



ON the eve of Malaysia Day, Prime Minister Najib Razak clearly sought to capture the imagination of an election-expectant public by promising reforms. He undertook to abolish the Internal Security Act 1960 ("ISA") and three Emergency Ordinances and to review other laws relating to the freedoms of expression, assembly and association.

### **Continuing detention without trial**

However, before two months had expired, the government made new arrests under the ISA based on grounds of terrorism. At present, there are over 50 detainees under the ISA and more than 1,000 are being detained under the Emergency Ordinance and Dangerous Drugs Act 1952.

## **More deaths in police custody**

The impunity of the Police and other enforcement agencies continued despite the demand from civil society, SUHAKAM, Malaysian Bar and opposition parties for an Independent Police Complaints and Misconduct Commission. The MACC made the headlines again with the death of yet another witness in their custody, Ahmad Sarbaini, in a similar fashion to the demise of Teoh Beng Hock. None of the officers implicated in Teoh Beng Hock's death by the Royal Commission of Inquiry and in Ahmad Sarbani's inquest have been prosecuted.

## **More deaths by police shootings**

Through our monitoring, SUARAM has documented a total number of 20 individuals killed in police shootings between 9 February 2011 to 1 November 2011, an increase from last year's 15 cases. There were a total number of 9 deaths in custody, an increase from 4 deaths in 2010.

There has been a heartening increase in public awareness of police violence and abuse of powers as was evident in several cases where dissatisfied family members of victims had on their own initiative demanded post-mortems and an inquest into the cause of death of the victims.

## **Continuing death penalties**

On 25 October, the High Court at Shah Alam handed down the death sentence on Japanese national Mariko Takeuchi, a former nurse, for trafficking 2,493gm of methamphetamine at the Kuala Lumpur International airport on 30 October 2009. This was but the latest court case involving the mandatory death sentence for drug trafficking in Malaysia. In the course of 2011, the courts continued to hand down the mandatory death sentence on those convicted of trafficking in drugs.

## **Denial of the right to peaceful assembly**

The government's refusal to allow the Bersih 2.0 rally on 9 July merely encouraged the police to use uncalled-for repressive methods to disperse demonstrators. The Bersih 2.0 rally had put forward eight demands calling for free and fair elections. About 50,000 supporters gathered and witnessed with their own eyes how the police used tear gas and water cannons to drench their right to assemble peaceably. A total number of 1,667 persons were arrested that day, perhaps the largest number of arrests in Malaysia on a single peaceful assembly. There was one death reported when Baharudin Ahmad died due to asphyxiation by tear gas.

Starting from 19 June, the police had begun arbitrarily arresting persons suspected to be supporters of Bersih 2.0 especially those who were wearing or were in possession of yellow T-shirts. Police also secured restriction orders from the court against 91 individuals to bar them from the city centre on 9 July. On the eve of Malaysia Day, Prime Minister Najib Razak clearly sought to capture the imagination of an election-expectant public by promising reforms. He undertook to abolish the Internal Security Act 1960 ("ISA") and three Emergency Ordinances and to review other laws relating to the freedoms of expression, assembly and association.

In February, 109 persons were arrested in an anti-racism rally organised by the Human Rights Party (HRP) to protest against the controversial Interlok novel which contained racial slurs. Police arbitrarily arrested persons they suspected to be Hindraf supporters, especially Indians found walking in the streets. The arrested persons were detained and investigated under Section 27(5) of the Police Act 1967 for participating in an "unlawful assembly" and Section 45(1) of the Societies Act 1966 in relation to an unregistered organisation. The crackdown on Hindraf's aborted rally continued for three consecutive days in two different towns.

On 30 November, a Peaceful Assembly Bill, which the people had hoped would return the peoples' right to peaceful assembly, turned out to be more repressive than previous laws that had suppressed this right. The bill confers arbitrary powers to the police and the Home Minister and contained inter alia provisions in which organisers can be fined up to RM10,000.00 if no advance notice of assembly is given to the police; participants can face RM20,000.00 in fines.

## **Racism on the rise**

2011 again saw the growing incidence of threatening racist demonstrations by the far-right with police connivance. Prior to Bersih 2.0 rally, 300 supporters from UMNO, Perkasa and unregistered NGO, Suara Anak Anak Mamak Pulau Pinang held a violent protest in George Town condemning both Pakatan Rakyat and Bersih 2.0. On 31 October, about 300 noisy motorcyclists clad in yellow t-shirts rode to Penang State Legislative Assembly at lunch time causing traffic to slow down to a crawl. Five persons were arrested but they were released later on the same day. Then on 29 September, about 300 people in yellow t-shirts from NGOs of different states including Perkasa and Pertubuhan Kebajikan Sejati Malaysia marched along Penang Road to Komtar demanding the resignation of Komtar assemblyman Ng Wei Aik alleging that he was rude and unfit to be an assemblyman. Nine persons were arrested but were later released on the same day.

In schools, instances of teachers and head teacher's expression racist and racial slurs continue to be documented by SUARAM.

## **Restrictions on the freedom of religion**

According to the international think tank, PEW Research Centre, Malaysia ranked among the top 10 in the world with some of the highest government-led restrictions on different religions and Malaysia ranked 5th in recording substantial increases in such restrictions.

In March, there was controversy over the stamping of 5,100 Malay-language Bible with “For Christians Only” on the cover of the bibles. This had been done without the consent of the importer, Bible Society of Malaysia. Then in May, the Democratic Action Party (“DAP”) was implicated by the UMNO-owned paper Utusan Malaysia to be involved in an alleged plot by Christian priests to replace Islam with Christianity as the official religion of Malaysia. Perkasa chief, Ibrahim Ali, warned of violence against the Christian community following allegations of the establishment of a Christian State. The Law Minister Nazri Aziz said that no action would be taken against Ibrahim Ali because doing so would amount to stifling his freedom of speech.

## **Suppression of freedom of expression**

The freedom of expression suffered a blow when lecturer Dr Abdul Aziz Bari was suspended by the International University of Islam for commenting on the Sultan of Selangor’s pronouncement on the raid by the Selangor State government’s Islamic Department JAIS’ raid on the Damansara Utama Methodist Church.

Another serious breach of the freedoms of expression and assembly occurred in November when the police banned the film fest and other activities associated with ‘Seksualiti Merdeka’, an annual activity to highlight the problems faced by lesbians, gay, bisexuals and transgenders (LGBT). The government, through its media organs, Utusan Malaysia and other news media went on a misinformation spree by portraying “Seksualiti Merdeka” as a “free sex” festival. The law minister, in his convoluted wisdom, even propounded his thesis that homosexuality is unconstitutional because it contradicts Article 3 of the Federal Constitution (which states that Islam is the official religion of Malaysia).

However, there was a glimpse of hope for freedom of expression when the Court of Appeal in a 2-1 majority decision ruled that Section 15(5) of the Universities and University Colleges Act 1971 ("UUCA") is unconstitutional and violates freedom of expression. The section allows public universities to take disciplinary action against students found to be involved in political activities. Appellants Muhammad Hilman bin Idham, Muhammad Ismail bin Aminuddin, Woon King Chai and Azlin Shafina Mohd Adzha of Universiti Kebangsaan Malaysia had been arrested on 22 April 2010 for allegedly participating in the Hulu Selangor by-election.

### **Hopeful developments for freedom of Information**

In the course of the year, the Selangor and Penang state governments introduced amendments to their respective Freedom of Information (FOI) Acts which were a positive move in the right direction. Civil society still stressed the importance of maximum disclosure and narrow exemptions; the protection of whistle-blowers; the routine publication of information; simple procedures to enable the public to gain access to information at a minimal cost; and the need for an independent administrative oversight body. Nevertheless, until the Official Secrets Act 1972 and the Printing Presses & Publications Act 1984 are abolished or amended, FOI cannot be said to empower and promote transparency and accountability in the country.

### **Denial of the freedom of association**

The Registrar of Societies (ROS) continued to curtail freedom of association by de-registering associations on technical grounds. On 12 October, the Registrar of Societies ("ROS") de-registered the Malacca Chinese Assembly Hall (pursuant to Section 42 of the Registrar of Societies Act 1966) for holding its Annual General Meeting ("AGM") without sufficient quorum.

In another instance, the ROS struck off the Malaysian Medical Association (MMA) following complaints from members that MMA had failed to deliver a list of candidates for elections and the failure to include the elections in the AGM agenda.

On 16 August, the Kuala Lumpur High Court dismissed HRP's application for a judicial review of the ROS' refusal to register the party on grounds of it being academic, alleging that the party was not properly organised and it had failed to produce a constitution in compliance with ROS requirements.

## **Positive development for free and fair elections**

The positive development as a result of the Bersih 2.0 rally and in an attempt to salvage the Najib government's damaged image, a Parliamentary Select Committee on Electoral Reforms ("PSC") was commissioned to review and make recommendations to reform the current electoral system. Prime Minister Najib again stirred up a storm of dissent when he said that the PSC recommendations can be implemented after the 13th General Election. He tried to justify this by claiming that the government of the day retains the discretion to dissolve the Parliament

at any time during its tenure.

Another positive development was seen on 14 November when six Malaysians living abroad in the United Kingdom through their counsel filed an application for a judicial review seeking to quash the Election Commission's decision not to register them as absent voters, thus depriving them their right to vote. Their counsel stated that in the event the High Court quashes the said Election Commission decision, the nation would be looking at 700,000 to 1,000,000 Malaysians living abroad voting by way of postal votes.

### **Malaysia embarrassed in refugees swap deal**

Malaysia made the international headlines when the refugees swap between Australia and Malaysia was aborted mainly because of Malaysia's failure to ratify the United Nations' 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. It was a deep embarrassment for the Malaysian government to have its human rights record relating to the treatment of refugees exposed by the international media.

In an attempt to circumvent international standards pertaining to protection of refugees, asylum seekers and undocumented migrants, the government introduced the "6P" program. This program still failed to distinguish the fundamental differences between a refugee, an asylum seeker and an undocumented migrant. In the presence of deportation provisions, the 6P program contradicts the principle of non-refoulement and acts as a sanctioned "rid-all" program

facilitating the Malaysian government's "immigrant cleansing" practices.

## **Flouting the freedom of movement**

During 2011, several cases illustrated the government's suppression of the freedom of movement and further embarrassed the nation in the international arena. On 22 July, French human rights lawyer, William Bourdon who was in Malaysia to present a speech at a fundraising dinner organised by SUARAM was deported back to France. Bourdon is the lawyer representing SUARAM in the on-going case in the French courts relating to suspected corruption in the purchase of two Scorpene submarines by the Malaysian government from the French naval arms producer DCNS.

Then on 12 August, British lawyer, Imran Khan, counsel for the Human Rights Part was detained and deported back to London on grounds of national security. He had arrived in Malaysia on a fact finding mission to investigate the marginalisation of Indians in Malaysia in regard to Hindraf's class action suit against the United Kingdom government.

The freedom of movement was again curbed for Malaysian activists going to Sarawak for the state elections when Bersih 2.0 Steering Committee members Chairperson S. Ambiga, Wong Chin-Huat and Haris Ibrahim together with other activists including Steven Ng and Ong Boon Keong were barred from entering Sarawak during and after the elections.

## **SUHAKAM's inquiry into rights of indigenous peoples lauded**

SUARAM welcomes SUHAKAM's national inquiry into land rights of the indigenous peoples and hopes this will be translated into positive policies to better the lives and conditions of the indigenous peoples of our country. SUHAKAM's stand on various events that happened in 2011 – detentions, Bersih 2.0, Seksualiti Merdeka, refugees, the Peaceful Assembly Bill – were also progressive. We hope the national human rights commission will go further in being more proactive in human rights cases and even drafting alternative human rights-based bills for the people.

## **Conclusion**

Malaysia's human rights record for 2011 puts into question the Prime Minister Najib's promises of reforms including the repeal of detention- without-trial laws, the Police Act 1967 and assembly. The recent arrests of 13 more individuals under the ISA have confirmed our suspicions that the BN government has no intention to abolish detention without trial.

The recent speedily passed Peaceful Assembly Bill 2011 has deprived Malaysians of their freedom to assemble peaceably enshrined in Article 10 of the Federal Constitution.

Abuse of power by the police has continued as seen in the rising statistics with regard to deaths in police custody, police shootings and other forms of violence against the public. The government remains recalcitrant in refusing to implement the IPCMC as recommended by the Royal Police Commission a few years ago.

The reaction by the government to the 50,000-strong rally organised by civil society on 9.7.2011 for free and fair elections was seen in the half-hearted formation of a Parliamentary Select Committee on Electoral Reforms. Even so, the Prime Minister Najib still maintained that his government reserves the right to dissolve parliament at any time even before the implementation of the recommendations by the PSC.

The plight of refugees has not been alleviated by the government's refusal to distinguish the fundamental differences between a refugee, an asylum seeker and an undocumented migrant. Their protection remains illusory while the Malaysian government drags its feet in ratifying the United Nations 1951 Convention Relating to the Status of Refugees.

With the 13th general election in sight, time is running out for the BN government to demonstrate that it is capable of reform. For the last 54 years since independence, every fundamental liberty enshrined in the federal constitution has been cynically taken away or amended beyond recognition.

*Released by SUARAM*