

STATEMENT

UPR Pre-Session on Malaysia

Geneva, 28 November 2023

Delivered by: Suara Rakyat Malaysia (SUARAM)

1. Organisation and Plan of Statement

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This statement is delivered on behalf of Suara Rakyat Malaysia (SUARAM), a Malaysian NGO that works on civil and political rights including arbitrary detention, access to justice, freedom of expression and freedom of peaceful assembly. SUARAM has participated in the UPR process since Cycle 3.

This statement addresses three areas: (1) freedom of expression, (2) freedom of peaceful assembly, and (3) the National Human Rights Commission of Malaysia (SUHAKAM).

2. Statement

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i. Freedom of Expression

Malaysia fully accepted recommendations related to creating a “safe and enabling” environment for the media and civil society. But recommendations mentioning laws that need to be amended or repealed with consultations were either partially accepted or taken note of. The said laws include the Sedition Act, the Communication and Multimedia Act (CMA), and the Printing Presses and Publications Act (PPPA).

Consultations with stakeholders such as civil society were held to identify challenges and review the application of these 3 laws.

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Whilst the prosecution rate of cases under the Sedition Act is close to 2% over 13 years, Section 233 of CMA is increasingly applied on online speech on race, religion and royalty. All 19 court cases from 2022 to 2023 involving speech on the aforementioned issues were in fact all charged under Section 233.

Censorships and bans are still carried out under the pretext of upholding public morality, such as using the PPPA to ban LGBT-themed materials including Swatch Pride watches. Films touching on religious sensitivities such as *Mentega Terbang* are censored or banned.

More restrictive guidelines to regulate concerts are also in place. This includes new guidelines released in September this year for universities, involving scrutiny of song lyrics by artists, and attire and seating (i.e., gender segregation) of audience.

News and blog sites critical of the government are also blocked. In 2023, there were 6, including MalaysiaNow which has media accreditation.

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Considering these developments, we recommend the Malaysian government to:

- Review, amend and repeal the following laws/provisions, in consultation with stakeholders including civil society, in line with international standards: Sedition Act, Section 233 of CMA,

PPPA, Sections 298A, 500, 504 and 505b of the Penal Code, Film Censorship Act and FINAS Act

- Review and amend the Universities and University Colleges Act 1971 (AUKU), in consultation with university student groups, civil society and other stakeholders, to remove government interference from university administration and enhance student autonomy
- Establish a Malaysia Media Council as a transparent and independent self-regulatory body, in line with recommendations by the Protem Committee

ii. Freedom of Peaceful Assembly

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Out of the three recommendations accepted, two were on amendments to the Peaceful Assembly Act (PAA). In 2019, the government did amend PAA to decriminalise street protests and reduce the period of notification of assembly from 10 to 5 days.

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Nevertheless, law enforcement doesn't fully live up to their roles of facilitating public assemblies. Organisers are still actively discouraged by police officers from organising public assemblies during pre-assembly facilitation meetings. Investigations are still done on organisers who submitted their notices 5 days before the public assembly, with some of these assemblies labelled as 'illegal'. Acts of obstruction or intimidation from law enforcement are also seen in public assemblies that are 'sensitive', or are organised by political opponents. Examples include police barricades, roadblocks and pre-assembly warnings to the public. A worrying precedent in 2021 was set when investigations were done against Commissioners from the National Human Rights Commission of Malaysia and representatives from the Malaysian Bar Council, who were monitoring the public assembly.

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To fully uphold the fundamental freedom of peaceful assembly, we recommend the Malaysian government to:

- Revise law enforcement's internal SOPs on policing public assemblies in line with international standards;
- Improve the existing human rights training module for law enforcement to include guidelines on policing public assemblies in line with international standards;
- Allow spontaneous and small peaceful assemblies, and;
- Review and amend PAA to guarantee children and non-citizens the right to peaceful assembly, guarantee the media full access to public assemblies; include significant public spaces as designated places of assembly, and limit requirement of consent from owner of place of assembly to only privately-owned premises

iii. National Human Rights Commission of Malaysia (SUHAKAM)

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Whilst recommendations from Cycles 1 and 2 calling for strengthened independence of SUHAKAM were taken note of, the current government has stated its commitment, since last year, to improve SUHAKAM's functioning via amendments to the SUHAKAM Act.

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On a longstanding basis, SUHAKAM's commissioner selection and appointment process is not sufficiently broad and transparent. The Commissioner lineup from July 2022 highlighted this gap.

SUHAKAM delayed tabling its 2020 annual report in Parliament by 2 years. 2021 and 2022 annual reports are yet to be released. It's also not mandatory for SUHAKAM's reports to be debated in Parliament. SUHAKAM also faces limitations to its human rights mandate. One, being unable to make unannounced visits to detention facilities, which can affect investigations of human rights violations in those facilities. The other being limited effectiveness to the recommendations SUHAKAM issues, as the government is not mandated to respond or implement them.

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We thus recommend the Malaysian government to amend the SUHAKAM Act to strengthen its independence and effectiveness in line with the Paris Principles, with amendments as follows:

- Mandating a clear, transparent and participatory Commissioner selection and appointment process.
- Establishing an independent and objective Commissioner dismissal process.
- Mandating government ministries and agencies to respond and take action on SUHAKAM's recommendations within a specific timeframe.
- Allowing SUHAKAM to conduct unannounced visits to detention facilities, and
- Mandating SUHAKAM's annual reports to be debated in Parliament.