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WORKING FOR
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HUMAN RIGHTS REPORT
2015 OVERVIEW
CIVIL AND POLITICAL RIGHTS

SOSMA | POTA | POCA | DEATH IN CUSTODY | ABUSE OF POWER
CORRUPTION | SEDITION ACT | OFFICIAL SECRETS ACT
JUDICIARY | COMMUNICATIONS & MULTIMEDIA ACT | TPPA
REFUGEES | DEATH PENALTY | PEACEFUL ASSEMBLY ACT

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Executive Summary

2015 has been a dreadful year for human rights in Malaysia. As one scandal after another was exposed, the Government of Malaysia cracked down on civil activists, academics, journalists and politicians using colonial era laws. Consequently, it has brought human rights in Malaysia to a new dark age reminiscent of the times when the ruling party UMNO was facing serious crises.

An unprecedented number of arrests were carried out under the “catch-all” Sedition Act 1948 and the arbitrary nature of these arrests was highlighted by the charges of sedition against cartoonist Zulkiflee Anwar Haque and academic Azmi Sharom. Apart from the escalation in the use of the Sedition Act 1948, the Communications and Multimedia Act 1998 has been increasingly used to suppress the freedom of expression in Malaysia.

Ever since the abolition of the infamous Internal Security Act, detention without trial has once again become the indispensable weapon in the Government’s armoury of laws to deal with dissent. Besides the Security Offences (Special Measures) Act 2012 or SOSMA, the Prevention of Terrorism Act 2015 (POTA) came into force on 1st September 2015. With power to detain an individual without being subject to any form of judicial review or control (apart from review on procedural grounds), POTA has become a potent tool to suppress political dissent.

While the Government has tried to use the threat of international terrorism to justify these draconian laws, the recent detention of Khairuddin Abu Hassan and Matthias Chang under SOSMA has shown that such charges of “security offences” against political dissidents are reminiscent of the abuse of such detention without trial laws, of which the ISA was the most infamous example.

The Peaceful Assembly Act 2012 (PAA) continues to be used to suppress Malaysians’ constitutional right to peaceful assembly with documented charges made against various activists, political groups and even individual protestors. The decision by the Court of Appeal which ruled section 9(5) of the PAA to be unconstitutional¹ in 2014 served as the ray of hope which was swiftly put out with the new decision on the matter by the Court of Appeal in October 2015 declaring the Act constitutional.

The Bersih 4 rally that took place on the 29th and 30th of August was a momentous event as it was the first time that a Bersih rally has managed to complete its planned programme without undue police intervention. While it was unfortunate and deplorable that there were sporadic arrests made during the rally, the commendable conduct of the police during the rally at Dataran Merdeka was a notable step forward. It was perhaps the only positive development that occurred throughout 2015.

The human rights situation for Malaysia in 2015 can be gleaned from the data and statistics for the violations of fundamental liberties documented and monitored by SUARAM. Once again, we can see that the promises of reform made by Prime Minister Najib Razak when he

¹ Lawrence Yong, ‘Court decision on PAA a victory for all Malaysians’, MalaysiaKini, <<http://www.malaysiakini.com/news/261024>> accessed 23rd November 2015

took over the office in 2009 have not been kept. Worse, his recent tribulations arising from the expose of the unaccounted RM2.6 billion in his personal account and mismanagement of 1MDB have led to desperate measures by the state to silence critics and stifle civil and political rights in Malaysia.

The introduction of the National Security Council Bill on the 1st December 2015 was the most alarming measure to date by the Government to introduce Emergency-type legislation when there is no justification to do so. The power to declare a state of emergency in a 'security area' and wide ranging powers granted to the security forces in the 'security area' brings us closer to a police state and the deprivation of our human rights.

1. Detention without trial

As of September 2015, there have been 46 documented cases (and likely more cases of detention undocumented) where the accused is investigated under Part VI or Part VII of the Penal Code and detained under **SOSMA**. This compares with 31 detained and 15 charged in 2014. The recent arrest of Khairuddin Abu Hassan and his lawyer, Matthias Chang under SOSMA has demonstrated clearly that the Malaysian state is again relying on detention without trial as convenient suppression apparatus against dissidents.

The case of the detention of Ardit Naim Ferizi, a Kosovan citizen under SOSMA pending his extradition to the US sets a dangerous precedent as it means that the Malaysian Government can detain a person under SOSMA pending the official extradition request by a foreign country. Further, the complicity of a foreign state in the whole matter put into question the independence of the Malaysian Government in the use of SOSMA and the danger of SOSMA being utilized indirectly by a foreign power.

So far, there have been no cases reported under **POTA** as this law has only recently been gazetted.

From 2nd April 2014 to 1st October 2015, there have been 975 arrests and investigations under the Prevention of Crime (Amendment and Extension) Act 1959 or **POCA**. The number of cases has significantly increased compared to year 2014 where there were only 116 cases reported under POCA.

Information regarding arrests and detention under the Dangerous Drugs Act or **DDA** is not easily obtainable. Nevertheless, a news report in September stated that in Perak alone, there had been 1452 arrests made in relation to drug trafficking in 2015.

2. Police Abuse of Power

As of November 2015, SUARAM has documented 11 cases of death in custody. In comparison there was 14 recorded in 2014. Concerns caused by the series of death in custody in Penang in early 2015 remain unaddressed with no development or investigation results being made known publicly. The repeated calls for the establishment of the IPCMC as recommended by the Police Commission of Inquiry in 2005 remain unheeded.

3. Freedom of Expression & Information

Despite the promise made by Prime Minister to repeal the **Sedition Act 1948**, the number of cases charged under the Act has continued to grow, from a total of 18 cases in 2013 to 44 cases in 2014, and now 220 cases in 2015.

As of November 2015, SUARAM has documented 37 incidents where an individual have been investigated, arrested/detained, charged and/or punished under the CMA, a steep increase compared to the 5 incidence documented in 2014.

In 2015, the Malaysian Communications & Multimedia Commission (MCMC) blocked *Sarawak Report* on the grounds that the website was a “threat to stability” of Malaysia. This action was in direct response to the information on the website pertaining to the 1MDB controversy. A few days before the commencement of Bersih 4 rally, MCMC declared that they were blocking websites that were promoting the rally. The reason given was that Bersih 4 was, again, “a threat to the Nation’s stability”.

The Official Secrets Act 1972 (OSA) was also used against those who were purported to have leaked information pertaining to Tabung Haji and 1MDB.

The Printing Presses and Publication Act 1984 was used to suspend the Edge’s publishing permit for publishing articles relating to 1MDB. Although the suspension of the Edge’s publishing permit was subsequently lifted by the High Court after finding that the home minister was in breach of section 7(1) of the Printing Presses and Publication Act 1984, the Ministry of Home Affairs is seeking to appeal the decision.

Freedom of expression was again violated when Ezra Zaid was charged under Section 16 of the Syariah Criminal Offences (Selangor) Enactment 1995 for the publication of a translated book titled, “Allah, Liberty and Love” by Irshad Manji. The decision by the Court granted the state religious department power to regulate publication under Section 16 of the Syariah Criminal Offences (Selangor) Enactment 1995. The unprecedented authority given to the state religious department was further affirmed by Nur Jazlan Mohamed in Parliament that any Islamic publication that deviates from the true teachings of the religion will be referred to the Islamic Development Department (JAKIM).

4. Freedom of Assembly

The Peaceful Assembly Act 2012 or PAA was used whenever there was an assembly or protest. During 2015, the organisers and participants of protests such as #KitaLawan, Mayday Anti-GST Rally, #TangkapNajib, Bersih 4 and Himpunan Rakyat Bersatu were investigated and charged under PAA.

Despite the declaration by the Court of Appeal of Malaysia that section 9(1) of the PAA was unconstitutional, the police and the Attorney General Chamber (AGC) are still actively investigating, arresting and prosecuting organizers of rallies and peaceful assemblies under Section 9(1) of the PAA.

5. Freedom of Movement

In 2015, the Government of Malaysia barred several Malaysians from travelling abroad including, Petaling Jaya Utara MP Tony Pua, Batu MP Tian Chua, Datuk Ambiga Sreenevasan, Maria Chin, Hishamuddin Rais and Adam Adli. It is noteworthy that these individuals were not convicted of (or even suspected of having committed) any crime.

Moreover, the ban on several Malaysian citizens travelling to Sarawak still stands. Many of these are leaders of various human rights related NGOs, including SUARAM director Kua Kia Soong. MPs Nurul Izzah and Tian Chua have also recently been banned from travelling to Sabah.

6. Freedom of Religion

In 2015, the Kelantan state government passed the amendments to the Shariah Criminal Code in the state. Apart from the constitutional issue of implementing Hudud in place of Malaysia's criminal justice system is the concern over the imposition of Hudud on non-Muslims and the disproportionate punishment under Hudud. At this juncture, the state government still requires the approval of the Federal Parliament for the implementation of Hudud. There were other instances of violations of the freedom of religion seen in Deepa's case of custodial rights in unilateral conversion; construction of place of worship where a church was forced to take down its cross and the coerced conversion of minors without parental consent such as the case of Sabrina Ngumbang in Sarawak.

7. Refugees, Asylum Seekers, Migrant Workers & Human Trafficking

Refugees and asylum seekers have no legal status in Malaysia and as a result their rights are not recognised because Malaysia is not a signatory to the UN 1951 Convention relating to the Status of Refugees and its 1967 Protocol and currently there is also no law governing refugees and asylum seekers in Malaysia. There are currently (as of September 2015) 153,850 registered refugees and asylum seekers with UNHCR Malaysia and an unknown number unregistered.

The official government response to the refugee boats that landed on and approached our shores in 2015 was not only irresponsible and inhumane but a blatant disregard for human rights².

There are an estimated over 6 million migrants, of which around half are documented and the rest are undocumented. Irrespective of whether they are documented or undocumented migrants, their rights as a worker are not respected by employers and they have no available right to redress. They are often exposed to abuse, violence, extortion, violation and arrest.

In 2015, our standing in relation to human trafficking has improved in the U.S. Department of State records with an elevation to tier two status as compared to tier 3 in 2014. However,

² Beh Lih Yi, 'Malaysia tells thousands of Rohingya refugees to 'go back to your country'', The Guardian, <<http://www.theguardian.com/world/2015/may/13/malaysia-tells-thousands-of-rohingya-refugees-to-go-back-to-your-country>> accessed 1st December 2015

this upgrade of Malaysia's status should be accepted with caution as human traffickers have the resources and capabilities to act with a degree of impunity in Malaysia. This upgrade of Malaysia's status with regards to human trafficking should be taken with a pinch of salt especially in the light of the gruesome discovery of the mass graves of trafficked victims near the Thai border.

8. Death Penalty

Although there have not been any known instances of execution as of November 2015, it was made known by Minister in the Prime Minister Department, Nancy Shukri, that there is currently 1022 convicts on death row. Despite the minister acknowledging the futility of the death penalty in curbing crimes abolishing death penalty in Malaysia is still a distant reality

9. Free and Fair Elections

Following the revelations regarding the depositing of RM2.6 billion in Prime Minister, Najib Razak's bank account apparently the sum donated was just a political donation³ before the 2013 General Election. This questionable political funding is more than 26 times the allowed election spending outlined in Malaysia's election law. It remains to be seen whether the Election Commission will take the initiative and take appropriate punitive actions.

10. Corruption and Accountability

In 2015, Malaysia hosted the 16th International Anti-Corruption Convention (IACC) but the Prime Minister absented himself apparently because of his association with the internationally publicised scandal involving the depositing of RM2.6 billion into his personal account. During the convention, Transparency International Chairman, Jose Ugaz pointed out that Malaysia was facing a major corruption crisis and that the government should let the Malaysian Anti-Corruption Commission (MACC) do its job without political interference. The 1MDB scandal has so far seen the removal of former AG Abdul Gani Patail from office, the reshuffle of cabinet, the removal of Muhyiddin as the Deputy Prime Minister, and the defamation suit threat by Dato' Seri Najib against Wall Street Journal.

11. Law and Judiciary

The United Nations Working Group on Arbitrary Detention (UNWGAD) has issued a statement condemning the charge, trial and conviction of Anwar Ibrahim as politically motivated and called for the immediate release of Anwar Ibrahim and the reinstatement of all of his political rights deprived when he was convicted. In response, the Prime Minister Office (PMO) issued a statement calling for the UNWGAD to respect the Malaysian legal process and claimed that the case of Anwar Ibrahim was a criminal case and not a political case and that it has nothing to do with the government.

The Attorney-General Chamber (AGC) initiated several dubious charges under draconian laws such as the Sedition Act 1948 and the PAA, leaving in doubt the independence of the

³ Shazwan Mustafa Kamal, 'Was the RM2.6b donation against election laws? EC chair says no power to find out', the Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/was-the-rm2.6b-donation-against-election-laws-ec-chair-says-no-power-to-fin>> accessed 1st December 2015

AGC as an executor in the criminal justice system. This was again seen when the former AG Abdul Gani Patail was summarily removed from office during his investigation into 1MDB by the AGC.

In 2015, the Judiciary made some rather controversial decisions in cases involving the rape charge of Bunya Jalong, Deepa's child custody case, Anwar Ibrahim's sodomy conviction and other controversial cases.

12. Gender and Sexuality

Although Malaysia has ratified the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1995, gender discrimination especially at workplace has not been significantly addressed. Further, gender equality in respect to representation in the Parliament remains abysmal with women accounting for only 10.4% of the total Members of Parliament sexist slurs occasionally being hurled against female Parliamentarians during the heat of debate.

The rights of LGBT communities in Malaysia remains unrecognized in light of the Federal Court's decision in overruling the Court of Appeal's decision that declared section 66 of the Negeri Sembilan Syariah Criminal (Negeri Sembilan) Enactment 1992 as constitutional.

13. Indigenous Peoples Rights

The rights and interests of the Orang Asli community continue to be disregarded. This was seen in the incident involving seven missing Orang Asli children in Kelantan; the dismal condition of the Kuala Bertis transit Centre in Gua Musang, and the health condition of the Jahai tribe in Perak. On a positive note, the Semai from Kampung Senta in Bidor, Perak managed to secure their native title rights to their customary land under common law. Similarly in Sarawak, the chief minister has put on hold the construction of Baram Dam which would have otherwise adversely affected the livelihood of indigenous peoples living in the locality.

14. Business and Human Rights

As the final signing of the TPPA draws nearer, we are concerned about the short and long term impact of the TPPA on the Malaysian economy, society and what this means for human rights of Malaysians. The human rights fallout from the TPPA has not been properly evaluated and some of these areas of concern raised by various quarters include: the intellectual property (IP) regulations which may adversely affect the current protection afforded to arts and cultural work; medication prices and availability; small and medium industries, the reduction or abolition of agricultural subsidies and its subsequent impact on food security in Malaysia.

DETENTION WITHOUT TRIAL.....

With the increasing threats of terrorism across the globe, the Malaysian State has introduced legal provisions meant for counter-terrorism. In Malaysia, this armoury of laws includes detention without trial. They are also used apparently to combat organized crimes.

Based on data gathered from the question and answer session in the Parliament sitting in October, SUARAM's documentation, media monitoring and press statement by the Royal Malaysian Police, the numbers of people detained without trial under the legal provisions of Special Offences (Special Measures) Act 2012, Prevention of Terrorism Act 2015 (POTA) and Prevention of Crime Act 1959 (POCA) is as follows:

| Legislation | Number of Cases (2014) | Number of Cases (2015) |
|-------------|------------------------|-------------------------------------------------------|
| SOSMA | 31 | 46 ⁴ |
| POTA | - | 0 ⁵ |
| POCA | - | 975 ⁶ (22 cases of terrorism) ⁷ |

* *Note: With the current modus operandi of the government and the nature of some of these legislations, information is difficult to obtain. The numbers reported by SUARAM in 2015 would likely be significantly lower than the actual numbers of detention held under these laws.*

While POTA has been in force since 1st September 2015, this law has not yet been used and all detentions in relation to terrorism have been made under SOSMA in conjunction with offences under Part VI or Part VII of the Penal Code. POCA would then be invoked if it is deemed necessary by those managing the investigation.

Security Offences (Special Measures) Act 2012 – SOSMA⁸

As of September 2015, SUARAM has documented 44 cases (and actively assisted with two cases where the accused is held under SOSMA). The actual number would likely be significantly higher as there is indirect evidence that more have been arrested but not reported and verified by the police. The case of Nor Jalani highlights the danger of SOSMA to freedom and liberty of all Malaysian citizens. Nor Jalani was arrested at an unspecified hotel in Cheras for allegation of crimes under Part VI of the Penal Code. When he was held

⁴ 8 cases documented by SUARAM; 17 detained under SOSMA as released by PDRM press statement (related to Azmi Jalani's case); Other cases are documented through media monitoring

⁵ No detention made under POTA 2015 according to confidential sources; Any detention reportedly made under POTA is incorrect and refers to detention made under SOSMA or POCA.

⁶ Detention made from 1st April 2014 to 1st October 2015; New Straits Times Online, 'Rehabilitation programme for POCA detainee', <<http://www.nst.com.my/news/2015/10/rehabilitation-programme-poca-detainees>> accessed 23rd November 2015

⁷ Sinar Harian, 'Polis tahan 132 individu 'teribat' pengganas' <<http://www.sinarharian.com.my/nasional/polis-tahan-132-individu-terlibat-pengganas-1.441934>>, accessed 23rd November 2015

⁸ It should be noted that the provisions of SOSMA does not include any criminal offences, it is a procedural law that is applied in place of the Criminal Procedure Code in the event that there is an arrest for offence found under Part VI and Part VII of the Penal Code. As such, it is noted that the detention made under SOSMA is not necessarily detention without trial, but can be considered as detention and punishment before sentencing as there can be no bail for those detained under SOSMA and those detained will be in custody until the completion of all hearings and exhausted all appeals

by the police, he was reportedly beaten by officers and forced to confess to the alleged crime. When he was brought before the court, he revealed that he was forced to confess to the crime under duress. Further, according to the police press statement issued in relation to the arrests of Azmi Jalani, a minor of 14 years of age was also hauled up during the raid⁹.

The human rights concern with regards to the abuse of SOSMA was validated with the detention of Khairuddin Abu Hassan under SOSMA¹⁰. Soon after, Khairuddin's lawyer, Matthias Chang was likewise detained under SOSMA for attempted sabotage under Section 124K and Section 124L of the Penal Code. Despite early promises made by the Government that SOSMA will never be used to silence political dissenters and the inclusion of legal safeguards, the detention of Khairuddin and Matthias Chang showcase the real possibility of abuse and the willingness of state agencies in abusing SOSMA for political gains. Fortunately, the High Court of Kuala Lumpur ruled that the alleged sabotage of financial institution does not fall under the purview of SOSMA and Part VI of the Penal Code and released both Khairuddin and Matthias on bail.

Further, the detention of Ardit Naim Ferizi (Kosovan citizen) came to the attention of SUARAM in late September 2015. Ardit was a student of Limkokwing University and was detained when he was scheduled for his flight back to Kosovo on the 15th September 2015. The detention of Ardit is a clear abuse of the procedure of SOSMA as he had not committed any crimes in Malaysia. From information gleaned from the Interpol department, Ardit's detention was made by the request of the United States government through the Attorney General Chambers. This information was revealed to SUARAM after Ardit was transferred for detention under the Extradition Act 1992.

When the lawyers appointed by Ardit's family tried to see him in Sungai Buloh Prison on the morning of 23rd October 2015, his lawyers were informed that Ardit was transferred to Kajang Prison the night before. On the subsequent call to make an appointment at Kajang Prison, his lawyers were informed that Ardit was indeed in Kajang. However, on the day of the appointment on the 27th October 2015, his lawyers were informed that Ardit had actually never left Sungai Buloh Prison. This deplorable state of affairs persisted until Ardit's parents managed to secure a visit on evening of 27th October 2015.

As of 23rd November 2015, Ardit's lawyers were informed that he was brought to the Kuala Lumpur Session Court on the 16th November 2015 and was told by FBI agents to sign a letter agreeing to his extradition. Ardit's lawyer were not informed of these proceedings and Ardit was not given any recognized legal counsel and representation during the signing of the document and hearing that followed.

On the 23rd November 2015, Ardit's lawyers were informed that he was brought to the Kuala Lumpur Session Court on the 16th November 2015 and was supposedly given a letter

⁹ 'Kenyataan Akhbar Ketua Polis Negara: Tangkapan Anasir Pengganas Yang Merancang Untuk Melancarkan Serangan Di Malaysia', PDRM, <<http://www.rmp.gov.my/siaran-media/2015/04/07/kenyataan-akhbar-ketua-polis-negara-tangkapan-anasir-pengganas-yang-merancang-untuk-melancarkan-serangan-di-malaysia>> accessed 27th November 2015

¹⁰ Koh Jun Lin, 'Khairuddin gets full 28-days detention under Sosma', MalaysiaKini, <<http://www.malaysiakini.com/news/313393>>, accessed 23rd November 2015

to sign by the FBI. Ardit's lawyer were not informed of these proceedings and Ardit was not given any independent legal counsel (the Deputy Public Prosecutor explained the potential consequences of his decision at that juncture) and representation during the signing of the document.

As of 2nd December 2015, Ardit's extradition hearing has concluded and he would be extradited to the United States in the near future. Despite the detention made under SOSMA, the extradition hearing makes no mention of this and merely stated that he was remanded under the Extradition Act on the 12th October 2015. The letter signed by Ardit was a waiver regarding his rights under the Extradition Act 1992.

This turn of event sets a dangerous precedent as it means that the Malaysian Government can detain a person under SOSMA pending the official extradition request by a foreign country. Further, the complicity of a foreign state in the whole matter put into question the independence of the Malaysian Government in the use of SOSMA and the danger of SOSMA being utilized indirectly by a foreign power.

List of Detainees under SOSMA (arrested in 2015 and documented by SUARAM):

1. Yazid Sufaat – detained on 7th February 2013
2. Hilmi Hasim – detained on 7th February 2013
3. Khairil Mi – detained on 28th April 2014
4. Nazhatul Zhima Sahak – detained on 13th October 2014
5. Amir Azlan Zainudin – detained on 13th October 2014
6. Nor Azmi Jalani (arrested with 16 others, was charged with 5 other individuals; 2 have plead guilty¹¹) – detained on 5th April 2015
7. Azlee Md Salleh – detained on 19th August 2015
8. Ahmad Kamil Ghazali – detained on 19th August 2015¹²
9. Mohd Azidi Said – detained on 19th August 2015¹³
10. Ardit Naim Ferizi – detained on 15th September 2015
11. Khairuddin Abu Hassan – detained on 18th September 2015
12. Matthias Chang – detained on 8th October 2015
13. Syrian, Malaysian and Indonesia arrested for terror alert in Jalan Alor¹⁴
14. 8 individuals arrested for suspected terrorism links¹⁵
15. 5 individuals arrested on suspicion of involvement with militant groups¹⁶

¹¹ S. Tamarai Chelvi, 'Father and son jailed for promoting terrorists activity', The Sun Daily, <<http://www.themalaymailonline.com/malaysia/article/false-whatsapp-message-on-floods-lands-couple-in-trouble>> 27 November 2015

¹² 'X-ray Technician, Interior Designer charged with possession of Islamic State-related materials', the Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/x-ray-technician-interior-designer-charged-with-possession-of-islamic-state>> accessed 30th November 2015

¹³ Ibid 12

¹⁴ Farik Zolkepli, 'Three arrested over Jalan Alor threat', the Star Online, <<https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=3%20detained%20in%20relation%20to%20jalan%20alor%20threat>> 27th November 2015

¹⁵ 'Civil servants among 8 arrested over links with terror groups', the Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/civil-servants-among-8-arrested-over-links-with-terror-groups>> accessed 23rd November 2015

16. Mohd Abu Haliff Shah Abu Bakar – detained on 12th November 2015¹⁷

In a forum organized by the Bar Council of Malaysia titled “Forum on SOSMA – Wolf in Sheep’s clothing?” the former attorney general Tan Sri Abdul Gani Patail described SOSMA as a well drafted legal provision with in-depth and thorough safeguards to prevent abuse. If Abdul Gani Patail’s claim is indeed true and accurate, it is curious why there has been documented violations of human rights in the recent months. Further, it is curious that if SOSMA was as ‘well designed’ as described, why the Government of Malaysia believes it as necessary for POTA and POCA to be used alongside SOSMA against security threats in Malaysia.

Prevention of Crime (Amendment and Extension) Act 1959 - POCA

Very little information has been made publicly available with regards to the numbers of detention made under POCA. Based on information made public by the deputy home minister, Masir Anak Kujat, there have been 975 arrests and investigations under POCA between 2nd April 2014 to 1st October 2015. From this number, 143 were to undergo detention; 480 are under police surveillance; 68 to be monitored through electronic monitoring, 28 were supposedly charged in court; 131 released after investigation while 193 remain under investigations.

Unfortunately, the circumstances around individual detentions and the reasons behind their detentions are often shrouded in secrecy. In cases in which SOSMA is ill suited or inapplicable, POCA has been the chosen tool of the Royal Malaysian Police in arresting and detaining suspected terrorists in Malaysia. According to the statement by Deputy Prime Minister Ahmad Zahid, 22 individuals with suspected involvement with the Islamic state are currently held under POCA¹⁸.

Prevention of Terrorism Act 2015 – POTA

Despite the existence of SOSMA and its broad ambit, it was reported that the Royal Malaysian Police and the Malaysian government had made arrests under POTA. According to a statement made in April, there were 107 individuals detained under POTA¹⁹. However, from SUARAM’s sources, the numbers referring to detention under POTA is wrong and the arrests were made under SOSMA and not POTA as POTA was not in force at the time of reporting.

¹⁶ Bernama, ‘Five men arrested on suspicion of involvement in militant groups – IGP’, Astro Awani, <<http://english.astroawani.com/malaysia-news/five-men-arrested-suspicion-involvement-militant-groups-igp-81128>> accessed 23rd November 2015

¹⁷ Sylvia Looi, ‘Army Commando Charged with Possession of IS t-shirt’, New Straits Times Online, <<http://www.nst.com.my/news/2015/12/114838/army-commando-charged-possession-t-shirt>> accessed 4th December 2015

¹⁸ Nawar Firdaws, ‘Home Minister sidesteps question on abuse of SOSMA’, the Rakyat Posts, <<http://www.therakyatpost.com/news/2015/10/19/home-minister-sidesteps-question-on-abuse-of-sosma/>> accessed 23rd November 2015

¹⁹ Malay Mail Online, ‘Zahid: Militants to be fitted with electronic monitors after release’, <<http://www.themalaymailonline.com/malaysia/article/zahid-militants-to-be-fitted-with-electronic-monitors-after-release>> accessed 23rd November 2015

Dangerous Drugs (Special Preventive Measures) Act 1985 - DDA

Very little information is made public with regards to arrests and detention made under DDA. Without any official data and numbers provided, one can only speculate about the numbers of arrests and detention made. A news report in September states that in Perak alone, there have been 1452 arrests made in relation to drug trafficking in 2015. Considering the large amount of arrests made²⁰, it would not be wrong to presume that a portion of these individuals may have been subjected to the DDA. If so, one would imagine the numbers of people detained under the DDA to be in the hundreds.

National Security Council Bill (NSC) was a bill that recently went through the third reading in Parliament with reported plans by the Government of Malaysia to push through the bill on the 3rd December 2015²¹. The Bill effectively allows the Prime Minister to declare a state of emergency on the advice of the National Security Council which consists of the Deputy Prime Minister, the Minister of Defence, the Minister of Home Affairs, the Inspector-General of Police and an unspecified General of the Armed Forces.

In the declared 'security areas', security forces would be given immense powers and discretion to arrest, search, seize property, declare curfew and use lethal force against perceived threats if they deem necessary. Any 'negligence' or excessive use of force would not be subjected to any form of prosecution, inquiry or inquests²².

While such wide-ranging powers are touted to be necessary to protect 'national security', it is not spelled out what sort of 'peril' the country is supposed to be facing to justify such draconian powers granted by the Bill. Under the Constitution, any declaration of state of Emergency has to be justified and signed by the Yang di-Pertuan Agung.

Even during the 'Konfrontasi' with Indonesia in the sixties, it was not necessary for Malaysia to adopt such extreme provisions in order to safeguard the security of the nation.

POLICE ABUSE OF POWER.....

The result of the investigation conducted by EAIC in case of Syed Mohd Azlan gives an indication of the level of accountability in the Royal Malaysian Police. Despite the existence of various Standard Operating Procedures and other procedural laws that the police officers must comply with, there have been documented cases of police officers acting with impunity.

²⁰ Ista Kyra Sharmugam, 'Husband, wife arrested for drug trafficking', The Malaysian Insider, <<http://www.themalaysianinsider.com/citynews/ipoh/article/husband-wife-arrested-for-drug-trafficking/husband-wife-arrested-for-drug-trafficking>> 27th November 2015

²¹ 'Withdraw repressive, frightening NSC Bill, human rights watchdog tells Putrajaya', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/withdraw-repressive-frightening-nsc-bill-human-rights-watchdog-tells-putraj>> accessed 3rd December 2015

²² 'New Security Council Bill will only empower PM', MalaysiaKini, <<https://www.malaysiakini.com/news/321839>> accessed 3rd December 2015

Death in Custody

As of November 2015, SUARAM has documented 11 cases of death in custody. The 11 cases of death in custody include:

| Name | Detention Centre | Date of Death | Cause of Death |
|-----------------------------|----------------------------------|---------------------------------|-------------------------|
| 1. R Sivan | Ayer Molek Lockup | 9 th January 2015 | Medical |
| 2. Phil Pott Fred | Hospital Pulau Penang | 18 th January 2015 | Medical |
| 3. Fahruz | Hospital Pulau Penang | 22 nd January 2015 | Medical |
| 4. Sharam Hassan | Bayan Baru Lockup | 26 th January 2015 | Medical |
| 5. K. Elumalai | Hospital Sg. Bakap | 18 th February 2015 | Unknown |
| 6. Mohd Zarafi Mohd Yunus | Ipoh Central Lockup | 13 th March 2015 | Sudden Death |
| 7. Liang Aiting | Sibu Hospital | 28 th March 2015 | Medical |
| 8. Shashikumar Selvam | Balai Polis Kluang | 22 nd May 2015 | Suicide |
| 9. Zulfakry Ibrahim | Pusat Tahanan Sementara Sandakan | 9 th June 2015 | Medical |
| 10. Ikechukwu Bright Ogundu | Balai Polis Mutiara Damansara | 23 rd September 2015 | Injury prior to arrests |
| 11. R. Thanagaraja | Balai Polis Dang Wangi | 18 th November 2015 | Medical |

Despite the worrying development observed in January 2015 when a series of deaths in police custody took place in Penang, there has not been any investigation report released by the Police Force. Despite promises of investigations²³, it is unfortunate that no answers have been given to the families of the deceased and the general public.

If these cases of Death in Custody were not caused by foul play, concrete steps must be taken to ensure that detainees and prisoners are given adequate healthcare with necessary standard operating procedure set in place to ensure that prisoners suffering from any health problems are given the necessary attention. Referring to the case of Thanagaraja who was suffering from chronic health problem, it is within his rights that he be provided with health checks to avoid any mishaps.

Enforcement Agency Integrity Commission (EAIC)

As of October 2015, the EAIC has concluded their hearing and investigation into the death of Syed Mohd Azlan Bin Syed Mohamed Nur²⁴. Their report concluded that blunt force trauma to the victim's chest was used, causing his death. The EAIC also mentions attempts by the police officers to alter and suppress the evidence relating to the case.

²³ Loghun Kumaran, 'Penang cops probe death in custody', the Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/penang-cops-probe-death-in-custody>> accessed 26th November 2015

²⁴ 'Laporan Suruhanjaya mengenai siasatan ke atas kes kematian Syed Mohd Azlan Bin Syed Mohamed Nur (KP. No: 891026-01-5545) Semasa di Dalam Tahanan Polis di Kota Tinggi, Johor pada 3 November 2014', EAIC, <http://www.eaic.gov.my/sites/default/files/laporan_syed.pdf> accessed 23rd November 2015

In the light of the conclusion drawn from the investigations, EAIC has put forward several recommendations that may well assist in reducing future recurrence of such tragedies. Unfortunately, it remains to be seen whether the recommendations put forward to the Royal Malaysian Police, the Attorney General’s Chamber and the Government of Malaysia will be accepted and acted upon.

As of November 2015, the hearing on the N. Dharmendran case is still on-going and we hope it will provide us with full and adequate information regarding the death of Dharmendran in police custody.

While the performance of EAIC in pursuing its investigation into deaths in police custody is welcomed and appreciated, it is unfortunate that the EAIC has not initiated any investigations into possible abuse of powers or failure to adhere to standard regulations by the police force in other controversial areas such as the detention and treatment of detainees under SOSMA.

Malaysian civil society still calls for the establishment of the Independent Police Complaints and Misconduct Commission (IPCMC) that was proposed by the Royal Commission on the Malaysian Police in 2005. We maintain that only such an independent body can ensure justice for the victims of deaths in police custody and other instances of police abuse of power.

FREEDOM OF EXPRESSION & INFORMATION.....

Freedom of expression & information was the main victim of the Government’s decision to use the Sedition Act 1948 against critics and dissidents in 2015. The harsh crack down and harassment that followed the revelations on the 1MDB financial scandal and the depositing of RM2.6billion into the Prime Minister’s private account were gross violations of human rights.

The Sedition Act 1948

In April 2015, the amendment to the Sedition Act 1948 was tabled in the Parliament. The decision to amend and strengthen the Sedition Act runs contrary to the promise made by the Prime Minister in 2012²⁵. While the proposed amendment is still subject to Parliamentary debate, the amendment proposed would further increase the applicability of the Sedition Act 1948 allowing it to cover more areas and inflict harsher punishment on those found guilty under the Act.

²⁵The Malaysian Insider, ‘Najib: Sedition Act to be repealed’, <<http://www.themalaysianinsider.com/malaysia/article/najib-sedition-act-to-be-repealed>> accessed 23rd November 2015

The gazetted amendment includes but not limited to:

1. Minimum 3 years' imprisonment and maximum 7 years' imprisonment from the maximum of 5 years' imprisonment for repeat offenders. Inclusion of aggravated sedition that may carry the penalty of 5-20 years' imprisonment.
2. The inclusion of religion as a ground for the charge of sedition (accompanied by the removal of judiciary and government as subjects that could be charged for sedition).
3. Removal of bail for those charged with sedition & imposition of travel restriction.
4. Expansion of the Sedition Act to cover electronic media possibly including private memos.

The following table outlines the current statistics pertaining to the usage of the Sedition Act 1948:

| | 2013 | 2014 | 2015 |
|----------------------------|------|------|------------------|
| Investigated ²⁶ | 10 | 29 | 206 |
| Charged | 7 | 12 | 11 ²⁷ |
| Convicted | 1 | 3 | 3 ²⁸ |
| Total | 18 | 44 | 220 |

Following the submission of the memorandum by Gerakan Hapuskan Akta Hasutan (GHAH), there was a notable decline in sedition charges made. Even though there were significantly fewer charges of sedition, there were still an extraordinary amount of individuals and groups being investigated under the Sedition Act. However, this positive development was quickly negated by the incident that took place at Rumah Api.

The arrests²⁹ at Rumah Api during the gig³⁰ included an unprecedented 163 individuals including expatriates being remanded and investigated under the Sedition Act³¹. It is fortunate that the individuals arrested were remanded without undue harassment by the police force. One of the arrested was an expatriate from Indonesia who was detained for a longer period due to some confusion over his immigration records.

²⁶ Arrests made in relation to the Sedition Act 1948 is included in this number

²⁷ Charges against Ali Tinju have been dropped; Hassan Karim was charged once in Kuala Lumpur and another round in Johor Bahru thus recorded as two incidence

²⁸ Hishamuddin Rais was convicted on 9th January 2015 but his case was first heard in 2013

²⁹ The Malay Mail Online, 'Ahead of Bersih 4, dozens nabbed in raid on independent punk venue Rumah Api', <<http://www.themalaymailonline.com/malaysia/article/ahead-of-bersih-4-dozens-nabbed-in-raid-against-independent-punk-venue-ruma>> accessed 23rd November 2015

³⁰ Event Page for Gig @ Rumah Api; Joe Kid, 'Friday, 28th August 2015 – Party Tonight, Revolution Tomorrow Show @ Rumah Api', <<http://carburetor.dung.kerbau.com/2015/08/20/friday-28th-august-2015-party-tonight-revolution-tomorrow-show-rumah-api/>> accessed 23rd November 2015

³¹ Anarchist News, 'Kuala Lumpur, Police raid anarchist space Rumah Api (Malaysia)', <<https://anarchistnews.org/content/kuala-lumpur-police-raid-anarchist-space-rumah-api-malaysia>> accessed 23rd November 2015

The lull in the use of Sedition Act 1948 was broken following the charges made against Khalid Ismath, MP for Subang Sivarasa Rasiah in October and Lawrence Jeyaraj³², Johor PKR Deputy Chief Hassan Karim and MP for Tanjong, Ng Wei Aik in November.

Media Control and Censorship

The suspension of the publishing permit of the Edge Weekly and the Edge Financial Daily for three months over the reports on 1MDB³³ and the arrests of Lionel Morais, Amin Iskandar, Zulkifli Sulong, Ho Kay Tat and Jahabar Sadiq were blatant punishment and harassment of the mass media and journalists by the Government of Malaysia.

The recent raids and investigation by the Malaysian Communications and Multimedia Commission (MCMC) and the Royal Malaysian Police at the office of the Star and MalaysiaKini further highlights the persistent and heavy-handed manner adopted by the Government of Malaysia to suppress media freedom in Malaysia³⁴.

It is thus not surprising that Malaysia's Press Freedom Index remained the same in 2015, ranking a lowly 147 out of 180 nation states³⁵. It is worth noting the fact that the Star maintained absolute silence³⁶ over the raid at its office³⁷.

Communications and Multimedia Act 1998

The Communications and Multimedia Act 1998 (CMA) is often used in conjunction with the Sedition Act 1948 when a 'seditious' work is made available online. The hefty punishment of RM50,000 in fines and/or 1 year in prison makes it a convenient supplement to the Sedition Act 1948 in the Government's armoury of laws to suppress the freedom of expression.

³² Ida Lim, 'Activist charged with sedition for denouncing Anwar verdict on Facebook', <<http://www.themalaymailonline.com/malaysia/article/activist-charged-with-sedition-for-denouncing-anwar-verdict-on-facebook>> accessed 23rd November 2015

³³ The Straits Times, 'Malaysia's Home Ministry suspends the Edge publications over 1MDB reports', <<http://www.straitstimes.com/asia/se-asia/malaysias-home-ministry-suspends-publications-over-1mdb-reports>> accessed 23rd November 2015

³⁴ Mayuri Mei Lin, 'Star, MalaysiaKini raided following 'report' Minister says', <<http://www.themalaymailonline.com/malaysia/article/star-malaysiakini-raided-following-report-minister-says>> accessed 23rd November 2015

³⁵ '2015 World Press Freedom Index: Malaysia', Reporters without Borders <<https://index.rsf.org/#!/index-details/MYS>> accessed 23rd November 2015

³⁶ D Kanyakumari, 'MalaysiaKini probed over 'DPP transferred' story, The Stars <<http://www.thestar.com.my/News/Nation/2015/11/06/mcmc-raids-malaysiakini-office/>>, accessed 23rd November 2015

³⁷ Noraizura Ahmad, Not just 'MalaysiaKini', 'The Star Online' also raided today, say cops, The Rakyat Post, <<http://www.therakyatpost.com/news/2015/11/06/not-just-malaysiakini-the-star-online-also-raided-today-say-cops/>> accessed 23rd November 2015

Number of CMA cases recorded in 2015

| | Numbers of People Involved |
|---------------------------------|----------------------------|
| Investigated | 23 |
| Arrested and/or detained | 10 |
| Charged | 3 |
| Sentenced | 1 |
| Total³⁸ | 37 |

Individuals Charged under Communications and Multimedia Act 1998

| No | Name | Date of Arrests | Further Information |
|----|------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 22 individuals | 1 st week of January (all bought in for investigation) | 22 individuals were called in to MCMC for investigation on false news spreading regarding the flood situation |
| 2 | Unspecified individual | 10 th January 2015 | Unnamed individual arrested for spreading false news ³⁹ |
| 3 | Unspecified individual | 8 th January 2015 | Unnamed individual detained for spreading false news on the flood situation through Whatsapp ⁴⁰ |
| 4 | Unspecified Couple | 11 th January 2015 | A couple of teachers were detained for disseminating false information on whatsapp claiming that there were bodies in Guchil and Kuala Krai. ⁴¹ |
| 5 | Zunar | 10 th February 2015 | Zunar was rearrested under CMA after his bail for 9 charges under the Sedition Act. |
| 6 | Lionel Morais | 30 th March 2015 | Detained and Investigated under Section 233 of CMA and the Sedition Act 1948 for news report covering the conference of rulers |
| 7 | Amin Iskandar | 30 th March 2015 | Detained and Investigated under Section 233 of CMA and the Sedition Act 1948 for news report covering the conference of rulers |
| 8 | Zulkifl Sulong | 30 th March 2015 | Detained and Investigated under Section 233 of CMA and the Sedition Act 1948 for news report covering the conference of rulers |
| 9 | Ho Kay Tat | 31 st March | Detained and Investigated under Section 233 of |

³⁸ Total incidence documented in 2015

³⁹ Bernama, 'MCMC: One arrested over false news on floods', MalaysiaKini, <<http://www.malaysiakini.com/news/285942>> accessed 23rd November 2015

⁴⁰ 'Technician detained for spreading false news', Free Malaysia Today, <<http://www.freemalaysiatoday.com/category/nation/2015/01/08/technician-detained-for-spreading-false-news/>> accessed 23rd November 2015

⁴¹ 'False WhatsApp message on floods lands couple in trouble', The Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/false-whatsapp-message-on-floods-lands-couple-in-trouble>> accessed 23rd November 2015

| | | | |
|----|------------------------|------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | 2015 | CMA and the Sedition Act 1948 when he turned up at Dang Wangi for his statement to be taken |
| 10 | Jahabar Sadiq | 31 st March 2015 | Detained and Investigated under Section 233 of CMA and the Sedition Act 1948 when he turned up at Dang Wangi for his statement to be taken |
| 11 | Sarawak Report | 19 th July 2015 | The official reason for blocking the website by MCMC was due to breach of section 233 of the CMA. |
| 12 | Khalid Ismath | 6 th October 2015 | Khalid Ismath was arrested, released, rearrested and slapped with 3 charges under the Sedition Act 1948 and 11 charges under the CMA. He is currently release on interim bail. |
| 13 | Wan Fatul Johari | 30 th October 2015 ⁴² (Convicted) | Senior Citizen, Wan Fatul Johari was sentenced to RM120,000 or 30 months jail time if in default of the fine for insulting the royalty. He was not represented by legal counsel in the hearing. |
| 14 | Unspecified Individual | 4 th November 2015 ⁴³ (Charged) | Factory worker in Johor was charged under Section 233 of CMA for allegedly insulting the police ⁴⁴ |
| 15 | Zaid Ibrahim | 4 th December 2015 (charged) ⁴⁵ | Under Section 233(1)(a) for comment deemed “hideous in nature” in his blog post supporting Dr. Mahathir |
| 16 | Joe Haidy Sulaiman | 4 th December 2015 (Investigated) | Investigated under Section 233 of CMA for the facebook page (LetakJawatan) calling for the resignation of the Prime Minister. |

The Malaysian Communications & Multimedia Commission (MCMC) displayed its intolerance of dissent and criticisms levelled against the government. In August 2015 alone, there were two incidents involving MCMC blocking websites that were critical of the government. In mid-August 2015, MCMC blocked the *Sarawak Report* on the grounds that the website was a threat to stability of Malaysia⁴⁶. This was presumably a direct response to the information the website was publishing pertaining to 1MDB controversy⁴⁷.

⁴² Date of investigation not known

⁴³ Offences dated on 24th October 2015; date of arrest and/or investigation unclear

⁴⁴ Norbaiti Phaharoradzi, 'Factory worker claims trial for allegedly insulting police on Facebook, The Star, <<http://www.thestar.com.my/News/Nation/2015/11/04/Court-insult-police-Facebook-factory-worker/>> accessed 23rd November 2015

⁴⁵ Yiswaree Palansamy, Zaid Ibrahim to be Charged over 'hideous' comments in pro-Dr M blog post, The Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/zaid-ibrahim-to-be-charged-over-hideous-comments-in-pro-dr-m-blog-post>> accessed 4th December 2015

⁴⁶ 'MCMC Sekat Laman Sesawang Yang Mengganggu-gugat Kestabilan Negara', Malaysian Communications and Multimedia Commission, <<http://www.skmm.gov.my/Media/Press-Releases/MCMC-Sekat-Laman-Sesawang-Yang-Mengganggu-gugat-Ke.aspx>> accessed 23rd November 2015

⁴⁷ Beh Lih Yi, 'Sarawak Report whistleblowing website blocked by Malaysia after PM allegations, The Guardian, <<http://www.theguardian.com/world/2015/jul/20/sarawak-report-whistleblowing-website-blocked-by-malaysia-over-pm-allegations>> accessed 23rd November 2015

A few days before the commencement of Bersih 4 rally, MCMC declared that they were blocking websites that were promoting the rally, spreading information regarding the rally or encouraging people to participate in the rally. The reason provided was that Bersih 4 was a threat to the Nation's stability based upon the press statement issued by the Home Ministry⁴⁸.

The Official Secrets Act 1972 (OSA) was once again used to suppress information that were of public interest. Those who were purported to have leaked information pertaining to Tabung Haji and 1MDB were investigated under the OSA⁴⁹. In recent months, Datuk Paul Low (Minister from the Prime Minister Office) has commented that Malaysia is not ready for a Freedom of Information Act even though the Selangor and Penang state governments have managed to implement such legal provisions at a state level.

Printing Presses and Publication Act

The Printing Presses and Publication Act 1984 continued to plague publishers and the media in Malaysia. The suspension of the Edge's publishing permit for publishing articles relating to 1MDB⁵⁰ marks a new low for the Government of Malaysia in its attempt to penalize and silence those who publish unfavourable news on the 1MDB scandal. Fortunately, the suspension of the Edge's publishing permit was lifted by the High Court after finding that the Home Minister was in breach of section 7(1) of the Printing Presses and Publication Act 1984⁵¹. The Ministry of Home Affairs is seeking to appeal the decision against them.

Freedom of expression with regards to printing and publication suffered another blow in the prosecution of Ezra Zaid⁵². Ezra Zaid was charged under Section 16 of the Syariah Criminal Offences (Selangor) Enactment 1995 for the publication of a translated book titled, "Allah, Liberty and Love" by Irshad Manji. Traditionally, the limitation on publications was a matter handled by the Ministry of Home Affairs and not the state religious department. Unfortunately, the decision by the Court granted the state religious department power to regulate publication under Section 16 of the Syariah Criminal Offences (Selangor) Enactment 1995.

This decision would endow state religious departments with unprecedented power in controlling the publication and distribution of Islamic books in Malaysia. This would likely serve as another barrier to the freedom of expression with regards to the printing and

⁴⁸ Ibid 28

⁴⁹ Muzliza Mustafa, 'Tabung Haji leaked land deal to be investigated under Official Secrets Act, says IGP', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/probe-on-tabung-haji-leaked-land-deal-to-be-investigated-under-official-sec>> accessed 23rd November 2015

⁵⁰ 'The Edge weekly, daily suspended for 3 months from July 27', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/the-edge-weekly-daily-suspended-for-3-months-from-july-27>> accessed 23rd November 2015

⁵¹ 'Malaysia High Court lifts suspension of The Edge publications', Straits Times, <<http://www.straitstimes.com/asia/se-asia/malaysia-high-court-lifts-suspension-of-the-edge-publications>> accessed 23rd November 2015

⁵² Ida Lim, 'Ezra Zaid to stand Syariah trial after failing to nullify Selangor Law on un-islamic books charge', The Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/ezra-zaid-to-stand-shariah-trial-after-failing-to-nullify-selangor-law-on-u>> accessed 23rd November 2015

publication in Malaysia. On top of the pre-existing control by the Ministry of Home Affairs, publishers and authors of Islamic (or un-Islamic) books would need to be wary of individual state religious department and criminal charges under state based Shariah law.

The unprecedented authority given to the state religious department is further affirmed with the statement made by Nur Jazlan Mohamed in Parliament who said that any Islamic publication that deviates from the true teachings of the religion will be referred to the Islamic Development Department (JAKIM)⁵³.

FREEDOM OF ASSEMBLY.....

Even though the Court of Appeal of Malaysia had made the declaration that section 9(1) of the Peaceful Assembly Act 2012 (PAA) was unconstitutional, the AGC continued to pursue its cases against various individuals under Section 9(1) of the PAA. The AGC filed an appeal in the Federal Court of Malaysia in the hope of reversing the decision made by the Court of Appeal in Nik Nazmi's case. The Federal Court struck out the appeal and maintained the decision made by the Court of Appeal⁵⁴.

Despite the decision made by the apex court, the police and the Attorney General Chamber (AGC) are still actively investigating, arresting and prosecuting organizers of rallies and peaceful assemblies under Section 9(1) of the PAA. The organizers who have been investigated or charged under PAA includes (and not limited to): #KitaLawan rally, anti-GST protest and Bersih 4 rally.

The reason behind the continued prosecution under PAA was made clear following the Court of Appeal decision on 2nd October 2015⁵⁵. In the light of the new decision declaring section 9(5) of the PAA constitutional, prosecution of individuals under the PAA would likely resume at a brisk pace. The conflict between this new decision and the decision made by the Court of Appeal last year would have to be resolved through an appeal to the federal court.

#KitaLawan

The first #KitaLawan rally was held on 7th March 2015 and was attended by 5,000 to 10,000 protestors. The main aim of the protest was to press for the release of Anwar Ibrahim. Various activists and politicians were questioned and/or arrested by the police in relation to charges of unlawful assembly under Section 143 of the Penal Code, section 9 of the PAA and in some cases section 4(1) of the Sedition Act. As of 8th September 2015, Maria Chin

⁵³ Nuradzimmah Daim, 'Publications deviate from true teachings of Islam to be referred to Jakim', New Straits Times Online, <<http://www.nst.com.my/news/2015/10/publications-deviate-true-teachings-islam-be-referred-jakim>> accessed 23rd November 2015

⁵⁴ Zurairi Ar, 'Apex court junks AG's PAA appeal again Nik Nazmi's acquittal', the Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/apex-court-junks-ags-appeal-against-nik-nazmis-acquittal>> accessed 23rd November 2015

⁵⁵ Koh Jun Lin, 'Appeals Court rules 10 days' rally notice 'constitutional', MalaysiaKini, <<http://www.malaysiakini.com/news/314194>> accessed 23rd November 2015

Abdullah⁵⁶ and PKR MP Sim Tze Sin have been charged under PAA for the #KitaLawan rally that took place on 28th March 2015⁵⁷.

Mayday Anti-GST Rally

The Mayday rally to protest the implementation of GST was also subjected to harassment by the police. A number of the activists and politicians that were present or supportive of the rally were investigated and/or charged for unlawful assembly under section 143 of the Penal Code. Jay Jay dennis, aide to Klang MP was investigated under Section 505B of the Penal Code for a comment he made in relation to the rally and police action that occurred⁵⁸.

#TangkapNajib

The demonstration that called for the resignation of the Prime Minister was also met with harassment by the police. On 31st July 2015, two of the organizers of #TangkapNajib, Adam Adil and Syukri Rezab were arrested outside Dang Wangi police station after discussing the rally with the police⁵⁹. Both of them were arrested under section 124(b) of the Penal Code. Activists Mandeep Singh was arrested later that day even though he was not involved with the #TangkapNajib rally⁶⁰. Twenty-nine protestors were arrested on the 1st of August after minor scuffle between the protestor and the police after the arrest of two Perak PKR leaders.

Bersih 4

Bersih4 was not spared from harassment by governmental agencies. MCMC decided to block Bersih 2.0 website (<http://www.bersih.org/>) and other website supportive of Bersih 2.0 on the grounds that Bersih 4 “incited” unrest between different ethnic groups; incited the general public against the government by spreading certain documents; that its associated activities were bad for Malaysia’s public image, and that it was a threat to peace, national security, economic wellbeing, sovereignty and the multicultural society of Malaysia⁶¹. On the eve of the rally, the Home Ministry declared that all yellow t-shirts that bore the word “Bersih 4” was illegal⁶². Despite the harassment prior to the commencement of the rally, the rally itself was largely peaceful with little to no intervention by the police

⁵⁶ ‘Malaysia’s Bersih chairman charged with illegal assembly’, Channel News Asia, <<http://www.channelnewsasia.com/news/asiapacific/malaysia-s-bersih/2111250.html>> accessed 23rd November 2015

⁵⁷ ‘Bersih chief, MP and two others to be charged’, MalaysiaKini, <<http://www.malaysiakini.com/news/311100>> accessed 23rd November 2015

⁵⁸ Md Izwan, ‘DAP lawmaker’s aide investigated for critical tweet against top cop’, The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/dap-lawmakers-aide-investigated-for-critical-tweet-against-top-cop>> accessed 23rd November 2015

⁵⁹ Hani Shamira Shahrudin, ‘Activists Syukri Razab, Adam Adli detained’, New Straits Times Online, <<http://www.nst.com.my/news/2015/09/activists-syukri-razab-adam-adli-detained>> accessed 23rd November 2015

⁶⁰ ‘Bersih activist mandeep singh latest to be arrested’, The Malaysian Insider, <http://www.themalaysianinsider.com/malaysia/article/bersih-activist-mandeep-singh-latest-to-be-arrested> accessed 23rd November 2015

⁶¹ Ibid 28

⁶² ‘KDN haramkan pakaian kuning, perkataan Bersih 4’, The Malaysian Insider, <<http://www.themalaysianinsider.com/bahasa/article/kdn-haramkan-pakaian-kuning-perkataan-bersih-4>> accessed 23rd November 2015

force. The estimated turn-out for Bersih 4 rally vary between 20,000 people as claimed by the Prime Minister to 200,000 as claimed by the organizing committee.

After the rally however, Bersih organizers and high profile individuals were called to give their statements. Datuk Abdul Rahman Dahlan, the Minister of Urban Wellbeing, Housing and Local Government, issued a statement that they were intent on sending a cleaning bill of RM65,000 to Bersih 4 organizers⁶³. The bill of RM 65,000 was eventually sent to Bersih 2.0 office.

Himpunan Rakyat Bersatu

The controversial rally by Malay supremacist groups, 'Himpunan Rakyat Bersatu', took place on Malaysia Day (16 September 2015) at Padang Merbok in Kuala Lumpur and several other locations. Despite police barricades, rally goers forced their way through several police barricades setup at Bukit Bintang. They also gathered at Petaling Street in an attempt to storm this largely Chinese commercial enclave. Several individuals were injured due to scuffles between police personnel and demonstrators. Despite claims that the rally was not racial in nature; various organizers and participants of the rally were recorded and documented to have espoused racist statements, remarks and slogans throughout the day. CCTV of local property owner also recorded vandalism by several participants of the rally.

Despite the acts of violence and racist provocations, no one was. Organizer, Jamal Yunos, threatened to lead a second rally when their demands made during the rally were not addressed by the relevant ministry.

FREEDOM OF ASSOCIATION.....

Gerakan Harapan Baru (GBH) was formed by former leaders of Parti Islam Se-Malaysia (PAS) who were not in agreement with the PAS leadership. GBH's initial application to register as a society with the name Parti Progresif Islam was rejected by the Registrar of Societies within 24 hours of submission. Then on 7th September 2015, GBH chose to take over the Malaysian Workers' Party and rebrand it as Parti Amanah Negara. After the initial rejection, the registration of the new name for the party was accepted.

FREEDOM OF MOVEMENT.....

A gross violation of the freedom of movement was seen when the Government of Malaysia barred various civil activist leaders and opposition politicians from travelling abroad including, Petaling Jaya Utara MP Tony Pua, Batu MP Tian Chua, Datuk Ambiga Sreenevasan,

⁶³ Neville Spykerman, 'Bersih organisers to be slapped with RM65,000 clean-up bill, The Star Online, <<http://www.thestar.com.my/News/Nation/2015/09/01/Bersih-organisers-to-be-slapped-with-cleanup-bill/>> accessed 23rd November 2015

Maria Chin, Hishamuddin Rais and Adam Adli⁶⁴. While some of the restrictions were eventually lifted, it is noteworthy that these individuals had not been convicted of (or even suspected of having committed) any crime.

The travel ban on Malaysian citizens to Sarawak still stands. Many of these are leaders of various human rights related NGOs, including SUARAM director Kua Kia Soong. The Sabah State Assembly has also decided to bar Nurul Izzah and Tian Chua from travelling to Sabah⁶⁵. The motion was passed through the Deputy Speaker Datuk Johnson Tee calling for an investigation to be carried out with legal action taken against both of them for meeting Jacel Kiram, the self-style princess of the Sulu.

In November 2015, the Australian band, 'I killed the Prom Queen', was detained for playing without permit in Malaysia⁶⁶. While the failure to obtain appropriate work visa is valid, the detention of the band members was unnecessary.

FREEDOM OF RELIGION.....

Issues pertaining to religion in Malaysia remain volatile in 2015 but despite the mounting religious intolerance portrayed by selected media and extremist groups, there have been positive developments. While acts of vandalism against places of worship still occurred in 2015, there were only two incidents recorded in 2015 compared to preceding years. There was a firebomb against a church in Penang which caused minor damage. The other was an incident in which a slab of pork was left in front of a mosque in Penang.

Implementation of Hudud in Kelantan

In 2015, the Kelantan state government passed the amendments to the Shariah criminal code in the state⁶⁷. Apart from the constitutional issues involved in implementing Hudud in place of the standard criminal justice system, critics and the general public are largely concerned with the imposition of Hudud on non-Muslims and the disproportionate punishment under Hudud⁶⁸. At this juncture, the state government still requires the approval of the Federal Parliament to implement Hudud.

⁶⁴ KC Nazari, 'Tian Chua, Ambiga, more activists barred from leaving country, The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/tian-chua-ambiga-and-other-activists-also-barred-from-going-overseas-by-imm>> accessed 23rd November 2015

⁶⁵ Akil Yunus, 'Sabah ban politically motivated, claims Tian Chua', The Star Online, <<http://www.thestar.com.my/News/Nation/2015/11/26/Sabah-ban-politically-motivated-says-Tian-Chua/>> accessed 27th November 2015

⁶⁶ Agence France-Presse, 'Australian metal band I killed the Prom queen detained in Malaysia over visa issues', The Guardian, <<http://www.theguardian.com/world/2015/nov/16/australian-band-i-killed-the-prom-queen-detained-by-malaysian-immigration>> accessed 23rd November 2015

⁶⁷ 'PAS wants hudud laws for Kelantan: What you need to know about the laws', The Straits Times, <<http://www.straitstimes.com/singapore/pas-wants-hudud-laws-for-kelantan-what-you-need-to-know-about-the-laws>> accessed 23rd November 2015

⁶⁸ 'Concerns over implementation of hudud in Kelantan', the Straits Times, <<http://www.straitstimes.com/asia/se-asia/concerns-over-implementation-of-hudud-in-kelantan>> accessed 23rd November 2015

Custodial rights in unilateral conversion

The case of Deepa continued in 2015 with the Federal Court granting Deepa's ex-spouse, Izwan Abdullah a stay against an order that he returned his 6 year-old daughter to his ex-wife. This decision put on hold the earlier decision made by Seremban High Court granting custody to Deepa along with the recovery order compelling the return of Deepa's son.

On a positive note, Perlis Religious Council issued a landmark fatwa that would give child custody to the parent who is more suitable irrespective of their faith⁶⁹. While this decision is laudable and would likely offer a breathing room for those affected by it, it remains to be seen whether the religious council of other states would find it agreeable and adopt a similar stance.

Construction of new places of worship

In April 2015, a church in Taman Medan, Petaling Jaya was forced to take down its cross following protest by a group of local residents⁷⁰. The protesters were subsequently probed under PAA and charged for trespass under the Penal Code. On this instance, the Home Minister declared the protest seditious while the Inspector-General of Police denied that the protest was seditious in nature.

A protest of a similar nature occurred in May at Puncak Alam, Kuala Selangor regarding the construction of a Hindu temple in the Muslim-majority area⁷¹. In both cases, police took minimal action against the organizers of the protests.

Conversion issues pertaining to minor

The unfortunate series of events plaguing G Thiyagurudeen and the subsequent suicide attempt by the 14 year-old⁷² highlights the lack of protection for those suffering from harassment by religious groups. Despite a police report filed relating to the harassment suffered by the victim and his father, no police action was taken against the perpetrators.

In Sarawak, there was the unfortunate case involving a 13 year-old Sabrina Ngumbang. It was alleged that her teachers had attempted to forcibly convert her to Islam without her parent's consent. In an interview, Sabrina stated that her teachers had provided money for her to purchase prayer clothing after a pre-conversion ceremony. A police report was subsequently made against her teacher for alleged conversion to Islam without her parents'

⁶⁹ 'Non-Muslim parents allowed child custody under new Perlis fatwa, says report', the Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/non-muslim-parents-allowed-child-custody-under-new-perlis-fatwa-says-report>> accessed 23rd November 2015

⁷⁰ 'Under the Najib Regime: PJ church forced to take down cross as 'locals' protests', Malaysia Chronicle, <http://www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=496891:under-the-najib-regime-pj-church-forced-to-take-down-cross-as-locals-protest&Itemid=2#axzz3kjpJKJ46> accessed 23rd November 2015

⁷¹ Melissa Chi, 'Muslim residents protest against planned building of Hindu temple in Kuala Selangor', the Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/muslim-residents-protest-against-planned-building-of-hindu-temple-in-kuala>> accessed 23rd November 2015

⁷² Mariam Mokhtar, 'Religious Fanatics who wreck lives', Free Malaysia Today, <<http://www.freemalaysiatoday.com/category/opinion/2015/03/13/religious-fanatics-who-wreck-lives/>> accessed 23rd November 2015

consent⁷³. Despite the publicity received, Datuk Fatimah Abdullah, Minister for Women, Family and Community Development denied that there had been attempts to convert Sabrina to Islam⁷⁴.

As one of the signatories of the United Nation Convention on the Right of the Child (UNCRC), it is deplorable that both the federal and state government did not take adequate action to protect the rights and interests of the minors involved.

REFUGEES, ASYLUM SEEKERS, MIGRANT WORKERS & HUMAN TRAFFICKING.....

Malaysia is not a signatory to the UN 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and currently there are no legislative or administrative provisions in place for dealing with the situation of **refugees or asylum-seekers** in the country. This means refugees and asylum seekers have no legal status, and therefore no recognised rights.

However, the Malaysian government does permit the UNHCR to conduct activities related to the reception, registration, documentation and status determination of refugees and asylum-seekers. There are currently (as of September 2015) 153,850 registered refugees and asylum seekers with UNHCR Malaysia and an unknown number unregistered: 57% are men, 43% women, and 33,740 are below 18. Over 11,000 children are of school-going age. Between 7,000 and 12,000 are resettled every year, though there is no guarantee these numbers will continue.

Some 90% of the registered refugee population are from Myanmar, with over 50,000 being Rohingya. The majority of the refugees and asylum-seekers are located in the greater Kuala Lumpur metropolitan area, with less significant numbers in Penang, Kedah and in Johor Bahru. Resettlement rates are not large enough to resettle all refugees from Malaysia. Many have been here for five years and more, with some who have been here for over thirty years.

But with no legal status, refugees and asylum seekers are forced to live a highly precarious existence, at the mercy of the authorities and others who exploit their vulnerability and lack of any right to redress. Having survived a journey fraught with danger and abuse, often surviving traffickers and other criminal syndicates, they arrive in Malaysia to face harassment, extortion, cheating, violence, and detention.

With no right to employment, refugees and asylum seekers have no legal protection at work, and as a result, are forced to work in the informal sector, many ending up being cheated, exploited, and worse, trafficked. Asylum seekers also have to pay 'foreigner' rates for healthcare and also run the risk of being reported to the authorities for being 'undocumented'. A refugee card theoretically entitles them to a 50% discount, but many

⁷³ Desmond Davidson, 'Sarawak teenager says teachers tried to convert her to Islam', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/sarawak-teenager-says-teachers-tried-to-convert-her-into-islam1>> accessed 23rd November 2015

⁷⁴ Oleh Steve Annuar, 'Tiada proses Islamkan Sabrina: Fatimah', The Borneo Post Online, <<http://www.theborneopost.com/2015/03/28/tiada-proses-islamkan-sabrina-fatimah/>> accessed 23rd November 2015

thousands are still waiting for this card. This means that many refugees forego or simply cannot afford healthcare, with all the obvious consequences.

In addition, the precariousness of their situation and uncertain future has severe negative impact on their physical and mental health. Barred from Malaysian schools, the children of refugees and asylum seekers do not have access to education and rely on voluntary efforts within the community or from NGOs, possibly with some limited support from the UNHCR.

Refugees and asylum seekers live in mainly low-cost urban areas. They face discrimination, xenophobia and racism. Immigration raids are commonplace, and detention a constant reality for thousands of asylum seekers. The Malaysian government and its agencies treat asylum seekers as 'illegal immigrants', arresting new arrivals and detaining those caught without documents in appalling special detention camps.

The numbers of **migrant workers** in Malaysia are significant. They are estimated to be over 6 million, of which around half are documented. The rest are undocumented. The rights of undocumented workers are not respected and they have no right to redress (for example when they have been cheated at the workplace). Many undocumented workers have started as documented workers but left their employers or agents possibly because of mistreatment.

Whether documented or undocumented, migrant workers have been subject to abuse, violations, violence, extortion, harassment and arrest. Despite comprising an estimated 25-30% of Malaysia's workforce, they remain a particularly vulnerable group of workers in Malaysia who have been deprived of their rights as workers. This increases their vulnerability to human trafficking and to modern day slavery.

The context within which this increasing exploitation of migrant workers occurs is the lucrative business in recruiting, outsourcing and employing migrant labour. Private agencies and companies make huge profits because employers can cut costs by employing migrant workers from around the region including Indonesia, Bangladesh, Nepal, Myanmar, Vietnam, and Cambodia.

As highlighted in the 2014 United States Trafficking in Persons report: "Many Malaysian recruitment companies, known as "outsourcing companies," recruit workers from foreign countries. Contractor-based labour arrangements of this type— in which the worker may technically be employed by the recruiting company—create vulnerabilities for workers whose day-to-day employers generally are without legal responsibility for exploitative practices. In some cases, foreign workers' vulnerability to exploitation is heightened when employers neglect to obtain proper documentation for workers or employ workers in sectors other than that for which they were granted an employment visa. In addition, a complex system of recruitment and contracting fees, often deducted from workers' wages, makes workers vulnerable to debt bondage."

A November 2014 Verite⁷⁵ report on Malaysia's electronic sector highlighted the extent of modern day slavery within even a mainstream industry. It found that 32% of migrant workers in the industry were in situations of "forced labour", where work is coerced through factors including indebtedness from excessive fees charged by recruiters. The illegal retention of passports by employers or agents was also cited as a practice which is widespread. The Verité report added that 73% of workers could be categorised as showing "some characteristics" of forced labour.

A catalogue of abuses perpetrated against migrant workers documented over the years include: changed contracts; unpaid wages; frequent flouting of the labour laws, arbitrary/high deductions; lack of health insurance or safety at work; unfair dismissal; violence; sexual harassment; trafficking; rape and murder. Domestic workers are particularly vulnerable but are by no means the only ones who suffer. Migrant workers do not have effective channels of redress under Malaysian law. Workers who complain can be summarily sacked and their permits cancelled. Most live in cramped, unhygienic accommodation and they are subject to xenophobia and/or racism from locals. Like refugees and asylum-seekers, migrant workers, documented and undocumented live in constant fear of harassment and extortion by enforcement personnel. Detention is a common occurrence.

Malaysia's standing in relation to **human trafficking** improved in the U.S. Department of State rankings. In 2015, Malaysia has gained back tier two status in the human trafficking report (Tier 3 in 2014)⁷⁶. The discovery of mass graves mentioned earlier in this report^{77,78} is a cause for concern as it reveals the fact that human traffickers have the resource and capabilities to act with a degree of impunity in Malaysia.

While investigations are still on-going⁷⁹, Phil Robertson, Deputy Director of Human Right Watch's Asia division alleged that such activities could not have taken place without the support of military, police and politicians. Irrespective of any possible criminal involvement by any quarters, the lacklustre response by the federal government in light of this gruesome discovery on Malaysian soil does not give us hope that the investigation will expose the guilty parties and appropriate preventive measures taken.

⁷⁵'Forced Labour in the Production of Electronic Goods in Malaysia: a Comprehensive Study of Scope and Characteristics', Verite,
<http://www.verite.org/sites/default/files/images/VeriteForcedLaborMalaysianElectronics_2014_0.pdf> accessed 2nd December 2015

⁷⁶ 'Office to Monitor and Combat trafficking in Persons', U.S. Department of State',
<<http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243485.htm>> accessed 23rd November 2015

⁷⁷ Beh Li Yih, 'Malaysia migrant mass graves: police reveal 139 sites, some with multiple corpses', The Guardian,
<<http://www.theguardian.com/world/2015/may/25/malaysia-migrant-mass-graves-police-reveal-139-sites-some-with-multiple-corpse>> accessed 2nd December 2015

⁷⁸ Hilary Whiteman, 'Malaysia finds another mass grave near Thai border', CNN,
<<http://edition.cnn.com/2015/08/24/asia/malaysia-mass-grave/>> accessed 2nd December 2015

⁷⁹ Jonathan Pearlman, 'Malaysian police arrested in investigation over migrant mass graves', The Telegraph ,
<<http://www.telegraph.co.uk/news/worldnews/asia/malaysia/11635671/Malaysian-police-arrested-in-investigation-over-migrant-mass-grave.html>> accessed 23rd November 2015

With this in mind, SUARAM concludes that the upgrade of Malaysia's status with regards to human trafficking should be taken with a pinch of salt especially in the light of the gruesome discovery of the mass graves.

DEATH PENALTY.....

As of November 2015, there were no instances of execution carried out. According to the Minister in the Prime Minister Department, Nancy Shukri on 18th November 2015, there are currently 1022 convicts on death row⁸⁰. The minister herself acknowledged the futility of the death penalty in curbing crimes and is added that the Government was considering amending the law to scrap mandatory death penalty in Malaysia.

This development in the removal of mandatory death penalty is a welcome change in the campaign to abolish the death penalty in Malaysia and we hope that all pending executions will be put on hold in the light of the recent developments.

FREE AND FAIR ELECTIONS.....

In 2015, there were three by-elections in Malaysia, namely, Rompin, Chempaka & Permatang Pauh. In all three by-elections, no major incidents were documented.

During the International Anti-Corruption Conference (IACC), Sarawak Chief Minister expressed willingness to cooperate with civil society⁸¹ including the Bersih coalition with regards to election issues. It remains to be seen whether the chief minister will follow-up on his declaration and work with civil society to improve the state.

The on-going delineation exercise has been criticized by various quarters for failing to address the existing intra-state malappropriation and the opaque notice given to the public⁸². Following the application made by Batu Lintang Assemblyperson, the High Court of Kuching nullified the delineation exercise⁸³ there. Unfortunately, in August 2015, the Court of Appeal overruled the decision of the Kuching High Court⁸⁴ and the process continued at a hurried pace. Despite the on-going appeal to the Federal Court, the Election Commission has chosen to proceed with the delineation process without waiting for the decision of the

⁸⁰ 'Govt looking to scrap mandatory death sentence', The Star Online, <<http://www.thestar.com.my/News/Nation/2015/11/18/Govt-looking-to-scrap-mandatory-death-sentence/>> accessed 23rd November 2015

⁸¹ Koh Jun Lin, 'S'wak CM pledges cooperation with civil society, including Bersih', MalaysiaKini, <<https://www.malaysiakini.com/news/310991>> accessed 23rd November 2015

⁸² 'Sarawak redelineation exercise seriously stymied by incomplete maps and gross malapportionment', Bersih 2.0, <<http://www.bersih.org/sarawak-redelineation-exercise-seriously-stymied-by-incomplete-maps-and-gross-malapportionment/3/>> accessed 23rd November 2015

⁸³ 'High Court nullifies EC's Sarawak re-delineation, 'Hornbill Unleashed'', <<https://hornbillunleashed.wordpress.com/2015/05/16/high-court-nullifies-ecs-sarawak-re-delineation/>> accessed 23rd November 2015

⁸⁴ Maizatul Nazlina, 'Appeals court rules sarawak's re-delineation exercise valid', The Star Online, <<http://www.thestar.com.my/News/Nation/2015/08/07/Court-of-Appeal-EC-recommendations/>> accessed 23rd November 2015

Federal Court. As of 3rd December 2015, the delineation process has been completed with the passing of the bill with 130 votes in favour in the Dewan Rakyat.

Following the expose of the RM2.6billion deposited into Prime Minister, Najib Razak's bank account, the opposition party including Parti Keadilan Rakyat and Gerakan Harapan Baru⁸⁵ filed a claim at Kuala Lumpur High Court against the Prime Minister, Barisan National Secretary-General Datuk Seri Tengku Adnan Tengku Mansor, 1MDB and the Election Commission. The allocation and usage of RM2.6billion in donation would be more than 26 times the allowed spending as outlined by Malaysian law⁸⁶. It remains to be seen whether the Election Commission will take proactive action on this serious breach of election laws.

CORRUPTION AND ACCOUNTABILITY.....

In 2014, Transparency International placed Malaysia's corruption index at 52 points, ranking US 50 out of 175 states. While the 2015 corruption index is not yet available, the government has claimed that the fight against corruption has been going well in light of the increase in conviction rate⁸⁷. Not many share the same optimism in light of the on-going scandals detailed below.

In 2015, when Malaysia served as the host for the **16th International Anti-Corruption Convention (IACC)**, Minister in the Prime Minister Office, Datuk Paul Low advised the Prime Minister Dato' Seri Najib against attending the event to avoid embarrassment in light of the international publicity surrounding the scandal of RM2.6billion deposited in his personal account.

During the convention, Transparency International Chairman, Jose Ugaz claimed that Malaysia was facing a major corruption crisis and that the way to get through this crisis would require the government to let the Malaysian Anti-Corruption Commission (MACC) do its job without political interference⁸⁸. The deputy chief commissioner of the MACC tried to downplay the statement by denying that Malaysia is facing a corruption crisis⁸⁹.

⁸⁵ Now known as Parti AMANAH

⁸⁶ Eileen Ng, 'PKR sues Najib for breaking election law with RM2.6 billion 'donation'', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/pkr-sues-najib-for-breaking-election-law-with-rm2.6-billion-donation>> accessed 23rd November 2015

⁸⁷ 'Government defends its anti-graft efforts', The Star Online, <<http://www.thestar.com.my/News/Nation/2015/09/04/Govt-defends-its-antigrft-efforts-DPM-Conviction-rate-proof-of-track-record/>> accessed 23rd November 2015

⁸⁸ 'Malaysia facing major corruption crisis, global anti-graft watchdog says', the Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/malaysia-facing-major-corruption-crisis-global-anti-graft-watchdog-says>> accessed 23rd November 2015

⁸⁹ 'MACC: Malaysia not facing corruption crisis', the star online, <<http://www.thestar.com.my/News/Nation/2015/09/04/macc-malaysia-not-facing-corruption-crisis/>> accessed 23rd November 2015

From the earliest and relatively minor failure to make payment to banks and bondholders to the eventual revelation of possible corruption and misappropriation of funds⁹⁰, **1 Malaysia Development Berhad (1MDB)** has had its share of misfortune in 2015. While the misappropriation of funds and other financial inaptitude is not new following the financial crisis of 2007, the desperate measures taken by the government to silence critics overstepped the bounds of human rights.

The initial report by Wall Street Journal⁹¹ resulted in a curious letter by Dato' Seri Najib's lawyers to Wall Street Journal demanding to know whether the report made by Wall Street Journal accused Dato' Seri Najib of misappropriated funds⁹² along with threats of defamation against the journalist and publisher. The whistle-blower website *Sarawak Report* was next to suffer the ire of the Malaysian government following MCMC decision to block their website from local access. To further escalate the situation, the task force formed to investigate the scandal was summarily disbanded shortly⁹³ after the sudden retirement of the former AG Abdul Gani Patail due to health reasons.

Shortly after the removal of former AG Abdul Gani Patail from office, the Cabinet reshuffle that took place resulted in the removal of former Deputy Prime Minister Muhyiddin Yassin from the Cabinet⁹⁴. Although no reason was given for the decision, it was widely held that the removal was due to Muhyiddin's critical comments on the 1MDB scandal⁹⁵ and the perceived political threat posed by the former Prime Minister Tun Mahathir.

LAW AND JUDICIARY.....

On 2nd November 2015, the **United Nations Working Group on Arbitrary Detention (UNWGAD)** issued a statement condemning the charge, trial and conviction of Anwar

⁹⁰ 'Heist of the century – How Jho Low Used PetroSaudi As a 'Front' to Siphon Billions out of 1MDB', Sarawak Report, <<http://www.sarawakreport.org/2015/02/heist-of-the-century-how-jho-low-used-petrosaudi-as-a-front-to-siphon-billions-out-of-1mdb-world-exclusive/>> accessed 23rd November 2015

⁹¹ Tom Wright & Simon Clark, 'Investigators believe money flowed to Malaysian leader Najib's accounts amid 1MDB Probe', The Wall Street Journal, <<http://www.wsj.com/articles/SB10130211234592774869404581083700187014570>> accessed 23rd November 2015

⁹² Ibid 70

⁹³ '1MDB special task force disbanded, says MACC', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/1mdb-special-task-force-disbanded-says-macc>> accessed 23rd November 2015

⁹⁴ M. Kumar, 'Muhyiddin: Najib informed me of removal less than two hours before announcement', The Star Online, <<http://www.thestar.com.my/News/Nation/2015/07/29/Cabinet-reshuffle-PM-Muhyiddin-Two-hours/>> accessed 23rd November 2015

⁹⁵ Mazwin Nik Anis & Razak Ahmad, 'Muhyiddin: Should be the PM to tell truth on 1MDB', The Star Online, <<http://www.thestar.com.my/News/Nation/2015/07/26/1mdb-muhyiddin-says-najib-should-explain-issues/>> accessed 23rd November 2015

Ibrahim as politically motivated⁹⁶ and called for the immediate release of Anwar Ibrahim and reinstatement of all of his political rights deprived when he was convicted.

Despite the clear conclusion drawn by UNWGAD, the Prime Minister Office (PMO) issued A statement calling for the UNWGAD to respect the Malaysian legal process and claimed that the case of Anwar Ibrahim was a criminal case and not a political case and that the government had no part in it.⁹⁷

The **Attorney-General Chamber (AGC)** is intended to be an independent and impartial organ of the criminal justice system. However, with the on-going prosecutions under the Sedition Act 1948 and the various frivolous charges under the PAA, it is difficult to perceive the AGC as the executor of the rule of law in Malaysia.

Despite his close relation with the federal government and administration, the former AG Abdul Gani Patail was summarily removed from office through an announcement made by the Chief Secretary Ali Hamsa⁹⁸. Officially, the reason for his removal or termination was health related although the popular belief was that the removal of the AG was a direct consequence of the investigation into 1MDB by the AGC. The new AG appointed, Tan Sri Mohamed Apandi Ali swiftly put an end to the joint-task force set up to investigate the 1MDB scandal after taking office.

As in 2014, the **Judiciary** has given cause for optimism as well as disappointment. Several controversial cases and decision were recorded in 2015. The criminal charge against Bunya Jalong is one of such case in which the Court of Appeal found the conviction of rape to be unsound, justifying the decision by a loophole in existing provision on rape⁹⁹.

In the continuation of the Deepa case, the Federal Court stayed the decision of the lower court which required the father, Izwan Abdullah to return his son to his ex-wife. It is unfortunate that the apex court came to such a decision despite clear evidence that the child's welfare would be better served if he was returned to his mother¹⁰⁰.

⁹⁶ 'UN Panel calls for Anwar's release, says charges 'politically motivated', Channel News Asia, <<http://www.channelnewsasia.com/news/asiapacific/un-panel-calls-for-anwar/2232238.html>> accessed 23rd November 2015

⁹⁷ 'PMO to UN group: Anwar's case criminal, not political', MalaysiaKini, <<https://www.malaysiakini.com/news/318167>> accessed 23rd November 2015

⁹⁸ FMT Reporters, 'Has Gani been sacked as AG and demoted?', Free Malaysia Today, <<http://www.freemalaysiatoday.com/category/nation/2015/07/28/has-gani-been-sacked-as-ag-and-demoted/>> accessed 23rd November 2015

⁹⁹ Sharon Ling, 'Shock over rape acquittal', The Star Online, <<http://www.thestar.com.my/News/Nation/2015/05/11/Shock-over-rape-acquittal-Group-aghast-over-verdict-and-seeks-better-protection-for-minors/>> accessed 23rd November 2015

¹⁰⁰ 'Federal Court ruling in Deepa custody case violating non-Muslim rights, says Hindraf', the Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/federal-court-ruling-in-deepa-custody-case-violating-non-muslim-rights-says>> accessed 23rd November 2015

The appeal by Anwar Ibrahim in the Federal Court was returned with a conviction. Despite the political intrigue and questionable evidence, the apex court decided to uphold the decision made by the Court of Appeal and convicted Anwar Ibrahim for sodomy¹⁰¹.

On a positive note, the Court of Appeal upheld the lower court's order for the Home Ministry to return Jill Ireland her CDs that contained the word Allah.

Despite the declaration that section 9 of the **Peaceful Assembly Act (PAA)** was unconstitutional by the Court of Appeal in 2014 and the Federal Court's rejection of an appeal, the Court of Appeal came to a different decision altogether on the 2nd October 2015 and declared that section 9(5) of the PAA was constitutional.

At this juncture, it is hoped that an appeal to the Federal Court would be allowed and that the recent decision made by the Court of Appeal would be reversed in favour of the decision made by the Court of Appeal in 2014.

The right to legal representation for **women in the Syariah Court**¹⁰² is problematic. In general, each state has an independent religious governing body and as a result autonomous Sharia Legal Systems and Sharia lawyers. For civil disputes, those in need can access pro bono service from the legal aid centre. Similarly, Jabatan Bantuan Guaman (JBG) provides legal services free of charge to individuals if they fulfil the monetary threshold required. Women who require representation in the Sharia courts do not necessarily know that these resources are available to them.

There have been numerous incidents in which the JBG has shown a lack of commitment in cases given to them. Some of the problems can be traced to the lack of a disciplinary board that would regulate the professional standards of the lawyers practicing in Sharia courts. Further, the monetary threshold is at a level that would in some cases exclude those who are not financially capable of hiring independent legal professional¹⁰³.

In conclusion, there is no doubt that there are various legal provisions attempting to safeguard the rights and interests of women in the Sharia courts. Unfortunately, the reality of divorces and circumstances surrounding the divorce may render the access to adequate legal representation illusory.

NATIONAL HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM).....

In 2015, SUHAKAM maintained its commendable stance in condemning laws and actions that violated human rights in Malaysia. Nevertheless, it is unfortunate that SUHAKAM still

¹⁰¹ Jethro Mullen, 'Malaysia court upholds sodomy conviction against opposition leader', CNN, <<http://edition.cnn.com/2015/02/09/asia/malaysia-anwar-ibrahim-sodomy-case/>> accessed 23rd November 2015

¹⁰² Zurairi Ar, 'For some Muslim women, divorce not the end of marital hell', the Malay Mail Online, <<http://www.themalaymailonline.com/malaysia/article/for-some-muslim-women-divorce-not-the-end-of-marital-hell1>> accessed 2nd December 2015

¹⁰³ 'Pembaharuan Proses Perceraian dan Tuntutan Sampingan Dalam Prosiding Mahkamah Syariah', Sisters in Islam, <<http://www.sistersinislam.org.my/news.php?item.1066.8>> accessed 2nd December 2015

suffers from procedural weakness that limits its ability to ensure prompt actions are taken by the relevant agencies.

In recent months, SUHAKAM has launched a campaign called 'UNCAT' to promote and demand that the Malaysian government ratifies the United Nation Convention against Torture (CAT). This campaign is a positive development as it is the first time that SUHAKAM has proactively engaged civil society in the promotion of human rights in Malaysia.

While SUHAKAM has shown its willingness to cooperate with civil society, the commission has yet to establish a formal and permanent platform for broader cooperation between SUHAKAM, civil society and relevant government agencies. Without formalising such an arrangement, SUHAKAM cannot yet claim to have greater representation and to hold the moral high ground as the national human rights commission of Malaysia.

In the Budget for 2016, the financial allocation for SUHAKAM has been sizeably cut from RM10,986,200 in 2015 to RM5,509,400 for 2016. It is curious how the Government of Malaysia expects SUHAKAM to operate with such a limited budget at their disposal. The cut in budget of almost 50% contravenes the responsibility of the government for funding SUHAKAM under Section 19(1) of the Human Rights Commission of Malaysia Act 1999. This will certainly be a blow to its capacity to carry out its human rights defence and promotional work. Furthermore, SUHAKAM's proposed amendments to the Human Rights Commission of Malaysia Act 1999 were rejected without further consideration by the Government of Malaysia. The rejection was highly unfortunate as the proposed amendments would endow SUHAKAM with additional power to better execute their duties and responsibilities.

Such treatment by the Malaysian Government is arguably, clear evidence that SUHAKAM has improved markedly in discharging its responsibilities as the National Human Rights Commission. It has likely incurred the displeasure of the Government by bringing to light numerous human rights violations in Malaysia.

GENDER AND SEXUALITY.....

Putting an end to gender discrimination is part of the global human rights agenda. In 1995, the Malaysian government ratified the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). Twenty years later, there is still much to be done to attain gender equality in the country.

The fact that groups such as the Obedient Wives Club formed by Global Ikhwan suggests that there are large pockets of the Malaysian population who retain sexist ideals with regards women's role in society. This is supported by UNICEF's findings that a majority of their respondents believe that men have a higher status in Malaysian society¹⁰⁴. In the

¹⁰⁴ 'Gender equality in Malaysia: Fact or Fiction?', UNICEF, <http://www.unicef.org/malaysia/media_features2015-gender-equality-in-malaysia-fact-or-fiction.html#.VfFnyZcrLjY> accessed 23rd November 2015.

workplace, the majority 46% (27% neutral and 27% agree) do not think that women are treated equally¹⁰⁵.

Other findings suggest that gender equality at the workplace is improving. From 2014 to 2015, women holding senior management positions in Malaysia have increased from 29% to 34%¹⁰⁶. While the figures do not represent equitable gender representation across all levels of employment and do not address the question of welfare and work condition, this is a welcome improvement.

While gender equality at the workplace may have seen some improvements, the same cannot be said for the Malaysian Parliament. Apart from the current under-representation of women politicians in Parliament with women accounting for only 10.4% of the total number of Member of Parliaments¹⁰⁷, some male Parliamentarians habitually hurl sexist slurs against women Parliamentarians in the heat of debate. An example is the behaviour of the Member of Parliament for Baling calling another Member of Parliament 'pondan', a sexist and derogatory term for an effeminate man.¹⁰⁸

LGBT Rights

In Malaysia, discrimination against the LGBT community is exacerbated by religious bigotry. While various civil society groups have advocated for the rights of the LGBT community, the Malaysian government has chosen to remain apathetic and indifferent to the plight faced by the LGBT community.

Indeed, more recently, there have been moves to repudiate the human rights of the LGBT community. For instance, the Minister for Tourism and Culture, Nazri Aziz opined that LGBT communities would never get equal rights in Malaysia as their 'lifestyle' goes against the teaching of Islam¹⁰⁹. Likewise, Prime Minister Najib Razak also claimed that LGBT communities are using the guise of human rights to justify their deviance from Islamic teachings¹¹⁰.

On 8th October 2015, the Federal Court of Malaysia, on technical grounds, overruled the decision of the Court of Appeal which had overturned the decision made by the High Court

¹⁰⁵ Ibid 94

¹⁰⁶ Noreen Ismail, 'More women in senior management roles in Malaysia', Advertising + Marketing Malaysia, <<http://www.marketing-interactive.com/women-senior-management-roles-malaysia-hays/>> accessed 23rd November 2015

¹⁰⁷ Lynda Lim, 'An Insight into Malaysia's Women in Parliamentary Caucus', The Malaysian Insider, <<http://www.themalaysianinsider.com/sideviews/article/an-insight-into-malaysias-women-parliamentary-caucus-lynda-lim>> accessed on 30th November 2015

¹⁰⁸ 'Sexism and bigotry in Parliament must be censured – Pusat Kesedaran Komuniti Selangor (EMPOWER), The Malay Mail Online, <<http://www.themalaymailonline.com/what-you-think/article/sexism-and-bigotry-in-parliament-must-be-censured-persatuan-kesedaran-komun>> accessed 30th Novemembr 2015

¹⁰⁹ Shahwan Mustafa Kamal, 'LGBT community will never have equal rights in Malaysia, tourism minister says', <<http://www.themalaymailonline.com/malaysia/article/lgbt-community-will-never-have-equal-rights-in-malaysia-tourism-minister-sa>> accessed on 23rd November 2015.

¹¹⁰ 'Muslims threatened by liberalism, secularism and LGBT, says Najib – Bernama', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/muslims-threatened-by-liberalism-secularism-and-lgbt-says-najib-bernama>> accessed 4th December 2015

in rejecting the application by a group of LGBT to have section 66 of the Negeri Sembilan Syariah Criminal (Negeri Sembilan) Enactment 1992 declared unconstitutional.

INDIGENOUS PEOPLES' RIGHTS.....

The plight of the indigenous peoples of Malaysia has been further highlighted by tragic events in 2015. The tragedy involving seven Orang Asli children in Kelantan focused the nation's attention on the serious lapse in care and protection for the Orang Asli in Malaysia. There have been various allegations made by the families of the victims against government agencies including, tardiness in commencing the search and allegations that the police had accused the families of hiding the children which consequently delayed the search for the children¹¹¹.

The recent expose by The Star has revealed the poor living conditions of the Jahai Tribe in Royal Belum State Park in Perak and the mysterious disease that has plagued the tribe in the recent years¹¹². According to their report, there is a notable discrepancy between the accounts given by the local indigenous settlement and the government agencies involved.

In another expose by The Star, the Kuala Betis Transit Centre for pregnant Orang Asli women in Gua Musang has been found to be in such a poor state of affairs with little or no essential necessities provided for the families¹¹³. The Orang Asli Development Department (JAKOA) claims that 'gotong-royong' (community self-help) has been carried out with the local community and that a new transit centre located away from flood-prone area would be completed in February 2016¹¹⁴. While their statement regarding the new transit centre is certainly welcomed, it remains to be seen whether any tangible action will be taken to remedy the state of affairs at the present transit centre.

SUHAKAM has also reported and acknowledged the deplorable state of affairs relating to the education provided for the Orang Asli community with specific concerns raised in the area of access to education for Orang Asli children and the reports of abuse of Orang Asli children by teachers¹¹⁵.

On 30th September 2015, the Semai from Kampung Senta in Bidor, Perak managed to secure their native title rights to their customary land under common law. While this victory may

¹¹¹ Melati A. Jalil, 'No delay in search, Orang Asli kids were hiding, says top cop', The Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/no-delay-in-search-orang-asli-children-were-hiding-says-top-cop>> accessed 30th November 2015

¹¹² Shanjeev Reddy & Elroi Yee, 'Dead and Forgotten', The Star: RAGE, <<http://rage.com.my/dead-and-forgotten>> accessed 26th November 2015.

¹¹³ Neville Spykerman, 'Home for expectant orang asli mother rundown, filthy and ill equipped', The Star, <<http://www.thestar.com.my/News/Nation/2015/11/25/Trauma-in-the-transit-centre/>> accessed 26th November 2015.

¹¹⁴ 'RM468,000 facility for pregnant orang asli will be ready in February', The Star, <<http://www.thestar.com.my/News/Nation/2015/11/26/New-transit-centre-coming-RM468000-facility-for-pregnant-orang-asli-will-be-ready-in-February/>> accessed 26th November 2015.

¹¹⁵ 'Protect Orang Asli children, Suhakam tells Putrajaya', the Malaysian Insider, <<http://www.thestar.com.my/news/nation/2015/10/15/suhakam-orang-asli/>> accessed 30th November 2015

seem small in the greater scheme of things, the security for the Semai from Kampung Senta stands as a significant victory in the struggle of the indigenous peoples of Malaysia for recognition of their rights to their native customary land and their entitlements as the original peoples of Malaysia.

In Sarawak, the construction of Baram hydroelectric Dam in Baram, Miri has been put on hold by the Sarawak Government. The reason given by the Chief Minister of Sarawak, Tan Sri Adenan Satem, was that the people in Baram do not want the project. While this development is certainly welcome, the statement made by the Chief Minister with regards to the possible lack of development in the area notably dampens the positive development in Baram¹¹⁶. This is also reminiscent of the numerous times when the Bakun dam was temporarily “put on hold” from the time it was conceived in the 1970s!

BUSINESS AND HUMAN RIGHTS.....

As a country that actively participates in the global economy, Malaysia is the host for numerous subsidiaries or regional branches of multinational companies such as Intel and Google. The presence of these multinational companies has a significant impact on the social, economic and environmental development of Malaysia.

Trans-Pacific Partnership Agreement (TPPA)

As the final signing of the TPPA draws nearer, we are concerned about the short and long term impact of the TPPA on the Malaysian economy, society as well as the various sectors. While Malaysians may enjoy an economic upturn and lower prices for selected goods as a result of the TPPA, the human rights fallout from the TPPA has not been properly mapped out and evaluated. Some of these areas of concern raised by various quarters include: the intellectual property (IP) regulations which may adversely affect the current protection afforded to arts and cultural work; medication prices and availability; small and medium industries, the reduction or abolition of agricultural subsidies and its subsequent impact on food security in Malaysia.

Contrary to international standards and procedure in approaching any international trade or investment agreement, the Government of Malaysia has yet to conduct any Human Rights Impact Assessment (HRIA) study. Instead, in its place, it has opted for a less rigorous cost-benefit analysis (CBA) on the TPPA.

Parliamentary debate on the TPPA was supposed to take place after the tabling of the budget for 2016. But it has been repeatedly delayed and is now reportedly scheduled to be tabled in Parliament only in January 2016.

¹¹⁶ ‘Baram dam on hold for now, says Sarawak CM’, the Malaysian Insider, <<http://www.themalaysianinsider.com/malaysia/article/baram-dam-on-hold-for-now-says-sarawak-cm>> accessed 23rd November 2015.

SUARA RAKYAT MALAYSIA (SUARAM) IS COMMITTED TO DEFENDING AND CAMPAINING FOR HUMAN RIGHTS IN MALAYSIA AND OTHER PARTS OF THE WORLD. THE ORGANISATION BEGAN IN 1989 AS A CAMPAIGN BODY FOR 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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