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# MALAYSIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2011

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In 2010 and 2011, the right to freedom of peaceful assembly continued to face serious impediments due to a restrictive legal framework, which led to the arrest of several human rights defenders. A women's rights organisation as well as a human rights lawyer faced judicial harassment as reprisals to their advocacy against the caning of women and support for Burmese migrant workers. Several land and indigenous rights activists also faced obstacles in carrying out their activities.

## Political context

The year 2010 saw further restrictions of civil and political rights in Malaysia. Indeed, the Government of Prime Minister Najib Razak was able to showcase only very limited progress in this field, despite campaign promises to uphold "civil liberties". The Government remained reluctant to enact long-awaited amendments to the Internal Security Act (ISA)<sup>1</sup> as well as other laws relating to detention without trial<sup>2</sup>. The trial of Mr. Anwar Ibrahim, former Deputy Prime Minister<sup>3</sup>, and the politically motivated charges against other Government critics, further contributed to a lack of public confidence in the judiciary. A potential repeal of the ISA appeared to be highly unlikely, as underlined by Mr. Abdul Nazri Aziz, Minister in the Prime Minister's Office in charge of Parliamentary Affairs, who stated on November 29, 2010 that the ISA would never be revoked, in response to the International Bar Association's Human Rights Institute's criticism of the ISA and call for its abolition<sup>4</sup>. The UN Working Group on Arbitrary Detention, which visited Malaysia from June 7 to 18, 2010, urged the Government to repeal or amend four preventive laws in force in the country that allow detention without trial, in some cases indefinitely: the ISA of 1960, the Emergency (Public Order and Prevention of Crime)

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1/ See Observatory Annual Report 2010.

2/ According to the NGO Suara Rakyat Malaysia (SUARAM), 25 individuals were arrested under ISA in 2010, and fifteen persons were released. See SUARAM Report, *Malaysia Civil and Political Rights Report 2010: Overview*, December 2010.

3/ Furthermore, on December 16, 2010, Mr. Ibrahim was suspended from addressing the Parliament for six months, in connection with remarks alleging that Prime Minister Najib Razak's policy of racial unity under the banner of "One Malaysia" was inspired by an Israeli election campaign in 1999, called "One Israel". The ban in effect means that Mr. Ibrahim will not be able to participate in parliamentary debates in the run-up to the 2011 general elections.

4/ See SUARAM.

Ordinance, the Dangerous Drugs (Special Preventive Measures) Act, and the Restricted Residence Act<sup>5</sup>.

Freedom of expression remained seriously restricted, with opposition newspapers temporarily shut down, their licenses not renewed and independent journalists harassed, resulting in self-censorship within the media. The Government increasingly used the 1984 Printing and Publications Act, the 1998 Communication and Multimedia Act, as well as the Sedition Act to stifle critical voices and dissent. Freedom of assembly is also conditional on approval by the police and grant of a permit to assemble. However, these conditions appeared not to apply equally to every group. Pro-Government groups were allowed to assemble in large numbers without much restriction while supporters of opposition parties or non-governmental organisations could not stage peaceful protests. These obvious double standards contributed to diminish public confidence in the police and other law enforcement authorities in the country, all the more as the police continued to use excessive force when dispersing peaceful assemblies and to enjoy widespread impunity for their actions<sup>6</sup>.

The Human Rights Commission of Malaysia (SUHAKAM) operated with no commissioner in office from April 23 to June 7, 2010, building up a considerable backlog of cases. Then, the selection process of new commissioners was not transparent. However, the initial responses of the newly composed institution gave rise to cautious optimism<sup>7</sup>. Furthermore, the Government continued to refuse any follow up on SUHAKAM's findings or even to debate their recommendations in Parliament.

Expectations that the election of Malaysia to the UN Human Rights Council will contribute positively to the promotion and protection of human rights both at the domestic and international levels proved to be overly optimistic. In its campaign promises in the run-up to the elec-

5/ See UN Working Group on Arbitrary Detention Statement, June 18, 2010 and Human Rights Council, *Report of the Working Group on Arbitrary Detention, Addendum, Mission to Malaysia*, UN Document A/HRC/16/47/Add.2, February 8, 2011.

6/ See ALIRAN.

7/ For instance, a loose coalition of eleven NGOs and 52 individuals filed a complaint with SUHAKAM concerning the way the LGBT community was portrayed in the media, also highlighting the fact that based on a 1994 decree the Government bans LGBT people from appearing in State-controlled media, thereby depriving them of the possibility of reacting to degrading comments. SUHAKAM filed the memo as a complaint against the media in June 2010, and also undertook to conduct a review of the relevant Malaysian laws. See International Gay and Lesbian Human Rights Commission (IGLHRC) and Protection Online Press Release, September 21, 2010. SUHAKAM also sent monitors to anti-ISA vigils in August and to a water hike rally in December 2010. See SUARAM Report, *Malaysia Civil and Political Rights Report 2010: Overview*, December 2010.

tions, Malaysia committed itself, among others, to the implementation of recommendations emanating from the Universal Periodic Review, held in February 2009, to actively promote and protect human rights at the national level through various efforts and to review and repeal archaic and outdated laws<sup>8</sup>. Malaysia further pledged itself to continue fostering a meaningful and productive engagement between the Government and civil society. Additionally, the campaign for a seat on the Human Rights Council also included a promise to strengthen capacities for the implementation and enforcement of human rights conventions which Malaysia is party to, alongside reconsidering the numerous instruments which it has yet to accede to. Despite its election to the Human Rights Council, Malaysia's cooperation with UN human rights mechanisms continued to be strained and insufficient<sup>9</sup>.

### **Ongoing repression of peaceful demonstrations**

Although freedom of peaceful assembly is guaranteed under the provisions of the Constitution, the police continued to place serious restrictions upon its exercise in 2010-2011, by either refusing to issue permits for public assemblies, or by violently dispersing them, often using excessive force and arresting activists. For instance, on August 1, 2010, the police dispersed candlelight vigils held simultaneously in several States, commemorating the 50<sup>th</sup> anniversary of the entry into force of the ISA and demanding that it be repealed. In total, 38 participants were arrested, including Mr. **Syed Ibrahim**, Chairperson of Gerakan Mansuhkan ISA (GMI), Ms. **Nalini Elumalai** and Mr. **Ong Jing Cheng**, SUARAM Coordinators, Ms. **Kohila**, Secretariat Member of SUARAM, Mr. **Choo Chon Kai**, Penang Branch Secretariat Member, and Mr. **Arutchelvan**, SUARAM Director. In some

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8/ See General Assembly, *Letter dated 23 April 2010 from the Permanent Representative of Malaysia to the United Nations addressed to the President of the General Assembly*, UN Document A/64/765, May 3, 2010.

9/ There are currently eight pending visit requests from various Special Procedures mandate holders, including the Special Rapporteurs on Human Rights Defenders (request made in 2002); on Indigenous Peoples (2005); on Human Rights and Counter-Terrorism (2005); on the Human Rights of Migrants (2006), on Freedom of Religion (2006) and on the Independence of Judges and Lawyers (2009). Malaysia also has a considerable backlog in reporting to the UN treaty bodies under the various human rights instruments it is party to. The country is also yet to ratify several core human rights conventions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of Racial Discrimination; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. On July 19, 2010, Malaysia ratified the Convention on the Rights of Persons with Disabilities, which is a welcome step. At the same time, however, the formal reservations attached to the instrument of ratification, along with Malaysia's declaration that aims at limiting the Government's legal application of the principles of non-discrimination and equality, give rise to serious concerns.

cases, lawyers were denied access to their clients. Eventually, all of those arrested were released without charge<sup>10</sup>. On August 2, 2010, Ms. **Lau Shu Shi**, a member of the All Women's Action Society Malaysia (AWAM) and former Penang SUARAM Coordinator, was summoned to court after being identified as having participated in the anti-ISA vigil in Penang. She was subsequently charged for "disorderly conduct in a police station" under Section 90 of the 1967 Police Act in connection with another incident stemming from May 2008<sup>11</sup> and released on bail<sup>12</sup>. She was charged in the Magistrate Court in north-east Penang on August 2, 2010, and pleaded not guilty. The trial was scheduled to be held on October 20, 2010, but was then postponed. As of April 2011, the case remained pending after being postponed on many occasions. On December 5, 2010, sixty persons were arrested in Kuala Lumpur for participating in a peaceful assembly to protest against the proposed water tariff hike in Selangor as well as to hand over a memorandum to the Sultan of Malaysia ("*Yang di-Pertuan Agong*") regarding the water issue. In addition, the police attacked the crowd with tear gas and water cannons, and stepped up their violent actions even as the crowd tried to disperse, resulting in some injuries among the participants of the rally. They were all released without charge<sup>13</sup>. Similarly, on August 2, 2010, SUARAM Coordinator Mr. **Tah Moon Hui** and opposition MP assistant Mr. **Rozam Azen** were arrested for taking part in an anti-fuel price hike campaign at Kampung Kerinchi, Selangor, before being released on bail without charge<sup>14</sup>. Similarly, on August 7, 2010, three persons were arrested in Kampung Sungai Teretang, Rawang, in a protest against the national power provider, before being released without charge<sup>15</sup>. On October 11, 2010, lawyers Mr. **Jason Kong** and Mr. **Chan Khoo Moh** and two students, Ms. **Norashikin** and Mr. **Mohd Azwan**, all working at the Bar Council's Legal Aid Centre (LAC), were arrested for handing out leaflets with information on police remand powers in Selangor. The police asked them for their identification cards and confiscated them as well as the "Red Books"<sup>16</sup>, alleging that they were anti-police publications. The four volunteers, who had been authorised by the mall management to distribute their leaflets, were taken to the district police headquarters,

10/ See SUARAM and GMI Joint Press Statement, August 2, 2010.

11/ In this incident, she was accused of being unruly and raising her voice against a police officer when she lodged a report against them for improperly dispersing an anti-ISA demonstration.

12/ See ALIRAN Statement, August 17, 2010.

13/ See SUARAM Urgent Appeal, December 5, 2010.

14/ See SUARAM Report, *Malaysia Civil and Political Rights Report 2010: Overview*, December 2010.

15/ *Idem*.

16/ The "*Red Book: Know your rights*" is a publication of the Malaysian Bar, providing legal information on one's rights when stopped by the police, during arrest and detention, and on remand proceedings.

State of Selangor. They were detained for three hours before being released without charge. Their identification cards and the copies of the “Red Book” were returned to them. In February 2011, Kuala Lumpur police denied a permit for the Solidarity March Against Racism organised by the Hindu Rights Action Force (HINDRAF) and its sister organisation, the Human Rights Party (HRP), two organisations aiming at defending the rights of Hindu and other marginalised minorities in Malaysia, scheduled for February 27. Moreover, at least 54 HINDRAF and HRP members were arrested in several locations across Malaysia between February 13 and 27 for participating in various promotional activities in the run up to the march. They were subsequently all released on bail but as of April 2011, they all continued to face charges of “acting as members of an unlawful society” or “participating in assemblies of an unlawful society”, under Section 43 of the Societies Act of 1966<sup>17</sup>.

### **Acts of harassment against land and indigenous rights activists**

In 2010, land and indigenous rights activists were again subjected to acts of harassment. For instance, on March 17, 2010, 2,000 Orang Asli, indigenous natives of Peninsular Malaysia, organised a historic march in Putrajaya to voice their dissatisfaction on land issues. The protest was organised by grassroots Orang Asli groups, the Network of Orang Asli Villages in Perak (JKOAPerak) and the Network of Orang Asli Villages in Pahang (JKOAPahang). The police stopped the march fifteen minutes after it started. They had originally planned to march from the Putrajaya mosque to the Prime Minister’s office to hand over a memorandum signed by 12,000 Orang Asli. The police instructed the protesters not to display their banners and redirected half of the crowd to the nearby Ministry of Rural Development. Finally, five representatives were allowed to submit the memorandum<sup>18</sup>. On August 11, barely over a month after the Penan Support Group (PSG) had released a fact-finding report on the sexual exploitation of indigenous Penan women in Sarawak State, Mr. **John Liu**,

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17/ HINDRAF submitted in January 2006 its first application for registration although this reportedly went unacknowledged by the Registrar of Societies. They submitted a second application in October 2007, which also went unacknowledged until October 2008, when the Home Minister announced that HINDRAF was banned. However, no court order followed or accompanied this announcement and, thus, HINDRAF continued its activities. In order to protect its volunteers, HINDRAF renamed itself “Hindraf Makkal Sakthi” in 2008. On October 2, 2009, its legal representatives sent a letter of intent to register the organisation under this name, however, the Registrar of Societies has reportedly not responded to this request. On November 25, 2010, HINDRAF Legal Adviser founded the Human Rights Party, and submitted the formal application for registration, which remains unanswered.

18/ See SUARAM Report, *Malaysia Civil and Political Rights Status Report 2010: Overview*, December

of the PSG, was summoned by the police. The police questioned Mr. Liu for approximately one hour about the contents of the report, which had already been distributed widely to the public, including to police officials. Subsequently, the police did not carry out any further action against Mr. Liu<sup>19</sup>. On November 17, 2010, SUHAKAM Commissioner **Jannie Lasimbang** was not able to enter Sarawak to gather information for a national inquiry into the rights of indigenous peoples because a ban on her entering Sarawak imposed in 1994 has never been lifted. Indeed, her conditional entry permit to Sarawak explicitly states that she should “not be involved directly or indirectly in activities that are detrimental to the interests of the State” or “associate with organisations that actively instigate or encourage Sarawak natives to carry out activities that are detrimental to the interests of the State”<sup>20</sup>. Moreover, as of April 2011, Messrs. **Bunya Ak Sengoh** and **Marai Ak Sengoh**, two Iban land activists from Sarawak who have been actively involved in a struggle to keep a plantation company out of their native customary rights land, remained detained in the Simpang Renggam detention centre, in Johor. Both were arrested on January 15, 2009, along with Ms. **Melati Ak Beken**i, another Iban land activist from Sarawak, under the Emergency Ordinance of 1969, after Bintulu police accused them of being involved in a series of robberies. However, it is believed that their arrest merely aimed at sanctioning their activities on behalf of the rights of their community. On March 15, 2009, Messrs. Bunya Ak Sengoh and Marai Ak Sengoh were given a two-year detention order under the Emergency Ordinance. However, no formal charge was brought against them. On March 15, 2009, Ms. Melati Ak Beken was released after the initial sixty-day detention period<sup>21</sup>.

### Harassment of a women’s rights organisation

Women human rights defenders were also targeted in 2010. On March 22, 2010, the Malaysian Assembly of Mosque Youths (MAMY) filed a lawsuit against Sisters in Islam (SIS), a group of women human rights defenders advocating for women’s rights in Malaysia, working in particular against the caning of women and urging the Government to review caning as a form of punishment under the Shariah Criminal Offences as it

19/ See SUARAM.

20/ The ban was imposed by the Chief Minister’s Office and enforced by the Sarawak Immigration Department following Ms. Lasimbang’s trip to the State in 1994 on a Penan fact-finding mission. See SUARAM Report, *Malaysia Civil and Political Rights Status Report 2010: Overview*, December 2010.

21/ Messrs. Bunya Ak Sengoh and Marai Ak Sengoh were released on May 18, 2011. Yet, they were placed under the Restricted Residence Act in Serian, Sarawak.

violates international human rights principles<sup>22</sup>. MAMY was questioning the use of the word “Islam” on the website and in the publications of SIS. The lawsuit seems to be an attempt to hinder the work of SIS, which had been targeted previously in a similar manner. For instance, in February 2010, the Selangor Islamic Council (MAIS) filed a police report against SIS for questioning the whipping of three Muslim women for allegedly engaging in illicit sex. Furthermore, on March 12, 2010, the Friday sermons in the mosques issued by the Selangor Islamic Department, called on the public to take action against SIS and its Executive Director, Dr. **Hamidah Marican**<sup>23</sup>. On October 29, 2010, the Malaysian High Court allowed the women’s organisation to use the name “Sisters in Islam”.

### **Judicial proceedings against a human rights lawyer for helping Burmese migrant workers**

In 2011, a human rights lawyer faced judicial proceedings for helping Burmese migrant workers. On February 14, 2011, the Asahi Kosei (M) Sdn. Bhd. Company, a Japanese company operating in Malaysia and employing migrant workers, lodged a complaint against Mr. **Charles Hector Fernandez**, a long-standing human rights defender and a lawyer, for “libel” on the company. The complaint came after Mr. Fernandez assisted 31 Burmese migrant workers in obtaining remedies from the company and posted articles calling upon the company to respect the rights of the Burmese migrant workers on his blog<sup>24</sup>. The company denied all the allegations and alleged that these workers were supplied by an “outsourcing agent” and hence that they were not responsible for the said workers. The company demanded from Mr. Charles Hector Fernandez the sum of 10,000,000 ringgits (about 2,319,000 euros). In addition, the company sought a court order to get Mr. Fernandez to remove all blog postings concerning the company and Burmese workers, which was granted by

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22 / Under international law, judicial corporal punishment such as caning constitutes torture or other ill-treatment, which are absolutely prohibited in all circumstances. Yet, more than sixty criminal offences are punishable by caning, including fraud and immigration offences. Each year, Malaysia subjects thousands of refugees migrants and Malaysian citizens to judicial caning. According to Amnesty International, as many as 10,000 people a year are caned in Malaysian prisons, including many foreigners from Indonesia and Burma. In February 2010, three women were caned under Shari’a law for the first time in Malaysia’s history. See Amnesty International Report, *A Blow to Humanity, Torture by judicial caning in Malaysia*, December 2010.

23 / See FORUM-ASIA Open Letter to the authorities, April 9, 2010.

24 / On February 7, 2011, the employer and/or their agents threatened these workers with deportation in retaliation for airing their grievances relating to illegal wage deductions, lack of medical leave and unilateral reduction of their wages. Upon being informed about the threatening deportation of the migrant workers, Mr. Fernandez contacted the company for clarification and verification of the reports received. When no response followed, he posted a media statement, now endorsed by over eighty civil society groups, on his blog on February 11, 2011.

the court on February 17, 2011. Yet, Mr. Fernandez never had any notice or knowledge about this application, and the order was obtained without Mr. Fernandez being given the chance to defend himself. On April 11, 2011, attempts by Mr. Charles Hector Fernandez to have the mentioned court order set aside failed as the court ordered the amended injunction to remain in place until the end of the defamation trial, which was scheduled to take place on June 28 and 29, 2011 before the Shah Alam High Court, Selangor<sup>25</sup>.

### **Urgent Interventions issued by The Observatory from January 2010 to April 2011**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Jason Kong, Mr. Chan Khoon Moh, Ms. Norashikin and Mr. Mohd Azwan	Arbitrary arrest / Release	Urgent Appeal MYS 001/1010/OBS 126	October 14, 2010
52 Hindu Rights Action Force (HINDRAF) and Human Rights Party (HRP) members	Judicial harassment / Obstacles to freedom of assembly	Open Letter to the authorities	March 30, 2011