

UNIVERSAL PERIODIC REVIEW

Malaysia

Stakeholders Submission to the 31st Session of
The Universal Periodic Review

Working Group

JOINT SSUBMISSION ON
MALAYSIA DRUG POLICY

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UNIVERSAL PERIODIC REVIEW –Malaysia Drug Policy –

NGO Joint Submission

Submitting organisations:

No	Organisation name and logo	Organisational description
1.	<p>Malaysia Drug Policy Movement Alliance (MDMA)</p> <p>Email: MalaysiaDMA@gmail.com</p> 	<p>MDMA is an alliance consisted of NGOs, drug users, individuals, professionals working on drug policy in Malaysia who believe the war on drugs must end and stop the punitive prohibitions approach that caused fears, prejudices and stigmas that are associated with drug user.</p> <p>Our mission is to supports evidence-based policies that are effective at reducing drug-related harm, promote right to health and access to justice for drug users.</p> <p>Our Works Provides channels for grassroots organisations to better engage with policy making processes, conducts training and advocacy works that are in line with our missions.</p>
2.	<p>Suara Rakyat Malaysia (Suaram)</p> <p>Website: https://www.suaram.net/</p> <p>Email: righttojustice@suaram.net</p> 	<p>SUARAM (Suara Inisiatif Sdn Bhd) is guided by the Memorandum and Articles of Association pursuant to the Companies Act, 1965. We believe in the universality, interdependence and indivisibility of all rights: civil, political, economic, social and cultural.</p> <p>SUARAM specializes in civil and political rights such as educational programs and trainings on freedom of expression, peaceful assembly and association; right to fair trial; freedom from torture, extra-judicial killings and cruel punishment; public accountability and genuine democracy-building. Together with other civil organisation and group partners who work on economic, social and cultural rights in Malaysia, we are able to collectively and comprehensively address all human rights.</p> <p>Our Work Suara Rakyat Malaysia (SUARAM) is a non-governmental organization established in 1989 to monitor and advocate for the respect of human rights in Malaysia. Through its consistent and uncompromising work, it has established itself as one</p>

		<p>of the key human rights organisations, one to which Malaysians turn to for information and support.</p> <p>The organization defends all aspects of human rights especially the right to trial, freedom from abuse of police powers and law enforcement agencies; freedom of expression and information; freedom of assembly and association; freedom of religion; the right of minorities, refugees, asylum seekers, migrants and trafficked persons and democracy.</p>
3.	<p>Persatuan Kebajikan Komuniti Iklhas Malaysia</p> <p>Website : https://masac.my/bm/helpcentres/pkkim-ikhlas</p>	<p>PKKIM -IKHLAS was established in 2013, at Chow Kit , Kuala Lumpur Malaysia. It supports the government’s efforts in reducing HIV/AIDS rate in Malaysia . They are involved in Needle & Syringe Exchange Programs in Kuala Lumpur that was pioneered by Malaysia Ministry of Health and Malaysia AIDS Foundation.</p>

1) EXECUTIVE SUMMARY

- 1.1. Malaysia has adopted a security/ punitive approach even before independence via Dangerous Drugs Act 1952 (“DDA”) and its current position of “Perangi Dadah habis-habisan” (translated as “War against Drugs to the end” in English).
- 1.2. The main enforcements agencies for DDA are Royal Malaysia Police (RMP) via its Narcotics Criminal Investigation Division (NCID) and National Anti-Drugs Agencies (“NADA”). Both agencies are placed under Ministry of Home Affairs.
- 1.3. However, the Home minister Datuk Seri Ahmad Zahid Hamidi himself had stated government had failed in their war on drugs, as the number of users have continuously increased over recent years. ¹
- 1.4. The position of PWUDs in Malaysia has remained extremely vulnerable as a result of the draconian punitive drugs legislation ². Although Malaysia had undergone two UPR reviews in 2009 and 2013, but the issues facing by People Who Use Drugs (“PWUD”) were never raised or addressed. We recognise that there have been some efforts including the adoption of a national harm reduction policy and the transition

¹ <http://www.themalaymailonline.com/malaysia/article/zahid-we-have-failed-in-our-war-on-drugs>

² Dangerous Drugs Act 1952 (Act 234), Drug Dependents (Treatment and Rehabilitation) Act 1983
 Dangerous Drugs (Special Preventive Measures) Act 1985

of some compulsory treatment centres to voluntary centres. However, human rights concerned for PWUD remains including:

- a) PWUDs suffer significant discrimination when engaging in the criminalisation system;
- b) Violation of right to health and medical treatment through discrimination in the health care system.

2. PWUDs suffer significant discrimination when engaging in the criminalisation system

2.1. United Nations Office on Drugs and Crime (UNODC)³ and researcher⁴ had documented evidence that suggest a criminalization system has caused extreme negative externalities to people who have purchased drugs for their own consumptions.

2.2. Draconian Drugs laws and the Punitive Criminal Justice System.

2.2.1 In Malaysia, PWUDs can be punished with two years of imprisonment and will be placed under NADA supervision for two years if convicted.⁵

2.2.2 PWUDs who have more than two previous convictions or two admissions to Compulsory Drug Detention Centre (“CDDCs” – which are not in accordance with WHO and UN Office on Drugs and Crime standards on drug dependence treatment) would be given increased penalty if they are convicted for a subsequent drug use charge.⁶

2.2.3 Convicted PWUD or those who were admitted to CDDCs are registered as convicts.⁷ This hinder PWUDs from getting proper employment due to a

³ UNODC, Discussion Paper: From Coercion to Cohesion, supra note 5, at 2.

⁴ Redonna K. Chandler et al., Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety, 301(2) JAMA 183, 184 (2009).

⁵ Section 15 of the DDA 1952

⁶ Section 39 C of the DDA 1952 provides for minimum of five years and up to seven years of imprisonment with additional mandatory whipping of not more than three strokes

⁷ Part IV of the Registration of Criminals and Undesirable Persons (Act 1969)

constant discrimination in workplace which perpetuates socio-economic hardship that can perpetuate recidivism back to drug use.

2.2.4 The judicial and prosecution officers are not as aware of the role of harm reduction and the fact that it is part of the national policy and furthermore appear to give little regard to global evidence based research on the benefits of viewing drug use through an individual and public health lens,

2.2.5 More often than not, heavy imprisonment sentences are seen to be the best solution for PWUDs when they face criminal charges in court.

2.3 Overcrowded Prison

2.3.1 In June, 2017, it was reported that 33,500 or 56% of the 59,600 in the prison population were drug related offenders ⁸which is the main reason contributing to prison overcrowding.

2.3.2 In 2015, 13186 or 25.8% of prison populations were reported to be remand prisoners who were yet to be convicted and awaiting trial.

2.3.3 Drug possession cases are often delayed due to the prolong delay to obtain chemist report from the Department of Chemistry to ascertain the type and weight of the drugs.

2.3.4 The client charter of Department of Chemistry has clearly stated 30 days turn-round time to produce chemist report for drug possession cases⁹. However, in reality the turn-around time is not realistic due to the volume of case send by RMP ¹⁰, the lack of human resources, financial resources and equipment.

⁸ <http://english.astroawani.com/malaysia-news/some-33-500-convicts-prison-because-drug-abuse-146240> accessed on March 28, 2018

⁹ <http://www.kimia.gov.my/v3/wp-content/uploads/2016/04/PIAGAM-JABATAN-2018.pdf> (Available on in Malay language)

¹⁰ In 2012, a total of 320,541 chemist's reports were issued following analyses on 1,657,608 samples. See 2013 Annual Report Chemistry Department, <http://www.kimia.gov.my/v3/wp-content/uploads/2016/08/Kimia-Annual-Report-2013.pdf>

- 2.3.5 Accused persons who cannot afford bail or charged under unbailable offence will be held in jail range from 2- 9 months pending chemist report.
- 2.3.6 After months of unnecessary delay and lengthy incarceration, it became unpractical for accused persons who were charged for small amount of drugs to claim trial even though they are innocent. A guilty plea would be the easy way out as they would have deem to have served the full jail terms after deducting the remand period.
- 2.3.7 In the extreme case of PP v Amiruddin @ Nadajaran Abdullah , the accused was charged for multiple charges of drug possession, drug use and drug trafficking. The Department of Chemistry failed to produce the chemist report after nine months which resulted in the courts granting a discharged not amounting to acquittal (DNAA) order. ¹¹

3.0 Violation of right to health and medical treatment through discrimination in the health care system

- 3.1 The war on drug policy have associated PWUDs with negative stigmas that are deeply rooted in Malaysia society. PWUDs are perceived to be the “trash or faeces of society”.
- 3.2 PWUDs living with HIV are reluctant to seek medical attention because of stigmatisation and fear of being reported to the authorities by healthcare provider. This is prevalent in more conservative Malaysia east coast states such as Kelantan and Terengganu.
- 3.3 According to Integrated Bio-Behavioural Survey conducted in 2014, the HIV prevalence among PWIDs , while nationally slowly declining, was the highest in the more conservative east coast states in Kelantan (44.7%) and Terengganu (30.0%).¹²

¹¹ <https://www.malaysiakini.com/news/414743> , <https://www.malaysiakini.com/news/409572>

¹² Malaysia National Strategic Plan for Ending AIDS 2016-2030
[http://www.moh.gov.my/images/gallery/Report/MalaysiaNSPEA2016-20302.3\(Final_27Nov\)_printed%20version.pdf](http://www.moh.gov.my/images/gallery/Report/MalaysiaNSPEA2016-20302.3(Final_27Nov)_printed%20version.pdf)

- 3.4 Urine test for scheduled drugs screening is mandatory in the hiring process of civil servants.
- 3.5 Since 2005, NGOs like IKLAS¹³ and Malaysia Aids Council (MAC) have been advocating harm reduction approach to reduce HIV infection in Malaysia. In 2006, as part of efforts to cope HIV pandemic, Ministry of Health (“MOH”) in partnership with MAC had started to apply harm reduction program such as Needle and Syringe Exchange Programme (NSEP) and Methadone maintenance treatment (“MMT”) and achieve significant success in the region.
- 3.6 The NSEP broke new grounds in providing direct community-based health care services for people who inject drugs nationwide. Through 17 NSEP sites, more than 24,000 registered people who inject drugs were served in 2010, with over 300,000 NSEP kits containing fresh needles and syringes distributed.¹⁴
- 3.7 Arrests carried out at an NSEP seriously hampered the harm reduction programs carried out by MOH, and deters potential clients from seeking their assistance, thereby violating their rights to health and resulting in an increase in HIV risks. Hence, NSEP Police Standard Operating Procedure (“SOP”) booklet was issued in 2006¹⁵ to ensure harmonization of policy between the NCID Police and MOH.
- 3.8 Article 5.2 states that police should not specifically target NSEP sites for raids or arrests. However, a survey conducted showed many police men are not familiar with the SOP.¹⁶

¹³ Persatuan kebajikan komuniti Ikhlas Malaysia (PKKIM)

¹⁴ <http://www.mac.org.my/v3/what-we-do/programme/nsep/>

¹⁵ Rahman F. and Parasuraman. G, Police Knowledge Of Needle-And-Syringe Programs And Harm Reduction In Malaysia, Conference Paper, 6th International Society for the Study of Drug Policy (ISSDP) Conference, 30-31 May 2012, Canterbury Cathedral Lodge, Canterbury, Kent, United Kingdom,

¹⁶ Ibid

3.9 There were documented cases in a Southwest coast state at Peninsular Malaysia where NCID and NADA had raided NSEP sites as follows:

Date& venue	Incident
<p>October 2015</p> <p>Community based NSEP office in District A.</p>	<p>Surprise raid by police from the Narcotics Criminal Investigation Division (NCID) at District A. All attendees were ordered to undergo urine test by the raiding officer.</p> <p>The program manager reported this incident to the AIDS district officer and health district officer. One of the program attendee was tested positive, convicted and was put under NADA supervision for 2 years</p>
<p>2015</p> <p>Methadone Maintenance Therapy Clinic (Government clinic) in District A</p>	<p>The police from NCID, District B, conducted an operation outside the clinic 's building (but still within the clinic's compound). All the MMT clients were forced to be tested for drugs.</p> <p>Pharmacy officer in charge raised objection to the police raiding officer but was ignored.</p> <p>A total of 10 clients were tested positive and arrested by the police. Some were charged, convicted and send to the CDDCs under Drug Dependents (Treatment and Rehabilitation) Act 1983 [Act 283] Dangerous Drug Ac. Some were sent to prison for violating NADA supervision order given by court from their previous convictions.</p>
<p>November 2016</p> <p>Community based NSEP office in District A</p>	<p>NCID Police from District B raided NSEP office .</p> <p>The program manager reported this incident to the AIDS district officer and health district officer.</p> <p>Two of program attendees were tested positive, convicted and was put under NADA supervision for two years.</p> <p>The repeated raids conducted in NSEP office by police from different districts have strike fear among drug dependents. As a result, the numbers of patients seeking help in NSEP office had dropped tremendously.</p>
<p>December 2016</p> <p>NSEP office in Community based Clinic in District C</p>	<p>NCID Police from District D conducted surveillance in the clinic.</p> <p>One of the clients spotted the plain clothes police and reported it to the Program Monitoring officer. All MMT and NSEP clients that intended to seek services were told about police presence in the clinic.</p>

	<p>The incident was reported to the District Health Officer and AIDS officer in District C. No arrest was made on the spot at the clinic but some arrests was made subsequently and they were send to the CDDCs</p>
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3.9 Reluctance of government clinics to treat PWUD living with HIV

- 3.9.1 A community based Nongovernmental organization (“NGO”) working on harm reduction at the East Coast of Malaysia reported that not all PWUDs living with HIV referred to government health clinic were given the necessary treatments.
- 3.9.2 PWUDs are in need of a holistic and comprehensive treatment strategy plan that should have included job placing program, support group and life management course. However, in certain clinic, the MMT program has become a mechanical process that merely dispenses Methadone.
- 3.9.3 Only 20 out of 55 HIV positive case referred were given Antiretroviral treatment (“ART”). 35 cases referred were rejected treatment. Eight persons passed away pending ART and two who were held in prison.
- 3.9.4 Feedback from case worker as to why treatments were rejected:
- a) Pending MMT (MMT/HIV integration is recommended by the World Health Organization (“WHO”) and the Centers for Disease Control and Prevention “CDC”);
 - b) The medical assistant in the clinic was not satisfied with client’s commitment to start ART;
 - c) Some government health clinics are still using abstinence based approach where the medical assistant will terminate MMT once client urine test was found positive. However, some clients were still using drugs due to instability associated with their MMT. Most clients required an average of six months to be stable and reduce drug craving.

3.10 PWUD living with HIV that was in Custody

- 3.10.1 Some of the clients that were held in Prison/ NADA/ Police custody were not given continuous MMT.
- 3.10.2 Government health clinic have difficulty to receive client for further treatment when they committed criminal activities and were held in prison.
- 3.10.3 From the methadone retention monitoring, only 50% of clients are still undergoing MMT.
- 3.10.4 MMT SOP not followed by the police personnel in lock up.

3.11 Institutionalized Rehabilitation Program

3.11.1 Background

NADA runs a few treatment and rehabilitation programs :

- a) Cure & Care Rehabilitation Centre (CCRC / CDDCs)
- b) Clinic Cure and Care 1 Malaysia (C&C1 M) (
- c) Cure & Care Service Centre (CCSC)

According to NADA's Annual Report 2016, as of December 2016, there are 20 CDDCs and 10 C&C1M and 24 CCSCs¹⁷

3.11.2 In 2010, the Compulsory Drug Detention Centre (CDDCs) were rebranded as Cure & Care Rehabilitation Centre (CCRCs) to provide rehabilitation and treatment to voluntary surrendered drug dependents or those that were ordered by court under (Section 8(3)(a) and Section 6(1)(a) of the Drug Dependents Act (Treatment and Rehabilitation), 1983.)

3.11.3 Although both CDDCs and CCSC are run by the National Anti-Drug Agency (AADK), they differ in how they treat drug addicts. CDDCs still adopt total abstinence approach for those who are arrested and brought there. On the other hand, CCSC is designed to be an institution for a more conducive manner that are voluntarily based and provides the following services:

- a) inpatient and outpatient MMT
- b) voluntary psychosocial interventions,
- c) recreational programming,
- d) vocational training

¹⁷ NADA Annual Report 2016 <https://www.adk.gov.my/wp-content/uploads/BUKU-STATISTIK-2016.pdf> at page 28

3.12 In Reality

- 3.12.1 A study published in December 2016 shows that the CDDC participants had significantly more rapid relapse to opioid use post-release compared (31 days) with voluntary drug treatment centres (“ VTC”)participants (352 days) who were treated with evidence-based treatments such as methadone . VTC participants had an 84% decreased risk of opioid relapse compared to CDDC participants, suggesting that CDDC have no role in the treatment of opioid-use disorders.¹⁸
- 3.12.2 Not all CCSCs provides MMT. Patients sometimes has to go to hospital to receive their methadone dosage.
- 3.12.3 If patients in CCSCs repeatedly failed their drug test, they would be detained at CDDCs.

4.0 Recommendations:

- 4.1 Recognize that discrimination in health care settings is a major barrier to the achievement of the Sustainable Development Goals (SDGs), by decriminalizing drug use and possession of drugs for personal use, pending review of current drugs legislation and other punitive laws that have negative socioeconomic and health outcomes for people who use drugs and their communities in line with the United Nations Shared Framework for Action on Combating Inequalities and Discrimination.
- 4.2 Replace Compulsory Drug Detention Centre with evidence-based and voluntary drug treatment and harm reduction services in line with WHO, UNAIDS and UNODC guidelines.
- 4.3 Review the costs to the criminal justice system, policing and prisons of current approaches versus health approaches and invest in health based approaches.

¹⁸ “Relapse to opioid use in opioid-dependent individuals released from compulsory drug detention centres compared with those from voluntary methadone treatment centres in Malaysia: a two-arm, prospective observational study” Wegman, Martin P et al. The Lancet Global Health , Volume 5 , Issue 2 , e198 - e207