

## General trends facing human rights defenders

1. Human rights defenders (HRDs) in Malaysia continue to face many challenges, including in particular judicial harassment, smear campaigns, arbitrary arrest, threats and intimidations. Laws which are not in line with international human rights standards in relation to freedom of expression, peaceful assembly and association have also been used to hindering the legitimate work of human rights defenders.
2. No significant progress was recorded as regards the situation of HRDs since the last UPR of Malaysia in 2009. At that time, recommendations on human rights defenders and on freedom of expression, association and assembly were rejected by Malaysia or were given a generic response.
3. Front Line Defenders is concerned that HRDs working on minority rights remain particularly vulnerable, especially in relation to their work on land and environmental issues. Concern in this regard was also expressed by the UN Special Rapporteur on the situation of human rights defenders, Ms Margaret Sekkagya<sup>1</sup>. Other groups of HRDs at risk include those working on election monitoring and good governance, labour rights, and sexual orientation and gender identity.
4. As of February 2013, the Malaysian government has yet to accept requests by the Special Rapporteur on the situation of human rights defenders to visit the country, which were made in 2002 and 2010.

## Legislation that hinders the right to defend human rights

5. Front Line Defenders is concerned that, despite criticisms from civil society and human rights groups, Malaysia has passed new laws or legislative amendments that could be used to limit and restrict the work of human rights defenders.
6. Provisions of the **Security Offences (Special Measures) Act (SOSMA)**, which was adopted by parliament on 17 April 2012, allow to hold suspects incommunicado for 48 hours and in detention of up to 28 days without being brought before a judge. Police officers are allowed to arrest anyone if they “have reason to believe” that the person may be involved in security offences – which remain vaguely defined. Although the law was passed to replace the draconian and much abused 1960 Internal Security Act, there is a concern that the SOSMA may be used, like its predecessor, to silence critics of the government, including HRDs, trade unionists and student activists.
7. Despite concerns raised by Front Line Defenders and the Special Rapporteurs on freedom of peaceful assembly and association, on human rights defenders, on freedom of expression, and on the human rights of migrants, the **Peaceful Assembly Act (PAA)** was adopted by the Senate on December 2011. The law replaced the 1967 Police Act, which regulated public demonstrations. The President of the Malaysian Bar Association, Lim Chee Wee, declared that the PAA is in fact more restrictive than the previous one. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association warned that “many of these restrictions are not justifiable under international law”.
8. According to the PAA, street protests will be outlawed. It is also an offence for non-Malaysian to organise or participate in a peaceful assembly. Organisers are obliged to inform authorities 10 days prior to the dates on which the assembly will be held. PAA gives power to police to arrest any organiser or participant without an arrest warrant. The police can impose conditions, including date, time, and the venue of the assembly. Under the PAA no one under the age of 21 is permitted to organise an assembly, while persons under the age of 15 are not allowed to participate in peaceful assemblies. The police is allowed to fine the organiser up to RM 10,000 (€ 2,335) if they receive no advance notice of a planned assembly. In addition, the police is allowed to fine those

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<sup>1</sup> A/HRC/19/55/Add.2

arrested for organising an unauthorised assembly a maximum of RM 20,000 (€ 4,671).

9. Front Line Defenders is concerned that the PAA may be used to restrict human rights defenders' right to organise peaceful assemblies and the right of anyone to participate in them. Prior to the KL 112 rally organised by a number of non-governmental organisations and opposition parties in Kuala Lumpur on 12 January 2013 to call for good governance, Attorney-General Tan Sri Abdul Gani Patail warned demonstrators who bring children to the gathering that they were liable to face prosecution.

### **Smear campaigns and use of defamation laws against human rights defenders**

10. Smear campaigns, instigated at times by high-ranking Malaysian politicians, represent a serious threat to the reputation of human rights defenders. Human rights groups receiving foreign funding have been accused by the government of pursuing hidden political agendas. Right wing groups, backed by the some officials, have labelled human rights groups as traitors. Many Malaysian human rights defenders regularly receive hate email or death threats via electronic communications means. Raids and attacks on the offices by police as well as by unknown individuals have been used as a tool of intimidation.

11. Front Line Defenders is concerned that charges related to defamation have been brought against human rights defenders monitoring alleged labour rights violations committed by private companies. In June 2011, **Charles Hector Fernandez** was sued for US\$3.3 million by the Asahi Kosei Company which accused him of posting false information on his blog concerning the breach of an agreement by the company with 31 Burmese migrant workers. The workers claimed they had been paid significantly less than what it had been originally agreed with their employer and when they complained about the breach of the agreement and sought compensation they were allegedly threatened with deportation and termination of their employment.

### **Arbitrary arrest and intimidation of human rights defenders**

12. A number of cases of arbitrary arrest by police have been reported. They were either carried out in the absence of an arrest warrant or in relation to the legitimate exercise (or plans to exercise) fundamental freedoms.

13. Between 13 and 21 February 2011, some 80 volunteer members, and other individuals associated with **Hindu Rights Action Force (HINDRAF)** were arrested and detained throughout Malaysia before being released without charge. HINDRAF is a coalition of Hindu non-governmental organizations working on promoting the rights of the Hindu communities in Malaysia. The arrests and detentions were reportedly related to the organization's ongoing preparations for an anti-racism march, which was due to take place on 27 February 2011.

14. On 21 February 2011, Mr **Gobalakrishnan Manickam**, affiliated to HINDRAF, was arrested at his home in Batang Kali by policemen who did not possess a valid Court Order for his arrest. He was subsequently denied contact with his lawyer and family members until his release. Gobalakrishnan Manickam had been involved in the preparatory forum, held on the same day, to discuss plans for the aforementioned anti-racism march. Following the arrest, police reportedly used loudspeakers to warn people in residential areas of Batang Kali not to attend the forum. It is further reported that five roadblocks were subsequently mounted in order to hinder attendance at the event. Furthermore, individuals wearing orange t-shirts (the colour associated with HINDRAF) were specifically targeted by police, who ordered many to remove their t-shirts and refused them entry to the forum should they refuse to do so.

15. On 29 June 2011, seven human rights defenders, namely Ms **Lau Shu Shi**, Ms **Mary Sinattan**, Ms **Deepa Kutta**, Ms **Mila Nordin**, Ms **Temme Lee**, Mr **Mohamad Ikhsan**, and Mr **Ang Hiok Gai** were arrested and later released on bail by Malaysian police after their office was raided. The human rights defenders were affiliated with **Coalition for Clean and Fair Elections (Bersih)**.

Bersih is a coalition of organisations led mainly by civil society groups. The coalition includes human rights organisations such as the National Human Rights Society, Sister in Islam, SUARAM, the Trade Union Congress, and the Women's Development Collective. The policemen, who detained the human rights defenders, did not reply when asked whether they had a warrant, and tried to break into the office. The raid happened two weeks prior to the demonstration which was held on 9 July 2011 calling for 8-point demands to Election Commission of Malaysia to ensure transparency in the upcoming election and for the public institutions to act independently, uphold laws, and protect human rights.

### **Violations of the rights to freedom of association**

16. Many NGOs in Malaysia can not obtain registration under the **Societies Act**, which governs political parties and non-governmental organisations. Many of them resort to register under the Companies Act, which however creates additional legal obstacles for them as well as difficulties in fund-raising. The Societies Act is not only restrictive in the initial registration process, which is lengthy and often delayed, but also in the many conditions imposed on activities, the burdensome reporting provisions and the omnipresent threats of dissolution on vaguely defined grounds, all of which are amplified by the broad and arbitrary powers afforded to the Registrar of Societies. Because of the many difficulties faced by CSOs in their efforts to register as societies, including the dismissal of their applications, many were forced to operate without registration.

17. In early March 2011, the Malaysian authorities arrested some 54 members of **HINDRAF** as a part of the widespread campaign of repression and judicial harassment against these organisations and their members. The 54 individuals, who have all been released on bail, were charged with taking part in an "illegal organisation", as a result of the authorities' continued refusal to process the organisation's request for registration.

18. Since early July 2012, Malaysia's leading human rights organisation **Suara Rakyat Malaysia (SUARAM)** has been a target of harassment by the government which included the seizure of documents from SUARAM's Company Secretary and auditors. The board and staff members of the organisations were summoned to visit the Companies Commission of Malaysia for investigations. The campaign against SUARAM also included accusations by the government that the foreign funds received by the NGO have been used for political purposes. SUARAM was accused of breaching the regulations of the Registrar of Societies. SUARAM challenged the fact that Registrar of Societies actually had jurisdiction over it in light of the fact that it is registered in the Companies Commission of Malaysia.

### **Restrictions on the right to freedom of assembly**

19. In addition to passing restrictive legislation (see para 8 and 9 above), authorities in Malaysia have limited in practice the enjoyment of the right to protest by using excessive force to disperse peaceful assemblies, arresting HRDs and protesters and actively pressurising the public against participating to public protests.

20. On 28 April 2012 Malaysian police fired tear gas and used water cannon against the crowd of protesters associated with **Bersih**, who were demanding electoral reforms. When a few protesters –in a crowd of at least 25,000– tried to break through barriers, riot police used excessive force and fired several dozen tear gas rounds, sending the protesters scattering through nearby streets.

21. On 9 July 2011, Malaysian authorities responded to a peaceful rally for electoral reform in Kuala Lumpur with mass arrests and excessive use of force. In the anticipation of another protest on 12 January 2013, civil servants were warned against attending the event and universities issued public notices discouraging students from attending.

### **Human rights defenders working on sexual orientation and gender identity**

22. Human rights defenders and organisations working on sexual orientation and gender identity remain at risk in Malaysia. On 2 November 2011, the Royal Malaysia Police declared a ban on an event planned by **Seksualiti Merdeka (SM)**, which was aimed to celebrate sexual diversity and disseminate information to the public on lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights through art and public talks. SM is a coalition of human rights defenders working to promote the rights of LGBTI individuals and communities in Malaysia. The yearly event has been held since 2008. Public officials and politicians made inflammatory statements about SM, and the police announced that they were going to detain anyone that participated in any such events on grounds of public order and threats to national security.

23. In addition to the threats of arrest by the police, public officials and politicians also verbally threatened and abused the organisers. As a response to this, SM decided to appeal for judicial review against the police decision but in March 2012 the court ruled that the police had authority to stop the event in order to ensure the security of the country.

**24. Front Line Defenders calls upon the member states of the UN Human Rights Council to urge the Malaysian authorities to prioritise the protection of human rights defenders and in doing so to:**

- a) Conduct an independent inquiry into the source of intimidation, ill-treatment, arbitrary arrest and judicial harassment directed towards all human rights defenders mentioned in this report;
- b) Ensure that all human rights defenders in Malaysia, especially those working on minority rights, election and good governance, and the rights of LGBTI community, are able to carry out their legitimate human rights activities free from persecution;
- c) Take measures to ensure that government officials or other public figures refrain from making statements or declarations stigmatising the legitimate work of human rights defenders;
- d) Amend the Security Offences Act and the Sedition Act with a view to ensuring that they fully comply with international human rights standards, and put in place safeguards to ensure that they are not used against human rights defenders;
- e) Review the newly passed Peaceful Assemblies Act, ensure its full compliance with the right to freedom of peaceful assembly as protected under the Universal Declaration on Human Rights, and ensure that human rights defenders can freely exercise their right to organise and participate in peaceful protests.
- f) Review the Societies Act and ensure its full compliance with the right to freedom of association. Ensure that human rights defenders can freely establish and operate associations and that they can register and obtain legal recognition.
- g) Cooperate fully with the Special Rapporteur on the situation of human rights defenders by responding to her urgent appeals and letter of allegations and accept the mandate holder's outstanding requests to visit the country;
- h) Fully implement the UN Declaration on Human Rights Defenders and the recommendations that will be made in the course of the UPR in a transparent and participatory manner with full involvement of human rights defenders and civil society organisations.