

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

Submitted by:



Suara Rakyat Malaysia (SUARAM)

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Our Work:

Suara Rakyat Malaysia (SUARAM) is a non-governmental organization established in 1989 following the aftermath of *Operasi Lalang* to monitor and advocate for the respect of human rights in Malaysia. Through its consistent and uncompromising work, it has established itself as one of the key human rights organisations, one to which Malaysians turn to for information and support. The organization defends all aspects of human rights especially the right to trial, freedom from abuse of police powers and law enforcement agencies; freedom of expression and information; freedom of assembly and association; freedom of religion; the right of minorities, refugees, asylum seekers, migrants and trafficked persons and democracy.

Executive Summary

1. During the reporting period of 2013 to 2018, SUARAM observed ongoing cases of human rights violations and the use of repressive laws in Malaysia.
2. SUARAM notes with concern that the Government of Malaysia has jeopardized the efficacy of an existing mechanism that could mitigate and address human rights violations. The Human Rights Commissions of Malaysia (SUHAKAM) was subjected to a substantial budget cut of more than 50% in 2015, seriously constraining its ability to exercise its duty as a National Human Rights Institution.
3. Furthermore, despite its efforts to undo the perception of being under executive control, the independence of the Judiciary was severely eroded by the appointments of a new Chief Justice and President of the Court of Appeal. The Government of Malaysia has disregarded concerns raised by civil society organizations and the Bar Council of Malaysia over the constitutionality of the two appointments and has defended its decision to appoint the two judges who are past the legal retirement age as stipulated in the Federal Constitution.
4. In this submission, SUARAM highlights with particular concern issues surrounding the right to a fair trial; torture and custodial death; enforced disappearances; and the use of repressive laws to curtail freedom of expression, freedom of assembly, and the activities of human rights defenders in Malaysia.

Right to a Fair Trial

5. SUARAM commends the Government of Malaysia for abolishing the Internal Security Act 1960 (ISA) in 2012. However, this report notes with concern the introduction and ongoing implementation of a series of laws that permit arbitrary detention and the abject denial of the right to fair trial. These laws include the Security Offences (Special Measures) Act 2012 (SOSMA),¹ the Prevention of Crime Act 1959 (POCA),² the Prevention of Terrorism Act 2015 (POTA), and the Dangerous Drugs (Special Preventive Measures) Act 1985. Some of these laws such as POCA, POTA and the Dangerous Drugs (Special Preventive Measures) Act 1985, greatly resemble the ISA, allowing police to order up to 60 days detention without trial, and government-appointed boards to order up to two years detention without trial.

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

² Amended in 2015

6. According to Prison Department records, on 9 October 2017, 2,787 people were detained without trial under these laws.³ In 2017 the Deputy Home Minister stated there had been a total of 989 cases of detention under SOSMA since its enactment in 2012.⁴
7. These laws have been used against members of civil society organisations and political opponents. Notable cases include the arrest and detention of Khairuddin Abu Hassan and Matthias Chang⁵ in 2015 under SOSMA (bail for both was maintained after the Federal Court rejected the prosecution's appeal for bail to be denied); arrest and detention of Sri Sanjeevan⁶ under POCA after a series of chain remands;⁷ and the arrest and detention of Maria Chin Abdullah⁸ under SOSMA on the eve of the Bersih 5 rally.
8. There are growing concerns over the use of these laws in combination, enabling the extended detention of individuals beyond the scope of each individual law. Notable cases include that of of Yazid Sufaat, a former detainee under ISA who was released in 2008. He was re-arrested under SOSMA in 2013 and in 2016 pleaded guilty to the alternative charge of omitting information relating to terrorist acts. Immediately after serving this sentence Yazid Sufaat was re-arrested in December 2017 under POTA and currently remains in detention without trial.
9. In a similar case, post-graduate student Siti Noor Aishah was arrested under SOSMA in March 2016. She was charged for the possession of 12 books related to Daesh and terrorism.⁹ At the court of first instance, she was acquitted and discharged *prima facie* by the High Court, with the court refusing to allow further pre-trial detention despite objections by the prosecution. Upon her release, she was re-arrested by the Royal Malaysian Police under POCA, detained, and subsequently sentenced to house arrest. The first prosecution then appealed successfully against the earlier High Court ruling and secured an extension to her pre-trial detention under SOSMA. She is now detained in Kajang Prison pending the conclusion of her appeals.

Torture and Custodial Death

³ 'Nearly 3,000 people detained without trial, reveals gov't' (MalaysiaKini, 31 December 2017) <<https://www.malaysiakini.com/news/407079>> accessed 8 March 2018

⁴ 'Malaysia extends anti-terrorism security law Sosma for 5 years' (Straits Time, 5 April 2017) <<http://www.straitstimes.com/asia/se-asia/malaysia-extends-anti-terrorism-security-law-sosma-for-5-years>> accessed 8 March 2018

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

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

⁷ Chain remand in Malaysia refers to the abuse of the remand system, whereby an individual is re-arrested for investigation upon the conclusion of a previous remand order granted by a magistrate

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

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

10. During the 2013 UPR cycle, the Government of Malaysia rejected recommendations for the creation of an Independent Police Complaints and Misconduct Commission (IPCMC) on the grounds that the existing Enforcement Agency Integrity Commission (EAIC) is already discharging the duties of the proposed IPCMC.
11. During the current reporting period, EAIC conducted investigations into cases of custodial death and torture. It has been commended for its independent investigations and comprehensive reports on the deaths of Syed Mohd Azlan, N. Dharmendran and S. Balamurugan. Unfortunately, the Government of Malaysia has failed to adopt and implement the recommendations made by the Commission on addressing the causes of custodial death.
12. Details of the EAIC reports on these cases released during the reporting period include:
13. N. Dharmendran in 2013 (report released 2015) - the investigation by EAIC found that a police officer from the Serious Crime Division had beaten up Dharmendran in detention and later fabricated evidence to cover up the violence. Four of the police officers charged with the murder of N. Dharmendran were acquitted by the Court of Appeal; the civil suit launched by the family is still in court at the time of writing.
14. Syed Mohd Azlan in 2014 (report released 2015) - the investigation by EAIC found that physical violence committed during arrest and questioning had caused the death of Syed Mohd Azlan. The investigation also uncovered attempts made by the police to obscure evidence from the interrogation. Three police officers were charged with culpable homicide not amounting to murder, but were discharged by the sessions court.
15. S. Balamurugan in 2017 (report released 2018) - the investigation by EAIC found that there were violent acts committed by the police against the deceased. The investigation found that the police had failed to comply with standard operating procedures, and had committed serious misconduct by re-arresting the deceased with no legal justification. No criminal charges have been made against the police officers in question.
16. During the the reporting period SUARAM documented several cases of torture. In 2015, SUARAM received a series of handwritten accounts of torture from detainees detained under SOSMA. Alleged torture methods inflicted against the detainees by the Royal Malaysian Police include the use of solitary confinement; physical abuse; sexual harassment; and death threats. In addition to these allegations of the use of torture on detainees detained under security laws, SUARAM has also documented a substantial number of cases that suggest detainees and suspects are regularly subjected to physical violence while in police custody.

17. Furthermore, SUARAM is deeply concerned over the welfare and rights of minors and juveniles held under the criminal justice system. A parliamentary reply made by the Home Minister on 31 October 2017 stated that 142 juveniles were being detained without trial at the time under POCA and 17 under SOSMA. Minors and Juveniles are reportedly kept in the same detention facilities as adults, as in the case of Ang Kian Kok.¹⁰

Enforced Disappearances

18. SUARAM noted the high profile kidnapping of a social worker in Northern Malaysia and the kidnapping of a pastor, Raymond Koh near Kuala Lumpur during the reporting period. After lobbying by civil society organisations, the Human Rights Commission of Malaysia embarked on a public inquiry into the disappearances. However, the inquiry into the kidnapping of Raymond Koh was later derailed, following a notice by the Royal Malaysian Police that a suspect had been charged for the kidnapping of Raymond Koh; the inquiry was therefore suspended as Section 12 of the Human Rights Commission of Malaysia Act 1999 (Act 597) states that the Commission cannot inquire as to any complaint which is subject to pending proceedings in any court.

Freedom of Expression

19. Since 2013, the Government of Malaysia has continued to crackdown on freedom of expression. The laws restricting freedom of expression include the Sedition Act 1948, the Communications and Multimedia Act 1998 (CMA), and the Printing Presses and Publications Act 1984 (PPPA).

20. The Government of Malaysia reneged on its commitment to abolish the Sedition Act 1948, which it had accepted during the 2013 UPR Cycle. Since then, the Government of Malaysia has introduced amendments to the Sedition Act 1948 that allow for the sentencing of harsher punishments. Use of the Sedition Act 1948 reached an all time high in 2015, with more than 200 arrests and investigations under the Act.

21. Similarly, use of Section 233¹¹ of the Communications and Multimedia Act 1998 also rose sharply during the reporting period. Monitoring suggests that there were at least 37 cases in 2015, which subsequently increased to at least 42 in 2016 (the relevant ministry reported more than 181 cases of social media abuse, which may include offences beyond Section 233), and increased further to 146 in 2017.

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

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

22. Notable cases of the criminal prosecution of human rights defenders and political opponents include the case of Fahmi Reza, a graphic artist prosecuted by the Malaysian Communications and Multimedia Commission for his satirical post on the national online censorship page of a caricature of the Prime Minister of Malaysia. He was found guilty in February 2018 and was sentenced to 1-month imprisonment and a RM30,000 fine. Political opponents of the Government of Malaysia such as Zaid Ibrahim (prosecuted for a blogpost) and Member of Parliament Sivarasa Rasiah (for sharing a satirical image) were also prosecuted under the Communications and Multimedia Act 1998.
23. The media was subject to greater restrictions and harassment at the hands of the Government of Malaysia. News site The Malaysian Insider was raided and investigated by the Communications and Multimedia Commission in 2015, and its editors detained over a series of reports claimed to be inaccurate by the Commission. Newspaper The Star was investigated by the Royal Malaysian Police and issued a 'show cause letter' by the Home Ministry following a controversial front page that was construed as linking news on terrorism to a photo of Muslims performing prayers during the month of Ramadhan. The paper's editors were suspended as a result. MalaysiaKini, a popular online news portal, was investigated and its editor subsequently charged under the Communications and Multimedia Act 1998 for publishing a video of a press conference about the Attorney General. SUARAM is deeply concerned about the 'chilling effect' of cases such as these on the freedom of expression in Malaysia.

Freedom of Assembly

24. During the years 2013 to 2015 of the reporting period, SUARAM noted a series of mass arrests of, and crackdowns on, participants in peaceful assemblies. During the Bersih 3 rally and the #KitaLawan rally, participants and organizers were subjected to varying degrees of physical violence at the hands of the Royal Malaysian Police. The Bersih 3 rally stood out in particular, with participants subjected to tear gas and water cannon, with video footage showing tear gas and water cannons being fired into the vicinity of a hospital.
25. From late-2015 through to 2018 however, SUARAM has observed an improving situation, as mass arrests and physical violence against those exercising the right to peaceful assembly have decreased substantially.
26. However, mass arrests are still common during assemblies led by marginalised groups and those fighting for their economic and social rights. SUARAM recorded mass arrests

during blockades led by community activists in Gatco in 2015,¹² anti-logging blockades led by indigenous peoples in Northern Malaysia,¹³ and a blockade against the demolition of residential and commercial houses led by villagers in Selangor.

27. Other restrictions on peaceful assembly imposed under the Peaceful Assembly Act 2012 remain prevalent. The Act requires organisers to submit notification of an assembly to the Royal Malaysian Police ten days in advance, who often do not grant permission for the assembly to go ahead. Organisers of assemblies that subsequently do go ahead will be called for questioning at the conclusion of their event. Spontaneous gatherings or protests by the general public are often ordered to disperse by the Royal Malaysian Police. During monthly solidarity vigils for Raymond Koh¹⁴ held during 2017, SUARAM witnessed Royal Malaysian Police intelligence officers surrounding, intimidating and photographing attendees at the assembly.

Human Rights Defenders

28. The situation pertaining to human rights defenders has been varied. In general, human rights organizations are still not recognized by government institutions, with most forced to operate as a corporate entity. Despite the ongoing practice of non-recognition however, the situation faced by civil and political rights activists improved somewhat towards the end of the reporting period, with SUARAM documenting fewer arrests and prosecutions. However, criminal action taken against human rights defenders prior to 2015 remains relevant, with a number of activists still subjected to fines and prison sentences.

29. Economic, social and cultural rights activists suffered harsher treatment in most situations. Notable incidents include the arrest and detention of 30 Gatco villagers who participated in a sit-in protest against bulldozers that entered their village without a court order, and the arrest of 28 more Gatco villagers¹⁵ for obstructing lorries that were transporting rubber logs from their village, prior to court proceedings. Despite the age of the community activists (with many in their 60s and 70s), those arrested were shackled together during detention and subjected to a 3 day remand order.

30. Indigenous peoples in Northern Malaysia were also subjected to physical violence and intimidation by the forestry department following their blockade to prevent logging activities that threaten their ancestral lands. In 2016, 47 indigenous peoples' activists and community members were arrested for trespassing on a permanent forest reserve.

¹² See paragraph 28

¹³ See paragraph 29

¹⁴ See paragraph 18

¹⁵ Media highlight of the struggle of Gatco settlers - 'Keeping up with the 40-year Kg Gatco row' (MalaysiaKini, 28 July 2017) <<https://www.malaysiakini.com/news/390085>> accessed 7 March 2018

Human rights defenders such as Siti Kassim, who is one of the prominent lawyers and activists defending the community, were also subjected to varying degrees of physical threats and death threats by unknown individuals. Environmental activists working in the region also received death threats for their activism and campaigning against the logging activities in the region.

31. A number of LGBTIQ activists received death threats following a the publication of a news article by a religious conservative online news portal with links to government officials. The portal continues to produce articles that propagate hate and incite violence against the LGBTIQ community, and faces no repercussion from law enforcement agencies.
32. The Government of Malaysia has implemented policies to restrict freedom of movement and block human rights defenders from leaving Malaysia. Internationally recognized human rights defenders such as Adilur Rahman Khan, Joshua Wong, Han Hui Hui and Mugiyanto Sipin were also blocked from entering the country, with authorities providing no explanation for this in most of the cases.¹⁶

Recommendations

33. To support the right to a fair trial, SUARAM recommends that the Government of Malaysia repeal SOSMA, POCA, POTA and the Dangerous Drugs Act, as these laws permit arbitrary detention and the denial of the right to fair trial, contravening international human rights standards;
34. Allow for independent judicial control over the remand system to prevent the use of chain remands and safeguard the liberty and security of person, in line with the Federal Constitution and the criminal procedure code;
35. Draft, implement and enforce appropriate laws prohibiting the use of torture and degrading treatment in line with international human rights standards, and criminalize law enforcement officials found to be in breach of these laws;
36. Abolish or amend laws that grant the Government of Malaysia power to arbitrarily restrict freedom of expression, such as the Sedition Act 1948 and Communications and Multimedia Act 1998;

¹⁶ Ray Sherman & Prapti Rahman, 'Malaysia Bars Entry to Bangladeshi Human Rights Activist' (BenarNews, 20 July 2017) <<https://www.benarnews.org/english/news/malaysian/malaysia-activist-07202017161805.html>> accessed 8 March 2018

37. Cease all politically motivated prosecution of political opponents and human rights defenders under the Sedition Act 1948, the Communications and Multimedia Act 1998, the Peaceful Assembly Act 2012, and other laws that violate human rights principles;
38. Cease harassment of human rights defenders for organizing peaceful assemblies under the Peaceful Assembly Act 2012;
39. Strengthen and safeguard the capacity of the Human Rights Commission of Malaysia and the Enforcement Agency Integrity Commission (EAIC), to enable these bodies to address cases of human rights violations, and adopt their recommendations;
40. Protect and promote the free movement of human rights defenders within Malaysia and internationally;
41. Ratify the core international human rights conventions, especially the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.