

MALAYSIA HUMAN RIGHTS REPORT 2019

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working for human rights

CIVIL AND POLITICAL RIGHTS



MALAYSIA HUMAN RIGHTS REPORT 2019



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FOREWORD

The equality of men and women is one of the most fundamental human rights recognized and adopted in the Universal Declaration of Human Rights in 1948. Soon after the 1948 Declaration, two further international treaties followed suit, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both these treaties prohibited discrimination based on sex and further reinforced the principles of equal rights between men and women. Collectively, the three documents are referred to as the International Bill of Human Rights.

Having worked in the space of women's human rights since 1995, I can attest that the principles of equality between men and women enshrined more than 70 years ago by the International Bill of Human Rights remains nascent in the Malaysian political landscape even amongst the civil society groups. The fight for civil and political rights can never be complete if the equal rights of women to men are not given its due recognition. The equal rights of women are very much an integral part of the civil and political rights of the *rakyat*. Gender based violence, under-representation in political and public life with the promise of 30% representation, wage disparity, systemic and institutionalized economic and social discrimination collectively constitute blatant civil and political oppression on half of the population. This fundamental wrong must be recognized, understood and incorporated into our general collective struggle for civil and political rights in this country.

SUARAM is at the forefront in fighting for the civil and political rights of all Malaysians, both men and women. I applaud SUARAM for its struggle, in particular having survived an unmitigated and vicious frontal assault on its very existence by the Najib government back in 2012 over the Scorpene submarine scandal that still reverberates to date with the unresolved murder of Altantuya.

Malaysia Baru were the sweet words that rang in our ears throughout 2018. We all welcomed a historic and unprecedented era in having a new government. Pakatan Harapan was swept to power with its Manifesto promising to deliver Malaysians from the dark ages of civil and political oppression. But by early 2019, our hopes and expectations began to falter marked by U-turns, back-tracking and dilution of promises made. Some felt that the new Pakatan government should be given more time, others were less patient. No doubt the Pakatan government faced resistance, challenges even possibly sabotage from some within the civil service, police, immigration and also the Attorney General Chambers.

However, I must credit the Pakatan government with a very important reform namely the lowering of the age of voting from 21 to 18 years old. Vibrant discussions also took place on child marriage but that reached a dead end. The enactment of laws on stalking looked promising, but we have yet to see it being tabled in Parliament. A Task Force Committee, which included multi agencies was set up to look into the Law on Gender Equality. The Joint Action Group for Gender Equality (JAG-GE) had proposed a draft on Gender Equality Law and that was used as the basis for discussions. It took JAG-GE by surprise

when the Committee stopped all discussions abruptly as there were real concerns on the definition of gender and whether the rights of lesbians, gays, bisexuals and trans-persons would be included.

For all the disappointments we endured as a consequence of an election stolen from the *rakyat*, I for one remain optimistic, optimistic that the pandora's box has been opened. 2018 remains the watershed in the political calendar for all Malaysians. The notion that an entrenched government that is all powerful and corrupt can be booted out of office serves as a reminder to those who are in power today that they too hold no security of tenure. It is reassuring that organisations like SUARAM are there at the forefront to question, to challenge and to bring the powers that be to account should they transgress on the political and civil rights of the *Rakyat*.

Meera Samanther

Vice President, Association of Women Lawyers

Assistant Treasurer of Women's Aid Organisation

EXECUTIVE SUMMARY

A year after the historic 14th General Election, the optimism for institutional reforms quickly evaporated with the repeated U-turns and inconsistency of the Pakatan Harapan administration. Human rights values that were trumpeted in Pakatan Harapan's election manifesto promising reforms were soon superseded by bickering and contradictory statements between the political factions and politicking within the ruling coalition.

Within their first year in office, we saw the new Malaysian government signing and then withdrawing from the Rome Statute; advocating for the complete abolition of the death penalty to then changing its stand to "reviewing" the use of mandatory death penalty; changing the complete repeal of the Sedition Act 1948 to using the Sedition Act 8 for alleged hate speeches; challenging an opposition state for encroaching upon indigenous peoples rights and subsequently encroaching upon indigenous rights themselves. And there were other policy U-turns.

The security laws opposed by Pakatan Harapan when they were in opposition became an accepted tool of the administration with continued application and abuse of the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime Act 1960 (POCA), the Prevention of Terrorism Act 2015 (POTA) and the Dangerous Drugs (Special Preventive Measures) Act 1985. These laws continued to play a central role in 'crime prevention' with numbers of arrest and detention without trial continuing at an even pace. The arrest of twelve individuals for alleged involvement in the Liberation Tigers of Tamil Eelam (LTTE) reignited the public debate on the application of SOSMA and the potential abuses of the law. Despite the position adopted by the Attorney General, prosecution by various deputy public prosecutors persisted. The standard tactic of harassing family members, associates of the victims and civil society by police continued as before despite the change in administration.

Access to Justice continued to be restricted under Pakatan Harapan with new cases of torture and other forms of abuses by the Royal Malaysian Police, as well as the continued inaction in the case of the four victims of enforced disappearance. The shooting of three individuals for alleged involvement with organized crime in September 2019 continued to mystify the country. The case highlighted the inadequate and often non-existent mechanisms for redress in the event of serious and gross violations of human rights by enforcement agencies.

Our early optimism that the Sedition Act 1948 would be a relic of the past turned out to be misplaced as the Pakatan Harapan administration doubled down on the law as a tool to address 'hate speech'. The existing laws criminalizing certain forms of expression were utilized as a means to crackdown and restrict public discourse or critical comments on Race, Royalty and Religion (3R). On the other hand, certain politicians and selected non-state actors who uttered hate speeches or advocated violence and other forms of discrimination were unfettered by these laws and seemed to operate by some other rules.

As for the freedom of assembly, Malaysians were offered an imaginary 'carrot' when Pakatan Harapan amended the Peaceful Assembly Act 2012. The relaxing of the existing provision requiring 10-days' notice and introduction of a compound for violation of the law solved none of the existing concerns while introducing new avenues for potential restriction. While some district police headquarters seem to have learnt to appreciate the rights afforded under Article 10 of the Federal Constitution, the same could not be said of the police force in general nor other private and public actors who continued to play an active role in suppressing our right to peaceful assembly.

The preliminary study for electoral reform of the legislature continued at an even pace with limited changes regarding electoral offences on the ground. Five by-elections were held in 2019, each of them replete with electoral offences committed by the different parties contesting the seats. The issue of re-delineation inherited from the previous administration continued to be a problem for the electoral process as the law prevents any other re-delineation exercise in the near future. Fundamentally, electoral laws did not change in 2019 apart from the amendment to reduce the legal age of voting from 21 to 18 years, and the inclusion of automatic voter registration which has yet to be implemented.

Issues pertaining to gender and sexuality continued to be the scapegoat for the administration in 2019. The hostile tone adopted by the Pakatan Harapan administration in 2018 grew in tandem with the rising rhetoric on race and religion in 2019. The Women's March 2019 was investigated by the police as a result of a more visible support for the LGBTIQ community in general. The march was also condemned by various ministers for the inclusion of LGBTIQ voices. 2019 was also marked by the infamous case in which a state religious department instituted caning of two women who were convicted of having sexual relations. They did not have adequate representation.

The death penalty continued to be under review by the administration throughout 2019 with the 2018 moratorium in force. The administration backed away from its previous stand on the total abolition of the death penalty to that of the abolition of the mandatory death penalty. A task force was established by the administration to evaluate the alternatives to punishment in lieu of mandatory death penalty.

In contrast to the slow pace of reform by the administration, the judiciary took a notable step forward with regards to the issue of the death penalty when it decided upon the constitutionality of Section 37B of the Dangerous Drugs Act 1952, a key provision that reverses the burden of proof in trials and results in hundreds of convictions for drug trafficking annually.



RIGHT TO FAIR TRIAL

RIGHT TO FAIR TRIAL

The collapse of the Islamic State in Syria marked another turning point for counter-terrorism efforts in Malaysia. Thus, apart from the traditional concerns of terrorism, Malaysia had to contend with the prospective return of Islamic State fighters and supporters who had been repatriated back to the country. While the use of detention without trial had been somewhat subdued following the change of administration in May 2018, the trend of abuse continued into 2019, albeit at a less visible level.

In 2018, the administration through the Ministry of Home Affairs held two consultations to address the concerns on security laws. Unfortunately, the consultation did not result in any observable changes in 2018. All four laws that permit detention without trial, namely, the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime Act 1959 (POCA), the Prevention of Terrorism Act 2015 (POTA) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA) continued to be applied and abused.

In terms of the policy, there was no new directive issued by then Minister of Home Affairs, Muhyiddin Yassin on the use of security laws, detention conditions and standard operating procedures to be adopted by the Royal Malaysian Police. The initially proposed timeline for amendment or repeal in Parliament¹ was also pushed back time and again with the latest update by the Minister of Home Affairs reported on 9 November 2019 claiming that the Cabinet would be looking into amending SOSMA².

Statistics on Detention without Trial from SUARAM's Documentation in 2019

	Terrorism	Trafficking/ Immigration	Organised Crime	Total
SOSMA	73	28	22	123
POCA	-	-	908	908
POTA	1	-	-	1
Total	74	28	930	1032

1 Luqman Arif Abdul Karim 'Pindaan POCA, POTA, SOSMA akan dibentang – Muhyiddin' (Berita Harian Online, 13 November 2018) <<https://www.bharian.com.my/berita/nasional/2018/11/497525/pindaan-poca-pota-sosma-akan-dibentang-muhyiddin>> accessed 14 November 2019

2 Martin Carvalho, Hemananthani Sivanandam and Rahimy Rahim 'Muhyiddin: Cabinet to consider amending Sosma' (The Star Online, 6 November 2019) <<https://www.thestar.com.my/news/nation/2019/11/06/muhyiddin-cabinet-to-consider-amending-sosma>> accessed 14 November 2019

SUARAM Estimation of Total Number of Arrests made under Security Laws since Inception³

	SOSMA⁴	POCA	POTA	Total
Total	2155 ⁵	6085	35 ⁶	8275

Security Offences (Special Measures) Act, SOSMA 2012

SOSMA is a procedural law that operates in lieu of the Criminal Procedure Code when an individual is detained for suspicion of offences under Chapter VI and VI A and VI B of the Penal Code; Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007 (ATIPSOM); and Special Measures Against Terrorism in Foreign Countries Act 2015. Under SOSMA, an individual can be detained for no more than 28 days for investigation. As an added measure, anyone detained can be denied access to legal counsel and access to the family for up to 48 hours. Furthermore, detainees are by default denied bail with no discretion afforded to the trial judge and could potentially be incarcerated until the conclusion of all trial proceedings including appeals.

This can be contrasted with the Criminal Procedure Code where an individual who has committed an alleged crime could only be remanded for a period of seven days in total, or 14 days in total depending on the severity of the offence and could be afforded bail depending on the offence they are charged for in court. The key difference lies in the discretion afforded to the trial judge in terms of bailable or non-bailable offences whereas SOSMA provides a blanket removal of judicial discretion and grants the public prosecution absolute power to determine whether a person should be granted bail.

SOSMA also differs from POCA, POTA and DDA by allowing detainees an opportunity to defend themselves in court. On the one hand, the trial process provides an opportunity for lawyers and members of the public to scrutinise the trial proceeding; on the other, provisions of SOSMA undermines several principles relating to international standards relating to the right to a fair trial.

Examples of this include, the extended pre-trial detention or remand when torture and degrading treatment is utilised as a part of the standard operating procedure; denial of legal counsel and family access; restriction on the admissibility of evidence and documents deemed as sensitive; the admissibility of protected witnesses who would be questioned

3 Parliament Reply, Question 506, Ref No. 10443 <<https://pardocs.sinarproject.org/documents/2017-october-november-parliamentary-session/written-replies-soalan-bertulis/soalan-506.pdf/view>> accessed 22 April 2019

4 June 2012 to October 2017

5 Based on SUARAM's data in 2018 and compilation of available arrest information in 2019

6 Based on Parliament question in December 2019 – Question 295, 5 December 2019

<[https://www.parlimen.gov.my/files/jindex/pdf/Kemaskini Jawapan Bukan Lisan 17 Disember 2019 1 PM.pdf](https://www.parlimen.gov.my/files/jindex/pdf/Kemaskini%20Jawapan%20Bukan%20Lisan%2017%20Disember%202019%201%20PM.pdf)>

without the presence of the accused or their counsel, and several other issues of concern involving the use of agent provocateurs and confessions.

As noted in SUARAM's reports over the years, detainees are often subjected to mental and physical abuses during the preliminary 28-days detention. Solitary confinement and extended interrogation period remain a common trend with allegations of abuse continuing to surface, as noted in the arrest and detention of twelve individuals for alleged involvement with the Liberation Tigers of Tamil Eelam (LTTE). Five of the twelve suspects alleged that they were subjected to mistreatment, torture and intimidation during the 28-days detention period with one detainee claiming that he was forced to say that he was an LTTE member⁷.

Family members and associates of detainees were also subjected to varying degrees of harassment. V. Uhma Devi, one of the detainees' spouse was called by an individual identifying himself as a high-ranking police officer, informing her that her husband could be released if she paid a bribe. The aide to G. Saminathan, one of the state assemblymen detained was instructed to remove his Facebook post regarding the detention and was quizzed on the list of attendees at candlelight vigils by unidentified callers⁸.

Lawyers representing the detainees and journalists who covered the case were also reported to have been subjected to investigation; a journalist from MalaysiaKini was called to give a statement regarding their report on the matter⁹. The Inspector-General of Police, Hamid Bador responded in the same way as his predecessor by dismissing the allegations as baseless and irresponsible¹⁰.

According to the Ministry of Home Affairs' Open Data, between January to September 2019, there were 53 individuals detained under SOSMA for association with the Islamic

7 V Anbalagan 'Court to examine complaints of torture, intimidation by LTTE suspects' (Free Malaysia Today, 8 November 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/11/08/court-to-examine-complaints-of-torture-intimidation-by-ltte-suspects/>> accessed 14 November 2019

8 Kevin Dasagayam 'Supporters of LTTE Sosma detainees report receiving mysterious phone calls' (The Sun Daily, 25 November 2019) <<https://www.thesundaily.my/local/supporters-of-ltte-sosma-detainees-report-receiving-mysterious-phone-calls-YX1653753>> accessed 7 April 2020

9 M Fakhrull Halim 'Lawyer in cops' crosshairs over LTTE suspects 'tortured' claims cries foul' (MalaysiaKini, 8 November 2019) <<https://www.malaysiakini.com/news/499090>> accessed 14 November 2019

10 Bernama, 'Allegations of police misconduct against LTTE detainees baseless: IGP' (MalaysiaKini, 2 November 2019) <<https://www.malaysiakini.com/news/498399>> accessed 14 November 2019

State¹¹, a decrease from 82 reported in 2018. Within the same time period for 2019, 25 arrests for cases related to human trafficking were made under SOSMA¹².

To the disappointment of human rights defenders, Ministers and members of the government who were once staunch opponents of SOSMA and other laws that permit detention without trial have also retracted their previous position on the matter and now advocate the amendment and not repeal of SOSMA¹³.

Prevention of Crime Act, POCA 1959

POCA is a law introduced to prevent organized crime, especially those relating to the triads, secret societies, and repeat offenders. In practice, it is much more similar to the repealed Internal Security Act 1960 and circumvents the criminal justice system by denying detainees any opportunity to defend themselves in court. The Act was amended in 2014 and 2017 respectively with additional provisions, making the law even more draconian.

Under POCA, any individual arrested can be detained for a maximum of 60 days with a breakdown of remand hearing after the initial 24 hours, after 21 days and for a further extension of 38 days. After the initial remand period, individuals would be either sentenced to two years' detention orders or two years under house arrest. The detention order can be renewed once every two years if the Crime Prevention Board thinks it is necessary for the person to remain incarcerated.

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

SUARAM and the Human Rights Commission of Malaysia (SUHAKAM) conducted a joint press conference to highlight the issue of juveniles detained without trial under security

11 'Statistik Tangkapan Elemen Daesh Di Bawah Security Offences (Special Measures) Act 2012 (SOSMA)

<http://www.data.gov.my/data/ms_MY/dataset/statistik-tangkapan-elemen-daesh-dibawah-sosma-2014-2017> accessed 14 November 2019

12 'Statistik Tangkapan Sindiket Penyeludupan Manusia Di Bawah Security Offences (Special Measures) Act 2012 (SOSMA)'

<http://www.data.gov.my/data/ms_MY/dataset/statistik-tangkapan-sindiket-penyeludupan-manusia-2014-2017> accessed 14 November 2019

13 Arfa Yunus, Nuradzimmah Daim 'Mat Sabut: Amend Sosma, don't abolish it' (New Straits Times, 15 October 2019)

<<https://www.nst.com.my/news/nation/2019/10/530147/mat-sabu-amend-sosma-dont-abolish-it>> accessed 14 November 2019

laws. This was in relation to the reported 159 juveniles detained under SOSMA and POCA in 2018. Following the press conference, the Deputy Prime Minister and the Minister of Home Affairs responded by claiming that, out of the 28 juveniles that were serving time under POCA and POTA, only one juvenile remained under POCA detention while the rest were either under house arrest or released¹⁴. It should be noted that the Inspector-General of Police at that time, Fuzi Harun reported differently, claiming only one remained in detention while 56 had been freed but under POCA supervision¹⁵, i.e. double the numbers reported by the ministers.

Despite all the assurances by the Pakatan Harapan government, POCA is still applied liberally with 627 suspected members of organised crime detained between January 2019 to June 2019¹⁶. The assistant director of D7 of the Royal Malaysian Police reported that between April to June 2019, there were 278 individuals detained under POCA for operating illegal gambling dens¹⁷. If the information provided by the police is accurate, it would suggest that between the first two quarters of 2019 alone, there were more than 900 cases of arrest and detention under POCA, easily rivalling the annual average of 900 cases of arrest and detention from 2014 until December 2018.

As the preceding years have shown, SUARAM's estimation and tabulation of data of arrest under POCA continue to be far more optimistic than the situation on the ground. With the data available up to 31 October 2019, SUARAM reported that roughly 4,000 individuals had been detained under POCA based on the available data between 2015 to 2019. A parliamentary reply later revealed this number to be far short of the official number of arrests¹⁸ which states that 6,085 individuals were detained between January 2016 to September 2019¹⁹.

14 Fatimah Zainal 'DPM: Fewer than 30 underage detainees under Poca, Pota' (The Star Online, 1 February 2019)

<<https://www.thestar.com.my/news/nation/2019/02/01/dpm-fewer-than-30-underage-detainees-under-poca-pota>> accessed 18 November 2019

15 Bernama 'IGP explains Poca detention' (New Straits Times, 1 February 2019)

<<https://www.nst.com.my/news/nation/2019/02/456629/igp-explains-poca-detention>> accessed 18 November 2019

16 Faris Fuad '627 disyaki ahli kumpulan kongsi gelap ditahan' (Berita Harian, 24 June 2019)

<<https://www.bharian.com.my/berita/kes/2019/06/577605/627-disyaki-ahli-kumpulan-kongsi-gelap-ditahan>> accessed 18 November 2019

17 Mohd Azam Shah Yaacob 'Bukit Aman terus gempur sindiket perjudian' (Harian Metro, 24 June 2019)

<<https://www.hmetro.com.my/mutakhir/2019/06/468546/bukit-aman-terus-gempur-sindiket-perjudian-metrotv>> accessed 18 November 2019.

18 Question 295, 5 December 2019 ([https://www.parlimen.gov.my/files/jindex/pdf/Kemaskini Jawapan Bukan Lisan 17 Disember 2019 1 PM.pdf](https://www.parlimen.gov.my/files/jindex/pdf/Kemaskini%20Jawapan%20Bukan%20Lisan%2017%20Disember%202019%201%20PM.pdf))

19 Question 295, 5 December 2019 ([https://www.parlimen.gov.my/files/jindex/pdf/Kemaskini Jawapan Bukan Lisan 17 Disember 2019 1 PM.pdf](https://www.parlimen.gov.my/files/jindex/pdf/Kemaskini%20Jawapan%20Bukan%20Lisan%2017%20Disember%202019%201%20PM.pdf))

Out of the 6,085 arrested under POCA, 1,283 were issued detention orders with 532 still serving the orders, whereas 3,506 were issued house arrest orders with 1,910 still serving their orders. A mere 1,296 individuals who were arrested under POCA were released without any further action. A similar number can be observed in the Ministry of Home Affairs open data sets²⁰ where it was reported that 180 were serving detention orders under POCA in 2019²¹, 239 in 2018, and 256 in 2017.

As a noted improvement, the Ministry's data set also provided a breakdown in terms of the ethnicity of the detainees in its more recent data set. The dataset confirms the disproportionate representation suspected by SUARAM in our preceding reports. Majority of the detainees are either housed in Bentong or Simpang Renggam detention centre.

Ethnic Breakdown of POCA Detainees in Detention

Year	Ethnicity				
	Malay	Chinese	Indian	Others	Total
2014	11	1	12	5	29
2015	75	16	93	22	206
2016	99	22	160	68	349
2017	85	18	140	91	334
2018	87	13	126	50	276
2019	85	10	70	159	324
Total	442	80	601	395	1518

Ethnic Breakdown of POCA Detainees under House Arrest

Year	Ethnicity				
	Malay	Chinese	Indian	Others	Total
2014	47	25	69	0	141
2015	170	144	148	31	493
2016	336	126	178	29	669
2017	454	200	189	89	932
2018	384	143	155	97	779
2019	324	82	134	61	601
Total	1715	720	873	307	3615

20 'Statistik Perintah Tahanan (Mengikut Pusat Pemulihan Khas) Di Bawah Seksyen 19A Akta Pencegahan Jenayah 1959 (Akta 297)' <http://www.data.gov.my/data/ms_MY/dataset/statistik-perintah-tahanan-mengikut-pusat-pemulihan-khas>

accessed 7 April 2020

21 January 2019 – September 2019

When contrasting Parliament data and those provided in the open data network, 5,081 out of 6,085 of cases under POCA were sentenced to imprisonment or house arrest. A mere 1,004 (roughly 16.5% of all cases) of those detained without trial were released after the two months detention period.

The proportion of cases issued with detention and house arrests orders is worthy of note as they differ substantially between ethnicity. Out of 2,157 cases involving ethnic Malay individuals, 442 were detained in prison, roughly 20.5% of the orders issued; in contrast, 80 out of 800 cases for ethnic Chinese, 10% of the orders issued; and 601 out of 1474 cases for ethnic Indian, roughly 42% of the orders issued.

Prevention of Terrorism Act, POTA 2015

Both in form and function, POTA is largely similar to POCA. The only difference is the ‘target’ of this law. As opposed to addressing threats posed by organised crimes, POTA is specifically introduced to address the threat of terrorism as noted in the preamble to the Act²². In terms of its powers, POTA is largely similar if not identical to POCA with its power to detain for 24 hours, followed by 21 days and further extension of 38 days. If found ‘guilty’ by the administrative board, an individual can be served with two years’ detention orders or be placed under house arrest.

In general, information about detention under POTA and the rehabilitation detainees undergo during detention is scarce. The same parliamentary data set provided on POCA also revealed the numbers of detention under POTA from January 2016 until September 2019 to be 35, or 7 more than what SUARAM previously reported. Of the 35, 23 were issued detention orders with three still serving, whereas three were issued house arrest orders with two still serving those orders.

Dangerous Drugs (Special Preventive Measures) Act, DDA 1985

The least known law permitting detention without trial is the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA85). This law is very similar to the Internal Security Act 1960. While the sentencing power under POCA and POTA is afforded to a ‘prevention board’, DDA85 retains the old policy whereby detention orders are meted out by the Home Minister.

22 An Act to provide for the prevention of the commission or support of terrorist acts involving listed terrorist organizations 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.

But while on the one hand, this law denies an individual the right to a fair trial; on the other hand, detention under DDA85 provides a ‘reprieve’ from the death penalty under Section 39B of the Dangerous Drug Act 1952.

Information is often limited on the use of DDA85, but in recent years, more data on its use has been made available through the Ministry of Home Affairs’ open data network. Between January to September 2019, 1405 individuals were reported to have been arrested and detained under DDA85, a notable increase from 1,186 reported for 2018²³.

Numbers of Individual Detained under DDA 1982²⁴

	Arrest
2015	854
2016	1015
2017	1263 ²⁵
2018	1186
2019	1405
Total	5723

Double Standards in Counter-Terrorism Policy

2019 was a particularly useful year for comparing government enforcement policy against alleged terrorist groups or individuals who were alleged to be involved or supportive of terror groups²⁶. Between 2018 to 2019, several notable and high-profile cases of individuals that had alleged involvement with terror group surfaced.

In 2018, the late-Palestinian lecturer, Fadi al-Batsh was allegedly assassinated by foreign intelligence organisation²⁷. According to some quarters, Mr Fadi al-Batsh was involved with Hamas and he had been residing in Malaysia and working as a lecturer at a local

23 ‘Tangkapan di bawah Seksyen 3(1) ADB (LLPK) 1985 mengikut kontinjen’

<http://www.data.gov.my/data/ms_MY/dataset/tangkapan-di-bawah-seksyen-3-1-adb-llpk-1985-mengikut-kontinjen-2013-2017> accessed 14 November 2019

24 Derived from Ministry of Home Affairs’ Open Data Website, < http://www.data.gov.my/data/en_US/dataset/tangkapan-di-bawah-seksyen-3-1-adb-llpk-1985-mengikut-kontinjen-2013-2017> accessed 19 March 2019

25 Original data set reports 1237 cases of arrest

26 Not all of the referred groups in the cases described below are listed domestically, regionally or globally.

27 Jalal Ali Abd Rahim & Shamsul Kamal Amarudin ‘Foreign agent link possible, says Zahid on killing of Palestinian Lecturer’ (New Straits Times, 21 April 2018) < <https://www.nst.com.my/news/nation/2018/04/359936/foreign-agent-link-possible-says-zahid-killing-palestinian-lecturer>> accessed 31 March 2020

university²⁸. While Hamas is not unanimously seen or treated as a terror organisation, Hamas is considered as a terrorist organisation by several countries including the European Union²⁹. Despite the ambiguity of Hamas' status as a terrorist organisation globally, the Malaysian government had no qualms about Mr Fadi al-Batsh residing in Malaysia.

In April 2019, four Egyptian asylum seekers were arrested and detained under the Security Offences (Special Measures) Act 2012 and later deported to Egypt where they reportedly went missing. The four were alleged to be members of the Muslim Brotherhood party. The Inspector-General Police of the day, Fuzi Harun claimed that there was an urgent need to thwart the network and activities as they pose a serious threat to the country³⁰. Access to counsel was also restricted and delayed by the Royal Malaysian Police leading up to their deportation. It should be noted that the Muslim Brotherhood is not listed as a terrorist organisation by the Ministry of Home Affairs³¹.

Another case involved Arik Kommis who was a refugee recognized by the United Nations High Commission for Refugees (UNHCR). He was detained and deported in August 2019 despite the absence of any criminal allegation against him in Malaysia³². The Prime Minister of the day, Mahathir Mohamad claimed that the police had proof that Arik Kommis was involved in terrorism. The Minister of Home Affairs, Muhyiddin Yassin later answered in Parliament that Arik Komis was deported because of his alleged affiliation with the Gulen movement in Turkey and asserted that the Gulenist movement (Fethullah Gulen Terrorist Organization, FETO) was considered a terror organization by Turkey and the Organisation of Islamic Cooperation (OIC).

The Gulen movement, which was referred to as FETO by Turkey, is not considered to be a terrorist organization by many countries. Attempts by Turkey to extradite individuals with alleged involvement with the movement were rejected by the United Kingdom in April 2019. The Gulen movement was not listed as a terrorist organization by our Ministry of Home Affairs³³. Even with the lack of clarity on the position of movement, no trial or hearing of any form was provided for Arik Komis before his deportation. Lawyers were also prevented from accessing him due to the short turnaround time between his arrest and deportation as in the case of the four deported Egyptians.

28 <https://www.haaretz.com/middle-east-news/palestinians/.premium-hamas-engineer-assassinated-in-malaysia-victim-s-family-blames-mossad-1.6013526>

29 <https://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:32019D1341&from=en>

30 <https://www.freemalaysiatoday.com/category/nation/2019/04/04/missing-4-egyptians-deported-by-malaysia/>

31 http://www.moha.gov.my/images/maklumat_bahagian/KK/kndndomestic.pdf

32 <https://www.malaymail.com/news/malaysia/2019/08/30/malaysia-to-deport-turkish-teacher-under-un-protection/1785763>

33 http://www.moha.gov.my/images/maklumat_bahagian/KK/kndndomestic.pdf

In sharp contrast, Zakir Naik, a controversial preacher from India continues to enjoy substantial support and welcome by the ruling government as well as the Muslim-based opposition parties. While Malaysia has offered Zakir Naik refuge, India continues to seek his extradition, Bangladesh has banned a TV channel founded by him whereas the United Kingdom has also barred him from entering the UK. The Malaysian government has consistently rejected the extradition request by India on the ground that the prosecution case against Zakir Naik was political in nature and that his trial in India may be conducted in a manner prejudicial to him. In Parliament, the minister also claimed that Zakir Naik was not on Interpol red notice nor listed as a wanted terrorist in the United Nations Security Council Resolution³⁴.

Despite courting controversy and raising racial and religious tensions with his provocative sermons in Malaysia, the government merely imposed a direction issued by the police that forbids Zakir Naik from giving any more public sermons. It is unclear what provision or law was used by the police in enforcing the directive³⁵. It should be noted some states in Malaysia have imposed their own restrictions forbidding Zakir Naik from delivering public sermons in their states and denying approval for him to conduct religious sermons within their states³⁶.

If we reflect on the actions taken by the police and the government in the cases outlined and detailed within this report, it is clear that the state and its apparatus exercises full discretion on how a person or group is defined as a terrorist and the law can be used in favour of the official view of who is a terrorist or otherwise. In the cases noted, the government and its security apparatus deported individuals without any form of trial or inquiry while in other cases, controversial personalities have been given protection and even honoured in Malaysia.

It would seem that Malaysia tolerates and welcomes certain forms of extremism based on the wishes and approval of the state and its security apparatus whereas others who have legitimate grounds to remain within Malaysia can be deported or detained with the discretion of the security apparatus.

This inconsistency of the government position sets a dangerous precedent for the country. The inconsistency is further exacerbated by the absence of any form of public debate on the designation of a “terrorist organization”. The concern in this regard is not a theoretical one because the previous BN administration and their leadership had actually glorified an

34 Question 35, 9 October 2019 <<https://www.parlimen.gov.my/files/jindex/pdf/JDR09102019.pdf>> accessed 7 April 2020

35 Hafidzul Hilmi Mohd Noor ‘Zakir Naik banned from speaking in public’ (New Straits Times, 20 August 2019) <<https://www.nst.com.my/news/nation/2019/08/514384/zakir-naik-banned-speaking-public>> accessed 2 April 2020

36 R.S.N Murali ‘Zakir Naik banned from speaking in Melaka, says Chief Minister’ (The Star, 19 August 2019) <<https://www.thestar.com.my/news/nation/2019/08/19/zakir-naik-banned-from-speaking-in-melaka-says-chief-minister>> accessed 2 April 2020

internationally recognized terrorist organization in positive terms³⁷, leading to public confusion regarding the status of the group.

While the Ministry of Home Affairs does provide a list of terrorist organizations and individuals in its resources³⁸, it is unclear as to why selected groups are listed while others are not seen as terror groups.

It goes without saying that the retention of any individual or group that promotes violence poses a national security threat and must be addressed. However, the identification and condemnation of these groups and their members cannot be selective and based on an arbitrary criterion set by the Royal Malaysian Police. The fundamental rights under the Constitution and due process must be part and parcel of Malaysia's counter-terrorism efforts as these are the values that we seek to protect in our efforts to combat terrorism.

With the opaque nature of the security apparatus and current trend, any effort to combat terrorism would ultimately result in the violation of fundamental rights and freedoms and potentially foster further radicalization of detainees after their detention. It certainly does not help when many of these discretionary powers of the police are tied to laws permitting detention without trial which undermines fundamental freedoms and the rule of law.

37 Melissa Chi 'Be brave like ISIL fighters, Najib tells Umno' (Malay Mail Online, 24 June 2014)

<<https://www.malaymail.com/news/malaysia/2014/06/24/be-brave-like-isil-fighters-najib-tells-umno/693209>> accessed 7 April 2020

38 List of individuals and groups associated with terrorism in Malaysia

<http://www.moha.gov.my/images/maklumat_bahagian/KK/kdndomestic.pdf> accessed 7 April 2020



RIGHT TO JUSTICE

RIGHT TO JUSTICE

Not unlike the situation relating to the right to a fair trial, issues relating to access to justice and abuse of power remained consistent throughout 2019. Custodial deaths remained an issue of concern with limited improvement; physical abuse and other forms of torture were still reported by detainees, and incidence of police shootings with contentious facts surfaced yet again.

In terms of policy development, the most noteworthy was the introduction of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill by the Minister of Law in July 2019³⁹. Similar to the first time when the concept of IPCMC was introduced to the country in 2005, the introduction of the bill was met with substantial opposition from select members of the Royal Malaysian Police. Another point of interest to note was the process for the introduction of IPCMC and the refinement that it underwent between July and October 2019 parliamentary session was the first notable attempt that a draft law underwent extensive public consultation and amendment under the Pakatan Harapan administration.

The initial bill proposed in July 2019 was not fully supported by civil society as there were fundamental concerns with the content of the bill. These included provisions that excluded the content of the Inspector General Standing Orders from IPCMC's mandate; lack of clear powers to conduct a public hearing; limited investigative power and lack of perceived independence in the appointment process for commissioners.

An amended bill was tabled in Parliament during the October 2019 Parliamentary session with amendments that removed the exclusion of Inspector General Standing Orders and included additional provisions that would restructure IPCMC as the formal disciplinary board for all cases of police misconduct⁴⁰. The expanded role as a disciplinary board is shared between IPCMC and the police force with the police force taking the lead in minor misconducts.

As of 31 October 2019, the Parliament Select Committee for the consideration of bills had conducted a series of public consultations and was expected to revert to Parliament with recommendations for amendments to the proposed IPCMC Bill by the end of the October 2019 Parliament session. While Select committee did provide a set of recommendations

39 Azril Annuar 'Who watches the watchers? IPCMC Bill finally reaches Parliament after 14 years' (Malay Mail Online, 18 July 2019) <<https://www.malaymail.com/news/malaysia/2019/07/18/who-watches-the-watchers-ipcmc-bill-finally-reaches-parliament-after-14-yea/1772662>> accessed 20 November 2019

40 Previously consultations had always maintained that minor misconduct such as issues relating to uniform or tardiness should not matters resolved within the police through the integrity division.

based on its consultation⁴¹, the tabling of the bill in Parliament was yet again delayed by the Pakatan Harapan administration⁴².

Deaths in Custody

Custodial deaths remained a challenge across all detention facilities in the country although the incidence of deaths in police custody reached an all-time low when there was reported to be only five cases throughout 2018⁴³. However, information obtained on deaths in police custody in 2019 suggested that these may have been underreported with the actual number of deaths in police custody at eight for 2018. In the same data source, it was reported that there were six cases of custodial deaths reported between January and October 2019⁴⁴.

In immigration detention, the number of custodial deaths remained serious, with 37 cases of deaths reported between January and October 2019. This was a notable increase from the 24 cases reported for 2017 and 32 reported for 2018. However, the main causes of death remained largely similar to those given over the years with most deaths reported to be attributable to health and medical reasons.

Data set for custodial deaths in prison was, unfortunately, not available at the time of the preparation of this report.

41 Bernama 'Ramkarpal to table IPCMC bill with 37 new amendments tomorrow' (MalaysiaKini, 2 December 2019)

<<https://www.malaysiakini.com/news/502109>> accessed 29 April 2020

42 Nuradzimmah Daim & Hana Nur Harun 'IPCMC Bill's second, third readings in Dewan Rakyat postponed' (New Straits Times, 3 December 2019) <<https://www.nst.com.my/news/nation/2019/12/544356/ipcmc-bills-second-third-readings-dewan-rakyat-postponed>> accessed 29 April 2020

43 The lowest point in recent decade would be 2009 and 2000 with 7 reported cases of death in police custody respectively.

44 Information was made available at a conference.

Overall Statistics on Deaths in Custody, 2015-19

Jurisdiction	Police	Prison Department	Immigration
2015	12	252	87
2016	15	269	40
2017	10	319 ⁴⁵	24
2018	8	2 ⁴⁶	32
2019	6	3 ⁴⁷	55 ⁴⁸
Total	59	842 ⁴⁹	195 ⁵⁰

SUARAM Documented Cases of Deaths in Custody, 2019

No	Name	Date of Death	Detention Location	Official Cause of Death ⁵¹
1	Proosothaman a/l Marimuthu	25 May	Sungai Buloh Prison [Prison]	Medical
2	Thomas Orhions Ewansiha	9 July	Bukit Jalil Immigration Detention [Immigration]	Medical
3	Gopal Krishnan Rajalinggam	24 July	Sungai Petani Prison ⁵² [Police]	Lung Infection
4	Shainal Mukhtar	4 October	Kepayan Central Prison [Prison]	Assault
5	Unnamed	12 November	Kuantan District Police Headquarters [Police]	Medical
6	Mohd Fazrin Zaidi	22 November	North Seberang Prai Police District Headquarters [Police]	Suicide

45 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/view>

46 The only two known and reported cases, actual figure would likely be higher based on preceding year statistic.

47 Limited data available

48 Based on numbers reported in Parliament Question – Question 296, 5 December 2019

49 Parliament reply in July 2017 reports that between 2010 to July 2017, a total of 1,808 prisoners died in prisons.

50 <https://pardocs.sinarproject.org/documents/2017-october-november-parliamentary-session/written-replies-soalan-bertulis/soalan-289.pdf/view>

51 Cause of death listed is attributable to police account of the cause of death - highlighted cases is where family or lawyers dispute the cause of death stated by the police

52 He was remanded by police for drug offence at the time of death and family alleges that he was beaten by prison warden during detention with injuries on his body – FMT Reporters ‘Cops urged to probe death of man allegedly beaten in prison’

(Free Malaysia Today, 30 July 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/07/30/cops-urged-to-probe-death-of-man-allegedly-beaten-in-prison/>> accessed 26 November 2019

Assault in Prison

While the issue of negligence or inadequate medical care for detainees is commonly heard when it comes to detention in prison, assault and battery, especially those causing death, are relatively rare for Malaysian prisons. In 2019, however, SUARAM documented two known cases of alleged assault with one resulting in death.

In July 2019 when Wan Ji Wan Hussin was imprisoned under the Sedition Act 1948 pending his appeal to the Court of Appeal, he was allegedly assaulted by a masked prison warden during processing. He publicly revealed the incident and was later met by a representative from the prison department's technical investigation and intelligence division⁵³. After the meeting, the prison department lodged a police report against Wan Ji⁵⁴. The police later investigated Wan Ji for criminal defamation⁵⁵.

Another notable case was the untimely demise of a detainee at Kepayan Central Prison in Sabah. Ten prison wardens were detained and remanded for investigation into the death as the initial report suggested that the deceased had signs of blunt force trauma on the body⁵⁶. The ten prison wardens were later prosecuted for the murder of the detainee at Kota Kinabalu magistrate court⁵⁷. The exact details leading to the death of the detainee was unclear, but the detainee was in prison for a drug offence and was found unconscious before being sent to the Queen Elizabeth Hospital in Kota Kinabalu.

Inquiries over deaths in custody

In 2014, due to the significant increase in the number of deaths in custody, then Minister of Law, Dato Sri Hajah Nancy binti Shukri, announced that the Coroner's court would be placed in each state in Malaysia with the intent to replace the inquest system in order to

53 'Wan Ji jumpa timbalan penguasa penjara' (MalaysiaKini, 16 July 2019) <<https://www.malaysiakini.com/news/484027>> accessed 20 April 2020

54 Nurul Riduan Nor Ashaha 'Wan Ji hairan Penjara Kajang buat laporan polis' (Sinar Harian, 23 July 2019) <<https://www.sinarharian.com.my/article/39336/BERITA/Nasional/Wan-Ji-hairan-Penjara-Kajang-buat-laporan-polis>> accessed 20 April 2020

55 Hariz Mohd 'After claiming assault, Wan Ji being probed for defamation' (MalaysiaKini, 20 July 2019) <<https://www.malaysiakini.com/news/484638>> accessed 20 April 2020

56 Bernama 'Kes kematian banduan, Polis Sabah tunggu laporan lengkap bedah siasat' (AstroAwani, 25 October 2019) <<http://www.astroawani.com/berita-malaysia/kes-kematian-banduan-polis-sabah-tunggu-laporan-lengkap-bedah-siasat-220946>> accessed 20 April 2020

57 Suzianah Jiffar '10 warden penjara dituduh bunuh tahanan' (Harian Metro, 29 October 2019) <<https://www.hmetro.com.my/mutakhir/2019/10/511848/10-warden-penjara-dituduh-bunuh-tahanan>> accessed 20 April 2020

address the issue of custodial deaths⁵⁸. The inquiries over deaths in custody would be conducted by a senior Sessions Court Judge⁵⁹.

Inquiries of death are governed by Chapter XXXII of the Criminal Procedure Code (CPC) and the Practice Direction No. 2/2014⁶⁰ regarding the conduct of death inquiries in line with the Coroner's Court. Inquest proceedings are fact-finding processes carried out when the police officer suspects that the deceased has died in a sudden or unnatural manner, by violence or any other way that was accelerated by any unlawful act or omission by any other person⁶¹.

In brief, the objectives of inquest proceedings are to identify who, when, where, how and the manner the deceased died⁶². The Coroner's court will function as a hearing where the coroner will inquire into the circumstances of the death of the deceased person and deliver the finding and verdict of the enquiry.

The coroner in an inquest must determine the cause of death of the deceased and whether any person is criminally concerned for the death⁶³. In Teoh Beng Hock's case, it was further elaborated that the finding of a person who is criminally concerned does not imply that the person is criminally liable as it cannot be equivalent to reasonable suspicion.

In relation to any death in custody under the police or in a psychiatric hospital or prison, an inquest must be held before a Coroner if the Coroner has sufficient evidence and thinks it is desirable to hold an inquest for further investigation⁶⁴. However, in most cases, an inquest is not always held even though it is required. In practice, the defence counsel may make an application to the High Court to make an order to the coroner's court to hold an inquest.

The Attorney-General or the Public Prosecutor may also direct the magistrate to hold an inquest⁶⁵. In Karuna Nithi's case, the AG called for the court to hold an inquest and the coroner's court subsequently ruled that Karuna was beaten to death by the police and inmates with nine injury marks on his body that were caused by blunt objects.

58 'Coroner's Court toothless without structural reforms, says lawyers group' (The Malay mail Online, 2 April 2014)

<<https://www.malaymail.com/news/malaysia/2014/04/10/coroners-court-toothless-without-structural-reforms-says-lawyer-group/650347>> accessed 24 April 2019

59 It should be noted for the term 'Magistrate' and 'coroner' will be interchangeably used in this report as the Magistrate shall act as a Coroner in Malaysia

60 The Guidelines of Death Inquiries was issued by the Office of the Chief Registrar of the Federal Court of Malaysia

61 Section 330 Criminal Procedure Code

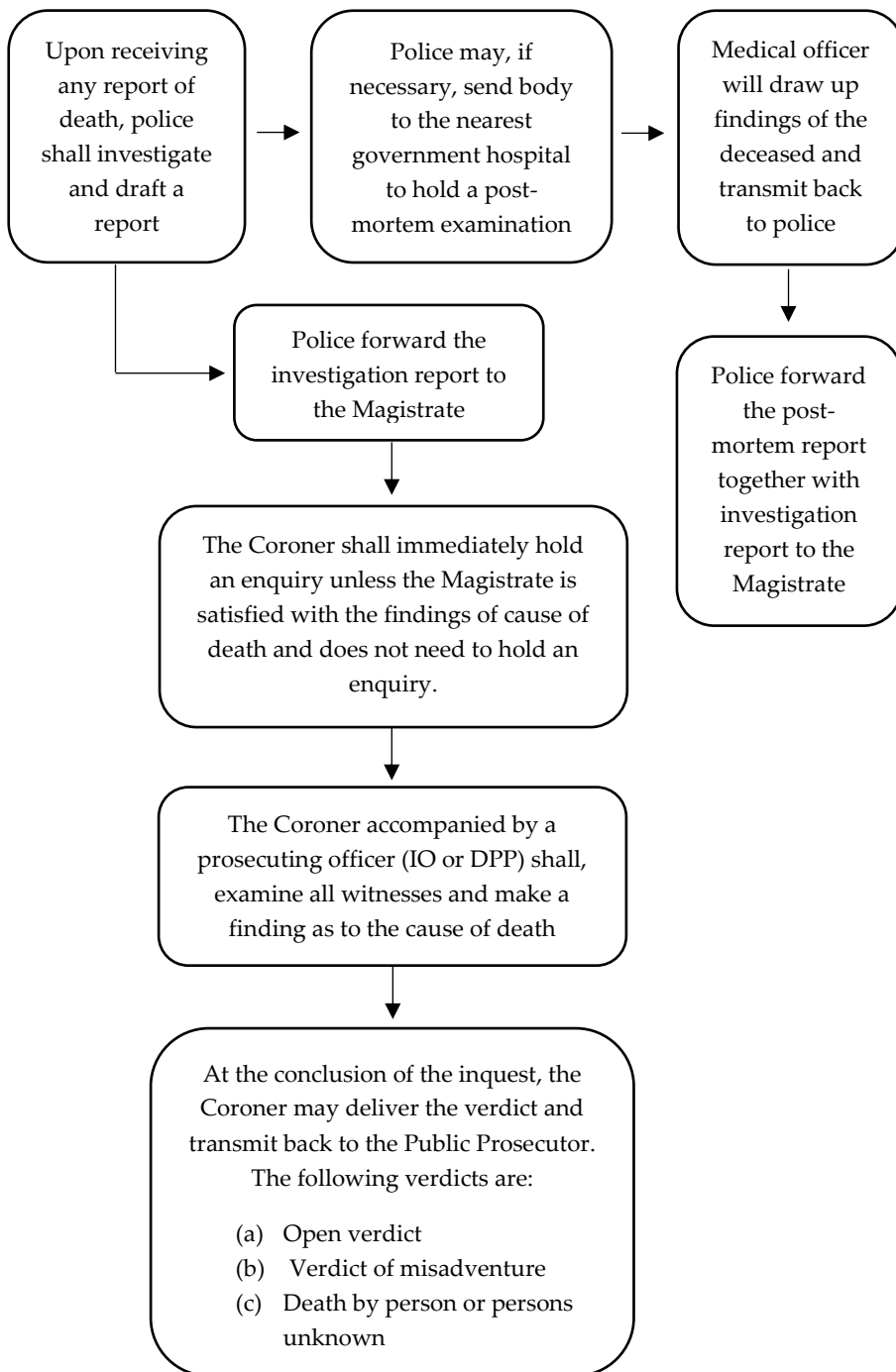
62 Section 328 Criminal Procedure Code

63 Section 337 Criminal Procedure Code

64 Section 337 Criminal Procedure Code

65 Section 339 Criminal Procedure Code

The Process of an Inquiry over Deaths in Malaysia



Upon receiving information on a case of death in custody, the Magistrate may, accompanied by a medical officer, view and examine the body of the deceased. The Magistrate has the power to obtain information and lock-up diaries, make an order for a medical officer to conduct and enquire the reasons for the delay of notifying the Magistrate⁶⁶.

At the conclusion of the inquest, the Coroner may deliver an open verdict, a verdict of misadventure or death by a person or persons unknown. It must be noted that the findings shall not determine civil or criminal liability against a person⁶⁷. If the families of the deceased are unhappy with the findings of the verdict, the families or their legal representative may apply to the High Court for an order of revision to set aside the verdict. It should be noted that the Royal Commission of Inquiry may probe into the matter for further investigation such as in Teoh Beng Hock's case⁶⁸.

An open verdict finding is one where the cause of death is unclear, and the person responsible cannot be accounted for. In the Teoh Beng Hock's case, he was found dead in the building adjacent to the MACC offices when Teoh was being interrogated for an allegation of corruption. It was revealed in the post-mortem examination that he had died from multiple injuries and was alive when he fell to his death. However, the police classified this as sudden death. As a result of this, the public outcry over the miscarriage of justice has led to an inquiry into his death.

In this case, both the magistrate and High Court delivered an open verdict. The Court of Appeal overturned the decision and delivered the verdict of death caused by a person or persons unknown as there was a substantial amount of evidence suggesting an act of homicide. Following the change in government, Inspector-General of Police Tan Sri Dato Sri Mohamad Fuzi Harun announced that the police had received orders to re-open investigations into the death of Teoh Beng Hock⁶⁹.

The decision of an open verdict is not uncommon⁷⁰. In cases where an open verdict is delivered and the family of the deceased suspects there are other causes leading to the death, a second post-mortem is often done to provide further clarity and certainty to the

66 Circular No 086/2014 | Arahan Amalan Bil 2 Tahun 2014 Pengendalian Siasatan Kematian (Death Inquiry) (15 April 2014)
Accessed on 24 April 2019

67 Circular No 086/2014 | Arahan Amalan Bil 2 Tahun 2014 Pengendalian Siasatan Kematian (Death Inquiry) (15 April 2014)
Accessed on 24 April 2019

68 'RCI concludes proceedings to investigate Teoh's Death' (The Star Online, 10 May 2011)
<<https://www.malaymail.com/news/malaysia/2018/03/02/renewed-calls-for-ipcmc-after-failure-to-stop-custodial-deaths/1589319>> Accessed 6 May 2019

69 Mohd Azam Shah Yaacob, 'IGP confirms police have reopened investigations into death of Teoh Beng Hock' (New Straits Times, 19 July 2018) <<https://www.nst.com.my/news/crime-courts/2018/07/392320/igp-confirms-police-have-reopened-investigations-death-teoh-beng>> Accessed 24 April 2019

70 In the case of Karuna Nithi and Gunasegaran, the coroner in the inquest delivered an open verdict

findings. It is emphasized in the practice guidelines that pathologists must be neutral and honest in conducting the post-mortem examinations and in court proceedings⁷¹ to ensure justice is given to the deceased.

A verdict of misadventure simply means death caused by an accident while performing a legal act without negligence or intention to harm. This was determined in Ahmad Sarbaini's coroner court case⁷², where he voluntarily went to MACC's office to retract a statement in which he had allegedly admitted to bribery but was later found dead on the first floor. Despite the coroner's court ruling that it was a misadventure, the Court of Appeal later overruled it as negligence.

Although the inquest proceedings are laid out in the Criminal Procedure Code and the Guidelines on Death Enquiry 2014⁷³, there has been widespread public concern for the lack of transparency and accountability of the post-mortem examination conducted during the enquiry. The common findings in most inquest cases are suicide or natural causes. This unsatisfactory performance has given rise to dissatisfaction and frustrated family members of the deceased and points to an urgent need for the government to set up the Independent Police Complaints and Misconduct Commission (IPCMC) to inquire into cases of death in custody and ensure the police are accountable⁷⁴ for their actions.

Torture and Ill-Treatment in Police Detention

Despite the change of leadership within the Royal Malaysian Police, the issue of torture and ill-treatment of detainees continues.

A notable case in 2019 was that of Ahmad Haikal and Muhammad Pardi⁷⁵ who were both arrested and detained under POCA by the South Klang district police. None of their family members was informed of their arrest, and they only found out through third parties. Both detainees also alleged that they were tortured and forced to confess to the allegations

71 Vinodh Pillai, 'Don't get defensive, just be honest, lawyer tells pathologist' (Free Malaysia Today, 9 September 2018)

<<https://www.freemalaysiatoday.com/category/nation/2018/09/21/dont-get-defensive-just-be-honest-lawyer-tells-pathologists/>> Accessed on 24 April 2019

72 Nicholas Cheng, 'Ahmad Sarbaini's death due to negligence of MACC, Court of Appeal rules' (the Star Online, 20 June 2016) <<https://www.thestar.com.my/news/nation/2016/06/20/ahmad-sarbaini-death-due-to-macc-negligence-court-of-appeal-rules/>> Accessed on 6 May 2019

73 Guidelines from the Judiciary

<<http://library.kehakiman.gov.my/digital/Arahan%20Amalan%20Dan%20Nota%20Amalan/Arahan%20Amalan%20Bil%20%20Tahun%202014.pdf>> accessed 7 May 2019

74 Husna Alias & Meor Riduwan Meor Ahmand, 'Set Up Commission to look into custody deaths, says Ambiga' (New Straits Times 14 September 2018) <<https://www.nst.com.my/news/nation/2018/09/411289/set-commission-look-custody-deaths-says-ambiga>> Accessed on 24 April 2019

75 The victim is also a person with disabilities

against them. They reported that they were strung up and beaten with a rubber hose and also beaten on the soles of their feet. Family members who saw them during the detention period also claimed that they were struggling to walk with one of them suffering a dislocated shoulder from the abuse⁷⁶.

They were later chain remanded at Serdang district police headquarters where the family was informed that they would be released. Unfortunately, they were not released but transferred to detention under POCA. The two were detained under chain remands for more than two weeks before the POCA detention began. The police chief for South Klang was reported to have said that the police would be investigating the allegations of abuse⁷⁷.

In another case of abuse involving Pukalanthee Rajoo and Linggeswaran⁷⁸ at the Kangar district police headquarters, SUARAM exposed the issue of wrongful arrest and abuse which elicited a response by the Police Chief of IPD Kangar, Wari Kiew who lodged a police report against SUARAM's executive director for criminal defamation (Section 500 of the Penal Code) and Section 233 of the Communications and Multimedia Act 1998⁷⁹.

The Inspector-General of Police initially clarified that the investigation was for the police to obtain additional information on the allegation of abuse and wrongful arrest⁸⁰. The police later took a statement from SUARAM's executive director in relation to the police report lodged by the Wari Kiew and the family members for the allegations of abuse at the Petaling Jaya police district headquarters.

Chain Remand

Chain remand occurs when an individual's remand period granted by the Magistrate court has expired, but he or she gets re-arrested by the police for a different or similar offence upon the expiration of the remand order against them. In the past, SUARAM has documented cases where individuals were detained in such a manner for almost three months and then put in various lockups and detention centres in the country by the police.

76 Ashley Tang 'Suaram alleges duo tortured by Klang police' (The Star Online, 24 May 2019)

<<https://www.thestar.com.my/news/nation/2019/05/24/suaram-alleges-two-men-tortured-by-klang-police>> accessed 27 November 2019

77 Alyaa Alhadjri 'Klang Selatan top cop pledges to investigate 'torture' claims by Poca duo' (Malaysia Kini, 25 May 2019)

<<https://www.malaysiakini.com/news/477365>> accessed 27 November 2019

78 Faisal Asyraf 'Ketua polis Kangar fail laporan terhadap pengarah eksekutif SUARAM' (Malaysia Kini, 12 October 2019)

<<https://www.malaysiakini.com/news/495526>> accessed 27 November 2019

79 Faisal Asyraf 'Kangar police chief files report against Suaram executive director' (Malaysia Kini, 12 October 2019)

<<https://www.malaysiakini.com/news/495523>> accessed 26 November 2019

80 M Fakhru Halim 'IGP on SUARAM's police intimidation claim: we just wanted to question them' (Malaysia Kini, 30 May 2019) <<https://www.malaysiakini.com/news/478050>> accessed 27 November 2019

The practice of chain remand and the abuse of the remand process under the Criminal Procedure Code is a common occurrence, and SUARAM often receives complaints of this practice by the respective state Legal Aid Centres and Yayasan Bantuan Guaman Kebangsaan (YBGK).

The practice of chain remand utilizing security law remained common in 2019. In January 2019, SUARAM was approached by three immigration officers detained to facilitate investigation into human trafficking syndicate who alleged that they were tortured and abused during interrogation. The three were initially detained under SOSMA and were later held under POCA⁸¹.

Another example was the case of Krishnan Suppiah, who was remanded for three weeks through six remand applications before he was detained under POCA. He was first arrested on 2 September 2019 for alleged lorry theft under Section 379 of the Penal Code⁸².

Police Shootings

Police shootings were on an upward trajectory but seemed to have dropped somewhat in 2019. There were no announced changes to the existing operating procedures relating to the discharge of firearms; neither was there any public release related to operating procedures. The last known guideline on the use of firearms by enforcement agencies was released by the Attorney General in July 2017 and continues to be in force⁸³.

During the launch of the guideline, the Attorney General at the time outlined that a warning must be given prior to any discharge of firearms at a person and that the firearm should only be used in life-threatening situations. While the guideline aims to streamline and standardize the use of firearms, instances of police shootings in subsequent years continue to cast doubt on the effectiveness of the guideline.

As the guideline in totality remains opaque, it is difficult to ascertain whether there is any distinction made with regards to the use of a firearm to disable a person versus its use for pure self-defence. There is also a lack of any information on whether disciplinary action

81 Tarrence Tan 'Suaram: Three immigration officers assaulted during interrogation' (The Star Online, 29 January 2019)

<<https://www.thestar.com.my/news/nation/2019/01/29/suaram-three-immigration-officers-assaulted-during-interrogation/>> accessed 20 November 2019

82 Ainaa Aiman 'Chain Remand' an abuse of law, Suaram complains to Suhakam' (Free Malaysia Today, 25 September 2019)

<<https://www.freemalaysiatoday.com/category/nation/2019/09/25/chain-remand-an-abuse-of-law-suaram-complains-to-suhakam/>> accessed 26 November 2019

83 'AG: Penguatkuasa boleh guna senjata api jika nyawa terancam' (MalaysiaKini, 21 July 2017)

<<https://www.malaysiakini.com/news/389376>> accessed 6 April 2020

would be taken against any violation of the guidelines nor whether an independent inquiry or investigation will take place in cases where firearms are used.

An example was the case of a police shooting that occurred in September 2019. On 14 September 2019, the case of G. Thavasvelan, S. Mahendran and J. Vijayaratnam went public after a family alleged foul play. The police account of the incident claimed that the deceased refused to stop when police attempted to pull them over and they engaged in a shootout with the police patrol. Two of the deceased were alleged by police to be members of the 08 triads but there were no entry records for the Sri Lankan who was also shot dead⁸⁴.

The family disputed the police account of the incident and claimed that the wife of J. Vijayaratnam was with the group and she went missing after the incident. The family members also dismissed the allegation that there were no entry records for Vijayaratnam and showed the media the luggage tag and air tickets of his flight into Malaysia⁸⁵. The car that was involved in the alleged car chase was also disputed by the family as they said that the group had left home in a white Perodua Alza while the car chase involved a red Volkswagen⁸⁶.

Moganambal Govindasamy remains unaccounted for after the police shootings⁸⁷. Police continue to deny that they were aware of any woman in the car and that no woman was arrested during the incident⁸⁸. In such a case, as police narrative claims occupants of the car had allegedly shot at the police officers in pursuit, there have been no further inquiries into the use of the firearms as far as the public is aware.

An inquest into the police shooting incident was scheduled to begin on 13 December 2019 at Shah Alam's coroner court⁸⁹. However, this was later postponed to 21 January 2020

84 'Cops: Two individuals killed in Rawang shooting incident were 08 triad members' (Malay Mail, 19 September 2019) <<https://www.malaymail.com/news/malaysia/2019/09/19/cops-two-individuals-killed-in-rawang-shooting-incident-were-08-triad-membe/1791957>> accessed 26 November 2019

85 Kalidevi Mogan Kumarappa 'Who was shot entered Malaysia last month' (The Malaysian Insight, 20 September 2019) <<https://www.themalaysianinsight.com/s/184768>> accessed 26 November 2019

86 Austin Camoens 'Family of foreign man killed in Rawang shootout demands answers' (The Star Online, 17 September 2019) <<https://www.thestar.com.my/news/nation/2019/09/17/family-of-foreign-man-killed-in-rawang-shootout-demand-answers>> accessed 26 November 2019

87 Sean Augustin 'Still no sign of missing woman in Batu Arang shooting, say cops' (Free Malaysia Today, 9 October 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/10/09/still-no-sign-of-missing-woman-in-batu-arang-shooting-say-cops/>> accessed 6 April 2020

88 Nicholas Chung 'Family of man killed in shootout wants cops to reveal wife's whereabouts' (Free Malaysia Today, 16 September 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/09/16/family-of-man-killed-in-shootout-wants-cops-to-reveal-wifes-whereabouts/>> accessed 26 November 2019

89 Bernama 'Inquest into Batu Arang shooting of 3 men by cops begins on Dec 13' (Free Malaysia Today, 28 November 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/11/28/inquest-into-batu-arang-shooting-of-3-men-by-cops-begins-on-dec-13/>> accessed 6 April 2020

when the family refused to attend the inquest, with the representing lawyer calling the inquest a sham⁹⁰.

In October 2019, the Inspector General of Police, Abdul Hamid Bador further clarified that the police force had made a decision to authorise police officers on duty to 'shoot to kill' if threatened by poachers. While the immediate threat to life and potentially others could certainly justify the legitimate use of firearms for police self-protection, the explicit remark of the IGP's that police officers are authorized to 'shoot to kill' raise concerns of police excess and chances of abuse⁹¹.

Police Shootings from SUARAM Monitoring, 2019

Date	Names	State	No ⁹²	Injured	Death	Monthly
13-Jan	Unnamed, 30s	Sabah	1	0	1	3
14-Jan	"Mages @ Black", 28	Kedah	1	0	1	
28-Jan	Unnamed, 30s	Kuala Lumpur	1	0	1	
31-Jan	Unnamed, 30s	Selangor	1	0	0	
20-Mar	Unnamed, 20s	Penang	1	0	1	1
16-May	Unnamed	Sarawak	3+	2	0	0
19-Jun	Benjamin Sagakkan Nyalipan, 48	Sarawak	1	0	1	1
20-Jun	Mohd Alif Anuar, 21	Kedah	1	1	0	
04-Aug	Unnamed, 33	Kuala Lumpur	Multiple	0	0	7
23-Aug	Unnamed	Kuala Lumpur	3	1	0	
26-Aug	Unnamed, 20s-30s	Penang	3	0	3	
27-Aug	Unnamed, 20s-30s	Penang	3	0	3	

90 'Family of Batu Arang shootout victims boycott inquest' (MalaysiaKini, 20 December 2019)

<<https://www.malaysiakini.com/news/504324>> accessed 6 April 2020

91 Adam Abu Bakar 'Cops can shoot to kill if threatened by poachers, says IGP' (Free Malaysia Today, 30 October 2019)

<<https://www.freemalaysiatoday.com/category/nation/2019/10/30/cops-can-shoot-to-kill-if-threatened-by-poachers-says-igp/>> accessed 6 April 2020

92 Number of people involved in shootout/shooting

31-Aug	Mohd Rahmat, 28	Sabah	1	0	1	
03-Sep	Unnamed	Sabah	2+	0	2	2
14-Sep	Unnamed	Selangor	3	0	3	12
14-Sep	G.Thavaselvan, 31 S. Mahendran, 23 J. Vijayaratnam, 40	Selangor	3	0	3	
23-Sep	Unnamed, 29-45	Selangor	4	0	4	
23-Sep	Unnamed, 25	Penang	1	0	1	
24-Sep	Mohd Zafarul Nizam Hamzah, 37	Selangor	1	0	1	
24-Dec	Unnamed	Johor	2	0	2	2
Total number of deaths attributable to the police shootings						26

Enforced Disappearance

SUHAKAM's inquiry into the disappearance of Amri Che Mat and Raymond Koh reached its conclusion in April 2019 with findings⁹³ that the two individuals were victims of enforced disappearance. The findings also point to the Special Branch of Bukit Aman as the perpetrators of the abduction and disappearance of the two⁹⁴.

After the release of the finding, the now-retired Inspector-General of Police Fuzi Harun refused to accept SUHAKAM's findings and claimed that SUHAKAM's findings were intended to punish the police⁹⁵. Fuzi Harun also claimed that the police had given their full cooperation during the inquiry⁹⁶. The claim by Fuzi Harun is questionable since the police had initially stalled the inquiry when they claimed that an individual had been

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

94 Esther Landau 'Suhakam inquiry concludes police behind disappearance of Amri, Pastor Koh' (New Straits Times, 3 April 2019) <<https://www.nst.com.my/news/nation/2019/04/475685/suhakam-inquiry-concludes-police-behind-disappearance-amri-pastor-koh>> accessed 20 November 2019

95 Bernama 'IGP: Police to give full cooperation in probe on disappearance of Koh, Amri' (New Straits Times, 6 April 2019) <<https://www.nst.com.my/news/nation/2019/04/476849/igp-police-give-full-cooperation-probe-disappearance-koh-amri>> accessed 20 November 2019

96 G Prakash 'IGP denies Suhakam's claim cops uncooperative in inquiry into missing pastor, activists' (Malay Mail Online, 10 April 2019) <<https://www.malaymail.com/news/malaysia/2019/04/10/igp-denies-suhakams-claim-cops-uncooperative-in-inquiry-into-missing-pastor/1741810>> accessed 20 November 2019

prosecuted in relation to the disappearance⁹⁷. The individual in question was initially prosecuted for extortion in March 2017 before the charges against him were changed to that of kidnapping⁹⁸. It should also be noted that the police initially claimed that the person was not involved after a preliminary investigation⁹⁹.

It should also be recorded that throughout the inquiry, the police had on occasion showed contempt for the proceedings; an example would be the incident when the police observers threatened lawyers representing the family members of the victims with Section 192 of the Penal Code for fabricating evidence due to photos produced as part of the inquiry¹⁰⁰.

Apart from Fuzi Harun, the former Inspector-General of Police of Khalid Abu Bakar who was serving as IGP when the disappearance took place claimed that SUHAKAM's findings were nothing more than circumstantial evidence and hearsay¹⁰¹.



Khalid Abu Bakar
@KBAB51

Follow



In Pastor Koh and Amri's issue SUHAKAM's decisions/ accusations on @PDRMsia was based on circumstances. My testimony during the Enquiry stands.

5:23 PM - 3 Apr 2019

97 Alyaa Alhadjri 'Suhakam suspends inquiry into pastor Koh's case after man charged' (MalaysiaKini, 16 January 2018) <<https://www.malaysiakini.com/news/408832>> accessed 20 November 2019

98 Dawn Chan 'remand extended for suspect in Pastor Raymond Koh's abduction' (New Straits Times, 12 March 2017) <<https://www.nst.com.my/news/2017/03/219995/remand-extended-suspect-pastor-raymond-kohs-abduction>> accessed 20 November 2019

99 Nadirah H. Rodzi 'Man charged with kidnap of missing Malaysian pastor in surprising turn of events' (The Straits Times, 16 January 2018) <<https://www.straitstimes.com/asia/se-asia/man-charged-with-kidnap-of-missing-malaysian-pastor-in-surprising-turn-of-events>> accessed 20 November 2019

100 Fatimah Zainal 'Police observers object to photo in SUHAKAM inquiry into disappearances' (The Star Online, 15 November 2017) <<https://www.thestar.com.my/news/nation/2017/11/15/police-observers-object-to-photo-in-suhakam-inquiry-into-disappearances>> accessed 20 November 2019

101 Teoh Pei Ying 'Ex-IGP Suhakam's report hearsay' (New Straits Times, 5 April 2019) <<https://www.nst.com.my/news/crime-courts/2019/04/476338/ex-igp-suhakams-report-hearsay>> accessed 20 November 2019

Disappointingly, Prime Minister Mahathir Mohamad took a similar stance as Khalid Abu Bakar and said SUHAKAM's findings were "based on hearsay."¹⁰² A task force was later established by the Minister of Home Affairs to reinvestigate the disappearance. The task force was criticised when it was first announced as the task force members included serving police officers and other individuals with questionable conflict of interest¹⁰³. Apart from the composition of the task force members, the terms of reference for the task force were oriented towards investigating SUHAKAM's report as opposed to the disappearance¹⁰⁴ and would only be in operation for 6 months¹⁰⁵ starting 1st July 2019¹⁰⁶.

To this day, no information has been made available by the task force and no further action has been taken by the Royal Malaysian Police. There has also been no progress in finding the police personnel identified with the disappearance, namely, Saiful Buhari¹⁰⁷.

The wife of Amri Che Mat filed a civil suit against the government in November 2019 for failure to investigate the disappearance of Amri Che Mat and government negligence¹⁰⁸.

The spokesperson for the Citizen against Enforced Disappearance (CAGED) group, Rama Ramanathan was also called for an investigation after an article on the 'write2rest' blog. He was investigated under Section 504 of the Penal Code for intentional insult and Section 233 of Communication and Multimedia Act 1998¹⁰⁹. After cooperating with the police

102 Robin Augustin 'Hearsay, says Dr M on Suhakam's claim of 'enforced disappearances'' (Free Malaysia Today, 3 April 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/04/03/hearsay-says-dr-m-on-suhakam-ruling-on-enforced-disappearances/>> accessed 20 November 2019

103 Austin Camoens 'Task force on pastor Koh, Amri to include additional members' (The Star Online, 7 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/07/task-force-investigating-disappearance-of-pastor-koh-amri-to-include-additional-member/>> accessed 20 November 2019

104 Bernama 'Task force to study SUHAKAM report on disappearance of Pastor Koh, activist Amri' (Bernama, 23 May 2019) <<http://www.bernama.com/en/news.php?id=1729174>> accessed 20 November 2019

105 Anabelle Lee 'Task force to begin with Amri, given 6 months' (MalaysiaKini, 20 June 2019) <<https://www.malaysiakini.com/news/480459>> accessed 20 November 2019

106 Oral Answer in Parliament, Question 31, 12 November 2019 <<https://www.parlimen.gov.my/files/jindex/pdf/JDR12112019.pdf>>

107 Bernama 'Cops seek Saiful Buhari's help over missing activists Amri's case' (New Straits Times, 29 August 2019) <<https://www.nst.com.my/news/crime-courts/2019/08/517103/cops-seek-saiful-baharis-help-over-missing-activist-amris-case>> accessed 20 November 2019

108 Julia Chan 'Wife sues gov't, police over her activist husband's enforced disappearance' (Malay Mail Online, 18 November 2019) <<https://www.malaymail.com/news/malaysia/2019/11/18/wife-sues-govt-police-over-her-activist-husbands-enforced-disappearance/1810993>> accessed 20 November 2019

109 FMT Reporters 'Activists summoned over 'abduction' attempts claim on Sabah dissident' (Free Malaysia Today, 6 November 2018) <<https://www.freemalaysiatoday.com/category/nation/2019/11/06/activist-summoned-over-abduction-attempt-claims-on-sabah-dissident/>> accessed 26 November 2019

investigation against him, his house was raided by the police, who confiscated his mobile phone and laptop.

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FREEDOM
OF
EXPRESSION

FREEDOM OF EXPRESSION

The greater freedom experienced following the 14th General Election evaporated as we progressed through 2019. The temporary respite from the moratorium against the Sedition Act 1948 and Section 233 of the Communication and Multimedia Act 1998 was short-lived as there was a renewed vigour in investigations, arrests and prosecutions throughout 2019. The Anti-Fake News Act 2018 (AFNA) was finally repealed after a change to the composition of the Senate¹¹⁰.

The restrictions imposed on the freedom of expression further gained traction following the Seafeld fracas in 2018 and continued to be in operation with increased use to address issues relating to race, religion and the monarchy. Even after the Seafeld fracas, the restriction on freedom of expression continued to be the norm.

The Malaysian Communication and Multimedia Commission (MCMC) which spearheaded many of the investigations and prosecutions against individuals who had criticized the government prior to GE14 also took an active role in establishing a ‘helpline’ to receive complaints on insensitive posts or contents “that could disrupt national peace and unity”¹¹¹.

Since the helpline was launched, MCMC had received more than 20,000 complaints within the first six weeks of operation with actions taken against 259 complaints received; 80% of the contents reported contained elements of racism while the others related to issues of religion. The controversial ‘sebenarnya.my’ website also continued to function as an official fact-checker website¹¹².

According to questions raised in Parliament, between May 2018 to 15 September 2019, 32 cases of ‘insulting the royal institution’ were investigated, with four cases¹¹³ prosecuted¹¹⁴

110 Lamont Mark Smith ‘Malaysia passes law to scrap anti-fake news act – after debate which saw bickering and ‘sexist’ remark made’ (Business Insider Malaysia, 10 October 2019) <<https://www.businessinsider.my/malaysia-passes-law-to-scrap-anti-fake-news-act-after-debate-which-saw-bickering-and-sexist-remark-made/>> accessed 20 November 2019

111 Kalbana Perimbanayagam ‘MCMC opens channel for offensive ‘race, religion and royalty’ content’ (New Straits Times, 17 August 2019) <<https://www.nst.com.my/news/nation/2019/08/513634/mcmc-opens-channel-offensive-race-religion-and-royalty-content>> accessed 20 November 2019

112 Oral Answer in Parliament – Question 10, 14 November 2019
<<https://www.parlimen.gov.my/files/jindex/pdf/JDR14112019.pdf>>

113 Two individuals are prosecuted under Section 4(1) of the Sedition Act 1948 and Section 233 of CMA whereas the other two individuals were on prosecuted under Section4(1) of the Sedition Act 1948, Question 36, 15 October 2019
<<https://www.parlimen.gov.my/files/jindex/pdf/JDR15102019.pdf>>

114 Break down of ethnicity is found in a separate oral answer in parliament
<<https://www.parlimen.gov.my/files/jindex/pdf/JDR21102019.pdf>>

while one pleaded guilty and was sentenced to one-year imprisonment. Eighteen other cases were classified under 'no further action' by the public prosecutor, and the remaining 10 cases were still under investigation at end 2019.¹¹⁵ In the same time period, the Ministry reported that there were 30 cases related to race with two cases prosecuted¹¹⁶, 10 'no further actions' and 18 still under investigation¹¹⁷. As for cases related to religion, 34 cases were investigated during the same time period.

In August 2019, several incidences of upside-down 'Jalur Gemilang' sparked anger from selected quarters with some political leaders suggesting the act to be treasonous or at the very least, disrespectful to the nation¹¹⁸. Several individuals were also reported to have been arrested for displaying the national flag in a disrespectful manner¹¹⁹. To a question in Parliament requesting to know the government response to individuals who insulted the national flag, the Ministry of Home Affairs said that there was a total of 69 reports lodged against such incidences with 9 investigation papers referred to the Attorney General's Chambers.

The Deputy Minister of Home Affairs raised concerns on privacy when his oral answer in Parliament claimed that the police have the power to access a person's mobile phone under Section 233 of the Communication and Multimedia Act 1998 (CMA) when investigating an offence. The Parliamentary reply also claimed that the access to a mobile phone could also be done through Section 103, 104 and 106 of the Criminal Procedure Code¹²⁰. The Deputy Minister later claimed that he was misquoted and that the power to check a person's mobile phone is only available if the police have had preliminary information or are acting on a police report that the person in question may have breached CMA¹²¹.

115 Oral Answer in Parliament – Question 34, 21 October 2019

<<https://www.parlimen.gov.my/files/jindex/pdf/JDR21102019.pdf>>

116 One investigated under Section 504 of Penal Code and CMA whereas the other was investigated under Section 4(1) of the Sedition Act 1948 - Question 36, 15 October 2019 <<https://www.parlimen.gov.my/files/jindex/pdf/JDR15102019.pdf>>

117 Oral Answer in Parliament – Question 20, 24 October 2019

<<https://www.parlimen.gov.my/files/jindex/pdf/JDR24102019.pdf>>

118 Astro Awani 'Pasang bendera terbalik pengkhianatan terbuka kepada negara – Rizam' (Astro Awani, 20 August 2019)

<<http://www.astroawani.com/berita-malaysia/pasang-bendera-terbalik-pengkhianatan-terbuka-kepada-negara-rizam-215413>> accessed 8 April 2020

119 Hamzah Osman 'Dua ditahan pasang bendera terbalik' (Metro, 31 August 2019)

<<https://www.hmetro.com.my/mutakhir/2019/08/491868/dua-ditahan-pasang-bendera-terbalik>> accessed 8 April 2020

120 Oral Answer in Parliament – Question 1, 18 November 2019

<<https://www.parlimen.gov.my/files/jindex/pdf/JDR14112019.pdf>>

121 Robin Augustin 'Media reports on mobile phone checks misleading, says deputy minister' (Free Malaysia Today, 19 November 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/11/19/media-reports-on-mobile-phone-checks-misleading-says-deputy-minister/>> accessed 20 November 2019

The Pakatan Harapan administration also mooted the idea of introducing new provisions on hate speech. Minister Muzahid Yusof Rawa suggested the inclusion of new provisions on hate speech into the Sedition Act 1948 as a mean to address this concern. He also recommended the establishment of a National Harmony and Reconciliation Commission to work in tandem with the additions to the Sedition Act 1948¹²².

The Sedition Act 1948

The abolition of the Sedition Act 1948 continued to be deferred on the ground that there were no adequate provisions to address offences that affect race, religion and the monarchy. The Ministry of Home Affairs cited concerns that there would be security implications if the Sedition Act 1948 were to be repealed¹²³.

Despite the assurances that the Sedition Act 1948 would not be further used for political purposes, there were still cases of individuals who were arrested or investigated for political commentaries made such as those in the forum supporting the introduction of Rome Statute where the Attorney General, Tommy Thomas¹²⁴ was one of the panellists. Similarly, the sectional backlash against the Women's March was followed by organizers of the march being called for investigation under the Sedition Act 1948.

Khalid Mohd Ismath was arrested yet again in 2019 under the Sedition Act 1948 after allegations that he had tweeted an offensive post against the Raja Permaisuri Agong. Curiously, there was no indication that he had made any tweets regarding the Queen; neither did the police specify the tweet he was investigated for¹²⁵. Fortunately, his remand application was retracted by the police after intervention by the Queen¹²⁶.

The use of the Sedition Act 1948 in the context of protecting the royal institution is highly problematic as it is essentially utilized as a form of lese majeste with no clear scope for its application. As noted in Khalid Ismath's case, a police report with no substantive evidence

122 'Muzahid says special law needed to curb hate speech' (MalaysiaKini, 26 August 2019)

<<https://www.malaysiakini.com/news/489453>> accessed 9 April 2020

123 Oral Answer in Parliament – Question 21, 12 November 2019

<<https://www.parlimen.gov.my/files/jindex/pdf/JDR12112019.pdf>>

124 Jerry Choong 'IGP says UM forum on Rome Statute with AG under sedition probe' (Malay Mail Online, 29 April 2019)

<<https://www.malaymail.com/news/malaysia/2019/04/29/igp-says-um-forum-on-rome-statute-with-ag-under-sedition-probe/1747974>> accessed 22 November 2019

125 Yiswaree Palansamy 'PSM activist Khalid Ismath arrested over alleged tweet to Queen' (Malay Mail Online, 14

September 2019) <<https://www.malaymail.com/news/malaysia/2019/09/14/psm-activist-khalid-ismath-arrested-over-alleged-tweet-to-queen/1790357>> accessed 22 November 2019

126 Muhammad Hafis Nawawi 'Khalid Ismath bakal bebas, jaminan polis' (Harian Metro, 14 September 2019)

<<https://www.hmetro.com.my/mutakhir/2019/09/496524/khalid-ismath-bakal-bebas-jaminan-polis>> accessed 22 November 2019

supporting any of the allegations could result in the arrest and detention of an individual without any form of preliminary investigations. It suggests that a individual with malicious intent could abuse the system as a form of harassment¹²⁷.

After his release, no further action was taken against Khalid Ismath which raises the further question as to the legitimacy of the police report lodged against him in the first place, and the internal processes of the Royal Malaysian Police in addressing such reports.

It should also be noted that blind adherence to the Sedition Act 1948 apparently to protect the royal institution can be problematic to say the least. As observed in SUARAM's report in 2016, a large number of individuals were arrested, detained and prosecuted for allegedly insulting a member of the royal family when they were merely involved in jeering and bickering online over football. The subsequent arrest, detention and imprisonment for jeering and insulting a football team and its owner who so happened to be a member of the royal family¹²⁸ was certainly disproportionate.

As for other outstanding cases of prosecution from the Barisan Nasional era, these were largely withdrawn except for a few notable cases. Wan Ji Wan Husin who was convicted and sentenced to 9 months imprisonment under the Sedition Act 1948 in April 2018 had his sentence increased by the High Court of Shah Alam on 10 July 2019. The court rejected the oral application made by his counsel for a stay of execution pending further appeal, and he was sent to Kajang prison pending a formal application for stay of execution. He was released after spending 3 days in prison¹²⁹.

Curiously, the Attorney General claimed that he was not aware of the case even though SUARAM had previously written to the Attorney General's office on all outstanding political prosecutions under the Sedition Act 1948 to advocate for the withdrawal of all cases¹³⁰.

127 A harassment technique by causing law enforcement response against target victim under false pretenses

128 Mohamad Fahd Rahmat 'Dijel setahun hina TMJ, Sultan Johor' (Harian Metro, 7 Jun 2016)

<<https://www.hmetro.com.my/node/143302>> accessed 9 April 2020

129 'Preacher Wan Ji gets stay of jail sentence' (The Star Online, 12 July 2019)

<<https://www.thestar.com.my/news/nation/2019/07/12/preacher-wan-ji-gets-stay-of-jail-sentence>> 22 November 2019

130 'I was not aware of Wan Ji's sedition case until High Court's decision to uphold sentence, says AG' (The Star Online, 12 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/12/i-was-not-aware-of-wan-ji-s-sedition-case-until-high-court-s-decision-to-uphold-sentence-says-ag>> accessed 22 November 2019

List of Individuals Investigated under the Sedition Act 1948 in 2019

	Name	Alleged Offence ¹³¹	Date of Arrest or Investigation
1	3 unnamed individuals	Allegedly posting comments on social media deemed insulting to Sultan Muhammad V	8 January
2	Lokman Noor Adam	Remarking that PH govt tried to protect those who killed firefighter Muhammad Adib	11 January
3	Eric Liew Chee Ling	Insulting Sultan Muhammad V on Facebook	11 February ¹³²
4	Michael Cheah	Insulting the Yang di-Pertuan Agong	2 February
5	Nazri Aziz	Alleged racial campaign speech in Semenyih	26 February
6	Lim Guan Eng	A statement describing PAS-Umno alliance as a "declaration of war against non-Muslims."	12 March
7	Unnamed individuals	Organising Women's March - mischaracterised as "illegal LGBT assembly"	14 March
8	Unnamed 18-year old	Posting Facebook statuses deemed insulting to Islam & Prophet Muhammad	19 April
9	Zamri Vinoth	Making statements deemed insulting to Hinduism during a religious lecture	28 April
10	Syed Husin Ali & Other panellists ¹³³	Allegedly seditious statements said to "incite hatred against the Malay royal institution" made during the forum	29 April
11	Khalid Ismath	Alleged sedition over tweet aimed at the Raja Permaisuri Agong	14 September
12	Three men	Racially charged comments on Facebook in relation to an incident in Penang	28 September

Communication and Multimedia Act 1998

Similar to the Sedition Act 1948, Section 233 of the Communication and Multimedia Act 1998 continues to be used regularly under the Pakatan Harapan administration. In

¹³¹ Shaded cells marks cases where individuals were arrested or remanded for investigation under the Sedition Act 1948

¹³² Charged for Sedition and Section 233 of CMA

¹³³ Jerry Choong 'IGP says UM forum on Rome Statute with AG under sedition probe' (Malay Mail Online, 29 April 2019)

<<https://www.malaymail.com/news/malaysia/2019/04/29/igp-says-um-forum-on-rome-statute-with-ag-under-sedition-probe/1747974>> accessed 22 November 2019

addition to the broad restriction imposed against free speech in the past, the cases that emerged throughout 2019 seemed to suggest that Section 233 was being utilized as a catch-all for all forms of alleged offences that are committed on the internet. This has reinforced the concern that Section 233 is too broad in its remit and thus prone to abuse.

Fahmi Reza, who was previously convicted of an offence under Section 233, also had his conviction maintained after his final appeal to the Court of Appeal. Fortunately, the reduced sentence by the High Court was maintained, and he was only required to pay a fine of RM10,000 as opposed to imprisonment and RM30,000 fine as sentenced by the Session Court¹³⁴. Similar to Wan Ji's case, SUARAM had also written to the Attorney General for a withdrawal of the appeal by the prosecution to no avail.

As noted in the start of this chapter, Parliament reported that there were 96 investigations in relation to insulting the royal institution and hate speech¹³⁵ under the Sedition Act 1948 and Section 233 of the Communication and Multimedia Act 1998. Specific questions directed on the Act, however, revealed a different picture with 153 investigations between October 2018 to September 2019.

The 153 cases reported in Parliament were far higher than the two cases documented in October 2018¹³⁶, and the 28 cases reported up to September 2019. Curiously, the same reply in Parliament suggested that of the 153 investigations, no cases were prosecuted or compounded. In fact, cases documented by SUARAM reports noted that there were indeed prosecutions under Section 233 during the period¹³⁷.

The inconsistency here suggests two possibilities. Either the information provided in Parliament was inaccurate or false, or the cited case involved the royal institution, race or religion and were accounted for separately in the 96 cases. If that was true, it would suggest that 2019 itself had been a remarkable year for restrictions under the Sedition Act 1948 and Section 233 of the Communication and Multimedia Act 1998 as it clearly surpassed the preceding years.

A matter of concern was the formalization of a collaboration between the Malaysian Communication and Multimedia Commission (MCMC) and the Royal Malaysian Police to address cybercrime, especially when it involves the royal institution, race and religion. The first point of concern is the equation of insults and criticism made online to be a form

134 Bernama 'Fahmi Reza fails to strike out conviction for publishing Najib caricature' (The Star Online, 5 July 2019)

<<https://www.thestar.com.my/news/nation/2019/07/05/fahmi-reza-fails-to-strike-out-conviction-for-publishing-najib-caricature>> accessed 22 November 2019

135 More specifically, messages identified as hate speech based on race and religion by enforcement agency

136 No known cases were documented in November and December 2018 by SUARAM.

137 'Kes hina nabi: Danny Antoni tukar pengakuan' (Berita Harian Online, 17 July 2019)

<<https://www.bharian.com.my/berita/kes/2019/07/586049/kes-hina-nabi-danny-antoni-tukar-pengakuan>> accessed 8 April 2020

of cybercrime by both institutions, and the second point of concern is the thinking and strategy of the government in addressing such cases.

As part of the collaboration, MCMC and the Royal Malaysian Police conducted 14 raids in seven states, with the arrest of 14 individuals between the age of 23 to 61. The identity of the 14 individuals detained is unclear¹³⁸.

List of Individuals Investigated under Section 233 of Communication and Multimedia Act 1998

	Name	Allegations and Offence	Status
1	Unnamed PAS member	Allegedly criticising four DAP lawmakers in a Facebook post [507 Penal Code(PC)]	Arrested in Sibul, Sabah on 3 January
2	Unnamed 43-year old	Allegedly uploading racist statements and religious insults on Facebook via a false account [505(c) PC]	Arrested on 9 February
3	Eric Liew Chee Ling	Allegedly insulting Sultan Muhammad V on Facebook [4(1) Sedition Act]	Charged on 11 February
4	Chan Quin Er	Commenting on leaked circular by Solicitor General III [298A(1)(a) PC]	Investigated on 14 February
5	Wai Foo Sing	Allegedly insulting Prophet Muhammad & his wife Saidatina Aishah on Facebook [298A(1)(a) PC]	Prosecuted on 27 February
6	Mohd Sharulnizam Stanley Sigan	Allegedly uploading and making offensive comments on Prophet Muhammad	Prosecuted on 8 March
7	Alister Cogia	Insulting Islam and Prophet Muhammad [Section 505(c) PC]	Sentenced to 10 years and 10 months imprisonment
8	Mohamad Yazid Kong Abdullah	Insulting Islam and Prophet Muhammad [Section 505(c) PC]	Pleaded guilty with an unknown sentence
9	Chow Mun Fai	Allegedly insulting Islam and Prophet Muhammad [505(c) PC]	Pending trial
10	Danny Antoni	Allegedly insulting Islam and Prophet Muhammad [505(c) PC]	Pending trial
11	Zamri Abdul Razak	Allegedly posting remarks deemed offensive to Hindus on Facebook page [298A PC]	Arrested 11 March
12	Jufazli Shi Ahmad	Allegedly insulting Mahathir [504 PC]	Arrested on 16 March

138 Question 21, 14 October 2019 - <<https://www.parlimen.gov.my/files/jindex/pdf/JDR14102019.pdf>> accessed 8 April

13	Razlan Rafii	Allegedly made posting asking DAP members to be shot [505(c) PC]	Investigated on 20 March
14	Tumik Aik	Allegedly insulting WARISAN & Sabah Chief Minister on Facebook	Individual reportedly identified on 5 April
15	3 unnamed individuals	Allegedly sending offensive and pornographic materials via social media	Investigated on 31 March
16	T.R. Thurkai Devi	Insulting the Yang di-pertuan Agong	Charged on 22 March
16	Shahril Mohd Sharif	Insulting the Yang di-Pertuan Agong	Sentenced 2 months imprisonment
17	Zamri Vinoth	Allegedly insulting Hinduism	Arrested on 28 April
18	Unnamed 34-year-old	Allegedly insulting religion [298A PC]	Arrested 28 April
19	2 unnamed individuals	Allegedly offensive posting on Prophet Muhammad and his wife	Arrested on 30 April
20	Unnamed	Allegedly making false allegation against royalty and leaders on Facebook and Blog	Investigated on 3 May
21	Unnamed 36-year old	Allegedly threatening to beat up Mufti of Perlis [506 PC]	Arrested on 3 May
22	Sri Shankar Ganesh	Alleged criminal intimidation against Zamri Vinoth [502 and 506 PC]	Arrested on 3 May
23	Unnamed 55-year old PAS member	Alleged dissemination of misinformation on social media [500 PC]	Arrested on 7 May
24	Unnamed 43-year old	Allegedly sharing a video of paying respects at Dato Kong altar [298A PC]	Arrested on 9 June after surrendering himself to the police
25	Farhash Wafa Salvador Rizal Mubarak & two others	In relation to an investigation into the sex video allegedly involving Azmin Ali [377B and 292 PC]	Arrested on 16 July
26	Koon Yew Yin	Allegedly insulting the armed forces [505(c) PC]	Investigated on 19 August
27	Unnamed 49-year old	Allegedly posting on Facebook threatening non-Muslims [505 (c) PC]	Arrested on 18 August
28	Unnamed 37-year old	Allegedly making an offensive Facebook comment that threatens harmony	Arrested on 30 August
29	Unnamed 'Datuk'	For the alleged confession of being a member of Gang 24 triad	Remanded on 12 October
30	VT Vasangam	For allegedly insulting Islam	Arrested on 6 October

31	Hew Kuan Yau & Chong Po Ling	For publication of 'Belt and Road Initiative (BRI) for Win Winism'	Investigated on 23 October
32	Rama Ramanathan	Alleged article on his blog [504 PC]	Investigated on 11 November
33	Dr Jeyakumar Devaraj, Ronnie Lius & Others	Gathering commemorating the Hatyai Peace Accord	Investigated in December ¹³⁹
34	Unnamed	Allegedly threatening a Perak State Exco	Arrested on 16 December

Printing Presses and Publications Act 1984

Since the change of administration, there were notably fewer publications banned. Throughout 2019 only five items were gazetted to be restricted items in comparison with seven in 2018 and 71 in 2017. The Ministry of Home Affairs also lifted the restriction on books by well-known author Faisal Tehrani and Zaid Ibrahim's book which was banned in 2017¹⁴⁰. It should be noted there was an outstanding judicial review filed by Zaid Ibrahim against the restriction order¹⁴¹.

In a departure from past practices, a restriction order was imposed this year on 'Infernal Goat Trashing', a music album and this is the first of its kind to be subjected to restriction in the recent record of the PPPA.

G25 filed a legal challenge after the banning of the publication 'Breaking The Silence: Voices of Moderation – Islam in a Constitutional Democracy' by the Ministry of Home Affairs. The High Court lifted the ban order imposed; the judge stated that the minister must show the basis for banning the publication¹⁴². The publication in question was banned on 27 July 2017.

As for the judicial review filed by Islamic Renaissance Front (IRF) against the banning of three of its publications, the high court upheld the government decision to ban the publications was valid as the home minister of that time, Zahid Hamidi came to the

¹³⁹ Different individuals were investigated on different dates

¹⁴⁰ Alyaa Azhar 'Gov't wants my ideas to be seen as dangerous, Zaid after book ban' (MalaysiaKini, 28 December 2017) <<https://www.malaysiakini.com/news/406810>> accessed 26 November 2019

¹⁴¹ V Anbalagan 'Zaid turns to courts for remedy over ban of his book' (Free Malaysia Today, 25 January 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/01/25/zaid-turns-to-courts-for-remedy-over-ban-of-his-book/>> accessed 26 November 2019

¹⁴² 'High court lifts ban on G25 book' (The Star Online, 9 April 2019)

<<https://www.thestar.com.my/news/nation/2019/04/09/high-court-lifts-ban-on-g25-book>> accessed 9 April 2020

decision after taking into account of opinions of experts that the content of the books are likely to be prejudicial to public order¹⁴³.

Publications Banned under Section 7(1) of PPPA

No	Name of Publication	Reason	Date Listed
1	Kamasutra: A Position A Day 365 Days A Year ¹⁴⁴	Prejudicial to Morality	14 February
2	Infernal Goat Trashing ¹⁴⁵	Prejudicial to Morality ¹⁴⁶	14 February
3	Inisiatif Jalur dan Jalan Meraid Manfaat Bersama	Prejudicial to Security	23 October
4	Belt and Road Initiative for Win-Winism	Prejudicial to Security	23 October
5	互利共赢的一带一路	Prejudicial to Security ¹⁴⁷	23 October

Publication Ban Lifted under Section 7(1) of PPPA

No	Name of Publication	Author	Date Listed
1	Sebongkah Batu di Kuala Berang	Faisal Tehrani	15 January
2	Karbala	Faisal Tehrani	15 January
3	Tiga Kali Seminggu	Faisal Tehrani	15 January
4	Ingin Jadi Nasrallah ¹⁴⁸	Faisal Tehrani	15 January
5	Assalamualaikum (May Peace be Upon You): Observations on the Islamisation of Malaysia ¹⁴⁹	Zaid Ibrahim	31 May

Restriction on 'Khat' Advocacy

Pakatan Harapan's initiative to introduce Khat¹⁵⁰ in all primary schools courted public controversy and sparked off public debates over the matter. Khat was proposed by the Ministry of Education to be introduced as part of Malay-Arabic calligraphy in Year 4

143 Minderjeet Kaur 'High Court upholds ban on 3 books on Islam' (Free Malaysia Today, 22 April 2019)

<<https://www.freemalaysiatoday.com/category/nation/2019/04/22/high-court-upholds-ban-on-3-books-on-islam/>>

accessed 9 April 2020

144 Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/output/pub_20190306_PUA67_2019.pdf

145 Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/output/pua_20190401_PUA102.pdf

146 This item is a death metal music album

147 Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/output/pua_20191023_PUA%20288.pdf

148 Federal Gazette Revocation Order: http://www.federalgazette.agc.gov.my/output/pua_20190220_PUA47.pdf

149 Federal Gazette Revocation Order: http://www.federalgazette.agc.gov.my/output/pua_20190918_PUA255.pdf

150 a form of calligraphy based on jawi, written letters for Malay prior to the romanized letter used for Malay

Bahasa Melayu subject in schools¹⁵¹. The initiative was not unanimous among the ruling coalition with the Democratic Action Party (DAP) voicing opposition against the introduction while Amanah welcomed the initiative by the Ministry of Education¹⁵².

Several vernacular education groups mobilized around the issue to pressure the Ministry of Education to retract the decision as there were concerns that Khat calligraphy is closely related to the Islamic faith and would violate the Federal Constitution¹⁵³. The Prime Minister Mahathir's response to these criticisms was to suggest that these groups were instigating the people and described the Chinese educationist group Dong Zong as racist¹⁵⁴. Bersatu's youth wing also launched an online petition calling for Dong Zong to be banned in the light of its opposition to the introduction of Khat¹⁵⁵.

Members of the Muslim-based opposition echoed Mahathir's opinion by defending the government's plans and they too described Dong Zong and Jiao Zong as chauvinist and racists. They also claimed that the public rally objecting to Khat was a provocation and it would provoke a response from the Malays who may "rise to defend history and the Federal Constitution"¹⁵⁶.

A rally organized by Indian education groups was shut down by the police for safety reasons. The Kuala Lumpur police chief Mazlan Lazim's statement suggested that the issue of Khat would disrupt public peace and affect the nation's racial and religious

151 FMT Reporters 'Education ministry defends Khat, will introduce it next year in Year 4' (Free Malaysia Today, 2 August 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/08/02/education-ministry-defends-khat-will-introduce-it-next-year-in-year-4/>> accessed 9 April 2020

152 Bernama 'Amanah welcomes Govt plan to introduce Khat next year' (New Straits Times, 3 August 2019) <<https://www.nst.com.my/news/nation/2019/08/509690/amanah-welcomes-govt-plan-introduce-khat-next-year>> accessed 9 April 2020

153 Vinodh Pillai 'Dong Zong, Jiao Zong once again say 'no' to khat in primary schools' (Free Malaysia Today, 8 August 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/08/08/dong-zong-jiao-zong-once-again-say-no-to-khat-in-primary-schools/>> accessed 9 April 2020

154 Zakiah Koya 'Dong Zong going against the law by instigating M'sians, says Dr M' (The Star Online, 13 August 2019) <<https://www.thestar.com.my/news/nation/2019/08/13/dong-zong-going-against-the-law-by-instigating-m039sians-says-dr-m>> accessed 9 April 2020

155 Zakiah Koya & Martin Carvalho 'Bersatu Youth launches online petition to ban Dong Zong' (The Star Online, 13 August 2019) <<https://www.thestar.com.my/news/nation/2019/08/13/bersatu-youth-launches-online-petition-to-ban-dong-zong>> accessed 9 April 2020

156 Roslinda Hashim 'Himpunan bantah khat jawi bersifat cauvinis, rasis: Asyraf Wajdi' (Sinar Harian, 3 August 2019) <<https://www.sinarharian.com.my/article/41331/BERITA/Politik/Himpunan-bantah-khat-jawi-bersifat-cauvinis-rasis-Asyraf-Wajdi>> accessed 9 April 2020

sensitivities¹⁵⁷. The PKR president Anwar Ibrahim also contacted the rally organizers and advised them to call off the rally. The organizers relented and cancelled the rally. However, two individuals were still detained in conjunction with the rally¹⁵⁸. They were arrested for investigation under Section 105 of the Penal Code and Section 9(5) of the Peaceful Assembly Act 2012¹⁵⁹.

A group of NGOs also filed a police report against another gathering by Dong Jiao Zong scheduled for 28 December 2019¹⁶⁰. The Islamic Party of Malaysia (PAS) also voiced their opposition to the gathering and publicly called for the Home Minister Muhyiddin Yassin to 'deregister' Dong Zong and Jiao Zong for their actions¹⁶¹.

Harassment against Human Rights Defenders and other Activists

As noted in the documented cases in this report, harassment and investigations against human rights defenders remain a common theme in Malaysia despite the change of administration and greater transparency within state institutions.

SUARAM's staff had the misfortune of being subjected to multiple investigations throughout the year as part of their role in defending human rights, solidarity actions, peaceful assembly and in some cases, moderating forums. In December 2019, SUARAM's executive director was called for an investigation by Bukit Aman into a forum on the Security Offences (Special Measures) Act 2012 (SOSMA). During the investigation, he was asked for his thoughts on whether SOSMA was used as a political tool to arrest DAP politicians and whether the detention of two DAP state assemblymen was due to DAP members' criticism of Zakir Naik¹⁶².

157 Nicholas Chung 'No-go for protest against khat and anti-Naik rally in brickfields' (Free Malaysia Today, 23 August 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/08/23/no-go-for-protest-against-khat-anti-naik-rally-in-brickfields/>> accessed 9 April 2020

158 'Organisers cancels second Brickfields rally after call from Anwar' (MalaysiaKini, 23 August 2019) <<https://www.malaysiakini.com/news/489244>> accessed 9 April 2020

159 FMT Reporters '2 ditahan kerana demo bantah khat' (Free Malaysia Today, 24 August 2019) <<https://www.freemalaysiatoday.com/category/bahasa/2019/08/24/2-ditahan-kerana-demo-bantah-khat/>> accessed 9 April 2020

160 Justin Zack 'NGOs lodge police reports against upcoming Dong Zong gathering' (The Star, 25 December 2019) <<https://www.thestar.com.my/news/nation/2019/12/25/ngos-lodge-police-reports-against-upcoming-dong-zong-gathering>> accessed 9 April 2020

161 'Haramkan DJZ: Surat terbuka kepada TS Muhyiddin' (Harakah Daily, 26 December 2019) <<https://harakahdaily.net/index.php/2019/12/26/haramkan-djz-surat-terbuka-kepada-ts-muhyiddin/>> accessed 9 April 2020

162 Annabelle Lee 'Aktivis Suaram hairan Bukit Aman tanya pasal Zakir Naik' (MalaysiaKini, 17 December 2019) <<https://www.malaysiakini.com/news/504015>> accessed 8 April 2020

Numan Afifi, a well-known activist, was called up for investigation by Bukit Aman after delivering a speech at the United Nations Human Rights Council (UNHCR) in Geneva during its March seating. The speech was part of a response to Malaysia's position on the recommendations made as part of the Universal Periodic Review (UPR) process¹⁶³.

Another notable case was that of Arunachalam Kasi who was imprisoned for 30 days with a fine of RM40,000 for contempt of court in April 2019. The Attorney General of the day, Tommy Thomas initiated the proceeding after two articles by Arunachalam on 16 and 22 February 2019 in line with the affidavit¹⁶⁴ involving Court of Appeal judge, Datuk Dr Hamid Sultan Abu Backer. The prosecution alleged that Arunachalam's articles had undermined public confidence in the administration of justice¹⁶⁵.

The case was curious since the substantive contents of the affidavit had been widely circulated and debated by the public. The public had not been shy to criticize the allegations raised in the affidavit, and it is unclear how Arunachalam's article could have further eroded public confidence in the judiciary when the allegations had not been disproved or disputed by any quarters. Even curiouser was the Attorney General Tommy Thomas' decision to initiate the prosecution despite his position on free speech during his appointment in 2018¹⁶⁶ and his own criticism of scandals involving the judiciary in his speech during the opening of the Legal Year 2019¹⁶⁷.

The report also takes note of Tommy Thomas' criticism of civil society during the launch of SUARAM's Annual Human Rights Report 2018¹⁶⁸ when he described civil society as

163 Mei Mei Chu, 'Activist Numan Afifi investigated over LGBT speech at United Nations' (The Star Online, 16 April 2019) <<https://www.thestar.com.my/news/nation/2019/04/16/activist-numan-afifi-investigated-over-lgbt-speech-at-united-nations/>> accessed 9 April 2020

164 'Appellate judge makes shocking claims of judicial scam in affidavit' (The Star Online, 14 February 2019) <<https://www.thestar.com.my/news/nation/2019/02/14/appellate-judge-makes-shocking-claims-of-judicial-scam-in-affidavit>> accessed 8 April 2020

165 'Contempt proceedings against lawyer Arun Kasi over Hamid affidavit articles in Aliran' (The Star Online, 27 February 2019) <<https://www.thestar.com.my/news/nation/2019/02/27/contempt-proceedings-against-lawyer-arun-kasi-over-hamid-affidavit-articles-in-aliran>> accessed 8 April 2020

166 He was quoted to have said "If you value free speech, then you must practice free speech, and free speech means everybody can criticize you" – Minderjeet Kaur 'Feel free to criticize, says new AG Tommy' (Free Malaysia Today, 6 June 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/06/06/feel-free-to-criticise-says-new-ag-tommy/>> accessed 8 April 2020

167 Terence Tang 'Lawyer ask CJ, Bar Council about AG's speech at Legal Year launch' (Malay Mail, 11 April 2019) <<https://www.malaymail.com/news/malaysia/2019/04/11/lawyer-asks-cj-bar-council-about-ags-speech-at-legal-year-launch/1742106>> accessed 8 April 2020

168 Martin Carvalho 'AG to civil society: Don't be complacent, press Pakatan to implement reforms' (The Star Online, 28 May 2019) <<https://www.thestar.com.my/news/nation/2019/05/28/ag-to-civil-society-dont-be-complacent-press-pakatan-to-implement-reforms/>> accessed 8 April 2020

complacent and 'expecting the government or the AG to perform miracles'¹⁶⁹. Perhaps the documented cases contained within SUARAM's report can attest to whether this comment is an accurate description of civil society after the historic election on 9 May 2018.

169 Ida Nadirah Ibrahim 'AGC staff not miracle workers, Tommy Thomas tells civil groups pushing legal reforms' (Malay Mail, 28 May 2019) <<https://www.malaymail.com/news/malaysia/2019/05/28/agc-staff-not-miracle-workers-tommy-thomas-tells-civils-group-pushing-legal/1757068>> accessed 8 April 2020

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FREEDOM
OF
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FREEDOM OF ASSEMBLY

The right to peaceful assembly is arguably a freedom that is relatively easy to uphold by the state in Malaysia. Unfortunately, the situation pertaining to the right to peaceful assembly in relation to the Peaceful Assembly Act 2012 (PAA) remained unchanged throughout 2019. The Buku Harapan (PH's GE14 manifesto) outlined the intention by the PH government to abolish the draconian aspects of PAA.

This resulted in an amendment in the July 2019 Parliamentary session where the required notice of 10-days was reduced to 5-days and the inclusion of a compound system¹⁷⁰ as opposed to the previous practice of prosecution for failure to adhere to Section 9(1)¹⁷¹. The amendment came into force on 1st November 2019¹⁷².

While the improvement is a welcome change, the present PAA still remains problematic as the required notice period does not make any exemption for urgent assemblies. An excellent example would be the assembly called by the de-facto Minister for Religious Affairs, Mujahid Yusof Rawa in solidarity with the shooting in Christchurch, New Zealand in March 2019¹⁷³. The announcement by the minister was merely 3-days before the proposed assembly¹⁷⁴. Not surprisingly, no investigation papers were initiated by the Royal Malaysian Police for this assembly.

Another aspect of concern is the compound system. While the compound system technically provides an alternative to the existing system of criminal prosecution, the provision for compound itself is redundant as any compound to be issued would be done by the Officer in Charge of Police District (OCPD) with consent in writing by the public prosecutor. If a person issued with a compound refuses to comply with it, it is presumed that prosecution would be brought against the individual concerned.

Furthermore, as Section 9(5) of the Peaceful Assembly Act 2012 was previously declared to be unconstitutional by the court of appeal, it is unclear how the current amendment would fit into the constitutionality of the section.

170 'Peaceful Assembly Bill passed' (The Star Online, 5 July 2019)

<<https://www.thestar.com.my/news/nation/2019/07/05/peaceful-assembly-bill-passed>> accessed 26 November 2019

171 Section pertaining to the required 10-days notice.

172 Listing on the Federal Gazette -

<[http://www.federalgazette.agc.gov.my/output/pub_20191017_P.U.%20\(B\)%20509.pdf](http://www.federalgazette.agc.gov.my/output/pub_20191017_P.U.%20(B)%20509.pdf)> accessed 20 April 2020

173 This is prior to the amendment to the PAA, which means the Minister failed to observe the 10-days notice period as opposed to the more recent 5-days.

174 Rahimy Rahim & Martin Carvalho 'Mujahid: Solidarity for Peace march to be held on Saturday (March 23)' (The Star Online, 20 March 2019) <<https://www.thestar.com.my/news/nation/2019/03/20/mujahid-solidarity-for-peace-march-to-be-held-on-saturday-march-23/>> accessed 26 November 2019

List of Individuals Investigated under the Peaceful Assembly Act 2012¹⁷⁵

No	Individual/Group	Event/Assembly	Date
1	Six unnamed organisers of the event	New Year celebration @ Lukut	1 January
2	Seven unnamed organisers of the march	International Women's Day March	9 March
	Unnamed organisers	Himpunan Mahasiswi Ubah Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN)	10 March
3	Wong Yan Ke & 6 UMANY student activist; Lokman Adam and unnamed Najib Abdul Razak supporters	A scuffle between Lokman Adam and co. & UM students	22 March
4	Unnamed organisers of the rally	UMMAH rally @ Masjid Jamek	6 May
5	Unnamed organisers of assembly	Silent protest of HK solidarity @ KLSCAH	16 June
6	Unnamed participants of the rally	NIDO-MY rally @ Nigerian High Commission Office	11 July
7	Baviniraj Rajendran & Ili Nadiyah Dzulfakar	#MyClimateRally	13 July 2019
8	Save Malaysia Stop Lynas committee	Anti-Lynas rally @ Gelora Park, Kuantan	18 August
9	K Umagandhan & Tan Book Tak	Protest over <i>khat</i> calligraphy for Tamil schools @ Brickfields	23 August
10	Sharan Raj; 7 unnamed student activists	Protest over the expulsion of 2 other students from college	26 August
11	Unnamed organisers of the rally	929 Global Anti-Totalitarianism rally @ KLSCAH	30 September
12	S Arulchelvan	World Habitat Day protest @ Parliament	8 October
13	Sharan Raj & Tan Cheng Siong	40 students protest over exorbitant MJIT tuition fees @ Parliament	11 October
14	Maizatun Afirah Ayub	'Mahasiswa Bersama VC' demo @ UM	25 October
15	Sevan Doraisamy	'The LTTE Conundrum and Sosma and a draconian law' forum	25 November

¹⁷⁵ Shaded cells indicate incidences where arrests were made

16	Dr Jeyakumar Devaraj, Ronnie Liu and others ¹⁷⁶	Gathering Commemorating the Hatyai Peace Accord	1 December
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Police Reports, Police Investigates

The trend of post-event investigation persisted throughout 2019. Normally, the organizers of a rally would submit a notice through a letter to the relevant district police headquarters where a form¹⁷⁷ would be provided for the would-be organizers.

Organizers would usually provide overall information in the form and submit it to the licensing department of the district police headquarters. From there, a meeting would usually be scheduled between the 'lead' officer in the headquarters with relevant stakeholders and the organizers. For bigger rallies or gatherings, it is not unusual for the commanding officer for the district (OCPD) to chair a meeting with representatives from the local authorities and organizers listed in the submitted form.

While the meeting provides an opportunity to resolve outstanding concerns between all parties, the meeting often results in an impasse and 'rejection' by the police and no approval would be granted. The 'approval' often described by the police as a permit is curious since the provisions of the Peaceful Assembly Act 2012 do not provide for any form of permit to be issued by the police.

For example, in the 2019 Women's March, the police officer who met with the organizers was reported to have agreed to the conditions discussed by all parties leading up to the march. However, no written approval of any form was issued¹⁷⁸ and the march took place. After the march and the controversy that followed, the police claimed that there was no permit issued for the march and hence they would be probing the march¹⁷⁹.

Similarly, in 2016 when a group of content creators under the banner of Malaysia Indian Creative Content Council protested Astro's policy on content for its Tamil channels¹⁸⁰, the police, when met leading up to the protest, was agreeable to the conditions discussed with the organizers but no approval or permit of any form was granted. The organizers also agreed to certain recommendations made by the police, which included moving the venue

176 Curiously, investigation was conducted under Section 505 of the Penal Code and Section 233 of the Communication and Multimedia Act 1998

177 A sample of this can be referred in the Fourth Schedule of the Peaceful Assembly Act 2012

178 A noted curiosity as the law does not grant any scope for an approval or permit by the police.

179 Minderjeet Kaur 'Women's march had no permit, police to probe, says Muhyiddin' (Free Malaysia Today, 11 March 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/03/11/womens-march-had-no-permit-police-to-probe-says-muhyiddin/>> accessed 10 April 2020

180 Minderjeet Kaur 'Group protests lack of local Indian content on Astro' (Free Malaysia Today, 2 September 2016) <<https://www.freemalaysiatoday.com/category/nation/2016/09/02/group-protests-lack-of-local-indian-content-on-astro/>> accessed 10 April 2020

of the protest. During the protest, the reaction of the police on the ground was a far cry from the amicable discussion that had taken place prior to the event.

The police's light strike force was deployed rapidly upon the start of the protest when the audio system was brought in by the organizers. The police in charge on the ground also described the protest as an illegal assembly under the Police Act 1967 and called on the participants to disperse immediately. After discussion with the officer in command, the protest was allowed to proceed as planned. Organizers and others identified by the police were later called for investigation under the Peaceful Assembly Act 2012.

As these protests are often described by the police as protests without permits, a police report would be filed by officers on duty and investigations would be conducted against organizers of the event under the Peaceful Assembly Act 2012.

It should be noted that these investigations often lead nowhere after the initial fanfare. Organizers and others called for investigation would attend and provide their statements to the police with no subsequent action taken even after the amendment to the Peaceful Assembly Act 2012. While the lack of prosecution and further criminal action against organizers are a marked improvement compared to the harsh crackdown observed prior to 2015 or the mass arrests leading up to Bersih 5, the investigation and description of a protest as an illegal assembly is still a form of harassment and an attempt to 'criminalize' the protest.

Community Blockade

A more disappointing violation of freedom of assembly under the Pakatan Harapan administration concerned the violations against the indigenous people's community. Despite the assurances and promises to address the plight faced by the community, the situation on the ground remained precarious for the community.

The relief brought by the federal government's civil suit against the Kelantan state government in January 2019¹⁸¹ was followed by an incursion into indigenous people's land in Pakatan Harapan-led Perak state government in February 2019. The community blockades against the logging activities were forcefully dismantled later in May 2019 after the Chief Minister of Perak claimed that the blockades were erected on state land and the logging activities were legal¹⁸².

181 Yimie Yong 'Federal govt sues Kelantan to protect orang asli land rights' (The Star Online, 18 January 2019)

<<https://www.thestar.com.my/news/nation/2019/01/18/federal-govt-sues-kelantan-to-protect-orang-asli-land-rights/>>
accessed 10 April 2020

182 Ili Aqilah 'Orang asli blockade in Gerik removed; Perak govt says was on state land' (The Star Online, 17 May 2019)

<<https://www.thestar.com.my/news/nation/2019/05/17/orang-asli-blockade-in-gerik-removed-perak-govt-says-was-on-state-land/>> accessed 10 April 2020

Further blockades by the community in Gerik, Perak ended with the arrest of three Temiar Orang Asli¹⁸³. Despite Minister P. Waytha Moorthy's objection and the federal government's suit against the Kelantan state government earlier in the year, federal agencies such as the police continued to play an active role in dismantling blockades and arresting community activists.

Khat Controversy

As noted in the preceding chapter on freedom of expression, the controversy that followed the introduction of Khat by the ministry of education led to threats of violence against those opposing the introduction of Khat and notable restrictions against organizers and communities expressing dissatisfaction and concerns over the introduction of Khat.

Besides the arrest and investigation of perceived organizers of the rally at Brickfields in August 2019¹⁸⁴, a closed-door meeting by Dong Jiao Zong in December 2019 was similarly forbidden by the police. The police sought a court order and served the order forbidding the meeting on 27 December 2019, compelling the organizers to call off the event. The Kajang district police chief claimed that the order was obtained as part of the police effort to maintain public order and safety.¹⁸⁵

Following the cancellation of the event by Dong Jiao Zong, the Malaysian Islamic Student Coalition (GAMIS) organized a protest aimed at "Rising to defend Jawi and outlawing Dong Zong ('Himpunan Bangkit Pertahan Jawi, Haramkan Dong Zong') on 1st January 2020. This rally was allowed to proceed despite the racial undertone and the similar reasons given for the cancellation of Dong Zong's meeting¹⁸⁶.

As noted in the earlier chapter, Mahathir Mohamad, the Prime Minister at that point of time claimed that Dong Zong's was racist¹⁸⁷ and later suggested its action could spark off retaliation and counter demands by Malay community and pointed out that communal

183 'Waytha urges police to release Orang Asli arrested in Gerik blockade' (The Star Online, 20 July 2019)

<<https://www.thestar.com.my/news/nation/2019/07/20/waytha-urges-police-to-release-orang-asli-arrested-in-gerik-blockade/>> accessed 10 April 2020

184 M. Kumar 'Two arrested during protest over khat in Brickfields' (The Star Online, 23 August 2019)

<<https://www.thestar.com.my/news/nation/2019/08/23/two-arrested-during-protest-over-khat-in-brickfields>> accessed 10 April 2020

185 'Dong Jiao Zong cancels gathering' (The Star Online, 28 December 2019)

<<https://www.thestar.com.my/news/nation/2019/12/28/dong-jiao-zong-cancels-gathering>> accessed 10 April 2020

186 Mdiha Abdullah 'Gamis desak Dong Zong diharamkan' (Astro Awani, 1 January 2020)

<<http://www.astroawani.com/berita-malaysia/gamis-desak-dong-zong-diharamkan-226931>> accessed 10 April 2020

187 'PM calls out Dong Zong for being racist' (The Star Online, 13 August 2019)

<<https://www.thestar.com.my/news/nation/2019/08/13/pm-calls-out-dong-zong-for-being-racist>> accessed 10 April 2020

tension has led to conflicts in other countries¹⁸⁸. Curiously, Mahathir did not see the irony and contradiction when he himself attended the Malay Dignity Congress in October 2019¹⁸⁹.

Non-State Actors

As noted in SUARAM's reports of recent years, non-state actors sanctioned by the state have played an increasing role leading up to the Bersih 4 and Bersih 5 rallies. It has also been noted that many of the individuals involved in organizing such counter-rallies have a clear political affiliation with the ruling party.

After the change of government on 9 May 2018, the activities of these activists diminished with the gradual withdrawal of key leaders such as Jamal Yunus from public view. Since the retirement of Jamal Yunus from such a role, Lokman Adam, a former member of UMNO's supreme council began to play increasing part in this role.

When students from Universiti Malaya protested at the sidelines of an event by former Prime Minister, Najib Razak, Lokman Adam and several others who were present confronted the student activists and subsequently ended up in a scuffle during which they assaulted the students and tore up their posters and placards¹⁹⁰.

Lokman Adam and others involved were later charged under Section 323 of the Penal Code (voluntarily causing hurt) and Section 149 of the Penal Code (every member of an unlawful assembly to be deemed guilty of any offence committed in prosecution of common object)¹⁹¹.

188 Azril Annuar 'Dr M tells Dong Zong anti-jawi rally could lead to tit-for-tat demands' (Malay Mail, 20 December 2019) <<https://www.malaymail.com/news/malaysia/2019/12/20/dr-m-tells-dong-zong-anti-jawi-rally-could-lead-to-tit-for-tat-demands/1821000>> accessed 10 April 2020

189 Wani Muthiah and Tarrence Tan, 'Resolutions on five areas presented at Malay dignity congress, but PM says not all will be met' (The Star Online, 6 October 2019) <<https://www.thestar.com.my/news/nation/2019/10/06/resolutions-on-five-areas-presented-at-malay-dignity-congress-but-pm-says-not-all-will-be-met>> accessed 10 April 2020

190 Syed Jaymal Zahiid "'We fear no threat,' UM students assaulted at anti-Najib protest tell attackers' (The Star Online, 23 March 2019) <<https://www.malaymail.com/news/malaysia/2019/03/23/we-fear-no-threat-um-students-assaulted-at-anti-najib-protest-tells-attackers/1735680>> accessed 10 April 2020

191 'UM scuffle: Lokman Adam, three others to be charged in court Thursday (March 28)' (The Star Online, 27 March 2019) <<https://www.thestar.com.my/news/nation/2019/03/27/um-scuffle---lokman-adam--three-others-to-be-charged-in-court-thursday-march-28>> accessed 10 April 2020

One of the student activists who was assaulted by Lokman Adam, Wong Yan Ke held a solitary protest during his graduation ceremony in October 2019¹⁹². Subsequently, a police report was lodged by the university against him and the police initiated an investigation under Section 504 of the Penal Code (intentional insult with intent to provoke a breach of peace)¹⁹³. Following the protest, another student activist was barred from taking part in his own graduation¹⁹⁴.

Following the protest at Universiti Malaya, the Malaysian Islamic Student Coalition (GAMIS) organized a solidarity rally with the University Malaya Vice-Chancellor, Abdul Rahim Hashim near the university. The purpose of the rally was reportedly to express solidarity with the vice-chancellor and to demand a public apology from Wong Yan Ke for his protest. However, the protest was dispersed by the police with several individuals arrested¹⁹⁵.

Thus, in recent years, non-state actors have played an increasing role in threatening and undermining the rights of other Malaysians to peaceful assembly.

Participation of Minors at Public Rallies

The participation of primary school students at a climate change protest in Penang led to a demand by a Penang councillor, Vino Dini Chandragason for the Penang Education Department to take action against SJK (T) Sungai Ara. The school was later asked to submit a report on why students were involved in after-hours climate change protest on 24 May 2019¹⁹⁶. Nevertheless, the Penang State Education Department deputy director, Abdul

192 Nur Hasliza Mohd Salleh 'Student activist carries out solo protest at his own graduation' (Free Malaysia Today, 14 October 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/10/14/student-activist-carries-out-solo-protest-at-his-own-graduation/>> accessed 10 April 2020

193 Austin Camoens 'Police confirm UM graduate protest probe' (The Star Online, 16 October 2019) <<https://www.thestar.com.my/news/nation/2019/10/16/police-confirm-um-graduate-protest-probe>> accessed 10 April 2020

194 Derek Yong Zher 'UM graduate barred from convocation for supporting protest' (The Star Online, 15 October 2019) <<https://www.thestar.com.my/news/nation/2019/10/15/um-graduate-barred-from-convocation-for-supporting-protest>> accessed 10 April 2020

195 Radzi Razak 'Student arrested as cops break up demo at Universiti Malaya entrance' (Malay Mail, 25 October 2019) <<https://www.malaymail.com/news/malaysia/2019/10/25/student-arrested-as-cops-break-up-demo-at-universiti-malaya-entrance/1803678>> accessed 10 April 2020

196 'Opalyn Mok 'Penang Education Dept probing school over students' climate change protest (VIDEO)' (Malay Mail, 4 June 2019) <<https://www.malaymail.com/news/malaysia/2019/06/04/penang-education-dept-probing-school-over-students-climate-change-protest/1758970>> accessed 17 April 2020

Rashid Abdul Samad clarified that no action would be taken against the students or the school as the department encourages students to get involved in green activities¹⁹⁷.

Under Section 4(1)(d) of the Peaceful Assembly Act 2012, a person below the age of twenty-one is technically not provided with a 'right' to participate or organize any peaceful assembly. However, this section is rarely invoked apart from one notable instance in 2015 when then Menteri Besar of Selangor Azmin Ali and his family were investigated for his son's presence at a Bersih rally¹⁹⁸.

Apart from the abovementioned instances, there were no other known issues of minors or people below the age of twenty-one participating in peaceful assemblies.

197 Susan Leong 'No action against schoolchildren in Penang climate change protest' (MALAYSIAKini, 4 June 2019)

<<https://www.malaysiakini.com/news/478553>> accessed 17 April 2020

198 'Azmin says his teen son investigated over Bersih rally' (Malay Mail, 8 November 2015)

<<https://www.malaymail.com/news/malaysia/2015/11/08/azmin-says-his-teen-son-investigated-over-bersih-rally/1001591>> accessed 17 April 2020

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FREE AND FAIR
ELECTION

FREE & FAIR ELECTIONS

By Lee Chung Lun, Bersih 2.0

Introduction

As we stepped into the second year of the PH government, 2019 saw modest progress towards free and fair elections. The main highlight was the introduction of the historic constitutional amendments that lowered the voting age to 18 and allowed for automatic voter registration. Structural issues such as the transparent appointment process of the Election Commission (EC) members, operational independence of the EC, flawed constituency re-delineation remain to be rectified.

There were five by-elections held in the year and violations of election rules by political parties continued to take place. Credit to the EC for efforts aimed at improving the conduct of elections; no major flaws were found in the electoral process.

Appointment of Election Commission Members

The King appoints the members of the EC upon the advice of the prime minister. This brings into question the independence of the appointees, especially when the former EC chair Mohd Hashim Abdullah was found to be politically connected with the then ruling party.

Despite the Pakatan Harapan manifesto of freeing the EC from the control of the prime minister, the government has yet to initiate relevant constitutional amendments to remove unchecked executive influence in this important appointment.

In 2019, six new members were appointed to the EC following the resignation of the former members. They were former Universiti Malaya law lecturer Azmi Sharom, former Foreign Ministry chief secretary Ramlan Ibrahim, former Human Resource Department Director-general Chin Paik Yoong, former Universiti Kebangsaan Malaysia senior fellow Faisal S Hazi, former BERSIH 2.0 advocacy officer Zoe Randhawa and former Sabah deputy police commissioner Awang Sahari E.M. Nadzeer.¹⁹⁹

Voter Registration

In July 2019, the parliament passed the historic constitutional amendment to lower the voting age from 21 to 18 years old. The constitutional amendment also includes provisions

¹⁹⁹ <https://www.malaysiakini.com/news/463938>

to register voters automatically and to lower the minimum age for individuals to stand as election candidates to 18.

The amendment that expands voting rights to a broader range of Malaysians is expected to come into force in June 2021. The government estimates that 7.8 million new voters will be added to the electoral roll by 2023. It also estimates that the total number of the electorate will reach 22.7 million in 2023, compared to 14.9 million in the 14th general election (GE14).²⁰⁰

The EC has taken a commendable step by introducing an online voter registration portal named MySPR Daftar in July 2019.²⁰¹ The initiative has greatly eased the registration of new voters and the change of voting address. Previously, eligible voters could only register at the post office, EC office or with EC-appointed assistant registrar officers.

Constituency Re-delineation

In July 2019, the Parliament passed the motion for the re-delineation of electoral boundaries in Sabah. The proposal prepared by the EC was based on the 2016 electoral roll and it increased the state assembly seats in Sabah from 60 to 73.

Malapportionment, which is the uneven electorate size across constituencies, remained in the new re-delineation proposal. For example, the state's largest state assembly constituency, N69 Sri Tanjung, comprises 25,104 voters, which is 4.5 times that of the smallest constituency N01 Banggi, with only 5,485 voters.

The disparity between parliamentary seats is also significant. The largest parliamentary constituency in the state, P171 Sepanggar (55,294 voters) has more than twice the number of voters of the smallest constituency, P183 Beluran (24,916 voters).

This severely violates the principle of "one person, one vote, one value" and the requirement set for delineation in Section 2 of the 13th Schedule of the Federal Constitution for the number of voters in each constituency in a state to be approximately equal.

The growth of the electorate with the prospective automatic voter registration and lowering of voting age is expected to aggravate malapportionment throughout the country. A fresh re-delineation exercise will be required in order to fix the problem. However, the Federal Constitution stipulates at least an eight-year gap between re-delineation exercises;

²⁰⁰ <http://www.bernama.com/en/news.php?id=1763767>

²⁰¹ <https://www.thestar.com.my/news/nation/2019/07/18/ec-launches-online-voter-registration-portal/>

hence, the next round of re-delineation can only be scheduled in 2023 for Sarawak, 2025 for Sabah and 2026 for peninsular Malaysia.²⁰²

Unless the Federal Constitution is amended to allow an earlier commencement of re-delineation exercise or to change the number of constituencies, the current electoral map will be used in the 15th general election due in 2023.

By-Elections

Five by-elections were held in 2019 due to prior elections being declared void and the demise of the incumbent. Three were for parliamentary seats and two were state seats.

BN successfully retained the Cameron Highlands seat after securing a greater majority than in GE14 with its candidate Ramli Mohd Nor becoming the first Orang Asli member of parliament elected to the Dewan Rakyat. The former ruling coalition also scored another victory in Rantau where the incumbent Mohamad Hassan retained his seat.

Only two seats, namely Semenyih and Tanjung Piai changed hands - both from PH-PPBM to BN. The by-election in PH-DAP’s stronghold Sandakan saw the incumbent party winning with over 70% of the votes cast.

Summary of the five by-elections in 2019

Constituency	Cameron Highlands	Semenyih	Rantau	Sandakan	Tanjung Piai
Level	Parliamentary	State	State	Parliamentary	Parliamentary
Reason of by-election	Election Court declared the previous result null and void due to corrupt practices committed during the election.	Death of the incumbent.	Election Court declared the previous result null and void as the incumbent was not duly elected.	Death of the incumbent.	Death of the incumbent.
Nomination day	12 Jan 2019	16 Feb 2019	30 Mar 2019	27 Apr 2019	2 Nov 2019

202 <https://www.malaymail.com/news/malaysia/2018/11/21/redrawing-election-boundaries-need-two-third-yes-in-parliament-deputy-minis/1695591>

Polling day	26 Jan 2019	2 Mar 2019	13 Apr 2019	11 May 2019	16 Nov 2019
Turnout rate	68.79%	73.24%	79.31%	54.44%	74.43%
Incumbent	BN-MIC	PH-PPBM	BN-UMNO	PH-DAP	PH-PPBM
Winner	BN	BN-UMNO	BN-UMNO	PH-DAP	BN-MCA
Majority	3,238	1,914	4,510	11,521	15,086

All five by-elections were consistently given a 14-day campaign period with the polling days set on Saturdays. The EC continues to show transparency by appointing civil society groups and non-party members as accredited observers in the by-elections.

The EC has adopted several improvements in the conduct of elections including live streaming the election processes online, mailing voter's information cards to voters, publishing the contact details of the enforcement agencies for public circulation, providing buggies to help voters in accessing polling centres, etc.

Nevertheless, the by-elections were repeatedly marred by election offences and corrupt practices by political parties.

**Number and type of election offences and misconducts recorded
by BERSIH 2.0**

	Cameron Highlands	Semenyih	Rantau	Sandakan	Tanjung Piai
Free food & handouts	4	5	7	2	3
Abuse of state resources	3	0	2	2	10
Bribery/undue influence	2	8	0	1	0
Incitement of racial and religious hatred	4	3	1	2	0
Campaigning on polling day	9	17	25	8	18
Intimidation/harassment	0	2	1	0	0
Others	1	0	0	4	0
Total	23	35	36	19	31

The Cameron Highlands by-election saw an increase in the use of racial and religious bigotry during campaigning. In a ceramah, UMNO Youth Chief Asyraf Wajdi Dusuki said

that if the DAP candidate won, it would be harmful to Malays and Islam. PAS Youth Chief Muhammad Khalil Abdul Hadi alleged that DAP would remove Islam as the official religion while PAS President Abdul Hadi Awang said in a video that “If non-Muslims want to be safe, do not vote for DAP... Vote for the Muslim candidate, all will be safe. Muslims will be safe, non-Muslims will be safe”.

Proffering free food and handouts was rampant especially in the Rantau by-election. Both PH and BN hosted various dinner functions for voters and provided food in their campaigning activities. PH was also found providing free health screening and other services in a carnival. This is an election offence under section 8 of the Election Offences Act.

Abuse of state resources in campaigning skyrocketed in the Tanjung Piai by-election. While there is no specific mention of this offence in the Election Offences Act, such practice with the intention to bribe voters is unethical. PH federal ministers and the Johor menteri besar were found announcing new development projects and financial allocations that targeted the people in Tanjung Piai. According to BERSIH 2.0's observation, the total amount of allocation announced during the election period was at least RM23.93 million.

Campaigning on polling day remained uncontrolled in all the by-elections. Setting up of pondok panas (campaign booths) and canvassing outside polling centres by almost all political parties were common practices despite being prohibited in Section 26 of the Election Offences Act.

In the Tanjung Piai by-election, the police imposed a new requirement for permit requirement for walkabouts and door-to-door campaigning and the EC endorsed it.²⁰³ Such a requirement has no legal basis and is a restriction upon the freedom to campaign. Attorney General Tommy Thomas later clarified that walkabouts and door-to-door campaigning do not require police permits under the current law provisions.²⁰⁴

BERSIH 2.0 made history in Cameron Highlands by-election by organising the first ever public debate between election candidates and it was telecast live over television via RTM TV1 and Astro Awani. However, the BN candidate Ramli Md Noor refused to take part in the debate.

203 <https://www.malaymail.com/news/malaysia/2019/11/12/police-permits-a-must-for-tg-piai-campaigners-on-walkabouts-says-ec/1809176>

204 <https://www.thestar.com.my/news/nation/2019/11/14/police-permits-not-needed-for-walkabouts-door-to-door-campaigning-says-ag>

Tribunal to Investigate Misconduct by Former EC Members

A five-member tribunal was convened on 28 January 2019 to look into allegations of misconduct by six former members of the EC in the preparation and conduct of GE14.

The tribunal was established in accordance with Article 114(3) and Article 125(3) of the Federal Constitution, which stipulate the EC members, like Federal Court judges, can only be removed on the recommendation of a tribunal. Oddly, the former EC chair Mohd Hashim Abdullah, the main person to be held accountable for the conduct of GE14, was spared from the tribunal due to his early resignation before the establishment of the tribunal on sitting members.

In a three-two decision on 24 May 2019, the tribunal panel held that the tribunal would not go ahead with its hearing as the six had tendered their resignation and the matter had been rendered academic.²⁰⁵

Timeline of the tribunal

9 May 2018	14th general election.
13 June 2018	EC chair Mohd Hashim Abdullah announced termination of his tenure effective 1 July 2018.
14 August 2018	BERSIH 2.0 openly appealed to Prime Minister Dr Mahathir Mohamad to establish a tribunal to investigate the misconduct of seven EC members during GE14.
17 October 2018	Government reported a tribunal would be set up.
19 October 2018	EC deputy chair Othman Mahmood and four members Md Yusop Mansur, Abdul Aziz Khalidin, Sulai-man Narawi and Leo Chong Cheong announced termination of their tenure effective 1 January 2019.
27 November 2018	The remaining EC member K Bala Singam announced termination of his tenure effective 1 January 2019.
28 January 2019	The tribunal convened.
24 May 2019	The tribunal ended its hearing.

²⁰⁵ <https://www.malaysiakini.com/news/477230>

Local Government Elections

Local government elections were suspended in 1965 during Indonesia's Confrontation against Malaysia with the assurance that it would be temporary. The suspension became permanent in 1976 when Parliament passed the Local Government Act, which abolished local government elections and provided for the appointment of local councillors by state governments.

Over half a century later, Malaysians' right to elect their local government continues to be denied with various excuses. Prime Minister Dr Mahathir Mohamad turned down the proposal to restore local government elections, arguing that elected local governments might lead to racial conflict.²⁰⁶

Despite the statement by the prime minister, Housing and Local Government Minister Zuraida Kamaruddin announced that her ministry would need three years to prepare a working paper on the proposal to implement local council elections for the Cabinet's approval.

At the village level, the Negeri Sembilan state government held a pilot election at Paroi Chinese new village to elect a new village chief on 7 July 2019 although such village elections were yet to be officially recognised in law.²⁰⁷ 821 eligible voters were allowed to choose their village leader through the ballot paper for the first time. The winning candidate was eventually appointed by the Negeri Sembilan state government as the village chief. The election was held smoothly without any controversy and the result was widely accepted. It can be regarded as a good experiment for grassroots democracy.

Parliamentary Select Committee on Elections

In October 2019, Law Minister Liew Vui Keong announced the formation of four new Parliamentary Select Committees (PSC), namely, Election, International Relations and Trade, Human Rights and Constitutional Affairs, and Science, Innovation and Environment.²⁰⁸

The PSC on Election was chaired by PH MP Syed Ibrahim Syed Noh and had six members, including PH MPs Jugah Anak Muiyang, Natrah Ismail, Khoo Poay Tiong and Dr. Ronald Kiandee; BN MP Nazri Aziz and PAS MP Takiyuddin Hassan. To date, the PSC has not made much progress.

206 <https://www.thestar.com.my/news/nation/2018/12/11/nogo-for-local-council-polls-reinstating-them-may-stir-racial-conflict-pm-cautions>

207 <https://www.thestar.com.my/news/nation/2019/07/06/rep-paroi-village-election-a-democratic-test>

208 <https://www.thestar.com.my/news/nation/2019/10/17/four-new-parliament-special-select-committees-formed>

A similar select committee, namely, PSC on electoral reform was established in October 2011 to study ways to improve the electoral system. However, the committee was temporary and only given a six-month timeframe to come up with its recommendations.

Electoral Reform Committee

In August 2018, the government set up the Electoral Reform Committee (ERC) under the Prime Minister's Department. It was a special committee to review election laws and systems in Malaysia. The committee was comprised of members from various backgrounds including former and current EC officials, political party representatives (though largely from PPBM), NGO representatives and academicians. The committee, chaired by Tan Sri Abdul Rashid Abdul Rahman, was given two years to study and provide recommendations on electoral reform to the government.

The list of ERC members

No.	ERC members	Background
1	Abdul Rashid Abdul Rahman	PPBM Vice President Former EC Chair
2	Haji Kamaruzaman Haji Mohd Noor	Former EC Secretary
3	Haji Kamarudin Md Nor	PPBM Supreme Council member
4	Harun Che Su	Former EC Deputy Secretary
5	Moharizian Mohamed	PPBM Kota Bharu division committee
6	Abdullah Jusoh	Former EC officer
7	Muhammad Sa'edi Abdul Maad	PKR Central Election Committee chief
8	Prof. Dr. Mohammad Redzuan Othman	Institut Darul Ehsan Deputy Chair
9	Haji Wan Abd. Rahim Wan Abdullah	AMANAH Central Committee
10	Assoc. Prof. Dr. Marzuki Mohamad	Home Affairs Ministry special affairs officer
11	Wan Saifulruddin Wan Jan	PPBM Supreme Council member
12	Mohamad Elias Abu Bakar	EC Secretary
13	Thomas Fann	Bersih 2.0 Chair
14	Dr. Anis Yusaf Yusoff	National Integrity Department director-general
15	Haji Hanif Hassan	Lawyer
16	Dr. Manimaran Govindasamy	Malaysian Anti-Corruption Commission strategic communication officer Education Ministry head of corporate communication Institut Integriti Malaysia communication director

17	Richard Yeoh Yong Woi	Former Transparency International Malaysia executive director
18	Ann Teo Chang Joo	Bersih 2.0 Vice Chair (Sarawak)
19	Prof. Dr. Wong Chin Huat	Academician Bersih 2.0 resource person
20	Yap Swee Seng	Bersih 2.0 executive director

The ERC focused on 15 key components to achieve a better electoral democracy and it was further divided into nine clusters, each cluster being led by a member to conduct intensive research on the topic.

15 key issues that ERC identified	9 working clusters in ERC
1. Electoral management body 2. Electoral constituency 3. Voter registration 4. Political party registration 5. Election campaign 6. Political financing 7. Media access and roles 8. Electoral process 9. Election code of ethics 10. Election observation 11. Enforcement of election laws 12. Caretaker government 13. Cooperation of public institutions 14. Civic and voter education 15. Electoral system	1. Delineation of electoral boundary 2. Voter registration 3. Political parties' registration and funding 4. Management of election process 5. Use of the election machinery and media access 6. Administration of a caretaker government 7. Voter education 8. Electoral system 9. Election law amendment

The ERC organised 22 stakeholders' engagement sessions throughout 2018-2019 with civil society, public and political parties nationwide.

The list of engagement sessions organised by ERC

No	Engagement session	Date
1	Central zone – Kuala Lumpur, Putrajaya and Selangor	21/2/2019
2	Universiti Utara Malaysia	6/3/2019
3	Northern zone – Kedah, Pulau Pinang and Perlis	12/3/2019
4	Administration and diplomatic officer alumni	10/4/2019
5	Persons with disabilities	13/4/2019
6	Media practitioner	4/5/2019
7	Southern zone – Johor, Melaka and Negeri Sembilan	27/6/2019
8	Negeri Sembilan	16/7/2019
9	Melaka	17/7/2019
10	Sandakan, Sabah	22/7/2019

11	Kota Kinabalu, Sabah	24/7/2019
12	Kelantan	8/8/2019
13	Perak	15/8/2019
14	Perlis	20/8/2019
15	Kedah	21/8/2019
16	Miri, Sarawak	26/8/2019
17	Kuching, Sarawak	28/8/2019
18	Terengganu	4/9/2019
19	Political parties	2/10/2019
20	Kuala Lumpur	15/10/2019
21	Media practitioner	6/11/2019
22	Civic and voter education – with Ministry of Education, Ministry of Youth and Sports, National Sports Institute and Polytechnics	7/11/2019

In addition, the ERC and Bersih 2.0 jointly organised three regional consultation workshops in Kota Kinabalu, Kuching and Kuala Lumpur, followed by a national consultation workshop in Kuala Lumpur on establishing an election code of ethics from July to November 2019. The consultation process engaged with 25 political parties nationwide to develop an election code of ethics to be included in the ERC report as part of its recommendations to the government.

The committee then submitted its interim report to Prime Minister Dr. Mahathir Mohamad in January 2020. The proposals include replacing the current "first-past-the-post" (FPTP) electoral system with a proportional representation system for parliamentary seats²⁰⁹, forming boundary commissions every eight years for the purpose of re-delineation exercises in Peninsula, Sabah and Sarawak respectively²¹⁰ and for the state to allocate a budget for political party funding.²¹¹

However, the full content of the interim report was not disclosed to the public, facing the same fate as the reports made by the Institutional Reforms Committee and the Council of Eminent Persons. The final report is expected to be delivered by August 2020.

209 <https://www.malaysiakini.com/news/505334>

210 <https://www.malaysiakini.com/news/505195>

211 <https://www.thestar.com.my/news/nation/2019/10/03/erc-moots-dual-voting-system>

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GENDER & SEXUALITY

Gender and Sexuality

Overview

The human rights situation of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons continued to regress in 2019 evidenced by the increased prosecution and criminalization of LGBTQ persons, online gender-based violence, hateful speech and crimes against LGBTQ persons, among others.

SUHAKAM's annual report, which was tabled in Parliament for the first time in 2019, included human rights violations experienced by LGBTQ persons. In particular, the report highlighted the cases of discrimination and violence against LGBTQ persons, including denial of employment opportunities, and hate crimes against trans women.

In total, the report noted that SUHAKAM has received five LGBT-related discrimination, specifically on hate speech, challenges with the criminal justice system, employment discrimination faced by a trans woman between June 2010 and 2018.

The report also highlighted the findings of SUHAKAM's study on discrimination faced by trans people in Kuala Lumpur and Selangor:

The study revealed that all transgender respondents agreed that at some stage of their life, they encountered some form of discrimination solely due to their gender identity and expression. In addition, they also experienced harassment, abuse, and violence by the state authorities as well as non-state agents, no less the general public. Some indicated that they were victims of bullying in schools and tertiary education by peers, teachers and lecturers. As adults, they were further discriminated against by various policies in the workplace and faced harassment in the workplace. It was also evident that transgender people not only face challenges in having their identity recognized but also in accessing basic public services such as healthcare and education. By ignoring sensitivities linked to their identity, public institutions have become hostile toward the community. Even filling up forms could be a traumatizing experience for a transgender.²¹²

The study makes the following recommendations to the government:

1. **Awareness and education.** Lack of understanding on issues of sexual orientation, gender identity and expression (SOGIE) as well as human rights may result in biases and prejudices from a young age resulting in discrimination. Education of human rights is important in addressing bullying in educational institutions.

212 SUHAKAM Annual Report 2018, page 135-137 <https://www.parlimen.gov.my/ipms/eps/2019-04-11/ST.31.2019%20-%2031.2019.pdf>

2. **Continuous dialogue and discourse** with diverse stakeholders to address discrimination faced by trans people.
3. **Legal or Policy Framework against Discrimination.** Discrimination against transgender persons in education, health, employment and housing is prevalent and widespread. Comprehensive legislation and/or policy on equality and non-discrimination are needed to provide legal protection to all persons, including LGBT, against discriminatory practices.
4. **Criminal Justice Process.** The government has to develop standard operating procedures (SOPs) that minimise arbitrary arrest, questioning and harassment of LGBT persons. Training should be held for enforcement agencies to discourage stereotyping, profiling and abuse.
5. **Capacity Building and Training** to increase understanding and empathy.

The personal, micro and macro cost of the structural and systemic discrimination that LGBTIQ persons face in Malaysia are blatant, although these are not adequately documented. As a result, the discrimination faced by LGBTIQ is seen as isolated experiences, instead of shared collective experiences of discrimination. In addition, the overwhelming religious sentiments and narratives often justify and override the experiences of discrimination faced by LGBTIQ persons.

The discrimination faced by LGBTIQ persons, manifested in denial and restricted opportunities, freedoms, access to services and justice, among others, has resulted in forcible migration of LGBTIQ persons.

Numbers of Malaysians seeking asylum and migrating to Australia have increased over the years. Between 2017 and 2018, over 50% of the asylum applications received by the Australian Administrative Appeals Tribunal (AAT) were reportedly by Malaysians.²¹³ In July 2019, Dato' Haji Marzuki bin Yahya, then Deputy Minister of Home Affairs, in a Parliamentary response said that sexual orientation and gender identity, is one of the four main reasons cited by Malaysians who seek asylum in Australia. Other reasons include domestic violence, family pressure and discrimination on the grounds on ethnicity and religion.²¹⁴

Indeed, the discrimination faced by LGBTIQ persons in Malaysia has wider economic, social and global impact.

213 Report: Half of appeals for refugee status in Australia from Malaysians

<https://www.freemalaysiatoday.com/category/nation/2018/02/28/report-half-of-appeals-for-refugee-status-in-australia-from-malaysians/>

214 Parliament Hansard, 2 July 2019, page 27, <https://www.parlimen.gov.my/hansard-dewan-rakyat.html?uweb=dr&arkib=yes>

Criminalization of LGBTQ persons and trend of prosecution under the laws

The Pakatan Harapan's triumph at the 14th General Election (GE-14) witnessed new tensions and heightened politicization of religion, race or ethnicity, royalty and LGBTQ related issues.

Throughout 2018 and 2019, LGBTQ or sexuality related issues remained at the center of Malaysian politics. It reached its peak in June 2019 when a few sex videos allegedly involving a minister and a senior political secretary were released on communication platforms.²¹⁵ The senior political secretary, who released a confessional video outing himself and a cabinet minister as the two men in the sex videos, was investigated under Section 377B of the Penal Code, which criminalizes consensual sex between adults and Section 233 of the Communications and Multimedia Act 1998, which penalizes improper use of network facilities or network service.²¹⁶

Meanwhile, the cabinet minister maintained that the sex videos were a "nefarious plot" to damage his reputation and destroy his political career. No charges were filed against the minister.²¹⁷ As a result of the episode, 'semburit', a new pejorative term was introduced into the public sphere. Semburit means sex between men.

The sex scandal was followed by another allegation of sexual harassment by a former staff against the President of the Justice Party in December 2019.²¹⁸ In January 2020, the investigation of the case was dropped.²¹⁹

These high-profile cases are complex in nature. The cases should be thoroughly investigated to ensure justice for the victims. At the same time, these cases also expose the increased vulnerability to blackmail based on one's actual or perceived sexual orientation. The criminalization of consensual "carnal intercourse against the order of nature" under

215 Man in alleged Malaysian minister gay sex video confesses, names minister <https://www.straitstimes.com/asia/se-asia/man-in-malaysian-gay-sex-video-confesses-says-minister-not-fit-to-lead-country>

216 Magistrate's court issues six-day remand order for Haziq, five others <https://www.thestar.com.my/news/nation/2019/07/15/magistrates-court-issues-sixday-remand-order-for-haziq-five-others/>

217 No charges over Azmin Ali sex video, Malaysia's attorney general says <https://www.scmp.com/news/asia/southeast-asia/article/3045398/no-charges-over-azmin-ali-sex-video-malaysias-attorney>

218 Anwar Ibrahim denies sexual harassment allegation by male ex-staff member <https://www.straitstimes.com/asia/se-asia/anwar-ibrahim-denies-sexual-harassment-allegation-by-male-ex-staff-member>

219 Malaysia drops sex assault probe on Anwar Ibrahim <https://theaseanpost.com/article/malaysia-drops-sex-assault-probe-anwar-ibrahim>

the Federal laws and liwat under state Syariah laws coupled with societal stigma permit violation of privacy and dignity to persist with impunity.

In 2019, LGBTQ persons continued to face prosecution under the Federal and state laws, as well as heavy-handed response by the state in relation to public participation and exercise of freedom of assembly and expression.

In March 2019, the organizers of the Women's March were subjected to a police investigation under the Sedition and Peaceful Assembly Act, as the march had visible participation of LGBTQ persons and included LGBT related chants.

The trend of prosecution of LGBTQ persons in Terengganu continued. A number of trans women were arrested and prosecuted for not performing the Friday prayers in Terengganu. The trans women were arrested in their homes.

A number of trans women, including foreigners were arrested and prosecuted for alleged sex work under Section 372B of the Penal Code.

State sponsored homophobia and transphobia

The Federal and state governments continued to play a key role in perpetuating discrimination against LGBTQ persons by spearheading and endorsing non-evidence and rights-based approaches and measures in responding to LGBTQ related issues. The state's misconception that LGBTQ persons are abhorrent and need to be rehabilitated creates adverse impact on lives of LGBTQ persons. It denies LGBTQ persons the right to self-determination, privacy, safety and dignity.

On 29 October 2019, Fuziah Salleh, then Deputy Minister of Religious Affairs, shared in Parliament that the government took a non-punitive and rehabilitative approach through a dakwah (evangelical) method in responding to LGBT related issues. She added that Islam teaches its followers to hate the act, not human beings. If LGBT people are hated, they will be further pushed away into immoral or criminal activities. The government also believes that 83% of the LGBT population are involved in sex work. Thus, it is important to guide them out of sex work and not isolate them further.

In the context of Malaysia, where religion has been integrated in the state administration, the policies and practices adopted by the government have an overarching impact on all LGBTQ persons regardless of religious background.

The Report of the Special Rapporteur on freedom of religion and belief published in February 2018 notes that:

... states with an 'official' religion have high levels of restrictions on freedom of religion or belief and often discriminate against persons belonging to religious minorities, women, lesbian, gay, bisexual, transgender and intersex persons, converts or apostates

and non-believers. States with a negative view of religion have equally high levels of restrictions on freedom of religion or belief for any individual manifesting another belief contrary to State atheism. In both cases, the nexus of other interdependent and mutually reinforcing rights is invariably violated too, such as freedoms of opinion, expression, peaceful assembly and association. Thus, in these models, even persons belonging to the numerically majority religion may be subject to repression and persecution.²²⁰

The report also points out the trend of some States, groups and individuals, to invoke “religious liberty” concerns in order to justify differential treatment against particular individuals or groups, including women and lesbian, gay, bisexual, transgender and intersex persons. The report stresses that the jurisprudence of the Human Rights Committee and the regional human rights courts uphold that it is not permissible for individuals or groups to invoke “religious liberty” to perpetuate discrimination against groups in vulnerable situations, including lesbian, gay, bisexual, transgender and intersex persons, when it comes to the provision of goods or services in the public sphere.

In addition, the lack of inclusion and diversity in religion remains a barrier for LGBTIQ persons to practice their religious beliefs. It is also important to note that all religions, including Islam are not monolithic. There are many LGBTIQ persons who are also followers of diverse religions and faiths. Similar to others, LGBTIQ persons also inherently have the right to freedom of thought, conscience and religion; this right includes freedom to change one’s religion or belief, and freedom, either alone or in community with others and in public or private, to manifest one’s religion or belief in teaching, practice, worship and observance.²²¹

The last few years has seen a robust discourse on religion and sexual orientation and gender identity, increased visibility of Muslim LGBTIQ persons, as well as increased inclusion and shifts in attitudes within religious institutions and communities towards LGBTIQ persons.

Introduction of new laws

On the legislative front, a new law criminalizing gender expression and identity of cisgender women, trans masculine, non-binary and gender non-conforming persons were introduced under the Negeri Sembilan Syariah Criminal Offences Enactment 1992. In May 2019, Negeri Sembilan introduced Section 66A, which criminalizes female persons posing as men.²²² With that, four states in Malaysia now prohibit cisgender women and trans masculine persons.

220 Report of the Special Rapporteur on freedom of religion and belief, A/HRC/37/49

221 Universal Declaration of Human Rights <https://www.un.org/en/universal-declaration-human-rights/>

222 Enakmen Jenayah Syariah (Negeri Sembilan) Diperkasa <https://www.negerisembilan.org/01-mei-2019-1>

In addition, the infamous Section 66 of the Negeri Sembilan Syariah Criminal Offences Enactment was amended. The amendment added ‘for immoral purposes’ in Section 66. The fine was increased from RM 1,000 to RM 3,000 and the 6 months prison sentence was increased to not more than 2 years.²²³

Malaysia has ratified Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD). In 2018, Malaysia underwent two human rights reviews – CEDAW in February 2018 on the status of women’s human rights in Malaysia and Malaysia’s third cycle of Universal Periodic Review (UPR) review in November 2018. This table includes the LGBTIQ related recommendation received via Malaysia’s UPR and CEDAW reviews.

Area	Concluding observations by CEDAW	Recommendation by UPR	Status
Criminalization, legal barriers and protection in relation to discrimination and violence against LGBTI persons	The State party undertakes awareness-raising measures to eliminate discrimination and negative stereotypes against lesbian, bisexual, transgender and intersex women. It particularly recommends that the State party: (a) Amend all laws which discriminate against LGBTI women, including the provisions of the Penal Code and Syariah laws that criminalize same-sex relations	Uruguay: Approve a broad antidiscrimination law that includes the protection of all rights for all people without discrimination (6.55). Argentina: Take the necessary measures to establish in its national legislation a comprehensive legal framework for effective protection against discrimination and violence against LGBTI people (6.77). Austria: Take necessary measures	Regressed. In 2018 and 2019, LGBTQ persons continued to face arbitrary arrest and detention as well as prosecution under various laws. At least 7 persons have been subjected to fines and 6 strokes of cane each for attempt of musahaqah in Terengganu and sex against the order of nature under the Terengganu in Selangor. Of

223 ibid

	between women and cross-dressing; (b) Apply a policy of zero-tolerance with regard to discrimination and violence against LGBTI women, including by prosecuting and adequately punishing perpetrators; (c) Expedite measures to discontinue all policies and activities, which aim to “correct” or “rehabilitate” LGBTI women.	to protect LGBTI persons, in law and in practice, against any form of violence, harassment or discrimination and ensure the full enjoyment of all their fundamental human rights and freedoms (6.78). Canada: Review and repeal laws that directly or indirectly criminalise consensual same-sex sexual activity and take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity (6.79). Chile: Decriminalise consensual sexual relations between adults of the same sex (6.80). France: Ensure respect for the fundamental rights of all, without discrimination, including in relation to LGBTI persons by decriminalising	which 5 were also imprisoned for attempt consensual sex against the order of nature. A number of transgender women were arrested for not performing Friday prayers in Terengganu. In addition, many transgender women are subjected to arrest, detention and prosecution for alleged solicitation of sex. Amendment to Section 66 of the Negeri Sembilan Syariah Criminal Offences Enactment was amended. Section 66A, which criminalizes female person who pose as man or wear men’s attire was introduced under the Negeri Sembilan Syariah Criminal Offences Enactment
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		homosexuality (6.81) Germany: Repeal all legislation that discriminates on the basis of sexual orientation or gender identity to guarantee that LGBTI persons can enjoy all human rights without facing discrimination with regard to work, health, education, housing and other policy (6.82). Iceland: Repeal all laws that criminalize persons based on their sexual orientation and gender identity (6.83). Ireland: Undertake efforts to guarantee and protect the human rights of LGBTI persons in line with international obligations (6.84). Netherlands: Take concrete steps to protect LGBTI persons from discrimination and violence, including through enactment	
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		of explicit nondiscrimination provisions in law, development of public awareness programs and to allow for recognition of the gender of transsexual persons (6.85). *all recommendations are noted	
Education	36. (e) Adopt anti-bullying policies based on alternative strategies to address bullying, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for LGBTI students	Portugal: Implement anti-bullying campaigns in schools addressing all forms of bullying, including based on actual or perceived sexual orientation, gender identity or gender expression (6.224). <i>*partially accepted</i>	Two cases in relation to LGBTQ related discrimination were reported in the media – 1) gender non-conforming students being targeted and subjected to ‘gender awareness’ corrective programmes by a counseling unit in Sabah. 2) a student caned by a teacher for using homophobic language towards the teacher The Ministry of Education’s

			interventions in both cases are commendable. However, long term, proactive and comprehensive are needed to address discrimination against LGBTQ persons in educational institutions.
Women human rights defenders	49. The Committee is concerned that women human rights defenders, in particular those advocating for Muslim women's rights, the rights of lesbian, bisexual, transgender and intersex women, as well as for democratic reforms, have reportedly been subjected to arbitrary arrests, harassment and intimidation by State authorities as well as religious institutions, including through the adoption of fatwas against women's organizations working on the		Regressed. While the investigation of the Women's March was dropped, the state response was heavy handed. The state response to the LGBT presence in the march had resulted increased security and safety risks for LGBTQ human rights defenders and organizers. There was no protection against reprisal and support for human rights

	above-mentioned issues.		defenders in responding to the reprisals against the participants of the march.
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Women’s march, gender-based violence online and freedom of assembly

The Women’s March is a global annual rally that takes place in conjunction with the International Women’s Day. In Malaysia, the Women’s March started in 2017, and the size of the rally and the number of participants has increased steadily in these three years.

Lesbian, bisexual, trans, intersex and queer women are among some of the more marginalized and invisible groups of women. Often, the experiences of LBTIQ women are silenced, dismissed and are undocumented. As a result, LBTIQ women suffer multiple forms of patriarchy, discrimination and violence in isolation.

On the Record: Violence against lesbian, bisexual and trans people in Malaysia documents multiple forms of violence and discrimination faced by LBTQ women in Malaysia. This includes sexual harassment and violence by family members, strangers and online users, lack of protection against intimate partner violence and domestic violence, withdrawal of emotional and financial support resulting in LBTQ person forcibly dropping out or unable to complete education, physical and emotional violence, coerced or persuaded to attend counselling to ‘correct’ sexual orientation and gender identity, increased pressure to be in a heterosexual marriage as a form of correction, restricted movement, among others.²²⁴

In addition, the criminalization of LGBTQ persons under Federal and state syariah laws also has a deleterious effect on LGBTQ persons’ ability to access, exercise and enjoy fundamental rights, including public participation, freedom of assembly, association and expression, as evidenced by the response to LGBTQ visibility, presence and inclusion in the Women’s March.

In 2019 the Women’s March was held in Kuala Lumpur and Kota Kinabalu. Attended by reportedly over 200 people,²²⁵ the march in Kuala Lumpur in particular received severe reprisals due to visible participation, presence and inclusion of LGBTQ persons, increased media coverage, amongst others.

224 KRYSS & OutRight Action International, On the Record: Violence against lesbian, bisexual and trans people in Malaysia, (New York: 2014), page 21 https://www.outrightinternational.org/sites/default/files/MalaysiaCC_0.pdf

225 In Women’s Day march, hundreds gather to demand end to patriarchy

<https://www.malaymail.com/news/malaysia/2019/03/09/in-womens-day-march-hundreds-gather-to-demand-end-to-patriarchy/1730821>

The LGBTQ visibility and LGBT related chants attracted unwanted attention and sensationalism in the media and on social media platforms. Some media outlets reported the Women's March as an LGBT march or that it had been hijacked or tainted by the LGBT presence. Homophobia, transphobia and misogyny coupled with a sensationalist media created hypervisibility of the march and fueled a wider anti-LGBT panic. This led to a hostile response towards the participants of the march and call for actions against the organizers by state and non-state actors alike.

Datuk Seri Mujahid Yusof Rawa, then minister in the Prime Minister's Department (Religious Affairs) expressed disappointment over the 'misuse of democratic space to defend things that are wrong in the religion of Islam and promote LGBT'. He reiterated that the government does not accept LGBT practices.²²⁶

Meanwhile, Tan Sri Muhyiddin Yassin, then Minister of Home Affairs reported that the police were investigating the organisers for conducting a rally without a permit.²²⁷ This further mischaracterized the Women's March as an illegal march. Contrary to the claims by the police and Ministry, the organizers did submit a notice 10 days prior to the march as required under the Peaceful Assembly Act 2012 (PAA).²²⁸ The claims by the police and Ministry raise a number of significant and on-going concerns in relation to the police, in particular the transparency of police processes and the wide trust deficit between the police and the people.

The participants and organizers of the march faced widespread and multiple forms of reprisals, particularly by employers, educational institutions, family, state, general public via social media platforms and in the media. At least four cases related to employment were recorded, which included participants being issued warning letters by employers for taking part in the march, being probed by colleagues and employers, and threats to report the participants to employers for being pro-LGBT or attending an LGBT inclusive march. Meanwhile, two participants, who were students in public universities, were reprimanded by the university dean or head of department for participating in the march.

A number of women human rights defenders, who are deemed 'liberal Muslim women' were also specifically targeted as organizers and faced reprisals amidst the broader backlash against the march. Siti Kasim, a prominent woman human rights defender and

226 Mujahid shocked Women's Day march was used to promote LGBT

<https://www.malaymail.com/news/malaysia/2019/03/09/mujahid-shocked-womens-day-march-was-used-to-promote-lgbt/1730905>

227 Muhyiddin: No permit issued for Women's Day march

<https://www.malaymail.com/news/malaysia/2019/03/11/muhyiddin-no-permit-issued-for-womens-day-march/1731428>

228 Malaysia: Attacks on women's day march inconsistent with the government's stated commitment to fundamental freedoms <https://www.article19.org/resources/malaysia-attacks-on-womens-day-march-inconsistent-with-the-governments-stated-commitment-to-fundamental-freedoms/>

Sisters in Islam (SIS), a Muslim women's human rights organisation, were among those targeted by online users.

On social media, online users tagged various state institutions and state actors including the Minister in the Prime Minister's Department (Religious Affairs), Ministry of Women, Community and Development and the police, among others, calling for state action against organizers and participants of the march. According to the Inspector-general of police, more than 50 police reports were lodged against the organizers.²²⁹

Response by Members of Parliament

In the Parliamentary sitting between 11 March and 11 April, at least eight Members of Parliament called for stern action by the government against the organizers due to the inclusion of LGBT persons in the event.

A few MPs, including Kasthuri Patto and Chang Lih Kang clarified misconceptions and mischaracterization of the march and called the Ministry of Home Affairs to drop the investigation against the Women's March organizers. Chang Lih Kang in his intervention reiterated that the right to peaceful assembly is a fundamental human right that must be upheld, especially in the new Malaysia.

Interventions by Members of Parliament in relation to the LGBT visibility and presence at the Women's March 2019

No	Name	Date	Summary of intervention(s)
1	Dato' Sri Ismail Sabri bin Yaakob [Bera]	13 March 20 March	'LGBT' can jeopardize national harmony, mocks religion and are against norms. The LGBT advocacy for right contravene with Article 3 of the Federal Constitution that places Islam as the religion of the Federation. For the government to take stern action against the organizers of the Women's March Pakatan Harapan is weak in dealing with the LGBT issues
2	Puan Hajah Siti Zailah binti	14 March	What are the actions by the government against the Women's March?

²²⁹ 'IGP: Women's March organisers did not give notice within 10-day timeframe',

<https://www.malaysiakini.com/news/468056>

	Mohd Yusoff [Rantau Panjang]		The march has degraded the nation's and Muslim persons' dignity. The LGBT issues are disgusting and have to be condemned strongly. Even animals do not engage such disgusting acts. The government of the day must use all of its powers and abilities to restrict this deviant group and something must be done to give them awareness and education so that they repent
3	Dato' Dr. Haji Noor Azmi bin Ghazali [Bagan Serai]	14 March	This (LGBT issues or persons) is a deviant practice that is disgusting and haram. Even animals don't engage in such acts. HIV prevalence is also in the rise because of these deviant acts. All Malaysians must rise up against LGBT persons.
4	Dato' Dr. Noraini Ahmad [Parit Sulong]	19 March	The inclusion of immoral elements in the Women's March is against syariah and social values in Malaysia. It challenges Islam as the religion of the Federation. Will the government allow individuals who are responsible for these immoral elements to go unpunished?
5	Dato' Sri Ikmal Hisham bin Abdul Aziz [Tanah Merah]	19 March	The Women's March that was tainted by LGBT persons have angered the Muslims. The laws enforcement agencies must monitor LGBT activities from spreading any further and influencing the society. Freedom must have its limits, as it should not create disharmony in society
6	Tuan Haji Wan Hassan bin Mohd Ramli [Dungun]	21 March	LGBT is a western phenomenon, and how has it invaded our Eastern culture? The LGBT issues have to be taken seriously. We cannot allow them to cause disasters, diseases in our Asian, Eastern and religious society. There must be laws to curb the growth of the LGBT in Malaysia.
7	Dato' Dr. Mohd Khairuddin bin	25 March	It is impossible for our Islamic values to accept LGBT people, and they must be condemned.

	Aman Razali [Kuala Nerus]		While as individuals they have rights, these rights do not apply to them as a group. The Pakatan Harapan administration appears to allow and like this deviant culture
8	Tuan Sabri bin Azit [Jerei]	25 March	The Pakatan Harapan administration should take drastic actions against LGBT and those who question the position of Islam. There were recently statements that slammed the Ministers of Religious Affairs' statement against the march. The government must take stern actions against these groups.

(Source: Parliament Hansard, 11 March – 11 April 2019)

Investigation of the organizers

The organizers of the march were called for a police investigation under Section 4(1) of the Sedition Act 1948 and Section 9(5) of the Peaceful Assembly Act 2012 (PAA) in March 2019.²³⁰

Section 9 (1) of the PAA 2012 requires organizers to notify the police 10 days before an assembly. Violation of Section 9 (1) could result in a fine in RM 10,000 as stated in Section 9 (5).

The Pakatan Harapan administration had pledged to repeal discriminatory provisions in the PAA 2012.²³¹ On 12 March 2019, three days after the women's march, the Deputy Minister of Home Affairs announced an amendment to the Peaceful Assembly Act (PAA) 2012 to make it more stringent. However, no further information is available.

The constitutionality of Section 9 of the PAA has been contested. In 2014, in a unanimous decision, the Court of Appeal declared Section 9(5) unconstitutional in the Nik Nazmi case. In a subsequent case in 2015, however, the court of appeal went against the precedent set in the Nik Nazmi case in 2014 and upheld the High Court's decision against the appellant of RM6,000 in fine for failing to give police 10-days' notice.

In compliance with section 9 (1), the organisers submitted a notice to the Dang Wangi District Police Headquarters within the stipulated time frame. Representatives of the

230 Cops investigating Women's March organisers under Sedition Act <https://www.malaysiakini.com/news/467955>

231 Dr M: Pakatan to repeal controversial laws, including fake news act

<https://www.thestar.com.my/news/nation/2018/04/03/dr-m-pakatan-to-repeal-controversial-laws-including-fake-news-act/>

organising committee also attended an interview with the assigned Inspector overseeing the event.

However, following the march, senior police officers publicly denied that the organisers submitted a notice, labelling the march as “illegal” or without a permit issued by the authorities. This was reiterated by the Minister and Deputy Minister of Home Affairs on 11 March 2019. Consequently, the organizers were investigated under Section 9 of the PAA.

This raises questions over the transparency of police procedures and credibility of the police, reinforcing the trust deficit in the police.

In May 2019, Tan Sri Muhyiddin Yassin, then Minister of Home Affairs, confirmed that the case had been classified as 'no further action' (NFA) and dropped in a written reply to Senator Siti Fatimah Yahya.²³²

Online gender-based violence

Online, the participants of the march faced severe reprisals. In particular, transgender women, LGBT persons, Muslim women, young women, attendees that carried placards on bodily autonomy and integrity, challenging patriarchy in religion and culture, called for respect of sex workers, were some of those who faced increased reprisals online.

There was a stark language polarization in the reactions on social media and mainstream media. Thus, while there were criticisms and negative reactions in English, the hateful comments in Bahasa Malaysia (BM) outweighed the hateful comments in English.

Facebook saw the most harassment and discriminatory as well as hateful comments. The weak reporting mechanism and delayed response by Facebook against harassment, including doxxing benefited perpetrators (some were also linked with anti-rights and right-wing groups) and prolonged the harassment.

Multiple complaints were lodged via the respective platform's complaint mechanism in relation to cases of harassment, including doxxing. The complaints aimed to remove the photos and posts in order to minimize harm to the attendees of the march, as the posts garnered hateful comments. Instagram and twitter were more responsive. There were higher success rates of doxxed posts being removed. Facebook was the least responsive to the reports.

232 Home Minister: Sedition probe against Women's March organisers dropped

<https://www.malaymail.com/news/malaysia/2019/05/29/home-minister-sedition-probe-against-womens-march-organisers-dropped/1757532>

Some forms of harassment that took place, included:

❖ **Doxxing or dissemination of personal information or photos without consent.**

Many personal photos of participants of the march were taken and shared without consent on various social media platforms, tabloids and media. Some of the photos that were widely shared, included:

- Women with placards or signs calling for bodily autonomy and integrity. A photo of a woman with the sign 'free the nipples' was widely shared.
- Photos of participants with rainbow flags.
- Placards in jawi
- Placards on sex work
- The hateful comments and hyper visibility due to the widespread sharing of the photos resulted in concerns over personal safety, privacy, and job security for some of the participants and organizers. Some of the participants in the doxxed and viral led photos were questioned by their families, friends & employers regarding their presence and participation in the march. Young people, especially first-time protestors or participants of public rallies experienced increased anxiety, stress and fear of being questioned, reprimanded or isolated by their friends, teachers, employers, parents and family members.
- Doxxing particularly has been an on-going issue in every march. In 2017 and 2018, the participants who had shared their photos online had received severe online harassment and shaming. Those who carried placards and signs that questioned patriarchy within religion and culture, gender stereotypes, barriers faced by Muslim women, ending violence against trans women, were amongst those who were more vulnerable to the harassment in the internet.

❖ **Moral policing of Muslim women who attended the march online.** Hijabi women who attended the march and were seen with a rainbow flag were criticized, vilified and shamed for attending the march. There were a significant number of comments that the participants had brought shame to their parents. Online users also offered prayers and advised the participants to return to the right path. Underlying the shaming and moral policing is homophobia and transphobia, and a need to reprimand those who associate themselves with LGBTIQ persons.

❖ **Hateful, discriminatory comments and speech online.** The march received a significant amount of hateful and discriminatory comments and speech online with religious sentiments and overtones. These were some common themes:

1. Sexism and misogyny:

- Trans women received trans-exclusionary comments and shaming; for example, comments that trans women are not real women;
- Body shaming and name-calling.

2. Violence against attendees of the women's march:

- Willing for the attendees to be run over by trucks, lorries, or other vehicles;

- Death threats against speakers of the march.

3. Religious overtones targeted at LGBT people and women, especially women in hijab.

The Women's March has consistently received reprisals online and offline following the first march and it is noteworthy that the scale of the reprisals has escalated each year.

In 2017, the first year that the Women's March was held in Malaysia, the participants of the march were subjected to misogyny, harassment and intimidation online. Participants who carried placards challenging patriarchy in culture and religion, the glass ceiling, expressing support for transgender women, calling for greater respect for bodily autonomy and integrity, faced increased harassment online. In the three years of the march, placards with these themes have consistently received increased reprisals. This points to the fact that issues of bodily autonomy and integrity, the glass ceiling and leadership, inclusion of transgender and LGBT persons, patriarchy in religion and culture, and gender binary are all issues that are highly contested in terms of human rights of diverse women in Malaysia.

For example, in 2017 a 16-year-old girl who carried a placard: "I wish to be the next Prime Minister, but I can't... Do you know why??? (Speech bubble: 'Mana tudung?')"

received severe attacks on social media. Some participants were also body shamed.²³³ Voice, Visibility and a Variety of Viciousness, a Malaysian Study of Women's Lived Realities on Social Media by EMPOWER notes that the online comments left the young person feeling 'battered, defenceless, and did not feel she could seek help from her parents for fear of repercussion.' The young person also retreated from social media temporarily until the situation subsided.²³⁴

Meanwhile, in 2018 the participants who shared photos at the march with their placards were harassed on social media. They were subjected to body shaming, transphobia and to threats of violence.²³⁵

While the reprisals have been consistently increasing, the state has yet to take meaningful measures to ensure the organizers and participants of the march are able to exercise and enjoy their freedom of assembly and expression without fear and such high costs on their

²³³ JAG condemns online attack on #WomensMarchKL <https://www.malaysiakini.com/letters/375734>

²³⁴ Voice, Visibility and a Variety of Viciousness, a Malaysian Study of Women's Lived Realities on Social Media, EMPOWER (2017), page 35

²³⁵ After Women's March, participants harassed online and offline

<https://www.malaymail.com/news/malaysia/2018/03/10/after-womens-march-participants-harassed-online-and-offline/1595223>

personal security and wellbeing. Similarly, social media platforms, especially Facebook have yet to take meaningful measures to address online gender-based violence.

Physical attacks

Other than the reprisals faced by participants and organizers online, incidents of physical harassment were also reported in 2019 and 2018. In 2019, two incidents of harassment were reported to the organisers during and after the march. The first, an unidentified motorcyclist rode dangerously close to the marchers, threatening to run into a participant of the march.

Four other participants also reported being harassed by a group of three men aged between 20-30 years of age near Kolam Biru, after the march had dispersed. The men reportedly shouted “Jangan La Berlagak” (Don’t Be Arrogant) and “Jangan la Berangan” (Don’t Let It Get into Your Head) at the participants. No police reports were lodged on the incident due to lack of details of the harassers.

In 2018, four Women's Aid Organisation (WAO) staff and volunteers, who had participated in the march were chased and their placards snatched and destroyed near the Dang Wangi police station after the march, at about 1pm.²³⁶ The men who attacked the four participants also shouted anti-LGBT slurs at them.²³⁷ While the volunteers did lodge police reports, the outcomes of the police reports are unknown.

The perpetrators, self-described UMNO members, were part of Baha Taha, a local ethno-nationalist group, which had lodged police reports against the Women’s March in 2018²³⁸ and 2019.

Arrest and detention of LGBTQ persons

Prosecution of LGBTQ persons under the various laws continued in 2019.

Sexual intercourse against the order of nature, liwat, musahaqah, etc

236 Thuggery mars peaceful Women’s Day march: WAO (Updated) <https://www.thesundaily.my/archive/thuggery-mars-peaceful-womens-day-march-wao-updated-DUARCH531869>

237 VIDEO: Participants of Women’s March Were Harassed By a Group of Pakciks <https://juiceonline.com/video-participants-of-womens-march-were-harassed-by-a-group-of-pakciks/>

238 Group urges action after ‘thugs’ attack women in KL event <https://www.freemalaysiatoday.com/category/nation/2018/03/11/group-urges-action-after-thugs-attack-women-in-kl-event/>

In 2018, two persons were subjected to fines and six strokes of the cane each for *musahaqah* (sexual relations between women) under the Terengganu Syariah Criminal Offences Enactment. The prosecutions for *musahaqah* and *liwat*, or sexual relations “against the order of nature” continued in Selangor in 2019.

In 2019, 12 men faced charges in the Selangor Syariah High Court under Section 52(1)(a) read together with Section 28 of the Selangor Syariah Criminal Offences Enactment 1995 for attempting sexual relations “against the order of nature”. The Selangor Islamic Department arrested the 12 men in a raid of a private party in November 2018.²³⁹ The raid was conducted by 50 officers from the Selangor Islamic Department together with the National Anti-Drugs Agency.

Five out of the 12 men who had pleaded guilty were convicted in November 2019. Four of the five men were sentenced to RM4,800 in fine, 6 months of imprisonment and 6 strokes of the cane. Meanwhile, the judge meted out a higher sentence for one other as he was married and had ‘betrayed his family’ by his actions. He was sentenced to a RM4,900 fine, 7 months’ imprisonment and 6 strokes of the cane.²⁴⁰ Seven others are awaiting trial.

The five men faced high levels of court bias. There were several statements by the presiding judge that amounted to bias; the judge was insistent on imprisoning the five men in order to rehabilitate them as well as to remove and isolate them from “others and their environment” (read: other LGBTQ people) as a preventative measure.²⁴¹ The judge also stated that as ‘people like them’ are difficult to control, therefore they must be segregated.²⁴² The judge also emphasized that the ‘court must be firm in punishing the five men in order to protect public interest.’

In the landmark decision which decriminalized homosexuality in India, the India’s Supreme Court stressed that, “private acts of adults including the LGBT community which are not only consensual but are also innocent, as such acts neither cause disturbance to the public order nor are they injurious to public decency or morality.”²⁴³

239 Lima lelaki cuba melakukan persetubuhan luar tabii dijel, sebat <https://www.sinarharian.com.my/article/56100/BERITA/Mahkamah/Lima-lelaki-cuba-melakukan-persetubuhan-luar-tabii-dijel-sebat>

240 Terbabit pesta seks songsang, 5 lelaki dihukum penjara, sebat <https://www.bharian.com.my/berita/kes/2019/11/625969/terbabit-pesta-seks-songsang-5-lelaki-dihukum-penjara-sebat>

241 Conviction for Attempts of Sex Acts Points to Increasing Hostility Towards LGBTQ Persons In Malaysia <https://www.queerlapis.com/conviction-for-attempts-of-sex-acts-points-to-increasing-hostility-towards-lgbtq-persons-in-malaysia/>

242 11 men charged for attempting sex: what you need to know <https://www.queerlapis.com/11-men-case-intro/>

243 Navtej Singh Johar & Ors. v. Union of India, Thr. Secretary & Ministry of Law and Justice (2018) <https://www.humandignitytrust.org/wp-content/uploads/resources/2018.09.06-Johar-v-India-judgment-Indian-SC.pdf>

The court decision in the Malaysian case in question adversely impacted the men's livelihood and job security, health, privacy, and familial responsibilities. At least one of them was terminated from his employment as a result of the imprisonment. The decision also exacerbated the trauma and lack of faith in the justice system among the seven other men who are awaiting trial before the same judge. Thus, the apparent public interest and impact on society in the case was entirely assumed, imagined and exaggerated.

The five men filed for a stay and appeal of their court decision. However, due to the inefficient Syariah system and inexperience of lawyers, the stay and appeal processes were only completed 12 days after the conviction.

In both the Terengganu and Selangor cases, the arrested persons, amongst others, lacked adequate legal representation, faced court bias and media sensationalism, resulting in harsh sentences and wide social stigma. The five men initially had no legal representation and support. They were even misadvised to plead guilty in order to lessen their sentence by the Selangor Islamic Department officers, a common practice given to many who face prosecution. Similarly, in the Terengganu case, the two were not legally represented and changed their initial plea from not guilty to guilty. This suggests the two in Terengganu could have faced challenges in accessing affordable human rights Syariah lawyers. Indeed, the legal fees in Syariah cases are sometimes higher than the maximum fines that can be imposed by the Syariah courts, namely RM 5,000. In the case of the five men, each person spent at least RM 15,000 for their legal fees and fines.

Taking place in a time of increasing homophobia in Malaysia, both cases combined attempt and sexual intercourse "against the order of nature", broadening the scope of criminalisation and increasing the arbitrariness of the charges.

Criminalization of actual or perceived sexual orientation and consensual carnal intercourse between adults

The criminalization based on actual or perceived sexual orientation and consensual sexual acts is against international human rights standards. It fundamentally violates LGBTQ persons' right to equality and non-discrimination, dignity, self-determination, privacy, to be free from harmful practices and torture, amongst others.

- ❖ **Right to equality and non-discrimination.** The criminalization of LGBTQ persons creates and reinforces the perception that LGBTQ persons are criminals or deviants. This perpetuates prejudice, and LGBTQ persons are not treated as equals under the law and in society.

India's Supreme Court decision on Section 377 recognized the failure to distinguish between consensual and non-consensual acts under Section 377 as a "dichotomy in the law" and "manifestly arbitrary".²⁴⁴

In Botswana's landmark decision in 2019 that decriminalized homosexuality, the High Court held that:

- "Discrimination has no place in this world;
- All human beings are born equal;
- Homosexuality is another form of sexuality that has been suppressed for years;²⁴⁵
- Human dignity is harmed when minority groups are marginalized;
- Sexual orientation is not a fashion statement, but an important attribute in one's personality."²⁴⁶

❖ **Right to life with Dignity.** The India's Supreme Court decision on Section 377 concluded that the law violates the personal liberty and the right to live with dignity guaranteed to all citizens under its Constitution:

- "Section 377 insofar as it curtails the personal liberty of LGBT persons to engage in voluntary consensual sexual relationships with a partner of their choice, in a safe and dignified environment... It inhibits them from entering and nurturing enduring relationships. As a result, LGBT individuals are forced to either lead a life of solitary existence without companion or lead a closeted life as "unapprehend felons".

❖ **Right to privacy.** Article 12 of the Universal Declaration of Human Rights, (1948) states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The criminalization of LGBTQ persons under various laws makes LGBTQ persons vulnerable to intrusion, surveillance, raids, intimidation, harassment, arbitrary arrest, moral policing and violence by state and non-state actors when they express

244 Navtej Singh Johar & Ors. v. Union of India (2018) – Case Digest <https://www.humandignitytrust.org/wp-content/uploads/resources/2019.01-Case-Digest-Johar-v-India-2018-.pdf>

245 Botswana's High Court decriminalizes homosexuality <https://www.reuters.com/article/us-botswana-lgbt/botswanas-high-court-decriminalizes-homosexuality-idUSKCN1TC1EP>

246 Botswana decriminalises homosexuality in landmark ruling <https://www.bbc.com/news/world-africa-48594162>

themselves and their identities. In the Selangor case, the men were arrested in a raid as a result of surveillance.

Not only that, when a person is under constant intrusion or threat of intrusion because of their sexual orientation or the types of relationships they form, they are unable to fully explore and nurture themselves, develop intimate relationships and actualize this aspect of their life. Thus, the lack of privacy has an adverse impact on the self-development and actualization, ability to make autonomous decisions or exercise autonomy, live with dignity and nurture intimacy.

India's Supreme Court stated that "...Section 377 affects the private sphere of the lives of LGBT persons. It takes away the decisional autonomy of LGBT persons to make choices consistent with their sexual orientation, which would further a dignified existence and a meaningful life as a full person. Section 377 prohibits LGBT persons from expressing their sexual orientation and engaging in sexual conduct in private, a decision which inhabits in the most intimate spaces of one's existence."

In *Toonen vs Australia*, Nicholas Toonen, an Australian citizen and activist with the Tasmanian Gay Law Reform Group, filed a complaint under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which allows individuals to make complaints on infringement of their human rights by the state to the UN Human Rights Committee. In 2012, the Human Rights Committee unanimously decided that the Tasmanian law had violated Toonen's right to privacy under Article 17(1). The Committee said that two laws "interfere" with Toonen's privacy, even if these provisions have not been enforced for a decade, there is no guarantee that the provisions will not be used in the future. The continued existence of the two sections will continuously and directly "interfere" with Toonen's privacy.

- ❖ **Free from cruel, degrading treatment as well as harassment.** The laws that criminalize LGBTQ persons impose various penalties, including fines, imprisonment and strokes of cane based on their sexual orientation. As a result of laws, many LGBTQ persons have been subjected to arbitrary arrest, extortion, humiliation and degrading treatment during arrest and detention.

The UN Special Rapporteur on Torture noted in his report that,

"States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity. States are complicit in violence against women and lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances.... A clear link exists between the criminalization of lesbian, gay, bisexual and transgender persons and homophobic and transphobic hate crimes, police abuse, community and

family violence and stigmatization... Such laws foster a climate in which violence against lesbian, gay, bisexual and transgender persons by both State and non-State actors is condoned and met with impunity.”²⁴⁷

A research involving 29 Muslim gays and Men who have Sex with Men (MSM) named several issues that attributed to their poor health-seeking behaviour or reluctance to see a doctor, namely, criminalisation, discriminatory laws and policies that reinforced the notion that LGBT people will never be accepted and fear of arrest and expression of identity; society’s double discrimination and stigma towards HIV and LGBT people; religious patriarchal interpretation of non-heteronormative sexualities; among other things. As a result, the respondents showed poor knowledge of HIV and sexual health, shame and stigma toward condom acquisition, internalized issues in terms of self-blame and self-guilt due to familial and societal pressure to marry and to ‘return to the right path’.²⁴⁸

In Malaysia, there are numerous laws that criminalize consensual sexual acts and actual or perceived sexual orientation.

Section 377 A, B and D of the Penal Code Act 574

Under the civil laws, Section 377 A, B and D criminalize consensual sex “against the order of nature” and gross indecency. Section 377A and B are gender neutral and criminalize consensual sexual acts. This means it can be used against anyone regardless of gender identity or sexual orientation for having consensual carnal intercourse with another adult.

The punishment under 377A and B can amount to torture, as it imposes a prison sentence for not more than 20 years and mandatory whipping for consensual carnal sex between adults.

377A. Carnal intercourse against the order of nature

Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.

247 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 5 January 2016, A/HRC/31/57, para. 69. <https://undocs.org/A/HRC/31/57>

248 “You Have to Keep Yourself Hidden”: Perspectives From Malaysian Malay-Muslim Men Who Have Sex With Men on Policy, Network, Community, and Individual Influences on HIV Risk (2018)
<https://www.tandfonline.com/doi/abs/10.1080/00918369.2018.1525946?journalCode=wjhm20>

377B. Punishment for committing carnal intercourse ‘against the order of nature’

Whoever voluntarily commits carnal intercourse ‘against the order of nature’ shall be punished with imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.

377D. Outrage on decency

Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

Section 377A and B are a colonial legacy that can be found in many countries that were formerly colonized by the British. Introduced in 1860s into the Indian Penal Code, Section 377 was legislated throughout countries formerly colonized by the British.

The law was introduced without any debates or “cultural consultations,” to support colonial control. The colonizers believed the “native” cultures did not punish “perverse” sex enough. Thus, the law was intended as a compulsory re-education in sexual mores, and to inculcate European morality.²⁴⁹

Section 377 was introduced in 1930s and has since been amended multiple times.

377. Unnatural Offences

‘Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with penal servitude for life, or with imprisonment of either description for a term which may extend for ten years, and shall also be liable to fine or to whipping’.

(Source: The laws of the Federated Malay States 1934)

State Syariah laws

There are many state Syariah laws that criminalize persons based on actual or perceived sexual orientation and consensual sexual acts, namely:

- ❖ Liwat (sexual conduct between men OR anal sex)
- ❖ Musahaqah (sexual conduct between women)
- ❖ Sexual intercourse against the order of nature (gender neutral)
- ❖ Sexual relations between persons of the same gender
- ❖ Attempt to commit liwat

249 This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism. Publisher, Human Rights Watch. (December 2008) https://www.hrw.org/sites/default/files/reports/lgbt1208_webwcover.pdf

The following table includes all the state Syariah laws that criminalize persons based on actual or perceived sexual orientation and gender identity, gender expression and consensual sexual acts.

State Syariah laws criminalising consensual sexual acts and gender identity and expression according to state

State / Law	Musahaqah	Liwat	Sexual intercourse against the order of nature	Sexual relations between persons of the same gender	Attempt to commit liwat	Male person posing as woman	Female person posing as man
Selangor			x	x		x	
Sabah	x	x	x			x	x
Melaka	x	x	x		x	x	
Negeri Sembilan	x	x	x			x	x
Kelantan	x	x				x	
Kedah	x	x				x	
Perlis	x	x				x	x
Wilayah Persekutuan	x	x				x	
Pulau Pinang	x	x				x	
Johor	x	x				x	
Pahang						x	x
Perak	x					x	
Terengganu	x					x	
Sarawak	x	x				x	

Almost all states in Malaysia, except Pahang have laws that criminalize persons based on actual or perceived sexual orientation and consensual sexual acts.

Both Kelantan and Terengganu had passed hudud laws in 1993 and 2002 respectively, and the punishments include stoning, whipping and imprisonment. However, these are not enforceable, as they are beyond the states' jurisdiction. The language used in the two enactments is different - Kelantan uses sodomy, Terengganu uses liwat. Both criminalize anal sex between wedded and unwedded heterosexual persons as well as between men. Consent is absent from the law. The laws are dealt with in 3 sections - content of the law, punishment and proof.

As can be seen in the table below, at least nine states impose fine, imprisonment and 6 strokes of the cane for consensual same-sex relations and consensual sexual acts between adults.

Punishments for Liwat, Musahaqah and related laws under state syariah laws in Malaysia

Sentence	Liwat	Musahaqah	Sexual intercourse against the order of nature <i>*not defined under the law</i>	Others
RM 5,000, 3 years of imprisonment, 6 strokes of cane	Wilayah Persekutuan Johor Pulau Pinang	Pulau Pinang Wilayah Persekutuan Johor Terengganu Sarawak	Selangor Melaka Sabah	
RM 5,000, 3 years of imprisonment	Sabah Kedah Kelantan Perlis Melaka	Perlis		Attempt to commit liwat (Melaka)
RM 5,000, 2 years of imprisonment		Negeri Sembilan	Negeri Sembilan	
RM 5,000,		Kelantan Kedah		

4 months of imprisonment,				
RM 2,000, 1 year of imprisonment,	Sarawak Negeri Sembilan	Perak		Sexual relations between persons of the same gender (Selangor)
RM 1,000, 6 months of imprisonment,		Melaka Sabah		

In addition, sexual intercourse against the order of nature is not defined under the laws. Laws that are undefined can create additional arbitrariness and lead to victimization of persons under the law. However, liwat and musahaqah are defined.

The state Syariah laws also overlap with the Section 377A, B and D of the Penal Code, causing over-criminalization of LGBTQ persons and consensual carnal intercourse between adults. For example, the 'sexual intercourse against the order of nature' in Selangor, Melaka, Sabah and Negeri Sembilan is already covered under Section 377. In fact, the wording of the state syariah laws is identical to the first iteration of Section 377 Penal Code introduced in the 1930s.

Section 377	Sexual intercourse against the order of nature - <i>Selangor</i>
377. Buggery with an animal Whoever voluntarily has carnal intercourse with an animal shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine or to whipping. 377A. Carnal intercourse against the order of nature Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is	Any person who performs sexual intercourse against the order of nature* with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. <i>*Against the order of nature is not defined</i>

said to commit carnal intercourse against the order of nature. 377B. Punishment for committing carnal intercourse against the order of nature Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.	
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The jurisdiction of the Federal and State governments is clearly demarcated under the Ninth Schedule in the Federal Constitution. The states are allowed to create laws and punishment on offences against the precepts (principles) of Islam. However, there are limitations to the state's powers. It cannot make laws on matters "included in the Federal List" or "dealt with by Federal law". Thus, the state syariah laws are ultra vires (beyond the powers of the states) the Federal Constitution.

Failure to perform Friday prayers

Terengganu continued to prosecute LGBTQ persons under various laws in 2019.

In 2019, a significant number of Muslim persons were arrested under Section 16 of the Terengganu Syariah Criminal Offences Enactment (Takzir), which penalizes failure to perform Friday prayers. In a reported case, six cisgender men were sentenced to fines and one-month imprisonment for failing to perform Friday prayers.²⁵⁰

Section 16. Failure to perform Friday prayers.

Any male person, being *mukallaf*, who fails to perform the Friday prayers in a mosque within his *mukim masjid* for three consecutive weeks without *uzur syarie* or without any reasonable cause shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

250 Penjara sebulan ponteng solat Jumaat <https://www.hmetro.com.my/utama/2019/12/522440/penjara-sebulan-ponteng-solat-jumaat>

Trans women were also targeted by the state Islamic Department in their Friday prayer operation. A number of trans women were arrested in their homes by the state Islamic Department in April 2019. Some of them pleaded guilty to the charges and were sentenced to fines.²⁵¹ Meanwhile, others are awaiting trial.

In a media report, the Assistant Director of the Enforcement unit was quoted saying ‘trans women hang out at home under the assumption that they are safe from the Islamic Department’.²⁵² The statement suggests that trans women in Terengganu were also subjected to surveillance and monitoring by the state Islamic Department.

The arrests of the trans women in Terengganu created a high level of fear and concern over arrest, personal safety and privacy among trans women in Terengganu and neighboring states. Some trans women were concerned that other Islamic Departments in other states might carry out similar arrests for failing to perform the Friday prayers. The arrests also created concern among trans women who travel to or happen to be in Terengganu on Fridays, creating restrictions of freedom of movement.

Section 16 only applies to male persons. The use of this law against trans women reinforces gender binary and stereotypes. It forces trans women to perform Friday prayers as cisgender men, thus forcing gender biases and religious enforcement.

Indecent acts in public places

In September 2019, two men were fined RM 1,000 each for ‘indecent acts in public places’ under Section 34 of the Terengganu Syariah Criminal Offences Enactment (Takzir)²⁵³ by the Terengganu Syariah Lower Court. A group of Islamic Department officers on patrol arrested the two men in April 2019. The two men were allegedly caught in an intimate position in a car parked near a beach. It is unknown if the two men had legal representation.²⁵⁴

251 Mak nyah tak solat Jumaat didenda <https://www.hmetro.com.my/mutakhir/2019/08/490797/mak-nyah-tak-solat-jumaat-didenda>

252 Mata-mata kesan kaki ponteng solat <https://www.hmetro.com.my/utama/2019/08/491317/mata-mata-kesan-kaki-ponteng-solat>

253 Section 34. Indecent acts in public place. Any person who, contrary to Hukum Sarawak, acts or behaves in an indecent manner in any public place shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

254 Dua lelaki bercium didenda <https://www.hmetro.com.my/mutakhir/2019/09/500111/dua-lelaki-bercium-didenda>

Soliciting for purpose of prostitution

Many trans women, including foreigners in Malaysia were subjected to arrest under Section 372B of the Penal Code, which prohibits solicitation of sex for purpose of prostitution²⁵⁵ in 2019. Based on cases that were shared with Justice for Sisters, some patterns have been identified:

1. In many cases, law enforcement officers entrap trans women via communication platforms. Law enforcement officers pretend to seek sexual services from trans women through online platforms;
2. Trans women in sex work 'hotspots' are vulnerable to arrest: In some cases, trans women who were not engaging in sex work at the time of arrest, were arrested either to make up the quota of arrests or for other reasons; in other cases, trans women were just out with friends, running errands such as buying food, etc;
3. Trans women who are foreigners are just as vulnerable and they also face being investigated for violation of their social pass;
4. Trans women who provide message services are also vulnerable to arrest under Section 372B.

The criminalization of sex workers subjects them to extortion and violence with impunity. In cases of arrests, sex workers face a high level of court bias, and they often lack legal representation.

Education

Two cases in relation to the education sector surfaced on social media and the mainstream media in 2019.

In February 2019, an annual school report in Sabah featuring a gender awareness programme in which its counseling unit had targeted 15 'effeminate students' surfaced on social media. The wide coverage of the report led to an intervention by the Ministry of Education. The school issued an apology and agreed to introduce positive programmes for the 15 students following the Ministry of Education's intervention and public outcry. However, the content of the positive programmes are unknown.²⁵⁶

255 372B. Soliciting for purpose of prostitution. Whoever solicits or importunes for the purpose of prostitution or any immoral purpose in any place shall be punished with imprisonment for a term not exceeding one year or with fine or with both.

256 Sabah secondary school behind 'kunyit' programme apologises

<https://www.freemalaysiatoday.com/category/nation/2019/02/16/sabah-secondary-school-behind-kunyit-programme-apologises/>

Many LGBTQ students are targeted via programmes by counseling units, schools, state educational departments and others. However, little is known about these programmes.

In June 2019, a teacher reportedly caned his student for calling him 'ah gua', a pejorative term used for gay men who have feminine gender expression and trans women.²⁵⁷ The Ministry of Education and the Department of Education in Johor intervened and carried out an investigation of the case. This case uncovered layers of issues and complex power dynamics between the student, teacher and the parents.

While the intervention of the Ministry of Education is commendable in both cases, long-term, proactive and comprehensive solutions are needed to address bullying and anti-LGBT programmes in schools. As recommended by the CEDAW Committee, the Ministry of Education should adopt alternative strategies to address bullying, such as counselling services and positive discipline, and undertake awareness-raising to foster respect, inclusion and understanding of diversity.

In addition, the Ministry of Education should also take measures to end corporal punishment for all students.

Conclusion

Discrimination, misinformation, violence and prosecution of LGBTIQ persons are on the rise, and this is widening existing inequalities and marginalization. Central to the discrimination and violence that LGBTIQ persons face in Malaysia is the criminalization and discriminatory legal framework as well as non-evidence and non-rights-based approach in responding to LGBTIQ-related issues.

In the last 15 years, more countries have removed laws that criminalize persons based on consensual sex, actual or perceived sexual orientation and gender. Since the Toonen case in 1994, more than 40 countries have decriminalized consensual same-sex relations, either through legislation or through the courts. Between 2012 and 2019, more countries decriminalized consensual same-sex relations, namely Belize, India, Mozambique, Palau, Sao Tome and Principe, the Seychelles, and Trinidad and Tobago, Botswana.

Thus, it is urgent for the government to review its current policies and practices in relation to LGBTIQ persons and to end and reverse the rising discrimination and violence against LGBTIQ persons in Malaysia.

257 JB Teacher Who Caned A 13-Year-Old For Calling Him "Ah Gua" To Be Probed <https://says.com/my/news/jb-teacher-probed-for-caning-a-13-year-old-after-she-called-him-ah-gua>

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DEATH PENALTY

Death Penalty

Following the announcement of the Government's intention to abolish the death penalty in 2018, a moratorium was imposed on all executions pending the necessary law reforms. However, the move to total abolishment was stymied by a series of objections led and propagated by the opposition parties²⁵⁸. This was an unfortunate development as the previous Barisan Nasional administration had conducted extensive study on the death penalty and was on track to abolish it in stages with the Dangerous Drugs Act 1952 amendment in 2017 that removed the mandatory death penalty for drug mules.

The president of PAS was not opposed to the abolition of the mandatory death penalty and was reportedly quoted as saying that lighter sentences ought to be considered for any crimes and death penalty should only be the last resort²⁵⁹.

The mounting pressure posed by the opposition parties and the public eventually resulted in the PH government backtracking and saying they would review their position on abolishing the mandatory death penalty²⁶⁰. The new position adopted by the government had seemingly received broader support²⁶¹ from groups that were previously silent on the decision on total abolition.

The known number of inmates on death row remained relatively consistent at 1,280 individuals with no notable increase reported in 2019²⁶². Total known individuals on death row in 2018 was 1,279. The relatively stagnant statistics for individuals on death row would suggest that several individuals previously on death row may have been successful in appealing for clemency.

258 'MCA activists badger Kit Siang on death penalty abolition' (MalaysiaKini, 23 January 2019)

<<https://www.malaysiakini.com/news/461386>> accessed 25 November 2019

259 Diyana Ibrahim 'Kaji semula mansuh hukuman mati mandatori – Pas' (Astro Awani, 16 October 2018)

<<http://www.astroawani.com/berita-malaysia/kaji-semula-mansuh-hukuman-mati-mandatori-pas-188415>> accessed 25 November 2019

260 Hairulazim Mahmud dan Rizanizam Abdul Hamid 'Setuju hapus hukuman mati mandatori kepada budi bicara' (Harian Metro, 13 March 2019) <<https://www.hmetro.com.my/mutakhir/2019/03/433146/setuju-hapus-hukuman-mati-mandatori-kepada-budi-bicara>> accessed 25 November 2019

261 'Kekal hukuman mati, mansuh aspek mandatori' (MalaysiaKini, 8 March 2019)

<<https://www.malaysiakini.com/news/467183>> accessed 25 November 2019

262 Nuradzimmah Daim 'Sentencing policy under review following death penalty moratorium' (New Straits Times, 3 December 2019) <<https://www.nst.com.my/news/nation/2019/12/544389/sentencing-policy-under-review-following-death-penalty-moratorium>> accessed 12 April 2020

As reported by SUARAM's in preceding years, a notable number of individuals sentenced to death were for drug trafficking offences. It is unclear whether this trend was the same for 2019²⁶³.

**Known Executions & Number of Individuals Sentenced to Death Annually,
2010-19**

Year	Number of Executions in Malaysia	Number of individuals sentenced to death
2010	1	135
2011	0	151
2012	0	141
2013	3	112
2014	6	183
2015	1	65
2016	9	254 ²⁶⁴
2017	12	45
2018	1	193 ²⁶⁵
2019	0 ²⁶⁶	— ²⁶⁷
Total	33	1279 ²⁶⁸

263 Out of the 1279 individuals on death row in 2018, 932 were sentenced for drug offence, 319 for murder, with 30 others for involvement in other criminal offences.

264 There is a data gap in 2016, the number 254 includes numbers of death row inmates in 2015 but due to data limitation it is impossible to distinguish it clearly.

265 Increase of numbers of death row inmate between November 2017 to October 2018

266 Moratorium by the government continues to be in force as of 31 December 2019

267 No data provided through any known sources

268 This number amounts to cases sentenced to death, not necessarily numbers of individuals on death row.

Pardon Process for Death Row Inmates

From SUARAM's monitoring over the years, the Prison Department of Malaysia would usually provide support to death row inmates in terms of assistance in the preparation of pardon applications and submission of pardon application letters on behalf of death row inmates. While there is some degree of transparency in terms of the pardon applications submitted by death row inmates themselves, there are limited indications of what the prison department provides on behalf of the inmates to the pardon boards.

With regard to pardon boards, the Federal Constitution provides the Yang Di-pertuan Agong, respective state sultans or Yang Di-Pertua Negeri powers to grant pardon, reprieve or respite for all offences within their own territories. The pardon board for each state consists of the Attorney General, Chief Minister of the state and three other members appointed by the ruler of the state or the Yang Di-Pertua Negeri. According to the constitution, pardon boards shall meet in the presence of the ruler or the Yang di-Pertua Negeri.

Unfortunately, beyond the framework outlined in the Federal Constitution, the internal process or the evaluation process in the determination of pardon application is usually shrouded in secrecy with limited feedback available to death row inmates and their family members. Furthermore, any pending application would usually stave off execution and as such, death row inmates are on occasion advised not to pursue the result of their pardon's application if they have not heard from the pardon's board.

Pamphlets on the pardon process by the government outlines several categories of pardon applications based on internal regulations. Under Rule 54 of Prison Regulation, for any detainee serving a sentence of more than 7 years, the Prison Department would submit a pardon application every 4th year of detention and every year after the 16th year of detention. The document also says that death row inmates can file a pardon application at any time to the relevant pardons board.

Special Committee on the Study of the Alternative Sentence to the Mandatory Death Sentence

In September 2019, a task force was formed by the Minister of Law to study alternative punishments to the mandatory death penalty²⁶⁹. It comprised of former federal court

269 'Liew: Govt to set up taskforce to study alternatives to mandatory death penalty' (The Star Online, 6 September 2019) <<https://www.thestar.com.my/news/nation/2019/09/06/liew-govt-to-set-up-taskforce-to-study-alternatives-to-mandatory-death-penalty>> accessed 25 November 2019

judges, former Attorney General Chambers' officers, a former senior officer of the Prison Department and representatives from statutory bodies, academia, and civil society²⁷⁰.

Since its establishment, representatives of the committee have participated in public roundtable discussions on the abolition of death penalty and hosted their own townhall meetings and public consultations during the four months of operation. The committee also called for written submissions by civil society.

The final report of the committee was submitted to the government in early 2020, but no further information was publicly shared by the committee or the government²⁷¹.

Constitutional Challenge on Mandatory Death Sentence

A landmark case involving Section 37 of the Dangerous Drugs Act 1952 that permits double presumption in cases of drug trafficking ended on a positive note with the provision declared to be unconstitutional²⁷². The double presumption imposes a presumption of 'possession and knowledge of the drug' and the possession was intended for the purpose of trafficking if it exceeds the prescribed weight. While this does not directly address the issue of the death penalty, it would likely reduce the numbers of death row inmates for drug trafficking under Section 39B of the Dangerous Drugs Act 1952.

Based on the last available data, those convicted of trafficking are the majority of the detainees on death row. The constitutionality of Section 39B which concerns the mandatory death penalty was also challenged in the abovementioned case, but the matter is now pending a decision that will be delivered separately.

Based on SUARAM's monitoring on the ground, a conviction for an offence under Section 39B is common with the application of the double presumption under Section 37 and this has resulted in obfuscating court judgments.

As an example, in a case monitored by SUARAM involving a foreign national who was convicted of drug trafficking under Section 39B, the individual was initially acquitted by the high court but had the acquittal reversed and upheld in the higher courts.

270 'Minister: Special committee to study alternative to mandatory death sentence' (Malay Mail, 6 September 2019) <<https://www.nst.com.my/news/nation/2019/12/544389/sentencing-policy-under-review-following-death-penalty-moratorium>> accessed 12 April 2020

271 'Death sentence – committee submits reports on alternatives' (MalaysiaKini, 11 February 2020) <<https://www.malaysiakini.com/news/510445>> accessed 12 April 2020

272 'Double presumption for drug-trafficking conviction struck down' (The Star Online, 6 April 2019) <<https://www.thestar.com.my/news/nation/2019/04/06/double-presumptions-for-drugtrafficking-conviction-struck-down>> accessed 25 November 2019

In this case, the accused was arrested at the airport with a bag filled with books. White powder that was later tested to be heroin was found in the binding of several hardcover books. The bag with the books came with a tag that did not list the accused as the passenger, but instead it was that of another individuals. During the trial, the defence's case was that the accused was brought to Malaysia by an agent and after arriving in Malaysia, the agent handed the bag containing the books to the accused and he had no way of knowing that the books contained drugs. As such, he was no more than an innocent carrier.

The lead regarding the agent and others involved was not further investigated; neither was the name listed on the passenger tag found on the bag. The high court agreed with the defence and acquitted the accused. Unfortunately for the accused, the court of appeal and the federal court disagreed and convicted him of drug trafficking. In essence, the decision to convict was based on the application of Section 37 of the Dangerous Drugs Act 1952 which puts the burden on the accused to disprove the presumptions.

Whether there was any possibility that he would have known that there were drugs hidden in the books and whether he could have acted in any other manner to discover the said drugs was made irrelevant by the law when Section 37 is applied and no further investigation was conducted into the other individuals involved.

The accused is currently one of the 1,280 on death row.



SARAWAK

SARAWAK

Despite a year after Pakatan Harapan had won the 2018 general election and formed a new government, the situation in Sarawak showed that little progress had been made. This was largely because certain issues such as NCR land which affects most rural folks was still under the jurisdiction of the state and so was environment, local council elections and child marriage.

In 2019, we once again witnessed the civil court refusing to recognize native customs as a force of law. This benefits the private companies and the state government. Despite the state government claim that they had amended the Sarawak Land Code to include Pemakai Menoa and Pulau Galau, in reality, the courts still do not consider those two concepts as part of the Land Code and consequently, they do not have any force of law²⁷³.

We also witnessed how a private company encroached into a national park zone and threatened the lives and livelihood of the near-by residents. In this case, the authorities stood on the side of the company concerned rather than with the native communities. The authorities claimed that there no such encroachment had happened, and that the area had already been set aside for plantation use.

The undocumented children or statelessness issue again received attention from politicians, civil society, and the general public. Politicians and civil society in Sarawak engaged with the relevant ministries such as Home Ministry and Ministry of Education to provide solution for the children to go to school.

The state government rejected the idea of local council elections citing state autonomy as a reason²⁷⁴ and this received criticism from local civil society. Statelessness has always been an issue in Malaysia particularly in Sarawak and Sabah. In 2019, the government implemented the Zero Reject Policy that allows stateless children to be registered for public schools with the condition that at least one of the parents is a Malaysia citizen and they did not impose a deadline for registration²⁷⁵.

273 'Federal Court reaffirms 'pemakai menoa', 'pulau galau' no force of law' (Borneo Post, 25 October 2019)

<<https://www.theborneopost.com/2019/10/25/federal-court-reaffirms-pemakai-menoa-pulau-galau-no-force-of-law/>>
accessed 21 May 2020

274 Sulok Tawie 'Sarawak govt rejected Putrajaya's suggestion to take over local government, says CM' (Malay Mail, 31 July 2019) <<https://www.malaymail.com/news/malaysia/2019/07/31/sarawak-govt-rejected-putrajayas-suggestion-to-take-over-local-government-s/1776429>> accessed 21 May 2020

275 '12,018 special needs students enrolled in schools under zero reject policy' (Borneo Post Online, 26 September 2019) <<https://www.theborneopost.com/2019/09/26/12018-special-needs-students-enrolled-in-schools-under-zero-reject-policy/>> accessed 21 May 2020

In the child marriage issue, Sarawak continued to be in the top three states that had the most underaged marriage applications for 2019²⁷⁶ and among the seven states that had not made any amendment to raise the minimum age for marriage. This is because in Sarawak customary marriage has no age limit and this needs to change to protect vulnerable children from exploitation.

Sarawak is well known for having a large rainforest area. However, its rainforests have constantly faced threats from deforestation, oil palm plantations and mega dams construction since the 1980s. These have caused damage to the environment and to the lives of the indigenous communities. The forest holds a special place in their cultures and belief system. In 2019, a palm oil plantation company Radiant Lagoon Sdn Bhd allegedly encroached into the Mulu National Park, a UNESCO protected zone²⁷⁷. The national park zone was once home to the Penan and Berawan communities and served as their hunting ground. The action by the company affected the interests of the Penans and Berawans and caused notable environmental damage. The state forestry department however denied that there was such an incursion by any oil palm plantation²⁷⁸ and claimed that the developments in the region were away from the UNESCO site²⁷⁹.

1. Indigenous Peoples' Rights

Customary Land Rights

The indigenous people in Sarawak, collectively known as Dayaks are the majority in the state. Despite being the majority community, they have constantly faced threats to their cultural and heritage rights. They have had to choose between preserving their culture, language and beliefs or to seek the sort of material development that would harm their culture, beliefs and languages. Their plight is no different from that of the other indigenous communities around the nation and the rest of the world.

The most serious threat to indigenous communities in Sarawak is the customary land issue. Indigenous land rights are protected under the Sarawak Land Code 1958. Their lands are known as Native Customary Rights (NCR) land. However, such rights are constantly

276 Sharon Ling 'S'wak has highest number of child marriage requests' (The Star Online, 25 October 2018)

<<https://www.thestar.com.my/news/nation/2018/10/25/swak-has-highest-number-of-child-marriage-requests/>> accessed 21 May 2020

277 Sarawak's only UNESCO World Heritage Site threatened by oil palm plantations' (The Borneo Project, 14 February 2019)

<<https://borneoproject.org/sarawaks-only-unesco-world-heritage-site-threatened-by-oil-palm-plantations/>> accessed 21 May 2020

278 'No oil palm plantation has encroached into Gunung Mulu National Park' (The Dayak Daily, 29 January 2019)

<<https://dayakdaily.com/no-oil-palm-plantation-has-encroached-into-gunung-mulu-national-park/>> accessed 21 May 2020

279 'No encroachment on national park as claimed' (Borneo Post Online, 7 March 2019)

<<https://www.theborneopost.com/2019/03/07/no-encroachment-on-national-park-as-claimed/>> accessed 21 May 2020

violated by government and private companies through non-recognition, land-grabbing and illegal encroachment. Prior to 2018, the land code only recognized Tanah Temuda (cultivated lands) as NCR lands but ignored Pemakai Menao (Communal territory of a long house/community) and Pulau Galau (communal forest for hunting and fishing activity and served as a border for the longhouse). This has been practiced by indigenous communities as adat²⁸⁰ even before the Brookes' administration.

This land encroachment has alienated the indigenous people and their customary "adat" from modern legal procedures and judiciary system even though in Sarawak there is a native court for dispute regarding indigenous "adat".

In 2018, the Sarawak Chief Minister, Abang Johari Abang Openg, promised to amend the state's Land Code to resolve the issue of "Pemakai Menao" and "Pulau Galau"²⁸¹. Apart from the legality of 'Pemakai Menao' and 'Pulau Galau', other issues raised included determining which section of the state land code should be used in gazetting NCR land. The amendment proposed that NCR land would be gazetted under Section 6 of the land code which constituted Native Communal Reserve land, which belongs to the state government. However, civil society and Pakatan Harapan politicians suggested that NCR land should be gazetted under Section 18 that allows individual land titles to be issued to the owners²⁸².

In the same year, the Sarawak Land Code was amended. The new amendment did not legally recognize 'pemakai menao' and 'pulau galau' respectively but it included both traditional land usage concept into Native Customary Domain and second amendment limits the NCR land title to 1000 hectares size per title²⁸³. This amendment was heavily criticized by both the indigenous communities and civil society because it failed to recognize the concepts of 'pemakai menao' and 'pulau galau' and was also unfair to the

280 A J. N. Richards' 1992, An [ban-English Dictionary, Penerbitan Fajar Sdn. Bhd.; Petaling Jaya (Second Impression) p. 2 defines adat as a "way of life, basic values, culture, accepted code of conduct, manners and conventions". Eric Jensen 1974, [ban Religion, Oxford: The Clarendon Press p. 5 observes that adat involves an indigenous "system of agriculture". The Malaysian Criteria and Indicators for Forest Management Certification [MC&I(2002)] defines adat as "native customs which include way of life, basic values, system of belief, code of conduct, manners, conventions and cultural practices according to which indigenous society is ordered

281 "Pemakai Meoa, Pulau Galau: Government willing to amend land code", Sarawak Voice, published Jan 25th 2018, accessed by <https://sarawakvoice.com/2018/01/25/pemakai-menoa-pulau-galau-government-willing-to-amend-land-code/>

282 "Pakatan propose use of Section 18 of Sarawak Land Code to protect native rights", The Star Online, published on June 18th 2018, accessed by <https://www.thestar.com.my/metro/metro-news/2018/06/18/pakatan-proposes-use-of-section-18-of-sarawak-land-code-to-protect-natives-land-rights/>

283 "2 changes in passed Land Code Bill", Borneo Post Online, published in July 13th 2018, accessed by <https://www.theborneopost.com/2018/07/13/2-changes-in-passed-land-code-bill/>

community as the amendment put a restriction of 1000 hectares per title. In the past, there were cases that were granted NCR titles of more than 10,000 hectares²⁸⁴.

Due to the amendments made in 2018, there was an effort to gazette communities' lands by the state government under section 6 and section 18 of the Sarawak Land Code²⁸⁵ and the federal government allocated RM21.5 million to the Sarawak state government for this particular purpose in 2019²⁸⁶. Later in 2019, Amar Douglas Uggah Embas, the Sarawak Deputy Chief Minister stated that the gazette under both sections was not confiscation of NCR lands but rather, an exercise to identify and confirm boundaries of the NCR lands as valid and registered in the state land register.²⁸⁷

NCR Land Dispute

When an NCR issue is brought to court, it can be a lengthy dispute between communities and either plantation companies or state government. The process could take years and this is due to the fact that indigenous communities' "adat" such as "pemakai menoa" and "pulau galau" are not officially recognized and included into Sarawak Land Code 1958²⁸⁸.

This issue has always threatened the interests of indigenous communities when their cases are brought to court. In 2019, two Iban communities from Sibu and Kinowit lost in the

284 "Land Code amendment unfair and morally questionable, says Baru Bian", New Straits Times, published on July 10th 2018, accessed by <https://www.nst.com.my/news/nation/2018/07/389454/land-code-amendment-unfair-and-morally-questionable-says-baru-bian>

285 "State uses own money to survey NCR land", New Sarawak Tribune, published on Jan 20th 2019, accessed by: <https://www.newsarawaktribune.com.my/state-uses-own-money-to-survey-ncr-land/>

286 "RM21.5m for survey of NCR land in Sarawak: Baru", The Sun Daily, published on Mar 28th 2019, accessed by: <https://www.thesundaily.my/local/rm21-5m-for-survey-of-ncr-land-in-sarawak-baru-BE732535>

287 "Tanah hak adat Bumiputera Sarawak akan disukat mengikut Seksyen 18", Berita Harian, published on Nov 21st 2019, accessed by: <https://www.bharian.com.my/berita/nasional/2019/11/630519/tanah-hak-adat-bumiputera-sarawak-akan-disukat-mengikut-seksyen-18>

288 "Native customary land disputes have dragged on too long", The Star, published on Jan 16th 2019, accessed by: <https://www.thestar.com.my/news/nation/2019/01/16/native-customary-land-disputes-have-dragged-on-too-long>

Federal Court²⁸⁹ in their bid to review the 2016 Federal Court's²⁹⁰ ruling that the "pemakai menoa" and "pulau galau" has no force of law in Sarawak²⁹¹.

However, in a separate case, after the Federal Court decision was made, the Chief Judge of Sabah and Sarawak, David Wong Dak Wah allowed the application for leave to appeal²⁹² by Tuai Rumah (longhouse chief) Ramba Bungkong on several points of law relating to the NCR land in Miri which had been leased out to a company without the community knowledge²⁹³.

In April, there was a confrontation between villagers and a plantation company when the company decided to cut off the road used by villagers to access their own farmland. After the plantation management refused to meet with them, angry villagers decided to burn the plantation guard post, motorcycles and other equipment²⁹⁴.

289 "Two iban communities from Sarawak fail in native custom review bid", The Sun daily, published on Sept 11th 2019, accessed by: <https://www.thesundaily.my/local/two-iban-communities-from-sarawak-fail-in-native-custom-review-bid-YC1361122>

290 "Iban communities lose bid to review Federal Court ruling that their native custom have force of law in S'wak", Sept 11th 2019, accessed by: <https://www.thestar.com.my/news/nation/2019/09/11/iban-communities-lose-bid-to-review-federal-court-ruling-that-their-native-custom-has-no-force-of-law-in-s039wak>

291 "Iban groups lose bid to review native customs' force of law in S'wak", Malaysiakini, published on Sept 11th 2019, accessed by: <https://www.malaysiakini.com/news/491585>

292 "Federal Court ruling on NCR land to be revisited", Borneo Post, published on Sept 25th 2019, accessed by: <https://www.theborneopost.com/2019/09/25/federal-court-ruling-on-ncr-land-to-be-revisited/>

293 "NCR: TR Sandah decision to be revisited as Federal Court allows leave to appeal in Ramba case", Dayak Daily, published on Sept 25th 2019, accessed by: <https://dayakdaily.com/ncr-tr-sandah-decision-to-be-revisited-as-federal-court-allows-leave-to-appeal-in-ramba-case/>

294 "Angry villager vent anger at plantation firm", The Borneo Post, published on April 24 2019, accessed by: <https://www.theborneopost.com/2019/04/24/angry-villagers-vent-anger-on-plantation-firm/>



A guard post at the plantation is burned by the villagers
(Source: The Borneo Post)

SADIA, Sarawak Dayak Iban Association²⁹⁵ and its local chapter helped the various communities in their dispute through engaging with related government agencies and through litigation by taking appropriate legal action²⁹⁶. In February, SADIA submitted a letter to the Forestry Department urging them to intervene in the alleged attempt by two local companies to extract timber from the Native Customary Rights (NCR) land of the Iban community at Bukit Spali, Sungai Ngemah in Kanowit²⁹⁷. According to Nicholas Mujah, SADIA sec-gen and the longhouse folks, the companies claimed they had been issued licenses in 2006 to extract timber from the Bukit Spali area. Fearing the expected severe impact on their life and livelihood, numerous police reports were lodged at Kanowit police station by the affected communities against the two logging companies. Matek Geram, SADIA mapping officer added that the logging activities would not only destroy the communities' crops but also their communal burial ground and other areas considered sacred to them including the nearby rivers.

295 "SADIA to help Sungai Kelawit residents to submit land dispute complaint to UN Rapporteur", Dayak Daily, published on Aug 12th 2019, accessed by: <https://dayakdaily.com/sadia-to-help-sg-kelawit-residents-to-submit-land-dispute-complaints-to-un-rapporteur/>

296 "SADIA want Forest Department to intervene in alleged timber extraction attempt", Borneo Post Online, published on Feb 22nd 2019, accessed by: <https://www.theborneopost.com/2019/02/22/sadia-wants-forest-department-to-intervene-in-alleged-timber-extraction-attempt/>

297 Ibid, 2019

In Sibü, when a landowner blocked the road access which affected the livelihood of communities nearby, local SADIA Rajang's chapter helped the communities to engage with the relevant authorities²⁹⁸ and finally took the issue to court²⁹⁹.

In 2019, the land encroachment issue at the Mulu National Park received a lot of attention from both international and local civil society especially the environmental rights groups³⁰⁰. Residents from nearby Penan and Berawan communities claimed that the palm oil plantation companies that had encroached into the Mulu National Park zone and also their land subsequently polluted their water source due to the plantations' activities³⁰¹. This was denied by the authorities and state government, both claiming that no such incident ever took place³⁰². The state government considered the issue solved after imposing a 1km buffer zone for the national park³⁰³ and plantations³⁰⁴. They claimed that the plantation that had been set aside earlier was not within the vicinity of the national park and there was no official claim on any NCR lands nearby³⁰⁵.

Despite these claims, the residents from the communities continued to campaign for their cause to preserve the national park as well as their land. Together with international NGOs such as Bruno Manser Foundation, they launched an online petition campaign and even went to Europe to campaign³⁰⁶. They managed to collect 191,000 of signatures in Europe. Besides the campaign, in August 2019, 14 plaintiffs representing 10 Penan and Berawan communities filed a lawsuit calling for the immediate nullification of two palm oil

298 "Blockade: Sadia Rajang ready to help", Borneo Post, published on Dec 15th 2019, accessed by:

<https://www.theborneopost.com/2019/12/15/blockade-sadia-rajang-ready-to-help/>

299 Sadia Rajang: Right of way application in blockade row put on hold", Borneo Post, published on Dec 17th 2019, accessed by: <https://www.theborneopost.com/2019/12/17/sadia-rajang-right-of-way-application-in-blockade-row-put-on-hold/>

300 "NGO calls for halt on logging near Mulu National Park", Malaysiakini, published on Feb 14th 2019, accessed by: <https://www.malaysiakini.com/news/463906>

301 "Indigenous communities in Sarawak call for an end to oil palm encroachment beside UNESCO heritage site", Changing Times, published on Feb 26th 2019, accessed by: <https://changingtimes.media/2019/02/26/indigenous-communities-in-sarawak-call-for-an-end-to-oil-palm-encroachment-beside-unesco-heritage-site/>

302 "No encroachment on National Park as claimed", Borneo Post, published on: Mar 7th 2019, accessed by: <https://www.theborneopost.com/2019/03/07/no-encroachment-on-national-park-as-claimed/>

303 "No official claim of NCR land in vicinity of Mulu National Park-Len", Borneo Post, published on May 3rd 2019, accessed by: <https://www.theborneopost.com/2019/05/03/no-official-claim-of-ncr-land-in-vicinity-of-mulu-national-park-len/>

304 "1km buffer zone imposed to protect Mulu National Park", The Star, published on May 2nd 2019, accessed by: <https://www.thestar.com.my/news/nation/2019/05/02/1km-buffer-zone-imposed-to-protect-mulu-national-park>

305 "Sarawak official says land set aside for palm oil estate not in Mulu Park zone", Malay Mail, published on May 2nd 2019, accessed by: <https://www.malaymail.com/news/malaysia/2019/05/02/sarawak-official-says-land-set-aside-for-oil-palm-estates-not-in-mulu-park/1748995>

306 "Mulu Penans bring their case against plantation to Europe", The Star, published on May 6th 2019, accessed by: <https://www.thestar.com.my/news/nation/2019/05/06/mulu-penans-bring-their-case-against-plantation-to-europe>

concessions against Radiant Lagoon³⁰⁷. They cited that the national park's management in a joint expedition of the Royal Geographical Society and the State government in 1977 and 1978 had carried a plan on the area for the Penan Settlement Reserves and their land claims were investigated from 1962 to 1970 and the then Residents of the Fourth and Fifth Divisions had decided on the boundary³⁰⁸.



Rainforest on Berawan community's land that affected by palm oil plantation.
(Source: Bruno Manser Fund)

307 "Mulu natives file lawsuit to halt logging near national park", Malaysiakini, published on Aug 9th 2019, accessed by: <https://www.malaysiakini.com/news/487301>

308 "Penan, Berawan community file suit to stop oil palm plantation near Mulu National Park", Borneo Post, published on Aug 6th 2019, accessed by: <https://www.theborneopost.com/2019/08/06/penan-berawan-community-file-suit-to-stop-oil-palm-plantation-near-mulu-national-park/>



Destructive logging by Malaysian oil palm company Radiant Lagoon in the Mulu region
(Source: Bruno Manser Fund)



Penan villagers from Bateu Bungan stage a blockade against the oil palm plantation
(Source: Bruno Manser Fund)



Penan and Berawan natives protesting against the forest clearing next to Mulu National Park.

(Source: The Star)

2. Right to Assembly

In 2019, Sarawak witnessed several peaceful assemblies for various issues. The Sarawak state autonomy rights group organized a demonstration in Kuching during Sarawak Day on 22nd July 2019 demanding for recognition of Malaysia Agreement 1969³⁰⁹ and the authorities gave full cooperation to the organizers³¹⁰. A group in Sibü also staged a demonstration to protest against the Ministry of Education for introducing Khat to Year 4 students starting in 2020³¹¹. All these demonstrations were carried out without any disturbance from any parties or groups. Natives residing near the Mulu National Park also staged a human blockade to stop the forest encroachment by a palm oil plantation

309 "NGO: Restore Sarawak rights or risk a secession movement", The Star, published on July 22nd 2019, accessed by: <https://www.thestar.com.my/news/nation/2019/07/22/ngo-restore-sarawak-rights-or-risk-a-secession-movement>

310 "July 22 rally organizer says will abide by all condition set", Borneo Post, published on July 17th 2019, accessed by: <https://www.theborneopost.com/2019/07/17/july-22-rally-organiser-says-will-abide-by-all-conditions-set/>

311 "Group of civilian stages demo against decision to introduce Khat", Borneo Post, published on Aug 15th 2019, accessed by: <https://www.theborneopost.com/2019/08/15/group-of-civilians-stages-demo-against-decision-to-introduce-khat/>

company³¹². However, police threatened to arrest community leader and headman Ukau Lupong over the blockade³¹³.

On 28 March 2019, a forum organized by a local NGO, ROSE (Rise of Sarawak Effort) on “Youth and Employment in Sarawak: Opportunities and Challengers” at a shopping mall in Kota Samarahan was stopped by the police on the day of the event itself with the excuse that organizer had failed to apply for a permit from the police as required by PAA³¹⁴. Later, ROSE along with 28 other NGOs issued a joint statement calling for the abolition of the Peaceful Assembly Act 2012 (PAA) as a core element of Sarawak’s political emancipation in the spirit of the Malaysia Agreement 1963³¹⁵.



Participants of the July 22 Sarawak Day's Rally.
(Source: The Star)

312 “300 Native stage blockade”, The Star, published on Feb 12th 2019, accessed by:

<https://www.thestar.com.my/news/nation/2019/02/19/300-natives-stage-blockade-swak-ethnic-groups-protest-forest-clearing-near-national-park/>

313 “Penan headman threatened with arrest over oil palm protest:BMF”, Borneo Post, published on Feb 19th 2019, accessed by <https://www.theborneopost.com/2019/02/19/penan-headman-threatened-with-arrest-over-oil-palm-protest-bmf/>

314 “Groups want PAA abolished as core elements of Sarawak’s political emancipation”, The Star, published on March 28th 2019, accessed by: <https://www.malaymail.com/news/malaysia/2019/03/28/group-wants-paa-abolished-as-core-element-of-sarawaks-political-emancipatio/1737483>

315 “Civil society groups want Peaceful Assembly Act 2012 abolished”, Dayak Daily, published on Mar 28th 2019, accessed by: <https://dayakdaily.com/civil-society-groups-want-peaceful-assembly-act-2012-abolished/>

3. Freedom of Speech/ Communication and Multimedia Act

In 2019, police received 929 police reports nationwide and opened 16 investigation papers related to insults made against Islam, the Prophet Muhammad and his wife Saidatina Aisyah on Facebook posting³¹⁶. As the result of this, five individuals were arrested and charged; one of the individuals was a 22 year-old man from Bau, Sarawak who was sentenced to 10 years jail and fined RM50,000.

At the first trial, he was not represented by any lawyer³¹⁷ but after that, with the help from Parti Keadilan Rakyat (PKR) Sarawak legal team, he filed an application for criminal revision at the court registry over the case³¹⁸. He was then ordered by the Kuching High Court to undergo mental observation for a month at Hospital Sentosa³¹⁹. In September 2019, after reviewing the Session's Court's earlier judgement, Judge Azhahari Kamal Ramli reduced the jail term from ten to six years after taking into account the timing and frequency of the offence³²⁰.

In another incident, a Facebook user by the name of 'Rabiatull Adawiyah Nordin' from Petra Jaya was apprehended by the Sarawak Islamic Affairs Department (Jais) for posting several photos that showed her performing acts that insulted the religion on her Facebook account, including stepping on the Quran³²¹.

316 "Over 900 police reports lodged against people insulting Islam, the Prophet", News Strait Times, published on Mar 5th 2019, accessed by: <https://www.nst.com.my/news/nation/2019/03/466131/over-900-police-reports-lodged-against-people-insulting-islam-prophet>

317 "Man gets 10 years' jail, Rm50,000 fine for insulting Islam on Facebook", Borneo Post, published on Mar 9th 2019, accessed by: <https://www.theborneopost.com/2019/03/09/man-gets-10-year-jail-rm50000-fine-for-insulting-islam-on-facebook/>

318 "Man jailed for insulting Islam case: PKR Sarawak legal team files for criminal revision", Borneo Post, published on Mar 11th 2019, accessed by: <https://www.theborneopost.com/2019/03/11/man-jailed-for-insulting-islam-case-pkr-swak-legal-team-files-for-criminal-revision/>

319 "Jailed for insulting Islam: Alister ordered to undergo mental observation", Borneo Post, published on Mar 13th 2019, accessed by: <https://www.theborneopost.com/2019/03/13/jailed-for-insulting-islam-alister-ordered-to-undergo-mental-observation/?fbclid=IwAR0rMVjCjA6q0uee7Pn-GXA2ZHRKd-dQ8lL83TER20kmfwtXV7omdaQVD2Y>

320 "Insulting Islam case: Alister's jail term reduced from 10 to six years", Borneo Post, published on Sept 13th 2019, accessed by: <https://www.theborneopost.com/2019/09/13/insulting-islam-case-alisters-jail-term-reduced-from-10-to-six-years/>

321 "Teen arrested for allegedly insulting Islam, Prophet Muhammad in Facebook posts", Borneo Post, published April 18th 2019, accessed by: <https://www.theborneopost.com/2019/04/18/teen-arrested-for-allegedly-insulting-islam-prophet-muhammad-in-facebook-posts/>

When commenting on the call for secession of Sarawak, Mahathir Mohammed, then Prime minister told the Parliament that he would use the Sedition Act against those who caused or jeopardized public order and security³²².

4. Freedom of Movement

When Malaysia was formed, Sarawak retained its autonomy on immigration rights. Hence, Sarawak government had the right to bar individuals from entering the state. Previously, this had been used against numerous activists and politicians from West Malaysia.

In 2019, there were two such cases when individuals were barred from entering the state. One of these involved Mandeep Singh, a former activist for Bersih 2.0³²³. During the time of entry, he was the Special Officer for Gobind Singh Deo, the Minister of Multimedia and Communication and he was expected to attend an event together with the Minister himself. This drew criticism from local and nationwide civil society toward the Sarawak Chief Minister for “the unlawful entry ban on political activists”³²⁴.

Another incident involved an academic and member of the Election Reform Committee (ERC)³²⁵, Wong Chin Huat who was expected to attend and speak at a consultation organized by ERC in Kuching³²⁶. This also drew criticism from both politicians and civil society³²⁷. Wong complained to the immigration officers at the airport about feeling unwell and he was diagnosed with high blood pressure and was admitted to the Sarawak General Hospital³²⁸. He was granted one-day special permission under a strict condition that he remained at the general hospital for a check-up. Wong demanded an explanation from

322 “Dr. M: We’ll take action under Sedition Act if call for Sarawak secession threaten public order”, Borneo Post, published on July 5th 2019, accessed by: <https://www.theborneopost.com/2019/07/05/dr-m-well-take-action-under-sedition-act-if-call-for-sarawaks-secession-threatens-public-order/>

323 “Sarawak sticks to ban on ‘troublemakers’”, The Malaysian Insight, published on May 26th 2019, accessed by: <https://www.themalaysianinsight.com/s/156934>

324 “End ‘abuse’ of immigration powers, Bersih tells Sarawak”, Malaysiakini, published on May 19th 2019, accessed by: <https://www.malaysiakini.com/news/476708>

325 “Sarawak govt slammed for barring entry to Electoral Reform Committee member”, Free Malaysia Today, published on Nov 14th 2019, accessed by: <https://www.freemalaysiatoday.com/category/nation/2019/11/14/sarawak-govt-slammed-for-barring-entry-to-electoral-reform-committee-member/>

326 “ERC speaker denied entry into Sarawak”, The Star, published on Nov 14th 2019, accessed by: <https://www.thestar.com.my/news/nation/2019/11/14/erc-speaker-denied-entry-into-s039wak>

327 “Academic wants CM to explain after being banned from entering S’wak”, Malaysiakini, published on Nov 15th 2019, accessed by: <https://www.malaysiakini.com/news/499993>

328 “Sarawak denied banned activist refused medical attention at airport”, Free Malaysia Today, published on Nov 15th 2019, accessed by: <https://www.freemalaysiatoday.com/category/nation/2019/11/15/sarawak-denies-banned-activist-refused-medical-attention-at-airport/>

the state government because earlier in August, he had been allowed to enter Sarawak and organized a similar consultation and workshop under ERC³²⁹.

5. Child marriages

In 2019, the Deputy Prime Minister who was also women, family and community development minister, Wan Azizah Wan Ismail claimed that the Sarawak government had refused to raise the minimum marriage age to 18 in a letter to Putrajaya³³⁰. According to her, raising the minimum marriage age could only happen if the state agreed to amend the enactment or ordinance and only Selangor had amended the enactment while the Federal Territories were in the process of amending it³³¹.

However, Sarawak Welfare, Community Wellbeing, Women, Family and Childhood Development Minister Fatimah Abdullah denied they had rejected the proposal to raise the minimum marriage age to address the problem of child marriages when in fact the state government was in favor of it³³².

The local civil society and public alike are supportive of the move to raise the marital age from 16 to 18 years old since at 16, a child is too young to take responsibility as a parent³³³.

In 2018, Sarawak was reported to have one of the highest numbers of child marriages in Malaysia³³⁴. For 2019, Sarawak had 104 applications for underage marriages, coming third after Kelantan and Sabah³³⁵.

Appropriate action has to be taken to protect children and to allow them to fulfill their potential and dreams. Furthermore, sex education should be included as part of health

329 "The pain of denial of my entry into Sarawak", Malaysiakini, published on Nov 18th 2019, accessed by:

<https://www.malaysiakini.com/news/500256>

330 "DPM: Seven states won't ban child marriage", Malay Mail, published on Nov 19th 2019, accessed by:

<https://www.malaymail.com/news/malaysia/2019/11/19/dpm-seven-states-wont-ban-child-marriage/1811186>

331 *ibid*

332 "Sarawak's stand on child marriage in letter to govt different, says DPM", Free Malaysia Today, published on Nov 27th 2019, accessed by: <https://www.freemalaysiatoday.com/category/nation/2019/11/27/sarawaks-stand-on-child-marriages-in-letter-to-govt-different-says-dpm/>

333 "Strong support for raising minimum marriage age", Borneo Post, published on Nov 23rd 2019, accessed by:

<https://www.theborneopost.com/2019/11/23/strong-support-for-raising-minimum-marriage-age/>

334 "S'wak has highest number of child marriage requests", The Star, published on Oct 25th 2018, accessed by:

<https://www.thestar.com.my/news/nation/2018/10/25/swak-has-highest-number-of-child-marriage-requests>

335 "K'tan records highest number of marriage application below age of 18", Malaysiakini, published on Mar 14th 2019, accessed by: <https://www.malaysiakini.com/news/467943>

education for teenage students for them to understand about safe sex practices and the consequences of such actions.

6. Local Council Elections

The Housing and Local Government Ministry was expected to amend several laws in Parliament as early as the end of 2020 to reinstate local government elections³³⁶. This decision to have local council elections was not welcome by the Sarawak state government³³⁷. It deemed that this was an act to “take over” the state administration in the local council. The Chief Minister, Abang Johari Abang Openg said that based on the Federal Constitution and the Malaysia Agreement 1963, local councils placed under Sarawak’s state jurisdiction³³⁸.

Historically, in preparing Sarawak for self-government and eventual full independence, the then colonial government had introduced the Local Authorities Ordinance and the Local Government Elections Ordinance in 1948. The Kuching Municipal Council held its election first, and in 1963, councilors had to be elected to the District Councils; from the District Councils to the Divisional Councils and eventually on to the Council Negri itself. In between, the Divisional Councils playing the roles of the electoral colleges in turn had elected the Divisional Councilors to the Council Negri at Kuching³³⁹.

Nevertheless, civil society including Bersih Sarawak and State Reform Party (STAR) urged the state government to hold its own local council election³⁴⁰. Bersih Sarawak had pointed out that elected councilors would be directly accountable to the ratepayer and those who elected them as compared to the current appointed councilors from political parties. Bersih Sarawak suggested that Sarawak’s autonomy means that the state can take the lead in holding local council elections under its own ordinances should it wish to do so, though this should be accompanied by proper consultation and engagement with the public first³⁴¹.

336 “Gov’t expected to amend laws to restore local elections in 2020”, Malaysiakini, published on May 1st 2019, accessed by: <https://www.malaysiakini.com/news/474411>

337 “Standing firm over local govt autonomy”, Borneo Post, published on Aug 1st 2019, accessed by: <https://www.theborneopost.com/2019/08/01/standing-firm-over-local-govt-autonomy/>

338 “Sarawak turns down Putrajaya’s bid to ‘take over’ local government”, Malaysiakini, published on Aug 1st 2019, accessed by: <https://www.malaysiakini.com/news/486217>

339 “Local Government Election”, Borneo Post Online, published on Aug 26th 2018, accessed by <https://www.theborneopost.com/2018/08/26/local-government-elections/>

340 “Reinstate local council elections so that only the best may serve”, Malaysiakini, published on July 2nd 2019, accessed by: <https://www.theborneopost.com/2019/07/02/reinstate-local-council-elections-so-that-only-the-best-may-serve/>

341 “Holding local council elections has its merits, Bersih Sarawak tells state govt”, Dayak Daily, published on Aug 1st 2019, accessed by: <https://dayakdaily.com/holding-local-council-elections-has-its-merits-bersih-sarawak-tells-state-govt/>

Real democratization and decentralization of power must not only be at the administrative level between the Federal government and State governments. It has to go down to the grass-root level and empower the grass-roots with participation in decision-making. Such process is crucial in Sarawak in order to have better management on natural resources, better urban planning, people-oriented social welfare policies, healthcare and even education³⁴² to certain extent.

7. The Stateless / Undocumented Persons

Statelessness has always been an issue in Malaysia, particularly Sarawak and Sabah. In 2019, the government implemented the Zero Reject Policy that allowed stateless children to be registered for public schools with the condition that at least one of the parents must be a Malaysian citizen³⁴³.

According to the state Welfare, Women and Community Development Minister, Fatimah Abdullah, there are at least 30 cases of Sarawak-born children who are without birth certificates reported every month³⁴⁴. Subsequently, the local Pakatan Harapan Sarawak engaged with the Home Affairs Ministry to address the issue of stateless children in Sarawak in order to work out a more effective policy direction and standard operating procedure (SOP) for those stateless children to apply for citizenship.³⁴⁵

Various reasons contribute to the high numbers of undocumented cases in Malaysia. As far as Sarawak is concern, such cases mostly happen among isolated and rural communities where the distance from their communities to administration centers, coupled with the high travel costs are among the major factors causing many late registrations.

Thus, civil society has called for more flexible treatment towards the registration process³⁴⁶. Peter John Jaban, a Sarawak activist called for the end of the current system of reviewing citizenship applications on a case-by-case basis, saying systemic changes are needed to the

342 Before the formation of Federation of Malaysia, in Sarawak local authority services included primary education. During this period, there were 1200 primary schools under the jurisdiction of local authorities, of which 800 primary schools in Sarawak were directly administered by the District councils.

343 "We have a Zero Reject Policy, so what's next?", Centre for Public Policy Studies, published on April 1st 2019, accessed by: <https://cpps.org.my/publications/we-have-a-zero-reject-policy-so-whats-next/>

344 "Minister: At least 30 cases of stateless children reported every month in Sarawak", The Star, published on Jan 7th 2019, accessed by: <https://www.thestar.com.my/news/nation/2019/01/07/minister-at-least-30-cases-of-stateless-children-reported-every-month-in-sarawak/>

345 "Resolving issue of stateless children in Sarawak", Borneo Post, published in Feb 13th 2019, accessed by: <https://www.theborneopost.com/2019/02/13/resolving-issue-of-stateless-children-in-sarawak/>

346 "Be flexible in processing stateless cases", The Star, published on Aug 1st 2019, accessed by: <https://www.thestar.com.my/metro/views/2019/08/01/be-flexible-in-processing-stateless-cases>

National Registration Department's (NRD) procedures, especially in rural areas as he was quoted saying the current system is broken and unresponsive³⁴⁷.

According to the state National Registration Department (NRD) director-general, Datuk Ruslin Jusoh said the department would not impose any deadline on late registrations of stateless folk in Sarawak and the department estimated that 60,000 in Sarawak are still without a birth certificate and/or MyKad³⁴⁸. This would be good news for most rural folks if there were no deadline imposed on late registrations because in Sarawak the cases of undocumented persons are not only among children but also among adults as well.

This issue involves endless red-tape and complicated bureaucratic procedures that would deter poorly-educated applicants. In Malaysia, without proper identification documents like birth certificates or My-kad, such individuals will almost certainly face difficulties in pursuing education, receiving healthcare, social welfare and job employment opportunities.



Stateless Penans in a remote settlement in Sarawak applying for birth cert and Mykads
(Source: The Star)

347 "Systemic change needed to address statelessness, says Sarawak activist", Free Malaysia Today, published on Mar 27th 2019, accessed by: <https://www.freemalaysiatoday.com/category/nation/2019/03/27/systemic-change-needed-to-address-statelessness-says-sarawak-activist/>

348 "Overcoming statelessness", The Star, published on Nov 18th 2019, accessed by: <https://www.thestar.com.my/metro/metro-news/2019/11/18/overcoming-statelessness>

8. Environment

The Sarawak rainforest as part the Borneo rainforest is one of the oldest rainforests in the world and most bioverse. According to the state Forest Department, 12.4 million hectares and more than 80% of the state is under forest cover (based on 2012 satellite imageries)³⁴⁹. Forest land in Sarawak is classified as the Permanent Forest Estate (Forest Reserves, Protected Forests and Communal Forests), Totally Protected Areas (National Parks, Wildlife Sanctuaries and Nature Reserves) and State-land Forest.

Six million hectares of the State's forests are designated as the Permanent Forest Estate which is meant for sustainable forest management and about 1 million hectares are designated as Totally Protected Areas³⁵⁰.

The Sarawak rainforest has always been threatened by logging activities since the 1980s when the rural and indigenous communities were threatened by illegal loggers and logging companies. In recent decades, the rainforest has been further threatened by palm oil companies and mega dams construction.

In 2018, the Chief Minister made a promise to preserve and restore 80 percent of state land area as primary and secondary forest³⁵¹. In 2019, Deputy Chief Minister Awang Tengah Ali Hasan said the state had significantly cut log exports in recent years, is mulling stopping exporting altogether as timber resources become scarce. Sarawak had reduced logs export from the current 20% of total production³⁵². From the chart below, we can see that timber logging activities were still relatively high throughout Sarawak in 2019:

Land Area for Logging in 2019

Months	Hills Log (m ³)	Swamp Log (m ³)	Total (m ³)
February	301, 297	3, 505	304,802
March	482, 320	6938	489,258
April	402, 579	6499	409,078
May	403, 553	6862	410,415
June	239, 698	3058	242,757
July	360, 160	2855	363,015
August	365, 240	3674	368,914
September	363, 357	7306	370,663

349 "Type and Categories of Sarawak Forest", Forest Department of Sarawak, accessed by:

<https://forestry.sarawak.gov.my/page-0-160-593-Types-and-Categories-of-Sarawak-s-Forests.html>

350 *ibid*

351 "80 pct of state land mass preserved as primary, secondary forest: CM", Borneo Post, published on Feb 27th 2018, accessed by: <https://www.theborneopost.com/2018/02/27/80-pct-of-states-land-mass-preserved-as-primary-secondary-forests-cm/>

352 "Sarawak consider to stopping log export", The Star, published on Jan 22nd 2019, accessed by:

<https://www.thestar.com.my/business/business-news/2019/01/22/sarawak-considers-stopping-log-exports/>

October	291, 048	3419	294,466
November	282, 323	6153	288,477
December	193, 666	6203	199,869
Total	4, 014, 215	60039	4,074,254

(Source: Forest Department Sarawak, 2019)



Trucks carry away timber in the upper Baram region of Malaysia's eastern Sarawak state.
(Source: Malay Mail)

Malaysia being the second largest producer of palm oil³⁵³ has meant that the industry has been one of contributing factors to deforestation in Sarawak. According to Center for International Forestry Research (Cifor) data, palm oil industry was responsible for at least 39% of forest loss in Borneo between 2000 and 2018 and it has caused drop in air quality to unhealthy levels in neighboring Singapore and Malaysia³⁵⁴. The move by Malaysian government to promote palm oil and it's related products on a large scale³⁵⁵ has totally ignored the livelihood of the indigenous communities in rural Sarawak and the forest they depend on.

353 "Malaysian palm oil group urges industry to tap tech to save forests", News Strait Time, published on Feb 10th 2019, accessed by: <https://www.nst.com.my/business/2020/02/564367/malaysian-palm-oil-group-urges-industry-tap-tech-save-forests>

354 "Palm oil to blame for 39% of forest loss in Borneo since 2000, study shows", Free Malaysia Today, published on Sept 19th 2019, accessed by: <https://www.freemalaysiatoday.com/category/nation/2019/09/19/palm-oil-to-blame-for-39-of-forest-loss-in-borneo-since-2000-study-shows/>

355 "Kerajan lancar kempen 'Sayangi Minyak Sawitku'", Berita Harian, published on: Jan 8th 2019, accessed by: <https://www.bharian.com.my/bisnes/lain-lain/2019/01/517625/kerajaan-lancar-kempen-sayangi-minyak-sawitku>

In one particular case, a palm oil company, Radiant Lagoon, which wants to establish a plantation near the UNESCO World Heritage Site Guntung Mulu National Park, is responsible for the destruction of 730 hectares of forest in the 4,400-hectare concession area³⁵⁶. The illegal felling of 30,000 cubic meters of timber was uncovered by the Swiss NGO Bruno Manser Fonds (BMF) during investigations in Malaysia between December 2018 and March 2019³⁵⁷. According to Lukas Straumann of BMF, Sarawak is the dirty backyard of Malaysia's palm oil industry³⁵⁸.

The palm oil industry contributes billions of ringgits to Malaysia's gross domestic product (GDP) every year, and in 2019 alone it was reported to contribute RM37.66 billion³⁵⁹. Regardless of that, we must take into account the environmental damage caused by the industry, the social destruction of indigenous communities not just in Sarawak or Borneo but in peninsula Malaysia as well.

356 "Press Release (14 February 2019): Penan customary territory in Batu Bungan, Mulu, Sarawak threatened by plantation project", Sahabat Alam Malaysia, released on Feb 14th 2019, accessed by: https://www.foe-malaysia.org/penan_customary_territory_in_batu_bungan_mulu_sarawak_threatened_by_plantation_project

357 "Malaysia: Slashing Sarawak forest for palm oil", Rainforest Rescue, published on May 7th 2019, accessed by: <https://www.rainforest-rescue.org/news/9355/malaysia-slashing-sarawaks-forests-for-palm-oil>

358 *ibid*

359 "Selected Agricultural Indicators, Malaysia 2019", Department of Statistic Malaysia, published Nov 29th 2019, accessed by:

https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=72&bul_id=SEUxMEE3VFdBcDJhdUhpZVUxa2pKdz09&menu_id=Z0VTZGU1UHBUT1VJMFpXRRR0xpdz09



Logging and forest clearing by Radiant Lagoon.
(Source: Bruno Manser Fund)



Trees that had been cut down on the fringe of Mulu National Park to make way
for palm oil plantation.
(Source: Bruno Manser Fund)



FEATURE 2

POLICE COMPLAINTS
AND
MISCONDUCT COMMISSION
(IPCMC)

Police Complaints and Misconduct Commission (IPCMC)

*By Ivy Josiah,
Women's Rights Activist, Secretary General
The Society for the Promotion of Human Rights (PROHAM).*

Police Accountability Crucial to Defending Human Rights³⁶⁰

"Surely the police would want an oversight mechanism, do they want to miss a potential learning opportunity that could have led to an improvement in services?" *NGO activist*

"If there is no independent formal complaint mechanism, this will only lead to impunity for the offender nurtures a culture of impunity in the police force." *NGO Activist*

"Malaysia's police are not accountable to anyone but themselves, and ordinary people across the country too often pay the price with broken bodies and tragically shortened lives," Phil Robertson, deputy Asia director at Human Rights Watch.

Independent Police Complaints and Misconduct Commission (IPCMC)

2018 was significant for Human Rights Day on 10 December 2018 marked the 70th anniversary of the Universal Declaration of Human Rights, a milestone document that proclaimed the inalienable rights of every human being regardless of race, colour, religion, sex, language, political or other opinion, national or social origin, property, birth or other status. 2018 was an extra special year for Malaysia as this was the year our newly elected government placed institutional reforms and rule of law up front in its Reform Agenda for "New Malaysia".

Civil society was, and still is eagerly expecting the promised reforms, especially the one key institutional reform of the Royal Malaysian Police (PDRM) that cannot be held back. SUARAM's documentation and monitoring through the years have exposed allegations of misconduct, corruption, torture, deaths in custody, fatal shootings and arbitrary arrests by the Malaysian police. For instance, the former Deputy Prime Minister Datuk Seri Ahmad Zahid Hamidi told Parliament in 2017 that 1,654 people had died in custody between 2010 to February 2017. PDRM has also been plagued with low morale - poor resources, poor salaries, dilapidated housing and police premises.

³⁶⁰ Contributed by Ivy Josiah

The Royal Commission on the Malaysian Police (2004-2005)

In 2004, when then Prime Minister, Tun Abdullah Badawi took the bold move of establishing the Royal Commission under the Commission of Inquiry Act 1950 with YA Bhg Tun Mohamaed Dzaiddin as the Chair, there was applause all round for the move. Sixteen commissioners were appointed (four from civil society) to not only investigate the negative perceptions and serious allegations but also the needs of PDRM to be more efficient and effective.

The Royal Commission's much awaited report was released in May 2005. The report had 125 recommendations of which 48 pertained to the welfare of the police force. The Commissioners emphasised that the setting up of an independent oversight mechanism was the most important recommendation to not only restore public confidence in the Malaysian Police but also ensure police accountability. It called for a system of internal and external checks and balances with a timeline of one year, ie, May 2006.

The Report further stated that police culture tended to be inward looking and closed and mindsets are usually resistant to change. We cannot therefore rely on internal mechanisms alone to ensure PDRM effectively implements and abides by rules and regulations. The establishment of an external oversight agency for PDRM would be a profoundly important development in the governance of this important organisation.

The role of this commission the Commissioners said, is straight forward: The IPCMC is intended to receive and investigate complaints about PDRM and its personnel; prevent, detect and investigate serious misconduct in PDRM and propose measures to the Minister of Home Affairs to improve police integrity, reduce misconduct while building public confidence in PDRM. "Misconduct" includes police corruption, commission of criminal offences and non-compliance with legal and police regulations.

Furthermore, the IPCMC will be an independent body that is established pursuant to an act of parliament and it will not supplant or supersede any existing organisations such as the Malaysian Anti- Corruption Agency (MACC) or The Human Rights Commission of Malaysia (SUHAKAM) but to compliment them.

The Enforcement Agency Integrity Commission EAIC

Resistance from PDRM was strong: "Why are we being picked on?" they lamented; "What about Immigration? Customs? Don't they also need oversight?" The then ruling government listened to their police force and set up the Enforcement Agency Integrity Commission (EAIC) in 2011 to act an oversight mechanism for ALL enforcement agencies. For the record, civil society did agree that Immigration and Customs need oversight but PDRM affects more lives both Malaysian and migrant population and everyone else in between – a huge number of stakeholders.

By 2014, it became apparent that the EAIC was floundering, The Malay Mail reported in August 2014 (<https://www.malaymail.com/news/malaysia/2014/08/16/almost-a-decade-on-lawyers-continue-push-for-ipcmc/727893>), quoting the then Malaysian Bar President Christopher Leong:

“...the existing Enforcement Agency Integrity Commission (EAIC) — which was created in 2011 by the government in place of the IPCMC — clearly failed to rein in the rate of custodial deaths, which hit 231 cases or one death every three weeks between 2010 and May 2013. There should be no more dithering, delays or excuses. The IPCMC remains as relevant today as it was when the Royal Commission’s report was released in 2005,” he said in his speech at a forum on police accountability in Malaysia.

“He said the EAIC can investigate complaints, but the police can ignore whatever recommendation made by the commission and launch its own internal probe on any complaint levied against the force. The EAIC is also bogged down by a heavy workload, handling hundreds of complaints lodged over the years while keeping tabs on 19 separate government agencies — all while having just one investigating officer since May last year and a miniscule budget of just over RM7 million each year, he added.”

2018 – The IPCMC Is Around the Corner!

In September 2018, civil society welcomed the announcement by Prime Minister, Tun Dr. Mahathir that the Enforcement Agency Integrity Commission (EAIC) would be upgraded to become an Independent Police Complaints and Misconduct Commission (IPCMC). The Prime Minister further added that the move would enhance the agency’s role and allow it to investigate complaints more holistically.

This was in keeping with the *PH manifesto*, *promise 20: Make the Malaysian Armed Forces and the Royal Malaysia Police a respected and an enviable force*, that states:

“The Independent Police Complaints and Misconduct Commission (IPCMC) will be established in the first term of the Pakatan Harapan administration. All allegations of misconduct will be investigated in a fair and comprehensive way, including allegations of death in custody.”

Why the Reinvention of the EAIC and Not A Whole New Body?

On 30 November 2018, a roundtable discussion was held at the Bar Council Secretariat to discuss the development and direction of the proposed IPCMC, as follow up to the PM’s announcement in September 2018.

Both the National Centre for Governance, Integrity and Anti-Corruption (GIACC), which now coordinates and monitors all activities related to governance, integrity and combating graft,

and the EAIC were present at the meeting. To our shock, the EAIC shared their recommendations of a new bill they are drafting for the proposed IPCMC.

We were wholly disappointed that the bill suggested by the EAIC was planning for the proposed IPCMC to merely recommend and not instruct PDRM to implement the findings. The EAIC drafters disregarded the Royal Commission on the Police of 2004/2005 draft bill, ignored the Bar Council improvement of the Royal Commission draft bill by adding a few more provisions, for instance the right of a police officer to appeal, to ask for an judicial review against a finding or recommendation by the IPCMC.

We could clearly see the wheels of resistance were in motion; the EAIC was not giving itself more powers while taking on the new identity of the proposed IPCMC. In other words, we were back to square one.

Then in March 2019 it was announced that the PDRM would submit a its own memorandum on the IPCMC to the Ministry of Home Affairs. Civil society knew the PDRM was not going to subject itself to an EXTERNAL oversight mechanism as PDRM leadership believed that internal processes were sufficient.

(<https://www.bharian.com.my/berita/nasional/2019/03/542990/polis-serah-memorandum-ipcmc-dalam-masa-terdekat>).

What Should Be the Role of PDRM vis-à-vis the IPCMC?

First, while PDRM can and should give feedback on the proposed Bill, PDRM cannot have the last word. In our view the cabinet and the AGC must finalise the Bill to ensure the IPCMC has effective powers and does not become an institution with no teeth.

Secondly, the IPCMC composition must not consist of present or ex police officers for this is in keeping with the proposal by the Royal Commission Report. Ex-police officers can act as consultants or investigators but by law, the commissioners themselves cannot have ever worked in the police force.

The Malaysian Police have to explain the Forced Disappearances

In the wake of the findings of Malaysia's Human Rights Commission (SUHAKAM) in April 2019 pursuant to the inquiry held regarding the forced disappearance of both Amri Che Mat and Pastor Raymond Koh, it is unacceptable to delay the setting up of the IPCMC.

SUHAKAM's findings that the Special Branch was involved in the kidnapping and the forced disappearance of both these individuals are disturbing and alarming. The police force is responsible for maintaining public order, with the safety of the rakyat being amongst their top priority; for the same entity to be involved in kidnapping and the forced disappearance of Malaysian individuals is chilling, to say the least.

"PROHAM further calls on the Government to take immediate action as recommended by SUHAKAM to investigate the perpetrators of this crime against humanity to ensure justice is done to the families of both these victims." Press Statement, April 2019, Society for the Promotion of Human Rights (PROHAM)

We want an independent IPCMC!

Regarding this issue, civil society will escalate our advocacy efforts. On 8 April 2019 we organised a walk to Parliament and submitted yet another memorandum to the MPs.

We reaffirm that the IPCMC must function this way:

- 1) It should be provided with a sufficiently strong staff to enable it to perform its function effectively. The Royal Commission was clear that in terms of composition that the members of the IPCMC may *not* be drawn from retired or serving police offices.
- 2) The powers of the IPCMC must include receiving complaints from the public regarding alleged police misconduct, to decide whether to investigate a complaint on its own or with other agencies and initiate an investigation on its own even without receipt of a complaint.
- 3) The IPCMC shall have the power to cause PDRM or other relevant agencies to produce for inspection any documents or items that have a bearing upon a case.
- 4) It shall have the power to summon witnesses and hear sworn testimony.
- 5) It shall have the power to enter and inspect any premises occupied or used by a public body or statutory authority.
- 6) Once the IPCMC has decided that a police officer is guilty of misconduct or other offences defined in the IPCMC Act, it can order such actions as it deems fit to be taken including caution and discharge of the police officer, suspension of allowances and increments, reduction in rank, fine or dismissal of the police officer.
- 7) It is key that the process is *fair to the individual police officer* accused of misbehaving, e.g. a right to be heard and defend himself/herself; a right to be represented by a lawyer; including any finding and order by the IPCMC may be subject to a judicial review.
- 8) Any investigation should be conducted expeditiously in order to maintain confidence in the rule of law.

Conclusion

Malaysia cannot be going against the international trend of police reform, especially since the State initiated police reform in 2004. Fourteen years later, we cannot be held to ransom by unseen powers even as we acknowledge that there are many good police officers who carry out their duties diligently in providing public security and maintain the rule of law.

We call on the present Pakatan Harapan government to do the right thing and not to allow PDRM or any institution for that matter to possess uncontrollable powers to do as they please. It is crucial that the police are accountable to the society and the public.

Officers responsible for unlawful actions must be prosecuted and convicted, we must protect the integrity of PDRM. <i>An Ex -Police Commissioner</i>
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MALAYSIA HUMAN RIGHTS REPORT 2019

SUARAM's Annual Human Rights Report on Malaysia is widely recognized 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 of human rights defenders that take place in Malaysia during the year.

The hopes for institutional reform was all but dead a year after Pakatan Harapan took power. The initial spur for institutional reform led by the introduction of the Institutional Reform Committee was soon revealed to be nothing more than a mirage for the people. The willingness to engage with civil society by the government varied by ministries with some seeking direct engagement as a way forward while others distance themselves from any form of engagement.

Amidst the continued fight for institutional reform, the rhetoric on race, religion and royalty took centre stage on all political and human rights discourse. Under the umbrella of the 3R, the freedom that Pakatan Harapan promised was replaced with a need to control expression. While the laws are not overtly used to protect the rich and powerful, it now claims to protect the harmony between different ethnic groups or the dignity of the royal institution.

Security laws that permit detention without trial continue to be used indiscriminately by the Royal Malaysian Police with no attempts by the executive to reign in or review the law. The only attempt to challenge the status quo through the Independent Police Complaints and Misconduct Commission (IPCMC) also seems to have fallen on the wayside with a watered-down bill and repeated delay in Parliament.

At the end of the day, it would seem the hope and fanfare Malaysians had in 2018 was nothing but a welcome for the same vehicle of injustice with a different coat of paint.