "sexy" clothes can be charged for indecency and punished under this law.
Section 14. Sodomy	Under the previous Kelantan Syariah Criminal Code, Sodomy and Musahaqah were punishable crimes applicable to all people regardless of their gender. However, with the new amendment, both offences will only apply to relationships between members of the same sex".
Section 15. Musahaqah	
Section 18. Changing gender	A Muslim who attempts to, or has already performed gender reassignment surgery, or hormone replacement therapy for transition-related purposes (i.e. to change his or her gender) will be punished under this law.  This is linked to Section 18, in the context of trans and gender diverse people. Muslim women who perform cosmetic treatment or surgery will be punished under this law. Muslim women are not allowed to freely undergo cosmetic treatment or surgery for non-medical purpose.
Section 22. Act of applying tattoo or undergoing treatment or surgery for cosmetic purposes without syariah cause	
Section 19. Male person posing as female	LGBTIQ and non-binary persons who dresses or expresses themselves publicly in a way that is deemed as being not in accordance with their gender group will be punished under this law.
Section 20. Female person posing as male	
Section 23. Exposing aurat in public places	Muslim women are not allowed to wear what they want to wear, or else will be punish under this law. In Islam, 'aurat' refers to parts of the body which needs to be covered, which translates to everything except the face and hands. By forbidding women to expose thier aurat in public places, this law polices the way women dress, and denies them the freedom to wear what they want, in the manner of their choice
Section 28. Female person fleeing from custody	Muslim women and queer women who are fleeing from custody due to their sexual orientation, gender identity and expression (SOGIE) or bodily autonomy will be punished under this law.
Section 33. Disobedience to parents	

189 Tan Sin Chow, 'Kelantan's new syariah laws criminalises tattooing and plastic surgery' (The Star , 2 November 2021) <<https://www.thestar.com.my/news/nation/2021/11/02/new-syariah-laws-in-kelantan-include-forbidding-sexual-intercourse-with-corpse>> accessed 1 April 2022

190 Analysis of the Kelantan Syariah Criminal Offences Enactment: <https://sistersinislam.org/wp-content/uploads/2022/03/Kelantan-Enactment-Report.pdf>



Women's rights group Sisters in Islam (SIS) have raised concerns over the enforcement of the enactment, criticising the developments in the law as being "concerning and dangerous as they violate fundamental principles of democracy by suppressing critical thought and expression through arbitrary provisions and punishing those who do not toe the line".<sup>191</sup>

The enactment has prompted many debates over its wide and unclear definitions on certain offenses that created grey area to criminalise "bad / misbehaving" women and the LGBTIQ community. While the Kelantan Menteri Besar Ahmad Yakob said that the enforcement of the enactment was aimed at educating and bringing Muslim offenders back to the right path of Islam, not merely punishing them, the imposition of stricter laws with the highest punishment clearly violates a person's fundamental constitution right to liberty. In the author's opinion, the purpose of enforcing the enactment does not appear to be simply to educate, but instead to achieve a more insidious objective to punish vulnerable groups so that they can prove how they are "defending Islam" to gain political mileage.

In December 2021, Malaysia first Malay Boys' Love (BL) web series titled 'Stay Away from Me' sparked controversy after several scenes in the series were reposted on social media. Apart from touching on the topic of LGBTIQ, the production also featured a minor actor as its lead.<sup>192</sup> The government was swift to rebuke the series; Religious Affairs Minister Ahmad Marzuk Shaary Idris Ahmad said that LGBT culture is against the norms of Malaysia culture, and JAKIM announced they would be referring the case to the Malaysian Communications and Multimedia Commission (MCMC) for investigation.

In December 2020, a long overdue Anti-Sexual Harassment Bill was finally tabled in parliament for a first reading. However, several rights activists and women's groups have collectively raised their concerns over the gaps in the proposed bill. Chief among these concerns is the lack of mechanisms to protect survivors of sexual harassment, third party complainants and witnesses. Second, the duty of organisations to prevent and address sexual harassment is not mentioned in the bill. Thirdly, the bill's definitions of actions that constitute sexual harassment are limited. Representatives from women's group have suggested that the definition of sexual harassment should recognise instances where the harassment is not only directed at a particular individual but include any comment, action or form of activity and behaviour that creates an offensive, hostile, or intimidating environment.<sup>193</sup> If these critical gaps are not addressed before the bill is passed into law, it will only leave room for loopholes for abuse, and fail to be effective in fulfilling its intended purpose.

In the same parliamentary session, another long overdue bill, the Employment (Amendment) Bill 2021 was tabled for a first reading. This bill covers 46 clauses to enhance the Employment Act 1955. Some positive amendments to the Act include:

- Maternity leave increase from 60 days to 90 days;<sup>194</sup>
- New section 41A introducing restrictions on the termination of pregnant female employee
- New section 60FA introducing three days' paid paternity leave<sup>195</sup>
- New section 69F introduced in respect of protection against discrimination in employment

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191 Kenneth Tee, 'SIS: Kelantan Syariah Criminal Code (I) Enactment 2019 contrary to inclusive, progressive and tolerant Islam' (The Malay Mail, 2 November 2021) <<https://www.malaymail.com/news/malaysia/2021/11/02/sis-kelantan-syariah-criminal-code-i-enactment-2019-contrary-to-inclusive-p/2017943>> accessed 1 April 2022

192 'Drama gay: Kami mangsa kerakusan produksi' (Sinar Harian, 11 December 2021) <<https://www.sinarharian.com.my/article/177345/BERITA/Semasa/Drama-gay-Kami-mangsa-kerakusan-produksi>> accessed 1 April 2022

193 Ming Teoh, 'Fix the sexual harassment bill, womens' groups urge the government' (The Star, 4 March 2022) <<https://www.thestar.com.my/lifestyle/family/2022/03/04/fix-the-bill>> accessed 1 April 2022

194 Dineskumar Ragu, 'Maternity leave extended from 90 to 98 days' (Free Malaysia Today, 21 March 2022) <<https://www.freemalaysiatoday.com/category/nation/2022/03/21/maternity-leave-extended-from-90-to-98-days/>> accessed 1 April 2022

195 , 'Amendments to Employment Act for seven-day paternity leave approved' (The Edge Markets, 22 March 2022) <<https://www.theedgemarkets.com/article/amendments-employment-act-sevenday-paternity-leave-approved>> accessed 1 April 2022

To an extent, these changes may be considered a historic achievement, for they acknowledge the decades-long call from women's groups to increase maternity and paternity leave and provide greater protection against discrimination for pregnant women. The new section 69F also allows employees to lodge a complaint with the Labour Department if they experience discrimination in the workplace based on their race, age, gender and SOGIE.

However, despite these progressive measures, there are still several critical gaps in the Act's scope of coverage. Firstly, the current scope of the Act is still restricted to employees earning RM 2000 monthly or less and manual workers.

On top of this, the proposed sexual harassment and discrimination clauses only apply when there is an employment relationship, meaning that the law cannot be applied to any issues that occur during pre-employment (e.g., during job interviews).

Without any amendments to the definition of "employee" under the First Schedule or Section 2 of the Act, or any meaningful proposals to expand select provisions of the Act to all employees regardless of salary earned or scope of work, the proposed amendments will therefore only apply to those whose wages or work scope fall within this defined coverage, or who are in active employment, while other categories of workers will still be systematically excluded from protection.

The confusion of ceiling wage in this amendment created an "error" in the bill. Current practice is, Employment Act is restricted to employees with monthly salary RM2000 and below and all manual workers irrespective of their earnings. But there is exclusion in maternity leave and sexual harassment, meaning all employees are entitled to these two clauses regardless their monthly salary figure.

But the bill did not suggest amending the First Schedule of the Act, so that can protect all employees, meaning maternity leave and sexual harassment and other progressive amendments only apply to employee with salary RM2000 and manual workers.

Furthermore, the sexual harassment and discrimination clause in Employment Act only apply to employees who are working, not applicable to interviewees. Interviewees who facing sexual harassment and discrimination during interview are not protected under this act.

Finally, with regards to participation in politics, the outcome of the Malacca state elections that took place in November 2021 showed that female representation was still far from the 30 per cent target intended for the empowerment of women in politics. Out of 112 candidates, only 16 were women, translating to just 14% of the total number of candidates fielded. On top of this, most political parties had failed to present more than 30% of the total number of women candidates in the elections.

Meanwhile, voter demographics in Malacca reflected a higher number of women voters, at 254,666, compared to male voters at 240,530. In other words, women took up a 51% share of total votership in the entire state, yet in terms of political representation, only 14% of the political candidates were women.<sup>196</sup> Unfortunately, the Johor state elections that took place in March 2022 appears to have followed a similar pattern. Out of 202 candidates, only 37 were women, bringing the total percentage of women representatives to less than 20% of total candidates. There appears to be a lack of political will to push for the 30% women participant quota system and to move forward with an inclusive agenda to recognize women as part of the nation's leadership assets.

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196 'Nasib Golongan Muda Dan Wanita Dalam PRN Melaka 2021' (Solidaritas, 2021) <<https://solidaritas.my/nasib-golongan-muda-dan-wanita-dalam-prn-melaka-2021/>> accessed 1 April 2022





**DEATH PENALTY**

# DEATH PENALTY

In October 2021, Malaysia won a seat at the United Nations' (UN) Human Rights Council for the 2022-2024 term.<sup>197</sup> However, the country has signed and ratified only three out of the nine international human rights treaties, making the country the ASEAN state with the least number of international human rights treaties signed and ratified.<sup>198</sup> Malaysia has yet to ratify the UN Convention against Torture and Other Cruel,<sup>199</sup> Inhuman or Degrading Treatment or Punishment, a core treaty that deals with the use of the death penalty in Malaysia.

Imposition of the death penalty in Malaysia has gone through various policy developments over the past few administrations. In 2017, then Barisan Nasional administration was on track to gradually abolish the penalty, most notably through the passage of the Dangerous Drugs Act 1952 (Amendment) to remove the mandatory death penalty for the offence of drug trafficking. A moratorium on the punishment was then imposed in 2018 by the Pakatan Harapan administration, but the intention to eventually abolish the death penalty completely was met by opposition parties-led objection. This resulted in a shift in stance from a complete abolition of the death penalty to a limited one.

As this stance remained well into the Perikatan Nasional administration, the moratorium seems to have been in place since. This was substantiated by Malaysia's vote in support of the moratorium on the death penalty at the United Nations General Assembly in December 2020.<sup>200</sup> The vote was welcomed by SUARAM's executive director Sevan Doraisamy who then called for the swift abolition of the death penalty in Malaysia after the vote remained<sup>201</sup>.

Nonetheless, Malaysia's application of the death penalty showed no signs of abating in 2021. The number of people on death row in Malaysia grew from the 1,281<sup>202</sup> reported in early 2019 to 1,366 as of September 2021<sup>203</sup>. A recent parliamentary reply<sup>204</sup> by the Home Ministry reveals that about 62% of them are in the process of appealing to the Pardons Board, while the others are in the process of appealing to either the Court of Appeal or the Federal Court.

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197 'Malaysia wins UN human rights council seat' (The Star, 15 October 2021) <<https://www.thestar.com.my/news/nation/2021/10/15/malaysia-voted-in-for-a-seat-in-un-human-rights-council-for-2022-2024-term>> accessed 22 March 2022

198 The status of Malaysia's international human rights treaty can be accessed at: <https://upr.malaysia.com/why-human-rights/>

199 United Nations. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations Human Rights Office of The High Commissioner. <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

200 UNGA Res 75/183 (16 December 2020) A/RES/75/183.



201 Rajvinder Singh, "Amend law to abolish death penalty" (The Sun Daily, 24 December 2020) <<https://www.thesundaily.my/local/amend-law-to-abolish-death-penalty-CG5811411>> accessed 22 March 2022

202 'Foreigners make up 44pct of 1,281 death row inmates in Msia' (New Strait Times, 11 October 2019) <<https://www.nst.com.my/news/nation/2019/10/528835/foreigners-make-44pct-1281-death-row-inmates-msia>> accessed 22 March 2022

203 Up to 1 September 2021

204 Written Answer in Parliament – Question 143, First Meeting of the Fourth Session of the 14th Parliament

In the same reply, the Home Ministry also presents a demographic breakdown of the country's current death row victims:

GENDER		NATIONALITY		OFFENCES		LOCATION	
	91%	Malaysian	61%	Section 39(B) Dangerous Drugs Act	68%	Johor	9%
	9%	Non-Malaysian	39%	Firearms Act & Kidnapping Act	1%	Federal Territories	8%
ETHNICITY (Malaysians)		AGE		Penal Code		Kedah	9%
Malay	30%	21 - 30 years old	24%	Section 302: Murder	30%	Melaka	2%
Chinese	15%	31 - 40 years old	42%	Section 121: Offences against Rulers	1%	Negeri Sembilan	2%
Indian	13%	41 - 50 years old	26%	Section 396: Gang Robbery with Murder		Pahang	4%
Others	3%	51 - 00 years old	7%			Perak	5%
		61 years old & above	1%			Pulau Pinang	9%
						Selangor	39%
						Terengganu	2%
						Sabah	7%
						Sarawak	5%
						Perlis	0%

The figure for those sentenced to death for trafficking drugs remains the highest in 2021 and continues to be the most talked about offence that warrants the death penalty in the country. There has been no shortage of media coverage and statements from prominent figures<sup>205</sup> on the use of the death penalty for Section 39(B) of the Dangerous Drugs Act, especially in the aftermath of high-profile cases such as Muhammad Lukman Mohamad<sup>206</sup>, Muhammad Hafizul Rashid Emmy<sup>207</sup>, the couple caught with cannabis-laced biscuits<sup>208</sup>, as well as Hairun Jalmani<sup>209</sup>.

205 'Being poor not 'free pass' to commit crime: Syed Saddiq rapped for opposing death penalty' (The Vibes, 18 October 2021) <<https://www.thevibes.com/articles/news/44962/being-poor-not-free-pass-to-commit-crime-syed-saddiq-rapped-for-opposing-death-penalty>> accessed 22 March 2022

206 V Anbalagan, 'Man who sold cannabis oil as medicine escapes gallows' (Free Malaysia Today, 17 February 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/02/17/man-who-sold-cannabis-oil-as-medicine-escapes-gallows/>> accessed 22 March 2022

207 'Edar 29909 gram kanabis, Hafizul menangis ke tali gantung' (Malaysiakini, 3 September 2021) <<https://www.malaysiakini.com/news/589779>> accessed 22 March 2022

208 'Couple making a living on marijuana cookies and cakes, busted by cops' (The Star, 9 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/09/couple-making-a-living-on-marijuana-cookies-and-cakes-busted-by-cops>> accessed 22 March 2022

209 Ardyhasnah Amat, 'Meraung Terima Hukuman Mati, Penjual Ikan Terima Padah Miliki Dadah' (Getaran, 16 October 2021) <<https://www.getaran.my/artikel/semasa/13113/meraung-terima-hukuman-mati-penjual-ikan-terima-padah-miliki-dadah>> accessed 22 March 2022

These cases reflect the ineffectiveness of the 2017 amendment to Section 39(B), which provides judges with conditional discretion in imposing the death penalty on convicted offenders. The four conditions are:

- i. The accused was not buying or selling the dangerous drugs at the time of arrest.
- ii. There was no involvement of an agent provocateur in the cases; or
- iii. The role of the accused was limited to transporting, carrying, sending, or delivering dangerous drugs; and
- iv. The accused assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

However, despite these conditions, there has been no significant decrease in the proportion of death row prisoners convicted for drug trafficking in Malaysia. According to a recent parliamentary reply<sup>210</sup>, only two out of 73 accused persons were sentenced to life imprisonment instead of the death penalty between March 2018 and September 2021. The amendment's ineffectiveness was reported by Anti-Death Penalty Asia Network (ADPAN), who found inconsistencies in interpretation of the conditions<sup>211</sup>. Some judges thought that all four conditions must be met before applying discretion, while others did not. Moreover, there seems to be confusion among judges regarding who gets to determine whether the accused provided sufficient assistance to enforcement agencies. These are just some of the inconsistencies contributing to the ineffectiveness of the amendment.

Nonetheless, law enforcers seem unperturbed by arguments<sup>212</sup> that Section 39(B) of the Dangerous Drugs Act disproportionately affects the poor and vulnerable. Bukit Aman's Narcotics Crime Investigation Department (NCID)<sup>213</sup> proposed in October 2021 that the weight threshold of the drug trafficking offence should be lowered, and this proposal received support from Alliance for Safe Community chairman Tan Sri Lee Lam Thye<sup>214</sup>. If tabled and passed in the Dewan Rakyat, the move could allow the death penalty to be applied more widely than before, harming those who possess (either unknowingly or knowingly) merely small amounts of certain drugs.

Lawmakers' stand against drugs, however, seems to be relatively softer. For instance, Home Minister Datuk Seri Hamzah Zainudin<sup>215</sup> announced in October 2021 that the government is looking into the legalisation of medical marijuana, a cautiously positive shift away from the longstanding punitive stance against the substance. This announcement follows Pakatan Harapan's<sup>216</sup> and Perikatan Nasional's<sup>217</sup> prior intentions to replace the death penalty with minimum jail terms for drug trafficking in the country. These intentions, nonetheless, have yet to be materialised in policy and legislation.

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210 Written Answer in Parliament – Question 219, Second Meeting of the Fourth Session of the 14th Parliament

211 Full report can be accessed at: <https://adpan.org/wp-content/uploads/2021/06/ADPAN-Malaysia-Report-Reform-in-Limbo.pdf>

212 Ngeow Chow ying, 'Malaysia's Drug Law Condemns Vulnerable Women to Death' (New Naratif, 21 September 2021) <<https://newnaratif.com/malaysias-drug-laws-condemn-vulnerable-women-to-death/>> accessed 22 March 2022

213 'Dangerous Drugs Act needs more teeth: Bukit Aman' (The Vibes, 2 October 2021) <<https://www.thevibes.com/articles/news/43311/Need-for-Dangerous-Drugs-Act-to-have-more-teeth-Bukit-Aman>> accessed 22 March 2022

214 'Table proposed amendments to Dangerous Drugs Act soon, says Lee Lam Thye' (New Strait Times, 3 October 2021) <<https://www.nst.com.my/news/nation/2021/10/733202/table-proposed-amendments-dangerous-drugs-act-soon-says-lee-lam-thye>> accessed 22 March 2022

215 Geraldine Tong, 'Hamzah: Putrajaya looking into legalisation of medical marijuana' (Malaysiakini, 5 October 2021) <<https://www.malaysiakini.com/news/594196>> accessed 22 March 2022

216 Hazyah Abdul Rahman, 'Penjara minimum 30 tahun ganti hukuman mati' (Berita Harian Online, 14 October 2018) <<https://www.bharian.com.my/berita/nasional/2018/10/486170/penjara-minimum-30-tahun-ganti-hukuman-mati>> accessed 22 March 2022

217 Mohd Iskandar Ibrahim, 'Ganti hukuman mati: Laporan akan ke Kabinet' (Berita Harian Online, 13 August 2020) <<https://www.bharian.com.my/berita/nasional/2020/08/720858/ganti-hukuman-mati-laporan-akan-ke-kabinet>> accessed 22 March 2022

Meanwhile, civil society efforts in advocating for abolishing the death penalty continues. In 2021, NGO Sebaran Kasih facilitated a musical collaboration between rapper Santesh and death row inmate Pannir Selvam titled 'Arah Tuju'<sup>218</sup>, examining the feelings of death row inmates as they await their execution. Researchers from Monash University also released a report on drug offences and the death penalty in Malaysia, detailing the pitfalls of Malaysia's current death penalty legal framework<sup>219</sup>. It is also notable that princess Tengku Chanela Jamidah<sup>220</sup> announced in June 2021 that she was working to help appeal the case of Amiruddin Nadarajan Abdullah, better known as Dr. Ganja<sup>221</sup>, who remains in prison since his arrest in 2017.

Advocacy efforts have also extended to cases of Nagaenthran Dharmalingam<sup>222</sup> and Pausi Jefridin<sup>223</sup>, two mentally challenged Malaysians who are on Singapore's death row for drug trafficking. Both men, with IQ below 70, have been argued<sup>224</sup> to fall under the category of persons with intellectual disability — and thus come within the protection of the Convention on the Rights of Persons with Disabilities (CRPD), a convention both Malaysia and Singapore are signatories to. Moreover, sentencing people suffering from mental health issues to death also violates the International Covenant for Civil and Political Rights (ICCPR)<sup>225</sup>, a treaty which neither Malaysia nor Singapore are signatories to.

Nevertheless, there have been some cautiously positive developments on the efforts to abolish the death penalty in Malaysia. The Special Committee on the Study of the Alternative Sentence to the Mandatory Death Sentence, which was formed by former Law Minister Datuk Liew Vui Keong in 2019, first submitted its report to the government in 2020<sup>226</sup>. No further information had publicly been shared by either the committee or the government since until December 2021. Incumbent Law Minister Datuk Seri Dr Wan Junaidi Tuanku Jaafar announced that the government would be deciding on the proposed abolition of the death penalty upon consideration of the Special Committee's report<sup>227</sup>, and acknowledged the need to determine the effectiveness of the death penalty as a deterrent to crime. A bill to amend relevant legislation on the death penalty is to be tabled in Parliament by the third quarter of 2022.

Until change materialises, death row inmates and their families are counting on the Agong's pardon<sup>228</sup>. Unfortunately, the royal pardon has not been exercised liberally enough since according to a recent parliamentary reply<sup>229</sup>, only 85 death row inmates were pardoned by the Agong between 2016 and September 2021 — a mere 6% of the current death row population. Law Minister Datuk Seri Dr Wan Junaidi Tuanku Jaafar also noted that pardoned death row inmates have spent between a year and 12 years on death row — a long, excruciating waiting period of chance for both the inmates and their loved ones.

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218 'Arah Tuju,' a music video calling for forgiveness & mercy' (The Vibes, 18 April 2021) <<https://www.thevibes.com/articles/culture/24343/arah-tuju-a-music-video-calling-for-forgiveness-mercy>> accessed 22 March 2022

219 'Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications' (Monash University, 1 January 2020) <[https://www.monash.edu/\\_data/assets/pdf\\_file/0016/2220622/MU\\_ADPAN\\_report\\_v7.pdf](https://www.monash.edu/_data/assets/pdf_file/0016/2220622/MU_ADPAN_report_v7.pdf)> accessed 29 October 2021

220 Lindsey Bartlett, 'Malaysian Princess Aims To Free Cancer Survivor Dr Ganja From Possible Death Sentence Over Cannabis' (Forbes, 15 June 2021) <<https://www.forbes.com/sites/lindseybartlett/2021/06/15/malaysian-princess-aims-to-free-cancer-survivor-dr-ganja-from-possible-death-sentence-over-cannabis/?sh=2f-9b0e52117f>> accessed 29 October 2021

221 'Ayahku Dr G I Trailer' (Kaji Bukan Keji, 1 January 2021) <<https://www.kajibukankeji.com/ayahkudrg>> accessed 29 October 2021

222 'Don't execute mentally disabled Malaysian, rights group tells S'pore' (Free Malaysia Today, 29 October 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/10/29/dont-execute-mentally-disabled-malaysian-rights-group-tells-spore/>> accessed 22 March 2022

223 'Rights group welcomes respite for Malaysian on death row in Singapore' (Free Malaysia Today, 18 February 2022) <<https://www.freemalaysiatoday.com/category/nation/2022/02/18/rights-group-welcomes-respite-for-malaysian-on-death-row-in-singapore/>> accessed 22 March 2022

224 Liew Jia Xian, 'After Nagaenthran, Singapore urged to call off execution of another mentally disabled Malaysian' (The Star, 14 February 2022) <<https://www.thestar.com.my/news/nation/2022/02/14/after-nagaenthran-singapore-urged-to-call-off-execution-of-another-mentally-disabled-malaysian>> accessed 22 March 2022

225 General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)

226 Dashveenjit Kaur, 'Final report on death penalty replacements to be tabled soon' (The Malaysian Reserve, 15 July 2020) <<https://themalaysianreserve.com/2020/07/15/final-report-on-death-penalty-replacements-to-be-tabled-soon/>> accessed 22 March 2022

227 Manjit Kaur, 'Decision on abolishment of death penalty only after special committee submits findings, says law minister' (The Star, 29 December 2021) <<https://www.thestar.com.my/news/nation/2021/12/29/decision-on-abolishment-of-death-penalty-only-after-special-committee-submits-findings-says-law-minister>> accessed 22 March 2022

228 R Loheswar, 'Families of 30 death row inmates hopeful Putrajaya will abolish capital punishment this year' (The Malay Mail, 21 February 2022) <<https://www.malaymail.com/news/malaysia/2022/02/21/families-of-30-death-row-inmates-hopeful-putrajaya-will-abolish-capital-pun/2042954>> accessed 22 March 2022

229 Written Answer in Parliament – Question 222, Second Meeting of the Fourth Session of the 14th Parliament





Figure 7 A candlelight vigil was held outside of SUARAM office to urge the Singapore government to stop the execution of Nageatnhran Dharmalingam who was sentenced to death for drug trafficking in Singapore



**PEOPLE BEFORE PROFIT**

# PEOPLE BEFORE PROFIT

Monitoring and documentation by SUARAM showcase a concerning pattern indicating that various State and Non-State actors are complicit in numerous violations of human rights under the guise of development in Malaysia. The work undertaken also reflects the intersectionality between civil and political rights (CPR) and economic social and cultural rights (ESCR) in Malaysia. Cases documented by SUARAM include incidents of land grabbing of native customary lands of Peninsular indigenous groups, forced eviction of farmers and fisherfolk from land occupied for decades and the de-gazettement of forest reserves that are critical for biodiversity, and which are crucial for safeguarding against the extreme consequences of climate change.

## **Peninsular Malaysia Indigenous Peoples Native Customary Land/ Ancestral Lands Under Threat**

In 2020 and 2021, there has been an alarming rate of indigenous peoples' ancestral lands being forcibly taken away by both State and Non-State actors. The Orang Asli, while legally are meant to benefit from Bumiputera privileges in Malaysia are often exploited and their human rights violated. This is an indication that since the lockdowns imposed to curb the COVID-19 pandemic in March 2020 and which continued until August 2021, indigenous communities have become more vulnerable to exploitation and land grabs.<sup>230</sup>

There are currently around 200,000 (about 0.6% of the total Malaysian population) 'Orang Asli' - collectively referred to as the original or native people of Peninsular Malaysia - and they are the "first people" or oldest inhabitants of Peninsular Malaysia.<sup>231</sup> The Orang Asli are generally classified into three main groups: Negrito, Senoi and Proto-Malay or Aboriginal Malay. Each main group has six different ethnic groups, with their own language and culture. Thus, in total there are 18 Orang Asli ethnic groups in Malaysia. Forced religious conversion, displacement from their traditional forests, lack of basic amenities and racial discrimination are among the problems faced by this small segment of Malaysians.<sup>232</sup>

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230 Law Yao-hua, 'Pahang Deforestation Adds to Decades of Indigenous Land Rights Struggle in Malaysia' (Pulitzer Center, 23 June 2021) <<https://pulitzercenter.org/stories/pahang-deforestation-adds-decades-indigenous-land-rights-struggle-malaysia>> accessed 28 October 2021

231 Ranjit Singh Malhi, 'The First People of Peninsular Malaysia' (Malaysiakini, 3 October 2021) <<https://www.malaysiakini.com/columns/593792>> accessed 4 February 2022

232 Vincent Tan, 'Malaysia's indigenous tribes fight for ancestral land and rights in a modern world' (Channel New Asia, 1 September 2019) <<https://www.channelnewsasia.com/asia/malaysia-orang-asli-ancestral-land-rights-1317616>> accessed on 5 February 2022

Below is a summary of some the cases of land grabbing documented by SUARAM in 2020 and 2021.

### *Kg Kelaik in Gua Musang, Kelantan*

On 11 March 2021, three Orang Asli men, representing the villagers of Kg Kelaik in Gua Musang, filed a suit against 14 entities, including the Kelantan state government, for allegedly encroaching on their ancestral land to conduct mining, logging, and plantation activities.<sup>233</sup> The plaintiffs alleged that all the defendants had encroached on their ancestral land and affected the daily livelihood of villagers living in those areas. In the suit, the plaintiffs are seeking a declaration that the Orang Asli of Kg Kelaik are the rightful owners of the ancestral land. The suit was filed by Ahak Uda, 54; Aziz Angah, 33; and Anjang Uda, 30, as plaintiffs through Messrs Raj & Sach at the Kota Baru High Court, Kelantan. The plaintiffs named Syarikat Perlombongan Gua Musang Sdn Bhd; Redstar Capital Sdn Bhd; Aqua Orion Sdn Bhd; Damai Corporate Services Sdn Bhd, Sindiyan Sdn Bhd; and Sindiyan Agro Park Sdn Bhd as the first to sixth defendants. Ladang Kelantan Sdn Bhd; Ikrar Bumi Sdn Bhd; Ladang Ulu Nenggiri Sdn Bhd; Iliasco Engineering & Construction Sdn Bhd; Kelantan Land and Mines Department; Kelantan Forestry Department, Orang Asli Development Department (Jakoa) and Kelantan state government were named as the seventh to 14th defendants.

In the statement of claim, the plaintiffs alleged that all the defendants had encroached on their ancestral land for mining and logging as well as oil palm and rubber tree plantations, which affected the daily livelihood of villagers living in the areas. They claimed that these activities have severely damaged the crops planted by the villagers in Kg Kelaik due to the movement of trucks and large vehicles owned or managed by the defendants.<sup>234</sup>

In the suit, the plaintiffs claimed that these activities also caused river pollution, resulting in the loss of the main water supply for villagers in the affected areas. The plaintiffs are seeking a declaration that the Orang Asli of Kg Kelaik are the rightful owner of the ancestral land. They are also seeking a declaration that the issuance of a licence or the granting of permission to the first to 10th defendants was contrary to the law, illegal and void.<sup>235</sup>

On the 18th of March 2021, Kota Bahru High Court judge Wan Ahmad Farid Wan Salleh granted the injunction sought by Kampung Kelaik folk. This means no work can be carried out in the contested territory until the next hearing.<sup>236</sup> Unfortunately, on the 29th of August 2021, the injunction was dismissed based on the precedent case of Tan Bun Teet<sup>237</sup> which was part of the Save Malaysia Stop Lynas initiative. The Orang Asli plaintiffs proceeded to file an appeal against this decision in the Court of Appeal, Putrajaya on the 12th of September 2021. They are being assisted by lawyers from the law firm of Raj & Sach on a pro bono basis.

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233 'Orang Asli In Kg Kelaik sue Kelantan govt, others over ancestral land encroachment' (Malay Mail, 11 March 2021) <<https://www.malaymail.com/news/malaysia/2021/03/11/orang-asli-in-kg-kelaik-sue-kelantan-govt-others-over-ancestral-land-encroa/1957047>> accessed 28 October 2021

234 Orang Asli in Kg Kelaik sue Kelantan govt, others over ancestral land encroachment (The Malay Mail, 11 March 2021) <<https://www.malaymail.com/news/malaysia/2021/03/11/orang-asli-in-kg-kelaik-sue-kelantan-govt-others-over-ancestral-land-encroa/1957047>> accessed 5th February 2022

235 ibid

236 Annabelle Lee, 'Court grants Orang Asli villagers' injunction against Kelantan govt' (Malaysiakini, 18 March 2021) <<https://www.malaysiakini.com/news/567129>> accessed by 5 February 2021.

237 Hidir Reduan Abdul Rashid, 'Court throws out legal challenge against Lynas' operating licence extension' (Malaysiakini, 28 July 2021) <<https://www.malaysiakini.com/news/584925>> accessed 30 March 2022

## *Kg Ong Jangking & Sg Papan, Gerik, Perak*

The media reported on 14 December 2020 that local Orang Asli citizen journalists managed to gather evidence to showcase unregulated logging activity that is destroying the rivers in an area near the Orang Asli settlements of Kampung Ong Jangking and Sungai Papan in the state of Perak. The Perak Forestry Department claims that the logging company involved is licensed, and its work had received the necessary approvals. However, photographs, videos and geospatial evidence gathered by the Orang Asli there suggest that logging companies are flouting regulations.<sup>238</sup>

Aside from the environmental damage, the Orang Asli also claim that the logging company is encroaching on their ancestral land. Kampung Ong Jangking and Sungai Papan both claim native title rights to the wider landscape around their settlements. Currently, that area covers parts of the Air Chepam Forest Reserve and a Felda plantation, but the Orang Asli have initiated proceedings to legalise their claim in court. The courts, in applying principles from common law and the Federal Constitution, have in the past ruled that the Orang Asli possess native title rights to their ancestral lands. Checks with the Perak Forestry Department show that the area licensed to the logging company lies just outside the community's claimed ancestral land, but the main log yard – where harvested logs are gathered before they are transported out to sawmills – is located around 300m from the homes in Kampung Sungai Papan.<sup>239</sup>

According to standards set by the Malaysian Timber Certification Council (MTCC), logging companies are required to seek the free, prior and informed consent of the local communities that will be affected by the logging activity. Timber harvested from forests in the state of Perak are MTCC-certified, hence all logging within the state must adhere to MTCC standards. The Orang Asli in Kampung Ong Jangking and Sungai Papan claim they have not agreed to the logging and can show evidence that they have been actively objecting to it since 2018.

They produced a letter dated 13 November 2018, addressed to MTCC, stating objections from several Orang Asli villages in the area to the “intrusion of logging onto (Orang Asli) ancestral land”.

In July 2019, the villages built a blockade to protest the logging, which resulted in a number of Orang Asli being detained by the authorities. Interventions by the then Minister in the Prime Minister's Department P. Watha Moorthy led to their release, and subsequently logging activities in the area came to a halt. Despite the Orang Asli's objections, Perak's MTCC certification was renewed on 11 July 2019 following an audit conducted from 18 to 23 February 2019. In July 2020, soon after the Covid-19 movement control order was lifted, the Orang Asli reported renewed logging activity, which has continued.<sup>240</sup>

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238 Elroi Yee, 'Logging has destroyed our land, say Orang Asli' (The Star, 14 December 2020) <<https://www.thestar.com.my/news/nation/2020/12/14/logging-has-destroyed-our-land-say-orang-asli>> accessed 28 October 2021

239 *ibid*

240 Elroi Yee, 'Logging has destroyed our land, say Orang Asli' (The Star, 14 December 2020) <<https://www.thestar.com.my/news/nation/2020/12/14/logging-has-destroyed-our-land-say-orang-asli>> accessed 28 October 2021

### *Kg Tasik Asal Cunex, Gerik, Perak*

The Temiar people of Kampung Tasik Asal Cunex, who live deep in the forest between Gerik and Sungai Siput in Perak have been fighting to stay on the land on which they have lived for generations. Since 2019, their plight has gained national attention when they erected blockades to prevent logging near their village, which had been permitted by the Perak state government.<sup>241</sup> The villagers continue to stop the loggers from clearing the forest that they have depended on for their livelihood. The villagers allege that they were neither consulted nor involved in any discussions regarding this development plan, which was held with a ‘Tok Batin’ (headman/village chief) appointed by the Department of Orang Asli Development, also known as JAKOA.<sup>242</sup>

On the 1st of August 2019, all logging activities in areas which may overlap with land claimed by the Orang Asli in Kampung Tasik Cunex, Gerik have been halted immediately until the discussion process between the state government and Orang Asli community is completed. The directive was issued by the then Perak Menteri Besar Ahmad Faizal Azumu in a joint statement with Minister in the Prime Minister’s Department P Waythamoorthy in Ipoh, Perak.<sup>243</sup>

### *Kg Beranang, Temerloh, Pahang and Plantation in Kg Lubok Perah, Bera, Pahang*

The Semelai indigenous community have been engaged in a fight to stop encroachments into Kampung Paya Berangan and nearby Kampung Paya Badak, which collectively are home to 200 villagers. The Semelai villagers claim customary rights over a plot of land in Kampung Orang Asli Lubok Perah which is also in Bera, and on which they have been living for over a century. They were ordered to make way for a company tasked with clearing the land for oil palm cultivation.<sup>244</sup> This came after the high court in Temerloh allowed the application by Elite Agriculture Sdn Bhd, which claimed to have a 99-year lease on the 655ha land, to repossess it.<sup>245</sup> However, on 7 September 2021, the Court of Appeal upheld the claim by the Orang Asli community that this was part of their native customary land. In a unanimous decision to allow the appeal by the community, the judges cited improper procedure in taking possession of land with a customary right claim.<sup>246</sup>

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241 ‘Perak demolishes Orang Asli blockade at timber camp near Gerik’ (Free Malaysia Today, 16 May 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/05/16/perak-demolishes-orang-asli-blockade-at-timber-camp-near-gerik/>> accessed 28 October 2021

242 Amir Azdee Simon, ‘Old way, new days: Can Orang Asli survive?’ (New Strait Times, 14 June 2019) <<https://www.nst.com.my/news/nation/2019/06/496132/old-way-new-days-can-orang-asli-survive>> accessed 28 October 2021

243 ‘Logging activities at Kg Tasik Cunex ordered to cease immediately’ (Malaysiakini, 1 August 2019) <<https://www.malaysiakini.com/news/486361>> accessed 5 February 2022

244 Kow Gah chie, ‘Court rules against Semelai Orang Asli over land dispute’ (Malaysiakini, 16 February 2021) <<https://www.malaysiakini.com/news/563206>> accessed 28 October 2021

245 *ibid*

246 ‘Bera Orang Asli Tribe Wins Appeal in Land Dispute’ (Free Malaysia Today 7 September 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/09/07/bera-orang-asli-tribe-wins-appeal-in-land-dispute/>>

## *Kampung Berengoi in Pahang*

YP Olio Sdn Bhd, a plantation company in Pahang is planning to clear almost 85km<sup>2</sup> of land. According to the villagers and activists, there has been coercion and misrepresentation in the consent for this case by the villagers. The illiterate villagers are alleging that the two letters that they signed in 2020<sup>247</sup>, which had indicated their support for the logging, had instead misrepresented them.<sup>248</sup> They initially believed that they were asked to sign letters to receive free houses from a private company YP Olio Sdn Bhd. Though unable to read a word, the villagers signed the document as they trusted the government officers who accompanied the company's representatives. If the villagers were able to read the letter, they would have seen it stated that they "have no objection to development project on YP Olio's land", the nature of which was left unspecified.<sup>249</sup> YP Olio has possession of the project site on a 99-year lease from the Pahang state government, with the lease starting on 20 December 2019. The site encompasses 4,047 hectares of customary territory claimed in 2017 by Orang Asli villagers, something the state government hasn't recognised to date.

The directors of YP Olio, through their appointed lawyer, refute allegations of fraud and misrepresentation in dealing with the Orang Asli. YP Olio has four directors. The founding director is Tun Putera Yasir Ahmad Shah bin Mohamed Moiz, who also owns 50% of the company through Metallic Hallway Sdn Bhd. Yasir is nephew to the Sultan of Pahang, who is also Malaysia's current ruler as king.<sup>250</sup>

While developers would benefit from selling logs and palm oil, the potential losers from the project's environmental fallout span from indigenous groups, residents, as well as the state and federal governments. Besides displacing Orang Asli, the project will destroy thousands of hectares of forests and prime wildlife habitats. Google Earth images dating back to 1984 show that the site was last logged sustainably in 1989-1994. In Malaysia, forest reserves are selectively logged every 25-30 years for reduced impact, and by 2018 the forest had regenerated into an ecologically rich area with trees taller than 30 metres. But now, the forest is set to be cleared without the prospect of regeneration..<sup>251</sup>

## *Proposed building of the Nenggiri Dam, Gua Musang, Kelantan*

Preliminary works on the Nenggiri Hydroelectric dam project in Gua Musang was scheduled to commence in March 2022, which would include, among others, resettlement of the Orang Asli community, their school, and other basic facilities..<sup>252</sup> Jaringan Kampung Orang Asli Kelantan stated in September 2021 that the proposed project will see the loss of forest, limestone caves and villages in an area spanning 5,384 hectares or 13,304 acres..<sup>253</sup> Apart from losing access to the forest areas, the indigenous community claims that at least three Orang Asli heroes are buried in the affected area, as well as other graves located in their ancestral land..<sup>254</sup>

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247 Law Yao-hua, 'Pahang Deforestation Adds to Decades of Indigenous Land Rights Struggle in Malaysia' (Pulitzer Center, 23 June 2021) <<https://pulitzercenter.org/stories/pahang-deforestation-adds-decades-indigenous-land-rights-struggle-malaysia>> accessed 28 October 2021

248 'Laporan Penilaian Kesan Kepada Alam Sekeliling (EIA) Bagi The Proposed 8,49858 Ha (21,000 Acres) Of Logging, Oil Palm Plantation And Agroforestry Development In Private Land Bukit Batu Putih (PT12227)' (Enviro Knowledge Management Center, 25 May 2021) <<https://enviro2.doe.gov.my/ekmc/eia/laporan-penilaian-kesan-kepada-alam-sekeliling-eia-bagi-the-proposed-8498-58-ha-21000-acres-of-logging-oil-palm-plantation-and-agroforestry-development-in-private-land-bukit-batu-putih-pt1222/>> accessed 28 October 2021

249 Law Yao-hua, 'Pahang Deforestation Adds to Decades of Indigenous Land Rights Struggle in Malaysia' (21 June 2021) <<https://southeastasiaglobe.com/deforestation-indigenous-malaysia/>> accessed 5 February 2022

250 *ibid*

251 *ibid*

252 , 'Preliminary works on Nenggiri dam in Gua Musang to commence in 2022, says Kelantan deputy MB' (Malay Mail, 11 August 2020) <<https://www.malaymail.com/news/malaysia/2020/08/11/preliminary-works-on-nenggiri-dam-in-gua-musang-to-commence-in-2022-says-ke/1892991>> accessed 28 October 2021

253 'Suhakam holds engagement session on Nenggiri dam project' (Malaysiakini, 18 April 2021) <<https://www.malaysiakini.com/news/571205>> accessed 28 October 2021

254 Alyaa Alhadjri, 'Nenggiri Dam project will erase Orang Asli's identity, says group' (Malaysiakini, 4 September 2021) <<https://www.malaysiakini.com/news/589893>> accessed 28 October 2021

On the 9th of November 2021, Tenaga Nasional Bhd (TNB) president and CEO Datuk Baharin Din said the dam, which is expected to operate in 2026, is expected to overcome various issues as well as create employment opportunities for the people in the state. “The Nenggiri dam will provide flood mitigation benefits with the ability to accommodate large amounts of rainwater during the monsoon season. The water in the main reservoir will be released back in a controlled manner into the Nenggiri River,” he said, adding that this will help control the flooding downstream of the dam. TNB claims that it has carried out all the preliminary work and studies required to develop this project. TNB also claims to have obtained all the required approvals such as Mineral Potential Study, Public Acceptance Study, Environmental Impact Study, Social Impact Study and Heritage Impact Study to ensure the project’s sustainability. The Orang Asli community who are directly involved with this project, especially from Pos Pulat, Pos Tohoi and Kampung Wias will be relocated to new settlements with better and more comfortable infrastructure and necessities. According to Baharin, they will also be given an economic stimulus package to improve their socio-economy in collaboration with the Kelantan state government, Land and Colony Office, Department of Orang Asli Development, and other government departments.<sup>255</sup>

There was no mention by TNB of the fact that the Orang Asli communities in this area have strongly objected to this project. ‘Any attempts to proceed with the construction of the Nenggiri Dam in Gua Musang, Kelantan, will be tantamount to erasing the identities of Orang Asli communities and their ties to the environment’, according to a group opposing the hydroelectric project led by Jaringan Kampung Orang Asli Kelantan (JKOAK) chairperson Mustafa Along.<sup>256</sup>

### *Lanthanide mining near Pos Lanai, Kuala Lipis, Pahang*

The Orang Asli villagers from Pos Lanai in Kuala Lipis, Pahang have been protesting an alleged plan to mine lanthanide in the area since 2020. They claim that the plan will encroach on their ancestral land, destroy the forest environment and jeopardise the livelihood of hundreds of families.<sup>257</sup> They learned from a JAKOA (Department of Orang Asli Development) letter that the Rural Development Ministry was set to conduct studies for the mining project at several Orang Asli villages in the Jelai forest in Lipis between 17 June and 31 August 2021.<sup>258</sup> The community has alleged that JAKOA has refused to listen to them and their objections against this project.<sup>259</sup>

The proposed lanthanide mining activity will cover a total area of 660 hectares which is now still within the Ulu Jelai Forest Reserve and would affect the forest’s ecosystem. The Ulu Jelai Forest Reserve is part of Malaysia’s Central Forest Spine, which houses many flora and fauna including 80 percent of the country’s Malayan Tiger population. The mining activity has also raised fears it would pollute the rivers nearby, including Sungai Telum, which is the main source of water for the Semai Orang Asli Tribe in the Pos Lanai area. Pos Lanai Orang Asli Land and Territories Action Committee chief Jeffry Hassan said the settlement has a population of 2,000 and most of them depend heavily on the forest and river to survive. Sungai Telum is also their main mode of transport.<sup>260</sup>

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255 ‘RM5B Nenggiri Hydroelectric Dam to Have Socio-Economic benefits for Kelantan’ (The Malaysian Reserve) <<https://themalaysianreserve.com/2021/11/09/rm5b-nenggiri-hydroelectric-dam-to-have-socioeconomic-benefits-for-kelantan/>> accessed on 5 February 2022

256 Alyaa Alhadjri, ‘Nenggiri Dam project will erase Orang Asli’s identity, says group’ (Malaysiakini, 4 September 2021) <<https://www.malaysiakini.com/news/589893>> accessed 5 February 2022

257 Shakira Buang, ‘Pos Lanai Orang Asli villagers protest rare earth mining project’ (Malaysiakini, 7 September 2020) <<https://www.malaysiakini.com/news/541683>> accessed 28 October 2021

258 Shakira Buang, ‘Pos Lanai Orang Asli villagers protest rare earth mining project’ (Malaysiakini, 7 September 2020) <<https://www.malaysiakini.com/news/541683%20>> accessed 28 October 2021

259 ibid

260 Hariz Mohd ‘Rare earth mining: Activists launch online petition to save Pos Lanai Orang Asli’ (Yahoo New, 1 July 2021) <https://malaysia.news.yahoo.com/rare-earth-mining-activists-launch-063000578.html> accessed 5 February 2022



### *International human rights obligations on indigenous peoples*

It is evident from the sample cases documented above that the State of Malaysia continues to fail in its international human rights obligations to respect, protect and fulfil the rights of the Orang Asli communities (indigenous communities). The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

Malaysia has ratified several different international treaties that clearly define its legal obligation to respect, protect and fulfil human rights at all levels. It has also adopted the UN Declaration Right to Development (1986), Rio Declaration on Environment and Development (1992) and UN Declaration on the Rights of Indigenous Peoples (UNDRIP – 2007), which means it has agreed in principle that any development plans undertaken would be done in the best interest of the people and the environment. These UN declarations although not legally binding set the framework that any development projects must be undertaken in an open and transparent process manner. When there are allegations of exploitation or coercion, the State has an obligation to investigate these impartially.

In many of the cases documented, there is an indication that the principle of free, prior, and informed consent as established in the Declaration on the Rights of Indigenous Peoples (UNDRIP) has been violated. UNDRIP (which has been adopted by Malaysia) requires States to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (article 19). States must have consent as the objective of consultation before undertaking projects that affect indigenous peoples' rights to land, territory, and resources, including mining and other utilization or exploitation of resources (article 32).<sup>261</sup>

All members of the United Nations have also agreed to undergo periodic reporting through the Universal Periodic Review (UPR) Process<sup>262</sup>, established in 2006 by the UN Human Rights Council.

During Malaysia 3rd cycle of the UPR in November 2018, these were the recommendations made to the State of Malaysia with regards to the rights of indigenous communities in Malaysia.<sup>263</sup> It is evident that there is international interest and concern on the plight of the Orang Asli/indigenous communities in Malaysia.

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261 <https://www.ohchr.org/Documents/Issues/ipeoples/freepriorandinformedconsent.pdf>

262 <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

263 <https://www.ohchr.org/EN/HRBodies/UPR/Pages/MYIndex.aspx>

- Ensure the rights of indigenous peoples in law and in practice, regarding their right to traditional lands, territories and resources (Norway)
- Continue the implementation of plans and strategies to strengthen the economic and social well-being of indigenous peoples (Bolivia)
- Strengthen policies and measures for the well-being of the indigenous peoples in Malaysia to uplift their economic and social status and benefit from the country's economic development (Lao People's Democratic Republic)
- Provide active support to vulnerable groups of the population – elderly persons, persons with disabilities, single mothers, and indigenous population – and facilitate the broadening of their rights and opportunities through education and training in skills in demand in order to develop human potential (Russian Federation)
- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) (Honduras)
- Intensify efforts in the field of education to ensure equal access to quality education for all, for the indigenous population
- Strengthen the rights of indigenous peoples through the incorporation of the principles of the United Nations Declaration on the Rights of Indigenous Peoples in judicial and administrative procedures (Peru)

### **Opaque development projects**

In addition to the land grabbing and other violations faced by the Orang Asli community in Malaysia, there are also documented cases of unnecessary development projects by both federal and state governments. Many of these projects are proven to be detrimental to the environment as well as destroying the livelihoods of fisherfolk and farmers. While many other countries are taking a serious view of the relationship among development projects, food insecurity and climate change, Malaysia seems to be lagging on this particular issue.

#### *North Kuala Langat Forest Reserve*

The most prominent case of 2020/2021 was the bid to de-gazette the Hutan Simpanan Kuala Langat Utara (HSKLU) by the Selangor Pakatan Harapan State government. The Selangor State Government had proposed to de-gazette 930.93ha of the HSKLU for a mix development project in February 2020. Despite numerous objections by environmental groups, concerned citizens, and the Selangor State Assembly<sup>264</sup>, the Selangor EXCO pressed on with this plan. This was despite knowing the fact that HSKLU is an Environmental Sensitive Area (ESA/KSAS) - Level 1 and is a peat swamp forest that has unique biodiversity and ecosystem functions.<sup>265</sup> More importantly, this forest is also part of the customary land of the Temuan indigenous community.

264 Hariz Mohd, 'Reps befuddled over S'gor MB's insistence on degazetting forest reserve' (Malaysiakini, 29 January 2021) <<https://www.malaysiakini.com/news/560845>> accessed 28 October 2021

265 'Help Save Kuala Langat North Forest Reserve' (Global Environment Centre, 1 March 2020) <<https://www.gec.org.my/index.cfm?&menuid=443>> accessed 28 October 2021

The ‘Save Our HSKLU’ coalition, for which SUARAM was the secretariat, mobilised an intense campaign to halt this de-gazettement. After months of advocacy work and strong commitment from the various coalition members, the de-gazettement was finally halted on 8th September 2021 when the Selangor Menteri Besar, Amirudin Shari announced that the ownership of the land which was previously transferred to a private company for a mixed-development project would be cancelled.<sup>266</sup> This was a huge victory for the activists and communities who fought against this unnecessary and environmentally disastrous development plan.

### *The Shah Alam Community Forest (SACF)*

Another concerning development impacting the environment is the proposal around the Shah Alam Community Forest. Concerned individuals have formed the Shah Alam Community Forest Society that is advocating for a part of the Bukit Cherakah Forest Reserve (BCFR) to be gazetted as a community forest to preserve its ecological value and biodiversity. The forest, which has been used by the public for recreation and educational purposes, is one of the few forests left in the Klang Valley.<sup>267</sup> The society has named the portion of the forest consisting of primary natural lowland dipterocarp forest as SACF. SACF is known for its community trails, hiking activities and scenic views.

The society’s pursuit in pushing for SACF to be turned into a community forest heightened after it was revealed in the Shah Alam Local Draft Plan 2035 of a proposed road cutting through the forest — to connect Section U13 and Section U10. Unfortunately, to date the Selangor EXCO is adamant about proceeding with this proposal by claiming that this development is not on a forest reserve.<sup>268</sup> This claim is being actively contested by various concerned individuals and groups including the Shah Alam Community Forest Association.<sup>269</sup>

### *‘Penang Tolak Tambak’ Campaign*

The Pakatan Harapan state government of Penang initiated a project that would involve the creation of 4,500 acres (1,821 hectares) of land on three artificial islands. According to the state government, these three artificial islands will have modern infrastructure and could house as many as 15,000 people on each island. The Penang South Reclamation Project (PSR) is said to be able to create 300,000 jobs over the next 30 years, reduce brain drain and guarantee a better future for Penang.<sup>270</sup>

However, environmentalists have argued that the three islands – named BiodiverCity – will bury the state’s richest fishing and most biodiverse area in the equivalent of 76,000 Olympic-size swimming pools of sand. Following an appeal filed by Sungai Batu Fishermen Unit chief Zakaria Ismail in July 2019, under Section 35 (1) (e) of the Environmental Quality Act, the DOE Appeals Board set aside the EIA approval for the project in September 2021, which was a victory for the fisherfolk community.<sup>271</sup> Despite this, the Penang state government is planning to continue the project by resubmitting its environmental impact assessment (EIA) report on the seawall project.<sup>272</sup>

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266 Farah Solhi, ‘Selangor MB: Proposed development for KLNFR stopped, ownership transfer cancelled’ (New Strait Times, 8 September 2021) <<https://www.nst.com.my/news/nation/2021/09/725587/selangor-mb-proposed-development-klmfr-stopped-ownership-transfer>> accessed 28 October 2021

267 Jarod Lim, ‘Seeing the forest for the trees’ (The Star, 15 June 2021) <<https://www.thestar.com.my/metro/metro-news/2021/06/15/seeing-the-forest-for-the-trees>> accessed 28 October 2021

268 ‘Shah Alam Community Forest not on forest reserve land - exco’ (Malaysiakini, 25 September 2021) <<https://www.malaysiakini.com/news/592732>> accessed 28 October 2021

269 Nora Mahpar, ‘Clarify status of Bukit Cherakah Forest reserve, says NGO’ (Free Malaysia Today, 13 October 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/10/13/explain-status-of-bukit-cherakah-forest-reserve-says-ngo/>> accessed 28 October 2021

270 ‘Malaysia fishermen in last-ditch bid to stop Penang reclamation’ (Al Jazeera, 6 September 2021) <<https://www.aljazeera.com/news/2021/9/6/penang-push-es-ahead-with-massive-reclamation-plan-despite-outcry>> accessed 28 October 2021

271 ‘Penang govt told to review PSR plans for benefit of fishermen’ (New Strait Times, 3 October 2021) <<https://www.nst.com.my/news/nation/2021/10/733279/penang-govt-told-review-psr-plans-benefit-fishermen>> accessed 28 October 2021

272 Audrey Dermawan, ‘Penang to proceed with PSR reclamation works’ (New Strait Times, 5 February 2021) <<https://www.nst.com.my/news/nation/2021/02/663368/penang-proceed-psr-reclamation-works>> accessed 28 October 2021

At COP26<sup>273</sup>, countries including Malaysia agreed to the Glasgow Climate Pact and will now have to deliver on their commitments to revisit and strengthen their 2030 emission reduction targets next year, to bring them in line with the Paris Agreement goals. Led by Minister of Environment and Water, YB Tuan Ibrahim Tuan Man, Malaysia has committed to take bold actions to tackle climate change through the country's enhanced Nationally Determined Contribution (NDC) and its new commitment on achieving carbon neutrality. Malaysia has also endorsed the Glasgow Leaders' Declaration on Forests and Land Use which champions halting and reversing deforestation, as well the Global Methane Pledge, setting a collective goal to reduce global methane emissions by 30 percent before 2030.<sup>274</sup>

Since these pledges were made, it is hoped that development projects undertaken by both federal and state governments will no longer be clouded in secrecy. Discussions on new developments projects that could include destroying forest reserves or displacing farmers and fisherfolk must be done in an open and transparent manner with the inclusion of all stakeholders. The fact that Malaysia keeps slipping down the Corruption Perception Index of Transparency International should be a major concern for all policy makers.<sup>275</sup> The perception that corruption is rampant in Malaysia needs to be dealt with on an urgent basis especially in ensuring development projects that are in line with Malaysia's promises and obligations in the international arena.

## Conclusion

SUARAM's 'People Before Profits' desk calls for deepening the discourse on the relationship between the development plans and the human rights obligations of Malaysia. Its monitoring and documentation of these cases related to so-called "development" projects in Malaysia showcases an alarming trend of complicity between the State and Non-State actors in violating indigenous peoples' rights and environmental rights. Development and human rights are interdependent and policy makers, both at state and national levels need to be cognisant of this fact. We call for all decision-making processes in development projects to adhere to international human rights law and standards as agreed by Malaysia, especially since it is a member of the Human Rights Council for the term 2022-2024.<sup>276</sup>

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273 COP 26 UN Climate Change Conference, hosted by the UK in partnership with Italy

274 <https://www.gov.uk/government/news/uk-to-work-with-malaysia-on-taking-forward-the-glasgow-climate-pact>

275 <https://www.nst.com.my/news/nation/2022/01/766007/malaysia-drops-five-spots-62-ti-ms-corruption-index-rankings>

276 'Malaysia wins UN human rights council seat' (The Star, 15 October 2021) <<https://www.thestar.com.my/news/nation/2021/10/15/malaysia-voted-in-for-a-seat-in-un-human-rights-council-for-2022-2024-term>> accessed 28 October 2021





**CRIMINALISING AND  
PROSECUTING TORTURE IN  
MALAYSIA**

# FEATURE 1: CRIMINALISING AND PROSECUTING TORTURE IN MALAYSIA

This chapter will analyse the situation pertaining to torture in Malaysia, by examining two key areas, namely the criminalization and prosecution of police torture in Malaysia. The discussion will pay close attention to, firstly, the current situation pertaining to the criminalisation of torture in Malaysia and, secondly, its prosecution by relevant authorities. Finally, the work of existing investigative authorities on the prosecution of torture will also be considered. Appendix A contains several case studies and examples of documented torture cases to substantiate the conclusions drawn.

## The Criminalization of Torture in Malaysia

Article 4 of the United Nations Convention Against Torture (UNCAT) mandates member states to criminalize torture as a separate and specific crime. To that end, the recognition of torture as a criminal offence in Malaysia requires three basic criteria to be fulfilled. Firstly, the act of torture should meet the basic definition found in Article 1 of the UNCAT. Secondly, the act of torture must be made punishable by appropriate penalties which consider their grave nature. Thirdly, as per Article 2 of the UNCAT, the justification of the torture on the grounds of being an order from a superior or a public authority must also be disallowed.

Regrettably, Malaysia does not have a specific anti-torture law. The closest resemblance to legislation that criminalizes torture is found in Sections 330 and 331 of the Penal Code of Malaysia<sup>277</sup>. Under Section 330, voluntarily causing hurt to extort a confession or compel the restoration of property is an offence punishable by a maximum of seven years' imprisonment and a fine<sup>278</sup>. The similarly worded Section 331 of the Penal Code provides that voluntarily causing grievous hurt to extort a confession or to compel the restoration of property is a crime punishable with a maximum of 10 years' imprisonment as well as a fine<sup>279</sup>. Upon closer examination, these two provisions do not suffice as adequate anti-torture legislation, for a few reasons.

Firstly, Sections 330 and 331 do not make explicit mention of torture, let alone define torture as per the requirements of Article 1 of the UNCAT. Additionally, the Committee against Torture (CAT) recommends in its General Comment No.3<sup>280</sup> that 'acts and omissions' be included in the definition of torture as a crime – the act of intentionally depriving an inmate of medicine for example, would be considered torture. Secondly, Sections 330 and 331 only provide for a maximum sentence of seven and 10 years respectively, which fails to meet the CAT's recommendation of a minimum sentence

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277 Penal Code of Malaysia (Act 594)

278 Penal Code of Malaysia (Act 594), pg 186

279 Penal Code of Malaysia (Act 594), pg 186-187

280 CAT, General Comment N°3: Implementation of Article 14 by States Parties (13 December 2012)

of at least six years<sup>281</sup> on a sliding scale that corresponds to the gravity of the crime. For context, the criminal code of Australia prescribes a minimum prison sentence of 20 years for the crime of torture. Unlike Australia, the provisions set out in the Malaysian Penal Code do not adhere to the minimum standards for sentencing set by the CAT, rendering it an inadequate anti-torture law. Finally, the Penal Code provisions only state that the offence must be committed voluntarily. They do not outlaw the defence of superior order - wherein the accused pleads that they were ordered to carry out the act of torture by a superior officer or public authority to be absolved of guilt.

## **The Prosecution of Torture in Malaysia – Law and Reality**

This section will outline several key findings derived from a case-by-case examination of criminal prosecutions of torture, as well as civil claims and media reports of torture. A detailed examination is necessary owing to the relative scarcity of data on torture prosecution and complaints in Malaysia. A comprehensive account of individual cases referred to in the following discussion can be found at the end of this section, in appendix A.

Prosecutions of torture are exceedingly rare in Malaysia. Based on SUARAM's documentation, between the period 1981-2021, a total of five criminal prosecutions of torture were recorded. In the absence of an independent investigative authority tasked with opening investigations into torture prosecutions in Malaysia, prosecutions usually originate from public pressure following instances of publicised custodial deaths; as with the trials of the deceased Kugan Ananthan and N.Dharmendran.

The next key finding relates to the nature of these prosecutions. They are often seen as tokenistic gestures, invoked to appease public anger towards custodial deaths where torture has been alleged. Some insight into the nature of these prosecutions and how they are used as scapegoats for systemic accountability by the authorities was highlighted in the death of Kugan Ananthan in police custody. In the civil claim filed by the deceased's mother, the testimony of the then-Inspector General of Police on Kugan's death revealed in open court that there had only been an investigation with a Section 330 case in mind<sup>282</sup>. He further admitted that a murder charge had not been contemplated, despite instructions from the Attorney General to probe the case the grounds of murder. In the end, the implicated policeman was only convicted on a Section 330 charge, which carries less harsh penalties out of the two 'torture' offences.

Prosecutions for the torture of a victim who is still alive are extremely rare, with only one such case recorded in this research. The two victims involved, Prabakar A/L Bala Chandran and Solomon Raj, had been scalded with hot water, assaulted, and beaten until they were forced to confess, yet the accused officers had only received four years imprisonment in respect of each victim. Like the case of Kugan Ananthan, this case exemplifies how in Malaysia, even when the accused is found guilty of committing torture, under Section 330, a relatively light punishment would still be meted out, versus the penalties prescribed for torture in other jurisdictions.

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281 APT, Guide to Anti-Torture Legislation, Pg20

282 N INDRANALLATHAMBY v.DATUK SERI KHALID ABU BAKAR & ORS [2013] 6 CLJ, pg 328-330



Despite Sections 330 and 331 carrying maximum sentences of seven and 10 years respectively, there is a disparity in terms of length of actual sentences meted out to perpetrators. In the case of Kugan Ananthan, who died brutally and was later shown to have died from rhabdomyolysis due to blunt force trauma to the skeletal muscles, the sole police officer prosecuted only received a three-year prison sentence on a charge of merely having caused hurt. The other option would be to try the perpetrators for murder, yet under the Malaysia criminal justice system, successful murder prosecutions of the police are even rarer. This was evident in the case of N.Dharmendran, who was found to have died from multiple blunt force trauma while in detainment at the Kuala Lumpur police headquarters in 2013. Dharmendran's case had been investigated by The Enforcement Agency Integrity Commission (EAIC), which later released a report concluding that the victim had been tortured, with his ears stapled, and beaten to death by the police and recommended charges against the police<sup>283</sup>. Yet, the four policemen charged with his murder were ultimately acquitted by the Federal Court in 2018.

As far as existing documented instances of criminal prosecutions for torture are concerned, the available evidence shows that these prosecutions are neither impartial nor sufficient to satisfy the functions and demands which merit effective prevention of torture. Based on SUARAM's examination of these cases, it is apparent that the provisions in Malaysian law that mimic anti-torture legislation have mostly been used to prosecute only the most publicised and most extreme instances of police torture that have resulted in the death of an inmate. The shortcomings of the criminal justice system with regards to torture are further compounded by manifestly light punishments meted out to perpetrators, evidence of cover-ups and tampering with existing, often skewed, investigations and lastly, an exceedingly low rate of successful prosecutions.

The reality of low prosecution rates for torture is reflected in the accounts of civil claims that are brought by torture victims or their families. These accounts often describe how aggrieved parties are forced to seek justice themselves, in the absence of an independent and impartial investigative authority with the power to prosecute. Although in most cases, damages are awarded by the court to torture victims, the severity of sentences meted out to offenders is grievously lacking, given the gravity of torture. In the case of Kugan Ananthan, the court found evidence of torture and a police cover-up, and had awarded the victim's family RM800,000. Yet, the sole police officer charged was only sentenced to three years' imprisonment. Likewise, in the case of N.Dharmendran, where the EAIC found sufficient evidence to recommend the prosecution of the perpetrators, the court awarded the family a sum of RM490,000, yet all 4 policemen who were implicated were ultimately acquitted. Finally in the case of Syed Mohammad Azlan, where the EAIC claimed that the police had murdered the victim and recommended prosecution for murder, the victim's family was awarded RM388,000. Meanwhile, the alleged perpetrators were ultimately acquitted of 'causing death' and subsequently charged under section 304 of the Penal Code, which provides for punishment for culpable homicide not amounting to murder. Section 304 carries a lighter charge compared to the mandatory death sentence under Section 302.

A common thread between these cases is clear evidence of torture and ill-treatment by the police resulting in the death of the victim. Additionally, in most cases, the presiding civil court has been inclined to award damages to compensate for the loss of the victims and their families. In certain cases, such as in that of Kugan Ananthan and Syed Mohammad Azlan, the courts had even awarded exemplary damages and condemned the police's actions in the strongest terms. The courts' judicial approach towards torture and ill-treatment may be interpreted as a means of compensating for inadequate prosecution mechanisms stemming from a lack of specific anti-torture legislation in

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283 Full report can be accessed at: [http://www.eaic.gov.my/sites/default/files/laporan\\_NDharmendran/laporan-NDharmendran.pdf](http://www.eaic.gov.my/sites/default/files/laporan_NDharmendran/laporan-NDharmendran.pdf)

Malaysia, which has been a major stumbling block in realizing the effective prosecution of torture as a preventive mechanism. Aside from this, the absence of a specific independent investigative authority with prosecutive powers further weakens the mechanism of criminal torture prosecution, rendering it merely reactive to public outcry.

Finally, this short feature also documents instances of alleged torture reported in the media, listed in appendix A. These reports showcase the under-prosecution of torture in Malaysia, corroborating the findings derived from criminal prosecutions and civil claims, and lending greater weight to the probability that incidence of torture in Malaysia is substantially higher than what is officially reflected within the justice system.

One important function of the media lies in its ability to highlight cases of torture among minority communities. Such communities are often overpoliced and unable to seek legal redress. As a result, their injustices often go unnoticed and unheard, as in the case of the 22 detainees held in Jelebu Prison, where police had kept families in the dark about the status of the detainees and denied them access and visitation rights.

### **Investigative Authorities in Malaysia**

This section examines existing investigative authorities tasked with the investigation of police misconduct, abuse of power and other disciplinary matters, with an aim to assess their potential to function as preventive mechanisms against torture. The three authority bodies in question are the EAIC, JIPS and the Police Force Commission.

The Enforcement Agency Integrity Commission (EAIC) was formed in response to calls for an independent police complaint and misconduct commission that arose following the 2005 Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police. The EAIC was formed under the EAIC Act 2009 and came into force in 2011. Among other functions, the commission is tasked with the investigation of misconduct among law enforcement personnel, preventing abuse of power by enforcement personnel, and receiving public complaints of misconduct and abuse. However, the EAIC lacks prosecution powers; instead, it merely has the power to recommend actions to be taken against enforcement officers guilty of abusing detainees or causing the deaths of those in custody, as well as improvements in procedure.

The EAIC has taken commendable stances on matters of torture and custodial deaths in the past. Notable examples include the recommendation to prosecute in the cases of N. Dharmendran and Syed Mohammad Azlan. These recommendations were derived from the findings of systematic investigations that were reported and disseminated to the public, albeit not immediately following a case, and sometimes only because of public pressure. However, without statutory authority to prosecute, the EAIC remains unable to serve as an effective preventive mechanism against police misconduct. In the case of Syed Mohd Azlan, for example, although the EAIC had found proof of police fabrication of evidence and a systematic cover-up of murder, the police officers were only charged with causing death under section 304 of the Penal Code, which provides for punishment for culpable homicide not amounting to murder, instead of the recommended Section 302 murder charge.

Like the EAIC, both the RMP's Integrity and Standard Compliance Department (JIPS) and the Police Force Commission (PFC) lack enforcement powers to prosecute torture. There are also strong reasons to believe that these investigative authorities lack impartiality, independence, and transparency.

Also known as "Jabatan Integriti dan Pematuhan Standard"<sup>284</sup>, JIPS is an internal investigative and disciplinary unit of the RMP formed in 2014. Although tasked to oversee disciplinary matters within the police force, its integrity and independence is deeply compromised by the fact that the department is staffed with police personnel who investigate their fellow colleagues. In terms of transparency, JIPS makes no explicit mention of police misconduct or torture in its statement of objectives, neither is it required to publish reports on investigations. Thus, JIPS serves no effective function to curb and control torture within the police force.

The legitimacy of the Police Force Commission (PFC) is enshrined in Article 140(1) of the Federal Constitution. It is chaired by the Home Minister, and its members include the Inspector General of Police, the Secretary General of the Home Ministry, a representative from the Public Services Commission and 2-6 members appointed by the Yang Di-Pertuan Agong<sup>285</sup>. The Commission is tasked with the appointment, confirmation of service, conferment into pension status, promotion, and transfer of police personnel<sup>286</sup>. Additionally, the Federal Constitution also stipulates that the commission is tasked with exerting disciplinary control over the police force. However, the heavy representation of the executive, as well as the Royal Malaysian Police, on the Commission calls its impartiality into serious question. Additionally, the Commission does not have an investigative track record in that it does not routinely carry out investigations. According to former IGP Tan Sri Abdul Hamid Bador, the PFC only meets four times a year, for 2 hours each. Hamid also claimed that the PFC was routinely used as a vessel for political interference by the Home Minister in matters of appointment and echoed calls for it to be led by a disinterested party<sup>287</sup>.

The discussion above has outlined the problems inherent within three major investigative authorities in Malaysia. These problems have weakened and ultimately hindered their ability to function as effective torture preventive mechanisms. On the metrics of impartiality and independence, the EAIC edges out the JIPS and PFC clearly. However, all three are compromised by the inability to prosecute torture crimes, while operating under the behest of the executive. These findings underscore the critical need for an independent investigative authority empowered to conduct impartial, independent scrutiny of the treatment of those in detention and prosecute wrong doers. The Malaysian government must establish a truly impartial and authoritative body, such as the proposed Independent Police Complaints and Misconduct Commission (IPCMC), to act as a preventive mechanism against torture if it is truly vested in preventing further ill-treatment and abuse within the police force.

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284 [https://www.rmp.gov.my/infor-korporate/jabatan--jabatan/jabatan-integriti-dan-pematuhan-standard-\(jips\)](https://www.rmp.gov.my/infor-korporate/jabatan--jabatan/jabatan-integriti-dan-pematuhan-standard-(jips))

285 <https://www.moha.gov.my/index.php/en/senarai-ahli-ahli-suruhanjaya-pasukan-polis>

286 <https://www.moha.gov.my/index.php/en/spp-pengenalan>

287 <https://www.malaysiakini.com/news/572853>

## APPENDIX A

### Case Studies

#### Criminal Prosecutions (Listed by name of victim)

##### *Nordin Hamzah*<sup>288</sup> (1981):

- a) *Facts: A 16-year-old was arrested by police officers attached to the Cheras police station. Evidence showed that he was beaten in multiple instances over the course of the interrogation. It culminated in the victim dying and being taken to the hospital, dead.*
- b) *Section: Section 304 of Penal Code*
- c) *Outcome: 4 out of the 6 accused officers were found guilty. The longest sentence, meted out to one Inspector Lai, was 3 years' imprisonment. Another accused was sentenced to 18 months imprisonment and the other two received one year's imprisonment, each.*

##### *Lee Quat*<sup>289</sup> (1996):

- a) *Facts: Two policemen were charged under s.330 for torturing the victim which ultimately led to the victim's death. The lack of information as to the nature of the torture was due to the accused policemen admitting to the offence*
- b) *Section: Section 330 of Penal Code*
- c) *Outcome: Both accused persons received 3 years' imprisonment each*

##### *N.Dharmendran*<sup>290, 291</sup> (2013):

- a) *Facts: A 32 year old man died 10 days from his arrest, while in custody. Cause of death as determined to be diffused soft tissue injuries due to multiple blunt force trauma. Pathologist also found that victim's ears were stapled while he was alive. 4 policemen were charged with murder in connection to the death. EAIC report confirmed that the death resulted as a result of physical force used by the police*
- b) *Section: Section 302 of Penal Code*
- c) *Outcome:*
  - i. *Criminal: Federal Court acquitted all four policemen implicated in the crime*
  - ii. *Civil: The family was awarded RM 490k*<sup>292</sup>

288 LAI KIM HON & ORS v PP [1981] 1 MLJ 84

289 PUBLIC PROSECUTOR v MUHARI BIN MOHD JANI & ANOR [1996] 3 MLJ 116

290 Nurbaiti Hamdan, 'Federal Court upholds acquittal of four policemen in Dhamendran murder case' (The Star, 24 October 2018) <<https://www.thestar.com.my/news/nation/2018/10/24/federal-court-upholds-acquittal-of-four-policemen-in-dhamendran-murder-case>> accessed 25 March 2022

291 Full report can be accessed at: [http://www.eaic.gov.my/sites/default/files/laporan\\_NDharmendran/laporan-NDharmendran.pdf](http://www.eaic.gov.my/sites/default/files/laporan_NDharmendran/laporan-NDharmendran.pdf)

292 Sean Augustin, 'Widow awarded RM490,000 in death in custody case' (Free Malaysia Today, 10 December 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/12/10/widow-awarded-rm490000-in-death-in-custody-case/>> accessed 25 March 2022

***Prabakar A/L Bala Krishnan; Solomon Raj A/L Chandran<sup>293</sup>(2014):***

- a) Facts: 7 Accused were charged under s.330 PC for torturing both victims at the Brickfields Police HQ to extract a confession. The victims were beaten and scalded with hot water.*
- b) Section: Section 330 Penal Code*
- c) Outcome: First and second accused: 4 years for each charge (4 years each in respect of 2 victims); third to seventh accused: Acquitted*

**Civil Claims (Listed by name of victim)**

***Abdul Malek Bin Hussein<sup>294</sup>(1980):***

- a) Facts: Arrested without being clearly informed of arrest. Handcuffed and slapped. Blindfolded en route to the police station. Stripped, drenched in cold water and made to stand in front of an air conditioner. Genitals were hit, made to drink urine, and assaulted by police. Medical attention given only 4 days later, denied access to counsel, only saw family twice during 57 days of detention without trial. Arrest was politically motivated (in connection to the political persecution of Anwar Ibrahim)*
- b) Outcome: Awarded MYR 1.5m in damages*

***Kugan A/L Ananthan<sup>295</sup>(2013):***

- a) Facts: Arrested without family members being notified, and were only notified on his death. First autopsy's findings inconsistent with external marks of abuse on the body. Pathologist was found to be guilty of professional misconduct by the Malaysian Medical Council. Second autopsy found 45 categories of external injuries. Listed official cause of death as acute renal failure due to rhabdomyolysis due to blunt trauma to skeletal muscles. Mother of the deceased claimed damages for negligence, breach of statutory duties for unlawfully having killed the deceased, misfeasance of the public office, assault and battery and false imprisonment. The plaintiff (Mother) also claimed aggravated, exemplary, vindictory, and special damages.*
- b) Outcome:*
  - i. Civil: Family awarded RM 800000, with Rm50k in costs.*
  - ii. Criminal: Policeman (Constable Navindran) tried and convicted for causing hurt. Sentenced to 3 years' imprisonment.*

<sup>293</sup> Public Prosecutor v Zulkiply bin Taib & Ors and other appeals [2015] 8 MLJ 521

<sup>294</sup> Abd Malek bin Hussin v Borhan bin Hj Daud & Ors [2008] 1 MLJ 368

<sup>295</sup> N INDRANALLATHAMBY v. DATUK SERI KHALID ABU BAKAR & ORS [2013] 6 CLJ

**Chandran Perumal<sup>296</sup>(2017):**

- a) *Facts: Arrested on suspicion of being involved in the abduction of a baby and found dead in his cell. Post-mortem found that he had not eaten nor taken medication and the cause of death was hypertensive heart disease. Coroner's inquest supported family contention that death could have been avoided if police had provided medical attention, finding that death was due to police negligence and dereliction of duty. Also found that there were unaccounted-for injuries on the deceased's body. Found for the family's civil claim for damages.*
- b) *Outcome: The family was awarded RM407,500.*

**Mohd Hady Yaakop<sup>297</sup>(2018):**

- a) *Facts: Victim (Carpenter) claimed for unlawful detention and assault. He was blindfolded, stripped, and assaulted despite his denial on his involvement in the fight. Remand order extended to a total of 14 days in custody following which investigations revealed no involvement in fight and no charges were brought. Resulting from the assault, the victim suffered injuries, shortness of breath and chest pains.*
- b) *Outcome: The victim was released. Awarded total of Rm 310,000 for unlawful detention and assault*

**Syed Mohd Azlan bin Syed Mohamed Nur<sup>298</sup>(2020):**

- a) *Facts: Victim died about 5 hours post-arrest. Post-mortem conducted by an expert found 61 injuries and summarised cause of death to be blunt force trauma. High court found that the only reasonable probability that can be drawn is that the deceased had been beaten up by the police while in custody, as corroborated by witness testimony to the effect of witnessing the beating. The EAIC found the death of the deceased to have resulted from the use of violent physical force on the deceased, the failure of the police to refer the deceased for medical treatment, recommended the first, second and third defendants be charged for offences under s. 302 read together with ss. 34 and 107 of the Penal Code and noted the many violations in the manner of arrest and suppression of evidence.*
- b) *Outcome:*
- i. *Civil: Family of the victim was awarded RM388,000.*
  - ii. *Criminal: 3 policemen were charged on a section 304 charge for causing the victim's death. Ultimately acquitted.*

296 Selvi Narayan & Anor (Administrators Of Estate Of Chandran Perumal; Deceased) v. Koperal Zainal Mohd Ali & Ors [2017] 5 CLJ

297 HASSAN MARSOM & ORS v. MOHD HADY YA'AKOP [2018] 7 CLJ

298 SYED MOHAMED NUR ALI v. WEDDRIN MOJINGKIN & ORS [2020] 3 CLJ





**GENDER-EQUAL CITIZENSHIP  
RIGHTS FOR MALAYSIAN  
WOMEN AND THEIR  
OVERSEAS-BORN CHILDREN**



## FEATURE 2: GENDER-EQUAL CITIZENSHIP RIGHTS FOR MALAYSIAN WOMEN AND THEIR OVERSEAS-BORN CHILDREN

### 1. Gender-discriminatory citizenship provision in the Federal Constitution impacting Malaysian women and their overseas-born children

The Federal Constitution grants Malaysian men the right to confer citizenship by ‘operation of law’ on their overseas-born children via **Article 14(1)(b) when read with Section 1(b) of Part II of the Second Schedule**<sup>299</sup>. Malaysian women, on the other hand, must rely on citizenship by ‘registration’ via **Article 15(2)**<sup>300</sup> – an application process for children below 21 years of age. This is a discretionary and arduous process fraught with delays and inconsistencies, often ending with a rejection with no reason given.<sup>301</sup> This makes Malaysia one of only 25 countries in the world that does not grant men and women equal rights to confer citizenship on their children.

The Home Minister on 2 March 2022 revealed that between 2013 and 15 February 2022, a total of 4,870 citizenship applications were made for children of Malaysian mothers who were born overseas. Out of these applications, 117 applications were approved, and 1,728 applications were rejected. This leaves the application status of 3,025 overseas-born children unknown.<sup>302</sup>

It must be noted that statistical information on the number of applications submitted under each category and by year is not available to the public. Family Frontiers is reliant on the information provided by the Government during Parliamentary sessions. Data as such is limited and is unable to be compared in a significant and systemic manner.

Numerous documented cases collected by Family Frontiers shows that the citizenship application process can take up to five years, after which the government provides a mere status update on the application, and usually, when rejected, is not accompanied by reasoning. Families that are denied citizenship are told to re-submit their applications despite fulfilling the requirements listed by the National Registration Department; occasionally when some resubmit their application (with the same supporting documents) they are successful. Sometimes, one sibling is denied citizenship, while the other is successful. The opaque and arbitrary procedure leaves too much discretion to the Government and to individual officers, while the plight of Malaysian women and their overseas-born children worsens.

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299 Section 1(b) of Part II of the Second Schedule: Every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of the Federation or of a State. Federal Constitution of Malaysia, p.169, 2020. <<https://lom.agc.gov.my/federal-constitution.php>> accessed 1 April 2022

300 Article 15(2): Subject to Article 18, the Federal Government may cause any person under the age of twenty-one years of whose parents one at least is (or was at death) a citizen to be registered as a citizen upon application made to the Federal Government by his parent or guardian. Federal Constitution of Malaysia, p.28, 2020. <<https://lom.agc.gov.my/federal-constitution.php>> accessed 1 April 2022

301 Family Frontiers. “Malaysian Campaign for Equal Citizenship: Procedural Inconsistencies and Challenges to Citizenship Application via Article 15(2) - Children Born Overseas to Malaysian Women.” Family Frontiers, 2020.

302 Ida Lim. “Is it easier, faster for overseas-born children of Malaysian fathers to be citizens compared to Malaysian mothers? Here’s what the numbers show” Malay Mail (15 March 2022) <<https://www.malaymail.com/news/malaysia/2022/03/15/is-it-easier-faster-for-overseas-born-children-of-malaysian-fathers-to-be-c/2047463>> accessed 1 April 2022

## 2. Gender-discriminatory citizenship provision in contradiction with Article 8(2) of the Federal Constitution and Malaysia's international obligations

This gender-biased provision in the Federal Constitution deprives Malaysian women of the right to family life on an equal basis as men, and exacerbates precarious lived realities, not only affecting the safety of Malaysian women, but of their children and family too. This outright discrimination against women remains, despite being in contradiction with the stipulations laid down by the Federal Constitution for equality before the law:

*Article 8(2)*<sup>303</sup> prohibits discrimination against citizens on the grounds of religion, race, descent, place of birth or gender in any law.

Furthermore, despite acceding to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) in 1995, Malaysia maintains its reservations on Article 9(2)<sup>304</sup> of the CEDAW Article 7<sup>305</sup> of the CRC on equal nationality rights. The inaction by the Government to remove gender discriminatory provisions from its nationality laws also violates the country's general obligation to eliminate all forms of discrimination against women under Article 2 of CEDAW and Article 3 of the CRC that sets the best interest of the child as a primary consideration in all actions concerning children.

## 3. Impact of gender-discriminatory citizenship laws on Malaysian women and their children

The right to citizenship is a gateway to a range of other fundamental rights. The legal and policy restrictions placed upon Malaysian women and their overseas-born children renders them extreme vulnerable to adversity, and effectively violates their human rights. The following are key areas where their rights to security and liberty are gravely infringed:

**i. Physical and psychological violence against women**, broadly termed as domestic violence, is harrowing and protection is limited. Family Frontiers has overseen many cases of women in abusive marriages overseas being forced to remain in such situations without access to justice or divorce, because the children are unable to acquire Malaysian nationality and are required to be dependent on their non-Malaysian father's nationality. Many women are trapped in harm's way for fear of losing custody of their children who carry a passport different from theirs.

**ii. Family separation and insecure family unity** is commonplace for Malaysian women and their overseas-born children. A family may be forced to take on different nationalities due to the challenges of securing Malaysian citizenship or even permanent residence. In some cases, one sibling is Malaysian because of a successful citizenship application (or they were born in Malaysia) while the other sibling's application is denied—despite both being the children of the same parents. Due to their different nationalities, families are torn apart, forced to live separately in different countries and face strenuous procedures to simply see one another.

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303 Article 8(2): Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation, or employment. Federal Constitution of Malaysia, p.p.23, 2020. <<https://lom.agc.gov.my/federal-constitution.php>>

304 Article 9(2) of the CEDAW: States Parties shall grant women equal rights with men with respect to the nationality of their children. United Nations OHCHR. "Convention on the Elimination of All Forms of Discrimination against Women." 1979. Document. <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>

305 Article 7 of the CRC: 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, where the child would otherwise be stateless. United Nations OHCHR. "Convention on the Rights of the Child" 1989.

Children over the age of 21 years face great difficulty in their attempts to return to Malaysia to unite with their families. They are primarily reliant on tourist visas, but as such are only able to remain in the country temporarily.

iii. **Restricted public healthcare and education for non-citizen children** of Malaysians is another reality Malaysian women and their overseas-born children must endure. These children are designated as foreigners in public medical facilities, which subjects them to exorbitant charges compared to citizens. For example, Malaysian parents would have to pay an estimated total of RM 1,000 in vaccinations alone for their child, which would have otherwise been completely free if their children were a citizen.<sup>306,307</sup> This creates an increased financial burden upon families who are already forced to rely on a single income.

Additionally, parents face issues in registering their non-citizen children in public schools, despite a 2018 policy change<sup>308</sup> which had granted all children with passports access to the public schooling system. Non-citizen children are discriminated against in delayed bureaucratic processes which forces them to attend school months after their classmates—forsaking the principle of ‘no child left behind’. On average, a non-citizen student will enter the school year two months later than a Malaysian student, culminating in 1.83 years of education lost throughout the entirety of a child’s primary and secondary schooling. Parents are to either endure this process or send their children to private schools, if, of course, the choice remains viable, after considering their limited finances.

iv. **Gender-discriminatory citizenship laws are a root cause of statelessness**; in the event the child cannot access the foreign father’s citizenship, the child can be at risk of statelessness.

*Aisyah (not her real name) is a Malaysian mother with four Malaysian children and one child who is currently stateless because of being born overseas. Before leaving for Turkey, Aisyah made sure to confirm with the National Registration Department that her child will be a Malaysian should she give birth overseas. Despite being told she could, she was dismayed to find out, after giving birth, that she would have to “apply” for her child’s citizenship. Unable to also inherit the foreign father’s citizenship, the newborn was stranded abroad for almost six months without any citizenship or travel documents. After lobbying and rigorous advocacy, they are now safely back home in East Malaysia. However, her child remains stateless to this day. Since then, her everyday life has become an uphill battle due to her child’s statelessness. In 2020, Aisyah was forced to separate from her breastfeeding child when she travelled to West Malaysia to explore solutions for her child’s statelessness. Without Malaysian citizenship, her child faces a lifetime of adversity, with limited access to education and affordable healthcare, while her other Malaysian children lead regular lives.*

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306 Ministry of Health Malaysia. “Outpatient Charges.” Ministry of Health Official Portal. Website. <<https://www.moh.gov.my/index.php/pages/view/160?mid=291>> accessed 1 April 2022

307 Ministry of Health Malaysia. “Vaccination for Children in Malaysia.” Ministry of Health. Website. <<http://hsi.moh.gov.my/2019/04/17/vaccination-for-children-in-malaysia-2/>> accessed 1 April 2022

308 As of 2018, children with passports have been allowed to attend the public school system given that they provide necessary documentation. However, implementation of this policy change has been slow and ad hoc, meaning schools have and will continue to reject applications based on citizenship.

### 3.1. Impact of gender-discriminatory citizenship laws further exacerbated by the Covid-19 pandemic

During the pandemic, the repercussions of these gender-discriminatory laws and policies on women and their children have intensified drastically. The following are key areas of impact:

i. **Family separation because of border closures and ambiguous immigration procedures:** On 18 March 2020, travel restrictions via the Movement Control Order (MCO) were established in reaction to the pandemic. Throughout the MCO, no clear standard operating procedures were provided to guide the immigration process, such as the procurement of the Long-Term Social Visit Pass. Offices of the Department of Immigration throughout the country remained uncontactable, negating attempts to clarify immigration procedures. The initial travel restrictions allowed for only Malaysian citizens to enter the country, leaving their non-citizen spouses and children stranded - some were stranded in locations with more severe COVID-19 conditions; some were stranded in third countries where they were working with expired contracts and no visas, while those who attempted to enter Malaysia were given a Not to Land order at the KLIA airport.

*Amy (not her real name) is a single Malaysian mother living overseas with her non-citizen child. She was living in a country with rampant COVID-19 cases at the start of the pandemic outbreak and had to turn down the opportunity to repatriate as her child was only offered a 30-day visa. “Where would my child go when her visa expires?” Amy asked, but her question was met with a blank response. She was not given the assurance of a long-term visa that would allow her child to remain in Malaysia with her. Amy wishes to return to Malaysia with her overseas-born child; however, she fears separation from her child who cannot remain in Malaysia permanently. As such, she is forced to single-handedly raise her child, whose nationality is different from hers, in a third country.*

After months of lobbying, in August 2020, the Department of Immigration created an ad-hoc system to vet non-citizens who wanted to enter the country, whereby requests could be made via MyTravelPass. However, decisions remained at the discretion of the Department of Immigration. Records reveal that, between 7 October to 20 November 2020, there were 4,218 applications from non-citizen spouses and non-citizen children of Malaysians. Of this, only 2,366 applications were allowed entrance, while 1,574 were denied (some were denied based upon their country of origin)—with total disregard for their safety; **non-citizen spouses and children who are immediate family members of Malaysians remained locked out of their Malaysian homes for months.** This also meant that Malaysian women living abroad who were looking to return to Malaysia faced obstacles – *as in the case of one Malaysian woman who had to return to Malaysia to care for her father diagnosed with Stage-4 cancer but received multiple rejections for her three-year-old non-citizen daughter to enter Malaysia with her.*

The travel and border restrictions and policies caused many families to be separated indefinitely. The ramifications of these policies disproportionately affected women and children, due to the challenges in securing citizenship by operation of law. Many families were separated unexpectedly for months, and those desperately trying to unite their families were given a run-around by the Immigration offices.

ii. Pregnant Malaysian women living overseas were forced to deliver their children abroad, resulting in the possibility of them forgoing their children's Malaysian citizenship. This was a result of the challenges with travelling during the Movement Control Order. Not only were they forced to deal with the risk of contracting the virus and limited availability of flights, but most of these women were also faced with the inability of their non-citizen spouses and children to travel with them as they received rejections in their appeal to enter the country. This resulted in some women either giving birth overseas or returning to Malaysia and undergoing their pregnancies (and postnatal care and postpartum depression) alone, without their spouses and children by their side.

iii. The heightened risks of violence against women, particularly domestic violence, has been seen worldwide as health, money and security strains expand.<sup>309</sup> The dire situation has been accentuated by the cramped and confined living conditions that follow a lockdown. Since the beginning of the pandemic, Family Frontiers has overseen many cases of domestic violence against Malaysian women. The normal strains, such as visa or financial dependence, have been exacerbated by the pandemic, putting additional pressure upon women to remain with their abusive spouses as gender-discriminatory citizenship laws create a situation of dependency and further diminish women's autonomy.

*One of the cases witnessed by Family Frontiers is of a Malaysian woman who had moved to her foreign husband's country of residence to live with her husband. There, whilst in lockdown, her husband was physically abusive to her in the presence of their child, to the extent that she made a police report after she was left with a broken bone. The case was heard in front of a judge, who let her husband off with a verbal warning, and allowed him to return home to his wife and child. She is now in Malaysia fighting for custody of her non-citizen child, while he continues to threaten her with their child's legal status and financial vulnerability.*

#### 4. The case of Suriani Kempe & Ors V Government of Malaysia & Ors

To combat this inequality, six Malaysian mothers and Family Frontiers, an organisation working to advance and promote the welfare of Malaysian binational families, filed a case at the Kuala Lumpur High Court on 18 December 2020. The case sought a declaration that Article 14(1)(b), together with Section 1(b) of Part II of the Second Schedule, is to be read harmoniously with Article 8(2) of the Federal Constitution that was amended in 2001, to prohibit gender discrimination. However, the Government attempted to strike out the case on 22 January 2021 by calling the case "*frivolous, vexatious and troublesome*"—however, the government's bid to dismiss the citizenship suit was rejected by the High Court on 6 May 2021.

On 9 September 2021, the Kuala Lumpur High Court judge Dato' Akhtar Tahir, in a landmark decision, ruled that Article 14(1)(b) together with the Second Schedule, Part II, Section 1(b) of the FC, must be read in a harmonious manner with Article 8(2) of the Federal Constitution. In doing this, the High Court judge announced that the word 'father' must be read to include mothers and that the overseas-born children of Malaysian women are citizens by 'operation of law'.

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309 UN Women. "COVID-19 and Ending Violence Against Women and Girls." UN Women. Document. <<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>> accessed 1 April 2022

However, on 13 September 2021, the Government filed an appeal against the landmark High Court decision. They also applied for a stay of execution to temporarily halt the implementation of the High Court's decision pending appeal. This was despite open support for the court decision from three federal ministers, including the de facto Law Minister, Datuk Seri Wan Junaidi Tuanku Jaafar.

As it stands, the Court of Appeal has fixed 22 June 2022 to announce its decision on the Government's appeal against the 9 September 2021 landmark High Court decision.



#### 4.1. The #tarikbalikrayuan campaign

Family Frontiers launched the #TarikBalikRayuan campaign to urge the Government to withdraw its appeal against the landmark High Court decision.

Family Frontiers, through its multi-pronged advocacy approach, targeted a wide range of stakeholders to increase public awareness on the discriminatory citizenship provisions and its impact on families, and increase public action towards pressuring the Government. Some of the approaches adopted by Family Frontiers had included engaging with policymakers (including engagement with the Parliament Special Select Committee on Women and Children Affairs and Social Development and utilising parliamentary mechanisms), civil society organisations (nationally, regionally, and globally), members of the legal fraternity, overseas and local Malaysian student groups and the media. Family Frontiers also collaborated with civil society organisations, activists, and persons influential on social media to amplify campaign messaging. On a global level, United Nations advocacy processes were utilised, including international treaties, UN Working Groups, and high-level events.

As part of the campaign, Family Frontiers also launched a short film<sup>310</sup> titled 'Saya Juga Anak Malaysia' and an advocacy microsite in collaboration with Freedom Film Network and The Fourth, with support from Angkatan Belia Islam Malaysia (ABIM). The film aimed to shed light on the effects of gender-discriminatory citizenship laws on Malaysian women, their children, and the family unit.



310 Link to short film: [www.sayajugaanakmalaysia.my](http://www.sayajugaanakmalaysia.my)

Despite an outpour of public support and action towards the #TarikBalikRayuan campaign—evident through the Change.org petition<sup>311</sup> launched by Family Frontiers, vigorous social media advocacy by impacted families, allies and collaborators, and the trending Twitter storm<sup>312</sup> that was organised between 20-21 March 2022—the Government has still refused to withdraw its appeal against the High Court decision and recognise Malaysian women’s equal citizenship rights.



311 Link to petition: [bit.ly/tarikbalikrayuan](https://bit.ly/tarikbalikrayuan)

312 Search #TarikBalikRayuan



#### 4.2. Government, unsuccessful with stay application, urged to comply with Kuala Lumpur High Court order

On 22 December 2021, the Court of Appeal unanimously dismissed the Government's stay of execution application and ordered the issuance of citizenship-related documents to affected children. Following this, on 29 December 2021, three Malaysian mothers who are plaintiffs in the Suriani Kempe case submitted their documents to the National Registration Department (NRD) under Article 14(1)(b) of the Federal Constitution, to obtain citizenship documents for their children. While Malaysian fathers who submit the required documents can receive the confirmation of citizenship for their overseas-born children anywhere between 3 to 10 days, the plaintiffs and other Malaysian mothers in similar circumstances who submitted their documents to the NRD were told that the process would take 3 to 6 months.

On 11 February 2022, Family Frontiers' legal team served the Government with a letter highlighting the continuing discrepancies between the processing of relevant documents by Malaysian mothers and Malaysian fathers, in contradiction to the High Court's ruling. The legal team also requested updates on the plaintiffs' submission of relevant documents. On 21 February 2022, in response to the letter, NRD issued the citizenship certificate (*Sijil Pengesahan Taraf*) to three of the plaintiffs in the *Suriani Kempe case*.<sup>313</sup>



313 Keertan Ayamany, 'Three children born overseas to Malaysian mums finally get citizenship certs after hours-long wait at NRD over 'printing issues' Malaymail (Putrajaya, 21 February 2022) <<https://www.malaymail.com/news/malaysia/2022/02/21/three-children-born-overseas-to-malaysian-mums-finally-get-citizenship-cert/2042978>> accessed 1 April 2022

#### 4.3. The #manadokumenkami campaign

While awaiting the Court of Appeal decision that is due to be announced on 22 June 2022, Family Frontiers has launched the #ManaDokumenKami campaign urging the Government to expeditiously issue citizenship-related documents to overseas-born children of Malaysian women. The Government must comply with the Kuala Lumpur High Court decision as the Court of Appeal had dismissed the Government's stay of execution application on 22 December 2021. As of March 2022, only three Plaintiffs received their children's documents; the remaining three Plaintiffs and other impacted mothers have yet to receive theirs. It is crucial that Malaysian women are granted equal citizenship rights without further delay, to provide them with much-needed safeguards and protection.

#### 5. 'Saya Juga Anak Malaysia', self-advocacy by impacted Malaysian Women

*Family Frontiers has a network of Malaysian women impacted by Malaysia's gender-discriminatory citizenship laws, as well as a newly established network of second-generation children impacted by these laws. The networks serve as a platform for the exchange of information, support, and solidarity, with the aim of ensuring Malaysian women feel supported in the process of navigating their children's citizenship.*



Through community engagement and confidence and capacity-building, impacted mothers who are a part of the network have been co-creating and leading the 'Saya Juga Anak Malaysia' campaign for equal citizenship rights to resist patriarchal structures that govern citizenship laws in Malaysia. This is evident through the network members' support and involvement in the case filed by Family Frontiers and the ensuing rigorous campaign demanding the Government's action on the matter. Impacted Malaysian mothers have been consistently sharing their stories and calls to action in all of Family Frontiers' outreach efforts, including webinars, forums, and discussions, to ensure that the advocacy is rooted in lived experiences; they have also been demonstrating and occupying public spaces to exercise their rights to freedom of speech and expression. Malaysian mothers have also been heavily utilising mainstream and social media to raise awareness of the issue and highlight the realities on the ground.



The Government has consistently utilised every judicial avenue possible to resist Malaysian women's equal citizenship rights since the day the case was filed. Despite the continued trauma and struggles that these impacted women and their families have faced, they have exhibited nothing but persistence, fearlessness, and resilience in their advocacy.

## 6. Conclusion

There has been growing anxiety and uncertainty among impacted Malaysian mothers and their children who are struggling to cope with the emotional and bureaucratic rollercoaster that the Government is putting them through. As a result of the Government's refusal to withdraw its appeal against the landmark High Court decision, and further taking the case to the Court of Appeal and eventually to the Federal Court if needed, the struggles of Malaysian women and their children are prolonged, adding to years of anxiety and hardship already experienced by affected families.

The practice of appealing against decisions related to citizenship in the higher courts is being normalised. Besides the Family Frontiers case, other individuals have met with resistance from the Government of Malaysia, that uses taxpayers' money to appeal against decisions in favour of individuals at the higher courts, with many of these cases eventually ending up in the Federal Court.<sup>314,315,316</sup> Not only is this an emotionally exhausting process, it also financially drains individuals, discouraging them from accessing the justice systems in place to obtain Malaysian citizenship.



This antiquated and discriminatory law on citizenship severely impacts women and their children resulting in situations of state-sanctioned violence and precarity. The Government has a golden opportunity to undo years of discrimination against Malaysian women by recognising women's equal citizenship rights. Now, more than ever, it is crucial for the Government to respect and uphold the 9 September 2021 High Court judgement and expedite the implementation of the High Court order without further delay, thus granting Malaysian women and their children their rights to much-needed safeguards and protection.

Once and for all, Malaysian women should be given true legal equality by recognising their equal rights to confer automatic citizenship on their overseas-born children, on a similar basis as Malaysian men.

314 Bernama, 'Federal Court declares stateless teenager a Malaysian citizen' New Straits Times (Putrajaya, 19 November 2021) <<https://www.nst.com.my/news/nation/2021/11/746764/federal-court-declares-stateless-teenager-malaysian-citizen>> accessed 1 April 2022

315 Ida Lim, 'Sabah-born man's 15-year-wait for Malaysian citizenship continues as govt appeals to Federal Court' Malaymail (Kuala Lumpur, 18 February 2022) <<https://www.malaymail.com/news/malaysia/2022/02/18/sabah-born-mans-15-year-wait-for-malaysian-citizenship-continues-as-govt-ap/2042416>> accessed 1 April 2022

316 Ida Lim, 'Perak-born stateless girl wins in court again, judges say correct to declare her a Malaysian citizen' Malaymail (Kuala Lumpur, 15 February 2022) <<https://www.malaymail.com/news/malaysia/2022/02/15/perak-born-stateless-girl-wins-in-court-again-judges-say-correct-to-declare/2041686>> accessed 1 April 2022



# MALAYSIA HUMAN RIGHTS REPORT 2021

SUARAM's Annual Human Rights Report on Malaysia is widely recognised as the most objective, comprehensive, and dependable source of information on the state of human rights in Malaysia. It documents the human rights violations as well as the struggles for human rights that take place in Malaysia during the year.

In 2021, Malaysia continued to grapple with political turmoil arising from the notorious 'Sheraton Move' and the concomitant resurgence of Covid-19. The political crisis, which stemmed from the alleged loss of parliamentary majority by former Prime Minister Muhyiddin Yassin, resulted in the country being put under abrupt emergency rule and haphazard lockdowns.

Malaysia's human rights situation deteriorated further in 2021, with the government clamping down on freedom of expression and assembly to stifle dissent, amid worsening political instability in the first half of the year. Security laws that violate the right to fair trial continued to be abused throughout the year. Incidents related to police abuse of power showed no sign of decreasing, while cases of deaths in police custody were also periodically reported.

Freedom of expression also suffered a major setback in Malaysia when the government manipulated its emergency powers to enact a fake news ordinance. Besides the fake news ordinance, other repressive laws, namely the Sedition Act 1948 and Communications and Multimedia Act 1998, were frequently used to investigate social activists such as Fahmi Reza, Mohammad Alshatri and Mohammad Asraf. While the freedom to assemble was exercised regularly by activists in 2021, they were not spared from police intimidation. Many individuals who took part in these assemblies were investigated under the Peaceful Assembly Act 2012.

