

Malaysia

Civil and Political Rights Report 2009 Overview

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INTRODUCTION

In April 2009, Najib Razak succeeded Abdullah Badawi as the Prime Minister of Malaysia. Like his predecessors, Najib promised reforms and greater respect for human rights and civil liberties by announcing the release of 13 Internal Security Act (ISA) detainees, the lifting of the ban on two news publications, and the review of the ISA – all on the very first day of his premiership.

While announcing a review of the ISA in 2009, the government has not signified any intention to repeal the law, which is the demand of 83 organisations in Malaysian civil society. At the end of 2009, nine detainees still remained in detention under the ISA. While the government announced that the ISA will be amended, two other detention-without-trial laws, namely the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EO) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA), were ignored by the government despite their similarities with the ISA. As the year draws to a close, it is clear that the government has no intention of repealing the ISA.

As soon as the new Prime Minister assumed power, the Barisan Nasional (BN) government acted to recover its losses suffered during the 2008 General Election. In this process, they have incurred various human rights violations and further compromised the integrity of several institutions, including the judiciary, the police, and the Malaysian Anti-Corruption Commission (MACC).

This was notably seen in the Perak constitutional crisis, during which the Pakatan Rakyat-controlled state government fell under the control of the BN as a result of the defection of three Pakatan Rakyat state representatives to become “BN-leaning” independent assemblypersons.

In this crisis, the police, state civil servants, the judiciary and the monarchy have all played questionable roles. The Sultan of Perak, in February, issued a statement ordering the incumbent Menteri Besar of Perak from Pakatan Rakyat, Mohd Nizar Jamaluddin, to resign, thus in effect consenting to the BN’s takeover of the Perak state government. While the Kuala Lumpur High Court later ruled that the Sultan of Perak

cannot dismiss the Menteri Besar, this decision was quickly overturned by the Court of Appeals. Even while this dispute was still unresolved, Mohd Nizar and his state executive councillors from Pakatan Rakyat were denied entry into the Perak State Secretariat building. In another instance, Perak State Assembly Speaker Sivakumar from Pakatan Rakyat was forcibly dragged out from State Assembly Hall by several uniformed police personnel when he presided over a State Assembly session during this dispute.

The Perak crisis also saw a massive crackdown on the freedoms of speech, expression and assembly. In May alone, a total of 167 arrests were made in Kuala Lumpur, Perak and Penang – all within a period of 20 days – in relation to protests against the unconstitutional regime change in Perak, including for wearing black, fasting and holding candlelight vigils. This marks an increased level of intolerance shown by the government under Najib Razak towards dissent and opposition as compared to that of his predecessor.

Law enforcement agencies continued to operate with lack of accountability and impunity despite numerous recommendations by bodies like the Human Rights Commission of Malaysia (SUHAKAM) and the Royal Commission on the Police. SUARAM recorded 7 cases of death in custody through media monitoring between 1 January 2009 and 5 December 2009. In July, Teoh Beng Hock, an aide of a politician from the Democratic Action Party (DAP), died while in the custody of the MACC.

In the treatment of refugees, at least two international reports in 2009 have highlighted the collusion of Immigration Department authorities in the trafficking of refugees to the Malaysia-Thailand border.

The government's efforts to restore the integrity and independence of the judiciary fell short of the expectations of civil society including the Bar Council. The Judicial Appointments Commission set up in 2009 vests too much power in the Prime Minister and lacks civil society representation. Justice was not seen to be done when the government decided to drop the case of senior lawyer V.K. Lingam, who was exposed in a video clip in 2007 attempting to influence the former Chief Justice over the appointments of judges.

The government also attempted to avoid international embarrassment over its human rights record by amending the enabling law of SUHAKAM twice in 2009, when the Commission was facing possible downgrading by the International Coordinating Committee of National Human Rights Institutions (ICC). Still, the government's abysmal record at the international level remains – it has to date only ratified two of the nine core international human rights treaties and still refuses to ratify the rest despite being urged to do so by the international community.¹

The BN government has tried to silence people such as Raja Petra Kamaruddin who raise questions surrounding the murder of the Mongolian national, Altantuya Shaariibuu and her former liaison with the present Prime Minister. Raja Petra has been charged with sedition but he has since evaded arrest. The disappearance of the private investigator, Balasubramaniam soon after his statutory declaration implicating the Prime Minister and his recent exposé on *Youtube* further brings into suspicion an attempt by the powers-that-be to cover up the truth behind the murder of Altantuya and her links to kickbacks surrounding the Scorpene submarine deal by the Ministry of Defence when Najib was the minister.

The even more recent scandal surrounding the racist and anti-Opposition propaganda by the Biro Tatatertib Negara (National Civics Bureau) in its courses to civil servants and tertiary institutions' students has exposed the hollowness of Najib's "1Malaysia" slogan.

RACISM, RACIAL DISCRIMINATION AND RELATED INTOLERANCE

In Najib Razak's inaugural speech as Prime Minister on 3 April 2009, he introduced the "1Malaysia" concept, which proclaims equality amongst all Malaysians and is intended to be the guiding philosophy of his

¹ See, for instance, Report of the Working Group on the Universal Periodic Review of Malaysia, A/HRC/11/30, 3 March 2009.

administration. In an apparent demonstration of his political will to carry out reforms, on 30 June 2009, the Prime Minister also announced the removal of the 30% Bumiputera equity quota for companies seeking to list on Bursa Malaysia.

However, the government still refuses to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) while other policies institutionalising racial discrimination, such as the “bumiputeras-only” policy of the public sector Universiti Teknologi Mara (UiTM), remain unchanged.

In November, a controversy surrounding the Biro Tatanegara (National Civics Bureau) course surfaced when the Selangor state government announced that it will bar its state civil servants and students in all Selangor state-owned academic institutions from attending the course, claiming that it is a “racist propaganda”. The Biro Tatanegara course, which is catered for civil servants and university students who are on public scholarships, has long been criticised for its racist contents. However, in response to the allegations, Deputy Prime Minister Muhyiddin Yassin defended the course as a form of nationalism in line with the 1Malaysia concept.

Religious intolerance also continued to be tolerated, as was seen in August, when the government initially tolerated the actions of a group of Muslims who carried a slaughtered cow’s head to protest the relocation of a Hindu temple to a predominantly Muslim neighbourhood. Only after widespread protests and indignation did the authorities change its attitude and the ringleaders were finally apprehended.

In July, Kartika Sari Dewi Shukarno, a 32-year-old woman was sentenced to six strokes of the cane by the Syariah Court in the state of Pahang after she pleaded guilty to consuming alcohol. The Joint Action Group for Gender Equality (JAG) and Sisters in Islam (SIS) campaigned against this sentence and in October, several Malay- and Islamic-based groups, including the United Malays National Organisation (UMNO), the Muslim Youth Movement of Malaysia (ABIM) and Jamaah Islah Malaysia (JIM), lodged police reports against these two women’s groups. They accused JAG and SIS of insulting Islam and called for the use of the Sedition Act

against them and on 4 November 2009, two representatives of SIS were called by the police to give their statements for investigations under the Sedition Act.

DETENTION WITHOUT TRIAL AND RESTRICTION OF MOVEMENT

Picking up from the momentum of the anti-ISA movement in 2008, when even component parties of the ruling coalition and a Cabinet Minister (who later resigned) spoke out against the ISA, 1 August 2009 saw the biggest anti-ISA protest to date when more than 30,000 took part in a demonstration in the capital Kuala Lumpur.

As a result of increasing public calls for the ISA to be abolished, the government announced that it would amend the Act. However, it did not indicate any intention to review the other emergency and anti-subversion laws and measures, namely, the EO and the DDA, which also provide for indefinite detention without trial.

In 2009, the government made seven arrests under the ISA, while 39 individuals were released. As of 1 December 2009, nine detainees are still being detained without trial under the ISA. This number includes Shamsuddin Sulaiman, an alleged Jemaah Islamiah member who has been detained under the ISA since 2002.

In addition to the ISA, an estimated total of over one thousand individuals, including minors, are currently being detained under the EO and the DDA at the Simpang Renggam Detention Camp in Johor.

In February, Malaysia's human rights record was reviewed by the United Nations Human Rights Council under the newly-established Universal Periodic Review (UPR) mechanism. Among the key concerns and recommendations made during the review was for the repeal of detention-without-trial laws. The Malaysian government was also urged by United Nations member states to extend invitations to the United Nations' Special Procedure Mandate Holders (experts or groups of experts on various

respective human rights areas), including the Working Group on Arbitrary Detention, which in 2008 made a request for a country visit to Malaysia in light of the many arbitrary detentions made under the three detention-without-trial laws. In June, during the adoption of the review of Malaysia by the United Nations Human Rights Council, the Malaysian government said that it was “positively considering” extending an invitation the United Nations Working Group on Arbitrary Detention to undertake a country visit to Malaysia.² However, up until December 2009, no invitation had been made.

On 16 September, Home Minister Hishammuddin Hussein said, “[The] Kamunting [Detention Camp] is there for a reason because it is to protect [the country] against threat to security.” The minister added, “If there are people out there who are threats to national security, I will fill Kamunting to the brim.”³ The Home Minister’s statement demonstrated that the government has no intention to repeal the ISA despite its highly publicised intention to review the Act.

On 29 October, Hishammuddin announced that five areas of the ISA would be amended, namely, the length of detention periods, rights and treatment given to detainees and their families, the power of the Home Minister in issuing detention orders, the use of ISA for political reasons, and detention without trial under the ISA. The minister also said that feedback had been obtained from various parties and that the amendments were being fine-tuned so that they can be tabled before the end of the ongoing session of Parliament which is scheduled to end on 15 December 2009.⁴ Despite announcing that feedback on the proposed amendments

² Malaysia (2009) “Statement by H.E. Othman Hashim, Pemanent Representative of Malaysia on the Adoption of Malaysia’s Universal Periodic Review Outcome Report, 11th Session of the United Nations Human Rights Council, 2-18 June 2009”, Geneva, Switzerland, 12 June 2009.

³ “Government will maintain Kamunting to combat threat to security”, *Bernama*, 16 September 2009, <http://www.bernama.com/bernama/v5/newsgeneral.php?id=440888>

⁴ “Even sceptics will be pleased with ISA changes: Hisham”, *The Star*, 29 October 2009, <http://thestar.com.my/news/story.asp?file=/2009/10/29/nation/20091029194025&sec=nation>

had been obtained from various parties, details of the proposal have not been made available to NGOs, including those monitoring detentions without trial. As of 5 December 2009, the amendments have yet to be tabled in Parliament or made public.

Most detainees released from the ISA, the EO or the DDA are given certain conditions before their release, including strict restrictions on their movements under the Restricted Residence Act (RRA). For example, Mat Sah Satray, who was released on 15 September 2009, is required to report to the police on every Monday and prohibited from leaving his residential area of Ampang and being outdoors from 9pm to 6am daily. He is also barred from speaking at public events and taking part in activities of political parties and trade unions. Besides Mat Sah, 21 other individuals were given similar restrictions upon their release in 2009.

ISA detainees who are foreign nationals often face deportation to their home countries, even when the detainee's family has resided in Malaysia. All 16 foreign nationals were deported upon their release from the ISA in 2009.

Violations of freedom of movement continue to occur through the abuse of state autonomy powers of the East Malaysian states of Sabah and Sarawak, in relation to powers over immigration. In recent years, the states' autonomy over immigration controls has been abused by the Sarawak state government in order to stifle dissent in the state. This has been seen in the cases of Sarawakian community leaders who were either denied renewal of their passports or had applications for a new one denied with no reason given, while those from outside Sarawak have been blacklisted and barred from entering the state.⁵

On 14 February 2009, federal opposition Parti Keadilan Rakyat (PKR) Member of Parliament Sivarasa Rasiah was prevented from entering the East Malaysian state of Sarawak. He was informed that he had been

⁵ In SUARAM's 2007 Human Rights Report, two such cases were documented in that year, while many others have been recorded since 1999. See SUARAM (2008) *Malaysia Human Rights Report 2008: Civil and Political Rights*, Petaling Jaya: SUARAM (pp. 110-113).

blacklisted by the state government and was served with an official notice stating that he was not entitled to enter the state without a permit under Section 66(1) of the Immigration Act. His blacklist followed a similar ban on another PKR Member of Parliament, N. Gobalakrishnan, who was denied entry into the state on similar reasons in December 2008.

ABUSE OF POWERS BY THE POLICE AND OTHER LAW ENFORCEMENT AGENCIES

The government's failure to implement reform of the police force, in particular the recommendations made by the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police (Royal Commission on the Police) and the Human Rights Commission of Malaysia (SUHAKAM), has contributed to further human rights violations by the police. This includes unwarranted brutality during peaceful assemblies, the arbitrary detention of protestors, physical abuse and deaths in police custody.

On 21 June, Home Minister Hishammuddin Hussein announced that the government would revisit all 125 recommendations of the Royal Commission on the Police to see if the recommendations had been carried out and if they had made an impact. However, two days later on 23 June, the minister retracted his position by saying that the Home Ministry would come up with a new strategy to boost public confidence in the police force instead of revisiting the 125 recommendations.⁶

On 30 July 2009, the Enforcement Agencies Integrity Commission Bill was passed in Parliament. The new law enables the establishment of the Enforcement Agencies Integrity Commission (EAIC). This falls short of the recommendation made by the Royal Commission on the Police for the government to set up an independent oversight mechanism to monitor the

⁶ "Home Minister backtracks on revisiting Royal Commission report on police", *The Malaysian Insider*, 23 June 2009, <http://themalaysianinsider.com/index.php/malaysia/30298-home-minister-backtracks-on-revisiting-royal-commission-report-on-police>

police force. Unlike the Independent Police Complaints and Misconduct (IPCMC) which was originally proposed by the Royal Commission on the Police, the EAIC does not have powers to prosecute and instead can only refer its investigations to the Attorney-General for prosecution. The Commission will also cover 21 law enforcement agencies, instead of concentrating on the police, despite the fact that most human rights violations are committed by the police force. The wide scope of the Commission raises concerns regarding its effectiveness in handling complaints of abuses of power, especially by the police.

Between 1 January and 5 December 2009, at least 7 deaths in police custody were recorded by SUARAM through media monitoring. Inquests into deaths in police custody generally take a long time to resolve, with many long overdue cases still pending in the courts.

In the case of A. Kugan, who died on 20 January 2009 in the Taipan police station in Subang Jaya, Selangor, an independent post-mortem commissioned by the deceased's family concluded that Kugan had died of kidney failure due to severe beatings. The post-mortem report also stated that Kugan sustained more than 10 severe burn wounds on his back. A first post-mortem and a statement given by the police right after Kugan's death stated that he had died of fluid accumulation in his lungs. In October, one policeman was charged with causing grievous hurt to Kugan.

Numerous cases of deaths by police shootings were reported by the media throughout 2009, including the widely-publicised cases of 6 individuals who were shot dead in Kulim, Kedah in February and 5 individuals who were killed in Klang, Selangor in November. These cases resulted in a public outcry and calls for the police to review its procedures on discharging firearms.⁷ No official number of deaths by police shootings was released by the government in 2009.

⁷ See SUARAM Press Statement, "Weak Procedures and Lack of Accountability in Police Shootings: Government Must Act Immediately to Stop Impunity", 24 November 2009; and also "Shootings: Minister urges cops to review procedures", *Malaysiakini*, 13 November 2009, <http://www.malaysiakini.com/news/117376>

Arbitrary arrests, abuse of remand period and the denial of legal representation for detainees are other examples of abuse of power by the police. Despite the amendments to the Criminal Procedure Code (CPC) in 2007 – which included a new Section 28A, requiring an arresting officer to inform a detainee of the reason for his/her arrest and enabling the suspect to contact his/her lawyer or family free of charge within 24 hours of arrest – many detainees have been denied access to their lawyers. This was seen, for example, in the arrests of 15 individuals during a candlelight vigil in Brickfields, Kuala Lumpur on 7 May. When five lawyers insisted on meeting those who had been arrested, they were themselves arrested by the police.

On 12 June, two members of the Malaysian Youth and Students Democratic Movement (DEMA), Ong Jing Cheng and Yap Heng Lung (now SUARAM campaign coordinator), were detained overnight by the police for allegedly trespassing onto the Universiti Malaya campus in Kuala Lumpur. The two were stopped by university security officers while visiting a friend and a memorandum addressed to the Prime Minister titled “Making our streets safe” was found in their possession. The officers then contacted the police and were brought to the police station to be detained under Section 447 of the Penal Code for “criminal trespass”. On the following day, Ong and Yap were remanded for two days. During the two-day remand period, the two were subjected to interrogation by the Special Branch. They were questioned about various issues and warned not to attend the anti-ISA rally, which was scheduled to take place on 1 August 2009. They were subsequently released on 15 June without being charged.

While the police was quick to arrest participants of public assemblies, it dragged its feet on the alleged rape cases of Penan women and girls in Sarawak which had surfaced in 2008. On 2 January 2009, the police invited several NGO representatives working on these cases to a meeting with the Inspector-General of the Police (IGP) and other senior officers at the police headquarters in Bukit Aman, Kuala Lumpur. At the meeting, the IGP pledged that Bukit Aman would give its fullest support to a Police-NGO joint investigation mission. This was followed by another meeting between the police and Sarawakian NGOs on 20 January 2009 in Kuching to discuss logistics and terms of references for the proposed joint investigation mission. After seven months in August 2009, the police then

announced that its investigation mission to Sarawak would exclude NGOs because of lack of funds. Then on 9 September 2009, the head of Sarawak's police criminal investigations department announced that it had probed three of the complaints but found "nothing with proper evidence for [the police] to proceed in court." He implied that this was partly because "the [NGO] activists did not give specific details to support their claims".⁸

On 14 October, SUARAM's Johor branch secretariat member Cheng Lee Whee was charged under Section 182 of the Penal Code for "false information, with intent to cause a public servant to use his lawful power to the injury of another person", punishable by a jail term of six months, maximum, or a fine of up to RM2000, or both. Cheng claimed trial. The charge against Cheng was in relation to a police report that she lodged in October 2008 against the police for arresting 27 persons during an attempt to stop a forced illegal operation in a village near Johor Baru. Shortly after lodging the report, she was arrested under Section 28 (Dissemination of False reports) of the ISA for "spreading information that could cause fear among the people" but was released the next day after the police had failed to obtain a remand order from the magistrate.

Despite an abysmal human rights track record, IGP Musa Hassan's contract as the chief of the police force was renewed for another year in October 2009. Deputy Home Minister Abu Seman Yusop told the Parliament on 20 October that Musa's contract was renewed because of his "excellent performance".⁹

In July, Teoh Beng Hock, an aide of a politician from the federal opposition Democratic Action Party (DAP), died while in the custody of the Malaysian Anti-Corruption Commission (MACC). Despite calls for a Royal Commission to be set up to investigate into the death of Teoh, the government set up a Royal Commission to study instead the investigative

⁸ "Loggers raped Borneo girls", *Associated Press*, 9 September 2009, http://www.straittimes.com/Breaking%2BNews/SE%2BAsia/Story/STIStory_427600.html

⁹ Abu Seman Yusop, 20 October 2009, Third Meeting of the Second Session of the Twelfth Parliament, Hansard, DR.20.10.2009 (p. 7) <http://www.parlimen.gov.my/hindex/pdf/DR-20102009.pdf>

procedures, leaving the investigation of Teoh's death to an inquest which is headed by only a magistrate.

On 22 July, Kajang councillor Tan Boon Hwa filed a suit claiming that the MACC had falsely imprisoned him when he was detained for questioning during odd hours. He said that he was questioned late into the night together with Teoh Beng Hock on 16 July 2009. On 19 November, the Kuala Lumpur High Court ruled that the MACC is not entitled to interrogate witnesses beyond normal office hours.¹⁰

The anti-corruption body in Malaysia has had a history of human rights abuses by its officers. In 2007, SUARAM documented the case of a man who died about three weeks after being brutally assaulted during an interrogation by officers of the Anti-Corruption Agency (ACA),¹¹ as the anti-corruption body was then known.¹²

FREEDOM OF SPEECH AND EXPRESSION

While Prime Minister Najib Razak on the very first day of his premiership announced the lifting of the ban on two opposition parties' news publications, *Harakah* and *Suara Keadilan*, the media remained tightly controlled with no substantial reforms implemented. In 2009, Malaysia maintained its dismal position in the *Reporters Sans Frontières* (RSF)'s Press Freedom Index at 131st position compared to 132nd last year. The RSF said:

“The authoritarianism of existing governments, for example in Sri Lanka and Malaysia, prevented journalists from properly covering sensitive subjects such as corruption or human rights abuses. [...] In Malaysia, the interior ministry imposed censorship or self-

¹⁰ “High Court: MACC’s night interrogation illegal”, *Malaysiakini*, 19 November 2009, <http://www.malaysiakini.com/news/117824>

¹¹ See SUARAM (2008) op. cit. (p. 54).

¹² In 2009, the MACC was set up under the Malaysian Anti-Corruption Commission Act 2009, thus replacing the ACA.

censorship by threatening media with the withdrawal of their licence or threatening journalists with a spell in prison.”¹³

On 9 April, a journalist from *Merdeka Review*, an online news website, was barred from covering Najib’s announcement of the new cabinet line-up. It was reported that when *Merdeka Review* contacted one of Najib’s aides to seek clarification on the matter, it was informed that the decision was made by the Prime Minister’s Office.¹⁴

In September, *Malaysiakini*, another online news website was investigated by the Malaysian Communication and Multimedia Commission (MCMC) for a video clip of the “cow head protest” posted on its website. The MCMC ordered *Malaysiakini* to bring down the video clip or face charges under the Communications & Multimedia Act 1998. MCMC officers went to the office of *Malaysiakini* on separate occasions in September to make copies of the videos stored in *Malaysiakini*’s servers and to record statements from the online newspaper’s staff.

On 18 November, the Home Ministry issued a warning letter to Tamil-language daily *Tamil Nesan* over its reporting of the killing of five suspected armed robbers by the police. The ministry accused the daily of arousing racial sentiments in its coverage of the police shooting. It also said that it found a statement by the Youth Wing of the Malaysian Indian Congress (MIC) published in the daily provocative. The Home Ministry’s letter warned that the daily’s publishing licence could be revoked if they continued publishing such articles.¹⁵

The deteriorating state of freedom of expression in the country is also manifested in the government’s use of various repressive laws, including the Sedition Act and the Universities and University Colleges Act (UUCA) to intimidate, arrest and prosecute individuals or groups of individuals,

¹³ Reporters Sans Frontières (2009) “Press Freedom Index – Asia: Authoritarianism prevents press freedom progress in much of Asia” <http://www.rsf.org/en-classement1003-2009.html>

¹⁴ “Online daily barred from Najib’s cabinet event”, *Malaysiakini*, 9 April 2009, <http://www.malaysiakini.com/news/102042>

¹⁵ “Tamil daily warned over shooting reports”, *Malaysiakini*, 14 November 2009, <http://www.malaysiakini.com/news/117453>

including activists, students, bloggers and opposition political parties who express dissenting views.

On 31 March, the Home Ministry barred political parties from bringing up the murder of Mongolian national Altantuya Shaaribuu, to whom Najib had been allegedly linked, in their campaigning during the three by-elections in April 2009 in Bukit Gantang (Perak), Bukit Selambau (Kedah) and Batang Ai (Sarawak).

On 5 May, Wong Chin Huat, an activist of the Coalition for Clean and Fair Election, was arrested under the Sedition Act. His arrest was believed to be in connection with a press conference held on the morning of his arrest, during which he had urged all Malaysians to wear black in protest against the BN's takeover of the Perak state government from Pakatan Rakyat, a move seen by many as unconstitutional. Scores of others were arrested in relation to similar protests in the following weeks. On 25 May, 19 individuals were arrested by the police in Ipoh for holding a hunger strike to protest the political takeover in Perak.

On 23 May, the police raided the headquarters of the DAP and seized a computer and several DVDs in relation to leaflets found when arrests were made during a candlelight vigil on 21 May 2009.

In October, eight students from Universiti Malaya were served notices threatening disciplinary action for allegedly contravening the UUCA by inviting politicians to two separate events at the university. On 19 November, an inquiry was conducted by the university to determine whether they had breached the UUCA and if action could be taken against them. Although the inquiry decided that the eight were not guilty of breaches of the UUCA, the students were given a warning and were advised to follow the rules provided in the Universiti Malaya statute.

In November, blogger Bernard Khoo was questioned by the police under the Sedition Act in relation to a posting on his blog on 8 August 2009 titled "Childish Police Bullying Again", which featured a modified logo of the Royal Malaysian Police. As of 5 December 2009, there were no charges against him.

In 2009, the government continued its persecution of Raja Petra Kamarudin who has been charged with sedition for making allegations implicating the current Prime Minister and his wife Rosmah Mansor in the high-profile murder of Mongolian national Altantuya Shaariibuu. The police issued two arrest warrants in 2009 – in March and October – against Raja Petra, who has evaded arrest. On 11 November 2009, Raja Petra was given a discharge not amounting to acquittal by the Petaling Jaya Sessions Court because the police could not trace him. Nevertheless, Federal Territories Criminal Investigation Department Director Bakri Zinin said that Raja Petra was still wanted by the police and that he would most likely face the sedition charge when the police locates him.¹⁶

FREEDOM OF INFORMATION

The government continued to invoke the loosely-defined Official Secrets Act (OSA), a legislation which has long been used by the government to restrict the right to information in the country.

In September, the government threatened to use the OSA against those who were responsible for leaking classified Cabinet papers on the financial scandal in the multi-billion dollar Port Klang Free Zone (PKFZ) project. The documents were posted on popular political blog, *Malaysia Today*. In response, Prime Minister Najib Razak said that the exposé “cannot be accepted” and that the police would investigate the matter under the OSA.¹⁷ On 24 September, the police said that the case was being investigated under the OSA and that several individuals would be called up to assist investigations into the exposé. Inspector-General of Police

¹⁶ “Raja Petra still a wanted man”, *The Star*, 11 November 2009, <http://thestar.com.my/news/story.asp?file=/2009/11/11/nation/20091111185105&sec=nation>

¹⁷ “PM: Police to probe PKFZ Cabinet paper posted on the net”, *The Star*, 18 September, <http://thestar.com.my/news/story.asp?file=/2009/9/18/nation/20090918151311&sec=nation>

Musa Hassan said that the police “will call whoever is connected, or involved, in exposing the documents”.¹⁸

At the state level, although the Pakatan Rakyat-led state governments of Selangor and Penang had pledged in 2008 to enact state legislations pertaining to freedom of information, they remain to be actualised. While there have been some developments in the Selangor state government, other Pakatan Rakyat-led states have made little progress. The Penang Chief Minister has since passed the buck to the state legal officer who has allegedly said that such enabling legislation has to be first implemented at the federal level.

On 10 November, the Selangor state government, through its Menteri Besar Khalid Ibrahim, declassified documents under Section 2C of the OSA, exposing three failed joint venture programmes under the tenure of the previous Selangor state government held by BN. On that same day, the Selangor state government also announced that it would enact a Freedom of Information Act by March 2010.

On 18 November, the Selangor state government released the findings of the Bukit Antarabangsa landslide disaster of 6 December 2008. In a preliminary summary of the report, it was revealed that a burst water pipe was the main cause of the landslide that had killed five people and destroyed 14 houses. While announcing the declassification, Khalid said copies of the report would be made available to the public and he instructed the Ampang Jaya Municipal Council to make copies for sale to the public.

However, on 23 November, the Selangor state government was forced to withhold its decision to reveal the details after the Federal Government challenged the decision and cautioned the state not to declassify the documents. According to the Selangor Menteri Besar, the state government had written to the Works Ministry – which had prepared the

¹⁸ “IGP: Several people will be quizzed over PKFZ paper leak”, *The Star*, 24 September 2009, <http://thestar.com.my/news/story.asp?file=/2009/9/24/nation/4774143&sec=nation>

report on the landslide – and requested the ministry to also declassify the document, but the ministry claimed that it had no jurisdiction to decide on the matter as the classification was the prerogative of the Cabinet.

FREEDOM OF ASSEMBLY

The BN government continued to flout the constitutionally-enshrined right to freedom of assembly by arresting almost a thousand individuals who had participated in peaceful assemblies in 2009.

In August, Home Minister Hishammuddin Hussein announced that Section 27 of the Police Act would be reviewed to “recognise the right of the public to gather peacefully”. However, the minister also said that such public gatherings would only be allowed if they are confined to “suitable areas” to ensure “national security and stability”.¹⁹ However, as of 5 December 2009, no amendments to Section 27 of the Police Act had been tabled in Parliament.

On 10 January, 21 persons including three elected representatives and three SUARAM coordinators – Tah Moon Hui, Enalini Elumalai and Wong Chai Yi – were arrested for organising and participating in a vigil held in Kuala Lumpur to protest against the Israeli bombing of Gaza.

On 6 May, 14 people, including SUARAM staff John Liu and Temme Lee, were arrested in Kuala Lumpur for holding a candlelight vigil demanding the release of Wong Chin Huat who had been earlier arrested under the Sedition Act. On the following day, another 20 individuals were arrested for holding another candlelight vigil for Wong Chin Huat who was still being detained. The 20 arrested included five lawyers who were on duty to provide legal assistance to those arrested. One of the five lawyers arrested was Puspawati Rosman, a SUARAM secretariat member.

In the Perak state capital of Ipoh, the police obtained a court injunction on 6 May which prohibited the public from being within 500 metres of the

¹⁹ “ISA and Police Act to see changes”, *New Straits Times*, 21 August 2009.

Perak State Secretariat building while the controversial state assembly was in session. The injunction empowered the police to arrest on sight any member of the public seen within the vicinity of the building where the state assembly sitting was scheduled to take place. The police also warned the public not to wear black – a symbol of popular protest against the BN's takeover of the state government of Perak – or to gather at the state assembly sitting on 7 May 2009.

On 7 May, a total of 69 individuals were arrested in Ipoh for breaching this court order. Those arrested included 10 elected representatives. In Kuching, Sarawak, another 10 individuals were arrested at a similar gathering to protest against the usurpation of state power in Perak.

In Penang, SUARAM branch secretariat member Ng Eng Kiat was arrested during a candlelight vigil attended by some 100 people on 8 May to show support for Wong Chin Huat who had been arrested under the Sedition Act.

On 21 May, another 16 individuals, including Selangor State representative for Teratai, Janice Lee, were arrested in Kuala Lumpur for holding another candlelight vigil outside her service centre. The organisers had made an application for a police permit for the gathering but their application was rejected by the police. About 40 police personnel, along with members of the light strike force unit, were deployed to the area. The 16 were remanded for two days and were released on police bail upon the expiration of their remand order.

On 21 June, the police disrupted a dinner organised by the DAP in Klang Selangor. The police had earlier withdrawn a permit issued for the event which had specified that no political speeches would be allowed at the dinner. The event was eventually held under heavy police surveillance with seven water cannons and the venue was cordoned off by the police. After negotiations between the organisers and the police, the dinner was allowed to proceed but was disrupted when the police confiscated the amplifiers at the dinner to prevent the speakers from continuing with their speeches.

On 22 June, the police warned the DAP that the permit issued to the party to hold its annual dinner under Section 27(2) of the Police Act was on the condition that only one speech, by the party treasurer, would be allowed throughout the entire event. The police also reminded the party not to utter seditious statements at the gathering.

During the Anti-ISA Rally on 1 August, 589 individuals, including 44 juveniles were arrested. The police had also used batons, shields, water cannons and teargas to disperse the crowd during the rally. In November, Home Minister Hishammuddin Hussein revealed that 663 policemen had been deployed during the demonstration while 442 were on standby at various locations around Kuala Lumpur; 182 Federal Reserve Unit (FRU) personnel had been deployed to disperse the demonstrators, while 973 teargas canisters costing RM89,000 were used by the police at the rally.²⁰

Throughout 2009, the police also arrested scores of land rights activists and indigenous leaders in relation to protests and resistance against encroachment of ancestral lands, especially by logging and oil palm companies in Sarawak.

In January, three Ibans – Bunya ak Sengoh, Marai ak Sengoh, and Melati ak Beken – who are actively involved in a struggle against the encroachment of their Native Customary Rights (NCR) land by a plantation company, were detained under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EO) for suspected “gang robbery”. The three were initially arrested together with four others on 26 December 2008. While four of those arrested were eventually released after a period under remand, three others were re-arrested under EO on 15 January 2009.²¹

On Malaysia Day, 16 September 2009, 15 Sarawakians – mostly from indigenous groups – were arrested by the police while handing over a memorandum to the Sarawak Chief Minister in Kuching to highlight their

²⁰ “973 Tear-gas Canisters Used To Disperse Anti-ISA Protestors”, Bernama, 11 November 2009,

<http://www.bernama.com/bernama/v5/newsgeneral.php?id=454390>

²¹ “Iban activists held for ‘gang robbery’”, *Malaysiakini*, 23 January 2009, <http://www.malaysiakini.com/news/97029>

problems and their opposition to the construction of the Baram and Murum dams in Sarawak.

On 19 September, 15 individuals from the indigenous Iban community in Sarawak's Pantu District were arrested by the police after being accused by a palm oil company of attempting to harvest oil palm fruits grown on their NCR land. After detaining them for about 12 hours, the police released them all.²² On 24 October, nine people, including an Iban indigenous leader who had mounted a blockade against loggers in their community's native customary land area, were arrested by the police.²³

FREEDOM OF RELIGION AND MATTERS PERTAINING TO RELIGION

An increasing number of disputes over the religion of persons who had purportedly converted into Islam without the knowledge of their families have surfaced in recent years. In most of these cases, decisions were made by the Syariah courts without the knowledge of the non-Muslim families, while it is stipulated in Article 121(1A) of the Federal Constitution that civil courts have "no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts". Article 121(1A) was inserted in 1988 to prevent overlapping jurisdiction and conflicting decisions by the civil and Islamic courts.

On 6 July 2009, the Shah Alam High Court in Selangor ruled that it had no jurisdiction to determine the religion of Mohan Singh, who had died on 25 May 2009. According to religious authorities, Mohan had converted to Islam in 1992, but this was disputed by his family. The High Court's ruling thus allowed religious authorities to bury the remains of Mohan according to Islamic rites. The High Court's decision was based on the

²² "Iban natives accused of 'trespassing' on own land", *Malaysiakini*, 19 September 2009, <http://www.malaysiakini.com/news/113279>

²³ "Iban leader detained over anti-logging blockade", *Malaysiakini*, 24 October 2009, <http://www.malaysiakini.com/news/115804>

existence of a conversion certificate which served as “sufficient proof” that Mohan had converted in 1992.

In April 2009, the nation witnessed yet another controversial case of conversion – that of three children of Indira Gandhi, who were converted to Islam by their father, Mohd Ridzuan Abdullah (formerly known as K. Patmanathan, who had converted in March 2009). Mohd Ridzuan had converted the three children using their birth certificates without the children themselves being present. The case soon turned into a legal tussle, with the Ipoh High Court granting Indira an interim custody of her three children and an injunction preventing her husband from entering their home on 24 April 2009.

Following this, the cabinet announced its decision that children’s religious conversion would not be allowed without both parents’ consent. In the cabinet’s decision, a child’s religion must be in accordance with the common religion at the time of marriage between the parents if there is any dispute. The cabinet also decided that a marriage under the civil court could only be dissolved under the civil law. In announcing this decision, Minister in the Prime Minister’s Department Nazri Aziz said that the Attorney-General’s chambers would be asked to look into all relevant laws that needed to be amended. However, this decision was strongly condemned by Muslim groups, including the federal opposition Pan-Malaysian Islamic Party (PAS) and other Islamic NGOs, which contended that the decision goes against Islamic laws and the constitution, denying the parent who converts to Islam his or her right and responsibility over the future of the children, and that this decision had been made without proper consultation with all parties.

On 16 June, Nazri Aziz announced that amendments to three pieces of legislations, namely the Law Reform (Marriage and Divorce) Act 1976, the Administration of Islamic Law (Federal Territories) Act 1993 and the Islamic Family Law (Federal Territories) Act 1984 were being fine-tuned by the Attorney-General and were due to be tabled at the Lower House of the Parliament on the following week. According to the minister, the proposed amendments included the provisions on the dissolution of marriage, the right to custody of children, the maintenance of children and wife, and the division of matrimonial assets. Among the proposed

amendments were those pertaining to the conversion of a child's religion which was expected to follow the cabinet decision in April, barring parents from secretly converting children.

However, on 29 June, the amendments were put on hold after the Conference of Rulers decided that any amendments to legislations pertaining to matters of conversion and religion must first be referred to the state religious authorities. The rulers decided that the proposed amendments should be adjourned pending the feedback from the state religious authorities.

Contentions surrounding the right to use the word "*Allah*" by non-Muslims remained unresolved in 2009 despite a government gazette in February permitting the Roman Catholic newspaper *The Herald* to do so, together with the use of words "*Kaabah*", "*Baitullah*" and "*Solat*" in its publications albeit on the condition that the publication carries the words "for Christians only" on its cover.

Following a January 2008 cabinet decision barring *The Herald* from using the word "*Allah*", the Catholic newspaper filed a judicial review in March 2008, challenging the Internal Security Ministry (now the Home Ministry) and the government over its decision. The Kuala Lumpur High Court is due to hear the case on 14 December 2009.

On 12 November, *The Herald* claimed that it had received a letter from the Home Ministry stating that its application for a publishing permit for 2010 had been rejected. However, on 15 November, the editor of the newspaper said that the government had withdrawn its decision to cancel its publishing permit. It was later clarified that the publishing permit for the Kadazandusun edition of *The Herald* had been rejected by the Home Ministry.

Freedom of religion in Malaysia is also curtailed by state laws which provide for a close surveillance and tight policing of Islamic beliefs and practices in various states of Malaysia. Islamic authorities have powerful influence over the administration of religious matters at the state and federal levels, including what is considered to be "true" Islam. Small Islamic sects are often labelled "deviationist" although what qualifies as

“deviationist” remains arbitrary. Members of “deviationist” groups can be arrested and detained in order for them to be “rehabilitated” and returned to the “true path of Islam”. Over the years, there have been arrests, detentions, and announcements of “successful” rehabilitation of deviationists and the curbing of deviationist activities.

On 9 August, it was reported that 20 followers of a “deviant teaching” were arrested in a joint operation held by the Negeri Sembilan state religious affairs department.²⁴

On 16 September, Abdul Kahar Ahmad, a self-proclaimed “Malay prophet” was arrested by the Selangor Islamic Affairs Department (JAIS) and was charged on five counts under the Selangor Syariah Criminal Enactment for proclaiming himself to be a Malay prophet, conducting deviationist teachings, violating the Selangor Mufti’s order, blasphemy and spreading false beliefs. He pleaded guilty to all five charges and was sentenced to 10 years in jail, six strokes of the cane and a fine of RM16,500 in October. Judge Abu Zaky Mohammad said Abdul Kahar’s actions were “a threat to the security of the religion, society and nation”.²⁵

On 20 July, the Syariah High Court in the Malaysian state of Pahang sentenced Kartika Sari Dewi Shukarno, 32, to six strokes of the cane and fined her RM5,000 after she pleaded guilty to consuming alcohol in the previous year at a hotel there. It led to a public outcry and international condemnation. Following this, the Syariah Court reviewed its own decision and on 28 September, the court’s appeal panel upheld the caning sentence.

In August, a protest was held by Malay-Muslim residents over the relocation of a Hindu temple to a predominantly Muslim neighbourhood. The protestors carried a slaughtered cow’s head – a grave insult to Hindus

²⁴ “20 pengikut ajaran sesat ditahan” [“20 followers of deviant teaching arrested”], *Utusan Malaysia*, 10 August 2009, http://www.utusan.com.my/utusan/info.asp?y=2009&dt=0810&pub=Utusan_Malaysia&sec=Dalam_Negeri&pg=dn_19.htm

²⁵ “‘Prophet’ gets 10 years’ jail”, *The Star*, 22 October 2009, <http://thestar.com.my/news/story.asp?file=/2009/10/22/courts/4952990&sec=courts>

as the cow is a sacred animal in their religion. The government was initially unmoved about the issue but soon changed its position after the outcry and charged the protestors for wrongful assembly and sedition.

On 1 November, former Perlis mufti Dr. Mohd Asri Zainul Abidin was arrested by the Selangor Islamic Affairs Department (JAIS) and then charged on 18 November at the Syariah Court in Selangor for giving religious talks without *tauliah* (authorisation) from the religious authorities. Mohd Asri claimed trial.

REFUGEES, ASYLUM SEEKERS, UNDOCUMENTED MIGRANTS AND TRAFFICKED PERSONS

As in the previous year, 2009 once again saw Malaysia being named as one of the worst places for refugees by international watchdog, the U.S. Committee for Refugees and Immigrants (USCRI).²⁶

In April, a report by the Committee on Foreign Relations of the United States Senate titled “*Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*” revealed Malaysian immigration officials’ involvement in the trafficking of Burmese refugees to the Malaysia-Thai border. It reported:

“Burmese migrants are reportedly taken by the Malaysian Government personnel from detention facilities to the Malaysia-Thailand border for deportation. [...] Upon arrival at the Malaysia-Thailand border, human traffickers reportedly take possession of the migrants and issue ransom demands on an individual basis. Migrants state that freedom is possible only once money demands are met. [...] [O]n some occasions, the ‘attendance’ list reviewed by traffickers at the Thailand-Malaysia

²⁶ U.S Committee for Refugees and Immigrants (2009) *World Refugee Survey 2009*, Arlington VA: USCRI.

*border was identical to the attendance list read prior to departure from Malaysian detention facilities”.*²⁷

Then in June, in the United States’ “*Trafficking in Persons Report*”, Malaysia was once again placed in Tier 3 blacklist of countries which do not comply with the minimum standards for the elimination of trafficking. The report stated:

*“Malaysia is a destination and, to a lesser extent, a source and transit country for women and children trafficked for the purpose of commercial sexual exploitation; and for men, women, and children trafficked for the purpose of forced labour.”*²⁸

The report further noted:

*“Malaysia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so, despite some progress in enforcing the country’s new anti-trafficking law.”*²⁹

In May, it was reported that there was an outbreak of Leptospirosis (an infectious disease that occurs due to contaminated water or food) at the Juru Immigration Detention Centre. Two Burmese detainees had died of the disease at the Detention Centre that month. The outbreak of the disease testifies to the deplorable conditions at Immigration Detention Centres around the country, a problem long highlighted by various quarters, including SUHAKAM and civil society groups. Based on monitoring by SUARAM as well as visits by human rights bodies like SUHAKAM, the detainees’ diet is deplorably deficient and they live in an unhygienic environment and face insufficient water supply. While the situation varies from one detention centre to another, conditions in the remotely located

²⁷ Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand: A Report to the Committee on Foreign Relations, United States Senate, One Hundred Eleventh Congress, First Session, 3 April 2009 (p. 2).

²⁸ United States, Department of State (2009) *Trafficking in Persons Report*, Washington D.C: US Department of State (p. 197).

²⁹ Ibid. (p. 198).

depots are reported to be worse. SUARAM has documented extensively on the conditions in these detention centres in our previous reports.

Besides the deaths of the two Burmese asylum seekers at the Juru Immigration Detention Centre, other cases of deaths in Immigration Detention Centres documented by SUARAM in 2009 were:

- In April, a Liberian died of Rectoviral Infection at the Lenggeng Immigration Detention Centre;
- In August, a Togolese detainee died in the same detention centre the KLIA Immigration Detention Centre due to Influenza A (H1N1). It was reported that this death was the fourteenth death at the KLIA Immigration Detention Centre in 2009;³⁰
- On 29 August, a Burmese detainee at the KLIA Immigration Detention Centre died of an unknown illness and six other detainees with similar symptoms were hospitalised at the Putrajaya General Hospital;
- On 25 September, six Burmese detainees died at an undisclosed detention centre, allegedly due to Leptospirosis.

On 9 November, the Home Ministry informed Parliament that there were a total of 70 deaths in immigration detention centres from 2006 to September 2009.³¹ In the same reply, the ministry said that there was only one death at the Lenggeng Immigration Detention Centre in 2009. However, it was reported that another Bangladeshi migrant worker detained at the Lenggeng Immigration Detention Centre died days after being tortured by the Malaysian police.³² This inconsistency is possibly due to the fact that the information provided by the ministry discounted those who died in medical centres while under custody of the Immigration Department. As such, the statistics on deaths of those under the custody of

³⁰ “H1N1 Flu: Lockdown in KLIA detention centre”, *Malay Mail*, 6 August 2009, <http://www.mmail.com.my/content/10126-h1n1-flu-lockdown-klia-detention-centre>

³¹ Pemberitahuan Pertanyaan Bagi Jawab Lisan Dewan Rakyat, 9 November 2009, No. AUM: 27.

³² “Bangladeshi tortured to death in Malaysia”, *The Daily Star*, 19 April 2009, <http://www.thedailystar.net/story.php?nid=84706>

the Immigration Department could possibly be much higher than that provided by the Home Ministry.

In June, the Malaysian government announced that they had sentenced 47,914 migrants to be caned for immigration offences since amendments to its Immigration Act came into force in 2002. At least 34,923 migrants have so far been caned between 2002 and 2008, according to the Prison Department's records.³³

In a parliamentary written reply during the June/July session, the Home Ministry revealed that they had detained 43,814 persons in 2004; 31,537 in 2005; 34,166 in 2006; 65,080 in 2007; and 60,800 in 2008, in 13 Immigration Detention Centres around the country. Of the total number of those detained between 2004 and 2008, a total of 3,775 were children below the age of 18. In 2008 alone, 2,397 children were detained at Immigration Detention Centres around the country – a sharp increase from 470 in the previous year.³⁴ This is despite the fact that the Malaysian government has ratified the Convention on the Rights of the Child (CRC), which obligates the government to provide protection to asylum seeking and refugee children.³⁵ The Convention also states that detention of children should only be a measure of last resort and for the shortest time possible.³⁶

In 2009, the Immigration Department replaced the part-time People's Volunteer Corps (RELA) personnel with its own officers specifically tasked to handle these centres. Since 2008, RELA has been temporarily put in charge of the Immigration Detention Centres as the Immigration Department face a shortage of personnel. Before 2008, the Immigration Detention Centres were handled by the Prisons Department.

The Malaysian government's failure to protect the rights of refugees was also clearly demonstrated when, on 20 October, officials from the Sri

³³ Parliamentary Written Reply to Liew Chin Tong (Bukit Bendera), Dewan Rakyat, 17 June 2009.

³⁴ Pemberitahuan Pertanyaan Bagi Jawab Bukan Lisan Dewan Rakyat, Soalan No: 294, Rujukan: 1934.

³⁵ Convention on the Rights of the Child (Art. 22 (1)).

³⁶ Ibid. (Art. 37 (B)).

Lankan High Commission were allowed access to the Pekan Nenas Immigration Detention Centre where 108 Sri Lankan refugees were being detained. It was reported that the diplomatic representatives visited the detention centre and forced the refugees to sign a repatriation agreement. Individuals from Persahabatan Semparuthi and SUARAM who were also visiting the detention centre were informed by some detainees that the Sri Lankan High Commission representatives assaulted and forced some of the Sri Lankan asylum seekers and refugees there to sign repatriation agreements.

While the Sri Lankan High Commission was allowed access into the Pekan Nenas Immigration Detention Centre, SUHAKAM was initially refused access into the KLIA Immigration Detention Centre, where another group of Sri Lankan asylum seekers and refugees were being held. SUHAKAM had written to the Immigration authorities at the KLIA Immigration Detention Centre requesting a visit on 16 October. This request was initially denied by the authorities. Then on 23 October, SUHAKAM Commissioner Siva Subramaniam decided to proceed with his visit and was eventually allowed into the detention centre.

LAW AND THE JUDICIARY

Public confidence in the judiciary, which was seriously undermined by the revelation of a video clip showing senior lawyer V.K. Lingam having a telephone conversation with the then-Chief Judge of Malaya Ahmad Fairuz Sheikh Abdul Halim (former Chief Justice) on the issue of appointment and promotion of judges,³⁷ was further eroded by the government's inaction over the matter.

³⁷ The conversation, believed to be recorded in 2002, revolved around the urgent need to get Ahmad Fairuz Sheikh Abdul Halim, then-Chief Judge of Malaya (Judiciary's third ranked post) appointed to the position of President of the Court of Appeal (second in rank) and then Chief Justice (the highest post in the Judiciary).

On 22 October 2009, the government said that it would not prosecute V.K. Lingam despite the findings of the Commission of Enquiry, confirming that the video clip was authentic and that the person to whom Lingam was speaking on the telephone was indeed Ahmad Fairuz. The Commission had also noted that “*there was, conceivably, an insidious movement by Lingam with the covert assistance of his close friends [...] to involve themselves actively in the appointment of judges*”.³⁸ The Commission had also found that:

- there was sufficient evidence of misbehaviour by certain persons mentioned or identified in the clip; and
- that there was sufficient reason for the relevant authorities to take appropriate action against those implicated for breaches of the Sedition Act, the Penal Code, the Official Secrets Act, the Legal Profession Act and other laws.

Another recommendation made by the Commission of Enquiry was for the government to set up the Judicial Appointments Commission. On 13 December 2008, the Judicial Appointments Commission Act was passed and on 8 January 2009 it was gazetted. The main function of the Judicial Appointments Commission is to select and recommend nominees to the Prime Minister who in turn advises the Yang di-Pertuan Agong in the appointment of judges of the superior courts.

Nevertheless, the Judicial Appointments Commission Act was criticised for divesting too much power over the appointment of Commission members in the hands of the Prime Minister. Under the Act, the Commission shall comprise nine members, namely:

- the Chief Justice;
- the President of the Appeals Court;
- the Chief Judge of Malaya;
- the Sabah and Sarawak Chief Judge;

³⁸ Commission of Enquiry on the Video Clip Recording of Images of a Person Purported to be an Advocate and Solicitor Speaking on the Telephone on Matters Regarding the Appointment of Judges (2008) *Report (Vol. 1)*, Presented to Seri Paduka Baginda Yang Di-Pertuan Agong on 9 May 2008 (pp. 75-76)

- a Federal Court judge, appointed by the Prime Minister; and
- four “eminent persons”, also appointed by the Prime Minister.

The Prime Minister not only appoints the four “eminent persons” but can also remove them at will. With the powers to appoint five members of the Commission (four “eminent persons” and one Federal Court judge), the Prime Minister effectively controls the appointments of the majority of the nine-member Commission. Further, the recommendations of the Commission on the appointments of judges are not binding upon the Prime Minister.

On 10 February, the Prime Minister appointed Federal Court Judge Zulkefli Ahmad Makinudin to the Commission while former Chief Justice Abdul Hamid Mohamad, former Chief Judge of Sabah and Sarawak Steve Shim, former High Court judge L.C. Vohrah and former Attorney-General Ainum Mohd Saaid were chosen as the 4 “eminent members” of the Commission. No members of the public, members of the Bar or eminent non-lawyers were appointed.

Chief Justice Zaki Azmi, Appeals Court President Alauddin Mohd Sheriff, Chief Judge of Malaya Arifin Zakaria, and Sabah and Sarawak Chief Judge Richard Malanjum completed the line up of the Commission, with the Chief Justice being appointed as Chairman.

On 23 June, the DNA Bill was passed by just a one-vote majority in Parliament. Since the bill was first tabled in Parliament in 2008, it was met with protests and criticisms from opposition Members of Parliament and civil society groups, including the Bar Council. Among the criticisms were that DNA sampling is not limited to serious offences and can be taken from any individual who has committed any offence; that the head and deputy head of the DNA data bank are police officers; that the Home Minister can give directions to the head of the data bank relating to their powers and functions, and the head of the data bank shall give effect to such directions; and that any information from the DNA data bank shall be admissible as conclusive proof of the DNA identification in any proceedings in any court.

Critics have also pointed out that the timing and urgency in the tabling and passing of the DNA Bill coincided with the sodomy trial of Opposition Leader Anwar Ibrahim – in which Anwar has refused to submit DNA samples as this was previously not required under the law and because of concerns regarding evidence tampering.

HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

In 2009, the enabling law of SUHAKAM, the Human Rights Commission of Malaysia Act 1999, was amended twice – in March and in July. These amendments were made in response to the notice given by the International Coordinating Committee of National Human Rights Institutions (ICC) for SUHAKAM to make improvements or face a possible downgrading in its accreditation status, from “A” to “B”.

On 24 March, just two days before the status of SUHAKAM was to be decided by the ICC, the government tabled a bill to amend the enabling law of SUHAKAM which was hurriedly passed in the Lower House of the Parliament on the very next day without any consultation with civil society groups. Members of Parliament themselves were given very little time to study and debate on the bill. The amendments, among others, changed the selection process by providing for a Selection Committee to be set up to make recommendations to the Prime Minister on the selection of Commissioner. However, the amendments were criticised as superficial as the Prime Minister still had discretionary power over the selection of SUHAKAM Commissioners. Under the March 2009 amendments, the Selection Committee’s recommendations were not binding upon the Prime Minister while civil society representation was not guaranteed.

In its review of SUHAKAM’s accreditation status on 26 March 2009, the ICC noted that *“some of the concerns it raised at its April 2008 session have been addressed”* and thus recommended that the decision on SUHAKAM’s accreditation status be deferred to November 2009.

On 22 June 2009, further amendments to the enabling law of SUHAKAM were tabled for the first reading in the Lower House of the Malaysian

Parliament in an apparent attempt by the government to prevent SUHAKAM from being downgraded by the ICC. However, the proposed amendments made only minor and minimal changes to the previous amendments passed in the Lower House of Parliament in March 2009.

Among the additional amendments made to the Act in July was the inclusion of three members of civil society in the Selection Committee to make recommendations to the Prime Minister on the appointment of Commissioners. Despite the inclusion of members of civil society in the Selection Committee, there remains concerns that no provision is included to ensure civil society's *full and transparent participation* in the process.

In response to these government-proposed amendments, on 1 July 2009, SUARAM and ERA Consumer submitted its own proposal for amendments to the Prime Minister's Department, noting that the two latest amendments made would not be adequate to ensure SUHAKAM's full compliance with the Paris Principles. Among the amendments proposed by SUARAM and ERA Consumer were:³⁹

1. A change in the composition and procedures of the proposed selection committee to ensure transparency and public participation, and the inclusion of a process for public nomination of candidates;
2. The inclusion of a provision which ensures that the proposed performance indicators for commissioners are made public; and
3. The inclusion of a provision which compels reports of SUHAKAM to be debated in Parliament to ensure that SUHAKAM's recommendations, including those pertaining to ratification to international human rights treaties are acted upon by the government.

Besides these, other longstanding concerns were also proposed by the two NGOs, including that all Commissioners serve full-time in office and that

³⁹ See Proposed Amendments to the Human Rights Commission of Malaysia Act (Act 597) by SUARAM and ERA Consumer, June 2009. See also SUARAM, Letter to Datuk Seri Mohamed Nazri Abdul Aziz, 'Re: Proposals by Human Rights NGOs for Amendments to the Human Rights Commission of Malaysia Act', dated 1 July 2009.

SUHAKAM be placed under the Parliament instead of the Prime Minister's Department so as to ensure structural autonomy from the Executive.⁴⁰

However, none of these proposals were adopted by the government, and on 2 July 2009, the government-proposed amendments were passed by the Lower House of the Parliament.

On 26 November, SUHAKAM held a press conference announcing that the ICC has retained the Commission's "A" status. This was despite the fact that the ICC, in its November 2009 review of SUHAKAM, expressed concerns over the transparency in the SUHAKAM's process of selecting its commissioners and the possibility that the performance indicators for commissioners as provided in the July 2009 amendments may be politically manipulated. These two concerns were also raised by the ICC in its March 2009 review of SUHAKAM.

An important mandate of the Commission, as spelt out in the Human Rights Commission Act 1999, is the power to conduct public inquiries into allegations of the infringement of human rights. In 2009, SUHAKAM held a public inquiry into the arrests of five lawyers who were providing legal assistance to those detained during a candlelight vigil on 7 May 2009. As of 5 December 2009, the findings from the public inquiry have not yet been made public by SUHAKAM.

In 2009, SUHAKAM also set up a Human Rights Defenders Desk upon calls by civil society groups since 2007 to do so to ensure better protection for human rights defenders in the country.

On the occasion of SUHAKAM's 10th anniversary on 9 September 2009, 42 Malaysian NGOs boycotted SUHAKAM's Human Rights Day event and announced a conditional engagement with the Commission as a result of the lack of progress in the implementation of recommendations by the international community as well as demands by civil society in Malaysia for SUHAKAM to improve its effectiveness and the government to make the Commission more independent. The groups provided further demands

⁴⁰ Ibid.

for improvements in SUHAKAM's independence and effectiveness, with specific timeframes for both SUHAKAM and the government to implement.⁴¹

CONCLUSION

In 2009, despite promises of reforms and greater respect for human rights, the new Prime Minister Najib Razak has thus far displayed an increased level of intolerance towards dissent and opposition compared to his predecessor, with the massive numbers of arrests by the police over peaceful protests against the BN government and its policies, thus seriously undermining the freedoms of speech, expression and assembly.

State institutions such as the judiciary and the police continued to suffer from a serious crisis of public confidence either due to the failure of the government to implement reforms or their questionable roles in the attempt by the BN to regain its losses suffered in the last general election, as witnessed in the constitutional crisis in Perak.

While the government announced that the ISA would be amended, two other detention-without-detention laws, namely the EO and the DDA, were ignored by the government despite their similarities with the ISA. With no mention of either a repeal of, or amendments to the EO and the DDA, and by only amending the ISA instead of repealing it, it is clear that the government does not intend to do away with the practice of detaining individuals without trial.

Meanwhile, other repressive laws like the Sedition Act, the Official Secrets Act, and Section 27 of the Police Act remain firmly in place, demonstrating the Najib government's unwillingness to uphold civil liberties despite its pledges.

⁴¹ See "42 Malaysian NGOs Boycott SUHAKAM's Human Rights Day Event, Announce Conditional Engagement with Specific Timeframe for Substantial Reforms", Joint statement by 42 NGOs in conjunction with SUHAKAM's 10th anniversary, 8 September 2009.

Numerous cases of deaths in custody of law enforcement agencies and police shootings recorded throughout 2009 reveal the increasing level of lack of accountability and impunity of law enforcement agencies. The government's decision not prosecute senior lawyer V.K. Lingam despite the findings of a Commission of Enquiry which confirmed Lingam's involvement in influencing the appointment of judges, further exacerbated this increasingly pervasive culture of impunity in the country.

SUARAM is a non-profit, non-governmental organisation committed to defending and campaigning for human rights in Malaysia and other parts in the world. The organisation began in 1989 as a campaign body for the abolition of the Internal Security Act in the aftermath of the infamous Operation 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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