

HUMAN RIGHTS REPORT MALAYSIA 2021 OVERVIEW

CIVIL AND POLITICAL RIGHTS



DETENTION WITHOUT TRIAL • DEATH IN CUSTODY • ABUSE OF POWER • FREEDOM OF EXPRESSION •
PEACEFUL ASSEMBLY ACT • DEATH PENALTY • PEOPLE BEFORE PROFIT • FREE AND FAIR ELECTIONS •
GENDER AND SEXUALITY



SUARAM'S HUMAN RIGHTS OVERVIEW REPORT ON MALAYSIA 2021

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Executive Summary

The political turmoil and pandemic crisis of 2020 continued into 2021 when Malaysia was under emergency rule and lockdown for much of 2021. The nationwide emergency which was announced on 12 January 2021 purportedly to curb the Covid-19 pandemic was seen as a political move by the former Prime Minister Muhyiddin Yassin to suspend parliament when his parliamentary support was at the brink of collapse. Thus, throughout much of the year, the Perikatan Nasional government managed to govern without any parliamentary scrutiny from 12 January to 1 August.

At the same time, the movement control order (MCO) was also re-introduced during the beginning of the year when Malaysia was recording a surge in daily Covid-19 cases and deaths. Consequently, outdoor activities were restricted for fear of spreading the Covid-19 virus. The economic and social impact of the lockdown in 2021 was certainly severe as there was a reported increase in suicides and distress calls. There was also an unofficial “white flag movement” which gained momentum on social media, namely, those who were facing financial difficulties could put up a white flag outside their residence if they needed any financial aid.

As for Malaysia’s human rights situation in 2021, there was little change from 2020 except that the government was seen to be further clamping down on freedom of expression and assembly to stifle dissent as the country’s political instability worsened.

Security laws that violate the right to fair trial continued to be abused throughout 2021. The pandemic and the restriction of movement did not slowdown the use of such laws. These laws were justified by the government on the grounds of ‘crime-prevention’ and SUARAM has noted that the security laws were mainly used to tackle organized crime.

The situation pertaining to right to justice was equally concerning in 2021 as incidents related to police abuse of power showed no sign of decreasing and cases of deaths in police custody were periodically reported. Other issues involving chain remand and torture continued to happen with no accountability and oversight and there was little effort by the police to tackle past cases of enforced disappearances or to investigate the findings by SUHAKAM on these cases.

Freedom of expression suffered a major setback in Malaysia when the government, using emergency power, enacted a fake news ordinance. While the ordinance was meant to deter the creation and circulation of ‘fake news’ related to Covid-19 and the emergency proclamation, the lack of parliamentary oversight during the enactment of the law and its similarity to the now repealed Anti-Fake News Act 2018 raises concern that it could be used to clampdown on political dissent instead. Social activists such as Fahmi Reza, Mohammad Alshatri, Mohammad Asraf were also investigated numerous times under the Sedition Act 1948 and Communications and Multimedia Act 1998 during the year because of their political opinions.

While the freedom to assemble was exercised regularly during 2021 by activists, they were investigated under the Peaceful Assembly Act 2012 after each assembly. Human Rights Defenders and political activists continued to be called up and there were at least 87 individuals who were investigated under the act, according to SUARAM’s monitoring.

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

Electoral democracy was suspended through much of 2021 due to the Covid-19 pandemic. Most notably, the emergency order was extended in the state of Sarawak to postpone the Sarawak state elections which was scheduled to be held no later than August 2021. There was also a delayed implementation by the government to lower the voting age and a rather dubious registration process of new political parties.

Women and LGBTIQ communities living in Malaysia continued to face severe human rights challenges especially when politicians and right-wing organizations would harp on gender and sexuality issues to gain political mileage. The proposed amendment of the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355) is particularly worrying since the amendments to increase the sentencing limits under Syariah courts' criminal jurisdiction are justified on the grounds of "resolving the LGBT issues" by the government. Nonetheless, there was judicial victory for women rights when the High Court made a ruling that there will be no distinction between Malaysian men and women who are married to foreign spouses. The court ruled that Malaysian women can pass on their citizenship automatically to their children who are born overseas.

Lastly, the Malaysian government recently voted in support of a United Nations (UN) resolution favouring a moratorium on the use of the death penalty. However, the application of the death penalty remained unabated in the country throughout 2021. Cases of drug trafficking remain the most significant on Malaysia's death row, and these cases continue to be plagued by injustices and inequities. This is most prominently seen in the case of Hairun Jalmani, a 55-year-old single mother of 9 who was sentenced to death in October 2021 for possessing 113.9g of methamphetamine. Thus, Malaysia's strict drug laws continue to influence the widespread application of the death penalty in the country.

Right to Fair Trial

The use of draconian security laws showed no sign of abating even during a pandemic year. 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) continue to exist and there is no indication that it will be repealed nor amended to conform to human rights standard in the foreseeable future. From the period 2020 to August 2021, the home minister has revealed that there were 369 individuals arrested under SOSMA, while 2,832 were arrested under POCA and no arrest under POTA¹.

Although the government has promised that SOSMA, POCA and POTA will be amended to ensure relevance and effectiveness in improving public safety and security through its 12th Malaysian Plan², the government has also defended the necessity of such laws in a separate occasion and argued that detention without trial laws such as SOSMA are essential for national security³. This has been the official stance taken by the Perikatan Nasional government since it came into power in 2020 and yet the government has not taken any active role in these two years to either review or amend these laws that they had promised to do.

There is also a belief within the government that detention without trial laws such as SOSMA are needed as a deterrent to hate speech and other such forms of expression. Upon his first day in office after the change of Prime Minister, the home minister suggested that SOSMA could be used if individuals issue statements which incite others and cause public fear even though the law is meant to be used only against individuals involved in security offences⁴.

Statistics on detentions without trial from SUARAM's Documentation in 2021

	Terrorism	Trafficking/Immigration	Organized Crime	Unidentified	Total
SOSMA	1	26	100	1	128
POCA	0	3	146	1	150
POTA	0	0	0	0	0
Total	1	29	246	2	278

Overall statistics on detentions without trial from SUARAM's Documentation

Year	SOSMA	POCA	POTA
2016	189	278	15
2017	326	158	2
2018	182	53	0
2019	123	908	1
2020	828	667	1
2021 (Jan – Sep)	128	150	0

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

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

3 Oral Answer in Parliament – Question 49, 4 October 2021 <<https://pardocs.sinarproject.org/documents/2021-september-december-parliamentary-session/oral-questions-soalan-lisan/2021-10-04-parliamentary-replies/20211004-par14p4m1-soalan-lisan-49.pdf/view>>

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

Security Offences (Special Measures) Act 2012

SOSMA is a procedural law that operates in lieu of the Criminal Procedure Code when an individual is detained for suspicion of offences under Chapter VI 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 their 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 is contrasted with the Criminal Procedure Code by which an individual who has committed an alleged crime can only be remanded for a period of seven days in total, or 14 days in total depending on the severity of the offence and can 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 affording detainees an opportunity to defend themselves in court. On one hand, the trial process provides an opportunity for lawyers and members of the public to scrutinize 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 utilized as part of the standard operating procedure; denial of legal counsel and family access; restriction on the admissibility of evidence and documents deemed as sensitive; the admissibility of protected witnesses who would be questioned without the presence of the accused or their counsel, and several other issues of concern involving the use of agent provocateurs and confessions. Aside from that and as noted in SUARAM's reports over the years, detainees are also often subjected to mental and physical abuse during the preliminary 28-days detention. Nevertheless, the risk of mental and physical abuse may persist even after the preliminary detention as shown in the Jelebu case in which 22 individuals were still suffering from torture after more than two years' detention under SOSMA⁵.

The abuse of SOSMA that grossly undermines several principles of the right to trial can be seen in several cases that happened in 2021. For instance, family members only found out Mohd Saiful was arrested and detained under SOSMA after they had made a police report regarding his sudden disappearance for five days⁶. The right to family access has clearly been infringed as the family members were not informed about his arrest until they had reported to the police about the detainee's disappearance. The family has also subsequently revealed that Mohd Saiful was denied legal counsel when he was detained.

SUARAM has documented a total of 128 individuals detained under SOSMA between January to September 2021 with most of the cases being related to organized crime.

⁵ Kow Gah Chie, 'Suhakam to probe alleged abuse in Jelebu Prison' (Malaysiakini, 20 May 2021) <<https://www.malaysiakini.com/news/575421>> accessed 26 October 2021

⁶ Manzaidi Mohd Amin, 'Pemandu teksi disangka hilang, rupanya kena tahan bawah SOSMA' (Malaysia Gazette, 06 April 2021) <<https://malaysiagazette.com/2021/04/06/pe-mandu-teksi-disangka-hilang-rupanya-kena-tahan-bawah-sosma/>> accessed 24 October 2021

Prevention of Crime Act 1959

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

Under POCA, any individual arrested can be detained for a maximum of 60 days by the police with a 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' 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'⁷ as those sentenced to house arrest are often sentenced to locations away from their homes and could require a person to stay in a different state within Malaysia. House arrest would also require the person in question to be fitted with an Electronic Monitoring Device, be restricted to a 5km radius, and subjected to checks by police officers. They would also have to report to a designated police station from time to time.

The use of POCA to arrest, detain or investigate individuals was rampant in 2021. According to SUARAM's documentation, a total of 150 individuals were arrested under POCA from January to September 2021 with most of the arrests being targeted at organized and gang related crime.

Prevention of Terrorism Act 2015

Both in form and function, POTA is largely like POCA. The only difference is the 'target' of this law. While POCA is allegedly meant to address threats posed by organized crimes, POTA has been specifically introduced to address the threat of terrorism as noted in the preamble to the Act⁸. 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 placed under house arrest.

⁷ In Malay, this is often referred to as 'Buang Daerah'

⁸ 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.

Information about detention under POTA and the rehabilitation that detainees undergo during detention is scarce but according to a parliamentary reply from the Minister of Home Affairs on 15 September 2021, no individual had been detained under POTA from the year January 2020 till June 2021⁹.

Dangerous Drugs (Special Preventive Measures) Act 1985

The least known law permitting detention without trial is the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA). 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’, DDA retains the old policy whereby detention orders are meted out by the home minister.

While this law denies an individual the right to a fair trial, detention under DDA is often seen as a ‘reprieve’ from the death penalty under Section 39B of the Dangerous Drug Act 1952. From January 2020 to June 2021, 1,814 individuals including 25 juveniles were arrested under DDA¹⁰.

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

10 ‘Minister: Preventive law for drug traffickers sees 25 teenagers held since 2020’ (Malaysiakini, 16 September 2021) <<https://www.malaysiakini.com/news/591586>> accessed 24 October 2021

Right to Justice

Cases of abuse of power by the police continued in 2021, following the pattern and prevailing issues documented through the years by SUARAM. Police abuse of power including deaths in custody with alleged torture and ill-treatment are still regularly reported and documented. Yet, there is little debate or public discussion from policymakers to address these human rights violations.

As for policy development, there was little update on the ‘new’ Independent Police Conduct Commission (IPCC) Bill which replaces the Independent Police Complaints and Misconduct Commission (IPCMC) Bill¹¹ as the progress of the bill through Parliament was hampered by the suspension of Parliament during the emergency. The bill is only expected to be tabled for second reading as of this writing¹² even though the first reading was completed in August 2020. Nevertheless, there are issues of accountability and independence related to the bill. It is SUARAM’s view that the bill is a watered-down version of its predecessor and would not be able to investigate police complaints independently.

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

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

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

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

¹¹It is noted that the bill introduced by Pakatan Harapan in 2019 was also titled the Independent Police Conduct Commission Bill, it is referred to as IPCMC in this context to make a distinction between it and the bill reintroduced in 2020

¹²‘IPCC Bill to be tabled for second reading during current Parliament sitting’ (The Star, 22 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/22/ipcc-bill-to-be-tabled-for-second-reading-during-current-parliament-sitting>> accessed 11 October 2021

Deaths in Custody

Custodial deaths in Malaysia remain an issue of grave concern. According to the reply by the Ministry of Home Affairs in Parliament, there were 6 deaths in police custody reported between January and August 2021. As for immigration centres, there were 28 cases of custodial deaths in immigration detention, from January – 23rd August 2021 while the latest figure for the whole of 2020 stands at 37 deaths in custody.

During the same parliamentary reply, the number of custodial deaths in prisons is only 8 for 2021 and 13 for the year 2020. However, the answer that has been provided by the home minister is highly inconsistent with the one he provided in the previous sitting in 2020. As documented in SUARAM's 2020 Human Rights Report, the no. 42 Oral Answer dated 24 November 2020 stated that custodial deaths in prisons for that year was 296¹³. The discrepancy in the number of prisons' custodial deaths is certainly too large to be ignored and worrying given that the difference between the two figures amount to more than a hundred lives. SUARAM has written to the Prison Department for further clarification on this matter.

Aside from the questionable prisons' deaths, SUARAM also has reason to believe that the number of police deaths in custody has been severely underreported when compared to those deaths that were documented by SUARAM or reported by media. For instance, according to the Home Ministry, there was only one Indian who died in police custody. This was despite the scandal of deaths in custody that was brought to national attention through the widely reported deaths in custody in Gombak police station within the span of one month involving A. Ganapathy¹⁴ and Sivabalan Subramaniam¹⁵ both of whom were Indians. The stated numbers clearly failed to take account of the two victims that were evidently cases of deaths in custody. The death of A. Ganapathy in Selayang Hospital due to injuries sustained while he was under the Gombak police custody and the death of Sivabalan Subramaniam as soon as he was arrested by the police from Gombak police station are examples of cases omitted by the Home Ministry.

As for measures to reduce deaths in custody, the government has since approved an allocation totalling RM50 million in 2020 to improve the conditions and facilities in police lockups and immigration detention centres¹⁶. This includes installation of closed-circuit television (CCTV) at police lockups and the installation process is estimated to be completed by the end of this year.

13 Oral Answer in Parliament – Question 42, 24 November 2020 <<https://www.parlimen.gov.my/files/jindex/pdf/JDR24112020.pdf>>

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

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

16 Oral Answer in Parliament – Question 47, 28 September 2021 <<https://www.parlimen.gov.my/files/jindex/pdf/JDR28092021.pdf>>

Overall Statistics on Deaths in Custody

Year	Police	Prison Department	Immigration
2016	15	269	40
2017	10	319 ¹⁷	24
2018	8	2 ¹⁸	32
2019	6	3	55
2020	13	13	37
2021 (Jan – Aug)	6	8	28

SUARAM Documented Cases of Deaths in Custody in 2021

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

17 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>

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

Torture and Ill-Treatment in Custody

Torture has been and remains a well-documented and recurring issue in Malaysia. Incidents of physical violence inflicted upon detainees under remand or during an investigation are prevalent especially when there is chain remand¹⁹ or detention under security laws. In general, it is difficult to provide the appropriate medical evidence to ascertain that torture has been inflicted as detainees are often locked away until their next court appearance and are subjected to threats of further violence by investigating officers if they were to reveal what had been inflicted upon them. While evidence of torture can be difficult to ascertain, the deaths in custody of Mohd Afis Ahmad, A. Ganapathy, and other similar cases due to injuries sustained have exposed the extent of physical violence inflicted upon them while they were detained by the police.

20-year-old Lim Xiang Hui was assaulted by the police because of smuggling activities, an allegation which the former claimed to know nothing about²⁰. Lim was initially arrested by police who did not identify themselves and was subsequently handcuffed and beaten. He was subsequently driven to a jungle area and was interrogated throughout the process with a gun pointed at his head. Moreover, Lim also complained that he was denied the right to contact his family members during the arrest and his remand was instituted without legal representation.

As noted in reports of the past, there is also a general concern that inadequate facilities, lack of appropriate training and the absence of basic amenities and medical resources are contributing to an oppressive and abusive environment for detainees. In some cases, the abusive conditions have led to the rapid deterioration of the health of detainees, eventually contributing to their untimely demise. Examples of such cases include Roopan Karnagarn who passed away in Kajang Prison. Prior to his death, the convicted Roopan Karnagaran had complained about breathing difficulties, but his family has since alleged that he was not given proper medical treatment by the police which could have prevented his death²¹.

This is of course compounded and exacerbated by unconscionable standard operating procedures such as those observed under SOSMA²² or the onerous remand process under POCA, POTA and DDA. In May 2021, 22 detainees under SOSMA were alleged to have suffered assault and torture while being imprisoned in Jelebu Prison²³. At a press conference, family members of the detainees have revealed that the detainees had been beaten with plastic pipes, sticks, chairs and tortured by having their genitals pepper sprayed.

19 Chain remand is further described in following pages

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

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

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

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

Chain Remand

Chain remand occurs when an individual's remand period granted by the Magistrate court has expired, yet 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 in which individuals were detained in such a manner for up to three months (90 days) and then put in various lockups and detention centres in the country by the police.

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

A recent example included a case documented by SUARAM. Mitheswaran Kumar²⁴ was initially remanded for 3 days under section 12(2) of the Dangerous Drugs Act 1952 for drugs possession. Mitheswaran's family was initially informed that 5 grammes of methamphetamine was found in his possession, only for that claim to be revised by the police themselves to only 0.5 grammes when the family probed further. At the end of the 3-day remand period, the family was informed that Mitheswaran would be further remanded for 6 days for 'housebreaking', an offence completed unrelated to drugs, under section 457 Penal Code.

In the cases that SUARAM has monitored and followed up, we have found that chain remand is often used to ensure that the accused remains in "possession" of the police to either extend investigation of the case or to hold the accused under custody indefinitely.

Police Shootings

SUARAM monitors incidents of officers of the Royal Malaysian Police discharging their firearms while on duty whenever these are reported. Our documentation noted 13 such cases in 2021 with 16 deaths attributed to such police shootings. The Batu Pahat shooting case with 4 fatalities²⁵ involved 4 suspected armed robbers caught in a gunfire exchange with police. Six suspected members of the militant group Abu Sayyaf were also shot dead in separate locations of Beaufort²⁶ and Sandakan²⁷ in 2021.

²⁴ Hakimie Amrie hisamudin, 'Probe cops for 'chain remand' of juvenile, says rights group' (Free Malaysia Today, 14 April 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/04/14/probe-cops-for-chain-remand-of-juvenile-says-rights-group/>> accessed 11 October 2021

²⁵ Essa Abu Yamin, 'Police shoot dead four suspected robbers in Batu Pahat [NSTTV]' (New Strait Times, 12 February 2021) <<https://www.nst.com.my/news/crime-courts/2021/02/665313/police-shoot-dead-four-suspected-robbers-batu-pahat-nstv>> accessed 11 October 2021

²⁶ 'Five members of Abu Sayyaf shot dead by police in Beaufort (updated)' (The Sun Daily, 18 May 2021) <<https://www.thesundaily.my/local/five-members-of-abu-sayyaf-shot-dead-by-police-in-beaufort-updated-DL7872335>> accessed 11 October 2021

²⁷ Stephanie lee, 'Two suspected Abu Sayyaf militants shot dead in Sandakan' (The Star, 20 August 2021) <<https://www.thestar.com.my/news/nation/2021/08/20/cops-shoot-two-men-believed-to-be-abu-sayyaf-in-sandakan>> accessed 11 October 2021

Police Shootings from SUARAM Monitoring for 2021

No.	Date	Names	Location	State	No. People Involved	Injured	Death
1	24 January	Lim Xiang Hui	Chini	Pahang	1	-	-
2	12 February	Unnamed	Batu Pahat	Johor	4	-	4
3	26 February	Unnamed	Kepong	Selangor	1	-	-
4	2 April	Unnamed	Labuan	Sabah	1	-	
5	17 May	Mabar Binda	Beaufort	Sabah	5	-	5
6	27 May	Unnamed	Kulim	Kedah	1		1
7	15 June	Unnamed	Georgetown	Penang	1		
8	27 June	Unnamed	Bayan Lepas	Penang	1		1
9	22 July	Too Kim Young	Kajang	Selangor	1	-	-
10	17 August	Unnamed	Sungai Buloh	Selangor	1		1
11	20 August	Unnamed	Sandakan	Sabah	2		2
12	3 September	Unnamed	Brickfields	Kuala Lumpur	4	1	
13	16 September	Unnamed	Kubang Semang	Penang	2		2
				Total	25	1	16

Enforced Disappearance

SUHAKAM's Public Inquiry into the Disappearance of Pastor Raymond Koh and Amri Che Mat²⁸ has concluded that the two individuals were indeed victims of enforced disappearance and that the Bukit Aman Special Branch was involved in their abduction and disappearance. Despite such damning findings, there is no initiative from the government nor the police to acknowledge or act on the findings. The police still maintains that there are no fresh leads pertaining to the case of Pastor Raymond Koh and Amri Che Mat²⁹.

As of June 2021, SUHAKAM's inquiry into the disappearance of Joshua Hilmy and his wife Ruth Sitepu was still ongoing after its suspension due to Covid-19³⁰. At the time of writing, SUHAKAM was nearing the end of the inquiry and their finding is expected to be released in early 2022.

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

29 Yiswaree Palansamy, 'Home minister: Still no new leads on forced disappearance cases, Indira Gandhi's ex-husband's whereabouts' (The Malay Mail, 23 September 2021) <<https://www.malaymail.com/news/malaysia/2021/09/23/home-minister-still-no-new-leads-on-forced-disappearance-cases-indira-gandhi/2007867>> accessed 11 October 2021

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

Freedom of Expression

Since the Perikatan Nasional administration came into power in 2020, it has continued to apply repressive laws such as The Sedition Act 1948 and Communication and Multimedia Act 1998 (CMA) to suppress freedom of expression and the number of investigations under the two repressive laws also increased in 2021. This is particularly evident when investigations or charges were laid against protest leaders and other critics of the government led by former Prime Minister Muhyiddin Yassin.

Furthermore, the emergency power that was granted to the government in 2021 also led to the adoption of Malaysian Emergency (Essential Powers) (No.2) Ordinance 2021 in March 2021 which was more commonly known as the Fake News Ordinance³¹. While the ordinance was purportedly enacted to combat ‘fake news’ relating to Covid-19 or the emergency proclamation, the lack of parliamentary oversight during the passing of the ordinance and the disproportionate power it has afforded to the government is a cause for concern for the freedom of expression in Malaysia³².

Under the fake news ordinance, an individual could be fined up to RM100,000 or maximum imprisonment of 3 years for creating, offering, publishing, or circulating fake news or publication of fake news. The ordinance also overrides the Evidence Act 1950 which upholds the right of the accused and allows for every offence under the ordinance to be a seizable offence. The fact that there are some sections from the ordinance including the definition of ‘fake news’ and related offence which are verbatim replicas of the now repealed Anti-Fake News Act 2018 further raises concern that the ordinance could be used to censor speech or punish government critics rather than tackling the problem of misinformation.

The Inspector-General of Police revealed on 1 June 2021 that 10 people had been arrested among whom 3 were charged under the Fake News Ordinance³³. Although the Emergency officially ended on 1 August 2021, the Fake News Ordinance and other emergency ordinances are still enforceable – unless annulled by both chambers of parliament - for 6 months after the Emergency expires under Article 150 (7) of the Federal Constitution³⁴.

Freedom of the press in Malaysia suffered a setback during 2020 when the media were harassed by the government for their reporting on Covid-19³⁵ while online media Malaysiakini was charged for comments made by its readers³⁶. Therefore, it is justifiable that Malaysia has dropped 18 ranks in the World Press Freedom Index, from 101 in 2020 to 119 in 2021³⁷. There has been little improvement in 2021 when the government has continued to harass, disrupt, and restrict journalists from doing their job freely.

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

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

33 ‘10 nabbed under fake news ordinance’ (Free Malaysia Today, 1 June 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/06/01/10-nabbed-under-fake-news-ordinance/>> accessed 20 October 2021

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

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

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

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

The Federal Court delivered a guilty verdict to Malaysiakini, and it was fined RM500,000 for contempt of court in relation to the news portal's reader's comments although its editor-in-chief Steven Gan was not found guilty of the same charge³⁸. Despite the verdict, Malaysiakini has maintained that the news portal should not be held responsible for readers' comments that might be derogatory or critical of the judiciary. The case against Malaysiakini is egregious and it has a chilling effect on other news portals that might likewise be found liable for their readers' comments. This would inhibit the scope of journalism in the Malaysia media and further curtail the already limited freedom of expression in Malaysia.

Malaysiakini's journalists were also not spared from intimidation when their reports were critical of the government. Malaysiakini Bahasa Malaysia desk editor Jimadie Shah Othman and KiniTV broadcast journalist Vivian Yap were called for investigation for a report on a press conference by former Inspector-General of Police Abdul Hamdi Bador in which he raised allegations of political interference and corruption within the police force³⁹. Similarly, two other Malaysiakini journalists Rusnizam Mahat and Aedi Asri Abudllah were also investigated under Section 505(b) of the Penal Code for 'spreading rumours that can cause fear and alarm among the public' for a report on a case of death in police custody⁴⁰.

A broadcaster from established news agency Astro Awani was also investigated on 1 May 2021 for allegedly making slanderous remarks against the police when the broadcaster was merely criticising the police over an incident where a burger seller was disproportionately issued with a RM50,000 compound for breaching Covid-19 standard operating procedures⁴¹.

Lastly, several journalists were also probed by the police for entering a quarantine centre to document the strike initiated by junior doctors over their contract employment. Apparently, the members of the press were subject to investigation because they had made a live video recording inside the quarantine center⁴².

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

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

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

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

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

The Sedition Act 1948

Since the abolition of Internal Security Act (ISA), the Sedition Act 1948 has been the go-to law by successive Malaysian governments to silence political dissent. In general, the crime of sedition is a colonial and archaic offence as the existence of the law predates even the nation's independence⁴³. The law itself has been amended on several occasions in the past. However, coming into the digital age, the government of Malaysia has not made any distinction in the application of the Sedition Act 1948 and that has led to the law – as archaic as it may look – being applied on articles or posts written online by Human Rights Defenders (HRD) or critics of the government. The fact that online posts and comments have increasingly fallen under the purview of the Sedition Act also contributes to the drastic increase in cases in 2020 and 2021.

The present government has claimed that there are no adequate laws to address “offences” that affect race, religion, and the monarchy in justifying the use of the Sedition Act. However, the investigation against Sarah Irdina and other activists for participating in the #lawan protest suggests that it is also used to censor speech and stifle political dissent.

Graphic artist and social activist, Fahmi Reza was arrested under the Sedition Act on 23 April 2021 for a facebook post promoting his Spotify playlist titled “This Is Dengki Ke”.⁴⁴ The playlist was created as a satire following an online comment by the Malaysian Queen.⁴⁵ According to the activist, the police kicked a hole in his door and forced their way in, arresting him while seizing his laptop and smartphone. Although the case was eventually dropped and listed as ‘no further action’⁴⁶, the manner of the arrest and investigation under the Sedition Act could be construed as intimidation of a citizen exercising his freedom of expression.

20-year-old social activist Sarah Irdina was also arrested under the Sedition Act 1948 and questioned for 10 hours before being released after much protest and public pressure⁴⁷. Sarah’s supposed ‘seditious’ remark was merely a tweet about the social movement #lawan demanding an end to the emergency, for Parliament to convene as soon as possible, and calling for the Prime Minister Muhyiddin Yassin to resign.

43 Sedition Act was passed in 1948 but Malaysia only achieved independence in 1957

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

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

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

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

List of Individuals Investigated under Sedition Act 1948 in 2021

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

List of Individuals Arrested under Sedition Act 1948 in 2021

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

List of Individuals Arrested under Sedition Act 1948 in 2021

No	Name	Status
1	Nur Faizah Wahid	Fined RM2,000 for uttering seditious remarks insulting the monarch through social media

Communications and Multimedia Act 1998

Apart from the liberal use of Section 233 of the Communications and Multimedia Act 1998 (CMA) on the grounds of addressing fake news along with the fake news ordinance, the law was also used to stifle political expression especially during the proclamation of emergency and the political controversy surrounding the legitimacy of the change of Prime Ministers in 2021.

Section 233 of the Act criminalises speech made with the intent to ‘annoy, abuse, threaten or harass another person’, including anonymous communications. The ambiguity of the language, the lack of clear definition of what is deemed ‘offensive’ and criminalizing the act of annoying people online are among the many reasons why section 233 is problematic. It should be noted that unlike its Sedition Act 1948 counterpart, section 233 of the CMA does not require the communication to be seditious, or to have the intention to incite violence or to instigate any offense commission.

On the whole, cases in 2021 mirror those for 2020 whereby Section 233 is utilized as a catch-all law for all forms of alleged offences that are committed on the internet. This reinforces the belief that Section 233 is unjustly broad in its remit and is thus prone to abuse by the authorities.

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

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

No	Name	Alleged Offence	Status
15	Unnamed Individual	Posted a comment on social medial inciting the public against the use of the word ‘Allah’ by Christians	Investigated on 15 March 2021
16	5 unnamed individuals	Posted a video which shows a van displaying a logo believed to be that of a Secret Society	Arrested on 16 March 2021
17	Unnamed individual	Posted an online comment threatening to shoot an assemblyman dead	Investigated on 23 March 2021
18	J Ramaaidoo	Posted a comment insulting Islam on facebook	Charged on 24 March 2021
19	Zamri Abdul Razak	Insulted Hinduism on Facebook	Found guilty on 24 March 2021 and fined RM15,000 on 2 April 2021
20	Joan Lee	Posted a video slandering and insulting another online personality	Arrested on 31 March 2021
21	Sufazrin Amin Ismail	Posted offensive remarks against the monarch	Found guilty and fined RM7,000 on 7 April 2021
22	Unnamed Individual	Uploaded a video of abuse against a three-year-old boy and five-year-old girl	Investigated on 15 April 2021
23	Unnamed Individual	Made a death threat against Deputy Chief Minister Datuk Amar Douglas Uggah Embas on social media	Arrested on 16 April 2021
24	Unnamed Individual	Uploaded a posting which contains a list of police personnel alleged to be colluding with various organised crime syndicates	Arrested on 18 April 2021
25	13 Unnamed Individuals	Produced and uploaded two Hari Raya-themed advertisements promoting online gambling	Arrested on 18 April 2021
26	Jonathan Tan Tee Hoe	Promoted online gambling that went viral on social media	Investigated on 23 April 2021
27	Unnamed Individual	Circulated a letter on social media condemning a Masjid and insulting the Malays	Arrested and remanded on 4 April 2021
28	J. Gajanayagam	Using messaging app to send sexually offensive contents	Charged on 23 April 2021
29	Fahmi Reza	Created a spotify playlist titled ‘Dengki Ke’	Arrested on 23 April 2021
30	Ahmad Muazz Ishak	Made an offensive statement on social media against the Crown Prince of Johor	Charged on 26 April 2021
31	Unnamed Newscaster	Made online comments which purportedly slandered the police who imposed a fine on a burger seller in Kelantan	Investigated on 30 April 2021

No	Name	Alleged Offence	Status
32	Zulkiflee Anwar Alhaque	Uploaded a caricature depicting the Kedah Menteri Besar's decision to cancel the Thaipusam holiday	Investigated on 7 May 2021
33	Fahmi Reza	Uploaded 2 caricatures of the health minister and another on the logo of Universiti Kebangsaan Malaysia	Called for questioning on 7 May 2021
34	Neelofa Mohd Noor	Uploaded a video in which she was seen to be breaching the Conditional Movement Control Order	Investigated on 4 May 2021
35	Muhamma Haris Mohd Ismail	Uploaded a video in which she was seen to be breaching the Conditional Movement Control Order	Investigated on 4 May 2021
36	Unnamed Individual	Posted offensive content that purportedly insulted the government on its policy to implement a ban on passenger flights	Investigated on 5 May 2021
37	Unnamed Individual	Posted offensive content that contained harsh words and threats against police personnel	Arrested on 7 May 2021
38	Lokman Noor Adam	Posted fake news about Covid-19	Investigated on 12 May 2021
39	Unnamed Individual	Spreading fake news on the issuance of compounds for the violation of SOPs	Investigated on 13 May 2021
40	Voon Lee Shan	Uploaded a video on social media on his party's objective for Sarawak to seek independence from Malaysia	Investigated on 19 May 2021
41	Syed Saddiq	Uploaded a video regarding death in custody in his social media	Statement recorded on 23 May 2021
42	Unnamed Individual	Uploaded a video that claimed that Nilai 3 is in Selangor state	Investigated on 23 May 2021
43	Unnamed Individual	Uploaded a video which purportedly contained fake news on the AstraZeneca vaccine	Investigated on 24 May 2021
44	Ryzal Ibrahim	Uploaded a video that made fun of traditional Iban clothing	Investigated on 29 May 2021
45	Iswardy Morni	Uploaded a video that had negative remarks against the monarch	Investigated on 30 May 2021
46	Unnamed Individual	Uploaded a video belittling Islam in social media	Investigated on 30 May 2021
47	Unnamed Individual	Uploaded a post in social media that allegedly criticised the Sultan of Johor	Investigated on 31 May 2021
48	D Arumugam	Spread false news regarding the loss of a gold ingot	Charged on 2 June 2021
49	R Thanaletchimy	Spread false news regarding the loss of a gold ingot	Charged on 2 June 2021
50	Unnamed Individual	Uploaded defamatory statements regarding the compound officer	Investigated on 8 June 2021

No	Name	Alleged Offence	Status
51	Instagram user 'safieyillias94'	Uploaded video which contained sexual grooming and obscene communication with minors	Arrested on 11 June 2021
52	Facebook account 'Gabungan Pertubuhan-Pertubuhan Pembela Islam'	Uploaded a video launching a fund to pay bail when the police had denied the existence of the bail	Investigated on 13 June 2021
53	Fahmi Reza	Uploaded a caricature depicting Perak Menteri Besar Datuk Saarani Mohama	Investigated on 8 June 2021
54	Unnamed Individual	Uploaded a video of himself giving a baby an alcoholic drink	Arrested on 22 June 2021
55	Muhammad Aiman Hakim Zainal Ariffin	Uploaded a post that insulted the Malay Rulers	Arrested on 23 June 2021 and released on the following day
56	Unnamed Individual	Made online death and rape remarks against the supporters of student activist Ain Husniza	Arrested on 23 June 2021
57	N Ganesparan	Uploaded a video entitled 'Racist in Vaccine (sic) Malaysia'	Investigated on 27 June 2021
58	Azrul Mohd Khalib	Uploaded a tweet on the use of MySejahtera data in law enforcement	Statement recorded on 1 July 2021
59	Unnamed Individual	Uploaded a post on social media comparing the azan to dog howling	Arrested on 1 July 2021
60	Anna Har	Uploaded the video 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Investigated on 2 July 2021 and Freedom Film Network's office was raided
61	Amin Landak	Uploaded the video 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Investigated on 2 July 2021 and Amin's residence was raided
62	Kua Kia Soong	Uploaded the video 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Statement recorded on 6 July 2021
63	Sevan Doraisamy	Uploaded the video of 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Statement recorded on 6 July 2021
64	Mohammad Alshatri	Uploaded the video of 'Chilli Powder and Thinner' which is about a boy's experience in police custody	Statement recorded on 6 July 2021
65	Unnamed Individual	Posted a video with insulting remarks against the Crown Prince of Johor	Arrested on 7 July 2021
66	Mahadi Mahbol	Made online offensive remarks against a political party and the Prime Minister's special officer	Charged on 13 July 2021

No	Name	Alleged Offence	Status
67	Dr Han@Gigi Han	Uploaded a video clip disputing the contractual appointment of doctors in the civil service	Investigated on 14 July 2021
68	Twitter user @zulhelmiismail	Uploaded a tweet alleging a policeman at a roadblock had solicited a bribe	Investigated on 14 July 2021
69	Unnamed Individual	Uploaded a live video on social media provoking the police	Investigated on 21 July 2021
70	Berallainitta Webley	Posted a remark on social media tarnishing the image of the police	Found guilty and fined RM5,000 on 21 July 2021
71	Heidy Quah	Uploaded a post on social media of mistreatment of refugees by the government	Charged on 27 July 2021
72	Boo Su-Lyn	Uploaded an article about hidden Covid-19 cases at the Setia City Convention Centre	Statement recorded on 26 July 2021
73	6 Media Practitioners	Made video recordings and reporting on the doctor striker in the Malaysia Agro Exposition Park Serdang	Investigated on 28 July 2021
74	Tharma Pillai	Shared the post promoting the #lawan protest	Called for questioning on 29 July 2021
75	Afiq Adib	Shared the post promoting the #lawan protest	Called for questioning on 29 July 2021
76	Mohammad Alshatri	Shared the post promoting the #lawan protest	Called for questioning on 29 July 2021
77	Sarah Irdina	Shared the post promoting the #lawan protest	Called for questioning on 29 July 2021
78	Unnamed Individual	Posted a live video of several individuals eating durians which allegedly violated the SOP of Movement Control Order	Investigated on 31 July 2021
79	Rosmawati Mohd Zain	Posted a remark on social media insulting the monarch	Found guilty and subsequently fined RM9,000 on 3 August 2021
80	Muhammad Zaki Omar	Posted offensive remarks regarding Covid-19 vaccination on social media	Charged on 6 August 2021
81	Unnamed Individual	Uploaded insulting or threatening remarks on social media against the Kedah Menteri Besar	Arrested on 9 August 2021
82	3 unnamed individuals	Uploaded insulting or threatening remarks on social media against the Kedah Menteri Besar	Arrested on 10 August 2021
83	Mohammad Asraf Sharafi bin Mohammad Azhar	Online posting promoting the #lawan protest 2.0	Called for questioning on 13 August 2021

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

Aside from Section 233 of the CMA, Section 263 of the said act also plays a substantial role in criminalizing the freedom of expression in Malaysia. Section 263 is targeted against network service providers and the law basically compels network service providers to follow government directives in enforcing the law and requires them to enforce all Malaysian laws as part of their services. While the law itself may be innocuous, the provision is often cited by the government and utilized to compel internet service providers (ISP) to block websites that are deemed illegal⁴⁸.

Printing Presses and Publications Act 1984

At the time of writing, there has been no banning of any publications under the Printing Presses Publications Act 1984 in 2021. However, the former attorney-general Tommy Thomas' memoir "My Story: Justice in the Wildnerness" published during 2021 did ruffle a few feathers and the governing party UMNO has accused the book of twisting historical facts⁴⁹. While the book was not banned and the backlash has since subsided, a total of 134 police reports have been lodged against Tommy Thomas' book and investigation papers have been opened under the Official Secrets Act 1972 and Sedition Act 1948⁵⁰.

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

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

50 '134 police reports lodged against Tommy Thomas' book' (NST, 08 February 2021) <<https://www.nst.com.my/news/nation/2021/02/663982/134-police-reports-logged-against-tommy-thomas-book>> accessed 20 October 2021

Freedom of Assembly

Protests and spontaneous assemblies were held despite the resurgence of the Covid-19 in 2021 and Malaysia was in a state of emergency for the large part of the year. This was a stark contrast to 2020 when the right of Malaysians to assemble peacefully was heavily curtailed due to the Covid-19 pandemic. As more information about Covid-19 has become available, activists have begun to adapt to the pandemic while defending their right to assemble peacefully. Therefore, assemblies in 2021 which SUARAM observed were comprised of demonstrators wearing masks and organizers ensuring that social distancing rules were strictly adhered to. The Health Director-General Dr Noor Hisham Abdullah's admission that there was no emergence of a Covid-19 cluster linked to the year's biggest protest⁵¹ and no reports of Covid-19 infection from any rallies in 2021 further testified to the fact that freedom to assemble can be exercised peacefully and safely even during pandemic times.

Peaceful Assembly Act 2012

The situation pertaining to the freedom of peaceful assembly in relation to the Peaceful Assembly Act 2012 (PAA) remained unchanged throughout 2021. The recent amendment of the PAA is still inadequate as it only resulted in an amendment of 10 days' notice being reduced to 5 days. For that reason, there is no provision to allow for spontaneous or urgent assemblies. Police investigations against demonstrators under PAA in 2021 were mostly undertaken under section 9(5) of PAA, by which the demonstrators were alleged to have failed to provide a 5-day notice to the police. While there were no notable charges nor prosecutions under the PAA, the number of investigations against demonstrators under PAA has substantially increased compared to 2020. The alarming number of investigations under the Perikatan Nasional government in 2021 points to the fact that the amended PAA fails to safeguard Malaysians' right to assemble.

For example, 11 people comprising of activists and politicians were called for investigation under Section 9(5) of PAA over the Undi18 protest outside parliament which was attended by around 200 people on 27 March 2021⁵². In response to the investigation, the then Housing and Local Government Minister Zuraida Kamaruddin surprisingly defended the protest and declared that peaceful assemblies should not be subjected to any police investigation⁵³. The PAA would need to be amended so that police can better facilitate assemblies and she announced that the matter would be raised in the cabinet. Unfortunately, there has been no further development nor any confirmation that the matter has been discussed in the cabinet after the minister's announcement.

There were also reports of police intimidation and assault during the arrests and investigations under PAA. Activist Mukmin Nantang has revealed that he was assaulted by authorities while he was on the way to the police station when he was demonstrating against the Enhanced Movement Control Order (EMCO) in Tawau, Sabah⁵⁴. Along with 6 other activists, they were remanded for 2 days for demonstrating against the government⁵⁵.

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

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

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

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

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

On 19 August 2021, 31 protesters were detained for attending a candlelight vigil in remembrance for those who had passed away due to Covid-19⁵⁶. One of the participants has alleged that she was forcibly treated and suffered physical injuries during the arrest⁵⁷. Furthermore, while in custody, the protesters were denied the right of access to lawyers. All of them were given RM2,000 fines for participating in demonstrations during the pandemic and investigations against them were made under the PAA. The police have since denied that the 31 protesters were under arrest.

Policing Peaceful Assemblies in 2021

Aside from the restrictive PAA, the Perikatan Nasional government has continued the 2020 practice of suppressing the freedom of assembly using the justification of preventing the spread of Covid-19 pandemic. However as compared to 2020, the Prevention and Control of Infectious Diseases Act 1988 was used more liberally in 2021 to prohibit assemblies or gatherings. SUARAM's Senior Coordinator Mohammad Alshatri along with 2 activists Mohd Asraf Sharafi Mohd Azhar and Muhammad Nur Taufiq Azhar were all fined RM2,000 over a flash mob held at Dataran Merdeka on 17 July 2021 for a breach of Regulation 10 of Prevention and Control of Infectious Diseases Regulations (Measures within Infected Local Areas) (National Recovery Plan) 2021⁵⁸. Similarly, the police warned the organizers of a convoy aim to drum up support for the upcoming Lawan protest by specifically mentioning the use of compound actions under the Prevention and Control of Infectious Diseases Act 1988⁵⁹.

The Lawan Protest, held on 30 July 2021, was the largest protest in 2021 in Malaysia. The protest also created a precedent whereby human rights observers were also not spared from police harassment. 2 SUHAKAM commissioners and 1 representative from Bar Council were called for investigation by the police for being present during the protest. This was even though the presence of representatives from SUHAKAM and Bar Council was to monitor and ensure the protest was conducted in an orderly and peaceful manner. SUHAKAM has since then protested the police action and said that its commissioners or officers have never been summoned for questioning for monitoring any event since its inception⁶⁰.

Furthermore, the emergency ordinance which was invoked by the government has also granted the police additional powers to police assemblies and gatherings. For example, the previously mentioned Tawau protest which had led to the arrest of 7 activists was alleged by the police to have violated the Emergency (Prevention and Control of Infectious Diseases) (Amendment) Ordinance 2021, aside from the usual PAA⁶¹.

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

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

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

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

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

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

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

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

No.	Individual/Group	Event	Date
26	Wong Yan Ke	May 1 rally	1 May 2021
27	Nalini Elumalai	May 1 rally	1 May 2021
28	Mohammad Alshatri	Dataran Merdeka Flash Mob	17 July 2021
29	Mohd Asraf Sharafi Mohd Azhar	Dataran Merdeka Flash Mob	17 July 2021
30	Muhammad Nur Taufiq Azhar	Dataran Merdeka Flash Mob	17 July 2021
31	Mohammad Alshatri	Protes Keluar dan Lawan assembly	31 July 2021
32	Mohd Asraf Sharafi Mohd Azhar	Protes Keluar dan Lawan assembly	31 July 2021
33	Tharmelinggam Pillai	Protes Keluar dan Lawan assembly	31 July 2021
34	Nur Qyira Izzati binti Yusri	Protes Keluar dan Lawan assembly	31 July 2021
35	Sevan Doraisamy	Protes Keluar dan Lawan assembly	31 July 2021
36	Azura Nasron	Protes Keluar dan Lawan assembly	31 July 2021
37	Dobby Chew	Protes Keluar dan Lawan assembly	31 July 2021
38	Edylyn Beverly Joeman	Protes Keluar dan Lawan assembly	31 July 2021
39	Asheeq Ali	Protes Keluar dan Lawan assembly	31 July 2021
40	Siti Nurizzah	Protes Keluar dan Lawan assembly	31 July 2021
41	Syazwani Mahmud	Protes Keluar dan Lawan assembly	31 July 2021
46	Chua Tian Chang	Protes Keluar dan Lawan assembly	31 July 2021
47	Nashita Binti Mohd Noor	Protes Keluar dan Lawan assembly	31 July 2021
48	Bad Latif Mansur	Protes Keluar dan Lawan assembly	31 July 2021
49	Asma Binti Latiff	Protes Keluar dan Lawan assembly	31 July 2021
50	Teo Lee Ken	Protes Keluar dan Lawan assembly	31 July 2021
51	Mathen a/l Muniasupran	Protes Keluar dan Lawan assembly	31 July 2021
52	Thanussha a/p Francis Xavier	Protes Keluar dan Lawan assembly	31 July 2021
53	Amir Abdul Hadi	Protes Keluar dan Lawan assembly	31 July 2021
54	Numan Afifi Bin Saadan	Protes Keluar dan Lawan assembly	31 July 2021
55	Sharan Raj	Protes Keluar dan Lawan assembly	31 July 2021
56	107 Member of Parliaments	Dataran Merdeka gathering to enter Parliament	2 August 2021
57	Muhammad Shafiq Izrafil Bin Mohd Azramrizal	Candlelight Vigil for Covid-19 Victims	19 August 2021
58	Subatra Jayaraj	Candlelight Vigil for Covid-19 Victims	19 August 2021

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

People Before Profit

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

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

From the cases monitored and documented, it would seem there were persistent attempts to forcibly evict people from their lands during the COVID-19 pandemic. Further, the various restrictions imposed by the Perikatan Nasional (PN) federal government and Pakatan Harapan state governments increased harassment and intimidation of activists, NGOs and local communities by state agents have stifled their ability to monitor, speak up and challenge these violations effectively.

This overview contains a summary of cases that will be further elaborated in SUARAM's full 2021 Human Rights Report on Malaysia.

North Kuala Langat Forest Reserve

The most prominent case of 2020/2021 was the bid to de-gazette the Hutan Simpanan Kuala Langat Utara (HSKLU) by the Selangor Pakatan Harapan State government. The Selangor State Government had proposed to de-gazette 930.93ha of the HSKLU for a mix development project in February 2020. Despite numerous objections by environmental groups, concerned citizens, and the Selangor State Assembly⁶², the Selangor EXCO pressed on with this plan. This was despite knowing the fact that HSKLU is an Environmental Sensitive Area (ESA/KSAS) - Level 1 and is a peat swamp forest that has unique biodiversity and ecosystem functions⁶³. More importantly, this forest is also part of the customary land of the Temuan indigenous community.

⁶² Hariz Mohd, 'Reps befuddled over S'gor MB's insistence on degazetting forest reserve' (Malaysiakini, 29 January 2021) <<https://www.malaysiakini.com/news/560845>> accessed 28 October 2021

⁶³ 'HELP SAVE KUALA LANGAT NORTH FOREST RESERVE' (Global Environment Centre, 1 March 2020) <<https://www.gec.org.my/index.cfm?&menuid=443>> accessed 28 October 2021

The ‘Save Our HSCLU’ coalition, for which SUARAM was the secretariat, mobilised an intense campaign to halt this de-gazettlement. After months of advocacy work and strong commitment from the various coalition members, the de-gazettlement was finally halted on 8th September 2021 when the Selangor Mentri Besar, Amirudin Shari announced that the ownership of the land which was previously transferred to a private company for a mixed-development project would be cancelled⁶⁴. This was a huge victory for the activists and communities who fought against this unnecessary and environmentally disastrous development plan.

The Shah Alam Community Forest (SACF)

Another concerning development impacting the environment is the proposal around the Shah Alam Community Forest. Concerned individuals have formed the Shah Alam Community Forest Society that is advocating for a part of the Bukit Cherakah Forest Reserve (BCFR) to be gazetted as a community forest to preserve its ecological value and biodiversity. The forest, which has been used by the public for recreation and educational purposes, is one of the few forests left in the Klang Valley⁶⁵. The society has named the portion of the forest consisting of primary natural lowland dipterocarp forest as SACF. SACF is known for its community trails, hiking activities and scenic views.

The society’s pursuit in pushing for SACF to be turned into a community forest heightened after it was revealed in the Shah Alam Local Draft Plan 2035 of a proposed road cutting through the forest — to connect Section U13 and Section U10. Unfortunately, to date the Selangor EXCO is adamant about proceeding with this proposal by claiming that this development is not on a forest reserve⁶⁶. This claim is being actively contested by various concerned individuals and groups including the Shah Alam Community Forest Association⁶⁷.

‘Penang Tolak Tambak’ Campaign

The Pakatan Harapan state government of Penang initiated a project that would involve the creation of 4,500 acres (1,821 hectares) of land on three artificial islands. According to the state government, these three artificial islands will have modern infrastructure and could house as many as 15,000 people on each island. The Penang South Reclamation Project (PSR) is said to be able to create 300,000 jobs over the next 30 years, reduce brain drain and guarantee a better future for Penang.⁶⁸

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

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

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

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

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

However, environmentalists have argued that the three islands – named BiodiverCity – will bury the state's richest fishing and most biodiverse area in the equivalent of 76,000 Olympic-size swimming pools of sand. Following an appeal filed by Sungai Batu Fishermen Unit chief Zakaria Ismail in July 2019, under Section 35 (1) (e) of the Environmental Quality Act, the DOE Appeals Board set aside the EIA approval for the project in September 2021, which was a victory for the fisherfolk community.⁶⁹ Despite this, the Penang state government is planning to continue the project by resubmitting its environmental impact assessment (EIA) report on the seawall project⁷⁰.

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

According to SUARAM's monitoring of land grabbing cases in Peninsular Malaysia, there has been an alarming rate of indigenous peoples' ancestral lands being forcibly taken away by both State and Non-State actors. This is an indication that since the lockdowns imposed to curb the COVID-19 pandemic in March 2020 and which continued until August 2021, indigenous communities have become more vulnerable to exploitation and land grabs⁷¹. Here are a few case summaries to illustrate this alarming trend.

Kg Kelaik in Gua Musang, Kelantan

On 11 March 2021, three Orang Asli men, representing the villagers of Kg Kelaik in Gua Musang, filed a suit against 14 entities, including the Kelantan state government, for allegedly encroaching on their ancestral land to conduct mining, logging, and plantation activities⁷². The plaintiffs alleged that all the defendants had encroached on their ancestral land and affected the daily livelihood of villagers living in those areas. In the suit, the plaintiffs are seeking a declaration that the Orang Asli of Kg Kelaik are the rightful owners of the ancestral land.

Kg Ong Jangking & Sg Papan, Gerik, Perak

The media reported on 14 December 2020 that the local Orang Asli citizen journalists managed to gather evidence to showcase unregulated logging activity that is destroying the rivers in an area near the Orang Asli settlements of Kampung Ong Jangking and Sungai Papan. The Perak Forestry Department claims that the logging company involved is licensed, and its work has received the necessary approvals. However, photographs, videos and geospatial evidence gathered by the Orang Asli there suggest that logging companies are flouting regulations⁷³. Kampung Ong Jangking and Sungai Papan both claim native title rights to the wider landscape around their settlements.

69 69 'Penang govt told to review PSR plans for benefit of fishermen' (New Strait Times, 3 October 2021) <<https://www.nst.com.my/news/nation/2021/10/733279/penang-govt-told-review-psr-plans-benefit-fishermen>> accessed 28 October 2021

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

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

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

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

Kg Tasik Asal Cunex, Gerik, Perak

The Temiar people of Kampung Tasik Asal Cunex, who live deep in the forest between Gerik and Sungai Siput in Perak have been fighting to stay on the land on which they have lived for generations. Since 2019, their plight has gained national attention when they erected blockades to prevent logging near their village, which had been permitted by the Perak state government⁷⁴. The villagers continue to stop the loggers from clearing the forest that they have depended on for their livelihood. The villagers allege that they were neither consulted nor involved in any discussions regarding this development plan, which was held with a ‘Tok Batin’ (headman/village chief) appointed by the Department of Orang Asli Development, also known as JAKOA⁷⁵.

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

The Semelai indigenous community have been engaged in a fight to stop encroachments into Kampung Paya Berangan and nearby Kampung Paya Badak, which collectively are home to 200 villagers. The Semelai villagers claim customary rights over a plot of land in Kampung Orang Asli Lubuk Perah which is also in Bera, and on which they have been living for over a century. They were ordered to make way for a company tasked with clearing the land for oil palm cultivation⁷⁶. This came after the high court in Temerloh allowed the application by Elite Agriculture Sdn Bhd, which claimed to have a 99-year lease on the 655ha land, to repossess it.⁷⁷

However, on 7 September 2021, the Court of Appeal upheld the claim by the Orang Asli community that this was part of their native customary land. In a unanimous decision to allow the appeal by the community, the judges cited improper procedure in taking possession of land with a customary right claim.⁷⁸

Kampung Berengoi in Pahang

YP Olio Sdn Bhd, a plantation company in Pahang is planning to clear almost 85km² of land. According to the villagers and activists, there has been coercion and misrepresentation in the consent for this case by the villagers. The illiterate villagers are alleging that the two letters that they signed in 2020⁷⁹, which had indicated their support for the logging, had instead misrepresented them.⁸⁰

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

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

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

77 ibid

78 <https://www.freemalaysiatoday.com/category/nation/2021/09/07/bera-orang-asli-tribe-wins-appeal-in-land-dispute/>

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

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

Proposed building of the Nenggiri Dam, Gua Musang, Kelantan

Preliminary works of the Nenggiri Hydroelectric dam project in Gua Musang was scheduled to commence in March 2022, which would include, among others, resettlement of the Orang Asli community, their school, and other basic facilities⁸¹. Jaringan Kampung Orang Asli Kelantan stated in September 2021 that the proposed project will see the loss of forest, limestone caves and villages in an area spanning 5,384 hectares or 13,304 acres⁸². Apart from losing access to the forest areas, the indigenous community claims that at least three Orang Asli heroes are buried in the affected area, as well as other graves located in their ancestral land.⁸³

Lanthanide mining near Pos Lanai, Kuala Lipis, Pahang

The Orang Asli villagers from Pos Lanai in Kuala Lipis, Pahang have been protesting an alleged plan to mine lanthanide in the area. They claim that the plan will encroach on their ancestral land, destroy the forest environment, and jeopardise the livelihood of hundreds of families. They learned from a JAKOA (Department of Orang Asli Development) letter that the Rural Development Ministry was set to conduct studies for the mining project at several Orang Asli villages in the Jelai forest in Lipis between 17 June and 31 August 2021⁸⁴. The community has alleged that JAKOA has refused to listen to them and their objections against this project.⁸⁵

SUARAM's 'People Before Profits' desk calls for deepening the discourse on the relationship between the development plans and the human rights obligations of Malaysia. Its monitoring and documentation of these cases related to so-called "development" projects in Malaysia showcases an alarming trend of complicity between the State and Non-State actors in violating indigenous peoples' rights and environmental rights. Development and human rights are interdependent and policy makers, both at state and national levels need to be cognisant of this fact. We call for all decision-making processes in development projects to adhere to international human rights standards and norms as agreed by Malaysia, especially since it is a member of the Human Rights Council for the term 2022-2024.⁸⁶

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

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

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

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

85 ibid

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

Free & Fair Elections

Electoral democracy in Malaysia continued to be put on hold and suffered constraints, compounded by the additional challenges brought by the COVID-19 pandemic. This is an overview of the concerns related to democracy and elections over the first ten months of 2021.

Elections during the COVID-19 pandemic

Malaysia saw a seven-month-long COVID-19 state of emergency starting from January that effectively suspended all elections. Two by-elections that were supposed to be held simultaneously on 16 January for the Bugaya state seat in Sabah and the Gerik parliamentary seat in Perak were also postponed due to the proclamation of emergency in those areas, making it a total of three by-election postponements after that of the Batu Sapi by-election which was supposed to be held in 2020.

Although the nationwide state of emergency ended on 1 August 2021, it was extended to 2 February 2022 in the state of Sarawak. This also led to the postponement of the Sarawak state elections since the Sarawak State Assembly should have been dissolved on 7 June.⁸⁷ Unfortunately, there was no legal provision for a caretaker government after the state assembly expired, calling into question the legitimacy of the current state government. The state of emergency in Sarawak was then lifted on 3 November, meaning that the state elections would be held within 60 days.

A snap state election has been scheduled in Melaka for 20 November following an unsuccessful coup attempt through the defection of some state assemblypersons. In the lead-up to the elections, Health Minister Khairy Jamaluddin imposed a ban on all election-related gatherings or activities from 25 October to 27 November to curb the risk of COVID-19 infections. The decision immediately brought criticism from the opposition parties and civil society groups. Election watchdog Bersih 2.0 criticised the blanket ban as a suppression of democracy as it denies the candidates' right to campaign and the voters' right to make an informed decision.

At the time of writing, the Sarawak and Melaka state elections have yet to begin, so the details of the elections will be further discussed in our full report in 2022.

Delayed implementation of Undi18 and automatic voter registration

The Federal Constitution was amended to lower the voting age from 21 to 18 in July 2019, and the government and the Election Commission (EC) had repeatedly said it would be implemented by July 2021. However, in March, the EC abruptly announced the decision to delay the implementation of Undi18 and automatic voter registration to 1 September 2022, citing constraints brought about by the Movement Control Order.⁸⁸ It was estimated that 1.2 million youths aged 18 to 20 would be affected.

⁸⁷ 'State Of Emergency Proclaimed In Sarawak Until February 2022' (NST Online, 31 July 2021) <<https://www.nst.com.my/news/nation/2021/07/713398/state-emergency-proclaimed-sarawak-until-february-2022>> accessed 20 October 2021.

⁸⁸ 'Pendaftaran Pemilih Automatik Dan Undi18' (spr.gov.my, 25 March 2021) <<https://www.spr.gov.my/ms/pusat-media/kenyataan-media/pendaftaran-pemilih-automatik-dan-undi18>> accessed 20 October 2021.

In April, 18 youths representing the Undi18 movement filed a judicial review against the government and the EC.⁸⁹ A group of five youths called “Undi Sarawak” (Vote Sarawak) also filed a judicial review at the Kuching High Court to compel the government into implementing Undi18 by July, as the Sarawak state elections were originally scheduled to be held by August.⁹⁰ In September, the Kuching High Court ordered the Federal Government to implement Undi18 by 31 December 2021, saying the delay was “unexplained, irrational and unreasonable”.⁹¹

Following the court order, the EC finally held a pre-registration of automatic voters from 1 to 31 October to allow prospective voters to check and verify their records. During the period, 5.8 million unregistered voters aged 18 or above could check their details on the EC’s online portal or at 604 verification centres nationwide.⁹² However, the EC has not yet announced the date of implementation at the time of writing.

Ambiguous and opaque party registration process

The registration of political parties remains ambiguous and opaque. Under the Societies Act 1966, the registration of political parties is under the purview of the Registrar of Society (ROS) over which the home minister has full authority. The law also does not specify a time frame for approving political party registrations.

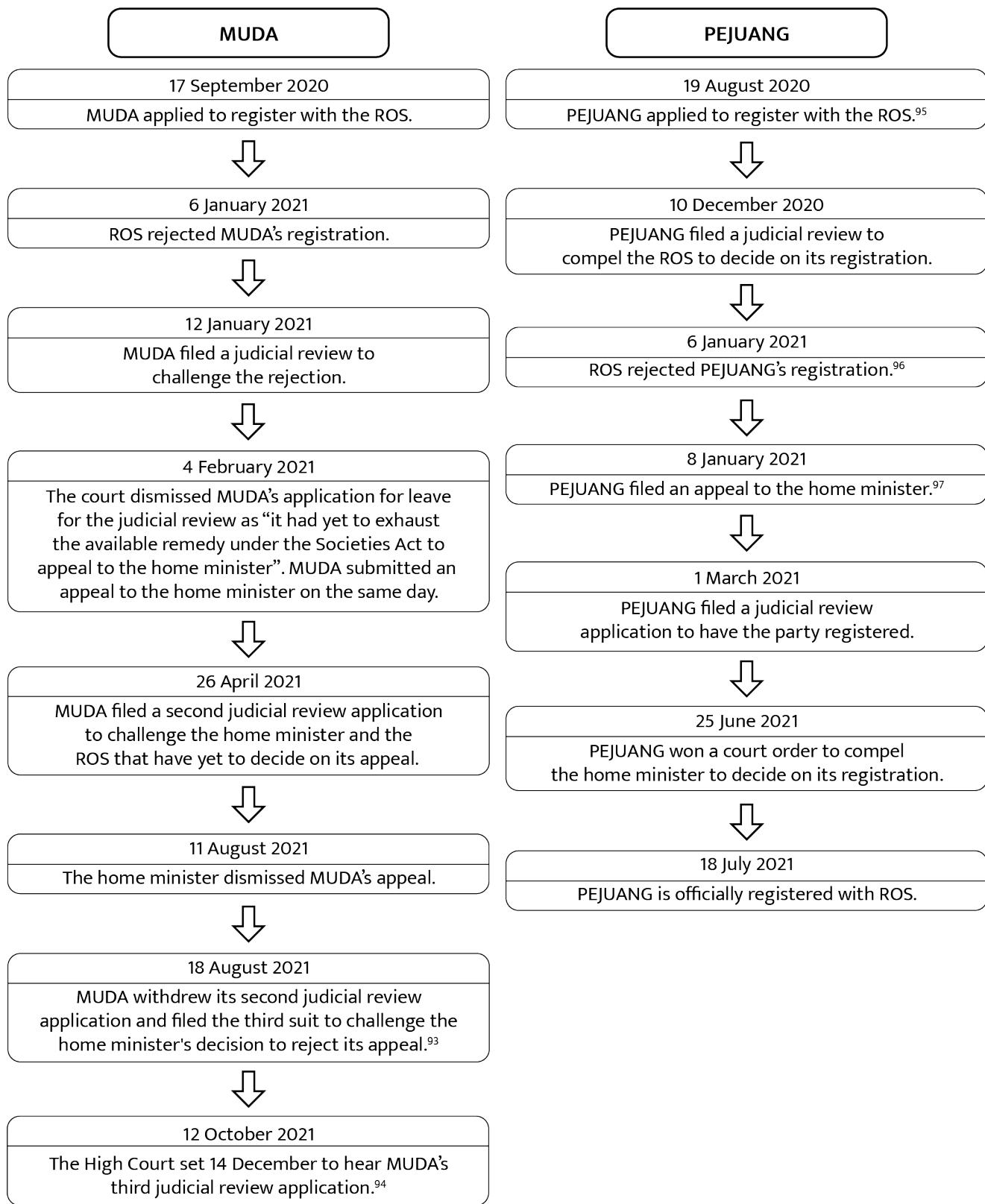
The newly formed Malaysian United Democratic Alliance (MUDA) and Parti Pejuang Tanahair (PEJUANG) attempted to register with the ROS last year, but the ROS rejected both registrations in January. Both parties then went through the appeal process and took court actions to be officially registered. PEJUANG was eventually registered as a formal political party in July, while MUDA’s registration is still pending as of October. The timeline below summarizes the tedious journey of the registration of the two parties:

89 ‘18 Youths Haul PM, Govt To Court Over Undi18’ (Malaysiakini, 2 April 2021) <<https://www.malaysiakini.com/news/569171>> accessed 20 October 2021.

90 Hariz Mohd, ‘Sarawak Youths Take Govt To Court Over Undi18 Delay’ (Malaysiakini, 4 May 2021) <<https://www.malaysiakini.com/news/573320>> accessed 20 October 2021.

91 Sharon Ling, ‘Undi18: Kuching High Court Orders Federal Govt To Implement Lowering Of Voting Age By Dec 31’ (The Star, 3 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/03/undi18-federal-govt-ordered-to-implement-lowering-of-voting-age-by-dec-31>> accessed 20 October 2021.

92 ‘Pelaksanaan Urusan Semakan Pra-Pendaftaran Automatik (SPPA)’ (spr.gov.my, 29 September 2021) <<https://www.spr.gov.my/ms/pusat-media/kenyataan-media/pelaksanaan-urusran-semakan-pra-pendaftaran-automatik-sppa>> accessed 20 October 2021.



⁹³ Hidir Reduan Abdul Rashid, 'Muda To Challenge Ex-Minister's Refusal To Allow Registration Appeal' (Malaysiakini, 18 August 2021) <<https://www.malaysiakini.com/news/587695>> accessed 20 October 2021.

⁹⁴ Hidir Reduan Abdul Rashid, 'Dec 14 Hearing Of Bid To Quash Home Minister's Refusal To Allow Muda Be Registered' (Malaysiakini, 12 October 2021) <<https://www.malaysia-kini.com/news/595095>> accessed 20 October 2021.

⁹⁵ Rashvinjeet S. Bedi, 'Dr M's New Party Pejuang Submits Application To ROS' (The Star, 2021) <<https://www.thestar.com.my/news/nation/2020/08/19/dr-m039s-new-party-pejuang-submits-application-to-ros>> accessed 20 October 2021.

⁹⁶ Hidir Reduan Abdul Rashid and Annabelle Lee, 'ROS Rejects Pejuang, Muda Applications For Registration' (Malaysiakini, 2021) <<https://www.malaysiakini.com/news/557935>> accessed 20 October 2021.

⁹⁷ Hafiz Yatim, 'Pejuang Files Judicial Review Over Party Registration, Names Home Minister And Ros As Respondents' (The Edge Markets, 1 March 2021) <<https://www.theedgemarkets.com/article/pejuang-files-judicial-review-over-party-registration-names-home-minister-and-ros>> accessed 20 October 2021.

In October, a new political party named Parti Kuasa Rakyat was launched by Kamarazaman Yaakob, the elder brother of Prime Minister Ismail Sabri Yaakob. The party has yet to apply to register with the ROS, but it revealed its plan to merge with a party that is already registered and form a new leadership.⁹⁸

Anti-party hopping legislation developments

There have been relatively more discussions about an anti-hopping legislation since the Sheraton Move that saw the ousting of the elected government caused by the crossover of MPs.

Pengerang MP Azalina Othman submitted a Recall Elections Bill in September to introduce a recall election mechanism whereby elected representatives can be sacked to deter party-hopping.⁹⁹ However, the Bill was not discussed in the September and October's parliamentary sessions. MCA also proposed a similar recall bill that empowers voters to recall MPs who have committed misdemeanours or switched parties.¹⁰⁰

On the other hand, Bersih 2.0 proposed a Recall Procedure Law at the state level that would allow voters to petition to keep or sack an assemblyperson who has changed party allegiance.¹⁰¹ The group also voiced support for Azalina's Bill¹⁰² and joined a discussion with MCA on their respective proposals on the recall bill.¹⁰³

98 'Kuasa Rakyat Launched Today, Offers To Be BN Component' (Astro Awani, 10 October 2021) <<https://www.astroawani.com/berita-malaysia/kuasa-rakyat-launched-today-offers-be-bn-component-324633>> accessed 20 October 2021.

99 Tarrence Tan, 'Azalina Submits Motion To Introduce Recall Election Bill' (The Star, 3 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/03/azalina-submits-motion-to-introduce-recall-election-bill>> accessed 20 October 2021.

100 'MCA Bill Committee Proposes To Introduce House Of Representatives Recall (HORR) Bill' (Malaysian Chinese Association, 6 September 2021) <http://www.mca.org.my/2/Content/SinglePage?_param1=28-102021-181704-10-202128&_param2=TS> accessed 20 October 2021.

101 'Enact Recall Procedure Law To Stop Political Frogs In States' (Bersih 2.0, 29 July 2021) <<https://www.bersih.org/enact-recall-procedure-law-to-stop-political-frogs-in-states/>> accessed 20 October 2021.

102 'Parliamentarians Must Support The Recall Of Members Of Parliament Bill 2021' (Bersih 2.0, 1 September 2021) <<https://www.bersih.org/parliamentarians-must-support-the-recall-of-members-of-parliament-bill-2021/>> accessed 20 October 2021.

103 'MCA Holds Discussion With Bersih 2.0 On Recall Bill' (The Star, 15 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/15/mca-holds-discussion-with-bersih-20-on-recall-bill>> accessed 20 October 2021.

Gender and Sexuality

Women and LGBTIQ communities living in Malaysia are still facing severe human rights challenges and this has exacerbated because of the Covid-19 pandemic and political instability in 2021. On one hand, the disruption of career and income brought by the Covid-19 pandemic has further disadvantaged women and LGBTIQ communities and on the other hand, political instability has allowed politicians and right-wing organizations to gain political mileage by harping on gender and sexuality issues.

In December 2020, the Home Minister Hamzah Zainudin banned the book “Gay is OK! A Christian Perspective” written by Ngeo Boon Lin, a well-known gay pastor¹⁰⁴. Although the home minister said that under the Printing Presses and Publication Act 1984, he was not required to give reasons to any parties on why he decided to ban the book, nevertheless he claimed that the book contained elements of homosexuality and Ngeo Boon Lin was seen to be promoting LGBT culture through several justifications in his book.

“Gay is OK! A Christian Perspective” was published by Gerakbudaya in 2014 and there has been no harassment by the government throughout these years. The banning of the book is clearly a violation of the freedom of expression and the right to equal treatment under the Federal Constitution. Publisher and author of the book have filed for judicial review and in March 2021, the High Court allowed the bid for leave to initiate a judicial review.¹⁰⁵

On a separate matter, in January 2021 a well-known cosmetic entrepreneur transwoman Nur Sajat was arrested by religious officials solely because she had attended a religious event wearing a woman costume. The charge against Nur Sajat was under Section 10 (a) of the Shariah Crimes (State of Selangor) Enactment 1995, by which she was accused of insulting Islam or causing Islam to be insulted. During the arrest, Nur Sajat claimed she was molested by the religion officer.¹⁰⁶ When Nur Sajat failed to attend the Shariah High Court hearing, the Selangor Islamic Religious Department (JAIS) launched a state-wide operation involving 122 officers to apprehend her.¹⁰⁷ During the whole incident, Nur Sajat managed to escape to Thailand around March for fear of her safety, and subsequently she was successful in seeking asylum in Australia in October 2021¹⁰⁸.

104 ‘Home Ministry bans two publications - ‘Gay is OK! A Christian Perspective’ and ‘Peichi’’ (The Star, 18 December 2020) <<https://www.thestar.com.my/news/nation/2020/12/18/home-ministry-bans-two-publications---039gay-is-ok-a-christian-perspective039-and-039peichi039>> accessed 29 October 2021

105 Khairah n khan, ‘Author, publisher of ‘Gay is OK’ gets green light to challenge book ban’ (New Strait Times, 30 March 2021) <<https://www.nst.com.my/news/crime-courts/2021/03/678186/author-publisher-gay-ok-gets-green-light-challenge-book-ban>> accessed 29 October 2021

106 Keertan Ayamany, ‘In NYT, Nur Sajat alleges molest during Jain arrest, says officer told mum OK to sexually assault ‘man’’ (The Malay Mail, 20 October 2021) <<https://www.malaymail.com/news/malaysia/2021/10/20/in-nyt-nur-sajat-alleges-molest-during-jais-arrest-says-officer-told-mum-ok/2014804>> accessed 29 October 2021

107 Soo Wern Jun, ‘Report: Jais launches state-wide search for cosmetics entrepreneur Nur Sajat’ (The Malay Mail, 25 February 2021) <<https://www.malaymail.com/news/malaysia/2021/02/25/report-jais-launches-state-wide-search-for-cosmetics-entrepreneur-nur-sajat/1952912>> accessed 29 October 2021

108 ‘Malaysian transgender tycoon Nur Sajat confirms asylum, saying ‘Australia chose me’’ (South China Morning Post, 21 October 2021) <<https://www.scmp.com/news/asia/australasia/article/3153075/australia-chose-me-malaysian-transgender-tycoon-nur-sajat>> accessed 29 October 2021

As for policy development, Deputy Minister in Prime Minister's Department (Religious Affairs) Ahmad Marzuk Shaary has suggested amending the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355) to enable harsher punishment for LGBTIQ communities to resolve the "LGBTIQ problem". The proposed amendment of the Act 355 aims to expand the Syariah courts' criminal jurisdiction from 3 years of imprisonment, RM5,000 in fine and 6 strokes to 30 years imprisonment, RM100,000 fine and 100 strokes. The harsher punishment could potentially fuel more discrimination and violence against the LGBTIQ communities. Although the minister maintained that amending the 355 Act is not against the LGBT community¹⁰⁹, the heavier penalty proposed on the LGBTIQ community has been used as a justification when the government was questioned about "resolving the LGBT issues".¹¹⁰ Regrettably, the newly elected Prime Minister Ismail Sabri has also appeared to continue this policy stance as he has recently announced the 355 Act will be scheduled for tabling in parliament this year.¹¹¹

On a positive note, the Federal Court reached a landmark decision in February 2021 when Section 28 of the Shariah Criminal Offences (Selangor) Enactment 1995 which criminalizes 'unnatural sex between the same sex' was declared invalid and unconstitutional. The Federal Court ruled that the law should fall under the federal parliament's jurisdiction, not under the state legislature's jurisdiction.¹¹²

There was another landmark decision with respect to protection of women's rights in September 2021. The High Court ruled that Malaysian women should have the same right as Malaysian men who are married to foreign spouse under the Federal Constitution. Thus, Malaysian women can pass on their citizenship automatically to their children who are born overseas.¹¹³ Before this, the children of Malaysian women who are married to foreigners and who are born overseas, are not automatically recognized as Malaysian citizens and Malaysian mothers would have to apply for citizenship of their children. Furthermore, unclear, and bureaucratic procedures had rendered the process of application extremely long and difficult. This was a systematic discrimination against Malaysian women especially when such denial of civil rights was not applied to Malaysian men. The child of a Malaysian male who marries a foreigner is automatically granted citizenship even if they are born overseas.

109 Siti Rohana Idris, 'Pindaan Akta 355 bukan tanda kebencian kepada LGBT' (Berita Harian Online, 24 January 2021) <<https://www.bharian.com.my/berita/nasional/2021/01/779451/pindaan-akta-355-bukan-tanda-kebencian-kepada-lgbt>> accessed 29 October 2021

110 Sharifah Mahsinah Abdullah, 'Government considers amending Act 355 for LGBT group' (New Strait Times, 19 January 2021) <<https://www.nst.com.my/news/nation/2021/01/658723/government-considers-amending-act-355-lgbt-group>> accessed 29 October 2021

111 Kenneth Tee, 'PM Ismail Sabri confirms controversial RUU 355 on track for tabling in Parliament this year' (The Malay Mail, 16 September 2021) <<https://www.malaymail.com/news/malaysia/2021/09/16/pm-ismail-sabri-confirms-controversial-ruu-355-on-track-for-tabling-in-parl/2005954>> accessed 29 October 2021

112 Ida Lim, 'Federal Court unanimously declares Selangor Shariah law criminalising 'unnatural sex' void, unconstitutional' (The Malay Mail, 25 February 2021) <<https://www.malaymail.com/news/malaysia/2021/02/25/federal-court-unanimously-declares-selangor-shariah-law-criminalising-unnat/1952701>> accessed 29 October 2021

113 Hidir Reduan Abdul rashid, "Bayi wanita Malaysia lahir di luar negara berhak dapat kewarganegaraan" (Malaysiakini, 9 September 2021) <<https://www.malaysiakini.com/news/590610>> accessed 29 October 2021

In April 2021, a young student Ain Husniza Saiful Nizam made a TikTok video to expose her teacher for making joke about rape in class. In her video, she exposed her teacher making a lewd joke about it being fine to sexually assault adult women since there are laws that protect minors from sexual assault and harassment.¹¹⁴ Ain's TikTok video went viral and because of that, she suffered numerous public backlash including a rape threat from her fellow male schoolmate, a warning letter from her school¹¹⁵, and a RM1 million legal suit from the teacher who claimed that Ain had defamed him¹¹⁶. After a series of investigations from the police, the deputy public prosecutor decided there was 'no further action' (NFA) pertaining to the case and the teacher was merely transferred to the Selangor state education department¹¹⁷.

During this time, many women also reached out to the media and social media about regular period spot checks during their schooling years¹¹⁸. Many shared their story about how they were forced to prove they are undergoing menstruation often through having to show their sanitary pads or having their vaginas swabbed with cotton buds, tissues or even fingers. It emerged that period spot checks in schools are not a new phenomenon since many adult women who have left school many years ago have since divulged that they also experienced similar indignities when they were in school.

After Ain Husniza's expose of the period spot checks, some people have started a #MakeSchoolASafePlace campaign on social media to encourage and empower female students to share their personal accounts of sexual harassment in education institutions¹¹⁹. The campaign has since collected 540 stories and exposed how female students' rights have been violated through accounts of sexual harassment, rape, jokes involving sex / rape / period, body shaming, moral policing, and cyberbullying.

In June 2021, SUHAKAM posted a research position to study 'third gender' in Malaysia on social media. The research position is to study the feasibility of having legislation to recognise a third gender in Malaysia.¹²⁰ This research position attracted the attention of some right-wing groups and the political party PAS accused SUHAKAM of attempting to introduce the idea of a third gender in Malaysia. The public backlash was such that the Minister in the Prime Minister's Department (Religious Affairs) Datuk Dr Zulkifli Mohamad Al-Bakri and the department of Islamic development Malaysia (Jakim) requested SUHAKAM to explain the rationale for conducting such research. Both the minister and JAKIM said that the research is against Islamic tenets and the government does not support any LGBTQ campaign in the country.¹²¹

114 'Teen claims teacher made rape jokes in class, Maszlee calls for probe' (Malaysiakini, 24 April 2021) <<https://www.malaysiakini.com/news/572049>> accessed 29 October 2021

115 Hariz Mohd, 'Teen claims teacher made rape jokes in class, Maszlee calls for probe' (Malaysiakini, 9 May 2021) <<https://www.malaysiakini.com/news/573957>> accessed 29 October 2021

116 Geraldine Tong, 'Ain gets letter demanding RM1m over lewd jokes allegation' (Malaysiakini, 4 August 2021) <<https://www.malaysiakini.com/news/585877>> accessed 29 October 2021

117 Hariz Mohd, 'No further action against teacher who allegedly made rape joke in Ain's class' (Malaysiakini, 5 August 2021) <<https://www.malaysiakini.com/news/585953>> accessed 29 October 2021

118 Alyaa Alhadjri, 'Schoolgirls 'shamed, groped and violated' in period spot checks' (Malaysiakini, 22 April 2021) <<https://www.malaysiakini.com/news/571658>> accessed 29 October 2021

119 'makeschoolasafeplace' (Instagram, 01 April 2021) <<https://www.instagram.com/savetheschoolsmy/?hl=en>> accessed 29 October 2021

120 'No 'third gender' for Malaysia, says minister' (The Star, 25 June 2021) <<https://www.thestar.com.my/news/nation/2021/06/26/no-039third-gender039-for-malaysia-says-minister>> accessed 29 October 2021

121 *ibid*

In September 2021, the Perlis state fatwa committee issued a fatwa that transgenders, feminine males and masculine females are not allowed to enter mosques in order to avoid confusion among other Muslims.¹²² After this fatwa was announced, the deputy minister in charge of Islamic affairs Datuk Ahmad Marzuk Shaary said that the federal government will not dispute this fatwa and he will make sure that Wilayah Persekutuan also has a similar prohibition. Penang Mufti Datuk Seri Wan Salim Wan Mohd Noor has also applauded this fatwa and promptly told trans people to “change their appearance” if they want to enter the mosque.

Lastly, in October 2021 the Olympic medallist, Pandelela revealed that she was bullied by a former coach after she confronted him for his lewd jokes. She hoped that by sharing her own story, she could empower other victims of sexual harassment to speak up.¹²³ However, Youth and Sports Minister Datuk Seri Ahmad Faizal Azumu showed no concern for women’s rights and dignity when he questioned why Pandelela had brought up the issue since the incident was alleged to have happened a long time ago.

122 Daniel Dzulkifly, ‘Don’t breach Constitution by banning transgender Muslims from entering mosques, religious authorities told’ (Malaysiakini, 29 September 2021) <<https://www.malaymail.com/news/malaysia/2021/09/29/dont-breach-constitution-by-banning-transgender-muslims-from-entering-mosqu/2009382>> accessed 29 October 2021

123 Emmanuel Santa Maria chin, ‘I spoke up now because victims of abuse never forget, says Malaysian Olympic diver Pandelela’ (Malaysiakini, 26 October 2021) <<https://www.malaymail.com/news/malaysia/2021/10/26/i-spoke-up-now-because-victims-of-abuse-never-forget-says-malaysian-olympic/2016012>> accessed 29 October 2021

Death Penalty

In October 2021, Malaysia won a seat at the United Nations' (UN) Human Rights Council for the 2022-2024 term¹²⁴. This is in the light of the fact that the country has signed and ratified only three out of the nine international human rights treaties, putting the country as the ASEAN state with the least number of international human rights treaties signed and ratified¹²⁵. We have yet to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a core treaty that implicates the use of the death penalty in Malaysia.

Malaysia's application of the death penalty showed no signs of abating in 2021. The number of people on death row in Malaysia grew from the 1,281¹²⁶ reported in early 2019 to 1,366 as of September this year¹²⁷. A recent parliamentary reply¹²⁸ presents a demographic breakdown of the country's current death row:

GENDER	NATIONALITY	OFFENCES	LOCATION
 91%	 9%	Malaysian 61% Non-Malaysian 39%	Section 39(B) Dangerous Drugs Act Firearms Act & Kidnapping Act 68% 1%
ETHNICITY (Malaysians)	AGE	Penal Code	
Malay 30%	21 - 30 years old 24%	Section 302: Murder 30%	Negeri Sembilan 2%
Chinese 15%	31 - 40 years old 42%	Section 121: Offences against Rulers 1%	Pahang 4%
Indian 13%	41 - 50 years old 26%	Section 396: Gang Robbery with Murder	Perak 5%
Others 3%	51 - 60 years old 7%		Pulau Pinang 9%
	61 years old & above 1%		Selangor 39%
			Terengganu 2%
			Sabah 7%
			Sarawak 5%
			Perlis 0%

124 'Malaysia wins UN human rights council seat' (The Star, 15 October 2021) <<https://www.thestar.com.my/news/nation/2021/10/15/malaysia-voted-in-for-a-seat-in-un-human-rights-council-for-2022-2024-term>> accessed 29 October 2021

125 'Why Human Rights' (UPR Human Rights, 1 January 2019) <<https://uprmalaysia.com/why-human-rights/>> accessed 29 October 2021

126 'Foreigners make up 44pct of 1,281 death row inmates in Msia' (New Strait Times, 11 October 2019) <<https://www.nst.com.my/news/nation/2019/10/528835/foreigners-make-up-44pct-1281-death-row-inmates-msia>> accessed 29 October 2021

127 Up to 1 September 2021

128 Oral Answer in Parliament – Question 143, 4th Session for the 14th Parliament <<https://www.parlimen.gov.my/files/jindex/pdf/JDRBERTULIS.pdf>>

The figure for those sentenced to death for trafficking drugs remains the highest in 2021 and continues to be the most talked about offence that warrants the death penalty in the country. There has been no shortage of media coverage and statements from prominent figures¹²⁹ on the use of the death penalty for Section 39(B) of the Dangerous Drugs Act, especially in the aftermath of high-profile cases such as Muhammad Lukman Mohamad¹³⁰, Muhammad Hafizul Rashid Emmy¹³¹, the couple caught with cannabis-laced biscuits¹³², as well as Hairun Jalmani¹³³ — a single mother of 9. Hairun's case, which was reported just days after the 2021 World Day Against the Death Penalty, garnered renewed public attention to the issue of death penalty abolition in Malaysia, with ample reactions and arguments¹³⁴ that Section 39(B) of the Dangerous Drugs Act disproportionately affects the poor and vulnerable.

Law enforcers seem to be unswayed by these sentiments now. Bukit Aman's Narcotics Crime Investigation Department (NCID)¹³⁵ proposed in October 2021 that the weight of methamphetamine required for one to be liable to either the death penalty or life imprisonment to be reduced from 50g to 15g or lower. This proposal has also received support from Alliance for Safe Community chairman Tan Sri Lee Lam Thye¹³⁶. If tabled and passed in the Dewan Rakyat, the move could allow the death penalty to be applied more widely than before.

129 Amar Shah Mohsen, 'Being poor not 'free pass' to commit crime: Syed Saddiq rapped for opposing death penalty' (The Vibes, 18 October 2021) <<https://www.thevibes.com/articles/news/44962/being-poor-not-free-pass-to-commit-crime-syed-saddiq-rapped-for-opposing-death-penalty>> accessed 29 October 2021

130 V Anbalagan, 'Man who sold cannabis oil as medicine escapes gallows' (Free Malaysia Today, 17 February 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/02/17/man-who-sold-cannabis-oil-as-medicine-escapes-gallows/>> accessed 29 October 2021

131 'Edar 29909 gram kanabis, Hafizul menangis ke talii gantung' (Malaysiakini, 3 September 2021) <<https://www.malaysiakini.com/news/589779>> accessed 29 October 2021

132 Farik Zolkepli, 'Couple making a living on marijuana cookies and cakes, busted by cops' (The Star, 9 September 2021) <<https://www.thestar.com.my/news/nation/2021/09/09/couple-making-a-living-on-marijuana-cookies-and-cakes-busted-by-cops>> accessed 29 October 2021

133 Ardyhasnah Amat, 'Meraung Terima Hukuman Mati, Penjual Ikan Terima Padah Miliki Dadah' (Getaran, 16 October 2021) <<https://www.getaran.my/artikel/semasa/13113/meraung-terima-hukuman-mati-penjual-ikan-terima-padah-miliki-dadah>> accessed 29 October 2021

134 Ngeow Chow Ying, 'Malaysia's Drug Law Condemns Vulnerable Women to Death' (New Naratif, 21 September 2021) <<https://newnaratif.com/malaysias-drug-laws-condemn-vulnerable-women-to-death/>> accessed 29 October 2021

135 'Dangerous Drugs Act needs more teeth: Bukit Aman' (The Vibes, 02 October 2021) <<https://www.thevibes.com/articles/news/43311/Need-for-Dangerous-Drugs-Act-to-have-more-teeth-Bukit-Aman>> accessed 29 October 2021

136 Table proposed amendments to Dangerous Drugs Act soon, says Lee Lam Thye' (New Strait Times, 03 October 2021) <<https://www.nst.com.my/news/nation/2021/10/733202/table-proposed-amendments-dangerous-drugs-act-soon-says-lee-lam-thye>> accessed 29 October 2021

Lawmakers' stand against drugs, however, seems to be relatively softer. For instance, Home Minister Datuk Seri Hamzah Zainudin¹³⁷ announced in October 2021 that the government is looking into the legalisation of medical marijuana, a cautiously positive shift away from the longstanding punitive stance against the use of marijuana. This announcement follows Pakatan Harapan's¹³⁸ and Perikatan Nasional's¹³⁹ prior intentions to replace the death penalty with minimum jail terms for drug trafficking in the country. These intentions, nonetheless, have yet to be materialised in policy and legislation.

Meanwhile, civil society efforts in advocating for abolishing the death penalty continues. In 2021, NGO Sebaran Kasih facilitated a musical collaboration between rapper Santesh and death row inmate Pannir Selvam titled 'Arah Tuju'¹⁴⁰, examining the feelings of death row inmates as they await their execution. Researchers from Monash University also released a report on drug offences and the death penalty in Malaysia, detailing the pitfalls of the country's current death penalty legal framework¹⁴¹. It is also notable that princess Tengku Chanela Jamidah¹⁴² announced in June 2021 that she is working to help appeal the case of Amiruddin Nadarajan Abdullah, better known as Dr. Ganja¹⁴³, who remains in prison since his arrest in 2017.

137 Geraldine Tong, 'Hamzah: Putrajaya looking into legalisation of medical marijuana' (Malaysiakini, 05 October 2021) <<https://www.malaysiakini.com/news/594196>> accessed 29 October 2021

138 Hazsyah Abdul Rahman, 'Penjara minimum 30 tahun ganti hukuman mati' (Berita Harian Online, 14 October 2018) <<https://www.bharian.com.my/berita/nasional/2018/10/486170/penjara-minimum-30-tahun-ganti-hukuman-mati>> accessed 29 October 2021

139 Mohd Iskandar Ibrahim, 'Ganti hukuman mati: Laporan akan ke Kabinet' (Berita Harian Online, 13 August 2020) <<https://www.bharian.com.my/berita/nasional/2020/08/720858/ganti-hukuman-mati-laporan-akan-ke-kabinet>> accessed 29 October 2021

140 "Arah Tuju, a music video calling for forgiveness & mercy" (The Vibes, 18 April 2021) <<https://www.thevibes.com/articles/culture/24343/arrah-tuju-a-music-video-calling-for-forgiveness-mercy>> accessed 29 October 2021

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

142 Lindsey Bartlett, 'Malaysian Princess Aims to Free Cancer Survivor Dr Ganja From Possible Death Sentence Over Cannabis' (Forbes, 15 June 2021) <<https://www.forbes.com/sites/lindseybartlett/2021/06/15/malaysian-princess-aims-to-free-cancer-survivor-dr-ganja-from-possible-death-sentence-over-cannabis/?sh=2f9b0e52117f>> accessed 29 October 2021

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

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