

SUARAM'S
HUMAN RIGHTS OVERVIEW
REPORT ON MALAYSIA 2019



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Executive Summary

The excitement for reform following the change of administration in 2018 has been dulled by the series of disappointments and backtracking by the new Pakatan Harapan government in late-2018 and 2019. The initial progress on the various fronts including, greater freedom of expression, freedom of assembly and promises to review and abolish security laws that permit detention without trial, the Sedition Act 1948 has largely petered out with no clear direction for reform by the new PH administration.

Security laws that continue to permit arbitrary detention and **detention without trial** continue to be abused throughout 2019. While most would have expected an overall slowdown with the historic regime change, the number of arrests under Prevention of Crime Act 2015 reported by the police remains at an all-time high and stands to rival the arrest statistics from preceding years. The surprise arrest of 12 individuals for alleged involvement in LTTE, a defunct terror group that fought in the Sri Lankan civil war raises another wave of concern of political manipulation and foul play on the part of the Royal Malaysian Police.

Access to justice has improved a little in 2019. While we have seen the lowest recorded custodial deaths in police detention in recent decades, issues of torture, ill-treatment, chain remand and other forms of abuse by the state remain common throughout 2019. The inquiry into enforced disappearances by SUHAKAM finally concluded that the Special Branch were on the balance of probability involved in the abduction and disappearance of Amri Che Mat and Raymond Koh. The police, not surprisingly, has continued to deny any involvement in this and claims innocence. Activists who voice out against these abuses have also been subjected to varying degrees of harassment and intimidation by the Royal Malaysian Police, including SUARAM's executive director who was called for an investigation after exposing allegations of torture and wrongful arrest.

As for the **freedom of expression**, the Sedition Act 1948 and Section 233 of the Communications and Multimedia Act 1998 continues to be applied to suppress freedom of expression. While the abuse of the two Acts for political purposes has seemingly reduced when compared to 2017 and 2018, their use is far more common against any speeches that touch on race, religion and royalty.

Likewise, freedom of assembly continues to be restricted by the Royal Malaysian Police with organizers of peaceful assemblies being called for investigation under the Peaceful Assembly Act 2012 even when the requirement for 10-days' notice was complied with. An amendment to the Peaceful Assembly Act 2012 came into force on 1 November 2019 and it remains to be seen whether the minor amendment would diminish the negative impact on freedom of assembly.

Since the 14th General Election, Malaysia had witnessed a series of by-elections that have seen landslide victories for both sides of the political divide and a new bout of allegations of vote-buying against Pakatan Harapan. The successful constitutional amendment which changed the eligible age for voters from 21 to 18 was lauded as a success and would likely shift the political dynamics of Malaysia with the massive increase in the numbers of the voter for the upcoming

15th General Elections from 14.9 million to 22 million. The Election Reform Committee which has been tasked to review existing electoral legislation and system to strengthen **free and fair elections** has another year for its operation but has thus far reviewed some of its reform proposal which includes the proportional representation system and redelineation framework.

The LGBTIQ community continues to serve as convenient “victims for harassment” by the Pakatan Harapan administration. The threats of violence to the community was exacerbated by the growing harassment and intimidation by state religious authorities working in tandem with federal agencies.

The abolition of the **death penalty** has thus far been stalled by the political opposition and public discontent over the position held by Pakatan Harapan on the matter in October 2018. After the public backlash, Pakatan Harapan administration had narrowed the initial scope of abolition to focus on the abolition of the mandatory death penalty. A task force was also established by the Minister of Law to look into alternative sentencing following the abolition of the mandatory death penalty. Concurrent to these developments, the Federal Court made a landmark judgment when it struck down Section 37 of the Dangerous Drugs Act 1952 that imposes double presumption in a drug trafficking case, potentially increasing the leeway for judicial discretion in determining whether a case can be considered as trafficking.

The Right to Fair Trial

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

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

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

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

	Terrorism	Trafficking/ Immigration	Organized Crime	Total
SOSMA	73	28	22	123
POCA	-	-	908	908
POTA	1	-	-	1
Total	74	28	930	1351

Security Offences (Special Measures) Act 2012

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

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

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

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

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

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

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

As noted in SUARAM's reports over the years, detainees are often subjected to mental and physical abuses during the preliminary 28-days detention. Solitary confinement and extended interrogation period remain a common trend with allegations of abuse continuing to surface, as noted in the arrest and detention of twelve individuals for alleged involvement with the Liberation Tigers of Tamil Eelam (LTTE). Five of the twelve suspects alleged that they were subjected to mistreatment, torture and intimidation during the 28-days detention period with one detainee claiming that he was forced to say that he was an LTTE member³.

Lawyers representing the detainees and also journalists who covered the case were also reported to have been subjected to investigation with a journalist from MalaysiaKini being called to give a statement regarding their report on the matter⁴. The Inspector-General of Police, Hamid Bador

³ V Anbalagan 'Court to examine complaints of torture, intimidation by LTTE suspects' (Free Malaysia Today, 8 November 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/11/08/court-to-examine-complaints-of-torture-intimidation-by-ltte-suspects/>> accessed 14 November 2019

⁴ M Fakhrull Halim 'Lawyer in cops' crosshairs over LTTE suspects 'tortured' claims cries foul' (MalaysiaKini, 8 November 2019) <<https://www.malaysiakini.com/news/499090>> accessed 14 November 2019

also continues the trend of his predecessor by dismissing the allegations as baseless and irresponsible⁵.

In terms of arrest and detention under SOSMA, the Ministry of Home Affairs' Open Data cites that between January to September 2019, there were 53 individuals detained under SOSMA for association with the Islamic State⁶, a decrease from 82 reported in 2018. Within the same time period for 2019, 25 arrests for cases related to human trafficking were made under SOSMA⁷.

To the disappointment of human rights defenders, Ministers and members of the government who were once staunch opponents of SOSMA and other laws that permit detention without trial have also retracted their previous position on the matter and now advocate the amendment and not repeal of SOSMA⁸.

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

⁵ Bernama, 'Allegations of police misconduct against LTTE detainees baseless: IGP' (MalaysiaKini, 2 November 2019) <<https://www.malaysiakini.com/news/498399>> accessed 14 November 2019

⁶ 'Statistik Tangkapan Elemen Daesh Di Bawah Security Offences (Special Measures) Act 2012 (SOSMA)' <http://www.data.gov.my/data/ms_MY/dataset/statistik-tangkapan-elemen-daesh-dibawah-sosma-2014-2017> accessed 14 November 2019

⁷ 'Statistik Tangkapan Sindiket Penyeludupan Manusia Di Bawah Security Offences (Special Measures) Act 2012 (SOSMA)' <http://www.data.gov.my/data/ms_MY/dataset/statistik-tangkapan-sindiket-penyeludupan-manusia-2014-2017> accessed 14 November 2019

⁸ Arfa Yunus, Nuradzimmah Daim 'Mat Sabu: Amend Sosma, don't abolish it' (New Straits Times, 15 October 2019) <<https://www.nst.com.my/news/nation/2019/10/530147/mat-sabu-amend-sosma-dont-abolish-it>> accessed 14 November 2019

and also subjected to checks by police officers. They would have to report to a designated police station from time to time.

SUARAM and the Human Rights Commission of Malaysia (SUHAKAM) conducted a joint press conference to highlight the issue of juveniles detained without trial under security laws. This was in relation to the reported 159 juveniles detained under SOSMA and POCA in 2018. Following the press conference, the government responded with the Deputy Prime Minister and the Minister of Home Affairs claiming that of the 28 juveniles that were serving time under POCA and POTA, only one juvenile remained under POCA detention while the rest were either under house arrest or released⁹. It should be noted that the Inspector-General of Police at that time, Fuzi Harun reported differently claiming only one remained in detention while 56 had been freed but under POCA supervision¹⁰, i.e. double the numbers reported by the ministers.

Despite all the assurances by Pakatan Harapan, POCA is still applied liberally with 627 suspected members of organized crime detained between January 2019 to June 2019¹¹. The assistant director of D7 of the Royal Malaysian Police reported that between April to June 2019, there were 278 individuals detained under POCA for operating illegal gambling dens¹². If the information provided by the police is accurate, it would suggest that between the first two quarters of 2019 alone, there were more than 900 cases of arrest and detention under POCA, easily rivalling the annual average of 900 cases of arrest and detention from 2014 until December 2018.

Prevention of Terrorism Act 2015

Both in form and function, POTA is largely similar to POCA. The only difference is the 'target' of this law. As opposed to addressing threats posed by organized crimes, POTA is specifically introduced to address the threat of terrorism as noted in the preamble to the Act¹³. In terms of its powers, POTA is largely similar if not identical to POCA with its power to detain for 24 hours,

⁹ Fatimah Zainal 'DPM: Fewer than 30 underage detainees under Poca, Pota' (The Star Online, 1 February 2019) <<https://www.thestar.com.my/news/nation/2019/02/01/dpm-fewer-than-30-underage-detainees-under-poca-pota>> accessed 18 November 2019

¹⁰ Bernama 'IGP explains Poca detention' (New Straits Times, 1 February 2019) <<https://www.nst.com.my/news/nation/2019/02/456629/igp-explains-poca-detention>> accessed 18 November 2019

¹¹ Faris Fuad '627 disyaki ahli kumpulan kongsi gelap ditahan' (Berita Harian, 24 June 2019) <<https://www.bharian.com.my/berita/kes/2019/06/577605/627-disyaki-ahli-kumpulan-kongsi-gelap-ditahan>> accessed 18 November 2019

¹² Mohd Azam Shah Yaacob 'Bukit Aman terus gempur sindiket perjudian' (Harian Metro, 24 June 2019) <<https://www.hmetro.com.my/mutakhir/2019/06/468546/bukit-aman-terus-gempur-sindiket-perjudian-metrotv>> accessed 18 November 2019.

¹³ *An Act to provide for the prevention of the commission or support of terrorist acts involving listed terrorist organizations in a foreign country or any part of a foreign country and for the control of persons engaged in such acts and for related matters.*

followed by 21 days and further extension of 38 days. If found 'guilty' by the administrative board, an individual can be served with two years detention orders or placed under house arrest.

In general, information about detention under POTA and the rehabilitation detainees undergo during detention is scarce.

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 a fair trial; on the other hand, detention under DDA85 provides a 'reprieve' from the death penalty under Section 39B of the Dangerous Drug Act 1952.

Information is often limited on the use of DDA85, but in recent years, more data on its use has been made available through the Ministry of Home Affairs' open data network. Between January to September 2019, 1405 individuals were reported to have been arrested and detained under DDA85, a notable increase from 1,186 reported for 2018¹⁴.

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

Access to Justice

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

In terms of policy development, the most noteworthy was the introduction of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill by the Minister of Law in July 2019¹⁵. Similar to the first time when the concept of IPCMC was introduced to the country in 2005, the introduction of the bill was met with substantial opposition from select members of the Royal Malaysian Police. Another point of interest to note is that the process for the introduction of IPCMC and the refinement that it underwent between July to the October 2019 parliamentary session was the first notable attempt that a draft law underwent extensive public consultation and amendment under the Pakatan Harapan administration.

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

An amended bill was tabled in Parliament during the October 2019 Parliament session with amendments that removed the exclusion of Inspector General Standing Orders and included additional provisions that would restructure IPCMC as the formal disciplinary board for all police misconduct¹⁶. The expanded role as a disciplinary board is shared between IPCMC and the police force with the police force taking the lead in minor misconducts.

As of 31 October 2019, the Parliament Select Committee for the consideration of bills has conducted a series of public consultations and is expected to revert to Parliament with recommendations for amendments to the proposed IPCMC Bill by the end of the October 2019 Parliament session.

Deaths in Custody

Custodial deaths remain a challenge across all detention facilities in the country. The incidence of deaths in police custody reached an all-time low when there was reported to be only five

¹⁵ Azril Annuar 'Who watches the watchers? IPCMC Bill finally reaches Parliament after 14 years' (Malay Mail Online, 18 July 2019) <<https://www.malaymail.com/news/malaysia/2019/07/18/who-watches-the-watchers-ipcmc-bill-finally-reaches-parliament-after-14-yea/1772662>> accessed 20 November 2019

¹⁶ Previously consultations had always maintained that minor misconduct such as issues relating to uniform or tardiness should not matters resolved within the police through the integrity division.

throughout 2018¹⁷. However, information obtained on deaths in police custody in 2019 suggests that these may have been underreported with the actual number of deaths in police custody at eight for 2018. In the same data source, it was reported that there have been six cases of custodial death reported between January to October 2019¹⁸.

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

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

Overall Statistics on Deaths in Custody

Jurisdiction	Police	Prison Department	Immigration
2015	12	252	87
2016	15	269	40
2017	10	319 ¹⁹	24
2018	8	2 ²⁰	32
2019	6	-	37
Total	59	842 ²¹	195 ²²

SUARAM Documented Cases of Deaths in Custody

No	Name	Date of Death	Detention Location	Official Cause of Death ²³
1	M. Proosothaman	25 May	Sungai Buloh Prison [Prison]	Medical
2	Thomas Orhions Ewansiha	9 July	Bukit Jalil Immigration Detention [Immigration]	Medical

¹⁷ The lowest point in recent decade would be 2009 and 2000 with 7 reported cases of death in police custody respectively.

¹⁸ Information was made available at a conference.

¹⁹ 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>

²⁰ The only two known and reported cases, actual figure would likely be higher based on preceding year statistic.

²¹ Parliament reply in July 2017 reports that between 2010 to July 2017, a total of 1,808 prisoners died in prisons.

²² <https://pardocs.sinarproject.org/documents/2017-october-november-parliamentary-session/written-replies-soalan-bertulis/soalan-289.pdf/view>

²³ 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

3	Gopal Krishnan Rajalinggam	24 July	Sungai Petani Prison ²⁴ [Police]	Lung Infection
4	Unnamed	4 October	Kepayan Central Prison [Prison]	Assault
5	Unnamed	12 November	Kuantan District Police Headquarters [Police]	Medical
6	Mohd Fazrin Zaidi	22 November	North Seberang Prai Police District Headquarters [Police]	Suicide

Torture and Ill-Treatment in Detention

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

A notable case that occurred in 2019 was that of Ahmad Haikal and Muhammad Pardi²⁵ who were both arrested and detained under POCA by the South Klang district police. None of their family members was informed of their arrest and they only found out through third parties. Both detainees also alleged that they were tortured and forced to confess to the allegation against them. They reported that they were strung up and beaten with a rubber hose and also beaten on the soles of their feet. Family members who saw them during the detention period also claim that they were struggling to walk with one of them suffering a dislocated shoulder from the abuse²⁶.

They were later chain remanded at Serdang district police headquarters where the family was informed that they would be released. Unfortunately, they were not released but transferred to detention under POCA. The two were detained under chain remands for more than two weeks before the POCA detention began. The police chief for South Klang was reported to have said that the police would be investigating the allegations of abuse²⁷.

²⁴ He was remanded by police for drug offence at the time of death and family alleges that he was beaten by prison warden during detention with injuries on his body – FMT Reporters ‘Cops urged to probe death of man allegedly beaten in prison’ (Free Malaysia Today, 30 July 2019)

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

²⁵ The victim is also a person with disabilities

²⁶ Ashley Tang ‘Suaram alleges duo tortured by Klang police’ (The Star Online, 24 May 2019)

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

²⁷ Alyaa Alhadjri ‘Klang Selatan top cop pledges to investigate ‘torture’ claims by Poca duo’ (Malaysia Kini, 25 May 2019) <<https://www.malaysiakini.com/news/477365>> accessed 27 November 2019

In another case of abuse involving Pukalanthee Rajoo and Linggeswaran²⁸ at the Kangar district police headquarters, SUARAM exposed the issue of wrongful arrest and abuse which elicited a response by the Police Chief of IPD Kangar, Wari Kiew who lodged a police report against SUARAM's executive director for criminal defamation (Section 500 of the Penal Code) and Section 233 of the Communications and Multimedia Act 1998²⁹.

The Inspector-General of Police initially clarified that the investigation was for the police to obtain additional information on the allegation of abuse and wrongful arrest³⁰. The police later took a statement from SUARAM's executive director in relation to the police report lodged by the Wari Kiew and the family members for the allegations of abuse at the Petaling Jaya police district headquarters.

Chain Remand

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

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 reported in the preceding years, the practice of chain remand utilizing security law remains common in 2019. In January 2019, SUARAM was approached by three immigration officers detained to facilitate investigation into human trafficking syndicate who alleged that they were tortured and abused during interrogation. The three were initially detained under SOSMA and were later held under POCA³¹.

²⁸ Faisal Asyraf 'Ketua polis Kangar fail laporan terhadap pengarah eksekutif SUARAM' (Malaysia Kini, 12 October 2019) <<https://www.malaysiakini.com/news/495526>> accessed 27 November 2019

²⁹ Faisal Asyraf 'Kangar police chief files report against Suaram executive director' (Malaysia Kini, 12 October 2019) <<https://www.malaysiakini.com/news/495523>> accessed 26 November 2019

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

³¹ Tarrence Tan 'Suaram: Three immigration officers assaulted during interrogation' (The Star Online, 29 January 2019) <<https://www.thestar.com.my/news/nation/2019/01/29/suaram-three-immigration-officers-assaulted-during-interrogation/>> accessed 20 November 2019

Another example was the case of Krishnan Suppiah who was remanded for three weeks through six remand applications before he was detained under POCA. He was first arrested on 2 September 2019 for alleged lorry theft under Section 379 of the Penal Code³².

Police Shootings

Police shootings were on an upward trajectory but seem to have dropped somewhat in 2019. However, throughout the reporting period, there were cases in which foul play did occur.

On 14 September 2019, the case of G. Thavaselvan, S. Mahendran and J. Vijayaratnam went public after a family alleged foul play. The police account of the incident claimed that the deceased refused to stop when police attempted to pull them over and they engaged in a shoot out with the police patrol. Two of the deceased were reported by police to be members of the 08 triads but there were no entry records for the Sri Lankan who was also shot dead³³.

The family disputed the police account of the incident and claimed that the wife of J. Vijayaratnam was with the group and she went missing after the incident. The family members also dismissed the allegation that there were no entry records for Vijayaratnam and showed the media the luggage tag and air tickets of his flight into Malaysia³⁴. The car that was involved in the alleged car chase was also disputed by the family as they said that the group had left home in a white Perodua Alza while the car chase involved a red Volkswagen³⁵.

Moganambal Govindasamy remains unaccounted for after the police shootings. Police continue to deny that they were aware of any woman in the car and that no woman was arrested during the incident³⁶.

³² Ainaa Aiman 'Chain Remand' an abuse of law, Suaram complains to Suhakam' (Free Malaysia Today, 25 September 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/09/25/chain-remand-an-abuse-of-law-suaram-complains-to-suhakam/>> accessed 26 November 2019

³³ 'Cops: Two individuals killed in Rawang shooting incident were 08 triad members' (Malay Mail, 19 September 2019) <<https://www.malaymail.com/news/malaysia/2019/09/19/cops-two-individuals-killed-in-rawang-shooting-incident-were-08-triad-membe/1791957>> accessed 26 November 2019

³⁴ Kalidevi Mogan Kumarappa 'Who was shot entered Malaysia last month' (The Malaysian Insight, 20 September 2019) <<https://www.themalaysianinsight.com/s/184768>> accessed 26 November 2019

³⁵ Austin Camoens 'Family of foreign man killed in Rawang shootout demands answers' (The Star Online, 17 September 2019) <<https://www.thestar.com.my/news/nation/2019/09/17/family-of-foreign-man-killed-in-rawang-shootout-demand-answers>> accessed 26 November 2019

³⁶ Nicholas Chung 'Family of man killed in shootout wants cops to reveal wife's whereabouts' (Free Malaysia Today, 16 September 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/09/16/family-of-man-killed-in-shootout-wants-cops-to-reveal-wifes-whereabouts/>> accessed 26 November 2019

Police Shootings from SUARAM Monitoring

Date	Names	State	No ³⁷	Injured	Death	Monthly
13-Jan	Unnamed, 30s	Sabah	1	0	1	3
14-Jan	"Mages @ Black", 28	Kedah	1	0	1	
28-Jan	Unnamed, 30s	Kuala Lumpur	1	0	1	
31-Jan	Unnamed, 30s	Selangor	1	0	0	
20-Mar	Unnamed, 20s	Penang	1	0	1	1
16-May	Unnamed	Sarawak	3+	2	0	0
19-Jun	Benjamin Sagakkan Nyalipan, 48	Sarawak	1	0	1	1
20-Jun	Mohd Alif Anuar, 21	Kedah	1	1	0	
04-Aug	Unnamed, 33	Kuala Lumpur	Multiple	0	0	7
23-Aug	Unnamed	Kuala Lumpur	3	1	0	
26-Aug	Unnamed, 20s-30s	Penang	3	0	3	
27-Aug	Unnamed, 20s-30s	Penang	3	0	3	
31-Aug	Mohd Rahmat, 28	Sabah	1	0	1	
03-Sep	Unnamed	Sabah	2+	0	2	2
14-Sep	Unnamed	Selangor	3	0	3	12
14-Sep	G.Thavaselvean, 31 S. Mahendran, 23 J. Vijayaratnam, 40	Selangor	3	0	3	
23-Sep	Unnamed, 29-45	Selangor	4	0	4	
23-Sep	Unnamed, 25	Penang	1	0	1	
24-Sep	Mohd Zafarul Nizam Hamzah, 37	Selangor	1	0	1	
Total number of deaths attributable to the police shootings						24

Enforced Disappearance

SUHAKAM's inquiry into the disappearance of Amri Che Mat and Raymond Koh reached its conclusion in April 2019 with findings³⁸ that the two individuals were victims of enforced

³⁷ Number of people involved in shootout/shooting

³⁸ The full report can be accessed at: <https://www.suhakam.org.my/pusat-media/sumber/laporan-siasatan-awam/>

disappearance. The findings also point to the Special Branch of Bukit Aman as the perpetrators of the abduction and disappearance of the two³⁹.

After the release of the finding, the now-retired Inspector-General of Police Fuzi Harun refused to accept SUHAKAM's findings and claimed that SUHAKAM's findings were intended to punish the police⁴⁰. Fuzi Harun also claimed that the police had given their full cooperation during the inquiry⁴¹. The claim by Fuzi Harun is questionable since the police had initially stalled the inquiry when they claimed that an individual had been prosecuted in relation to the disappearance⁴². The individual in question was initially prosecuted for extortion in March 2017 before the charges against him were changed to that of kidnapping⁴³. It should also be noted that the police initially claimed that the person was not involved after preliminary investigation⁴⁴.

It should also be recorded that throughout the inquiry, the police had on occasion showed contempt for the proceedings; an example would be the incident when the police observers threatened lawyers representing the family members of the victims with Section 192 of the Penal Code for fabricating evidence due to photos produced as part of the inquiry⁴⁵.

Apart from Fuzi Harun, the former Inspector-General of Police of Khalid Abu Bakar who was serving as IGP when the disappearance took place claims that SUHAKAM's findings were nothing more than circumstantial evidence and hearsay⁴⁶.

³⁹ Esther Landau 'Suhakam inquiry concludes police behind disappearance of Amri, Pastor Koh' (New Straits Times, 3 April 2019) <<https://www.nst.com.my/news/nation/2019/04/475685/suhakam-inquiry-concludes-police-behind-disappearance-amri-pastor-koh>> accessed 20 November 2019

⁴⁰ Bernama 'IGP: Police to give full cooperation in probe on disappearance of Koh, Amri' (New Straits Times, 6 April 2019) <<https://www.nst.com.my/news/nation/2019/04/476849/igp-police-give-full-cooperation-probe-disappearance-koh-amri>> accessed 20 November 2019

⁴¹ G Prakash 'IGP denies Suhakam's claim cops uncooperative in inquiry into missing pastor, activists' (Malay Mail Online, 10 April 2019) <<https://www.malaymail.com/news/malaysia/2019/04/10/igp-denies-suhakams-claim-cops-uncooperative-in-inquiry-into-missing-pastor/1741810>> accessed 20 November 2019

⁴² Alyaa Alhadjri 'Suhakam suspends inquiry into pastor Koh's case after man charged' (MalaysiaKini, 16 January 2018) <<https://www.malaysiakini.com/news/408832>> accessed 20 November 2019

⁴³ Dawn Chan 'remand extended for suspect in Pastor Raymond Koh's abduction' (New Straits Times, 12 March 2017) <<https://www.nst.com.my/news/2017/03/219995/remand-extended-suspect-pastor-raymond-kohs-abduction>> accessed 20 November 2019

⁴⁴ Nadirah H. Rodzi 'Man charged with kidnap of missing Malaysian pastor in surprising turn of events' (The Straits Times, 16 January 2018) <<https://www.straitstimes.com/asia/se-asia/man-charged-with-kidnap-of-missing-malaysian-pastor-in-surprising-turn-of-events>> accessed 20 November 2019

⁴⁵ Fatimah Zainal 'Police observers object to photo in Suhakam inquiry into disappearances' (The Star Online, 15 November 2017) <<https://www.thestar.com.my/news/nation/2017/11/15/police-observers-object-to-photo-in-suhakam-inquiry-into-disappearances>> accessed 20 November 2019

⁴⁶ Teoh Pei Ying 'Ex-IGP Suhakam's report hearsay' (New Straits Times, 5 April 2019) <<https://www.nst.com.my/news/crime-courts/2019/04/476338/ex-igp-suhakams-report-hearsay>> accessed 20 November 2019



Khalid Abu Bakar
@KBAB51

Follow

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

5:23 PM - 3 Apr 2019

Disappointingly, Prime Minister Mahathir Mohamad took a similar stance as Khalid Abu Bakar and called SUHAKAM's findings "hearsay"⁴⁷. A task force was later established by the Minister of Home Affairs to reinvestigate the disappearance. The task force was criticised when it was first announced as the task force members included serving police officers and other individuals who may have a conflict of interest⁴⁸. Apart from the composition of the task force members, the terms of reference for the task force were oriented towards investigating SUHAKAM's report as opposed to the disappearance⁴⁹ and would only be in operation for 6 months⁵⁰ starting 1st July 2019⁵¹.

To this day, no information has been made available by the task force and no further action has been taken by the Royal Malaysian Police. There has also been no progress in finding the police personnel identified with the disappearance, namely, Saiful Buhari⁵².

The wife of Amri Che Mat filed a civil suit against the government in November 2019 for failure to investigate the disappearance of Amri Che Mat and government negligence⁵³.

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

⁴⁷ Robin Augustin 'Hearsay, says Dr M on Suhakam's claim of 'enforced disappearances'' (Free Malaysia Today, 3 April 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/04/03/hearsay-says-dr-m-on-suhakam-ruling-on-enforced-disappearances/>> accessed 20 November 2019

⁴⁸ Austin Camoens 'Task force on pastor Koh, Amri to include additional members' (The Star Online, 7 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/07/task-force-investigating-disappearance-of-pastor-koh-amri-to-include-additional-member/>> accessed 20 November 2019

⁴⁹ Bernama 'Task force to study Suhakam report on disappearance of Pastor Koh, activist Amri' (Bernama, 23 May 2019) <<http://www.bernama.com/en/news.php?id=1729174>> accessed 20 November 2019

⁵⁰ Anabelle Lee 'Task force to begin with Amri, given 6 months' (MalaysiaKini, 20 June 2019) <<https://www.malaysiakini.com/news/480459>> accessed 20 November 2019

⁵¹ Oral Answer in Parliament, Question 31, 12 November 2019 <<https://www.parlimen.gov.my/files/jindex/pdf/JDR12112019.pdf>>

⁵² Bernama 'Cops seek Saiful Buhari's help over missing activists Amri's case' (New Straits Times, 29 August 2019) <<https://www.nst.com.my/news/crime-courts/2019/08/517103/cops-seek-saiful-baharis-help-over-missing-activist-amris-case>> accessed 20 November 2019

⁵³ Julia Chan 'Wife sues gov't, police over her activist husband's enforced disappearance' (Malay Mail Online, 18 November 2019) <<https://www.malaymail.com/news/malaysia/2019/11/18/wife-sues-govt-police-over-her-activist-husbands-enforced-disappearance/1810993>> accessed 20 November 2019

Act 1998⁵⁴. After cooperating with the police investigation against him, his house was raided by the police, who confiscated his mobile phone and laptop.

⁵⁴ FMT Reporters 'Activists summoned over 'abduction' attempts claim on Sabah dissident' (Free Malaysia Today, 6 November 2018) <<https://www.freemalaysiatoday.com/category/nation/2019/11/06/activist-summoned-over-abduction-attempt-claims-on-sabah-dissident/>> accessed 26 November 2019

Freedom of Expression

The greater freedom experienced following the 14th General Election evaporated as we progressed through 2019. The temporary respite from the moratorium against the Sedition Act 1948 and Section 233 of the Communication and Multimedia Act 1998 was short-lived as there was a renewed vigour in investigations, arrests and prosecutions throughout 2019. The Anti-Fake News Act 2018 (AFNA) was finally repealed after a change to the composition of the Senate⁵⁵.

The restrictions imposed on the freedom of expression further gained traction following the Seafeld fracas in 2018 and continue to be in operation with increased use to address issues relating to race, religion and the monarchy. The Malaysian Communication and Multimedia Commission (MCMC) which spearheaded many of the investigations and prosecutions against individuals who had criticized the government prior to GE14 also took an active role in establishing a ‘helpline’ to receive complaints on insensitive posts or contents “that could disrupt national peace and unity”⁵⁶.

Since the helpline was launched, MCMC has received more than 20,000 complaints within the first six weeks of operation with actions taken against 259 complaints received; 80% of the contents reported contained elements of racism while the others related to issues of religion. The controversial ‘sebenarnya.my’ website also continues to function as an official fact-checker website⁵⁷.

According to questions raised in Parliament, between May 2018 to 15 September 2019, 32 cases of ‘insulting the royal institution’ were investigated, with four cases⁵⁸ prosecuted⁵⁹ while one pleaded guilty and was sentenced to one-year imprisonment. Eighteen other cases were classified as ‘no further action’ by the public prosecutor and the remaining 10 cases are still under investigation⁶⁰. In the same time period, the Ministry reported that there were 30 cases related

⁵⁵ Lamont Mark Smith ‘Malaysia passes law to scrap anti-fake news act – after debate which saw bickering and ‘sexist’ remark made’ (Business Insider Malaysia, 10 October 2019) <<https://www.businessinsider.my/malaysia-passes-law-to-scrap-anti-fake-news-act-after-debate-which-saw-bickering-and-sexist-remark-made/>> accessed 20 November 2019

⁵⁶ Kalbana Perimbanayagam ‘MCMC opens channel for offensive ‘race, religion and royalty’ content’ (New Straits Times, 17 August 2019) < <https://www.nst.com.my/news/nation/2019/08/513634/mcmc-opens-channel-offensive-race-religion-and-royalty-content>> accessed 20 November 2019

⁵⁷ Oral Answer in Parliament – Question 10, 14 November 2019

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

⁵⁸ Two individuals are prosecuted under Section 4(1) of the Sedition Act 1948 and Section 233 of CMA whereas the other two individuals were on prosecuted under Section4(1) of the Sedition Act 1948, Question 36, 15 October 2019 <<https://www.parlimen.gov.my/files/jindex/pdf/JDR15102019.pdf>>

⁵⁹ Break down of ethnicity is found in a separate oral answer in parliament

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

⁶⁰ Oral Answer in Parliament – Question 34, 21 October 2019

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

to race with two cases prosecuted⁶¹, 10 'no further actions' and 18 still under investigation⁶². As for cases related to religion, 34 cases were investigated during the same time period.

The Deputy Minister of Home Affairs raised concerns on privacy when his oral answer in Parliament claimed that the police have the power to access a person's mobile phone under Section 233 of the Communication and Multimedia Act 1998 (CMA) when investigating an offence. The Parliament answer also claimed that the access to mobile phone can also be done through Section 103, 104 and 106 of the Criminal Procedure Code⁶³. The Deputy Minister later said that he was misquoted and that the power to check a person's mobile phone is only available if the police have had preliminary information or are acting on a police report that the person in question may have breached CMA⁶⁴.

The Sedition Act 1948

The abolition of the Sedition Act 1948 continues to be deferred and delayed on the ground that there are no adequate provisions to address offences that affect race, religion and the monarchy. The Ministry of Home Affairs cited concerns that there would be security implications if the Sedition Act 1948 is repealed⁶⁵.

Despite the assurances that the Sedition Act 1948 would not be further used for political purposes, there were still cases of individuals who were arrested or investigated for political commentaries made such as those in the forum supporting the introduction of Rome Statute where the Attorney General, Tommy Thomas⁶⁶ was one of the panellists. Similarly, the public backlash against the Women's March was followed by organizers of the march being called for investigation under the Sedition Act 1948.

Khalid Mohd Ismath was arrested yet again in 2019 under the Sedition Act 1948 after allegations that he had tweeted an offensive post against the Raja Permaisuri Agong. Curiously, there was no indication that he had made any tweets regarding the Queen, neither did the police specify

⁶¹ One investigated under Section 504 of Penal Code and CMA whereas the other was investigated under Section 4(1) of the Sedition Act 1948 - Question 36, 15 October 2019

<<https://www.parlimen.gov.my/files/jindex/pdf/JDR15102019.pdf>>

⁶² Oral Answer in Parliament – Question 20, 24 October 2019

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

⁶³ Oral Answer in Parliament – Question 1, 18 November 2019

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

⁶⁴ Robin Augustin 'Media reports on mobile phone checks misleading, says deputy minister' (Free Malaysia Today, 19 November 2019) <<https://www.freemalaysiatoday.com/category/nation/2019/11/19/media-reports-on-mobile-phone-checks-misleading-says-deputy-minister/>> accessed 20 November 2019

⁶⁵ Oral Answer in Parliament – Question 21, 12 November 2019

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

⁶⁶ Jerry Choong 'IGP says UM forum on Rome Statute with AG under sedition probe' (Malay Mail Online, 29 April 2019) <<https://www.malaymail.com/news/malaysia/2019/04/29/igp-says-um-forum-on-rome-statute-with-ag-under-sedition-probe/1747974>> accessed 22 November 2019

the tweet he was investigated for⁶⁷. Fortunately, his remand application was retracted by the police after intervention by the Queen⁶⁸.

Cases of prosecution from Barisan Nasional era were largely withdrawn except for a few notable cases. Wan Ji Wan Husin who was convicted and sentenced to 9 months imprisonment under the Sedition Act 1948 in April 2018 had his sentence increased by the High Court of Shah Alam on 10 July 2019. The court rejected the oral application made by his counsel for a stay of execution pending further appeal and he was sent to Kajang prison pending a formal application for stay of execution. He was released after spending 3 days in prison⁶⁹.

Curiously, the Attorney General claimed that he was not aware of the case even though SUARAM had previously written to the Attorney General's office on all outstanding political prosecutions under the Sedition Act 1948 to advocate for the withdrawal of all cases⁷⁰.

List of Individuals Investigated under the Sedition Act 1948

	Name	Alleged Offence ⁷¹	Date of Arrest or Investigation
1	3 unnamed individuals	Allegedly posting comments on social media deemed insulting to Sultan Muhammad V	8 January
2	Lokman Noor Adam	Remarking that PH govt tried to protect those who killed firefighter Muhammad Adib	11 January
3	Eric Liew Chee Ling	Insulting Sultan Muhammad V on Facebook	11 February ⁷²
4	Nazri Aziz	Alleged racial campaign speech in Semenyih	26 February
5	Lim Guan Eng	A statement describing PAS-Umno alliance as a "declaration of war against non-Muslims"	12 March
6	Unnamed individuals	Organising Women's March - mischaracterised as "illegal LGBT assembly"	14 March
7	Unnamed 18-year old	Posting Facebook statuses deemed insulting to Islam & Prophet Muhammad	19 April

⁶⁷ Yiswaree Palansamy 'PSM activist Khalid Ismath arrested over alleged tweet to Queen' (Malay Mail Online, 14 September 2019) <<https://www.malaymail.com/news/malaysia/2019/09/14/psm-activist-khalid-ismath-arrested-over-alleged-tweet-to-queen/1790357>> accessed 22 November 2019

⁶⁸ Muhammad Hafis Nawawi 'Khalid Ismath bakal bebas, jaminan polis' (Harian Metro, 14 September 2019) <<https://www.hmetro.com.my/mutakhir/2019/09/496524/khalid-ismath-bakal-bebas-jaminan-polis>> accessed 22 November 2019

⁶⁹ 'Preacher Wan Ji gets stay of jail sentence' (The Star Online, 12 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/12/preacher-wan-ji-gets-stay-of-jail-sentence>> 22 November 2019

⁷⁰ 'I was not aware of Wan Ji's sedition case until High Court's decision to uphold sentence, says AG' (The Star Online, 12 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/12/i-was-not-aware-of-wan-ji-s-sedition-case-until-high-court-s-decision-to-uphold-sentence-says-ag>> accessed 22 November 2019

⁷¹ Shaded cells marks cases where individuals were arrested or remanded for investigation under the Sedition Act 1948

⁷² Charged for Sedition and Section 233 of CMA

8	Zamri Vinoth	Making statements deemed insulting to Hinduism during a religious lecture	28 April
9	Syed Husin Ali & Other panelists ⁷³	Allegedly seditious statements said to "incite hatred against the Malay royal institution" made during forum	29 April
10	Khalid Ismath	Alleged sedition over tweet aimed at the Raja Permaisuri Agong	14 September

Communication and Multimedia Act 1998

Similar to the Sedition Act 1948, Section 233 of the Communication and Multimedia Act 1998 continues to be used regularly under the Pakatan Harapan administration. In addition to the broad restriction imposed against free speech in the past, the cases that emerged throughout 2019 seem to suggest that Section 233 is now utilized as a catch-all for all forms of alleged offences that are committed on the internet. This has reinforced the concern that Section 233 is too broad in its remit and thus prone to abuse.

Fahmi Reza who was previously convicted of an offence under Section 233 also had his conviction maintained after his final appeal to the Court of Appeal. Fortunately, the reduced sentence by the High Court was maintained and he was only required to pay a fine of RM10,000 as opposed to imprisonment and RM30,000 fine as sentenced by the Session Court⁷⁴. Similar to Wan Ji's case, SUARAM had also written to the Attorney General for a withdrawal of the appeal by the prosecution to no avail.

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

	Name	Allegations and Offence	Status
1	Unnamed PAS member	Allegedly criticising four DAP lawmakers in a Facebook post [507 Penal Code(PC)]	Arrested in Sibul, Sabah on 3 January
2	Unnamed 43-year old	Allegedly uploading racist statements and religious insults on Facebook via a false account [505(c) PC]	Arrested on 9 February
3	Eric Liew Chee Ling	Allegedly insulting Sultan Muhammad V on Facebook [4(1) Sedition Act]	Charged on 11 February
4	Chan Quin Er	Commenting on leaked circular by Solicitor General III [298A(1)(a) PC]	Investigated on 14 February

⁷³ Jerry Choong 'IGP says UM forum on Rome Statute with AG under sedition probe' (Malay Mail Online, 29 April 2019) <<https://www.malaymail.com/news/malaysia/2019/04/29/igp-says-um-forum-on-rome-statute-with-ag-under-sedition-probe/1747974>> accessed 22 November 2019

⁷⁴ Bernama 'Fahmi Reza fails to strike out conviction for publishing Najib caricature' (The Star Online, 5 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/05/fahmi-reza-fails-to-strike-out-conviction-for-publishing-najib-caricature>> accessed 22 November 2019

5	Wai Foo Sing	Allegedly insulting Prophet Muhammad & his wife Saidatina Aishah on Facebook [298A(1)(a) PC]	Prosecuted on 27 February
6	Mohd Sharulnizam Stanley Sigan	Allegedly uploading and making offensive comments on Prophet Muhammad	Prosecuted on 8 March
7	Alister Cogia	Insulting Islam and Prophet Muhammad [Section 505(c) PC]	Sentenced to 10 years and 10 months imprisonment
8	Mohamad Yazid Kong Abdullah	Insulting Islam and Prophet Muhammad [Section 505(c) PC]	Pleaded guilty with unknown sentence
9	Chow Mun Fai	Allegedly insulting Islam and Prophet Muhammad [505(c) PC]	Pending trial
10	Danny Antoni	Allegedly insulting Islam and Prophet Muhammad [505(c) PC]	Pending trial
11	Zamri Abdul Razak	Allegedly posting remarks deemed offensive to Hindus on Facebook page [298A PC]	Arrested 11 March
12	Jufazli Shi Ahmad	Allegedly insulting Mahathir [504 PC]	Arrested on 16 March
13	Razlan Rafii	Allegedly made posting asking DAP members to be shot [505(c) PC]	Investigated on 20 March
14	Tumik Aik	Allegedly insulting WARISAN & Sabah Chief Minister on Facebook	Individual reportedly identified on 5 April
15	3 unnamed individuals	Allegedly sending offensive and pornographic materials via social media	Investigated on 31 March
16	Shahril Mohd Sharif	Insulting the Yang di-Pertuan Agong	Sentenced 2 months imprisonment
17	Zamri Vinoth	Allegedly insulting Hinduism	Arrested on 28 April
18	Unnamed 34 year-old	Allegedly insulting religion [298A PC]	Arrested 28 April
19	2 unnamed individuals	Allegedly offensive posting on Prophet Muhammad and his wife	Arrested on 30 April
20	Unnamed	Allegedly making false allegation against royalty and leaders on Facebook and Blog	Investigated on 3 May
21	Unnamed 36-year old	Allegedly threatening to beat up Mufti of Perlis [506 PC]	Arrested on 3 May
22	Sri Shankar Ganesh	Alleged criminal intimidation against Zamri Vinoth [502 and 506 PC]	Arrested on 3 May
23	Unnamed 55-year old PAS member	Alleged dissemination of misinformation on social media [500 PC]	Arrested on 7 May

24	Unnamed 43-year old	Allegedly sharing a video of paying respects at Dato Kong altar [298A PC]	Arrested on 9 June after surrendering himself to the police
25	Farhash Wafa Salvador Rizal Mubarak & two others	In relation to an investigation into the sex video allegedly involving Azmin Ali [377B and 292 PC]	Arrested on 16 July
26	Koon Yew Yin	Allegedly insulting the armed forces [505(c) PC]	Investigated on 19 August
27	Unnamed 49-year old	Allegedly posting on Facebook threatening non-Muslims [505 (c) PC]	Arrested on 18 August
28	Unnamed 37-year old	Allegedly making an offensive Facebook comment that threatens harmony	Arrested on 30 August
29	Rama Ramanathan	Alleged article on his blog [504 PC]	Investigated on 11 November

Printing Presses and Publications Act 1984

Since the change of administration, there have been notably fewer publications banned. Throughout 2019 only five items were gazetted to be restricted items in comparison with seven in 2018 and 71 in 2017. The Ministry of Home Affairs has also lifted the restriction on books by well-known author Faisal Tehrani and Zaid Ibrahim's book which was banned in 2017⁷⁵. It should be noted there was an outstanding judicial review filed by Zaid Ibrahim against the restriction order⁷⁶.

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

Publications Banned under Section 7(1) of PPPA

No	Name of Publication	Reason	Date Listed
1	Kamasutra: A Position A Day 365 Days A Year ⁷⁷	Prejudicial to Morality	14 February
2	Infernal Goat Trashing ⁷⁸	Prejudicial to Morality ⁷⁹	14 February

⁷⁵ Alyaa Azhar 'Gov't wants my ideas to be seen as dangerous, Zaid after book ban' (MalaysiaKini, 28 December 2017) <<https://www.malaysiakini.com/news/406810>> accessed 26 November 2019

⁷⁶ V Anbalagan 'Zaid turns to courts for remedy over ban of his book' (Free Malaysia Today, 25 January 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/01/25/zaid-turns-to-courts-for-remedy-over-ban-of-his-book/>> accessed 26 November 2019

⁷⁷ Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/outputpub/pub_20190306_PUA67_2019.pdf

⁷⁸ Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/outputpub/pua_20190401_PUA102.pdf

⁷⁹ This item is a death metal music album

3	Inisiatif Jalur dan Jalan Mermaid Manfaat Bersama	Prejudicial to Security	23 October
4	Belt and Road Initiative for Win-Winism	Prejudicial to Security	23 October
5	互利共赢的一带一路	Prejudicial to Security ⁸⁰	23 October

Publication Ban Lifted under Section 7(1) of PPPA

No	Name of Publication	Author	Date Listed
1	Sebongkah Batu di Kuala Berang	Faisal Tehrani	15 January
2	Karbala	Faisal Tehrani	15 January
3	Tiga Kali Seminggu	Faisal Tehrani	15 January
4	Ingin Jadi Nasrallah ⁸¹	Faisal Tehrani	15 January
5	Assalamualaikum (May Peace be Upon You): Observations on the Islamisation of Malaysia ⁸²	Zaid Ibrahim	31 May

⁸⁰ Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/outputp/pua_20191023_PUA%20288.pdf

⁸¹ Federal Gazette Revocation Order: http://www.federalgazette.agc.gov.my/outputp/pua_20190220_PUA47.pdf

⁸² Federal Gazette Revocation Order: http://www.federalgazette.agc.gov.my/outputp/pua_20190918_PUA255.pdf

Freedom of Assembly

The right to peaceful assembly is arguably one freedom that is relatively easy to uphold by the state in Malaysia. Unfortunately, the situation pertaining to the right of peaceful assembly in relation to the Peaceful Assembly Act 2012 (PAA) remained unchanged throughout 2019. The Buku Harapan (PH's GE14 manifesto) outlined intent by the government to abolish the draconian aspects of PAA. In practice, this has resulted in an amendment where the required notice of 10-days was reduced to 5-days and the inclusion of a compound system⁸³ as opposed to the previous practice of prosecution for failure to adhere to Section 9(1)⁸⁴.

While the improvement is a welcome change, the present PAA still remains problematic as the required notice period does not make any exemption for urgent assemblies. An excellent example would be the assembly called by the de-facto Minister for Religious Affairs, Mujahid Yusof Rawa in solidarity with the shooting in Christchurch, New Zealand in March 2019. The announcement by the minister was merely 3-days before the proposed assembly⁸⁵. Not surprisingly, no investigation papers were initiated by the Royal Malaysian Police for this assembly.

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

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

List of Individuals Investigated under the Peaceful Assembly Act 2012⁸⁶

No	Individual/Group	Event/Assembly	Date
1	Six unnamed organisers of the event	New Year celebration @ Lukut	1 January
2	Seven unnamed organisers of the march	International Women's Day March	9 March

⁸³ 'Peaceful Assembly Bill passed' (The Star Online, 5 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/05/peaceful-assembly-bill-passed>> accessed 26 November 2019

⁸⁴ Section pertaining to the required 10-days notice.

⁸⁵ Rahimy Rahim & Martin Carvalho 'Mujahid: Solidarity for Peace march to be held on Saturday (March 23)' (The Star Online, 20 March 2019) <<https://www.thestar.com.my/news/nation/2019/03/20/mujahid-solidarity-for-peace-march-to-be-held-on-saturday-march-23/>> accessed 26 November 2019

⁸⁶ Shaded cells indicate incidences where arrests were made

3	Seven unnamed student protestors; unnamed Najib Abdul Razak supporters	A scuffle between Lokman Adam and co. & UM students	22 March
4	Unnamed organisers of the rally	UMMAH rally @ Masjid Jamek	6 May
5	Unnamed organisers of assembly	Silent protest of HK solidarity @ KLSCAH	16 June
6	Unnamed participants of the rally	NIDO-MY rally @ Nigerian High Commission Office	11 July
7	Unnamed organisers of the rally	Anti-Lynas rally @ Gelora Park, Kuantan	18 August
8	2 unnamed individuals	Protest over <i>khat</i> calligraphy for Tamil schools @ Brickfields	23 August
9	Sharan Raj; 7 unnamed students	Protest over the expulsion of 2 other students from college	26 August
10	S Arulchelvan	World Habitat Day protest @ Parliament	8 October
11	Sharan Raj & Tan Cheng Siong	40 students protest over exorbitant MJIT tuition fees @ Parliament	11 October
12	Unnamed organisers of the rally; 1 student arrested	'Mahasiswa Bersama VC' demo @ UM	25 October
13	Unnamed organisers of the rally	929 Global Anti-Totalitarianism rally @ KLSCAH	30 September

Free & Fair Elections

The change of administration following the 14th General Election marked the first reversal of role and power from the Barisan Nasional to Pakatan Harapan. In addition to the shift in political power, the new Election Commissioners appointed were largely seen as independent and impartial and would bring about improvements to the electoral process.

Since the 14th General Election, there have been nine by-elections and each has been hotly contested, raising new concerns of abuse, vote-buying and electoral offences. Five were state assembly seats – Sungai Kandis,⁸⁷ Seri Setia,⁸⁸ Balakong,⁸⁹ Semenyih,⁹⁰ and Rantau⁹¹; while the remaining four were federal seats – Port Dickson,⁹² Cameron Highlands,⁹³ Sandakan,⁹⁴ and Tanjung Piai, with the participation of 31 candidates in total in all nine by-elections.

The shift of political power was swiftly followed by allegations of vote-buying and inducements on the part of Pakatan Harapan⁹⁵. The most recent by-election at Tanjung Piai had 93 cases of electoral offences with 32 police reports and 3 Malaysian Anti-Corruption Commission (MACC) reports lodged over a variety of electoral offences according to the Election Commission (EC)⁹⁶.

⁸⁷ 'Laporan Pemerhatian Pilihan Raya Kecil DUN N49 Sungai Kandis' (Bersih 2.0, 18 August 2018) <<http://www.bersih.org/wp-content/uploads/2018/10/Laporan-Pemerhatian-PRK-Seri-Setia.pdf>> accessed 26 November 2019

⁸⁸ 'Laporan Pemerhatian Pilihan Raya Kecil DUN N32 Seri Setia' (Bersih 2.0, 3 October 2018) <<http://www.bersih.org/wp-content/uploads/2018/10/Laporan-Pemerhatian-PRK-Seri-Setia.pdf>> accessed 26 November 2019

⁸⁹ 'Laporan Pemerhatian Pilihan Raya Kecil DUN N27 Balakong' (Bersih 2.0, 3 October 2018) <<http://www.bersih.org/wp-content/uploads/2018/10/Laporan-Pemerhatian-PRK-Balakong.pdf>> accessed 26 November 2019

⁹⁰ 'Laporan Pemerhatian Pilihan Raya Kecil N24 Semenyih' (Bersih 2.0, 8 March 2019) <<http://www.bersih.org/wp-content/uploads/2019/03/Laporan-Pemerhatian-Pilihan-Raya-Kecil-N24-Semenyih.pdf>> accessed 26 November 2019

⁹¹ 'Laporan Pemerhatian Pilihan Raya Kecil N27 Rantau' (Bersih 2.0, 23 April 2019) <<http://www.bersih.org/wp-content/uploads/2019/04/Laporan-Pemerhatian-Pilihan-Raya-Kecil-N27-Rantau-Latest.pdf>> accessed 26 November 2019

⁹² 'Laporan Pemerhatian Pilihan Raya Kecil P132 Port Dickson' (Bersih 2.0, October 2018) <<http://www.bersih.org/wp-content/uploads/2018/12/Laporan-Pemerhatian-Pilihan-Raya-Kecil-P132-Port-Dickson.pdf>> accessed 26 November 2019

⁹³ 'Laporan Pemerhatian Pilihan Raya Kecil P078 Cameron Highlands' (Bersih 2.0, 31 January 2019) <<http://www.bersih.org/wp-content/uploads/2019/01/Laporan-Pemerhatian-Pilihan-Raya-Kecil-P078-Cameron-Highlands.pdf>> accessed 26 November 2019

⁹⁴ 'Laporan Pemerhatian Pilihan Raya Kecil P186 Sandakan' (Bersih 2.0, 21 May 2019) <<http://www.bersih.org/wp-content/uploads/2019/05/Laporan-Pemerhatian-Pilihan-Raya-Kecil-P186-Sandakan-1.pdf>> accessed 26 November 2019

⁹⁵ Mohd Husni Mohd Noor 'Saivrraajh lodges reports against DAP for alleged vote-buying in Cameron Highlands' (New Straits Times, 15 January 2019) <<https://www.nst.com.my/news/crime-courts/2019/01/450878/sivarraajh-lodges-reports-against-dap-alleged-vote-buying-cameron>> accessed 27 November 2019 ; 'Najib fumes over free SIM cards and palm oil , wants EC to act' (MalaysiaKini, 12 November 2019) <<https://www.malaysiakini.com/news/499537>> accessed 27 November 2019 ; 'EC views seriously alleged electoral offences in Cameron Highlands polls' (The Star Online, 21 January 2019) <<https://www.thestar.com.my/news/nation/2019/01/21/ec-views-seriously-alleged-electoral-offences-in-cameron-highland-polls/>> 27 November 2019

⁹⁶ 'EC records 93 election offences in Tanjung Piai' (The Star Online, 14 November 2019) <<https://www.thestar.com.my/news/nation/2019/11/14/ec-records-93-election-offences-in-tanjung-piai>> accessed 27 November 2019

However, actions against the alleged offenders are still largely impeded by the fact that the Royal Malaysian Police and the MACC are the bodies tasked to investigate the alleged offences⁹⁷. The Election Commission chairperson Azhar Azizan Harun, at a training programme after Tanjung Piai by-election, revealed that the EC was looking into the need for a special enforcement agency to probe and take action against the perpetrators of electoral offences⁹⁸.

On a more positive note, the Parliament successfully passed a constitutional amendment that lowered voters age from 21 years old to 18 years old, potentially enabling 7.2 million new voters to take part in the 15th General Election. This would bring the total number of voters to around 22 million voters⁹⁹. In the same amendment, the Parliament also passed the amendment requiring automatic voters' registration¹⁰⁰.

Electoral Reform Committee (ERC)

An Electoral Reform Committee (ERC) was established not long after the 14th General Election in August 2018. The special committee was tasked with the review of electoral law and system in Malaysia and chaired by former Election Commission Ab Rashid Ab Rahman¹⁰¹.

The ERC was given two years to prepare and submit a comprehensive report on the necessary electoral reform. The ERC has since identified 16 components for electoral reform, including recommendations for electoral systems, election laws, and constituency delimitation¹⁰².

One of the key areas was unsurprising, the issue of delineation and size of the constituency which became a point of concern for the integrity of the electoral process. Leading up to the 14th General Election, the expansive delineation that in some cases, makes very little sense and

⁹⁷ 'Report election offences, urges new EC chief' (The Star Online, 6 October 2018) <<https://www.thestar.com.my/news/nation/2018/10/06/report-election-offences-urges-new-ec-chief/>> accessed 27 November 2019

⁹⁸ Adib Povera, Ain Zaki & Maya Basir 'EC mulls need to establish special agency to tackle electoral offence' (New Straits Times, 25 November 2019) <<https://www.nst.com.my/news/nation/2019/11/541935/ec-mulls-need-establish-special-agency-tackle-electoral-offences>> accessed 27 November 2019

⁹⁹ Nuradzimmah Daim, Nor Ain Mohamed Radhi 'EC braces for new set of challenges ahead of GE15' (New Straits Times, 16 July 2019) <<https://www.nst.com.my/news/nation/2019/07/504897/ec-braces-new-set-challenges-ahead-ge15>> accessed 27 November 2019

¹⁰⁰ 'EC: automatic voter registration will be in place before GE15' (The Star Online, 18 July 2019) <<https://www.thestar.com.my/news/nation/2019/07/18/ec-automatic-voter-registration-will-be-in-place-before-ge15>> accessed 27 November 2019

¹⁰¹ 'Government sets up Electoral Reform Committee headed by Ab Rashid' (The Star Online, 16 August 2018) <<https://www.thestar.com.my/news/nation/2018/08/16/government-sets-up-electoral-reform-committee>> accessed 27 November 2019

¹⁰² Hana Naz Harum, '16 components for electoral reform to be presented to government next year' (New Straits Times, 4 May 2019) <<https://www.nst.com.my/news/nation/2019/05/485571/16-components-electoral-reform-be-presented-government-next-year>>

further segregates voters based on ethnicity raised concerns that the Election Commission was creating an unequal playing field for the benefit of one party¹⁰³.

Thus far, the ERC has proposed an independent body to ensure that the next delineation exercise (due in 2026) would be conducted transparently, with constituency sizes based on Section 2 of the 13th Schedule of the Federal Constitution.¹⁰⁴ Having such a commission would also help reduce the workload of the EC, thus enabling it to focus on its main role of conducting the elections. Chairman Abdul Rashid suggested the commission can be formed every eight years to carry out the re-delineation exercise, with its membership determined by the Parliamentary Select Committee¹⁰⁵. It should be noted that there is no detailed study on the efficacy of the proposed structure.

Other notable proposals include the registration and regulation of political parties to be managed by the EC rather than the Registrar of Societies (ROS) to ensure transparency and impartiality, as the EC is an independent body established by the constitution whereas the ROS is a government department under the Home Ministry with broad powers by the minister to influence the direction and action of ROS with a track record of stifling the functioning of political parties¹⁰⁶. A notable example would be the registration of the Pakatan Harapan coalition itself which was only granted after its victory on 14th General Election¹⁰⁷.

Curiously, despite acting with the authority granted by the federal government, a member of the ERC, Wong Chin Huat was barred from entering Kuching, Sarawak when he was travelling to Kuching in his capacity as an ERC member for an electoral system workshop. He later developed a medical emergency while waiting for approval for access and was still denied entry into the state. After intervention by the Minister of Health, he was finally allowed to receive medical attention¹⁰⁸.

¹⁰³ Ooi Kok Hin, 'How Malaysia's Election is Being Rigged' (New Naratif, 19 March 2018) <<https://www.malaysiakini.com/news/417270>>

¹⁰⁴ 'Electoral Reform Committee proposes formation of special commission for redelineation of electoral boundaries' (Bernama, 21 August 2019) <<https://www.malaymail.com/news/malaysia/2019/08/21/electoral-reform-committee-proposes-formation-of-special-commission-for-red/1782814>>

¹⁰⁵ *ibid.*

¹⁰⁶ 'Electoral Reform Committee proposes proportionate representation system for parliamentary seats' (Bernama, 2 October 2019) <<https://www.thesundaily.my/local/electoral-reform-committee-proposes-proportionate-representation-system-for-parliamentary-seats-KX1440804>>

¹⁰⁷ Yimie Yong 'It's official! Pakatan gets its certificate of registration from RoS' (The Star Online, 17 May 2018) <<https://www.thestar.com.my/news/nation/2018/05/17/its-official-pakatan-gets-its-certificate-of-registration-from-ros>> accessed 27 November 2019

¹⁰⁸ Lu Wei Hoong 'Chin Huat barred from entering Sarawak despite needing medical help' (MalaysiaKini, 15 November 2019) <<https://www.malaysiakini.com/news/499873>> accessed 27 November 2019

Gender and Sexuality

The recognition and identity of the LGBTIQ community remain a contentious issue in Malaysia, as the government and certain sections of the public at large continue to harass and deny them that human right. Officials in various positions of power condone the rejection of the community on public platforms and this has hindered the progress of Malaysia into becoming a more inclusive society.

In March 2019, ahead of the opening of the ITB Berlin tourism show, the Tourism Minister Datuk Mohamaddin bin Ketapi was asked whether Malaysia was safe for gay and Jewish visitors. In response, he made the very bold claim that Malaysia has 'no gays',¹⁰⁹ sparking a strong backlash from the community.¹¹⁰

In the same month, the Woman's March took place, with one of the key demands being ending violence against gender and sexual orientation. Mujahid Yusof Rawa, the MP for Parit Buntar and then Penang Amanah Negara chairman, commented that this was an 'abuse of democracy', adding that LGBT practices will never be accepted in this country and that it is impossible for them to acknowledge it.¹¹¹

Furthermore, despite the Home Minister Muhyiddin Yassin's classification of 'no further action' and a confirmation from the *de facto* Deputy Law Minister Mohamed Hanipa Maidin that the Woman's March did not contravene the Federal Constitution nor the Peaceful Assembly Act,¹¹² the PAS deputy president Tuan Ibrahim Tuan Man criticised this position, claiming that the freedom of expression and assembly should not trump public interest and moral principles.¹¹³

In April 2019, LGBT activist Numan Afifi gave a statement at the UN Human Rights Council for its Universal Periodic Review of Malaysia. Shortly after, he was questioned by the police after online backlash to his statement. He stated that this is a pattern of intimidation employed by the police to silence human rights defenders.¹¹⁴

In June 2019, retail chain H&M announced a collection which will donate 10% of its proceeds to the UN Free & Equal movement to support the LGBT community. Similarly, this faced considerable backlash, with a user on Twitter calling for a boycott, deeming supporting such causes to be forbidden in Islam.¹¹⁵ This

¹⁰⁹ 'ITB Berlin tourism partner Malaysia claims it has 'no gays'' (Deutsche Welle, 5 March 2019)

<<https://www.dw.com/en/itb-berlin-tourism-partner-malaysia-claims-it-has-no-gays/a-47781804>> accessed 25 November 2019

¹¹⁰ 'LGBTQ Malaysians Fight Back After Gov't Official Says They Don't Exist' (The Advocate, 7 March 2019)

<<https://www.advocate.com/world/2019/3/07/lgbtq-malaysians-fight-back-after-govt-official-says-they-dont-exist>> accessed 25 November 2019

¹¹¹ 'Defending LGBTs at Women's March an abuse of democracy – Mujahid' (MalaysiaKini, 9 March 2019)

<<https://www.malaysiakini.com/news/467258>> accessed 25 November 2019

¹¹² 'Women's March didn't violate Federal Constitution, says Hanipa' (MalaysiaKini, 17 July 2019)

<<https://www.malaysiakini.com/news/484153>> accessed 25 November 2019

¹¹³ 'LGBT in Women's March: PAS raps gov't for 'right to assembly' reply' (MalaysiaKini, 19 July 2019)

<<https://www.malaysiakini.com/news/484518>> accessed 25 November 2019

¹¹⁴ Michael Taylor, 'Malaysian LGBT+ activist accuses authorities of intimidation' (Thomson Reuters Foundation, 29 April 2019)

<<https://www.reuters.com/article/us-malaysia-lgbt-rights-interview/malaysian-lgbt-activist-accuses-authorities-of-intimidation-idUSKCN1S51JX>> accessed 25 November 2019

¹¹⁵ <<https://twitter.com/azmanhaj/status/1134246311106994176>> accessed 27 November 2019

led to a response from UMNO supreme council member Fathul Bahri Mat Jahya questioning H&M's links with the UN campaign.¹¹⁶

Later in June, in an International Labour Organisation vote to adopt a global treaty to improve protection for workers facing violence and harassment, the Malaysian Trade Union Congress, along with the Malaysian Employers Federation, were two of the seven delegates who voted against it. Other Malaysian delegations also abstained from voting. The MTUC president Abdul Halim Mansor has cited the government's position of rejecting and not recognising LGBT as the reason for MTUC's vote. MEF president Shamsudin Bardan also emphasised that the convention failed to account for religious sensitivities.¹¹⁷

In November 2019, five Malaysian men were sentenced to jail and caning for attempting to have gay sex, which is a crime under Islamic laws. LGBT rights activist Numan Afifi has commented that the sentences would create a "culture of fear" among the community. Critics have also noted that the LGBT community are facing increasing pressure in Malaysia.¹¹⁸

Also in November, the deputy prime minister Datuk Seri Dr Wan Azizah Ismail revealed that seven states have refused to amend their state laws on the minimum age for marriages.¹¹⁹ This is an alarming development in light of the government's attempt to ban child marriages, prompting a call from Women's Centre for Change to push the government into being more proactive in implementing the ban at a federal level which takes precedence over state legislation.¹²⁰

There was also an uproar over a recent suggestion from the National Film Development Corporation for the government to censor Netflix, an online streaming service. Similarly, the portrayal of LGBT and crude language was blamed, with FINAS CEO Fadzil Hashim making a snide remark that those against it do not love their children.^{121,122}

¹¹⁶ 'Umno leader targets H&M's M'sian chain over pro-LGBT donation' (MalaysiaKini, 1 June 2019)

<<https://www.malaysiakini.com/news/478258>> accessed 27 November 2019

¹¹⁷ 'Yes, it was LGBT factor which made us say 'No', confirms MEF boss' (MalaysiaKini, 27 June 2019)

<<https://www.malaysiakini.com/news/481423>> accessed 27 November 2019

¹¹⁸ 'Five men jailed, caned for gay sex' (The Star Online, 7 November 2019)

<<https://www.thestar.com.my/news/nation/2019/11/07/five-malaysian-men-jailed-caned-for-gay-sex>> accessed 27 November 2019

¹¹⁹ Azril Annuar, 'DPM: Seven states won't ban child marriage' (Malay Mail, 19 November 2019)

<<https://www.malaymail.com/news/malaysia/2019/11/19/dpm-seven-states-wont-ban-child-marriage/1811186>> accessed 27 November 2019

¹²⁰ Opalyn Mok, 'Enact federal law banning child marriage so states can follow suit, Putrajaya told' (Malay Mail, 22 November 2019)

<<https://www.malaymail.com/news/malaysia/2019/11/22/enact-federal-law-banning-child-marriage-so-states-can-follow-suit-putrajaya/1812412>> accessed 27 November 2019

¹²¹ Mastura Malak, 'Those against Netflix censorship don't love kids, says Aflix TV CEO' (The Malaysian Insight, 20 November 2019)

<<https://www.themalaysianinsight.com/s/198659>> accessed 27 November 2019

¹²² Arisha Rozaidee, 'Aflix TV Group CEO: Those Upset Over Netflix Censorship Issue Do Not Love Their Children' (SAYS, 18 November 2019)

<<https://says.com/my/news/netizens-call-out-finas-ceo-for-conflict-of-interest-after-alleged-endorsement-of-aflix>> accessed 27 November 2019

Throughout the year, there were also several alarming statements by various parties. In August, a Penang mufti, Wan Salim Wan Mohd Noor compared the fight for LGBT rights to fighting for animal rights, claiming that the freedom of man is limited by religion and customs.¹²³

In September, the choice of words by PAS president Abdul Hadi Awang, such as 'links' and 'members' in describing the community reflects the misconception that the LGBT identity is one that a person voluntarily associates with like a political party, rather than a trait inherent to a person such as race or gender.¹²⁴

In November, this view was once again reflected in the twitter post by state assemblyman for Kota Anggerik, Najwan Halimi, implying a choice to be queer. More alarmingly, rather than recognise the persecution faced by the LGBT community and that criticism towards them often consisted of religious or actual physical threats, he insisted that it is instead part and parcel of freedom of expression.¹²⁵

The discrimination faced by the LGBT community extends even to education institutions. LGBT activist Pang Khee Teik was invited to speak at a TEDx talk at Universiti Malaysia Sabah and was subsequently uninvited after the organisers consulted with the university's administration. He has also expressed frustration that he received a rather ironic request to speak of LGBT experiences without being overtly LGBT, explaining that others rather have them in the closet than speak out.¹²⁶

To sum up, the LGBT community still faces significant challenges in Malaysia and this pattern of harassment and silencing is showing no signs of slowing down. These challenges come from nearly all layers of society, as seen in the various examples above: the ruling government, Opposition, professional organisations and even members of the public.

¹²³ 'Penang mufti likens LGBT freedom to 'freedom for animals'' (MalaysiaKini, 10 August 2019)

<<https://www.malaysiakini.com/news/438315>> accessed 27 November 2019

¹²⁴ 'I'm not an 'LGBT member' – Hadi on 'wedding gown' image' (MalaysiaKini, 27 September 2019)

<<https://www.malaysiakini.com/news/493563>> accessed 27 November 2019

¹²⁵ <<https://twitter.com/NajwanHalimi/status/1193861313329369091>> accessed 27 November 2019

¹²⁶ Sukhbir Cheema, 'Malaysian LGBTQ activist gets uninvited as a speaker by TEDx. What's going on?' (Mashable SEA, 8 November 2019)

<<https://sea.mashable.com/culture/7281/malaysian-lgbtq-activist-gets-uninvited-as-a-speaker-by-tedx-whats-going-on>> accessed 27 November 2019

Death Penalty

Following the announcement of the Government's intention to abolish the death penalty in 2018, a moratorium was imposed on all executions pending the necessary law reforms. However, the move to total abolishment was stymied by a series of objections led and propagated by the opposition parties¹²⁷. This is an unfortunate development as the previous Barisan Nasional administration had conducted extensive study on the death penalty and was on track to abolish it in stages with the Dangerous Drugs Act 1952 amendment that removes the mandatory death penalty for drug mules.

The president of PAS was not opposed to the abolition of the mandatory death penalty and was reportedly quoted to say that lighter sentences ought to be considered for any crimes and death penalty should only be the last resort¹²⁸.

The mounting pressure posed by the opposition parties and the public eventually resulted in the government backtracking and saying they would review their position on abolishing the mandatory death penalty¹²⁹. The new position adopted by the government has seemingly received broader support¹³⁰ from groups that were previously silent on the decision on total abolition. It remains to be seen whether the opposition parties would accept the proposed abolition of the mandatory death penalty when it is next proposed or tabled in Parliament.

A task force was also formed by the Minister of Law to study alternative punishments to the mandatory death penalty¹³¹. The taskforce has since called for submission by civil societies and conducted public consultation and engagement to obtain feedback from the public based on the terms of reference of the taskforce.

The known number of inmates on death row remained relatively consistent at around the previously reported 1,281 with no notable increase reported in 2019.

A major landmark case was decided in 2019, when Section 37 of the Dangerous Drugs Act 1952 that permits double presumption in cases of drug trafficking was struck down by the Federal

¹²⁷ 'MCA activists badger Kit Siang on death penalty abolition' (MalaysiaKini, 23 January 2019)

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

¹²⁸ Diyana Ibrahim 'Kaji semula mansuh hukuman mati mandatori – Pas' (Astro Awani, 16 October 2018)

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

¹²⁹ Hairulazim Mahmud dan Rizanizam Abdul Hamid 'Setuju hapus hukuman mati mandatori kepada budi bicara' (Harian Metro, 13 March 2019) <<https://www.hmetro.com.my/mutakhir/2019/03/433146/setuju-hapus-hukuman-mati-mandatori-kepada-budi-bicara>> accessed 25 November 2019

¹³⁰ 'Kekal hukuman mati, mansuh aspek mandatori' (MalaysiaKini, 8 March 2019)

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

¹³¹ 'Liew: Govt to set up taskforce to study alternatives to mandatory death penalty' (The Star Online, 6 September 2019) <<https://www.thestar.com.my/news/nation/2019/09/06/liew-govt-to-set-up-taskforce-to-study-alternatives-to-mandatory-death-penalty>> accessed 25 November 2019

Court¹³². The double presumption imposes a presumption of 'possession and knowledge of the drug' and the possession was intended for the purpose of trafficking if it exceeds the prescribed weight. While this does not directly address the issue of the death penalty, it would likely reduce the numbers of death row inmates for drug trafficking under Section 39B of the Dangerous Drugs Act 1952. Currently, those convicted of trafficking are the majority of the detainees on death row. The constitutionality of Section 39B which concerns the mandatory death penalty was also challenged in the abovementioned case, but the matter is now pending a decision that will be delivered separately.

¹³² 'Double presumption for drug-trafficking conviction struck down' (The Star Online, 6 April 2019)
<<https://www.thestar.com.my/news/nation/2019/04/06/double-presumptions-for-drugtrafficking-conviction-struck-down>>
accessed 25 November 2019