

## CPPS Policy Factsheet: Human Rights

**CPPS** is pleased to bring to you its “**CPPS Policy Fact Sheet**” on human rights. In this factsheet, we will examine the fragile and sometimes confusing state of human rights in Malaysia, and what can be done to shore up fundamental rights and liberties. Due to the immense size of this topic, this factsheet will only cover the most basic points on human rights; more information can be found on our website, [www.cpps.org.my](http://www.cpps.org.my). You can [access other policy factsheets on the CPPS website](#).

### BACKGROUND

The Federal Constitution devotes nine articles to what it calls “**fundamental liberties**”. However, over the years these essential rights have been **watered down** by constitutional amendments. Other legislation continues to **impinge on basic rights** such as personal liberty, freedom of speech and freedom of assembly. Foreigners, homosexuals and other minorities face **discrimination or persecution** from the authorities.

Although Malaysia is a member of the **United Nations Human Rights Council (UNHRC)**, it has **ratified only two of the eight major international human rights conventions**, protecting the rights of women and children. Conventions pertaining to other minority or disadvantaged groups and basic civil and political rights have yet to be ratified.

The Malaysian Human Rights Commission, or **Suhakam**, has made several **key policy recommendations** to the government which would greatly advance human rights in Malaysia. However, these **recommendations have consistently been ignored**. Government efforts to implement key recommendations such as the Independent Police Complaints and Misconduct Commission (IPCMC) have been **stymied by politics and internal resistance**.



### FLASH POINTS

- **Part II of the Federal Constitution** enumerates a number of fundamental liberties: the right to **life and personal liberty**, the right to **equal protection under the law**, **freedom of movement**, **freedom of speech and expression**, **freedom to assemble peacefully**, **freedom of association**, **freedom of religion**, and the **right to private property**. Many of these liberties have been **undermined by constitutional amendments adding exceptions** under which these rights can be abrogated.
- Under Article 5, which guarantees life and liberty, anyone who is arrested must be **presented before a judge** within 24 hours, who must then approve their continued detention; the detainee may also **challenge their detention in court**, and the judge must release them unless satisfied their detention is lawful. However, the Constitution itself **exempts detentions** made under the Restricted Residence Enactment from some of these provisions, and preventive detentions made under the **Internal Security Act** are **completely exempt**.
- Broadly worded and arbitrary laws such as the **Printing Presses and Publications Act (PPPA)**, the **Official Secrets Act (OSA)** and the **Sedition Act** threaten the freedom of speech and expression. Further draconian and arbitrary laws like the **Internal Security Act (ISA)**, **Restricted Residence Enactment**, and **Emergency Ordinance**, to name a few, run counter to liberty of the person and freedom of movement.
- The balance between personal liberty and national security has become increasingly **tilted against liberty** due to restrictions on judicial review; most government decisions under the PPPA, OSA and ISA **cannot be overturned by a judge**, and the government often immediately **rearrests those freed by the courts**.
- In the little space left for judicial review, justice is often threatened by the spectre of **executive dominance over the judiciary**.
- Movement between West and East Malaysia is constitutionally exempt from provisions on freedom of movement; opposition politicians have been **denied entry to Sabah and Sarawak** before.
- Freedom of assembly is **irregularly protected**; opposition and civil society rallies have often been forced to disperse, sometimes by violent means, while government gatherings are often left alone. Strict requirements for police permits severely **hinder peaceable public gatherings**.
- The **Registrar of Societies** has near unlimited power to approve or deny societies' registrations; its decisions are typically not subject to judicial review. Many political parties remain unable to contest elections because their registration was rejected.
- **Freedom of religion** remains contentious, with non-Muslims arguing that they face **discrimination** if public records incorrectly state their family members are Muslim. Muslims who have attempted to convert to other religions also face **legal barriers**.
- **Foreign workers, refugees and other migrants** often face discrimination from public agencies; those suspected of being illegals are often **summarily detained** and held in camps with **very poor living conditions**.
- The government **did not officially acknowledge the importance or existence of human rights** until 1999; beforehand, it often insinuated that such values were Western in nature and **inappropriate for Malaysian society**.
- In 1999, the government established the **Malaysian Human Rights Commission**, or **Suhakam**. Although it has done much to raise awareness of human rights, its **policy recommendations have almost entirely been ignored** by the government.
- Malaysia is a member of the UNHRC, but has only ratified two of the eight international human rights conventions: the **Convention on the Rights of the Child (CRC)** and the **Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**. Unratified conventions include the Convention on Civil and Political Rights and the Convention on Racial Equality.

# HUMAN RIGHTS BASICS

- The **Universal Declaration of Human Rights (UDHR)** is a document which all UN member nations have committed themselves to. Its 30 articles uphold basic human rights, and is routinely cited by international lawyers as part of **customary international law**; the 1968 UN International Conference on Human Rights held that the UDHR "constitutes **an obligation for the members of the international community**".
- The **International Convention on Political and Civil Rights** gives legal effect to portions of the UDHR. It is divided into five categories: protection of individual's physical integrity, procedural fairness in law, protection based on gender, religious, racial or other forms of discrimination, individual freedom of belief, speech, association, freedom of press, right to hold assembly, and the right to political participation. Malaysia is **one of only 22 countries** in the world which have **not ratified** this convention.
- The **International Covenant on Economic, Social and Cultural Rights** protects several rights, including the right to work under "just and favourable conditions" and form trade unions; the right to social security; the right to family life; the right to an adequate standard of living; the right to health; the right to education; and the right to participate in cultural life. Malaysia is one of **18 countries** in the world which have yet to ratify this convention and give it legal effect.
- The **Paris Principles** lay out a framework for national human rights institutions. These institutions must: monitor the violation of human rights; be able to advise the government, Parliament and any other competent body on violations of human rights, legislative issues and compliance with international human rights instruments; relate to regional and international organisations; educate and inform the public on human rights; and optionally be given quasi-judicial competence.
- The **Vienna Declaration** reaffirms the UDHR, and was adopted by consensus amongst delegates from 171 states, including Malaysia, in 1993. It proclaims that human rights are **universal, and indivisible**: there cannot be economic, social or cultural rights without political and civil rights, and vice-versa. It **holds states responsible** for failure to realise human rights.

## WHO ARE the PLAYERS

- Most important is the **Malaysian Human Rights Commission (Suruhanjaya Hak Asasi Malaysia)**, or **Suhakam**. Established under the **Human Rights Commission of Malaysia Act 1999**, as of 2007 Suhakam had an annual budget of RM9 million. There are 16 commissioners at present; all commissioners are appointed to renewable two-year terms. Suhakam has the power to visit places of detention, make recommendations, and hold awareness programmes; it reports to the Prime Minister. It has made numerous recommendations over the years, including that the government **ratify all international human rights conventions**, establish the IPCMC, and **repeal oppressive legislation**.
  - Suhakam has been criticised for being a "**toothless tiger**"; the current chair himself has admitted that its mandate is only to advise, and that the **government is free to reject its recommendations**.
  - The International Coordination Committee of National Human Rights Institutions has threatened to **downgrade** Suhakam from its current status of full compliance with the Paris Principles to "**partial compliance**". It found that Suhakam is **insufficiently independent** from the government, and **not empowered to enforce its decisions**. Downgrading would strip Malaysia of its right to participate in UNHRC meetings, and relegate Suhakam to non-voting member status in the Asia Pacific Forum of National Human Rights Institutions.
- The **Foreign Ministry** is responsible for handling foreign relations, and thus signing and ratifying international conventions.
- The **Attorney General's Chambers** will have to look into how to give any international conventions legal and binding effect.
- The **Jabatan Hal Ehwal Orang Asli**, or Orang Asli Affairs Department, is responsible for looking after the rights of the Orang Asli.
- Non-governmental organisations (NGOs) such as **Suara Rakyat Malaysia (SUARAM)** and **HAKAM** have played instrumental roles in highlighting human rights abuses and reviewing the performance of institutions such as Suhakam. In August 2008 the 1st **National Consultation on the Universal Periodic Review by the Human Rights Council of the United Nations** gathered dozens of NGOs to collate their views and form a stakeholders' assessment of the state of human rights in the country.

## SUHAKAM ENQUIRIES

- Under the **Human Rights Commission Act 1999** Suhakam has the right to **conduct enquiries** into any matter as long as it is not the subject of a court case. There have been **six such enquiries** since its inception.
- In 2001 an enquiry into the handling of the **Kesas Highway Incident** found that there were insufficient grounds to prevent the gathering, and that **the police had violated human rights** in their handling of the incident. Suhakam recommended that the police ensure public assemblies be conducted peacefully without harm; that the authorities permit such peaceful gatherings; that roadblocks not be used to prevent such assemblies; and that protesters be given sufficient time and warning to disperse.
- In 2002, Suhakam enquired into **conditions of detention under the ISA**, finding sufficient evidence that some ISA detainees had suffered **cruel, inhuman or degrading treatment**. It recommended that the police exercise greater care in ensuring personal liberty is not violated; that individuals not be detained under the ISA without a genuine reason for believing them to be prejudicial towards national security; and that where such reasons exist, individuals should not be detained for any longer than necessary.
- In 2004, an enquiry into the **Kundasang Incident** found that 18 villagers from Kundasang, Sabah had been **subjected to inhumane treatment** during their 14-day remand in a police lock-up, and that the police had abused the remand procedures. Suhakam recommended that action be taken against the police officers concerned and that the poor conditions at the detention centre be rectified. It also found that the full two week remand had not been necessary, and that the villagers should have been granted bail.
- In 2006, Suhakam held an inquiry into the **sudden death of S. Hendry at the Simpang Renggam rehabilitation and detention centre**. It found no foul play, but that **the warders had been negligent**. Its recommendations were that young individuals not be left alone in cells unless they exhibited violent behaviour; that new detainees be provided with toiletries, reading material, radio access and information on how to get help in case of suicidal feelings; that warders be given better training for emergency situations; and that motion detectors be used to record the frequency of patrols around a prison block and pinpoint the precise position of each guard.
- Another 2006 enquiry found that the protesters during a May 28 demonstration against petrol and electricity price hikes in the Kuala Lumpur City Centre were **entitled to their constitutional freedom of assembly**, notwithstanding their lack of a permit, and that the police had interfered with this right. Suhakam stated that demonstrations are not an annoyance, but a necessity in any democratic country, and recommended that the need for a permit be abolished; that organisers provide details of the assembly in writing to the local police chief; and that police and Federal Reserve Unit apparel and equipment bear clear identification of the personnel's identity.
- In 2008, Suhakam launched a still ongoing enquiry into the **Bukit Mahkota Cheras Incident**, citing allegations of **excessive use of police force**. The terms of reference were to inquire whether any police officers had used excessive force; if so, whether there was a violation of human rights and who was responsible; and to recommend what action be taken against those responsible.

## CIVIL and POLITICAL RIGHTS

- Malaysia has **not been consistent in upholding Article 19** of the Universal Declaration of Human Rights: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”
- Freedom of expression is threatened by the ISA and Sedition Act, both of which permit the government to summarily detain any person it considers a threat to national security or public order; the right to judicial review of the government’s decision has been eliminated, and there is thus **no accountability** on the part of the Home Affairs Ministry.
- In 1980, **Operation Lalang** resulted in the summary detention of many politicians, activists and journalists under the ISA. During the political turmoil of the late 1990s and early 2000s, many **opposition politicians and civil society activists** were also held.
- Under the PPPA, the government may **revoke or suspend press licences at will**, without any judicial review or other checks and balances. Many press outlets have faced **suspension or complete banning** under the PPPA. The government also routinely bans books it finds subversive or dangerous. Internet media is not subject to most media laws, but **bloggers and online journalists** such as Nathaniel Tan and Raja Petra Kamarudin have been held under the OSA and Sedition Act.
- The **Societies Act** requires all societies to register with the government; the Registrar of Societies is **free to reject any registration**, without judicial review.
- The University and University Colleges Act (UUCA) **prohibits students from joining and associating with any societies**, political or otherwise, without prior approval from the Vice-Chancellor of their institution. The government is looking into amending the act, but its **proposed changes have been attacked as cosmetic**.
- **Academic freedom**, especially in public institutions, is often under threat. Faculty are often forced to sign the “**Akujanji**”, a document which promises they will not criticise the government and imposes other limitations on freedom of thought and expression. Members of certain professions, including university lecturers, **cannot participate in political societies**.
- There is **little freedom of information** in Malaysia; many government documents, from tender agreements to draft legislation are classified under the OSA, making possession or publication of the information within them illegal. The government has **refused to implement a Freedom of Information Act**. For more, refer to the [freedom of information factsheet](#).



## ECONOMIC, SOCIAL and CULTURAL RIGHTS

- The Hindu Rights Action Force (HINDRAF) brought the **plight of the Indian community** to the nation’s attention in a series of rallies throughout 2007. Although several of its key leaders were summarily detained under the ISA, the group continues to operate. Among the issues it raises are the **demolition of Hindu temples**, **poor access to economic opportunities** amongst Indians, and the **encroachment of Muslim Syariah law on non-Muslims’ affairs**.
- Indians and the West Malaysian aborigines (Orang Asli) often face **severe economic hardship**. Many Indians reside on rural agricultural estates, with little or no access to education and other ladders out of poverty. The Orang Asli suffer a similar fate because of their rural existence; in 1997, for **every 5 women who died in childbirth, 3 of them were Orang Asli**, even though they only comprise 0.5% of the nation’s population. In 2001 Orang Asli scholar Colin Nicholas reported that **81%** of Orang Asli and East Malaysian natives worried daily about where their next meal would come from; according to him, that year the poverty rate amongst Orang Asli stood at **81.4%**. Resettlement and unrelenting development of rural areas have decimated the native communities.
- **Migrant workers are routinely denied basic rights** available to others; domestic workers for example are often illegally confined to their homes or workplaces by employers. Many suffer **sexual, physical and psychological abuse** at the hand of their employers or agents.
- The authorities and the RELA volunteer vigilante force routinely detain foreigners they suspect of being illegals. Such detainees are often held under **degrading conditions** and **prosecuted under harsh immigration laws**; they may be **detained indefinitely** pending deportation.
- The government **does not acknowledge refugees or asylum seekers**, who are frequently detained as illegals and subject to the same degrading treatment as other immigrants not recognised by the law. The government **does not recognise United Nations High Commissioner for Refugees documents** which give refugees and asylum seekers international protection.
- **Human trafficking** widely occurs; Suhakam has found that many women held in Malaysian prisons are in fact workers who were victims of human trafficking. In spite of this, the government has often been unresponsive to their plight.
- Concerns over **religious freedom** are growing; in 2007, the Federal Court ruled that Lina Joy, a woman who had converted from Islam to Christianity, **had to go through the Syariah courts** for her conversion to be legally valid, even though she argued as a practicing non-Muslim she was **no longer under the Syariah court jurisdiction**. Non-Muslims who official records show as having converted to Islam are often **buried as Muslims over the protests of their families**, while non-Muslims who convert to Islam have been able to **dissolve their marriages and claim custody of their children in the Syariah courts**, even though their former spouse is not subject to Syariah jurisdiction as a non-Muslim. For more, see the [judiciary policy factsheet](#).

## WOMEN'S AND CHILDREN'S RIGHTS

- Under the penal code, **rape is a crime punishable by up to 30 years in jail**, caning and a fine. However, **spousal rape is not a crime**; a husband may nevertheless be charged for injuring his wife while having sexual relations with her. The courts have discretion in deciding the minimum jail time for a person convicted of the statutory rape of a child aged 15 or below.
- **Sexual harassment** — specifically using a position of authority to coerce a subordinate into engaging in sexual intercourse — is **illegal**. The government has a voluntary code but NGOs are pushing for a specific act prohibiting sexual harassment.
- Numerous public hospitals have centres where women can report rape or domestic abuse without going to a police station. The Ministry of Women, Family, and Community Development states that only **10% of all rape cases are reported** to the police. Some NGOs accuse the police of having insufficient sympathy with rape victims, **detering such reports** especially in a culture where sexual activity is often taboo. In 2007, the police stated that they had received **3,177 reports of rape**.
- There are Syariah laws which **protect women from domestic abuse** and permit them to file for divorce on such grounds; however in some states the law **prohibits women from disobeying their husbands' "lawful orders"**, presenting a barrier to pursuing such cases. Some women opt to sue in civil courts instead.
- In 2007 **3,264 reports of domestic violence** were filed. Under the Domestic Violence Act such violence is punishable by a prison term of up to a year, and an RM2,000 fine. Causing "grievous hurt" with a deadly weapon increases the maximum jail sentence to 20 years. Women's groups have attacked the existing law as **inadequate**, citing the need to file separate reports of abuse with the Social Welfare Department and police before obtaining a restraining order, and also the need to present physical evidence of injury.
- Although the government and NGOs offer support to victims of rape and domestic abuse, there are fears that existing support mechanisms are insufficient. In particular, activists believe the police could use **additional training** in dealing with such victims.
- **Prostitution is not a crime**, although Muslim women may be charged under Syariah law for fornication out of wedlock. However, deriving **financial benefit from the prostitution of others is a crime**. In the first eight months of 2007, 44 such panders were summarily detained but not charged; in 2006, a total of 35 were charged with the crime of pandering under the penal code. A common estimate puts the total **number of prostitutes in Malaysia at 150,000**.
- Foreign women are often detained as prostitutes, primarily for the crime of violating the terms of their visa. In the first eight months of 2007, 5,250 foreign prostitutes were arrested. NGOs claim that the police **selectively profile** Chinese nationals as prostitutes.
- Some women's groups allege that Syariah law does not provide **adequate protection for the rights of Muslim women**, mainly due to prejudiced and discriminatory interpretations of the law in local Syariah courts. Muslim men are permitted polygamy, a right which a few choose to exercise. The Muslim inheritance law usually **favours male children and male relatives**; only a small but growing number of Muslim women opt to divorce their husbands without first obtaining their consent.
- Non-Muslim women are subject only to civil law, and under the **Guardianship of Women and Infants Act** have equal parental rights as men. Four states **extend the provisions of this civil legislation to Syariah law**, giving Muslim women the same rights.
- The government promotes **equality in the workforce**, and is largely successful. At the end of 2007 women comprised 46.1% of the work force, including over half of all dentists, and almost half of all lawyers and accountants. In other areas women have been less successful; the Ministry figures indicate that women comprised only 7.6% of total board members of publicly traded corporations and 6.9% of state legislative assembly members.
- **Children of illegal immigrants and asylum seekers** face difficulty in having their births registered; the authorities refuse to register such births, and asylum seekers risk arrest as illegal immigrants. Refugee births are documented by the UNHCR rather than the government. **Children of marriages between Muslims and non-Muslims** also cannot have their births registered. Lack of a birth certificate **denies children access to public and private schools**, and also forces them to pay **higher medical fees**.
- Primary education is compulsory, but there is **no enforcement mechanism**.
- **Incest** is a problem, especially in rural areas; under the law, a person found guilty is subject to between 6 and 20 years of prison, and also caning. In 2006, 332 cases were reported. Children's testimony is only accepted in court if other corroborating evidence exists, complicating cases where the child is the only witness.
- **Statutory rape** is illegal, but Syariah laws which treat a girl as an adult after her first period have resulted in Muslim rape victims being **charged with the crime of khalwat** (indecent contact between people of the opposite sex).

## OTHER HUMAN RIGHTS ABUSES

- The Royal Commission made a number of key recommendations to cut down on human rights abuses; number one was the **establishment of the IPCMC** to check corruption and abuse of power in the Police, and to safeguard constitutional liberties.
- The Royal Commission found that police routinely apply for the **longest possible remand periods**, with **little effort made to complete investigations speedily**.
- Other findings included a **lack of awareness of human rights** amongst police officers, and a **lack of clear procedural codes** or practices.
- **Confessions** are often a primary form of evidence crucial to securing criminal convictions, but legal counsel for the defendants is not always available. The recording is also often **carried out by the police alone**, rather than in the presence of a lawyer or a judge, leading to **fears of tampering** with evidence.
- A significant number of **detainees have died in police custody**, with few inquests held.
- The **right of detainees to legal counsel is often ignored**, with the Police claiming this would interfere with ongoing investigations.

## REGIONAL HUMAN RIGHTS MECHANISMS

- Asia is **the only region in the world** that does not have any regional human rights legislation.
- The **Asian Human Rights Commission** was founded in 1986 by a group of regional activists and jurists. As an **independent non-governmental organisation**, it promotes greater human rights throughout the region. It is currently based in Hong Kong, and in 1998, the 50th anniversary of the UDHR, proclaimed the [Asian Human Rights Charter](#) in Kwangju, South Korea.
- The **Asia Pacific Forum** gathers national human rights institutions, including Suhakam, from all over the region. Its last annual meeting was held in Kuala Lumpur this July. The organisation provides resources and facilitates the growth of national human rights institutions throughout the region.
- The **Association of Southeast Asian Nations (ASEAN)** recently ratified the **ASEAN Charter** in Singapore, establishing the organisation as a legal entity. The charter proclaimed ASEAN's intention to establish a **regional human rights body**, with terms of reference to be later determined and **no other further elaboration**.

## POLICY RECOMMENDATIONS

- Malaysia should sign and **ratify the International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, since it is a member of the Human Rights Council. Malaysia should also ratify the **Convention Against Torture**.
- Amendments to the Human Rights Commission of Malaysia Act 1999 should be made to ensure that **SUHAKAM's Annual Reports are tabled and debated at Parliament annually**.
- **Greater independence** should be given to SUHAKAM so it is empowered to enforce its recommendations, to ensure **full compliance with the Paris Principles**.
- SUHAKAM should consider appointing **full time Commissioners** whose time would be fully dedicated to advancing human rights causes.
- The **Internal Security Act (ISA) should be repealed**. Detention without trial is a **blatant act against citizens' rights** and reflects badly on the responsibility of the State to uphold this right. Current ISA detainees should be either released or charged with a crime and **given a fair trial in a court of law**.
- An **immediate review of policies governing migrant workers** must be conducted, where the present system is a source of great corruption and confusion. Roles of UNHCR, the Immigration Department and the Police must be **clarified immediately**.
- **Review the role of Jabatan Hal Ehwal Orang Asli (JHEOA)**. Greater attention must be given to legal protection, poverty alleviation and socio-cultural preservation of the Orang Asli community.
- A **specific Government Ministry** should be designated and tasked the responsibility of dealing with the issue of **increasing trafficked women in Malaysia**.
- A **national level Commission on Religion and National Unity** should be set up under the Ministry of Unity, Culture and Arts to realistically deal with the controversies on religious conversion facing Malaysia. Specific policies can be outlined to **clarify the present confusion between jurisdictions of the Civil court and Syariah court**.
- The **Independent Police Complaints and Misconduct Commission (IPCMC)** as recommended by the Royal Commission on Police should be set up immediately.

## PARTY POSITIONS

### Barisan Nasional

- Supports current legislation, citing national security and public order.
- Critical of the UNHCR and other international human rights institutions.
- Supports reform of the UUCA, but not repeal.
- Supports crackdowns on public gatherings, citing potential threat to public order and safety.
- Dithers on the establishment of the IPCMC
- Believes present cultural and religious freedom is generally sufficient.
- Supports tougher measures against illegal immigrants; opposes recognition of refugees and asylum seekers.
- Believes existing policies are sufficient for the welfare of the Indians, native Malaysians, and other such communities.

### Pakatan Rakyat

- Opposes the Internal Security Act, Official Secrets Act, Sedition Act and PPPA, in addition to a host of other laws such as the Emergency Ordinance.
- Opposes the UUCA and other barriers to freedom of association.
- Opposes laws against peaceful public gatherings.
- Supports the establishment of the IPCMC
- Supports greater cultural and religious freedom.
- Supports greater protection for refugees and foreign workers.
- Supports economic assistance to disadvantaged communities such as the Indians and native Malaysians.