



HUMAN RIGHTS REPORT MALAYSIA 2016 OVERVIEW CIVIL AND POLITICAL RIGHTS



DETENTION WITHOUT TRIAL | DEATH IN CUSTODY | ABUSE OF POWER | CORRUPTION
OFFICIAL SECRET ACT | JUDICIARY | COMMUNICATION AND MULTIMEDIA ACT
SEDITION ACT | REFUGEES | DEATH PENALTY | PEACEFUL ASSEMBLY ACT

A large black silhouette of a protest scene is centered below the title. It shows several people's hands raised in the air, some holding white flags or banners. In the background, a white flag with a red emblem is partially visible. The overall composition suggests a protest or rally.

**SUARA RAKYAT MALAYSIA (SUARAM) IS COMMITTED TO DEFENDING AND
CAMPAINING FOR HUMAN RIGHTS IN MALAYSIA AND OTHER PARTS OF THE
WORLD. THE ORGANIZATION BEGAN IN 1989 AS A CAMPAIGN BODY FOR THE
INFAMOUS OPERASI LALANG WHEN 106 MALAYSIANS WERE DETAINED
WITHOUT TRIAL. SINCE THEN, IT HAS EVOLVED INTO THE LEADING HUMAN
RIGHTS ORGANIZATION IN MALAYSIA, COMMITED TO PROTECTING,
PRESERVING AND PROMOTING HUMAN RIGHTS.**

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Executive Summary

As a beleaguered government tried to deflect international criticisms of the 1MDB scandal throughout 2016, human rights violations have continued. Detention without trial remained an area of concern while police shootings saw an alarming increase. Freedom of expression was seriously constrained while the freedom of assembly has been usurped by neo-fascist groups with state connivance. The freedom of movement of some Malaysians has been taken away on federal and state government orders while the freedom of religion was under threat by a private member's bill on hudud in parliament. Meanwhile, free and fair elections are seriously threatened by an on-going re-delineation exercise that reeks of gerrymandering and malapportionment. The LGBTIQ community remain under siege and harassment by state religious authorities, the indigenous peoples still suffer infringement of their native customary lands by state-sanctioned loggers while refugees and asylum seekers still live under threat of harassment by enforcement agencies.

Documented cases of **detentions** under SOSMA and POCA continue to rise in 2016. As of 31st October 2016, SUARAM has recorded 189 cases of detention under SOSMA. In comparison with the same period in 2015, SUARAM only recorded less than 50 cases of SOSMA detention last year. Several cases involving the use of POCA came to light in 2016 raising concern with regard to the manner POCA is being used against first time offenders. While POCA tends to be used against 'organized crime', in some of the cases documented, POTA was also reported to be used in 2016 following disclosure at a conference on National Security Council Act in Kuala Lumpur. While the number of POTA detentions is relatively low, it should be noted that terror suspects can be and are still detained under POCA.

While there was a relative improvement in the number of cases of **torture and ill treatment** by the Royal Malaysian Police, several high-profile cases alleging police brutality and torture came to light. Furthermore, the practice of 'chain remand' continued unabated with notable cases documented by SUARAM in March, April, May, June and July 2016. Reported cases of **death in police custody** showed an improvement with only two documented cases of death in police custody, in comparison with 10 during the same period in 2015. While deaths in police custody have been on the decrease, police shootings have been steadily increasing over the years with 33 cases of police shooting, including 31 fatalities reported thus far in 2016.

Freedom of Expression remains constrained by the Malaysian government. The positive development in 2016 was the sharp decline in the use of the Sedition Act 1948. Unfortunately, this restrained use of the Sedition Act was accompanied by several convictions and failed constitutional challenges. The Communications and Multimedia Act 1998 became the Government's primary method to stifle dissent and criticism in 2016 with more than 30 cases documented and more than 60 investigations conducted in the first half of 2016 alone. The Printing Presses and Publications Act 1984 (PPPA) remained an obstacle to the freedom of expression with more books joining the list of banned publications. In 2016, 'deviant' religious publications were the main victims of the PPPA. The social movement Bersih once again fell prey to the PPPA in 2016 when organisers of the Bersih convoy were arrested in Sabah in 2016.

There has been more **freedom of assembly** in Malaysia in 2016 with substantially fewer arrests at peaceful assemblies. Although state harassment has not been as severe as in previous years, organizers and participants are still harassed by police investigations for non-existent crimes. The rise of the neo-fascist ‘Red Shirts’ has raised new concerns in relation to the freedom of assembly in Malaysia. The state appears to have outsourced its harassment to non-state actors such as the ‘Red Shirts’ who have resorted to violence to disrupt the Bersih convoy and to issue threats against Bersih and media personnel.

Restrictions on **freedom of movement** in Malaysia was highlighted during the Sarawak state election in 2016 when a long list of opposition politicians and human rights activists were barred from entering Sarawak during the campaign period. Some controversial right-wing individuals from the peninsula were also barred from entering Sarawak. Maria Chin was barred from travelling when she was attempting to leave Malaysia to receive the 2016 Gwangju Prize for Human Rights. She was allegedly barred from travelling for ‘ridiculing’ the government abroad. A minister tried to justify the government action by claiming that freedom of movement is a privilege and not a right.

As for the **freedom of religion**, the issue of unilateral conversions continued to be an issue in Malaysia with no remedy in sight. The Malaysian government’s promised law amendment that would supposedly provide a remedy for families caught in the legal tussle over unilateral conversion had still not been tabled as of 31st October 2016. Religious minorities perceived as ‘deviants’ remained under threat in 2016 with publications banned under the PPPA and arrests of alleged syiah practitioners. The issue of the controversial Hudud amendment bill was once again headline news in Malaysia following the Malaysian Government’s facilitation of the Pan Islamic Party’s private member’s bill. While even component parties of the ruling coalition were openly critical of the move by the government, no concrete action has been taken to defer the bill. While the opposition coalition is apparently opposed to the proposed amendments, their component party AMANAH has proposed its own Hudud amendment draft to the controversial PAS bill.

Free and fair elections were once again under grave threat in 2016. In the by-elections that were held during the year, election offences committed by politicians from both sides of the political divide were at an all-time high. The re-delineation exercise that started in Sarawak in 2015 was extended to the rest of Malaysia. As of 31st October 2016, Bersih had raised substantial concerns regarding gerrymandering and malapportionment in the redelineation exercise in many constituencies.

As for **Law & Judiciary in Malaysia**, several constitutional challenges that hold significant impact in Malaysia remained unanswered in 2016. Laws such as the Peaceful Assembly Act 2012 are technically still in limbo with divergent court of appeal decisions. Anwar Ibrahim’s last attempt to challenge his sentence in the Federal Court was heard in October 2016. It remains to be seen whether his appeal will succeed.

Gender and Sexuality issues remained problematic in 2016. There was little improvement for gender equality in Malaysia. Sexist remarks were still made with impunity by politicians from both sides of

the political divide. The LGBTIQ community remained under siege in 2016 with an increase in documented cases of arrests and harassments. Persecution of the community by the respective state religious authorities continued across Malaysia with little to no room for productive discussion and engagement.

The National Human Rights Commissions of Malaysia (SUHAKAM) was left ineffectual until June 2016 after the previous SUHAKAM commissioners' term concluded in April 2016. The delay in appointment of new commissioners and the reduction of funds in 2015 gave the impression that the government was punishing SUHAKAM for its defence of human rights in 2015. Fortunately, the new budget for 2017 has raised SUHAKAM's budget back to its previous allocation of RM10 million. Soon after their appointment, the new chairperson made statements that contravened recognized human rights values and sparked a barrage of criticism by civil society. Since then, the newly appointed chairperson has adopted a more accommodating stance on human rights and has expressed clear support on many issues in line with international human rights values.

The plight of the **indigenous peoples** of Malaysia worsened in 2016 with new challenges faced by the community in Kelantan as government-sanctioned loggers threatened to destroy their homes and way of life. In a desperate bid, the indigenous community there have set up a blockade and called on the state government to negotiate a settlement on the community's terms. Elsewhere, the indigenous people achieved success when the courts decided on their rights to customary land. Another important victory for indigenous people was the cancellation of the Baram Dam in Sarawak in March 2016.

For refugees and asylum seekers, the Malaysian government's refusal to recognize their rights meant that they remained under constant threat and exposed to systemic exploitation. In some cases, the threat experienced by refugees and asylum seekers was posed by none other than the Malaysian government itself. A notably different treatment was given to the Syrian refugees in 2016 when a minister pointed out that the Syrian refugees accepted by Malaysia were not taken in as refugees but as migrants.

Death Penalty remained a serious violation of human rights in Malaysia in 2016 with nine cases of executions reported by the law minister in Parliament. Out of these, only four cases were publicly known. As of 31st October 2016, more than 1,000 prisoners remain on death row with no clemency in sight.

Detention without Trial

Malaysia continues to be plagued by laws that permit detention without trial. 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 1984 (DDA) have been invoked to combat the threat of terrorism, organized crime and drug trade respectively.

The latest addition to the long list of laws permitting detention without trial was in early 2016 with the introduction of the National Security Council Act 2016 (first tabled in December 2015). While the Act has come into force, it has not yet been invoked and it remains to be seen how the Act would be used against those seen as a threat to the security of Malaysia. The new National Special Operation Force (NSOF) was established under the National Security Council.

Statistics on detentions without trial from SUARAM's documentation in 2016

	Terrorism	Trafficking/ Immigration	Other criminal offences	Total
SOSMA	102	39	45	189
POCA	1	28 ¹	249	278
POTA	11	-	-	11
Total	114	67	294	475

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 suspicious offences under Chapter VI and VII of the Penal Code or for offences under Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM). 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 family for up to 48 hours. Furthermore, detainees are not granted bail and could be subjected to incarceration until the conclusion of their trial and after all legal proceedings including appeals have been exhausted.

Out of all the laws allowing detention without trial, SOSMA differs in that a trial does take place after the initial remand. Due to its 'unique' nature requiring suspects to be brought before a court for a trial, reported cases in which individuals were detained under SOSMA give an insight into how these laws are apparently used to protect Malaysia against security threats and reveal possible misconduct by the police.

¹ Trafficking is a crime under ATIPSOM which usually utilizes SOSMA for remand, however in this case, suspected human traffickers were arrested under POCA in Kuala Lumpur; 'Actor's wife nabbed in human trafficking probe' (The Star Online, 29 July 2016) <<http://www.thestar.com.my/news/nation/2016/07/29/actors-wife-nabbed-in-probe/>> Accessed 31 October 2016

Case Profiles:

Nor Azmi Jalani

A 28-year-old military man from the Royal Malaysian Air Force, Nor Azmi Jalani was arrested on suspicion of involvement in a conspiracy to procure firearms and kidnap VVIPs. He alleged that he was tortured whilst in police custody for alleged involvement in terrorism related activities.

He was charged under s.130g and s.120B of the Penal Code. The prosecution described him as a member of a wicked conspiracy that seeks to promote terrorism in Malaysia. He has been detained since April 2015 and remains in detention at Sungai Buloh.

Siti Noor Aishah

A 29-year-old postgraduate student, Siti Noor Aishah was arrested for alleged possession of 12 books that were purportedly tied to terrorism. The authority claims that the books were on Jemayaah Islamiyah (JI), Islamic State (IS) and Al-Qaeda, all faith-based terror groups.

She was charged under S.130JB (1)(a) Penal Code for the alleged offence. One month after her arrest on 19 April 2016, she was charged with the offence at the Kemaman Magistrate's Court. She entered a plea of not guilty at the High Court on 25 July 2016. On 29 September 2016, she was discharged of the offence and acquitted when the trial judge found that there was no evidence to suggest that the offence had been committed. The court ruled that the prosecution had failed to prove a *prima facie* case.

Her freedom was shortlived as Noor Aishah was re-arrested on the same day for a new offence. The details of her new charges are unknown. She has been detained under POCA at Pusat Pemulihan Akhlak, Machang.

Prevention of Crime Act 1959

POCA was a law introduced to prevent organized crimes especially by triads, secret societies and repeat offenders. It has been amended in recent years to include offences involving terrorism and it is intended to be used if SOSMA is deemed inadequate. POCA grants the Royal Malaysian Police powers to arrest and detain an individual for up to 60 days with the approval by senior police officers. After the initial 60 days' detention period, detainees must be produced before a 'Prevention of Crime Board' at which they would either be discharged, subjected to house arrest and electronic monitoring or serve a two years' detention order that can be renewed indefinitely by the Board.

In 2016, there were occasional announcements of successful sting operations that led to 'mass' detentions under POCA. In July 2016, POCA was prominent in the Malaysian news following the arrest and detention of R. Sri Sanjeevan under POCA.

Numbers of detention remain startling with police in Selangor revealing that 174 individuals had been detained under POCA in Selangor between January and August 2016². Police in Perak also reported 75 detentions under POCA within the same period³.

As noted earlier, POCA seems to be used as a fall back by the police whenever SOSMA is found to be inadequate in extending the detention of an individual.

Raid on ‘Tontos’

In May 2016, Ops Khas Cantas Tonto saw 16 *tontos* arrested and their vehicles confiscated. The suspects, who were between the ages of 20 to 40, were detained under POCA. Their arrests involved the deployment of substantial show of force by enforcement agencies that cornered the *tontos* using helicopters and land vehicles⁴.

Tonto is a name given by the Road Transport Department to the “evil twin” of syndicates. They assist transport operators in evading enforcement agencies by shadowing Road Transport Department officers in their vehicles and tipping off their whereabouts in exchange for a fee.

N. Letchumanan and N. Vikram

These two brothers were remanded for investigations into an attempted murder in a gang fight. Despite their young ages (17 and 19 respectively) and with no prior criminal records, they were detained under POCA. The teenage boys were allegedly to be members of secret society, ‘Kongsi Gelap 36’. They were subsequently ordered to be detained at the Special Rehabilitation Centre in Kluang, Johor by the Crime Prevention Board. During the remand period, the boys submitted complaints of alleged abuse by the investigating officers. However, the police have vehemently denied the allegation.

R. Sri Sanjeevan

The NGO MyWatch chairman, Dato’ Seri R. Sri Sanjeevan and his family went through an ordeal when he was arrested a total of nine times within a span of two months. More than 15 charges were laid on him during this period and he was even remanded under POCA for a period of 21 days. He eventually won a writ of habeas corpus that rendered the remand null and void. He is now facing various charges of extortion and also charged for insulting the Inspector-General of Police.

² ‘24 Gangsters picked up under POCA this year’ (The Star Online, 7 September 2016)

<<http://www.thestar.com.my/news/nation/2016/09/07/24-gangsters-picked-up-under-poca-this-year/>> accessed 31 October 2016

³ T. Avineshwaran, ‘Perak cops arrest 71 suspected gangsters’ (The Star Online, 25 August 2016)

<<http://www.thestar.com.my/news/nation/2016/08/25/perak-cops-arrest-71-suspected-gangsters/>> accessed 31st October 2016

⁴ Hariz Mohd, ‘Cop bust ‘Tonto’ gangs in ‘Hollywood’ operation (New Straits Times Online, 28 April 2016)

<<http://www.nst.com.my/news/2016/04/142125/cops-bust-tonto-gangs-hollywood-operation>> accessed 28 October 2016

Prevention of Terrorism Act 2015

POTA is a recent addition to the number of laws permitting detention without trial. POTA was introduced in 2015 apparently to combat the rising threat posed by Islamic State and terrorism⁵. Like POCA, POTA grants the police powers to arrest and detain an individual for 60 days. After the initial detention, detainee has to be produced before the ‘Prevention of Terrorism Board’ which can discharge the detainee, subject them to house arrest and electronic monitoring or sentence them to two years’ detention order which can be renewed indefinitely by the Board.

In a presentation made by Dr. Fathul Bari Mat Jahya at a conference on the National Security Council Act 2016 (NSC), it was reported that there are 11 individuals charged and detained under POTA⁶. Unfortunately, the clandestine manner in which POTA cases are dealt with leaves little information available to the public regarding its use. Furthermore, as there are still reported cases of POCA being used for alleged terrorism offences, it is unclear what the exact role of POTA in Malaysia’s security and justice system is.

Dangerous Drugs (Special Preventive Measures) Act 1985

The Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA) is another law that permits detention without trial in Malaysia. Compared to the other laws allowing detention without trial, the use of DDA has of late been rather low key with little to no media coverage and public announcement. DDA differs from POCA and POTA in that the detention order is signed by the Home Minister rather than an appointed ‘board’. Nevertheless, this is only a technical detail as there is still a board that exercises the power of issuing detention orders on behalf of the minister. Individuals arrested under DDA can be detained for 60 days by the police and can be sentenced to two years’ detention order that can be renewed.

While detention without trial is intrinsically unjust and should have no place in a modern democracy, when we bear in mind that selected drug offences are punishable by death in Malaysia⁷, indefinite detention under DDA is sometimes viewed as a ‘lighter’ sentence!

⁵ ‘Pota is needed now, say Barisan MPs’ (The Star Online, 8 April 2015)

<<http://www.thestar.com.my/news/nation/2015/04/08/pota-is-needed-now-say-barisan-mps/>> accessed 1 November 2016

⁶ ‘Important to widen our view on terror’ (The Star Online, 11 September 2016)

<<http://www.thestar.com.my/news/nation/2016/09/11/important-to-widen-our-view-on-terror/>> accessed 1 November 2016

⁷ Section 39B of the Dangerous Drugs Act 1952

Police Abuse of Power

Allegations of torture, abuse of the remand process and misconduct by the police were prevalent throughout 2016 although there was improvement in some areas.

Deaths in Custody

On 26th May 2016, it was reported that from 2013 to 30th April 2016, 721 prisoners had died in custody in the previous 40 months⁸. This figure evens out to an average of 18 deaths in custody a month from 2013 to April 2016. Out of those deaths in police custody, 427 were Malay, 104 Chinese, 91 Indian, 10 others and 89 foreign citizens⁹. The primary cause of death was through diseases such as HIV, cancer, cardiac arrest, blood problems, tuberculosis and asthma. While some of these diseases may be considered to be incurable, diseases such as tuberculosis and asthma can be treated with modern medication and should not have to result in death.

Logeswary A/P Baskaran

Logeswary was imprisoned for a period of two weeks for failure to pay a fine to the court. She was initially arrested for alleged theft of a bar patron's monies. She was later charged and found guilty of not carrying her identity card. The circumstances surrounding her death in the week following her imprisonment are unclear.

She was transferred to Kajang prison on 13 July 2016 at which point she informed prison officials that she was suffering from Tuberculosis (TIBI) and needed medication. Despite her complaints of a worsening condition on 14 July 2016, it was not until 18 July 2016 that any action was taken. On 18 July, a prison officer had contacted Hospital Kuala Lumpur (HKL) requesting for details of her medical condition. Despite the call, the medical staff at HKL did not respond with the details required. On 22 July 2016, Logeswary was brought to Hospital Kajang at 5am due to her deteriorating condition. She died at 6am from a severe chest infection.

As far as we know, the situation with regards to deaths in police custody appears to be better since April 2016. As of October 2016, SUARAM has documented only two additional cases of deaths in police custody¹⁰.

Deaths in police custody since April 2016

Name	Detention Centre	Date of Death	Cause of Death
Unknown ¹¹	IPD Sg Siput	5 May 2016	Suicide
Azri Mohamed ¹²	Pengkalan Chepa	14 September 2016	Damage to intestine and infection

⁸ Lee Choon Fai, 'Home Ministry: 721 prisoner deaths in past 40 months' (The Sun Daily, 26 May 2016) <<http://www.thesundaily.my/news/1816265>> accessed 1 November 2016

⁹ FMT Reporters, 'Surendran: 18 prison deaths monthly 'shocking', unacceptable' (Free Malaysia Today, 27 May 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/05/27/surendran-18-prison-deaths-monthly-shocking-unacceptable/>> accessed 1 November 2016

¹⁰ Cases documented are through media reports which was verified by SUARAM or cases directly received by SUARAM

¹¹ Although detained in police lockup, detainee was arrested and investigated by the National Drug Agency: Muhammad Apendy Issahak, 'Tahanan mati tergantung dalam lokap' (Harian Metro, 5 May 2016) <<http://www.hmetro.com.my/node/135515>> accessed 31 October 2016

¹² Adila Sharinni Wahid, 'Mayat banduan dibedah kali kedua' (Sinar Online, 15 September 2016) <<http://www.sinarharian.com.my/semasa/mayat-banduan-dibedah-kali-kedua-1.562870>> accessed 31 October 2016

Torture and Ill Treatment in Detention

Following SUARAM's exposure of the use of torture against SOSMA detainees in late 2015, the situation appears to have improved. Cases relating to SOSMA received by SUARAM in 2016 have generally been free of torture and other forms of ill treatment.

It should also be noted that the report by the Enforcement Agency Integrity Commission (EAIC) regarding the death of N. Dharmendran revealed that there is an Inspector-General Special Order which forbids the use of violence against all detainees as well as an order by the Police Chief of Selangor that forbids the use of force against detainee¹³.

However, the existence of these orders has not eradicated the use of torture and other forms of ill treatment in detention. In SUHAKAM's report on deaths in police custody, their survey of 369 detainees under remand notes that almost 10% of detainees alluded that they have witnessed, heard or suffered physical violence by police officer in detention centres¹⁴. Some of the notable cases in 2016 include:

Nor Ros Syidi's Torture Case @ Parit Buntar

On 18 February 2016, a laborer named Nor Ros Syaidi bin Abidin was detained at the Bagan Serai's police station for investigation under Section 392 of the Penal Code for robbery. His mother was subsequently arrested for not cooperating with the on-going investigations and was remanded for 4 days. They were both subjected to varying degrees of abuse and torture during their remand.

The mother alleged that she was electrocuted and beaten by the police officer in charge. Similarly, Ros Syaidi was allegedly beaten and tortured during investigation. In court, Ros Syaidi pleaded guilty to the charges and was imprisoned for 3 years and 3 lashes at the Jawi Prison Complex, Seberang Perai, Penang. Motion filed by lawyers to halt the sentence pending a review and further investigation into alleged misconduct and forced confession was rejected.

Bandar Baru Nilai Torture Case

Muhammad Izzatuddin B. Marzuki reported that he was beaten by the police during his arrest at Bandar Baru Nilai. He alleged that he was beaten before being taken to the Nilai Police Station on 25th May 2016. In the police station, he alleged that he was beaten again by police officers with a rubber pipe and baseball bat. Izzatuddin was warned by the police that had beaten him and was subsequently drugged.

He later woke up in the High Dependency Ward at Hospital Seremban after a 9-hour surgery. He had 50 stitches around his neck and his wrists. He was also found with traces of drugs found in his system. The police alleged that he attempted suicide when he was on the police transport to the magistrate court.

¹³ EAIC Dharmendran Report pg 103

¹⁴ SUHAKAM, 'Kematian Dalam Tahanan Polis: Satu Kaji Selidik Mengenai Keadaan Lokap dan Faktor-Faktor Penyumbang Kepada Kematian', page 108 – report can be accessed at <<http://www.suhakam.org.my/ms/death-in-police-custody/>>

Sexual Assault by the police at the Jinjang Lockup

On April 2016, Lance Korporal Mohd Khairul Hisham bin Azis was remanded for a period of six days under s. 377 D of the Penal Code. He had allegedly committed acts of indecency towards three teenagers at the Jinjang lockup on the same date that the victims lodged a police report in the early hours of the morning. The victims lodged a police report concerning the assault. Although CCTV have been installed at the lockup since February 2016, there are no footage to show the commission as it had allegedly been performed at a blind spot.

Chain Remand

A chain remand takes place when an enforcement agency, usually the police, abuse their power to arrest and repeatedly arrest and re-arrest an individual after an individual's remand or after their 24 hours' detention period under the Criminal Procedure Code has lapsed. While in some cases an individual may be re-arrested for genuine investigation purposes, SUARAM has documented cases involving individuals who were detained for close to three months using chain remand¹⁵.

Police Shootings

Incidence of police shootings was relatively low following the high profile case of Aminulrasyid Amzah. Unfortunately, in the recent years, incidence of police shootings has been on a steady rise again. Reports of police shootings often involve situations of self-defence on the part of the police. While there has been no sign of foul play in most the cases documented by SUARAM, family and friends of the recent shooting along the Selayang highway have approached SUARAM suspecting foul play on the part of the police.

Statistics on Police Shootings in 2016

Month	Date	Names	Injured	Deaths	Total
January	1-Jan	Unnamed	0	4	4
February	21-Feb	Joshua Beti Chong, Awie Ningan	0	2	2
March	11-Mar	Unnamed	0	1	3
	14-Mar	Unnamed	0	1	
	20-Mar	Jusili Dasin	0	1	
April	4-Apr	Unnamed	1	0	4
	8-Apr	Unnamed	0	3	
May	15-May	Unnamed 40-year-old and 41-year-old	0	2	6
	26-May	Unnamed	0	4	
June	13-Jun	Herman	0	1	3
	16-Jun	Unnamed	0	1	
	29-Jun	Unnamed 37 yr old	0	1	

¹⁵ Refer to case study under POCA

July	14-Jul	Chung Chun Wah	0	1	1
August	8-Aug	Unnamed	1	0	4
	12-Aug	Unnamed	0	1	
	20-Aug	Uva & Sri Murni Boy	0	2	
September	6-Sep	Unnamed	0	3	10
	9-Sep	Khor Hock Yong	0	1	
	13-Sep	Unnamed	0	1	
	23-Sep	Ronald Engliong	0	1	
	23-Sep	Unnamed	0	4	
October	16-Oct	Unnamed	0	2	4
	19-Oct	Unnamed	0	1	
	29-Oct	Unnamed	0	1	
Total			2	39	41

Selayang Police Shooting along the Selayang-Kepong Highway

On 19th August 2016, two suspects Mohammad Shahril Sugumaran B. Abdullah and Uvaeahan A/L Santhanasmay who were alleged to be members of a secret society ‘Gang 36’ were shot dead by the police at the Selayang-Kepong Highway near the Forest Research Institute of Malaysia (FRIM). The family of the two individuals is currently filing for an inquest as they suspect that the firefight did not take place.

The police statement claimed that the deceased had refused to comply with police instruction to stop their vehicle which led to a car chase and then to a shootout between them and the police on duty. The family on the other hand, has obtained evidence to show that the autopsy reports given by the Hospital Kuala Lumpur and Hospital Selayang show a different time of death and they claim to have seen signs of bruises and handcuff marks on the deceased.

Enforcement Agency Integrity Commission (EAIC)

EAIC published its report on the death of N. Dharmendran in April 2016. Despite the detailed and irrefutable finding of misconduct, the Royal Malaysian Police were slow in implementing the recommendations made by EAIC. With limited power to act against misconduct and the absence of a legal requirement for enforcement agencies to report back on the findings and recommendations made by EAIC, it is not a great surprise that EAIC is seen as another toothless tiger by enforcement agencies.

While the lack of legal action is disappointing, the existence of a thorough and extensive report by EAIC still serves as an excellent basis to support families of victim in initiating civil suits against any misconduct by enforcement agencies.

Freedom of Expression

Crackdown on freedom of expression was still prevalent in Malaysia in 2016. The notable change between 2015 and 2016 can be seen in the government's utilization of different provisions in restricting and curtailing freedom of speech. Another trend that has continued from 2015 is the Royal Malaysian Police's active monitoring of social media postings. This usually takes the form of the Inspector-General of Police publicly calling on the Royal Malaysian Police to trace and investigate social media posts on his twitter¹⁶ account or warnings from the Police Cyber Investigation Response Centre (PCIRC)¹⁷.

The Sedition Act 1948

The application of the Sedition Act 1948 seems to have eased. There were no reported cases of individuals being prosecuted under the Sedition Act 1948 in 2016. However, this does not discount the possibility that some prosecution cases may not be publicly known or reported. Although there may not be new cases of prosecution under the Sedition Act 1948, there were several arrests made under the Sedition Act 1948 and these individuals were called for questioning for possible offences under the Sedition Act 1948.

Statistics comparing the use of the Sedition Act 1948 in recent years

	2013	2014	2015	2016
Convicted	1	3	3	4
Charged	7	12	11	0
Investigated	10	29	206	8 (7) ¹⁸
Total	18	44	220	12

Summary of seditious cases for 2016

No	Name	Background	Status
1	Ahmad Shukri Kamarudin	Former Solidariti Mahasiswa Malaysia (SMM) activist	Arrested on 1 st April 2016 for a police report against him under the Sedition Act in 2014.
2	Shazni Murni	Amanah Youth Vice Chief	Arrested on 4 th April 2016 for alleged statement urging people to topple the government through mass demonstration.
3	Azrul Mohd Kalib	Social Policy Strategist at Institute for Democracy and	Called for questioning on 20 th April 2016 for initiating a petition calling for the Prime Minister of Malaysia to step down on change.org ¹⁹ .

¹⁶ 'IGP arah siasat tweet "sweet deal" dengan Najib' (MalaysiaKini, 23 August 2016)

<<http://www.malaysiakini.com/news/353351>> accessed 17 October 2016

¹⁷ Link to PCIRC twitter: <https://twitter.com/officialpcirc> - though it is noted that PCIRC has seemingly stop with its public monitoring and call out in 2016

¹⁸ In some cases, individuals were detained and remanded for investigation. Total case of those arrested and detained are listed in brackets

¹⁹ Several others were called for questioning for similar reasons. List of those called for questioning is not disclosed for privacy concerns.

		Economic Affairs (IDEAS)	
4	Zhafran Muhammad Zuhdi	Activist	Arrested on 2 nd April 2016 and investigated under the Sedition Act for posting a sticker on a police car; subsequently charged for other offences.
5	Unnamed	Factory Worker	Arrested on 26 th April 2016 for Facebook posting that allegedly insulted a religion using vulgar words ²⁰
6	Fahmi Reza and others ²¹	Activists	Arrested on 4 th June 2016 at Publika for selling #KitaSemuaPenghasut t-shirts
7	Vivian Lee		Convicted and sentenced on 27 th May 2016 for facebook posting. Sentence was stayed pending appeal [6 months' imprisonment]
8	Tian Chua	Member of Parliament for Batu	Convicted and sentenced on 28 September 2016 for statement made in a forum in 2013 [RM1,800 fine and 3 months' imprisonment]
9	Mohd Fakhrulrazi Mohd Mokthar	Former PAS Youth Treasurer	Convicted and sentenced on 25 th August 2016 under the Sedition Act 1948 for #KitaLawan rally in 2015 [8 months' imprisonment]
10	Abdullah Zaik Abd Rahman	President of ISMA	Convicted and sentenced on 30 th August 2016 for his alleged statement labelling Chinese as 'trespassers' in the country [RM2,000 fine]
11	Haris Ibrahim	Activist	Convicted and sentenced on 14 th April 2016 for making seditious remark in 2013 that allegedly called for people to take to the street and topple the government [8 months imprisonment]
12	Adam Adli	Student Activist	Jail sentence set aside following appeal at High Court on 18 th February 2016 [RM5,000 fine]
13	Hishamuddin Rais	Activist	Jail sentence set aside following appeal at the Court of Appeal on 16 th May 2016 [RM5,000 fine]

Mat Shuhaimi's constitutional challenge was heard on 1st June 2016. Unfortunately, the High Court denied the constitutional challenge by Member of Parliament, N. Surendran's as the issue was supposedly resolved through Azmi Sharom's case. While the initial challenge was rejected, Surendran has an appeal challenging the non-reference of constitutional challenge and another appeal on striking out the charges against him pending. Both appeals are scheduled to be heard in early 2017.

²⁰ Opalyn Mok, 'Cops arrest factory worker for posting seditious remarks on social media', (Malay Mail Online, 27 April 2016) <<http://www.themalaymailonline.com/malaysia/article/cops-arrest-factory-worker-for-posting-seditious-remarks-on-social-media>> accessed 27 October 2016

²¹ Other arrested includes Pang Khee Teik, Lew Pik-Svonn and Arif Rafhan Othman

Communications and Multimedia Act 1998

In contrast to the Sedition Act 1948 that predominantly targets human rights defenders or politicians, the Communication and Multimedia Act 1998 (CMA) has largely been used against the general public. The main section utilized to restrict the freedom of expression is Section 233 of the CMA which criminalizes online and network communications that are considered ‘obscene, indecent, false, menacing or offensive in nature with intent to annoy, abuse, threaten or harass another person’.

With such a broad definition, it is not surprising that SUARAM has documented a wide variety of statements and comments which resulted in the arrest of the authors of these statements. These have ranged from perceived rude remarks regarding football teams to cases in which individuals have allegedly insulted Islam.

Apart from the broad ambit of ‘crimes’ falling under CMA, another concern is the new trend of arrests under CMA. In recent months, enforcement agencies have made ‘cross border’ arrests, detaining individuals in their respective home states and subsequently brought to Johor Bahru for investigation. The justification given by the police was that a police report had been lodged at a police station in Johor Bahru which required the detainee to be brought to and subsequently detained at the said location despite the police report clearly stating that the alleged offence had been committed elsewhere.

Then there are reports filed by members of the Royal Malaysian Police or other enforcement agencies which are based in every state. A recent example is the report lodged by the Malaysian Anti-Corruption Commission (MACC) in Johor Bahru over the viral video of a MACC officer beating up a ‘police officer’ in Selangor²². Another example is the charge against Fahmi Reza which was heard in Ipoh, Perak although the alleged offence had been committed in Kuala Lumpur.

Statistics on the use of the Communications and Multimedia Act 1998

	2015	2016
Investigated (Questioned)	23	4
Arrested and/or detained	10	20
Charged	3	6
Sentenced	1	1
Total	37	31 ²³

²² Farik Zolkepli, ‘Bukit Aman: ‘Cop’ on receiving end in viral video actually a motorcycle thief’, (The Star, 13 October 2016) <<http://www.thestar.com.my/news/nation/2016/10/13/bukit-aman-cop-on-receiving-end-in-beating-video-actually-a-car-thief/>> accessed 14 October 2016

²³ Cases documented by SUARAM is significantly lower than the numbers reported by the Malaysia Communication and Multimedia Commission due to unreported arrests and convictions – ‘MCMC Siasat 62 Aduan Salah Guna Media Sosial Setakat Mei Tahun Ini’, (MCMC, 3 June 2016) <<http://www.skmm.gov.my/Mobile/Tools/ViewMobile.aspx?datapath=/Media/Press-Releases/MCMC-Siasat-62-Aduan-Salah-Guna-Media-Sosial-Setakat&classname=SKMM.CustomArticles&csrt=18099981513749567319>> accessed 27 October 2016

Summary of cases under CMA

No	Name	Reason	Status
1	Khairul Nizam	Alleged comment against member of royal family	Arrested on 8 th January 2016 at his home in Kota Bahru and investigated in Johor Bahru
2	Unnamed	Offensive and insulting offence against Prime Minister of Malaysia	Arrested on 28 th March 2016 to facilitate investigation
3	Muhammad Isyraf Shamsuddin	Allegedly insulted member of royal family	Surrendered himself on 20 th April 2016, remanded for investigation, charged on 27 th April 2016 and claimed trial.
4	Muhamad Amirul Azwan Mohd Shakri	Allegedly insulted member of royal family	Arrested on 28 th April 2016 and convicted on 8 th June 2016. Sentenced to 14 years' imprisonment to be concurrently served. Sentence subsequently amended to attend Henry Gurney school until 21 years' old
5	Masyhur Abdullah	Allegedly insulted member of royal family	Arrested on 25 th May 2016 and remanded for 2 days
6	Arrasyiddin Mohd	Allegedly insulted member of royal family	Arrested on 28 th May 2016 and remanded for 11 days
7	Muhd Salman Zakaria	Allegedly insulted member of royal family	Arrested on 30 th May 2016 and remanded for 11 days
8	Effie Amron	Allegedly insulted member of royal family	Called for investigation on 30 th May 2016
9	Nik Pa	Allegedly insulted member of royal family	Arrested on 31 st May 2016 and remanded for 12 days
10	Nik Azwa	Allegedly insulted member of royal family	Arrested on 31 st May 2016 and remanded for 12 days
11	Unnamed	Alleged posting alleging that police accepted bribe to cover up criminal activity in the city	Arrested on 5 th June 2016 and investigated under Section 233 of CMA and Section 507 of the Penal Code ²⁴
12	Chong Chun Hau	For his comments on the series of arrests under CMA	Arrested on 17 th June 2016
13	Fahmi Reza	For his satirical posting using MCMC's image and #KitaSemuaPenghasut contents	Charged at Kuala Lumpur on 6 th June 2016 and subsequently at Ipoh on 10 th June 2016

²⁴ 'Housewife who made allegations against Miri police on Facebook arrested' (Malay Mail Online, 6 June 2016) <<http://www.themalaymailonline.com/malaysia/article/housewife-who-made-allegations-against-miri-police-on-facebook-arrested>> accessed 27 October 2016

14	Unnamed (25-year-old woman)	Alleged fake religious statement under Permaisuri Johor Raja Zarith Sofiah Sultan Idris Shah	Arrested on 21 st July 2016 ²⁵
15	Syarul Ema Rena Abu Samah	Facebook posting on picture taken from Prime Minister Hari Raya open house in Pekan	Raided by MCMC on 2 nd August 2016 and summoned to MCMC office for questioning on the same day ²⁶
16	Unnamed	Alleged racist statement	Police officer attached to Desa Cemerlang police station was arrested on 6 th August 2016 and investigated for alleged racist post on Facebook ²⁷
17	Unnamed	Allegedly insulted member of royal family	Detained on 22 nd August 2016 in Penang ²⁸
18	Unnamed	Allegedly insulted member of royal family	Detained at Batu Tiga on 12 th August 2016 ²⁹
19	Pa Ya	Uploaded photo on WhatsApp that allegedly insulted the Prime Minister of Malaysia	Arrested on 2 nd July 2016 ³⁰
20	Lim Cheng Lam	Allegedly insulted Islam in relation to Haron Din's death	Arrested on 19 th September 2016
21	Sidek Kamiso	Allegedly insulted Islam in relation to Haron Din's death	Arrested on 19 th September 2016 and subsequently rearrested on 29 th September 2016 under Section 298A of Penal Code ³¹

²⁵ Nabila Ahmad, 'woman nabbed for fake religious statement on FB' (The Star Online, 21 July 2016) <<http://www.thestar.com.my/news/nation/2016/07/21/woman-nabbed-for-fake-religious-statement-on-fb/>> accessed 27 October 2016

²⁶ Minderjeet Kaur, 'Ratu Naga questioned by MCMC over Facebook posting' (Free Malaysia today, 2 August 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/08/02/ratu-naga-questioned-by-mcmc-over-facebook-posting/>> accessed 27 October 2016

²⁷ 'Policemen detained over racist Facebook post' (The Star Online, 6 August 2016) <<http://www.thestar.com.my/news/nation/2016/08/06/policeman-detained-racist-comments/>> accessed 27 October 2016

²⁸ 'Man held over 'offensive statement' against Johor Sultan' (The Star Online, 23 August 2016) <<http://www.malaysiakini.com/news/353305>> accessed 27 October 2016

²⁹ 'Police arrest man for insulting Tunku Mahkota Johor' (The Star Online, 13 August 2016) <<http://www.thestar.com.my/news/nation/2016/08/13/man-arrested-insulting-tmj/>> accessed 27 October 2016

³⁰ 'Elderly man arrested for posting insulting photo of Malaysia PM Najib Razak on Whatsapp' (Straits Times, 3 July 2016) <<http://www.straitstimes.com/asia/se-asia/elderly-man-arrested-for-posting-insulting-photo-of-malaysia-pm-najib-razak-on-whatsapp>> accessed 27 October 2016

³¹ Causing religious disharmony

22	Unnamed	Allegedly insulted Islam in relation to Haron Din's death	Arrested on 19 th September 2016 ³²
23	Jeff Ooi	Tweet in relation to death of Haron Din	Submitted for questioning on 20 th September 2016 ³³
24	Abdul Rahim Thamby Chik	Offensive remark against member of royal family	Convicted and sentenced on 21 st September 2016 [RM1,900 fine] ³⁴
25	Unnamed	Allegedly insulted member of royal family	Arrested on 27 th September 2016 ³⁵
26	Idris Md Nasir	Allegedly insulted police on Facebook	Charged on 21 st September 2016 for a post allegedly made on 23 rd April 2015 ³⁶
27	Syarul Ema Rena Abu Samah	Alleged defamatory posting against Rosmah Mansor	Brought in for questioning on 21 st September 2016 ³⁷
28	Unnamed (account Shammeer Akhter)	Alleged derogatory remarks against royal family	Arrested on 26 th September 2016 ³⁸
29	Rosmin Mohamed Noor	Allegedly insulting comment against the Inspector-General of Police	Charged on 29 th September 2016 ³⁹
30	Unnamed	Alleged offensive remark against member of royal family	Arrested 4 th October 2016 ⁴⁰
31	R. Sri Sanjeevan	Allegedly insulting the Inspector-General of Police	Charged on 27 October 2016 ⁴¹

³² Natasha Joibi & Victoria Brown, 'Two arrested over postings on Haron Din's death' (The Star Online, 19 September 2016) <<http://www.thestar.com.my/news/nation/2016/09/19/haron-din-post-arrested-facebook/>> accessed 27 October 2016

³³ R. Sekaran, 'Jeff Ooi turns himself in for questioning over tweet' (The Star Online, 20 September 2016) <<http://www.thestar.com.my/news/nation/2016/09/20/jeff-ooi-turns-himself-in-for-questioning-over-tweet/>> accessed 27 October 2016

³⁴ 'Ex-Melacca CM fined RM1,900' (The Star Online, 21 September 2016) <<http://www.thestar.com.my/news/nation/2016/09/21/exmalacca-cm-fined-rm1900-abdul-rahim-ordered-to-pay-up-for-facebook-remark-about-royalty/>> accessed 27 October 2016

³⁵ 'Another FB user nabbed for 'insult to Johor royal'' (MalaysiaKini, 27 September 2016) <<http://www.malaysiakini.com/news/357045>> accessed 27 October 2016

³⁶ 'Baker charged with insulting police on Facebook' (Malay Mail Online, 21 September 2016) <<http://www.themalaymailonline.com/malaysia/article/baker-charged-with-insulting-police-on-facebook>> accessed 27 October 2016

³⁷ Rahmah Ghazali, 'Cops question 'Ratu Naga' over Facebook posts on Rosmah' (the Star Online, 21 September 2016) <<http://www.thestar.com.my/news/nation/2016/09/21/cops-question-ratu-naga-over-facebook-posts/>> accessed 27 October 2016

³⁸ 'Man held for insulting Johor royalty on Facebook' (The Sun Daily, 27 September 2016) <<http://www.thesundaily.my/news/1984139>> accessed 27 October 2016

³⁹ Maizatul Nazlina, 'Man claims trial to insulting IGP on Facebook' (The Star Online, 29 September 2016) <<http://www.thestar.com.my/news/nation/2016/09/29/man-claims-trial-to-insulting-igp-on-facebook/>> accessed 27 October 2016

⁴⁰ Bernama, 'Man detained for offensive remark on TMJ's daughter' (MalaysiaKini, 5 October 2016) <<http://www.malaysiakini.com/news/357885>> accessed 27 October 2016

⁴¹ FMT Reporters, 'Sanjeevan charged with 'insulting' IGP' (Free Malaysia Today, 27 October 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/10/27/sanjeevan-charged-with-insulting-igp/>> 27 October 2016

Football Arrest

In May and June, several football fans were charged under section 233 of the Communications and Multimedia Act 1998. Muhammad Mashyur Abdullah, Arrasyidin Mohamad, Muhd Salman Zakaria and “Minah Pendek⁴²” are four additional victims of CMA. They were alleged to have made online comments about the sport and football officials. The police did not provide conclusive evidence that the accounts used to make the online statements were related to the individuals arrested and they were not charged.

14 Years for Alleged Insult Online

19-year-old Muhammad Amirul was found guilty of 14 counts of offence under s.233 of the Communications and Multimedia Act 1998. He was arrested on 28 April 2016 in Kelantan. He was later handed over to the Johor police after spending two nights at the Tumpat lockup. The 19-year-old was arrested for allegedly insulting a member of the royal family on Facebook. He spent four months in jail following his arrest. He pleaded guilty to all 14 charges and was initially sentenced to 12 months’ imprisonment (1-year imprisonment per charge to be served concurrently). The sentence was subsequently reviewed after challenges by lawyers and substituted with Muhammad Amirul being sent to Henry Gurney reform school for a period of 2 years.

Sidek Kamiso

The death of PAS spiritual leader Haron Din on 16 September 2016 elicited a slew of mixed reactions from the Malaysian public. Among those who expressed their views via social media included former journalist, Sidek Kamiso. His tweet on 15 September 2016 was as follows: “*Someone who made his career selling air jampi for any illnesses succumbed to his illness in a modern hospital in San Fransisco. #irony*”. The tweet was deemed to be insulting to Islam.

Following the discovery of the tweet, the police on 19 September 2016 raided and arrested Sidek Kamiso at his home in Shah Alam. He was then brought to Johor Bahru on remand. Fortunately, the remand application was rejected. When the legality of his arrest and the raid was questioned, the Inspector-General of Police, Tan Sri Khalid Abu Bakar replied that under s.233 of the CMA, no warrant was required for any arrest. Unfortunately, ten days after the initial arrest, Sidek was arrested again, only this time it was under s.298 of the Penal Code for ‘causing religious disharmony’. Sidek was arrested immediately when he turned up at the Dang Wangi police station for questioning over his allegedly insulting tweet. He has since been released on police bail.

Internet Censorship

Under CMA, the Malaysia Communications and Multimedia Commission (MCMC) is granted substantial powers to regulate contents available to Malaysia’s Internet users. While the powers granted to MCMC could be challenged, there has been little challenge posed by owners of websites

⁴² Minah Pendek was the online handle used. It was later discovered that 2 individuals detained in relation to the handle was Nik Pa and Nik Azwa

that had been blocked by MCMC. Some of the websites that were blocked in 2016 included Malaysian Insider⁴³, Medium and AsiaSentinel.

Apart from these websites, websites that are usually blocked by MCMC include pornography and internet gambling websites.

Printing Presses and Publications Act 1948 (PPPA)

The list of banned publications continued to grow in 2016. As listed below, most of the books banned were religious publications that are deemed to be deviant compared to the mainstream religious teachings. Other types of publications banned included those that are considered ‘inappropriate’ for the average Malaysian reader.

PPPA was once again invoked against the social movement Bersih in 2016. During the Bersih 5 Convoy in Sabah, Maria Chin Abdullah was briefly detained for questioning under Section 11 of PPPA for allegedly handing out leaflets that did not include the name and address of the printer⁴⁴.

List of banned publications for 2016

No	Book Title	Author	Date banned
1	Rasullah Saw: Sejak Hijrah Hingga Wafat	Dr. Ali Syariati & Dr. Afif Muhamad	5th February 2016
2	Tafsir Ayat-Ayat Kematian	Muhamad Husain al-Hasani al-Husaini ath-Thabathaba'i (Alamah Thabathaba'i/Irwan Kurniawan)	5th February 2016
3	Sinema Spiritual: Dramatugi dan Kritikan	Faisal Tehrani	5th February 2016
4	Orang Ngomong Anjing Gong Gong	Mutalib Uthman	8th March 2016
5	Grey (Fifty Shades of Grey as Told by Christian)	E L James	8th March 2016
6	Sex, Pork, And Prosecution: How One Young Man's Fight against Conformity Led to Imprisonment and Vilification	Alvin Tan	8th March 2016
7	Israk Mikraj: Tinjauan Saintifik Di Sebalik Kontroversi	Armansyah/Yusammir Yusuf	18th February 2016
8	Ajaran Makrifat Syekh Siti Jenar	Abu Fajar Al-Qalami	18th February 2016
9	Ibnu Taimiyah; Rekam Jejak Sang Pembaharu	Sha'ib Abdul Hamid	18 April 2016

⁴³ Malaysia Insider has since shut down its operation for commercial reasons

⁴⁴ Olivia Miwil & Naim Zulkifi, ‘Bersih’s Maria Chin released on police bail’ (New Straits Times Online, 29 October 2016) <<http://www.nst.com.my/news/2016/10/184273/bersih-s-maria-chin-released-police-bail>> accessed 31 October 2016

10	Kitab Berlian Syahadat	Kh Syeh Muhammad Yusuf MR	18 April 2016
11	Sejarah Syekh Abdul Wahab Tuan Guru Babussalam	H.Ahmad Fuad Said	18 April 2016
12	Primbon Wanita dan Tafsir Mimpi (Lengkap)	Ny. Ninik Happianti	18 April 2016
13	Mencontoh Para Wali	M.Z Hasan Amruhi	18 April 2016
14	Syi'ar Manifestasi Tuhan Dalam Wanita		18 April 2016
15	Mereka Adalah Teroris (Sebuan Tinjauan Syari'at)	Al Ustadz Luqman bin Muhammad Ba'abduh	18 April 2016
16	Lesbian Sex Positions 100 Passionate Positions from Intimate and Sensual to Wild and Naughty	Shanna Katz	18 April 2016
17	Sexual Intimacy for Women: A Guide for Same Sex Couples	Dr. Glenda Corwin	18 April 2016
18	The Whole Lesbian Sex Book: A Passionate Guide For All of Us	Felice Newman	18 April 2016
19	Kissing Cousins? Christians and Muslims Face to Face	Bill A. Musk	18 April 2016
20	A Treasury of Asian Literature	John D. Yohannan	18 April 2016
21	What Went Wrong? The Clash Between Islam and Modernity in the Middle East	Bernard Lewis	18 April 2016
22	1000 Hikmat	Ali Zulfakar	18 April 2016
23	Senjata Mukmin	Abu Mazaya Al-Hafiz	18 April 2016
24	Sabda Rasulullah S.A.W : Mahdi Aku Ada Dua Tanda	Mohd Zain Bin Hassan	18 April 2016
25	Nomad : from Islam to America - A Personal Journey Through the Clash of Civilizations	Ayyan Hirsi Ali	18 April 2016
26	Misteri Alam Arwah: Persiapan Menjelang Ajal dan Kisah-Kisah Mayat	Abu Sulaiman Ad Darani	18 April 2016
27	Nabiyyuhrahmah Min Minzoril Qurani Wa Ahli Bayt	Muhammadurriy Sahri	18 April 2016

Official Secrets Act 1972

Official Secrets Act 1972 (OSA) remains an obstacle to the freedom of information in Malaysia. Notable incidents relating to OSA includes the arrests of Member of Parliament Rafizi Ramli at the

Parliament gates after exposing documents that has been classified under OSA⁴⁵; former Finance Minister II, Datuk Seri Ahmad Husni Hanadzlah and several other former ministers including Tan Sri Muhyiddin Yassin and Datuk Seri Shafie Apdal. They were investigated under the Official Secrets Act 1972 for their speeches on 1 Malaysia Development Berhad in the Parliament⁴⁶.

Other violations of the freedom of expression

Two reporters from ABC's Four Corners, Linton Besser and Louie Eroglu were briefly detained after posing several thorny questions to Malaysia's Prime Minister when they approached him at a press conference⁴⁷. They were threatened with charges under Section 186 of the Penal Code for obstructing a public official from conducting his or her duties. Fortunately for the duo, they were released and deported and were not charged.

Rapper Namewee was arrested when he returned to Malaysia on 21st August 2016. He was remanded to facilitate investigation into his music video 'Oh My God'. He was investigated under Section 295 of the Penal Code for defiling a place of worship with intention to insult the religion⁴⁸.

⁴⁵ Zikri Kamarulzaman & Zulaikha Zulkifli, 'Rafizi arrested at Parliament gates for exposing OSA document' (MalaysiaKini, 5 April 2016) <<http://www.malaysiakini.com/news/336624>> accessed 31 October 2016

⁴⁶ 'Report: Husni summoned for police questioning over Parliament speech' (Malay Mail Online, 31 October 2016) <<http://www.themalaymailonline.com/malaysia/article/report-husni-summoned-for-police-questioning-over-parliament-speech>> accessed 31 October 2016

⁴⁷ 'Four Corners reporter Linton Besser describes frightening detention in Malaysia' (ABC News, 16 March 2016) <<http://www.abc.net.au/news/2016-03-15/four-corners-reporter-describes-arrest,-detention-in-malaysia/7249174>> accessed 14 October 2016

⁴⁸ Opalyn Mok, 'Rapper Namewee remanded four days in Penang over 'Oh My God' music video' (Malay Mail Online, 22 August 2016) <<http://www.themalaymailonline.com/malaysia/article/rapper-namewee-taken-to-penang-courthouse-in-cuffs>> accessed 27th October 2016

Freedom of Assembly

Compared to 2015, 2016 was a relatively good year for the freedom of assembly in Malaysia. There was a growing acceptance by government agencies that the public have a right to peaceful assembly. Rather than the usual hostile crackdown involving arrests and detention of activists and participants of an assembly, 2016 has been marked by reduced hostility between police on duty and participants of an assembly.

It should be noted that despite the improvements on the ground, the status of the Peaceful Assembly Act 2012 remains in limbo following the decision by the Court of Appeal declaring Section 9 of the Peaceful Assembly Act 2012 (PAA) as constitutional. Furthermore, the Inspector-General of Police remains adamant that peaceful assemblies that take place without notice are illegal and warned that action would be taken against those who fail to adhere to PAA requirement of 10 days' notice⁴⁹.

Although there were no crackdowns on participants, organizers or individuals identified as organizers were called for questioning after a rally or an assembly. The only documented case of arrest relating to a peaceful assembly was the arrest of SUARAM's coordinator after the #BantahTPPA protest that took place in Kuala Lumpur in January 2016 and Maria Chin in Sabah. A list of individuals called for questioning for possible offences under the PAA includes:

List of individuals called for questioning in relation to peaceful assemblies

No	Names	Event	Investigated On
1	Amir Abdul Hadi ⁵⁰	Anti-TPP Rally	23 January 2016
2	Sevan Doraisamy ⁵¹	May Day Rally	19 May 2016
3	S. Arutchelvan	May Day Rally	19 May 2016
4	V. Selvam	May Day Rally	19 May 2016
5	Nadzirah Yaakop ⁵²	Solidarity for Khalid Ismath	26 May 2016
6	Anis Syafiqah Mohd Yusof ⁵³	Tangkap MO1	1 September 2016
7	Aqilah Zainuzi	Tangkap MO1	1 September 2016
8	Luqman Hakim	Tangkap MO1	1 September 2016
9	Luqman Nul Hakim	Tangkap MO1	1 September 2016

⁴⁹ Kelly Koh, 'IGP: some rally organizers intent on flouting the law' (New Straits Times, 28 October 2016) <<http://www.nst.com.my/news/2016/10/184096/igp-some-rally-organisers-intent-flouting-law>> accessed 31 October 2016

⁵⁰ 'Activist freed after arrest at anti-TPP rally', (Malay Mail Online, 23 January 2016) <<http://www.themalaymailonline.com/malaysia/article/activist-freed-after-arrest-at-anti-tpp-rally>> accessed 14 October 2016

⁵¹ Ram Anand, 'Cops question organisers over May Day rally' (Malay Mail Online, 19 May 2016) <<http://www.themalaymailonline.com/malaysia/article/activist-freed-after-arrest-at-anti-tpp-rally>> accessed 14 October 2016

⁵² Yiswaree Palansamy, 'Candlelight vigil for hubby lands activist's wife in soup with cops' (Malay Mail Online, 26 May 2016) <<http://www.themalaymailonline.com/malaysia/article/candlelight-vigil-for-hubby-lands-activists-wife-in-soup-with-cops>> accessed 14 October 2016

⁵³ M. Kumar, 'Police quiz 9 over 'Tangkap MO1' rally (The Star Online, 1 September 2016) <<http://www.thestar.com.my/news/nation/2016/09/01/police-quiz-9-over-tangkap-mo1-rally/>> accessed 14 October 2016

10	Suhail Wan Azahar	Tangkap MO1	1 September 2016
11	Asheeq Ali	Tangkap MO1	1 September 2016
12	Teo Kok Seong	Tangkap MO1	1 September 2016
13	Nik Nazmi Nik Mat	Tangkap MO1	1 September 2016
14	Amir Abdul Hadi	Tangkap MO1	1 September 2016
15	Khairol Najib	Tangkap MO1	1 September 2016
16	Isiah Jacob	Tangkap MO1	1 September 2016
17	Howard Lee ⁵⁴	Tangkap MO1	1 September 2016
18	Maria Chin Abdullah	Tangkap MO1	6 September 2016
19	Hishamuddin Md Rais	Tangkap MO1	6 September 2016
20	A Samad Said	Tangkap MO1	6 September 2016
21	Rozen Azen Mat Rasip	Tangkap MO1	6 September 2016
22	Adam Adli	Tangkap MO1	6 September 2016
23	Tian Chua	Tangkap MO1	6 September 2016
24	Salleh	Bersih 5 Convoy (Johor Bahru)	11 October 2016
25	Terrance Naidu	Bersih 5 Convoy (Teluk Intan)	13 October 2016
26	Azwan Ramli	Bersih 5 Convoy (Teluk Intan)	13 October 2016
27	Anida Osman	Bersih 5 Convoy (Teluk Intan)	13 October 2016
28	Maria Chin ⁵⁵	Bersih 5 Convoy (Sabah)	29 October 2016

Jannie Lasimbang's case under PAA continues in 2016 with the decision of her case pending at the Magistrates' Court. The judgement is scheduled to be delivered on 24 November 2016⁵⁶. The pending constitutional challenge by seven individuals charged for participating in KitaLawan rally in 2015⁵⁷ at the Federal Court was sent back to the sessions court for trial after the court decided the challenge posed by the seven accused was academic as the prosecution had not proved that there was a street protest⁵⁸.

On a brighter note, the PAA charges against Maria Chin for Bersih 4 was struck out by the Court of Appeal. The Court of Appeal agreed with the counsel's argument that the PAA was unconstitutional

⁵⁴ Chris Lau, 'DAP Rep Howard Lee quizzed on organisation of TangkapMO1 rally' (MalaysiaKini, 5 September 2016) <<http://www.malaysiakini.com/news/354719>> accessed 14 October 2016

⁵⁵ NOTE: Maria Chin was arrested for questioning under the Printing Presses and Publications Act 1984: FMT Reporters, 'Bersih Leader Maria freed on police bail' (Free Malaysia Today, 29 October 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/10/29/bersih-leader-maria-arrested-under-press-law/>> accessed 31 October 2016

⁵⁶ 'Ruling on Sabah Bersih chief Nov 24' (Borneo Post Online, 31 October 2016)

<<http://www.theborneopost.com/2016/10/28/ruling-on-sabah-bersih-chief-nov-24/>> accessed 31 October 2016

⁵⁷ Those charged includes: Adam Adli, Mohd Fariz Abd Talib, Maria Chin, Mandeep Singh, MP Sim Tze Tzin, MP Chong Chien Jen and MP Julian Tan.

⁵⁸ 'Federal Court orders trial for seven before hearing PAA challenge' (Malay Mail Online, 10 October 2016)

<<http://www.themalaymailonline.com/malaysia/article/federal-court-orders-trial-for-seven-before-hearing-paa-challenge>> accessed 31 October 2016

at the point of time and thus no offence was committed by Maria Chin when she did not submit a 10-day notice under PAA⁵⁹. The victory in Maria's case was short lived as the prosecution filed an appeal to the Federal Court on the matter⁶⁰.

Besides the PAA, other laws are still being invoked as part of investigation against organizers of protests. Some of the laws that were mentioned as part of investigation include Section 505(b) of the Penal Code for public mischief, Section 124B of the Penal Code for activities detrimental to parliamentary democracy, the Sedition Act 1948 (for speeches given at rallies) and others.

Other arrests that took place during peaceful assemblies in 2016 included:

No	Names	Event	Investigated On	Offence
1	Zhafran Muhammad Zuhdi	Anti-GST Rally	2 nd April 2016 ⁶¹	Section 504 Penal Code
2	5 Individuals ⁶²	Cheras Hartamas Pylon	9 th August 2016 ⁶³	Section 186 Penal Code

Bersih 5 Convoy

The start of Bersih Convoy on 1st October 2016 marked a change in the Malaysian government's attitude toward peaceful assemblies. Throughout the Bersih 5 convoy, the 'Red Shirts' led by Jamal Yunos harassed and physically harmed participants of the Bersih 5 convoy. On the media front, Jamal Yunos portrayed himself as an independent agent unrelated to the ruling party UMNO. But he does acknowledge the fact that he is the Sungai Besar UMNO division chief and that many of his supporters are UMNO members⁶⁴.

Actions by the 'Red Shirts' thus far included the clash between Bersih 5 convoy participants and members of the 'Red Shirts' following Jamal Yunos attempt to grab a Bersih banner which resulted in minor scuffles⁶⁵ in Teluk Intan; assaulting Bersih 5 convoy participant at Sabak Bernam⁶⁶; threats

⁵⁹ V Anbalagan, 'Appeals Court strikes out Maria Chin's charge' (Free Malaysia Today, 7 September 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/09/07/appeals-court-strikes-out-maria-chins-charge/>> accessed 31 October 2016

⁶⁰ V Anbalagan, 'Maria has to deal with earlier charge before next rally' (Free Malaysia Today, 27 October 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/10/27/chin-has-to-deal-with-earlier-charge-before-next-rally/>> accessed 31 October 2016

⁶¹ Zhafran was remanded for 2 days.

⁶² 'Cheras residents arrested after 'human shield' against TNB Pylon' (MalaysiaKini, 9 August 2016) <<http://www.malaysiakini.com/news/351691>> accessed 14 October 2016

⁶³ Released on the same day.

⁶⁴ 'Many 'Red Shirts' supporters from Umno, Jamal Yunos admits' (Malay Mail Online, 13 October 2016) <<http://www.themalaymailonline.com/malaysia/article/many-red-shirts-supporters-from-umno-jamal-yunos-admits>> accessed 14 October 2016

⁶⁵ Geraldine Tong, 'Bersih and red shirts clash in Teluk Intan' (MalaysiaKini, 1 October 2016) <<http://www.malaysiakini.com/news/357586>> accessed 14 October 2016

⁶⁶ 'Red Shirts wanted for alleged assault', (The Star Online, 9 October 2016) <<http://www.thestar.com.my/news/nation/2016/10/09/red-shirts-wanted-for-alleged-assault/>> accessed 14 October 2016

to start a racial riot in response to Bersih's planned activity on the 19th November by Jamal Yunos⁶⁷; making accusations that Bersih has links to the Islamic State⁶⁸; and making scathing remarks against the Royal Malaysian Police for safeguarding the Bersih 5 convoys⁶⁹.

Maria Chin Abdullah, chairperson of Bersih 2.0 was also threatened by Mohd Ali Baharom for organizing Bersih 5 rally⁷⁰. Apart from open threats mentioned above, Maria Chin (and her family members), Ambiga Sreenevasan and Mandeep Singh were sent death threats via messaging services. Maria Chin's family was also threatened with red paint splashed on their car⁷¹.

The response by the Royal Malaysian Police to the Red Shirts and their threats against Bersih 5 Convoy has been fairly positive and commendable⁷². Police on duty have on many occasions prevented the Red Shirts' attempts to physically confront Bersih 5 convoy participants and provided escorts to the Bersih 5 convoy.

Unfortunately, it needs to be noted that the response by the Royal Malaysian Police and the Attorney General Chambers has been relatively tolerant toward the Red Shirts despite their clear intent to instigate violence.

⁶⁷ Hani Shamira Shahrudin, 'IGP slams Jamal Yunos' May 13 pledge, says police will take action' (New Straits Times Online, 9 October 2016) <<http://www.nst.com.my/news/2016/10/179198/igp-slams-jamal-yunos-may-13-pledge-says-police-will-take-action>> accessed 14 October 2016

⁶⁸ Sumisha Naidu, 'Malaysia's Red Shirts leader says IS elements in Bersih', (Channel News Asia, 4 October 2016) <<http://www.channelnewsasia.com/news/asiapacific/malaysia-s-red-shirts-leader-says-is-elements-in-bersih/3178560.html>> accessed 14 October 2016

⁶⁹ 'Jamal Yunos: Police treating Red Shirts like 'anjing kurap' (Malay Mail Online, 9 October 2016) <<http://www.themalaymailonline.com/malaysia/article/jamal-yunos-police-treating-red-shirts-like-anjing-kurap>> accessed 14 October 2016

⁷⁰ 'Ali Tinju claims misquoted over 'threat against Maria' (MalaysiaKini, 21 September 2016) <<http://www.malaysiakini.com/news/356377>> accessed 14 October 2016

⁷¹ FMT Reporters, 'Maria Chin unafraid of death threats', (Free Malaysia Today, 18 October 2016) <<http://www.freemalaysiatoday.com/category/videos/2016/10/18/maria-chin-unafraid-of-death-threats-2/>> accessed 31 October 2016

⁷² An exception in Sabah where participants distributing leaflet had their identity recorded by the police

Freedom of Movement

The travel restriction imposed on human rights defenders and politicians remained a prevalent issue in 2016. These travel restrictions included the prevention of individuals from Peninsular Malaysia from entering East Malaysia (Sabah & Sarawak) as well as preventing individuals from travelling abroad. A statement by the Director-General of Immigration Department, Datuk Sakib Kusmiin in May 2016 alarmed many when he said that those who ridiculed the government would be prevented from travelling abroad as the Malaysian passport was a privilege and not a right⁷³.

The Sarawak State Election saw an extensive application of the Sarawak State Government's power to restrict opposition politicians and civil society activists from entering Sarawak. The Chief Minister, Tan Sri Adenan Satem claims that it is the autonomous right of Sarawak to ban 'unsavoury elements' from entering the state. In his zeal to protect Sarawak from such 'unsavoury' elements, the Chief Minister has built an increasing list of Malaysians who have been banned from entering Sarawak.

Individuals who have been banned from entering Sarawak or travelling abroad

No	Name	Reason / Backgound	Restriction
1	Maria Chin Abdullah	Chairperson of Bersih 2.0	International
2 ⁷⁴	Abdul Malik Abul Kassim	PAS	Sarawak
3	S. Ambiga	Former Chairperson of Bersih 2.0	Sarawak
4	Andrew Khoo	Human Rights Committee of the Malaysian Bar	Sarawak
5	Clare Rewcastle Brown	Sarawak Report	Sarawak
6	Colin Nicholas	Activists from Center for Orang Asli Concerns (COAC)	Sarawak
7	Cynthia Gabriel	Executive Director of C4	Sarawak
8	Fahmi Reza	Human Rights Activists	Sarawak
9	Harris Ibrahim	Activist Lawyer	Sarawak
10	Mohamad Sabu	President AMANAH	Sarawak
11	Hew Kuan Yau	Former DAP	Sarawak
12	Jannie Lasimbang	Bersih Sabah	Sarawak
13	Jerald Joseph	Director of Pusat Komas	Sarawak
14	Kua Kia Soong	Director of SUARAM	Sarawak
15	Mandeep Singh	Manager of Bersih 2.0	Sarawak
16	Maria Chin Abdullah	Chairperson of Bersih 2.0	Sarawak
17	N Gobalakrishnan	Former PKR MP	Sarawak

⁷³ 'Immigration D-G: Those who badmouth Putrajaya can be stopped from leaving Malaysia' (Malay Mail Online, 14 October 2016) <<http://www.themalaymailonline.com/malaysia/article/immigration-d-g-those-who-badmouth-putrajaya-can-be-stopped-from-leaving-ma>> accessed 14 October 2016

⁷⁴ Peter Sibon, Liang Cheng and Karen Bong, 'CM: It's our right to bar unsavoury characters from entering Sarawak' (Borneo Post, 13 April 2016) <<http://www.theborneopost.com/2016/04/13/cm-its-right-to-bar-unsavoury-characters-entering-sarawak/>> accessed 14 October 2016

18	Nurul Izzah Anwar	Vice President of PKR	Sarawak
19	Ooi Leng Han	DAP Mascot Designer	Sarawak
20	Rafizi Ramli	Secretary General of PKR	Sarawak
21	Ridhuan Tee Abdullah	Columnist, Public Icon	Sarawak
22	Saifuddin Nasution Ismail	PKR Chief of Staff	Sarawak
23	Sivarasa Rasiah	PKR Member of Parliament	Sarawak
24	Shamsul Iskandar Mohd Akin	Vice President of PKR Youth	Sarawak
25	Syed Ibrahim Syed Noh	Ketua Penerangan PKR	Sarawak
26	Teo Nie Ching	DAP Member of Parliament	Sarawak
27	Teresa Kok	DAP Member of Parliament	Sarawak
28	Tian Chua	Vice President of PKR	Sarawak
29	Tony Pua	DAP Member of Parliament	Sarawak
30	P. Waythamoorthy	Hindraf	Sarawak
31	Wong Chin Huat	Bersih 2 Steering Committee	Sarawak
32	Zuraida Kamaruddin	PKR Member of Parliament	Sarawak
33	Sim Tze Tsin	PKR Strategy Director	Sarawak
34	Ibrahim Ali	Perkasa	Sarawak
35	Zunar	Cartoonist	International

Freedom of Religion

Freedom of religion and belief in Malaysia was challenged in 2016 with the unexpected support for PAS's private member bill on Hudud law by the ruling party. The new challenge posed by the possible amendment and strengthening of Sharia provisions in Malaysia threatens to further aggravate the current predicament of those Malaysians who are faced with unilateral conversion of minors, freedom to proclaim or choose one's own faith and criminalization of marginalized communities or vulnerable groups by religious authorities.

Unilateral Conversion

The case of unilateral conversion by M. Indira Gandhi continued in 2016 following a successful appeal to the Federal Court in May 2016 which allowed her to challenge the validity of the unilateral conversion of her three children.

Other such cases included that of Rosliza Ibrahim who was born out of wedlock to a Muslim father but lived her life as a Buddhist while being registered as a Muslim⁷⁵, and the case of Lee Chang Yong and Teng Wai Yee in which the mother unilaterally converted her child to Islam during the divorce proceedings⁷⁶.

On the issue of unilateral conversion, Tourism and Culture Minister Nazri Aziz intimated that there would be a bill to amend the Law Reform (Marriages and Divorce) Act 1976 that would supposedly resolve the issue of unilateral child conversions. It remains to be seen whether such an amendment bill will be tabled and passed in the current session of Parliament.

Conversion from Islam

On 24 March 2016, the High Court in Kuching allowed a Bidayuh man, Roneey Rebit who had been converted to Islam as a child to renounce Islam and be recognized as a Christian. In this case, the judge based her decision on article 11 of the Federal Constitution which guarantees the freedom of religion. This has repercussions for Muslims who had previously been prevented from leaving Islam⁷⁷. In this case, the National Registration Department (NRD) posed no further challenges or appeal following the intervention by the Chief Minister of Sarawak⁷⁸.

Unfortunately, not all quarters were happy with the decision and intervention by the Chief Minister and the Prime Minister. While this development is certainly welcome by many in Malaysia, the reality remains that the case was heard in Sarawak with a markedly different political climate of tolerance.

⁷⁵ Zurairi Ar, 'Born out of wedlock to a Muslim father, woman refuses to be subject to Shariah laws' (Malay Mail Online, 11 October 2016) <<http://www.themalaymailonline.com/malaysia/article/born-out-of-wedlock-to-a-muslim-father-woman-refuses-to-be-subject-to-shari>> accessed 14 October 2016

⁷⁶ Ho Kit Yen, 'Court to decide on child conversion custody case on Oct 11' (Free Malaysia Today, 4 October 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/10/04/court-to-decide-on-child-conversion-custody-case-on-oct-11/>> accessed 14 October 2016

⁷⁷ Anasathia Jenis, 'High Court allows convert to renounce Islam' (Borneo Post, 25 March 2016) <<http://www.theborneopost.com/2016/03/25/high-court-allows-convert-to-renounce-islam/>> accessed 14 October 2016

⁷⁸ FMT Reporters, 'Adenan: NRD to withdraw appeal on Roneey Rebit case' (Free Malaysia Today, 2 May 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/05/02/adenan-nrd-to-withdraw-appeal-on-roneey-rebit-case/>> accessed 14 October 2016

The unique circumstances surrounding the case of Roneey Rebit makes it difficult for the success to be replicated elsewhere.

Intolerance against Minority Groups

Persecution of religious minorities in Malaysia such as Shia Muslims continued in 2016. As noted in the section on Freedom of Expression above, many of the books banned are considered to be ‘deviationist’ teachings. Faisal Tehrani’s writings which are alleged by the Home Ministry to be spreading Shia teachings⁷⁹ remain banned.

In October 2016, Selangor religious authorities (JAIS) arrested 50 Pakistan nationals who are believed to be Shia Muslim at Batu Caves⁸⁰. Two more were also arrested in Malacca for allegedly displaying a banner with the word ‘Hussain’ inscribed on it.

Introduction of the Hudud Bill

The controversial Hudud bill which was introduced in the May 2016 parliament sitting with the support from the ruling party raised concerns about the possibility that the proposed amendments could be passed. Immediately after the introduction of the Hudud Bill, parties from both sides of the political divide voiced concerns over the proposed amendments⁸¹.

The Pan Islamic Party (PAS) president, Datuk Seri Abdul Hadi Awang maintains that the private member’s bill he has tabled in Parliament is merely intended to expand the range of punishments by the Shariah courts and is not meant to introduce Hudud law in Kelantan. He reiterated that the proposed amendment concerns only Muslims and that non-Muslims will not be affected by it⁸².

The support shown by UMNO in the May 2016 Parliament sitting was again reflected in the October 2016 Parliament sitting. As of 31st October 2016, the controversial amendment is still listed at No.4 in the Parliament’s Order Paper.

⁷⁹ Hidir Reduan, ‘Novelist Faisal Tehrani seeks to overturn book ban’ (New Straits Times Online, 23 December 2015) <<http://www.nst.com.my/news/2015/12/118685/novelist-faisal-tehrani-seeks-overturn-book-ban>> accessed 14 October 2016

⁸⁰ Aedi Asri ‘Jais arrests 50 Pakistani Shia Muslim’ (Free Malaysia Today, 12 October 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/10/12/jais-arrests-50-pakistani-shia-muslims/>> accessed 14 October 2016

⁸¹ Sumisha Naidu, ‘UMNO backing PAS an ‘act of desertion’ against BN parties: MCA President (Channel News Asia, 27 May 2016) <<http://www.channelnewsasia.com/news/asiapacific/umno-backing-pas-an-act/2821492.html>> accessed 14 October 2016

⁸² Ram Anand, ‘Hadi clarifies Bill not for hudud’ (Malay Mail Online, 28 May 2016) <<http://www.themalaymailonline.com/malaysia/article/hadi-clarifies-bill-not-for-hudud>> accessed 14 October 2016

Free & Fair Elections

2016 saw the Sarawak State Election as well as the by-elections at Sungai Besar and Kuala Kangsar, during which election offences occurred with impunity.

With three victories by the ruling Barisan Nasional, it was not surprising that speculation and rumours of a snap election were rife in mid-2016. The latest re-delineation exercise only serves as additional fuel for these speculations.

Sarawak State Election

The good will that was extended Sarawak Chief Minister Adenan Satem by civil society in 2015 swiftly evaporated as the Sarawak State Election approached⁸³. As the election campaign kicked off, the Sarawak state government banned a substantial number of opposition leaders and members of civil society from entering Sarawak⁸⁴.

Furthermore, Bersih documented a series of election offences throughout the campaign including bribery; unauthorised expenses during the campaign period; intimidation and the use of government machinery. Bersih also observed and identified a number of procedural failures by the Election Commission. Full documentation of abuses can be found at Bersih's website - <https://www.bersih.org/media-statement-13-may-2016-11th-sarawak-state-election-marred-by-vote-buying-treating-and-illegal-campaigning/>.

Sungai Besar & Kuala Kangsar By-Election

The Sungai Besar and Kuala Kangsar by-elections were held on 18th June 2016. As in the Sarawak State Election, the two by-elections were fraught with electoral offences including vote-buying by political parties from both sides. Some of these instances have been documented by Bersih such as free sports equipment for youth and equipment for farmers and fishermen by Barisan Nasional; free Hari Raya clothes and free servicing for motorcycles by Pakatan Harapan⁸⁵.

On-going Re-Delineation Exercise

Similar to the re-delineation that took place in Sarawak prior to the Sarawak State Election; the recent re-delineation exercise by the Election Commission has been riddled with allegations of gerrymandering and malapportionment. The official notice for the exercise was made available by the Election Commission in September 2016⁸⁶. As of October 2016, Bersih and various political parties have reached out to the public to raise awareness of the issue at hand and facilitated the first round of objections to the proposed re-delineation.

⁸³ Sulok Tawie, 'Sarawak has 'no problem' with Bersih 4, says chief minister' (Malay Mail Online, 28 August 2016) <<http://www.themalaymailonline.com/malaysia/article/sarawak-has-no-problem-with-bersih-4-says-chief-minister>> accessed 14 October 2016

⁸⁴ Refer Freedom of Movement

⁸⁵ 'Bersih: Harapan, PAS join BN in vote-buying bandwagon for twin poll', (MalaysiaKini, 14 June 2016) <<https://www.malaysiakini.com/news/345269>> accessed 17 October 2016

⁸⁶ Additional information on the current exercise can be found at the following. 'Your KiniGuide to the Re-Delineation Exercise' (MalaysiaKini, 17 September 2016) <<http://www.malaysiakini.com/news/355964>> accessed 17 October 2016; 'Malapportionment in the 2015-2016 Re-delineation Exercises' (Bersih DART, 23 September 2016) <<https://dart.bersih.org/malapportionment-in-the-2015-2016-redelineation-exercises/>> accessed 16 October 2016

Law & Judiciary

With many of the constitutional challenges and prosecution of human rights defenders and members of the opposition decided in 2016, the situation relating to our various freedoms as decided by the Malaysian Judiciary is as follows:

Peaceful Assembly Act (PAA) 2012

With two different decisions at the Court of Appeal on the PAA, the issue concerning whether Section 9(5) of the PAA is constitutional remains unaddressed as of October 2016. The Federal Court decided recently that the constitutional challenge posed was academic as the case against seven individuals who posed the challenge has not gone to trial⁸⁷ (refer to Freedom of Assembly chapter). With the matter in limbo, it is likely that the PAA will continue to pose a threat to the freedom of assembly in Malaysia.

The Sedition Act 1948

The constitutional challenge posed by Member of Parliament, N. Surendran was denied by the High Court and his case was remitted back to the session court for trial⁸⁸. As of 31st October 2016, Surendran has two challenges pending at the Court of Appeal, one for High Court's refusal to refer the constitutional question of his sedition case to the Federal Court, and the other on the High Court's dismissal of his application to strike out the charge⁸⁹.

Anwar Ibrahim's Case Review

Anwar Ibrahim filed for a review of his sodomy conviction on 12th October 2016. His counsel, Datuk Seri Gopal Sri Ram argued for Anwar's case to be reviewed⁹⁰ under Rule 137 of the Rules of the Federal Court 1995⁹¹. The challenge posed by Anwar's counsel revolved around the issue of compromised evidence which had resulted in Anwar's conviction⁹². At the start of the trial, Anwar's application for a fresh panel of judge was not granted.

⁸⁷ 'Federal Court orders trial for seven before hearing PAA challenge' (Malay Mail Online, 10 October 2016) <<http://www.themalaymailonline.com/malaysia/article/federal-court-orders-trial-for-seven-before-hearing-paa-challenge>> accessed 17 October 2016

⁸⁸ Maizatul Nazlina, 'Surendran fails to get sedition case referred to Federal Court' (The Star Online, 14 April 2016) <<http://www.thestar.com.my/news/nation/2016/04/14/courts-surendran-fails-to-get-case-referred/>> accessed 17 October 2016

⁸⁹ 'Court of Appeal grants stay in Surendran's sedition trial' (The Star Online, 13 July 2016) <<http://www.thestar.com.my/news/nation/2016/07/13/courts-surendran-grants-stay/>> accessed 17 October 2016

⁹⁰ FMT Reporters, 'Anwar in final bid for freedom' (Free Malaysia Today, 12 October 2016), <<http://www.freemalaysiatoday.com/category/nation/2016/10/12/anwar-in-final-bid-for-freedom/>> accessed 17 October 2016

⁹¹ Edmund Bon, 'Federal Confusion: 137/Yes/No/Yes/No?' (The Malaysian Bar, 2 February 2012) <http://www.malaysianbar.org.my/legal/general_news/federal_confusion_137_yes/no/yes/no_.html> accessed 17 October 2016

⁹² 'Malaysia's

Gender Discrimination

Gender discrimination remained prevalent in 2016 with several notable incidents in which public figures or political leaders made sexist remarks. These included Izat Ismail Bukhary's statement that he was running in the Kuala Kangsar by-election because he does not trust women leaders⁹³; Gerakan legal bureau and human rights chief Baljit Singh's remarks that sexy and beautiful women should be fielded as candidates to boost Barisan Nasional chances at elections⁹⁴; and a leaked Whatsapp message of Selangor PKR Youth Deputy Chief, Zainol Abidin Mohamed's remarks about a fellow PKR Youth member's photo⁹⁵.

The damages awarded to Noorfadilla Ahmad Saikin who was refused employment because she was pregnant was unfortunately overturned by the High Court which reduced her claims to a mere RM30,000 from the previously awarded damages of RM300,000. Judicial Commissioner Datuk Azimah Omar ordered the reduction in damages awarded after finding the damages to be inappropriate and described the claim by Noorfadilla as a shortcut to massive sum of money⁹⁶.

On the same note, a brief survey conducted by Women's Aid Organization (WAO) found that nearly 90% of pregnant women lacked awareness of their rights and had failed to file a complaint against the discrimination they faced. In the same survey, 40% also said that they experienced discrimination at work resulting in termination; they had been passed over in promotion or given redundant positions while 20% said that their offers of employment were retracted when the prospective employers found out about their pregnancy⁹⁷.

From the above, the implications of the impunity with regard to discrimination suggest that much more need to be done for gender equality in Malaysia.

Sexual Orientation and Gender Identity

Persecution of the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) community continued unabated in 2016. For a start, the laws that restrain the enjoyment of equal rights by the LGBTIQ community remain in place. Some of the notable incidents of discrimination or discriminatory comments includes the Deputy Inspector General of Police, Noor Rashid Ibrahim's comment that those who are openly lesbian, gay, bisexual or transgender will not be admitted into the Royal

⁹³ Loghun Kumaran, 'Women should not be leaders, says Kuala Kangsar independent' (Malay Mail Online, 5 June 2016) <<http://www.themalaymailonline.com/malaysia/article/women-should-not-be-leaders-says-kuala-kangsar-independent>> accessed 17 October 2016

⁹⁴ Kamles Kumar, 'Gerakan chief defends Baljit says media spun 'sexist' remarks (Malay Mail Online, 10 October 2016) <<http://www.themalaymailonline.com/malaysia/article/gerakan-chief-defends-baljit-says-media-spun-sexist-remarks>> accessed 17 October 2016

⁹⁵ Alyaa Azhar, 'Leaked: Sexist remarks hurled in PKR WhatsApp group' (MalaysiaKini, 8 January 2016) <<https://www.malaysiakini.com/news/326058>> accessed 17 October 2016

⁹⁶ Boo Su Lyn, 'To prevent profiteering, court slashes woman's gender equality case award by 90pc' (Malay Mail Online, 17 February 2016) <<http://www.themalaymailonline.com/malaysia/article/to-prevent-profiteering-court-slashes-womans-gender-equality-case-award-by>> accessed 17 October 2016

⁹⁷ 'WAO: Just one in eight women fought pregnancy discrimination' (Malay Mail Online, 10 August 2016) <<http://www.themalaymailonline.com/malaysia/article/wao-just-one-in-eight-women-fought-pregnancy-discrimination>> accessed 17 October 2016

Malaysian Police⁹⁸ and former DAP member, Hew Kuan Yau's attack against a columnist for his sexuality⁹⁹.

Justice for Sisters also documented a substantial increase in arrests and persecution against the transgender community in 2016. The transgender community are often prosecuted and persecuted by state religious authorities for cross dressing¹⁰⁰ and on occasion arrested by police for offences under the penal code which includes soliciting, theft and/or unruly behavior in public.

Statistics on arrests of transgender women in Malaysia (up to May 2016)

State/Month	January	February	March	April	May	Total
Penang	-	-	13	-	3	16
Kuala Lumpur	4	6	5	11	9	35
Malacca	-	-	-	-	4	4
Kedah	-	-	-	1	-	1
Pahang	-	-	-	-	7	7
Total	4	6	18	12	23	63

Other incidents of human rights violations include: physical violence and sexual harassments during detention; detainees being subjected to 'counselling' by state religious authorities, amounting to mental torture¹⁰¹; and unsanctioned raids on private gatherings and even arrests of legal counsels present¹⁰².

⁹⁸ FMT Reporters, 'Straight men and women only for PDRM' (Free Malaysia Today, 23 April 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/04/23/straight-men-and-women-only-for-pdrm/>> accessed 17 October 2016

⁹⁹ Lee Long Hui, 'DAP's "Superman" sorry over "gay" attack on columnist' (MalaysiaKini, 26 January 2016) <<http://www.malaysiakini.com/news/328225>> accessed 17 October 2016

¹⁰⁰ A crime under state Syariah Enactments

¹⁰¹ Detailed accounts of harassments suffered by transgender community can be obtained from Justice for Sisters at <https://justiceforsisters.wordpress.com/> or email at justiceforsisters@gmail.com

¹⁰² Mikha Chan, 'Siti Kasim arrested for obstruction, criminal intimidation' (Free Malaysia Today, 8 April 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/04/08/siti-kasim-arrested-for-obstruction-criminal-intimidation/>> accessed 17 October 2016

National Human Rights Commission of Malaysia (SUHAKAM)

New commissioners were appointed in June 2016¹⁰³ after more than two months following the end of the terms of the previous set of commissioners. The newly appointed chairperson, Tan Sri Razali Ismail made some comments and views which are contrary to human rights. These included his comments relating to the Bersih rally in which he was perceived to have belittled participants of Bersih 4 and suggested that Bersih 4 had caused property damage.¹⁰⁴ He also made offhand suggestions that legal representation should be restricted for terror suspects¹⁰⁵. Since his controversial interview in July 2016, the chairperson has retracted his previous stance on some issues and clarified his support for Bersih 2.0's right to peaceful assembly¹⁰⁶.

SUHAKAM initiated a meeting between its newly commissioners and members of non-governmental organizations in September 2016 to discuss the current human rights issues in Malaysia.

SUHAKAM has also released a statement emphasising the need to protect rights of religious minorities following the arrest and detention of 50 Shiite Parkistanis by the Selangor Religious Authority¹⁰⁷. Other notable statements include SUHAKAM's call for the formation of a mechanism to review the National Security Council Act¹⁰⁸ and call for police to be defenders of civil liberties in Malaysia¹⁰⁹.

The initiative to conduct joint investigations between SUHAKAM and EAIC is to be welcomed as it allows both commissions to share their expertise and information in order to strengthen the investigations into allegations of human rights violations.

We welcome the fact that SUHAKAM's budget for 2017 has been revised to its previous level of RM10.5 million (roughly 2.5million USD).

Further review of SUHAKAM's performance can be found in the 2006 ANNI report on the Performance and Establishment of National Human Rights Institutions in Asia.

¹⁰³ 'Announcement on the Appointment of the New Commission Members for the term 2016-2019' (SUHAKAM, 22 June 2016) <<http://www.suhakam.org.my/announcement-on-the-appointment-of-the-new-commission-members-for-the-term-2016-2019/>> accessed 17 October 2016

¹⁰⁴ Shahanaaz Habib, 'Don't take to the streets, new Suhakam chief tells Bersih' (The Star Online, 31 July 2016) <<http://www.thestar.com.my/news/nation/2016/07/31/dont-take-to-the-streets-new-suhakam-chief-tells-bersih-a-diplomatic-approach-to-human-rights/>> accessed 17 October 2016

¹⁰⁵ Shahanaaz Habib, 'A diplomatic approach to human rights' (The Star Online, 31 July 2016) <<http://www.thestar.com.my/news/nation/2016/07/31/a-diplomatic-approach-to-human-rights-we-didnt-fight-the-british-to-become-independent-so-that-we-ca/>> accessed 17 October 2016

¹⁰⁶ Syed Jaymal Zahiid, 'I support Bersih's right to protest, Suhakam chief clarifies' (Malay Mail Online, 5 August 2016) <<http://www.themalaymailonline.com/malaysia/article/i-support-bersih-s-right-to-protest-suhakam-chief-clarifies>> accessed 17 October 2016

¹⁰⁷ 'Suhakam reminds of religious freedom after Jaisarrest 50 Shiite Pakistani' (MalaysiaKini, 13 October 2016) <<http://www.malaysiakini.com/news/358958>> accessed 17 October 2016

FMT Reporters, 'Suhakam wants mechanism to review NSC Act' (Free Malaysia Today, 18 August 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/08/18/suhakam-wants-mechanism-to-review-nsc-act/>> accessed 17 October 2016

¹⁰⁹ Ram Anand, 'Suhakam: Police must not be "face of intimidation"' (Malay Mail Online, 21 September 2016) <<http://www.themalaymailonline.com/malaysia/article/suhakam-police-must-not-be-face-of-intimidation>> accessed 17 October 2016

Indigenous Peoples' Rights

The key issues faced by indigenous peoples in 2016 are the on-going deforestation and encroachment on Orang Asli customary lands in Kelantan, the struggle for recognition of native customary lands in Perak and lack of basic amenities including access to clean water, electricity, internet and roads.

The fight for recognition of native customary land in Perak has been largely successful despite the state government's appeal against the High Court ruling made in 2015. The Court of Appeal in a unanimous decision rejected the state government's appeal and allowed a cross appeal by the indigenous community. The decision further reinforced the previous finding that upholds and recognizes customary land rights under common law and challenged the High Court decision that customary lands can be alienated if compensation is paid for.

While the indigenous community in Perak may have experienced success in their quest for recognition of customary land rights, the indigenous community in Johor is still struggling with their case. In July 2016, the Johor Bahru High Court heard oral submission from all parties in the case of the *Orang Seletar of Danga Bay*¹¹⁰. Another case of Saling v Kanawagi in Johor Bahru High Court remains unresolved as the trial judge decided that he needs more time to go through the submitted documents related to the case and shall deliver his decision in December at the Ipoh High Court (the trial judge's new station)¹¹¹.

The protest against the encroachment of customary land by logging companies in Kelantan has reached a flashpoint in recent months. As their previous plea to the state government had fallen on deaf ears, the indigenous community in the region has formed a blockade to halt the logging activities that are threatening their livelihood. Although the government and the companies in question have not taken any steps to force through the blockade, thugs claiming to be police officers have arrested indigenous peoples manning the blockade and taken down the blockade with chain saws¹¹². Soon after, the forestry department of Kelantan put up their own blockade, restricting access to the indigenous peoples' blockade, preventing supplies and lawyers from reaching the community there¹¹³.

There was good news in 2016 when the long battle against the Baram Dam in Sarawak ended in a victory for the local community with the plans for Baram Dam cancelled. While the project has been suspended since the Sarawak's Chief Minister's announcement in 2015, activists remain vigilant against possible resumption of the project by the state government.¹¹⁴

¹¹⁰ Centre for Orang Asli Concern (COAC), 'Decision for the Orang Seletar case set for 27 October 2016' (COAC Facebook, 28 July 2016) <<https://www.facebook.com/notes/center-for-orang-asli-concerns-coac/decision-for-the-orang-seletar-case-set-for-27-october-2016/1167414519969139>> accessed 31 October 2016

¹¹¹ Centre for Orang Asli Concerns (COAC), 'Decision Day for Recovery of Lost Millions Postponed to December' (COAC Facebook, 18 October 2016) <<https://www.facebook.com/notes/center-for-orang-asli-concerns-coac/decision-day-for-recovery-of-lost-millions-postponed-to-december/1234874509889806>> accessed 31 October 2016

¹¹² Danial Albakri, 'Thugs posing as police break up Orang Asli blockade in interior of Kelantan' (The Star Online, 28 September 2016) <<http://www.thestar.com.my/news/nation/2016/09/28/thugs-attack-orang-asli-blockade/>> accessed 31 October 2016

¹¹³ 'Forestry's entry ban choking Gua Musang Orang Asli' (MalaysiaKini, 30 October 2016) <<http://www.malaysiakini.com/news/361034>> accessed 31 October 2016

¹¹⁴ Geryl Ogilvy Ruekeith, 'Baram Dam project halted indefinitely' (Borneo Post, 19 November 2016) <<http://www.theborneopost.com/2015/11/19/baram-dam-project-halted-indefinitely/>> accessed 31 October 2016

Refugees and Asylum Seekers

The situation facing refugees in Malaysia has not changed: they continue to lack any legal status and the Malaysian government has made no effort to develop any administrative or legal framework to provide refugees with rights or protection. The United Nations High Commission for Refugees (UNHCR) is still used by the Malaysian government as the default agency responsible for refugees. UNHCR oversees a process of registration and the issuance of refugee cards (which give some limited protection but does not confer any rights) as well as a very limited resettlement programme. For the estimated 200,000 refugees in the country, the vast majority continue to have no rights to work or to education; any access to healthcare is severely compromised by issues of affordability and security, and they remain vulnerable to daily harassment, abuse, extortion, detention, enslavement and human trafficking.

Refugees remain at the mercy of employers and agents as they seek to earn enough to keep themselves and their families at least at the level of subsistence. Long hours, low wages, uncertain tenure, lack of any health or accident insurance, and no right of redress if abuses happen describe the situation facing refugees in employment. Many are in situations of modern day slavery. With their legal status classified as undocumented migrants, regular raids by police and Immigration officials have resulted in thousands of refugees being put in detention centres where hygiene and health is a concern and where extortion, physical and sexual abuse occur¹¹⁵.

The ambivalence of the Malaysian government to the presence of refugees is exemplified, for example, by raids on refugees queuing at the UNHCR offices in Kuala Lumpur¹¹⁶. It is demonstrated in the language used to refer to the boat people fleeing Myanmar¹¹⁷ and in other government statements¹¹⁸. Despite the Prime Minister's rhetoric at the UN General Assembly last year about 'common humanity' and 'we cannot stand idly by' and the Malaysian government's commitment to take in 3,000 Syrian refugees, Malaysia has actually accepted Syrian migrants¹¹⁹ and not refugees.

The lack of action against human traffickers in the country reflects on the Malaysian government's lack of commitment to bring such people who murder, rape, torture and traffic women, men and children to justice. The horror of the human trafficking camps discovered on the Malaysian-Thai border where refugees were kept, tortured, raped and killed has not resulted in any traffickers or colluding enforcement agency officials being charged. This is despite the report that the collusion between human trafficking gangs and enforcement officials is endemic. Indeed, if there had not been the link made between the status of a country on the United States' Trafficking in Persons report (TIP

¹¹⁵ Joseph Paul Maliamuv, 'Abuse, torture and death in M'sian Immigration Detention Centre' (MalaysiaKini, 17 August 2016) <<http://www.malaysiakini.com/letters/352583>> accessed 27 October 2016

¹¹⁶ Hashim Ullah, 'Malaysian Authorities Crackdown on Refugees at UNHCR Office' (Rohingya Vision TV news, 6 February 2016) <<http://www.rvisiontv.com/malaysian-authorities-crackdown-on-refugees-at-unhcr-office/>> accessed 27 October 2016

¹¹⁷ Jonathan Edward, 'No migrant landings, say agency' (Malay Mail Online, 16 October 2016) <<http://www.themalaymailonline.com/malaysia/article/no-migrant-landings-says-agency>> accessed 27 October 2016

¹¹⁸ 'Malaysia to 'waste no time' in deporting Bangladeshi illegal immigrants, says Wan Junaidi' (Malay Mail Online, 27 October 2016) <<http://www.themalaymailonline.com/malaysia/article/malaysia-to-waste-no-time-in-deporting-bangladeshi-illegal-immigrants-says>> accessed 27 October 2016

¹¹⁹ Boo Su-Lyn, 'Nur Jazlan: Malaysia-bound Syrians are 'migrants', not refugees' (Malay Mail Online, 7 January 2016) <<http://www.themalaymailonline.com/malaysia/article/malaysia-bound-syrians-are-migrants-not-refugees-nur-jazlan-says>> accessed 27 October 2016

Report) and the eligibility to sign the Trans Pacific Partnership Agreement (TPPA), there is no obvious reason why Malaysia would not still be at Tier 3¹²⁰.

There seems no immediate prospect of Malaysia signing the United Nations 1951 Refugee Convention and its associated protocols. We can only hope that some status and protection can be given to refugees in Malaysia to allow them to earn an income and for their children to access mainstream education and healthcare. There must be an enforceable right to redress any grievance faced by refugees and asylum seekers in order to provide basic protection against abuses.

We demand that the Malaysian Government takes concerted action against human traffickers and other criminals preying on the vulnerability of people like refugees and for ASEAN to take joint action to protect the rights and livelihood of people in their homeland such as the Rohingya in Myanmar, where most refugees in Malaysia have come from.

¹²⁰ Nicholas Cheng, 'Malaysia fails to improve in anti-human trafficking watchlist' (The Star Online, 1 July 2016) <<http://www.thestar.com.my/news/nation/2016/07/01/malaysia-still-do-not-meet-minimum-standard-in-eliminating-human-trafficking/>> accessed 27 October 2016

Death Penalty

In Malaysia, those sentenced to death are usually sent to the gallows. While executions do not always make the news in Malaysia, criminal offences that can result in the death sentence is relatively common. The mandatory death penalty is given for the crime of murder under Section 302 of the Penal Code or possession of drugs under section 39B of the Dangerous Drugs Act 1985. Other offences that could carry death penalty include the crime of kidnapping with intent to murder, act of terrorism resulting in death and rape¹²¹. There are several other concerns relating to capital punishment in Malaysia.

Firstly, criminal cases tend to take place within the time frame of years and in some cases, decades as opposed to months. In many cases, it could take up to 10 years before an individual concludes his or her final appeal following the initial conviction. There are concerns that the long ‘waiting’ period could lead to severe mental and physical suffering that can be considered as torture.

There is also the concern as to whether those charged with offences that could lead to the death penalty are given adequate legal representation and whether the existing criminal justice system is sufficiently robust to ensure those on death row can expect justice. The findings by Malaysian Against Death Penalty & Torture (MADPET) in the case involving Gunasegar Pitchaymuthu and 2 others suggests that in some circumstances, there may be flaws that could result in potential miscarriage of justice¹²².

Furthermore, the clemency process for death row inmates is shrouded in secrecy. As there is no official legal process in place for the clemency appeal, families of death row inmates and activists are often left in the dark with regard to the appeals filed by them. While there is an accepted norm that death row inmates who are waiting for their clemency appeals would not be executed, there is no guarantee that those waiting for possible clemency would be spared.

In 2015, the Malaysian government was reported to be considering abolishing mandatory death penalty for drug related offences. The initiative to abolish mandatory death penalty was announced by Minister Nancy Shukri when she was the de-facto law minister. Following a cabinet reshuffle, she no longer holds the said portfolio. Since then, progress on the abolition of mandatory death penalty for drug related offences seems to have been put on hold.

Malaysia has held on to its unofficial moratorium on the death penalty for drug related crimes. The four reported executions in 2016 were all for offences under Section 302 of the Penal Code. This marks the highest number of executions in the last five years¹²³. As of 16th May 2016, there are 1,041 death row prisoners in Malaysia¹²⁴. It should be noted that the prison department does not readily disclose information on the number of executions that are scheduled to take place or have taken

¹²¹ List of offence printed that carries death penalty is not a conclusive list

¹²² Charles Hector, ‘Opinion – Looking At Judgment of 3 Executed on Good Friday 2016 – Miscarriage of Justice?’ (MADPET, 21 April 2016) <<https://madpet06.blogspot.my/2016/04/opinion-looking-at-judgements-of-3.html>> accessed 28 October 2016

¹²³ Based on reported numbers

¹²⁴ ‘Nancy Shukri: Over 1,000 inmates on death row’ (The Star Online, 17 May 2016) <<http://www.thestar.com.my/news/nation/2016/05/17/parliament-nancy-shukri-over-1000-inmates-on-death-row/>> accessed 28 October 2016

place. Numbers and information on death sentence or death row inmates are only made available through Parliamentary question time or minister's announcements.

Statistics on death sentences and executions¹²⁵

Year	Number of Executions in Malaysia	Number of individuals sentenced to death¹²⁶
2010	-	135
2011	-	151
2012	0	141
2013	At least 2	112
2014	6	183
2015	1	65 ¹²⁷
2016	9 ¹²⁸	_129
Total	16¹³⁰	829¹³¹

Reported executions in 2016

No.	Name	Age at date of death (years)	Charge	Date of Conviction	Date of Execution
1.	Gunasegar Pitchaymuthu	35	Murder	2005	25 th March 2016
2.	Ramesh Jayakumar	34	Murder	2005	25 th March 2016
3.	Sasivarnam Jayakumar	37	Murder	2005	25 th March 2016
4.	Ahmad Najib Aris	40	Murder	2003	23 rd September 2016

¹²⁵ <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=malaysia#f10-2>

¹²⁶ Oral question in Parliament – 18 June 2015, Reference 8001, Question 79 <<https://partisosialis.org/node/3503>>; Parliament answers can also be found at <<http://pardocs.sinarproject.org/>>

¹²⁷ Between January 2015 to to 30 April 2016

¹²⁸ Oral question in Parliament – 19 October 2016, Question 51 <<http://pardocs.sinarproject.org/documents/2016-october-november-parliamentary-session/oral-questions-soalan-lisan/2016-10-19-parliamentary-replies/soalan-51.pdf/view>> accessed 7 November 2016

¹²⁹ No exact figure given in Parliament answer

¹³⁰ Based on Parliament answer in March 2016: Oral question in Parliament – 29 March 2016, Reference 8665, Question 20 <<https://partisosialis.org/node/3595>>; Parliament answers can also be found at <<http://pardocs.sinarproject.org/>>

¹³¹ Up to 22nd February 2016

Postscript on Bersih 5

Bersih 5 was the fifth rally in the campaign to demand free and fair elections in Malaysia organized by the Coalition for Free and Fair Elections. The rally was held on 19 November 2016 but even before it began, the intended peaceful assembly of ordinary Malaysian citizens was branded as illegal by the police¹³². The convoy that was organized to build a mass movement for the 19th November rally was subjected to varying degrees of harassment by the so-called red shirted Malay supremacists led by Jamal Yunos.

The Convoy

Unlike previous Bersih rallies, the Bersih 5 movement commenced on 1 October 2016 with a 7-week-long convoy all over Malaysia with the aim of building awareness of Bersih's demands. Before it even began, police reports were made by various NGOs against the rally claiming that the rally would affect public order. Throughout the campaign, there were acts of violence initiated by the Red Shirts in an attempt to harass and sabotage the Bersih convoy.

The Perak leg of the convoy was ambushed by a gang of red shirts who were tailing the Bersih supporters on motorcycles. These bikers were seen kicking the convoy vehicles, punching side mirrors and pulling flags attached to the vehicles. Their attempts to intimidate and derail the convoy also occurred in East Malaysia where car tyres were punctured and windows smashed.

The harassments included violence against individuals in Sabak Bernam where the Red Shirts threw eggs and kicked two men who were wearing Bersih shirts¹³³. In another incident, some journalists were assaulted by the Red Shirts. Even journalists from the mainstream "The Star" daily were attacked and forced to delete their footages by these red shirts. They also tried to block the Bersih convoy from entering several areas. The highlight of the harassment took place when Jamal Yunos, the leader of Red Shirts was seen nursing a bloody nose after claiming that he was attacked by Bersih supporters¹³⁴. His claims remain unsupported as there is video evidence showing zero involvement of Bersih supporters in the purported attack. Throughout the convoy, Jamal Yunos seemed determined to stop the rally by all means. He also led a group of his followers to protest at the online newspaper

¹³² 'Deputy IGP says will take action against Bersih's illegal assemblies' (MalayMail Online, 13 November 2016) <<http://www.themalaymailonline.com/malaysia/article/deputy-igp-says-will-take-action-against-bersih-illegal-assemblies>> accessed 23 November 2016

¹³³ Tarrence Tan and FMT Reporters, 'Police seek red shirt supporters in Bersih attack' (Free Malaysia Today, 9 October 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/10/09/police-seek-red-shirts-supporters-in-bersih-attack/>> accessed 23 November 2016

¹³⁴ M.Kumar, 'Jamal Yunos left with bloodied nose' (The Star Online, 13 November 2016) <<http://www.thestar.com.my/news/nation/2016/11/13/jamal-bloodied-nose-ampang/>> accessed 23 November 2016

Malaysiakini's office and threatened that he would destroy Malaysiakini's building due to its "errant" methods of reporting¹³⁵.

Pre-Bersih arrest

Before the rally got started, it was reported that a total of 175 police reports had been made against both Bersih and Red Shirt supporters. The leaders of both groups were called for questioning under different offences. The red shirt leader Jamal Yunos was arrested and remanded for a period of two days over an alleged Facebook post under his account that was inciting racial disharmony between the Malay and Chinese community. He was subsequently released and no reports of further investigations have been made known to the public¹³⁶. On 28 October, Maria Chin Abdullah, chairman of Bersih 2.0 was detained at the Kota Marudu police station in Sabah for distributing leaflets and was also released after questioning¹³⁷.

On 18 November 2016, the eve of Bersih 5 rally, Bersih's office was raided and all Bersih 2.0 computers were confiscated¹³⁸. Contrary to established practice, no search list¹³⁹ was provided after the raid. Lawyers were ousted from the office during the search and subsequently, Maria Chin and Mandeep Singh (Secretary of Bersih 2.0 Steering Committee) were arrested. The pre-Bersih crackdown saw a total of 13 arrests. They included personalities¹⁴⁰ who supported Bersih 5 as well as the Red shirts leader Jamal Yunos and one his supporters.

The Bersih 5 rally

The rally itself went on without any serious incidents. Despite the pre-rally crackdown, a crowd of over 40,000 protesters gathered around Kuala Lumpur and eventually congregated at Kuala Lumpur City Centre (KLCC) to demand free and fair elections. The Red Shirt supporters were estimated at around 4,000. The professional conduct of the Royal Malaysian Police (PDRM) was commendable as they successfully prevented any untoward incidents without the use of force¹⁴¹. Road blocks were set up all over Kuala Lumpur but this did not stop the supporters from taking alternative routes to reach

¹³⁵ Farik Zolkepli and Jastin Ahmah Tarmizi, 'Jamal Calls for Malaysiakini's closure' (The Star Online, 5 November 2016) <<http://www.thestar.com.my/news/nation/2016/11/05/jamal-protest-malaysiakini/>> accessed 23 November 2016

¹³⁶ Bernama, 'Red Shirts leader Jamal released on police bail' (The Sun Daily, 20 October 2016) <<http://www.thesundaily.my/news/2010489>> accessed 23 November 2016

¹³⁷ Ruben Sario, ' Maria Chin released after arrest in Sabah' (The Star Online, 29 October 2016)

¹³⁸ Mandeep Singh's cellphone remains in police possession - footnote

¹³⁹ Borang Bongkar or search list is produced at the end of the raid in order to ascertain the items that have been seized. The search list also serves as an important piece of evidence before the court to render the items seized as admissible evidence.

¹⁴⁰ 'Jamal finally nabbed with 12 others in pre-rally arrests' (Malaysiakini, 18 November 2016) <<https://www.malaysiakini.com/news/363368>> accessed 23 November 2016

¹⁴¹ Unfortunately, the professionalism shown during the Bersih 5 rally is overshadowed by the crackdown against human rights defenders and activists the night before.

the final point of the rally. Five individuals were arrested during the rally itself¹⁴². There was some confusion when the Investigation Officers (IO) could not be identified for some of those arrested.

Post-Bersih Arrests

Immediately after the rally ended, Fahmi Reza, political graphic designer was arrested¹⁴³. PKR MPs Tian Chua and Zuraida Kamarudin were also arrested the following day¹⁴⁴. Tian Chua was arrested under section 147 of the Penal Code for rioting whereas Zuraida's charge is unknown. The twelve who were arrested were remanded and subsequently released in stages after their remand period ended.

Present status

Out of all who were arrested, Maria Chin is the only one detained under SOSMA. SUHAKAM has confirmed that Maria is kept under solitary confinement. Although the condition of her cell is considered acceptable by the Commission, they verified that she has only been provided with a wooden bed and has only cold water to wash with. Maria Chin previously informed her lawyers that she is kept in a 15x8 windowless cell with two lightbulbs that are perpetually lit. As of 23 November, SUHAKAM reports that Maria has only been interrogated for a total of 3 hours since her arrest on 18 November. Daily vigils are slated to be held until Maria's release from SOSMA at Dataran Merdeka. There have been calls from various NGOs demanding Maria's release. As of 23rd November 2016, the city council (Dewan Bandaraya Kuala Lumpur – DBKL) has officially closed off Dataran from public access¹⁴⁵.

After his release from jail, Jamal Yunos has vowed to hold "Bersih 7" against the Selangor government in an attempt to mirror Bersih 5.

¹⁴² Based on SUARAM Urgent Arrest Records

¹⁴³ Dina Murad, 'Bersih 5 : Fahmi Reza detained at the end of rally' (The Star Online, 19 November 2016) <<http://www.thestar.com.my/news/nation/2016/11/19/bersih-5-fahmi-reza-detained-at-end-of-rally/>> accessed on 23 November 2016

¹⁴⁴ FMT Reporters 'Tian Chua and Zuraida arrested'(Free Malaysia Today, 20 November 2016) <<http://www.freemalaysiatoday.com/category/nation/2016/11/20/tian-chua-and-zuraida-arrested/>> accessed on 23 November 2016

¹⁴⁵ Koh Jun Lin, '1,00 at Maria Chin vigil told to get off Dataran Merdeka' (Malaysiakini, 23 November 2016) <<http://www.malaysiakini.com/news/363804>> accessed on 23 November 2016