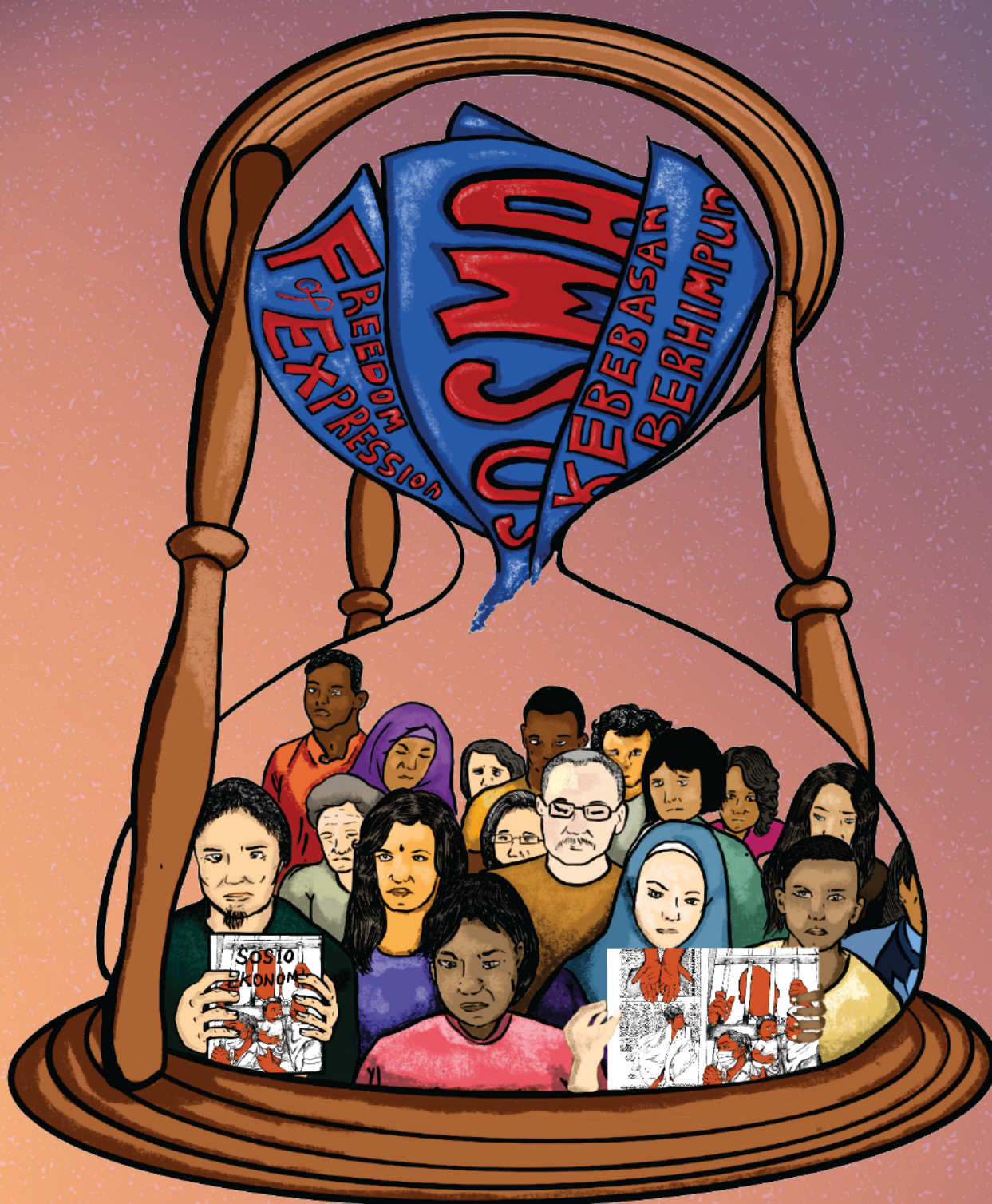


# Malaysia

Human Rights Report 2023 Overview

## Civil & Political Rights

Detention Without Trial | Right to Justice | Freedom of Expression | Freedom of Peaceful Assembly  
| Free and Fair Elections | Freedom of Religion and Belief | Corruption & Governance | Migrants & Refugees





# Human Rights Report Malaysia 2023 Overview

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## EXECUTIVE SUMMARY

After three years of political and socioeconomic uncertainties, the unity government with its proclaimed commitments for reform was a source of hope for many Malaysians. There is increased receptivity by the current administrations to engage with civil society on human rights issues. Commitments to legislative reform were also made. Despite this, substantive progress in creating an enabling environment for not only regular Malaysians to fully exercise their civil and political rights, but also vulnerable groups to live without fear and violence, remains limited.

Laws that violate the **right to fair trial** continue to be applied. SUARAM documented 3196 cases of arrests, detention and charges related to human trafficking under the Security Offences (Special Measures) Act 2012 (SOSMA). There were 249 arrests under the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA85). Whilst the government is receptive to amending SOSMA, no explicit timeline was given. How the government can ensure protection of fundamental rights of individuals whilst continuing to use SOSMA for its touted purposes of national security and public order is also uncertain, in light of the negative socioeconomic cascade effects that SOSMA has on families of detainees.

Realisation of **right to justice** remains precarious for individuals and families affected. SUARAM documents 13 death-in-custody (DIC) cases this year, with close to 85% of them under police custody. This does not reflect actual DIC prevalence, due to the longstanding issue of lack of data transparency. Access of justice for families involved is also challenging and protracted. There is no commitment by the current administration to improve the Independent Police Conduct Commission Act 2022 (IPCC) - one of the pledges by the Pakatan Harapan coalition in its election manifesto last year.

Significant regression is seen in **freedom of expression**. Key laws such as the Sedition Act 1948 and Section 233 of the Communications and Multimedia Act 1998 continue to be enforced. More explicit measures such as warnings by members in government and the setup of a investigation task force were implemented to exert more restrictive control over discourse related to race, religion and royalty. Five bans were enacted under the Printing Presses and Publications Act 1984, comprising four books and the Swatch Pride watch.

Restrictions to exercise **freedom of peaceful assembly** persist. Investigations against organisers and/or participants after, and in some cases, before public assemblies, persist. SUARAM documented the number of individuals investigated to be at least 80 this year. Four activists and civilians were charged under the Peaceful Assembly Act 2012. Tactics seen in previous years such as police barricade, arrest and detention of individuals and pre-rally warnings are still used in public assemblies organised by the political opposition or held in significant public spaces such as Parliament.

Six state elections and five by-elections are held this year. An emerging issue is the misuse of MyKad for voting, whereby the Royal Malaysian Police received as many as 94 complaints. Abuse of government resources persists, due to the lack of strong legal frameworks to define and circumscribe powers of caretaker and non-caretaker governments.

**Freedom of religion and belief** is still restricted, in light of selective application of blasphemy laws, as well as longstanding practices of prosecution of religious minorities and moral policing by state religious authorities.

In **corruption and governance**, commitment to legislative reform is seen in the passing of the Public Finance and Fiscal Responsibility Act 2023 and ongoing drafting of the Ombudsman Bill, but no timeline for reform is given on the separation of the offices of the Attorney-General and the Public Prosecutor. The government's commitment to tackling corruption and governance is also diluted by the extension of Chief Commissioner Azam Baki's tenure within the Malaysian Anti-Corruption Commission and continued lack of transparency in government-linked company political appointments.

Preliminary efforts are undertaken by the government to improve the welfare of **migrants and refugees**, such as the launch of forced labour guidelines and the commitment to implement a policy for refugees that will give them access to employment, health and education. Nevertheless, such efforts will not come full circle, when investigations and raids by law enforcement persist and political will to align with global human rights standards on migrant and refugee protection is still lacking.

Human rights of **LGBTIQ and gender-diverse people** continue to regress in 2023, as evidenced by wide-ranging state-led efforts that restrict their rights. This is seen in a spike in censorship of LGBTIQ expressions, increase in violence including hate speech, introduction of anti-LGBT Syariah laws and expansion of conversion practices. At least two murders of trans women were documented.

In the face of climate disasters faced by Malaysia such as floods and heatwaves, the nation's ability to effectively tackle them remains limited, due to climate and welfare policies that are not yet fully responsive to the Rakyat's needs. As Malaysia undertakes green transition, there is also the need to strengthen accountability frameworks to safeguard environmental rights, including those of environmental human rights defenders.

# RIGHT TO FAIR TRIAL

## SUARAM

In the wake of the reactivation of Section 4(5) of the Security Offences (Special Measures) Act 2012 (SOSMA) and subsequently change in government administration after the 15th General Election, no tangible policy development was seen in the detention of trial laws, namely SOSMA, the Prevention of Crime Act 1959 (POCA), the Prevention of Terrorism Act (2015) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA85). Whilst the government engaged with various stakeholders to review SOSMA, proposed amendments were still studied as of 20 November 2023<sup>1</sup>, with no explicit timeline given with regards to the tabling and passing of these amendments.

There have also been no changes in use of detention without trial laws. SOSMA is still widely used to curb human trafficking. Whilst organised crime is another category in which SOSMA is prevalently used, no corresponding news reports have surfaced based on SUARAM's preliminary media monitoring efforts. DDA85 is, as usual, applied alongside the Dangerous Drugs Act 1952 (DDA52) in national, state and district-level anti-drug operations by the police. No news reports on investigations, arrests, detention, or charges under POCA and POTA were found.

### Media Reported Detention Without Trial Case Numbers in 2023

SOSMA	POCA	POTA	DDA85	Total
3196*	0	0	249*	3445

*\*These figures do not include media reports that do not provide specific numbers of persons detained under SOSMA/DDA85*

Media reported case numbers on investigations and arrests under SOSMA over the first 10.5 months of 2023 are higher than those from official data disclosed by the Home Minister Saifuddin Nasution on 2 March this year via a parliamentary question, as well as cases compiled from the previous year's media monitoring efforts. Unlike media reported SOSMA cases this year that were exclusively on human trafficking, those in 2022 (116) had a mix of human trafficking (73) and organised crime (43). For POCA cases, contrary to having none reported by the media in 2023, case numbers were consistent above 130 across both official data and media reporting in 2022. Similar to this year, no POTA cases emerged in the media last year. As for DDA85 investigations, arrests and detention, media reported case numbers by mid-November 2023 only consists of less than 30% of last year's.

### Detention Without Trial Case Numbers in 2022

	SOSMA	POCA	POTA	DDA85	Total
Official data via parliamentary question <sup>2</sup>	624	132	1	--	757
Media monitoring	116	133	0	848*	1246

*\*848 was from the period of January to 10 December 2022, provided by the police. Nevertheless, there was another overall case number provided that was higher in prevalence but across a shorter period from January to June 2022 – 997. The 848 figure was classified as media monitoring, due to the source of information obtained.*

<sup>1</sup> The Home Minister's reply to the parliamentary question by Damansara member of Parliament on the status of SOSMA amendments

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



## Security Offences (Special Measures) Act 2012

SOSMA is a procedural law that operates in lieu of the Criminal Procedural Code when an individual is detained under suspicion of offences under Chapter VI, 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.

Many provisions in SOSMA blatantly violate an individual's right to fair trial. Under Section 4(5) of this procedural law, for example, the police can detain an individual for up to 28 days, without needing to bring the detainee before a magistrate to obtain a remand order. This contravenes the remand procedure under the Criminal Procedure Code (CPC), whereby an individual who has committed an alleged crime can only be remanded for a period of seven days or 14 days in total, depending on the severity of the offence. In addition, as stipulated in Section 13(2) of SOSMA, detainees are, by default, not granted bail when they are charged in court, unless they are below 18 years old, a woman, sick or infirm. The public prosecutor is thus granted absolute power to determine whether a person should be granted bail. Under CPC, on the other hand, there is judicial discretion in granting bail.

Despite the exception for women detained under SOSMA for bail, this was not always upheld. A Filipino woman, Divina Gutierrez Sanchez, sought bail on 31 January 2023 at the Sessions Court, but this application was refused by the judge. Divina was initially charged under Section 26A of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM) 2007 on 28 December 2022 for smuggling two Filipino women at Kota Belud. Her lawyer then filed a revision at the Kota Kinabalu High Court, and the Sessions Court ruling was overturned. The High Court judge ruled that the bail exception applied to Divina, who is a female applicant, as Section 26A of ATIPSOM 2007 is encompassed in the First Schedule to SOSMA<sup>3</sup>.

SOSMA also differs from POCA, POTA and DDA85 by affording detainees an opportunity to defend themselves in court. This does not detract from the procedural law's provisions that severely violate international standards on right to fair trial. Examples include extended pre-trial detention or remand during which torture and ill-treatment are used as part of standard operating procedures; denial of access to legal counsel and family members up to 48 hours<sup>4</sup>; restrictions on the admissibility of evidence and documents deemed as sensitive; admissibility of protected witnesses who can 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.

All (alleged) offences taking place this year that led to investigations, arrests, detention and charges under SOSMA were human trafficking. SUARAM noted arrest and detention of at least 3189 persons, as well as charges against seven persons under the procedural law. Nevertheless, these figures do not include the media report on 14 September 2023 without specified numbers of individuals detained under SOSMA. Saifuddin briefly stated that SOSMA was invoked for investigations in the non-radioactive rare earth element mineral theft scandal in Kedah, due to detection of forced labour and human trafficking elements<sup>5</sup>.

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<sup>3</sup> Durie Rainer Fong, 'KK High Court frees Filipina from Sosma detention on bail in landmark decision' (*The Star*, 3 March 2023) <<https://www.thestar.com.my/news/nation/2023/03/03/kk-high-court-frees-filipina-from-sosma-detention-on-bail-in-landmark-decision>> accessed 10 November 2023

<sup>4</sup> Section 5(2) of SOSMA

<sup>5</sup> Mohamed Basyir, 'Police find forced labour, human trafficking acts in NR-REE scandal' (*New Straits Times*, 14 September 2023) <<https://www.nst.com.my/news/nation/2023/09/955407/police-find-forced-labour-human-trafficking-acts-nr-ree-scandal>> accessed 10 November 2023

Two media-reported cases involved enforcement officers. One involved a police corporal. On 13 February 2023, Syed Shaifful Amri Syed Solihuddin was charged under Section 26B (d) of ATIPSOM 2007, which is an offence under SOSMA<sup>6</sup>. The charge entailed two counts of smuggling 29 Myanmar migrants that took place on 16 January 2023. The other involved 6 Immigration officers in connection with an alleged syndicate smuggling illegal Filipino migrants into Peninsular Malaysia. They were initially remanded for six days by the Malaysian Anti-Corruption Commission (MACC) for investigations, and eventually released on bail on 30 March 2023 under Section 49(2) of the MACC Act 2009<sup>7</sup>. Less than five hours later, they were arrested by the police under SOSMA for investigations under Section 26A of ATIPSOM 2007.

<b>Date of Arrest</b>	<b>No. of Persons Detained</b>	<b>Nationality</b>	<b>Gender</b>	<b>(Alleged) Offence</b>	<b>Case Status</b>
16 January 2023	1	Malaysian	Male	Aggravated offence of smuggling 29 migrants	Charged
30 January 2023	9	1 Malaysian 8 non-Malaysians	5 males 4 females	Smuggling of migrants	Detained
10 February 2023	8	Malaysian	6 males 2 females	Smuggling of 20 migrants	Detained
18 February 2023	1	Non-Malaysian	Male	Smuggling of 97 illegal immigrants	Detained
16 March 2023	1	Malaysian	Male	Smuggling of 6 illegal immigrants	Detained
30 March 2023	9	--	4 males 5 females	Smuggling of migrants	Detained
2 May 2023	4	Malaysian	Male	Smuggling of 20 migrants	Charged
28 May 2023	2	Malaysian	Male	Smuggling of 23 illegal immigrants	Detained
25 July 2023	4	Malaysian	Male	Smuggling of 9 migrants	Detained
15 August 2023	2	Non-Malaysian	Male	Smuggling of 11 migrants	Charged
14 September 2023	--	--	--	Smuggling of migrants	Arrested
19 September 2023	3154	Non-Malaysian	--	--	Arrested
10 October 2023	1	Malaysian	Male	Smuggling of 7 illegal immigrants	Arrested

<sup>6</sup> 'Police corporal charged with smuggling 29 Myanmar migrants' (*The Star*, 13 February 2023) <<https://www.thestar.com.my/news/nation/2023/02/13/police-corporal-charged-with-smuggling-29-myanmar-migrants>> accessed 10 November 2023

<sup>7</sup> 'Nine held under Sosma over alleged smuggling of Filipino migrants' (*The Star*, 30 March 2023) <<https://www.thestar.com.my/news/nation/2023/03/30/nine-held-under-sosma-over-alleged-smuggling-of-filipino-migrants>> accessed 10 November 2023

SUARAM notes two court appeals by the government to respectively quash a ruling to compensate a former detainee and increase the prison sentence of current detainees. The former is still pending in outcome, whilst the other was dismissed.

- On 11 January 2023, the Court of Appeal fixed 13 July 2023 to hear the authorities' appeal to overturn the High Court's ruling for them to pay Khairuddin Abu Hassan RM300,000 for his 62-day detention linked to 1MDB in 2015. The hearing is also for an appeal by Khairuddin to secure higher compensation than the amount awarded by the High Court<sup>8</sup>. After making numerous reports both locally and overseas over the losses suffered by 1MDB, Khairuddin was detained from 18 to 25 September 2015 under Section 124C<sup>9</sup> of the Penal Code, and then rearrested under SOSMA and charged under Section 124L<sup>10</sup> of the Penal Code. Khairuddin's detention was ruled by the High Court to be unlawful, as Sections 124C and 124L of the Penal Code are not encompassed within the First Schedule of SOSMA<sup>11</sup>.
- On 14 February 2023, the Court of Appeal upheld the five-year prison sentence on 14 men for being members of the organised crime group 'Ayahanda Yie Tiger 99'<sup>12</sup>. The judge panel unanimously ruled that there were no grounds for interference with the Shah Alam High Court decision made in March 2021 and March 2022. The said 14 men were arrested in 2020, 2021 and 2022, and the charge against them was framed under Section 130V(1) within Chapter VI B of the Penal Code, an offence encompassed within the First Schedule of SOSMA. The gang ringleader was a civil servant, who was also previously linked to the shooting and subsequent injury of the driver of a former Attorney General in 2017<sup>13</sup>.

Amendments or repeal of SOSMA remain dire, and this is especially evident in the hunger strike by family members of SOSMA detainees from 31 July to 2 August 2023. 100 family members of 69 SOSMA detainees gathered outside Sungai Buloh Prison to call on the authorities to provide closure on the detention of their loved ones and to abolish SOSMA. It is noteworthy that 20 children, with the youngest being 3 years old, were among the 100 protesters outside the prison entrance. This strike came after a hunger strike by the 69 SOSMA detainees within Sungai Buloh Prison on 30 July 2023. The detainees have been in detention awaiting trial for a period ranging from one to three years. The prison strike ended at 2pm on 2 August 2023. It was only five years ago in 2018 that strikes by detainees<sup>14</sup> and family

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<sup>8</sup> Hidir Reduan Abdul Rashid, '1MDB detention suit: Govt, Khairuddin appeal hearing on July 13' (*Malaysiakini*, 11 January 2023) <<https://www.malaysiakini.com/news/651150>> accessed 10 November 2023

<sup>9</sup> Section 124C concerns the attempt to commit activities detrimental to parliamentary democracy: "Whoever attempts to commit an activity detrimental to parliamentary democracy or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years."

<sup>10</sup> Section 124L concerns attempt to commit sabotage: "Whoever attempts to commit sabotage or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years."

<sup>11</sup> Ho Kit Yen, '1MDB critic awarded RM300,000 damages for wrongful detention under Sosma' (*Free Malaysia Today*, 24 August 2022) <<https://www.freemalaysiatoday.com/category/nation/2022/08/24/court-awards-rm300000-to-khairuddin-for-wrongful-detention-in-sosma-suit/>> accessed 10 November 2023

<sup>12</sup> 'Appeals Court upholds five-year jail term for 'Ayahanda Yie Tiger 99' gang members' (*The Star*, 14 February 2023) <<https://www.thestar.com.my/news/nation/2023/02/14/appeals-court-upholds-five-year-jail-term-for-039ayahanda-yie-tiger-99039-gang-members>> accessed 10 November 2023

<sup>13</sup> Suzalina Halid, 'Penjawat awam ketua Ayahanda Yie Tiger 99 kena tuduh' (*Berita Harian*, 18 February 2020) <<https://www.bharian.com.my/berita/kes/2020/02/656660/penjawat-awam-ketua-ayahanda-yie-tiger-99-kena-tuduh>> accessed 10 November 2023

<sup>14</sup> Hafidzul Hilmi Mohd Noor, '160 tahanan SOSMA mogok lapar' (*Berita Harian*, 25 August 2018) <<https://www.bharian.com.my/berita/kes/2018/08/465799/160-tahanan-sosma-mogok-lapar>> accessed 10 November 2023

members<sup>15</sup> took place within and outside the same prison. Similar responses by the government of the day were also observed in strikes in 2018 and 2023. In response to the strikes, both Deputy Ministers in the Prime Minister's Department in charge of Law (and Institutional Reform) – Mohamed Hanipa Maidin and Ramkarpal Singh - met family members and detainees to urge them to be patient for reform<sup>16,17</sup>. There was a point of difference, nonetheless: instead of hinting that detainees may have their charges amended after consideration by the Attorney-General's Chambers (AGC) as what was done in 2018<sup>18</sup>, the current Deputy Minister in the Prime Minister's Department (Law and Institutional Reform) Ramkarpal Singh informed family members of SOSMA detainees that the government is currently studying proposed amendments, among which included allowing bail for detainees<sup>19</sup>. These amendments were the culmination of a series of 13 engagements undertaken with various stakeholders, including civil society, SOSMA detainees in Penang, Alor Setar, Taiping and Sungai Buloh prisons, and detainees' family members<sup>20</sup>. It is noteworthy that 11 out of 13 engagements were conducted with the Royal Malaysian Police, the Prison Department and the Attorney-General's Chambers<sup>21</sup>. Sections 13 and 30, on bail and detention pending exhaustion of legal process respectively, were among the amendments in consideration by the government<sup>22</sup>.

Until SOSMA amendments are tabled and passed in Parliament, the government's commitments will remain rhetorical. Over the last five years, previous Home Ministers (Muhyiddin Yassin, Hamzah Zainudin) have promised to amend or improve the procedural law, all of which were unfulfilled<sup>23</sup>. The road to reform for SOSMA has been protracted on a longstanding basis. This stagnant progress is characterised by the narrative of the procedural law's relevance or necessity in ensuring public order, national security and even sovereignty, which is continuously propagated by the Home Ministry and law enforcement. By the current Home Minister Saifuddin Nasution alone, this narrative was recycled less than a month after

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<sup>15</sup> Ho Kit Yen, 'Hundreds protest outside prison as Sosma detainees continue hunger strike' (*Free Malaysia Today*, 25 August 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/08/25/hundreds-protest-outside-prison-as-sosma-detainees-continue-hunger-strike/>> accessed 10 November 2023

<sup>16</sup> Mohamad Fadli, 'Hanipa runding dengan tahanan Sosma henti mogok lapar' (*Free Malaysia Today*, 26 August 2018) <<https://www.freemalaysiatoday.com/category/bahasa/2018/08/26/hanipa-runding-dengan-tahanan-sosma-henti-mogok-lapar/>> accessed 10 November 2023

<sup>17</sup> Teh Athira Yusof, 'Sosma families urged to be patient, end hunger strike' (*The Star*, 2 August 2023) <<https://www.thestar.com.my/news/nation/2023/08/02/sosma-families-urged-to-be-patient-end-hunger-strike>> accessed 10 November 2023

<sup>18</sup> 'Tuduhan 442 tahanan SOSMA mungkin dipinda' (*Berita Harian*, 29 August 2018) <<https://www.bharian.com.my/berita/nasional/2018/08/467502/tuduhan-442-tahanan-sosma-mungkin-dipinda>> accessed 10 November 2023

<sup>19</sup> '12 engagement sessions held over proposed Sosma amendments' (*The Star*, 3 August 2023) <<https://www.thestar.com.my/news/nation/2023/08/03/12-engagement-sessions-held-over-proposed-sosma-amendments>> accessed 10 November 2023

<sup>20</sup> Rahimy Rahim, Gerard Gimino and Teh Athira Yusof, 'Proposed improvements to Sosma to be announced soon, says Ramkarpal' (*The Star*, 22 May 2023) <<https://www.thestar.com.my/news/nation/2023/05/22/proposed-improvements-to-sosma-to-be-announced-soon-says-ramkarpal>> accessed 10 November 2023

<sup>21</sup> Oral Question in Parliament, Question 41, 23 October 2023

<sup>22</sup> Ibid

<sup>23</sup> In 2018, the Home Minister claimed that he had instructed the police to develop new standard operating procedures for case management as an interim measure pending amendment or repeal of SOSMA, and that amendments to SOSMA will be tabled in Parliament in the November 2018 or March 2019 Parliament sessions. By 2019, the timeline was pushed back multiple times, ending in a statement by the Home Minister in November 2019 that the Cabinet would be looking into amending SOSMA. In 2020, the government also vaguely promised to consider amending security laws like SOSMA.

appointment<sup>24</sup>, subsequently reiterated in replies to parliamentary questions by members of Parliament<sup>25</sup> this year. As for law enforcement, the Deputy Inspector-General of Police argued that SOSMA needs to be widely applied to effectively crack down on syndicate-related criminal activities, citing Johor's past successful efforts in curbing human trafficking syndicates whilst he was the state's police chief<sup>26</sup>.

Interestingly and ironically, the commitment to ensure that fundamental rights of individuals are protected is consistently made alongside the touted purposes of continuing use of SOSMA. Socioeconomic challenges continuously experienced by family members of SOSMA, however, blatantly demonstrate the impossibility of striking such a balance, especially when tangible amendments to the procedural law are yet to be tabled, passed, and implemented. SUARAM conducted interviews with former SOSMA detainees as well as family members of former and current SOSMA detainees, as part of the qualitative research study to understand these socioeconomic challenges. The negative cascade effect found is all-encompassing, infringing on civil, economic, and social rights of families of these detainees.

- As almost all detainees were family breadwinners prior to arrest and detention, loss of income was the most apparent and immediate consequence experienced, which directly jeopardised the family's financial security. Although spouses who were previously homemakers adapted to the situation by working, the family's financial situation was not alleviated due to exorbitant detention-related expenses. These expenses included legal fees for their loved ones, and expenditures incurred when visiting them in detention facilities. Even if the detainees were to be acquitted, no significant improvement in socioeconomic status was observed, due to persisting difficulties in securing employment and accessing basic financial services such as bank accounts.
- Detention under SOSMA was found to have a serious impact on the detainees' children, specifically their wellbeing and education. The children's longing for their detained parents led to behavioural changes, including sleep problems and long-term emotional distress. Decline in emotional and mental wellbeing affected access to education, seen in effects such as difficulties in learning and school absenteeism. Bullying by peers due to the detention status of their parents was also a contributing factor to school absenteeism by children of SOSMA detainees.
- SOSMA detention was also found to uproot the social lives of these families. One aspect consists of violations of security and privacy of these families were documented via unconsented dissemination of their personal information to the public. With societal stigma against SOSMA detainees still prevalent, such violations make families of SOSMA detainees more vulnerable to negative treatment and even discrimination by authorities and members of the public. Some families had to move to different cities or even states, due to community stigma. The other is deterioration in relationship quality especially between the detainees and their spouses. In cases where such deterioration was irreversible, divorce was the end result.

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<sup>24</sup> Mohamed Basyir, 'Saifuddin: Sosma necessary to manage organised crimes' (*New Straits Times*, 14 December 2022) <<https://www.nst.com.my/news/nation/2022/12/860867/saifuddin-sosma-necessary-manage-organised-crimes>> accessed 10 November 2023

<sup>25</sup> Questions by Members of Parliament for the constituencies of Bandar Kuching, Damansara, Jelutong, Klang and Selayang

<sup>26</sup> 'Sosma must be better used to cripple crime rings, says Ayob Khan' (*The Star*, 27 September 2023) <<https://www.thestar.com.my/news/nation/2023/09/27/sosma-must-be-better-used-to-cripple-crime-rings-says-ayob-khan>> accessed 10 November 2023

## Prevention of Crime Act 1959

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

Under POCA, any individual arrested can be detained for a maximum of 60 days with a breakdown of remand hearing after the initial 24 hours, after 21 days and for a further extension of 28 days. After the initial remand period, individuals would be sentenced to either a two-year detention order or two-year house arrest. The detention order can be renewed once every two years, if the Crime Prevention Board thinks it necessary for the person to remain incarcerated.

Despite the existence of a ‘hearing’ process by the Prevention of Crime Board to determine the detention order, the process of detention under POCA has been widely criticised, as it contradicts international standards on right to fair trial. Serious concerns are directed towards the standard of evidence required for a detention order; criteria establishing the necessity of incarceration and use of electronic monitoring; as well as vulnerability to torture and ill-treatment by enforcement officers during detention.

House arrest under POCA is often referred to as ‘banishment’ (*buang daerah*), as they are often sentenced to locations away from their homes in other states within Malaysia. Individuals on house arrest are required to wear Electronic Monitoring Devices. Their movements are curtailed to a 5km radius, subjected to regular checks by police officers. They would also have to report to a designated police station on a periodic basis.

As noted in the 2021 Malaysia Human Rights Report, the Court of Appeal made a landmark decision to declare that Sections 4 and 15(B) of POCA are unconstitutional, as they run afoul of Articles 4 and 121 of the Federal Constitution. Both sections curtail effective judicial review against detentions under POCA. In the same appeal, Section 15(B) of the ouster clause was also concluded to be void. Under Section 15(B), judicial review of grounds of detention or elements of abuse that took place is prohibited and is only confined to scrutinising detention procedures (e.g., whether a form has been produced by the court and signed by the detainee). Thus, this ouster clause unjustifiably reduces the purpose of judicial review as a check-and-balance mechanism against the executive to a mere clerical function.

Nevertheless, the said Federal Court decision cannot be retrospectively applied to prior cases of POCA detention. This is demonstrated in an unexpected turn in developments in social activist R. Sri Sanjeevan’s case. On 15 September 2023, the Court of Appeal allowed the appeal by the police and government to overturn the 2022 High Court ruling that Sanjeevan’s 16-day detention in 2016 under Section 4 of POCA was unlawful<sup>27</sup>. The apex court judges ruled that such a retrospective application would open the floodgates for any and all remands under Section 4 to be unconstitutional, when these procedures were carried out in reliance of the fact that said Section was lawful at the time. Sanjeevan was ordered to pay RM60,000 in costs. In addition, the 2022 High Court finding that the physical abuse allegation could be used in claiming false imprisonment was also overturned, on grounds of Sanjeevan’s documented awareness of the actuation of arrest and remand under Section 4 of POCA. The apex court also

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<sup>27</sup> ‘Former MyWatch chairman’s detention was lawful, Appeals Court rules’ (*The Star*, 15 September 2023) <<https://www.thestar.com.my/news/nation/2023/09/15/former-mywatch-chairman039s-detention-was-lawful-appeals-court-rules>> accessed 10 November 2023

cited the lack of opportunity given to appellants to challenge this contention, as this issue was only raised during the appeal hearing and not prior in Sanjeevan's written submission.

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

Both in form and function, POTA is largely like POCA. One key difference is the purpose of the legislation. While POCA is allegedly meant to address threats posed by organised crimes, POTA was specifically introduced to address terrorist threats. Another distinction is the scope of terrorism to which the law applies. Whilst POCA and SOSMA are usually used in cases of local terrorism, POTA is primarily applied in cross-border terrorism. In terms of powers, POTA is largely similar, if not identical, to POCA, with its power to detain an individual for 24 hours with subsequent extensions of 21 and 38 days. If found 'guilty' by the Prevention of Terrorism Board, an individual can be served with a two-year detention order or placed under house arrest.

To date, no information about detention under POTA and conditions through which detainees undergo in 2023 is available in the media. Members in the current government administration seemed to demonstrate receptivity to review and improve terrorism-related laws. Replying to a supplementary question from Padang Terap MP on the government's intention to do so, the Deputy Foreign Affairs Minister Mohamad Alamin stated that his ministry stands ready to assist related ministry that intend to amend POTA and the Special Measures Against Terrorism in Foreign Countries Act 2015<sup>28</sup>.

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

DDA85 is similar to the repealed Internal Security Act 1960. While the sentencing power under POCA and POTA is afforded to a 'prevention board'. DDA85 retains the old policy whereby detention orders are meted out by the Home Minister. While this law denies the individual the right to fair trial, detention under DDA85 is often seen as a 'reprieve' from the death penalty under Section 39B of the Dangerous Drugs Act 1952 (DDA52).

SUARAM's media monitoring has recorded a total of at least 249 individuals arrested/detained under DDA85 in 2023 (i.e., the sum of all non-asterisked figures in the table below). The extent to which the current media-monitored numbers reflect actual prevalence is inconclusive, due to limited data available. Whilst police from three states have publicly disclosed numbers of individuals arrested/detained under DDA85, the reporting period differs. Moreover, across the four state-level anti-drug operations conducted (asterisked figures), the exact number of individuals arrested/detained under DDA85 is not specified. Nevertheless, one can infer the number of individuals arrested/detained under DDA85 to increase in 2023 compared to 2022, based on the trend observed in official case numbers over eight and a half years from 2013 to June 2021<sup>29</sup>.

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<sup>28</sup> Nor Ain Mohamed Radhi and Luqman Hakim, 'Foreign affairs ministry ready to assist with improving anti-terrorism laws [NSTTV]' (*New Straits Times*, 18 October 2023) <<https://www.nst.com.my/news/nation/2023/10/968446/foreign-affairs-ministry-ready-assist-improving-anti-terrorism-laws-nsttv>> accessed 10 November 2023

<sup>29</sup> 2013 (869); 2014 (948); 2015 (854); 2016 (1015); 2017 (1237); 2018 (1186); 2019 (1405); 2020-June 2021 (1814)

<b>Narcotics Crime Investigation Branch (Scale of Drug Operations)</b>	<b>Reporting Period for 2023</b>	<b>No. of Individuals Arrested/Detained under DDA85</b>	<b>Specific Provisions Under Which Individuals Are Detained</b>
Federal (national)	January - May	4	Section 3(1) of DDA85
Sabah (state)	January - August	29	DDA85
Kedah (state)	January - September	59	Section 3(1) of DDA85
Johor (state)	January – 23 November	126	DDA85
Federal (in Sentul, Selangor)	27 March	27	Section 3(1) of DDA85; Sections 12(2), 15(1)(a), 39A(1) and 39B of DDA52
Kelantan (state)	6 – 16 August	416*	DDA85, DDA52, Poisons Act 1952
Pahang (state)	5 – 7 September	4	DDA85
Kelantan (state)	13 – 26 September	620*	DDA85, DDA52, Poisons Act 1952
Federal (national)	10 – 12 October	4509*	DDA85, DDA52, Poisons Act 1952
Kelantan (state)	23 October – 5 November	811*	DDA85, DDA52, Poisons Act 1952

*\*The news articles reported that these individuals were arrested for various offences under the specified legislations.*



# RIGHT TO JUSTICE

## SUARAM

### Independent Police Conduct Commission

Whilst the Independent Police Conduct Commission (IPCC) Act was passed in Parliament in July 2022, it is limited, in its current form, in its ability to provide independent and fully accountable oversight over police conduct, as well as to act as a safeguard in access to justice. No efforts, nor commitments, have been made to improve the legislation. It is noteworthy that whilst in Opposition, the Pakatan Harapan coalition rejected the bill in July last year when it was passed for the same reasons as advocated by civil society<sup>30</sup>, and even included within its manifesto the pledge to strengthen IPCC in line with recommendations from the 2005 Royal Commission Report on Malaysian Police<sup>31</sup>.

SUARAM maintains the view that the previous Independent Police Complaints and Conduct Commission (IPCC) Bill guarantees police accountability. Firstly, unlike the IPCC which is limited to providing recommendations to the Police Force Commission without powers to compel replies or action, the Bill provides enforcement powers to IPCC to reprimand and punish errant police officers. Secondly, the IPCC is granted effective investigative powers such as conducting unannounced visits to police premises and can take necessary measures to collect evidence for investigations. IPCC's investigative powers, on the other hand, are gagged by provisions that give police rights to refuse answering questions that may expose other police officers to possible criminal penalty, and submitting documents that they deem to be prejudicial to national security or interest<sup>32</sup>. Thirdly, unlike the IPCC Act, the IPCC Bill prohibits the appointment of former police officers or current government officials to the Commission, which ensures institutional independence in carrying out its mandate.

The IPCC Act was enforced on 1 July 2023, but this was not accompanied with the establishment of IPCC.

- By 12 October 2023, selection, evaluation and appointment of members for the Commission was still ongoing<sup>33</sup>. The Home Ministry agreed in April to set up a search committee to suggest candidates<sup>34</sup>. This committee would be chaired by the Head Secretary of the Ministry, consisting of six committee members from the Home Ministry, the Attorney-General's Chambers (AGC), Royal Malaysian Police (RMP) and Malaysian Anti-Corruption Commission (MACC). The selection criteria and process used for Commission member appointments are not made public.
- There is currently no operational oversight mechanism to handle complaints against the RMP or its officers, as the Enforcement Agency Integrity Commission (EAIC) has

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<sup>30</sup> 'Opposition rejects 'weaker' IPCC Bill, says doesn't meet expected reforms' (*Free Malaysia Today*, 27 July 2022) <<https://www.freemalaysiatoday.com/category/nation/2022/07/27/opposition-rejects-weaker-ipcc-bill-says-doesnt-meet-expected-reforms/>> accessed 10 November 2023

<sup>31</sup> Pakatan Harapan, 'Keselamatan Negara' <<https://kitaboleh.my/tawaran-kita-boleh/keselamatan-negara/>> accessed 10 November 2023

<sup>32</sup> Section 27(4)(a) and (b) of the Independent Police Conduct Commission Act 2022

<sup>33</sup> Mazwin Nik Anis, 'IPCC to get its members soon, says Home Minister' (*The Star*, 12 October 2023) <<https://www.thestar.com.my/news/nation/2023/10/12/ipcc-to-get-its-members-soon-says-home-minister>> accessed 10 November 2023

<sup>34</sup> Oral Question in Parliament, Question 35, 20 November 2023

ceased accepting related complaints as of 1 July<sup>35</sup>, and the IPCC is only expected to be fully operational by early 2024 at the earliest<sup>36</sup>. 94 complaints have been received under Section 5(2) of the IPCC Act<sup>37</sup> - nevertheless, no explicit timeline to set up relevant standard operating procedures to investigate and resolve these complaints was given.

### Deaths in Custody

Based on case statistics disclosed by the government through a parliamentary reply in February 2023, cases of deaths of detainees in police lockups in 2022 (i.e., 24 cases) have reduced by 47.8% compared to 2021 (i.e., 46 cases). Case numbers over the last 10 years were also commendably revised by the government to encompass deaths within and outside of police lockups. This revision, though long overdue, is greatly needed, as deaths outside of police lockups constituted 93.9% of disclosed cases from 2012 to 2022 (108 out of 115 cases). Out of these 108 deaths, close to 90% of them took place within hospitals (78 cases; 72.2%) or en route from police lockups to hospitals (16 cases; 14.8%). Prison DIC prevalence was consistent (i.e., 9 cases each in 2021 and 2022), whilst immigration DIC spiked by a whopping 427.6% from 29 cases in 2021 to 153 cases in 2022.

Nevertheless, the extent to which disclosed death-in-custody (DIC) case statistics reflects actual DIC prevalence remains a question. A longstanding contributing factor is data inconsistency. Comparing case figures compiled over successive years through parliamentary questions and the 10-year data disclosed in a parliamentary question in October 2023, total case numbers for police and prison DIC reduced by 37.5% and a staggering 92.8% respectively. Immigration DIC, on the other hand, saw a difference of 13.5% between two sets of case statistics. For particularly prison DIC, not only were there inconsistent availability of data for the first three years within the 10-year period, but also were significant discrepancies in case numbers from years 2015 to 2017 observed.

Lacklustre data transparency is also a recurring issue, and this is demonstrated in case numbers for immigration DIC, via the absence of breakdown of deaths within and outside immigration depots.

#### DIC Case Statistics Compiled Over the Years<sup>38</sup>

	Police	Prison	Immigration	Total
2012	19	-	-	19
2013	13	-	-	13
2014	18	-	44	62
2015	12	252	87	351
2016	15	269	40	324
2017	10	319	24	353
2018	8	2	32	42
2019	6	3	55	64
2020	13	13	37	63

<sup>35</sup> 'EAIC will no longer accept complaints against PDRM, officers starting July 1' (*The Star*, 30 June 2023) <<https://www.thestar.com.my/news/nation/2023/06/30/eaic-will-no-longer-accept-complaints-against-pdrm-officers-starting-july-1>> accessed 10 November 2023

<sup>36</sup> 'IPCC to be fully operational early 2024' (*Malaysiakini*, 17 November 2023) <<https://www.malaysiakini.com/news/686858>> accessed 20 November 2023

<sup>37</sup> Ibid

<sup>38</sup> Sources consist of parliamentary questions from previous years, and in the case of statistics for the year of 2022, the information was obtained from Oral Answer in Parliament, Question 37, 28 February 2023

2021	46*	9	29	84
2022	24*	9	153	186
	<b>184</b>	<b>876</b>	<b>501</b>	<b>1561</b>

\*Figures consist of deaths within and outside of police lockups

### Government's DIC Statistics<sup>39</sup>

	Police	Prison	Immigration	Total
2012	3	1	<b>569</b>	
2013	2	1		
2014	2	1		
2015	5	6		
2016	10	4		
2017	10	9		
2018	8	8		
2019	14	5		
2020	16	13		
2021	32	12		
2022	13	3		
2023 (Jan – 17 May)				
	<b>115</b>	<b>63</b>		

Among 13 media reported DIC cases from January to November 2023, 11 of them took place in police custody. All except two deceased detainees under police custody were detained or charged under the Dangerous Drugs Act 1952. Health reasons was the predominant cause of death (10 cases), with 60% of related cases involving deaths in less than 24 hours after symptom manifestation. While information shared by authorities included reasons for detaining the victims and flow of events leading up to their deaths, no updates in case investigations were provided beyond mentions of conducting or having conducted post-mortem examinations and where applicable, the Criminal Investigation Unit on Deaths in Custody (USJKT) continuing investigations 'from various angles'<sup>40</sup>. This half-baked transparency was also seen in USJKT's press statements notifying the public of occurring DIC cases, released within the first 9 months of 2022.

Grepprall Sall's case was significant, in light of negligence by prison authorities in the body identification process. Grepprall was arrested by the police on 24 February 2023 for an unspecified offence. He passed away on 2 March 2023 in Sungai Buloh Prison. Whilst pneumonia was established as the official cause of death, Grepprall's brothers asserted that he was fine and only complained that one of his ears hurt when they met in court. Grepprall's body was mishandled to his inmate C. Laksman's family in Negeri Sembilan, who had intended to cremate him on 5 March. The mix-up only came to light on the day of the cremation, with the ceremony stopped less than five hours before it was carried out. The Home Minister Saifuddin Nasution personally reimbursed the cremation expenses to Laksman's family by 9 March 2023. Whilst Saifuddin also acknowledged the presence of elements of negligence and clarified that he had instructed a committee to be formed to investigate this incident, there were no updates on investigation findings and action taken against relevant prison officers.

<sup>39</sup> Oral Question in Parliament, Question 137, October 2023

<sup>40</sup> 'Bukit Aman: No criminal injuries found on man who died in custody at Sungai Besar police station' (*Malay Mail*, 28 October 2023) <<https://www.malaymail.com/news/malaysia/2023/10/28/bukit-aman-no-criminal-injuries-found-on-man-who-died-in-custody-at-sungai-besar-police-station/98838>> accessed 10 November 2023

### Media Reported DIC Cases in 2023

No	Name <i>Nationality, Age, Gender</i>	Date of Death	Detention Location <i>(Custody Authorities)</i>	(Alleged) Cause of Death
1	Unnamed <i>Malaysian, 47, Male</i>	11 January 2023	Larkin clinic <i>(Police)</i>	Health reasons
2	Unnamed <i>Unreported, 35, Male</i>	19 January 2023	Baling Lockup <i>(Police)</i>	Health reasons
3	Unnamed <i>Non-Malaysian, 49, Male</i>	23 January 2023	Sultanah Aminah Hospital <i>(Police)</i>	Health reasons
4	Greprall Sall <i>Malaysian, 18, Male</i>	3 February 2023	Sungai Buloh Prison <i>(Prison)</i>	Health reasons
5	Unnamed <i>Malaysian, 60s, Male</i>	15 June 2023	Putrajaya Hospital <i>(Malaysian Anti-Corruption Commission (MACC))</i>	Health reasons
6	Unnamed <i>Malaysian, 40, Male</i>	7 July 2023	Seberang Perai Selatan District Police Headquarters <i>(Police)</i>	Suicide
7	Unnamed <i>Malaysian, 59, Male</i>	25 July 2023	Setiawangsa Lockup <i>(Police)</i>	Health reasons
8	Unnamed <i>Non-Malaysian, 50, Male</i>	31 July 2023	En route from Marudi District Police Headquarters to Beluru Clinic <i>(Police)</i>	Health reasons
9	Unnamed <i>Unreported, 51, Male</i>	8 August 2023	Kubang Pasu District Police Headquarters <i>(Police)</i>	Suicide
10	Unnamed <i>Malaysian, 39, Male</i>	8 September 2023	Kuala Muda District Police Headquarters <i>(Police)</i>	Health reasons
11	Unnamed <i>Non-Malaysian, 43, Male</i>	30 September 2023	Jinjang Centralised Lockup <i>(Police)</i>	Health reasons
12	Mohd Nahar Kamsah <i>Malaysian, 49, Male</i>	27 October 2023	Sungai Besar Police Station <i>(Police)</i>	Unknown
13	Unnamed <i>Malaysian, 38, Male</i>	23 November 2023	Pengkalan Chepa Police Lockup <i>(Police)</i>	Health reasons

For families of the deceased in DIC cases, getting an inquest granted is a persistent challenge. This is clearly reflected in the proportion of inquests conducted – depending on the dataset quoted, inquests were only done in 15.1%<sup>41</sup> of 31.5%<sup>42</sup> of all DIC cases over the last 10 years.

Inquest findings disclosed by the government also stopped short at the apparent cause of death. For non-tuberculosis bacterial infection cases which has a broad aetiology and currently constitutes the largest category of DIC inquest findings, providing further information about the manner of death including the presence of unlawful acts or their omission that

<sup>41</sup> Out of 1561 DIC cases, extracted by SUARAM from previous years' parliamentary questions

<sup>42</sup> Out of 747 DIC cases, quoted from Oral Question in Parliament, Question 137, October 2023

caused/contributed/accelerated to this condition would be crucial for families in their pursuit of justice for their loved ones. Although the two-pronged purpose of the inquest is clearly stipulated within the Criminal Procedure Code (CPC)<sup>43</sup>, inquests, when conducted, usually stop short upon determining the cause of death, with no further attempts made to fulfil the second prong. In addition, relevant provisions in the CPC are insufficient in clearly and comprehensively outlining the roles and duties of the Coroner in inquiries, as well as the two-pronged purpose of these procedures. Amendments to the CPC are necessary to safeguard the rights of the deceased, as well as the interest of their family members and legal representatives as they seek justice. A Coroners' Court Act, a solution also long propounded by the Bar Council, may be necessary in empowering Coroners to carry out their mandate of conducting inquiries of deaths, including DIC cases, effectively and independently.

#### **Government Statistics on Number of Inquests Conducted Over the Last 10 Years<sup>44</sup>**

2012	1
2013	1
2014	19
2015	27
2016	21
2017	14
2018	3
2019	19
2020	31
2021	20
2022	79
<b>Total</b>	<b>235</b>

SUARAM is currently assisting family members of Roopan a/l Karnagaran with their inquest. Roopan was detained over involvement in triple murder in his neighbour's home in 2013, when he was only 17 years old<sup>45</sup>. After being convicted of murder in 2017 when he turned 21, Roopan appealed against it and was serving time in prison pending the appeal date of 29 June 2021. On 17 June 2021, he was admitted to Kajang Hospital due to breathing difficulties, and subsequently discharged. Four days later, Roopan died. The inquest was held in February and May 2023<sup>46</sup>, hearing 25 witnesses including inmates, then on-duty medical professionals in the prison clinic and hospital visited by Roopan, and investigating officer who took up Roopan's case after police reports on the prison's negligence were lodged by the family. The date for the Coroner to deliver the verdict was initially set for 25 August, but it has been postponed till further notice.

<sup>43</sup> Section 328 of the Criminal Procedure Code on the definition of cause of death: "...not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from, or was accelerated by, any unlawful act or omission on the part of any other person".

<sup>44</sup> Oral Answer in Parliament, Question 138, October 2023

<sup>45</sup> Ainaa Aiman, '25-year-old dies in custody, 12th custodial death of the year' (*Free Malaysia Today*, 9 July 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/07/09/25-year-old-dies-in-custody-12th-custodial-death-of-the-year/>> accessed 10 November 2023

<sup>46</sup> Faisal Asyraf, 'Roopan's inquest ends, doctor who ordered blood test still unknown' (*Free Malaysia Today*, 18 May 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/05/18/roopans-inquest-ends-doctor-who-ordered-blood-test-still-unknown/>> accessed 10 November 2023

Various measures were implemented by detention authorities to different extents to prevent DIC. The police and the Prison Department have been more active in their efforts. In reply to a parliamentary question in February 2023, the Ministry of Home Affairs mentioned that there are ongoing initiatives within the police force, such as preparation of standard operating procedures on lockup management and in-progress installation of CCTVs at 684 lockups<sup>47</sup>. Lockup inspection by officers in charge of police districts are undertaken at least four times daily to prevent misconduct and DIC<sup>48</sup>. Preparation of amendments to the Lockup Rules 1953 was also reportedly in the works<sup>49</sup>. As for the Prison Department, education initiatives were undertaken, such as the translation of Nelson Mandela Rules and relevant e-modules were translated into Bahasa Melayu, and the development of the ‘Human Rights and Detention’ training manual in collaboration with the National Human Rights Commission of Malaysia (SUHAKAM)<sup>50</sup>. No systematic measures by the Immigration Department to prevent DIC are reported.

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

Torture has been and remains a well-documented and recurring issue in Malaysia. Incidents of physical remand inflicted upon detainees under remand or during investigations are prevalent, especially when there is chain remand or detention under security laws. It is generally difficult to provide the appropriate medical evidence to ascertain that torture has been inflicted, as detainees are often locked away until their court appearances and are subjected to threats of further violence by investigating officers should they reveal what had been inflicted upon them.

A case of alleged torture that surfaced this year was that of 125 inmates in a prison in the northern Peninsular<sup>51</sup>. They were allegedly abused for talking and perceived disobedience during muster sessions, reportedly beaten with PVC pipes and other blunt objects by wardens. They were also allegedly subjected to frequent ‘cavity’ searches after returning from court dates in a degrading manner, being told to lay on the ground unclothed. Water for drinking, sanitation and ablution was reportedly scarce, and other basic rights including access to adequate food and health services were denied. The inmates detailed their experiences in a petition whilst in detention and submitted it to the government through their lawyer. This is the second time that such a petition was initiated, following claims of similar abuses at another prison in the same state<sup>52</sup>. To date, neither the Prisons Department nor Saifuddin has responded to the alleged torture and ill-treatment incidents raised.

In October 2023, an eight-second video of a suspect tortured by narcotics police at South Klang police headquarters went viral on social media<sup>53</sup>. One officer was seen stepping on the suspect’s

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<sup>47</sup> Oral Answer in Parliament, Question 37, 28 February 2023

<sup>48</sup> Aliza Shah and Shahrin Aizat Noorshahrizam, ‘Exclusive: IGP on a mission to fortify police’s core principle of integrity [NSTTV]’ (*New Straits Times*, 8 October 2023) <<https://www.nst.com.my/news/nation/2023/10/964452/exclusive-igp-mission-fortify-polices-core-principle-integrity-nsttv>> accessed 10 November 2023

<sup>49</sup> Oral Answer in Parliament, Question 37, 28 February 2023

<sup>50</sup> Derived from updates provided by representatives from the Ministry of Foreign Affairs or Permanent Missions of Malaysia in external dialogues.

<sup>51</sup> Predeep Nambiar, ‘125 inmates file petition to govt alleging abuse by wardens’ (*Free Malaysia Today*, 5 July 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/07/05/125-inmates-file-petition-to-govt-alleging-abuse-by-wardens/>> accessed 10 November 2023

<sup>52</sup> M. Fakhrull Halim, ‘Prison inmates pepper-sprayed on their privates during quarantine’ (*Malaysiakini*, 1 May 2021) <<https://www.malaysiakini.com/news/572991>> accessed 10 November 2023

<sup>53</sup> ‘Shocking video of alleged police brutality in Klang Selatan emerges [NSTTV]’ (*New Straits Times*, 11 October 2023) <<https://www.nst.com.my/news/nation/2023/10/965918/shocking-video-alleged-police-brutality-klang-selatan-emerges-nsttv>> accessed 10 November 2023

knee. The other officer in the video whipped the suspect’s foot with what appeared to be a cane or rubber hose – the *falanga* method, which is recognised as a form of torture by the European Court of Human Rights. Preliminary investigations revealed that the incident took place on 2 August 2022<sup>54</sup>. Investigations were said to be conducted on the two police personnel, and that findings will be sent to the Attorney-General’s Chambers for recommendations<sup>55</sup>. No subsequent updates were provided on investigation findings and action taken against them.

Access to justice for families in cases of alleged torture and ill treatment is also protracted. Court trials monitored by SUARAM as below entail DIC cases that occurred as far back as 2013.

<p>P Karuna Nithi (death: 1 June 2013; 42 years old)</p>	<p>Nithi was arrested and remanded on 28 May 2013 following an alleged altercation with his spouse. He was further detained when his family was not able to raise bail after he was charged. On 1 June 2013, Nithi was found dead, and CCTV recordings showed him being assaulted by police and detainees. In 2015, the Coroner’s Court ruled assault as the cause of death, which was upheld by the High Court. It is noteworthy that the AGC appealed against the high court decision in 2018, but subsequently discontinued it in 2019.</p> <p>The family has also filed civil action since 2018 to seek compensation over the authorities’ alleged contravention of Nithi’s fundamental right to liberty, and subsequently to challenge the time limit legal argument<sup>56</sup>. All civil actions failed, with the latest one at the Court of Appeal in October 2023 which upheld the Kuala Lumpur High Court’s decision of dismissal of the lawsuit.</p>
<p>Shainal Mukhtar (death: between 2 and 4 October 2019; 36 years old)</p>	<p>Between 2 and 4 October 2019, Shainal was restrained by wearing a straitjacket and placed in the isolation cell, as he was allegedly disturbing other inmates and did not provide full cooperation to the prison officers. He was allegedly beaten and at some stage, took blows to his head. By 4 October, he was found unconscious and taken to the hospital, subsequently pronounced dead upon arrival. Autopsy results showed that Shainal had bruises on his head and body.</p> <p>On 29 October 2019, 10 prison personnel were jointly charged under Section 302 of the Penal Code. The trial took place between 2019 and 2023. On 26 October 2023, five of the charged prison personnel were acquitted, and the remaining five pleaded guilty under Section 304A of the Penal Code and sentenced to a reduced charge of a RM1500 fine each in default one-month imprisonment. All five guilty officers paid the fine.</p>
<p>G Jestus Kevin</p>	<p>Kevin was arrested for theft and remanded on 2 April 2020 for four days pending investigations. On 4 April, he was moved to another</p>

<sup>54</sup> Austin Camoens, ‘Cops allegedly bashing suspect in custody to face action’ (*The Star*, 12 October 2023) <<https://www.thestar.com.my/news/nation/2023/10/12/cops-allegedly-bashing-suspect-in-custody-to-face-action>> accessed 10 November 2023

<sup>55</sup> N. Trisha, ‘Transparent and fair’ investigation into alleged beating of detainee by two cops in Klang, says IGP’ (*The Star*, 12 October 2023) <<https://www.thestar.com.my/news/nation/2023/10/12/039transparent-and-fair039-investigation-into-alleged-beating-of-detainee-by-two-cops-in-klang-says-igp>> accessed 10 November 2023

<sup>56</sup> In bids to strike out Nithi’s family’s civil action, the police and government relied on Section 2(a) of the Public Authorities Protection Act 1948 to contend that his family’s suit cannot be instituted as it was filed more than 36 months after Nithi’s death.

(death: 5 April 2020; 30 years old)	<p>cell occupied by two other inmates, due to his alleged state of delirium. He was allegedly assaulted by those inmates with the encouragement of on-duty police officers. He died on 5 April 2020. The inquest was eventually conducted in 2021.</p> <p>In April 2023, Kevin’s father filed a negligence suit against the two inmates, police and government at the Kuantan High Court, seeking damages for negligence, misfeasance in public office, breach of statutory duty, as well as assault and battery. In July 2023, the government dismissed the contention of the police’s role in the assault, claiming the responsibility to be solely on the inmates.</p>
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### Chain Remand

Chain remand occurs when an individual’s remand period granted by the Magistrate court has expired, yet he/she gets rearrested 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 and then placed in various lockups and detention centres in the country by the police.

As noted in SUARAM’s reports from previous years, the practice of re-arrests and chain remands through the concurrent application of SOSMA, POCA, and in limited cases, under POTA, is common. This is to ensure that the accused remains within police custody for extended investigations or incarceration for an indefinite period. It should be noted that the 2021 directive by Chief Justice Tengku Maimun Tuan Mat, which necessitated legal representation for any accused appearing in court for remand applications, may have reduced reliance on chain remand by the police.

To date, SUARAM has not received cases relating to the abuse of remand applications.

### Police Shootings

SUARAM monitors reported incidents of officers of the Royal Malaysian Police discharging their firearms while on duty. Our documentation noted 12 cases in 2023, attributing to 5 deaths and 3 injured.

#### Police Shooting Incidents Documented by SUARAM in 2023

No.	Date	Location & State	No. of People Involved	Injured	Dead	Total Deaths (Month)
1	12 February	Banting/Klang, Selangor	1	0	0	0
2	7 April	Lahad Datu, Sabah	1	0	1	1
3	19 April	Kuantan, Pahang	1	0	0	
4	24 May	Hutang Melintang, Perak	1	0	1	1
5	4 & 6 June	Jalan Sibu-Bintulu and outside Betong Hospital, Sarawak	2	1	0	2
6	8 June	Cheras, Selangor	2	0	2	
7	9 June	Medan Selera Premba, Kedah	3	1	0	
8	7 August	Kepong, Selangor	2	0	0	0
9	25 September	Labok, Kelantan	2	0	1	1



10	10 October	Tumpat, Kelantan	8	0	0	0
11	23 October	Teluk Intan, Perak	2	1	0	0
12	2 November	Kulim, Kedah	1	0	0	0
<b>Total</b>			<b>26</b>	<b>3</b>	<b>5</b>	

In March 2023, the Court of Appeal lowered the quantum of damages from RM1.5 million to RM630,000 that was awarded to families of three youths aged 15, 20 and 22, who died in a police shooting in Shah Alam 13 years ago. The families' pursuit for justice spanned across 10 years. A joint civil suit was first filed by the families in 2013 at the Shah Alam High Court, which was then dismissed in 2015 on the grounds that the police officers acted out of self-defence. In 2016, this ruling was overturned by the Court of Appeal, and the case was sent to the High Court for damages assessment. The initial RM1.5 million was the result of an appeal by the three families to the High Court in 2021, after having obtained a much lower compensation amount totalling up to RM207,000<sup>57</sup>.

In October 2023, the Taiping High Court ordered the government and police to pay RM602,500 in damages to a former palm oil plantation worker Isma Izami Jaafar. Isma was shot at by police officers during a car chase seven years ago. 22 gunshots were discharged. As a result of the incident, Isma had to undergo surgical removal of bullet fragments from his brain. The civilian also testified that he suffered permanent brain damage and the loss of basic functions, including how to do simple arithmetic. The government has filed an appeal<sup>58</sup>.

### Enforced Disappearances

Despite the change in administration, accountability in cases relating to the enforced disappearances of Amri Che Mat and Pastor Raymond Koh remains precarious.

On 9 May 2023, the Kuala Lumpur High Court allowed the judicial review application by the spouse of activist Amri Che Mat<sup>59</sup>, Norhayati Mohd Ariffin, to access the classified special task force report to strengthen her related civil action against the police and federal government over Amri's disappearance in 2016<sup>60</sup>. The judge ordered the authorities to disclose the report to Norhayati within 30 days, but this report was to be utilised for the main legal action and cannot be disclosed to third parties. Nevertheless, the government and police filed an appeal for a stay of the report release, which was granted by the court on 7 June<sup>61</sup>. Three days later, Saifuddin stated that the government will review the steps that can be taken by the government in releasing the report<sup>62</sup>. He also dismissed allegations that the current government was sensitive about disclosing the classified report. Amri's spouse and daughter were set to testify

<sup>57</sup> Nurbaiti Hamdan, 'Court lowers damages for families of three men killed by police' (*The Star*, 24 March 2023) <<https://www.thestar.com.my/news/nation/2023/03/24/court-lowers-damages-for-families-of-three-men-killed-by-police>> accessed 10 November 2023

<sup>58</sup> 'Police, govt to pay over RM600,000 for 'overzealous' car chase, shooting' (*Free Malaysia Today*, 3 October 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/10/03/police-govt-to-pay-over-rm600000-for-overzealous-car-chase-shooting/>> accessed 10 November 2023

<sup>59</sup> Amri Che Mat was an alleged Syiah Islam follower and proselytiser. He disappeared on 24 November 2016 in Kangar, Perlis. A public inquiry held by SUHAKAM in 2019 concluded that he was a victim of enforced disappearance, with members of the Special Branch from police headquarters Bukit Aman as the perpetrators.

<sup>60</sup> Hidir Reduan Abdul Rashid, 'Enforced disappearance: Amri's wife gets classified report' (*Malaysiakini*, 9 May 2023) <<https://www.malaysiakini.com/news/664447>> accessed 10 November 2023

<sup>61</sup> Hidir Reduan Abdul Rashid, 'Govt, police appeal to prevent Amri's wife accessing classified report' (*Malaysiakini*, 7 June 2023) <<https://www.malaysiakini.com/news/667740>> accessed 10 November 2023

<sup>62</sup> 'Gov't to study release of report on Amri Che Mat's disappearance' (*Malaysiakini*, 10 June 2023) <<https://www.malaysiakini.com/news/668209>> accessed 10 November 2023

in court on 21 June 2023 over the family's lawsuit over the enforced disappearance, but the proceedings were postponed due to technical issues of the judiciary's IT system<sup>63</sup>.

Pastor Raymond Koh's<sup>64</sup> family also has an ongoing civil action against the police and government over Koh's enforced disappearance that took place in 2017.

- The first two days of trial took place on 6 and 7 June 2023 after postponement from 19 December 2022<sup>65</sup>, in which witness Roeshan Celestine Gomez testified that the operation was "professionally done"<sup>66</sup>. Roeshan's friend, who was allegedly present at the scene, was instructed to stop recording the incident. Roeshan was also signalled to leave the scene by one of the motorcycle outriders. Upon further cross-examination by the senior federal counsel (SFC) on the identity of the abductors, Roeshan said that he had no idea if they were police agents, as the black SUVs and masked men had no police logo on them<sup>67</sup>. Another notable point that Roeshan brought up was the remark made by the investigating officer (IO) upon lodging the police report about the abduction, that it looked "very much like the modus operandi of a police operation" and that the IO even made phone calls to confirm that there was a police operation that day. The SFC denied that the IO made such a statement<sup>68</sup>.
- Trial resumed in November 2023, in which witness G Sri Ram testified that rightwing Islamist groups threatened Pastor Koh in 2011, following the visit by the Islamic Religious Department and the police on a dinner hosted by Harapan Komuniti, an NGO that was headed by Koh<sup>69</sup>. The threats continued even after the Selangor Sultan decreed that no further action in investigations against the NGO. The witness reiterated his belief that it was the police who abducted Koh. Koh's spouse Susanna Liew also testified that Koh received bullets and a death threat note following the raid<sup>70</sup>. Although a police report was lodged on the matter, no updates were received from authorities on investigation status despite multiple follow-ups.

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<sup>63</sup> Hidir Reduan Abdul Rashid, 'Enforced disappearance: Amri's wife, daughter to testify in lawsuit' (*Malaysiakini*, 19 June 2023) <<https://www.malaysiakini.com/news/669180>> accessed 10 November 2023

<sup>64</sup> Pastor Raymond Koh was abducted from his car in Petaling Jaya, Selangor on 13 February 2017. SUHAKAM's public inquiry also concluded that this was an enforced disappearance case, perpetrated by members of the Special Branch.

<sup>65</sup> Hidir Reduan Abdul Rashid, 'Govt, pastor Koh's family attempting to resolve suit, court hears' (*Malaysiakini*, 19 December 2022) <<https://www.malaysiakini.com/news/648636>> accessed 10 November 2023

<sup>66</sup> Hidir Reduan Abdul Rashid, 'Pastor Koh abduction was 'professionally done' - witness' (*Malaysiakini*, 6 June 2023) <<https://www.malaysiakini.com/news/667641>> accessed 10 November 2023

<sup>67</sup> Hidir Reduan Abdul Rashid, 'Witness 'has no idea' if Pastor Koh abductors were police agents' (*Malaysiakini*, 7 June 2023) <<https://www.malaysiakini.com/news/667785>> accessed 10 November 2023

<sup>68</sup> Hidir Reduan Abdul Rashid, 'IO never said Pastor Koh abduction looked like police operation, court told' (*Malaysiakini*, 20 June 2023) <<https://www.malaysiakini.com/news/669301>> accessed 10 November 2023

<sup>69</sup> Hidir Reduan Abdul Rashid, 'Witness: Rightwing Islamist groups threatened Pastor Koh in 2011' (*Malaysiakini*, 6 November 2023) <<https://www.malaysiakini.com/news/685618>> accessed 10 November 2023

<sup>70</sup> Hidir Reduan Abdul Rashid, 'Missing Pastor Koh received two bullets, death threat, wife tells court' (*Malaysiakini*, 7 November 2023) <<https://www.malaysiakini.com/news/685705>> accessed 10 November 2023

# FREEDOM OF EXPRESSION

## SUARAM

Enforcement of existing laws that restrict freedom of expression, such as the Sedition Act (SA) 1948 and Section 233 of the Communications and Multimedia Act (CMA) 1998, resumes under Dato Seri Anwar Ibrahim's administration. Review and repeal of "oppressive legislations that can be misused curtail freedom of expression", including the SA 1948 and Section 233 of CMA 1998, was a key promise within Pakatan Harapan's election manifesto last year<sup>71</sup>. Nevertheless, this palpable hope for reform was dashed when the government announced that it has no intention to abolish the SA 1948<sup>72</sup>. Review of Section 233 of CMA 1998 is also only confined to ensuring how investigations can be carried out more smoothly<sup>73</sup>, which still does not address the longstanding arbitrary use of this legislative provision in cracking down on any content that is perceived to be 'offensive' and silencing critics. Whilst the government has commendably agreed in principle to review the use of SA 1948 to confine its use to statements directed at the royal institution<sup>74</sup>, this is still in breach of international standards of freedom of expression.

Engagements were undertaken by the Minister in the Prime Minister's Department (Law and Institutional Reforms) Dato' Sri Azalina Othman Said in July 2023 with various stakeholders, including non-governmental organisations, to review the effectiveness of dealing with issues related to race, religion and royalty (3R)<sup>75</sup>. The outcome of these sessions was open-ended. No concrete consensus emerged on which of the three options were most relevant and feasible: maintain the status quo, repeal existing laws and replace them with new ones, or repeal the SA 1948 and replace it with a more specific legislation. Despite the government's initiative to engage, the political will for substantive reform in the SA 1948 and Section 233 of CMA 1998 remains precarious. This is substantiated by the swift backpedalling to the narrative used by previous administrations of the adequacy of existing laws in tackling 3R matters, explicitly stated<sup>76</sup> or implied<sup>77</sup>. In the case of the Deputy Home Minister Shamsul Anuar Nasarah, prevention of exploitation by irresponsible parties was even used as a basis for having no current plans to enact specific laws or guidelines on 3R issues<sup>78</sup>. This is especially ironic, given that Azalina previously acknowledged that the SA 1948, CMA 1998 and other laws have not been revised for decades and are in need of review to ensure relevance with current national

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<sup>71</sup> Refer to <https://kitaboleh.my/tawaran-kita-boleh/menjamin-kebebasan-media-dan-hak-bersuara/>

<sup>72</sup> Jason Thomas, 'No plans to abolish Sedition Act just yet, says Ramkarpal' (*Free Malaysia Today*, 21 March 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/03/21/no-plans-to-abolish-sedition-act-just-yet-says-ramkarpal/>> accessed 20 November 2023

<sup>73</sup> 'Efforts to review 'Akta Sakit Hati' underway - deputy minister' (*Malaysiakini*, 1 March 2023) <<https://www.malaysiakini.com/news/656901>> accessed 20 November 2023

<sup>74</sup> 'Cabinet to review Sedition Act, use only to protect royalty, says Azalina' (*The Star*, 25 July 2023) <<https://www.thestar.com.my/news/nation/2023/07/25/cabinet-to-review-sedition-act-use-only-to-protect-royalty-says-azalina>> accessed 20 November 2023

<sup>75</sup> Arfa Yunus, 'Several options proposed to tackle 3R issues, says Azalina' (*The Star*, 21 July 2023) <<https://www.thestar.com.my/news/nation/2023/07/21/several-options-proposed-to-tackle-3r-issues-says-azalina>> accessed 20 November 2023

<sup>76</sup> 'No plan to change current laws related to governing 3R issues' (*The Star*, 8 November 2023) <<https://www.thestar.com.my/news/nation/2023/11/08/no-plan-to-change-current-laws-related-to-governing-3r-issues>> accessed 20 November 2023

<sup>77</sup> Oral Question in Parliament, Question 24, 7 November 2023

<sup>78</sup> Rahimy Rahim, Junaid Ibrahim and Teh Athira Yusof, 'Discussing 3R issues is allowed as long as no laws are broken, Dewan Rakyat told' (*The Star*, 14 November 2023) <<https://www.thestar.com.my/news/nation/2023/11/14/discussing-3r-issues-is-allowed-as-long-as-no-laws-are-broken-dewan-rakyat-told>> accessed 20 November 2023

developments<sup>79</sup>. Lawmakers, including the Prime Minister Dato’ Seri Anwar Ibrahim<sup>80</sup>, have also justified continued application of especially the SA 1948 on the basis of unavoidable necessity, i.e., maintaining national security and stability, and public order.

2023 also witnessed an increase in explicit hardline rhetoric and measures to curb 3R discourse. Multiple warnings were delivered from time to time by lawmakers, including Anwar<sup>81</sup>, aside from the seasonal ones in the lead-up to state elections<sup>82</sup>. A 3R task force was set up on 22 March. Seven cases were received within the first two weeks of operation, with three cases referred to the Attorney-General’s Chambers by the end of that period<sup>83</sup>.

### Sedition Act 1948

Based on SUARAM’s media monitoring, 20 investigations involving 17 individuals under the SA 1948 were opened in 2023. Compared to 2022, there was an increase of the number of investigations (i.e., 16), but apprehending fewer individuals (i.e., 21). Out of the 17 cases that remained at the investigation stage, all except one entailed at least Section 233 of CMA 1998 aside from Section 4(1) of the SA 1948. The said exception involved the remark by the President of the Pan-Malaysian Islamic Party questioning the authorisation of the Pardons Board during a political talk held in conjunction with the Simpang Jeram by-election. Three cases were tried at court, all of which involved politicians from the Opposition.

The application of the SA 1948 does not reflect the government’s consideration of confining the scope of the legislation’s application to ‘insults’ against royalty, which only consisted of 40% of cases. The three charged cases, in fact, entailed ‘disaffection’ against the administration of justice and those currently in public office.

#### List of Individuals/Groups Investigated Under the Sedition Act 1948

No.	Name of Individual(s)	Allegation/Cause for Investigation	Status	Other Laws Investigated
1	1 individual	Video with derogatory remark against the royal institution (15 Mar)	Investigated	s4(1) of SA 1948, s233 of CMA 1998, s505(b) of the Penal Code
2	Roslizal Razali	Racist comments on X	Arrested & remanded	s4(1) of SA 1948, s233 of CMA 1998, s505c of the Penal Code

<sup>79</sup> Imran Hilmy, ‘Cabinet to be briefed on 3R discussions’ (*The Star*, 25 July 2023) <<https://www.thestar.com.my/news/nation/2023/07/25/cabinet-to-be-briefed-on-3r-discussions>> accessed 20 November 2023

<sup>80</sup> Luqman Hakim, ‘Anwar gives final warning to those playing up 3R issues [NSTTV]’ (*New Straits Times*, 12 July 2023) <<https://www.nst.com.my/news/nation/2023/07/930021/anwar-gives-final-warning-those-playing-3r-issues>> accessed 20 November 2023

<sup>81</sup> Luqman Hakim, ‘Anwar gives final warning to those playing up 3R issues [NSTTV]’ (*New Straits Times*, 12 July 2023) <<https://www.nst.com.my/news/nation/2023/07/930021/anwar-gives-final-warning-those-playing-3r-issues>> accessed 20 November 2023

<sup>82</sup> ‘Anwar gives final warning to those playing up 3R issues [NSTTV]’ (*The Star*, 3 July 2023) <<https://www.thestar.com.my/news/nation/2023/07/03/state-polls-cops-to-monitor-those-playing-up-3r-issues-says-igp>> accessed 20 November 2023

<sup>83</sup> Farik Zolkepli, ‘Police task force opens seven IPs into issues touching on royalty, religion and race’ (*The Star*, 8 April 2023) <<https://www.thestar.com.my/news/nation/2023/04/08/police-task-force-opens-seven-ips-into-issues-touching-on-royalty-religion-and-race>> accessed 20 November 2023

3	Owner of Facebook account 'Raja Hairun'	Online insult against the royal institution	Arrested & remanded (12–14 Apr)	s4(1) of SA 1948, s233 of CMA 1998
4	Owner of Facebook account 'Nong Mazlan'	Three seditious posts	Arrested & remanded (6–9 May)	s4(1) of SA 1948, s233 of CMA 1998, s504 of the Penal Code
5	Owner of Twitter account @hezryhaizad	Two racist posts	Arrested & remanded (8–11 May)	s4(1) of SA 1948, s233 of CMA 1998, s505c of the Penal Code
6	Tun Dr Mahathir Mohamad	Remarks against the royal institution in a "Malay Proclamation" meeting (6 June)	Investigated	s4(1) of SA 1948, s233 of CMA 1998
7	Shahidan Kassim	Remarks against the PN's plan to topple the govt	Investigated	s4(1) of SA 1948, s233 of CMA 1998
8	Lim Guan Eng	Remark that temples will be destroyed if the 'green wave' takes over Penang (7 July)	Investigated	s4(1) of SA 1948, s233 of CMA 1998, s505b of the Penal Code
9	Tan Sri Abdul Hadi Awang	Remark of DAP's plan to destroy Malay and Bumiputera supremacy with the support of Malays who have forgotten their roots (8 July)	Investigated	s4(1) of SA 1948, s233 of CMA 1998
10	Owner of Facebook account @SamBanjar Perak	Online insult against the Yang Di-Pertuan Agong	Arrested & remanded (15 Aug – 18 Aug)	s4(1) of SA 1948, s233 of CMA 1998
11	Tan Sri Abdul Hadi Awang	Statement questioning the authorisation of the Pardons Board in political talk during Simpang Jeram by-election (26 Aug)	Investigated	s4(1) of SA 1948
12	Facebook user 'Iman Mustaqim'	Online insult against the Sultan of Selangor (28 Aug)	Investigated	s4(1) of SA 1948, s233 of CMA
13	Datuk Seri Muhammad Sanusi Md Nor	Statement at a political talk (22 Sep)	Investigated	s4(1) of SA 1948, s233 of CMA 1998, s4A(1) of the Election Offences Act 1954
14	Shahril Azman Abd Halim	Speech related to 3R made in Felda Sungai Kemahal before the Pelangai by-election	Investigated	s4(1) of SA 1948, s233 of CMA 1998, s505(b) of the Penal Code

15	Owner of Facebook account 'Muhammad Farhan'	Online insult against the royal institution	Arrested & remanded (12–15 Oct)	s4(1) of SA 1948, s233 of CMA 1998
16	Owner of TikTok account @azwanar9	Online insult against the royal institution	Arrested & remanded (13–16 Oct)	s4(1) of SA 1948, s233 of CMA 1998
17	1 individual	Online insult against the Yang Di-Pertuan Agong	Remanded (28–30 Nov)	s4(1) of the Sedition Act 1948, s233 of CMA 1998

### New Cases Charged Under the Sedition Act 1948 in 2023

No.	Name of Individual(s)	Allegation/Cause for Investigation	Status	Laws Charged
1	Datuk Seri Muhammad Sanusi Md Nor	Remarks on the appointment of Selangor Menteri Besar during political talk (11 July)	Pleaded not guilty (4 Oct)	s4(1)(b) of SA 1948
2		Remarks on Dato Seri Anwar Ibrahim's statement on the Royal Decree and the unity govt's establishment during political talk (11 July)	Pleaded not guilty (4 Oct)	s4(1)(b) of SA 1948
3	Datuk Razali Idris	Remarked that decisions of the judiciary were being controlled by the govt at the Kemaman by-election machinery launch (10 Nov)	Pleaded not guilty (24 Nov)	s4(1) of SA 1948

As for recent developments of cases investigated or charged under the SA 1948 prior to 2023, there were two notable ones.

#### *Wan Ji's Jail Sentence*

Religious preacher Wan Ji Wan Hussin was ordered to commence his nine-month prison sentence from 26 September 2023<sup>84</sup>. Wan Ji was first charged under Section 4(1) of SA 1948 in 2012 for publishing offensive words and insulting the Selangor Sultan via Facebook, to which he pleaded guilty two years later and received the said jail sentence. At the time, Wan Ji's sentence marked a concerning increase in severity of punishment, as most sedition cases at the High Court or Court of Appeal then were primarily limited to fines. Despite Pakatan Harapan's promise prior to the 14th General Election to repeal the SA 1948, the prosecution appealed, and successfully, to enhance Wan Ji's jail sentence instead to one year when the coalition came to power in 2019<sup>85</sup>. Wan Ji managed to get a stay pending the outcome of his appeal to the sentence for 2018 and 2019. He subsequently submitted his application to refer

<sup>84</sup> 'Wan Ji starts jail sentence for royal insult' (*The Star*, 26 September 2023) <<https://www.thestar.com.my/news/nation/2023/09/26/wan-ji-starts-jail-sentence-for-royal-insult>> accessed 20 November 2023

<sup>85</sup> Annabelle Lee, 'Insulting royalty - preacher Wan Ji's sentence enhanced, begins jail term today' (*Malaysiakini*, 9 July 2019) <<https://www.malaysiakini.com/news/483022>> accessed 20 November 2023

constitutional issues involving the SA to the Federal Court, which was eventually rejected by the Court of Appeal in August 2023<sup>86</sup>.

### *Kean Wong's Arrest and Overnight Detention*

On 16 October 2023, book editor Kean Wong was arrested at the Kelana Jaya Immigration Department whilst there for passport renewal. He was subsequently detained overnight, and only released upon completion of the one-day remand period<sup>87</sup>. Wong has been on the police's suspect person list since 2020<sup>88</sup>, over a cover art resembling the national-coat-of-arms for the book that he edited 'Rebirth: Reformasi, Resistance, and Hope in New Malaysia'. Responses by authorities in 2020 were unwarranted, including a ban of the book under the Printing Presses and Publications (Control of Undesirable Publications) Order 2020<sup>89</sup>, probes of cover artist and chapter writers<sup>90</sup>, and a raid of the publisher to seize 313 copies of the book<sup>91</sup>. Three years later, three out of the four legislations still applied in police investigations against Wong: Section 4(1) of the SA 1948, Section 233 of the CMA 1998, and Section 8(1) of the Printing Presses and Publications Act 1984.

### **Communications and Multimedia Act 1998**

Section 233 of the CMA 1998 criminalises speech made with the intent to 'annoy, abuse, threaten or harass another person', including anonymous communications. The ambiguity of the language, lack of clear definition of what is deemed 'offensive' and criminalising the act of 'annoying people online' are among the many reasons why Section 233 is problematic. Unlike the SA 1948, Section 233 of the CMA 1998 does not require the communication to be seditious, or to have the intention to incite violence or to instigate the commission of any offence.

Like in 2022, Section 233 continues to be widely used to address fake news and address any online discourse that is deemed to be 'offensive'. A significant example is the arrest and four-day remand of two 18-year-olds for criticising this year's Sijil Pelajaran Malaysia (SPM) History paper, which took place after a teacher lodged a report about the said video. Fundamentally, this matter should have been confined to the school authorities, and the teacher should have lodged an internal complaint that would have enabled key stakeholders within the school such as the disciplinary board and counselling unit to take responsive action. Nevertheless, the ambiguous Section 233 provided law enforcement unfettered discretion in interpreting and enforcing the provision. In the context of frustration venting by two students of an exam paper, arrest and detention, alongside a raid of the students' homes, confiscation of their phones and being forced to undergo drug tests<sup>92</sup>, are illegitimate, unnecessary and disproportionate, thus severely encroaching on freedom of speech.

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<sup>86</sup> 'Wan Ji fails to get constitutional issues on sedition charges referred to apex court' (*The Star*, 14 August 2023) <<https://www.thestar.com.my/news/nation/2023/08/14/wan-ji-fails-to-get-constitutional-issues-on-sedition-charges-referred-to-apex-court>> accessed 20 November 2023

<sup>87</sup> 'CID chief: 'Rebirth' editor freed after remand ends' (*Malaysiakini*, 17 October 2023) <<https://www.malaysiakini.com/news/683173>> accessed 20 November 2023

<sup>88</sup> Faisal Asyraf, 'Rebirth' editor gave contact details, Aussie address to cops, says his lawyer' (*Malaysiakini*, 18 July 2020) <<https://www.malaysiakini.com/news/535019>> accessed 20 November 2023

<sup>89</sup> 'Home Ministry bans book with cover art resembling national coat of arms' (*Malaysiakini*, 1 July 2020) <<https://www.malaysiakini.com/news/532654>> accessed 20 November 2023

<sup>90</sup> 'Cops quiz artist in 'Rebirth' book cover probe' (*Malaysiakini*, 4 July 2020) <<https://www.malaysiakini.com/news/532939>> accessed 20 November 2023

<sup>91</sup> 'Police raid company linked to controversial book cover, seize 313 books' (*Malaysiakini*, 1 July 2020) <<https://www.malaysiakini.com/news/532448>> accessed 20 November 2023

<sup>92</sup> 'LFL: Arrest of 2 teens over video rant on SPM paper heavy-handed' (*Malaysiakini*, 26 February 2023) <<https://www.malaysiakini.com/news/656500>> accessed 20 November 2023

48.3% of media monitored cases entailed online content related to 3R. Religion-related dissent was highest in prevalence (41.4%) among these 3R cases. A notable case involved investigations of a film under Section 233. Seven cast and crew of *Mentega Terbang*, a local film exploring different religions and their conceptions of death and afterlife, were investigated under Section 233 of the CMA alongside other provisions<sup>93</sup>. This led to not only curtails of artistic expression, but also risks to safety and security of those involved. The film director and scriptwriter received death threats and had their cars vandalised due to public backlash<sup>94</sup>.

There may be an increase in use of Section 233 of CMA, instead of SA 1948, to investigate and prosecute 3R cases, namely remarks related to religion and royalty. Whilst Section 4(1) of SA 1948 was included in investigations against ‘insults’ related to royalty, this provision was not a part of the charge for all three charged cases – it was Section 233(1)(a) instead. On religion-related cases, only one investigation included SA 1948. Race-related remarks, on the other hand, demonstrated a different trend, in that SA 1948 was included in almost all investigations.

#### **List of Individuals/Groups Investigated Under Section 233 of CMA**

<b>No.</b>	<b>Name of Individual(s)</b>	<b>Allegation/Cause for Investigation</b>	<b>Status</b>	<b>Laws Investigated</b>
1	Muhammad Fawwaz Mohamad Jan	Online post about infidels making efforts to topple Islam (Jan)	Investigated	s233 of CMA 1998, s505c of the Penal Code
2	1 individual	TikTok video of on-duty traffic police inspecting a lorry and issuing four summonses (4 Feb)	Arrested & remanded (4–7 Feb)	s233 of CMA 1998, s504 of the Penal Code
3	2 individuals	TikTok video in which they complained about a secondary school history exam paper	Arrested & remanded (24–27 Feb)	s233 of CMA 1998, s14 of the Minor Offences Act 1995
4	Halimah Nasoha	Online posts criticising Dato’ Seri Anwar Ibrahim’s trip to Saudi Arabia in March	Investigated	s233(1)(a) of CMA 1998
5	Tan Sri Abdul Hadi Awang	Remarks of PN’s attempt to topple the unity govt (4 Mar)	Investigated	s233 of CMA 1998, s505b of the Penal Code
6	Unreported number of individuals	Viral video of a man defaming Anwar on a 4-wheel drive using a loudspeaker outside Jalan Duta Court (11 Mar)	Investigated	s233 of CMA 1998, s500 of the Penal Code, s9(5) of the Peaceful Assembly Act 2012

<sup>93</sup> Section 298A of the Penal Code - Causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill will or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion.

Section 500 of the Penal Code - Punishment for defamation

<sup>94</sup> Arif Zikri, ‘Mentega Terbang’ director and scriptwriter receive death threats, cars splashed with paint, corrosive substance’ (*Malay Mail*, 16 March 2023) <<https://www.malaymail.com/news/showbiz/2023/03/16/mentega-terbang-director-and-scriptwriter-receive-death-threats-cars-splashed-with-paint-corrosive-substance/59946>> accessed 20 November 2023



7	Khairi Anwar Jailani	Mentega Terbang film exploring religion and death	Investigated	s233 of CMA 1998, s298A & s505b of the Penal Code
8	Arjun Thanaraju			
9	5 individuals			
10	1 individual	Video with derogatory remark against the royal institution (15 Mar)	Investigated	s233 of CMA 1998, s4(1) of SA 1948, s505(b) of the Penal Code
11	Facebook account 'Che'Gubard Original'	Online post linking the Youth & Sports Ministry with a Christian Evangelist movement	Investigated	s233 of CMA 1998, s500 of the Penal Code
12	Unreported	Video of police extortion case	Investigated	s233 of CMA 1998, s384 of the Penal Code
13	Unreported	Video of a couple in an indecent act in a car park	Investigated	s233 of CMA 1998
14	1 individual	Video of kicking and damaging a mosque's door (9 Apr)	Detained & released on bail	s233 of CMA 1998, s295 of the Penal Code
15	Unreported number of individuals	Investment scheme poster with Perlis Menteri Besar's image	Investigated	s233 of CMA 1998, s500 of the Penal Code
16	Unreported	Video of a man spitting into a food mix prepared at a Ramadan bazaar (19 Apr)	Investigated	s233 of CMA 1998
17	Roslizal Razali	Racist comments on X	Arrested & remanded	s233 of CMA 1998, s4(1) of SA 1948, s505c of the Penal Code
18	Owner of Facebook account 'Raja Hairun'	Online insult against the royal institution	Arrested & remanded (12–14 Apr)	s233 of CMA 1998, s4(1) of SA 1948
19	1 individual	Allegation of senior police officer's refusal to accept his complaint	Investigated	s233 of CMA 1998, s500 of the Penal Code
20	Unreported	Several pornographic videos containing use of unconsented photos of a woman and her family members	Investigated	s233 of CMA 1998, s509 of the Penal Code, s15(a) of the Sexual Offences Against Children Act 2017
21	Owner of Facebook account 'Nong Mazlan'	Three seditious posts	Arrested & remanded (6– 9 May)	s233 of CMA 1998, s4(1) of SA 1948, s504 of the Penal Code

22	Owner of Twitter account @hezryhaizad	Two racist posts	Arrested & remanded (8–11 May)	s233 of CMA 1998, s4(1) of SA 1948, s505c of the Penal Code
23	Unreported	Video of shoplifting	Investigated	s233 of CMA 1998
24	1 individual	Telegram account that discusses obscene issues	Investigated	s233 of CMA 1998
25	Unreported	Poster on planned orgy (24 May)	Investigated	s233 of CMA 1998, s292(e) of the Penal Code
26	Datuk Seri Muhammad Sanusi Md Nor	Remarks that Kedah owns Penang (late May)	Investigated	s233 of CMA 1998, s505b of the Penal Code
27	Tun Dr Mahathir Mohamad	Remarks against the royal institution in a “Malay Proclamation” meeting (6 June)	Investigated	s233 of CMA 1998, s4(1) of SA 1948
28	Jocelyn Chia	Stand-up comedy about Malaysia as a developing country and the MH370 tragedy (7 June)	Investigated	s233 of CMA 1998, s504/506(C) of the Penal Code
29	Shahidan Kassim	Remarks against the PN’s plan to topple the govt	Investigated	s233 of CMA 1998, s4(1) of SA 1948
30	Lim Guan Eng	Remark that temples will be destroyed if the ‘green wave’ takes over Penang (7 July)	Investigated	s233 of CMA 1998, s4(1) of SA 1948, s505b of the Penal Code
31	Tan Sri Abdul Hadi Awang	Remark of DAP’s plan to destroy Malay and Bumiputera supremacy with the support of Malays who have forgotten their roots (8 July)	Investigated	s233 of CMA 1998, s4(1) of SA 1948
32	Fake Facebook account	Bore the name and photos of the spouse of Tunku Mahkota Johor, promoting Japanese air conditioners	Investigated	s233 of CMA 1998, s419 of the Penal Code
33	Facebook account ‘Whyman Whyman’	Video of a woman being assaulted by two men and two women	Investigated	s233 of CMA 1998, s147 of the Penal Code
34	Tan Sri Muhyiddin Yassin	Remark that Allah issue is indicative of unity govt run by non-Malays (30 July)	Investigated	s233 of CMA 1998, s505c of the Penal Code
35	Fahmi Fadzil	Speech in main prayer hall of Nurul Yaqin Mosque (31 July)	Investigated	s233 of CMA 1998

36	1 individual	Uploaded and shared video of Fahmi Fadzil speaking in mosque	Investigated	s233 of CMA 1998, s500 of the Penal Code, s4A(1) of the Election Offences Act 1954
37	Afnan Hamimi Taib Azamudden	Statement of caretaker Kedah Menteri Besar's absence at mega event due to safety reasons (8 Aug)	Investigated	s233 of CMA 1998, s505b of the Penal Code
38	Three individuals			
39	Owner of Facebook account @SamBanjar Perak	Online insult against the Yang Di-Pertuan Agong	Arrested & remanded (15–18 Aug)	s233 of CMA 1998, s4(1) of SA 1948
40	Facebook user 'Iman Mustaqim'	Online insult against the Sultan of Selangor (28 Aug)	Investigated	s233 of CMA 1998, s4(1) of SA 1948
41	Tan Sri Muhyiddin Yassin	Remark that it is 'haram' to vote for PH candidate for Pulau, declaring that his assertion is 'fatwa' (2 Sep)	Investigated	s233 of CMA 1998, s505b of the Penal Code
42		Remark of Malays losing their special position, with claim that the govt is unable to understand issued faced by Malays (2 Sep)	Investigated	s233 of CMA 1998, s505b of the Penal Code
43	Howard Lee Chuan How	Insulted Islam by quoting verse 59 of Surah an-Nisa of the Quran in his TikTok video	Investigated	s233 of CMA 1998, s505b of the Penal Code
44	Datuk Seri Muhammad Sanusi Md Nor	Statement at a political talk (22 Sep)	Investigated	s4(1) of SA 1948, s233 of CMA 1998, s4A(1) of the Election Offences Act 1954
45	Shahril Azman Abd Halim	Speech related to 3R made in Felda Sungai Kemahal before the Pelangai by-election	Investigated	s4(1) of SA 1948, s233 of CMA 1998, s505(b) of the Penal Code
46	1 individual	Online crude remark about Dato' Seri Anwar Ibrahim	Arrested (28 Sep)	s233 of CMA 1998, s504 of the Penal Code, s14 of the Minor Offences Act 1955
47	Owner of Facebook account 'Muhammad Farhan'	Online insult against the royal institution	Arrested & detained (12–15 Oct)	s233 of CMA 1998, s4(1) of SA 1948

48	Owner of TikTok account @azwanar9	Online insult against the royal institution	Arrested & detained (13–16 Oct)	s233 of CMA 1998, s4(1) of SA 1948
49	Owner of Facebook account 'Nekad Hikers Ventures'	Online threats against Dato' Seri Anwar Ibrahim and Deputy Inspector-General of Police Datuk Ayob Khan Mydin Pitchay	Arrested & detained (27 Oct)	s233 of CMA 1998, s507 of the Penal Code
50	Owner of Facebook account 'Jgad Zruu'			
51	1 individual	Online threats against Education Minister Fadhlina Sidek	Arrested & remanded (3–6 Nov)	s233 of CMA 1998, s507 of the Penal Code
52	Siti Mastura	Statements of Lim Guan Eng being related to four DAP leaders, as well as Tan Sri Lim Kit Siang to Lee Kuan Yew and Chin Peng (5 Nov)	Investigated	s233 of CMA 1998, s505b of the Penal Code
53	Email addresses 'Taktstorer' and 'Takstorer'	Bomb threat emails to 51 international, private and public schools nationwide	Investigated	s233 of CMA 1998, s507 of the Penal Code
54	1 individual	Online insult against the Yang Di-Pertuan Agong	Remanded (28–30 Nov)	s4(1) of the Sedition Act 1948, s233 of CMA 1998
55	1 individual	Uploaded a TikTok video offering a RM5 million reward to assassinate Dato' Seri Anwar Ibrahim and his Cabinet	Detained and remanded (28 Nov – 1 Dec)	s233 of CMA 1998, s507 of the Penal Code

### New Cases Charged Under Section 233 of CMA in 2023

No.	Name of Individual(s)	Allegation/Cause for Investigation	Status	Laws Charged
1	Ahmad Feisal Mohd Kamil	Facebook post 'A Historical Look at Attitudes of Homosexuality in the Islamic World' (10 Jan)	Pleaded not guilty (21 Nov)	s233(1)(a) of CMA 1998
2	Abdul Rahim Abdullah	Online offensive communications on racial issues (25 Jan)	Pleaded guilty (13 Apr)	s233(1)(a) of CMA 1998
3		Online offensive communications against the King (2-3 Apr)		
4	Muhammad Indera Mulia Ahmad	Online offensive communications against Sultan of Johor (21 Apr)	Pleaded not guilty	s233(1)(a) & s233(3) of CMA 1998
5	Aznizan Yusof	Uploaded without consent an ad on the opening of a	Pleaded not guilty	s233 of CMA 1998

		gold shop by Tengku Bendahara of Kelantan (16 Oct)	(23 Oct)	
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### *Follow-up Developments of the Crackhouse Comedy Club Case<sup>95</sup>*

In July 2022, Rizal van Geyzel (owner of the Crackhouse Comedy Club), Siti Nuramira and her partner Alexander Navin Vijayachandran pleaded not guilty to the respective charges against them. In 2023, all three pleaded guilty. Rizal van Geyzel did so to the first<sup>96</sup> of three charges under Section 233(1)(a) of CMA 1998, as proposed in his third representation accepted by the Attorney-General’s Chambers (AGC) and was fined RM8000<sup>97</sup>. Siti Nuramira also submitted a representation letter to the AGC to change her plea from Section 298(A)(1)(a)<sup>98</sup> to Section 298<sup>99</sup>, which was also accepted. She was also fined RM8000<sup>100</sup>. Alexander was fined RM16,000 for two counts under Section 233(1)(a) of CMA 1998<sup>101</sup>.

### **Freedom of Expression in Tertiary Educational Institutions**

On 30 August 2023, the Ministry of Higher Education issued guidelines regulating concerts in universities and colleges. These guidelines significantly impinge on university students’ autonomy to organise entertainment activities, as well as freedom of expression in attire and creative expression. Examples include:

- Students are required to involve university administration in all aspects of the organisation of concerts, including scrutinising song lyrics and genres so as to not affect local sensitivities.
- There are restrictions on how concerts are to be run. Examples include the prohibition of mosh pits, artistes not being allowed to bring audience members on stage, as well as the application of gender segregation to audience seating.

<sup>95</sup> Siti Nuramira, as part of her open mic skit at Crackhouse Comedy Club, stripped off her headscarf and baju kurung (although she still had a skirt and top underneath). She was investigated, detained and charged under Section 298A of the Penal Code. Her partner was also charged under Section 233 of CMA 1998. Crackhouse Comedy Club was not spared either (via ban from opening other businesses under their names), with its co-founder Rizal van Geyzel also charged under Section 233 of CMA.

<sup>96</sup> Making and initiating the transmission of offensive communications with the intent to offend others via Facebook

<sup>97</sup> ‘Crackhouse owner fined RM8k for posting offensive remarks on FB’ (*Malaysiakini*, 7 July 2023) <<https://www.malaysiakini.com/news/671195>> accessed 20 November 2023

<sup>98</sup> Section 298A(1)(a) of the Penal Code: Whoever by words, either spoken or written, or by signs, or by visible representations, or by any act, activity or conduct, or by organizing, promoting or arranging, or assisting in organizing, promoting or arranging, any activity, or otherwise in any other manner— (a) causes, or attempts to cause, or is likely to cause disharmony, disunity, or feelings of enmity, hatred or ill will... on grounds of religion, between persons or groups of persons professing the same or different religions, shall be punished with imprisonment for a term of not less than two years and not more than five years.”

<sup>99</sup> Section 298 of the Penal Code: “Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”

<sup>100</sup> Rahmat Khairulrijal, ‘Siti Nuramira fined RM8,000 for uttering words to hurt feelings of others’ (*New Straits Times*, 17 April 2023) <<https://www.nst.com.my/news/crime-courts/2023/04/900402/siti-nuramira-fined-rm8000-uttering-words-hurt-feelings-others>> accessed 20 November 2023

<sup>101</sup> ‘Comedy club case: Siti Nuramira’s husband fined RM16,000 for posting offensive video on social media’ (*The Star*, 6 June 2023) <<https://www.thestar.com.my/news/nation/2023/06/06/comedy-club-case-siti-nuramira039s-husband-fined-rm16000-for-posting-offensive-video-on-social-media>> accessed 20 November 2023

- Audience and artistes are also subjected to restrictive dress codes, such as the prohibition of punk hairstyles and attire that feature Illuminati or pro-LGBT symbols, as well as for male artistes, the prohibition from wearing earrings, bracelets and shorts.

University student groups such as the Universiti Malaya Association of New Youth (UMANY) and the Universiti Tunku Abdul Rahman Sungai Long Campus' Student Representative Council (SRC), have condemned these guidelines, whilst also arguing that no consultations with them as key stakeholders were undertaken for this policy. The Ministry of Higher Education's response has been reprehensible. Instead of withdrawing the regressive guidelines, the Ministry stated that a review will be undertaken, with the Minister Mohamed Khaled Nordin clarifying that he has not yet approved those guidelines<sup>102</sup>. A few days later, this was followed by the statement that these guidelines serve as reference for universities to develop their own with the involvement of respective student councils or unions<sup>103</sup>. By 16 November 2023, the Ministry sang a different tune, indicating that on-campus concerts must adhere to the government's guidelines<sup>104</sup>. UMAN Y is mounting a judicial review against this policy<sup>105</sup>.

On 9 October 2023, activist and former UMAN Y president Wong Yan Ke was fined RM5000 in default three months' jail<sup>106</sup> over his one-person protest against the university's former vice-chancellor Abdul Rahim Hashim during his convocation in October 2019. Although Wong paid the fine, he would appeal against the decision, in light of the significance of the case on freedom of speech on university campuses<sup>107</sup>. This said court development ensued from April 2022, when Wong was ordered to enter defence over the protest, as the court ruled that the prosecution succeeded in establishing a prima facie case against him under Section 504 of the Penal Code<sup>108</sup>.

### Printing Presses and Publications Act 1984

Section 7 of the Printing Presses and Publications Act (PPPA) 1984 gives the Home Ministry sweeping discretion to ban any publication that is "in any manner prejudicial to or likely to be prejudicial to" public order, morality, security, even public interest and national interest. Arbitrary enforcement of bans is further enabled by the broad definition of publication in the legislation, which includes not just the traditional ones (e.g., books, newspapers etc), but also audio recordings and "anything which by its form, shape or in any manner is capable of suggesting words or ideas"<sup>109</sup>. Having failed to narrowly and specifically define restrictions of

<sup>102</sup> Muhammad Yusry, 'Higher Education Ministry says will review controversial guidelines for entertainment activities at IPTAs' (*Malay Mail*, 1 September 2023) <<https://www.malaymail.com/news/malaysia/2023/09/01/higher-education-ministry-says-will-review-controversial-guidelines-for-entertainment-activities-at-iptas/88481>> accessed 20 November 2023

<sup>103</sup> '[UPDATED] Concert guidelines for varsities only at recommendation stage: ministry' (*The Vibes*, 5 September 2023) <<https://www.thevibes.com/articles/education/98497/concert-guidelines-for-varsities-only-at-recommendation-stage-ministry>> accessed 20 November 2023

<sup>104</sup> Junaid Ibrahim, Rahimy Rahim & Teh Athira Yusof, 'All on-campus concerts must follow govt guidelines, Dewan Rakyat told' (*The Star*, 16 November 2023) <<https://www.thestar.com.my/news/nation/2023/11/16/all-on-campus-concerts-must-follow-govt-guidelines-dewan-rakyat-told>> accessed 20 November 2023

<sup>105</sup> 'Student group crowdfunds to challenge varsity concert rules' (*Malaysiakini*, 3 September 2023) <<https://www.malaysiakini.com/news/677822>> accessed 20 November 2023

<sup>106</sup> Cha Zhi Ting, 'Convocation protest: Court fines ex-UM activist RM5K' (*Malaysiakini*, 9 October 2023) <<https://www.malaysiakini.com/news/6820130>> accessed 20 November 2023

<sup>107</sup> 'UM student group: Support warrior who stood up against racism' (*Malaysiakini*, 5 November 2023) <<https://www.malaysiakini.com/news/683728>> accessed 20 November 2023

<sup>108</sup> Raveena Nagotra, 'Ex-Umany president ordered to enter defence over convocation protest' (*Malaysiakini*, 5 April 2022) <<https://www.malaysiakini.com/news/616993>> accessed 20 November 2023

<sup>109</sup> Section 2 of PPPA 1984

expression, PPPA 1984 violates principles of legality and legitimacy, making the legislation incompatible with international human rights law.

In 2023, five bans were imposed under Section 7(1) of PPPA 1984, with one of these bans reinstated.

- A watch product and two publications were banned for containing elements of LGBT. A ban was gazetted on 10 August 2023 on all Swatch products containing LGBTQ+ elements, including watches, boxes, wrappers and other relevant materials<sup>110</sup>. This followed a raid by the Home Ministry of 11 Swatch stores in May this year, which led to the confiscation of 172 Swatch Pride watches. Swatch filed a suit at the Kuala Lumpur High Court to challenge the seizure of these watches. The said two banned publications were *'The Tale of Steven'* and *'Jacob's Room to Choose'*<sup>111</sup>.
- The publication *'Aku'* was banned, due to allegedly 'obscene and immoral content that is against the values of decency in Malaysian society'<sup>112</sup>.
- The publication *'Gay is OK! A Christian perspective'* had its ban reinstated, after the government successfully won its appeal to set aside last year's High Court decision. Publisher Chong Ton Shin and author Ngeo Boon Lim were ordered to pay RM15,000 in costs to the Home Ministry and government for High Court and Court of Appeal proceedings<sup>113</sup>.

The Home Ministry also raided Toko Bukit Rakyat on 19 August 2023, confiscating two publications *'Marx Sang Pendidik Revolusioner'* and *'Koleksi Puisi Masturbasi'*. Enforcement officers took one copy of each publication, citing the PPPA 1984<sup>114</sup>. None of the said publications were on the banned books list.

22,929 sex toys worth an estimated RM1.1 million during a raid of premises in Penang. An investigation paper was opened under Section 7(1) of the PPPA 1984, with the sex toys confiscated and a woman arrested. The said woman pleaded guilty to the charge and was fined RM5000<sup>115</sup>.

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<sup>110</sup> Tarrence Tan, 'Swatch Pride watches banned, owning one can lead to 3 years' jail' (*The Star*, 10 August 2023) <<https://www.thestar.com.my/news/nation/2023/08/10/swatch-pride-watches-banned-owning-one-can-lead-to-3-years039-jail>> accessed 20 November 2023

<sup>111</sup> 'Home Ministry bans three publications for immorality, LGBT' (*The Star*, 14 February 2023) <<https://www.thestar.com.my/news/nation/2023/02/14/home-ministry-bans-three-publications-for-immorality-lgbt>> accessed 20 November 2023

<sup>112</sup> Ibid

<sup>113</sup> 'Home Minister, govt win appeal to reinstate ban on 'Gay is okay' book' (*The Star*, 25 September 2023) <<https://www.thestar.com.my/news/nation/2023/09/25/home-minister-govt-win-appeal-to-reinstate-ban-on-gay-is-okay-book>> accessed 20 November 2023

<sup>114</sup> R. Lohewar, 'Home Ministry raids bookstore, seizes a copy of book on Karl Marx and education' (*Malay Mail*, 19 August 2023) <<https://www.malaymail.com/news/malaysia/2023/08/19/home-ministry-raids-bookstore-seizes-a-copy-of-book-on-karl-marx-and-education/85987>> accessed 20 November 2023

<sup>115</sup> Imram Hilmy, 'Home Ministry seizes RM1.1mil worth of sex toys in Bukit Mertajam' (*The Star*, 14 March 2023) <<https://www.thestar.com.my/news/nation/2023/03/14/home-ministry-seizes-rm11mil-worth-of-sex-toys-in-bukit-mertajam>> accessed 20 November 2023

# FREEDOM OF PEACEFUL ASSEMBLY

## *SUARAM*

Despite the change in administration, the longstanding practice of investigating organisers and/or participants for organising and/or participating in public assemblies prevails, especially under Section 9(5)<sup>116</sup> of the Peaceful Assembly Act (PAA) 2012. Although not as highly prevalent as in 2022, unwarranted tactics to intimidate organisers and participants before and after public assemblies are still applied, and in the case of some assemblies that are organised by the political opposition or are perceived to jeopardise public morality, disproportionately implemented.

### **Policing Peaceful Assemblies**

Preliminary media monitoring efforts noted at least 80 individuals investigated for organising or participating in designated public assemblies. In 2022, 188 individuals and 1 organisation were investigated. Limited conclusions can be drawn on whether there was a significant reduction in investigations between 2022 and 2023, as there were four public assemblies of which no specific number of individuals investigated was disclosed.

Unlike in 2022 where the identities of persons investigated were clearly reported, eight out of 14 public assemblies investigated had limited or no corresponding information. On this basis, at least six (3.2%) persons investigated are politicians or known members of political parties, with the remaining consisting of a mix of activists and civilians. In 2022, activists including those from NGOs constituted the biggest group (60.6%) against which investigations were conducted under PAA 2012, with civilians coming second (24.5%) and politicians or political party members third (14.9%).

With regards to laws under which public assemblies are investigated, whilst Section 9(5) of PAA 2012 still predominated (i.e., 78.6%), other provisions from the same acts or other acts were included.

- Two public assemblies that had children as participants were investigated under Section 4(2)(e) and/or (f)<sup>117</sup> of PAA 2012. In the case of the three-day hunger strike by family members of SOSMA detainees outside Sungai Buloh prison<sup>118</sup>, they were also investigated under Section 31<sup>119</sup> of the Child Act 2001.

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<sup>116</sup> Section 9(5) of PAA 2012: “A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit”. The said subsection (1) requires organisers to notify the Officer in Charge of the Police District in which the assembly is to be held five days before the date of the assembly.

<sup>117</sup> Sections 4(2)(e) and (f) of PAA 2012: “A person commits an offence if (e) being a child, he participates in an assembly other than an assembly specified in the Second Schedule; or (f) he recruits or brings a child to an assembly or allows a child to attend an assembly other than an assembly specified in the Second Schedule”. As per the Second Schedule, a child is only allowed to participate in religious assemblies, funeral processions, assemblies related to custom and assemblies approved by the Home Minister.

<sup>118</sup> ‘Cops probe hunger strike by families of Sosma detainees’ (*Free Malaysia Today*, 2 August 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/08/02/cops-probe-hunger-strike-by-families-of-sosma-detainees/>> accessed 20 November 2023

<sup>119</sup> Section 31 of the Child Act 2001 pertains to ill-treatment, neglect, abandonment or exposure of children. Refer to page 42: <https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Malaysia-Child-Act-1.pdf>



- Section 4(2)(b)<sup>120</sup> of PAA 2012 was used in investigations against the Save Malaysia rally organised by Perikatan Nasional (PN) youth. The crowd first gathered at the Masjid Jamek Kampung Baru for prayers, before marching to the Sogo shopping complex where speeches were delivered<sup>121</sup>.
- Three public assemblies were investigated under Section 14<sup>122</sup> of the Minor Offences Act 1955. The Women’s March and a rally in solidarity with the LGBT community were among these assemblies, with the participants’ placard content (that were based on human rights issues such as gender-based violence and discrimination) as the basis for investigations under the said provision – e.g., “Police your behaviour not my body”<sup>123</sup>, “Imagine if men are as disgusted with rape as with periods” and “Gay people are not criminals, being gay is not a crime”<sup>124</sup>.
- Section 186<sup>125</sup> of the Penal Code was also used to investigate two public assemblies – one was the rally in solidarity with the LGBT community and the other was the memorandum submission by farmers and activists outside Parliament<sup>126</sup>.
- Section 4(1)(a)<sup>127</sup> of the Sedition Act 1948 was used in investigations against Himpit 2023. The said gathering held in February 2023 entailed a parade in which participants marched carrying replicas of medieval weapons such as swords and spears<sup>128</sup>.
- A male civilian, on top of Section 9(5) of PAA 2012, was also investigated under Section 500 of the Penal Code and Section 233 of the Communications and Multimedia Act 1998. He allegedly defamed the government outside Jalan Duta Court using a loudspeaker<sup>129</sup>.

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<sup>120</sup> Section 4(2)(b) of PAA 2012: “A person commits an offence if (b) he organises or participates in an assembly held at any prohibited place and within fifty metres from the limit of the prohibited place”. Places of worship are among the prohibited places of assembly listed in the First Schedule of PAA 2012.

<sup>121</sup> Zunaira Saieed, ‘Protest rally held in Kuala Lumpur over charges against Zahid being dropped’ (*The Straits Times*, 16 September 2023) <<https://www.straitstimes.com/asia/se-asia/protest-rally-in-kuala-lumpur-over-charges-being-dropped-against-zahid>> accessed 20 November 2023

<sup>122</sup> Section 14 of the Minor Offences Act 1955: “Any person who uses any indecent, threatening, abusive or insulting words, or behaves in a threatening or insulting manner, or posts up or affixes or exhibits any indecent, threatening, abusive or insulting written paper or drawing with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned, shall be liable to a fine not exceeding one hundred ringgit.”

<sup>123</sup> ‘Women’s march organiser slams cops for probe against rally’ (*Malaysiakini*, 13 March 2023) <<https://www.malaysiakini.com/news/658429>> accessed 20 November 2023

<sup>124</sup> Chantelle Billson, ‘Malaysian official brands LGBTQ+ people ‘perverted’ after eight protestors detained’ (*PinkNews*, 4 August 2023) <<https://www.thepinknews.com/2023/08/04/malaysian-official-brands-lgbtq-people-perverted-after-eight-protestors-detained/>> accessed 20 November 2023

<sup>125</sup> Section 186 of the Penal Code: “Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment for a term which may extend to \*two years or with fine which may extend to \*ten thousand ringgit or with both.”

<sup>126</sup> ‘Cops probe Perak farmers’ march to Parliament’ (*Free Malaysia Today*, 12 September 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/09/12/cops-probe-perak-farmers-march-to-parliament/>> accessed 20 November 2023

<sup>127</sup> Section 4(1)(a) of the Sedition Act 1948: “Any person who does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency... shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years...”

<sup>128</sup> ‘T’ganu Harapan lodges police report over PAS’ Himpit event’ (*Malaysiakini*, 20 February 2023) <<https://www.malaysiakini.com/news/655745>> accessed 20 November 2023

<sup>129</sup> Hafidzul Hilmi Mohd Noor, ‘Polis siasat ucapan lelaki hina PM’ (*Berita Harian*, 11 March 2023) <<https://www.bharian.com.my/berita/nasional/2023/03/1075688/polis-siasat-ucapan-lelaki-hina-pm>> accessed 20 November 2023

It is noteworthy that the Women’s March and rally in solidarity with the LGBT community also entailed (alleged) investigations by the Federal Territories Islamic Department (JAWI). In response to the Women’s March, the Minister in the Prime Minister’s Department (Religious Affairs) Mohd Na'im Mokhtar stated that instructions were given to the Department to assist with the police probe<sup>130</sup>. To the latter rally, on the other hand, statements were obtained from several individuals participating in the rally, with the spokesperson also indicating that legal action and punishment can be taken under the Syariah Criminal Offences (Federal Territories) Act 1997 against any “offences related to beliefs...if proven guilty”<sup>131</sup>.

### List of Individuals/Groups Investigated

No.	Name of Individual(s)	Event (Date)	Status	Laws Investigated
1	10 individuals	Protest outside Swedish embassy on Quran burning (27 Jan)	Investigated	s9(5) of PAA 2012
2		Protest outside Dutch embassy on Quran burning (27 Jan)	Investigated	s9(5) of PAA 2012
3	Yusuf Abdul Hadi	Himpit 2023	Investigated	s4(1)(a) of Sedition Act 1948, s14 of Minor Offences Act 1955
4	35 other individuals			
5	Unknown	Solidarity gathering in support of BERSATU President Muhyiddin Yassin (9 Mar)	Investigated	Not mentioned
6	1 individual	One-person protest outside Jalan Duta Court (11 Mar)	Charged	s9(5) of PAA 2012, s500 of the Penal Code, s233 of the Communications and Multimedia Act 1998
7	7 individuals (speakers, organisers, participants)	Women’s March (12 Mar)	Investigated	s9(5) of PAA 2012, s14 of Minor Offences Act 1955
8	Unreported number of individuals	Himpunan Solidariti Bersama Palestin (7 April)	Investigated	s9(5) of PAA 2012
9	E. Parameiswary	May Day Labour rally (1 May)	Investigated	s9(5) of PAA 2012
10	Unreported number of individuals	Another Labour Day rally (1 May)	Investigated	s9(5) of PAA 2012
11	Ho Chi Yang		Investigated	

<sup>130</sup> ‘Minister instructs Jawi to assist cops on probing women's march’ (*Malaysiakini*, 14 March 2023) <<https://www.malaysiakini.com/news/658580>> accessed 20 November 2023

<sup>131</sup> ‘Police arrest 8 pro-LGBT demonstrators’ (*Malaysiakini*, 31 July 2023) <<https://www.malaysiakini.com/news/673905>> accessed 20 November 2023

12	3 individuals	‘Vehicle ban’ protest in Cameron Highlands (30 June)		s9(5) of PAA 2012
13	8 individuals	Rally in support of LGBT persons outside Sogo Complex (29 July)	Arrested, remanded overnight and released on bail	s9(5) of PAA 2012, s186 of the Penal Code, s14 of the Minor Offences Act 1955
14	Unreported number of individuals	Hunger strike by family members of SOSMA detainees outside Sungai Buloh Prison (31 July – 2 Aug)	Investigated	s4(2) & s9(5) of PAA 2012, s31 of Child Act 2001
15	S Arutchelvan	#LawanLapar outside Parliament (12 Sep)	Investigated	s186 of the Penal Code
16	Sih Sook Hwa			
17	Ayman Hareez			
18	11 individuals*	Save Malaysia rally	Investigated	s4(2)(b), s4(2)(e), s(4)(2)(f), s9(5) of PAA 2012

*\*Although the police stated that 25 individuals were identified, it was subsequently reported that 11 within that list had their statements recorded and investigated in the aforementioned PAA provisions. As such, only 11 were accounted for in the table below.*

Four persons were charged for organising and/or participating in public assemblies in 2023. The said persons were arrested for blocking a bulldozer by the Ipoh Land and Mines Office attempting to destroy farmland in Kanthan, detained till night and ultimately released on bail<sup>132</sup>. Two were activists and two were farmers. The forced eviction will threaten livelihoods of 2000 farmers in the area. This attempted eviction took place less than a week after the issuance of eviction notices to six farmers that only gave them a week’s notice to vacate<sup>133</sup>. It is noteworthy that since 2012, these farmers were promised 30-year lease agreements by the Perak State Development Board, but this promise was not upheld.

#### **List of Individuals/Groups Charged**

No.	Name of Individual(s)	Event (Date)	Status	Laws Investigated
1	Michael Jeyakumar Devaraj	Protest in Kanthan in response to forced eviction (24 Oct)	Charged and released on bail	s186 of the Penal Code
2	Karthiges Manickam			
3	Ho Pon Tien			
4	Kesavan Parvathy			

<sup>132</sup> ‘PSM chairman Dr Michael Jeyakumar, 3 others detained by cops in Kanthan forced land eviction stand-off’ (*Focus Malaysia*, 24 October 2023) <<https://focusmalaysia.my/psm-chairman-dr-michael-jeyakumar-3-others-detained-by-cops-in-kanthan-forced-land- eviction-stand-off/>> accessed 20 November 2023

<sup>133</sup> Peter Boyle, ‘Malaysia: Former socialist MP arrested defending small farmers facing eviction’ (*Green Left*, 1 November 2023) <<https://www.greenleft.org.au/content/malaysia-former-socialist-mp-arrested-defending-small-farmers-facing-eviction>> accessed 20 November 2023

Intimidation tactics and attempts to limit or prohibit assemblies are still applied, albeit to selected public assemblies.

- **Pre-rally tactics** were heavily employed against the Save Malaysia rally. An investigation was opened against a video calling on individuals to join the demonstration<sup>134</sup>. Warnings were issued by the police urging the public to not be involved in “any demonstration that violates the law”. It is also noteworthy that the longstanding narrative of the need for permits for public assemblies to proceed was recycled by the current Deputy Inspector-General of Police. The PN Youth Chief, Bersatu Youth Chief and Gombak Setia assemblyperson were also summoned for questioning three days before the rally<sup>135</sup>.
- **Arrest and detention.** Aside from the afore-described protest in Kanthan, arrest and detention was carried out against the eight members of the Ahmadi Religion of Peace and Light for participating in a rally in solidarity with the LGBT community<sup>136</sup>. All said members were remanded for one day before being released on bail.
- **Police barricade.** This was evident in the #LawanLapar march to Parliament. The Parti Sosialis Malaysia deputy chairperson was blocked on all sides by police officers and prevented from continuing the march from the car park to Parliament<sup>137</sup>.

SUARAM also observes seemingly selective treatment between the Save Malaysia rally and certain other public assemblies.

- Whilst pre-rally warnings were issued by police after the emergence of the video calling for individuals to join the gathering, such warnings were absent in the case of the Save Syariah rally, even after Kedah PAS Commissioner urged the public to join the protest<sup>138</sup>. The Save Syariah rally took place outside the Palace of Justice to oppose two lawyers’ legal bid to nullify 20 provisions under Kelantan’s Syariah Criminal Code (I) Enactment 2019.
- Unlike in the Save Malaysia rally, Section 4(2)(b) was not invoked in two rallies outside Shah Alam and the Federal Territory mosques respectively. The rally outside Shah Alam Mosque was to protest against the government’s move to withdraw its appeal in the Jill Ireland case and defend Muslims’ “exclusive rights to use the word ‘Allah’”<sup>139</sup>. The protest outside Federal Territory Mosque, on the other hand, consisted of more than UMNO members calling for a royal pardon for former Prime Minister Najib Razak<sup>140</sup>. Based on media reporting, it is noteworthy that the police’s responses towards participants across both rallies were disparate. Whilst the police approached speakers to stop the gathering outside the Shah Alam Mosque with speakers needing to negotiate for extension, such attempts were not seen in the gathering outside the Federal Territory

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<sup>134</sup> ‘Cops open investigation paper on ‘Save Malaysia’ rally video’ (*Malaysiakini*, 13 September 2023) <<https://www.malaysiakini.com/news/679070>> accessed 20 November 2023

<sup>135</sup> Cha Zhi Ting, ‘Sept 16 gathering to celebrate Malaysia Day - PN Youth changes tack’ (*Malaysiakini*, 13 September 2023) <<https://www.malaysiakini.com/news/679087>> accessed 20 November 2023

<sup>136</sup> ‘Police arrest 8 pro-LGBT demonstrators’ (*Malaysiakini*, 31 July 2023) <<https://www.malaysiakini.com/news/673905>> accessed 20 November 2023

<sup>137</sup> Keran Raj, ‘PSM blocked from getting to Parliament, but memorandum eventually handed over’ (*The Rakyat Post*, 13 September 2023) <<https://www.therakyatpost.com/news/2023/09/13/psm-blocked-from-getting-to-parliament-but-memorandum-eventually-handed-over/>> accessed 20 November 2023

<sup>138</sup> ‘Public urged to join Nov 20 protest against court challenge’ (*Malaysiakini*, 15 November 2023) <<https://www.malaysiakini.com/news/686684>> accessed 20 November 2023

<sup>139</sup> ‘Malay-Muslim groups gather at S'gor mosque to protest 'Allah appeal’ (*Malaysiakini*, 19 May 2023) <<https://www.malaysiakini.com/news/665711>> accessed 20 November 2023

<sup>140</sup> ‘Over 2k Umno members gather outside mosque, seek pardon for Najib’ (*Malaysiakini*, 21 October 2023) <<https://www.malaysiakini.com/news/683685>> accessed 20 November 2023

Mosque. Interestingly, the Selangor Sultan's decree against gatherings being held at or nearby mosques<sup>141</sup> was quoted by the police as a basis to halt the gathering, instead of Section 4(2)(b) of PAA 2012.

### **Court Developments of Past Peaceful Assemblies**

Case management for the Malaysian Bar's (plaintiffs) lawsuit seeking compensation from the police and government (defendants) for preventing the 500-lawyer Walk for Judicial Independence<sup>142</sup> to Parliament on 17 June 2022 was fixed on 12 January 2023. In the lawsuit filed in October 2022, the plaintiffs claimed that the participants were falsely restrained and imprisoned between 10.35am and 11.15am by the defendants, when they were forcibly confined at the Padang Merbok car park within the plastic barricades constructed by police under the direction of the officer-in-charge of the Dang Wangi police district<sup>143</sup>. This was argued to have deprived the participants of their rights under Articles 5, 8, 9 and 10 of the Federal Constitution. In addition, the plaintiffs contended that the defendants contravened their rights under PAA and breached statutory duties under the Peaceful Assembly Act 2012<sup>144</sup>. Two months later in December 2022, the police filed a statement of defence, arguing that false imprisonment is a misstatement, as the plaintiffs were only barred from proceeding to the Parliament building and never prevented from leaving the car park<sup>145</sup>. The police also claimed that the Malaysian Bar was informed beforehand that any procession to Parliament was prohibited and justified their action based on having received objections from a nearby school and Bank Negara Malaysia and the no-procession terms were instructions from higher-ups. The defendants maintained that no arrests were done during the assembly and their actions were lawful.

On 7 February 2023, Parti Muda Secretary-General Amir Hariri Abd Hadi filed a preliminary objection to strike out the charge against him under Section 9(1) of PAA 2012 over the 1 August rally held last year on the RM6 billion littoral combat ship scandal<sup>146</sup>. Amir pleaded not guilty to the charge in the Kuala Lumpur Magistrate's Court within the same month in 2022<sup>147</sup>. The court set 20 March 2023 for all parties involved to file their written submissions, with the preliminary objection hearing scheduled to take place a week later.

On another note, the same charge under Section 9(1), albeit in a different rally, against a member of one of the parties within the current ruling government was recently withdrawn. Amanah Youth Chief Hasbie Muda was freed by the Kuala Lumpur Magistrate's Court in April 2023, and the acquittal took place a month after submission of representation<sup>148</sup>. In August 2022, Hasbie was charged alongside two others over their involvement in the Turun Malaysia

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<sup>141</sup> On 22 July 2023, the Selangor Islamic Religious Department (JAIS) directed all mosques and suraus in the state to ban any form of political activities or programmes within the perimeters of such places of worship, including the putting up of political party banners, slogans or logos.

<sup>142</sup> The Walk for Judicial Independence was to raise public awareness of the Malaysian Anti-Corruption Commission's (MACC) investigations against Court of Appeal judge Mohd Nazlan Mohd Ghazali, who presided over former Prime Minister Najib Razak's SRC International corruption case

<sup>143</sup> Hidir Reduan Abdul Rashid, 'Bar seeks compensation from cops for barring march to Parliament' (*Malaysiakini*, 29 November 2022) <<https://www.malaysiakini.com/news/646082>> accessed 20 November 2023

<sup>144</sup> Ibid

<sup>145</sup> Hidir Reduan Abdul Rashid, 'Lawyers already told procession to Parliament not allowed – police' (*Malaysiakini*, 11 January 2023) <<https://www.malaysiakini.com/news/651159>> accessed 20 November 2023

<sup>146</sup> 'Muda sec-gen files application to strike out charge over LCS' (*Malaysiakini*, 8 February 2023) <<https://www.malaysiakini.com/news/654366>> accessed 20 November 2023

<sup>147</sup> 'Muda sec-gen charged over LCS protest' (*Malaysiakini*, 26 August 2022) <<https://www.malaysiakini.com/news/633523>> accessed 20 November 2023

<sup>148</sup> 'Cost-of-living rally: PAA charge dropped against Amanah Youth chief' (*Malaysiakini*, 19 April 2023) <<https://www.malaysiakini.com/news/662687>> accessed 20 November 2023

rally, which was over rising prices of goods<sup>149</sup>. The case status of the two other individuals, Batu PKR Youth chief Muhammad Sabda Suluh Lestari Yahya and International Islamic University Malaysia president Aliff Naif, is unknown.

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<sup>149</sup> ‘Three charged over price hike protest gatherings in KL’ (*The Star*, 18 August 2023) <<https://www.thestar.com.my/news/nation/2022/08/18/three-charged-over-price-hike-protest-gatherings-in-kl>> accessed 20 November 2023

# FREE AND FAIR ELECTIONS

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## Six State Elections

In the states of Kedah, Kelantan, Terengganu, Penang, Selangor and Negeri Sembilan, elections were held after the 15th General Election (PRU15), as these six states did not dissolve their State Assemblies (DUN) alongside Parliament's House of Representatives on 10 October 2022. Kedah, Kelantan and Terengganu were under Barisan Nasional (BN) Perikatan Nasional (PN), whilst Selangor, Penang and Negeri Sembilan were under Pakatan Harapan (PH).

All six states dissolved their DUN on different dates. The earliest states to do so were Kelantan on 22 June 2023, with the last being Negeri Sembilan on 1 July 2023. Despite these different DUN dissolution dates, all six state elections (PRN6) ran concurrently on 12 August 2023<sup>150</sup> that involved over 9.7 million voters. Turnout for all six states was 70.73%. The state with the highest voter turnout was Terengganu at 74.79%, whilst Kelantan was the lowest at 60.96%<sup>151</sup>. Nevertheless, voter turnout in PRN6 is improved, compared to that observed in other state elections in 2022 held separately from PRU15, namely Sabah (66.1%), Melaka (65.85%), Sarawak (60.77%) and Johor (54.92%). 70% of voter turnout is the threshold that election watchdogs such as the Coalition for Clean and Fair Elections (BERSIH) usually use to indicate the legitimacy of the newly formed government after the elections.

The state elections this time were akin to the general election albeit on a smaller scale, whereby more than 40% of voters decided which political party or coalition will lead the respective states over the next five years.

## By-Elections

There were several by-elections that took place at the same time as and also after PRN6. These by-elections are held in light of unexpected vacancies such as due to the Election Court's decision nullifying the elected candidate as is the case with the Kuala Terengganu by-election and Kemaman by-election, and deaths of incumbents such as Dato' Salahuddin Ayub, Member of Parliament for Pulau and State Assemblyperson for Simpang Jeram in Johor, as well as Datuk Seri Johari Harun, State Assemblyperson for Pelangai in Pahang.

## Election Petition

An election petition can be filed at the Election Court to challenge election results, in light of election practices that allegedly violate the Election Offences Act 1954 (EOA). The burden of proof is in tandem with criteria set out in Section 32 of EOA. The election of a candidate will be declared void, if the Election Judge found evidence of extensive prevalence of bribery, corruption, treating or intimidation that they may be "reasonably supposed to have affected" election results; or non-compliance with provisions of any written law relating to the conduct of any election and that such non-compliance affected election results, among others.

After GE15, the following petitions were filed:

1. By Gabungan Rakyat Sabah's Tuaran candidate Datuk Joniston Bangkuai against member of Parliament (MP) from the Pakatan Harapan coalition (PH), Datuk Seri Madius Tangau, seeking a court order to determine Madius was not duly elected as

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<sup>150</sup> Election Commission's press statement Bil 12/2023, 5 July 2023

<sup>151</sup> Election Commission's press statement Bil 22/2023, 13 August 2023

Tuaran MP during GE15 and that the said election was void. The election petition was struck out<sup>152</sup>.

2. By the Parti Kesejahteraan Demokratik Masyarakat (KDM) president Datuk Peter Anthony against the Tenom Returning Officer for rejecting his nomination papers in GE15. This election petition was struck out by the Election Court in March 2023, with subsequent appeal against the decision also unsuccessful<sup>153</sup>.
3. By PH's Putatan candidate, Awang Hussaini Ramli, against Datuk Shahelmey Yahaya, who contested under Barisan Nasional (BN) in GE15. The election petition was filed in December 2022, and was dismissed by the Federal Court in August 2023<sup>154</sup>.
4. By United Malays National Organisation's (UMNO) Gua Musang candidate, Tengku Razaleigh Hamzah, against MP Mohd Azizi Abu Naim from the Perikatan Nasional coalition (PN). This was to challenge the parliamentary constituency's election outcomes, allegedly because of money politics. The petition was struck out, as the petitioner fired all his lawyers<sup>155</sup>.
5. By BN's Segamat candidate, Tan Sri M. Ramasamy, against MP R. Yuneswaran under PH, on allegations of treating activities under Section 8 of EOA. The Muar High Court dismissed the petition on 3 April 2023, to which Ramasamy filed an appeal to the Federal Court to send back his Segamat election petition to the Election Court for a full hearing. The Federal Court allowed this appeal<sup>156</sup>.
6. By Putrajaya UMNO division vice-chief Datuk Ahmad Faisal Abdul Karim against MP Mohd Radzi Jidin from PN, on alleged corruption during GE15 by Radzi and his agent. The petition was filed in February 2023, to which Radzi filed a preliminary objection in March to strike out the petition. Karim's appeal to remit back the election petition to the High Court for a full hearing was dismissed.
7. By Marang's BN candidate Jasmira Othman against MP Abdul Hadi Awang from PAS on alleged corruption. The petition was rejected by the Election Judge<sup>157</sup>.
8. By Masjid Tanah's BN candidate Abdul Hakim Abdul Wahid against MP Mas Ermieyati, on allegations of bribery and treating activities. The petition was dismissed by the Election Judge<sup>158</sup>.
9. By Kuala Terengganu's BN candidate Mohd Zubir Embong against MP Ahmad Amzad Hashim on allegations of bribery via the i-Student, i-Belia and i-Pencen programmes by the Terengganu state government. The Election Court accepted the petition and

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<sup>152</sup> Ersie Anjumin, 'Joniston's election petition struck out, Madius remains Tuaran MP' (*New Straits Times*, 23 March 2023) <<https://www.nst.com.my/news/crime-courts/2023/03/892106/jonistons-election-petition-struck-out-madius-remains-tuaran-mp>> accessed 7 November 2023

<sup>153</sup> Ersie Anjumin, 'Peter Anthony's election petition struck out, Riduan Rubin confirmed Tenom MP' (*New Straits Times*, 15 March 2023) <<https://www.nst.com.my/news/crime-courts/2023/03/889513/peter-anthonys-election-petition-struck-out-riduan-rubin-confirmed>> accessed 7 November 2023

<sup>154</sup> Izwan Abdullah, 'Shahelmey kekalkan kerusi Parlimen Putatan' (*New Straits Times*, 10 March 2023) <<https://www.bharian.com.my/berita/nasional/2023/03/1075073/shahelmey-kekalkan-kerusi-parlimen-putatan>> accessed 7 November 2023

<sup>155</sup> 'Mahkamah batal petisyen pilihan raya Gua Musang, Pas terkejut pempetisyen pecat peguam' (*Astro Awani*, 5 September 2023) <<https://www.astroawani.com/berita-politik/mahkamah-batal-petisyen-pilihan-raya-gua-musang-pas-terkejut-pempetisyen-pecat-peguam-435996>> accessed 7 November 2023

<sup>156</sup> 'Mahkamah Persekutuan benarkan rayuan cabar keputusan pilihan raya Segamat' (*Astro Awani*, 18 October 2023) <<https://www.astroawani.com/berita-malaysia/mahkamah-persekutuan-benarkan-rayuan-cabar-keputusan-pilihan-raya-segamat-433512>> accessed 7 November 2023

<sup>157</sup> Mohd Azli Adlan, 'Mahkamah: Petisyen PRU15 Parlimen Marang ditolak' (*Kosmo!*, 27 June 2023) <<https://www.kosmo.com.my/2023/06/27/mahkamah-petisyen-pru15-parlimen-marang-ditolak/>> accessed 7 November 2023

<sup>158</sup> Nor Farhana Yaacob, 'Mas Ermieyati kekal Ahli Parlimen Masjid Tanah' (*Sinar Harian*, 27 October 2023) <<https://www.sinarharian.com.my/article/631688/berita/semasa/mas-ermieyati-kekal-ahli-parlimen-masjid-tanah>> accessed 7 November 2023



annulled Amzad's appointment<sup>159</sup>. A by-election was held concurrently with the Terengganu state election on 12 August 2023, and Amzad retained his victory.

10. By voters in the Kemaman constituency against MP Che Alias Hamid for alleged bribery via the i-Student, i-Belia and i-Pension programmes by the Terengganu state government. The Election Court dismissed the petition. The petitioners filed an appeal at the Federal Court, which was reinstated by the latter on the basis that there were issues meriting a full hearing at the Election Court. Hamid's victory was eventually nullified in September 2023, with the Election Court ruling that the petitioners succeeded in proving beyond a reasonable doubt that corruption with the aim of influencing voters in GE15 took place.

### **Issue of Access to Voting**

Due to close proximity in dates of PRU15 and PRN6 in 2023 (i.e., around eight to nine months), there was concern that uncertainties in dates of DUN dissolution and polling might lead to a low voter turnout. In this context, Chief Ministers from the six states met to discuss the respective DUN dissolution dates and came to a consensus that all DUN dissolutions were to take place within the last two weeks of June<sup>160</sup>.

On that basis, several organisations such as BERSIH issued statements opining that the Election Commission (EC) can announce the election dates as early as six months in advance, based on the deadlines of DUN dissolution for each of the six states, to enable a higher voter turnout<sup>161</sup>. Issuing early announcements of election dates provides more time to all parties, especially enforcement authorities such as the EC and the Royal Malaysian Police, as well as the voters, can make their preparations or plans for the state elections accordingly.

In terms of postal voting, with the exclusion of three parliamentary seats in Terengganu due to election petitions, it is estimated 157318 postal votes were issued for the six states during PRU15<sup>162</sup>. For PRN 6, 102070 postal votes were issued for the six states<sup>163</sup>.

### **Misuse of MyKad for Voting**

Parliament approved automatic voter registration alongside the constitutional amendment on the lowering of voting age to 18 years old in 2019, with the former subsequently being gazetted for implementation on 15 December 2021<sup>164</sup>. Prior to the implementation of automatic voter registration, Malaysian citizens who were old enough to vote had to complete the application forms and submit them to the Election Commission (EC), with voter registration results released by the EC once every three months. Now, however, Malaysians who are 18 years old will automatically be registered as voters by the EC, based on information obtained from the

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<sup>159</sup> 'Mahkamah batal kemenangan Ahmad Amzad di kerusi Parlimen Kuala Terengganu' (*Berita Harian*, 27 June 2023) <<https://www.bharian.com.my/berita/nasional/2023/06/1119741/mahkamah-batal-kemenangan-ahmad-amzad-di-kerusi-parlimen-kuala>> accessed 7 November 2023

<sup>160</sup> Nailah Huda, 'PRN: Enam negeri sepakat bubar DUN dua minggu terakhir Jun' (*Astro Awani*, 22 February 2023) <<https://www.astroawani.com/berita-malaysia/prn-enam-negeri-sepakat-bubar-dun-dua-minggu-terakhir-jun-407732>> accessed 7 November 2023

<sup>161</sup> Sofia Zahari, 'Announce date of state polls 6 months in advance, says Bersih' (*Free Malaysia Today*, 23 February 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/02/23/announce-date-of-state-polls-6-months-in-advance-says-bersih/>> accessed 7 November 2023

<sup>162</sup> This is based on Tindak Malaysia's (a electoral reform group that endorses Bersih) internal study on postal votes for PRU15

<sup>163</sup> EC Media Statement 19/2023 - <https://www.spr.gov.my/sites/default/files/KM192023.pdf>

<sup>164</sup> 'Undi18: Pendaftaran automatik berkuat kuasa 15 Disember' (*Astro Awani*, 2 December 2021) <<https://www.astroawani.com/berita-malaysia/undi18-pendaftaran-automatik-berkuat-kuasa-15-disember-333981>> accessed 7 November 2023

National Registration Department (NRD). In GE15, election monitoring bodies such as BERSIH only found three cases<sup>165</sup> in which voters were unable to vote as their names were not within the voter registration list<sup>166</sup>.

The Royal Malaysian Police (RMP), on the other hand, reported receiving as many as 94 complaints regarding misuse of MyKad by other parties to vote<sup>167</sup>. This development is very concerning, as it deprives affected persons of their right to vote and participate in democracy. This misconduct is an offence under Section 7(1) of the Election Offences Act 1954. To date, the police have not provided updates on investigation outcomes.

### Misuse of Government Resources

Across the 6PRN and by-elections, instances of abuse of the federal government's (non-caretaker government) powers to influence voters were observed during the election period. The Deputy Prime Minister Datuk Seri Zahid Hamidi's announcement on the RM500,000 allocation to several youth organisations in Terengganu<sup>168</sup> during the Kuala Terengganu by-election period is an example of this. It is clearly implied in his announcement that the allocation will be given if a ruling party of the unity government is elected as the state government. Another prominent example is the announcement by the current Deputy Education Minister Lim Hui Ying on providing additional funding of over RM110,000 to three vernacular schools (SJK) during the Pelangai by-election period<sup>169</sup>.

This is perpetuated by the lack of strong legal frameworks to define and circumscribe powers of caretaker and non-caretaker governments during the election period. Only one guideline limiting powers of caretaker governments has been issued thus far in 2021 whilst the eighth Prime Minister, Tan Sri Muhyiddin Yassin, was in power<sup>170</sup>. Election monitoring bodies such as BERSIH, on the other hand, has issued recommendations to limit the powers of the non-caretaker government via prohibition of the 3Cs (no condition, no campaign and no candidate)<sup>171</sup>.

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<sup>165</sup> Election Observation Report on the 15<sup>th</sup> Malaysian General Election, The Coalition on Free and Fair Elections (BERSIH) <<https://bersih.org/download/ge15-observation-report/>>

<sup>166</sup> Police in the state of Penang received 33 reports, whilst police in the state of Melaka received 5 reports on misuse of voters' MyKad to vote.

<sup>167</sup> 'Polis terima 94 laporan guna Mykad orang lain untuk mengundi' (*Malaysiakini*, 13 August 2023) <<https://www.malaysiakini.com/news/675536>> accessed 7 November 2023

<sup>168</sup> 'Peruntukan RM250,000 kepada Majlis Belia Negeri Terenggan' (*Astro Awani*, 28 July 2023) <<https://www.astroawani.com/videos/video-terkini-x7sio1/peruntukan-rm250000-kepada-majlis-belia-negeri-terengganu-x8mucjw>> accessed 7 November 2023

<sup>169</sup> 'Three schools get additional allocation for upgrading work' (*The Star*, 22 September 2023) <<https://www.thestar.com.my/news/nation/2023/09/22/three-schools-get-additional-allocation-for-upgrading-work>> accessed 7 November 2023

<sup>170</sup> 'Kenyataan media: Fungsi dan peranan kerajaan caretaker' <[https://ksn.gov.my/images/pdf/KERAJAAN\\_CARETAKER.pdf](https://ksn.gov.my/images/pdf/KERAJAAN_CARETAKER.pdf)> accessed 7 November 2023

<sup>171</sup> 'Tanpa Syarat, Tanpa Kempen, Tanpa Calon: Panduan Mencegah Salah Guna Kelebihan Penyandang Untuk Kempen Pilihan Raya' (*BERSIH*, 20 July 2023) <<https://bersih.org/2023/07/20/panduan-mencegah-salah-guna-kelebihan-penyandang-untuk-kempen-pilihan-raya/>> accessed 7 November 2023

# FREEDOM OF RELIGION AND BELIEF

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This 2023 report highlights ongoing challenges and controversies related to religious freedom and the laws of religious practices and expressions in Malaysia, particularly in the context of Islam as the state religion and its interactions with other faiths. Violations of the right to religious freedom at the state level have ramifications that extend beyond state-sponsored discrimination. But it also has an alarming societal impact of creating a justification for coercion and violence.

## Religious Blasphemy

Malaysia is one of the countries that sanction insults and dissenting views against individuals for offending, insulting or denigrating religious doctrines, symbols, authorities or institutions. At the federal level, several laws<sup>172</sup> are commonly used to curb religious blasphemy or insult from those with the intention to cause disharmony among Malaysians. However, in most cases, the laws were selectively used to only sanction religious insults against Islam, the majority religion, but not other religions. On the other hand, at the state level, there are a total of 89 provisions in the state sharia Criminal Enactments or Acts and fatwas that sanction religious blasphemy<sup>173</sup>. Offences under the sharia typically involve insults or bringing into contempt the religion of Islam and its institution in Malaysia.

In March, a 40-year-old man was detained by the police for allegedly insulting Islam, Allah and the Prophet, through his Facebook account<sup>174</sup>. He then faced 10 counts of charges for intentionally making and initiating transmission of offensive communication mixed with insults<sup>175</sup>. In the same month, a 27-year-old man was also detained for allegedly insulting the royal institution and making racially insensitive statements through his Twitter account<sup>176</sup>. This comes after the Royal Malaysia Police (PDRM) established a special team to investigate cases that involve insults against religion, race and the royal institution (3R) the month prior<sup>177</sup>.

Additionally in March, a 2021 indie film *Mentega Terbang* came under the spotlight and faced the fury of religious conservatives for allegedly coaxing children to question and leave

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<sup>172</sup> Section 298 and 298A (1) of the Penal Code, Section 3 (1) and 4 (1) of the Sedition Act 1948, Section 233 of the Communications and Multimedia Act 1998 and Section 7 (1) of the Printing Presses and Publications Act 1984

<sup>173</sup> INITIATE.MY, 'Database on Malaysian Laws that Impact Freedom of Religion and Belief (FORB)' <<https://initiate.my/freedom-of-religion-and-belief/>> accessed 8 November 2023

<sup>174</sup> Austin Camoens, 'Man arrested in Wangsa Maju for allegedly insulting Islam' (*The Star*, 10 May 2023) <<https://www.thestar.com.my/news/nation/2023/05/10/man-arrested-in-wangsa-maju-for-allegedly-insulting-islam>> accessed 8 November 2023

<sup>175</sup> 'In Johor, trader charged with insulting God, Islam and Prophet on Facebook' (*Malay Mail*, 7 June 2023) <<https://www.malaymail.com/news/malaysia/2023/06/07/in-johor-trader-charged-with-insulting-god-islam-and-prophet-on-facebook/73076>> accessed 8 November 2023

Man accused of insulting God, Islam and prophet' (*Free Malaysia Today*, 7 June 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/06/07/man-accused-of-insulting-god-islam-and-prophet/>> accessed 8 November 2023

<sup>176</sup> 'Man arrested for allegedly insulting royalty, making racially provocative statements on Twitter' (*New Straits Times*, 26 May 2023) <<https://www.nst.com.my/news/crime-courts/2023/05/913464/man-held-allegedly-insulting-royal-institution-racial-provocation>> accessed 8 November 2023

<sup>177</sup> 'Police set up special team to investigate cases involving insults to religion, race and royal institution' (*Malay Mail*, 8 April 2023) <<https://www.malaymail.com/news/malaysia/2023/04/08/police-set-up-special-team-to-investigate-cases-involving-insults-to-religion-race-and-royal-institution/63859>> accessed 8 November 2023

Islam<sup>178,179</sup>. The film was finally banned in September following a publication of a government gazette under the Film Censorship (Prohibition) Order 2023<sup>180</sup>. Amidst backlash against the film, the director and screenwriter received death threats and sexual harassment. Both of them also faced real life aggression when their cars were damaged by paint and acid<sup>181</sup>.

While laws designed to prevent religious blasphemy come with the intention of maintaining social harmony, the selective application of these laws and the presence of state-level provisions prohibits critical thinking and a cross-cultural perspective in assessing the legal system's consistency. Additionally, as illustrated above, laws enacted by the state create an enabling and conducive environment for intolerance and extremist behaviour to thrive. This has allowed for a condition of state-sponsored discrimination, wherein ordinary citizens take the law into their own hands to commit violence against those with whom they disagree.

### Unilateral Conversion of Minors

Unilateral conversion of minors refers to the process by which a child's religion is converted without the consent of both parents. The Federal Court's ruling on *Indira Gandhi a/p Mutho v. Pengarah Jabatan Agama Islam Perak & Ors*<sup>182</sup> back in 2018 has set a positive precedent declaring that unilateral conversions of children to Islam as unlawful. Nevertheless, the issue of unilateral conversion has still persisted as one of the major issues when it comes to the exercise of religious freedom in Malaysia.

In March, Indira Gandhi along with two other women who claimed to be victims of unilateral conversion to Islam joined 11 other plaintiffs in filing a legal challenge against 8 state governments over state laws that allowed unilateral conversions without the consent of both parents<sup>183</sup>.

In another case, a mother of 3 whose children were converted to Islam by her former husband in 2020. Loh Siew Hong sought declaration that her children are Hindus and that they were legally unfit to embrace Islam without her consent. Additionally, she seeks to reverse her children's Certificate of Conversion dated on July 7th, 2020. In May, the High Court ruled that

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<sup>178</sup> Hadi Azmi, 'Malaysia filmmakers face fury of religious conservatives as Mentega Terbang becomes latest cultural war target' (*South China Morning Post*, 12 March 2023) <<https://www.scmp.com/week-asia/lifestyle-culture/article/3213144/malaysia-filmmakers-face-fury-religious-conservatives-mentega-terbang-becomes-latest-cultural-war>> accessed 8 November 2023

'Seniman lodges police report over movie that allegedly insults Islam' (*New Straits Times*, 3 March 2023) <<https://www.nst.com.my/news/crime-courts/2023/03/885641/seniman-lodges-police-report-over-movie-allegedly-insults-islam>> accessed 8 November 2023

<sup>179</sup> 'Kenyataan Media Isu Filem "Mentega Terbang"' (*Kementerian Dalam Negeri*, 3 March 2023) <[https://www.moha.gov.my/images/Agensi/UKOM/KENYATAAN\\_MEDIA\\_ISU\\_FILEM\\_MENTEGA\\_TERBANG1.pdf](https://www.moha.gov.my/images/Agensi/UKOM/KENYATAAN_MEDIA_ISU_FILEM_MENTEGA_TERBANG1.pdf)> accessed 8 November 2023

<sup>180</sup> Kenneth Tee, 'Govt bans 'Mentega Terbang' film and its related publicity materials' (*Malay Mail*, 13 September 2023) <<https://www.malaymail.com/news/malaysia/2023/09/13/govt-bans-mentega-terbang-film-and-its-related-publicity-materials/90576#:~:text=KUALA%20LUMPUR%2C%20Sept%202013%20%E2%80%94%20Putrajaya,and%20published%20on%20September%2021>> accessed 8 November 2023

<sup>181</sup> 'Mentega Terbang' director receives death threats' (*Free Malaysia Today*, 16 March 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/03/16/mentega-terbang-director-receives-death-threats/>> accessed 8 November 2023

<sup>182</sup> *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545

<sup>183</sup> Nurbaiti Hamdan, 'M. Indira Gandhi and 13 other plaintiffs file legal challenge against unilateral conversion' (*The Star*, 20 March 2023) <<https://www.thestar.com.my/news/nation/2023/03/20/m-indira-gandhi-and-13-other-plaintiffs-file-legal-challenge-against-unilateral-conversion#:~:text=KUALA%20LUMPUR%3A%20Hindu%20mother%20M,the%20consent%20of%20both%20parents>> accessed 8 November 2023

the conversion of her three children is valid and done in accordance with the law<sup>184</sup>. Even so, Loh was granted sole custody and guardianship of both children. In October, the High Court dismissed an application by the Perlis Islamic Religious and Malay Customs Council (MAIPs) to provide Islamic education to the three child converts since Loh is a non-Muslim<sup>185</sup>.

Transferring custody of a Muslim child to a non-Muslim parent is considered an offence under sharia criminal laws in Malaysia. The justification behind this legal provision often rests on the concept of coercion which suggests that the conversion of one parent places undue pressure on the child's religious upbringing. This then led to the transfer of custody to the Muslim parent or guardian, thereby ensuring the child's adherence to Islamic practices and beliefs.

### **Moral Policing**

The imposition of a particular set of moral standards based on traditional and conservative values are not a foreign concept within Malaysian society. This typically involves regulating the behaviour and lifestyle choice of others in public spaces. For instance, indecent acts<sup>186</sup> and exposing *aurat*<sup>187</sup> in public places are considered offences under the Kelantan sharia Criminal Code (I) Enactment 2019.

In January, the Permatang Pauh MP met the management of Sunway Carnival Mall to voice his uneasiness on how alcohol was being openly sold at the mall during the upcoming Chinese New Year celebration. Even though the promotion was aimed towards non-Muslims and carried out in accordance with the law, the management decided to adhere to his request to remove the alcohol sales<sup>188</sup>.

In January, a woman was denied entry to a police station in Kajang following a car accident because her attire was deemed inappropriate<sup>189</sup>. Similarly in February, a woman was refused entry to the Kampar Hospital for treatment due to her attire<sup>190</sup>. Witnesses reported that the woman was scolded by medical staff for her 'indecent dress'. In March, another woman was barred from entering the Companies Commission of Malaysia (SSM) building by an employee who said she failed to comply with the dress code guidelines<sup>191</sup>. In April, seven men were

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<sup>184</sup> Rahmat Khairulrijal, 'High Court rules conversion of 3 children to Islam valid' (*New Straits Times*, 11 May 2023) <<https://www.nst.com.my/news/crime-courts/2023/05/908204/high-court-rules-conversion-3-children-islam-valid#:~:text=KUALA%20LUMPUR%3A%20Hindu%20mother%20Loh,four%20years%20ago%20is%20valid>> accessed 8 November 2023

<sup>185</sup> 'High Court rejects MAIPs bid to provide Islamic education to child converts' (*The Star*, 11 October 2023) <<https://www.thestar.com.my/news/nation/2023/10/11/high-court-rejects--maips-bid-to-provide-islamic-education-to-child-converts>> accessed 8 November 2023

<sup>186</sup> Section 21 of the Kelantan Syariah Criminal Code (I) Enactment 2019

<sup>187</sup> Section 23 of the Kelantan Syariah Criminal Code (I) Enactment 2019

<sup>188</sup> Audrey Dermawan, 'Permatang Pauh MP gets mixed reactions over alcohol sale objection' (*New Straits Times*, 10 January 2023) <<https://www.nst.com.my/news/nation/2023/01/869001/permatang-pauh-mp-gets-mixed-reactions-over-alcohol-sale-objection>> accessed 8 November 2023

<sup>189</sup> Reshna Reem Ganesan, 'Woman denied entry to police station over attire' (*Free Malaysia Today*, 31 January 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/01/31/woman-in-shorts-denied-entry-to-police-station/>> accessed 8 November 2023

<sup>190</sup> 'Another woman refused entry for wearing shorts, this time at a hospital' (*The Vibes*, 14 February 2023) <<https://www.thevibes.com/articles/news/85268/another-woman-refused-entry-for-wearing-shorts-this-time-at-a-hospital>> accessed 8 November 2023

<sup>191</sup> Manjit Kaur, 'Hemline hullabaloo: Women barred from govt building in Ipoh over dressing' (*The Star*, 10 March 2023) <<https://www.thestar.com.my/news/nation/2023/03/10/hemline-hullabaloo-woman-barred-from-govt-building-in-ipoh-over-dressing>> accessed 8 November 2023

issued a warning for wearing shorts in Tanah Merah, Kelantan<sup>192</sup>. The offence carried a fine of up to RM1,000 or six months in prison, if convicted.

In June, a RELA officer was suspended after he denied a woman in a skirt from entering a SOCSO building in Penang<sup>193</sup>. In July 2023, a non-Muslim woman was fined in Kelantan for wearing shorts in her own clothing store<sup>194</sup>. She was fined under Section 34(2)(b) of MPKB's Business and Industrial Trade By-Laws 2019. Many expressed their concerns and fears that non-Muslims were being subjected to Muslim standards. In October, a state tourism exco member said that Terengganu will ramp up enforcement of Shariah dress code of visitors by working with companies to ensure compliance<sup>195</sup>.

Additionally, a famous moral vigilante and anti-vice group in Sungai Petani, Skuad Badar has organised multiple raids this year. In January, the group caught a couple on the night of New Year's Eve for *khalwat*<sup>196</sup>. In September, the group organised a raid to catch trans women in Sungai Petani<sup>197</sup>. Khalwat and crossdressing are both criminal offences under the sharia law in Kedah.

Moral policing provisions under the sharia law does not only empower religious authorities to prosecute Muslims who commit moral offences within the purview of the state jurisdiction. It has also inspired other Muslims to take laws into their own hands to impose their moral standard upon others. The moral vigilante or anti-vice group is one of the newest phenomena that inspire normal citizens, whether individually or in groups to coerce Islamic principles that impact Muslims and non-Muslims alike. In most cases, women are the victims of this issue.

### Prosecution Against Religious Minorities

Malaysia officially recognises only Sunni Islam, and non-Sunni denominations, including Shia, Ahmadiyya, some Sufi Tariqat, and religious-based cult groups, are considered deviant mainly in gazetted fatwas that have a legal binding effect. Practising these minority religions can lead to legal punishment for false worship, teaching without permission, and spreading religious doctrine.

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<sup>192</sup> 'Expect 1 year jail for wearing shorts in Kelantan' (*Focus Malaysia*, 1 April 2023) <<https://focusmalaysia.my/expect-1-year-jail-for-wearing-shorts-in-kelantan/>> accessed 8 November 2023

<sup>193</sup> Adie Zulkifli, 'Rela member denying entry to woman over dress code an isolated incident, insists Saifuddin' (*New Straits Times*, 3 July 2023) <<https://api.nst.com.my/news/nation/2023/07/926827/rela-member-denying-entry-woman-over-dress-code-isolated-incident-insists>> accessed 8 November 2023

<sup>194</sup> Eileen Ng, 'Non-Muslim Malaysian woman fined for wearing shorts in Kelantan' (*The Straits Times*, 3 July 2023) <<https://www.straitstimes.com/asia/se-asia/non-muslim-malaysian-woman-fined-for-wearing-shorts-in-kelantan#:~:text=Non%2DMuslim%20Malaysian%20woman%20fined%20for%20wearing%20shorts%20in%20Kelantan,-The%20unnamed%20woman&text=A%20non%2DMuslim%20woman%20in,authority%20to%20cancel%20the%20fine>> accessed 8 November 2023

<sup>195</sup> 'Terengganu to ramp up enforcement of Shariah dress code' (*Free Malaysia Today*, 8 October 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/10/08/terengganu-to-ramp-up-enforcement-of-shariah-dress-code/>> accessed 8 November 2023

<sup>196</sup> azharmohamadat. [Bani Tanah Jawi] (2023, January 1). [TikTok video]. TikTok. <[https://www.tiktok.com/@azharmohamadat/video/7183562010460785946?\\_r=1&\\_t=8gQKEVwR3VS](https://www.tiktok.com/@azharmohamadat/video/7183562010460785946?_r=1&_t=8gQKEVwR3VS)> accessed 8 November 2023

<sup>197</sup> azharmohamadat. [Bani Tanah Jawi] (2023, September 18). [TikTok video]. TikTok. Taman Jubli Adalah Tempat Orang Awam Beriadah, Dan Bukannya Tempat Melakukan Aktiviti Tidak Bermoral. <[https://www.tiktok.com/@azharmohamadat/video/7280025932625169665?\\_r=1&\\_t=8gQKI5WLCVT](https://www.tiktok.com/@azharmohamadat/video/7280025932625169665?_r=1&_t=8gQKI5WLCVT)>

The status for Shia and Ahmadiyya Muslims has remained the same in 2023. In total, there are 15 gazetted fatwas against the Shia community and 4 counts of gazetted fatwas against Ahmadiyya Muslims since 1997<sup>198</sup>.

In the newest development, the Perak Fatwa Council in July has declared the teachings of Si Hulk (Society of Islamic Holisticism Universal Linkage Knowledge) group, which was founded by Suhaini Mohammad, as deviant. In the same month, the Johor Islamic Religious Department (JAINJ) announced that they will be working with the Malaysian Communications and Multimedia Commission (MCMC) and PDRM to investigate and curb the spread of the Si Hulk group<sup>199</sup>. About 150 of Si Hulk followers were reportedly seeking asylum in New Zealand to avoid prosecution from the Malaysian government<sup>200</sup>. Previously in 2021, Melaka<sup>201</sup> and Johor<sup>202</sup> Fatwa committees also declared Si Hulk teaching as deviant.

In February, the Johor Islamic Religious Council (MAINJ) issued a fatwa prohibiting Muslims from attending and participating in religious rituals of other faiths<sup>203</sup>. Sultan Ibrahim of Johor clarified that Muslims can still attend festivities of other faiths, provided that they do not involve religious rituals. In March, Selangor Religious Affairs EXCO reminded the public that Muslims are prohibited from participating in any programmes at non-Muslim houses of worship as it is an offence under the Non-Islamic Religions (Control of Propagation Among Muslims) Enactment 1988<sup>204</sup>. Any interfaith events must follow the guidelines set by the Selangor Islamic Religious Department (JAIS). The issue came under spotlight after Projek Artikel 11<sup>205</sup> by Impact Malaysia that was intended to raise awareness amongst Malaysian youth about interfaith engagement was targeted as a platform to proselytise Muslims<sup>206</sup>.

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<sup>198</sup> INITIATE.MY, 'Database on Malaysian Laws That Impact Freedom of Religion and Belief (FoRB)' <<https://initiate.my/freedom-of-religion-and-belief/>> accessed 8 November 2023

<sup>199</sup> 'JAINJ, MCMC to curb spread of Si Hulk deviant teachings' (*New Straits Times*, 20 July 2023) <<https://www.nst.com.my/news/nation/2023/07/933027/jainj-mcmc-curb-spread-sihulk-deviant-teachings>> accessed 8 November 2023

Remar Nordin, 'JAINJ to investigate spread of deviant Si Hulk teachings' (*The Star*, 24 July 2023) <<https://www.thestar.com.my/news/nation/2023/07/24/jainj-to-investigate-spread-of-deviant-si-hulk-teachings>> accessed 8 November 2023

<sup>200</sup> 'Si Hulk deviant group fails in attempt to take over mosque in New Zealand' (*New Straits Times*, 7 August 2023) <<https://www.nst.com.my/news/crime-courts/2023/08/939745/sihulk-deviant-group-fails-attempt-take-over-mosque-new-zealand>> accessed 8 November 2023

<sup>201</sup> Diyanatul Atiqah Zakarya, 'Pengikut ajaran sesat Suhaini bin Mohamad lari ke New Zealand' (*Kosmo!*, 15 June 2023) <<https://www.kosmo.com.my/2023/06/15/pengikut-ajaran-sesat-suhaini-bin-mohamad-lari-ke-new-zealand/#:~:text=Jawatankuasa%20Fatwa%20Negeri%20Melaka%20juga,akidah%2C%20sharia%20serta%20a%20khlak%20Islam>> accessed 8 November 2023

<sup>202</sup> Fatwa Ajaran Meragukan Suhaini Mohammad (SI HULK) [https://said.johor.gov.my/perkhidmatan/paparan\\_detail\\_fatwa.php?id=98](https://said.johor.gov.my/perkhidmatan/paparan_detail_fatwa.php?id=98)

<sup>203</sup> 'Johor fatwa prohibits Muslims from joining in 'rituals of other faiths' (*Free Malaysia Today*, 2 February 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/02/02/johor-fatwa-prohibits-muslims-from-joining-in-rituals-of-other-faiths/>> accessed 8 November 2023

<sup>204</sup> 'Selangor bans Muslims from attending events at churches, temples' (*Free Malaysia Today*, 15 March 2023). <<https://www.freemalaysiatoday.com/category/nation/2023/03/15/selangor-bans-muslims-from-attending-events-at-churches-temples/>> accessed 8 November 2023

<sup>205</sup> Rasyidah Zulkifli, 'Jom Ziarah Gereja sebahagian 'Projek Artikel 11' dedah belia tentang agama pelbagai kaum' (*The Merdeka Times*, 14 March 2023) <<https://themerdekaitimes.com/news/2023/03/jom-ziarah-gereja-sebahagian-projek-artikel-11-dedah-belia-tentang-agama-pelbagai-kaum/>> accessed 8 November 2023

<sup>206</sup> Iskandar Shah Mohamed, 'Selangor larang 'Projek Artikel 11 Jom Ziarah' – MAIS' (*Utusan Malaysia*, 17 March 2023) <<https://www.utusan.com.my/berita/2023/03/selangor-larang-projek-artikel-11-jom-ziarah-mais/>> accessed 8 November 2023

In October, the Inspector-General of Police announced that the Royal Police of Malaysia is keeping a close watch on deviant religious groups<sup>207</sup> to ensure that none of their followers threaten national security. The police are currently monitoring seven groups, namely Tarekat Habib Shah, Dewan Perkasa Ekonomi Islam Nusantara, Perjalanan Mimpi Yang Terakhir, Millah Abraham @ Ibrahim, Ajaran Suhaini or Si Hulk, Nur Mutiara Mutmainnah, and the Ahmadi Religion of Peace and Light.

There are a total of 342 provisions in Sharia law and fatwas that criminalise religious minorities, leading to a dogmatic environment that permits only one form of Islam and leaves no room for other religious denominations<sup>208</sup>. As a consequence, interfaith programs, designed to foster social cohesion and harmony among all races and religions, have regrettably come under scrutiny.

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<sup>207</sup> ‘Cops keeping close eye on deviant religious groups’ (*Free Malaysia Today*, 19 October 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/10/19/cops-keeping-close-eye-on-deviant-religious-groups/>> accessed 8 November 2023

<sup>208</sup> INITIATE.MY, ‘Database on Malaysian Laws That Impact Freedom of Religion and Belief (FoRB)’ <<https://initiate.my/freedom-of-religion-and-belief/>> accessed 8 November 2023



# CORRUPTION AND GOVERNANCE

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The intersection between anti-corruption efforts and good governance with the promotion, protection, and enjoyment of human rights (particularly the full realisation of economic, social, and cultural rights<sup>209</sup>) is well-recognised under international human rights law, yet not often considered when analysing the human rights situation in Malaysia. Following the 15th General Election (GE15) in November 2022, which saw a Pakatan Harapan and Barisan Nasional coalition government coming into power, PM Anwar Ibrahim pledged to make tackling corruption and good governance core issues of his administration moving forward<sup>210</sup>. Unfortunately, the progress of the Madani Government towards accomplishing these lofty goals this year has been middling, with several baffling decisions calling into question this administration's commitment to those stated goals.

The erstwhile National Anti-Corruption Plan 2019-2023 (NACP) introduced under the first Pakatan Harapan government – a comprehensive set of reforms and policies targeted at creating a corruption-free nation through measures such as increasing credibility of public institutions and efficiency in public service delivery – has been largely unfulfilled due to the political instability of the past few years. This year, the Prime Minister's Office has announced the continuation of the NACP with a new national-level plan termed the National Anti-Corruption Strategies (NACS)<sup>211</sup>. No further details have been released as to the specifics of the NACS, and it remains to be seen whether this new plan will be effective in tackling corruption at its core.

A key reform championed by the Government is the establishment of an Ombudsman to replace the existing Public Complaints Bureau as a federal statutory body tasked with managing and investigating complaints against the public service. The Ombudsman Bill was initially slated to be tabled in Parliament in October 2023<sup>212</sup> after several consultation sessions with relevant stakeholders. However, on 18 September 2023, Minister in the Prime Minister's Department (Law and Institutional Reform) Azalina Othman divulged in the Dewan Rakyat that the scope, function, and role of the body had to be reevaluated due to similarities and redundancies with other oversight agencies, such as the Enforcement Agency Integrity Commission (EAIC)<sup>213</sup> – thereby indicating that the Bill shall be delayed.

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<sup>209</sup> See Committee on Economic, Social and Cultural Rights General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24 (23 June 2017), available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2017-state-obligations-context>, Human Rights Council resolution 47/7, The negative impact of corruption on the enjoyment of human rights, A/HRC/RES/47/7 (26 July 2021), available at [undocs.org/en/A/HRC/RES/47/7](https://undocs.org/en/A/HRC/RES/47/7); and Human Rights Council resolution 51/5, The role of good governance in the promotion and protection of human rights, A/HRC/RES/51/5 (12 October 2022), available at [undocs.org/en/A/HRC/RES/51/5](https://undocs.org/en/A/HRC/RES/51/5)

<sup>210</sup> Su-Lin Tan, "Malaysia's new prime minister Anwar Ibrahim vows to unify the country and fight corruption", (CNBC, 25 November 2022) <<https://www.cnn.com/2022/11/25/malaysias-new-pm-anwar-ibrahim-vows-to-unify-country-fight-corruption.html>> accessed 27 October 2023

<sup>211</sup> 'Govt to issue guidelines on 'support letters' to prevent power abuse, says PMO' (*The Star*, 6 July 2023) <<https://www.thestar.com.my/news/2023/07/06/govt-to-issue-guidelines-on-039support-letters039-to-prevent-power-abuse-says-pmo>> accessed 27 October 2023

<sup>212</sup> 'Ombudsman Malaysia to replace, improve functions of PCB' (*Malaysiakini*, 14 June 2023) <<https://www.malaysiakini.com/news/668694>> accessed 27 October 2023

<sup>213</sup> Penyata Rasmi Dewan Rakyat, 18.09.2023, p. 12. Available at <<https://www.parlimen.gov.my/files/hindex/pdf/DR-18092023.pdf>>

Strong calls for laws to control political financing once again emerged this year in light of high-profile investigations into former Prime Minister Muhyiddin Yassin and his party Parti Pribumi Bersatu Malaysia for various allegations of embezzlement and graft<sup>214</sup>. Earlier this year, Azalina stated that the Government would prioritise revisions to bankruptcy laws to help Malaysians, instead of political financing laws which were allegedly more pressing during elections and should have been passed prior to GE15<sup>215</sup>. However, during her September 18th speech in the Dewan Rakyat, Azalina announced that the Cabinet had agreed to refer the Political Financing Bill to the Parliamentary Special Select Committee (PSSC) on Human Rights, Elections, and Institutional Reforms<sup>216</sup>, which suggests that the Bill is at an advanced stage of development.

Other legislative reforms which the Government has signalled interest in pursuing include amendments to the Whistleblower Protection Act 2010 (such as fine-tuning legal definitions under the Act and introducing an internal complaint mechanism)<sup>217</sup>, as well as legislation aimed at ameliorating leakage and wastage of public funds such as the Government Procurement Act and the Fiscal Responsibility Act<sup>218</sup>. Details of the amendments to the Whistleblower Protection Act and the Procurement Act have yet to be released to the public, hence it is too early to determine whether they will be drafted in a manner sufficiently comprehensive to achieve the intended goals.

However, the Public Finance and Fiscal Responsibility Act 2023 was passed by the Dewan Rakyat in October 2023, and clearly stipulates that government fiscal policy must be formulated and implemented in line with the general principles of accountability, responsibility, transparency, and intergenerational equity<sup>219</sup>. This Act places significant duties upon the Minister of Finance to ensure compliance with the Act<sup>220</sup>, and requires the publication of various reports, documents, and statements (such as mid-year expenditure performance reports, fiscal risk statements and tax expenditure statements) to uphold transparency in the

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<sup>214</sup> Isabelle Liew, 'Malaysia's anti-graft agency probes former PM Muhyiddin over \$92m in 'political funds'' (*The Straits Times*, 15 February 2023) <<https://www.straitstimes.com/asia/se-asia/malaysia-s-anti-graft-agency-probes-former-pm-muhyiddin-over-91m-in-political-funds>> accessed 27 October 2023

<sup>215</sup> Ida Lim, 'Azalina: Political funding laws should have come in before GE15, focus now on bankruptcy law reforms' (*Malay Mail*, 15 March 2023) <<https://www.malaymail.com/news/malaysia/2023/03/15/azalina-political-funding-laws-should-have-come-in-before-ge15-focus-now-on-bankruptcy-law-reforms/59650>> accessed 27 October 2023

<sup>216</sup> Penyata Rasmi Dewan Rakyat, 18.09.2023, p. 6. Available at <<https://www.parlimen.gov.my/files/hindex/pdf/DR-18092023.pdf>>

<sup>217</sup> 'Super agency among 7 ideas for whistleblower protection' (*Free Malaysia Today*, 22 May 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/05/22/super-agency-among-7-ideas-for-whistleblower-protection/>> accessed 27 October 2023

<sup>218</sup> Ragananthini Vethasalam, Rahimy Rahim, Gerard Gimino and Teh Athira Yusof, 'Fiscal Responsibility Act, Procurement Act expected to be tabled by year-end' (*The Star*, 13 June 2023) <<https://www.thestar.com.my/news/nation/2023/06/13/fiscal-responsibility-act-procurement-act-expected-to-be-tabled-by-year-end>> accessed 27 October 2023

<sup>219</sup> Public Finance and Fiscal Responsibility Bill 2023 (D.R. 34/2023), Sections 5 and 6, available at <<https://www.parlimen.gov.my/files/billindex/pdf/2023/DR/DR%2034%20-%20BI.pdf>>

<sup>220</sup> Ibid, Sections 12, 15, 19, and 21.

management of public funds<sup>221</sup>. These, coupled with clear medium-term targets<sup>222</sup>, present a promising picture for the near future<sup>223</sup>.

The role of Parliament as a check on the Executive also seems to have been strengthened this year, with SUHAKAM's 2020 Annual Report<sup>224</sup> and the Auditor-General's Report 2021<sup>225</sup> being tabled and debated in the Dewan Rakyat. In the case of the latter, the motion was strongly opposed by members of the Opposition bench, who argued that the Speaker Johari Ghani's decision to allow the debate was unprecedented. However, the Speaker's steadfast commitment to an open debate set an extremely important precedent for key reports on the performance of the Government to be discussed by elected representatives on behalf of the electorate, before the entire nation. This decision, made through the exercise of his residuary powers under Standing Order 100 of the Standing Orders of the Dewan Rakyat<sup>226</sup>, is a vital example of the way discretion should be exercised in the public interest – given that the relevant governing legislation generally only provides for the reports to be laid before or submitted to Parliament<sup>227</sup>. It is indicative of a growing understanding of the importance of public participation and transparency in matters of governance which has extended across the various branches of Government.

The Malaysian Anti-Corruption Commission (MACC) has also faced scrutiny this year, largely due to the extension of Chief Commissioner Azam Baki's tenure for another year despite allegations of misconduct involving a share trading controversy and his usage of Strategic Litigation against Public Participation (SLAPP) to silence journalistic reporting<sup>228</sup>. After significant backlash, PM Anwar responded by stating that his decision to retain Azam was made in order to change the convention that new leaders would be appointed once a new Prime Minister comes into power. He also added that the government would consider placing MACC under Parliament and for appointments to be decided upon by a parliamentary committee, but that the proposal had to be studied first before implementation<sup>229</sup>.

Furthermore, a MACC probe in April 2022 into Justice Nazlan Ghazali – who convicted and sentenced former PM Najib Razak in the SRC trial at the High Court – was found by the Federal

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<sup>221</sup> Ibid, Sections 32 - 38

<sup>222</sup> Soo Wern Jun, 'In a first for the country, Public Finance and Fiscal Responsibility Act passed in Dewan Rakyat' (*Malay Mail*, 11 October 2023) <<https://www.malaymail.com/news/malaysia/2023/10/11/in-a-first-for-the-country-public-finance-and-fiscal-responsibility-act-passed-in-dewan-rakyat/95694>> accessed 27 October 2023

<sup>223</sup> "IDEAS: Public Finance and Fiscal Responsibility Act a welcome start; regular review required for meaningful impact" (*IDEAS*, 13 October 2023) <<<https://www.ideas.org.my/ideas-public-finance-and-fiscal-responsibility-act-a-welcome-start-regular-review-required-for-meaningful-impact>>> accessed 27 October 2023

<sup>224</sup> 'Issues raised in Suhakam report will be addressed, says Azalina' (*The Star*, 13 June 2023) <<https://www.thestar.com.my/news/nation/2023/06/13/issues-raised-in-suhakam-report-will-be-addressed-says-azalina>> accessed 27 October 2023

<sup>225</sup> Soo Wern Jun and Shathana Kasinathan, 'Auditor-General Report 2021 to be debated today, Dewan Rakyat Speaker declares after furore from Opposition' (*Malay Mail*, 6 June 2023) <<https://www.malaymail.com/news/malaysia/2023/06/06/auditor-general-report-2021-to-be-debated-today-dewan-rakyat-speaker-declares-after-furore-from-opposition/72813>> accessed 27 October 2023

<sup>226</sup> Ibid

<sup>227</sup> See Article 107(1) of the Federal Constitution regarding the Auditor-General's Report, and Section 21 of the Human Rights Commission of Malaysia Act 1999 for SUHAKAM's Reports

<sup>228</sup> R. Loheswar, 'How the Azam Baki share saga unfolded' (*Malay Mail*, 14 January 2022) <<https://www.malaymail.com/news/malaysia/2022/01/14/how-the-azam-baki-share-saga-unfolded/203501>> accessed 27 October 2023

<sup>229</sup> Predeep Nambiar, 'Anwar tells why he retained Azam Baki as MACC chief' (*Free Malaysia Today*, 28 March 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/03/28/anwar-tells-why-he-retained-azam-baki-as-macc-chief>> accessed 27 October 2023

Court to have been done without compliance with proper protocol<sup>230</sup>. In a unanimous decision by the seven-person bench, the Court opined that the investigations commenced against Justice Nazlan were done “without regard to judicial independence” and had “curious timing” which cast doubt upon the *bona fides* of the exercise<sup>231</sup>. The Court also reaffirmed that “criminal investigative bodies are Executive bodies and thus investigations into judges can amount to judicial interference.”<sup>232</sup>

The separation of the offices of the Attorney-General (AG) and the Public Prosecutor (PP) was also a salient topic of discussion this year due to several questionable decisions involving high-profile prosecutions, including the failure to file the notice of appeal in time in respect of Najib Razak and Arul Kanda Kandasamy’s acquittal for charges of tampering with the Auditor General’s report on 1MDB at the Court of Appeal (resulting in their acquittals at the High Court standing unchallenged)<sup>233</sup>, Muhyiddin Yassin’s discharge and acquittal on the charges linked to the Jana Wibawa scandal due to defective charges framed by the prosecution<sup>234</sup>, and the application for a discharge not amounting to an acquittal (DNAA) for Deputy PM Zahid Hamidi in his Yayasan Akalbudi case<sup>235</sup>. PM Anwar has affirmed his administration’s commitment to the proposal, but qualified the statement by saying that the reform will involve time and cost to be implemented<sup>236</sup>. Recently, Azalina explained in Parliament that the government remains committed to institutional reforms such as the separation of the AG and PP’s offices, and that the Cabinet has agreed to a detailed and holistic empirical study on the matter, taking legal and financial implications into account<sup>237</sup>. It must be noted that public scrutiny and criticism of decisions of this sort is unavoidable until and unless prosecutorial power is divested from the AG, who is a key part of the Government of the day and thus is inherently susceptible to political influences and considerations.

Political appointments to the boards of government-linked companies (GLCs) and statutory bodies have also continued under this administration, despite what seemed to be an initial attempt to dismantle political patronage by sacking all chairpersons and board members of GLCs and statutory bodies late last year<sup>238</sup>. The use of such appointments as a bid to shore up political support has been a long-standing feature of Malaysian politics; an approach clearly still favoured by some parties in light of former PM Muhyiddin Yassin’s stated plans to appoint

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<sup>230</sup> Hidir Reduan Abdul Rashid, ‘MACC probe against SRC judge not properly done: CJ’ (*Malaysiakini*, 24 February 2023) <<https://www.malaysiakini.com/news/656227>> accessed 27 October 2023

<sup>231</sup> *Haris Fathillah Mohamed Ibrahim & Ors v. Tan Sri Dato’ Sri Hj Azam Baki & Ors* [2023] 3 CLJ 653 (FC), paras. [84] – [86]

<sup>232</sup> *Ibid*, para. [72]

<sup>233</sup> Noor Azlida Alimin, ‘Pinda laporan audit 1MDB: Najib, Arul Kanda bebas sepenuhnya’ (*Sinar Harian*, 12 September 2023) <<https://www.sinarharian.com.my/article/278509/berita/semasa/pinda-laporan-audit-1mdb-najib-arul-bebas-sepenuhnya>> accessed 27 October 2023

<sup>234</sup> Iylia Marsya Iskandar, ‘Muhyiddin’s acquittal does not translate to innocence, say legal experts’ (*New Straits Times*, 16 August 2023) <<https://www.nst.com.my/news/nation/2023/08/943649/muhyiddins-acquittal-does-not-translate-innocence-say-legal-experts>> accessed 27 October 2023

<sup>235</sup> Tarrence Tan, ‘We never ‘withdrew’ case against Zahid, DNAA followed due process, says AGC’ (*The Star*, 8 September 2023) <<https://www.thestar.com.my/news/nation/2023/09/08/we-never-039withdrew039-case-against-zahid-dnaa-followed-due-process-says-agc>> accessed 27 October 2023

<sup>236</sup> Adib Povera, ‘PM reaffirms commitment to separation of powers between AG and PP’ (*New Straits Times*, 8 September 2023) <<https://www.nst.com.my/news/nation/2023/09/952737/pm-reaffirms-commitment-separation-powers-between-ag-and-pp>> accessed 27 October 2023

<sup>237</sup> Penyata Rasmi Dewan Rakyat, 09.10.2023, pp. 12 - 13. Available at <<https://www.parlimen.gov.my/files/hindex/pdf/DR-09102023.pdf>>

<sup>238</sup> Syed Jaymal Zahiid, ‘Anwar administration terminates all GLC political appointments with immediate effect’ (*Malay Mail*, 15 December 2022) <<https://www.malaymail.com/news/malaysia/2022/12/15/anwar-administration-terminates-all-glc-political-appointments-with-immediate-effect/45412>> accessed 27 October 2023

politicians to GLC boards if his coalition came to power in the 2023 state elections<sup>239</sup>. PM Anwar has alleged that those appointed to these positions do possess suitable qualifications<sup>240</sup>. However, the continued lack of transparency in the appointment process gives rise to the potential for these positions to be used to perpetuate patronage, instead of being in the best interests of the companies/bodies. For instance, the appointments of UMNO politicians Asyraf Wajdi Dusuki and Ahmad Jazlan Yaakob as the Chairman of Majlis Amanah Rakyat (MARA) and FELCRA Bhd respectively have been criticised as potentially being motivated by a desire to strengthen internal party support due to the timing of the decisions (during UMNO party selections and leading up to the state elections)<sup>241</sup>, whereas the appointments of former Inspector-General of Police Acryl Sani and former AG Idrus Harun as Chairmen of Perbadanan Usahawan Nasional Bhd<sup>242</sup> and Amanah Raya Bhd<sup>243</sup> respectively are illustrative of the “revolving door” concept, where individuals rotate between the public and private sectors while maintaining the influence and interests of each position.

In summary, the Anwar administration has shown some indication that it genuinely intends to tackle corruption and promote good governance by committing to various legislative and institutional reforms. Although not much has materialised in this regard, it is better to call for well-crafted reform plans (which would necessitate a longer time to create) instead of half-baked and rushed proposals to be bulldozed through purely for the sake of presenting a progressive image. However, this Government must ensure that political considerations do not supersede its commitment to professed ideals, lest it lose sight of the fundamental principles which brought it to power in the first place.

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<sup>239</sup> R Loheswar, ‘GLCs aren’t ‘ATMs’ for political parties to give as reward for election support, Bersih tells Muhyiddin’ (*Malay Mail*, 1 July 2023) <<https://www.malaymail.com/news/malaysia/2023/07/01/glcs-arent-atms-for-political-parties-to-give-as-reward-for-election-support-bersih-tells-muhyiddin/77333>> accessed 27 October 2023

<sup>240</sup> ‘Some political appointments at government-linked companies to be reviewed: Malaysia PM Anwar’ (*Channel News Asia*, 11 April 2023) <<https://www.channelnewsasia.com/asia/malaysia-anwar-ibrahim-political-appointment-glc-review-3409571>> accessed 27 October 2023

<sup>241</sup> Irfan Faruqi, ‘BERSIH kecam lantikan Pengerusi GLC, gesa reformasi disegerakan’ (*Astro Awani*, 20 March 2023) <<https://www.astroawani.com/berita-politik/bersih-kecam-lantikan-pengerusi-glc-gesa-reformasi-disegerakan-411657>> accessed 27 October 2023

<sup>242</sup> ‘Ex-IGP Acryl Sani named PUNB chairman’ (*The Star*, 1 September 2023) <<https://www.thestar.com.my/news/nation/2023/09/01/ex-igp-acryl-sani-named-punb-chairman>> accessed 27 October 2023

<sup>243</sup> Alzahrin Alias, ‘Idrus Harun dilantik jadi Pengerusi AmanahRaya’ (*Berita Harian*, 10 October 2023) <<https://www.bharian.com.my/bisnes/korporat/2023/10/1163170/idrus-harun-dilantik-jadi-pengerusi-amanahraya>> accessed 27 October 2023

# MIGRANTS AND REFUGEES

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In this overview, the scope and focus given are on some aspects of the rights of migrant and refugee as well as domestic workers in Malaysia, from January 2023 to September 2023.

## **Migrants & Refugees**

One of the top issues with regards to labour migration in 2023 is job scams cum human trafficking of mainly South Asian (Bangladeshi and Nepali) workers to Malaysia from December 2022 to May 2023. As of 28 June 2023, it is recorded that there are 1120 migrant workers from South Asia, who were left jobless and stranded in the hostels<sup>244</sup>. The crux of the matter is the abuse of foreign workers quotas to enrich a few people, who manage their labour recruitment. Such corrupted and unregulated practices have left thousands of migrant workers stranded, with no means to pay the debts accumulated to secure employment in Malaysia. This questions the mandate and competency of the labour department in facilitating the placement of these abandoned workers<sup>245</sup>.

## **United Nations Standards**

Civil society organisations (CSOs) such as Tenaganita, North South Initiative (NSI), Persatuan Sahabat Wanita Selangor (PSWS) and Suara Rakyat Malaysia (SUARAM) have on different occasions publicly urged Malaysia to ratify the ICRMW 1990<sup>246</sup>. Yet, no decision has been made by the government to ratify it. This, in other words, can be viewed as Malaysia deliberately ignoring global standards on the protection of migrant workers.

## **Malaysia Upgraded in US Trafficking in Persons (TIP) Report 2023**

The latest US Department of State's Trafficking in Persons (TIP) Report (2023) has upgraded Malaysia to the Tier Two Watchlist, after two years of languishing in Tier Three<sup>247</sup>. This means that Malaysia is near the minimum standards of eliminating forced labour but is exerting significant efforts towards reaching it. Besides acknowledging the efforts put up by the government, it is more important that impact on the ground is visible. Some of the issues include the coordination of the different agencies being haphazard, as there is no strategic or intelligent framework for government agencies to collaborate smoothly and enforce laws. The lack of having a clear strategic framework also causes the interpretation of human trafficking to be read regressively and not in the best interest of protecting the victim/survivor.

On another note, The TIP report, unfortunately, does not pinpoint and analyse the background of people who are prosecuted for human trafficking. By not doing so, the public or

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<sup>244</sup> '1,120 foreign workers brought into Malaysia but left jobless, says home minister' (*MalaysiaNow*, 28 June 2023) <<https://www.malaysianow.com/news/2023/06/28/1120-foreign-workers-brought-into-malaysia-but-left-jobless-says-home-minister>> accessed 24 October 2023

<sup>245</sup> 'Sivakumar: Labour Dept rescues 226 foreign workers placed in poor housing conditions in Nilai' (*Malay Mail*, 10 April 2023) <<https://www.malaymail.com/news/malaysia/2023/04/10/sivakumar-labour-dept-rescues-226-foreign-workers-placed-in-poor-housing-conditions-in-nilai/64133>> accessed 24 October 2023

<sup>246</sup> The International Convention On The Protection Of The Rights Of All Migrant Workers & Members Of Their Families (ICRMW 1990) is an international instrument renders states/signatories committed to promote and implement protective measures towards migrant workers, their families and children (whether documented or undocumented) against all forms of discriminations along with the right to access various social services that are necessary for their human development.

<sup>247</sup> Julia Chan, 'Malaysia back on Tier 2 Watchlist of US human trafficking report after two years' (*Malay Mail*, 16 June 2023) <<https://www.malaymail.com/news/malaysia/2023/06/16/malaysia-back-on-tier-2-watchlist-of-us-human-trafficking-report-after-two-years/74574>> accessed 24 October 2023

professionals involved in fighting human trafficking will not be able to know the depth and length or causality of current or ongoing trends to plan/design effective methods to achieve the desired impact/outcome.

## Refugee Rights

On refugees, Malaysia has not made any progress in ratifying the 1951 Refugee Convention and its 1967 Protocol, a call that has been made for decades by civil society organizations (CSOs). However, some efforts are taking place to increase refugee rights. On 8 May 2023, Datuk Seri Zahid Hamidi<sup>248</sup> after chairing the committee on the management of refugees, stated that the government was considering entering into an agreement with United Nations High Commissioner for Refugees (UNHCR) in line with Resolution 428 (V) UN General Assembly on the establishment, roles and responsibilities of the UNHCR as an international body.

A day later on 9 May 2023, Datuk Seri Saifuddin Nasution spoke in a press conference on designing a clear policy for refugees that includes access to employment, health and education<sup>249</sup>. He said that to find employment for refugees, it is of utmost importance that granular data is collected and matched with job demand. The government views this as one effective strategy to fill in the job shortage in different sectors. In the previous attempt by the government to collect data on refugees, a third party was contracted, yielding TRICS (Refugee Information Tracking System). The number of registrants in TRICS was only 30,000 - only 15.8% of 190,000 UNHCR registrants. Civil society groups are also concerned about the data security of information collected by the Home Affairs Ministry being weaponized as it was weaponized during the pandemic in the form of mass arrests and detention<sup>250</sup>.

## Launch Of Guidelines on Forced Labour

On 26 September 2023, the Human Resource Ministry<sup>251</sup> launched guidelines on prevention and eradication of forced labour practices. This initiative was in collaboration with JTKSM (Peninsula Malaysia Labour Department) and MAPO (The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants). Whilst a commendable effort, it is also hoped that the government implements further follow-up programmes with stakeholders such as enforcement agencies to familiarise them with the nature and scope of forced labour, with the aim of drastically lessening exploitative practices and restoring Malaysia's reputation in the global supply chain. Nevertheless, Malaysia is still perceived as a high-risk country, not just for migrant workers but also for investors and businesses as reported in the following two credible global reports. Malaysia is placed within the Rating 5 category (second lowest rating) in the International Trade Union Confederation Global Rights Index 2023<sup>252</sup>. The Global

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<sup>248</sup> 'Govt mulling agreement with UNHCR over issue of refugees, asylum seekers in M'sia' (*New Straits Times*, 8 May 2023) <<https://www.nst.com.my/news/nation/2023/05/907193/govt-mulling-agreement-unhcr-over-issue-refugees-asylum-seekers-msia>> accessed 24 October 2023

<sup>249</sup> 'M'sia seeking UNHCR help for undocumented migrant data: Saifuddin' (*The Vibes*, 25 September 2023) <<https://www.thevibes.com/articles/news/98961/msia-seeking-unhcr-help-for-undocumented-migrant-data-saifuddin>> accessed 24 October 2023

<sup>250</sup> Predeep Nambiar, 'Crackdown can backfire with 'explosion' of cases, govt warned' (*Free Malaysia Today*, 21 June 2021) <<https://www.freemalaysiatoday.com/category/nation/2021/06/12/crackdown-can-backfire-with-explosion-of-cases-govt-warned/>> accessed 24 October 2023

<sup>251</sup> Natasha Busst, 'Forced labour victims laud govt announcement on proposed guidelines' (*Free Malaysia Today*, 20 September 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/09/29/forced-labour-victims-laud-govt-announcement-on-proposed-guidelines/>> accessed 24 October 2023

<sup>252</sup> Refer to <https://www.globalrightsindex.org/en/2023/countries/mys>

Slavery Index (GSI) report<sup>253</sup> by Walk Free<sup>254</sup> highlights that Malaysia (and China) “remain the highest value at-risk product imported by G20 countries” based on numerous “reported cases of forced labour and debt bondage in the electronics manufacturing industry, which is reliant on migrant labour from Bangladesh, Nepal, Myanmar, and Indonesia”.

### **Domestic Workers**

Although social security in the form of SOCSO has been extended to domestic workers since 1 June 2021, there still exist many serious limitations to their rights and wellbeing in Malaysia.

The First Schedule of the Employment Act (amended in 2022) not only exempts domestic workers from basic labour rights, namely leave entitlement such as paid sick and maternity leave, but also does not legally or clearly define/state the number of hours of work per day. Simply put, their rights are not legally guaranteed and rely only on their employers’ discretion/empathy to be granted leave or work according to fixed hours of work.

It is generally known that domestic workers experience abusive and exploitative work conditions. The International Labour Organisation’s (ILO) 2023 report/survey<sup>255</sup> on conditions faced by domestic workers in Southeast Asia found that the prevalence of exploitative conditions in Malaysia were significantly higher than neighbouring countries - 30% vs 3% and 7% in Singapore and Thailand. The exploitative conditions against them consist of excessive working hours, unpaid salary and overtime, low wages, restrictive movement, and being unable to quit or change their employer.

Domestic workers have remained un-unionised and under-organised. As a result, collective advocacy and solidarity efforts calling for legal and structural reforms by this group of stakeholders have been minimal or absent. The isolated nature of domestic work, legal restrictions on freedom of association and the fear of severe penalties being imposed on them by law enforcers further hinder such efforts.

Malaysia still has not ratified the ILO Convention for Domestic Work (C189)<sup>256</sup>. Without ratifying it, Malaysia ends up not showing any commitment to constructively deal with the aforementioned issues, which perpetuates a cycle of suffering and injustices by domestic workers. This lack of substantive international commitment has cemented Malaysia to have a reputation of being a ‘serial abuser’ of domestic worker rights on the global stage.

### **Four Noteworthy Cases (January to July 2023)**

#### ***a) Raid by the Immigration Department of a Chin Refugee Community Organisation on Jalan Imbi, Kuala Lumpur (6 January 2023)***

The Immigration Department raided a community-based organisation (CBO) set up by the Matu Community<sup>257</sup> on Jalan Imbi, Kuala Lumpur.

The CBO was labelled as an “illegal syndicate” by the Immigration Department’s Director-General, due to its issuance of community cards to Chin ethnic refugees. To date, an estimated 1000 cards were issued. Contrary to prevalent misconceptions that this community card

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<sup>253</sup> Refer to <https://cdn.walkfree.org/content/uploads/2023/05/17114737/Global-Slavery-Index-2023.pdf>

<sup>254</sup> Walk Free is an International Human Rights NGO based in Perth, Australia which focuses on the eradication of forced labour/modern slavery

<sup>255</sup> Refer to [https://www.ilo.org/asia/media-centre/news/WCMS\\_885132/lang--en/index.htm](https://www.ilo.org/asia/media-centre/news/WCMS_885132/lang--en/index.htm)

<sup>256</sup> Refer to [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY)

<sup>257</sup> The Matu community is one of the many tribes or subethnic groups in the Chin state, Myanmar, whose members have had a presence in Malaysia for more than a decade



replaces the UNHCR refugee card, its purpose is limited to organisation membership and through that membership, benefits such as social services, cultural and religious activities.

***b) Raid of Migrant Worker Settlement & Indonesian Migrant Children's Learning Centre in Nilai, Negeri Sembilan (1 February 2023)***

At about 1.30 am, on 2 February 2023, the Malaysian Immigration Department, the General Operations Force (PGA), the National Registration Department and the Civil Defence Force (APM) conducted a massive raid on a so-called "illegal settlement" of Indonesian migrant workers in Nilai Springs, Negeri Sembilan.

The settlement was originally set up in 2014 by a group of Indonesian labourers, who had worked in the sand mining industry within the same area. Apart from the presence of the settlement, there was also a makeshift school which uses the Indonesian educational syllabus. The settlement is situated in a thick forested area, about 1.2 km from the main road. It was reported that surveillance and monitoring was carried out to gauge the security situation on the ground before the raid took place. In this raid, 67 people were arrested and detained, including 11 women and children, for overstaying, being undocumented and for other Immigration offences.

Authorities claimed that this settlement was set up so that migrants could illegally reside in Malaysia for an indefinite period. MigrantCare<sup>258</sup> disputed this claim, explaining that the settlement was provided by employers who hired the initial batch of settlers. Furthermore, the settlers were making preparations to leave Malaysia "for good", and the makeshift school was only there to facilitate the children's integration with the Indonesian system after returning to their home country. The migrants also obtained temporary travel documents of 1-year validity to facilitate their return home, issued by the Indonesian mission in Malaysia.

***c) Employment Fraud of South Asian Migrant Workers in Nilai, Negeri Sembilan (January - May 2023)***

From December 2022 until April 2023, thousands of migrant workers from Bangladesh and Nepal were brought to Malaysia in different batches with the promise of jobs<sup>259</sup>. The workers, however, were left stranded and helpless in their hostels in Nilai, Negeri Sembilan for up to 4 months. The recruitment was carried out by four different companies, who also kept their passports. This series of job/recruitment scams were reported in April and May 2023.

They also had racked up debts ranging from RM 20,000 to RM 25,000 each, having taken loans from banks, money lenders and their relatives. Some of them even sold their own land to secure jobs in Malaysia. During the period of being housed in the hostels, some were only given a meagre allowance of RM 200 a month and their living conditions were squalid.

Migrant rights advocates<sup>260</sup> met the workers and distributed rations to them for their sustenance. The Human Resource Minister, V. Sivakumar, on 10 April 2023, visited the hostel and intervened in the matter by ordering the Labour Department to find new job placements and employers for the stranded workers.

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<sup>258</sup> MigrantCare is a civil society organisation in Indonesia that focuses on advocacy of rights for Indonesia migrant workers abroad. It has offices in both Jakarta and Kuala Lumpur

<sup>259</sup> 'Sivakumar: Labour Dept rescues 226 foreign workers placed in poor housing conditions in Nilai' (*Malay Mail*, 10 April 2023) <<https://www.malaymail.com/news/malaysia/2023/04/10/sivakumar-labour-dept-rescues-226-foreign-workers-placed-in-poor-housing-conditions-in-nilai/64133>> accessed 24 October 2023

<sup>260</sup> This includes Dato Pardip Kumar Kukreja of Malaysia - Nepal Business Council (MNBC) and two volunteers from North South Initiative (NSI), who cannot be disclosed for safety reasons

Currently, there are still workers who have not been given job placements. According to one source<sup>261</sup>. The workers were ferried to Malacca in July 2023 and placed in a hostel. This move was done with the intent of dividing and alienating those workers from meeting other batches of workers, and also to prevent them from contacting ‘outsiders’, who could possibly help them voice this to the media or take legal action against the perpetrators. It is appalling that the recruitment agencies and companies involved in this job scam have not fully resolved this matter. The workers have yet to receive any compensation for what they had gone through. Despite police reports against the people who promised them jobs, there is still no news of the authorities pressing charges against these perpetrators.

***d) Enforced Disappearances of Thuzar Maung and her family in Ampang, Selangor (4th July 2023)***

On 4 July 2023 at about 4.30 pm, Thuzar Maung<sup>262</sup>, a Myanmar refugee and persistent critic of the Myanmar military dictatorship, together with her husband and children, were abducted by a group of men from their home at a gated housing community in Ampang Jaya. Their abduction, according to witnesses and recordings of CCTV footage, exhibited a high possibility that it was a planned operation. It was also found that the same car used to abduct her and her family was seen in the housing area less than a month ago on 19 June 2023.

Thuzar Maung led two CBOs, namely Myanmar Muslim Committee (MMC) and Myanmar Migrant Workers Committee (MMWC). Both these organisations are closely aligned with the exiled National Unity Government (NUG) of Myanmar. As at the time of her abduction, she had about 93,000 followers on Facebook alone. This goes to show that her critical views of the military dictatorship did have significant online resonance and influence with the pro-democracy masses in Myanmar. It can be reasonably said that her disappearance could be due to her vigorous activism/advocacy against the brutality and depravity of the military dictatorship.

What is most unfortunate about her case is that unlike previous enforced disappearances that have taken place in Malaysia, the media coverage or awareness of the mystery surrounding her abduction was regrettably low.

The Royal Malaysian Police, as at the time of this writing have already launched an investigation into the family's disappearance. On 16 September 2023, Suhaily Zain, CID Bukit Aman stated that the possibility of Thuzar and her family fleeing their home ‘willingly’ is not ruled out<sup>263</sup>. He said that based on the CCTV footage retrieved, her action of entering the car seemed voluntary and the car did not take off in a ‘speedy manner’. He also assured the Myanmar community that the police are still investigating this case under ‘missing persons’.

**Summary Of Cases & Other Related Issues**

The cases noted above received widespread media coverage over the last 9 months. The types of cases mentioned in this section are not unusual or uncommon in the context of migrant and refugee rights in Malaysia, except for case (d) that is an alleged instance of enforced

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<sup>261</sup> Information was shared with the North South Initiative from a whistleblower, who was part of this particular recruitment process - July 2023

<sup>262</sup> Fuad Nizam, ‘Police start probe into disappearance of Myanmar activist Thuzar Maung, family’ (*New Straits Times*, 18 July 2023) <<https://www.nst.com.my/news/nation/2023/07/932279/police-start-probe-disappearance-myanmar-activist-thuzar-maung-family>> accessed 24 October 2023

<sup>263</sup> Faisal Asyraf, ‘Missing Myanmar activist, family’s actions seemed voluntary, say cops’ (*Free Malaysia Today*, 16 September 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/09/16/missing-myanmar-activist-familys-actions-seemed-voluntary-say-cops/>> accessed 24 October 2023

disappearance. Missing persons cases of refugees and migrants have been reported before. However, disappearances of people conducted in such a methodical manner with the possible involvement of state or non-state actors for a particular motive is a rarity. Previous cases of alleged enforced disappearance targeted people who were suspected of proselytizing activities or “belonged to a deviant religious sect”.

Moving forward, Malaysia should commit to protecting its citizens from the prey of state and non-state entities. It is recommended that the government ratifies the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and use this international instrument as a salient point to forge customary and consistent intolerance towards a crime of this kind both domestically and internationally. Law enforcement personnel/investigators may also need to upgrade its capacity when investigating cases of this nature.

### **Detention Of Children in Immigration Detention Centres**

The raid on the school in the Nilai migrant settlement is a clear example of infringements of CEDAW and CRC (of which Malaysia is party), as women and children were rounded up and detained. The preparedness of arresting and detaining children is a major concern, as there are many reports of children detained along with adults. Instead of detaining the children with adults, they must be placed under the care of child rights NGOs.

Datuk Seri Saifuddin Nasution made it public in February 2023 that detention centres are not places for children to be detained. Nine months later on 4 September 2023, he announced that Baitul Mahabbah shelter will be in operation to cater to children under the age of 10<sup>264</sup>. The Immigration Department has moved 23 children and 10 female caregivers to this shelter. They were previously detained at depots in Bukit Jalil, Semenyih, KLIA and Eco Millennium Beranang. Whilst this approach needs to be recognised, it is crucial that the Home Ministry explores better alternatives to detention as well as more comprehensive trauma care and rehabilitation approaches in the long-term for detained children from migrant, refugee and asylum-seeking communities.

It will be critical and vital as per the SDG slogan of “leave no one behind”, if the shelter program for children is replicated too in Sabah due to its notoriety of abuses in the Temporary Immigration Centres/Depots (*Pusat Tahanan Sementara*) as reported by the Indonesia-based Coalition of Sovereign Migrant Workers (*Koalisi Buruh Migran Berdaulat*) from 2020 to 2023. According to their report on women & child detainees in Sabah’s immigration depot, numbers from March 2022 to April 2023 consisted of 2347, out of which 165 were below 18<sup>265</sup>.

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<sup>264</sup> Ming Teoh, ‘Malaysian coalition urges further steps towards ending child detention in the countr’ (*The Star*, 7 September 2023) <<https://www.thestar.com.my/lifestyle/family/2023/09/07/first-step-towards-ending-child-detention-in-malaysia>> accessed 24 October 2023

<sup>265</sup> Mereka Yang Tidak Pernah Kembali - Laporan Pemantauan Situasi Perempuan dan Anak di Pusat Tahanan Imigrasi Sabah, Malaysia Maret 2022 - April 2023 (2023)

# HUMAN RIGHTS VIOLATIONS AGAINST LGBTQ+ PERSONS

*Author: Thilaga Sulathireh*

LGBTQ and gender-diverse people face increasing criminalisation under various laws, state-sponsored conversion practices, and censorship, among other forms of state-sanctioned regulation of the basis of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC).

The Malaysian government, regardless of administration, have adopted varying exclusionary and discriminatory positions and actions in relation to LGBTQ-related issues and human rights. The government's position is often expressed and reiterated both domestically through Parliament or media agencies, and internationally.

For example, in a written Parliament response in May 2023, the current Minister in the Prime Minister's Department (Religious Affairs) reiterated the general stance by the Malaysian government on LGBTQ-related issues. This position can be summarised as follows:

As a country that upholds Islam as the religion of the Federation and that instils moral values based on traditions, culture and religion, the government is firm in not recognizing the lesbian, gay, bisexual and transgender people. 'LGBT behaviour' (added by writer) is against religion, morals, Malaysia's culture and laws, both civil and Syariah laws. ... LGBT communities' rights to 'practise their lifestyle' are subject to the laws that prohibit such acts. Nonetheless, the government does discriminate against any groups, including LGBT people, in enjoying their human rights as enshrined in the Federal Constitution, including right to education, right to practise their religion, and right to employment consistent with Article 8(2) of the Federal Constitution<sup>266</sup>.

Contrary to the statement by the Minister and the state's position, LGBT people's right to education, freedom of religion and employment, among others continue to decline, largely due to the state's non-evidence and rights-based approach to LGBT-related issues and rights. The government also does not understand that it is challenging to access, let alone enjoy rights in the context of criminalisation and regulation by the state.

## **Criminalisation & Regulation of LGBT Identities, Expression and Other Aspects of Life**

LGBTQ and gender-diverse people are criminalised on the basis of sexual orientation, gender identity, gender expression and consensual sexual acts between adults under various Federal and state levels. The overall context of criminalisation of LGBTQ and gender-diverse people has a systemic impact on all areas of their lives, including being free from violence, seeking redress, opportunities, and information.

At the Federal level, Section 377A and B of the Penal Code penalises carnal intercourse between adults. While the law is gender neutral and used interchangeably with Section 377C of the Penal Code, Section 377A and B are often perceived as a law criminalising LGBT people, resulting in increased vulnerability to discrimination, violence and exclusion by state and non-state actors.

As of 2023, there are at least 53 state Syariah laws (please see table 1) that criminalise LGBT people on the basis of their SOGIE and consensual sexual acts between adults, 8 of which were introduced between 2019 and 2022 in Negeri Sembilan, Kelantan and Terengganu. The new

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<sup>266</sup> Parliament written response JDR22052023, 22 May 2023

laws in Kelantan and Terengganu came into force and were introduced following the Iki Putra decision by the Federal Court. The Court, in accordance with Article 74, Federal and state list of the Federal Constitution, affirmed that state governments do not have the legislative jurisdiction to enact criminal laws, including laws prohibiting consensual sex between adults<sup>267</sup>.

Additionally, *fatwa*, guidelines and other measures also regulate and prohibit LGBT expressions, right to self-determination, access to health and religious spaces, and public life, among others.

It is also important to note that the criminalisation and regulation of actual or perceived LGBTQ people by the Malaysian government is not limited to citizens, but also includes foreigners and non-citizen as evidenced by the introduction of the recent guidelines for foreign performers and the trend of censorship.

The trend of criminalisation and regulations against LGBTQ and gender-diverse people by the Malaysian government can be observed through the:

- Introduction of anti-LGBT state Syariah laws. There are three key elements that can be observed at the state level:
  - Increased punishment to existing anti-LGBT laws, where possible. Many of the *liwat* (sexual relations between men or anal sex) and *musahaqah* (sexual relations between women) laws already carry maximum punishments. The increase of punishment is seen mainly in laws targeting trans people through the ‘male or female persons posing as a woman or man’ provisions.
  - Re-defining scope of criminalisation. For example, in the new Kelantan Syariah Criminal Offences Enactment, the scope of criminalisation of trans people has been expanded from prohibition of trans and gender-diverse people’s gender expression in public places to ‘any public place or in any private place publicly visible or accessible’.
  - Introduction of new laws, including the attempt of *musahaqah* and *liwat*, female person posing as a man in Kelantan and Terengganu, as well as changing gender in Kelantan.
- Introduction and amendments to guidelines, reinforcing harmful gender norms. This includes:
  - New prohibition of male foreign artistes from “dressing up and wearing clothes that cause them to resemble women” by the Central Agency for Application for Filming and Performance by Foreign Artistes (PUSPAL) in March 2023<sup>268</sup>. PUSPAL is an agency under the purview of the Ministry of Communications and Digital.
  - Introduction of guidelines on entertainment activities (concerts) in higher learning institutions by the Department of Higher Education (JPT) under the Ministry of Higher Education<sup>269</sup>. The guideline, among others, introduced:

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<sup>267</sup> Ida Lim, ‘Federal Court unanimously declares Selangor Shariah law criminalising ‘unnatural sex’ void, unconstitutional’ (*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 30 October 2023

<sup>268</sup> Amir Yusof, ‘No cross-dressing for male artistes, blackout dates on Islamic holidays among updated rules for Malaysia concerts’ (*Channel News Asia*, 15 March 2023) <<https://www.channelnewsasia.com/malaysia-concert-rules-no-cross-dressing-male-performers-blackout-dates-islamic-holidays-3348541#:~:text=For%20instance%2C%20the%20dress%20code,%E2%80%9Conly%20underwear%E2%80%9D%20when%20performing>> accessed 30 October 2023

<sup>269</sup>

- Prohibition of performers-based association with LGBT people or actual or perceived sexual orientation, gender identity and gender expression
- Regulation of attire, hairstyles, accessories, physical interaction, movement of performers
- Prohibition of symbols and display of support in solidarity with LGBT people/issues
- Regulations on interactions, including gender segregated seating arrangements, and removal of standing area for attendees<sup>270</sup>
- Use of broad and vague existing laws and misuse of public morality, such as Section 7 of the Printing Presses and Publication Act and Section 233 of the Communications and Multimedia Act. Between 2020 and 2023, the Printing, Publication and Presses Act has been used at least 7 times against LGBT expressions through censorship of publications, and the removal of watches with LGBT-related imprints.

### State-Funded LGBT Rehabilitation Programmes

LGBT rehabilitation programmes have intensified and expanded under the Prime Minister’s Department (Religious Affairs), JAKIM and state Islamic departments since 2010. LGBT rehabilitation or any form of SOGIE change efforts or conversion practices are harmful and have been widely discredited. Given the long-term psychological harm, increasingly, more countries have introduced to protect the health and well-being and prohibit or regulate conversion practices<sup>271</sup>.

Justice for Sisters’ survey found at least 66% of 156 LGBTIQ and gender-diverse respondents had experienced pressure to change their SOGIE by various actors. The study also extrapolated that 1 out of 10 respondents had been forcibly sent to an external party to be corrected. This is consistent with SUHAKAM’s study, which found 15% of 100 trans and intersex respondents who had forcibly been sent to an external party to be corrected. The survey found the pressure to change the respondents SOGIE, resulted in:

- 45.5% faced increased stress, anxiety, isolation, and other forms of burden on mental health;
- 36.6% felt unmotivated, and loss of interest in school, work, family activities, social activities and others;
- 32.5% experienced suicidal thoughts and attempts; and
- 4.9% dropped out of school<sup>272</sup>.

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‘MOHE leaves it up to colleges to set guidelines on organisation of entertainment activities’ (*The Edge*, 1 September 2023) <<https://theedgemaalaysia.com/node/681032>> accessed 30 October 2023> accessed 30 October 2023

<sup>270</sup> ‘Media statement: Recall Ministry of Higher Education’s entertainment guideline’ (*Justice for Sisters*, 11 September 2023) <<https://justiceforsisters.wordpress.com/2023/09/11/media-statement-recall-ministry-of-higher-educations-entertainment-guideline/>> accessed 30 October 2023

<sup>271</sup> ‘Appendix 3: Measures taken by country’ (*Government Equalities Office*, 25 October 2022) <<https://www.gov.uk/government/publications/conversion-therapy-an-evidence-assessment-and-qualitative-study/appendix-3-measures-taken-by-country>> accessed 30 October 2023

<sup>272</sup> ‘Situation in Malaysia - Justice for sisters’ (*Justice for Sisters*, 6 June 2023) <<https://justiceforsisters.org/en/balik-pangkal-jalan/situation-in-malaysia/>> accessed 30 October 2023

The government in many instances have relied on discredited and harmful sources of information and so-called experts<sup>273,274</sup> in implementing its activities, and in supporting its position and efficacy of LGBT rehabilitation<sup>275</sup>, while creating distinction between the ‘western conversion practices’ and the efforts undertaken by the government<sup>276,277</sup>.

The LGBT rehabilitation programmes and advocacy may appear as a ‘softer’ approach and even alternative to criminal punishment, it still reinforces cis and heteronormative constructs, where only the combination of cisgender heterosexual identities can exist. Identities that exist outside of the construct are either punished, censored or rehabilitated.

The Minister in the Prime Minister’s Department (Religious Affairs) periodically provides updates of the government’s ‘progress’ in addressing what it views as the LGBT problem<sup>278</sup>. According to the Minister, between January 2021 and April 2023, the Prime Minister’s Department with other agencies have undertaken a range of activities categorised under four aspects.

- a) **Education, prevention and advocacy.** 18 collaborative media, online and offline programmes have been undertaken in collaboration with various government agencies and non-governmental organisations<sup>279</sup> targeting young people<sup>280</sup> and Muslim outreach groups (*komuniti dakwah* dan *tarbiah*).
- b) **Research.** Two transgender related studies both focusing on rehabilitation of transgender people were reportedly undertaken within the reported period<sup>281</sup>.
- c) **Dakwah and guidance.** Six activities were undertaken by state Islamic councils, Yayasan Ihtimam Malaysia (YIM), and the *hijrah* community. The *hijrah* community refers to ex-LGBT people or LGBT people who may have ‘changed’ or suppressed their sexual orientation, gender identity and gender expression. They may no longer fully identify as ‘former’ aspects of their identities. Some may still do, but only in the safest environments. On 18 October 2023, the Minister reported that the government had held 4 *Mukhayyam* camps attended by 220 people<sup>282</sup>.

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<sup>273</sup> ‘Pengamal kesihatan bimbang ubat PrEP kepada pasangan gay diperluaskan KKM’ (*Agenda Daily*, 8 December 2022) <<https://www.agendadaily.com/isu-semasa/pengamal-kesihatan-bimbang-ubat-prep-kepada-pasangan-gay-diperluaskan-kkm/>> accessed 30 October 2023

<sup>274</sup> See LGBT and Spirituality: A Holistic Approach to Care (page 34) [https://www.medicineandhealthukm.com/sites/medicineandhealthukm.com/files/article/2022/16th\\_congress\\_of\\_asia\\_oceania\\_federation\\_for\\_sexol\\_18878.pdf](https://www.medicineandhealthukm.com/sites/medicineandhealthukm.com/files/article/2022/16th_congress_of_asia_oceania_federation_for_sexol_18878.pdf)

<sup>275</sup> ‘Majlis Perasmian Kem Ibadah Nusantara Kali Ke-3’ (*JAKIM*, 5 October 2023) <<https://www.islam.gov.my/en/berita/3902-majlis-perasmian-kem-ibadah-nusantara-kali-ke-3>> accessed 30 October 2023

<sup>276</sup> Honouring the religious rights of the LGBTQ persons: an Islamic perspective. (2023). *TAFHIM IKIM Journal of Islam and the Contemporary World*, 16(1), 1–33. <https://doi.org/10.56389/tafhim.vol16no1.4>

<sup>277</sup> Mohd Haridi, N. H., Ismail, A. M., Subhi, N., & Hussin, H. (n.d.). Komponen dalam model pemulihan holistic terhadap Lesbian, Gay, Biseksual dan Transgender (LGBT di Malaysia). *Jurnal Al-Ummah* 3 (2021M/1443H): 165-188.

<sup>278</sup> Luqman Hakim and Nor Ain Mohamed Radhi, ‘Jakim to work with Health Ministry to address LGBT issues’ (*New Straits Times*, 18 October 2023) <<https://www.nst.com.my/news/nation/2023/10/968489/jakim-work-health-ministry-address-lgbt-issues>> accessed 30 October 2023

<sup>279</sup> JAKIM, Ministry of Youth and Sports, Ministry of Health, IKIM, Al-Hijrah TV, Selangor Mufti Office and YADIM

<sup>280</sup> Ministry of Health through youth-based PROSTAR (*Program Sihat Tanpa AIDS Remaja*) 2.0 programme

<sup>281</sup> 1) collaborative research between the University of Islamic Science Malaysia (USIM) and JAKIM funded by a JAKIM research grant. 2) Master’s Dissertation on A Rehabilitation Approach to Transgender People According to Fiqh Al-Hadith: A Study of Rehabilitation Programs by the Islamic Development Department of Malaysia (*Pendekatan Pemulihan Terhadap Golongan Transgender Menurut Fiqh Al-Hadith : Kajian Terhadap Program Pemulihan Oleh Jabatan Kemajuan Islam Malaysia*)

<sup>282</sup> Parliament Hansard, 18 October 2023

- d) **Action and enforcement.** This includes censorship of the Lightyear animation, investigation of the Women’s March organisers, and others.

Aside from the four aspects, a special committee on Muslim LGBT issues composed of state agencies and non-governmental organisations, which meets annually or based on needs, has been established according to the Minister.

None of these programmes fundamentally address the marginalisation of LGBT people due to the discrimination by the state and society through a rights and evidence-based approach. Instead, LGBT people’s SOGIESC are moralised and demonised as a sin, and wrongly medicalised and pathologized. Relatedly, HIV is moralised and weaponised as being a consequence for “being LGBT”. Pseudo-scientific and harmful religious methods are then adopted to ‘cure’, ‘treat’ and ‘rehabilitate’ LGBT people to the right path, resulting in further harm to LGBT people and gendered mis/disinformation.

### **Increasing Censorship against LGBT Expressions**

In response to a question in Parliament about the introduction of laws to prohibit LGBT open or closed events, and regulation of non-governmental organisations that promote LGBT people, the Minister noted that the Peaceful Assembly Act (PAA) can be applied in such situations. He added that promotion of LGBT issues can be restricted on the grounds of ‘public order’. Misguidedly, he noted that Section 15 of the PAA can be invoked to safeguard the ‘safety or public order, including protection of others’ rights and freedom’.

Under international human rights law, restrictions of rights must be justified and satisfy the test of legality, necessity and proportionality. Article 29 of the Universal Declaration of Human Rights (UDHR) allows limitations of rights solely to secure due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare in a democratic society. In this case, the restriction of human rights of LGBTIQ and gender-diverse people in the interest of the majority, results in tyranny of the majority and decline of rights of minorities.

Justice for Sisters’ documentation and research has found that the overall restrictive environment has a profound impact on LGBT people’s ability to express themselves and engage in public life, report cases of violence and discrimination, among others. The restrictive environment has also increased trust deficit in public institutions, and the desire to seek asylum and migration among LGBTIQ and gender-diverse people<sup>283</sup>.

There were five key events:

- **Introduction of guidelines for foreign performers by PUSPAL (March 2023) and concerts in universities by the Ministry of Higher Education (September 2023).**
- **Cancellation of the Good Vibes festival and the subsequent self-censorship by foreign artists.**

In July 2023, the Ministry of Communication and Digital cancelled the Good Vibes Festival following a protest against the discrimination of LGBTQ people in Malaysia by a foreign band. The protest involved two of the band members kissing on stage. Following the incident, at least two foreign artists, Muse removed a song from their

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<sup>283</sup> ‘Survey findings: Impact of Covid-19 & anti-LGBT narratives on LGBTQ+ persons in Malaysia out now - Queer Lapis.’ (*Queer Lapis*, 23 March 2023) <<https://www.queerlapis.com/survey-findings-impact-of-covid-19-anti-lgbt-narratives-on-lgbtq-persons-in-malaysia-out-now/>> accessed 30 October 2023



setlist in order to comply with the government's guidelines<sup>284,285</sup>. Similarly, A-Mei, a Taiwanese singer also changed her setlist and released an advisory to fans and concert attendees, which among others prohibited any kind of flags with the image of the rainbow flag<sup>286</sup>.

- **Banning of pride-themed Swatch watches.**

On 22 May 2023, Swatch reported raids on 11 Swatch outlets by the Ministry of Home Affairs (MOHA) resulting in confiscation of their limited-edition Pride collection watches. A total of 172 watches, worth over US\$14,000 or RM64,255 were confiscated for violating Section 7 of the Printing Presses and Publication Act (PPPA)<sup>287</sup>. The raids were triggered by social media posts by online users linking the watches with Coldplay, who are slated to be performing in Malaysia in November 2023. Swatch filed a judicial review to challenge the grounds of the raid, and the confiscation of the watches in June<sup>288</sup>. In August 2023, the Kuala Lumpur High Court granted Swatch leave to pursue its judicial review<sup>289</sup>. Under Section 7(1), the Minister is expected to make an order regarding the prohibition of the watches. The orders are typically published as a Gazette on the Attorney General Chambers' (AGC) website. However, the gazette was only published in August 2023, months following the raid and filing the judicial review<sup>290</sup>.

- **Overturing of the High Court's decision, which lifted the ban on Gay is OK!: A Christian Perspective, by the Court of Appeal.**

In a split 2-1 decision, the Court of Appeal overturned the High Court decision and reinstated the ban on the book. The book was banned in 2020, seven years after it was published in 2013, by the then Minister of Home Affairs on the grounds that it is likely to be prejudicial to public order, morality and public interest. Two of the Court of Appeal judges sided with the then Minister's decision and further added that the content and the title of the book are likely being prejudicial to public order, morality and public interest, in spite of the lack of evidence by the Minister to support his claims, and the book being in circulation for seven years. Meanwhile, the dissenting judge agreed with

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<sup>284</sup> Isobel Lewis, 'Muse explain decision to change setlist for Malaysia show following Matty Healy controversy' (*The Independent*, 1 August 2023) <<https://www.independent.co.uk/arts-entertainment/music/news/muse-matty-healy-malaysia-resistance-ban-b2385551.html>> accessed 30 October 2023

<sup>285</sup> Damian Jones, 'Muse reveal song swapped and reason for Malaysia setlist change amidst 1975 controversy' (*NME*, 3 August 2023) <<https://www.nme.com/news/music/muse-reveal-song-swapped-and-reason-for-malaysia-setlist-change-amidst-1975-controversy-3476249#>> accessed 30 October 2023

<sup>286</sup> Azri Azizan, 'Taiwanese Singer, A-Mei Not Allowed to Sing "Rainbow" in M'sia Due to its LGBTQ Elements, Flags are Banned Too' (*World of Buzz*, 26 August 2023) <<https://worldofbuzz.com/taiwanese-singer-a-mei-not-allowed-to-sing-rainbow-in-msia-due-to-its-lgbtq-elements-flags-are-banned-too/>> accessed 30 October 2023

<sup>287</sup> 'Swatch raid over Pride-themed watches calls for a review of the Printing, Presses and Publication Act (PPPA)' (*Justice for Sisters*, 26 May 2023) <<https://justiceforsisters.wordpress.com/2023/05/26/swatch-raid-over-pride-themed-watches-calls-for-a-review-of-the-printing-presses-and-publication-act-pppa/>> accessed 30 October 2023

<sup>288</sup> 'Swatch sues Malaysia over seizure of LGBTQ pride watches' (*Al Jazeera*, 17 July 2023) <<https://www.aljazeera.com/economy/2023/7/17/swatch-sues-malaysia-over-seizure-of-lgbtq-pride-watches>> accessed 30 October 2023

<sup>289</sup> Rahmat Khairulrijal, 'Swatch Malaysia granted permission to challenge Home Ministry's confiscation of 172 watches from Pride Collection' (*New Straits Times*, 23 August 2023) <<https://www.nst.com.my/news/crime-courts/2023/08/946289/swatch-malaysia-granted-permission-challenge-home-ministrys>> accessed 30 October 2023

<sup>290</sup> Ida Lim, 'Three months after raids, Home Ministry bans 'LGBTQ+' on Swatch watches' (*Malay Mail*, 10 August 2023) <<https://www.malaymail.com/news/malaysia/2023/08/10/three-months-after-raids-home-ministry-bans-lgbtq-on-swatch-watches/84574>> accessed 30 October 2023

the High Court judge's decision to quash the ban<sup>291</sup>. The Court ordered a cost of RM 15,000 to be paid to the respondents - the Ministry of Home Affairs and the government.

- **Banning of LGBT websites**

In October 2023, in response to a PAS member of parliamentary question regarding actions by the Ministry of Communication and Digital to 11 applications that facilitate 'LGBT activities', the Minister shared that the Ministry has reportedly received 35 public 'complaints' in relation to 'deviant' activities via websites and applications between 2021 and September 2023. Meanwhile, 85 websites and applications with related domain names have been blocked. It is, however, unclear, the types of LGBT-related websites and applications that have been blocked<sup>292</sup>.

### **Investigation into Organisers of Peaceful Assemblies**

In 2023, at least two LGBT-inclusive and related rallies or protests were investigated by the police. In both cases, the police investigated the organisers and participants of the rally or protest under Section 9(5) of the Peaceful Assembly Act 2012 (PAA), for failure to provide prior notification at least five days before the assembly; and Section 14 of the Minor Offences Act 1955 on insulting behaviour.

It is important to note that the PAA does not require approval or a permit for an assembly. However, the PAA requires the organisers to provide a notification to the police five days prior to the assembly. Under international human rights law notification prior to assembly is not mandatory. Moreover, non-compliance should not be subjected to criminal or administrative sanctions. It is also important to understand the difference between notification procedure and the permission requirement. The purpose of a notification procedure is to "trigger the positive obligations of the state to facilitate the exercise of freedom of peaceful assembly, consistent with the "principle of presumption" in favour of holding assemblies outlined in the OSCE/ODIHR Guidelines on Assembly'."

Section 14 of the Minor Offences Act is increasingly used as grounds for investigation of the organisers, participants, and monitors of the rallies due to alleged insulting placards, even if they are calling for gender equality, bodily autonomy and rights, protection of LGBT people, among others.

They include:

- **The Women's March in March 2023.**

The Women's March's organisers have been consistently called in for investigation. In 2023, they were investigated under Section 9(5) of the Peaceful Assembly Act 2012 (PAA), for alleged failure to provide prior notification at least five days before the assembly; and Section 14 of the Minor Offences Act 1955 on insulting behaviour. The organisers of the Women's March had notified the police six days prior to the march. The investigation was later dropped.

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<sup>291</sup> Ida Lim, 'In 2-1 decision, Court of Appeal restores Home Ministry's ban on 'Gay is OK!' book' (*Malay Mail*, 25 September 2023) <<https://www.malaymail.com/news/malaysia/2023/09/25/in-2-1-decision-court-of-appeal-restores-home-ministrys-ban-on-gay-is-ok-book/92737>> accessed 30 October 2023

<sup>292</sup> Mohammad Khairil Ashraf Mohd Khalid, '85 aplikasi, laman sesawang aktiviti songsang disekat' (*Harian Metro*, 13 October 2023) <<https://www.hmetro.com.my/mutakhir/2023/10/1019493/85-aplikasi-laman-sesawang-aktiviti-songsang-disekat>> accessed 30 October 2023

- **A protest in solidarity with LGBT people by followers of the Ahmadi Religion of Peace and Light in July 2023.**

Unlike other protests, the protest by the eight members of the Ahmadi Religion of Peace and Light was disrupted by the police. They were subsequently arrested and detained at the Dang Wangi police station, where their statements were taken. The eight were investigated under Section 186 of the Penal Code, Section 14 of the Minor Offences Act 1955, and Section 9(5) of the Peaceful Assembly Act 2012. Section 186 penalises obstruction of any public servant in the discharge of his public functions. Given the fact that they are a minority religious sect, JAWI also opened an investigation paper on the protestors<sup>293</sup>. The outcomes of the investigations are unknown.

Both events received high levels of violent comments. Justice for Sisters has documented extreme, violent and degrading speech against protestors, and LGBTQ and gender-diverse people in various spaces, including social media and in Parliament. These include:

- Calls to kill themselves, or be killed, and the ‘extinction’ of LGBT people;
- Calls for physical and sexual violence against protestors and LGBT people;
- Calls for war or jihad against LGBT people and lust. e.g. An article published in Harakah Daily, ‘*Perang, adakah hanya sekadar angkat senjata?*’ (War, is it just a matter of taking up arms?);
- Comparison of LGBT people to animals by Members of Parliament<sup>294</sup>.

Under international human rights law (IHRL), restrictions on the right to freedom of expression are permitted only if they are: (a) provided by law, (b) in pursuit of a legitimate aim, including protecting the rights of others, and (c) necessary and proportionate to that aim. Additionally, IHRL requires that governments restrict speech that constitutes incitement to discrimination, hostility, violence or international crimes<sup>295</sup>.

### **Increasing Violence Against LGBT People, Including Hate Speech**

Discriminatory and hate speech against LGBT people is high, however unaddressed. Justice for Sisters documentation shows that a significant amount of anti-LGBT comments blatantly advocates for discrimination and hatred constituting incitement of hostility, discrimination and violence.

An election monitoring report found that gender and LGBTIQ-related ‘offensive speech’ was 47% of the overall social media posts monitored. Further, they were at least 2 times higher than ‘offensive speech’ related to religion and race<sup>296</sup>.

A survey with 220 LGBT people found 55% and 53% faced increased stress due to media sensationalism and online hate speech respectively. Meanwhile, about 33% - 39% experienced discrimination<sup>297</sup>.

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<sup>293</sup> ‘Eight men from “Ahmadi Religion of Peace and Light” group detained for LGBT gathering’ (*New Straits Times*, 31 July 2023 <<https://www.nst.com.my/news/crime-courts/2023/07/937143/eight-men-ahmadi-religion-peace-and-light-group-detained-lgbt>> accessed 30 October 2023

<sup>294</sup> ‘Media statement: End all forms of harassment against the Women’s March Malaysia 2023’ (*Justice for Sisters*, 17 March 2023) <<https://justiceforsisters.wordpress.com/2023/03/17/media-statement-end-all-forms-harassment-against-organisers-and-participants-of-the-womens-march-malaysia-2023/>> accessed 30 October 2023

<sup>295</sup> Ibid

<sup>296</sup> Centre for Independent Journalism, ‘15th General Elections Social Media Monitoring’ <<https://cijmalaysia.net/election-monitoring/>> accessed 30 October 2023

<sup>297</sup> Justice for Sisters, PLUHO, Queer Lapis, & Diversity. (2021). *Survey findings: Impact of Covid-19 & anti-LGBT narratives on LGBTQ+ persons in Malaysia*. <https://www.queerlapis.com/wp->

## Hate Crime and Murder of Trans and Gender-Diverse People

At least two murders of trans women were reported in June and October 2023. Justice for Sisters monitoring shows that the police and media are ill-equipped to address and report cases of violence and hate crimes against LGBTQ persons, particularly trans and gender-diverse persons. In the case reported in October 2023, the trans woman was not only misgendered, but the police were also quick to rule out hate crime elements despite the brutal violence and pending lab reports<sup>298</sup>.

Justice for Sisters does not intend to assume or assign Nhaveen an identity. However, it is important to note that Nhaveen was a victim of gender-based violence, as he was bullied based on his gender expression and perceived sexual orientation. In 2017, Nhaveen died following brutal attacks by his assailants.

On 3 October, the five men accused of Nhaveen's murder were acquitted<sup>299</sup>. Later in the same month, the AGC reported that it will appeal the acquittal<sup>300</sup>. The media has widely reported delays and shortcomings in the trial. Based on media monitoring, Justice for Sisters found shortcomings in the evidence gathering processes by the police. Nhaveen's family were also reportedly planning to initiate a legal suit against the hospital and police<sup>301</sup>.

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content/uploads/2021/12/311221-Survey-findings\_Impact-of-Covid-19-and-anti-LGBT-narratives-on-LGBT-persons-in-Malaysia.pdf, pages 23 – 25

<sup>298</sup> 'Media statement: End all forms of harassment against the Women's March Malaysia 2023' (*Justice for Sisters*, 17 March 2023) <<https://justiceforsisters.wordpress.com/2023/03/17/media-statement-end-all-forms-harassment-against-organisers-and-participants-of-the-womens-march-malaysia-2023/>> accessed 30 October 2023

<sup>299</sup> Audrey Dermawan, 'Nhaveen murder trial: High Court acquits and discharges 5 men without calling defence [NSTTV]' (*New Straits Times*, 3 October 2023) <<https://www.nst.com.my/news/crime-courts/2023/10/962434/nhaveen-murder-trial-high-court-acquits-and-discharges-5-men>> accessed 30 October 2023

<sup>300</sup> Faisal Asyraf, 'T Nhaveen's mother in tears after AGC confirms appeal over acquittal' (*Free Malaysia Today*, 13 October 2023) <<https://www.freemalaysiatoday.com/category/nation/2023/10/13/t-nhaveens-mother-in-tears-after-agc-confirms-appeal-over-acquittal/>> accessed 30 October 2023

<sup>301</sup> Imram Hilmy, 'Family of killed teen to file civil suit against hospital, cops' (*The Star*, 4 October 2023) <<https://www.thestar.com.my/news/nation/2023/10/04/family-of-killed-teen-to-file-civil-suit-against-hospital-cops>> accessed 30 October 2023

# THE STATE OF CLIMATE EMERGENCY IN MALAYSIA

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## 1.0 Introduction

The worldwide climate crisis, primarily fuelled by developed countries and large businesses, presents a significant challenge to countries, notably Malaysia. Malaysia, while progressing industrially, grapples with the adverse impacts of this unfolding emergency. The evidence is clear: endangered coastal areas, rampant deforestation, constant tension between development and ecological preservation, and environmental rights issues. In a hopeful turn, the Human Rights Council and UNGA acknowledged in 2022 everyone's right to a clean, healthy and sustainable environment. Furthermore, in 2023, a resolution allowing the ICJ to advise on climate responsibilities was passed. Although this is not mandatory, it offers a nudge for countries, Malaysia included, to enhance their environmental and human rights commitment. It is vital for governments to honour, shield, and fulfil human rights, and Malaysia has the opportunity to address its specific challenges while aligning with the benchmarks provided by the UN Special Rapporteur Office for Human Rights and Environment.

## 2.0 Climate Impacts and Human Rights Consequences in Malaysia

2023 bore witness to the ramifications of climate change in Malaysia, with dire human rights implications. Just over a year following the 2021 mega floods, Johor experienced devastating floods, reputed as the worst in recent memory. Over a span of two weeks, continuous rainfall displaced 82,000 people, culminating in the tragic loss of five lives<sup>302</sup>. Although the full extent of the economic loss remains undisclosed, preliminary assessments have pinpointed damages to roads and infrastructure exceeding RM168 million<sup>303</sup>, with the agricultural sector suffering losses amounting to RM35.5 million<sup>304</sup>.

By May 2023, Malaysia grappled with an intense heatwave that led to the unfortunate deaths of two children<sup>305</sup>. Such events, set against the backdrop of rising temperatures across Asia and the anticipated repercussions of El Niño, highlight the urgency on public health and community preparedness.

Moreover, the recent surge in malaria cases, as identified by public health experts, is linked to climate change<sup>306</sup>. An increased prevalence of mental health issues, stemming from the stress and trauma of these climate disasters are well-documented.

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<sup>302</sup> Zahratulhayat Mat Arif, 'Part of RM150m funds for flood relief to be used to instal Bailey bridges in Johor' (*New Straits Times*, 18 March 2023) <<https://www.nst.com.my/news/nation/2023/03/890361/part-rm150m-funds-flood-relief-be-used-instal-bailey-bridges-johor>> accessed 9 November 2023

<sup>303</sup> Yee Xiang Yun, 'Floods: At least RM168mil needed for infrastructure repairs, says Johor exco member' (*The Star*, 14 March 2023) <<https://www.thestar.com.my/news/nation/2023/03/14/floods-at-least-rm168mil-needed-to-repair-infrastructure-says-johor-exco-member>> accessed 9 November 2023

<sup>304</sup> Yee Xiang Yun, 'Fresh produce to cost more in Johor due to floods' (*The Star*, 13 March 2023) <<https://www.thestar.com.my/news/nation/2023/03/13/fresh-produce-to-cost-more-in-johor-due-to-floods>> accessed 9 November 2023

<sup>305</sup> Press Release: Gabungan Darurat Iklim Malaysia (GDIMY) Demands Urgent Action on Heat Stroke-Related Deaths in Malaysia <<https://docs.google.com/document/d/1JewcyMLI0vifoTZXWhBldxubyfBqIilz5ISxKyYe3oE/edit>>

<sup>306</sup> Ragananthini Vethasalam, 'Malaria makes a scary comeback' (*The Star*, 2 October 2023) <<https://www.thestar.com.my/news/nation/2023/10/02/malaria-makes-a-scary-comeback>> accessed 9 November 2023

A glaring oversight exists in Malaysia's approach to these challenges. Specifically, there is substantial data deficit concerning women and their means of coping. Added to this, increased care burdens and limited access to healthcare further intensify their vulnerability. Disconcertingly, Malaysia's current climate policies overlook these gender-sensitive nuances. Without a dedicated UNFCCC National Gender and Climate Change Focal Point, Malaysia finds itself isolated from the shared best practices and insights of other nations.

Food security, an essential human right, is also under threat. Recent floods have wreaked havoc on Johor's agriculture, causing 929 farmers in the state to apply for flood relief aid following losses of over RM17 million, with a total of 60 operators in the fishery sector incurred damages amounting to approximately RM5.234 million<sup>307</sup>. Unpredictable weather patterns in 2023 have led to a staggering 50% reduction in vegetable production in Cameron Highlands, resulting in a consequential doubling of prices<sup>308</sup>. Cumulatively, the nation's agriculture and agro-food sectors reported losses of around RM111.95 million, following the recent monsoon season with the damages covering 24,500ha of land involving some 12,000 farmers and breeders nationwide<sup>309</sup>. Malaysia is introducing government-supported insurance schemes, including the agro-food insurance<sup>310</sup> and Padi Crop Takaful Scheme<sup>311</sup>, to bolster food security and supplement the existing Padi Crop Disaster Fund (TBTP). However, glaringly absent from these interventions is the consideration of farmers' physical and mental well-being throughout these disaster cycles.

In light of these realities, it is paramount for the government to address the human rights implications, prioritising the welfare and wellbeing of the nation's most vulnerable.

### 3.0 Malaysia's Climate Policies and Plans

In 2023, Malaysia moved to pivot from its heavy reliance on fossil fuels by launching the National Energy Transition Roadmap (NETR), aligning with the 12th Malaysian Plan's goal for Net Zero emissions by 2050. This ambitious strategy targets 70% renewable energy by 2040 and considers lifting renewable energy export bans. Furthermore, the burgeoning rare earth minerals sector under the upcoming Dasar Mineral Negara<sup>312</sup>, essential for electric vehicle batteries, promises to create around 7,000 jobs. While considering export restrictions on these minerals to bolster the industry's growth domestically, the government must ensure the right to clean water and air under the new procedure for Rare Earth Elements (REE) and address the issue of energy poverty of the local communities. It is vital that, in this green transition, the rights and concerns of local communities, especially the Orang Asli's rights to Free, Prior and

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<sup>307</sup> 'More than nine hundred farmers apply for assistance following RM17 million in losses due to floods' (*New Straits Times*, 15 June 2023) <<https://www.nst.com.my/news/nation/2023/06/920518/more-nine-hundred-farmers-apply-assistance-following-rm17-million-losses>> accessed 9 November 2023

<sup>308</sup> 'Daily showers bring vegetable shortage and price woes' (*The Star*, 8 February 2023) <<https://www.thestar.com.my/news/nation/2023/02/08/daily-showers-bring-vegetable-shortage-and-price-woes>> accessed 9 November 2023

<sup>309</sup> Sharifah Mahsinah Abdullah, 'Farmers suffer RM111 million losses due to recent floods' (*New Straits Times*, 5 January 2023) <<https://www.nst.com.my/news/nation/2023/01/867557/farmers-suffer-rm111-million-losses-due-recent-floods>> accessed 9 November 2023

<sup>310</sup> Nor Ain Mohamed Radhi, 'Agrofood insurance scheme in final stages, says Kiandee' (*New Straits Times*, 5 July 2022) <<https://www.nst.com.my/news/nation/2022/07/810919/agrofood-insurance-scheme-final-stages-says-kiandee>> accessed 9 November 2023

<sup>311</sup> 'Takaful Scheme for paddy crops to be launched soon' (*Selangor Journal*, 28 February 2023) <<https://selangorjournal.my/2023/02/takaful-scheme-for-paddy-crops-to-be-launched-soon/>> accessed 9 November 2023

<sup>312</sup> 'Kabinet lulus SOP berkaitan REE - Nik Nazmi' (*Astro Awani*, 12 September 2023) <<https://www.astroawani.com/berita-malaysia/kabinet-lulus-sop-berkaitan-ree-nik-nazmi-437113>> accessed 9 November 2023

Informed Consent (FPIC) and self-determination, are upheld. Ongoing conflict, like controversial land acquisitions for hydro dams<sup>313</sup> or mining for REE within Permanent Forest Reserves, particularly those situated within the environmentally sensitive Central Forest Spine<sup>314</sup>, highlight the need to ensure 'just' within the green transition.

The NETR also indicates Malaysia's gas reliance until 2050, risking carbon lock in. While often touted as a cleaner transition fuel, the methane in natural gas has a substantially higher global warming potential than CO<sub>2</sub> and could spur short-term temperature increases, risking irreversible climate impacts. Malaysia's expansion in natural gas infrastructure, as per NETR, might deter renewable uptake, leading to carbon lock-in and stranded assets, posing significant economic risks in a globally shifting energy landscape. A significant transition concern is the need for Malaysia to accelerate the adoption of renewable energy through assisting the state oil company, Petronas, to incorporate Scope 3 emission reporting<sup>315</sup> urgently into its transition targets while gradually divesting from natural gas investments, as well as supporting underrepresented groups in a just energy transition.

In Malaysia's response to ESG, disclosure and accountability, the Joint Committee on Climate Change (JC3) was set up to guide businesses towards climate resilience through guidelines and regulations. Moreover, to boost the manufacturing sector's ESG practices, the i-ESG framework has been introduced. Simultaneously, Malaysia's National Action Plan on Business and Human Rights, currently in the making, promotes corporate accountability with the environment as its cornerstone. Opportunities exist also within JC3's SMEs Focus Group to align initiatives with human rights principles.

The Bursa Carbon Exchange has started trading. However, there's a demand for more mandatory safeguards in Malaysia's Voluntary Carbon Market (VCM), especially in light of a judicial review filed by civil society against the Sabah state government for perceived due diligence shortcomings in the Sabah NCA Deal<sup>316</sup>. The government is in the process of developing the National Carbon Policy, which will offer guidance for implementing carbon trading initiatives at the state level.

Despite the cabinet's approval for the development of the Freedom of Information Act, and the Government Procurement Act, several enduring institutional barriers continue to hinder transparency in government operations. These include the inadequacies of the Whistleblower Protection Act 2010, the absence of an anti-SLAPP legal framework to safeguard the safety of activists<sup>317</sup>, and the persistent application of the Official Secrets Act 1972. Furthermore, the

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<sup>313</sup> 'TNB to build mini gallery to house Orang Asli artifacts found at site of Nenggiri dam project' (*Malay Mail*, 14 June 2022) <<https://www.malaymail.com/news/malaysia/2022/06/14/tnb-to-build-mini-gallery-to-house-orang-asli-artifacts-found-at-site-of-nenggiri-dam-project/12268>> accessed 9 November 2023

<sup>314</sup> Mangai Balasegaran, 'Why is Malaysia allowing forest-destroying mining to take place in a forest reserve?' (*The Star*, 8 October 2023) <<https://www.thestar.com.my/lifestyle/living/2023/10/08/why-is-malaysia-allowing-forest-destroying-mining-to-take-place-in-a-forest-reserve>> accessed 9 November 2023

<sup>315</sup> Raja Aiman, 'Petronas to adopt a 'progressive' approach in managing Scope 3 emissions' (*Eco-Business*, 14 April 2023) <<https://www.eco-business.com/news/petronas-to-adopt-a-progressive-approach-in-managing-scope-3-emissions/>> accessed 9 November 2023

<sup>316</sup> Ersie Anjumin, 'Sabah's civil society groups to initiate judicial review on controversial carbon deal' (*New Straits Times*, 2 August 2023) <<https://www.nst.com.my/news/nation/2023/08/937858/sabahs-civil-society-groups-initiate-judicial-review-controversial-carbon>> accessed 9 November 2023

<sup>317</sup> 'Malaysia: Timber company Samling files defamation suit against Indigenous civil society group, rights organisations claim it's a SLAPP; co. responds' (*20 Years of Business & Human Rights Resource Centre*, 4 October 2021) <<https://www.business-humanrights.org/en/latest-news/malaysia-timber-company-samling-files-defamation-suit-against-indigenous-civil-society-group-rights-organisations-claim-its-a-slapp-co-responds/>> accessed 9 November 2023

issue of defining greenwashing, particularly in the context of Net Zero commitments, remains a subject of debate with no clear legal repercussions established.

Malaysia has recently established a climate change consultative panel involving civil society, highlighting its commitment to inclusive governance. However, calls for greater transparency in the operations and discussions of this group have emerged. Notably, women's groups have been excluded from this panel, raising concerns about the sidelining of gender perspectives and representation. Furthermore, the postponement of the Climate Change Bill to 2025 is a pressing concern, given the urgent need for such legislation. Civil Society Organisations are advocating for a stronger focus on environmental rights and are urging amendments to the constitution to reflect this emphasis.




SUARAM's Human Rights Report Overview on Malaysia is widely recognised as the most objective, comprehensive and reliable source of information on the state of human rights in Malaysia.


The 2023 Overview provides a critical snapshot of the violations of fundamental liberties and rights of vulnerable groups that take place within the year.

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