

**Stakeholder Written Submission
for
Malaysia's 3rd Universal Periodic Review
2018**

Submitted by:



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Executive Summary

1. The human rights situation in Malaysia within reporting period of 2013 to 2018 have been volatile at best. Running up to Malaysia's 2nd UPR cycle in 2013, the political situation in Malaysia enabled a brief period of improvement to human rights and civic space. However, the positive development leading up to the 2nd UPR cycle have all but disappeared following the growing political dissidents among the general population.
2. Overall, civil societies have documented and highlighted human rights violations across the board. Notable issues of concern arising within the reporting period includes the practice of arbitrary detention and the denial of the right to fair trial; the use of torture in detention; racial discrimination; growing religious intolerance and islamization of secular institution; attacks and hate speech against minority groups; gender based violence; infringement of labours rights; the absence of legal recognition for refugees; and shrinking of civic space through government policies and non-state actors attacks against rights based groups.
3. On top of the direct violations of human rights, the Government of Malaysia has jeopardized existing mechanism that could mitigate and address human rights violations. The Human Rights Commissions of Malaysia was the subject of a substantial budget cut of more than 50% in 2015 and was left in a bind with regards to its ability to exercise its duty as a National Human Rights Institution.
4. The Judiciary which had to struggle to reclaim its independence and undo the perception of being controlled by the executive was all but destroyed following the appointment of the new Chief Justice and President of the Court of Appeal. Despite the concerns with regards to the constitutionality of the two appointment, the Government of Malaysia have disregarded the concerns raised by civil societies and the Bar Council of Malaysia and defended its choice in appointing two judges who were past the retirement age for judges outlined in the Federal Constitution.
5. This report will focus on the primary concerns related to the Right to Fair Trial; the issue of torture and custodial death; freedom of expression; freedom of assembly; and the threats against human rights defenders within Malaysia.

Right to Fair Trial

6. The report commends the Government of Malaysia for the abolition of the Internal Security Act 1960 in 2012. However, the report notes with concern the introduction and implementation of a series of laws that permits arbitrary detention and the abject denial of the right to fair trial. These laws includes, the Security Offences (Special Measures) Act 2012 (SOSMA)¹, the Prevention of Crime Act 1959 (POCA)², Prevention of Terrorism Act 2015 (POTA), Dangerous Drugs (Special Preventive Measures) Act 1985. Some of these laws such as the Prevention of Crime, Prevention of Terrorism and the Dangerous Drugs (Special Preventive Measures) Act 1985 greatly resembles the Internal Security Act 1960 (upwards of 60 days detention orders by police, and 2 years detention order by government appointed Board).
7. According from reports by the the Prison Department, 2,787 people are currently detained under these laws³. Parliament reply by the Home Ministry in 2017 highlights that there has been a total of 989 cases of detention under SOSMA since its enactment in 2012 (a period of 5 years)⁴.
8. On top of the massive scale in which these laws are utilized to deny the right to fair trial, these laws have also been utilized against members of civil societies and political opponents. Notable cases includes the arrest and detention of Khairuddin Abu Hassan and Matthias Chang⁵ in 2015 under SOSMA (bail for both were maintained after the Federal Court rejected the prosecution's appeal for bail to be denied); arrest and detention of Sri Sanjeevan⁶ under POCA after a series of chain remand⁷; and the arrest and detention of Maria Chin Abdullah⁸ under SOSMA at the eve of Bersih 5 rally.
9. Furthermore, there are growing concerns that these laws are utilized in conjunction with each other and enabling extended detention of individuals beyond the scope of each law. Notable cases includes the case of Yaziid Sufaat, a former detainee under the Internal Security Act 1960 (ISA) who was released in 2008. He was re-arrested under SOSMA in 2013 and formally charged for omitting information relating to terrorist acts.

¹ SOSMA differs from its peers as it only provides for 28 days detention under police order and detainees are produced in court for criminal charges at the conclusion of the investigation period; however, detainees are all un-bailable under SOSMA and will remain in detention until the conclusion of all appeals.

² Amended in 2015

³ 'Nearly 3,000 people detained without trial, reveals gov't' (MalaysiaKini, 31 December 2017)

<<https://www.malaysiakini.com/news/407079>> accessed 8 March 2018

⁴ 'Malaysia extends anti-terrorism security law Sosma for 5 years' (Straits Time, 5 April 2017)

<<http://www.straitstimes.com/asia/se-asia/malaysia-extends-anti-terrorism-security-law-sosma-for-5-years>> accessed 8 March 2018

⁵ The two were involved in lodging police reports against a state owned enterprise embroiled in corruption scandal.

⁶ Sanjeevan was known to be a whistleblower on corruption within the police force

⁷ Chain remand in Malaysia refer to the abuse of the remand system where an individual is re-arrested for investigation upon the conclusion of the remand order granted by a magistrate.

⁸ The chairperson of Bersih 2.0, a coalition of rights based NGOs advocating for free and fair election

After pleading guilty to the charge and serving a 7 years sentence, Yazid Sufaat was re-arrested under Prevention of Terrorism Act 2015 and currently remain in detention.

10. Similarly in the case of Siti Noor Aishah, a post-graduate student who was arrested under SOSMA in March 2016. She was charged for the possession of 12 books related to Daesh and terrorism⁹. At the court of first instance, she was acquitted and discharged at prima facie by the High Court with the court refusing to allow further pre-trial detention despite objections by the prosecution. Upon her release, she was re-arrested by the Royal Malaysian Police under the Prevention of Crime Act 1959 and subsequently sentenced to house arrest under the law. The prosecution appealed successfully against the High Court findings and secured an extension to her pre-trial detention under SOSMA. She is now detained in Kajang Prison pending the conclusion of her appeals.

Torture and Custodial Death

11. In the 2013 UPR cycle the Government of Malaysia rejected recommendations for the creation of an Independent Police Complaints and Misconduct Commission (IPCMC) on the grounds that the established Enforcement Agency Integrity Commission (EAIC) is discharging the duties of the proposed IPCMC.
12. In the recent years, EAIC has embarked on several notable investigations into cases of custodial death and torture and has been commended for its independent investigations and comprehensive report in the investigation of the death of Syed Mohd Azlan in 2015, N. Dharmendran in 2016 and Balamurugan in 2018. Unfortunately, the Government of Malaysia often fail to adopt and implement the recommendations by the Commission in addressing the cause of custodial death.
13. Notable case of custodial death within the reporting period includes:
 14. N. Dharmendran in 2013 - investigation by EAIC found that police officer from the Serious Crime Division beaten up Dharmendran in detention and later fabricated evidence to cover up the violent investigation; 4 of the police officer charged for the murder of N. Dharmendran was acquitted by the Court of Appeal; the civil suit by the family is still in court as of time of writing;
 15. Syed Mohd Azlan in 2014 - investigation by EAIC found that physical violence during arrest and questioning caused the death of Syed Mohd Azlan; investigation also found attempts by the police to obscure evidence from the interrogation; 3 police officers were charged for culpable homicide not amounting to murder but was discharged by the sessions court;

⁹ 'Bekas pelajar sarjana Siti Noor Aishah ditangkap, sekali lagi' (MalaysiaKini, 28 March 2017) <<https://www.malaysiakini.com/news/377262>> accessed 8 March 2018

16. S. Balamurugan in 2017 - investigation by EAIC found that there was violent acts committed by the police against the deceased and that the police had failed to comply with standard operating procedure and committed a serious misconduct by re-arresting the deceased with no legal justification; no criminal charge have been made against the police officers in question.
17. Within the reporting period, several notable cases of torture and custodial death was documented. In 2015, SUARAM received a series of handwritten accounts of torture by detainees under SOSMA. Alleged tortures inflicted against the detainees by the Royal Malaysian Police includes the practice of solitary confinement; physical abuse; sexual harassment; and death threats. Apart from allegation of torture under security laws, SUARAM has also documented substantial amount of cases that suggests that detainees and suspects are often subjects of physical violence.
18. Furthermore, there is concern with the welfare and rights of minors and juveniles under the current criminal justice system. Parliament reply by the Home Minister on 31 October 2017 outlines that 142 juvenile were detained without trial under the Prevention of Crime act 1959 and 17 under SOSMA. Minors and Juvenile were also reportedly kept in the same detention facilities as adults as reported in the case of Ang Kian Kok¹⁰.

Enforced Disappearances

19. In light of the high profile kidnapping of a social worker in Northern Malaysia and the kidnapping of a pastor, Raymond Koh near Kuala Lumpur. After lobbying by civil societies, the Human Rights Commission of Malaysia embarked on a public inquiry. However, the inquiry on the kidnapping of Raymond Koh was later derailed following a notice by the Royal Malaysian Police that a suspect has been charged for the kidnapping of Raymond Koh.
20. The inquiry was suspended as Section 12 states that the Commission shall not inquire into any complaint which was subject matter of any proceeding pending in any court.

Freedom of Expression

21. Since 2013, the Government of Malaysia has conducted several crackdowns on freedom of expression. The laws restricting freedom of expression includes the Sedition Act 1948, the Communications and Multimedia Act 1998 (CMA), and the Printing Presses and Publications Act 1984 (PPPA).

¹⁰ Ang Kian Kok was detained with S. Balamurugan, the deceased from the case of custodial death reported earlier in the report. Ang was 16 years old when he was arrested and detained together with S. Balamurugan

22. The Government of Malaysia renege on its commitment to abolish the Sedition Act 1948 accepted in the 2013 UPR Cycle. Since then, the Government of Malaysia have introduced amendments to the Sedition Act 1948 that strengthens potential punishment if found guilty. Furthermore, the use of Sedition Act 1948 reached an all time high in 2015 with more than 200 arrests and investigation under the Act.
23. Concurrently, the use of Section 233¹¹ of the Communication and Multimedia Act 1998 also witnessed a sharp rise in reporting period. Monitoring from 2015 suggest that there were at least 37 cases which subsequently increased to at least 42 (the relevant ministry reported more than 181 cases of social media abuse which may include offence beyond Section 233) in 2016 and sharply increased to 146 in 2017.
24. Notable cases of criminal prosecution against human rights defenders and political opposition includes the prosecution against Fahmi Reza, a graphic artists for his satirical post on the censorship page by the Malaysian Communication and Multimedia Commission and the caricature of the Prime Minister of Malaysia. He was found guilty in February 2018 and was sentenced to 1 month imprisonment and RM30,000 in fine; political opponents to the Government of Malaysia such as Zaid Ibrahim (prosecuted for a blogpost) and Member of Parliament Sivarasa Rasiah (for sharing a satirical image) were also prosecuted under the Communication and Multimedia Act 1998.
25. The media was also subject of growing restriction and harassment by the Government of Malaysia. The Malaysian Insider was raided and investigated by the Malaysia Communication and Multimedia Commission in 2015 for a news article produced by the news portal; The Star was investigated by the Royal Malaysian Police and issued a show cause letter by the Home Ministry following a controversial front page that was construed as linking news on terrorism to a photo of Muslim performing prayers during the month of Ramadhan; MalaysiaKini, a popular online news portal was investigated and subsequently charged under the Communications and Multimedia Act 1998 for the publication of a video of a press conference.

Freedom of Assembly

26. Within the reporting period, there were some commendable developments with regards to the right to peaceful assembly. 2013 to 2015 were mired with a series of mass arrest and crackdown of participants in peaceful assembly. In the Bersih 3 rally and the #KitaLawan rally, participants and organizers were subjected to varying degrees of physical violence. Bersih 3 rally stood out in particular with participants of the rally were

¹¹ *criminalises the use of network facilities or network services by a person to transmit any communication that is deemed to be offensive and could cause annoyance to another person*

subjected to tear gas and water cannon with videos showing tear gas and water cannons fired into a hospital in the vicinity.

27. From late-2015 onwards to 2018, mass arrest and physical violence have dropped substantially. Notification by organizers of rally to the Royal Malaysian Police is often disregarded with organizers of rallies or assemblies called for statement or questioning at the conclusion of their respective programme. In community led blockades or protests, mass arrest was still common with notable incidents recorded in the blockade by community activists of Gatco; blockade by the indigenous peoples in Northern Malaysia and blockade against demolition of residential house and shop house by community in Selangor.
28. Apart from these incidents, substantial restriction against peaceful assemblies remain prevalent. Spontaneous gatherings or protest by the general public is often ordered to disperse by the Royal Malaysian Police. Solidarity vigils by civil society is often hounded by intelligence officers from the Royal Malaysian Police.

Human Rights Defenders

29. The situation pertaining to human rights defenders have been varied. In general, human rights organizations are still not recognized by government institutions with most human rights organizations forced to operate as a corporate entity. Apart from the practice of non-recognition, the situation faced by civil and political rights activists have improved towards the end of this reporting period. However, criminal motion against human rights defenders prior to 2015 remains with a number of activists subjected to fines and prison sentences.
30. Economic, Social and Cultural Rights activists suffered harsher treatment in most situations. Notable incident includes the arrest and detention of 28 Gatco settlers¹² who were preventing lorries from transporting rubber logs from their village pending a court proceeding. Despite the age of the community activists (with many above the age of 50s), those arrested were shackled together during detention and was subjected to a 3 days remand order.
31. The Indigenous Peoples in Northern Malaysia was also subjected to physical violence and intimidation by the forestry department following their blockade to prevent logging activities that threaten their ancestral lands. In total, 41 indigenous peoples' activists and community members were arrested for trespassing on a permanent forest reserve. Human Rights Defenders such as Siti Kassim who were one of the prominent lawyer and

¹² Media highlight of the struggle of Gatco settlers - 'Keeping up with the 40-year Kg Gatco row' (MalaysiaKini, 28 July 2017) <<https://www.malaysiakini.com/news/390085>> accessed 7 March 2018

activist defending the community was also subjected to varying degree of physical threats and death threats by unknown individuals. Environmental activists working in the region also received death threats for their activism and campaign against the logging activities in the region.

32. A number of LGBTIQ activists were also placed under the spotlight and subjected to death threats following a news article by religious conservative news portal. The portal continues to produce articles that propagates hate and violence against the LGBTIQ community.
33. On top of the threats against human rights defenders within the country, the Government of Malaysia has also implemented policies that blocked selected human rights defenders from leaving Malaysia. Internationally recognized human rights defenders such as Adilur Rahman Khan, Joshua Wong, Han Hui Hui and Mugiyanto Sipin were also blocked from entry into the country with no clear reason given in most of the cases¹³.

Recommendations

34. With regards to the issue of the Right to Fair Trial, SUARAM recommends for the Government of Malaysia to repeal all laws permitting arbitrary detention and the denial of the right to fair trial in line with international human rights;
35. Reinforced existing judicial mechanism to safeguard the security and liberty of person in line with the Federal Constitution and existing criminal procedure code;
36. Implement laws to criminalize and punish the use of torture and degrading treatment by enforcement agencies;
37. Abolish and amend laws that grants the Government of Malaysia power to arbitrarily restrict freedom of expression;
38. Cease all politically motivated prosecution of political opponents and human rights defenders under the Sedition Act 1948, the Communications and Multimedia Act 1998, the Peaceful Assembly Act 2012 and other laws that violate human rights principles;
39. Cease harassment of human rights defenders for organizing peaceful assemblies under the Peaceful Assembly Act 2012;

¹³ Ray Sherman & Prapti Rahman, 'Malaysia Bars Entry to Bangladeshi Human Rights Activist' (BenarNews, 20 July 2017) <<https://www.benarnews.org/english/news/malaysian/malaysia-activist-07202017161805.html>> accessed 8 March 2018

40. Strengthen and safeguard the capacity of the Human Rights Commission of Malaysia and the Enforcement Agency Integrity Commission in addressing cases of human rights violations;
41. Protect and promote the free movement of human rights defenders within Malaysia and internationally;
42. Ratify the core human rights convention, especially the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.