

**SUARAM'S  
HUMAN RIGHTS OVERVIEW  
REPORT ON MALAYSIA 2018**



## Acknowledgement

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## Executive Summary

2018 has been a monumental year for democracy and human rights in Malaysia. With the change of administration after 61 years under the Alliance/Barisan Nasional, Malaysians' aspirations for democratic and human rights have finally found a new space to grow.

Malaysians have of course not expected swift reforms from the new Pakatan Harapan (PH) government within the short term. Nevertheless, this does not exempt the current administration from perpetuating further human rights violations nor does it prevent the new government from being accountable for breaking commitments to the promised reforms outlined in their election manifesto.

The introduction of the Council of Eminent Persons and its derivative, the Institutional Reform Committee raised concerns among civil society. While giving both entities the benefit of the doubt, the lack of transparent and accountable reports of their findings has left civil society concerned about the administrations' commitment to reform and the real roles of these two committees.

Since the 14<sup>th</sup> general election (GE14), SUARAM has closely monitored developments relating to human rights in Malaysia. We published a 100-day Report Card on the new PH government. Since GE14, the government has expressed commitment to the ratification of the remaining human rights treaties and promised to establish a Parliamentary Select Committee on Human Rights.

However, beyond the two promises, the PH administration has wavered on several key promises relating to human rights from their *Buku Harapan* manifesto. They have just decided to abandon the ratification of the International Convention on the Eradication of Racial Discrimination (ICERD) after protests by UMNO, PAS and other Malay supremacist groups. The situation pertaining to detention without trial remains in limbo with no clear policy direction apart from promises of eventual repeal; freedom of expression is still under threat of the Sedition Act 1948 and the Communications and Multimedia Act 1998; investigations under Peaceful Assembly Act 2012 against human rights defenders and political activists remain the norm, and discrimination against marginalized communities remains the norm.

With regards to the **Right to Fair Trial**, there have been fewer documented cases of arrest and detention for organized crimes following the change of administration in May 2018. The Attorney-General Chamber has also reviewed charges for 42 individuals charged under SOSMA which resulted in their release from SOSMA detention. However, the fate of the others who continue to languish under SOSMA remains unaddressed, with no clear policy and administrative direction regarding their fate.

**Custodial deaths** remain common with SUARAM documentation noting four cases of custodial deaths in police detention and two known custodial deaths in prison. The failure to secure convictions against those involved in the death of N. Dharmendran was disappointing as the

earlier finding by the Enforcement Agency Integrity Commission (EAIC) has made it abundantly clear that criminal elements were present in the death of Dharmendran.

**Freedom of Expression** remains under threat as new investigations and prosecutions under the Sedition Act 1948 and the Communication and Multimedia Act 1998 have continued even after the change in administration. The investigations against Fadhiah Nadwa and Kadir Jasin under the Sedition Act 1948 and the conviction of an individual who allegedly insulted the Royal Malaysian Police under the Communication and Multimedia Act 1998 suggest that enforcement agencies have still not shifted from their old habits toward protecting and promoting the freedom of expression in Malaysia.

The Peaceful Assembly Act 2012 continues to be used to curtail the **freedom of assembly** with the practice of post-rally investigations. Human rights defenders and political activists are still called up for investigations after events, including the submission of an official memorandum to ministers which resulted in organizers and participants being called for investigation under the Peaceful Assembly Act 2012.

The resignation of Raus Sharif and Zulkefli Ahmad Makinuddin and the subsequent appointment of a new Chief Justice, Richard Malanjum gave new hopes for the **independence of the judiciary**. With the appointment of a new chief justice, internal reforms such as a full panel to preside over constitutional matters and the appointment of respectable figures to the Judicial Appointment Commission promise to bring about an independent judiciary that can be relied on to defend the rights and liberties enshrined within the Federal Constitution.

The ratification of the Refugee Convention 1951 remains a pipe dream for **refugees and asylum seekers in Malaysia**. With no clear timeline for the ratification of the convention and the absence of any commitments to establish a mechanism to protect refugee and asylum seekers in Malaysia, the situation of refugees and asylum seekers remains perilous. The regional push for repatriation of Myanmar refugees and asylum seekers by 2019 also raises concerns with regards to the viability of any repatriation within the designated timeframe and the possible threat to life and safety of refugees and asylum seekers who may be repatriated.

The discrimination against LGBTIQ groups continues unabated with politicians scapegoating the community to distract the general public from their shortcomings. The hopes that the new administration would review state-sponsored harassment and forced rehabilitation was dashed when the Minister for Religious Affairs, Mujahid Rawa ordered the removal of LGBTIQ activists' portraits from public events and went on a tirade while dismissing the discriminations against the community.

The advocacy against the **Death Penalty** finally gained momentum with the support of the Pakatan Harapan administration. Despite the bi-partisan support inherent in the abolition of the death penalty, public backlash based on misinformation continues to flourish with limited public space for the dissemination of accurate information and public debate on the subject. While the

administration's initiative is laudable, concern about societal rejection and political backlash remains an obstacle to the abolition of the death penalty.

**Free and Fair Elections** came under scrutiny with the conduct of the Barisan Nasional administration leading up to the 14<sup>th</sup> General Elections. With the implementation of the new redelineated electoral map, any hopes for reform would now require bi-partisan support in Parliament and hinder immediate plans for reform. Following the resignation of members of the Election Commission, new commissioners have been appointed. Although there were concerns for the opaque procedures in the appointment of new commissioners, the appointed chairperson provides hope for a systemic reform to the electoral system. However, the change of commissioners does not absolve the misconduct of the previous Election Commission and there should be a public inquiry into the misconduct and years of gerrymandering that have undermined the foundation of democratic elections.

## Right to Fair Trial

The abuse of draconian security laws reached its peak in 2017 with thousands detained without trial under the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime Act 1959 (POCA), the Prevention of Terrorism Act 2015, and the Dangerous Drugs (Special Preventive Measures) Act 1985.

In 2018, the trend of mass arrests and detentions under these laws continued unabated leading up to the 14<sup>th</sup> General Election on 9 May 2018. Following the 14<sup>th</sup> General Election, there appears to be a lull in this trend. Unfortunately, holistic data or information on the change of trend can only be obtained once the past operating procedures leading to the excesses of 2017 are published or made public in Parliament. At this juncture, SUARAM's monitoring and documentation would attribute the general change of trend in detentions and denial of the right to fair trial to the suspension of several task forces within the Royal Malaysian Police which were notorious for indiscriminate mass arrests.

### Statistics on Detention without Trial from SUARAM's Documentation in 2018<sup>1</sup>

	Terrorism	Trafficking/Immigration	Other Criminal Offences	Total
SOSMA	85	18	116	219
POCA	-	17	50	67
POTA	-	-	-	0 <sup>2</sup>
Total	85	35	165	286

The report also notes that the administration has to an extent, progressed from its predecessor and engaged with human rights groups on the merits of security laws in two stakeholder consultations. While the findings from the consultations were not published, the Minister of Home Affairs, Muhyiddin Yassin has said that amendments to POCA, POTA and SOSMA would be tabled in Parliament in the current Parliament session or the March 2019 session<sup>3</sup>.

### Security Offences (Special Measures) Act 2012

SOSMA is a procedural law that operates in lieu of the Criminal Procedure Code when an individual is detained for suspicion of offences under Chapter VI and VI A and VI B of the Penal Code; Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007 (ATIPSOM); and Special Measures Against Terrorism in Foreign Countries Act 2015<sup>4</sup>. Under SOSMA, an individual can be detained for no more than 28 days for investigation. As an added measure, anyone detained can

<sup>1</sup> Cases documented are known cases from SUARAM's media monitoring or case management

<sup>2</sup> No new or known detention under POTA in 2018

<sup>3</sup> Luqman Arif Abdul Karim 'Pindaan POCA, POTA, SOSMA akan dibentang – Muhyiddin' (Berita Harian Online, 13 November 2018) <<https://www.bharian.com.my/berita/nasional/2018/11/497525/pindaan-poca-pota-sosma-akan-dibentang-muhyiddin>> accessed 19 November 2018

<sup>4</sup> First Schedule (Section 3) Security Offences

be denied access to legal counsel and access to family for up to 48 hours. Furthermore, detainees are by default denied bail with no discretion afforded to the trial judge and could potentially be incarcerated until the conclusion of all trial proceedings including appeals.

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

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

Examples of this include, the extended pre-trial detention or remand when torture and degrading treatment is utilized as part of the standard operating procedure; denial of legal counsel and family access; restriction on the admissibility of evidences and documents deemed as sensitive<sup>5</sup>; the admissibility of protected witnesses who would be questioned without the presence of the accused or their counsel, and several other issues of concern involving the use of agent provocateurs and confessions.

Based on SUARAM's documentation and monitoring of SOSMA from 2012 to 2018, we were able to verify that during the 28 days remand period, detainees are kept in solitary confinement in constantly lit cells and subjected to prolonged interrogation on a daily basis. Furthermore, detainees often complained of torture and other forms of abuse by investigating officers. In late 2015, handwritten accounts by detainees who had been allegedly tortured were provided to SUARAM. The Former Inspector-General of Police, Khalid Abu Bakar has also revealed that it was part of police standard operating procedure for detainees to be kept in solitary confinement and not be provided with the basic amenities.<sup>6</sup>

According to the Ministry of Home Affairs' open data website, between 2014 and 2017, a total of 52 individuals were detained under SOSMA for ATIPSOM related offences. The 52 detainees included one woman. First detentions for ATIPSOM-related offences were recorded in 2015 (26

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<sup>5</sup> Section 8(1) provides public prosecutor an exemption to the provision of Section 51A of the Criminal Procedure Code when dealing with sensitive information

<sup>6</sup> Zurairi AR, 'IGP: Maria could have asked for mattress but did not' (Malay Mail Online, 23 November 2016) <<https://www.malaymail.com/s/1256711/igp-maria-could-have-asked-for-mattress-but-did-not>> accessed 29 October 2018

detained)<sup>7</sup>. As for Islamic State-related arrests, a total of 366 detentions were recorded with the first incident in 2014 (59 detained)<sup>8</sup>. Of these 366 detained, 37 were women.

Following the change in administration, the Ministry of Home Affairs dissolved three police teams, namely, the Special Task Force for Anti-vice, Gaming and Gangsterism (Stagg), Special Task Force on Organised Crime (StafoC) and Special Tactical Intelligence Narcotics Group (Sting)<sup>9</sup>. Following the termination of these three task forces, there has been a notable decrease in arrests and detentions under SOSMA related to organized crimes.

With the lack of a clear action plan on SOSMA detainees by the government, 160 SOSMA detainees embarked on a hunger strike in August 2018. Roughly 160 detainees reportedly went on hunger strike in Sungai Buloh Prison, demanding the abolition of SOSMA<sup>10</sup>. The Deputy Minister for Law, Mohamed Hanipa Maidin then met the detainees on hunger strike and reiterated the commitment of the government to abolish SOSMA and requested for the detainees to be patient and cease their hunger strike<sup>11</sup>. The deputy minister also suggested that 442 individuals detained under SOSMA for organized crimes related activities may have their charges amended after consideration by the Attorney General's Chamber<sup>12</sup>.

42 individuals who were accused of being members of Geng 360 Devan later had the charges against them under SOSMA amended. These 42 individuals were re-charged under Section 43 of the Societies Act 1966 with 14 of them claiming trial while 42 of them pleaded guilty to the charges under the Societies Act 1966<sup>13</sup>. The decision for the shift to using the Societies Act 1966 was a curious one as most would have expected an amendment to the charges for the

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<sup>7</sup> Ministry of Home Affairs Open Data Resource – Statistic on Arrest of Human Trafficking Syndicate under SOSMA <[http://www.data.gov.my/data/ms\\_MY/dataset/statistik-tangkapan-sindiket-penyeludupan-manusia-2014-2017](http://www.data.gov.my/data/ms_MY/dataset/statistik-tangkapan-sindiket-penyeludupan-manusia-2014-2017)> accessed 19 November 2018

<sup>8</sup> Ministry of Home Affairs Open Data Resource – Statistic on Arrest of Daesh element under SOSMA <[http://www.data.gov.my/data/ms\\_MY/dataset/statistik-tangkapan-elemen-daesh-dibawah-sosma-2014-2017](http://www.data.gov.my/data/ms_MY/dataset/statistik-tangkapan-elemen-daesh-dibawah-sosma-2014-2017)> accessed 19 November 2018

<sup>9</sup> Farik Zolkepli 'Three elite teams disbanded' (The Star Online, 27 June 2018) <<https://www.thestar.com.my/news/nation/2018/06/27/three-elite-teams-disbanded-muhyiddin-police-force-undergoing-change-to-ensure-credibility/>> accessed 19 November 2018

<sup>10</sup> Hafidzul Hilmi Mohd Noor '160 tahanan SOSMA mogok lapar' (Berita Harian Online, 25 August 2018) <<https://www.thestar.com.my/news/nation/2018/09/07/sosma-charge-revised-42-freed/>> accessed 19 November 2018

<sup>11</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 19 November 2018

<sup>12</sup> 'Tuduhan 442 tahanan SOSMA mungkin dipinda' (Berita Harian Online, 29 August 2018) <<https://www.bharian.com.my/berita/nasional/2018/08/467502/tuduhan-442-tahanan-sosma-mungkin-dipinda>> accessed 19 November 2018

<sup>13</sup> Nurbaiti Hamdan 'SOSMA charge revised – 42 freed' (The Star Online, 7 September 2018) <<https://www.thestar.com.my/news/nation/2018/09/07/sosma-charge-revised-42-freed/>> accessed 19 November 2018

prosecution to continue under the Criminal Procedure Code in conjunction with the same Penal Code Offence as opposed to a reduced charge under the Societies Act 1966.

### **Prevention of Crime Act 1959**

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

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

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

POCA gained popularity and notoriety between 2016 and 2017 as the Royal Malaysian Police was known to conduct raids which resulted in mass arrests throughout the period. At the height of its use in 2017, more than a thousand individuals were detained without trial under POCA.

Despite the implied severity of the 'offence' that is targeted by POCA, juvenile offenders are often targeted and detained under POCA. In 2017, a total of 142 minors were reported by the Ministry of Home Affairs to be under POCA detention. There are also a number of women detainees under POCA although there is no clear statistical breakdown of women detained under POCA.

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

According to the government, POTA was introduced in 2015 to combat the rising threat posed by Islamic State and terrorism in general. Similar to POCA, POTA grants the police power to detain and remand an individual for 60 days before the person is sentenced to a two-year detention order or house arrest by the Prevention of Terrorism Board.

Since its introduction, the authorities have been highly secretive, providing little information on POTA detentions and detention conditions. From SUARAM's monitoring and documentation, there has only been a handful of cases throughout the three years of POTA's existence.

A notable case that came to SUARAM's attention under POTA was the case involving Yazid Sufaat, who gained international notoriety for his involvement with Jemaah Islamiyah and was detained

under the Internal Security Act in 2001. After his release in 2008, he enjoyed a brief period of freedom before being arrested and charged under SOSMA in 2013. In 2016, he pleaded guilty to an alternative charge and was sentenced to seven years' imprisonment<sup>14</sup>. He was to be released in October 2017 on parole but was immediately rearrested under POTA for allegations of recruiting convicts for terrorism<sup>15</sup>.

Since then, his legal counsel has been denied access to the decision and sentence meted out to him under POTA, the authorities claiming that the sentence itself is under the Official Secrets Act 1972.

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

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

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

Information on the application of this law is limited with little public knowledge or awareness of the existence of this law. SUARAM is also unable to uncover any records relating to detention under this law prior to 2018 and no Parliament data is available on the subject matter. Then in September 2018, a data set outlining the number of detentions under this law was uploaded to the Ministry of Home Affairs open data project with data relating to detention under DDA85 for the year 2017. This data is reproduced below.

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<sup>14</sup> 'Narrative Summaries of Reasons For Listing' (UN Security Council)  
<[https://www.un.org/sc/suborg/en/sanctions/1267/aq\\_sanctions\\_list/summaries/individual/yazid-sufaat](https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/individual/yazid-sufaat)>  
accessed 29 October 2018

<sup>15</sup> FMT Reporters, 'Prisoners Radicalized by detainee with militant links identified' (Free Malaysia Today, 8 October 2017) <<https://www.freemalaysiatoday.com/category/nation/2017/10/08/prisoners-radicalised-by-detainee-with-militant-links-identified/>> accessed 29 October 2018

**Statistics on Sentences under DDA85 for 2017<sup>16</sup>**

<b>Month</b>	<b>Detention</b>	<b>House Arrest</b>	<b>Released</b>	<b>Total</b>
January	67	8	0	75
February	53	2	1	55
March	110	14	0	124
April	102	4	0	106
May	112	1	1	113
June	118	4	1	122
July	126	9	1	135
August	113	2	0	115
September	147	3	2	150
October	83	1	5	84
November	76	3	1	79
December	96	9	4	105
<b>Total</b>	<b>1203</b>	<b>60</b>	<b>16</b>	<b>1263</b>

Unfortunately, at this time, no similar data set is available for 2018 nor the preceding years, so this report is not able to show any trends based on the available data.

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<sup>16</sup> Data Source – (data.gov.my) <[http://www.data.gov.my/data/ms\\_MY/dataset/pecahan-perintah-di-bawah-akta-dadah-berbahaya-langkah-langkah-pencegahan-khas-1985-mengikut-bulan/resource/772a3158-22d6-4b80-9fb9-95bcdda41e66](http://www.data.gov.my/data/ms_MY/dataset/pecahan-perintah-di-bawah-akta-dadah-berbahaya-langkah-langkah-pencegahan-khas-1985-mengikut-bulan/resource/772a3158-22d6-4b80-9fb9-95bcdda41e66)> accessed 29 October 2018

## Right to Justice

With regards to the Right to Justice<sup>17</sup>, many of the prevailing issues documented in 2017 continued unabated in 2018. Despite the change in administration in May 2018, many of the abuses committed by the Royal Malaysian Police remain unaddressed by the new administration. In the second half of the year, there has been no clear policy reform except for the announcement that the Enforcement Agency Integrity Commission (EAIC) would be ‘upgraded’ into the Independent Police Complaints and Misconduct Commission (IPCMC).

### Overall Statistics on Deaths in Custody

Jurisdiction	Police	Prison Department	Immigration	Total
2014	18 <sup>18</sup>	-	44 <sup>19</sup>	62
2015	12	252	87	354
2016	15	269	40	324 <sup>20</sup>
2017	10	319 <sup>21</sup>	24	353
2018	4	2 <sup>22</sup>	- <sup>23</sup>	6
Total	59	842 <sup>24</sup>	195 <sup>25</sup>	1096

### Deaths in Custody

As of 31 October 2018, SUARAM only noted four deaths in police custody and two known incidences of death in prison custody. As noted in SUARAM’s 2015 Overview Report, a low number of documented custodial deaths at this juncture cannot be presumed to be an

<sup>17</sup> Right to Justice at SUARAM encompasses issues relating to torture in detention, custodial death and other abuses or other form of violations by state enforcement agencies including but not limited to chain remand, police shooting, police inaction and enforced disappearances.

<sup>18</sup> This was reported by SUARAM as 14 in the preceding years, but more recent Parliamentary data suggest this to be 18; Parliament Reply, 15 March 2018, Ref No. 10581, Question 33 <<https://pardocs.sinarproject.org/documents/2018-march-april-parliamentary-session/oral-questions-soalan-lisan/2018-03-15-parliamentary-replies/soalan-33.pdf/view>> accessed 9 November 2018.

<sup>19</sup> Parliament reply in April 2017, Question 468 - <https://pardocs.sinarproject.org/documents/2017-march-april-parliamentary-session/written-replies-soalan-bertulis/soalan-468.pdf>

<sup>20</sup> Numbers of death in prison and immigration can be found in SUHAKAM’s Annual Report 2016, ‘SUHAKAM Annual Report 2016’, Page 61 <<https://drive.google.com/file/d/0B6FQ7SONa3PRLVFYOHoyODc0eDg/view>> accessed 12 April 2017

<sup>21</sup> Obtained through difference between reported death up to June 2017 and earlier reports - <https://pardocs.sinarproject.org/documents/2017-march-april-parliamentary-session/oral-questions-soalan-lisan/2017-03-21-parliamentary-replies/soalan-30.pdf/view>

<sup>22</sup> The only two known and reported cases, actual figure would likely be higher based on preceding year statistic.

<sup>23</sup> No data available as of 31 October 2018

<sup>24</sup> Parliament reply in July 2017 reports that between 2010 to July 2017, a total of 1,808 prisoners died in prisons.

<sup>25</sup> <https://pardocs.sinarproject.org/documents/2017-october-november-parliamentary-session/written-replies-soalan-bertulis/soalan-289.pdf/view>

improvement as the known incidents or reported cases of custodial deaths may not necessarily be an accurate representation of the situation until official figures are released later.

#### SUARAM Documented Cases of Deaths in Custody

No	Name	Date of Death	Detention Location	Official Cause of Death <sup>26</sup>
1	Not Published <sup>27</sup>	17 March 2018	Selama Police Lockup	Suicide
2	Thanabalan Subramaniam <sup>28</sup>	17 April 2018	Shah Alam Centralized Lockup	Medical <sup>29</sup>
3	Mariappan Manivanan	6 June 2018	Bentong Prison	Medical
4	Mustaffa bin Abdullah	11 August 2018	Ulu Choh Remand Centre	Medical <sup>30</sup>
5	Lau Ah Huat	23 September 2018	Taiping Prison	Medical <sup>31</sup>
6	Mohd Faizal Md Yeit	24 September 2018	Batu Pahat Police lockup	Medical <sup>32</sup>

In January 2018, the Enforcement Agency Integrity Commission (EAIC) published their report on the deaths of Soh Kai Chiok and S. Balamurugan.

Soh Kai Chiok<sup>33</sup> died in Triang Police Station on 18 January 2017. The investigation report concludes that the cause of death, in this case, was medical in nature<sup>34</sup>. However, EAIC also found that the police had failed to provide the necessary medical treatment for the deceased when the deceased complained of pains, and there was negligence in the handling of medication for the deceased during his detention which contributed to the deterioration of his condition.

<sup>26</sup> Cause of death listed is attributable to police account of the cause of death - highlighted cases is where family or lawyers dispute the cause of death stated by the police

<sup>27</sup> Bernama, 'Police investigate detainee's death in lock-up' (The Sun Daily, 25 March 2018) <<http://www.thesundaily.my/news/2018/03/26/police-investigate-detainees-death-lock>> accessed 10 November 2018

<sup>28</sup> Bernama 'Tahanan SOSMA maut dalam lokap' (Astro Awani, 18 April 2018) <<http://www.astroawani.com/berita-malaysia/tahanan-sosma-maut-dalam-lokap-173226>> accessed 10 November 2018

<sup>29</sup> Initial reports to family suggest that it was heart attack, but the alleged cause of death was later dismissed

<sup>30</sup> Family member alleged that there were bruises on the forehead

<sup>31</sup> Family member alleged that there were sign of blood on neck and chest when they claimed the body from prison.

<sup>32</sup> Post-Mortem by family revealed there was sign of ruptured intestine with bruises found on the deck and stomach of the deceased.

<sup>33</sup> EAIC, 'Makluman Siasatan EAIC Ke Atas Kematian Soh Kai Chiok Semasa Dalam Tahanan Polis' (EAIC, 18 January 2018) <[http://www.eaic.gov.my/sites/default/files/kenyataan\\_media\\_eaic\\_siasatan\\_kematian\\_soh\\_kai\\_chiok.pdf](http://www.eaic.gov.my/sites/default/files/kenyataan_media_eaic_siasatan_kematian_soh_kai_chiok.pdf)> accessed 9 November 2018

<sup>34</sup> Peritonitis due to perforated peptic ulcer

Furthermore, the investigation also found police documentation of the detention of the deceased lacking and failure on the part of the police in complying with a court order to transfer the deceased to prison after failing to post bail.

As for the investigation into S. Balamurugan's case<sup>35</sup>, EAIC conducted a public inquiry into his death and concluded that the cause of death<sup>36</sup> was attributable to physical violence inflicted by members of the Royal Malaysian Police. The report also notes the misconduct of the Royal Malaysian Police when they failed to release Balamurugan after the denial of further remand by the magistrate and disobeyed the court instruction to bring Balamurugan to the hospital.

EAIC also recommended that the Attorney-General Chambers brought criminal charges against police officers identified to have used physical force on the deceased which led to his death.

As for on-going criminal prosecution against errant officers found to have contributed the death of detainees in detention, the prosecution against four police officers who were involved in the death of N. Dharmendran concluded in the Federal Court with the court upholding the acquittal of the four. The four police officers were suspended throughout the trial period and are now continuing their former duties.

The consistent failure of the Attorney General in securing a conviction despite the clear evidence is cause for concern as this has allowed the perpetrators of the torture inflicted on N. Dharmendran to escape criminal charges.

It is also noted that, between 2010 and February 2018, nine police officers have been charged in court with disciplinary action taken against them for negligence or causing injuries or deaths to detainees<sup>37</sup>.

N. Dharmendran died in IPK Kuala Lumpur on 21 May 2013 after allegedly suffering from an asthma attack. The post-mortem conducted on the deceased on 22 May 2013 found 'diffuse soft tissue injuries due to multiple blunt force trauma' as the cause of death. The post-mortem also notes 52 injuries in the form of bruises caused by blunt force trauma which were two to three days old at the time of the post-mortem. It also found staples from a bullet stapler on the deceased's ears.

In a Parliamentary reply to a question on the issue of custodial death in April 2018, the Ministry of Home Affairs claimed that it had introduced a new standard operating procedure requiring a form in which the detainee's health condition has to be filled by the detainees themselves. Detainees suffering from infectious diseases or high risk will be detained separately from others,

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<sup>35</sup> EAIC 'Dapatan Siasatan EAIC ke atas Kematian S. Balamurugan Semasa dalam Tahanan Polis' (EAIC, 18 January 2018)

<[http://www.eaic.gov.my/sites/default/files/kenyataan\\_media\\_eaic\\_siasatan\\_kematian\\_s.\\_balamurugan.pdf](http://www.eaic.gov.my/sites/default/files/kenyataan_media_eaic_siasatan_kematian_s._balamurugan.pdf)> accessed 8 November 2018

<sup>36</sup> Coronary artery disease with multiple blunt force injuries

<sup>37</sup> <https://pardocs.sinarproject.org/documents/2018-march-april-parliamentary-session/oral-questions-soalan-lisan/2018-03-15-parliamentary-replies/soalan-33.pdf/view>

and detainees of different categories must be separated in detention centres. The Parliamentary reply in question also highlighted that 414 out of 730 police lockups in the country now have CCTV installed whereas the remaining 316 police lockups are not active or not used<sup>38</sup>.

#### Deaths in Police Custody from 2011 to 2018 according to cause of death

Year	Medical	Suicide	Accident	Blunt force (assault)	Unknown	Total
2011	3	2	1	-	11	17
2012	3	1	1	-	15	19
2013	9	1	-	1	2	13
2014	10	1	-	1	2	14
2015	7	1	-	1 <sup>39</sup>	2	11
2016	14	1	-	-	-	15
2017	7 <sup>40</sup>	1	0	1 <sup>41</sup>	1	10
2018	3	0	0	0	1	4
<b>Total</b>	<b>43</b>	<b>8</b>	<b>2</b>	<b>4</b>	<b>34</b>	<b>103</b>

<sup>38</sup> Parliament Reply, 5 April 2018, Ref No. 10648, Question 26 <<https://pardocs.sinarproject.org/documents/2018-march-april-parliamentary-session/oral-questions-soalan-lisan/2018-04-05-parliamentary-replies/soalan-26.pdf/view>> accessed 9 November 2018

<sup>39</sup> Death was not caused by Royal Malaysian Police. Victim succumbed to injuries caused by vigilante before official police arrest

<sup>40</sup> Based on reasons or causes given by police

<sup>41</sup> Balamurugan's case based on EAIC findings

### Deaths in Police Custody from 2011 to 2018 according to ethnicity

Year	Malay	Chinese	Indian	Others	Foreigners	Total
2011	11	3	1	-	2	17
2012	4	4	6	2	3	19
2013	1	3	5	-	4	13
2014	3	3	8	-	-	14
2015	4	-	4	-	3	11
2016	2	-	-	-	-	2 (15)
2017	1	1	7	1	-	10
2018	2	-	-	2	-	4

### Torture and Ill-Treatment in Detention

Torture has been and remains a well-documented and reoccurring issue in Malaysia. Incidents of physical violence inflicted upon detainees under remand or during investigation are prevalent especially when there are elements of chain remand<sup>42</sup> or detention under security laws. In general, it is difficult to provide the appropriate medical evidence to prove torture has been inflicted as detainees are often locked away until their next court appearance and subjected to threats of further violence by investigating officers if they were to reveal what had been inflicted upon them. While evidence of torture can be difficult to ascertain, the gruesome death of A.Kugan, N.Dharmendran, S. Balamurugan, and other similar cases continue to expose the extent of physical violence and torture inflicted upon those detained by the police.

In general, ill-treatment often results from inadequate and limited facilities afforded to the police, lack of necessary resources to provide for basic amenities and medical needs<sup>43</sup>, and lack of training or available staff to provide adequate or appropriate detention condition.

The case of P. Chandran which was heard by the Court of Appeal in 2017 ruled that the police were responsible for the health and well-being of the detainee and awarded family of P. Chandran damages for his death. P. Chandran died in police lock-up after he was detained for alleged kidnapping. During his detention, his family was not allowed to provide him with his medication, he was not provided with the necessary medical treatment and was later found dead.

<sup>42</sup> Chain remand is further described in following pages

<sup>43</sup> A common problem noted by SUHAKAM's Report on Death in Custody – <https://drive.google.com/file/d/0B6FQ7SONa3PRWFBkjbBtbFp3MTQ/view> accessed 10 November 2018

The Ministry of Home Affairs in a Parliamentary reply from the March-April Parliamentary session notes that there were no recorded torture-related deaths in prison<sup>44</sup>.

### **Chain Remand**

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

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

As noted in SUARAM's reports from preceding years, the practice of rearrests and 'chain remands' through the concurrent application of SOSMA, POCA and in limited cases, under POTA is common. Case examples include immigration officers who were re-arrested under POCA after serving 28 days detention under SOSMA; the re-arrest and subsequent house arrest of Siti Noor Aishah under POCA after her initial acquittal by the High Court.

Yaziid Sufaat, was one of the newer additions to this trend with his rearrests under POTA after serving his sentence under Section 130M of the Penal Code. Yaziid Sufaat was detained under the Internal Security Act 1960 prior to its abolishment and was detained under SOSMA in 2013 for an allegation of involvement with Tanzim Al-Qaida Malaysia and for inciting terrorism. He was arrested in October 2017 under POTA allegedly for recruiting inmates for terrorist acts<sup>45</sup>.

### **Police Discharge of Firearms**

SUARAM monitors incidents of members of the Royal Malaysian Police who discharge their firearms in the line of duty whenever these are reported. Our documentation noted 23 such cases in 2018 with 40 deaths attributed to shootouts or police chase.

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<sup>44</sup> Parliament Reply, April 2018, Ref No. 10688, Question 321 <<https://pardocs.sinarproject.org/documents/2018-march-april-parliamentary-session/written-questions-soalan-bertulis/soalan-320.pdf/view>> accessed 9 November 2018

<sup>45</sup> Nadirah H. Rodzi, 'Malaysia's prisons under threat of radicalisation' (The Straits Times, 8 October 2017) <<https://www.straitstimes.com/asia/se-asia/malysias-prisons-under-threat-of-radicalisation>> accessed 9 November 2018

**Police shooting incidents documented by SUARAM in 2018**

<b>Date</b>	<b>Names</b>	<b>Location</b>	<b>State</b>	<b>No. People Involved</b>	<b>Injured</b>	<b>Death</b>	<b>Total deaths (month)</b>
5 January	unnamed, unknown age	Kuala Lumpur	Kuala Lumpur	1	-	1	8
6 January	unnamed, 20s	Taman Connaught, Cheras	Kuala Lumpur	1	-	1	
8 January	Unnamed 22 years old and 33 years	Bandar Baru Salak Tinggi and Bandar Sunway	Kuala Lumpur	2	-	2	
11 January	Unnamed Age 30 and 35 years old, other unknown	Taman Bandar Baharu in Sungai Udang	Malacca	3	1	2	
15 January	unnamed, unknown age	Jalan Gangsa, Batu Berendam	Malacca	2	-	2	
13 February	Unnamed, 20s	Kota Kinabalu	Sabah	1	-	1	
14 February	Kaidal Muksin, 30	Kota Kinabalu	Sabah	1	-	1	
28 February	Unnamed, 40s	Tawau	Sabah	3	-	3	
6 March	Tong Ming Kei, 38 and Yong Kok Kuan, 43	Persiaran Ainsdale Selatan, Seremban	Seremban	2	-	2	4

16 March	Unnamed, 20s and 30s	Templer Park, Rawang	Selangor	2	-	2	
8 May	Unnamed	Lahad Datu	Sabah	4	-	4	11
18 May	Unnamed	Damansara Jaya	Selangor	6	1	2	
19 May	Unnamed, 22 years old	Bukit Beruntung, Hulu Selangor	Selangor	1	-	3	
19 May	unknown	Ampang Jaya	Selangor	4	-	1	
20 May	Black Crow Gang	Cheras	Kuala Lumpur	5	-	1	
22 May	Unnamed, 30 years old	Pulau Mampat di Chengkau, Rembau	Negeri Sembilan	2	-	2	
23 May	unnamed, 20 to 30 years old	Banting	Selangor	4	1	-	
13 July	Unnamed, 37 years old	Sabak Bernam	Selangor	1	-	1	
30 August	Unnamed, aged between 20 and 30 years old	Kulim	Kedah	4	-	4	4
2 September	unnamed, unknown age	Seberang Perai Tengah (SPT) and Seberang Perai Selatan (SPS) districts	Penang	2	-	-	7

10 September	<i>Keri Pok Jeng</i>	Chukai	Terengganu	1	-	1	
12 September	Unnamed, aged 36 and 43	Kajang	Selangor	2	-	2	
21 September	Samsul & Osman	Pulau Boheyang Waters	Sabah	2	-	2	
21 September	Unnamed	Kulai	Johor	2	-	2	
<b>Total</b>				<b>58</b>	<b>3</b>	<b>40</b>	<b>40</b>

**Enforced Disappearances**

Despite the change in administration, the cases relating to the disappearances of Raymond Koh, Amri Che Mat, Joshua, and Ruth Hilmy remain unresolved. The public inquiry by the Human Rights Commission of Malaysia (SUHAKAM) continued in 2018 with several notable turns of events.

In May 2018, family members of Amri Che Mat informed SUHAKAM of a whistle-blower who had approached the wife of Amri Che Mat, Norhayati Mohd Ariffin. The police officer based in Kedah alleged that the kidnapping of Amri Che Mat and Raymond Koh was conducted by the Special Branch. The allegation claims that the operation involved senior officers and had the full knowledge of the former Inspector-General of Police, Khalid Abu Bakar<sup>46</sup>.

On 15 May 2018, Norhayati lodged a police report on the matter. The officer in question later denied ever making such a claim to Norhayati but merely met her to inquire about renting a shoplot within the compound of her house. On 18 May 2018, he also lodged a report denying the allegations by Norhayati<sup>47</sup>.

<sup>46</sup> Michael Murty 'Pastor Koh case: lawyer to call witness 'whistleblower' cop' (Free Malaysia Today, 12 November 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/05/16/pastor-koh-case-lawyer-to-call-as-witness-whistleblower-cop/>> accessed 12 November 2018

<sup>47</sup> Rashvinjeet S. Bed 'Suhakam inquiry: Cop denies missing activist's wife's allegation' (The Star Online, 12 November 2018) <<https://www.thestar.com.my/news/nation/2018/07/06/suhakam-inquiry-cop-denies-missing-activists-wifes-allegations/>> accessed 12 November 2018

## Freedom of Expression

In April 2018, the Anti-Fake News Act 2018 (AFNA) was steamrolled through Parliament under the guise of restricting or curbing disinformation online. The timing of the introduction and the swiftness in which it was passed through Parliament and published in the Federal Gazette gave rise to concerns that this law was going to be yet another tool for the Barisan Nasional administration to restrict and silence political opponents and critics of the administration.

With regard to the substance of the laws, experts and human rights groups have raised concerns about the policy direction, practical challenges in implementation, impact on media freedom and the curtailing of freedom of expression that AFNA represents. Notable concerns include the definition of fake news, the disproportionate punishment for an offence, and the room for private individuals to take others to court for alleged fake news and remove online content without any opportunity for other parties to defend themselves at the first application<sup>48</sup>.

Thus far, there has been only one known case of criminal prosecution and conviction under AFNA (the individual in question pleaded guilty to the charges against him and was sentenced to a week's imprisonment and RM10,000 fine)<sup>49</sup> with another case investigated under AFNA<sup>50</sup>. However, cases filed by private individuals under AFNA are difficult to document and there are no clear statistics or information as to how often AFNA has been cited to resolve individual complaints of fake news.

While the new PH administration has tried to repeal AFNA, the motion by the *Dewan Rakyat* was pushed back by the *Dewan Negara*. With this failed attempt, AFNA will continue to be in place in the Malaysian statute books for the foreseeable future and this action by the Senate threatens to undermine future attempts at repealing other draconian laws by the elected representatives.

On the other restrictions on the freedom of expression under the Sedition Act 1948 and the Communication and Multimedia Act 1998 (CMA), incidents of criminal action against activists, government critics and other comments have remained common throughout 2018.

It is noted that with the establishment of a new administration, a policy shift has taken place with regards to freedom of expression. While a moratorium is nowhere in sight, cases of investigation or prosecution relating to freedom of expression have been limited to several cases. Prosecution of human rights defenders and political opponents that took place during the Barisan Nasional

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<sup>48</sup> Malaysian Bar, 'Press Release: Withdraw the Anti-Fake News Bill 2018' (Malaysian Bar, 27 March 2018) <[http://www.malaysianbar.org.my/press\\_statements/press\\_release\\_%7C\\_withdraw\\_the\\_anti\\_fake\\_news\\_bill\\_2018.html](http://www.malaysianbar.org.my/press_statements/press_release_%7C_withdraw_the_anti_fake_news_bill_2018.html)> accessed 7 November 2018

<sup>49</sup> Qishin Tariq, 'Danish national first to be sentenced under Anti-Fake News law' (The Star Online, 30 April 2018) <<https://www.thestar.com.my/news/nation/2018/04/30/danish-national-first-to-be-sentenced-under-anti-fake-news-law/>> accessed 7 November 2018

<sup>50</sup> Reuters, 'Malaysia's opposition leader Mahathir under investigation for 'fake news': police' (Reuters, 2 May 2018) <<https://www.reuters.com/article/us-malaysia-election-mahathir/malysias-opposition-leader-mahathir-under-investigation-for-fake-news-police-idUSKBN1I322L>> accessed 7 November 2018

administration have mostly been withdrawn by the Attorney General's chamber except for a few known cases.

### **Sedition Act 1948**

The application of the Sedition Act 1948 remained prevalent in 2018. The hope that the Sedition Act 1948 would be suspended with a moratorium pending its eventual repeal failed to materialize. Notable investigations under the Sedition Act 1948 include those made against Fadhiah Nadwa Fikri<sup>51</sup> and Kadir Jasin<sup>52</sup>.

The new administration has failed to answer the continued questioning of the Sedition Act 1948 with several PH Members of Parliament themselves calling for others to be investigated under the Sedition Act 1948. This includes the initial call by Ramkarpal Singh for Hanif Omar to be investigated under the Sedition Act 1948 for his allegation made against the Democratic Action Party (DAP). Ramkarpal later apologized and retracted his statement<sup>53</sup>. Then we saw Johari Abdul's call for Kadir Jasin to be investigated under the Sedition Act 1948 for alleged comments insulting the Sultan of Kedah<sup>54</sup>.

Instead of acting against the Royal Malaysian Police for the continued use of the Sedition Act 1948, the Deputy Home Minister, Azis Jamman actually defended the police investigations using the Sedition Act 1948. He argued that despite what was promised in Pakatan Harapan's manifesto, the Sedition Act 1948 is still a valid law and that the police are merely complying with standard operating procedure.

While most of the cases under the Sedition Act have been withdrawn or dropped, there are some such as Wan Ji Wan Hussin's, who is still facing a prison sentence for his initial conviction<sup>55</sup> by the session court and awaiting his appeal. Based on SUARAM's communication with the Attorney General Chamber's, the chamber will not relent on the prosecution of Wan Ji and will not withdraw the case against him.

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<sup>51</sup> Ida Nadirah Ibrahim, 'Activist under sedition probe defends article critical of royalty' (Malay Mail Online, 11 July 2018) <<https://www.malaymail.com/s/1651266/activist-under-sedition-probe-defends-article-critical-of-royalty>> accessed 7 November 2018

<sup>52</sup> M. Kumar, 'IGP: Kadir Jasin to be investigated for sedition (updated)' (The Star Online, 7 June 2018) <<https://www.thestar.com.my/news/nation/2018/06/07/igp-kadir-jasin-to-be-investigated-for-sedition/>> accessed 7 November 2018

<sup>53</sup> 'Ramkarpal regrets mooting use of sedition law' (MalaysiaKini, 10 September 2018) <<https://www.malaysiakini.com/news/442531>> accessed 7 November 2018

<sup>54</sup> Rahimy Rahim, 'Kedah PKR MPs: Probe Kadir Jasin under Sedition Act for allegedly insulting Sultan' (The Star Online, 1 November 2018) <<https://www.thestar.com.my/news/nation/2018/11/01/probe-kadir-jasin-under-sedition-act-for-allegedly-insulting-sultan/>> accessed 7 November 2018

<sup>55</sup> Rafidah Mat Ruzki, 'Penang CM's office staff jailed for seditious statements against Selangor Sultan' (New Straits Times, 9 April 2018) <<https://www.nst.com.my/news/crime-courts/2018/04/355163/penang-cms-office-staff-jailed-seditious-statements-against>> accessed 7 November 2018.

Some groups continue to ‘apply’ the Sedition Act 1948 by filing police reports calling for police investigations against individuals under the Sedition Act 1948, as was observed in Perkasa’s demands against Kadir Jasin and Koon Yew Yin<sup>56</sup>.

As of 31 October 2018, the administration has reiterated its commitment to abolish the Sedition Act 1948 with the cabinet imposing a moratorium on the Sedition Act 1948<sup>57</sup>.

#### Records of Individuals Investigated, Arrested or Charged under Sedition Act 1948 in 2018

No	Name	Allegation or Cause for Investigation	Date Investigated, Arrested or Charged <sup>58</sup>
1	Badrul Hisham (Chegubard)	Alleged sedition against the Selangor Royal Institution	13 April 2018
2	Jeffrey Chew Gim Earn	Jeffrey Chew, who alerted his party about a slanderous video clip allegedly spreading the video he was trying to warn his party about.	26-Apr-2018 <sup>59</sup>
3	Abdul Kadir Jasin	Alleged sedition against the Royal Institution based on his commentaries on the expenditure of Sultan Muhamad V.	7-Jun-2018 <sup>60</sup>
4	Fadiyah Nadwa Fikri	Allegedly disrespecting the royal institution through an article 'Don't Kiss the Hand that Beats you' in Jentayu, the blog by Malaysia Muda.	11 July 2018
5	Asheeq Asli	Called for questioning after expressing support for Fadiyah Nadwa at the solidarity event by SUARAM	13- Aug- 2018
6	Azman Noor Adam	UMNO supreme council member Lokman Adam's younger brother was arrested by police under the Sedition Act for allegedly sharing a photo insulting Tun Dr Mahathir on social media.	2-Oct-2018
7	Ngeh Koo Ham	Called in for allegedly leaking documents on the Perak government	7-Oct-2018

<sup>56</sup> Bernama ‘Perkasa wants cops to probe Kadir Jasin, tycoon for sedition’ (Free Malaysia Today, 7 November 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/11/07/perkasa-wants-cops-to-probe-kadir-jasin-tycoon-for-sedition/>> accessed 13 November 2018

<sup>57</sup> Zakiah Koya ‘Cabinet agrees to impose moratorium on Sedition Act’ (The Star online, 11 October 2018) <<https://www.thestar.com.my/news/nation/2018/10/11/cabinet-agrees-to-impose-moratorium-on-sedition-act/>> accessed 13 November 2018

<sup>58</sup> Cases where individual was arrested is shaded.

<sup>59</sup> Jeffrey Chew was also investigated under CMA - Predeep Nambiar ‘DAP man arrested after report on anti-DAP video’ (Free Malaysia Today, 26 April 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/04/26/dap-man-arrested-for-reporting-anti-dap-video/>> accessed 13 November 2018

<sup>60</sup> M. Kumar ‘IGP: Kadir Jasin to be investigated for sedition (updated)’ (The Star Online, 7 June 2018) <<https://www.thestar.com.my/news/nation/2018/06/07/igp-kadir-jasin-to-be-investigated-for-sedition/>> accessed 13 November 2018

## Communication and Multimedia Act 1998

The investigations and prosecutions under the CMA seemingly stopped after the 14<sup>th</sup> General Election with the majority of the criminal prosecutions against human rights defenders and political opponents withdrawn. However, this does not necessarily mean that Section 233 of CMA is no longer abused by the Malaysian Communication and Multimedia Commission (MCMC) or the Royal Malaysian Police.

While some prosecutions have been withdrawn, the Royal Malaysian Police continues to arrest those accused of “offensive postings” online. Mohd Hannan Ibrahim was arrested and convicted for posting an allegedly offensive comment regarding the deaths of two policemen in an accident. The accused were unrepresented during his hearing<sup>61</sup>.

### Records of Individuals Investigated, Arrested or Charged under CMA in 2018

No	Name	Allegation or Cause for Investigation	Date Investigated, Arrested or Charged <sup>62</sup>
1	Sarajun Hoda Abdul Hassan	Allegedly insulting Islam	29 January 2018
2	Nga Kor Ming	Allegedly making offensive social media post	18 January 2018
3	Datuk Mahfuz Omar	Allegations of insulting the Sultan of Pahang	18 January 2018
4	Unknown	Allegedly making an offensive remark against the Islamic religion and also alleged provocations against Muslims on his Facebook	22 January 2018
5	Mazlan Aliman	Uploading a video on Youtube on March 7, which allegedly linked Rosmah to a sturgeon - farming project.	23 March 2018
6	Lim Guan Eng	Allegations that he had indoctrinated children with ‘politics of hate’ during the recent launch of a tuition centre in the state	1 April 2018
7	Ainin Syazwani	Alleged Fake News	13 April 2018
8	Mohd Azsrul	Alleged Fake News	13 April 2018 <sup>63</sup>
9	Jeffrey Chew Gim Earn	Allegedly spreading a video, in which he was trying to warn his party (DAP) about	26-Apr-2018 <sup>64</sup>

<sup>61</sup> Bernama, ‘Fish delivery worker gets 6 months for insulting police force’ (Free Malaysia Today, 26 October 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/10/26/fish-delivery-worker-gets-6-months-for-insulting-police-force/>> accessed 7 November 2018

<sup>62</sup> Cases where individual was arrested is shaded.

<sup>63</sup> Ainin Syazwani and Mohd Azsrul both pleaded guilty and fined RM3,000 respectively – Maizatul Nazlina ‘Two charged for fake news... but under CMA, not new fake news law’ (The Star Online, 13 April 2018) <<https://www.thestar.com.my/news/nation/2018/04/13/two-charged-for-fake-news-but-under-cma-not-new-fake-news-law/>> accessed 13 November 2018

<sup>64</sup> Jeffrey Chew was also investigated under CMA - Predeep Nambiar ‘DAP man arrested after report on anti-DAP video’ (Free Malaysia Today, 26 April 2018)

10	Fadiyah Nadwa	Allegedly disrespecting the royal institution through an article 'Don't Kiss the Hand that Beats you' in Jentayu, the blog by Malaysia Muda.	11 July 2018
11	Mohd Hannan Ibrahim	Insulting police force on Facebook	23 October 2018 <sup>65</sup>

### Printing Presses and Publications Act 1984

With the change in administration, various groups have advocated for the repeal of Printing Presses and Publications Act 1984 (PPPA) and an establishment of an independent media council. However, no tangible development has been observed on this front. The application of PPPA in the banning of publications has remained common throughout 2018.

Similar to the preceding years, there are no known instances of individuals arrested, prosecuted or fined for possession of banned publications. Since the change of administration on 9 May 2018, no further publications were reportedly banned.

#### List of Publications Banned under Printing Presses and Publications Act 1984

No	Name of Book	Author or Editor	Order Issued
1	Hidden Agendas	Lora Leigh	4 April 2018
2	Mengenal Allah Melalui Agama-Agama Purba: Gautama Buddha Seorang Nabi?	Kamaludin Endol	4 April 2018
3	Confessions: A Secret Diary	Amber Stephens	4 April 2018
4	Islam Dan Teologi Pembebasan	Asghar Ali Engineer/Agung Prihantoro	4 April 2018
5	The Road to Muhammad	Jalaluddin Rakhmat	4 April 2018
6	Mutiara Sastra Ali; Edisi Surat & Aforisme	Muhammad Hashem	4 April 2018

### Film Censorship Act 2002

Film censorship remains a common practice in Malaysia. In general, films screened in cinemas and for public distribution must be certified and approved by the Film Censorship Board which is parked under the Ministry of Home Affairs.

While most attempts to censor a film would only be noted by the film industry itself and avid film watchers, incidents such as the initial demand for Beauty and the Beast to remove 4 minutes of

<https://www.freemalaysiatoday.com/category/nation/2018/04/26/dap-man-arrested-for-reporting-anti-dap-video/> accessed 13 November 2018

<sup>65</sup> He was charged and subsequently pleaded guilty and sentenced to 6 months imprisonment – Melissa Darlyne Chew 'Lawyers decry charge against fish delivery worker for insulting cops' (Free Malaysia Today, 27 October 2018) <https://www.freemalaysiatoday.com/category/nation/2018/10/27/lawyers-decry-charge-against-fish-delivery-worker-for-insulting-cops/> accessed 13 November 2018

material which contained alleged 'gay moments'<sup>66</sup> became common knowledge and subject of a public backlash. On *Beauty and the Beast*, the Film Censorship Board relented on the matter and the film was screened in its totality<sup>67</sup>.

For 2018, it was perhaps not a surprise when *Bohemian Rhapsody* which tells the story of Freddie Mercury and Queen was censored by the Film Censorship Board. An estimate of three minutes was censored from the film by the Film Censorship Board. According to the Board, 12 scenes with four involving 'gay moments' were snipped off despite the 18+ rating<sup>68</sup> given to the film<sup>69</sup>.

Other films such as *Young Karl Marx* was also not spared from censorship when it was aired in Malaysia as part of the European Union Film Festival. The method of censorship<sup>70</sup> used for the film was extremely crude and annoying for cinema patrons which included foreign tourists.

The position of film censorship in Malaysia is peculiar as internet-based streaming services become more common in the country. As of 2018, content on the Internet through Netflix, YouTube or other services are still largely accessible with little to no censorship. The freedom from censorship in this regard could be attributed to the fact that the Film Censorship Board does not have any power to regulate or restrict contents online.

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<sup>66</sup> Faridul Anwar & Veena Babulal 'Beauty & the Beast's scenes cut: LPF explains why [Video]' (New Straits Times, 19 March 2017) <<https://www.nst.com.my/news/2017/03/222250/beauty-beasts-scenes-cut-lpf-explains-why-video>> accessed 27 November 2018

<sup>67</sup> Gwilyn Mumford 'Beauty and the Beast: Malaysian film censors back down in 'gay moment' row' (The Guardian, 21 March 2017) <<https://www.theguardian.com/film/2017/mar/21/beauty-and-the-beast-malaysian-film-censors-back-down-in-gay-moment-row>> accessed 27 November 2018

<sup>68</sup> Only for adults above the age of 18

<sup>69</sup> Chris Mohan 'Only three minutes, including four gay scenes, cuts from *Bohemian Rhapsody*, says censorship board' (Malay Mail, 13 November 2018) <<https://www.malaymail.com/s/1693047/only-three-minutes-including-four-gay-scenes-cut-from-bohemian-rhapsody-say>> accessed 27 November 2018

<sup>70</sup> Cinemas are known to occasionally use the tactic of 'blocking the projector' as part of its effort to implement censorship required by the Film Censorship Board.

## Freedom of Assembly

Assemblies continue to be restrictive with police obstruction and harassment common for all public rallies or assemblies. The practice of calling organizers, human rights defenders or political activists for questioning is still common. There is also no visible or notable change in the standard operating procedure of the Royal Malaysian Police in addressing peaceful assemblies and disproportionate restrictions are still imposed on organizers and participants.

Parliament, a popular place for activists and communities to gather for peaceful protests and delivering memoranda to ministers or Members of Parliament remains under restriction by the Royal Malaysian Police. Even when activists or communities have made the necessary arrangements with ministers or Members of Parliament for the delivery of memoranda, they are still subjected to investigations by the Royal Malaysian Police at the conclusion of the gatherings.

### **Peaceful Assembly Act 2012 and Peaceful Assemblies**

The Peaceful Assembly Act 2012 (PAA) continues to serve as the basis for the Royal Malaysian Police to call organizers of peaceful gatherings for investigation. Prosecution for violation of Section 9(5) had ceased in 2017 and no new prosecution under Section 9(5) was made in 2018.

Furthermore, despite Pakatan Harapan's policy direction to abolish the PAA, the Royal Malaysian Police continue to call identified activists or organizers for investigation under PAA and to threaten legal action for not complying with the provision of 10 days' notice<sup>71</sup>.

Thus, investigations under PAA have continued despite the change in administration the investigations under PAA have bordered on the ridiculous<sup>72</sup>. SUARAM and several other civil societies organization and activists organized a solidarity for Fadiyah Nadwa when she was called for investigations under the Sedition Act 1948. Despite clear indication that the solidarity action was organized by SUARAM and others, Fadiyah was later called for investigation under PAA.

In other instances, Socialist Party Central Committee Member, S. Arulchelvan was called for investigation by the Putrajaya District Police Headquarters after sending a memorandum to the Prime Minister's Office. Similarly, SUARAM Executive Director, Sevan Doraisamy has also been called on multiple occasions for questioning for submitting memoranda to Parliament and for other gatherings.

Protests or demonstrations by members of the United Malay National Organization (UMNO) such as Lokman Adam have resulted in police intervention. The Anti-SST protest by Lokman Adam under the banner of Pemantau Malaysia Baharu (PMB)<sup>73</sup> outside of Sogo Shopping Centre on 7

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<sup>71</sup> Bernama 'Taxi drivers warned not to violate Peaceful Assembly Act' (Free Malaysia Today, 25 October 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/10/25/taxi-drivers-warned-not-to-violate-peaceful-assembly-act/>> accessed 13 November 2018

<sup>72</sup> Investigation is often 'triggered' after the police themselves lodge a police report against activists or organizers of public assemblies.

<sup>73</sup> Translation: Observer/monitor of new Malaysia

September 2018 ended up in minor scuffles after the group demanded the local buskers at the venue to keep quiet while speeches by rally organizers were taking place<sup>74</sup>.

Similar to the fate of human rights defenders, Adam Lokman was also called for investigation under the Peaceful Assembly Act 2012<sup>75</sup>.

#### **List of Known Cases of Investigation under the Peaceful Assembly Act 2012**

<b>No</b>	<b>Names</b>	<b>Event</b>	<b>Investigated On</b>
1	Amir Abd Hadi	2017 Year-End Demonstration	2 January 2018
2	Amir Abd Hadi	Rapat Umum Malaysia Muda	January 2018
3	Siti Hasmah Mohamad Ali	Women Against Toxic Politics	26 January 2018
4	Unnamed	Police looking for 17 people wearing Parti Warisan Sabah T-shirt who gathered at roundabout holding posters and banners on 24 March 2018	25 March 2018
5	Sevan Doraisamy	Bersih 2.0 Memorandum to Parliament on Redelineation	2 April 2018
6	Yap Swee Seng	Bersih 2.0 Memorandum to Parliament on Redelineation	2 April 2018
7	Amir Abd Hadi	Bersih 2.0 Memorandum to Parliament on Redelineation	2 April 2018
8	Shahrul Aman	Bersih 2.0 Memorandum to Parliament on Redelineation	2 April 2018
9	Mandeep Singh	Bersih 2.0 Memorandum to Parliament on Redelineation	2 April 2018
10	Luqman Hakim <sup>76</sup>	Tangkap Jho Low Rally	14 April 2018
11	Asheeq Ali	Tangkap Jho Low Rally	14 April 2018
12	S. Arulchelvan	Memorandum on Bank Negara Malaysia Sacking to PMO	21 June 2018
13	Karthiges Rajamanickam and Nathan Munusamy	Padang Tembak eviction protest & solidarity protest in front of Komtar	4 July 2018

<sup>74</sup> Fazrik Kamaruddin 'Lokman Adam's peaceful rally turns chaotic' (New Straits Times, 7 September 2018) <<https://www.nst.com.my/news/nation/2018/09/409380/lokman-adams-peaceful-rally-turns-chaotic>> accessed 12 November 2018

<sup>75</sup> Hafidzul Hilmi Mohd Noor 'Polis siasat kumpulan Anti SST' (Berita Harian Online, 17 September 2018) <<https://www.bharian.com.my/berita/kes/2018/09/474743/polis-siasat-himpunan-anti-sst>> accessed 12 November 2018

<sup>76</sup> Both Luqman Hakim and Asheeq Ali were briefly arrested at start of the rally but released immediately after their contact information and identification information were collected by police

14	Fadiah Nadwa Fikri	Solidarity gathering in front of Brickfields Police Station	12 July 2018
15	Eight activists arrested <sup>77</sup>	Pandang ke Sabah rally (Hari Malaysia Gathering: Pandang ke Sabah (Malaysia Day Gathering: Look Towards Sabah))	17 Sept 2018
16	Umno supreme council member Datuk Lokman Noor Adam organised ( + 50 individuals from NGO)	protest against alleged attempts by the Government to undermine the Yang di-Pertuan Agong's power, the position of Islam and Bumiputra rights in the country.	17 July 2018
17	Sevan Doraisamy	#Bantah1050 Minimum wage Memorandum to Parliament	November 2018
18	Sevan Doraisamy	Memorandum to Parliament with Desak Sampai Mansuh on SOSMA	November 2018

### Community Blockade and Forced Evictions

Blockades by the Indigenous Groups in Kelantan and other states continued in 2018 as their land issues remain unresolved by the respective state governments.

The Temiar community around Gua Musang has continued with the building of new blockades to halt further incursions into their ancestral land by logging companies and plantation companies<sup>78</sup>. The protests escalated with blockades against the community from Pos Tohoi by unidentified groups which are allegedly affiliated with companies operating in the vicinity<sup>79</sup>. The company in question, M7 Plantation Bhd later denied responsibility and claimed that their workers were forced to use a longer alternative route to access its plantation<sup>80</sup>.

The state government of Kelantan continues with its effort to remove and dismantle the blockades by the indigenous communities through the state forestry department and to deny the land rights of the indigenous people, claiming that Kelantan has no provisions for their ancestral lands but only 'foraging lands'<sup>81</sup>.

<sup>77</sup> They were arrested after minor scuffles with the police resulting in torn clothes

<sup>78</sup> 'Temiar stands firm with more blockades' (The Star Online, 30 August 2018)

<<https://www.thestar.com.my/news/nation/2018/08/30/temiar-stand-firm-with-more-blockades/>> accessed 12 November 2018

<sup>79</sup> 'Musang King durian plantation owners blockade jungle roads of orang asli (updated)' (The Star Online, 31 July 2018) <<https://www.thestar.com.my/news/nation/2018/07/31/orang-asli-see-red-over-titfortat-blockade/>> accessed 12 November 2018

<sup>80</sup> Bernard Cheah, 'Plantation company denies responsibility for Gua Musang blockade' (The Star Online, 9 August 2018) <<https://www.thestar.com.my/news/nation/2018/08/09/plantation-company-denies-responsibility-for-gua-musang-blockade/>> accessed 12 November 2018

<sup>81</sup> Anne Muhammad 'Orang asli land belong to K'tan gov't, says PAS MP' (MalaysiaKini, 11 August 2018) <<https://m.malaysiakini.com/news/438473>> accessed 12 November 2018

The federal government has also tried to intervene on behalf of the indigenous community in the area with little success. Deputy Rural Development Minister R. Sivarasa met with the representative of the community in Gua Musang, the Kelantan state government and the Orang Asli Development Department (JAKOA)<sup>82</sup> on the possibility of gazetting the ancestral land, but there have been no further updates available at the point of publication.

But despite the assurance by the federal government that it would try and provide the necessary support to the indigenous community, the Royal Malaysian Police which answers to the Ministry of Home Affairs continues to contribute to the demolition of the blockades. The district police chief superintendent, Taufik Maidin reportedly advised the community not to resist the forestry department's demolition efforts in order to avoid any altercations<sup>83</sup>.

In Bukit Tinggi, Klang, a ranch owner, his brothers and two members of the Socialist Party of Malaysia were arrested after a scuffle when the Klang Municipal Council officers went to demolish the cattle farm. The issue was caused by a series of events which started with Gamuda Berhad redeveloping the original ranch area in 2003. The owner of the ranch, A. Thevindran moved to its current location with promises that the appropriate approval would be obtained for him later. In 2016, the district land office informed Thevindran that the land occupied by him had been transferred to the Selangor Religious Department and he was to be evicted from the land. After a series of meetings, Thevindran requested for a piece of land to relocate to within 5km of the current ranch but he was offered an alternative 40km away at Kuala Langat. Upon rejecting the offer, Thevindran received a notice to vacate the land<sup>84</sup>.

The Klang Land Office claims that the land belongs to Selangor Religious Department and Selangor Drainage and Irrigation Department and that both had plans to redevelop the land. The Klang Municipal Council also claims that the cattle reared in the ranch often wandered off the ranch, posing a danger to motorists and a nuisance to residents living in the area<sup>85</sup>.

As part of the eviction, a Hindu temple built on the land was also demolished and an unspecified number of cows reared by the ranch was confiscated by the municipal council. The five individuals detained by North Klang District Police Headquarters were later released after 12 hours of detention.

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<sup>82</sup> Sira Habibu 'Sivarasa: Ministry to meet Kelantan govt over gazetting of customary land' (The Star Online, 2 August 2018) <<https://www.thestar.com.my/news/nation/2018/08/02/sivarasa-ministry-to-meet-kelantan-govt-over-gazetting-of-customary-land/>> accessed 12 November 2018

<sup>83</sup> Timothy Achariam 'Forestry Dept destroys orang asli barricades but issues remain unresolved' (The Sun Daily, 27 August 2018) <<http://www.thesundaily.my/news/2018/08/27/forestry-dept-destroys-orang-asli-barricades-issues-remain-unresolved>> accessed 12 November 2018

<sup>84</sup> Charles Ramendran 'Cowherd arrested after stand-off with council staff' (The Sun Daily, 27 August 2018) <<http://www.thesundaily.my/news/2018/08/27/cowherd-arrested-after-stand-council-staff>> accessed 12 November 2018

<sup>85</sup> Mei Mei Chu & Brenda Ch'ng 'Five detained for protesting against cattle farm demolition in Klang' (The Star Online, 27 August 2018) <<https://www.thestar.com.my/news/nation/2018/08/27/five-arrested-for-protesting-against-cattle-farm-demolition/>> accessed 12 November 2018

On 28 October 2018 in Ulu Kelawit Tatau, Sarawak, a group of 11 Iban natives were arrested by the police for their blockade against a private plantation company. The police reportedly demolished the blockade before arresting the community leaders involved. The blockade was meant to prevent the company from accessing native customary rights (NCR) forests<sup>86</sup>.

### **Non-State Actors' Harassment of Peaceful Assemblies**

The harassment by non-state actors came into prominence in 2017 with the violent antics by Jamal Yunus and the Malay supremacist 'red-shirts'. While the harassment by these 'red-shirts' and similar groups has diminished substantially after the 14<sup>th</sup> General Elections, the trend of political parties utilizing 'independent' non-state actors to mobilize, and protest against government policies have become common phenomena in Malaysian politics.

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<sup>86</sup> Stephen Then 'Iban groups stage street demo against arrest of protestors at blockade' (The Star Online, 12 November 2018) <<https://www.thestar.com.my/news/nation/2018/10/30/iban-groups-stage-street-demo-against-arrest-of-protestors-at-blockade/>> accessed 12 November 2018

## Free and Fair Elections

The results of the 14<sup>th</sup> Malaysian General Election<sup>87</sup> were totally unexpected. On one hand, researchers and thinktanks which conducted nationwide studies and surveys expected the three-cornered fights in GE14 to be a disadvantage to Pakatan Harapan; Rafizi Ramli and his NGO, Invoke ambitiously forecasted that the Pan Islamic Party (PAS) would lose everything<sup>88</sup>; while human rights NGOs which had campaigned against the redelineation were expecting the worst with the uneven playing field benefiting the incumbent.

On the other hand, Barisan Nasional which proceeded with its festive gathering at Putra World Trade Centre on election night was suddenly left rudderless when the results came in and their leader, Najib Razak nowhere in sight<sup>89</sup>. The new Prime Minister, Mahathir Mohamad who led Pakatan Harapan into the election revealed that they did not expect to win the election<sup>90</sup>, while PAS surprised the pundits by managing to be a political force in Kelantan, Terengganu, Pahang and Perlis.

In East Malaysia, not many had expected the turning of the tide in Sabah led by Parti Warisan Sabah (Sabah Heritage Party) which demolished the Barisan Nasional which had ruled the state since independence. Likewise, not many expected Pakatan Harapan would snatch an additional six parliamentary seats in Sarawak when compared to the 13<sup>th</sup> General Elections<sup>91</sup>.

The months leading up to the 14<sup>th</sup> General Elections were fraught with concerns of greater repression of civil and political rights, electoral misconduct and subversion of the democratic process.

7 April 2018 marked the formal dissolution of the 13<sup>th</sup> Parliament of Malaysia. This was followed by the announcement of the date for the 14<sup>th</sup> General Election, 9 May 2018. The official campaign period set by the Election Commission (EC) was from 28 April 2018 for a period of 11 days.

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<sup>87</sup> For more in-depth analysis of the 14<sup>th</sup> General Election, please refer to Bersih 2.0's 'Election Observation Report of the 14<sup>th</sup> Malaysian General Election' <<http://www.bersih.org/wp-content/uploads/2018/07/PEMANTAU-Election-Observation-Report-of-the-14th-Malaysian-General-Election.pdf>> accessed 16 November 2018

<sup>88</sup> Robin Augustin 'Invoke predicts 5 states to PH, PAS to lose everything' (Free Malaysia Today, 10 March 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/03/10/invoke-predicts-5-states-to-ph-pas-to-lose-everything/>> accessed 16 November 2018.

<sup>89</sup> 'Malaysia GE: PM Najib fails to appear at Umno headquarters for press conference on election result' (The Straits Times, 10 May 2018) <<https://www.straitstimes.com/asia/se-asia/malaysia-ge-pm-najib-fails-to-appear-at-umno-headquarters-press-conference-postponed-to>> accessed 16 November 2018

<sup>90</sup> 'Dr. M admits in closed-door meeting Pakatan made promises without expecting to win GE14' (The Star Online, 14 August 2018) <<https://www.thestar.com.my/news/nation/2018/08/14/dr-m-admits-in-closed-door-meeting-that-pakatan-made-promises-without-expecting-to-win-ge14/>> accessed 16 November 2018

<sup>91</sup> Geryl Ogilvy 'GE14 a wake-up call for Sarawak Barisan' (The Star Online, 11 May 2018) <<https://www.thestar.com.my/metro/metro-news/2018/05/11/ge14-a-wakeup-call-for-sarawak-barisan/>> accessed 16 November 2018

However, long before any of these dates were made public, party flags and banners swiftly multiplied and proliferated through all corners of Malaysia<sup>92</sup>. State enforcement agencies, municipal councils and the EC were either powerless or apathetic to the placement of these party flags and banners across Malaysia. The presence of these flags galvanized some citizens to take action to remove these flags.

A video of an unidentified gentleman tearing down a political party flag in Taman Tun Dr Ismail was widely circulated with police seeking the person for investigation under Section 427 of the Penal Code for causing mischief following a police report by Segambut UMNO youth chief, Ahmad Baidzawi Salleh Hamdi<sup>93</sup>. Soon after, another group of three individuals were detained after they were caught removing Barisan Nasional flags in Taman Tun Dr Ismail. They were detained and remanded for investigation under Section 427 of the Penal Code<sup>94</sup>.

The redelineation of constituencies was another key issue of controversy in the 14<sup>th</sup> General Election. The redelineation of new electoral boundaries was passed through Parliament despite objections by then opposition party on 28 March 2018<sup>95</sup>. Malapportionment was at an all-time high with Parliamentary seats such as Petaling Jaya Utara increasing from 84,456 voters to 150,439 voters, an increase of 65,983 voters; in contrast, smaller seats such as Lenggong in Perak only has a total of 29,752 voters. It was also not surprising that the 10 largest constituencies were held by Pakatan Harapan in the 13<sup>th</sup> General Election whereas the 10 smallest constituencies were component parties of Barisan Nasional.

Apart from the unjustifiable malapportionment that took place with the new redelineation, there were also substantive concerns on the further polarisation of the different ethnic groups due to the new distribution and seat allocations. Bersih in its study of the new boundaries found that 15 constituencies which were traditionally 'mixed' constituencies were redrawn and made into eight Malay-dominant constituencies and seven Chinese-dominated constituencies<sup>96</sup>.

Despite all these concerns, the former Election Commission chairman, Mohd Hashim Abdullah dismissed the concerns saying that the EC was only carrying out its duties and that the redelineation was not merely carried out for the 14<sup>th</sup> General Election. He also claimed that the

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<sup>92</sup> Rahimy Rahim 'Remove party flags, banners' (The Star Online, 25 March 2018) <<https://www.thestar.com.my/news/nation/2018/03/25/remove-party-flags-banners/>> accessed 16 November 2018

<sup>93</sup> Ashwin Kumar 'Police on lookout for man who tore down party flags in viral video (Updated)' (The Sun Daily, 9 April 2018) <<http://www.thesundaily.my/news/2018/04/09/police-lookout-man-who-tore-down-party-flags-viral-video-updated>> accessed 16 November 2018

<sup>94</sup> Farik Zolkepli 'Three women detained for taking down BN flags in TTDI' (The Star Online, 16 November 2018) <<https://www.thestar.com.my/news/nation/2018/04/18/three-women-detained-for-taking-down-bn-flags/>> accessed 16 November 2018

<sup>95</sup> MalaysiaKini Team 'LIVE: New electoral boundaries passed with 129-80 vote' (MalaysiaKini, 16 November 2018) <<https://www.malaysiakini.com/news/417395>> accessed 16 November 2018

<sup>96</sup> Soo Wern Jun 'Redelineation has created race-dominant constituency, says Bersih' (Free Malaysia Today, 3 April 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/04/03/redelineation-has-created-race-dominant-constituencies-says-bersih/?fmt=1>> accessed 16 November 2018

opposition did not complain of redelineation when it benefitted them politically and that the redelineation would enable representatives to better provide services to the people<sup>97</sup>.

On nomination day, there were several incidents that sparked controversy. In total, six Pakatan Harapan candidates were disqualified for the 14<sup>th</sup> General Election<sup>98</sup>. Notable cases included Tian Chua, the former Member of Parliament for Batu constituency who was disqualified due to the RM2,000 fine imposed by Shah Alam High Court. The decision was made by the returning officer Anwar Mohd Zain<sup>99</sup>. Attempts by Tian Chua to challenge the decision of the returning officer were later dismissed by the High Court<sup>100</sup>.

Pakatan Harapan's candidate for Rantau state seat in Negeri Sembilan was not allowed to contest by the returning officer when he was barred from entering the nomination centre as he did not possess an EC pass. S. Steram claimed that he was only informed of the need for the pass late in the evening. As the EC office was closed by then, the officer he liaised with informed him that the EC would provide the necessary pass on nomination day<sup>101</sup>. The returning officer in question, Amigo Agus was later outed as a former UMNO leader. On 16 November 2018, the Election Court ruled the election null and void, necessitating a by-election<sup>102</sup>.

On election night itself, there were several incidents relating to ballot boxes, suspicion of phantom voters and electoral fraud as the night progressed. Details of these incidents can be found in Bersih 2.0 report on the 14<sup>th</sup> General Election. It is noted that the delayed election results and the suspense behind the lack of adequate information by the EC on the evening of the election have likely contributed to the strong response and vigilantism by Malaysians.

The Royal Malaysian Police reported that in April, the police recorded a total of 136 police reports related to election offences lodged, with 50 investigation papers opened in six states; 71 reports on damage caused to campaign posters lodged in Sabah with 24 investigation papers opened; 33 reports on various offences in Selangor; 36 reports in Johor; 24 reports in Kelantan with 3 arrests;

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<sup>97</sup> Nasarudin Parzi 'Redelineation not merely for GE14' (New Straits Times, 2 May 2018)

<<https://www.nst.com.my/news/politics/2018/05/364496/redelineation-not-merely-ge14>> accessed 16 November 2018

<sup>98</sup> Ian McIntyre 'PH digs hole for itself with 6 candidates disqualified' (The Sun Daily, 29 April 2018)

<<http://www.thesundaily.my/news/2018/04/29/ph-digs-hole-itself-6-candidates-disqualified>> accessed 16 November 2018

<sup>99</sup> 'Tian Chua disqualified from Batu seat, four others running' (The Star Online, 28 April 2018)

<<https://www.thestar.com.my/news/nation/2018/04/28/tian-chua-disqualified-from-batu-seatfour-others-running/>> accessed 16 November 2018

<sup>100</sup> Maizatul Nazlina 'High Court dismissed Tian Chua's disqualification suit' (The Star Online, 4 May 2018)

<<https://www.thestar.com.my/news/nation/2018/05/04/tian-chua-fails-disqualification-suit/>> accessed 16 November 2018

<sup>101</sup> Syed Jaymal Zahiid 'Disqualified PKR Rantau candidate says wasn't told about EC pass' (Malay Mail, 29 April 2018)

<<https://www.malaymail.com/s/1625356/disqualified-pkr-rantau-candidate-says-wasnt-told-about-ec-pass>> accessed 16 November 2018

<sup>102</sup> 'Rantau by-election on after court invalidates BN win' (The Star Online, 16 November 2018)

<<https://www.thestar.com.my/news/nation/2018/11/16/rantau-results-invalid-court-orders-by-election/>> accessed 16 November 2018

5 reports in Negeri Sembilan; 8 investigation papers from Kuala Lumpur; and 3 investigation papers opened in Pahang<sup>103</sup>.

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<sup>103</sup> NST Team 'Whew! 136 police report lodged over election-related offences to date' (New Straits Times 2 May 2018) <<https://www.nst.com.my/news/politics/2018/05/364812/whew-136-police-reports-lodged-over-election-related-offences-date>> accessed 16 November 2018

The concern following the appointment of Raus Sharif as Chief Justice and Zulkefli Ahmad Makinudin as Court of Appeal President was largely resolved following the resignation of the two in June 2018<sup>104</sup>. It was reported that both individuals met with Mahathir on 15 May to express their intent to resign with their resignation to take place at a later date to allow them to resolve pending judicial affairs.

The call for the resignation of Raus Sharif and Zulkefli Ahmad was sparked by their appointment to their respective positions in 2017. Upon their appointment, the Malaysian Bar raised concerns with regards to the constitutionality of their appointment and subsequently filed an application against both individuals relating to their appointment. The application was dismissed by the Federal Court in February 2018<sup>105</sup>.

While the resignation was not objected to by the Malaysian Bar and other groups which were critical of the appointments, there were concerns with regards to the discussion that allegedly took place behind the resignation of both individuals.

Prior to their resignation, the Council of Eminent Persons (CEP) reportedly summoned both individuals to meet the CEP where they were advised to resign from their respective position. As CEP is essentially only an advisory body appointed by the Prime Minister, their intervention into the operation of the judiciary, however 'justified' raises concerns of yet another round of intervention by the executive into the judiciary<sup>106</sup>.

Following the resignation of the two, Richard Malanjum was appointed to the position of Chief Justice. Since his appointment, the Chief Justice has established a requirement for a matter of constitutional issues to be heard by a panel of 9 judges<sup>107</sup>. Richard Malanjum also encouraged judges to make dissenting judgments when they are concerned that justice is at stake and reminded the judiciary that superior judges are not civil servants who have to support the actions of the government<sup>108</sup>.

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<sup>104</sup> 'Chief Justice Raus and Court of Appeal president Zulkefli resign' (The Star Online, 13 June 2018) <<https://www.thestar.com.my/news/nation/2018/06/13/chief-justice-raus-and-court-of-appeal-president-zulkefli-resign/>> accessed 13 November 2018

<sup>105</sup> Ida Nadirah Ibrahim 'Malaysian Bar fails constitutional challenge against top two judges' (Malay Mail, 2 March 2018) <<https://www.malaymail.com/s/1589033/malaysian-bar-fails-constitutional-challenge-against-top-two-judges#kYm3P0Br5GcBlhvR.97>> accessed 13 November 2018

<sup>106</sup> Emmanuel Santa Maria Chin 'Ramkarpal says Council of Eminent Persons overstepped boundaries' (Malay Mail, 13 June 2018) <<https://www.nst.com.my/news/nation/2018/06/379760/malaysian-bar-glad-raus-zulkefli-have-resigned>> accessed 13 November 2018

<sup>107</sup> Rahmat Khairulrijal 'First time 9-member Federal Court sits to determine constitutionality of SAC ruling' (New Straits Times, 28 August 2018) <<https://www.nst.com.my/news/crime-courts/2018/08/405777/first-time-9-member-federal-court-sits-determine-constitutionality>> accessed 13 November 2018

<sup>108</sup> Rash Behari Bhattacharjee 'Show courage, Malanjum tells judges' (The Edge Market, 9 November 2018) <<http://www.theedgemarkets.com/article/show-courage-malanjum-tells-judges>> accessed 13 November 2018

The peculiarities noted by SUARAM's report in 2017 with regards to the Judicial Appointment Commission (JAC) was also resolved following the appointment of 4 new commissioners. The newly appointed commissioners include Mah Weng Kwai who also serves as a SUHAKAM Commissioner, Linton Albert, Mohd Hishamudin Yunus and Shad Saleem Faruqi<sup>109</sup>.

During the International Malaysia Law Conference in August 2018, Hamid Sultan Abu Backer, a Court of Appeal judge claimed that he had been reprimanded by a top judge after writing a dissenting judgment on the issue of unilateral conversion in the M. Indira Gandhi case in 2016. The judge in question also claimed that after that dissenting judgment, he was no longer assigned to hear constitutional and public interest cases<sup>110</sup>.

Following the claims by the judge, various quarters have called for investigations into the assertion. The Malaysian Bar proposed a Royal Commission of Inquiry to investigate the assertion of judicial misconduct; while former Chief Justice Abdul Hamid Mohamad called on the judiciary to conduct an inquiry into other similar allegations and incidences<sup>111</sup>.

Considering the gravity of the allegations and the implications for the countless constitutional and public interest case heard by the Federal Court in recent years, it would be difficult for the people's trust in the judiciary to be restored without any public inquiry and substantive reforms to strengthen judicial independence.

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<sup>109</sup> 'Four new appointees to judicial commission' (The Star Online, 18 September 2018) <<https://www.thestar.com.my/news/nation/2018/09/18/four-new-appointees-to-judicial-commission/>> accessed 13 November 2018

<sup>110</sup> 'Court of Appeal Judge reprimanded by his superior over dissenting judgment' (The Sun Daily, 16 August 2018) <<http://www.thesundaily.my/news/2018/08/17/court-appeal-judge-reprimanded-his-superior-over-dissenting-judgment>> accessed 13 November 2018

<sup>111</sup> Tun Abdul Hamid Mohamad 'Probe into alleged judicial interference' (New Straits Times, 5 September 2018) <<https://www.nst.com.my/opinion/letters/2018/09/408410/probe-alleged-judicial-interference>> accessed 13 November 2018

## Refugees & Asylum Seekers

The situation relating to refugees and asylum seekers in Malaysia remains dire despite the change of administration in May 2018. The lack of formal recognition for refugees and asylum seekers continues as there are no immediate plans to introduce the necessary legal provisions to recognize refugees and asylum seekers in Malaysia. While the current administration has announced plans to ratify human rights treaties, which include the Refugee Convention of 1951, recognition of refugees and asylum seekers and the associated support system required for it would unlikely be implemented without a holistic review of the necessary institutions and mechanisms.

General concerns for the status of refugees and asylum seeker relates to the role of enforcement agencies and how refugees and asylum seekers are often caught in operations targeting illegal and/or undocumented migrants. The more recent crackdown on illegal and/or undocumented worker in July 2018 under Ops Mega 3.0 raises substantial concerns as to the possibility of refugees or asylum seekers getting caught yet again in operations by enforcement agencies<sup>112</sup>. Fortunately, under Ops Mega 3.0, SUARAM has not received any complaints or requests for assistance from refugees and asylum seekers although many of them have expressed fears when travelling within Malaysia because of such operations.

After two years of silence, there are finally more answers with regards to the status of a pilot programme on employment for 300 Rohingya refugees. The Minister for Foreign Affairs, Saifuddin Abdullah revealed that the pilot programme did not take off and cited the possibility that the pilot programme failed due to inappropriate job placements or the method used for the implementation of the pilot. The Ministry, however, is still exploring other ways to help refugees find employment<sup>113</sup>.

A bigger issue of concern relating to refugees and asylum seekers involves the current roadmap for repatriation of refugees and asylum seekers from Myanmar. A circular citing that Chin refugees would be repatriated back to Myanmar surfaced in June 2018. The circular outlines that the recognition of ethnic Chin refugees and asylum seekers would end on 31 December 2019. The Chin refugees and asylum seekers in Malaysia and Chin human rights NGOs in Myanmar have raised concerns that the situation in Chin state remains volatile and there is no clear plan of action for the repatriation of ethnic Chins safely back to Myanmar.

Minister Saifuddin Abdullah also highlighted a similar plan for ethnic Rohingya to be repatriated by end 2019 in his statement on 22 October 2018. Minister of Defence, Mohamad Sabu also

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<sup>112</sup> Faris Fuad 'Ops Mega 3.0: 1,224 PATI sudah ditahan' (Berita Harian, 3 July 2018)

<<https://www.bharian.com.my/berita/kes/2018/07/444595/ops-mega-30-1224-pati-sudah-ditahan>> accessed 13 November 2018

<sup>113</sup> Bernama 'Rohingya refugees to be repatriated next year, says Saifuddin' (Free Malaysia Today, 22 October 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/10/22/rohingya-refugees-to-be-repatriated-next-year-says-saifuddin/>> accessed 13 November 2018

expressed a similar view when interviewed by Bernama after a meeting with his Myanmar counterpart. He expressed the view that there is a need for Rohingya refugees to be allowed to return to their homeland safely<sup>114</sup>.

While the possibility of a safe repatriation would be welcomed by most, there are substantial concerns for the safety of returning refugees to Myanmar. While the Myanmar government pays lip service to welcoming the refugees back to their home country, there are no clear provisions or plan of action to ensure the safety of returning refugees.

The allegation of genocide and ethnic cleansing in Arakan remains unaddressed and the discrimination that accompanied the crackdown against ethnic Rohingya in Arakan would likely continue to be a threat to the Rohingya community if they were to be repatriated under the current circumstances.

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<sup>114</sup> 'Malaysia gets spillover effect over Myanmar's Rohingya issue, says Mat Sabu' (The Star Online, 21 October 2018) <<https://www.thestar.com.my/news/nation/2018/10/21/malaysia-gets-spillover-effect-over-myanmars-rohingya-issue-says-mat-sabu/>> accessed 13 November 2018

## Women's Rights<sup>115</sup>

Key events in 2018 that highlighted the status of women in the country included Malaysia's review during the 69<sup>th</sup> session of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 14<sup>th</sup> General Election and finally the third cycle of the Universal Periodic Review (UPR).

Several issues revealed that the advancement of women's rights in Malaysia is taking place at a very slow pace. Below are some selected highlights:

### **30% quota for women in decision-making positions**

The 14<sup>th</sup> General Elections on the 9<sup>th</sup> of May 2018 was seen as a watershed moment in the country's history as Malaysians voted out the Barisan National coalition government that had been in power since 1957.

During an intense election campaigning period prior to the elections, the then opposition coalition called Pakatan Harapan issued a 150-page election manifesto which made specific pledges to ensure the realisation of women's rights including 30% quota of policymakers for women<sup>116</sup> (page 140). However, since forming the new government, there has been a lack of progress in delivering this promise.

Of the 28-member federal cabinet, only five women are full-time ministers including the first female deputy premier<sup>117</sup>. There are also only four deputy ministers who are women<sup>118</sup>. Therefore, women only make up an estimated 18% of the new Malaysian cabinet. Nevertheless, a record 32 women were elected into Malaysia's 222-seat parliament at the recent poll, up from 23 during the last term<sup>119</sup>. This means that there is a sufficient number of women who could have been viable candidates for cabinet positions as ministers or deputy ministers.

Out of the seven states analysed, only the Selangor executive committee has a 20% representation of women, closest to the promised 30%. Melaka, Sabah, Johor, and Kelantan

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<sup>115</sup> Chapter contribution by Dorothy Benjamin, independent researcher.

<sup>116</sup> Buku Harapan – Pakatan Harapan's Manifesto - [https://kempen.s3.amazonaws.com/manifesto/Manifesto\\_text/Manifesto\\_PH\\_EN.pdf](https://kempen.s3.amazonaws.com/manifesto/Manifesto_text/Manifesto_PH_EN.pdf) accessed on 20 November 2018

<sup>117</sup> Cabinet Line-up 2018 <<http://www.pmo.gov.my/home.php?menu=cabinet&page=1797>> accessed on 20 November 2018

<sup>118</sup> Kong Wai Yeng 'Meet the female ministers in Malaysia's new cabinet' <<http://www.optionstheedge.com/topic/people/meet-female-ministers-malaysia%E2%80%99s-new-cabinet>> accessed on 20 November 2018

<sup>119</sup> Beh Lih Yi 'Women sidelined in new Malaysian government, despite campaign promises' <<https://www.reuters.com/article/us-malaysia-women-politics/women-sidelined-in-new-malaysian-government-despite-campaign-promises-idUSKCN1IM11U>> accessed on 20 November 2018

executive committees have a mere 10% women representation. Penang stands at 12.5%, while Terengganu's executive committee has an all-men line-up.<sup>120</sup>

Malaysian women's representation in politics is among the lowest in the world, according to the Inter-Parliamentary Union. The Inter-Parliamentary Union ranks Malaysia 155 out of 188 nations in terms of women's representation in national legislatures, below less developed Southeast Asian nations such as East Timor, Vietnam and Laos<sup>121</sup>. Malaysia was ranked 104 out of 144 countries in the World Economic Forum's 2017 Gender Gap Index after scoring poorly on political empowerment.<sup>122</sup> Furthermore, there is evidence in the PH-led states that because of implicit gender biases, women continue to be overlooked or ignored<sup>123</sup>.

Gender parity is a vital condition for democracy because women – who make up half the world – should be allowed to participate directly in decision-making processes that affect their lives, such as female welfare and children's rights. This is not just for the sake of fairness – a government can only thrive on diverse skill sets and perspectives that can only come from diverse ideas and individuals<sup>124</sup>.

The 30% quota is also a part of the government's obligation in accordance with article 4(1) of the CEDAW Convention and in line with the Committee's general recommendation No.23 (1997) on women in political and public life. Further, general recommendation No.25, calls on the government to guarantee and accelerate the full and equal participation of women at all levels, including bodies, ministerial posts and local government, the judiciary and the diplomatic service.<sup>125</sup>

### **Female Genital Mutilation (FGM)**

During Malaysia's review at the CEDAW session in February 2018, the CEDAW Committee recorded its "deep concern" about the issuance of a fatwa on female circumcision by the

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<sup>120</sup> Jia Vern Tham 'Pakatan HARapan Reminded To Uphold Their Promise For 30% Female Policy Makers' (Says, 18 May 2018) <<https://says.com/my/news/ngos-want-pakatan-harapan-to-uphold-their-promise-for-30-female-policy-makers>> accessed on 20 November 2018

<sup>121</sup> Beh Lih Yi 'Women sidelined in new Malaysian government, despite campaign promises' (Reuters, 21 May 2018) <<https://www.reuters.com/article/us-malaysia-women-politics/women-sidelined-in-new-malaysian-government-despite-campaign-promises-idUSKCN1IM11U>> accessed on 20 November 2018

<sup>122</sup> Beh Lih Yi 'Women sidelined in new Malaysian government, despite campaign promises' (Reuters, 21 May 2018) <<https://www.reuters.com/article/us-malaysia-women-politics/women-sidelined-in-new-malaysian-government-despite-campaign-promises-idUSKCN1IM11U>> accessed on 20 November 2018

<sup>123</sup> Jacqueline Ann Surin & Koh Lay Chin 'The problem with a 30% women quota' (Edge Weekly, 10 June 2018) <<http://www.theedgemarkets.com/article/problem-30-women-quota>> accessed on 20 November 2018

<sup>124</sup> Kong Wai Yeng 'Meet the female ministers in Malaysia's new cabinet' (Options, 4 July 2018) <<http://www.optiontheedge.com/topic/people/meet-female-ministers-malaysia%E2%80%99s-new-cabinet>> accessed on 20 November 2018

<sup>125</sup> 'Concluding observations on the combined third to fifth periodic reports of Malaysia' CEDAW/C/MYS/CO/3-5 - <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMYS%2fCO%2f3-5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMYS%2fCO%2f3-5&Lang=en)> last accessed 21 November 2018

Malaysian National Council of Islamic Religious Affairs in April 2009, which makes it obligatory for Muslim women to undergo female genital circumcision. It was further concerned that the Ministry of Health developed guidelines in 2012 to reclassify female circumcision as a medical practice, which allows the practice to be performed in health-care facilities and has contributed to the endorsement of female genital mutilation as a medically safe and beneficial procedure.<sup>126</sup>

The CEDAW Committee stresses that female genital mutilation, female circumcision or female genital cutting cannot be justified on religious grounds and constitutes a harmful practice to exert control over the bodies and sexuality of women and girls in violation of the Convention, irrespective of the extent of removal or cutting of the female genital organs and of whether or not it is performed within or outside a medical institution. Malaysia was recommended to prohibit all forms of female genital mutilation in its criminal code, ensuring that the prohibition cannot be overruled by any fatwas or other rulings issued by religious or clerical authorities, as well as in practice.<sup>127</sup>

This concern was also reiterated during Malaysia's review at the UPR on human rights which took place on the 9<sup>th</sup> of November 2018 in Geneva. Unfortunately, the Malaysian delegation defended this practice by saying it was part of Malay culture and this stance was then supported by the Deputy Prime Minister Dr Wan Azizah who attempted to justify that the circumcision practised in Malaysia differs from how FGM is practised in other countries<sup>128</sup>. This stance by the Malaysian government has been criticised by many individuals and organisations including the Malaysian Human Rights Commission (SUHAKAM)<sup>129</sup>.

### **Minimum Age of Marriage**

Once again, the Pakatan Harapan's commitment to girls' and women's rights was brought under scrutiny in the light of the recent cases of paedophilia sanctioned under so-called "religious" marriages.

Some cases that were highlighted by the media included the 41-year-old man from Gua Musang who married an 11-year-old girl in Thailand (July 2018) and a 44-year-old man in Tumpat who

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<sup>126</sup> 'Concluding observations on the combined third to fifth periodic reports of Malaysia' CEDAW/C/MYS/CO/3-5 - <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMYS%2fCO%2f3-5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMYS%2fCO%2f3-5&Lang=en)> last accessed 21 November 2018

<sup>127</sup> This is in accordance with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, target 5.3 of the Sustainable Development Goals and General Assembly resolution 69/150 on intensifying global efforts for the elimination of female genital mutilations

<sup>128</sup> Hemananthani Sivanandam, Martin Carvalho & Rahimy Rahim 'DPM maintains that female circumcision is part of Malaysian culture' (The Star Online, 15 November 2018) <<https://www.thestar.com.my/news/nation/2018/11/15/dpm-maintains-that-female-genital-mutilation-is-part-of-malaysian-culture/>> accessed on 20 November 2018

<sup>129</sup> 'Suhakam slams Putrajaya: Female Genital mutilation not Malaysian culture' (The Star Online, 14 November 2018) <<https://www.thestar.com.my/news/nation/2018/11/14/suhakam-takes-womens-ministry-to-task-over-female-circumcision-statement/>> accessed on 20 November 2018

took a 15-year-old girl as his second wife with the approval from the Shariah Court (September 2018).<sup>130</sup>

In a late July parliamentary session, Deputy Women, Family, and Community Development Minister Hannah Yeoh announced that 14,999 child marriages were recorded between 2007 and 2017. An estimated 10,000 of these marriages were Muslim marriages. Statistics also pointed to Sarawak having the highest number of registered child marriages. Meanwhile, the Child Rights Coalition Malaysia reported that records in 2009 showed that 32 were children under the age of 10, 447 children were between 10 - 14 years old, and 8,726 children in the 15 - 19 age groups underwent pre-marital HIV tests. That is a total of 9,205 children who might have entered into marriage<sup>131</sup>.

In October 2018, Prime Minister Mahathir Mohammad issued a directive to all state authorities that the legal minimum marriage age is now set at 18 for Muslims and non-Muslims alike. The government has ruled that child marriage, a recurring phenomenon in Malaysia that permits parents to marry off their offspring with the consent of authorities, is no longer to be allowed under any circumstances.<sup>132</sup>

In November 2018, Deputy Prime Minister, Dr Wan Azizah reportedly stated that laws governing child marriages will be tightened. She mentioned that these amendments would include, among others, the requirements that social, health and police reports be submitted for application for underage marriages, which comes under the purview of the Home Ministry. Dr Wan Azizah said the amendments will cover both civil and Islamic marriages and make it a requirement for relevant agencies to submit reports before such marriages are allowed<sup>133</sup>.

The amendments will be tabled in Parliament by the middle of next year (2019) including amendments to the Law Reform (Marriage and Divorce) Act 1976 that governs marriages for non-Muslims. She added that amendments will be made to the Islamic Family Law (Federal Territories) Act 1984 for underage marriages under Islamic law where the reports must be submitted to a Syariah Court judge.

At present, she said the government had tightened approval for underage marriages whose procedures are governed by the Home Ministry, Syariah and customary courts. She also said the

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<sup>130</sup> Khaw Chia Hui 'Child marriage: Why it is still a problem in 2018' (Malay Mail, 10 November 2018) <<https://www.malaymail.com/s/1691899/child-marriage-why-it-is-still-a-problem-in-2018>> accessed on 20 November 2018

<sup>131</sup> Khaw Chia Hui 'Child marriage: Why it is still a problem in 2018' (Malay Mail, 10 November 2018) <<https://www.malaymail.com/s/1691899/child-marriage-why-it-is-still-a-problem-in-2018>> accessed on 20 November 2018

<sup>132</sup> UCAN 'Malaysia: PM Mahathir Mohamad Bans Child Marriage' (Euro Asia Review, 23 October 2018) <<https://www.eurasiareview.com/23102018-malaysia-pm-mahathir-mohamad-bans-child-marriage/>> accessed on 20 November 2018

<sup>133</sup> Martin Carvalho 'Malaysia to have tighter rules on child marriages' (The Star Online, 15 November 2018) <<https://www.thestar.com.my/news/nation/2018/11/15/malaysia-to-allow-child-marriages-to-go-on-but-tighter-enforcement/>> accessed on 20 November 2018

Syariah Judiciary Department's standard operating procedure (SOP) on Muslim underage marriage was issued to Syariah courts nationwide on July 23. Under the SOP, the state Welfare Department and Health Department, and state police must submit a social, health and police report if a Syariah judge finds it necessary for consideration in an application for an underage marriage.

Dr Wan Azizah said her ministry tabled the Government's intention at the pre-meeting of the Council of Rulers and at the Meeting of Chief Ministers and Menteri Besar on Oct 16. She noted that the Meeting of Chief Ministers and Menteri Besar had specifically agreed, in consensus, that minimum marriage age should be raised to 18. So far, only Selangor has raised the age to 18 some two months ago.<sup>134</sup>

### **Nationality Laws**

In August 2018, recommendations were made by a Citizenship Taskforce to amend the constitution, particularly Articles 14 and 15, to eliminate inconsistencies that allow for gender discrimination<sup>135</sup>. It was highlighted that the Pakatan Harapan manifesto pledged to ensure women and men enjoy legal equality in all aspects as indicated in Commitment 4 (no 3) on page 140<sup>136</sup>.

Malaysia is still one of 25 countries in the world that denies women the right to confer nationality on their children on an equal basis as men. Malaysia is also one of 50 countries in the world that denies women the equal right to confer nationality on their spouses and one of only three countries that denies men the right to confer nationality on their children born out of wedlock.<sup>137</sup>

Malaysian fathers with children born abroad can apply for their children's citizenship at the High Commission in the country where they are currently residing. However, Malaysian mothers in a similar scenario are required to return to Malaysia to make the application.

Article 8(1) and 8(2) of the Federal Constitution which promotes equality is undermined by the prevalence of gender discrimination in nationality laws. Another form of gender discrimination can also be seen in cases involving foreign spouses. Currently, a Malaysian man can apply for citizenship for his foreign spouse after two years of permanent residence, while a Malaysian woman can only make the same application for her foreign spouse through the naturalisation

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<sup>134</sup> 'Malaysia to tighten regulations on child marriages' (Channel News Asia, 15 November 2018) <<https://www.channelnewsasia.com/news/asia/malaysia-continue-allow-child-marriages-tighter-regulations-10934256>> accessed on 20 November 2018

<sup>135</sup> S. Indramalar 'Malaysian women wants equal rights to confer citizenship to their children' (The Star 2, 3 August 2018) <<https://www.star2.com/family/2018/08/03/advocating-for-their-family/>> accessed on 20 November 2018

<sup>136</sup> Pakatan Harapan Manifesto [https://kempen.s3.amazonaws.com/manifesto/Manifesto\\_text/Manifesto\\_PH\\_EN.pdf](https://kempen.s3.amazonaws.com/manifesto/Manifesto_text/Manifesto_PH_EN.pdf). Last accessed on 20 November 2018

<sup>137</sup> S. Indramalar 'Malaysian women wants equal rights to confer citizenship to their children' (The Star 2, 3 August 2018) <<https://www.star2.com/family/2018/08/03/advocating-for-their-family/>> accessed on 20 November 2018

process. This means the foreign male spouse would have to be a Malaysian resident of 10 years as pre-requisite to apply for citizenship.<sup>138</sup>

### **Access to healthcare by women migrant workers, refugees and asylum seekers**

In the February CEDAW review session, the Committee expressed their concern about the obstacles faced by certain groups of women that blocked their access to health-care services, including asylum-seeking and refugee women, women migrant workers, and others. The government was reminded that the obligations under CEDAW also includes women who are not citizens of Malaysia but currently reside in Malaysia for whatever reason.

Currently, non-citizens are required to pay a deposit before they are admitted to public hospitals and that, under the Fees Act (Medical) 1951 for Foreigners, public hospitals charge them higher fees than they do Malaysian nationals for the same health-care services, which severely restricts access to health care for women with low incomes, such as asylum-seeking and refugee women and migrant women employed as domestic workers. The CEDAW Committee was also concerned about a government directive that requires public hospitals to refer undocumented asylum seekers and migrants to the Immigration Department when they seek medical attention, which has serious consequences for maternal, foetal and infant mortality and morbidity as women are deterred from seeking essential health-care services for fear of arrest and detention<sup>139</sup>.

The CEDAW Committee recommended that the authorities ensure that all women, regardless of nationality or income, have effective access to affordable health-care services, including maternity, family planning and reproductive health-care services; and that measures are taken to improve the affordability of health care services for non-citizens, including by fully exempting asylum-seeking and refugee women from having to pay deposits and higher fees than nationals of Malaysia for the same health-care services.<sup>140</sup>

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<sup>138</sup> S. Indramalar 'Malaysian women wants equal rights to confer citizenship to their children' (The Star 2, 3 August 2018) <<https://www.star2.com/family/2018/08/03/advocating-for-their-family/>> accessed on 20 November 2018

<sup>139</sup> 'Concluding observations on the combined third to fifth periodic reports of Malaysia' CEDAW/C/MYS/CO/3-5 - <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fMYS%2fCO%2f3-5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fMYS%2fCO%2f3-5&Lang=en)> last accessed 21 November 2018

<sup>140</sup> 'Concluding observations on the combined third to fifth periodic reports of Malaysia' CEDAW/C/MYS/CO/3-5 - <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fMYS%2fCO%2f3-5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fMYS%2fCO%2f3-5&Lang=en)> last accessed 21 November 2018

## Gender & Sexuality

The harassment and targeted attacks against the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) community have continued unabated throughout 2018. The trend of scapegoating the community as a diversion from national issues remains a common political ploy by politicians from both sides of the divide.

Despite the initial hopes that the administration would cease with the demonization of LGBTIQ community, the hope quickly shifted back to the status quo of the Barisan Nasional administration. Coordinated campaigns that purport that LGBTIQ is a lifestyle gained traction in Malaysia with Minister in Charge of Religious Affairs who eventually echoed the sentiment and claiming that LGBTIQ communities are not allowed to practice their 'lifestyle' in the country<sup>141</sup> in Parliament following criticism that the Pakatan Harapan administration was friendlier to the community.

In August 2018, two portraits of LGBT activists were removed from an exhibition at George Town Festival 2018 following the instructions by Minister Mujahid<sup>142</sup>. The exhibition was meant to commemorate Malaysia's 60<sup>th</sup> Independence Day<sup>143</sup>. The removal of the portraits had a domino effect<sup>144</sup> starting with the press conference held by Mujahid with Nisha Ayub following their meeting. At the press conference, Mujahid said that trans people should use toilets that they are comfortable with given that issues relating to dignity and safety of trans people and this drew severe backlash online and reinforcement of inaccurate facts on sex and gender by muftis and others. Mujahid issued an apology following the backlash and the deputy Minister advised trans people to use toilets for people with disabilities. This sparked outrage of groups and persons with disabilities for belittling their needs.

In September 2018, another controversy surfaced when two women in Terengganu sentenced to RM 3,300 in fines and 6 strokes of the cane after pleading guilty to an allegation of preparing to commit *musahaqah* (the sexual relationship between women). They were not represented by any legal counsel<sup>145</sup>. The caning itself was problematic in various ways. First, the Criminal Procedure Code clearly forbids the sentencing of caning for women which puts in question the

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<sup>141</sup> 'Parliamen: Budaya, gaya hidup LGBT bertentangan undang-undang Malaysia' (Kosmo Online, 23 July 2018) <<http://www.kosmo.com.my/negara/parlimen-budaya-gaya-hidup-lgbt-bertentangan-undang-undng-malaysia-1.714464>> accessed 13 November 2018

<sup>142</sup> Boo Su-Lyn 'LGBT activists' portraits removed from George Town Festival exhibition' (Malay Mail Online, 8 August 2018) <<https://www.malaymail.com/s/1660198/lgbt-activists-portraits-removed-from-george-town-festival-exhibition>> accessed 13 November 2018

<sup>143</sup> 'Stripes and Strokes' <<https://www.georgetownfestival.com/programmes/stripes-and-strokes>> accessed 13 November 2018

<sup>144</sup> 'Mujahid: Meeting about LGBT discrimination, not same-sex marriage' (The Star Online, 11 August 2018) <<https://www.thestar.com.my/news/nation/2018/08/11/mujahid-meeting-was-over-lgbt-discrimination/>> accessed 13 November 2018

<sup>145</sup> AFP 'Two in Terengganu to be caned for lesbian sex' (New Straits Times, 14 August 2018) <<https://www.nst.com.my/news/crime-courts/2018/08/401343/two-terengganu-be-caned-lesbian-sex>> accessed 13 November 2018

legitimacy of the sentence imposed; the procedure for the execution of the caning sentence under existing Syariah provision is also questionable as there is no mechanism for the execution of the sentence which required the Prison Department to provide the necessary officer to execute the caning.

Furthermore, there are also substantial questions that the punishment and the manner in which it was carried out constitutes torture or degrading treatment. The religious authority in question claims that the caning itself was not considered as cruel as it was gentle in comparison to the usual caning implemented in prisons. However, the manner of the caning itself does not mitigate the degrading treatment that both individuals undergo following the publicity of their sentence and the 'private' viewing of the execution of the sentence by more than 100 people<sup>146</sup>.

The caning itself was condemned and criticized by human rights groups, the Human Rights Commission of Malaysia (SUHAKAM)<sup>147</sup> and politicians from both sides of the political divide<sup>148</sup>.

In October 2018, the Islamic Department of Malaysia (JAKIM) Deputy Director for Social and Community Development, Dr Mohd Izwan Md Yusof claimed that the gay community and transgender community have been growing in the last couple of years. His claim was made based on various sources available to JAKIM. In the same speech, Mohd Izwan also refers to several audacious and peculiar claims that the LGBT community are often exposed to children at a young age of 12 to 15 in school hostels through sexual acts which develop into an addiction to homosexual activities and turn a person gay<sup>149</sup>.

In the same month, opposition leader Ahmad Zahid Hamidi made a statement in Parliament claiming that Malaysia will face God's wrath due to the action of the LGBT community. He cited that the earthquake and tsunami in Palu, Indonesia were the result of LGBT community in the area<sup>150</sup>. While some Members of Parliament and ministers have criticised and shunned the claims

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<sup>146</sup> FMT Reporters '100 attend public caning of couple in Terengganu lesbian sex case' (Free Malaysia Today, 3 September 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/09/03/100-attend-public-caning-of-couple-in-terengganu-lesbian-sex-case/>> accessed 13 November 2018

<sup>147</sup> 'Suhakam deplores caning of women, says corporal punishment must end' (The Star Online, 4 September 2018) <<https://www.thestar.com.my/news/nation/2018/09/04/suhakam-deplores-caning-of-women-says-corporal-punishment-must-end/>> accessed 13 November 2018

<sup>148</sup> Michelle Tam 'Khairy slams public caning of two women in Terengganu' (The Star Online, 3 September 2018) <<https://www.thestar.com.my/news/nation/2018/09/03/kj-slams-public-caning-of-two-women-in-terengganu/>> accessed 13 November 2018

<sup>149</sup> Audrey Dermawan 'Bilangan gay, transgender semakin meningkat: JAKIM' (Berita Harian Online, 29 October 2018) <<https://www.bharian.com.my/berita/nasional/2018/10/491972/bilangan-gay-transgender-semakin-meningkat-jakim>> accessed 13 November 2018

<sup>150</sup> Martin Carvalho & Rahimy Rahim 'Zahid warns LGBT activities risk incurring God's Wrath' (The Star Online, 23 October 2018) <<https://www.thestar.com.my/news/nation/2018/10/23/zahid-warns-lgbt-activities-risk-incurring-gods-wrath/>> accessed 13 November 2018

by Zahid Hamidi<sup>151</sup>, the answer by Mujahid on the commentary essentially reinforces the ongoing discrimination and rehabilitation experienced by the LGBT community.

News media coverage by selected media remains relative hostile towards the LGBTIQ community with any human rights issues pertaining to the community demonized and portrayed as an affront to Malaysian culture and constitution<sup>152</sup>.

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<sup>151</sup> 'Ministers criticize Zahid Hamidi's LGBT remark' (The Star Online, 23 October 2018)

<<https://www.thestar.com.my/news/nation/2018/10/23/govt-ministers-criticises-zahid-hamidis-lgbt-remark/>> accessed 13 November 2018

<sup>152</sup> Hadi Ab. Manap 'Peralihan kerajaan dimanfaatkan aktivis LGBT, liberal' (Utusan Online, 7 June 2018)

<<http://www.utusan.com.my/berita/politik/peralihan-kerajaan-dimanfaat-aktivis-lgbt-liberal-1.687412>> accessed 13 November 2018

## Death Penalty

After years of living with the death penalty under the Barisan Nasional administration, the new PH administration provided a breath of fresh air with their announcement of the complete abolition of the death penalty from Malaysia's criminal justice system. Pending executions were halted in September according to reports received by SUARAM, presumably in response to governments moratorium on execution pending the abolition of death penalty.

The earlier amendment to Section 39B of the Dangerous Drugs Act 1952 which provides for a lower sentence of life imprisonment when the accused can raise the necessary defence to prove that they are merely drug mules is unfortunately not applicable for majority of those sentenced to death prior to the amendment to 39B of the Dangerous Drugs Act 1952. The delay between the passing of the amendment to gazetting of the law itself has denied more than 100 individuals reprieve from the gallows under 39B of the Dangerous Drugs Act 1952.

According to the statistics by Prison Department of Malaysia<sup>153</sup>, there is a total of 1,279 inmates on death row with 932 of these sentenced under Section 39B of the Dangerous Drug Act 1952. Out of these 1,279 on death row, 143 are women; 710 are Malaysians and 569 are foreign nationals. Death row inmates represent roughly 2.131% of the total prison population of 59,997.

Furthermore, it should be noted that the reported execution by the data set released suggests that there was no execution of any individual under 39B of the Dangerous Drugs Act 1952.

The concerns that there were 12 executions (of which only 4 were publicly known) documented by SUARAM in our 2018 report have proven to be accurate with the Prison Department statistics reporting 12 executions in 2017.

### Data of Execution and Imposition of Death Sentence in Malaysia

Year	Number of Executions in Malaysia	Number of individuals sentenced to death
2010	1	135
2011	0	151
2012	0	141
2013	3	112
2014	6	183
2015	1	65
2016	9	254 <sup>154</sup>
2017	12	45
2018	1	193 <sup>155</sup>
<b>Total</b>	<b>33</b>	<b>1279</b>

<sup>153</sup> Up to 11 October 2018

<sup>154</sup> There is a data gap in 2016, the number 254 includes numbers of death row inmates in 2015 but due to data limitation it is impossible to distinguish it clearly.

<sup>155</sup> Increase of numbers of death row inmate between November 2017 to October 2018.

Following the death of an 11-month old baby, in November 2018, some Pakatan Harapan Members of Parliament have shifted their position on the death penalty. MP for Bukit Gelugor, Ramkarpal Singh, suggested that mandatory death penalty should be retained for exceptional cases where the crime can be proven beyond reasonable doubt<sup>156</sup>. The Deputy Prime Minister, Dr Wan Azizah echoed this sentiment on 13 November, suggesting that the government will reconsider abolishing the mandatory death penalty for those convicted of murder<sup>157</sup>.

At a Townhall meeting at Universiti Teknologi Mara on 14 November, the Law Minister, Liew Vui Keong maintained that the cabinet decision to abolish the death penalty still stands but the cabinet is considering the denial of parole for those convicted of murder<sup>158</sup>.

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<sup>156</sup> Ida Nadirah Ibrahim 'DAP MP changes tune on ending death penalty after raped baby girl dies' (Malay Mail, 11 November 2018) <<https://www.malaymail.com/s/1692300/dap-mp-changes-tune-on-ending-death-penalty-after-raped-baby-girl-dies>> accessed 27 November 2018

<sup>157</sup> Emmanuel Santa Maria Chin 'Govt will review death penalty for murder, DPM says' (Malay Mail, 13 November 2018) <<https://www.malaymail.com/s/1692993/govt-will-review-death-penalty-for-murder-dpm-says>> accessed 27 November 2018

<sup>158</sup> Minderjeet Kaur 'No parole for those charged with heinous crimes, say law minister' (Free Malaysia Today, 14 November 2018) < <https://www.freemalaysiatoday.com/category/nation/2018/11/14/no-parole-for-those-charged-with-heinous-crimes-says-law-minister/>> accessed 27 November 2018.

## Freedom of Movement

Restrictions on the freedom of movement imposed by the Barisan Nasional administration have mostly been lifted after the 14<sup>th</sup> General Elections.

In June 2018, 429,945 individuals who had been blacklisted following their failure to repay their PTPTN loans were given an 'amnesty' and the travel ban imposed on them was also lifted<sup>159</sup>. This was in fact promised in Pakatan Harapan's election manifesto. However, the lifting of the travel ban was met with objections by various quarters<sup>160</sup>.

While most human rights defenders and political activists who had the travel ban imposed upon them lifted, this only extends to the travel ban imposed by the federal government through the Immigration Department and the travel ban imposed by the state government of Sabah<sup>161</sup>. The state government of Sarawak remains unperturbed by this development elsewhere in Malaysia.

The Chief Minister Abang Johari Tun Openg reportedly considered the ban imposed on investigative journalist Clare Rewcastle Brown but has yet to decide on whether the state government will remove her from the state immigration's 'undesirable elements' list<sup>162</sup>. Apart from Clare Rewcastle Brown, the Sarawak state immigration also barred the deputy youth chief of Amanah, Shazni Munir when he was travelling to Sibu<sup>163</sup> and continue to maintain the travel ban imposed on Jerald Joseph, a SUHAKAM Commissioner<sup>164</sup>. Other human rights activists who continue to be banned from entering Sarawak include Kua Kia Soong, SUARAM's adviser. They have been banned for their advocacy against the construction of Bakun Dam in the Nineties.

Curiously, the ban imposed on international human rights activists such as Adilur Rahman Khan in 2017 was also removed. The Immigration Department of Malaysia said that the detention of Adilur Rahman Khan and blocking of his entry was based upon requests by the Royal Malaysian Police. Further inquiries as to the justification provided by the Royal Malaysian Police were not

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<sup>159</sup> Rebecca Rajaendram 'Over 400,000 PTPTN loan defaulters removed from travel blacklist' (The Star Online, 26 June 2018) <<https://www.thestar.com.my/news/nation/2018/06/26/over-400000-ptptn-loan-defaulters-removed-from-travel-blacklist/>> accessed 19 November 2018

<sup>160</sup> Rebecca Rajaendram 'Unfair to remove defaulters from blacklist, PTPTN told' (The Star Online, 28 June 2018) <<https://www.thestar.com.my/news/nation/2018/06/28/unfair-to-remove-defaulters-from-blacklist-ptptn-told/>> accessed 19 November 2018

<sup>161</sup> Muguntan Vanar & Stephanie Lee 'Shafie lifts Sabah travel ban on politicians and activists' (The Star Online, 14 May 2018) <<https://www.thestar.com.my/news/nation/2018/05/14/shafie-lifts-sabah-travel-ban-on-politicians-activists/>> accessed 19 November 2018

<sup>162</sup> Geryl Ogilvy 'Sarawak govt yet to decide on Rewcastle Brown travel ban' (The Star Online, 23 May 2018) <<https://www.thestar.com.my/news/nation/2018/05/23/sarawak-govt-yet-to-decide-on-rewcastle-brown-travel-ban/>> accessed 19 November 2018.

<sup>163</sup> FMT Reporters 'Pemimpin Amanah berang dilarang ke Sarawak' (Free Malaysia Today, 24 August 2018) <<https://www.freemalaysiatoday.com/category/bahasa/2018/08/24/pemimpin-amanah-berang-dilarang-ke-sarawak/>> accessed 19 November 2018

<sup>164</sup> FMT Reporters 'Lift travel ban on commissioner, Suhakam tells Sarawak' (Free Malaysia Today, 18 October 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/10/18/lift-travel-ban-on-commissioner-suhakam-tells-sarawak/>> accessed 19 November 2018

responded to. It is unclear whether the lifting of the ban would apply to other international human rights defenders who have been prevented from entering Malaysia in the preceding years.