

# MALAYSIA

## CIVIL & POLITICAL RIGHTS REPORT 2012

### OVERVIEW



## **INTRODUCTION**

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Prime Minister Najib had a year to deliver on his promises of reform before the impending 13<sup>th</sup> general elections but the human rights situation in Malaysia for 2012 has not improved.

The concerted harassment of SUARAM throughout the second half of this year demonstrates the government's flagrant flouting of human rights and its habit of vindictive persecution of human rights defenders.

Detention without trial and incommunicado detention remains on the statute books as the Internal Security Act 1960 was replaced by the Security Offences (Special Measures) Act 2012. The freedom of assembly is now governed by a restrictive legislation; the freedom of expression has been restricted by the introduction of S114A Evidence Act 1950; a program that was supposed to regulate non-citizens was abused by government cronies through fraudulent employment agencies.

### **Continuing detention without trial**

The Security Offences (Special Measures) Act 2012 ("**SOSMA 2012**") received the Royal Assent from the Yang Dipertuan Agong on 18/6/2012 and was set to commence on 31/7/2012 to replace the Internal Security Act 1960 ("**ISA 1960**"). However, critics propounded that the SOSMA is in fact, "old wine in a new bottle" since it still allowed detention without trial and incommunicado detention.

Throughout the year, the Home Minister made several releases notably after a series of hunger strikes. Documentation and monitoring by SUARAM and Abolish ISA Movement show that there are currently 27 detainees comprising of 10 Malaysians, 6 Sri Lankans, 2 Indians, 2 Iraqis, 2 Indonesians, 1 Bangladeshi, 1 Pakistani and 3 Filipino. A total of 18 out of 45 remaining detainees were released throughout the year, compared to 20 releases in 2011. No arrest was made under the SOSMA 2012 as of December 2012 compared to 27 arrests made under the ISA 1960 in 2011.

### **More deaths in custody and police shootings**

In 2012, deaths in custody, fatal police shootings and violence against suspects have continued unabated. Official statistics for deaths in custody stood at 209 from 2000 to September 2012. Home Minister Hishammuddin Hussein disclosed in Parliament that a total of 298 individuals were shot dead from 2007 to August 2012. Thirty seven deaths were recorded for 2012 compared to 30 in 2011.

Despite repeated calls by human rights defenders and victims of police brutality for the setting up of the Independent Police Complaints and Misconduct Commission ("**IPCMC**"), the government remained adamant that IPCMC is not necessary. Instead, the Enforcement Agencies Integrity Commission ("**EAIC**") was introduced which lacked the independence and capacity of the IPCMC.

### **Questionable integrity and impartiality of the police**

The police's integrity and impartiality were questioned following damning exposes made by former Inspector-General of Police, Musa Hassan which revealed the rampant political influences in the police force, including taking orders from politicians or 'top people' to

release certain individuals in certain cases. A statutory declaration made in 2009 surfaced amidst the revelations which further casted doubts on the police force. Former aide de camp for Musa, Noor Azizul Rahin Taharim's deposition accused Musa of wrongdoings during his tenure and exposed how he had silenced critics within the force with manipulation of promotions, ranks and postings in the force.

### **Injustices to Migrants**

Malaysia has yet to ratify the 1951 Convention relating to the Status of Refugee and its 1967 protocol despite repeated calls from local, regional and international human rights defenders. The Immigration Act 1959/63 performed a perfunctory role in detaining, whipping and deporting non-citizens throughout 2012.

Government statistics reveal that a total of 35,000 non-citizens were whipped under S6(1) of the Immigration Act 1959/63 from 2005 to 2012. A total of 32,664 (93.3%) were found to have violated the Immigration Act 1959/63 while the remaining 2,336 (6.7%) were found guilty under the Penal Code, Dangerous Drugs Act 1952 and Drug Dependents (Treatment and Rehabilitation) Act 1983.

The 6P Program relating to undocumented migrants had to cease operation on 10/4/2012 after allegations of corruption and other injustices. It was revealed that former Home Minister and current MP for Kangar, Mohd Radzi Sheikh Ahmad is the director of SNT Universal Corporation Sdn Bhd, an agent appointed by the government in the 6P Amnesty program. SNT had committed several offences including collecting fees from non-citizens and falsely representing to the non-citizens that it is able to register and obtain work permits for them from a number of bogus employment agencies.

### **Suppression of freedom of expression and information**

The government continued to curtail the legitimate exercise of freedom of expression throughout 2012. In May 2012, about 30 officers from the Federal Territory Islamic Religious Department ("**JAWI**") confiscated copies of Irshad Manji's 'Allah Liberty & Love - Courage to Reconcile Faith & Freedom' from Borders bookstore as the content was deemed to be contrary to Islamic teachings.

The publisher, Ezra Zaid of ZI Publications was taken to Jabatan Agama Islam Selangor headquarters for questioning under S47(1) of the Selangor Syariah Criminal Offences Enactment 2003. Borders store manager, Nik Raina Nik Abdul Aziz was charged under S13 of the Federal Territory Syariah Offences Act 1997 for distributing Manji's books.

Mkini Dotcom's application to quash the Home Ministry's decision to reject a publishing permit of Malaysiakini was allowed by the Kuala Lumpur High Court on 1/10/2012. Justice Abang Iskandar Abang Hashim in an oral decision stated that "...the decision affects the right of the applicant to the right of freedom of expression, which also includes the right to apply for a permit. It is a fundamental liberty enshrined in the constitution..." However, the Attorney General's Chambers and the Home Ministry have filed a notice of appeal against Justice Abang's decision.

### **Selective prosecution under the Peaceful Assembly Act 2012**

The real function of the new Peaceful Assembly Act 2012 was demonstrated in the government's handling of the BERSIH 3.0 rally on 28/4/2012. A total number of 909 tear smoke shells were used in BERSIH 3.0 as compared to 262 at BERSIH 2.0. There were around 300,000 participants in the rally and a total number of 572 were arrested on the day of rally. The government, in an unusual move filed two civil suits against BERSIH Steering Committee members for causing damage to public properties.

The speedily passed Peaceful Assembly Act 2012 ("**PAA 2012**") received its Royal Assent on 30/1/2012 and was set to commence on 23/4/2012, just in time for the BERSIH 3.0 rally on 28/4/2012. Participants, Anwar Ibrahim, Azmin Ali and Badrul Hisham Shaharin were charged under S4(2)(c) of the PAA 2012 for violating a Magistrate's Order by taking part in BERSIH 3.0 rally. The three were also alleged to have conspired with R. Tangam, G. Rajesh Kumar and Farhan Ibrahim for incitement to breach the barricades set up at Dataran Merdeka.

Student groups made a significant impact in 2012. On 14th April 2012, about 500 members of Malaysia Bangkit, Gabungan Mahasiswa Islam Malaysia, Kelab Mangsa PTPTN and Malaysia Student Democratic Movement took to the streets to demand the abolition of PTPTN and called for free education. Violence against the students escalated when a group of about 50 to 70 thugs attacked the students and destroyed their tents at Dataran Merdeka, with one student having to be rushed to the hospital. About a dozen of police officers stood by and watched the entire incident without intervening.

Environmental groups made headlines with a series of rallies. *Himpunan Hijau* began an epic 300 kilometre walk from Kuantan to Kuala Lumpur. From a mere 70 participants in Kuantan, the crowd along the way gathered to a massive 20,000 participants at Dataran Merdeka in Kuala Lumpur to protest against several environmental issues namely, the Lynas Corporation's rare earth refinery in Gebeng; the use of cyanide by Raub Australia Gold Mining Sdn Bhd; the RM60 billion Petronas Refinery and Petrochemical Integrated Development project at Pengerang and the building of more mega dams in Sarawak. At the end of the rally, the police announced to the participants that the organisers would be investigated under the PAA 2012.

### **Vindictive harassment of human rights defenders**

SUARAM began to face an unprecedented barrage of intimidation and harassment from the government and its agencies as a result of the Scorpene public inquiry arising from SUARAM's complaint in Paris. On 1/7/2012, President of Jaringan Melayu Malaysia ("**JMM**"), Azwanddin Hamzah urged SUARAM to clarify its status as an NGO and to reveal its sources of funds locally and internationally. Two days later, on 3/7/2012, Companies Commission of Malaysia ("**CCM**") arrived at SUARAM's doorsteps for a 'routine' inspection.

The government-controlled mainstream newspapers, News Straits Times, Berita Harian and Utusan Malaysia joined in this government chorus, accusing SUARAM and other organisations including BERSIH 2.0, Malaysiakini and Centre for Independent Journalism of being involved in a "Zionist plot to destabilise the government".

That first visit was the beginning of an interminable series of investigations of SUARAM and other individuals deemed to be related to SUARAM by a government orchestrated task force

consisting of the Companies Commission Malaysia, Malaysian Communication and Multimedia Commission, Bank Negara, Registrar of Societies, the Royal Malaysian Police and the Home Ministry. This harassment has not ceased as at December 2012.

### **Hopeful developments in the judiciary, negative developments in the law**

On 2/10/2012, five former ISA detainees namely Hishamuddin Rais, MP Chua Tian Chang, Badrulamin Bahrom, Saari Sungib and Badaruddin Ismail were awarded RM15,000.00 each for each day of their detention and RM30,000 each as aggravated damages by Kuala Lumpur High Court Judge Lau Bee Lan. Justice Lau further awarded RM60,000.00 in general damages and RM40,000.00 for aggravated and exemplary damages to the plaintiffs in a defamation suit brought by all five of them except Badaruddin Ismail. In her decision, Justice Lau found that the plaintiffs were detained unlawfully and in bad faith, and had been subjected to cruel treatment during their detention.

In May 2012, an amendment to the Evidence Act 1950 was passed in the Parliament. S114A of the Act provides punishment to internet users for any content posted through their registered networks or data processing device. The amendment has reversed the burden of proof to the accused person, failing which an author is liable whenever unlawful materials are published in the author's name, blog or website or even transmitted from any individual's computer. The burden to prove otherwise now rests squarely on the accused person. The amendment could be open to abuse by the investigators and force an innocent party to rebut the presumption of guilt at serious risk of wrongful prosecution and injustice.

In October 2012, de facto Law Minister, Nazri Aziz announced that the government may replace the death penalty for drug offenders with a prison term, whilst acknowledging that the law only punishes drug mules and not the baron themselves. This would in effect entail reprieves for about 900 offenders on death row. He was, however quick to exclude murder cases from this reprieve from the death penalty saying that there are many differing opinions that are inclined towards the eye for an eye sentencing policy.

### **Plight of Stateless People in Malaysia**

Cases of stateless people in Malaysia have escalated at a worrying degree. In June 2012, Pertubuhan Kebajikan dan Sosial Malaysia claimed that the Social Welfare Department had failed to issue birth certificates to about 1,758 Malaysian orphans.

### **Laudable actions by SUHAKAM**

On 21/5/2012, SUHAKAM announced that it has decided to hold a public inquiry into unnecessary use of force by the police during BERSIH 3.0 rally on 28/4/2012. SUHAKAM demonstrated a sense of urgency on the necessity of the inquiry coupled with the obligation to carry out its own inquiry pursuant to its mandate as provided under the Human Rights Commission of Malaysia Act 1999.

In the on-going harassment of SUARAM, SUHAKAM released a statement in October saying that freedom of expression and association are central and guaranteed under the Federal Constitution of Malaysia and in the Universal Declaration of Human Rights. SUHAKAM also pointed out that the Universal Declaration on Human Rights Defenders recognises human rights defenders and their legitimate activities to promote and protect

human rights including the receipt foreign funds. The commission added that human rights defenders should be allowed to function freely, operate in an enabling and safe environment, and have the freedom to determine their status, structure and activities.

## **DETENTION WITHOUT TRIAL**

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The Security Offences (Special Measures) Act 2012<sup>1</sup> (“*SOSMA 2012*”) received the Royal Assent from the YDPA Agong on 18/6/2012 and was set to commence on 31/7/2012<sup>2</sup> to replace the Internal Security Act 1960 (“*ISA*”). However, critics propounded that the SOSMA is in fact, “old wine in a new bottle” since it still allowed detention without trial and incommunicado detention.<sup>3</sup>

The day SOSMA was passed<sup>4</sup> in Dewan Rakyat, Home Minister Hishammuddin Hussein asked for a grace period of one week to study the files personally to determine if the remaining ISA detainees will be tried in court or released.<sup>5</sup> He has also dismissed the need for a truth commission, saying that it is an effort to distract the public and instil anger and hatred while admitting that there were instances when the Act was used for political reasons.<sup>6</sup>

A series of hunger strikes followed after the repeal of the ISA. On 18/5/2012, the detainees broke their fast on condition that SUHAKAM provided them with information pertaining to their status of detention by 30/6/2012.<sup>7</sup> Tired of waiting for SUHAKAM to secure their release, a second wave of hunger strikes was then started by two detainees on 21/6/2012.<sup>8</sup> Unperturbed by this second wave of hunger strikes, the Home Minister stated that the hunger strike was the detainees’ own decision and he alleged that they had been carried out to hijack the government transformation plan.<sup>9</sup> When pressed to explain further, Home Minister just tweeted, “*Next week the Home Ministry will explain everything.*”<sup>10</sup>

1 Passed in Dewan Rakyat on 17/4/2012, passed in Dewan Negara on 9/5/2012

2 [http://www.federalgazette.agc.gov.my/eng\\_main/main\\_akta.php?jenis\\_akta=Baru](http://www.federalgazette.agc.gov.my/eng_main/main_akta.php?jenis_akta=Baru) (last accessed: 21/11/2012)

3 Security Offences (Special Measures) Act 2012, Act 747

4 without considering and rejecting Sungai Siput MP Dr Jeyakumar’s long list of proposed amendments and Subang MP R. Sivarasas’s proposal to discuss the Bill at parliamentary select committee

5 Current ISA detainees may be tried in court, Malaysiakini, 17/4/2012, <http://www.malaysiakini.com/news/195269> (last accessed: 26/11/2012)

6 Gov’t says no to truth commission call, Malaysiakini, 19/4/2012, <http://www.malaysiakini.com/news/195419> (last accessed: 26/11/2012)

7 ISA detainees threaten to resume hunger strike, Malaysiakini, 24/5/2012, <http://www.malaysiakini.com/news/198940> (last accessed: 26/11/2012)

8 Two ISA detainees start new hunger strike, Malaysiakini, 23/6/2012, <http://www.malaysiakini.com/news/201671> (last accessed: 26/11/2012)

9 Hisham: Hunger strike a bid to hijack transformation plan, Malaysiakini, 25/5/2012, <http://www.malaysiakini.com/news/199059> (last accessed: 26/11/2012)

10 Home Minister to respond to hunger strike next week, Malaysiakini, 1/7/2012, <http://www.malaysiakini.com/news/202430> (last accessed: 26/11/2012)

On 27/6/2012, Bakri MP Er Teck Hwa filed a motion at the Dewan Rakyat to discuss the torture of those detained under ISA but this was rejected by the speaker because “the subject involves secrecy and there is no urgent need under Standing Order 18(1).”<sup>11</sup>

Throughout the year, the Home Minister made several releases. In July 2012, the Home Minister released 3 detainees;<sup>12</sup> on 17.8.2012, 12 detainees were released;<sup>13</sup> on 25/9/2012, Mustawan Ahabab was released;<sup>14</sup> on 19/11/2012, 2 detainees were released.<sup>15</sup> Documentation and monitoring by SUARAM and Abolish ISA Movement show that there are currently 27 detainees comprising of 10 Malaysians, 6 Sri Lankans, 2 Indians, 2 Iraqis, 2 Indonesians, 1 Bangladeshi, 1 Pakistani and 3 Filipino. A total of 18 out of 45 remaining detainees were released throughout the year, compared to 20 releases in 2011. No arrest was made under the SOSMA 2012 as of December 2012 compared to 27 arrests made under the ISA 1960 in 2011.<sup>16</sup>

Three emergency proclamations were lifted by Prime Minister Najib on 24/11/2012, namely, the 1966 state emergency proclamation to “quell political discord” in Sarawak, the 1969 national emergency after the May 13 racial riot and the 1977 state emergency proclamation issued to “quell political discord” in Kelantan. The proclamations will cease to have effect after 6 months pursuant to Article 150 of the Federal Constitution.<sup>17</sup>

Brothers Rafe Mohamed Ali, Mohd Ramadhan Mohamed Ali and friend, Mohamad Arif Abu Semah were released without conditions on 6/3/2012 by an order signed by Deputy Home Minister, Datuk Wira Abu Seman Yusop.<sup>18</sup> The trio were arrested for alleged motorcycle thefts in Selayang on 8/3/2011 and was detained under the Emergency (Crime Prevention and Public Order) Ordinance 1969 (“EO”) on 19/3/2011. The trio were later banished under the Restricted Residence Act 1933 on 17/3/2012. The release was secured as an answer to lawyer, K. Shanmuga’s request to the Home Minister for their release since the emergency proclamations were lifted.<sup>19</sup>

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<sup>11</sup> Speaker rejects ISA torture motion, citing secrecy, Malaysiakini, 28/6/2012, <http://www.malaysiakini.com/news/202132> (last accessed: 26/11/2012)

<sup>12</sup> Press statement dated 3/8/2012, “Early release a proof that Minister has power”, GMI

<sup>13</sup> Press statement dated 27/8/2012, “To repeal or not to repeal? To release or not to release? Stop politicizing the fate of detainees” GMI

<sup>14</sup> Press statement dated 27/9/2012, “Mustawan Ahabab, seorang lagi tahanan ISA dibebaskan tetapi dihantar pulang negara asal”, GMI

<sup>15</sup> Press statement dated 20/11/2012, “Dua tahanan ISA yang ingin failkan Habeas Corpus dibebaskan”, GMI

<sup>16</sup> Documentation and Monitoring by SUARAM and Gerakan Mansuhkan ISA

<sup>17</sup> PM tables motion to lift emergency proclamations, Malaysiakini, 24/11/2011, <http://www.malaysiakini.com/news/182243> (last accessed: 26/11/2012)

<sup>18</sup> Freedom for trio under EO, The Star, 7/3/2012, <http://thestar.com.my/news/story.asp?file=/2012/3/7/nation/10865669&sec=nation> (last accessed: 26/11/2012)

<sup>19</sup> EO Trio finally freed, months after Emergency lifted, Malaysiakini, 6/3/2012, <http://www.malaysiakini.com/news/191242> (last accessed: 26/11/2012)

In June 2012, Deputy Selangor Police Chief A. Thaiveegan implied that the surge in complaints of crime levels may be a result of mass release of detainees following the repeal of the EO. He went on to state that the detainees had been detained for too long and they needed to “exercise” and thus relapsed into criminal activities again. When questioned further on the direct link of the rising crime and the mass releases, Thaiveegan replied that he needed a month or two to confirm his allegation.<sup>20</sup> Home Minister Hishammuddin Hussein was quick to deny that the recent spate of crimes was caused by the release of EO detainees. He stated that only 0.27% out of 1,476 caused the rise in crime statistics.<sup>21</sup> The Inspector General of Police, Ismail Omar had also denied the link and reminded the public not to speculate because the crime rate was still under control, adding that the public should provide employment opportunities to former detainees should they ask for assistance.<sup>22</sup>

## **ABUSE OF POWERS BY THE POLICE AND OTHER LAW ENFORCEMENT AGENCIES**

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In 2012, deaths in custody, fatal police shootings and violence against suspects have continued unabated. Official statistics for deaths in custody stood at 209 from 2000 to September 2012.<sup>23</sup> From 2007 to 2012, a total of 228 non-citizens died in police lock-ups, immigration depots and those who were referred to hospitals by the authorities.<sup>24</sup> In reply to a written question on statistics of fatal shooting in 2012 by MP for Sungai Siput, Dr. Jeyakumar, Home Minister Hishammuddin Hussein disclosed that a total of 298 individuals were shot dead from 2007 to August 2012. 37 deaths were recorded for 2012 compared to 30 in 2011.<sup>25</sup>

Crime statistics rose in 2012 despite the government’s implementation of the National Key Results Areas on crime reduction. Denying the surge in crime statistics, Prime Minister Najib described the opposition’s dispute over the crime statistics as mere polemic and told the police not to be disappointed. He said a transformation from within the force was necessary to meet the demands of the people who are now more aware of their human rights. He was quoted as saying,

*“...If the police can be as disciplined as Muslims are in the month of Ramadhan, to be self-disciplined even though they are not watched by their superiors...we will be respected and the*

<sup>20</sup> EO repeal made scapegoat for S’gor crime surge, Malaysiakini, 30/6/2012, <http://www.malaysiakini.com/news/202350> (last accessed: 26/11/2012)

<sup>21</sup> Hisham denies EO abolition cause of recent crimes, Malaysiakini, 19/7/2012, <http://www.malaysiakini.com/news/204108> (last accessed: 26/11/2012)

<sup>22</sup> IGP: Don’t link EO detainees release with crime hike, Malaysiakini, 13/7/2012, <http://www.malaysiakini.com/news/203535> (last accessed: 26/11/2012)

<sup>23</sup> 209 mati dalam tahanan sejak 2000, freemalysiatoday, 30/10/2012, <http://www.freemalysiatoday.com/category/nation/2012/10/30/209-mati-dalam-tahanan-sejak-2000/> (last accessed: 2/12/2012)

<sup>24</sup> Pemberitahuan Pertanyaan Bagi Jawab Lisan Dewan Rakyat daripada pertanyaan Dr Micheal Devaraj kepada Menteri Dalam Negeri bertarikh 20/11/2012, no soalan 31, rujukan 5218

<sup>25</sup> Pemberitahuan Pertanyaan Bagi Jawab Lisan Dewan Rakyat daripada pertanyaan Dr Micheal Jeyakumar Devaraj kepada Menteri Dalam Negeri bertarikh 22/10/2012, no soalan 35, rujukan 5157

*police's performance will shine even more..."* 26

In November 2012, former Inspector General of Police, Musa Hassan claimed that Home Minister Hishammuddin Hussein had once given instructions directly to junior police officers and a district police chief without his knowledge. Musa added that often, politicians and “top people” will interfere in police’s work by giving orders to immediately release certain individuals in certain cases.<sup>27</sup> Musa claimed that political influences were more rampant under the current Inspector-General of Police’s administration.<sup>28</sup>

Musa went on to say that crime statistics were often go under-reported. Citing an example on Sentul police district, Musa recalled that misclassification and discrepancy in crime statistics can happen. He stated that about 20-30% of discrepancy was discovered from his probe on the statistics of Sentul police district.<sup>29</sup>

A statutory declaration made in 2009 surfaced amidst the damning revelations made by Musa. Former aide de camp for Musa, Noor Azizul Rahin Taharim accused Musa of wrongdoings during his tenure and exposed how Musa had silenced critics within the force by manipulation of promotions, ranks and postings in the force. Likening Musa to a traitor, Noor Azizul stated that many of Musa’s actions undermined the integrity and credibility of the police. Noor Azizul was reportedly to be willing to testify should a royal commission was set up to probe into the matter.<sup>30</sup>

Despite endless calls from human rights defenders and victims of police brutality for the setting up of the IPCMC since 2005, the government remained adamant in not implementing it. Minister in the Prime Minister’s Department, Nazri Aziz said that the establishment of EAIC was already sufficient to investigate complaints and misconduct of enforcement personnel.<sup>31</sup>

The EAIC, was established in April 2011 after stringent opposition from the police force against the IPCMC, including threats to the government to allow crime rates to sky rocket and to vote for the opposition parties. One year into its operation, the EAIC has only received a meagre 170 complaints with only 16 fully probed cases. The remaining complaints were

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<sup>26</sup> Don’t fret over crime stats polemics, PM tells cops, Malaysiakini, 7/8/2012, <http://www.malaysiakini.com/news/205726> (last accessed: 11/11/2012)

<sup>27</sup> Ex-IGP accuses Hisham of meddling with PDRM, Malaysiakini, 28/11/2012, <http://www.malaysiakini.com/news/215364> (last accessed: 6/12/2012)

<sup>28</sup> Musa wants IGP to regain control, be ‘tough’, Malaysiakini, 28/11/2012, <http://www.malaysiakini.com/news/215404> (last accessed: 6/12/2012)

<sup>29</sup> Crime stats can go under-reported, says ex-IGP, Malaysiakini, 29/11/2012, <http://www.malaysiakini.com/news/215442> (last accessed: 6/12/2012)

<sup>30</sup> Ex-aide damns ex-IGP in SD, freemalaysiatoday, 3/12/2012, <http://www.freemalaysiatoday.com/category/nation/2012/12/03/ex-aide-damns-ex-igp-in-sd/> (last accessed: 6/12/2012)

<sup>31</sup> No plans to set up IPCMC, says Nazri, Malaysiakini, 11/6/2012, <http://www.malaysiakini.com/news/200565> last accessed: (11/11/2012)

either in preliminary investigation stage or were referred to other relevant agencies for further actions due to lack of jurisdiction.<sup>32</sup>

On the lack of actions by the EAIC, Chief Executive Officer, Nor Afizah Hanum Mokhtar explained that due to the insufficient RM7 million allocation per annum and with only 26 staff, the commission could not initiate its own investigation whilst maintaining that the commission wants to act but it needs to have complaints in the first place, lamenting that the people just do not trust them.<sup>33</sup> Further, citing the commission's powers under the EAIC Act 2009, Afizah boasted that even the Inspector General of Police cannot be exempted from scrutiny if a complaint is lodged against him.<sup>34</sup>

Fatal police shootings have increased from 30 in 2011 to 37 in 2012. The standard explanation for fatal shootings was that the police were acting in self-defence. On 21/8/2012, Dinesh Darmasena Wijemanna, 26, was brutally killed in a police shooting at a traffic light at a junction at Pandan Permai nearby Ampang Waterfront. The police claimed that Dinesh, together with four others had approached a group of plainclothes police in a threatening manner with iron rods, meat chopper and machetes. Witnesses denied the police's claim that Dinesh and company had just returned from a gang fight at an apartment nearby and maintained that Dinesh and company were on their way to have dinner.<sup>35</sup>

According to two witnesses who were present at the scene, Dinesh had just alighted from his vehicle at the said traffic lights after two unmarked police cars cornered his car. Unarmed, Dinesh walked towards the police cars when the plainclothes police officers began shooting at Dinesh without any warning.<sup>36</sup>

Assistant Public Relations Officer, Ramli Mohamed Yoosuf stated that the police had already concluded its investigation and submitted the papers to the Attorney-General's Chambers. He added that an inquest would be held to determine the cause of Dinesh's death. Lawyers, N.Surendran and Latheefa Koya stressed that an inquest will be irrelevant as the cause of death was certain and it was more important to determine why Dinesh was shot and why the police officers responsible for Dinesh's death have not been investigated. The lawyers added that the proper action would be to charge the police officers for murder in court.<sup>37</sup>

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<sup>32</sup> People don't trust us, laments EAIC, Malaysiakini, 6/6/2012, <http://www.malaysiakini.com/news/200017> (last accessed: 11/11/2012)

<sup>33</sup> ibid

<sup>34</sup> We can even investigate the IGP, Malaysiakini, 7/6/2012, <http://www.malaysiakini.com/news/200157> (last accessed: 11/11/2012)

<sup>35</sup> Saksi dakwa polis tembak mati lelaki tak bersenjata, malaysianinsider, 27/8/2012, <http://www.themalaysianinsider.com/bahasa/article/saksi-dakwa-polis-tembak-mati-lelaki-tak-bersenjata> (last accessed: 2/12/2012)

<sup>36</sup> Saksi: Polis Membuta Tuli tembak Lelaki Tak Bersenjata, selangorku, 27/8/2012, <http://www.selangorku.com/?p=13457> (last accessed: 2/12/2012)

<sup>37</sup> Keluarga mahu kematian Dinesh diklasifikasi kes bunuh, Malaysiakini, 7/9/2012, <http://www.malaysiakini.com/news/208258> (last accessed: 2/12/2012)

In 14/4/2012, siblings Aidi Noor Hafizal Othman, 24 and Noor Azman Othman, 39 and friend Ahmad Soufa Ahman, 23, were shot dead by the police at a roundabout near Taman Billion in Cheras. According to the police, the three were suspected to be involved in a jewellery shop heist in Shah Alam on 6/4/2012. City Criminal Investigation Department Chief, Datuk Ku Chin Wah claimed that one of the suspects opened fire at the policemen and that the policemen had to return fire in self-defense. He added that the police found several machetes and methamphetamine in the car, which was reportedly stolen in Kajang.<sup>38</sup> Noor Azman died of eight gunshot wounds while Aidi died of eleven wounds. Lawyers for the victims' families cast doubt on the police' version of the events for, if the police were acting in self-defence, how do they explain the numerous gunshots to the head and not to other parts of their bodies? Father of the siblings claimed that the police had even stopped a reporter from speaking to him at the morgue in Hospital University Kebangsaan Malaysia.<sup>39</sup>

There was not a single case in 2012 in which the police took responsibility over the death of detainees under their custody. Two days after being detained for drug abuse, S. Isparan, 37, was found dead in Sungai Siput Utara police station on 29/5/2012. A postmortem concluded that Isparan had died of perforated peptic ulcer with peritonitis. Family members were incredulous as Isparan had never had any record of stomach ailment prior to his arrest.<sup>40</sup> The disappointed family members lamented that despite having delivered a memorandum to SUHAKAM and having written to the Chief Justice, Attorney-General and the Sungai Siput district police chief calling for an inquest, the various authorities did not respond to their plight.<sup>41</sup>

Cheah Chin Lee, 36, died in police custody after being detained for five hours. Cheah was arrested on 14/8/2012 at or about 12:00AM and was brought to Jalan Pattani police headquarters for urine test until about 2:00AM. Cheah was later brought to Tanjong Tokong police station at about 5:00AM and was found dead 20 minutes later. Post mortem revealed that Cheah died of "asphyxia due to hanging".<sup>42</sup> The family argued that Cheah had no reasons to kill himself by hanging as he was mentally stable and held a permanent job. SUARAM argued that the officer in charge of Cheah needs to be accountable for his negligence as the Lock-Up Rules 1958 requires the officer-in-charge to be responsible for taking care of detainees in the lock-up at all times.<sup>43</sup>

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38 GRUESOME END: Trio believed to be responsible for a jewellery shop heist in Shah Alam on April 6, news straits times, 15/4/2012, <http://www.nst.com.my/nation/general/robbery-suspects-shot-dead-1.74033> (last accessed: 2/12/2012)

39 Lawyer group seeks special probe of Cheras killing, freemalaysiatoday, 31/5/2012, <http://www.freemalaysiatoday.com/category/nation/2012/05/31/lawyer-group-seeks-special-probe-of-cheras-killing/> (last accessed: 2/12/2012)

40 Not Another Death in Custody! Now, who's responsible?, SUARAM press statement dated 4/6/2012 by Thevarajan, Right to Justice Coordinator; see also SUHAKAM asked to probe death in police custody, The Sun Daily, 27/6/2012

41 1 month after death in custody! Still no inquest!, SUARAM, Press statement dated 29/6/2012; see also Still nothing on inquest for death custody detainee, Malaysiakini, 29/6/2012, <http://www.malaysiakini.com/news/202282> (last accessed: 2/12/2012)

42 Man dies in lock-up five hours after arrest, Malaysiakini, 14/8/2012, <http://www.malaysiakini.com/news/206348> (last accessed: 1/12/2012)

43 Death in custody again! Have we not learned?!, SUARAM, Press statement dated 15/8/2012 by Thevarajan, Right to Justice Coordinator

On 11/6/2012, after a 3-year long struggle for justice in the case of Kugan Ananthan, Shah Alam Sessions Judge, Aslam Zainuddin sentenced Constable V. Navindran to 3 years of concurrent imprisonment for two charges of causing hurt under S330 of the Penal Code.<sup>44</sup> Kugan, a suspected car thief was beaten to death at Taipan Police Station on 20/1/2009. According to a post mortem conducted by Hospital Serdang, Kugan's case was classified as sudden death caused by fluid accumulation in the lungs. A second post mortem at Universiti Malaya Medical Centre revealed that Kugan's kidney had reportedly failed as a result of broken muscle cells and congested blood flow due to severe assault.<sup>45</sup> Mother of deceased, N. Indra has filed a RM100 million civil suit at the High Court on 13/1/2012 against the Deputy Inspector-General of Police, V. Navindran and 3 others.<sup>46</sup>

SUARAM documented a crime committed by three young police officers against a vulnerable Indonesian woman. On 9/11/2012, the nation was shocked by the news that three police officers had gang-raped an Indonesian restaurant worker in Prai, Penang. The victim was apprehended by the officers for purportedly not being able to produce her passport despite showing them a photocopy of the same. She was taken back to the police station in Prai where she was gang-raped in a separate room before being sent back to her home in a police patrol car.<sup>47</sup> The trio, Nik Sin Mat Lazim, Syahiran Romly and Remmy Anak Dana claimed trial for charges under S376 and S377C of the Penal Code. They were later released on bail for RM25,000.00 each.<sup>48</sup> When asked if it is high time to set up the IPCMC and that he should resign for such police misconduct, Home Minister Hishamuddin Hussein replied, "...we have already ensured that they are brought to court. What else can we do? This is our country's system... IPCMC? There is no single formula that would solve all our problems..."<sup>49</sup>

## FREEDOM OF EXPRESSION AND INFORMATION

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The government continues to curtail the legitimate exercise of freedom of expression throughout 2012. A total number of six books were banned from publication namely, *Allah, Liberty & Love – Courage to Reconcile Faith & Freedom* and its Malay language translation by Irshad Manji, "*Where Did I Come From?*" by Peter Mayle, *Penghantar Ilmu-Ilmu Islam*

<sup>44</sup> Kugan case: Constable gets 3 years for 'causing hurt', Malaysiakini, 11/6/2012, <http://www.malaysiakini.com/news/200513> (last accessed: 11/11/2012)

<sup>45</sup> Post-mortem: Kugan 'starved and beaten' to death, Malaysiakini, 3/3/2009, <http://www.malaysiakini.com/news/99449> (last accessed: 11/11/2012)

<sup>46</sup> RM100m suit: Kugan's mother to testify on Nov 2, freemalaysiatoday, 30/10/2012, <http://www.freemalaysiatoday.com/category/nation/2012/10/30/rm100m-suit-kugans-mother-to-testify-on-nov-2/> (last accessed: 11/11/2012)

<sup>47</sup> Cops held over gang-rape in police station, the Star, 11/11/2012, <http://thestar.com.my/news/story.asp?file=/2012/11/11/nation/12306474&sec=nation> (last accessed: 7/12/2012)

<sup>48</sup> Three cops charged with 'gang rape', Malaysiakini, 16/11/2012, <http://www.malaysiakini.com/news/214297> (last accessed: 1/12/2012)

<sup>49</sup> Home Minister won't resign over rape case, Malaysiakini, 17/11/2012, <http://www.malaysiakini.com/news/214406> (last accessed: 1/12/2012)

by Murtadha Muthahhari, *Dialog Sunnah Syi'ah* by A. Syarafuddin Al-Musawi and *Tafsir Sufi Al-Fatihah Mukadimah* by Jalaluddin Rakhmat.<sup>50</sup>

On 23/5/2012, about 30 officers from JAWI confiscated seven copies of Irshad Manji's '*Allah Liberty & Love - Courage To Reconcile Faith & Freedom*' from Borders bookstore as the content was deemed to be contrary to Islamic teachings. During the raid, JAWI officers together with media personnel took photographs of the staff and recorded their identification card numbers, including non-Muslim staff. JAWI was investigating the case under S13 of the Federal Territory Syariah Offences Act 1997 for offences against the sanctity of Islam and its institutions.<sup>51</sup>

The book was banned the next day under S7(1) of the Printing Presses and Publication Act 1984 and the ban was gazetted on 29/5/2012. According to Deputy Home Minister Abu Seman, the book was believed to contain elements that can shake Muslims from their faith, Islamic teachings and elements which insulted Islam.<sup>52</sup> '*Allah Liberty & Love - Courage to Reconcile Faith & Freedom*', according to Manji "...shows all of us how to reconcile faith and freedom in a world seething with repressive dogmas... This book is the ultimate guide to becoming gutsy global citizen..."<sup>53</sup>

Subsequently, on 29/5/2012, the Selangor Islamic Affairs Department ("**JAIS**"), in a group of 20 officers have raided *ZI Publications* office and confiscated copies of Manji's books under S16(1)(a) or (b) of the Religious Publications Offences against Islamic Law. Director, Ezra Zaid was taken to JAIS headquarters for questioning under S47(1) of the Selangor Syariah Criminal Offences Enactment 2003.<sup>54</sup> On 19/6/2012, Borders store manager; Nik Raina Nik Abdul Aziz was charged with distributing the said book under S13 of the Federal Territory Syariah Offences Act 1997, which relates to the sanctity of Islam and its institutions.<sup>55</sup>

Theater producers were also reminded of the limits to their freedom of expression. Producer of "*Beng Hock*", Faisal Mustaffa of Rumah Anak Teater ("**RAT**"), received a call from the police on 3/7/2012 requesting him to appear at Jinjang police station for questioning. Faisal was questioned on the synopsis of the play. Kuala Lumpur Performing Arts Centre ("**KLPAC**") Theatre manager, Ian Chow was also called by the police for 'routine' queries. Puzzled and not knowing the offences he may have committed, Faisal asserted that a permit

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50 <http://www.moha.gov.my/index.php/en/2012-08-08-00-54-58/penerbitan-larangan>

51 Islamic authorities seize controversial book, Malaysiakini, 24/5/2012, <http://www.malaysiakini.com/news/198852> (last accessed: 14/11/2012)

52 Home Ministry bans Manji's 'Love Book', Malaysiakini, 24/5/2012, <http://www.malaysiakini.com/news/198958> (last accessed: 14/11/2012)

53 'Allah, Liberty & Love' Malaysiakini, 19/5/2012, <http://www.malaysiakini.com/news/198421> (last accessed: 14/11/2012)

54 Jais raids publisher's office, confiscates Manji's books, Malaysiakini, 29/5/2012, <http://www.malaysiakini.com/news/199328> (last accessed: 14/11/2012)

55 Store manager charged with distributing Manji's book, Malaysiakini, 19/6/2012, <http://www.malaysiakini.com/news/201256> (last accessed: 14/11/2012)

from the Kuala Lumpur City Hall (“**DBKL**”) was not necessary since it is free and open to public and that the theatre would take place in a private property.<sup>56</sup>

*Mkini Dotcom* filed an application for a Judicial Review at the Kuala Lumpur High Court (Appellate and Special Powers division) after the rejection of an application for a publishing permit of its print version on 14/4/2010 under S6(1)(a) of the PPPA 1984. The application was filed to quash the decision of the Home Ministry in rejecting the said application. *Mkini Dot Com* contended that the government must be fair in its approach as enshrined in Article 8 of the Federal Constitution and that *Malaysiakini* is not a threat to public order, security and morality as it has won many awards both locally and internationally. Considering that most major mainstream media like *Utusan Malaysia* and *News Straits Times* are significantly owned by the Barisan Nasional and even *Suara Perkasa* of PERKASA, known to bear racial prejudices and inciting intolerance, the Minister’s decision should be quashed as it lacks procedural fairness and violates the laws of natural justice.<sup>57</sup>

On 1/10/2012, Justice Abang Iskandar Abang Hashim, in an oral decision quashed the Home Minister’s decision because it was ‘improper and irrational’. “...*the decision affects the right of the applicant to the right of freedom of expression, which also includes the right to apply for a permit. It is a fundamental liberty enshrined in the constitution...*” His Lordship had also stated that freedom of expression (through publication) is a natural right and is enshrined in Article 10 of the Federal Constitution, rather than a privilege of the Home Minister. However, the Attorney General’s Chambers and the Home Ministry have filed a notice of appeal against Justice Abang’s decision.<sup>58</sup>

At least four cases were documented on alleged insults to the Sultan of Johor, Sultan Ibrahim Ismail ibni al-Marhum Sultan Mahmud Iskandar. The first was recorded in June 2012 where former Menteri Besar of Perak, Mohammad Nizar Jamaluddin<sup>59</sup> was questioned by the police over his statement on *Twitter* on the Sultan’s bid for *WWW1* vehicle registration number, second was in July 2012, where a blogger, Syed Abdullah Hussein Al-Attas, known as *Uncleseekers*<sup>60</sup> was arrested over a series of controversial articles which feature documents on the heritage of the late Sultan Iskandar ibni Almarhum Sultan Ismail. In July 2012, Solidariti Mahasiswa Malaysia’s media secretary, Ahmad Shukri Kamarudin was investigated under S4(1)(b) of the Sedition Act 1948 over his comments on *Uncleseekers*’ blog.<sup>61</sup> Lastly, in November 2012, quantity surveyor, Ahmad Abdul Jalil was detained by the police under

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<sup>56</sup> Cops probe Teoh Beng Hock play, *Malaysiakini*, 5/7/2012, <http://www.malaysiakini.com/news/202725> (last accessed: 14/11/2012)

<sup>57</sup> Decision not to give permit to *Mkini* ‘unconstitutional’, *Malaysiakini*, 11/5/2012, <http://www.malaysiakini.com/news/197624> (last accessed: 14/11/2012)

<sup>58</sup> AG appeals decision on permit for *Malaysiakini*, *Malaysiakini*, 16/10/2012, <http://www.malaysiakini.com/news/211822> (last accessed: 14/11/2012)

<sup>59</sup> *WWW1* tweet: Police record statement from Nizar, *Malaysiakini*, 6/6/2012, <http://www.malaysiakini.com/news/200110> (last accessed: 14/11/2012)

<sup>60</sup> Blogger held under OSA over articles against Johor sultan, *Malaysiakini*, 5/7/2012, <http://www.malaysiakini.com/news/202760> (last accessed: 14/11/2012)

<sup>61</sup> Activist under sedition probe over Johor Sultan comments, *Malaysiakini*, 13/7/2012, <http://www.malaysiakini.com/news/203544> (last accessed: 14/11/2012)

the Sedition Act 1948 and Malaysian Communications and Multimedia Commission Act 1998 for allegedly insulted the Sultan on *Facebook*.<sup>62</sup>

After the watershed 12<sup>th</sup> General Elections in 2008, Barisan Nasional lost its two-thirds parliamentary majority the first time since 1969 where the use of the internet for political mobilization was widely perceived as contributing to the opposition's electoral gains, the government had recognized the potential political impact of the internet and had therefore grown more determination to control it. Recent amendments to the Evidence Act 1950 namely S114A which holds intermediaries liable for seditious content is very troubling development.

Commenting on US-based Freedom House's annual study on internet freedom, *Freedom on the Net 2012: A Global Assessment of Internet and Digital Media* where Malaysia has worsened<sup>63</sup> as reported by the study, Executive Officer of Centre for Independent Journalism ("*CIJ*"), Masjaliza Hamzah commented that "...the report's analysis confirms our own fears of increasing government clampdown for speech online, as evidenced by the Section 114A amendment. These moves are an effort to tame the internet which is considered too permissible towards airing unfavourable views of the ruling government..."<sup>64</sup>

CIJ in an open letter endorsed by Southeast Asian Press Alliance, Media Defence-Southeast Asia and Centre for Law and Democracy to Prime Minister Najib, Menteri Besar of Selangor, Than Sri Khalid Ibrahim and Chief Minister of Penang Lim Guan Eng called upon the Barisan Nasional government to enact a Right to Information law and repeal all laws that unduly restrict citizen's right to access public information. The letter also called upon the opposition governments to publish an inventory of information held by public bodies and undertake routine proactive disclosure of information of public interest. While pointing out that the right to information as enshrine in Article 19 of the Universal Declaration of Human Rights, the letter expressed deep concerns that the government had repeatedly rejected calls to enact such law but instead systematically targeted whistleblowers who sought to expose wrongdoing and corruption in the public sector.<sup>65</sup>

## FREEDOM OF ASSEMBLY

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The speedily passed Peaceful Assembly Act 2012 ("*PAA 2012*") received its Royal Assent on 30/1/2012 and was set to commence on 23/4/2012.<sup>66</sup> Barely a month after coming into effect, several individuals were charged under this new law. Condemning the charges, SUARAM in a statement<sup>67</sup> regarded the charges as selective prosecution under the PAA 2012. Anwar

62 Ahmad's second arrest 'an abuse of court process', Malaysiakini, 6/11/2012, <http://www.malaysiakini.com/news/213541> (last accessed: 14/11/2012)

63 Country report, Malaysia, Freedom on the Net, Freedom House, [http://www.freedomhouse.org/report/freedom-net/2012/malaysia#\\_ftn10](http://www.freedomhouse.org/report/freedom-net/2012/malaysia#_ftn10) (last accessed: 2/12/2012)

64 Threats against internet freedom expected to worsen in Malaysia in 2012, 2/12/2012, National Alerts, Releases & Announcements, Centre for Independent Journalism, <http://cijmalaysia.org/2012/10/02/malaysia-slips-in-global-rankings-of-internet-freedom/> (last accessed: 2/12/2012)

65 Open letter to PM, Penang CM, Selangor MB in conjunction to Right to Know Day, 27/9/2012, Centre for Independent Journalism, <http://cijmalaysia.org/2012/09/28/open-letter-to-pm-penang-cm-selangor-mb-in-conjunction-with-right-to-know-day/> (last accessed: 2/12/2012)

66 [http://www.federalgazette.agc.gov.my/eng\\_main/main\\_akta.php?jenis\\_akta=Baru](http://www.federalgazette.agc.gov.my/eng_main/main_akta.php?jenis_akta=Baru) (last accessed: 27/11/2012)

67 Rights groups decry selective prosecution over BERSIH 3.0, Malaysiakini, 22/5/2012, <http://www.malaysiakini.com/news/198663> (last accessed: 27/11/2012)

Ibrahim, Azmin Ali and Badrul Hisham Shaharin were charged under S4(2)(c) of the PAA 2012 (violating Order and taking part in rally), S188 (breaching Magistrates' Order) and S147 (abetting in rioting) of the Penal Code.

The three were also alleged to have conspired with R. Tangam, G. Rajesh Kumar and Farhan Ibrahim for incitement to breach the barricades set up at Dataran Merdeka.<sup>68</sup> Counsel for Anwar Ibrahim, Karpal Singh, has filed an application to the Sessions Court to transfer the case to a High Court judge as S4(1)(c) of the PAA 2012 directly contradicts Article 10 (1) of the Federal Constitution which guarantees a person's freedom of assembly.<sup>69</sup>

Student groups made significant impact in 2012. On 14<sup>th</sup> April 2012, about 500 members of *Malaysia Bangkit*, *Gabungan Mahasiswa Islam Malaysia*, *Kelab Mangsa PTPTN* and *Malaysia Student Democratic Movement* took to the streets to demand for the abolition of PTPTN and free education. The group had marched from Masjid Jamek Light Railway Transit station to Dataran Merdeka where the group camped calling on the government to respond to their demands by 28<sup>th</sup> April 2012.<sup>70</sup>

About 30 DBKL officers then intervened and in the course of evicting the students, injured at least four students. When questioned by reporters, one DBKL officer identified as Nordin retorted by warning the reporters not to provoke the DBKL, altogether ignored the questions despite the fact that clear evidence of aggression against the students had been recorded on video.<sup>71</sup>

Violence against the students escalated when a group of about 50 to 70 thugs attacked the students and destroyed their tents, with one student having to be rushed to the hospital. The fracas which started at about 2:36AM on 19/4/2012 was photographed and recorded on video by the students but the assailants destroyed or confiscated their cameras and camcorders. Unfortunately, about a dozen of police officers stood by and watched the entire incident without intervening.<sup>72</sup>

Home Minister Hishammuddin Hussein remarked that the students' allegation of attacks were an attempt to raise emotions among public. He was quoted as saying "*...I don't really see the traction... twenty or thirty people set-up tents in Dataran Merdeka and it's as if the world is coming to an end...*"<sup>73</sup>

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<sup>68</sup> Anwar claims trial to BERSIH 3.0 charge, Malaysiakini, 22/5/2012, <http://www.malaysiakini.com/news/198632> (last accessed: 27/11/2012)

<sup>69</sup> Anwar wants PAA charge heard by High Court, Malaysiakini, 3/9/2012, <http://www.malaysiakini.com/news/207788> (last accessed: 27/11/2012)

<sup>70</sup> Varsity students march KL streets for free education, Malaysiakini, 14/4/2012, <http://www.malaysiakini.com/news/195014> (last accessed: 10.11.2012)

<sup>71</sup> Four students in Dataran sit-in injured in DBKL scuffle, Malaysiakini, 16/4/2012, <http://www.malaysiakini.com/news/195126> (last accessed: 10/11/2012)

<sup>72</sup> Thugs attack 'Occupy Dataran' encampment, Aliran, 19/4/2012, <http://aliran.com/8813.html> (last accessed: 7/12/2012); see also Thugs attack students at Dataran Merdeka, Malaysiakini, 19/4/2012, <http://www.malaysiakini.com/news/195396> (last accessed: 10.11.2012)

BERSIH made a comeback by organizing a mammoth rally, BERSIH 3.0 on 28/4/2012. A total number of 909 tear smoke shells were used in BERSIH 3.0 as compared to 262 at BERSIH 2.0.<sup>74</sup> About 300,000 participants turned up and a total number of 572 were arrested on the day of rally.<sup>75</sup> The government, in an unusual move filed two civil suits against S. Ambiga and Maria Chin Abdullah for causing damages to public properties.<sup>76</sup>

As expected, the government began its massive crackdown prior to the rally. Tan Hong Kai was the first person to be arrested on 20/4/2012 under S447 of the Penal Code for putting up BERSIH 3.0 posters in the compound of Universiti Sains Malaysia. Magistrate Noor Aini Yusoff ordered a discharge without amounting to acquittal to Hong Kai on 9/8/2012. Hong Kai had maintained that he was in the campus by invitation.<sup>77</sup>

Intimidation and harassment against S. Ambiga and other steering committee members began with a group of army veterans performing their “butt” exercise (shaking their backsides) outside Ambiga’s residence<sup>78</sup> followed by a group of petty traders who identified themselves as *BERSIH 4.0*, *Halau 1.0*, *Gerakan Belia Gagasan 1Malaysia* who claimed to have suffered economic loss on the day of the rally. The groups demanded a personal apology from S. Ambiga and a revocation of her citizenship.<sup>79</sup> There was also a call from UMNO’s MP for Sri Gading for Ambiga to be “hanged” similar to *Al-Ma’unah* leaders.<sup>80</sup>

On the eve of Merdeka Day celebration, *Gabungan Janji*, a coalition of 47 NGOs and civil society groups organized a demonstration calling for “*Janji Demokrasi*” (Democratic Promises) - the implementation of unfulfilled promises by Prime Minister Najib, especially for clean and fair elections.<sup>81</sup> Despite being declared illegal under S9(1) and S11 of the Peaceful Assembly Act 2012 by Dang Wangi district police chief Zainuddin Ahmad, the demonstration proceeded with about 10,000 participants adhering to several self-imposed

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73 Dataran attack claims may be to rile up public, says Hisham, Malaysiakini, 19/4/2012, <http://www.malaysiakini.com/news/195416> (last accessed: 10/11/2012)

74 BERSIH 3.0: Three times more tear-gas than BERSIH 2.0, Malaysiakini, 11/6/2012, <http://www.malaysiakini.com/news/200542> (last accessed: 27/11/2012)

75 SUARAM documentation and monitoring

76 Gov’t sues Ambiga, 9 others for BERSIH 3.0 damage, Malaysiakini, 23/5/2012, <http://www.malaysiakini.com/news/198817> (last accessed: 27/11/2012)

77 BERSIH poster activist discharged without acquittal, Malaysiakini, 9/8/2012, <http://www.malaysiakini.com/news/205868> (last accessed: 27/11/2012)

78 Ex-army veterans “exercise” outside Ambiga’s house, the Star, 15/5/2012, <http://thestar.com.my/news/story.asp?file=/2012/5/15/nation/20120515112217&sec=nation> (last accessed: 7/12/2012)

79 Traders, youths and bikers at anti-Ambiga protest, Malaysiakini, 24/5/2012, <http://www.malaysiakini.com/news/198937> (last accessed: 27/11/2012)

80 ‘Call for Ambiga to be hanged not BN’s stance, Malaysiakini, 27/6/2012, <http://www.malaysiakini.com/news/202078> (last accessed: 27/11/2012); see also *HANSARD* at <http://www.parlimen.gov.my/files/hindex/pdf/DR-26062012.pdf>

81 Janji Demokrasi – the real Merdeka event, Malaysiakini, 2<sup>nd</sup> September 2012, <http://www.malaysiakini.com/news/207719> (last accessed: 10<sup>th</sup> November 2012)

restrictions set by the organizers namely, no banners and placards, no provocation, no loudspeakers and a strict warning that participants abide by the organiser's instructions.<sup>82</sup>

Two distinct incidents took place during the demonstration which kicked off a series of nationwide police operation to nab individuals alleged to have committed offences under the Penal Code and the Sedition Act 1948. A 19 year-old college student was arrested on 4/9/2012 under S290 and S504 of the Penal Code over his *moonning* (showing his backside) at portraits of Prime Minister Najib and wife during the event.<sup>83</sup> The student was however released on 5/9/2012 on police bail.<sup>84</sup> In another incident, 2 youths were accused of replacing the *Jalur Gemilang* with *Sang Saka Malaya* despite the fact that the duo had intended to unfurl the flag alongside *Jalur Gemilang* in honour of the Malay leftist struggle for independence, a fact they claimed had been erased from official history.<sup>85</sup> The police were investigating the incident under S290 and S504 of the Penal Code and S4(1)(a) of the Sedition Act 1948.<sup>86</sup>

Whilst acknowledging that there were no untoward incidents at the demonstration, Home Minister, Hishammuddin Hussein remarked, "...we see that the event, which was aimed at creating chaos, failed, but we have to always be cautious..."<sup>87</sup>

Environmental groups made headlines with a series of significant rallies. *Himpunan Hijau* led by Wong Tack began an epic 300 kilometre walk from Kuantan to Kuala Lumpur starting on 13/11/2012. From a mere 70 participants from Kuantan, the amassed crowd along the way ended up at Dataran Merdeka to a massive 20,000 participants.<sup>88</sup> Reminding the participants not to breach any barricades set up at Dataran Merdeka and to remain peaceful, Wong Tack led an estimated 20,000 walkers to Dataran Merdeka to protest against several environmental issues namely the Lynas Corporation's rare earth refinery in Gebeng, the use of cyanide by Raub Australia Gold Mining Sdn Bhd, the RM60 billion Petronas Refinery and Petrochemical Integrated Development project at Pengerang and the building of more mega dams in Sarawak.<sup>89</sup>

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82 Police declare tonight's Janji Demokrasi rally illegal, Malaysiakini, 30<sup>th</sup> August 2012, <http://www.malaysiakini.com/news/207526> (last accessed: 10<sup>th</sup> November 2012)

83 Student nabbed over moonning incident, Malaysiakini, 4.9.2012, <http://www.malaysiakini.com/news/207904> (last accessed: 10.11.2012)

84 SUARAM urgent arrest documentation

85 Flag duo denies wanting to change Jalur Gemilang, Malaysiakini, 2.9.2012, <http://www.malaysiakini.com/news/207733> (last accessed: 10.11.2012)

86 Cops on the hunt for 'new flag' advocates, Malaysiakini, 2.9.2012, <http://www.malaysiakini.com/news/207746> (last accessed: 10.11.2012)

87 Sea of yellow: 10,000 defy ban for 'Janji Demokrasi', Malaysiakini, 31/8/2012, <http://www.malaysiakini.com/news/207603> (last accessed: 10/11/2012)

88 20,000 join green march against Lynas, Malaysiakini, 25/11/2012, <http://www.malaysiakini.com/news/215072> (last accessed: 27/11/2012)

89 ibid

The DBKL had set up blockades on both ends of Dataran Merdeka for “renovation and upgrading works”. Despite this, the group managed to enter Dataran Merdeka from an unblocked entrance adjacent to the main crossroad.<sup>90</sup> The next morning, the group handed over resolutions to more than a dozen opposition MPs. The group had hoped to elicit a response from the Prime Minister but he did not turn up on the 26/11/2012 morning. The organisers were to be investigated under the PAA 2012.<sup>91</sup>

Himpunan Hijau had earlier held demonstrations in Raub together with residents of Kampung Baru Bukit Koman protesting against the use of cyanide by Raub Australia Gold Mining Sdn Bhd on 2/9/2012<sup>92</sup> and in Pengerang on 30/9/2012 protesting against the RM60 billion Petronas Refinery and Petrochemical Integrated Development project which would occupy 9,000 hectares of land, affecting at least 15 villages.<sup>93</sup>

## **FREEDOM OF ASSOCIATION**

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In 2012, the Malaysian government displayed a wanton disregard for the legitimate exercise of freedom of association by a concerted harassment of SUARAM, apparently for having the temerity to complain to the French courts over suspected corruption in the Scorpene submarine deals. SUARAM suffered an unprecedented attack from a taskforce consisting of no less than six agencies which had been ordered by the government to specifically “pin a charge or charges” on SUARAM.<sup>94</sup>

On 1/7/2011, Home Minister Hishammuddin Hussein had declared BERSIH 2.0 as unlawful under S5 of the Societies Act 1966. He added that investigation had revealed that BERSIH 2.0 was not a registered organisation and that it has been ‘*moving actively and creating uneasiness*’ among the people by distributing pamphlets containing propaganda to topple the government.<sup>95</sup>

However, although he had declared BERSIH 2.0 as illegal, on 10/4/2012 Hishammuddin gave the permission for BERSIH 3.0 rally to take place subject to the provisions of the PAA 2012.<sup>96</sup> This would later become the bone of contention as Justice Rohana Yusof quashed

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<sup>90</sup> Dataran sealed again due to ‘renovation’ work, Malaysiakini, 25/11/2012, <http://www.malaysiakini.com/news/215063> (last accessed: 27/11/2012)

<sup>91</sup> Marchers hold ‘people’s meeting’ next to Dataran, Malaysiakini, 26/11/2012, <http://www.malaysiakini.com/news/215117> (last accessed: 27/11/2012)

<sup>92</sup> Mining reps no-show, Green rally turns into march, Malaysiakini, 2/9/2012, <http://www.malaysiakini.com/news/207732> (last accessed: 27/11/2012)

<sup>93</sup> Pengerang rally declared ‘roaring success’, Malaysiakini, 30/9/2012, <http://www.malaysiakini.com/news/210357> (last accessed: 27/11/2012)

<sup>94</sup> Six agencies to probe Suaram links with George Soros, the Star, 12/9/2012, <http://thestar.com.my/news/story.asp?file=/2012/9/12/nation/20120912133504&sec=nation> (last accessed: 7/12/2012)

<sup>95</sup> Hisham declares BERSIH an outlaw organisation, Malaysiakini, 2/7/2011, <http://www.malaysiakini.com/news/168716> (last accessed: 28/11/2012)

<sup>96</sup> Home Minister gives nod to BERSIH 3.0 but..., Malaysiakini, 10/4/2012, <http://www.malaysiakini.com/news/194634> (last accessed: 28/11/2012)

Hishammuddin's declaration. In her decision, Justice Rohana stated the said declaration was "*tainted with irrationality.*"<sup>97</sup>

Because it had initiated the Scorpene public inquiry in Paris, SUARAM began to face an unprecedented barrage of intimidation and harassment from the government and its agencies in its 23<sup>rd</sup> year of operation. On 1/7/2012, President of Jaringan Melayu Malaysia ("*JMM*"), Azwanddin Hamzah urged SUARAM to clarify its status as an NGO and reveal its sources of funds locally and internationally.<sup>98</sup> Two days later, on 3/7/2012, Companies Commission of Malaysia ("*CCM*") arrived at SUARAM's doorsteps for a 'routine' inspection. That first visit was the beginning of an interminable series of investigations of SUARAM which have not ceased as at December 2012.

The government-controlled mainstream newspapers, News Straits Times, Berita Harian and Utusan Malaysia joined in this government chorus accusing SUARAM and other organisations including BERSIH 2.0, Malaysiakini and Centre for Independent Journalism of being involved in a Zionist plot to destabilise the government.<sup>99</sup>

On 11/9/2012, a decision to form a taskforce consisting of six government agencies, namely, the CCM, Malaysian Communication and Multimedia Commission ("*MCMC*"), Bank Negara, Registrar of Societies ("*RoS*"), the Royal Malaysian Police and the Home Ministry was made to determine the jurisdiction of respective agencies and coordinate any actions to be taken against SUARAM.<sup>100</sup>

On 18/9/2012, Minister of Domestic Trade, Cooperatives and Consumerism, Ismail Sabri Yaakob stated that he would recommend to the Attorney-General to bring charges against SUARAM in two days' time. Ismail added that SUARAM's accounts were confusing but when questioned further by reporters, he said "*...All kind of things. It is misleading... they do one thing and report another...*"<sup>101</sup>

Ismail mentioned five possible charges but has only confirmed one charge under S364(2) of the Companies Act 1965. The possible sections include S166A(3), S169(14), S167(1), S167(2) and S132(1) of the Companies Act 1965.<sup>102</sup> The next day, the purported CCM Investigation Papers ("*IPs*") were returned to the CCM with Deputy Solicitor-General II Tun Abdul Majid Tun Hamzah stating that the IPs were incomplete and insufficient for the Attorney-General to draft any charges. Ismail had also requested the Bank Negara to investigate SUARAM under the Anti-Money Laundering and Anti-Terrorism Financing Act

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<sup>97</sup> BERSIH not 'unlawful organisation', rules court, Malaysiakini, 24/7/2012, <http://www.malaysiakini.com/news/204459> (last accessed: 28/11/2012)

<sup>98</sup> Pressure group probes SUARAM's NGO status, Malaysiakini, 1/7/2012, <http://www.malaysiakini.com/news/202441> (last accessed: 28/11/2012)

<sup>99</sup> Plot to destabilise govt, News Straits Times, 21/9/2012, <http://www.nst.com.my/top-news/plot-to-destabilise-govt-1.146549> (last accessed: 28/11/2012)

<sup>100</sup> ibid

<sup>101</sup> CCM hopes to charge SUARAM in two days, Malaysiakini, 18/9/2012, <http://www.malaysiakini.com/news/209176> (last accessed: 28/11/2012)

<sup>102</sup> ibid

2001. However a bank official stated that they were still looking for the source of funds and its money trail together with other suspected transactions before submitting its IPs to the Attorney-General.<sup>103</sup> After further investigation, the IPs were again submitted to the Attorney-General on 11/10/2012. The Attorney-General was reported to be waiting for the RoS (which has since initiated its investigation of SUARAM) to wind up its investigation before initiating legal proceedings against SUARAM.<sup>104</sup>

In a press conference on 5/10/2012, President of JMM, Azwanddin Hamzah alleged that SUARAM had bribed more than 10 officers from various government agencies i.e the CCM, the Prime Minister's Department, the Finance Ministry and Bank Negara to cover up financial transactions and to obtain information regarding national security. Azwanddin claimed that SUARAM has links with 40 companies, of which 38 out of these are inactive in business but would receive USD3,000.00 or USD5,000.00 every day or once a week. He added "...these are actions of lackeys who are uncouth and impudent. We must destroy these people...".<sup>105</sup> SUARAM challenged JMM to substantiate their allegations and called upon the alleged 'bribed' officials to reveal the truth and defend themselves.<sup>106</sup>

In September 2012, a police report no. 10952/12 was lodged in Muar by one Mohd Said bin Bakri to Constable Muhamad Shuid bin Osman, R182036, complaining that SUARAM had received funding from the Jews and attempted to topple the government by way of unlawful demonstrations, defamation and treason.<sup>107</sup> The alleged activities had also "caused the complainant to feel dissatisfied as it constitutes a serious offence" and he could "no longer keep quiet on SUARAM's activities."<sup>108</sup>

The Muar report was enough for the RoS to start vigorous investigation of SUARAM's activities since 24/9/2012. This was despite S2 of the Societies Act 1966 which defined a society as inter alia, excluding "...any company registered under the provisions of any written law relating to companies for the time being in force in Malaysia..."<sup>109</sup> Consequently, SUARAM has on 29/10/2012 written to the RoS requesting them to clarify and justify its jurisdiction and powers over SUARAM but to date, SUARAM has yet to receive a satisfactory answer from the RoS. Ignoring the request, the RoS has continued its harassments of SUARAM.

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<sup>103</sup> AG's Chambers: CCM probe on SUARAM incomplete, Malaysiakini, 19/9/2012, <http://www.malaysiakini.com/news/209341> (last accessed: 28/11/2012)

<sup>104</sup> SUARAM probe: AG receives CCM report, awaiting RoS's, Malaysiakini, 1/11/2012, <http://www.malaysiakini.com/news/213186> (last accessed: 28/11/2012)

<sup>105</sup> SUARAM terima RM100 juta dana asing?, Utusan Malaysia, 5/10/2012, [http://www.utusan.com.my/utusan/Dalam\\_Negeri/20121005/dn\\_02/Suaram-terima-RM100-juta-dana-asing](http://www.utusan.com.my/utusan/Dalam_Negeri/20121005/dn_02/Suaram-terima-RM100-juta-dana-asing) (last accessed: 28/11/2012); see also Group to reveal bribe takers, JMM will also send letters to ministry and department heads, with copies to MACC, Malay Mail, 5/10/2012, <http://www.mmail.com.my/story/group-reveal-bribe-takers-32356> (last accessed: 28/11/2012)

<sup>106</sup> Show us the officials we 'bribed', challenges SUARAM, Malaysiakini, 5/10/2012, <http://www.malaysiakini.com/news/210848> (last accessed: 28/11/2012)

<sup>107</sup> SUARAM's documentation and monitoring

<sup>108</sup> SUARAM's documentation and monitoring

<sup>109</sup> Section 2 of the Societies Act 1966, Act 335

On 5/11/2012, the RoS served notices under S111 of the Criminal Procedure Code (“**S111 notice**”) to individuals who were not acquainted with the facts and circumstances of SUARAM, viz. Executive Director of EMPOWER, Maria Chin Abdullah; President of the Malaysian Bar, Lim Chee Wee; human rights lawyer, Syahredzan Johan and opposition Members of Parliament YB Chua Tian Chang (Batu) and YB Tony Pua Kiam Wee (Petaling Jaya Utara)<sup>110</sup>. The RoS had even issued a notice to deceased Fan Yew Teng.<sup>111</sup> The staff of SUARAM were not spared as they also received the same S111 notices from the RoS on 9/11/2012, including SUARAM Penang office’s coordinator, Lee Hui Fei.

Then on 30/11/2012, two police officers visited SUARAM’s office to investigate SUARAM under S9 of the PAA 2012 for allegedly assembling unlawfully at CCM building on 18/9/2012.<sup>112</sup> On 7/12/2012, the RoS saw it fit to appear at the residence of the company secretary of SUARAM’s landlord together with a blaring police patrol car just for the purpose of serving a notice under S66 of the Societies Act 1966. According to the company secretary, eyewitnesses recalled that the RoS had visited his home several times the day before on 6/12/2012 when he was not at home. The wife of the company secretary, a high blood pressure patient, suffered series of panic attacks since 6/12/2012 and had to be admitted to the hospital for medical check-up.<sup>113</sup> A total number of 62 notices and 34 persons have been called by CCM, RoS and PDRM since 3/7/2012.<sup>114</sup>

It was ironic and highly embarrassing to the government that in the midst of this concerted campaign against SUARAM, the Auditor General released his annual report showing that CCM had failed in its responsibility to rein in companies for not paying their compounds and submitting audited accounts.<sup>115</sup> MP for Petaling Utara, Tony Pua highlighted the fact that the CCM had been prejudicial to SUARAM in keeping an eye closed on companies belonging to Shahrizat Jalil’s family, namely the *National Meat and Livestock Company Sdn Bhd* and *Meatworks Sdn Bhd* which had reportedly failed to hold annual general meetings and file annual returns together with audited financial reports. These are clear offences under the Companies Act 1965. He further pointed out that *Yayasan Gerakbakti Kebangsaan* whose directors, UMNO Youth Chief Khairy Jamaluddin and UMNO’s Kota Belud MP, Abdul Rahman Dahlan had not filed its accounts since 2009,<sup>116</sup> and that *National Aerospace and Defense Industries Sdn Bhd*, a partner in the country’s newest budget airline *Malindo*

110 Pua cries abuse for being pulled into ROS dragnet, Malaysiakini, 6/11/2012, <http://www.malaysiakini.com/news/213566> (last accessed: 28/11/2012)

111 SUARAM probe: ROS summons Bar president, BERSIH leader, Malaysiakini, 5/11/2012, <http://www.malaysiakini.com/news/213488> (last accessed: 28/11/2012)

112 3 pegawai Suara Inisiatif ke SSM, 18/9/2012, Utusan Malaysia, [http://m.utusan.com.my/Dalam\\_Negeri/20120919/dn\\_09/3-pegawai-Suara-Inisiatif-ke-SSM](http://m.utusan.com.my/Dalam_Negeri/20120919/dn_09/3-pegawai-Suara-Inisiatif-ke-SSM) (last accessed: 7/12/2012)

113 RoS and Police Out to Get Company Secretary of SUARAM’s landlord, press statement dated 7/12/2012, SUARAM

114 SUARAM’s documentation and monitoring

115 ‘CCM failed to nab errant directors of companies’, Malaysiakini, 16/10/2012, <http://www.malaysiakini.com/news/211895> (last accessed: 6/12/2012)

116 ‘CCM, why no action against NFC’s companies?’, Malaysiakini, 6/9/2012, <http://www.malaysiakini.com/news/208113> (last accessed: 28/11/2012)

*Airways* has not filed its audited accounts since 2007. The chairperson, Gen (Rtd) Mohd Hashim Mohd Ali, is the brother in-law of Tun Mahathir.<sup>117</sup>

## FREEDOM OF RELIGION

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SUARAM has documented three cases of human rights violations on freedom of religion and its practises. These involved alleged proselytization claims in Penang; alleged teaching of Islamic lessons to non-Muslim children without the knowledge and permission of parents, and another regarding freedom of religion for all Malaysians.

In August 2012, Jabatan Agama Islam Pulau Pinang (“**JAIPP**”) began probing claims of proselytization among Muslims in Penang. State Executive Committee member, Abdul Malik Abul Kassim said the JAIPP had taken the initiative to investigate the claims but had yet to get hold of any evidence and identify those concerned. The investigation was a result of a claim<sup>118</sup> by *Pertubuhan Aktivis Pengupayaan Insan* (“**API**”) that efforts to convert Muslims to Christian were made to especially homeless and trishaw riders by two Caucasian tourists using cash and basic necessities during Ramadan.<sup>119</sup> API claimed to have photographs and video evidence<sup>120</sup> of an elderly trishaw rider being offered *mandi air* (likely to mean baptised) and said they would submit them to the Penang Islamic Affairs Council.<sup>121</sup>

In October 2012, a group of parents lodged police reports at the Gua Musang police station against a teacher at SK Pos Bihai (an exclusively Orang Asli school) for slapping four 12-year-old children because they did not recite the *doa* (prayer) after lunch. According to deputy chairperson of Parent-Teacher Association, Arom Asir, the children were made to recite prayers before and after meals but they did not know how to perform it. They were slapped when they decided to keep quiet during the prayers. The parents contacted SUHAKAM and planned to hold a dialogue with the Kelantan Education Department and Orang Asli Development Department (“**JAKOA**”). The parents also claim that the children were made to study a religion that is not their faith.<sup>122</sup> The Kelantan Education Department and JAKOA have apologised to the parents during a 5 hour meeting. The parents are considering taking legal actions if no actions are taken against the teacher who had clearly violated S17 of the Aboriginal Peoples Act 1954. On 1/11/2012, Rural and Regional Minister

117 Tony Pua reveals another Companies Act breach, Malaysiakini, 1/10/2012, <http://www.malaysiakini.com/news/210421> (last accessed: 28/11/2012)

118 Ramadhan Discovery: Siapa Mereka Di Hati Kita (penemuan mengejutkan), 1/8/2012, Pertubuhan Aktivis Pengupayaan Insan, <http://apipenang.blogspot.com/2012/08/ramadhan-discovery-siapa-mereka-di-hati.html> (last accessed: 7/12/2012)

119 Penang on the hunt for ‘Christian proselytisers’, Malaysiakini, 7/8/2012, <http://www.malaysiakini.com/news/205669> (last accessed: 17/11/2012)

120 Video Pengaduan Dan Pengakuan Pakcik Beca Tentang Agenda Kristianisasi Di Georgetown, 7/8/2012, Pertubuhan Aktivis Pengupayaan Insan (API), <http://apipenang.blogspot.com/2012/08/video-pengaduan-dan-pengakuan-pakcik.html> (last accessed: 7/12/2012)

121 NGO to submit ‘proof’ of proselytising in Penang, Malaysiakini, 7/8/2012, <http://www.malaysiakini.com/news/205704> (last accessed: 17/11/2012)

122 Orang Asli children slapped for not reciting ‘doa’, Malaysiakini, 25/10/2012, <http://www.malaysiakini.com/news/212654> (last accessed: 17/11/2012)

Shafie Apdal denied that the children were slapped and said that the issue had been politicised.<sup>123</sup>

According to Arom, he was told by the parents that they were offered RM250.00 by a group of teachers for each child and that the teacher who slapped the children would then top up RM50.00, making the total amount to RM300.00 per child. In return, the parents would have to retract their police reports against the teacher.<sup>124</sup>

Then on 3/11/2012, Lembah Pantai MP Nurul Izzah Anwar made a controversial statement at a forum titled “*Islamic State: Which Version; Whose Responsibility?*” jointly organised by Oriental Hearts and Minds Study Institute and Islamic Renaissance Front. A transcript showed that in replying to a question on whether freedom of religion applies to Malays, the MP has stated “...*how can you ask me or anyone, how can anyone really say, sorry, this only apply to non-Malays... it has to apply equally, apply equally... in the Quran, there is no specific terms for the Malays. This is how it should be done... So I am tied, of course, to the prevailing views but I would say that...*” She went on to say that quality is what matters, citing example of herself being schooled in Assunta with a huge cross in the hall and an active Catholic society.<sup>125</sup>

Her statements created uproar in the Muslim community which led to several individuals, including the Selangor Sultan making statements on the issue. Puteri UMNO claimed that the statements carried significant implications especially to the younger generation as it paved the way for other movements to “deviate the faith of Muslims”.<sup>126</sup> They also claimed that it could be viewed as maligning Islam or cause Islam to be looked down upon by others.<sup>127</sup> Nurul protested that she had been misrepresented by Utusan Malaysia<sup>128</sup> and had since lodged a complaint to the Selangor Islamic Affairs Department (“**JAIS**”).<sup>129</sup>

## REFUGEES, ASYLUM SEEKERS, STATELESS PERSONS AND PERSONS OF CONCERN

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123 Agencies apologise over Orang Asli kids’ slapping, Malaysiakini, 2/11/2012, <http://www.malaysiakini.com/news/213241> (last accessed: 17/11/2012)

124 Orang asli kids’ family offered cash to retract report, Malaysiakini, 19/11/2012, <http://www.malaysiakini.com/news/214496> (last accessed: 1/12/2012)

125 Transcript of Nurul Izzah’s Q&A at forum, Malaysiakini, 8/11/2012, <http://www.malaysiakini.com/news/213783> (last accessed: 17/11/2012)

126 Nurul Izzah to lodge complaint with JAIS tomorrow, Malaysiakini, 8/11/2012, <http://www.malaysiakini.com/news/213616> (last accessed: 17/11/2012)

127 Nurul can be charged with maligning Islam, Malaysiakini, 7/11/2012, <http://www.malaysiakini.com/news/213659> (last accessed: 17/11/2012)

128 “Melayu bebas pilih agama?” frontpage Utusan Malaysia, 5/11/2012

129 Nurul Izzah hadir buat aduan di Jais, 9/11/2012, Sinar Harian, <http://www.sinarharian.com.my/semasa/nurul-izzah-hadir-buat-aduan-di-jais-1.102326> (last accessed: 7/12/2012)

Malaysia has yet to ratify the 1951 Convention relating to the Status of Refugee and its 1967 protocol despite repeated calls from local, regional and international organisations. The Immigration Act 1959/63 performed a perfunctory role in detaining, whipping and deporting non-citizens throughout 2012.

As of 31/8/2012, the total number of refugees stood at 98,787<sup>130</sup> as compared to 95,000 in 2011.<sup>131</sup> On 1/11/2012, Home Minister, Hishammuddin Hussein disclosed that 35,000 non-citizens were whipped under S6(1) of the Immigration Act 1959/63 from 2005 to 2012. A total of 32,664 (93.3%) were found to have violated the Immigration Act 1959/63 while the remaining 2,336 (6.7%) were found guilty under the Penal Code, Dangerous Drugs Act 1952 and Drug Dependents (Treatment and Rehabilitation) Act 1983.<sup>132</sup>

On 12/2/2012, the Malaysian government deported an asylum seeker to Saudi Arabia where he faced the immediate risk of a death sentence for act of apostasy.<sup>133</sup> The 23-year old who was en-route to New Zealand to seek political asylum had on Prophet Muhammad's birthday tweeted "...I have loved things about you and I have hated things about you and there is a lot I don't understand about you. I will not pray for you..." The tweet had sparked more than 30,000 responses and several death threats. Hamza Kashgari has profusely apologized for his tweet but that did not stem the outrage especially when the King of Saudi Arabia had ordered his arrest.<sup>134</sup>

In an unusual court sitting on a Sunday, human rights lawyers, N. Surendran together with Fadiyah Nadwa Fikri had successfully secured an interim injunction to stop Kashgari's deportation but upon rushing to the airport, Fadiyah was informed by the Immigration that Kashgari had already been deported. Outraged by the foul play, N. Surendran stated that the Home Ministry and police have withheld crucial information as to Kashgari's whereabouts and that the deportation plans were deliberate and unlawfully withheld from the lawyers.<sup>135</sup>

Senior Middle East researcher of Human Rights Watch, Christoph Wilcke had earlier called on the Malaysian government not to be "...complicit in sealing Kashgari's fate by sending him back..."<sup>136</sup> Equally outraged, President of the Malaysian Bar, Lim Chee Wee stated that

130 Pemberitahuan Pertanyaan Dewan Rakyat daripada pertanyaan Datuk Paduka Abu Bakar bin Taib kepada Perdana Menteri bertarikh 18/10/2012, soalan 27

131 Refugees, Asylum Seekers, Undocumented Migrants and Trafficked Persons, SUARAM's Malaysia Human Rights Report 2011, Civil & Political Rights

132 35,000 foreigners whipped since 2005, freemalaysiatoday, 1/1/2012, <http://www.freemalaysiatoday.com/category/nation/2012/11/01/35000-foreigners-whipped-since-2005/> (last accessed: 24/11/2012)

133 Malaysia deports Saudi journalist Hamza Kashgari, BBC News Asia, 12/2/2012, <http://www.bbc.co.uk/news/world-asia-17001900> (last accessed: 26/11/2012)

134 Saudi detained in Malaysia for insulting Prophet tweet, BBC News Asia, 10/2/2012, <http://www.bbc.co.uk/news/world-asia-16977903> (last accessed: 26/11/2012)

135 M'sia deports Saudi journalist Kashgari, Malaysiakini, 12/2/2012, <http://www.malaysiakini.com/news/188896> (last accessed: 26/11/2012)

136 ibid

“...it would appear that the Malaysian government has sacrificed Hamza Kashgari’s liberty and life for the sake of diplomatic expediency. This must not be repeated...”

Kashgari was reportedly to have repented before a syariah court in Riyadh in the presence of his family and that it is likely that he will face a lighter sentence. However, mounting pressures to execute Kashgari is rising by the day with scholars saying that anyone who insults the Prophet should be killed.<sup>137</sup>

Almost a year after the introduction of the 6P Program, Home Minister Hishammuddin Hussein had on 5/4/2012 announced that the 6P Program will cease operation when it expires on 10/4/2012, citing that information obtained from the program is sufficient for all interested parties.<sup>138</sup> Earlier, *Kajian Politik Untuk Perubahan (“KPRU”)* has pointed out that 6P has failed in several ways and that the focus should be put on resolving corruption, non-citizen oriented economy structure and implementation of policies in relation to non-citizens. Lashing out at 6P, KPRU has claimed that the 6P was used to fund the expenses of 13<sup>th</sup> General Election.<sup>139</sup> It is also revealed that former Home Minister and current MP for Kangar, Mohd Radzi Sheikh Ahmad is a director of *SNT Universal Corporation Sdn Bhd*, an agent appointed by the government in the 6P Amnesty program. Other directors include former president of Jasin City Council, Mustadza Abu Bakar and Malacca Puteri UMNO leader, Rozilahwati Kalil.

Police investigation revealed that SNT had committed several offences including falsely representing itself to non-citizens that it is able to register non-citizens under the 6P program, able to obtain work permits for them and setting up dozens of bogus employment agencies.<sup>140</sup> *Selangor Council Against Human Trafficking (“MAPMAS”)* also released a closed circuit television recording of violent assaults of job-seeking non-citizens by the bogus employment agencies.<sup>141</sup>

Stateless cases in Malaysia escalated at a worrying degree. In June 2012, *Pertubuhan Kebajikan dan Sosial Malaysia* claimed that the Social Welfare Department had failed to issue birth certificates to Malaysian orphans. The Home Ministry has since been asked why 1,758 people who had been under the care of government-operated welfare homes have grown up to be stateless.<sup>142</sup> PKR vice-president, N. Surendran stated that applications made

<sup>137</sup> Apostate Saudi writer repents at court, Emirates 24/7, 8/3/2012, <http://www.emirates247.com/crime/region/apostate-saudi-writer-repents-at-court-2012-03-08-1.447298> (last accessed: 26/11/2012)

<sup>138</sup> Program 6P tidak akan lanjut, Utusan Malaysia, 5/4/2012, [http://www.utusan.com.my/utusan/info.asp?v=2012&dt=0405&pub=Utusan\\_Malaysia&sec=Terkini&pg=bt\\_09.htm](http://www.utusan.com.my/utusan/info.asp?v=2012&dt=0405&pub=Utusan_Malaysia&sec=Terkini&pg=bt_09.htm) (last accessed: 26/11/2012)

<sup>139</sup> Program 6P dijangka gagal, freemalaysiatoday, 2/3/2012, <http://www.freemalaysiatoday.com/category/nation/2012/03/02/program-6p-dijangka-gagal/> (last accessed: 26/11/2012)

<sup>140</sup> Ex-Minister Radzi a boss in rogue 6P firm, freemalaysiatoday, 23/11/2012, <http://www.freemalaysiatoday.com/category/nation/2012/11/23/ex-minister-radzi-a-boss-in-%E2%80%98rogue-%E2%80%99-6p-firm/> (last accessed: 26/11/2012)

<sup>141</sup> CCTV exposes 6P agents abusing foreign workers, freemalaysiatoday, 5/11/2012, <http://www.freemalaysiatoday.com/category/nation/2012/11/05/caught-on-cctv-%E2%80%93-6p-agents-abusing-foreign-workers/> (last accessed: 26/11/2012)

<sup>142</sup> No birth certs for orphans in gov’t welfare homes, Malaysiakini, 4/6/2012, <http://www.malaysiakini.com/news/199871> (last accessed: 24/11/2012)

by Indian Malaysians for blue identity cards and birth certificate were rejected under Article 16 (meant for foreigners) instead of Art 14<sup>143</sup> of the Federal Constitution. He had challenged the cabinet to resolve the long-standing issue within a week as it is duty-bound to guarantee the livelihood of its citizens.

He had also highlighted the plight of many facing difficulties to sit for *Sijil Pelajaran Malaysia* (“*SPM*”) examinations as the main requirement to sit for the examinations is an identity card.<sup>144</sup> Many are still on permanent resident status and hence denied education and employment opportunities. Being non-citizens, they are not covered under the Social Security Organisation or Employee Provident Fund schemes.<sup>145</sup>

In June 2012, more than 3,000 Muslim Rohingyas protested outside the Burmese Embassy demanding urgent international intervention to stop the killings and violence against Muslim Rohingyas. Clashes between the Buddhist Rakhines and minority Muslim Rohingyas had left dozens dead and more than 30,000 displaced.<sup>146</sup>

In August 2012, the *Young Buddhist Association of Malaysia* called for an immediate end of all violence and bloodshed in Arakan against minority Muslim Rohingyas. Official statistics from the *Burma's National Human Rights Commission* showed that at least 78 people were killed whilst Amnesty International recorded about 90,000 were displaced.<sup>147</sup>

In November 2012, Parti Keadilan Rakyat MP for Lembah Pantai, Nurul Izzah Anwar filed a motion to the Dewan Rakyat to debate the bloody ethnic riots between the Rohingyas and Rakhines which has now caused about 200 lives and nearly 30,000 people displaced but it was rejected by the Dewan Rakyat Speaker. It was reported that the motion was rejected because the Foreign Ministry had already addressed the matter through various public statements expressing concerns and intention to provide aid to Burma.<sup>148</sup>

## FREE AND FAIR ELECTIONS

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143 citizenship is by operation of law for persons born before or after Malaysia Day in 1963; while Article 16 states that the federal government may, upon application made by any person of or over the age of 21 years who is not a citizen, grant a certificate of naturalisation to that person if satisfied

144 Gov't classifying stateless Indians as foreigners, Malaysiakini, 25/4/2012, <http://www.malaysiakini.com/news/195991> (last accessed: 24/11/2012)

145 Stateless Indians want PM to end lifelong agony, Malaysiakini, 16/4/2012, <http://www.malaysiakini.com/news/195148>

146 Rohingyas in Malaysia protest violence, Malaysiakini, 15/6/2012, <http://www.malaysiakini.com/news/201008> (last accessed: 24/11/2012)

147 Burmese gov't must end Rohingya massacre, Malaysiakini, 16/8/2012, <http://www.malaysiakini.com/letters/206501> (last accessed: 26/11/2012)

148 Debate over Myanmar violence rejected, freemalaysiatoday, 8/11/2012, <http://www.freemalaysiatoday.com/category/nation/2012/11/08/debate-over-myanmar-violence-rejected/> (last accessed: 24/11/2012)

The Parliamentary Select Committee ("**PSC**") on Electoral Reform which was formed in August 2011 completed its nationwide public hearing sessions on 13/1/2012. The Election Commission ("**EC**") has agreed to implement seven out of ten proposals presented by the PSC for electoral reform in the coming 13<sup>th</sup> general election. The seven proposals are: use of indelible ink; early voting; electoral roll display up to 14 days; abolishing objection process and withdrawal period of candidates; cleaning up the electoral rolls and strengthening the EC.

The PSC report was tabled in the Parliament on 3/4/2012. However, BERSIH 2.0 has argued that the PSC report failed in five key areas, namely, manipulation of electoral roll by the National Registration Department ("**NRD**") and EC; manipulation of citizenship-for-votes; enhancing the problems and infringements of Election Offences Act 1954; inviting international observers; and a plan to stop dirty politics. Eighteen out of the 22 recommendations also do not set out a time-frame for implementation.<sup>149</sup>

Deputy Chairman of EC, Datuk Wira Wan Ahmad Wan Omar has further set a condition to allow overseas voters to cast their ballot only if they return to Malaysia at least once every 5 years to show their loyalty to the country.<sup>150</sup>

The use of indelible ink was mooted and approved by the PSC. The EC has adopted an approach by inking the voter's finger before casting the ballot. BERSIH 2.0 has slammed the process by saying that it is "fraught with unfair procedures and delays". The coalition argues that the inking would run the risk of smudging the ballot paper which will then invalidate it. It also runs the risk of obstructing the critical path of other voters. Thus, the process would likely cause delays and overcrowding at polling centres as the inking process would take at least one minute per voter.<sup>151</sup>

On 25/5/2012, Merdeka Centre released the results of a survey done three weeks prior to BERSIH 3.0 rally. The results revealed that 92% of respondents wanted the electoral roll cleaned up before the next general election while nearly half of the respondents expressed distrust of the electoral system. Only 37% thought postal voting was transparent and unbiased<sup>152</sup> whilst most respondents felt that there were irregularities in the roll including doubtful voters such as foreigners, people transferred without their knowledge or people with multiple identities.<sup>153</sup>

Irregularities in the electoral roll were highlighted in several cases pointed out by Ong Kian Ming, project director of Malaysia Electoral Roll Analysis Project ("**MERAP**"). In May 2012, Ong identified two individuals with identity card numbers registered under their names

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149 BERSIH 2.0: PSC report fails in five key areas, Malaysiakini, <http://www.malaysiakini.com/news/194007> (last accessed: 23/11/2012)

150 Malaysians overseas may get to vote in next polls, Malay Mail, 9/10/2012 <http://www.mmail.com.my/story/malaysians-overseas-may-get-vote-next-polls-32720> (last accessed: 23/11/2012)

151 Inking process needs fine-tuning, says BERSIH, Malaysiakini, 12/11/2012, <http://www.malaysiakini.com/news/214077> (last accessed: 23/11/2012)

152 DAP: Survey results show BERSIH 3.0 justified, Malaysiakini, 26/5/2012, <http://www.malaysiakini.com/news/199085> (last accessed: 23/11/2012)

153 92pct M'sians want voters roll cleaned up before GE, Malaysiakini, 25/5/2012, <http://www.malaysiakini.com/news/199051> (last accessed: 23/11/2012)

but with different dates of birth.<sup>154</sup> In June 2012, Ong discovered another four individuals whose identity card numbers were not reflective of their dates of birth. Falling short of an explanation on the discrepancies, the EC stated that it has no right to either reject or remove them from the electoral roll (still valid) as long as the details match the records in the National Registration Department database.<sup>155</sup>

On 28/5/2012, Information, Communications and Cultural Minister Rais Yatim prepared a cabinet paper on equal media access to political parties to present their election manifestos. Rais Yatim reportedly said that manifestos would be aired depending on their newsworthiness. BERSIH 2.0 condemned the paper, saying that it does not even scratch the surface of fulfilling the demands for free and fair access to the media.<sup>156</sup>

Other irregularities found in the electoral roll included: questionable numbers of voters registered in one home; postal voters being allowed to cast their vote 72 hours prior to voting day; 1,000 voters more than 100 years old; 18 voters born before 1900 with the oldest born in 1853; incomplete home addresses; immediate approval of identity cards to foreigners to enable them to vote.<sup>157</sup>

## LAW AND THE JUDICIARY

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Two cases of child rape came to public attention after both accused were sentenced to good behaviour bonds. The first case reported concerned a national bowler, Noor Afizan who had earlier pleaded guilty to raping a 13-year old girl at Ayer Keroh, Malacca.<sup>158</sup> On 8/8/2012, after a successful appeal by the prosecution, the Court of Appeal bench led by President Raus Md Sharif bound Noor Afizal Azizan over on good behaviour for five years, in a sum of RM25,000.00 setting aside the 5 year imprisonment imposed by the Malacca High Court. “He still had a bright future ahead of him” was one of the reasons national bowler Noor Afizal was spared imprisonment. However, the Court of Appeal President said the decision should not be construed to apply to all young offenders in similar cases.<sup>159</sup>

Then on 28/8/2012, the Sessions Court in Penang bound Chuah Guan Jiu over on good behaviour for three years, in the sum of RM25,000.00 after he was found guilty of raping a 12-year old girl. Mirroring Nor Afizal’s case, Judge Nisa Abdul Aziz said Chuah was young

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<sup>154</sup> EC corrects yet another error in electoral roll, Malaysiakini, 29/5/2012, <http://www.malaysiakini.com/news/199316> (last accessed: 23/11/2012)

<sup>155</sup> IC numbers don’t match DOB? Still valid, says EC, Malaysiakini, 9/6/2012, <http://www.malaysiakini.com/news/200376> (last accessed: 23/11/2012)

<sup>156</sup> BERSIH says airtime for manifestos not enough, Malaysiakini, 28/5/2012, <http://www.malaysiakini.com/news/199289> (last accessed: 23/11/2012) (last accessed: 23/11/2012)

<sup>157</sup> For more details, please visit [www.bersih.org](http://www.bersih.org)

<sup>158</sup> Did fame save rapist bowler from jail, asks MP, Malaysiakini, 9/8/2012, <http://www.malaysiakini.com/news/205926> (last accessed: 21/11/2012)

<sup>159</sup> Man spared jail for statutory rape of 12-year old, Malaysiakini, 29/8/2012, <http://www.malaysiakini.com/news/207380> (last accessed: 21/11/2012)

and had a bright future.<sup>160</sup> However, after hearing the submission from the prosecutor on appeal, Penang High Court Judge Datuk Seri Zakaria Sam overturned the Sessions Court decision and sentenced Chuah to five-and-a-half year's imprisonment.<sup>161</sup>

Following this, de facto Law Minister, Nazri Aziz announced that S376 of the Penal Code would be amended to provide that S294 of the Criminal Procedure Code would not apply to statutory rape cases.<sup>162</sup> The government is currently studying the amendment to the Penal Code.

The Security Offences (Special Measures) Act 2012<sup>163</sup> ("**SOSMA 2012**") received the Royal Assent from the YDPA Agong on 18/6/2012 and was set to commence on 31/7/2012<sup>164</sup> to replace the Internal Security Act 1960 ("**ISA**"). However, critics abound that the SOSMA is in fact, old wine in new bottle since it still allowed detention without trial and incommunicado detention.<sup>165</sup>

On 2/10/2012, five former ISA detainees i.e Hishamuddin Rais, MP Chua Tian Chang, Badrulamin Bahrom, Saari Sungib and Badaruddin Ismail were awarded RM15,000.00 each for each day of their detention and RM30,000 each as aggravated damages by Kuala Lumpur High Court Judge Lau Bee Lan. Justice Lau further awarded RM60,000.00 in general damages and RM40,000.00 for aggravated and exemplary damages to the plaintiffs in a defamation suit brought by all five of them except Badaruddin Ismail. In her decision, Justice Lau found that the plaintiffs were detained unlawfully and in bad faith, and had been subjected to cruel treatment during their detention.<sup>166</sup>

In May 2012, an amendment to the Evidence Act 1950 was passed in the Parliament. S114A of the Act provides punishment to internet users for any content posted through their registered networks or data processing device. The amendment has reversed the burden of proof to the accused person, failing which an author is liable whenever unlawful materials are published in the author's name, blog or website or even transmitted from any individual's computer. The burden to prove otherwise now rests squarely on the accused person. The amendment could be open to abuse by the investigators and force an innocent party to rebut the presumption of guilt at serious risk of wrongful prosecution and injustice.<sup>167</sup> Responding to the critics on the reversal of burden of proof, Malaysian Communications and Multimedia Commission chairman said that if an

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160 ibid

161 Good behaviour bond overturned, Malay Mail, 20/11/2012 <http://www.mmail.com.my/story/good-behaviour-bond-overturned-38060> (last accessed: 22/11/2012)

162 Statutory rape: Consult before changing law, Malaysiakini, 14/10/2012, <http://www.malaysiakini.com/news/211665> (last accessed: 22/11/2012)

163 Passed in Dewan Rakyat on 17/4/2012, passed in Dewan Negara on 9/5/2012

164 [http://www.federalgazette.agc.gov.my/eng\\_main/main\\_akta.php?jenis\\_akta=Baru](http://www.federalgazette.agc.gov.my/eng_main/main_akta.php?jenis_akta=Baru) (last accessed: 21/11/2012)

165 Security Offences (Special Measures) Act 2012, Act 747

166 Five ex-ISA detainees awarded RM4mil in damages, Malaysiakini, 2/10/2012, <http://www.malaysiakini.com/news/210553> (last accessed: 21/11/2012)

167 The Sun Daily, 21/5/2012, Michelle Chun

accused can produce witnesses to say that he/she is nowhere near his/her computer or any other communicating device at the material time, he/she can get off. Minister in the Prime Minister's Department, Nazri Aziz said that the Government does not want to stifle anyone's freedom of expression but does not want people to slander or threaten others.<sup>168</sup>

In March 2012, de facto Law Minister, Nazri Aziz revealed that the government may replace the death penalty for drug offenders with a prison term, whilst acknowledging that the law only punishes drug mules and not the baron themselves. Home Minister Hishammuddin Hussein had said that the death penalty had not succeeded in deterring offenders under S39B Dangerous Drugs Act 1952, i.e there were 2,955 cases in 2009, 3,700 cases in 2010 and 3,845 cases in 2011.<sup>169</sup> This would in effect entail reprieves for about 900 offenders on death row. He was, however quick to distinguish murder cases where there are many differing opinions that are inclined towards the eye for an eye sentencing policy.<sup>170</sup>

Consequently, 79 organisations, including SUARAM called for the abolition of the death penalty and demanded an immediate moratorium on all executions pending abolition. The organisations also called on the government to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.<sup>171</sup> The next step must be for a moratorium on the use of death penalty, which must culminate in the abolition of the penalty as it amounts to barbarity to society and legitimizes the taking of human lives.<sup>172</sup>

## **HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)**

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SUHAKAM has lived up to its re-gained National Human Rights Institution ("*NHRI*") A-status since 2009. In 2012, SUHAKAM has recorded its firm stand on several main issues namely, the inquiry on BERSIH 3.0, the abolition of death penalty for drug offences, to encourage judges in taking into account of human rights in decision making, a firm stand on freedom of association and a probe into the incident<sup>173</sup> at SK Bihai, Kelantan.

On 21/5/2012, SUHAKAM announced that it has decided to hold a public inquiry into unnecessary use of force by the police during BERSIH 3.0 rally on 28/4/2012. SUHAKAM demonstrated a sense of urgency on the necessity of the inquiry coupled with the obligation

<sup>168</sup> Cyber bullies and stalkers often get away because of lack of evidence, thestaronline, 27/5/2012, <http://thestar.com.my/news/story.asp?file=/2012/5/27/nation/11367864&sec=nation> (last accessed: 21/11/2012)

<sup>169</sup> Death penalty not deterring drug trade, freemalaysiatoday, 19/3/2012, <http://www.freemalaysiatoday.com/category/nation/2012/03/19/death-penalty-not-deterring-drug-trade/> (last accessed: 21/11/2012)

<sup>170</sup> Drug-related executions on hold, freemalaysiatoday, 24/10/2012, <http://www.freemalaysiatoday.com/category/nation/2012/10/24/drug-related-executions-on-hold/> (last accessed: 21/11/2012)

<sup>171</sup> Media Statement dated 3/11/2012, Charles Hector "Call for the Abolition of the Death Penalty in Malaysia"

<sup>172</sup> Malaysian Bar welcomes proposal to give Judges discretion on death sentence, 20/7/2012, [http://www.malaysianbar.org.my/press\\_statements/malaysian\\_bar\\_welcomes\\_proposal\\_to\\_give\\_judges\\_discretion\\_on\\_death\\_sentence.html](http://www.malaysianbar.org.my/press_statements/malaysian_bar_welcomes_proposal_to_give_judges_discretion_on_death_sentence.html) (last accessed: 21/11/2012)

<sup>173</sup> Please refer to FREEDOM OF RELIGION, SUARAM's Overview 2012

to carry out its own inquiry pursuant to its mandate as provided under the Human Rights Commission of Malaysia Act 1999. Referring to former Inspector-General of Police, Tun Hanif Omar who also intent to head an inquiry on the subject but had yet to obtain the terms of reference from the Home Minister, the Commission states “...*the commission had wanted to wait, but can no longer await the release of the terms of reference of the independent panel established by the government as they have yet to finalised...*”<sup>174</sup>

Tun Hanif’s credibility as the panel chief was questioned especially after he said that he identified communist elements in the rally. He was reportedly said that he recognised participants from the rally who were involved in 1970s pro-communist demonstrations and his support to Najib’s *coup d’état theory*<sup>175</sup> *Despite mounting pressure from the public, Home Minister Hishammuddin Hussein maintained that the government will not bow to pressure over calls to remove and change the panel chief.*<sup>176</sup>

SUHAKAM has consistently called on the government to consider a moratorium on the death penalty for drug offences or commuting this form of punishment to life imprisonment. It also called upon the government to review the relevance and effectiveness of capital punishment and to join other 140 United Nations member states to completely abolish the death penalty. Adding that the move is in line with a person’s right to life and the right not to be subject to torture, cruel, inhuman or degrading treatment and punishment as provided in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>177</sup>

In September 2012, Chairperson Tan Sri Hasmy Agam, in a 2 day colloquium with the country’s top judges had urged judges to take into account human rights and international conventions in arriving at decisions, even though these were not expressly laid out in law. He also urged the courts to interpret and breathe life into international laws in Malaysian courts, otherwise, it is futile to signify and ratify the said laws. Citing that these international laws have yet to be encoded into Malaysian laws, as much as judges are facing constraints, they should also be able to ensure that the United Nations Declaration of Human Rights and the Charter of United Nations are taken into account when arriving at decisions.<sup>178</sup>

In October 2012, in reply to SUARAM’s Memorandum to the commission dated 21/9/2012 pertaining to the intimidation and harassment of government and its agencies against SUARAM, SUHAKAM stated that freedom of expression and association are central and guaranteed under the Federal Constitution of Malaysia and in the Universal Declaration of

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<sup>174</sup> SUHAKAM to probe police violence during BERSIH 3.0, Malaysiakini, 21/5/2012, <http://www.malaysiakini.com/news/198608>

<sup>175</sup> Ex-IGP: Pro-communist elements in BERSIH 3.0, Malaysiakini, 1/5/2012, <http://www.malaysiakini.com/news/196640> (last accessed: 22/11/2012)

<sup>176</sup> Hishammuddin: Hanif stays as panel chief, period, Malaysiakini, 12/5/2012, <http://www.malaysiakini.com/news/197718> (last accessed: 22/11/2012)

<sup>177</sup> Proposed review of the death penalty for drug offences is welcomed, Press Statement dated 22/10/2012, Tan Sri Hasmy Agam, SUHAKAM, [http://www.suhakam.org.my/c/document\\_library/get\\_file?uuid=19ee953b-a70b-4347-bef4-1a2f2562b6da&groupId=794910](http://www.suhakam.org.my/c/document_library/get_file?uuid=19ee953b-a70b-4347-bef4-1a2f2562b6da&groupId=794910)

<sup>178</sup> Consider human rights in judgments, urges SUAHAKAM, Malaysiakini, 23/9/2012, <http://www.malaysiakini.com/news/209678> (last accessed: 22/11/2012)

Human Rights. SUHAKAM also pointed out that the Universal Declaration on Human Rights Defender recognises human rights defenders and its legitimate activities to promote and protect human rights including the receipt foreign funds. The commission added that human rights defender should be allowed to function freely, operate in an enabling and safe environment, and have the freedom to determine their status, structure and activities.<sup>179</sup>

On 23/10/2012, upon receiving a complaint to investigate an incident involving the slapping of 4 orang asli children by a teacher from SK Bihai Parent-Teacher Association chairperson, Arom Asir, SUHAKAM has conducted a study on the incident and had a meeting with Arom and the parents on 23/10/2012. SUHAKAM had also attended a dialogue on the incident among the parents, the Education Department, JAKOA, Bar Council representative, Siti Kassim and about 30 government and NGO representatives on 30/10/2012.<sup>180</sup>

However, it is important that the Human Rights Commission of Malaysia Act 1999 be debated in Parliament to include powers to compel actions to be taken against violators in addition to the powers to hold inquiries and make recommendations. We hope that SUHAKAM will continue to be proactive in issues of human rights and civil liberties and even drafting alternative human rights-based bills for the people.

## **COMPETENCY, TRANSPARENCY AND ACCOUNTABILITY**

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On 31/5/2012, former Women and Family Development Minister Shahrizat Abdul Jalil was cleared of involvement in the multi million ringgit National Feedlot Corporation<sup>181</sup> (“**NFC**”) project run by her family with a government loan amounting to RM250 million.<sup>182</sup> Malaysian Anti-Corruption Commission’s (“**MACC**”) Operations Review Panel chief, Hadenan Abdul Jalil said that the panel had decided to wrap up the matter.<sup>183</sup>

Shahrizat’s husband who is also the Chairman of NFC, Mohd Salleh Ismail was charged with four counts under S409 of the Penal Code and S132 of the Companies Act 1965 for criminal breach of trust.<sup>184</sup> Salleh was alleged to have channeled a large portion of the loan into investments not related to the cattle rearing business including the purchase of two luxurious condominiums in Kuala Lumpur, a prime piece of land in Putrajaya, a restaurant business and a supermarket in Singapore.<sup>185</sup>

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179 The work of human rights defenders must be respected and recognized, Press Statement dated 1/10/2012, Tan Sri Hasmy Agam, SUHAKAM, [http://www.suhakam.org.my/c/document\\_library/get\\_file?uuid=5d1cbc2c-2712-42a7-b810-c04670b4468a&groupId=794910](http://www.suhakam.org.my/c/document_library/get_file?uuid=5d1cbc2c-2712-42a7-b810-c04670b4468a&groupId=794910)

180 Agencies to apologise over Orang Asli kids’ slapping, Malaysiakini, 2/11/2012, <http://www.malaysiakini.com/news/213241> (last accessed: 1/12/2012)

181 [www.nfc.com.my](http://www.nfc.com.my)

182 NFC Corp ‘breached loan terms’, News Straits Times, 15/2/2012, <http://www.nst.com.my/top-news/nfc-corp-breached-loan-terms-1.46863> (last accessed: 7/12/2012)

183 MACC clears Shahrizat of NFC contract, loan award, Malaysiakini, 31/5/2012, <http://www.malaysiakini.com/news/199533> (last accessed: 15/11/2012)

184 NFC boss claims trial to 4 charges, Malaysiakini, 12/3/2012, <http://www.malaysiakini.com/news/191815>

Unfortunately, the whistleblowers, Parti Keadilan Rakyat strategy director, Rafizi Ramli and former bank clerk, Johari Mohamad were charged under S97 and S112 (1)(c) of the Banking and Financial Institutions Act 1989 respectively for disclosing and abetting to disclose financial accounts related to NFC. Rafizi was arrested at 6:50AM by five police officers and five Bank Negara officers at his residence and charged in court on the same day.<sup>186</sup>

Whistleblower website Sarawak Report has revealed documents purported from the Independent Commission Against Corruption (“*ICAC*”) which reveal millions of Euro and US, Singapore and Hong Kong dollars had flowed from certain companies into accounts managed by timber trader Micheal Chia and his nominees and finally to Sabah Chief Minister Musa Aman’s account in Zurich. On 14/8/2008, Micheal Chia was caught red-handed at Hong Kong International Airport with about RM40 million in his luggage before boarding his flight to Kuala Lumpur.

To this, Kota Belud MP Abdul Rahman Dahlan<sup>187</sup> and Minister in the Prime Minister’s Department, Nazri Aziz had stated that the RM40 million was political contribution to Sabah UMNO and not for Musa Aman and that the MACC had concluded that no element of corruption was proven in the case.<sup>188</sup> This was despite the fact that MACC Deputy Chief Commissioner, Mohd Shukri Abdull stated that the investigation against Musa Aman has completed but the operation evaluations panel has instructed Shukri’s team to obtain more evidence before the matter can proceed to prosecution.<sup>189</sup>

Accusing Nazri of conflict of interest when clearing Musa and Micheal Chia, Parti Keadilan Rakyat strategy director, Rafizi Ramli’s produced photographic evidence that showed Nazri’s son, Nedim using a luxurious vehicle registered in Micheal Chia’s name. Stressing that it was a personal arrangement between Nedim and Chia, Nazri stated “...*I don’t sleep with my son. I am not gay. My son is not my wife; my son is not my lover. What he does, he doesn’t tell me...*”<sup>190</sup>

This has led to former MACC adviser, Robert Phang commenting that it would put a damper on the Government’s Transformation Plan if this case is not done transparently as it will set a bad precedent. He called on the Prime Minister to seriously look at the adverse effects of the case and the message it carried. He also noted that there was no independence in the MACC

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<sup>185</sup> NFC blames Agro Ministry for shortfall, Malaysiakini, 17/10/2012, <http://www.malaysiakini.com/news/211963> (last accessed: 15/11/2012)

<sup>186</sup> PKR’s Rafizi arrested, charged under Bafia, Malaysiakini, 1/8/2012, <http://www.malaysiakini.com/news/205129> (last accessed: 15/11/2012)

<sup>187</sup> RM40mil- ICAC quizzed Sabah CM and cleared him, Malaysiakini, 22/10/2012, <http://www.malaysiakini.com/news/212378>

<sup>188</sup> RM40mil smuggled cash not for Musa but for Sabah UMNO, Malaysiakini, 11/10/2012, <http://www.malaysiakini.com/news/211387> (last accessed: 15/11/2012)

<sup>189</sup> Anti-graft panel wants more evidence against Sabah CM, Malaysiakini, 5/10/2012, <http://www.malaysiakini.com/news/210860> (last accessed: 15/11/2012)

<sup>190</sup> Nazri: My son is not my wife, he doesn’t tell me what he does, freemalaysiatoday, 1/11/2012, <http://www.themalaysianinsider.com/malaysia/article/nazri-my-son-is-not-my-wife-he-doesnt-tell-me-what-he-does/> (last accessed: 15/11/2012)

investigations as heads of legal and prosecution are representatives of the Attorney General's Chambers.<sup>191</sup>

## CONCLUSION

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In 2012, the promised reforms by Prime Minister Najib Razak never came. In its 23 years' existence, SUARAM has never faced such an unprecedented barrage of vindictive actions coordinated by no less than six government agencies under executive orders with the mainstream press in concert. All this was in response to SUARAM's legitimate complaint to the French courts to probe suspected corruption in the Scorpene submarine deal.

The fundamental liberties of Malaysians remain restricted, with continuing detention without trial, more deaths in police custody and police shootings, gross injustices to migrants, suppression of the freedom of expression and information and selective prosecution under the new Peaceful Assembly Act 2012.

There have been hopeful developments in the Malaysian judiciary although developments in the law have been negative. We are encouraged to note that the actions and positions taken by the National Human Rights Commission SUHAKAM in 2012 have been laudable.

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<sup>191</sup> Phang: Unusual precedent being set over RM40mil affair, Malaysiakini, 25/10/2012, <http://www.malaysiakini.com/news/212638> (last accessed: 15/11/2012)

SUARAM is committed to defending and campaigning for human rights in Malaysia and other parts of the world. The organisation began in 1989 as a campaign body for the abolition of the Internal Security Act (ISA) in the aftermath of the infamous *Operasi Lalang* when 106 Malaysians were detained without trial. Since then, it has evolved into the leading human rights organisation in Malaysia, committed to protecting, preserving and promoting human rights.

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