

STATEMENT BY BAR COUNCIL MALAYSIA

Bar Council Malaysia transmitted its UPR submission on 11 March 2013. We focused on 7 issues: law and security, interference with lawyers and human rights defenders, freedom of assembly, deaths in police custody, freedom of religion, Peninsular Malaysia *Orang Asli* land rights, and international responsibility and conduct.

We wish to highlight significant developments since that date.

Law and Security

Citing a rise in violent crime and blaming the increase on the repeal of the Emergency (Public Order and Prevention of Crime) Ordinance 1969, which took effect on 22 July 2012, the police have repeatedly called for a reintroduction of preventive detention legislation.

However the police have hitherto failed to produce any meaningful evidence to prove that the repeal of the Emergency Ordinance is the direct cause of the rise in violent crime. Indeed, the police have not addressed the question of how those released from detention have been able to gain access to firearms.

The Malaysian Government has also announced that it is considering the use of electronic monitoring devices on those suspected of criminal activity.

The Malaysian Bar welcomes the fact that the Malaysian Attorney General in a speech at a crime prevention forum on 24 August 2013 has resisted such calls for the reintroduction of preventive detention legislation. We urge the international community to continue to encourage the Malaysian Government to resist the reintroduction of preventive detention legislation. The international community should also encourage the Malaysian Government to respect the right of those suspected of criminal activity to the presumption of innocence, and not to restrict their liberty until and unless formal charges have been brought. Any detention of those suspected of criminal activity must be supervised by the courts, and not by the police or the Malaysian Government.

Interference with lawyers and human rights defenders

On 3 July 2013 Malaysian authorities interrupted a screening of "NO FIRE ZONE: The Killing Fields of Sri Lanka", a documentary by Callum Macrae on the situation of Tamils in Sri Lanka. The screening had been organised by local human rights organisation Pusat KOMAS. The authorities intervened on the basis that the documentary had not been cleared by the film censorship board for viewing. This is notwithstanding that the same documentary had been screened to Parliamentarians at Parliament House. The police checked the identity cards of all those attending the viewing, and detained 3 of the organisers for questioning. The head of Pusat KOMAS was subsequently summoned for an interviewed by the police. We are given to understand that the Sri Lankan High Commission in Malaysia had contacted the venue owners to request that the screening be cancelled. Instead, the organisers invited the Sri Lankan High Commission to attend the screening, and put across its position. They did not.

The Malaysian Bar urges the international community to recommend to the Malaysian Government to recognise and acknowledge the important role that non-governmental organisations, especially those in the human rights field, play in terms of highlighting abuses of human rights, both within and outside the country. In particular, the international community needs to be critical of the harassment faced by human rights defender organisations in Malaysia.

Freedom of Assembly

On 19 August 2013, the Malaysian Government charged 4 persons for violating the Peaceful Assembly Act 2012. 2 of the persons charged were the organisers of the “Himpunan Hijau” (“Green Gathering”) rally that took place on 2 September 2012 in the town of Raub. If found guilty, they can be fined up to RM10,000. The 2 other persons were charged for bringing children to the rally. Under the Peaceful Assembly Act 2012, children under the age of 15 may not attend any public rally. If found guilty, they can be fined up to RM20,000.

In the aftermath of the 13th general election on 5 May 2013, opposition political parties have organised a series of rallies known as “Black 505” to protest the results, in which the ruling party was re-elected amidst allegations of electoral fraud. According to press reports, a total of 43 persons have so far been charged for violating the Peaceful Assembly Act 2013 in relation to these “Black 505” rallies. One of the provisions of the law requires organisers of public assemblies to give the police at least 10 days’ advance written notice of any public rally, and then to comply with such terms and conditions that the police may impose.

The Malaysian Bar calls on the international community to recommend to Malaysia that it rescind the various provisions that place restrictions or limitations on the right to peaceful assembly, and amend the Peaceful Assembly Act 2012 so as to ensure the incorporation of international human rights norms.

Deaths in police custody

The situation has further deteriorated. Since the drafting of our submission, a further 11 persons have died whilst in police custody, bringing the total for the year to date to 13, and from 2000 to August 2013 to 233. The police have steadfastly maintained that their personnel were only responsible for 2 of these deaths in police custody. The Enforcement Agency Integrity Commission, which began operations on 1 April 2011, has belatedly discovered that it has power to convene an investigation suo motu, and has formed a task force to look into 2 of the recent incidents of deaths in police custody. The task force has yet to make any public announcements.

On 28 June 2013, the High Court of Malaya concluded that the current Inspector General of Police, whilst he was Chief of Police of the state of Selangor, had committed misfeasance in public office in that he covered up the reasons for the death in police custody of A. Kugan on 20 January 2009 and shielded those responsible. The High Court awarded the deceased’s family RM801,700 in civil damages. The Malaysian Government is appealing this decision.

The Malaysian Bar urges the international community to again recommend to the Malaysian Government that it immediately establish an Independent Police Complaints and Misconduct Commission to oversee the police force in Malaysia, to ensure external civilian oversight of the police force. It is clear that the Malaysian Government's chosen alternative, the Enforcement Agency Integrity Commission, has wholly failed to exercise proper oversight over the police force.

Freedom of Religion

In 1996, the National Fatwa Council issued a religious edict banning Shia Islam. However this ban was not fully enforced. In early August 2013, the Malaysian Government indicated that it would now pursue a more comprehensive enforcement of this ban against Shia Islam. In particular, state religious authorities would now proceed to gazette this fatwa, making this religious edict part of state law and thus enforceable in their respective states. One particular state, Kedah, has already publicly stated that it will gazette this fatwa.

Kedah has also publicly announced that it will ban non-Muslims from using the word "Allah" notwithstanding that the Malaysian Government's appeal against the 2009 High Court decision permitting non-Christians to use the word "Allah" is pending before the Court of Appeal.

In the meantime, a Muslim woman who was the subject of a video showing her caring for her dogs with Islamic religious background music is being investigated by the religious authorities for the offence of insulting Islam. Under one school of Islamic jurisprudence, the Shafie school of Sunni Islam preferred by the Malaysian Government, the rearing of dogs by Muslims is not permitted. Some other schools of Islamic jurisprudence are more permissive. The video, made 3 years ago, was distributed via social network during the month of Ramadan.

The Singaporean owner of a holiday resort in the state of Johor had his Malaysian permanent residence revoked for allowing the resort's surau, a building set aside for Muslim religious prayer, to be used by a Buddhist group from Singapore for meditation. The owner is being charged under the Penal Code for an offence relating to desecration of places of religious worship, and the local authorities have issued a demolition order in respect of the building. The building has since been demolished.

The Malaysian Bar calls on the international community to recommend greater room for freedom of religion in Malaysia in general, and in particular by Muslims to practice Islam in accordance with the teachings of internationally-recognised schools of Islam.

Peninsular Malaysia *Orang Asli* land rights

Between 2011 and 2013, the Malaysian National Human Rights Commission (SUHAKAM) embarked on an extensive national inquiry into land rights of indigenous peoples of Malaysia. However, the Malaysian Government rejected a request by SUHAKAM to launch its Report of the National Inquiry into the Land Rights of Indigenous Peoples by distributing copies of it to members of the Malaysian Parliament.

Instead, on 27 August 2013, in a low-key ceremony, SUHAKAM handed over a copy of the Report to the Malaysian Government. The Malaysian Government in turn has formed a task force to consider findings and recommendations of the Report with a view to implementation. The task force has no specific time-frame to complete its work, and no formal “stand still” on introducing new measures is in place at federal or state level. This is of particular concern in the state of Sarawak, where notices to revoke native customary status on land for the building of a dam have already been issued.

The Malaysian Bar calls on the international community to recommend to the Malaysian Government that the principles of free, prior and informed consent as encapsulated in the United Nations Declaration on the Rights of Indigenous Peoples be given comprehensive application in all policies affecting indigenous peoples, but especially those involving development. The speedy implementation of the Inquiry’s recommendations is critical.

International responsibility and conduct

The Malaysian Government has made no announcement of any intention to accede to further international human rights conventions, nor has any indication of any timeline for accession been given. There has also been no further development arising from the Malaysian Government’s announcement in March 2011 that it will accede to the Rome Statute of the International Criminal Court.

As a member of the Human Rights Council, the Malaysian Government should be encouraged to exemplify the highest international human rights standards. In particular, accession to and implementation of the provisions of all international human rights covenants should be a priority.

Post-election legal challenges and access to justice

The Malaysian Bar is deeply concerned that many of the election petitions brought after the recently-completed 13th general elections have been dismissed on preliminary objections, without the merits of the petitions being considered. In particular, an overly-technical and narrow interpretation of the Election Petition Rules 1954 have led to petitioners being denied the right to counsel. Further, even when counsel have been disqualified, the petitioner has been denied the right to self-representation. The courts have also adopted a practice of awarding high legal costs against the losing petitioners. These are extremely punitive in effect.

These dismissals represent a serious undermining of the right to legal representation of one’s choice, and the right to access to justice. The Malaysian Bar calls on the international community to recommend that the Malaysian Government uphold the principle of clean, free and fair elections and re-look election petition rules so as to reduce dismissals of legal challenges on purely technical grounds, especially in situations when the effective right of an individual to challenge results is denied.

2 September 2013