

MALAYSIA HUMAN RIGHTS REPORT 2020

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FOREWORD

By Dato' Seri (Dr.) Anwar Fazal

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

(Article 1, Universal Declaration of Human Rights, 10th December 1945)

I was born in 1941, the year President Franklin Delano Roosevelt delivered his historic “Four Freedoms” speech to awaken people to the dangers of fascism and to enunciate a bold new framework for the future of humanity. He formulated “**The Four Freedoms**”:

- The Freedom of Speech and Expression
- The Freedom to worship God, each in his own way
- The Freedom from Want
- The Freedom from Fear.

The end of the horrendous World War Two in 1945 and its shocking end, which many of us would say was particularly unconscionable with the hideous nuclear bombing of the two Japanese cities, Nagasaki and Hiroshima and killing of thousands of innocents. It certainly created a new world of “supremacism with impunity”, with dark divisions and alliances that shaped and influenced our future in the following decades in a rocky stream of challenging times. That “new order” began beautifully with a new hope, creative and constructive, with an attempt at a new “Universalism” through two key momentous instruments - the **Charter of the United Nations** and the **Universal Declaration of Human Rights**.

This new hope, this spirit of universalism, not only saw the beginnings of the ending of colonisation but also the emergence of a new imperialism. The “Cold War” emerged as did the “Non-Aligned Movement (NAM)” including the historic Afro-Asia Bandung Conference. We saw Indonesia, India and China emerging as new forces. We also saw the emergence of two worrisome new factors: a massive nuclear proliferation, including dangerous testing, and the dominance of the “**Military-Industrial Complex**”, a term stated by the US President Dwight Eisenhower, on his retirement speech enunciating to future presidents of the US that it was not he but the “complex” that were the “controllers” of the country!

This was the world out of which our country was born with its own share of struggles, with the outlawing of the Malayan Communist Party and the painful struggles of what was euphemistically

called the “Emergency”. I grew up in the town of Taiping, which, in the Mandarin language, means “everlasting peace” which had a combination of large military barracks, diverse people’s (including Fijian soldiers) and a beautiful lake gardens and hill resort. There in 1957 I had the joy of celebrating Malaya gaining its independence, listening to the radio (my obsession till today) with **Tunku Abdul Rahman**, our first Prime Minister, proclaiming “Independence” with the unforgettable statement that this nation shall be “**founded upon the principles of liberty and justice and ever seeking the welfare and happiness of its people...**”

As President of the University of Malaya Students Union (UMSU) and the National Union of Malaysian Students in the early sixties, I first directly learnt about human rights. It began with the notorious “Suitability Certificate” a vetting process that was imposed through the action of Lee Kuan Yew, then Prime Minister of Singapore, who did not want to allow “troublemakers” to enter the University of Malaya. We managed to get this notorious requirement removed. After graduation, I served with the largest, and arguably, the most successful local authority in Malaysia then, the City Council of George Town, Penang, which was run by the democratically elected Socialist Front. Soon after, local elections were suspended, inflicting a major blow to human rights and good governance through the abolishment of local democracy.

While in Penang I also learnt of two great human rights advocates:

(a) **James Richardson Logan**, the earliest human rights lawyer activist in this country, who in the 19th century, fought the East India Company to protect and support the rights of the locals including ‘sireh’ (betel nut) vendors and Chinese clan houses. There is an amazing monument built in memory of this human rights legend. The monument has four women facing four directions and representing the values of the four cardinal virtues: justice, wisdom, fortitude, and temperance! To remember his legacy there is an Annual Logan Lecture organised by the Bar Council, Penang.

(b) I also learnt of another human rights legend in Penang, **Dr Wu Lien-Teh**, a medical doctor who set up an Anti- Racism Society in the Colonial Straits Settlements during the early 20th century. Yes, racism was practised so that even taking the train up Penang Hill had a ‘Europeans’ and ‘others’ sections. A Society has been formed in Penang to remember this legend.

I mention these stories to show the struggle for human rights has been an ongoing one for over two centuries and the struggles and lessons from history must not be forgotten but remembered and shared.

Malaysia, as a nation began and evolved into a journey of great hope but also later went through its own trials and tribulations. Many human rights laws were established but others diminished and abused. One constant asset in Malaysia has been the role of a third force, civil society that continuously were the lighthouses of caring and justice.

In the area of human rights, Suara Rakyat Malaysia (SUARAM) was one of these lighthouses. It emerged as a consistent advocate, courageous and systematic, speaking out to inform, to inspire and ignite action of the universal values that Malaysia should strive for, respecting the many global Conventions. It acted to promote, protect, and educate the community on fundamental issues of humanity and justice.

SUARAM led a pioneering and historic engagement with like-minded civil society and individuals which resulted in encyclopaedic work of assessment in 1998, the Malaysian Human Rights Report. It sprouted a whole new awakening of the many challenges for this nation in this field. We saw many more groups become aware and the Human Rights Commission (SUHAKAM) was established. More and more dimensions of human rights began to be addressed and new awareness of human rights proliferated but slowly, and sadly, parochialism, racism and bigotry has also begun to rear its ugly head.

This report on the 2020 situation in Malaysia brings to us the struggle in detail and the tensions. The report is also special as it covers a unique year when the whole world saw a shutdown like never in recent history. It exposed global weaknesses and the emergence of a whole new world of digital supremacy (what has been called “Surveillance Capitalism”) with its own issues. We saw health services challenged like never. We saw heroes and heroines and caring and sharing among communities but sadly too we saw racism and bigotry sprouting combining with fascist thinking and with the vulnerable migrant communities suffering even more. We are moving towards “ecocide” which has led hopefully a new global framework - the **Charter of the Rights of Mother Earth**, which needs to be attended to.

Malaysia has been a rainbow of colours and creeds and blessed with natural resources and entrepreneurships and we have gone through many challenges, many fits and starts, much hope and despair. One of our greatest strength continues to be the vibrant, courageous, creative civil society with a conscience and compassion that also measures ourselves critically without our fear or favour on universal values of rights, responsibilities, and relationships. It reminds us of the journey we need to make to ensure that we the citizens of the universe, children of Mother Earth, brothers and sisters together march for a just, ecological and peaceful world.

This book is an excellent manifestation of that important journey. It encourages us to not fear to speak out if we want the Malaysia that our founding leaders dreamed of, where welfare and happiness through liberty and justice are fundamentals.



**Dato 'Seri (Dr.) Anwar Fazal is
Chairperson of the Right Livelihood
College and the Penang Gandhi
Peace Centre, and Recipient of the
Right Livelihood Award*

EXECUTIVE SUMMARY

2020 was a tumultuous year for Malaysia with the country grappling with not just the Covid-19 pandemic but an unprecedented political crisis. The Pakatan Harapan (PH) government which was elected in the 14th general election of 2018 collapsed when their Prime Minister Mahathir resigned and was replaced by the Perikatan Nasional (PN) government headed by new Prime Minister, Muhyiddin Yassin. The historic change of administration that led to the formation of Pakatan Harapan government was initially accompanied with greater freedom of expression and the promise to review and abolish draconian detention laws and the Sedition Act 1984.

Yet, as the PH government proceeded, the slew of reform promises in their 2018 election manifesto was either ignored or discarded and the administration even reactivated the use of detention without trial laws by the end of its rule in February 2020. Its successor, the Perikatan Nasional government did not reverse the trend and has continued to use the same repressive laws.

Security laws that permit **detention without trial** continued to be abused throughout 2020. The pandemic and the restriction of movement did not slowdown the use of such laws which are often justified on the grounds of ‘crime-prevention.’ In 2020, SUARAM has noted that the Security Offences (Special Measures) Act 2012 (SOSMA) was used more often than previous years for cases mostly related to human trafficking. Besides SOSMA, the Prevention of Crime Act (POCA) 1959 was another repressive detention without trial law that was also used extensively to combat organized crime.

Access to justice saw no improvement in 2020 with cases related to police abuse of power showing no sign of decreasing. Deaths in custody, chain remand and police shootings continued to happen with no accountability or oversight.

Freedom of expression continued to be curtailed in Malaysia and there was a drastic increase in the application of Communications and Multimedia Act 1998 against speeches that touched on race, religion and royalty and fake news related to Covid-19 on the internet. Furthermore, the abuse of the Sedition Act 1948 for political purposes was more prevalent in 2020 as compared to the previous three years. The new PN government was less willing to tolerate dissent and did not hesitate to utilize repressive laws to curtail and deter public criticism.

The **freedom to assemble** was also heavily curtailed in 2020 due to the Movement Control Order implemented by the government. There was a tendency for the government to suppress the freedom of assembly under the pretext of preventing the spread of Covid-19 pandemic. Aside from the restrictive nature of Peaceful Assembly Act 2012, the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) Regulations 2020 were also used against any kind of assembly during the period of the pandemic.

SUARAM has also documented various abuses and extreme arrests executed by the police in the name of preventing the pandemic. Some of the notable examples of such abuses during the Movement Control Order and its various phases included double standards of the arrests, arrests of children and migrants, unfair sentencing, extrajudicial punishment, and restriction of press freedom.

The implementation of MCO also accentuated the plight of migrant workers in Malaysia where their rights are severely curtailed. While the lockdown has highlighted many human rights abuses and exploitation faced by migrant workers, they further suffer from social stigmatization because there is no urgency to reform or enact laws that offer some protection for the rights and welfare of migrant workers.

The LGBTIQ community in Malaysia remains a discriminated community and the government and the public at large have continued to harass and deny them their human rights. The threats of violence against the community have not ceased and there appears to be no political will from both political coalitions to protect the community from continued discrimination and harassment by the authorities.

SUARAM's new 'People before Profit' desk has also identified some key areas where the degradation of the Malaysian environment through unfettered deforestation and so-called "development" has violated the economic, social, and cultural rights of Malaysians, in particular our indigenous peoples. SUARAM has documented cases where developers with the assistance of federal or state governments have acquired lands through high-handed methods from the indigenous community. Controversial land reclamation remains a norm and often at the expense of the economic, social, and cultural rights of the people.



RIGHT TO FAIR TRIAL

RIGHT TO FAIR TRIAL

Malaysian's right to fair trial is guaranteed in Article 5 Liberty of the person of the Federal Constitution of Malaysia and this includes the right to public hearing, right to apply for habeas corpus for any unlawful detention, right to be informed of the reason for arrest, and the right to be released within 24 hours of arrest if no case was produced before a magistrate, all of which encompasses the spirit of the right to fair trial.

However, in cases regarded as subversion, organized violence or acts prejudicial to the public, Article 149 of the constitution acts as a 'get-out' clause for laws crafted to address these cases even though it contradicts the constitutional guarantees of Article 5 as well as Article 9 (freedom of movement), Article 10 (freedom of speech, assembly, and association) or Article 13 (right to property). Therefore, it is in relation to Article 149 that the constitutionality of detention without trial laws are not likely to be challenged and one which the government constantly falls back on to justify detention without trial.

The use of draconian security laws shows no sign of abating even during a pandemic year. 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.

The possible amendments to SOSMA as mooted by the former Minister of Home Affairs during November 2019¹ appear to be a dead letter given the collapse of the Pakatan Harapan's government in February 2020. The same also applies to the Pakatan Harapan's Attorney General's promise to amend a provision in SOSMA to enable courts to grant bail to the accused².

The former Minister of Home Affairs, who is now the Prime Minister of Malaysia has not publicly commented on his previous position and policy with regards to detention without trial. Questions about the new Perikatan Nasional government's stance on these security laws are met with the vague promise that '*This government is committed to improve security laws like SOSMA.*'³

Security laws are also often used in succession to extend the duration of detention without trial⁴.

1 Radzi Razak, 'Home minister: Sosma preventive detention period may be shortened' (*Malay Mail*, 6 November 2019) <<https://www.malaymail.com/news/malaysia/2019/11/06/home-minister-sosma-preventive-detention-period-may-be-shortened/1807458>> accessed 12 November 2020

2 Rahmat Khairulrijal, 'Government to amend Sosma enabling courts to grant bail to accused' (New Strait Times, 3 January 2020) <<https://www.nst.com.my/news/crime-courts/2020/01/559151/government-amend-sosma-enabling-courts-grant-bail-accused>> accessed 25 February 2021

3 Written Answer in Parliament – Question 213, 2nd Meeting of the 3rd Session of the 14th Parliament

4 The process is known as 'chain remand' where details could be found under the chapter Access to Justice

One noteworthy example was the case of 26 individuals who were initially detained under SOSMA for 28 days and were not charged. Police application for further remand was unsuccessful, but the police duly proceeded to place all the individuals under POCA and successfully remanded them⁵.

**Number of Individuals Arrested under Security Laws
from 2015 - 2019⁶**

	Citizenship		Alleged Crime			Total
	Malaysian	Non-Malaysian	Terrorism	Trafficking/ Immigration	Organized Crime	
SOSMA	1,408	277	552	532	601	1,685
POCA	-	-	-	-	8,402	8,402
POTA	-	-	35	-	-	35
Total	-	-	587	532	9,003	10,122

The Home Ministry has revealed in Parliament the number of individuals arrested from 2015 to 2019 under the three security laws, and the total number of individuals arrested stands at more than 10,122. It should be noted that the data does not represent both the total number of individuals arrested under SOSMA and POCA since these two laws were enforced at a much earlier date⁷. However, the 35 individuals arrested under POTA could be inferred to be the total number of arrests under the said act since POTA was only enforced in 2015. Aside from the number of individuals, the Home Ministry has fallen short in providing more data about individuals arrested under these security laws even though MPs have specifically requested the data in Parliament based on age, gender, ethnicity, and state.

**Statistics on Detentions Without Trial
from SUARAM’s Documentation in 2020**

	Terrorism	Trafficking/Immigration	Organized Crime	Others	Total
SOSMA	13	629	184	2	828
POCA	0	7	116	544	667
POTA	1	0	0	0	1
Total	14	636	242	546	1,496

5 ‘PDRM Must Stop Abusing the Remand Process’ (Suaram, 13 November 2020) <<https://bit.ly/3ftVvWI>> accessed 25 November 2020

6 Written Answer in Parliament – Question 188, 3rd Meeting of the 3rd Session of the 14th Parliament

7 SOSMA was passed on April 2012 while POCA was passed on 1959 and was amended in 2014 and 2017

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 (against the state) and VI A (terrorism related) and VI B (organised crime) 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. This means that the Criminal Procedure Code would not be applied under these offences and instead the provision in SOSMA will be utilized by the authorities concerned.

Under SOSMA, an individual can be detained for no more than 28 days for investigation. As an added measure, anyone detained can be denied access to legal counsel and access to the family for up to 48 hours. Furthermore, detainees are by default denied bail unless under Section 13(2), they are either under 18 years of age, a woman, sick or infirm. Aside from that, there is no discretion afforded to the trial judge and individuals arrested under SOSMA could potentially be incarcerated until the conclusion of all trial proceedings including appeals.

This is perhaps the most repressive nature of what SOSMA entails, and it 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 nonbailable 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.

This includes 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 evidence 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. Aside from that and as noted in SUARAM's reports over the years, detainees are also often subjected to mental and physical abuses during the preliminary 28-days detention.

After the detention of more than 135 days under SOSMA, the 12 individuals who were alleged to have supported the Liberation Tigers of Tamil Eelam (LTTE) were finally released in late February⁸. Five of them alleged that they were subjected to mistreatment, torture, and intimidation during the initial 28- days detention period, with one detainee claiming that he was forced to say that he was an LTTE member⁹.

Family members and associates of detainees were also subjected to varying degree of harassment. V Uhma Devi, spouse of one of the detainees, was informed by an individual identifying himself as a high-ranking police officer that her husband could be released if she paid a bribe. The aide to G. Saminathan, one of the state assemblymen detained, was instructed to remove Facebook posts regarding the detention and quizzed by unidentified callers on the list of attendees at candlelight

8 Khairah N karim, 'Eight more LTTE accused freed [NSTTV]' (New Strait Times, 25 February 2020) <<https://www.nst.com.my/news/crime-courts/2020/02/568890/eight-more-ltte-accused-freed-nsttv>> accessed 25 February 2021

9 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

vigils¹⁰.

When SOSMA was first passed by the Parliament in 2012, it was touted as a bill to counter terrorism, and this is the pretext given by the Government for SOSMA to circumvent the Criminal Procedure Code. Yet the broad definition of what amounts to security offences under SOSMA has clearly extended beyond combatting terrorism when data above suggest that SOSMA has been increasingly used for other crimes.

Furthermore, the provision in SOSMA that the law will not be used against Malaysians solely for their political beliefs or political activities does not hold up to scrutiny given that SOSMA has been used to detain dissidents such as Khairuddin Abu Hassan, Matthias Chang¹¹ and Maria Chin¹².

SUARAM has documented a total of 828 individuals detained under SOSMA for the year 2020, with most of the cases being related to human trafficking.

It looks like SOSMA will be still in place given that the new Perikatan Nasional government does not harbour any intention of abolishing it. It is regrettable that under the 22 months of Pakatan Harapan rule, ministers and members of the parliament who had explicitly promised to repeal the draconian provisions of SOSMA under their manifesto failed to honour this promise to the electorate.

Prevention of Crime Act 1959

POCA is a law introduced to prevent organized crime, especially those relating to triads, secret societies and repeat offenders. It is likened 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 by the police 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 order 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'¹³ as those sentenced to house arrest are often sentenced to locations away from their homes, and the house arrest sentence could require a person to stay in a different state within Malaysia. House arrest would also require the person in question to be fitted with an Electronic Monitoring Device, be restricted to a 5km radius, and also subjected to checks by police officers. They would have to report to a designated police station from time to time.

The use of POCA to arrest, detain or investigate individuals remained a feature in 2020. Petaling Jaya OCPD Assistant Commissioner has revealed that up until October 2020, there were 84 individuals

10 Kevin Davasagayam 'Supporters of LTTE Sosma detainees report receiving mysterious phone calls' (The Sun Daily, 25 November 2019) <<https://www.thesundaily.my/local/supporters-of-ltte-sosma-detainees-report-receiving-mysterious-phone-calls-YX1653753>> accessed 7 April 2020

11 V anbalagan, 'Lawyer Matthias Chang arrested under Sosma' (The Edge Markets, 8 October 2015) <<https://www.theedgemarkets.com/article/lawyer-matthias-chang-arrested-under-sosma>> accessed 25 February 2021

12 Victoria Brown, 'Bersih 5: Maria Chin detained under Sosma' (The Star, 19 November 2016) <<https://www.thestar.com.my/news/nation/2016/11/19/bersih-5-maria-chin-detained-under-sosma>> accessed 25 February 2021

13 In Malay, this is often referred to as 'Buang Daerah'

arrested under POCA for online gambling¹⁴ while 185 individuals were arrested for gambling operations according to Bukit Aman CID Director Datuk Huzir Mohamed¹⁵. Kuala Lumpur police chief Mazlan Lazim also reported that between January to July 2019, there were 74 individuals prosecuted under POCA for prostitution¹⁶.

Ethnic Breakdown of POCA Detainees in Detention

Year	Ethnicity				
	Malay	Chinese	Indian	Others	Total
2014	11	1	12	5	29
2015	75	16	93	22	206
2016	99	22	160	68	349
2017	85	18	140	91	334
2018	87	13	126	50	276
2019	113	24	105	247	324
2020 ¹⁷	48	1	34	210	293
Total	518	95	670	693	1,811

Ethnic Breakdown of POCA Detainees under House Arrest

Year	Ethnicity				
	Malay	Chinese	Indian	Others	Total
2014	47	25	69	0	141
2015	170	144	148	31	493
2016	336	126	178	29	669
2017	454	200	189	89	932
2018	384	143	155	97	779
2019	417	121	179	72	789
2020 ¹⁸	172	71	47	24	314
Total	1,980	830	965	342	4,117

14 Safeek Affendy Razali, '34 pereka aplikasi judi dalam talian ditahan bawah POCA' (*Berita Harian Online*, 30 October 2020) <<https://www.bharian.com.my/berita/kes/2020/10/747991/34-pereka-aplikasi-judi-dalam-talian-ditahan-bawah-poca>> accessed 16 November 2020

15 Safeek Affendy Razali, '61 sindiket judi tumpas sehingga Julai tahun ini' (*Berita Harian Online*, 13 August 2020) <<https://www.bharian.com.my/berita/kes/2020/08/720870/61-sindiket-judi-tumpas-sehingga-julai-tahun-ini>> accessed 16 November 2020

16 Malaysiakini, '1,863 individuals arrested over prostitution so far this year' (*Malaysiakini*, 23 July 2020) <<https://www.malaysiakini.com/news/535677>> accessed 16 November 2020

17 Due to limited data provided from data.gov.my, the 2020 only provided data up until May 2020

18 Due to limited data provided from data.gov.my, the 2020 only provided data up until May 2020

It is commendable that the Home Ministry has continued to provide a breakdown of the detainees' ethnicities in its more recent data. Aside from confirming the disproportionate representation raised by SUARAM in our previous reports, most of the detainees are still being held in either Bentong or Simpang Renggam detention centre.

The proportion of cases issued with detention and house arrests orders remains the same as there appears to be great contrast between ethnicities. There are 2,498 cases involving ethnic Malays and 518 were detained in prison, amounting to 20.7% of the orders issued. The Chinese make up only 10.2% of the orders issues; however, cases for Indian shot up to 42.4%.

According to SUARAM's documentation for the year, reported cases of POCA have primarily been for alleged gambling-related operations with 331 individuals recorded while total individuals arrested in 2020 stood at 667.

Prevention of Terrorism Act 2015

Both in form and function, POTA is largely like POCA. The only difference is the 'target' of this law. While POCA is allegedly meant to address threats posed by organized crimes, POTA was specifically introduced to address the threat of terrorism as noted in the preamble to the Act¹⁹. In terms of its powers, POTA is largely similar if not identical to POCA with its powers to detain for 24 hours, followed by 21 days and a further extension of 38 days. If found 'guilty' by the administrative board, an individual can be served with two-year detention orders or placed under house arrest.

In general, information about detention under POTA and the rehabilitation that detainees undergo during detention is scarce. According to a parliamentary reply from the Minister of Home Affairs on 21 July 2020, there was only one individual still under house arrest under POTA, allegedly for having joined the Islamic State (IS) in Syria²⁰.

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 remarkably like the Internal Security Act 1960. While the sentencing power under POCA and POTA is provided by 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.

SUARAM documentation recorded 897 individuals arrested under DDA85 for the year 2020.

19 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.

20 Malaysiakini, '16 individu dikaitkan dengan IS pulang ke Malaysia' (*Malaysiakini*, 21 July 2020) <<https://www.malaysiakini.com/news/535384>> accessed 16 November 2020



ACCESS TO JUSTICE

ACCESS TO JUSTICE

Cases of abuse of power by the police continued in 2020, following the pattern and prevailing issues documented through the years by SUARAM. Predictably, the sudden change in government in 2020 has not resulted in any notable reform of the Royal Malaysian Police, and many of the abuses committed by the latter remain unaddressed.

The new Perikatan Nasional government promised that there would be a review of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill²¹ which was tabled previously in Parliament by the previous Pakatan Harapan government²². However, the review which led to the 'new' Independent Police Conduct Commission (IPCC) Bill being tabled in August 2020 has been a watered-down version of its predecessor.

By removing Section 33 (1) in the IPCC bill from the original IPCMC, the former would lack any disciplinary powers to compel actions against any police personnel found to have abused their powers. The new IPCC bill also removes Section 31 (4) which allows the Chief Secretary to the government to set up a special disciplinary board to deal with complaints against the Inspector-General of Police (IGP).

There are other areas of the bill which also cause concern, and which have been omitted from the previous IPCMC bill. These include provisions that police officers may refuse to answer to the Commission if it may expose other police officers to criminal charges; and, the police can refuse to disclose sensitive documents or information to the commission on the grounds of national security.

SUARAM believes that the IPCC, if it were to be passed in its current form, would not be able to effectively hold the police accountable for their actions nor increase public confidence in the Royal Malaysian Police. Worse, the introduction of IPCC would likely diminish the current accountability mechanism provided by the Enforcement Agency Integrity Commission (EAIC), defeating the purpose of introducing IPCMC as a stronger or more effective mechanism for police accountability.

The Home Ministry's justification for replacing the IPCMC with the IPCC is highly questionable and unconvincing judging by the answers they have given in Parliament. The Home Ministry claimed that the IPCMC is inferior as compared to IPCC because it lacks the element of 'check and balance' as the former would grant the power of investigation and enforcing disciplinary

²¹ It is noted that the bill introduced by Pakatan Harapan in 2019 was also titled the Independent Police Conduct Commission Bill, it is referred to as IPCMC in this context to make a distinction between it and the bill reintroduced in 2020
²² Mazwin Nik Anis and Erle Martin Carvalho, 'Govt to review IPCMC' (*The Star*, 19 March 2020) <<https://www.thestar.com.my/news/nation/2020/03/19/govt-to-review-ipcmc>> accessed 24 November 2020

actions to the commission²³. They say the IPCC is more congruent to the spirit of separation of powers whereby the commission would only have investigative powers while the power to enforce disciplinary actions against police misconduct would still be within the sole discretion of the police force.

It appears that the government is confused over the doctrine of 'check and balance' and the principle of separation of powers because it was precisely the lack of check and balance within the police forces that led to the need for a truly independent police misconduct commission. The question of separation of powers does not arise as the IPCMC would be acting under the executive branch to hold the police accountable. Furthermore, with the disciplinary power afforded to the commission under the IPCMC, the powers of the police would be checked accordingly. The Home Ministry's feeble justification in Parliament perhaps reveals the fact that the government and the Malaysian police are not keen to let an independent body adjudicate the conduct of the police, never mind conferring upon its disciplinary powers to punish police misconduct.

Apart from the issue of police abuse, the establishment of the IPCMC is also crucial as an oversight body to reduce police corruption. For example, 18 police officers were arrested because of their involvement with human smuggling syndicates along the Johor east coast in June 2020²⁴. Similarly, 29 Royal Malaysian Police personnel were alleged to be involved in the notorious telecommunication fraud known as Macau Scam²⁵. An IPCMC would certainly install much needed accountability in the police forces and help to protect public interest.

Nevertheless, one small improvement towards police accountability that should be commended is the policy by the Home Ministry to equip body cameras on police officers. The Ministry has confirmed in Parliament that the procurement of body cameras is expected to be implemented in 2021²⁶. The use of body cameras on police officers could prevent abuse of police power and ensure transparency from police officers when they are on duty.

Deaths in Custody

Custodial deaths in Malaysia remain an issue of grave concern. According to the reply by the Ministry of Home Affairs in Parliament, there were nine deaths in police custody reported between January and September 2020.

For the same period, there were 30 cases of custodial deaths in immigration detention. The actual number of deaths in immigration detention is estimated to be higher than previous years barring 2019 given that the 2020 figure covering just 9 months is comparable to the 24 and 32 cases reported in 2017 and 2018. The numbers have shown that custodial deaths in immigration detention are on the rise again after a mild decline in 2017 and 2018. In prison, the number of custodial deaths between January and September 2020 stood at 296. This figure is largely consistent with the years 2017 and 2018.

23 Oral Answer in Parliament – Question 54, 3 November 2020 <<https://pardocs.sinarproject.org/documents/2020-november-december-parliamentary-session/oral-questions-soalan-lisan/2020-11-03-parliamentary-replies/2020-11-03-par14p3m3-soalan-lisan-54.pdf/view>>

24 Mohd Farhan Shah, '18 cops and army personnel nabbed for being in cahoots with human trafficking syndicates' (The Star, 18 June 2020) <<https://www.thestar.com.my/news/nation/2020/06/18/18-cops-and-army-personnel-nabbed-for-being-in-cahoots-with-human-trafficking-syndicates>> accessed 2 March 2021

25 'Senior police officer in cahoot with Addy Kana' (The Sun Daily, 14 December 2020) <<https://www.thesundaily.my/home/senior-police-officer-in-cahoot-with-addy-kana-CL5629466>> accessed 2 March 2021

26 Rahim Rahimy, 'Home Ministry to obtain over 2,000 body-worn cameras for cops next year' (The Star, 19 November 2020) <<https://www.thestar.com.my/news/nation/2020/11/19/home-ministry-to-obtain-over-2000-body-worn-cameras-for-cops-next-year>> accessed 2 March 2021

Overall Statistics on Deaths in Custody

Year	Police	Prison Department	Immigration
2016	15	269	40
2017	10	319 ²⁷	24
2018	8	2 ²⁸	32
2019	6	3	55
2020 ²⁹	9	296	30
Total	48	889	181

Ethnic or Country Breakdown of Death in Custody in 2020³⁰

	Malay	Chinese	Indian	Others	Non-Malaysians	Total
Police	1	1		-	1	3
Prison Department	109	20	25	4	30	188

Immigration	
Indonesia	10
Bangladesh	2
Cambodia	2
Kenya	2
Myanmar	1
Nepal	1
Pakistan	1
Vietnam	1
Canada	1
Total	21

The government also revealed data on deaths in custody through ethnic and country breakdown from January 2020 till June 2020 and if we compare these with previous data, we can reasonably conclude that there were 6 deaths under police custody, 9 deaths under immigration detention centre and 108 deaths in police custody from June 2020 to September 2020.

27 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>

28 The only two known and reported cases, actual figure would likely to be higher based on preceding year's data

29 Oral Answer in Parliament – Question 42, 24 November 2020 <<https://pardocs.sinarproject.org/documents/2020-july-august-parliamentary-session/oral-questions-soalan-lisan/2020-08-05-parliamentary-replies/20200805-par14s3m2-soalan-lisan-47.pdf/view>>

30 Oral Answer in Parliament – Question 47, 5 August 2020 < <https://pardocs.sinarproject.org/documents/2020-july-august-parliamentary-session/oral-questions-soalan-lisan/2020-08-05-parliamentary-replies/20200805-par14s3m2-soalan-lisan-47.pdf/view>>

SUARAM Documented Cases of Deaths in Police Custody in 2020

No	Name	Date of Death	Detention Location	Official Cause of Death
1	G Jestus Kevin	5 April 2020	Bentong Police Station (Police)	Medical
2	Dhan Bahdur	31 May 2020	Jinjiang Police Station (Police)	Unreported
3	Zeeawdeen Kadar Masdar	12 June 2020	MAEPS Quarantine Centre (Immigration)	Medical
4	V Mugilarasu	2 July 2020	Sungai Buloh Prison (Prison)	Medical
5	Unnamed Individual	17 July 2020	Segamat District Police Headquarters (Police)	Yet to be determined
6	Wong Kok Leong	10 August 2020	Georgetown Court Complex	Accidental Fall
7	Unnamed Individual	1 September 2020	Pengkalan Chepa Prison (Prison)	Unreported
8	Unnamed Individual	13 September 2020	Bentong Prison (Prison)	Unreported

Inquiries over deaths in custody

In 2014, due to the significant increase in the number of deaths in custody, then Minister of Law, Dato Sri Hajah Nancy binti Shukri, announced that the Coroner’s court would be introduced in each state in Malaysia with the intent to replace the inquest system³¹. The inquiries over deaths in custody would be conducted by a senior Sessions Court Judge³².

Inquiries of death are governed by Chapter XXXII of the Criminal Procedure Code (CPC) and the Practice Direction No. 2/2014³³ regarding the conduct of death inquiries in line with the Coroner’s Court. Inquest proceedings are fact-finding processes carried out when the police officer suspects that the deceased has died in a sudden or unnatural manner, by violence or any other way that was accelerated by any unlawful act or omission by any other person³⁴.

In brief, the objectives of inquest proceedings are to identify who, when, where, how and the manner the deceased died³⁵. The Coroner’s court will function as a hearing where the coroner will inquire into the circumstances of the death of the deceased person and deliver the findings and verdict of the enquiry.

The coroner in an inquest must determine the cause of death of the deceased and whether any person is criminally concerned for the death³⁶. In Teoh Beng Hock’s case, it was further elaborated

31 ‘Coroner’s Court toothless without structural reforms, says lawyers group’ (The Malay mail Online, 2 April 2014) <<https://www.malaymail.com/news/malaysia/2014/04/10/coroners-court-toothless-without-structural-reforms-says-lawyer-group/650347>> accessed 24 April 2019

32 It should be noted for the term ‘Magistrate’ and ‘coroner’ will be interchangeably used in this report as the Magistrate shall act as a Coroner in Malaysia

33 The Guidelines of Death Inquiries was issued by the Office of the Chief Registrar of the Federal Court of Malaysia

34 Section 330 Criminal Procedure Code

35 Section 328 Criminal Procedure Code

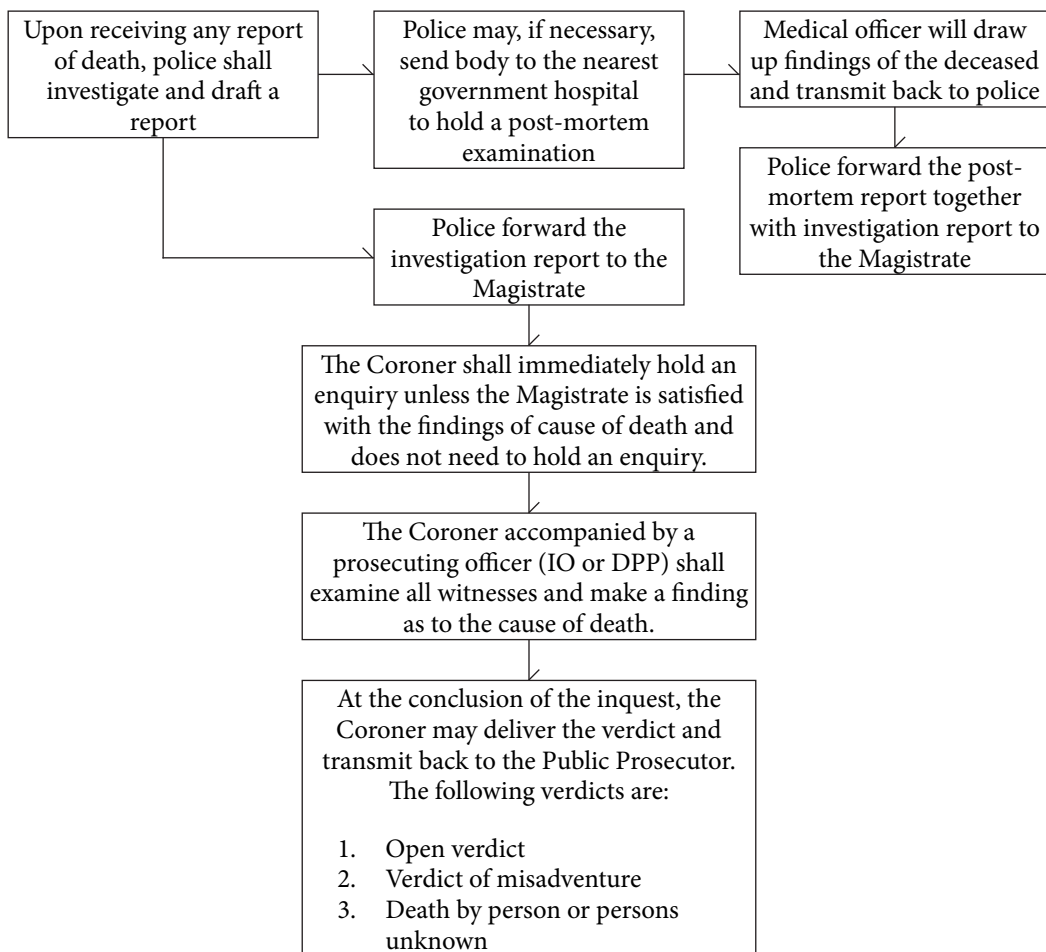
36 Section 337 Criminal Procedure Code

that the finding of a person who is criminally concerned does not imply that the person is criminally liable as it cannot be equivalent to reasonable suspicion.

In relation to any death in custody under the police or in a psychiatric hospital or prison, an inquest must be held before a Coroner if the Coroner has sufficient evidence and thinks it is desirable to hold an inquest for further investigation³⁷. However, in most cases, an inquest is not always held even though it is required. In practice, the defence counsel may make an application to the High Court to make an order to the coroner's court to hold an inquest.

The Attorney-General or the Public Prosecutor may also direct the magistrate to hold an inquest³⁸. In Karuna Nithi's case, the AG called for the court to hold an inquest and the coroner's court subsequently ruled that Karuna was beaten to death by the police and inmates and that nine injury marks on his body were caused by blunt objects.

The Process of an Inquiry of Death in Malaysia



37 Section 337 Criminal Procedure Code

38 Section 339 Criminal Procedure Code

Upon receiving information on a case of death in custody, the Magistrate may, accompanied by a medical officer, view and examine the body of the deceased. The Magistrate has the power to obtain information and lock-up diaries, make an order for a medical officer to conduct and enquire into the reasons for the delay in notifying the Magistrate³⁹.

At the conclusion of the inquest, the Coroner may deliver an open verdict, a verdict of misadventure or death by a person or persons unknown. It must be noted that the findings shall not determine civil or criminal liability against a person⁴⁰. If the families of the deceased are unhappy with the findings of the verdict, the families or their legal representative may apply to the High Court for an order of revision to set aside the verdict. It should be noted that the Royal Commission of Inquiry may probe into the matter for further investigation such as in Teoh Beng Hock's case⁴¹.

An open verdict finding is one where the cause of death is unclear, and the person responsible cannot be accounted for. In the Teoh Beng Hock's case, he was found dead in the building adjacent to the MACC offices when Teoh was being interrogated for an allegation of corruption. It was revealed in the post-mortem examination that he had died from multiple injuries and was alive when he fell to his death. However, the police classified this as sudden death. As a result of this, the public outcry over the miscarriage of justice led to an inquiry into his death.

In this case, both the magistrate and High Court delivered an open verdict. The Court of Appeal overturned the decision and delivered the verdict of death caused by a person or persons unknown as there was a substantial amount of evidence suggesting an act of homicide. The decision of an open verdict is not uncommon⁴² and in cases where an open verdict is delivered and the family of the deceased suspects there are other causes leading to the death, a second post-mortem is often done to provide further clarity and certainty to the findings. It is emphasized in the practice guidelines that pathologists must be neutral and honest in conducting the post-mortem examinations and in court proceedings⁴³ to ensure that justice is accorded the deceased.

A verdict of misadventure simply means death caused by an accident while performing a legal act without negligence or intention to harm. This was determined in Ahmad Sarbaini's coroner court case⁴⁴, in which he voluntarily went to MACC's office to retract a statement in which he had allegedly admitted to bribery but was later found dead on the first floor. Despite the coroner's court ruling that it was a misadventure, the Court of Appeal later overruled it as negligence.

Although the inquest proceedings are laid out in the Criminal Procedure Code and the Guidelines on Death Enquiry 2014⁴⁵, there has been widespread public concern over the lack of transparency and accountability of the post-mortem examinations conducted during the enquiry. The common findings in most inquest cases are suicide or natural causes. This unsatisfactory performance has given rise to dissatisfaction and frustrated family members of the deceased point to an urgent need for the government to set up the Independent Police Complaints and Misconduct Commission

39 Circular No 086/2014 | Arahan Amalan Bil 2 Tahun 2014 Pengendalian Siasatan Kematian (Death Inquiry) (15 April 2014) Accessed on 24 April 2019

40 Circular No 086/2014 | Arahan Amalan Bil 2 Tahun 2014 Pengendalian Siasatan Kematian (Death Inquiry) (15 April 2014) Accessed on 24 April 2019

41 'RCI concludes proceedings to investigate Teoh's Death' (The Star Online, 10 May 2011) <<https://www.malaymail.com/news/malaysia/2018/03/02/renewed-calls-for-ipcmc-after-failure-to-stop-custodial-deaths/1589319>> Accessed 6 May 2019

42 In the case of Karuna Nithi and Gunasegaran, the coroner in the inquest delivered an open verdict

43 Vinodh Pillai, 'Don't get defensive, just be honest, lawyer tells pathologist' (Free Malaysia Today, 9 September 2018) <<https://www.freemalaysiatoday.com/category/nation/2018/09/21/dont-get-defensive-just-be-honest-lawyer-tells-pathologists/>> Accessed on 24 April 2019

44 Nicholas Cheng, 'Ahmad Sarbaini's death due to negligence of MACC, Court of Appeal rules' (the Star Online, 20 June 2016) <<https://www.thestar.com.my/news/nation/2016/06/20/ahmad-sarbaini-death-due-to-macc-negligence-court-of-appeal-rules/>> Accessed on 6 May 2019

45 Guidelines from the Judiciary <<http://library.kehakiman.gov.my/digital/Arahan%20Amalan%20Dan%20Nota%20Amalan/Arahan%20Amalan%20Bil%20202%20Tahun%202014.pdf>> accessed 7 May 2019

(IPCC) to inquire into cases of deaths in custody and to ensure that the police are accountable⁴⁶ for their actions.

Torture and Ill-Treatment in Detention

Torture has been and remains a well-documented and recurring issue in Malaysia. Incidents of physical violence inflicted upon detainees under remand or during an investigation are prevalent especially when there are elements of chain remand⁴⁷ or detention under security laws. In general, it is difficult to provide the appropriate medical evidence to prove that torture has been inflicted as detainees are often locked away until their next court appearance and subjected to threats of further violence by investigating officers if they were to reveal what has been inflicted upon them. While evidence of torture can be difficult to ascertain, the gruesome deaths of A.Kugan, N.Dharmendran, S. Balamurugan, and other similar cases continue to expose the extent of physical violence and torture inflicted upon those detained by the police. There are also instances of enforcement officials holding individuals for long hours of questioning and causing them to suffer from mental fatigue and therefore making them even more susceptible to ill-treatment by the questioning officers. For example, former youth and sports minister Syed Saddiq spent about 11 hours with Malaysian Anti-Corruption Commission investigators just to give his statement regarding the RM250,000 that was allegedly missing from his house⁴⁸.

As noted in reports of the past, there is also a general concern that inadequate facilities, lack of appropriate training, absence of basic amenities and medical resources all contribute to an oppressive and abusive environment for detainees. In some cases, the abusive conditions have led to the rapid deterioration of the health of detainees, eventually contributing to their untimely demise. Examples of such cases include the case of Benedict Thanilas, whose death was attributed to neglect by a coroner court⁴⁹ on 11 September 2020.

This is compounded and exacerbated by dubious standard operating procedures such as those observed under SOSMA⁵⁰ or the onerous remand processes under POCA, POT and DDA85.

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 expiry of the remand order against them. In the past, SUARAM has documented cases in which individuals were detained in such a manner for almost three months (90 days) and then put in various lockups and detention centres in the country by the police.

This 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).

46 Husna Alias & Meor Riduwan Meor Ahmand, 'Set Up Commission to look into custody deaths, says Ambiga' (New Straits Times 14 September 2018) <<https://www.nst.com.my/news/nation/2018/09/411289/set-commission-look-custody-deaths-says-ambiga>> Accessed on 24 April 2019

47 Chain remand is further described in following pages

48 Yasmin Ramlan, 'Syed Saddiq out of MACC HQ after 11 hours' (*Malaysiakini*, 17 July 2020) <<https://www.malaysiakini.com/news/534886>> accessed 2 March 2021

49 Minderjeet Kaur 'Drug suspect's death in custody due to neglect, rules coroner' (Free Malaysia Today, 11 September 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/09/11/drug-suspects-death-in-custody-could-have-been-avoided-says-coroner/>> accessed 30 November 2020

50 The practice of solitary confinement was practiced and documented in SUARAM's earlier reports.

As noted in SUARAM's reports from preceding years, the practice of rearrests and 'chain remand' through the concurrent application of SOSMA and POCA is relatively common and in limited cases, POTA is used as part of the chain remand process.

A recent example includes the case in which a group of 25 individuals were arrested on 26 September 2020 and were initially remanded for 11 days. They were detained for investigation into a shootout that occurred at Banting⁵¹. However, they were re-arrested and were detained for an additional 4 days at IPD Serdang. Although a remand extension was rejected by the court on 10 October, the police did not comply with the order and yet again, these individuals were re-arrested by IPD Jinjang. Remand application was rejected on 11 October 2020; at which point they were re-arrested by IPD Putrajaya with another rejected

remand application on 12 October 2020. The families were kept in the dark after that, but the detainees were re-arrested and remanded under SOSMA which allows for another 28 days of detention⁵². The family members of the detainees only discovered later, on 14 October that the 'missing' detainees were detained under SOSMA. After the SOSMA detention, some were re-arrested again for investigation under the Societies Act 1966 whereas others are detained under POCA.

Police Shootings

SUARAM monitors incidents of officers of the Royal Malaysian Police discharging their firearms while on duty whenever these are reported. Our documentation noted 19 such cases in 2020 with 10 deaths attributed to such police shootings.

51 Farik Zolkepli 'Detained under Poca: 25 members of gang involved in Banting school shooting' (The Star, 13 November 2020) <<https://www.thestar.com.my/news/nation/2020/11/13/detained-under-poca-25-members-of-gang-involved-in-banting-school-shooting>> accessed 30 November 2020

52 'Suaram tells police to stop abusing remand process' (*The Malaysian Insight*, 13 November 2020) <https://www.themalaysianinsight.com/s/284347?fbclid=IwAR08JTy3YK2qlDzewWu8dSQ2YncylccYFZiwzWB6oYXVdQ-Ou6_SmFtcEgg> accessed 24 November 2020

Police Shooting Incidents Documented by SUARAM in 2020

No.	Date	Names	Location	State	No. People Involved	Injured	Death	Total Deaths (month)
1	25 January	Unnamed	Alor Gajah	Malacca	1	-	-	0
2	8 February	Unnamed	Kunak	Sabah	1	1	-	0
3	12 February	Unnamed	Gombak	Selangor	1	1	-	
4	16 May	Unnamed	Lahad Datu	Sabah	1	-	1	1
5	20 May	Unnamed	Sentul	Kuala Lumpur	2	-	0	
6	7 June	Unnamed	Kota Damansara	Selangor	4	-	-	1
7	9 June	Unnamed	Kudat	Sabah	2	-	1	
8	21 July	Unnamed	Kepong	Kuala Lumpur	1	-	-	0
9	22 July	Unnamed	Kota Kinabalu	Sabah	2	-	-	
10	8 August	Unnamed	Petaling Jaya	Selangor	2	-	-	1
11	12 August	Unnamed	Sentul	Kuala Lumpur	1	-	-	
12	17 August	Unnamed	Pasir Puteh	Kelantan	1	-	1	
13	1 September	Unnamed	Kepala Batas	Penang	1	-	1	1
14	19 October	Unnamed	Temerloh	Pahang	2	-	2	2
15	17 October	Unnamed	Port Dickson	Negeri Sembilan	1	1	-	
16	27 October	Unnamed	Sungai Siput	Perak	1	-	-	
17	26 November	Unnamed	Jalan Kuala Slim	Perak	1	-	-	0
18	25 December	Unnamed	Rawang	Selangor	4	-	4	4
19	26 December	Unnamed	Jalan Raja Chulan	Kuala Lumpur	2	-	-	
	Total				24	3	10	

Enforced Disappearance

SUHAKAM's Public Inquiry into the Disappearance of Pastor Raymond Koh and Amri Che Mat⁵³ has concluded that the two individuals were indeed victims of enforced disappearance and that the Bukit Aman's Special Branch was involved in their abduction and disappearance. Yet there has been little action or condemnation by the government or Royal Malaysian Police ever since the release of the report.

There have been no updates regarding the task force which was specifically set up to investigate SUHAKAM's findings. Thus, SUHAKAM has called out the task force to make public its findings as soon as possible⁵⁴.

Both the police and the government have maintained that their investigation of Amri Che Mat is within the law. In response to the suit filed by the wife of Amri Che Mat, Norhayati Mohd Ariffin, the police asserted that SUHAKAM had never mentioned that the police's investigations were lackadaisical or ineffective in their findings⁵⁵. Yet, SUHAKAM's report has clearly stated that the police investigations into the disappearance of Amri Che Mat were "sham" investigations that had not been treated with serious effort or endeavour by the police to uncover the truth⁵⁶.

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

54 'Make report on Pastor Koh and Amri public' (The Star, 31 August 2020) <<https://www.thestar.com.my/news/nation/2020/08/31/make-report-on-pastor-koh-and-amri-public>> accessed 24 November 2020

55 Hidir Reduan Abdul Rashid, 'Polis: Keputusan Suhakam tak kata siasatan kehilangan Amri sambil lewa' (*Malaysiakini*, 26 October 2020) <<https://www.malaysiakini.com/news/548146>> accessed 24 November 2020

56 SUHAKAM, Public Inquiry Into the Public Disappearance of Amri Che Mat (SUHAKAM 2019) 70

Regarding a separate case of enforced disappearance, SUHAKAM's inquiry into the disappearance of Joshua Hilmy and his wife Ruth Sitepu resumed on 12 August 2020 after it was halted for more than six months due to the Covid-19 pandemic⁵⁷.

57 RashvinjeetS Bedi, 'Suhakam inquiry into disappearance of Joshua Hilmy, wife to resume Aug 12' (The Star, 10 August 2020) <<https://www.thestar.com.my/news/nation/2020/08/10/suhakam-inquiry-into-disappearance-of-joshua-hilmy-wife-to-resume-aug-12>> accessed 24 November 2020



**FREEDOM OF
EXPRESSION**

FREEDOM OF EXPRESSION

The slight improvement to the right to freedom of expression under Pakatan Harapan was short-lived and ceased with the fall of the administration in early 2020. Since the Perikatan Nasional administration came into power, it has continued to apply repressive laws such as The Sedition Act 1948 and Communication and Multimedia Act 1998 (CMA) to suppress freedom of expression. Moreover, the new government alluded to the possibility that it may also reintroduce the Anti-Fake News Act 2018 (AFNA) that had been abolished in 2019⁵⁸.

The newly appointed Minister of Home Affairs, Datuk Seri Hamzah Zainudin, has on more than one occasion defended the use of Sedition Act 1948 and Communications and Multimedia Act 1998 because of a rise in public comments on the royalty, race, and religion⁵⁹. Later in the year, he further reiterated the view that the Sedition Act 1948 is still relevant and would be retained by the Perikatan Nasional government through a parliamentary reply⁶⁰. According to his reply, from 2015 until July 2020, there were a total of 300 investigations under the Sedition Act 1948 with 41 cases having been charged; 171 cases that were declared as ‘no further action’, while 54 cases are still under investigation and 34 cases have been classified as ‘*kemaskini untuk simpan*’⁶¹.

Freedom of the press in Malaysia under the Perikatan Nasional government also suffered in 2020. In less than 2 months after his appointment, the Senior Minister (Security Cluster), Datuk Seri Ismail Sabri Yaakob warned online news portals that stern action would be taken against “confusing and inaccurate” articles⁶², yet news portals and journalists were often investigated less about the veracity of their articles but for how the articles had put the government in a bad light. In May 2020, South China Morning Post’s Kuala Lumpur Correspondent was questioned by the police under Section 504 of the Penal Code and Section 233 of the CMA for an article that she co-authored describing the arrests of hundreds of migrant workers in Kuala Lumpur⁶³.

58 Oral Answer in Parliament – Question 41, 11 November 2020 <<https://pardocs.sinarproject.org/documents/2020-november-december-parliamentary-session/oral-questions-soalan-lisan/2020-11-11-parliamentary-replies/20201111-p14m3p2-soalan-lisan-41.pdf/view>>

59 Mail Malay, ‘Home Ministry issues warning, won’t hesitate to act against sedition, ‘fake news’ (Malay Mail, 14 May 2020) <<https://www.malaymail.com/news/malaysia/2020/05/14/home-ministry-issues-warning-wont-hesitate-to-act-against-sedition-fake-new/1866168>> accessed 17 November 2020

60 Rahimy Rahim, ‘Sedition Act to remain, says Home Ministry’ (The Star, 27 July 2020) <<https://www.thestar.com.my/news/nation/2020/07/27/sedition-act-to-remain-says-home-ministry>> accessed 17 November 2020

61 Updated and retained

62 Yiswaree Palansamy, ‘Senior minister warns action against news outfits over ‘inaccurate’ reports on govt remarks’ (Malay Mail, 11 April 2020) <<https://www.malaymail.com/news/malaysia/2020/04/11/senior-minister-warns-action-against-news-outfits-over-inaccurate-reports-o/1855731>> accessed 16 February 2021

63 ‘Malaysian police investigate reporter who covered Covid-19 arrests’ (Reporters Without Borders, 6 May 2020) <<https://rsf.org/en/news/malaysian-police-investigate-reporter-who-covered-covid-19-arrests>> accessed 16 February 2021

Similarly, Boo Su-Lyn, the editor-in-chief of an online health news portal, Codeblue, was summoned; Capitalize Penal Code by the police in June 2020 for a series of articles about the findings from the 2016 fire at Hospital Sultanah Aminah that killed six patients⁶⁴. She was investigated under the penal code and Official Secrets Act (OSA).

The independent news portal, Malaysiakini, was also charged by the government for comments made by its reader. A contempt of court proceeding was filed by the Attorney-General against Malaysiakini for readers' comments in the portal that alleged the judiciary was involved in corruption and had committed wrongdoings⁶⁵.

The Sedition Act 1948

Since the abolition of Internal Security Act (ISA), the Sedition Act 1948 seems to be the go-to law by successive Malaysian governments to silence political dissent. The Ministry of Home Ministry revealed in Parliament that there was a total of 76 individuals arrested under the Sedition Act 1948 from 2015 to 2019.⁶⁶

The crime of sedition is a colonial and archaic offence as the existence of the law predates even the nation's independence⁶⁷ though the law itself has been amended on several occasions in the past. However, coming into the digital age, the government of Malaysia has not made any distinction in the application of the Sedition Act 1948 and that has led to the law being applied on articles or posts written online by Human Rights Defenders (HRD) or political dissenters. This was more so in 2020 when movement control was imposed leading to more human rights or political activities, fora or discussions being conducted online. Thus, aside from the government's liberal use of the Sedition Act, the fact that online posts and comments were increasingly falling under the purview of the Sedition Act also contributed to the drastic increase in cases in 2020.

Number of cases documented by SUARAM that were either investigated, arrested, charged, or found guilty under the Sedition Act 1948

Year	Number of Cases
2016	15
2017	11
2018	10
2019	12
2020	24
TOTAL	72

64 Justin Zack, 'Portal editor to be questioned under OSA over Hospital Sultanah Aminah fire stories' (The Star, 26 June 2020) <<https://www.thestar.com.my/news/nation/2020/06/26/portal-editor-to-be-questioned-under-osa-over-hospital-sultanah-aminah-fire-stories>> accessed 16 February 2021

65 'AG files application to cite Mkini for contempt over readers' comments' (Malaysiakini, 16 June 2020) <<https://www.malaysiakini.com/news/530477>> accessed 16 February 2021

66 Written Answer in Parliament – Question 188, 3rd Meeting of the 3rd Session of the 14th Parliament

67 Sedition Act was passed in 1948 but Malaysia only achieved independence in 1957

The government justified the use of such a law by claiming that there are no adequate laws to address “offences” that affect race, religion, and the monarchy. Moreover, they are also of the opinion that the Sedition Act 1948 acts as a deterrent to prevent Malaysians from speaking about ‘sensitive’ issues⁶⁸. The commitment by the Perikatan Nasional government to ‘improve’ the Sedition Act 1948⁶⁹ did not inspire confidence either as no details of the so-called improvements were divulged and the law was still being used liberally and disproportionately against political dissidents.

In less than three days after Muhyiddin was sworn in as Prime Minister of the new government, social activist Fadhiah Nadwa Fikri was immediately summoned by the police and investigated under the Sedition Act 1948⁷⁰. She was alleged to have uploaded a Twitter post calling for people to attend a protest against the February political shenanigans.

On 3 November, University of Malaya Association of New Youth (UMANY) President Robin Yap Wen Qing and Vice President Tan Li Yuan were questioned by the police under the Sedition Act 1948 for publishing an article, contending that the monarch should exercise his powers within the framework of the Federal Constitution⁷¹. The police insisted that the article had questioned the role of the monarch in Malaysia.

The use of the Sedition Act 1948 was also extended to foreign agencies. Al Jazeera’s staff were summoned by the police and investigated under the Sedition Act 1948 for broadcasting a documentary, ‘Locked up in Malaysia’s Lockdown’⁷² and their office was subsequently raided by the police⁷³. The documentary by Al Jazeera, which recounted the poor handling of undocumented migrants in Malaysia during the Movement Control Order was roundly criticized by the government. The Communications and Multimedia Minister claimed that the documentary had belittled Malaysia’s frontliners⁷⁴.

SUARAM has observed how the Sedition Act 1948 is prone to abuse by the government or enforcement officials in harassing opposition lawmakers. The vice-president of the opposition party Amanah, Dr Mujahid Yusof Rawa was called for investigation under the said act in November 2020 for a speech criticizing the newly appointed Prime Minister in March 2020. The accused himself was also puzzled by the fact that the police had waited until November to act against him for a speech he made in March⁷⁵. To date, the police has not given any explanation for the long-time lag between the speech and the investigation.

68 Oral Answer in Parliament – Question 48, 30 November 2020

69 ‘PN looking to ‘improve’ Sosma, Sedition Act’ (*Malaysiakini*, 21 July 2020) <<https://www.malaysiakini.com/news/535372>> accessed 17 November 2020

70 ‘Police probe is to silence us, says activist Fadhiah Nadwa’ (*Malaysiakini*, 3 March 2020) <<https://www.malaysiakini.com/news/513022>> accessed 17 November 2020

71 ‘Students group probed under Sedition Act for article on Agong’s role’ (*Malaysiakini*, 5 November 2020) <<https://www.malaysiakini.com/news/549604>> accessed 17 November 2020

72 ‘Al Jazeera staff summoned to Bukit Aman for questioning’ (*New Strait Times*, 10 July 2020) <<https://www.nst.com.my/news/nation/2020/07/607438/al-jazeera-staff-summoned-bukit-aman-questioning>> accessed 17 November 2020

73 ‘Malaysian police raid Al Jazeera’s office, seize computers’ (*Aljazeera*, 5 Aug 2020) <<https://www.aljazeera.com/news/2020/08/05/malaysian-police-raid-al-jazeeras-office-seize-computers/>> accessed 17 November 2020

74 ‘“Changed man” - Seputeh MP dismayed by Saifuddin’s response to Al Jazeera raid’ (*Malaysiakini*, 4 August 2020) <<https://www.malaysiakini.com/news/537327>> accessed 17 November 2020

75 Justin Zack, ‘Mujahid leaves Bukit Aman after almost two hours’ (*The Star*, 02 November 2020) <<https://www.thestar.com.my/news/nation/2020/11/02/mujahid-leaves-bukit-aman-after-almost-two-hours>> accessed 16 February 2021

Record of Individuals Investigated or Arrested under Sedition Act 1948 in 2020

No	Name	Allegation or Cause for Investigation	Date of Arrest or Investigation
1	Datuk Mohd Tamrin Abdul Ghafar	Posting a blog post deemed offensive to the Crown Prince of Johor, Tunku Ismail Ibrahim	10-Feb-20
2	3 Unnamed Individuals	Allegedly accused the king of being a racist and undermining democracy	1-Mar-20
3	35-year-old unnamed individuals	Allegedly posting a seditious post that insulted the king	1-Mar-20
4	Fadiah Nadwa Fikri	Allegedly rallying people to attend a protest against the new administration during February political crisis through social media.	2-Mar-20
5	2 unnamed individuals	Allegedly mocking Islam in a video which went viral on social media	18-Apr-20
6	Dr Xavier Jayakumar	Allegedly making seditious statement insulting the king during a parliament sitting	20-May-20
7	Cynthia Gabriel	Allegedly writing a letter titled 'Anticorruption rhetoric will never purify the unelected Perikatan Nasional government'.	5-Jun-20
8	Hannah Yeoh	Allegedly publishing a seditious and inflammatory remark online	17-Jun-20
9	Syed Saddiq	Speaking out against the new Perikatan Nasional government in an online interview	18-Jun-20
10	Unnamed book publisher	Publishing a book that purportedly insults Malaysia's coat of arms	30-Jun-20
11	Sevan Doraisamy	In relation to an article published by Malaysia Muda in 2018	30-Jun-20
12	Unnamed graphic designer	Allegedly mischaracterizing Malaysia's coat of arms on a book cover	2-Jul-20
13	6 unnamed individuals	Publishing a documentary that allegedly features malicious and incorrect content against the Malaysia government	10-Jul-20
14	K Sudhakaran Stanley	Social media posting critical of police arrests during the movement control order	20-Jul-20
15	Ramesh Rao	Claiming the judge that sentenced Najib Razak is Mahathir's grandson or grandnephew	4-Aug-20
16	Ganesparan A/L Nadaraja	Posting a seditious video which went viral on social media	18-Oct-20
17	2 unnamed individuals	Allegedly insulting the king on social media	25-Oct-20

18	Unnamed individual	Allegedly insulting the king on social media	26-Oct-20
19	Ronnie Liu	Allegedly insulting the king on social media	28-Oct-20
20	Mujahid Yusof Rawa	Allegedly questioning the Agong's power in appointing Muhyiddin Yassin as Prime Minister in social media	2-Nov-20
21	Robin Yap Wen Qing and Tang Li Yuan	Publishing an article that questions the role of the king	5-Nov-20
22	6 UMANY Members	Questioning the role of Agong's power in denying Agong's emergency rule through an article	9-Nov-20
23	Haziq Azfar	Questioning the role of Agong's power in denying Agong's emergency rule through an article	9-Nov-20
24	Bukan_Bang_Jago	Allegedly mocking the monarch, national anthem, and the flag of Malaysia	31-Dec-20

Banning of Parody Websites

Aside from implementing and promoting the government's policy pertaining to the communications and multimedia sector, the Malaysian Communications and Multimedia Commission (MCMC) is also empowered as a regulatory body to regulate all matters relating to communications and multimedia activities and to supervise and monitor communications and multimedia activities. Under the CMA, the MCMC is empowered to regulate online contents made by individuals or groups or blocking access to certain websites. According to parliamentary data, MCMC received 10,406 public complaints regarding online contents that contained elements of bullying, sexual harassment, threat, intimidation, and wrongful use of personal information from 2016 to September 2020⁷⁶. They also revealed that out of the 10,406 complaints they received, they had officially investigated 795 cases, out of which 17 charges were laid under Section 233 of CMA.

As most Malaysians were ordered to stay at home under the Movement Control Order (MCO) in the pandemic year, they were more likely to express their opinions through the internet and social media. This in turn increased the likelihood of intervention by MCMC in its zeal to regulate and monitor online speeches and opinions.

On December 6, the famous Twitter parody account Bermama TV was suspended by Twitter for purportedly violating the community standards as set by the social media platform provider⁷⁷. This was although the account - which often parodies government ministers - had stated clearly on its Twitter bio that it was a parody news account⁷⁸. The MCMC subsequently released a statement saying that they had filed a complaint and welcomed the decision made by Twitter⁷⁹. Before this, the MCMC Chairman, Dr Fadhullah Suhaimi Abdul Malek had also claimed that parody accounts

⁷⁶ Oral Answers in Parliament – Question 38 – 10 December 2020

⁷⁷ 'Twitter suspends 'BermamaTV' account' (Malay Mail, 06 December 2020) <<https://www.malaymail.com/news/malaysia/2020/12/06/mcmc-suspends-bermanatv-twitter-account-suspended/1929309>> accessed 16 February 2021

⁷⁸ Sadho ram, 'MCMC: Parody Accounts Are A Problem In Malaysia' (SAYS, 07 October 2020) <<https://says.com/my/news/mcmc-parody-accounts-are-a-problem-in-malaysia>> accessed 16 February 2021

⁷⁹ 'Pemberitahuan: Orang Ramai Digesa Waspada Dengan Kewujudan Akaun-Akaun Palsu di Media Sosial' (Malaysia Communication and Multimedia Commission, 06 December 2020) <<https://www.mcmc.gov.my/en/media/announcements/pemberitahuan-orang-ramai-digesa-waspada-dengan-ke>> accessed 16 February 2021

are a problem in Malaysia and are liable for civil suits⁸⁰. Similarly, an account which impersonated the government’s Islamic Development Department (JAKIM) was suspended by Twitter and the MCMC again welcomed the decision made by Twitter⁸¹.

‘Fake News’ in 2020

Section 233 of the Communication and Multimedia Act 1998 continued to be applied regularly to restrict free speech on the internet. In 2020, there was an unprecedented spike in the use of section 233 of the Communication and Multimedia Act 1998 to combat the circulation of alleged ‘fake news’ related to Covid-19.

List of cases pertaining to the spread of fake news⁸²

	2015	2016	2017	2018	2019	2020 ⁸³	Total
Cases Investigated	11	25	28	38	18	65	185
Cases Brought to Court	-	2	7	-	1	6	16
Number of Charges	-	4	7	-	2	6	19
Compound Issued by Case	-	1	2	-	-	-	3
Number of Warning Notices	-	1	12	-	-	11	24

From the data provided by the Ministry of Communications and Multimedia, we can assume that the abolishing of the Anti-Fake News Act 2018 has not deterred the government from criminalizing freedom of expression in the name of containing fake news. The data also further suggests that the investigations and charges laid pertaining to fake news are rapidly increasing and may well exceed the record high in 2017 by the end of 2020.

It also appears that with the repeal of the Anti-Fake News Act, section 233 of the Communication and Multimedia Act 1998 has been primarily used to combat what government deems to be false information. At the end of April 2020, the Senior Minister (Security Cluster), Ismail Sabri Yaakob revealed that the police and the Malaysian Communications and Multimedia Commission (MCMC) had opened a total of 238 investigation papers on cases of fake news related to the Covid-19 pandemic. According to him, there were 170 cases still under investigation at that time; 24 had been prosecuted in court, while 13 had pleaded guilty under Section 233 of the Communications and Multimedia Act 1998⁸⁴. This was inconsistent with the previous data provided by Ministry of Communications and Multimedia in Parliament that showed only 65 cases of fake news being investigated up until September 2020.

80 ‘Parody accounts on social media liable to legal action, says MCMC chief’ (Malay Mail, 07 October 2020) <<https://www.malaymail.com/news/malaysia/2020/10/07/parody-accounts-on-social-media-liable-to-legal-action-says-mcmc-chief/1910296>> accessed 16 February 2021

81 ‘Twitter suspends account of Jakim ‘imposter’ (Free Malaysia Today, 06 October 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/10/06/twitter-suspends-account-of-jakim-imposter/>> accessed 16 February 2021

82 Oral Answer in Parliament – Question 37, 1 December 2020

83 Data provided by relevant Ministry for year 2020 is until September

84 Nuradzimmah Daim, ‘238 investigation papers opened on Covid-19-related fake news cases’ (New Strait Times, 26 April 2020) <<https://www.nst.com.my/news/nation/2020/04/587644/238-investigation-papers-opened-covid-19-related-fake-news-cases>> accessed 18 November 2020

With the confusion over the government's flip-flopping standard operating procedures and inconsistent directives issued, it is also unclear whether there were any investigations for 'fake news' at all. Examples of such confusion included the requirement to check in with the MySejahtera application at petrol pumps since the police had reportedly said it was mandatory for those using petrol pumps to check-in with the MySejahtera⁸⁵. This stipulation was later refuted by the Petrol Dealers Association of Malaysia and it was even more confusing with the contradictory statements by the National Security Council⁸⁶. While the confusion was eventually resolved through another announcement by the National Security Council, it remains to be seen⁸⁷ whether any of the actions taken for 'fake news' related to such confusion.

Secondly, the government's own definition of what it construed to be 'fake news' was also troubling because it could be employed as a tool to stifle free speech rather than ensuring the veracity of the news. In April 2020, there was an attempt to deter 'fake news' through the release of a circular that sought to define the boundary of 'fake news'⁸⁸. Insults against the government and its leaders, belittling the dignity or image of an individual, organisation or country and spreading critical information were all classified as 'fake news' in the aforementioned circular⁸⁹.

Communications and Multimedia Act 1998

Apart from the rampant use of Section 233 on the grounds of addressing fake news, the law was also used to stifle political expression especially during the political crisis in 2020 with social media users making postings on the internet, purportedly insulting, or demeaning the monarch or the Prime Minister being either arrested, questioned, or even charged under the said law. Section 233 of the Act criminalises speech made with the intent to 'annoy, abuse, threaten or harass another person', including anonymous communications. The ambiguity of the language, the lack of clear definition of what is deemed 'offensive' and criminalizing the act of annoying people online are among the many reasons why section 233 is problematic. It should be noted that unlike the Sedition Act 1948, section 233 does not require the communication to be seditious or intended to incite violence or to instigate the commission of any offense.

Overall, cases in 2020 mirrored those for 2019, whereby Section 233 was utilized as a catch-all law for all forms of alleged offences that were committed on the internet. This reinforced the belief that Section 233 is too broad in its remit and thus prone to abuse by the authorities.

85 Sylvia Looi 'Police: RM1,000 fine for failure to register with MySejahtera app when pumping fuel' (Malay Mail, 9 November 2017) <<https://www.malaymail.com/news/malaysia/2020/11/09/police-rm1000-fine-for-failure-to-register-with-mysejahtera-app-when-pumpin/1920958>> accessed 29 November 2020

86 Anthony Lim 'MySejahtera scan to pump fuel – MKN confirms that no scanning is needed for refueling if paying at the pump' (Paultan, 10 November 2020) <<https://paultan.org/2020/11/10/mysejahtera-scan-to-pump-fuel-the-cprc-and-mkn-confirm-pdrms-statement-that-scanning-is-mandatory/>> accessed 29 November 2020

87 As no detailed breakdown of each alleged false information based on publicly available information, it is difficult to ascertain whether there are any cases that fall into such a category.

88 'Penyebaran berita palsu mungkin nampak remeh bagi sesetengah pihak, namun impaknya amatlah besar jika penularannya tidak terkawal terutamanya ketika musim wabak COVID-19 kini' (Jabatan Penerangan Malaysia, 31 March 2020) <<https://www.facebook.com/penerangan/photos/a.10151420495798884/10157679488513884/>> accessed 16 February 2021

89 Emmanuel Santa Maria Chin, 'Lembah Pantai MP questions Information Dept's advisory discouraging bad remarks towards gov't' (Malay Mail, 11 April 2020) <<https://www.malaymail.com/news/malaysia/2020/04/11/lembah-pantai-mp-questions-information-depts-advisory-discouraging-bad-remar/1855702>> accessed 16 February 2021

List of individuals arrested, investigated, charged, or found guilty under Section 233 of Communication and Multimedia Act 1998 in 2020

No.	Name	Allegations and Offence	Status
1	K Senthivelu	Uploading a picture that insults an Islamic preacher, Dr Zakir Naik	Investigated on 6 January
2	11 unnamed individuals	Disseminating a pornographic defamatory video	Under Investigation
3	35-year-old unnamed individual	Sharing video that attempts to put traffic officer on duty in a bad light	Remanded for 2 days and under investigation on 20 January 2020
4	4 unnamed individuals	Disseminating false information on the Covid-19 outbreak	Called for investigation on 27 January 2020
5	3 unnamed individuals and 1 group Facebook account	Disseminating false information on the Covid-19 outbreak	Investigated on 29 January 2020
6	34-year-old unnamed individual	Facebook post about Covid-19 that allegedly contains false information	Arrested in Bangi, Selangor on 28 January 2020
7	4 unnamed individuals	Spreading fake news about Covid-19	Arrested in their respective places on 29 January 2020
8	Mohd Khairul Azam Abdul Aziz	Threatening to lodge a police report over Chinese New Year decorations in a school online	Called for investigation on 9 January 2020
9	Unnamed individual	Spreading fake news about Covid-19	Detained in Kuantan, Pahang on 30 January 2020
10	Fahaizal Lee	Uploading fake news regarding “Perak Exco Freed of Rape Charge” in Facebook	The statement was taken on 30 January 2020
11	Rozaidi Jamil	Sharing fake news about Covid-19	A statement was taken on 31 January 2020
12	Facebook account Haziq Fahmi	Spreading fake news about Covid-19	Investigation opened on 2 February 2020
13	Unnamed individual	Spreading fake news about Covid-19	Identifying individual on 6 February 2020
14	Mohd Tamrin Abdul Ghafar	Posting a blogpost that allegedly insults the Johor Crown Prince	Called for investigation on 10 Feb 2020
15	Wai Foo Sing	Making obscene graphic caricature posting against Prophet Muhammad and his wife	Pleaded guilty and was fined RM15,000
16	Unnamed individual	Sharing a video which insults Islam	Arrested on 16 February 2020
17	Azlan Sani Zawawi and Hasbullah Mat Soom	Sharing a video about damaged roads	Called for investigation on 16 February 2020

18	Unnamed individual	Defaming Amanah's Deputy President Salahuddin Ayub online	Investigated on 20 February 2020
19	48-year-old unnamed individual	Sharing defamatory content against Lim Guan Eng on social media	Charged on 21 February 2020
20	Unnamed individual	Sharing fake news about Covid-19 on social media	Identifying individual on 21 February 2020
21	Mohamad Faezi Abd Latif	Sharing obscene communications with the intention of offending others	Fined RM50,000, in default 3 months jails on 28 February 2020
22	Muhammad Firdaus Akil	Providing obscene communications for commercial purposes	Pleaded not guilty on 28 February 2020
23	4 unnamed individuals	Spread false information about the position of Prime Minister	Identifying individual on 29 February 2020
24	35-year-old individual	Allegedly accusing the king of being a racist and undermining the country's democracy	Arrested on 1 March 2020
25	Fadiyah Nadwa Fikri	Uploading a post calling for people to attend protest the betrayal over the political changeover	Investigated on 2 March 2020
26	Ain Zafira Md Said	Allegedly insulting the Prophet via her Facebook account	Pleaded guilty and fined RM4,000 on 5 March 2020
27	Azrin Bidin	Allegedly insulting the king via his Facebook account	Pleaded not guilty on 6 March 2020
28	Ooi Wei Siong and Nurhaizad Azhar	Allegedly insulting the king via their Facebook accounts	Pleaded guilty on 13 March 2020
29	23-year-old unnamed individual	Allegedly insulting the police for fulfilling their duties during the movement control order	Arrested on 21 March 2020
30	5 unnamed individuals	Spreading fake news about Covid-19	Investigated on 24 March 2020
31	Mohd Naim Md Isa	Producing and sending offensive recording mocking the implementation of the movement control order	Pleaded guilty on 25 March 2020
32	Azwan Ali	Uploading an offensive post about front liners	Pleaded guilty and fined RM17,000 on 27 March 2020
33	Facebook account Fiza Wie and Mizo Sulaiman	Uploading fake news about Covid-19	Investigated on 29 March 2020
34	Nursahira Mohd Mizuar	Sharing obscene content through her Facebook account	Fined RM10,000 and sentenced to 3 months in jail
35	Unnamed individual	Making insulting and demeaning remarks against the police through his Facebook account	Arrested on 4 April 2020

36	2 unnamed Indonesian individuals	Uploading insulting remarks against police through her Facebook account	Arrested on 9 April 2020
37	Unnamed individual	Allegedly posting insulting remarks against the Prime Minister through his Facebook account	Arrested on 10 April 2020
38	2 unnamed individuals	Allegedly making facebook remarks defaming the police	Arrested on 11 April 2020
39	Fuziah Salleh	Posting a fake video about Malaysians storming the immigration complex during the movement control order	Investigated on 10 April 2020
40	Unnamed Individual	Allegedly making an offensive Facebook status against the police and the Johor Royal Family	Arrested on 17 April 2020
41	2 unnamed individuals	Allegedly making offensive videos against Islam	Arrested and remanded in custody on 22 April 2020
42	Tashny Sukumaran	Reporting of the immigration raid on the downtown Kuala Lumpur red zone	Called for investigation on 6 May 2020
43	Shamsubahrin Ismail	Making a Facebook post that was alleged to be an offensive entry	Charged on 9 May 2020
44	Dr Xavier Jayakumar	Making a public statement with elements of sedition	Investigated on 20 May 2020
45	Unnamed individual	Issuing online threats against a man who filmed a wedding during movement control order	Statement recorded on 26 May 2020
46	Unnamed individual	Allegedly issuing an online death threat against two DAP assemblypersons	Arrested on 28 May 2020
47	45-year-old unnamed individual	Allegedly making an online statement ridiculing the approval for a 12-person congregation to perform Friday prayers	Charged on 1 June 2020
48	Datuk R. Sri Sanjeevan	Allegedly circulating offensive remarks against the police	Charged on 5 June 2020
49	Cynthia Gabriel	Allegedly writing a letter titled 'Anticorruption rhetoric will never purify the unelected Perikatan Nasional government'.	Investigated on 5 June 2020
50	Lai Yuet Ming	Making online offensive remarks against the Prime Minister and the King	Charged on 9 June 2020
51	Tham Wai Yuen	Allegedly spreading offensive remarks that insult Islam	Charged on 10 June 2020

52	Patrick Teoh	Allegedly making an offensive online statement against the Crown Prince of Johor	Charged on 14 June 2020
53	Hannah Yeoh	Allegedly publishing a seditious and inflammatory remark online	Probed on 17 June 2020
54	Syed Saddiq	Speaking out against the new Perikatan Nasional government in an online interview	Called for investigation on 18 June 2020
55	Siti Kassim	Posting a Facebook post critical of political party PAS	Called for investigation on 18 June 2020
56	Muhammad Shammir Sam	Allegedly making Facebook post insulting the king	Charged on 22 June 2020
57	Koh Teen Ern	Allegedly posting an insulting comment on Islam on Facebook	Pleaded guilty and fined RM6,000
58	Zamri Abdul Razak	Uploading two alleged offensive posts against Hinduism	Charged on 29 June 2020
59	Sevan Doraisamy	In relation to an article published by Malaysia Muda in 2018	Investigated on 30 June 2020
60	Mahadi Ibrahim	Making offensive remarks against Johor Royal Family in Whatsapp	Fined RM5,000 on 3 July 2020
61	Abdullah Sani Ahmad	Circulating offensive remarks against the Health Minister	Pleaded guilty on 3 July 2020
62	2 unnamed individuals	Designing and publishing a book that allegedly insults Malaysia's coat of arms	Investigated on 4 July 2020
63	Shahril Mohd Sarif	Allegedly insulting the king via his Instagram account	Sentenced to 10 months in jail on 6 July 2020
64	Heidy Quah	Posting statement of alleged mistreatment of refugees at the detention centres	Called for investigation on 7 July 2020
65	6 unnamed individuals	Producing a documentary that alleged mistreatment of migrants by the government	Called for investigation on 10 July 2020
66	Nazaruddin Mohamad	Making and sharing offensive remarks against the king on Facebook in 2018	Charged on 10 July 2020
67	Mohammad Shahrizal Md Shah Rudin	Making offensive post against the police on Facebook	Fined RM2,000 on 14 July 2020
68	2 unnamed individuals	Mocking the government's announcement declaring Friday as Jawi Day on social media	Arrested on 15 July 2020

69	Danny Antoni	Making insulting remarks against the Prophet, and PAS President via Facebook	Sentenced for 6 months on 17 July 2020
70	K Sudhagaran	Making a post on a Facebook that disputed police action during movement control order	Arrested on 20 July 2020
71	Siti Nurul Ain Mat Nayan	Making a Facebook post allegedly insulting the Royal Family of Selangor	Pleaded guilty on 21 July 2020
72	Muhammad Hariz Saleh	Making online comment against the Sultan of Selangor	Pleaded not guilty on 23 July 2020
73	Ramesh Rao	Making the online comment that the High Court judge is related to Mahathir Mohamad	Statement recorded on 4 August 2020
74	Sufazrin Amin Ismail	Making online remarks against the king on Twitter	Pleaded guilty on 6 August 2020
75	33-year-old unnamed individual	Spreading fake news related to Covid-19	Arrested on 9 August 2020
76	Mohd Asri Hamid	Allegedly making an online statement that insults the police	Called for investigation on 14 August 2020
77	Unnamed individual	Allegedly making an online statement that accused the police of receiving bribery	Called for investigation on 21 August 2020
78	Jamal Yunos	Submitting a memorandum urging the police to raid premises conducting gambling activities	Investigated on 25 August 2020
79	Nor Zigan Mohd Tori	Making a Facebook posting threatening Lim Guan Eng	Fined RM3,000 on 27 August 2020
80	Fadilah Hamid	Making an offensive post against the Prophet	Fined RM2,000 on 15 September 2020
81	2 unnamed individuals	Displaying the Malaysian flag upside down in the factory which went viral on social media	Remanded on 19 September 2020
82	Mohamaddin Ketapi	Purportedly claiming the battle between Malaysia Armed forces and Sulu terrorist was mere theatrics. The video of his speech went viral on social media	Statement recorded on 1 October 2020
83	Cik Non	Making a post blaming Sabahans for the recent spike in Covid-19 cases	Investigated on 8 October 2020
84	Muhamad Syakir Mustaffa	Making and sharing defamatory post against the Jakle family and company	Pleaded not guilty on 8 October 2020
85	Anwar Ibrahim	Making the claim that 121 MPs in Parliament support his bid to become the next Prime Minister	Called for investigation on 16 October 2020

86	Unnamed individual	Allegedly making a post that insults the police	Remanded on 13 October 2020
87	Ganesparan A/L Nadaraja	Allegedly posting a seditious statement that insults the institution of Malay Rulers	Investigated on 18 October 2020
88	Mohd Firdaus Adnan and Azmi Jaafar	Allegedly posting a video showing them blacking out Chinese characters on street signs	Arrested on 27 October 2020
89	Ronnie Liu	Allegedly sharing a Facebook post that insults the king	Arrested on 28 October 2020
90	Mohd Azmi Ismail	Allegedly posting offensive contents against Fuziah Salleh on Facebook in 2018	Pleaded not guilty on 28 October 2020
91	Lokman Noor Adam	Allegedly making insulting remarks against the Prime Minister	Arrested on 2 November 2020
92	Robin Yap Wen Qing and Tan Li Yuan	Allegedly posting an article that questions the role of the King in Malaysia	Investigated on 5 November 2020
93	Muhammad Abdullah	Allegedly making a post that insinuates that the authorities are oppressing the people	Investigated on 16 November 2020
94	Mohd Faiz Basri	Allegedly spreading fake news	Pleaded guilty on 23 November 2020
95	K. Haridas	Allegedly making a slanderous statement on Inspector-General of Police Tan Sri Abdul Hamid Bador and Johor police chief Comm Datuk Ayob Khan Mydin Pitchay.	Arrested on 23 November 2020
96	Sebastian	Allegedly making an online post threatening to shoot the Inspector General Police	Investigated on 1 December 2020
97	Mohamad Fareez Md Hanapi	Allegedly making fake complaints with regards to the flood in Kelantan	Pleaded not guilty on 10 December 2020
98	Bukan_Bang_Jago	Allegedly mocking the monarch, national anthem, and the national flag	Investigated on 31 December 2020

Aside from Section 233 of CMA, Section 263 of the said Act also plays a substantial role in the criminalization of freedom of expression in Malaysia. Section 263 is targeted towards network service providers and the law basically compels network service providers to follow government directives in enforcing the law and requires the network service providers to enforce all Malaysian laws as part of their services. While the law itself may be innocuous, the provision is often cited by the government and utilized to compel internet service providers (ISP) to block websites that are

deemed illegal⁹⁰. Although the law has not been recently invoked, it also appears there is no political will from both the government and opposition to address the repressive nature of Section 263.

Printing Presses and Publications Act 1984

Although the banning of publications has been declining over the years with only 2 items gazetted to be restricted in comparison with 2019 (5), 2018 (7) and 2017 (71), the government continues to utilize the Printing Presses and Publications Act 1984 to stifle political dissent and restrict freedom of expression.

One such example is the banning of the book ‘Rebirth: Reformasi, Resistance and Hope in New Malaysia’⁹¹. The book was deemed by the government to be prejudicial to the national interest, security and public order because it contains the cover art of a nude child flanked by two human-faced tigers that resemble the national coat of arms. Besides banning the book, the publisher Gerakbudaya was raided by the police and the authorities confiscated 313 units of the book⁹².

SUARAM has noted that the books ‘Gay is Ok! A Christian Perspective’ and ‘Peichi’ were allowed publication after a long while before they were banned. The former which was published in 2013⁹³ was only banned after seven years of undisturbed publication and sale. Similarly, ‘Peichi’ was released in 2019 and apparently the ban was instituted only after complaints by another Tamil author⁹⁴.

Publications Banned under Section 7(1) of PPPA

No	Name of Publication	Reason	Date Listed
1	Atlas of Military History ⁹⁵	Prejudicial to Morality	23 June 2020
2	Reformasi, Resistance and Hope in New Malaysia ⁹⁶	Prejudicial to National Interest, Security and Public Order	1 July 2020
3	Gay is Ok! A Christian Perspective ⁹⁷	Prejudicial to Public Order, Morality and Public Interest	17 November 2020
4	Peichi ⁹⁸	Perjudicial to Morality	9 December 2020

90 Ida Lim, ‘Sarawak Report blockage shines light on ‘abusive’ MCMC powers’ (Malay Mail, 24 July 2015) <<https://www.malaymail.com/news/malaysia/2015/07/24/sarawak-report-blockage-shines-light-on-abusive-mcmc-powers/938837>> accessed 16 February 2021

91 WaiKit Chan, ‘Home Ministry bans book with ‘insulting’ cover of modified Malaysian coat-of-arms’ (Malay Mail, 01 July 2020) <<https://www.malaymail.com/news/malaysia/2020/07/01/home-ministry-bans-book-with-insulting-cover-of-modified-malaysian-coat-of-1880644>> accessed 20 November 2020

92 ‘Police raid company linked to controversial book cover, seize 313 books’ (Malaysiakini, 30 June 2020) <<https://www.malaysiakini.com/news/532448>> accessed 20 November 2020

93 ‘Gay is OK!’ is not okay for home ministry’ (Free Malaysia Today, 18 December 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/12/18/gay-is-ok-is-not-okay-for-home-ministry/>> accessed 16 February 2021

94 Bharathi Sp, ‘Malaysia bans Tamil novel ‘Peichi’, support pours in for Ma Navin from literary circles’ (The News Minute, 24 December 2020) <<https://www.thenewsminute.com/article/malaysia-bans-tamil-novel-peichi-support-pours-ma-navin-literary-circles-140246>> accessed 16 February 2021

95 Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/output/pua_20200907_PUA268.pdf

96 Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/output/pua_20200701_PUA%20200.pdf

97 Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/output/pua_20201127_PUA340_2020.pdf

98 Federal Gazette Restriction Order: http://www.federalgazette.agc.gov.my/output/pua_20201215_PUA355.pdf



**FREEDOM OF
ASSEMBLY**

FREEDOM OF ASSEMBLY

The right to assemble freely is often used in the context of right to protest in Malaysia and it is one of the few rights that is relatively easy to uphold by the government as most assemblies in Malaysia are conducted in a peaceful manner. Unfortunately, the situation pertaining to the right to assemble freely and peacefully in relation to the Peaceful Assembly Act 2012 (PAA) remained unsatisfactory in 2020.

Number of individuals investigated, arrested, or charged in relation to peaceful assemblies⁹⁹

Year	Number of Individuals
2016	49
2017	140
2018	73
2019	47
2020	25

Although the application of PAA against individuals has reduced drastically in 2020, it must be noted that the right of Malaysians to assemble peacefully in 2020 – at least in the first half of the year - was largely curtailed due to the implementation of Movement Control Order (MCO) by the government in response to the Covid-19 pandemic.

Right to assemble peacefully in the year of Covid-19 pandemic

From March 18th until the end of the year, the nation was either under some form of lockdown or *cordon sanitaire* that immobilized movement and forbade any exercise of the right to assemble. The first variation of MCO which lasted from 18 March till the end of April was the strictest by far: it encompassed a blanket ban on most forms of assembly nationwide, including religious activities,

⁹⁹ SUARAM's own documentation and calculation, numbers are mainly sourced from SUARAM's media monitoring

sports, social and cultural events¹⁰⁰. Furthermore, outdoor movements were strictly limited to purchasing essential supplies and commuting to work only in sectors that could operate. It goes without saying that both the civil society organisations and opposition were denied the right to either protest or assemble during that crucial period and to register their discontent against the Perikatan Nasional government which came into power just before the first MCO through elite bargaining and defection of MPs.

The effectiveness of MCO in driving down daily infection numbers led to a series of relaxation of restrictions in the second half of 2020 with the introduction of Conditional Movement Control Order (CMCO) and subsequently Recovery Movement Control Order (RMCO)¹⁰¹. This included lifting the ban on eating out¹⁰², resumption of Muslims' Friday congregational prayers for less affected states, meetings and seminars allowed with a maximum participation of 250 people¹⁰³ and most economic sectors could return to business subject to strict Standard Operation Procedure (SOP) measures¹⁰⁴. Even though life in Malaysia was almost back to normalcy at that time, the government did not restore the right of Malaysians to protest for political purposes but continued to suppress any protests in the name of preventing the spread of Covid-19 pandemic.

Nevertheless, there were several notable protests and assemblies that were clamped down during the second half of 2020 by the government with little justification. The National Union of Workers in Hospital Support and Allied Services (NUWHSAS) staged a protest on 2 June 2020 against their employer Edgenta UEMS for harassment and union-busting activities. Yet, NUWHSAS Executive Secretary M Saraswathy and four other picketers were arrested for refusing to disperse after several warnings were given by the police¹⁰⁵. They were subsequently charged under Regulation 7 (1) of the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) Regulations 2020 and their right to assemble peacefully has clearly been violated in this case¹⁰⁶ even though that the picketers were seen wearing masks and observed physically distancing throughout the protest.

Similarly, protesters who had organized around the Kuala Lumpur Court Complex to show support for the Former Prime Minister Najib Razak were also investigated under the PAA and the Prevention and Control of Infectious Diseases Act 1988 (PCIDA) on July 2020¹⁰⁷. It must be stressed that aside from the PAA which historically has been the go-to act by the government to criminalize peaceful assemblers and protesters, the PCIDA has also been used in conjunction with the former to deter assembly or protest.

100 (Full text) PM's Movement Control Order speech in English' (New Strait Times, 17 March 2020) <<https://www.nst.com.my/news/nation/2020/03/575372/full-text-pms-movement-control-order-speech-english>> accessed 10 February 2021

101 P Prem Kumar, 'Malaysia to ease lockdown early to stanch economic bleeding' (Nikkei Asia, 1 May 2020) <<https://asia.nikkei.com/Spotlight/Coronavirus/Malaysia-to-ease-lockdown-early-to-stanch-economic-bleeding>> accessed 10 February 2021

102 Jerry Choong, 'Ismail Sabri: Restaurant SOPs amended to allow full capacity for dining in' (Malay Mail, 19 June 2020) <<https://www.malaymail.com/news/malaysia/2020/06/19/ismail-sabri-restaurant-sops-amended-to-allow-full-capacity-for-dining-in/1876982>> accessed 10 February 2021

103 Mazwin Nik Anis, 'Ismail Sabri: Meetings and seminars now allowed, but no buffets for participants' (The Star, 17 June 2020) <<https://www.thestar.com.my/news/nation/2020/06/17/ismail-sabri-meetings-and-seminars-now-allowed-but-no-buffets-for-participants>> accessed 10 February 2021

104 Mazwin Nik Anis, 'Family entertainment centres can reopen from July 15, says Ismail Sabri' (The Star, 10 July 2020) <<https://www.thestar.com.my/news/nation/2020/07/10/family-entertainment-centres-can-reopen-from-july-15-says-ismail-sabri>> accessed 10 February 2021

105 'Five arrested for protest against union-busting outside Ipoh Hospital' (*Malaysiakini*, 2 June 2020) <<https://www.malaysiakini.com/news/528339>> accessed 20 November 2020

106 Manjit kaur, 'Five activists charged with defying MCO over hospital protest' (*The Star*, 4 June 2020) <<https://www.thestar.com.my/news/nation/2020/06/04/five-activists-charged-with-defying-mco-over-hospital-protest>> accessed 20 November 2020

107 'Police to call organisers of court complex gathering' (*The Malaysian Reserve*, 30 July 2020) <<https://themalaysianreserve.com/2020/07/30/police-to-call-organisers-of-court-complex-gathering/>> accessed 20 November 2020

SUARAM's staff were present during the protest outside Damansara police station on 7 November 2020. The protest was spontaneously called to demand the release of social activist Wong Yan Ke who was controversially arrested and subsequently detained overnight for recording a police raid¹⁰⁸. However, throughout the 2 to 3 hour-long protest, the organizers were repeatedly warned by the police officers stationed in the police station that the Covid-19 situation did not allow such an assembly to proceed. There were also threats of arrests and further punitive actions if the crowd of 25 people did not disperse immediately. This was another example of how the police utilized the pandemic and the power it had obtained under MCO to further discourage or forbid protests.

The shortfall of the Peaceful Assembly Act 2012

The circumscribed right of Malaysians to assemble freely and peacefully during 2020 could be partially attributed to the partial amendments of the PAA as opposed to abolishing the draconian aspects of the act as promised by PH during the last general election. The amendments to the PAA were passed on July 2019 Parliamentary session by the now defunct PH government, and it has resulted in an amendment requiring 10 days' notice being reduced to 5 days and the introduction of a compound system in lieu of prosecution by the court for failure to notify the enforcement agencies within the notice period. However, this still does not preclude the possibility of charges being made against individuals who fail to give due notice. This means that the PAA still retains the aspect of criminalising peaceful assemblers.

Perhaps the most problematic part of the act lies in the fact that it fails to consider or make any exemption for spontaneous or urgent assemblies. The 'Save Malaysia' protest – arguably Malaysia's last major protest before the first MCO was instituted – was called spontaneously to protest the sudden appointment of Muhyiddin Yassin as the Prime Minister and the instalment of the Perikatan Nasional regime amid the February political crisis. The police subsequently deemed the protest to be illegal under the PAA and reportedly investigated activists Ambiga Sreenevasa and Marina Mahathir for their alleged involvement¹⁰⁹. According to SUARAM's documentation, there were around 19 activists that were investigated for the protest at that time. If the 2019 amendment had included the provision that allows for spontaneous assembly, then a legal precedence would have been established which puts any government in a difficult position to take actions against organizers or protesters assembling even during the period of MCO.

Aside from falling short of allowing spontaneous protest, the act remains inadequate in the light of international human rights standards as Malaysians under the age of 21 and non-Malaysians are still denied the right to either organize or participate in an assembly and parents are also liable to investigation or arrest for permitting their children to attend a protest.

The PAA could also lead to abuse by the police to intimidate and harass human rights defenders in Malaysia. BERSIH 2.0 Chairman Thomas Fann was called for investigation by the police under the PAA on 6 July 2020 for a Facebook post on 29 February 2020 urging Malaysians who were against the sudden change of government to attend a rally. To date, the police have not explained the logic of calling a social activist for investigation after the protest has occurred for more than 4 months¹¹⁰.

108 '党团斥警方不当逮捕·要求立即释放黄彦铭' (Malaysiakini, 11 July 2020) <<https://www.malaysiakini.com/news/549933>> accessed 10 February 2021

109 Report: Cops to probe Ambiga, Marina Mahathir over 'Save M'sia' protest' (*Malaysiakini*, 2 March 2020) <<https://www.malaysiakini.com/news/512927>> accessed 20 November 2020

110 'Bersih 20 chairman probed under Peaceful Assembly Act' (The Malaysian Insight, 11 July 2020) <<https://www.themalaysianinsight.com/s/258970>> accessed 10 February 2021

List of Individuals Investigated under the Peaceful Assembly Act 2012 in 2020

No.	Individual/Group	Event Assembly	Date
1	Unnamed organisers of the event	Anti-Dong Zong Rally	1 January 2020
2	Ambiga Sreenevasan	'Save Malaysia' protest in SOGO	3 March 2020
3	Marina Mahathir	'Save Malaysia' protest in SOGO	3 March 2020
4	Muhammad Faiz Fadzil	'Save Malaysia' protest in SOGO	3 March 2020
5	Fadiah Nadwa Fikri	'Save Malaysia' protest in SOGO	3 March 2020
6	E Nalini	'Save Malaysia' protest in SOGO	3 March 2020
7	Asheeq Ali	'Save Malaysia' protest in SOGO	3 March 2020
8	Liew Liang Hong	'Save Malaysia' protest in SOGO	3 March 2020
9	Wong Yan Ke	'Save Malaysia' protest in SOGO	3 March 2020
10	Nik Azura Nik Nasron	'Save Malaysia' protest in SOGO	3 March 2020
11	Amir Hariri Abd Hadi	'Save Malaysia' protest in SOGO	3 March 2020
12	Asmalif Abdul Adam	'Save Malaysia' protest in SOGO	3 March 2020
13	Abbas Azmi	'Save Malaysia' protest in SOGO	3 March 2020
14	Amar Atan	'Save Malaysia' protest in SOGO	3 March 2020
15	Beverly Joemen	'Save Malaysia' protest in SOGO	3 March 2020
16	Aishah Adam	'Save Malaysia' protest in SOGO	3 March 2020
17	Azam Mekhtar	'Save Malaysia' protest in SOGO	3 March 2020
18	Rennddypeper Ismail	'Save Malaysia' protest in SOGO	3 March 2020
19	Dobby Chew	'Save Malaysia' protest in SOGO	3 March 2020
20	Ridzuan Abu Bakar	'Save Malaysia' protest in SOGO	3 March 2020
21	Thomas Fann	'Turun Ke Jalan: Demokrasi Mati' protest	6 July 2020
22	S Arutchelvan	Black Thursday Commemoration	20 July 2020
23	Khalid Mohd Ismath	Black Thursday Commemoration	20 July 2020
24	Rama Ramanathan	Black Thursday Commemoration	20 July 2020
25	Unnamed organisers	Protest against Najib's verdict outside of Kuala Lumpur High Court	30 July 2020



**GENDER AND
SEXUALITY**

GENDER AND SEXUALITY

Overview

The human rights of LGBTIQ persons continued to regress under the Perikatan Nasional coalition. The Covid-19 pandemic further exacerbated the human rights situation for LGBTIQ persons, who were already marginalized with limited access to services and opportunities. Many LGBTIQ persons, especially those living with non-accepting family members from lower economic background and informal sectors, among others were hard hit by the pandemic. The lack of protection of LGBTIQ persons was especially felt during the pandemic as many faced increased vulnerabilities to further marginalization.

This report will focus on a few key issues, including:

- Covid-19 and its impact
- Criminalization and prosecution of LGBTIQ persons
- State-led rehabilitation programmes
- Freedom of religion

Covid-19 and its impact

The Covid-19 pandemic surfaced and exacerbated many forms of inequalities and marginalization. LGBTIQ persons, like many marginalized were adversely affected. A few key issues were identified based on the collective documentation of the LGBTIQ human rights groups, including,

- **Increased domestic violence and mental health burden**, especially among LGBTIQ persons living or in quarantine with non-accepting family members, thus lacking space to express themselves. Many LGBTIQ human rights groups have reported increased requests for support by LGBTIQ persons in Malaysia over the period of Movement Control Order (MCO) and the pandemic.

The Monitoring Report: LGBTIQ+ Rights in Malaysia documents two cases of young queer men, who were disowned after their sexual orientation were discovered by their family members.¹¹¹ They were left with no support and sought support, including shelter, financial and community support from Jejaka, an LGBTIQ human rights group.

111 Justice for Sisters, and E. Cheah. *Monitoring Report: LGBTIQ+ Rights in Malaysia*. ARROW, 2020, arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf.

Conversely, SEED Malaysia also observed a marked increase of trans people seeking shelter over the period of pandemic.

Making the Invisible Visible in Southeast Asia, a report by Sayoni, documents increased stress and isolation among LBQ persons, because of hiding their identities for fear of being suspected and outed due to their actual or perceived sexual orientation and gender identity, being disowned by family members, among others. N, a queer woman whose sexuality is unbeknown to her family members had to be “as straight as possible at home” due to fear of being disowned. Her experience illustrates the challenges faced by LBQ persons:

... “My brothers can absolutely be themselves, but when it comes to me, there are so many things that I can’t do and can’t say just because of who I am and my sexual orientation,” N explained. She is unable to talk to her partner in front of her parents or “express [her] queerness or be with queer friends”, which takes a huge toll on her mental health.¹¹²

Queer Lapis also reported cases of domestic violence over the period of the MCO. In one case, a queer man was forced to move in with his family members after losing his job due to the pandemic. At home, his personal communications are surveilled, as his parents suspect that he could be gay.

His father even blamed the LGBT community for causing the pandemic, resulting in deterioration of his mental health:

“My entire life has ground to a halt, and no one can protect us from our homophobic parents who are taking advantage of the isolation to hurt us ... He blamed me for being the reason so many are dying without explaining how and why except that the mufti in the mosque said so. How can anyone bear with this torture every single day?”¹¹³

In another case, a queer woman shared that her family members actively sought suitors to marry her off upon her return from university during the MCO. She further reports being subjected to verbal and physical aggression and violence due to her resistance to participating in the marriage talks and visits by her suitors. She says,

“I was ordered to look through photos of men and their profiles and nothing else these days, and I was never asked whether I even want to get married ... Noor refused to meet them (a potential suitor and his mother) and stayed in her own room, but her parents not only verbally abused her but aggressively dragged her out of her room... I have a bruise on my left arm from my mum’s grip, and when I complained about her hurting me, she tightened her hold even more without batting an eye.... No one cares in this country because I’m invisible, and now my family is subduing me, and I just can’t breathe anymore”.¹¹⁴

While forced marriages in relation to LGBTQ persons are common, these cases are not documented due to various factors, including among others, lack of access to victims of forced marriages; the potential harm, negative perception, and personal conflicts in relation to speaking out against their family members; normalization of forced marriage in relation to LGBTQ persons as a method of ‘correction’ or ‘suppression’ of one’s sexual orientation and gender identity. The Monitoring Report: LGBTIQ+ Rights in Malaysia includes two cases of forced marriages of Muslim queer women between 2017 and 2019. In both cases, the women were married off to suitors found by their family members within a month upon discovering

112 Sayoni. Making the Invisible Visible in Southeast Asia, Singapore, 2020. page 42

113 Leyla. “Under MCO, Malaysian Queer People Face Family Violence at Home.” *Queer Lapis*, 5 Apr. 2020, www.queerlapis.com/violence-under-mco.

114 Ibid

their sexual orientation or relationship. In one of the cases, the family members confined her at home and her phone calls and text messages were under surveillance.

The report noted that “the women were subjected to surveillance and restriction of freedom of movement, had no supportive family members to intervene, had no knowledge and access to women’s rights groups and LGBTIQ human rights groups, and had no prior knowledge regarding their human rights and the legal framework in Malaysia.” The report further notes that the women were very afraid of the Syariah laws, and they specifically needed assurance from a Muslim person or ally, who are few and far between especially outside of the Klang Valley. As a result, the women opted to endure the abuse by their family members.

- **Increased vulnerability to profiling based on gender expression and/or actual or perceived gender identity and sexual orientation & violation of privacy at roadblocks during the MCO.** Queer Lapis reports at least two cases of queer men who were harassed at the roadblocks by the police. In both cases, the police checked the men’s phone and read their private messages. In one case, Queer Lapis reports that the man was asked intrusive and degrading questions, including how he likes to have sex. The man reported feeling sexually harassed by the police.¹¹⁵ A non-binary person in Sabah to LGBTIQ human rights groups also reported a similar harassment at a roadblock during the MCO. As a result of the incident, they deleted their LGBT related apps to avoid similar harassment.

In April 2020, several trans women in Kuala Lumpur reported that they were mistakenly rounded up and placed in a government temporary shelter for homeless people by the Kuala Lumpur City Hall (DBKL). One of the trans women stated she and her friends are not homeless and have their own homes.

“I lived with my friend in a rented room near Chow Kit Market. On Monday, when my friends and I were having food at Medan Tuanku, several City Hall officers called us to go inside their truck and brought us here. I am not homeless, so are several others.”¹¹⁶

- **Separation from partners and loved ones.** The pandemic had a severe impact on couples in cross border relationships and of mixed nationality. In Malaysia, the overwhelming ‘same sex marriage’ panic and stigma towards LGBTQ persons have led to the invisibility of issues faced by LGBTIQ persons in relationships. As a result, LGBTIQ persons are not only further isolated and are denied the opportunity to build healthy and sustainable relationships, but they are also unable to seek support, let alone discuss their relationship openly without fear.

The Making the Invisible Visible in Southeast Asia report includes non-binary persons who were forced to end their relationships with their partners, who were living abroad during the pandemic. The LGBT-phobic environment in Malaysia was a main consideration for separating, as living in Malaysia was not option for them.¹¹⁷

Queer migrants living and working in Malaysia say that they are constantly worried and anxious of the prospect of being separated from their partners. They are worried of the risk of them not being allowed back in the country if they were to leave, and their partners not being allowed to leave to be with them due to Covid-19 travel restrictions and the lack of

115 “Can the police check your Grindr at a roadblock?” *Queer Lapis*, 2020, <https://www.queerlapis.com/can-police-check-your-grindr/>

116 Razak, Radzi, and Kenneth Tee. “On Mattresses One-Metre Apart, KL’s Homeless Placed in Shelters to Tide over Covid-19.” *Malay Mail*, 4 Apr. 2020, www.malaymail.com/news/malaysia/2020/04/04/on-mattresses-one-metre-apart-kl-homeless-placed-in-shelters-to-tide-over/1853377.

117 Sayoni. *Making the Invisible Visible in Southeast Asia*, Singapore, 2020. page 31

recognition of their relationship.¹¹⁸ In turn, disclosure of their relationship to the Immigration Department could result in rejection of their application to leave the country as evidenced by the multiple rejections faced by a man who sought permission to leave the country to reunite with his partner. The man reportedly has been rejected over 30 times by the immigration due to “insufficient supporting documents” or “unnecessary travel” since March 2020. In addition, the man was also told to ‘repent’ by the Immigration Department for disclosing his relationship.¹¹⁹ Against the backdrop of increasing xenophobia and anti-LGBT sentiments, queer migrants are increasingly anxious over both their and their partner’s safety and security since they have no pathway to secure a future in Malaysia.¹²⁰

Tasha and her partner share this anxiety. Although they are legally married in Tasha’s country of origin, due to the non-recognition of their relationship in Malaysia, Tasha remains in the country thanks to their work visa. During the pandemic, they had to make the difficult decision of quitting their job, as their work did not allow them travel to see their family members abroad. They were left with the difficult decision of choosing their family abroad and their family in Malaysia, which resulted in a massive mental strain. They shared that they went through months of therapy to cope with the separation, the thought of not being with their partner in the same place, the changing dynamics of their relationship and the uncertainty surrounding the prospect of their not being able to see their partner due to the non-recognition of their relationship in Malaysia. Tasha added that being legally married does not give them any protection in Malaysia. In turn, it could potentially pose threats to them and their partner should they disclose that they are married. For example, Tasha’s partner traveling under a spousal visa is not an option for them, due to the risks of prosecution, denial of travel, among others. As a result, Tasha had to rely on her embassy’s support to enable her to reunite with their partner. Throughout this period, Tasha connected with other queer migrants in Malaysia for support, researched ‘LGBT immigration advice’, and reached out to legal centers abroad for legal advice. Tasha noted that the support that they received from a law center abroad was helpful in their decision-making process.¹²¹

Following global campaigns, such as #LoveIsNotTourism¹²² aimed to reunite binational couples, many countries, in particular EU countries¹²³ and Canada¹²⁴ have loosened their travel restrictions to permit unmarried couples and life partners to reunite. Although a #LoveIsNotTourism campaign was launched in Malaysia, the campaign did not explicitly mention LGBTQ couples and their unique vulnerabilities.¹²⁵

- **LGBTIQ refugees and stateless persons** were hard hit by the pandemic. Their accessibility to humanitarian aid was significantly lower and was compounded by among others, the increasing xenophobia and anti-LGBT sentiments, lack of legal documents. In many instances, legal documents were required to access humanitarian aids, including by non-state actors. The

118 Interview with Kimani, 27 March 2021

119 FMT Reporters. “Repent’ Shocker in Official Rejection Note from Immigration to Travel Abroad.” *Free Malaysia Today (FMT)*, 7 Feb. 2021, www.freemalaysiatoday.com/category/nation/2021/02/07/repent-shocker-in-official-rejection-note-from-immigration-to-travel-abroad.

120 Interview with Kimani, 27 March 2021

121 Interview with Tasha, 27 March 2021

122 “#LoveIsNotTourism - Official Website.” *#LoveIsNotTourism*, 26 Dec. 2020, www.loveisnottourism.org.

123 Sh.Januzi. “EU Countries That Have Reopened Borders for Unmarried Partners Separated by Entry Ban.” *Schengen Visa Info.Com*, 21 Nov. 2020, www.schengenvisa.info.com/news/eu-countries-that-have-reopened-borders-for-unmarried-partners-separated-by-entry-ban.

124 MacCharles, Tonda, and Nicholas Keung. “Canada Eases Border Restrictions for Students, Unmarried Couples and Those with a Dying Relative.” *TheStar.Com*, 3 Oct. 2020, www.thestar.com/politics/federal/2020/10/02/canada-to-make-it-easier-for-students-lovers-and-those-with-a-dying-relative-to-cross-border.html.

125 “Reunite Binational Malaysians Couples and Families.” *Change.Org*, 2020, www.change.org/p/malaysian-government-reunite-binational-malaysians-couples-and-families-c76977c6-9d10-4d09-8edf-bec6b6d8916c?utm_source=share_petition.

use of legal documents in general as an authentication method created additional barriers for trans and non-binary persons to access humanitarian aid due to concerns of being outed and subjected to discrimination because of their gender identity and/or perceived sexual orientation.¹²⁶

During the pandemic, some LGBTIQ asylum seekers and refugees sought support from LGBTIQ human rights groups for rent, food, health and well-being and financial support for other expenses. It is important to note that LGBTIQ refugees, in many instances, are unable to seek support from their respective refugee communities. In fact, some may even find it challenging to express their gender identity, gender expression, sexual orientation, and their romantic relationship, which often may be their reason for seeking asylum. Consequently, some may even present themselves as heterosexual and/or cisgender to avoid discrimination, especially if they come from an LGBT-phobic context.

The xenophobic climate, coupled with the increasing anti-LGBT sentiments also increased anxiety and stress among the LGBTIQ refugees over their personal safety and security and their increased vulnerability to arbitrary arrest and detention based on their nationality, gender expression, gender identity and sexual orientation. Muslim LGBTIQ refugees experienced additional mental health burden due to criminalization of LGBTIQ persons based on sexual orientation, gender identity and gender expression under state syariah laws. Meanwhile, many trans refugees have expressed anxiety over their vulnerability to violence and mistreatment in detention. As a result, LGBTIQ refugees suffer trauma and isolated environments with little support.

- **LGBTQ persons are overrepresented in the B40 category and in informal sectors**¹²⁷ owing to employment discrimination against LGBTIQ persons. Angel, a human rights defender from Sabah, points out that the employment discrimination and economic marginalization of trans women makes them vulnerable during this pandemic, as they are left with little or no protection. She explained,

“It’s a problem when we [from the trans community] are not able to get professional jobs. So, when something huge like a pandemic happens, we’re left without a stable income.”¹²⁸

Suhakam’s Study on Discrimination against Transgender Persons based in Kuala Lumpur and Selangor supports Angel’s observation. The study shows that at least 34 of the 100 trans and intersex respondents earned below RM1,500 per month; 28 others earn between RM1,500 and RM3,000 monthly, while 45 respondents stated that they engage in additional part time jobs to supplement their financial commitments, including their specific trans healthcare needs, among others.¹²⁹

More than half of the respondents, 58% of the respondents, were denied employment because of their gender identity; 57% reported that the prospective employers-imposed conditions or questioned their gender identity. This included asking them to cut their hair, remarking on

126 Sim, Natasha. “LGBTQ Sabahans Help Each Other Survive Covid-19, Politics & Isolation.” *Queer Lapis*, 2 Nov. 2020, www.queerlapis.com/lgbtq-sabahans-help-each-other-survive-covid-19-politics-isolation.

127 “Statement by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights, on His Visit to Malaysia, 13–23 August 2019.” *OHCHR*, 2019, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24912.

128 Ibid.

129 Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity) by the Human Rights Commission of Malaysia (SUHAKAM), 2019, page 53

their attire, asking about their genitals, and presumed they were unqualified.¹³⁰

Making the Invisible Visible in Southeast Asia and the Monitoring Report: LGBTIQ+ Rights in Malaysia reports show that queer women leave their jobs due to misogynistic and LGBT-phobic workplace environments.

Q, a bisexual woman, shared that her choices of jobs had been limited due to her fear of being outed and the multiple forms of sexism in formal work environments.

“I know there are those who are okay with LGBTIQ, but there are also other people who are not okay with you being gay. What if one of your colleagues is homophobic and he or she does not like you, it is so easy to say ‘hey, this person should not work here, this person is gay’. What I do not understand is, what does my sexuality have to do with my ability to contribute to the business or the work that I am supposed to do? But that is the thing, you become paranoid about it and decide that you cannot be so open about it. And this is just not comfortable at all. You are scared because of just who you are. They could use that to terminate your career and your income....

At my previous job, they made misogynistic jokes, and I felt like I had to restrain myself because they were higher up in rank. So, it is quite a struggle because you must face all this around you, and at the same time you must act professional. So, I have anxiety about being queer as a government staff and at the same time, trying to be cool about these people passing obnoxious remarks. It is really frustrating, and it does affect my choice of jobs in life.”¹³¹

LGBTQ persons in informal sectors, including sex workers¹³² were significantly affected by the pandemic. Given the scarcity of jobs and the employment discrimination faced by LGBTQ persons, many risked exposures to Covid-19 to sustain themselves. Furzann, a queer person, shared that they had to be financially secure to move away from hostile family members. Despite the Movement Control Order, Furzann continued working non-stop everyday: “I still have a job which I’m grateful for. I need to get paid. I have to go out and risk my health. I’m on survival mode all the time, I just have to deal with it.”¹³³

Many sex workers suffered loss of income due to the MCO. The Queer Lapis Sex Workers series report that sex workers, who are largely from the lower economic background or the B40 category found it challenging to find clients, and many had to find other employments opportunities to support themselves.¹³⁴ Khartini Slamah, human rights defender, noted that many trans women sex workers were unable to pay their rent and utilities, put food on the table, and afford basic needs due to the severe economic impact of the pandemic.¹³⁵

Khartini, too, highlighted the “trickle-down effect on senior transgender women who have no job and normally rely on community support from other transgender women for their small

130 Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity) by the Human Rights Commission of Malaysia (SUHAKAM), 2019, page 53

131 Monitoring Report: LGBTIQ+ Rights in Malaysia <https://arrow.org.my/wp-content/uploads/2021/01/LGBTIQ-Rights-in-Malaysia-.pdf>

132 Sim, Natasha. “LGBTQ Sabahans Help Each Other Survive Covid-19, Politics & Isolation.” *Queer Lapis*, 2 Nov. 2020, www.queerlapis.com/lgbtq-sabahans-help-each-other-survive-covid-19-politics-isolation.

133 Sayoni. *Making the Invisible Visible in Southeast Asia*, Singapore, 2020, page 21

134 Pillai, Vinodh. “We Don’t Do It For Fun: The Sex Workers Series Pt 3.” *Queer Lapis*, 22 Dec. 2020, www.queerlapis.com/sexworkseriespt3.

135 Slamah, Khartini. “Mama Tini Talk of Services for Transgender Women in Malaysia.” *APCOM*, 10 July 2020, www.apcom.org/mama-tini-talk-of-services-for-transgender-women-in-malaysia.

home-based businesses”¹³⁶

LGBTQ human rights defenders and groups that provided Covid-19 relief for LGBTIQ persons observed that LGBTIQ persons have limited access to humanitarian aid due to fear of discrimination and degrading treatment, use of the national identification card to access humanitarian aid, among others.

On the flip side, the government is also unaware of the poverty and economic marginalization of LGBTIQ persons, although at least two donations were made to ex-LGBT groups for the participants of the mukhyyam programmes through JAKIM’s Musa’adah Covid-19 fund. These micro efforts, which address short terms needs, do not address the magnitude of poverty and economic marginalization faced by LGBTIQ persons as well its root causes. Currently, there is no data collection in relation to poverty and economic marginalization faced by LGBTIQ persons in Malaysia and its contributing factors. As a result, there are no meaningful, targeted, and long terms efforts to alleviate LGBTIQ persons from poverty and economic marginalization by the government.

A human rights defender in Pahang noted that transgender women and sex workers from the B40 category were left out of government food aid programmes, including those by the Welfare Department. The defender noted that the Welfare Department only delivered 15 to 16 food aid provisions when 200 trans women needed food aid.¹³⁷

In response to the emerging needs, LGBTIQ human rights groups launched several fundraising and Covid-19 relief efforts over the pandemic.

SEED Malaysia, a trans led organization in Malaysia, started a food aid programme for marginalized communities in Kuala Lumpur, Selangor, and Malacca. SEED reported that they had to increase their daily free food programme, which served 70 to 100 persons due to increase in demand during the MCO.¹³⁸

Justice for Sisters together with SEED Malaysia also launched the Trans Solidarity Fund to support trans people affected by the pandemic and MCO. The Trans Solidarity Fund raised RM 40,960.35, and supported over 600 requests for food aid, rent and medical support, cash contributions and support for legal fees by trans women and sex workers in at least 12 states in Malaysia. The Trans Solidarity Fund reported that about 20% of the recipients were either unemployed or had no stable income. Meanwhile, over 48% of the beneficiaries earned between RM 200 – 950. In terms of age groups, the trans women who benefited were between 19 and 82 years old. The cisgender women sex workers recipients were between 30 and 45 years old.¹³⁹

In Kuantan, LGBTQ human rights defenders in collaboration with #MakanKongsi delivered food aid to at least 300 trans women and sex workers in the B40 category.¹⁴⁰ In total, they raised RM 10, 000 through public donations to address their needs.¹⁴¹

136 *ibid.*

137 Pillai, Vinodh. “The Trans Women at the Frontline.” *Queer Lapis*, 29 Apr. 2020, www.queerlapis.com/the-trans-women-at-the-frontline.

138 *Ibid.*

139 Justice for Sisters. “Update 17 May: Trans Solidarity Fund / Dana Solidariti Transgender.” *Justice for Sisters*, 17 May 2020, justiceforsisters.wordpress.com/2020/04/09/update-trans-solidarity-fund-dana-solidariti-transgender.

140 BERSIH 2.0 and ENGAGE. #MakanKongsi Report 2020. n/a, 2020, www.bersih.org/wp-content/uploads/2021/01/Bersih-2.0-Makan-Kongsi-Report.pdf. Page 24

141 Pillai, Vinodh. “The Trans Women at the Frontline.” *Queer Lapis*, 29 Apr. 2020, www.queerlapis.com/the-trans-women-at-the-frontline.

In Sabah, the Queer Solidarity Fund by the Gender and Sexuality Alliance Kota Kinabalu (GSAKK) raised RM 32, 608.73, which supported 219 LGBTQ persons and their family members in Kota Kinabalu and Semporna. The funds were used for among others, food aid, cash contribution, school fees, healthcare costs, to support utility bills.

GSAKK noted that most of the recipients of their funds were trans feminine and undocumented persons. Most of them were unemployed or had no stable income. They further noted that while there are other Covid-19 relief programmes, fears of discrimination prevent LGBTQ persons from seeking aid.¹⁴²

Some of the recipients Queer Solidarity Fund were hard to reach, as they did not own phones. The roadblocks and travel restrictions in Sabah made it even more challenging to reach these communities.

JAKIM through its Musa'adah Covid -19 Fund made two donations to 'LGBT community'. In March, a donation was made to Hijrah Republique Network Organisation for LGBTQ persons who are 'returning to right path' or described as hijrah. The term 'hijrah' is used in multiple contexts, including but not limited to LGBTQ persons.

Meanwhile, in September 2020, the Musa'adah Covid-19 Fund¹⁴³ channeled RM 260,500 to Hijrah Republique Network Organisation again for the LGBT persons who participated in JAKIM's much-scrutinized Mukhayyam programme.¹⁴⁴

Given the increasing climate of prosecution, rehabilitation efforts and discrimination against LGBTQ persons in Malaysia by state actors, a few LGBTIQ human rights defenders raised concerns over collection of personal data of the recipients of the LGBTQ specific government Covid-19 relief.

While the government Covid-19 relief for 'LGBT community' is needed to address LGBTQ persons' immediate financial situation, it also reinforces the existing paternalistic relationship between the state and LGBTQ persons. In this context, it makes LGBTQ persons as well as the public less critical of the state's policies in relation to rehabilitation and conversion therapy given the support and perks that one could access by participating in the JAKIM's rehabilitation programmes, which are harmful and inconsistent with human rights.

Criminalization of LGBTQ persons

In Malaysia, LGBTQ persons are criminalized under various Federal and state Syariah laws based on their gender expression and actual or perceived sexual orientation and gender identity as well as consensual sexual acts.¹⁴⁵ This includes;

142 Sim, Natasha. "LGBTQ Sabahans Help Each Other Survive Covid-19, Politics & Isolation." *Queer Lapis*, 2 Nov. 2020, www.queerlapis.com/lgbtq-sabahans-help-each-other-survive-covid-19-politics-isolation.

143 Ahmad, Samadi. "80 Peratus Tabung Musa'adah Covid-19 Sudah Disalurkan [METROTV]." *Harian Metro*, 18 Sept. 2020, www.hmetro.com.my/mutakhir/2020/09/621861/80-peratus-tabung-musaadah-covid-19-sudah-disalurkan-metrotv.

144 Malay Mail. "About 80pc of Musa'adah Covid-19 Fund Distributed to Recipients, Says Minister." *Malaysia | Malay Mail*, 18 Sept. 2020, www.malaymail.com/news/malaysia/2020/09/18/about-80pc-of-musaadah-covid-19-fund-distributed-to-recipients-says-minister/1904448.

145 Queer Lapis. "LGBTQ Legal Guide: What Laws Are out to Catch You?" *Queer Lapis*, 26 Feb. 2020, www.queerlapis.com/legal-resource-laws-part-1-laws.

Federal laws

- **Penal Code 377** criminalizes consensual carnal intercourse between adults
- Laws that disproportionately affect LGBTQ persons
 - **Dangerous Drugs Acts** are often used to raid gay friendly clubs, saunas, and other establishments
 - **Section 372B** of the Penal Code
 - **Section 21 of the Minor Offences Act** (Public Indecency law)

State Syariah laws

- **Liwat** criminalizes sexual relations between men. *Liwat* is criminalized in 11 states except Pahang, Perak, and Selangor
- **Musahaqah** criminalizes sexual relations between women. *Musahaqah* is criminalized in 13 states except Pahang
- **Sexual relations between persons of the same gender** can be found in Selangor
- **Sexual intercourse against the order of nature** can be found in four states - Selangor, Sabah, Melaka and Negeri Sembilan
- **Male person posing as a woman** criminalizes trans women based on gender identity and gender expression in all states in Malaysia
- **Female person posing as a man** criminalizes trans men based on gender identity and gender expression in 4 states in Malaysia - Sabah, Pahang, Perlis and Negeri Sembilan

In 2020, Justice for Sisters and other LGBTIQ human rights groups documented several cases of arrests of LGBTQ persons, in particular, trans women. They were mainly arrested and charged under Section 372B of the Penal Code for alleged sex work. Meanwhile, under the state Syariah laws, the following laws have been used against trans women

- Male person posing as a woman
- Encouraging vice
- Abetment

In October 2020, the Kedah Islamic Department raided a birthday party attended by people of diverse gender identities. In the raid, 30 visible trans women attendees were singled out. They were each given a notice to appear at the Kubang Pasu District Islamic Office for an investigation under Section 26 of the Kedah Syariah Enactment 2014 for wearing female attire in a public place. Meanwhile, the organizer of the party, who was celebrating his birthday, was arrested under Section 31 of the same enactment for encouraging vice.¹⁴⁶

Many among the 30 trans women were concerned about the prospective financial costs should they be charged in court, especially given their strained financial situation due to the pandemic. Although they were upset by the selective persecution of the trans women attendees, given their financial situation, many felt that pleading guilty would be more cost effective. However, the Kedah Islamic Department has yet to contact the trans women since the investigation.

¹⁴⁶ Zulkifli, Zuliaty. "Padah Berlagak Wanita [METROTV]." *Harian Metro*, 28 Oct. 2020, www.hmetro.com.my/mutakhir/2020/10/635430/padah-berlagak-wanita-metrotv.

Section 26 of the Kedah Syariah Enactment 2014 is identical to then Section 66 of the Negeri Sembilan Syariah Enactment. In 2014, the Court of Appeal in a landmark decision declared Section 66 unconstitutional, as it contravened with the following Articles under the Federal Constitutional

- Article 5(1), which guarantees personal liberty, right to live with dignity, and right to livelihood/work
- Article 8 (1), which guarantees equality before the law and equal protection of the law
- Article 8 (2), which guarantees no discrimination on the grounds of gender
- Article 9 (2), which guarantees freedom of movement
- Article 10 (1)(a), which guarantees freedom of expression - a person's dress, attire and articles of clothing are a form of expression.

The Court of Appeal unanimously agreed that “the existence of a law that punishes the gender expression of transsexuals degrades and devalues persons with GID (Gender Identity Disorder) in our society. As such, Section 66 directly affects the appellants’ right to live with dignity, guaranteed by Article 5(1), by depriving them of their value and worth as members of our society.”

It is important to note that the understanding of gender identity has evolved exponentially since the Court of Appeal decision in 2014. Significantly, the International Classification of Diseases (ICD-11) removed of all trans-related diagnoses from the mental disorders chapter as ‘evidence is now clear that it is not a mental disorder, and indeed classifying it in this can cause enormous stigma for people who are transgender, there remain significant health care needs that can best be met if the condition is coded under the ICD.’¹⁴⁷

The Court of Appeal in its decision used transsexual, transgender, and persons with GID interchangeably. GID has been revised, and it is now known as gender dysphoria under the current Diagnostic Statistical Manual 5 (DSM).¹⁴⁸ In some sense, although ‘persons with GID’ uses a problematic pathologized framework, it provides entry points to expand the persons affected by law to non-binary and gender diverse persons.

147 World Health Organization. “WHO/Europe Brief Transgender Health in the Context of ICD-11.” *WHO Europe*, www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11.

148 “What Is Gender Dysphoria?” *Web Starter Kit*, www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria.

Syariah Criminal Offences (Kedah Darul Aman) Enactment 2014

Male person posing as woman

26. Any male person who, in any public place, wears woman's attire and poses as a woman shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Encouraging vice

31. Any person who promotes, induces, or encourages another person to indulge in any vice shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.¹⁴⁹

**this section is not available in all states in Malaysia*

Based on Justice for Sisters' documentation of cases of arrests and prosecution of LGBT persons, the 'encouraging vice' state laws are used in two contexts:

1. **Against organizers of events, which include participation of trans or LGBT persons.** In the past, many organizers of trans women beauty pageants or events were investigated or charged under the 'encouraging vice' state laws. In 2016, a trans woman who organized a trans woman event, which included a beauty pageant component, was charged under Section 35 of Federal Territories Syariah Enactment.

Section 35 prohibits anyone from promoting, inducing, or encouraging another person to indulge in any vice, an offence punishable with a fine of not more than RM5,000, or imprisonment of not more than three years, or both.¹⁵⁰

The use of the 'encouraging vice' state laws in this context suggests that freedom of association and expression of LGBT and trans people are perceived as promotion, inducement, and encouragement of another person to indulge in 'vice'.

Furthermore, any event organizers, regardless of their gender identity, are vulnerable to prosecution under this law, should their events include participation of trans and LGBT persons, as evidenced by the raid of the birthday party in Kedah.

¹⁴⁹ "Syariah Criminal Offences (Kedah Darul Aman) Enactment 2014." syariah.kedah.gov.my/userfiles/files/PDF/Enakment/BI/Enakmen%2018%20Syariah%20Criminal%20Offences%20(Kedah%20Darul%20Aman) %202014.pdf.

¹⁵⁰ Su-Lyn, Boo. "Transgender at 'Beauty Pageant' to Be Charged with Encouraging Vice, Group Says." *Malaysia | Malay Mail*, 5 Apr. 2016, www.malaymail.com/news/malaysia/2016/04/05/transgender-at-beauty-pageant-to-be-charged-with-encouraging-vice-group-say/1093719.

- 2. Alleged sex work.** Trans women who are arrested for alleged sex work by the state Islamic Departments are charged under the ‘encouraging vice’ state laws. Although the state Syariah laws criminalize sex work and pimping, the gendered laws are applied only to cisgender women.¹⁵¹ The state Syariah laws that criminalize sex work and pimping not only overlap with Section 372 B under the Penal Code, but also deprive sex workers of the right to work and live with dignity.

Many cases of arrests of trans women for alleged sex work and encouraging vice involve entrapment by police or the state Islamic officers, who pretend to be clients seeking massage or sexual services through online platforms, such as WeChat. In some cases, their intentions of seeking paid sexual or massage services are unclear. The officers may pretend to be someone seeking sex or a hook up online. Nonetheless, the sexual engagements and services rendered are made under the pretext that they are voluntary and consensual.

Further, the criminalization of sex work has sex workers vulnerable to arbitrary arrest and violence with impunity by state and non-state actors. It deprives sex workers of the right to work with dignity in a safe and conducive environment. Suhakam’s report on transgender persons in Kuala Lumpur and Selangor found that trans sex workers experience violence from clients, authorities, and members of the public, including

- Coerced sex relations without payments by police or clients
- Being paid less than the agreed amount
- Robbed by clients
- Extortion by police
- Physical and verbal violence by members of the public, clients, and police. This includes having eggs thrown at them, being called pejorative names in public and in detention.¹⁵²

Research shows that decriminalization of sex work will see a positive impact on reduction of HIV prevalence.¹⁵³ A series of papers by the Lancet shows

“Modelling suggests that across both generalized and concentrated HIV epidemics, decriminalization of sex work could have the largest effect on the course of the HIV epidemic, averting 33% to 46% of incident infections over the next decade through combined effects on violence, police harassment, safer work environments, and HIV transmission pathways.¹⁵⁴

The paper also showed that the ‘elimination of violence by clients, police and strangers could avert 17% to 20% of HIV infections among female sex workers and their clients in Canada and Kenya.’¹⁵⁵

151 Queer Lapis. “Laws Relating to Sex Work and Prostitution in Malaysia.” *Queer Lapis*, 15 Jan. 2021, www.queerlapis.com/sex-work-related-laws.

152 Study on Discrimination Against Transgender Persons Based in Kuala Lumpur and Selangor (Right to Education, Employment, Healthcare, Housing and Dignity) by the Human Rights Commission of Malaysia (SUHAKAM), 2019, page 62

153 “Facts about Sex Workers and the Myths That Help Spread HIV?” *The Lancet*, www.thelancet.com/series/HIV-and-sex-workers.

154 Moriarty, Katherine. “The Lancet Says Decriminalizing Sex Work Could Significantly Reduce HIV Infections.” *The Lancet*, 23 July 2014, www.thebodypro.com/article/leading-medical-journal-says-decriminalizing-sex-w.

155 *ibid.*

Freedom of Religion

In February 2020, Nur Sajat, a woman celebrity and entrepreneur, who is perceived as a trans woman faced severe backlash from state and non-state actors for posting photos of her in *telekung* or female prayer garments while performing *umrah* (pilgrimage) in Mecca on her social media platforms.¹⁵⁶

The backlash quickly escalated after Sajat's legal and travel documents was disclosed without consent (doxed) by one of her acquaintances. Following which, the Federal Territory Mufti's Office released her personal details on her birth certificate after obtaining them from the National Registration Department without her consent. This further fueled the backlash and concerns over her and her family members' safety and security. Significantly, the multiple doxing, which violated Sajat's rights, was amplified by the media. The event also led to the media misgendering and using her deadname in their reports.¹⁵⁷

The then Minister of Religious Affairs, on the other hand, called for Sajat to be banned from social media platforms, as her actions were deemed to have "given rise to discomfort among Muslims."¹⁵⁸

Although there is plenty of evidence that illustrates the existence of trans women throughout world history, their identities are still denied and misunderstood. Contrary to the hegemonic cis- and hetero-patriarchal understanding of religion, references to gender diversity can also be found in religious texts. For example, there are many references made to *mukhannath* and *khuntha* (intersex persons). *Mukhannath* is understood as an umbrella term for persons assigned male at birth, who express themselves through feminine gender expressions.

Amidst the public backlash against Nur Sajat for wearing the female prayer garment while performing the *umrah* with her family members, Mustafa Akyol, a prominent scholar, expressed in his own words that trans people have existed throughout history and the conflation of gender identity and sex leads to discrimination of transgender persons, including denial and restriction of their freedom of religion. He urged the society to come to terms with the existence of transgender people:

Some people are born with a conflict with their physical fitra and psychological fitra... Such a group of people exists, not just today, but also throughout history, for reasons we do not fully know... But there should be no problem in a transgender person being a full member of society – and a good Muslim.¹⁵⁹

Victor Madrigal-Borloz, United Nations Independent Expert on protection from Violence and Discrimination based on Sexual Orientation and Gender Identity (SOGI) in an address at the Identity Conference, Toronto pointed out the severe and systemic impact of binary notions, gender stereotypes, and preconceived ideas of feminine and masculine on trans and gender diverse persons:

¹⁵⁶ Palansamy, Yiswaree. "Minister's Nod for Authorities to Go after Trans Persons Will Lead to Spike in Discrimination, Violence, Says Rights Group." *Malaysia | Malay Mail*, 12 July 2020, www.malaymail.com/news/malaysia/2020/07/12/ministers-nod-for-authorities-to-go-after-trans-persons-will-lead-to-spike/1883702.

¹⁵⁷ Nawawi, Muhaamad Hafis. "It's Muhammad Sajjad" *NST Online*, 5 Feb. 2020, www.nst.com.my/news/nation/2020/02/562688/its-muhammad-sajjad.

¹⁵⁸ Malay Mail. "Mujahid Meets MCMC to Act against Nur Sajat's 'umrah' Social Media Posts." *Malaysia | Malay Mail*, 4 Feb. 2020, www.malaymail.com/news/malaysia/2020/02/04/mujahid-meets-mcmc-to-act-against-nur-sajats-umrah-social-media-posts/1834221.

¹⁵⁹ Koya, Abdar Rahman. "Leave Nur Sajat Alone, Prominent Turkish Scholar Tells Malaysian Authorities." *Free Malaysia Today*, 5 Feb. 2020, www.freemalaysiatoday.com/category/nation/2020/02/05/leave-nur-sajat-alone-prominent-turkish-scholar-tells-malaysian-authorities.

...I am convinced that the cruelty and viciousness of the violence and discrimination against trans women and men derives from the fact that respecting their identity represents the most radical rupture of the systems in place, that rely so strongly on binary notions and on preconceptions of the masculine and the feminine. The lack of legal recognition of gender identity in vast regions of the world must make us think about the connections with the concept of citizenry. As one scholar, from the global north recently put it, “when [States] deny legal access to trans identities, what they are actually doing is messaging a sense of what is a proper citizen.” As we speak of proper citizenship, we must also make reference to the cultural and juridical significance of criminalisation.¹⁶⁰

Statement by Minister of Religious Affairs

In July 2020, amidst the backlash against Nur Sajat for posting photos and videos of herself in a bikini on her social media platforms, the Minister of Religious Affairs in a statement announced that the Federal Territory Islamic Department has full license to arrest and educate trans people.¹⁶¹

The statement by the Minister had wide-ranging impact on all transgender persons regardless of their religious background and geographical locations. Through a separate documentation project, Justice for Sisters documented the impact of the Minister’s statement. At least four of seven respondents shared that they were worried about being in public places. The respondents added that they feared arbitrary arrest, violation of privacy and harassment by not just the Islamic Department, but also the police and members of the public.

One respondent was worried about her workplace enforcing stricter dress code policies following the Minister’s statement. She became even more worried as she did not own any male attire other than t-shirts.¹⁶²

The Minister’s statements illustrate the systemic and adverse impacts of criminalization of trans women coupled with state policies that promote rehabilitation of LGBT persons in creating an environment that allows arbitrariness, violence, and impunity to persist and fester.

State sponsored rehabilitation programmes

Since 2010, there have been multiple state-initiated anti-LGBT programmes, most of which focus on rehabilitation and conversion of LGBT persons. These programmes reinforce misinformation regarding LGBT people such as, the myth that ‘LGBT behaviours’ are caused by hormonal imbalances, psychological disorders, excessive sexual desires, or a lack of parental or spiritual guidance; that LGBT people deliberately defy cultural, religious, and societal norms; that LGBT persons are the sole vectors of HIV; and that LGBT identities can be corrected.

On 23 July 2018, Mujahid Rawa listed the government-sponsored LGBT programmes in Parliament:

- JAKIM’s voluntary treatment and rehabilitation programme, ‘*Ilaj Wa Syifa*’.

¹⁶⁰ “OHCHR | Identity Conference, Toronto.” *OHCHR*, 2018, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23129&LangID=E.

¹⁶¹ Palansamy, Yiswaree. “Minister’s Nod for Authorities to Go after Trans Persons Will Lead to Spike in Discrimination, Violence, Says Rights Group.” *Malaysia | Malay Mail*, 12 July 2020, www.malaymail.com/news/malaysia/2020/07/12/ministers-nod-for-authorities-to-go-after-trans-persons-will-lead-to-spike/1883702.

¹⁶² Unpublished research by Justice for Sisters

- The **Mukhayyam program** - a 3-day camp introduced as a strategy to reduce HIV transmission among key affected populations, namely Muslim trans women. The programme, listed in the National Strategic Plan to End AIDS 2016-2030, aims to create awareness about HIV, Islam and being a good Muslim; offer job placement and financial assistance for startups; and encourage participants to abandon immoral behaviour, including one's sexual orientation and gender identity. There are also *Mukhayyam* camps for gay men and lesbian women. The Global AIDS Response Progress Report 2016 has noted that there is no evidence to prove the efficacy of this programme.
- **Seminars and programs** targeting students, school counsellors, parents, volunteers, health staff and representatives of Muslim NGOs, that encourage people to avoid committing 'LGBT acts', and encourage others to identify and curb 'LGBT behaviours' within their families, social circles, and workplace.
- **JAKIM's e-book 'Panduan Hijrah Diri'** (available on Google Play Store), and other publications, including a compilation of hadith on 'LGBT acts and a brochure '*Memahami LGBT dari Perspektif Seorang Muslim*' (Understanding LGBT from a Muslim's perspective), which promotes conversion practices.
- A **5-year action plan - *Pelan Tindakan Menangani Gejala Sosial Perlakuan LGBT 2017 - 2021*** (Action Plan to address Social Ills, LGBT behavior 2017-2021). This action plan which aims to curb proactively and effectively 'LGBT behaviour' is endorsed by 22 partners, including the Ministry of Health, Ministry of Sport and Youth, Ministry of Women, Development and Community, state Islamic departments and other state agencies.

According to JAKIM's data, nine activities were held under their 'treatment and rehabilitation programmes on gender confusion' in 2019 – four seminars on gender confusion related issues targeting the public and five LGBT community intervention programmes:

- Two *mukhayyam* programmes for the lesbian and gay communities
- One appreciation programme of Islam (preventing wayward life) for women prisoners
- Forum for ex-trans people
- One *ibadah* (worship) national camp for gay and transgender community

JAKIM's Director General said the "gender confusion education, treatment, and rehabilitation programme" has reached over 1,700 LGBT persons since it began in 2011. He added many have *hijrah* and are now assisting JAKIM and state Islamic departments as facilitators.

According to the data and statements by JAKIM and other state actors, the government programmes aim to change and suppress LGBTQ persons' sexual orientation or rehabilitate LGBTQ persons due to our sexual orientation, gender identity and gender expression.

Human rights defenders, who have raised concerns over the compliance of these programmes, particularly the *Mukhayyam* programme, with human rights standards have been met with reprisals by state and non-state actors, including state linked ex-LGBT groups. In 2019, a human rights defender faced backlash by conservative groups for describing the programme as amounting to 'state sponsored violence', who called for the HRD to retract his statement and issue an apology for making allegedly baseless claims.¹⁶³ The police also summoned him for an investigation¹⁶⁴.

163 Davasagayam, Kevin. "LGBT Activist Asked to Withdraw Statement against Mukhayyam Programme." *www.thesundaily.my*, 19 Apr. 2019, www.thesundaily.my/local/lgbt-activist-asked-to-withdraw-statement-against-mukhayyam-programme-FG796007.

164 "Evidence of State-Sponsored Discrimination against LGBT Persons." *Malaysiakini*, www.malaysiakini.com/letters/472951.

In August 2020, an HRD faced reprisals by state and non-state actors for publishing contents of conversion therapy in Malaysia, which included the mukhayyam programme and other state funded rehabilitation programmes via her social media accounts. Aside from online mobbing and harassment, at least 4 police reports were lodged against the HRD, of which one was from JAKIM. JAKIM claimed the contents “... are manipulative, malicious and seen as wanting to hinder and restrict the right to freedom of religion of Muslims in the LGBT community who want to lead a better life in line with the requirements of Islamic law”.¹⁶⁵

Banning of Books

In November 2020, the Ministry of Home Affairs banned “Gay is OK! A Christian Perspective” under Section 7(1) of the Printing Presses and Publications Act 1984¹⁶⁶ on the grounds that the publication is “likely to be prejudicial to public order, which is likely to be prejudicial to morality and which is likely to be prejudicial to public interest is absolutely prohibited throughout Malaysia.”¹⁶⁷

Printing Presses and Publications Act 1984

Undesirable publications

7. (1) If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.

Conclusion

To conclude, the discrimination and violence against LGBTQ persons are on the rise. However, most of these cases are under reported and undocumented. Amidst the increasing climate of impunity, scapegoating and prosecution of LGBTQ persons, access to justice has become far more restricted. As such, Justice for Sisters urges the government to:

1. End state funded and endorsed activities that promote rehabilitation and conversion therapy
2. Repeal all laws that criminalize LGBTQ persons based on sexual orientation, gender identity, gender expression and sex characteristics

¹⁶⁵ “Jakim Lodges Police Report against Twitter Account Owner Regarding Mukhayyam Programme.” *The Sun Daily*, 3 Aug. 2020, www.thesundaily.my/local/jakim-lodges-police-report-against-twitter-account-owner-regarding-mukhayyam-programme-BK3286715.

¹⁶⁶ Bernama. “Home Ministry Bans Two Books, including ‘Gay Is OK!’” *NST Online*, 19 Dec. 2020, www.nst.com.my/news/nation/2020/12/650656/home-ministry-bans-two-books-including-gay-ok.

¹⁶⁷ Printing Presses and Publication (Control of Undesirable Publications [No.3] Order 2020), Federal Government Gazette. 27 November 2020. P.U (A) 340

3. Implement the CEDAW concluding observations and UPR recommendations in relation to LGBTIQ persons
4. Meaningfully engage with LGBTIQ human rights groups.



**POLICE ARRESTS AND
ABUSE DURING THE MCO**

POLICE ARRESTS AND ABUSE DURING THE MCO

On the 18 March 2020, the Movement Control Order (MCO) was officially implemented throughout the nation as a drastic means to control the spread of Covid-19. Under the MCO, there would be a complete restriction of movement and assembly nationwide and closure of most non-essential public and private institutions. The enforcement agencies - mainly the police - have been granted extraordinary powers during these times to ensure the restriction is complied with. SUARAM has noted multiple instances when the police have violated human rights through their arrests and abuse of power throughout the year 2020.

MCO Violations: Compound and Court Sentence

Under the MCO, the Royal Malaysian Police arrested and imprisoned a disconcerting number of alleged MCO violators. Within the first two weeks leading up to 2 April 2020, 4,189 arrests were made, and out of those arrests, 1,149 (27%) were charged in court¹⁶⁸. By 9 April, the number of arrests almost doubled to 7,479¹⁶⁹. In the same week, new policies granting the police discretionary power to issue RM1,000 compounds were enacted¹⁷⁰. With the introduction of the compound, there was a reduction in arrests made but the respite was short lived.

On 10 April 2020, Senior Minister (Security Cluster) Datuk Seri Ismail Sabri Yaakob announced that the government would consider implementing heavier fines. This came after there were some views that the RM1,000 compound was too lenient, resulting in non-compliance and further MCO violations. He also mentioned in his speech that the government was looking into reinstating court sentencing that would include prison punishment as a further deterrent¹⁷¹.

The government later reinstated prison sentencing for MCO violations. However, the decision was met with opposition from the prison department and the latter reportedly requested the courts to stop sending MCO violators to prison to prevent any COVID-19 outbreak within prisons. The government later introduced and converted 13 academies under the Prisons Department into holding facilities for those sentenced to prison for MCO violations¹⁷².

168 'Ingkar PKP: Lebih 4,000 tangkapan, 1,000 didakwa di mahkamah' (Malaysiakini, 2 April 2020) <<https://www.malaysiakini.com/news/518343>> accessed 1 December 2020

169 Tharanya Arumugam, 'A heavier fine for flouting the MCO? [NSTTV]' (New Strait Times, 10 April 2020) <<https://www.nst.com.my/news/nation/2020/04/583129/heavier-fine-flouting-mco-nsttv>> accessed 1 December 2020

170 Farik Zolkepli, 'Cops to start issuing RM1,000 compounds for MCO violations from Wednesday (April 8)' (The Star, 8 April 2020) <<https://www.thestar.com.my/news/nation/2020/04/08/cops-to-start-issuing-rm1000-compounds-for-mco-violations-from-wednesday-april-8>> accessed 1 December 2020

171 Tharanya Arumugam, 'A heavier fine for flouting the MCO? [NSTTV]' (New Strait Times, 10 April 2020) <<https://www.nst.com.my/news/nation/2020/04/583129/heavier-fine-flouting-mco-nsttv>> accessed 1 December 2020

172 'Putrajaya to convert 13 academies into prisons for MCO violators' (Malaysiakini, 15 April 2020) <<https://www.malaysiakini.com/news/518343>> accessed 1 December 2020

Ismail Sabri later announced on 16 April 2020 that the cumulative number of arrests during MCO was 11,017 individuals and the government had decided to stop giving out compounds and would subject all MCO violation cases to court sentencing¹⁷³. Yet, after the government had shifted to Controlled Movement Control Order (CMCO) on 4 May 2020 allowing some industries to operate and cross-state movement became possible in some cases, the government decided to go back to issuing compounds. After a month of sentencing violators through the court process, the police went back to issuing compounds on May 19 as there was a spike in covid cases due to inter-state travel for Hari Raya¹⁷⁴.

Number of Individuals Arrested and Sentenced to Prison during MCO and CMCO¹⁷⁵

	MCO (18 March – 3 May 2020)	CMCO (4 May – 9 Jun 2020)
Arrested	24,081	2,285
Sentenced to Prison	4,355	636

Up until 10 July 2020, the Ministry of Health had issued a total 10,466 compounds, with RM5,928,000 amount collected. This amount increased to RM17,377,500 by 24 October 2020¹⁷⁶ while RM11,713,500 in compounds were issued to MCO violators. This meant that the government had issued a total of RM29,091,000 in compounds. The last Parliament session of 2020 also revealed the latest statistics of arrests and compounds since the beginning of MCO, namely, a total of 29,784 individuals had been arrested while a total of 42,693 individuals were issued compounds¹⁷⁷.

Unfair Sentencing and Nit-picking

SUARAM also took note of perceived unfair or disproportionate punishment for MCO violators. This included notable cases where individuals were given preferential treatment for being office bearers, or relatives of VIPs.

Excessive punishment toward vulnerable communities was also documented during the MCO. For example, in Tampin, Negeri Sembilan, an 80-year-old man and a 63-year-old woman were fined while waiting for food aid in front of a restaurant in April¹⁷⁸. The two elderly persons were not able to pay their RM1,000 fine despite attempts by the community to assist them. No consideration was given to them even though they lived on food aid and social services.

In another case, a single mother with a six-year-old son was sentenced to 30 days in prison after

malaysiakini.com/news/520731> accessed 1 December 2020
 173 Hasimi Muhamad, 'MCO: Another 11,017 violators brought straight to court' (Astro Awani, 16 April 2020) <<https://www.astroawani.com/berita-malaysia/mco-another-11017-violators-brought-straight-to-court-238648>> accessed 1 December 2020
 174 John Bunyan, '127 arrested for defying CMCO SOP; cops have started issuing compounds, says senior minister' (Malay Mail, 19 May 2020) <<https://www.malaymail.com/news/malaysia/2020/05/19/127-arrested-for-defying-cmco-sop-cops-have-started-issuing-compounds-says/1867614>> accessed 1 December 2020
 175 Oral Answer in Parliament – Question 41, 13 August 2020
 176 Oral Answer in Parliament – Question 20, 5 November 2020
 177 Oral Answer in Parliament – Question 24, 5 November 2020
 178 Esther Liew, 'Poor 80yo Uncle Who's Only Waiting For His Free Food Gets Slapped With RM1,000 Fine' (World of Buzz, 17 April 2020) <<https://worldofbuzz.com/poor-80yo-uncle-whos-only-waiting-for-his-free-food-gets-slapped-with-rm1000-fine/>> accessed 1 December 2020

being found guilty of violating the MCO on April 21¹⁷⁹. She was reported to be out shopping for a beverage when she was detained. Even though the sentence was later reduced to RM 1,000 fine, she was sent to prison to serve her sentence while her legal counsel appealed.

By contrast, in the cases involving Deputy Minister of Health Dr Noor Azmi Ghazali and Perak Executive Council, Razman Zakaria who also violated the MCO, they were not subjected to the strict punishment we saw meted out to ordinary citizens. They had flouted the MCO by attending a lunch gathering in a school¹⁸⁰ but were only fined RM1,000.

Another noteworthy case was that of Nurul Hidayah Ahmad Zahid, the daughter of UMNO leader Zahid Hamidi. She was sharing images of herself violating the MCO restrictions. The police only called her up for investigations after her postings went viral on social media¹⁸¹. She was fined RM 800, a reduction from the initial fine of RM1,000. Media practitioners also reported that they were not allowed to report on her case. The court denied that the media were disallowed from covering the trial claiming that it was not aware of the presence of media personnel¹⁸².

The Plantation, Industries and Commodities Minister Khairuddin Aman Razali also came under severe criticism for failing to follow the government's own mandatory quarantine order after an overseas trip¹⁸³. He was only given a RM1,000 fine and after the media exposure, he pledged to donate his ministerial salary from May until August 2020 to the government's Covid-19 fund¹⁸⁴. The Attorney-General's Chamber subsequently decided that no further action would be taken against the minister¹⁸⁵ even though the Parliament revealed that 27 police reports had been made against him.¹⁸⁶

Arrests of Children

During the MCO, there were also reports of minors being detained for violating MCO. At Least two known cases of arrests involving children were reported, one involving a fourteen-year-old child who was arrested together with seven other adults for praying in a surau near Parit Husain, Bagan Serai, Perak¹⁸⁷.

179 'Single mum jailed 30 days for breaching MCO wants sentence revised' (Free Malaysia Today, 28 April 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/04/28/single-mum-jailed-30-days-for-breaching-mco-wants-sentence-revised/>> accessed 1 December 2020

180 'Deputy health minister, Perak exco fined RM1,000 each for breaching MCO' (Free Malaysia Today, 28 April 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/04/28/deputy-health-minister-perak-exco-fined-rm1000-each-for-breaching-mco/>> accessed 1 December 2020

181 'AG Idrus denies his office silent on MCO cases' (Free Malaysia Today, 27 April 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/04/27/ag-idrus-denies-his-office-silent-on-mco-cases/>> accessed 1 December 2020

182 The Athira Yusof, 'Court says unaware of media presence to cover Zahid's daughter's case' (New Strait Times, 6 May 2020) <<https://www.nst.com.my/news/crime-courts/2020/05/590467/court-says-unaware-media-presence-cover-zahids-daughters-case>> accessed 1 December 2020

183 Hazlin Hassan, 'Malaysian minister sparks anger for skipping quarantine after overseas trip' (The Strait Times, 19 August 2020) <<https://www.straittimes.com/asia/se-asia/malaysian-minister-skips-quarantine-after-overseas-trip-sparks-anger-in-parliament>> accessed 7 March 2021

184 'Malaysian minister in hot water for flouting quarantine apologises, donates 4 months of his salary' (The Strait Times, 22 August 2020) <<https://www.straittimes.com/asia/se-asia/malaysian-cabinet-minister-issued-s328-fine-after-controversy-over-quarantine-order>> accessed 7 March 2021

185 'Malaysian govt allows Cabinet minister to walk away despite breaking Covid-19 quarantine' (The Strait Times, 22 October 2020) <<https://www.straittimes.com/asia/se-asia/malaysian-govt-allows-cabinet-minister-to-walk-away-despite-breaking-quarantine>> accessed 7 March 2021

186 Oral Answer in Parliament – Question 40, 4 December 2020

187 Shaiful Shahrin Ahmad Pauzi, 'Remaja antara ditahan solat berjemaah di surau' (My Metro, 19 April 2020) <<https://www.hmetro.com.my/mutakhir/2020/04/568535/remaja-antara-ditahan-solat-berjemaah-di-surau>> accessed 1 December 2020

Another arrest involved two children aged fifteen and seventeen years of age. They were arrested with 18 others during a funeral in Klang¹⁸⁸. The children, who pleaded guilty, were later released while waiting for their sentencing pending behaviour report from the Social Welfare Department. They were both later fined RM 1,000 fine each.

Extrajudicial Punishment: Degrading Treatment

The police were reported to have carried out extrajudicial punishment against alleged MCO violators. Various videos that circulated via social media showed the police rounding up people in public areas and forcing them to do degrading physical exercises as a form of punishment¹⁸⁹.

A 27-second video that was verified to have been recorded in Kunak, Sabah showed police officers rounding up and hitting five teenagers with sticks. After the footage went viral, Minister of Home Affairs Datuk Seri Hamzah Zainudin said that the case was under investigation and action would be taken against the police officers for violating the standard operating procedure (SOP)¹⁹⁰.

In another case, Ahmad Radhi Bashizan, 19, who was on crutches, was assaulted by five police officers from IPD Kuala Muda during an arrest for allegedly violating MCO¹⁹¹. He complained that he was dragged into a police car despite his leg injury from a recent surgery. He was then handcuffed and asked to walk towards the patrol car without the use of his crutches or help from the police officers.

Restrictions on the Recording of Police Officers and Press Freedom

After receiving negative press from the circulation of police abuse and extrajudicial punishments during the roundup, the police began to take extra steps to prevent individuals from recording videos of the police on duty. IGP Abdul Hamid Bador said that PDRM would take stern action against those who recorded roadblocks to create negative perceptions of the police on social media¹⁹².

SUARAM also noted the restrictions and investigation of journalists covering immigration operations during the mass arrest of migrants around the Kuala Lumpur and Selangor area. The police opened an investigation paper on South China Morning Post correspondent Tashny Sukumaran. She was called for an investigation following her reporting on the arrest of migrants near Masjid India on 1 May 2020¹⁹³.

188 '18 men jailed, fined for attending funeral during MCO' (Malay Mail, 21 April 2020) <<https://www.malaymail.com/news/malaysia/2020/04/21/18-men-jailed-fined-for-attending-funeral-during-mco/1858943>> accessed 1 December 2020

189 '【独家】违反管控令群聚 被罚拉耳做运动' (E Nanyang, 29 March 2020) <https://www.youtube.com/watch?v=Y_tWCs6B7II&feature=youtu.be> accessed 1 December 2020

190 'Kes rotan: Ketegasan polis demi lindungi masyarakat, kata menteri' (Sinar Harian, 4 April 2020) <<https://www.sinarharian.com.my/article/77323/KHAS/Koronavirus/Kes-rotan-Ketegasan-polis-demi-lindungi-masyarakat-kata-menteri?fbclid=IwAR3b5jfX3KIqJqN001rxG2IjdbOgVF97UkZiiBvHXTJNF7PsHpsey7Buk>> accessed 1 December 2020

191 'Remaja bertongkat dakwa diheret ke balai dalam but kereta polis' (Malaysiakini, 24 April 2020) <https://www.malaysiakini.com/news/522317?utm_source=dlvr.it&utm_medium=facebook> accessed 1 December 2020

192 'IGP: Action can be taken on those who shoot photos, videos of roadblocks' (Malaysiakini, 7 April 2020) <<https://www.malaysiakini.com/news/519209>> accessed 1 December 2020

193 Max Walden, 'On World Press Freedom Day, Malaysia investigates journalist over 'provocation'' (ABC News, 4 May 2020) <<https://www.abc.net.au/news/2020-05-04/malaysia-investigates-journalist-world-press-freedom-day/12210552>> accessed 1 December 2020

Mass Arrests of Migrants

There were mass arrests of undocumented migrants, especially at three central locations in Kuala Lumpur and Selangor. The seizure started in Kuala Lumpur where hundreds of undocumented migrants were arrested after a surprise raid at Jalan Masjid India and Menara City One¹⁹⁴ that had earlier been put under enhanced movement control order (EMCO). The IGP had justified the arrest as an attempt to contain the spread of COVID-19¹⁹⁵.

Ten days later, another mass raid was conducted in the Selayang Market area. The immigration department later issued a statement saying that 1,368 undocumented migrants, including 261 women and 98 children were arrested and brought to a detention centre¹⁹⁶. On 14 May, the immigration officers arrested another 113 individuals, including 36 women and 11 children in Selayang Baru, another EMCO area¹⁹⁷.

Despite criticisms from NGOs such as Tenaganita, SUARAM, and Lawyers for Liberty that such actions were counterproductive, the government persisted with the arrests. Soon after, another 1,408 undocumented individuals were arrested, and Ismail Sabri again justified the actions by claiming that the migrants were nabbed while attempting to enter Malaysia through illegal routes¹⁹⁸. The raids continued in Petaling Jaya Old Town where around 200 undocumented migrants were arrested on 20 May 2020¹⁹⁹.

On 21 May 2020, Malaysian Health Director-General Noor Hisham Abdullah said that 35 foreign nationals that were detained in Bukit Jalil Immigration Detention Centre had tested positive for COVID-19²⁰⁰. Following that, another two cases were reported in Semenyih detention centre, which came to a total of 60 cases the next day²⁰¹. These infected numbers in immigration detention centres continued to grow during the following days just as numbers of cases were going down²⁰². Before long, the surge of cases in these overcrowded detention centres led Noor Hisham to concede that detention centres were now high-risk zones²⁰³.

194 Safeek Affendy Razali, 'Raid on undocumented migrants carried out at Masjid India, Menara City One' (New Strait Times, 1 May 2020) <<https://www.nst.com.my/news/nation/2020/05/589137/raid-undocumented-migrants-carried-out-masjid-india-menara-city-one>> accessed 1 December 2020

195 'Top cop says arrests of undocumented migrants' part of Covid-19 measures' (Free Malaysia Today, 2 May 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/05/02/top-cop-says-arrests-of-undocumented-migrants-part-of-covid-19-measures/>> accessed 1 December 2020

196 'Over 1k undocumented migrants arrested in Selayang enhanced MCO raid' (Malaysiakini, 12 May 2020) <<https://www.malaysiakini.com/news/525290>> accessed 1 December 2020

197 'EMCO: 113 undocumented migrants, including 11 kids, held after raids in Selayang Baru' (Malay Mail, 15 May 2020) <<https://www.malaymail.com/news/malaysia/2020/05/15/emco-113-undocumented-migrants-including-11-kids-held-after-raids-in-selaya/1866547>> accessed 1 December 2020

198 'Over 1,000 migrants arrested at illegal entry points taken into custody - Ismail' (Malaysiakini, 17 May 2020) <<https://www.malaysiakini.com/news/526079>> accessed 1 December 2020

199 'Around 200 Undocumented Migrants Arrested in Raid At PJ Old Town' (Malaysiakini, 20 May 2020) <<https://www.kinitv.com/video/3d403048-bfe1-46de-9b13-2282e8bd7a09>> accessed 1 December 2020

200 D Kanyakumari, 'COVID-19: New cluster involving immigration detainees identified in Malaysia' (Channel News Asia, 21 May 2020) <<https://www.channelnewsasia.com/news/asia/covid-19-new-cluster-malaysia-detainees-12756824>> accessed 1 December 2020

201 Joseph Kaos jr, 'Semenyih immigration detention centre under probe after two detainees test positive for Covid-19' (The Star, 22 May 2020) <<https://www.thestar.com.my/news/nation/2020/05/22/semenyih-immigration-detention-centre-under-probe-after-two-detainees-test-positive-for-covid-19>> accessed 1 December 2020

202 'Covid-19: 48 new cases, almost half from Semenyih immigration depot' (Malaysiakini, 23 May 2020) <<https://www.malaysiakini.com/news/527066>> accessed 1 December 2020

203 The Athira Yusof, 'More than 13,000 detainees, staff at detention depots have undergone Covid-19 tests' (New Strait Times, 18 June 2020) <<https://www.nst.com.my/news/nation/2020/06/601629/more-13000-detainees-staff-detention-depots-have-undergone-covid-19-tests>> accessed 7 March 2021



**MIGRANT RIGHTS AND
THE COVID-19 PANDEMIC**

MIGRANT RIGHTS AND THE COVID-19 PANDEMIC

The Covid-19 pandemic has exposed many of the vulnerabilities faced by migrants in Malaysia and the implementation of Malaysia's Movement Control Orders (MCO) and its variants have only aggravated the plight of the migrant workers in Malaysia.

Prior to the Covid-19 outbreak in Malaysia, migrant workers were already being subjected to living in cramped and unsanitary workers' accommodation along with poor access to healthcare because of a severe lack of workers' protection. They are also victims of social stigmatization where they are accused of being job takers and suppressing wages of local workers.

The International Labour Organization (ILO) defines the migrant workers as: "a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment"²⁰⁴. By comparison, the International Organization for Migration (IOM) sees the migrant as:

*An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally-defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students*²⁰⁵.

Some of the above-mentioned vulnerabilities faced by migrant workers have existed long before the Covid-19 pandemic and the different kinds of Movement Control Order (MCO) imposed by the government to combat the pandemic.²⁰⁶ At the same time, new kinds of vulnerabilities and rights abuses have intensified or emerged in the past year. The following international reports give an idea of the kinds of abuses and human rights violations prior to the pandemic:

1. *Forced Labour in the production of electronic goods in Malaysia. A Comprehensive Study of Scope and Characteristics [2014]*²⁰⁷

204 'ILC87 - Report III (1B) Migrant Workers' (Ilo.org, 2021) <<https://www.ilo.org/public/english/standards/relm/ilc/ilc87/r3-1b2.htm>> accessed 6 April 2021

205 'Key Migration Terms' (International Organization for Migration, 2021) <<https://www.iom.int/key-migration-terms#Migrant>> accessed 6 April 2021

206 'Chronology of Movement Control Order (MCO)' (BERNAMA, 2021) <<https://www.bernama.com/en/infographics/index.php?v=6222>> accessed 6 April 2021

207 'Forced Labor In the Production Of Electronic Goods In Malaysia' (Verite.org, 2021) <<https://www.verite.org/wp-content/uploads/2016/11/VeriteForcedLaborMalaysianElectronics2014.pdf>> accessed 6 April 2021

2. *Liberty Shared released a summary of a petition submitted to U.S. Customs and Border Protection concerning alleged conditions of forced labour and child labour experienced by workers on plantations/estates owned and/or run by Sime Darby Plantation Berhad [2020]*²⁰⁸
3. *US Customs issues detention order on imports of goods made by Malaysia's Top Glove [2020]*²⁰⁹
4. *Offshoring the Risks: Gendered Occupational Hazards in Malaysian and Indonesian Electronics Factories [2020]*²¹⁰

Essentially, these reports reveal that the abuses faced by migrants cut across almost all sectors, from plantation to retail to personal protection equipment (PPE), and involves human trafficking to forced labour at all stages of migration. While these reports were commissioned by the private sector, there were also those done by foreign governments. In particular, the United States Department of State Trafficking in Person (TIP)²¹¹ reports show that Malaysia has been placed in Tier 2 Watch List for 3 consecutive years.

Current Governance Standards and Rights Frameworks.

The primary responsibility in protecting the rights of citizens falls under the duty of the government. In the case of migrants, many governments do not see it as an obligation to provide migrants with equal, if not similar rights, as citizens. This predicament is unfortunately not balanced by the protection provided by governments of the countries of origin of migrants via their respective embassies which are mandated to ensure the protection of their citizens while abroad. As embassies also have a role to ensure the continued international cooperation with the country of destination of their fellow citizens, it would be exceedingly rare that an embassy would take up a legal case against the Malaysian government in the pursuit for justice. Instead of confrontational approaches, embassies would choose soft diplomacy and remedies to resolve matters with the government or employer in the case of workers' rights violations or security/immigration related violations. This not only leads to impunity of many perpetrators but also the continuity of the cycle of rights violations and abuses.

The MCO restrictions have exacerbated the blurring of the standards of protection usually accorded to migrants in line with international standards. Many employers have been known not to comply with the regulations and directives imposed by the government as they argue that they are "vague." As such, they have turned to "force majeure" driven remedies as a desperate measure to either not pay workers or to lay them off. However, most of migrant workers contracts do not have valid "force majeure" clauses which could protect the interest of both employers and workers in a fair and just manner.

208 'Palm Oil Industry — Liberty Shared' (Liberty Shared, 2021) <<https://libertyshared.org/palm-oil-industry>> accessed 6 April 2021

209 'US Customs Issues Detention Order on Imports of Goods Made by Malaysia's Top Glove - Business & Human Rights Resource Centre' (Business & Human Rights Resource Centre, 2021) <<https://www.business-humanrights.org/en/latest-news/us-customs-issues-detention-order-on-imports-of-goods-made-by-malysias-top-glove/>> accessed 6 April 2021

210 'Offshoring the Risks: Gendered Occupational Hazards in Malaysian And Indonesian Factories' (Amrc.org.hk, 2021) <https://www.amrc.org.hk/sites/default/files/Offshoring%20the%20Risk_2021-compressed.pdf> accessed 6 April 2021

211 '2020 Trafficking in Persons Report: Malaysia' (United States Department of State, 2021) <<https://www.state.gov/reports/2020-trafficking-in-persons-report/malaysia>> accessed 6 April 2021

Violations of Migrant Workers' Rights

In 2020, many employers in Malaysia are known to have committed various kinds of labour related violations. Many of these violations were commonly known to migrant worker activists even before the Movement Control Order (MCO) restrictions started but were amplified as checks and balance mechanisms were reduced or diluted.

One of the most common labour violations is the deduction and non-payment of salaries of migrant workers in various sectors for several months. This was done in the name of pandemic related austerity and financial restructuring by employers. Government policy requires that negotiations between employers and workers must take place before any decisions can be made. The capacity for negotiation by migrant workers is minimal and hence, decisions are usually made unilaterally. This is further compounded by the fact that most migrant workers are not unionised or are employed in sectors that have no unions. Thus, they are not represented in negotiations with employers, nor do they receive fair benefits in comparison to local workers. It is well known that the low rate of unionisation among migrant workers is due to the obstructing tactics of many employers.²¹²

In 2020, the government offered the Wage Subsidy²¹³ scheme to aid companies in maintaining the wages of their workers. However, this scheme (among many others) was not extended to migrant workers²¹⁴.

In the event of retrenchments, the official labour policy is for migrant workers to be retrenched first, followed by Malaysians using the Last-In-First-Out formula. As for workers who were retrenched, the government had introduced the Employment Insurance Scheme (EIS)²¹⁵ in 2017 as a safety net for workers who were retrenched. Unfortunately, migrant workers are exempted from the benefits of the EIS retrenchment.

There were also instances of delayed repatriation and forced work happening during the MCO. As certain industries were given the green light to operate as essential services, the visa renewal and repatriation services by the relevant ministries were interrupted. Coupled with the lack of clarity in information, migrant workers were forced to stay back unwillingly after their contracts were over. As their permits expired while they were waiting, migrant workers were forced to get the special passes while waiting for the next flight out of Malaysia. Without the special passes, they would be deemed “illegal” by the government and susceptible to arrest and detention.

While waiting, some workers were made to work even though their contracts had expired. This period would have left many in vulnerable and forced labour conditions as there was no guiding principles or directive from the government for the migrant workers on the options for them to choose in such precarious situations. Some workers were not even provided with food subsidies during their delayed repatriation periods. The postponement of flights increased the risks faced by the workers. Many employers struggled to comply with immigration related laws to ensure the workers whose contracts had finished were safely repatriated but without the risk of becoming undocumented and a target of immigration enforcement. In such scenarios, many migrants were advised not to move around, or risk being arrested.

212 Nicholas Chung, 'Bosses Stopping Migrant Workers Joining Unions, Says MTUC' (Free Malaysia Today (FMT), 2021) <<https://www.freemalaysiatoday.com/category/nation/2019/11/27/bosses-stopping-migrant-workers-joining-unions-says-mtuc>> accessed 6 April 2021

213 Emirul Zainul, 'Three-Month Extension for Wage Subsidy Programme' (The Edge Markets, 2021) <<https://www.theedgemarkets.com/article/threemonth-extension-wage-subsidy-programme>> accessed 6 April 2021

214 'End Discrimination Against Foreigners and Migrants In COVID-19 Responses' (Malaysiakini, 2021) <<https://www.malaysiakini.com/announcement/532379>> accessed 6 April 2021

215 'Contributions' (PERKESO, 2021) <<https://www.perkeso.gov.my/en/our-services/employer-employee/contributions.html>> accessed 6 April 2021

The Precarious Situation of Domestic Workers

The domestic workers sector is one of the most under regulated labour sector in Malaysia, even more so if one is a migrant worker. The pandemic exposed how precarious the nature of the work is and the minimal social protection guaranteed by the laws. Domestic workers in Malaysia can be considered state sanctioned forced labour. Till today, domestic workers are excluded from many aspects of the law that governs labour. The Employment Act 1955 has exempted domestic workers from protection against long working hours, lack of rest days, conditions of service and even maternity benefits²¹⁶. Many clauses from the labour law do not apply to Domestic Workers including SOCSO protection, minimum wage, and other regulations. During the Movement Control Order, many family members practiced the Work from Home (WFH) directive by the government. This caused additional burden and stress on domestic workers as it added to the heavy workload throughout the day. The stress of employers and family members being at home for long periods of time was passed on to domestic workers to mitigate. This caused the stress levels of domestic workers to also increase. This added stress led to further abuses by the employers, including assault and sexual harassment and, due to the isolated nature of the domestic working environment, there is almost no access to redress when disputes happen.

As the domestic environment is a private space, the family members who go in and out of the house tend not to be monitored. This has increased the risks of contracting Covid-19 in the home. Homes which do not practice SOPs and with high mobility of people in and out of the house obviously puts the health care of the domestic workers at risk. As for domestic workers who work part time or are informal workers, some employers have chosen to retrench them as they do not want to face the health risks involved. This discriminatory practice is unfortunate as many employers tend to believe the unreliable sources of information which stigmatise domestic workers. This has caused many domestic workers to lose their livelihood and end up in very precarious conditions. As the pandemic has exposed the added risks faced by domestic workers²¹⁷, it is vital that the government of Malaysia legislate a Domestic Workers Act to regulate this highly precarious sector of work. North-South Initiative have also found domestic workers who did not have copies of their contract. This makes it impossible to track and trace their sponsors, agents and others involved in the fraudulent aspects of the migration industry in Malaysia. Additionally, this has made them highly vulnerable when trying to go back to their homes during the pandemic as they are prone to be victims of trafficking and smuggling. Malaysia has yet to ratify ILO Convention C189, which is the Domestic Workers Convention (2011).

Migrant Workers' Right to Information

During the Movement Control Order, migrants also faced a challenge in obtaining accurate and timely information regarding Standard Operating Procedures (SOPs) and directives from the Malaysian government in languages understood by them. This posed a serious challenge to communities in adhering to the new laws and regulations related to Covid-19 curtailment. Most of the information and directives from the Malaysian government were released in either Malay or English via the social media portals and websites of the ministries leading the management of the Covid-19 pandemic – which included the National Security Council, Home Affairs Ministry, Health Ministry, Human Resource Ministry, and their respective departments. While embassies played a vital role to ensure these directives and instructions were conveyed to their citizens in Malaysia, some of this information were either lost in translation or not elaborated in detail in the

216 Alyaa Alhadjri, 'Kakak Juga Pekerja' Campaign: Groups Seek Recognition For Domestic Helpers' (Malaysiakini, 2021) <<https://www.malaysiakini.com/news/565648>> accessed 6 April 2021

217 Dina Murad, 'Immediate Protection Measures Needed' (The Star Online, 2021) <<https://www.thestar.com.my/news/focus/2021/03/21/immediate-protection-measures-needed>> accessed 6 April 2021

languages understood by migrants. This led to migrants unknowingly violating the MCO laws and causing them to be punished unfairly.

The lack of accurate information for migrants also led to migrants not fully understanding the nature of the Covid-19 virus and thus taking the necessary safety precautions. Very few, if any, employers published comprehensive Covid-19 regulatory and safety related materials in the native languages of migrants. According to the ground-breaking research on Cultural Communication Competency gaps in the migrant health care management in Malaysia²¹⁸, ensuring health care practitioners and migrants understand each other is vital for finding holistic solutions to the health care issues faced by migrants. The same applies to ensuring the rights of migrants in all other fields from labour rights to access to justice to security matters. Unfortunately, the Right to Information for migrants is still at a very minimal level despite the need for everyone to adhere to the SOPs of the MCO.

During the MCO, despite the Minister of Home Affairs Ismail Sabri making a public statement that migrants would not be arrested for immigration offences if they came forward for Covid-19 testing, there were multiple cases where immigration raids were conducted a few days after the health screenings especially in EMCO areas²¹⁹. Misleading information and non-coherent statements by politicians and bureaucrats during the early stages of the pandemic caused much confusion and fear among the migrant communities. Many migrants who fell ill refused to come forward to be screened and to check into quarantine centres. While this would increase the risks of asymptomatic cases spreading the virus to both Malaysians and migrants, there was only assurance from the Ministry of Health that it would be safe for undocumented migrants to come forward for testing.

Lack of information on the Covid-19 pandemic also caused many migrants to be fearful of returning to work, especially without the proper PPEs. While companies from certain industries could continue operations, the health care and SOPs were not explained in a comprehensive manner to the migrants and yet they were forced to return to work. This communication gap must be addressed by government regulation that makes it mandatory for the various government regulatory agencies and employers to provide sufficient and detailed safety information to all workers. There was a recorded case where migrant workers who were tested positive for Covid-19 did not understand the meaning of “positive” in the lab test result sheet and neither were they picked up for quarantine by the local authorities. This communications gap must be bridged in all efforts to ensure the health rights of migrants are protected. One glaring example is the “asymptomatic” nature of the Covid-19 virus and its consequences and this was never explained or translated into the mother tongues of the migrant workers.

Migrant Workers’ Freedom of Movement

The pandemic saw many countries including Malaysia implement strict border controls where many borders were closed for entry and exit over exceptionally long periods of time to manage the pandemic. This affected the migrant communities in many ways. Besides delayed repatriation, many families especially those of mixed nationalities had to be separated for long periods of time pending the border control regulations in both Malaysia and country of location. We saw many

218 NicolaSuyin Pocock, ‘Moving towards culturally competent health systems for migrants? Applying systems thinking in a qualitative study in Malaysia and Thailand’ (Plos One, 6 April 2020) <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0231154>> accessed 9 April 2021

219 ‘Raids Came Only After Illegals Refused to Be Tested, Says Minister’ (Free Malaysia Today (FMT), 2021) <<https://www.freemalaysiatoday.com/category/nation/2020/05/31/raids-came-only-after-illegals-refused-to-be-tested-says-minister/>> accessed 6 April 2021

Malaysians aboard²²⁰ who were not allowed to leave the country of location to return home. Many foreign spouses were also denied entry back into Malaysia and this caused many families to be separated for abnormally long periods of time. This caused great stress within families as separation caused disruption in care and relationships between family members. Many migrant workers who had gone home for holidays were also stranded as the lock down procedures were implemented in their country of origin and Malaysia. This also caused many to lose their livelihood and unable to support their families²²¹.

Some of the migrant workers who were denied exit from their country and entry back into Malaysia found that their contracts had expired and lost the opportunity to come back to Malaysia. It was only recently that the Malaysian government announced that it was in talks with Bangladesh to bring back stranded workers to Malaysia to fulfil their contractual obligations.

The migrants from Patani, who were working in Thai restaurants also found their rights to mobility and economic rights denied. Thousands lost their restaurant jobs as Tom Yam shop owners had to shut down their restaurants due to the MCO and return to Thailand. Many of the owners who had gone back to Patani or to homes in Malaysia just before the closure of borders, left their workers stranded. The closure of borders by both Malaysia and Thailand made it impossible for the Patani workers to return home safely. Lack of food and finances caused them to be in difficult conditions, having to depend on aid from various NGOs. Fortunately, some Patani-based movements managed to mobilize resources to ensure that the community stranded here could survive the harsh conditions.

The closure of borders in the name of managing the pandemic is a violation of the right to movement of the migrants. This decision to close borders seemed more like a convenient method of crisis management rather than controlling the pandemic.

Refugees and Asylum Seekers as Undocumented Workers in Malaysia

The government of Malaysia does not have a formal policy on refugees and asylum seekers²²². Nevertheless, the government has allowed the UNHCR to operate from Kuala Lumpur to help process the documents of asylum seekers and refugees for resettlement or repatriation purposes.

While they are legally considered as “undocumented migrants” (Pendatang Asing Tanpa Izin, PATI), “refugee card holders” seem to have slightly more access to limited rights as compared to “asylum seekers” who hold a UNHCR identification paper, or the interview schedule papers. While there is an unwritten law that allows refugees to work in the informal sector, both refugees and asylum seekers faced increased precarity of labour conditions during the MCO. As they are not employed formally, the worker-employer relationship is not established in black and white via contracts but only verbally. If they are sacked or refused payment for work done, the burden of proof falls on the refugee and asylum seeker. The lack of documentation has led to various types of human rights abuses towards the refugee and asylum seekers community.

220 Imran Ariff, ‘Stranded Malaysians Plead to See Their Families’ (Free Malaysia Today (FMT), 2021) <<https://www.freemalaysiatoday.com/category/nation/2020/10/20/stranded-malaysians-plead-to-see-their-families/>> accessed 6 April 2021

221 ‘Respect Dignity, Human and Labour Rights Of Migrant Workers In Msia’ | New Straits Times’ (NST Online, 2021) <<https://www.nst.com.my/news/nation/2020/12/650440/respect-dignity-human-and-labour-rights-migrant-workers-msia>> accessed 6 April 2021

222 ‘Malaysia’S Coronavirus Scapegoats’ (Foreign Policy, 2021) <<https://foreignpolicy.com/2020/06/19/malaysias-coronavirus-scapegoats>> accessed 6 April 2021

Many refugees and asylum seekers were not paid for services rendered to their employers during the MCO which restricted certain industries and work. The Labour Department of the Ministry of Human Resource has refused to consider processing the labour disputes as they claim that with no contract and due to the irregular status of refugees and asylum seekers, they are not legally obliged to record or take these cases to the labour or industrial court. This is even though the laws related to employment such as the Employment Act, Industrial Relations Act and others do not discriminate based on immigration status of a worker. This artificial and deliberate lacuna has caused thousands of refugees and asylum seekers to be denied their salaries and to be retrenched in an undignified manner, with no redress through public regulators or private actors during the MCO. It must be noted that there is already a legal case precedence to ensure refugees are paid for work done, regardless of their legal status.

Justice Delayed is Justice Denied

Due to the MCO, many court cases related to foreign workers were delayed. This meant that the migrants on remand had to endure months in the detention centres before their trials could begin. The on-off nature of the lockdown according to different states of the pandemic made access to justice challenging for migrants. Despite having online digital facilities in courts, many migrants were punished by abnormally long detentions due to the lock down regulations. The migrants were not compensated in any way for this violation of rights. While in detention, many migrants were not given access to their rights as detainees such as the right to seek redress, calls to legal aid service providers or even receiving visitors. This also prevented family members from getting prescriptions and medications to their sick loved ones in time. This violation of their right to justice and redress is a fatal flaw in the pandemic management of the country. Access to justice is a fundamental principle of human rights and must never be compromised in any way.

Detention without Access to Justice

During the MCO lock down, the government of Malaysia conducted many raids in the name of reducing undocumented and irregular migrants in Malaysia. The raids were coupled by the strict border control Operation Fortress (Ops Benteng) campaign which was based on the premise of tightening the borders as a means of pandemic management. This campaign was supposedly aimed at targeting human trafficking and smuggling activities. During the raids, we came to know of huge numbers of migrants who were detained incommunicado without access to justice. In some cases of detained Indian national migrants, many were detained without trial for long periods, some for as long as 55 days²²³ which far surpasses permitted incommunicado detention periods of the draconian Internal Security Act (ISA) and Security Offences Special Measures (SOSMA). As mentioned in a parliamentary reply, “The Immigration director-general, under Section 9 (of the Immigration Act) can take action against any foreigner who we feel is unwanted in this country.”²²⁴

Some of the families of these detained migrants denied that their family members had broken the law and tried to contact the Indian embassy for help in securing their release so that they could go home. Unfortunately, the Indian embassy did not respond in a timely and effective manner as they chose to believe that the detainees were undocumented. The detained migrants were also denied

223 Satish Nandgaonkar, ‘60 Indians Detained In Malaysia Since May 1; Human Rights Commission Launches Investigation’ (Mumbai Mirror, 2021) <<https://mumbaimirror.indiatimes.com/coronavirus/news/60-indians-detained-in-malaysia-since-may-1/articleshow/76635094.cms>> accessed 6 April 2021

224 Minderjeet Kaur, ‘Immigration DG Can Send Home Any ‘Unwanted’ Foreigner, Dewan Rakyat Told’ (Free Malaysia Today (FMT), 2021) <<https://www.freemalaysiatoday.com/category/nation/2020/08/04/immigration-dg-can-send-home-any-unwanted-foreigner-dewan-rakyat-told/>> accessed 6 April 2021

access to communication with their families and access to justice, i.e., legal representation. This clearly shows that pandemic related laws and regulations have been used to violate the civil and political rights of migrants.

Many migrants faced long detention periods. Before the pandemic, migrants could be detained for 14 days²²⁵ under immigration offences, followed by an additional 14 days for remand integration, or a total of up to 28 days without trial. With the pandemic, postponed court cases caused many migrants to be held for long periods of time. Many were denied their basic right to justice like a phone call to the legal aid services, NGOs, or their embassies.

Civic Rights Curtailed

In 2020, the civic rights of migrants were curtailed when they were denied the right to freedom of expression and freedom of assembly due to pandemic related laws and regulations.

One of the more prominent case involved those who expressed their concern over the treatment of fellow migrants during the raids in a documentary by Al Jazeera.²²⁶ They were attacked with hate speech by the public on social media and accused of sedition by the Home Affairs Ministry.²²⁷ The Immigration Department also launched a nation-wide manhunt for them, including publishing a “wanted” poster of Kabir. Kabir was eventually deported. Al Jazeera journalists involved in the making of the documentary were reprimanded and did not have their work permits renewed.²²⁸

Their right to assemble freely was also violated due to the lockdown as evident in the case of Myanmar migrants who were celebrating a Water Festival at their hostel compound. While held in a private area, the workers were nevertheless investigated under Section 269 of the Penal Code, Section 505(c) of the Penal Code, Section 22 of the Prevention and Control of Infectious Diseases Act 1988 (Act 342) and Section 233 of the Communications and Multimedia Act 1998²²⁹. Such heavy-handed action by the authorities was unnecessary as it is the responsibility of the hostel managers and owners to enforce SOPs.

Since no public health care materials related to the pandemic were translated by the authorities into languages easily understood by migrants, it is unreasonable and unjust to expect them to adhere to these regulations and to punish them so harshly. Migrants who were found guilty of violating the pandemic related laws faced deportation as required by Malaysian immigration laws. These punitive actions only disenfranchise the migrant community and disables them from living with full dignity and respect.

225 ‘Situation and Gap Analysis On Malaysian Legislation, Policies And Programmes, And The ILO Forced Labour Convention And Protocol’ (ILO, 2021) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_650658.pdf> accessed 6 April 2021

226 https://www.youtube.com/watch?v=zyl_xsdptel

227 Zurairi Ar, ‘Immigration Dept: Rayhan Kabir To Be Deported, Permanently Banned from Entering Malaysia | Malay Mail’ (Malaymail, 2021) <<https://www.malaymail.com/news/malaysia/2020/07/25/immigration-dept-rayhan-kabir-to-be-deported-permanently-banned-from-enteri/1887925>> accessed 6 April 2021

228 ‘Al-Jazeera Says Malaysia Rejects Visas For Aussie Staffers | New Straits Times’ (NST Online, 2021) <<https://www.nst.com.my/news/nation/2020/08/614716/al-jazeera-says-malaysia-rejects-visas-aussie-staffers>> accessed 6 April 2021

229 ‘MCO: Cops Nab 62 Myanmar Men Celebrating Songkran In Sepang | New Straits Times’ (NST Online, 2021) <<https://www.nst.com.my/news/crime-courts/2020/04/584107/mco-cops-nab-62-myanmar-men-celebrating-songkran-sepang>> accessed 6 April 2021

Lack of Transparency and Accountability

The various government ministries and departments involved in stopping trafficking and smuggling of refugees have refused to make public their operational and enforcement SOPs in their investigation and prosecution of perpetrators of the crime.

Without transparency and adhering to best practices in governance by making their SOPs public, it is almost impossible to hold the enforcement officers and their commanding officers accountable for the abuses toward migrants. This absence can be seen in the coroner's court inquest into the death of an international student from Nigeria, Thomas Orhions Ewansih. The SOPs were only revealed by the camp commandant of the Bukit Jalil Immigration Detention Centre and other public servants involved after questioning by the coroner.²³⁰ Moreover, while Thomas died in custody on 9 July 2019, the inquest into his death only took place between 2020 and 2021. At the time of this report, the result of the inquest has yet to be finalized by the coroner's court.

The Malaysian government has refused to release the report by the "Special Independent Committee on Foreign Worker Management" (SICFWM) which was formed in August 2018 by the Pakatan Harapan administration. The report has been classified under the Official Secrets Act. It was chaired by former Court of Appeal judge, Mohd Hishamudin Yunus. Ever since the committee submitted its report to the Cabinet in early 2019, it has not been made public despite countless calls by various groups including NGOs and politicians. The former judge later revealed of abuse in the migrant labour recruitment system²³¹ which was also indicated in both the SICFWM report and another critical report by the Public Accounts Committee (PAC)²³². The Public Accounts Committee of the 3rd Session of the 14th Malaysian Parliament reported on the "Control Mechanisms of Foreign Workers". Both reports highlighted the various irregularities in the management of foreign workers from 2016 to 2018. Since then, almost all these issues have not been resolved and continue to plague migrant workers in 2020, magnified further by the pandemic related regulations. The mismanagement by the various authorities and the failure of their systems were also echoed in a previous PAC report released in 2017 during the 5th Session of the 13th Malaysian Parliament which scrutinised the "Implementation of the Malaysian Immigration System (myIMMs)"²³³.

The Human Rights Report on Malaysia 2019 by the United States had previously highlighted the involvement of a former high-ranking cabinet member to various scams linked to the recruitment of migrant workers.²³⁴ To date, the government has yet to ensure reforms to put an end to exploitation and profiteering activities linked to recruitment of migrant workers. This shows the woeful lack of political will and accountability in ensuring holistic and comprehensive solutions to the labour migration crisis and border security.

230 Rama Ramanathan 'The Devastating Testimony of The Investigating Officer in The Case Of Death In Custody Of Thomas Orhions Ewasinha' (Write2rest.blogspot.com, 2021) <<https://write2rest.blogspot.com/2021/02/the-devastating-testimony-of.html>> accessed 6 April 2021

231 Jason Thomas, 'Ex-Judge Calls For End To 'Special Approvals' In Foreign Worker Recruitment' (Free Malaysia Today (FMT), 2021) <<https://www.freemalaysiatoday.com/category/nation/2020/11/27/ex-judge-calls-for-end-to-special-approvals-in-foreign-worker-recruitment/>> accessed 6 April 2021

232 <https://www.parlimen.gov.my/pac/review/docs-217-261.pdf?fbclid=IwAR0PEZVVb6LPaM76IpAYrsfQNWusAliOvN2OB9jO06xBULidfTHMp1Ko-VQ>

233 <https://www.parlimen.gov.my/pac/review/docs-173-207.pdf>

234 'Malaysia 2019 Human Rights Report' (United States Department of State, 2021) <<https://www.state.gov/wp-content/uploads/2020/02/MALAYSIA-2019-HUMAN-RIGHTS-REPORT.pdf>> accessed 6 April 2021

Adherence to International Standards on Migrant Workers

There are various international standards and frameworks set for States and the private sector to adhere to regarding the management of migrant workers and other people on the move. These include the Global Compact on Labour Migration, Global Compact on Refugees, the Sustainable Development Goals (SDGs), the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, ASEAN Convention Against Trafficking in Persons Especially Women and Children (+Action Plan), ASEAN Declaration on Strengthening Social Protection, Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, International Labour Organization, The Roundtable on Sustainable Palm Oil (+Certification) and many more.

Besides the SDGs and the United Nation's Universal Periodic Review reporting mechanism, there have been several reports which reveal that Malaysia has a poor record in planning, reporting and measurement of these tools and frameworks. This includes the Malaysian Business and Human Rights National Action Plan whereby labour migration would be deeply impacted by the action plan. Unfortunately, this is not the case as Malaysia has exhibited a lack of transparency and accountability towards these frameworks. As a consequence of Malaysian laws and standards lagging below global standards on the prevention of forced labour and human trafficking, there have been cases of Malaysian products being sanctioned by the United States of America²³⁵.

As the global supply chain, brands, and buyers become more aware and supportive of human rights and ethical business principles, Malaysia will be scrutinized even more closely for their treatment of migrant workers. While waiting for legally binding conventions respecting the rights of migrant workers to come into force, it would be wise for local business enterprises to become more familiar with the UN Guiding Principles on Business and Human Rights.²³⁶ The two key ones are:

- a. **Avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur.**
- b. **Seek to prevent or mitigate adverse human rights impacts that are causally linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts.**

235 'Withhold Release Orders and Findings' (2021) <<https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>> accessed 6 April 2021

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PEOPLE BEFORE PROFIT

PEOPLE BEFORE PROFIT

In 2020, SUARAM's People Before Profit desk monitored the profit-oriented economic projects under the federal Perikatan Nasional government as well as those of the respective state governments, some of which were run by the PH state governments to gauge how they affected the lives of the people. Overall, SUARAM have observed that the situation on the ground had not changed much since land reclamation and deforestation of indigenous peoples' land are still happening with impunity.

Orang Asli & Orang Asal

The Nenggiri Hydroelectric Dam proposal was brought to the planning table in 2020 after an initial suggestion in the 11th Malaysia Plan (RMK-11) received severe protests from the Orang Asli (OA) community in January 2020.²³⁷ The proposed dam will submerge about 5,500 ha of forest²³⁸ and displace about 1,200 Orang Asli²³⁹ from their ancestral land. The dam will be built by TNB with the land provided by Kelantan State Government. Apart from generating electric power, the dam is also cited to mitigate flood during the rainy season in the East Coast.²⁴⁰ The excerpt from an article below written by Save Rivers (an NGO in Sarawak) explains the damage done by tropical mega dams.

The global impacts of mega dams are well documented. Annually, billions of tonnes of greenhouse gas are released into the atmosphere because of decomposing materials located at the bottom of tropical dam reservoirs. The construction of mega dams drastically transforms river systems and their surrounding environments, affecting communities who rely heavily on rivers as part of their daily life.²⁴¹

237 Nur Hasliza Mohd Salleh, 'Orang Asli serah memorandum bantah projek empangan Sungai Nenggiri kepada Suhakam' (Free Malaysia Today, 6 January 2020) <<https://www.freemalaysiatoday.com/category/bahasa/2020/01/06/orang-asli-serah-memorandum-bantah-projek-empangan-sungai-nenggiri-kepada-suhakam/>> accessed 6 April 2021

238 Annabelle Lee, 'Orang Asli Menriq bantah projek empangan Sg Nenggiri' (Malaysiakini, 20 June 2017) <<https://www.malaysiakini.com/news/386168>> accessed 6 April 2021.

239 N Faizal Ghazali, '1,115 Orang Asli akan dipindahkan susulan projek empangan Nenggiri' (Malaysiakini, 11 August 2020) <<https://www.malaysiakini.com/news/538227>> accessed 6 April 2021

240 Akmaliah Razak, 'Bantah projek empangan Nenggiri' (Sinar Harian re-published by TNB, 08 December 2017) <<https://www.tnb.com.my/assets/newsclip/08122017e.pdf>> accessed 6 April 2021

241 Save Rivers, 'Reasons that new mega hydro dams have no place in Sarawak's energy future' (saverivers.org, 22 July 2020) <<https://saverivers.org/2020/07/22/reasons-that-new-mega-hydro-dams-have-no-place-in-sarawaks-energy-future/>> accessed 6 April 2021

Then again, while the proposal to build the Telom Hydroelectric Dam in Ulu Jelai, Kuala Lipis, Pahang had been officially withdrawn during the PH tenure²⁴², the Orang Asli community living in the vicinity (Pos Lanai) became affected by a lanthanide (rare earth) mining proposal. In June 2020, a consultant was given permission to do a survey for the mining²⁴³. A protest by Pos Lanai Orang Asli at the Department of Orang Asli Development (JAKOA) revealed that the survey was a part of the environment impact assessment (EIA) commissioned by the federal government for the purpose of developing a mining project.

Furthermore, logging concessions continued to be awarded by State governments without proper free, prior, and informed consent from the indigenous peoples. Examples were villages in Kampung Ong Jangkang, Sg Papan, Gerik in Perak²⁴⁴ in December 2020; and the Penan village of Long Moh, Ulu Baram, Miri, Sarawak²⁴⁵ in October 2020. Both communities complained about unregulated logging which was damaging to the river and environment and rendered their villages uninhabitable.

In PH-run Selangor state, SUARAM's People Before Profit desk was part of the Pertahankan Hutan Simpan Kuala Langat Utara (PHSKLU) coalition which opposed the proposed degazettement of the forest land nearby of the Orang Asli village there. The Selangor State Executive Councillor (EXCO) of Environment, Green Technology, Tourism and Indigenous Affairs, Hee Loy Sian said that 60% of 74 Orang Asli villages in Selangor had been gazetted.²⁴⁶ Nevertheless, the coalition doubted the accuracy of the figure and consistently asked for explanation from the EXCO. To date, the coalition has not received any reply from the EXCO or any other state representatives.

Meanwhile, in Pos Gedung, Tapah, Perak, an Orang Asli village of 200 residents was left without electricity even though the facilities to supply electricity had been set up four years ago. Currently, the residents are spending between RM5 to RM8 per day per generator for electricity supply to the houses.²⁴⁷

During the Covid-19 pandemic, there were problems in food supply distribution among the OA communities. Food was not distributed according to the OA's needs and this was highlighted by COAC (Centre for Orang Asli Concerns).²⁴⁸ This was also admitted by Juli Edo, the Director General of JAKOA (OA Development Department), when he said that the lack of manpower and large number of households needing assistance was stretching JAKOA's resources and their ability to deliver food for the needy.²⁴⁹

242 KiniTV, 'Menteri umum batal projek Empangan Telom, nafi ada kaitan PRK' (YouTube, 23 January 2020) <<https://www.youtube.com/watch?v=bmTiYPEkSMM>> accessed 6 April 2021

243 Letter from Prof. Dr. Juli Edo, Ketua Pengarah, Jabatan Kemajuan Orang Asli, Kementerian Pembangunan Luar Bandar to Jeffrey Bin Hassan, Pengerusi, Jawatankuasa Bertindak, Tanah & Wilayah Adat Pos Lanai (8 September 2020) Ref: JAKOA.PP.30.032 Jld 47 (61)

244 Elroi Yee, 'Logging has destroyed our land, say Orang Asli' (The Star, 14 December 2020) <<https://www.thestar.com.my/news/nation/2020/12/14/logging-has-destroyed-our-land-say-orang-asli>> accessed 6 April 2021

245 Save Rivers, 'UNETHICAL PRACTICES BY LOGGING COMPANY REVEALED BY LONG MOH COMMUNITY' (saverivers.org, 02 December 2020) <<https://saverivers.org/2020/12/02/unethical-practices-by-logging-company-revealed-by-long-moh-community/>> accessed 6 April 2021

246 Jade Chan, 'Securing land for Orang Asli in S'gor' (The Star, 30 December 2020) <<https://www.thestar.com.my/metro/metro-news/2020/12/30/securing-land-for-orang-asli-in-sgor>> accessed 6 April 2021

247 Zaki Salleh, 'Tiang sudah pacak, bekalan elektrik belum ada' (Utusan Malaysia, 14 December 2020) <<https://www.utusan.com.my/nasional/2020/12/tiang-sudah-pacak-bekalan-elektrik-belum-ada/>> accessed 6 April 2021

248 Chung Nicholas, 'Putrajaya not in touch with Orang Asli's woes, says activist' (Free Malaysia Today, 9 April 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/04/09/putrajaya-not-in-touch-with-orang-aslis-woes-says-activist/>> accessed 7 December 2020

249 R Loheswar, 'Jakoa struggling to deliver aid to Orang Asli during MCO due to transport, manpower shortage' (Malay Mail, 9 April 2020) <<https://www.malaymail.com/news/malaysia/2020/04/09/jakoa-struggling-to-deliver-aid-to-orang-asli-during-mco-due-to-transport-m/1854945>> accessed 7 December 2020

Environment

In the case of Segari Melintang Forest Reserve, Pantai Remis, Perak, the State Government allowed an operator to carry out quarrying and laterite mining activities at the forest reserve. The impact on its ecosystem and the coastal area was reported in August 2020.²⁵⁰

In Jerantut, Pahang, two logging companies have filed legal actions against eight individuals on 14 July 2020, over allegations that latter had prevented the companies' workers and contractors from carrying out work in a nearby forest.²⁵¹ Earlier the villagers had been disseminating information through the Facebook page '*Bantah Pembalakan di Kawasan Tadahan Air di Kampung Baharu, Jerantut, Pahang*'.

The Selangor State Executive's effort in degazetting KLNFR (Kuala Langat North Forest Reserve) was strongly opposed by elected representatives from the state when they voted unanimously in the State Assembly on 11 November 2020 to preserve all the forest reserves in the state.²⁵² Moreover, in a public hearing held to gather the response on the proposed degazetting on 29 September 2020 in Carey Island, many organisations opposed the proposal including, Peninsular Malaysia Forestry Department, Forest Research Institute Malaysia (FRIM), Orang Asli Development Department (JAKOA) and Institute of Landscape Architects of Malaysia (ILAM).²⁵³ In February 2020, 250 Orang Asli had protested against the forest reserve degazetting in front of the Selangor State Secretariat.²⁵⁴

Pollution

In Taman Bakti, Banting, Kuala Langat, Selangor, a paper recycling factory which began operation in 2019 became a source of concern for residents there because it was just 40 metres from their home.²⁵⁵ An acrid smell permeates the area and noise from the factory continues after midnight from the factory which imports 1.7 million tonnes of wastepaper annually from United States and Europe. The residents are asking how an industrial facility that spans 46 hectares (and a planned expansion for another 7.2 ha) could operate near their residential area and a school.

2020 was the infamous year for Selangor's public water supply because of its constant disruption. There were in total, nine cases of pollution of water intake rivers in Selangor.²⁵⁶ Some quick reforms suggested by former SPAN chairman, Charles Santiago include the setting up of a National River Protection Authority; creating a buffer of 300 to 400 metres (inland) from all rivers where business activities should not be allowed, and long-term reforms on water conservation and demand management.²⁵⁷

250 Zaki Salleh, 'Tiang sudah pacak, bekalan elektrik belum ada' (Utusan Malaysia, 14 December 2020) <<https://www.utusan.com.my/nasional/2020/12/tiang-sudah-pacak-bekalan-elektrik-belum-ada/>> accessed 6 April 2021

251 Yasmin Ramlan, 'Logging firms sue Jerantut villagers in row over forest reserve' (Yahoo! news, 17 October 2020) <<https://malaysia.news.yahoo.com/logging-firms-sue-jerantut-villagers-024200157.html?guccounter=1>> accessed 6 April 2021

252 FMT Reporters, 'Pakatan MPs hail bipartisan vote to protect forest reserves in Selangor' (Free Malaysia Today, 11 November 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/11/11/pakatan-mps-hail-bipartisan-vote-to-protect-forest-reserves-in-selangor/>> accessed 6 April 2021

253 Annabelle Lee, 'Orang Asli, agencies, join in chorus against degazetting Kuala Langat forest' (Malaysiakini, 30 September 2020) <<https://www.malaysiakini.com/news/544585>> accessed 6 April 2021

254 Bernama, '250 Orang Asli protest against degazetting of Kuala Langat forest reserve' (Free Malaysia Today, 26 February 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/02/26/250-orang-asli-protest-against-degazetting-of-k-langat-forest-reserve/>> accessed 6 April 2021

255 Farid Wahab, 'Paper factory cuts short peace of neighbourhood' (The Star, 31 August 2020) <<https://www.thestar.com.my/metro/metro-news/2020/08/31/paper-factory-cuts-short-peace-of-neighbourhood>> accessed 6 April 2021

256 Bernama, 'Sorotan 2020: Selangor hadapi sembilan kali pencemaran air' (BH Online, 22 December 2020) <<https://www.bharian.com.my/berita/nasional/2020/12/767741/sorotan-2020-selangor-hadapi-sembilan-kali-pencemaran-air>> accessed 6 April 2021

257 Yvonne Tan, 'Long, winding road to solving Selangor's water crisis' (Malaysia Now, 20 November 2020) <<https://www.malaysianow.com/opinion/2020/11/20/long-winding-road-to-solving-selangors-water-crisis/>> accessed 6 April 2021

People Before Profit believes that the critical point to solve Selangor's water crisis is if the state governments and federal government have the political will to overrule the business interests. This includes strict penalties for the polluters, introduction of a truer democratic water management system, treating water as a basic human rights, and eliminating cronyism and nepotism in infrastructure management.

Workers' Rights

In 2020, the Jaringan Pekerja Kontrak Kerajaan (JPKK), or Government Contract Workers' Network highlighted the exploitation of contract workers in schools and hospitals.²⁵⁸ A memorandum was submitted to the Finance Minister, Tengku Zafrul Tengku Abdul Aziz in December 2020 urging the government to absorb the workers as permanent staff. It pointed out some forms of exploitation such as not paying or delaying the workers' salaries, cutting their wages unreasonably and not contributing to the Employees Provident Fund and Social Security Organisation. According to JPKK, the biggest problem faced by workers under the contract system is they do not have job security because they are treated as contract workers and are replaced every three years. Workers will also lose their years of service and become new workers if their contracts are renewed. In fact, there are workers who lose their jobs altogether because they are contract workers.

Housing for the Poor

Housing for poor was largely neglected by both Perikatan Nasional (PN) and Pakatan Harapan (PH) governments in 2020. People Before Profit found no new Affordable Housing Scheme (PPR) projects approved in Budget 2020. A letter to the National Housing Department (JPN) in November 2020 to query this.²⁵⁹ PPR houses are provided at a subsidised price by the Federal Government for families which fulfil certain criteria.²⁶⁰

People Before Profit assisted a group of B40 (bottom 40%) families from Cameron Highlands in their efforts to get the Federal Government to build a PPR in their area. The last affordable housing scheme built in Cameron Highlands was some 50 years ago in Tanah Rata! We managed to obtain some details about how a PPR scheme is built nationwide.

- a. Land to build PPR houses is provided by the State Government to the Federal Government. In the Cameron Highlands case, the land had been earmarked and provided free-of-charge. This would help to reduce the subsidised cost of a PPR house.
- b. The Ministry of Housing and Local Government will only be able to suggest PPR projects nationwide but the decision to approve a project lies with the Prime Minister's Department, specifically, the Economic Planning Unit (EPU).²⁶¹ This information reinforces our view that building PPR houses for poor Malaysian families is ultimately a political decision rather than one based on need or supply and demand.

258 Bernama, 'NGO urges govt to absorb contract workers at schools, hospitals as permanent staff' (The Sun Daily, 18 December 2020) <<https://www.thesundaily.my/local/ngo-urges-govt-to-absorb-contract-workers-at-schools-hospitals-as-permanent-staff-NX5707924>> accessed 6 April 2021

259 Letter from Sevan Doraisamy, Pengarah Eksekutif, SUARAM to Jayaselan K.Navaratnam, Ketua Pengarah, Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (18 November 2020)

260 Administrator, 'Program Perumahan Rakyat (PPR)' (Portal Rasmi Jabatan Perumahan Negara (Kementerian Perumahan dan Kerajaan Tempatan), 28 August 2018) <<https://ehome.kpkt.gov.my/index.php/pages/view/133>> accessed 6 April 2021

261 Letter from Ministry of Economic Affairs, Putrajaya to Jawatankuasa Rumah Mampu, Ringlet, Cameron Highlands, Pahang (31 January 2020). Ref:MEA.S.12-11/5/2 Jld.15sk(35)(5)

The supply of affordable houses for the poor still lags behind their desperate demand. According to the Deputy Minister of Federal Territory in December 2020, the Kuala Lumpur City Hall (DBKL) managed to fulfil only about 7% of the housing demand for the poor.²⁶² People Before Profit believes this number would not vary much nationwide. Based on our calculations, the supply of PPR houses up until June 2018 was only about 13% of the demand.²⁶³ We could not calculate for 2019 and 2020 since the figures are not available on JPN's portal and a request for data from National Housing Department was not replied.²⁶⁴

A case of this pathetic supply of affordable houses was illustrated in a Sabah State Assembly. The newly elected State Assemblyman for the constituency complained that only 5 houses were sanctioned per year for the poorest in his constituency of about 15,000 voters.^{265 266}

Another example of short-sightedness in providing housing for the poor was a six-year-old Affordable Housing Scheme for the Poorest (PPRT) in Kg Baru Kemasik, Kemaman, Terengganu. The scheme which was supposed to solve the housing problem for poor families living near Kemasik was built on a flood-prone area.²⁶⁷ In December 2020, they faced the worst flood in six years during the East Coast monsoon, and 580 people had to be evacuated.

Furthermore, PPR schemes nationwide are also the clusters of drug abuse. 24 out of 155 areas categorised as 'high-risk drug abuse' are PPRs.²⁶⁸ Substance abuse does not happen solely because of individual traits and behaviours but rather, in a broader social and economic context. This includes the environment in which they live.

People Before Profit monitored evictions of poor families from their rented houses during the Covid-19 pandemic. This is mainly because of PN government's failure to introduce and include a protection scheme for house tenancy agreements in Temporary Measures For Reducing The Impact of Coronavirus Disease 2019 (COVID-19) 2020 [Act 829].²⁶⁹ Twenty five percent of Malaysian families do not own their houses and live in a rented premise.²⁷⁰

One such case is Vicneswary and her mother Puspa from Cheras.²⁷¹ They were forced to vacate their rented house in November 2020 when the landlord disconnected the electric and water supply.

262 Bernama, '20 peratus penghuni tak lagi layak duduk perumahan awam, rakyat DBKL' (BH Online, 22 December 2020) <<https://www.bharian.com.my/berita/nasional/2020/12/767901/20-peratus-penghuni-tak-lagi-layak-duduk-perumahan-awam-rakyat-dbkkl>> accessed 6 April 2021

263 Suaram, 'Malaysia Human Rights Report 2020 Overview' (Suara Rakyat Malaysia, 9 December 2020) <<https://www.suaram.net/wp-content/uploads/2020/12/HRR-Overview-2020-Digital-Print.pdf>> accessed 6 April 2021

264 Administrator, 'Perangkaan Perumahan' (Portal Rasmi Jabatan Perumahan Negara (Kementerian Perumahan dan Kerajaan Tempatan), 21 December 2020) <<https://ehome.kpkt.gov.my/index.php/pages/view/36?mid=195>> accessed 6 April 2021

265 Izwan Abdullah, 'Selenggara sistem saliran dua kali setahun elak banjir' (BH Online, 21 December 2020) <<https://www.bharian.com.my/berita/wilayah/2020/12/767497/selenggara-sistem-saliran-dua-kali-setahun-elak-banjir>> accessed 6 April 2021

266 Administrator, 'KEPUTUSAN TERKINI DUN N34' (Suruhanjaya Pilihan Raya Malaysia, NA) <<https://dashboard.spr.gov.my/#!/dun/12/N.34>> accessed 6 April 2021

267 Bernama, 'Selamat dari masalah hakisan, kini berdepan banjir' (BH Online, 19 Disember 2020) <<https://www.bharian.com.my/berita/nasional/2020/12/766732/selamat-dari-masalah-hakisan-kini-berdepan-banjir>> accessed 6 April 2021

268 Afifi Hafiz Mohd Nor, '155 kawasan berisiko tinggi dadah seluruh negara' (Utusan Malaysia, 19 Disember 2020) <<https://www.utusan.com.my/berita/2020/12/155-kawasan-berisiko-tinggi-dadah-seluruh-negara/>> accessed 6 April 2021

269 Malaysian Government, 'AKTA LANGKAH-LANGKAH SEMENTARA BAGI MENGURANGKAN KESAN PENYAKIT KORONAVIRUS 2019 (COVID-19) 2020 (Akta 829)' (Legal Affair Division (BHEUU), 23 October 2020) <[http://www.bheuu.gov.my/pdf/Akta/Akta%20829-2020/Akta%20829%20\(BM\).pdf](http://www.bheuu.gov.my/pdf/Akta/Akta%20829-2020/Akta%20829%20(BM).pdf)> accessed 6 April 2021

270 Parti Sosialis Malaysia (PSM), 'The Covid-19 Recession: A Program That Ensures That Nobody is Left Behind! (Part One)' (Think Left, 10 May 2020) <<https://thinkleft.net/2020/05/10/the-covid-19-recession-a-program-that-ensures-that-nobody-is-left-behind-part-one/>> accessed 6 April 2021

271 Reena Sekaran, 'Penniless, student resorts to selling fruits to pay university fees' (Free Malaysia Today, 14 December 2020) <<https://www.freemalaysiatoday.com/category/highlight/2020/12/14/penniless-student-resorts-to-selling-fruits-to-pay-university-fees/>> accessed 6 April 2021

Vicneswary's father had died of a massive heart attack in October 2019, and she lost her job because of Covid-19 in August 2020.

Lack of understanding of the need of PPR houses for the poor was also highlighted by the case of S. Ganesh and his family from Pulau Pinang. The family of five had been homeless for about 8 months after their house was razed in a fire in April 2020.²⁷² He applied for a PPR house on the same month but did not hear anything from the authorities after that. Apparently, his application was not processed because it was incomplete but the authorities never informed Ganesh about this. It was only when his case was highlighted in the press that he was sanctioned a PPR house by the Pulau Pinang government.

Evictions

In December 2020, there was an effort to evict residents without proper discussion and compensation at Kampung Manis, Perai, Pulau Pinang.²⁷³ RAC (Railway Asset Corporation) issued a six-month notice of vacant possession to some 200 families. In the notice RAC's chairman threatened the residents with penalty of not more than RM500,000 or 5-years imprisonment or both. Even though the notice was rescinded a day after²⁷⁴, it highlighted the plight of Kampung Manis residents who had been living on the land for four generations.²⁷⁵

Another case of eviction was that at Jalan Atas Paloh, Kota Bahru, Kelantan. PKINK (Kelantan State Economic Development Corporation) was developing the land and requested 16 families to vacate without proper compensation and relocation at the end of 2020.^{276 277} The villagers filed a civil suit on the demolition of 12 houses, and judicial review against PKINK's decision on the compensation for the families.²⁷⁸

Small Farmers

The Musang King farmers in Raub, Pahang have been in a tussle with the state government which was treating them as 'criminals' and forcing them to enter a lopsided deal to allow a private company

272 Opalyn Mok, 'Family of five in Penang appeals for public housing after living in car for eight months' (Malay Mail, 24 December 2020) <<https://www.malaymail.com/news/malaysia/2020/12/24/family-of-five-in-penang-appeals-for-public-housing-after-living-in-car-for/1934649>> accessed 6 April 2021

273 Opalyn Mok, 'Penang deputy CM tells Railway Asset Corporation to compensate Kampung Manis residents before eviction' (Malay Mail, 15 December 2020) <<https://www.malaymail.com/news/malaysia/2020/12/15/penang-deputy-cm-tells-railway-asset-corporation-to-compensate-kampung-mani/1932140>> accessed 6 April 2021

274 Pradeep Nambiar, 'Railway body rescinds eviction notice to Kg Manis residents' (Free Malaysia Today, 16 December 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/12/16/railway-body-rescinds-eviction-notice-to-kg-manis-residents/>> accessed 6 April 2021

275 Audrey Dermawan, 'Kampung Manis villagers' lives just became 'pahit' with eviction notice [NSTTV]' (New Straits Times, 16 December 2020) <<https://www.nst.com.my/news/nation/2020/12/649873/kampung-manis-villagers-lives-just-became-pahit-eviction-notice-nsttv>> accessed 6 April 2021

276 MRB, 'Tak turun padang, penduduk Jalan Atas Paloh petik nama Takiyuddin' (Makkal Osai, 28 September 2020) <<https://makkalosai.com.my/2020/09/28/tak-turun-padang-penduduk-jalan-atas-paloh-petik-nama-takiyuddin/>> accessed 6 April 2021

277 Rohana Mohd Nawi, '16 penduduk Jalan Atas Paloh dakwa dianiaya kerajaan negeri' (Kosmo, 24 December 2020) <<https://www.kosmo.com.my/2020/12/24/16-penduduk-jalan-atas-paloh-dakwa-dianiaya-kerajaan-negeri/>> accessed 6 April 2021

278 Manzaidi Mohd Amin, 'Kes roboh rumah, penduduk dapat kebenaran permohonan semakan kehakiman' (Malaysia Gazette, 28 December 2020) <<https://malaysiagazette.com/2020/12/28/kes-roboh-rumah-penduduk-dapat-kebenaran-permohonan-semakan-kehakiman/>> accessed 6 April 2021

to easily reap the benefits.²⁷⁹ The private company is chaired by a member of the Pahang royalty.²⁸⁰ People Before Profit visited Raub and managed to interview some farmers to get a full picture of what was happening.

In June 2020, the company was awarded land-lease rights for 5,357 ha (about 13,200 acres) for 30 plus 30 years.²⁸¹ The company claims that 30% of the land awarded to them had been encroached upon and therefore it was offering a means to legitimise the farmers' plots. Apart from 'legitimising' the farmers' plots, the company would also introduce a levy on the farmers' crops.

In December 2020, Kuantan High Court (KHC) dismissed the 204 farmers' application for a judicial review against the land eviction notice issued to them by the state.²⁸² Two reasons given by KHC were that:

1. the eviction notice issued by a land administrator cannot be reviewed in court and,
2. the farmers were trespassers on the land. As trespassers, they do not have locus standi to file this application for judicial review.

An appeal had been filed in the Court of Appeal.²⁸³

279 Alagesh T.N., 'Raub durian farmers cry foul over impending eviction move' (New Straits Times, 31 December 2020) <<https://www.nst.com.my/news/nation/2020/12/653558/raub-durian-farmers-cry-foul-over-impending-eviction-move>> accessed 6 April 2021

280 Administrator, 'The Company' (Royal Pahang Durian, NA) <<https://www.royalpahangdurian.com/about/>> accessed 6 April 2021

281 Emmanuel Santa Maria Chin, 'Company refutes Pahang's Musang King farmers' 'modern slavery' accusations, says scheme protects Malaysia's durian industry' (Malay Mail, 22 August 2020) <<https://www.malaymail.com/news/malaysia/2020/08/22/company-refutes-pahangs-musang-king-farmers-modern-slavery-accusations-says/1896062>> accessed 6 April 2021

282 Bernama, 'Court rules durian farmers to be trespassers, denies review bid' (Free Malaysia Today, 23 December 2020) <<https://www.freemalaysiatoday.com/category/nation/2020/12/23/court-rules-durian-farmers-to-be-trespassers-denies-review-bid/>> accessed 6 April 2021

283 Ashman Adam, 'Why force Musang King durian farmers out when court has yet to decide on appeal, group asks Raub land office' (Malay Mail, 01 January 2021) <<https://www.malaymail.com/news/malaysia/2021/01/01/why-force-musang-king-durian-farmers-out-when-court-has-yet-to-decide-on-ap/1936497>> accessed 6 April 2021

