



Malaysia Civil and Political Rights Report 2008 Overview

SUARAM Komunikasi
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INTRODUCTION¹

The year 2008 was most notably marked by the 12th General Election which saw the ruling National Front (*Barisan Nasional*, BN) coalition's biggest loss in Malaysian electoral history. The 2008 General Election saw the opposition coalition, *Pakatan Rakyat*, winning 82 seats in the 222-seat Parliament. This is only the second time since the country's independence in 1957 that the ruling coalition is denied its two-thirds majority in the Parliament.² In addition, *Pakatan Rakyat* now controls five of the thirteen state governments in the country, thus eroding the BN's political hegemony and posing a serious challenge to the dominant-party regime of the BN in Malaysia.

The unprecedented result in the 2008 General Election was a manifestation of the popular call for reforms and greater respect for human rights in the country. It was clearly borne out of the great disappointment over the increasing failure of state institutions, such as the judiciary, the police, the Anti-Corruption Agency (ACA), and the Human Rights Commission of Malaysia (*Suruhanjaya Hak Asasi Manusia Malaysia*, SUHAKAM), in upholding justice, equality, human rights and democracy, as highlighted by SUARAM in 2007.³ Major events in 2007, including the landmark demonstrations organised respectively by the Malaysian Bar Council, the Coalition for Clean and Fair Elections (BERSIH), and the Hindu Rights Action Force (HINDRAF), culminated in 2008, resulting in the huge setback of the BN government in the General Election in March. Despite the huge loss of popular support, the BN government has still generally failed to respond to the demands for reforms, democratisation and respect for human rights.

In recent years, we have noted the deterioration of human rights in Malaysia as a result of the BN government's failure to implement reforms despite having continuously pledged and reaffirmed its commitment towards the promotion and protection of human rights.⁴ In 2008, most of the major regressive trends in human rights in recent years persist:

¹ This report covers highlights of events pertaining to civil and political rights in Malaysia in the period between 1 January 2008 and 5 December 2008.

² The only other time that the ruling BN and its predecessor, the Alliance, failed to obtain a two-thirds majority in the Parliament was in 1969.

³ See SUARAM (2008) *Malaysia Human Rights Report 2007: Civil and Political Rights*, Petaling Jaya: SUARAM Komunikasi.

⁴ See Ibid. See also SUARAM (2007) *Malaysia Human Rights Report 2006: Civil and Political Rights*, Petaling Jaya: SUARAM Komunikasi.

- The government continued to detain persons without trial, with 46 individuals still detained under the ISA as of 5 December 2008. 10 arrests were made under the ISA in 2008, including a blogger, an opposition member of parliament, and a journalist, while 55 detention orders or extension of detention orders were signed by the Home Minister.
- The government has failed to implement most of the more substantial recommendations made by SUHAKAM and the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police (Royal Police Commission).
- Abuses of powers by the police remained unchecked with the failure to set up the Independent Police Complaints and Misconduct Commission (IPCMC). In 2008, SUARAM recorded 7 deaths in police custody through media monitoring, with possibly more cases unreported.
- Press freedom continued its decline in world rankings, being placed in an all-time low position of 132nd out of 195 countries in 2008, dropping from 124th in 2007.
- The government was selective in recognising the right to freedom of assembly. While some assemblies were tolerated by the government, those which were held to oppose government policies were cracked down.
- The independence of the judiciary remained in doubt with no substantial reforms being implemented by the government.
- Refugees, undocumented migrants and asylum-seekers continued to face arrests and other serious human rights abuses as a result of the Malaysian government's non-recognition of the rights of these groups.

The year also saw the perpetuation of racial and religious intolerance as a result of heightened politicisation of race and religion by the BN government after its biggest loss in the 12th General Election. Throughout Malaysia's modern political history, the race-based ruling coalition has continued to invoke the "spectre of racial conflict"⁵ to consolidate power and to justify its control of power, especially in times of political crises. This was seen once again in 2008, when the BN coalition's poor showing in the 12th General Election resulted in challenges to the leadership of Abdullah Badawi.

In October, Prime Minister Abdullah Badawi announced that he will retire in March 2009, following immense pressure for him to do so both

⁵ Kua Kia Soong (2008) "Racial conflict in Malaysia: against the official history", *Race & Class* 49(3), London: SAGE Publications (p. 53).

from outside and also within the BN coalition. Deputy Prime Minister Najib Razak, is set to become the next Prime Minister of Malaysia⁶ when Abdullah Badawi steps down. The transition of leadership in the BN and the government's responses to growing criticisms and political challenges from both within and outside the BN will have major implications on human rights and fundamental freedoms in Malaysia.

DISCRIMINATION, INTOLERANCE AND INSTITUTIONALISED RACISM

One of the regressive trends observed in recent times is the politicisation of race and religious intolerance.⁷ During the year under review, the BN government, predominantly made up of race-based political parties, continued to tolerate and perpetuate racial and religious intolerance. Racial discrimination continues to be institutionalised in Malaysia, while the assertion of racial and religious intolerance by non-state actors has been tolerated by the government.

In August, the Prime Minister and the Minister of Higher Education reasserted the government's affirmative policy which gives preferential treatment to the *bumiputera*, when they rejected a proposal to allocate a quota of 10 percent for non-Malays in the admission to *Universiti Teknologi Mara* (UiTM), a university which has been open only to Malays since its inception.

In the same month of August, Prime Minister Abdullah Badawi spoke out against the hosting of public forums to discuss the social contract, saying that such discussions might lead to feelings of animosity and give rise to tension.⁸ The Prime Minister said that there is no need to discuss the matter in response to a public forum on the social contract held by the Malaysian Bar Council. In October, the Conference of Rulers reiterated the Prime Minister's statement not to question the social contract with a press statement warning that "[t]he actions of certain quarters in disputing

⁶ Najib Razak has obtained 185 nominations for the President's post in the upcoming 2009 UMNO elections, making him the uncontested winner.

⁷ See, for instance, Coalition of Malaysian NGOs in the Universal Periodic Review Process (2008) *Submission for the Universal Periodic Review on Malaysia for the 4th Session of the UPR* (pp. 2-3); and also SUARAM (2007) *op. cit.* (pp. 8-10).

⁸ "Don't host forum on social contract, says Abdullah", *Bernama*, 29 June 2008, http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/don_t_host_forum_on_social_contract_says_abdullah.html (last accessed 18 November 2008).

and questioning these matters [...] had caused provocation and uneasiness among the people”.⁹

Similar intolerance towards matters of race and religion was also seen in another forum organised by the Malaysian Bar Council to discuss the issue of conflict of laws facing families caught between the separate jurisdictions of civil and *Syariah* laws. The forum, held on 9 August 2008, was forcibly disrupted by a group of mob, led by members of the ruling United Malays National Organisation (UMNO), the opposition People’s Justice Party (*Parti Keadilan Rakyat*, PKR) and Pan-Malaysian Islamic Party (*Parti Islam Se-Malaysia*, PAS), and also several other Malay- and Islamic-based NGOs.

Such warnings against discussions of matters relating to race and religion were not only made by political leaders, but also by the police, as was seen in November, when Inspector-General of Police Musa Hassan warned non-Muslim NGOs not to interfere in matters involving Islamic laws or risk severe actions by the police.¹⁰ This warning was made following the criticisms made by various NGOs against the National Fatwa Council’s *fatwa* (edict) on ‘tomboys’ in October.

DETENTION WITHOUT TRIAL

In 2008, the government continued to use preventive laws arbitrarily, including the Internal Security Act 1960 (ISA), the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EO), and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA) to arrest and detain suspects without trial. Most notably in 2008, the government used the ISA to threaten and detain critics. Among the most prominent of those detained was a blogger, a journalist and an opposition member of parliament – all were picked up within a period of 24 hours in a series of arrests made by the police.

On 12 September 2008, the police launched a series of arrests under the ISA. The series of arrests began with Raja Petra, webmaster of *Malaysia Today*. Raja Petra’s blog is well-known for its uncovering of scandals, in

⁹ “Rulers defend social contract”, *The Star*, 17 October 2008, <http://thestar.com.my/news/story.asp?file=/2008/10/17/nation/2303782&sec=nation> (last accessed: 18 November 2008).

¹⁰ “IGP to Non-Muslims: ‘Stay out of Muslim matters’”, *The Star*, 13 November 2008, <http://thestar.com.my/news/story.asp?file=/2008/11/13/nation/20081113180902&sec=nation> (last accessed: 18 November 2008).

particular corruption in the government. Prior to his ISA detention, Raja Petra was already facing charges of sedition and criminal defamation.

On the same day as Raja Petra's arrest, a senior journalist for the Chinese-language newspaper *Sin Chew Daily*, Tan Hoon Cheng, was also arrested and detained in connection to her report regarding the derogatory remarks made by a leader of the ruling party, the United Malays National Organisation (UMNO), against the Chinese community in Malaysia. Home Minister Syed Hamid Albar claimed that she was detained to ensure her own safety after her report on the racist remarks made by the UMNO leader had led to a national uproar. The Home Minister's justification drew strong public criticisms given the serious breaches of human rights in ISA detentions and the well-known and documented cases of human rights violations, including torture, that are subjected to ISA detainees.¹¹

Opposition member of parliament and Selangor state executive councillor Teresa Kok, was the third to be detained under the ISA on 12 September 2008. She was arrested for allegedly inciting racial and religious tension, by requesting mosque officials at several locations in the state of Selangor to tone down the call to prayer, an allegation which has been denied by Kok and also the mosque officials.

These ISA arrests were made in the midst of a serious political crisis within UMNO, as a result of its worst electoral performance during the 2008 General Election in March and its huge defeat in the Permatang Pauh by-election in August, which was won by the leader of the opposition People's Justice Party (*Parti Keadilan Rakyat*, PKR), Anwar Ibrahim. The political crisis within the ruling party worsened when Anwar Ibrahim announced his intentions to get members of parliament from the parties in the ruling coalition to join the opposition ranks and to form a new government.

As a result of intense local and international pressure on the government, Tan Hoon Cheng was released on 13 September 2008, one day after her arrest, while Teresa Kok was released on 19 September 2008. Raja Petra Kamaruddin was released on 7 November 2008, in a habeas corpus application.

¹¹ See, for instance, SUARAM's Human Rights Reports of 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007. Other publicly available accounts of former ISA detainees include Syed Husin Ali (1996) *Two Faces: Detention without Trial*, Kuala Lumpur: INSAN; Kua Kia Soong (1999) *445 Days Under Operation Lalang: An Account of the 1987 ISA Detentions*, Kuala Lumpur: Oriengroup; and Koh Swe Yong (2004) *Malaysia: 45 Years Under the Internal Security Act*, Petaling Jaya: SIRD.

Based on SUARAM's monitoring, as of 5 December 2008, there are 46 detainees in the Kamunting Detention Camp. Most of them are alleged members of "religious extremist groups", including the *Jemaah Islamiah* (JI) while another significant number comprises those allegedly involved in counterfeiting currency and falsifying documents. To date, none of the detainees have been charged with any offences. 16 detainees have been detained for more than four years, of which 5 have been in detention since 2002. 10 people were arrested under the ISA in 2008, while 55 detention orders or extension of detention orders were signed by the Home Minister. 31 detainees were known to have been released in 2008.

Under the ISA, detainees, especially in the preliminary stages of investigation, are often subjected to physical assaults and intense interrogation techniques in order to coerce a confession, forced to strip naked, forced to imitate sexual acts, and denied food, drink or sleep. In 2008, ISA detainee Sanjeev Kumar was paralysed as a result of torture in detention in the period between July 2007 and September 2008.¹²

In the past, the call to review or abolish the ISA has been made mainly by civil society and opposition political parties. However, the year 2008 witnessed strong criticisms against the government for its use of the ISA from member political parties of the ruling-BN. On 16 September 2008, Zaid Ibrahim, the minister in charge of law in the Prime Minister's Department, resigned from his post in the government over the government's use of the ISA on Raja Petra Kamaruddin, Teresa Kok and Tan Hoon Cheng in September. Several political parties within the ruling BN coalition have also called for the ISA to be reviewed. In October, the Malaysian Chinese Association (MCA) called for the ISA to be reviewed, while three other major component parties in the BN, the Malaysian Indian Congress (MIC), *Parti Gerakan Rakyat Malaysia* (GERAKAN), and the Progressive People's Party (PPP), called for the same.

The lesser-known Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EO) continues to be used mainly on alleged underworld kingpins and suspected criminals. Over the years, a significant number of

¹² Detained under the ISA on 28 July 2007, Sanjeev was subjected to interrogations, often prolonged to 15 hours a day without any breaks, and was held in solitary confinement. He also reported that he was forced to drink his own urine during detention. As a result of the torture, Sanjeev had frequently complained that his left hand and leg were not functioning properly. Despite his complaints, Sanjeev did not receive sufficient medical treatment. In April 2008, he was finally sent to the hospital, where he was pronounced paralysed. Sanjeev, now wheelchair-bound, was released in September 2008. See SUARAM-FIDH (2008) *Submission to the Universal Periodic Review on Malaysia*, submitted on 8 September 2008.

EO detainees have successfully won their freedom through habeas corpus applications. However, many detainees were re-arrested immediately after the court had released them. Some were released but put under the Restricted Residence Act which confines the movements of detainees.

Similar to the ISA and the EO, the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA) also gives powers to the Home Minister to hand a two-year detention order to any suspect who “has been or is associated with any activity relating to or involving in dangerous drugs”.¹³

On 6 May 2008, in response to a question in the Parliament, Home Minister Syed Hamid Albar revealed to the Parliament that between 2002 and March 2008, the DDA has been used to arrest or detain a total of 11,142 persons.¹⁴ In the same parliament proceeding, the Home Minister said that the DDA will not be repealed.¹⁵

ABUSES OF POWER BY THE POLICE

The government’s continued failure to implement reforms on the police force, in particular the recommendations made by the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police (Royal Police Commission) and the Human Rights Commission of Malaysia (SUHAKAM), has contributed to further human rights violations by the police, including violent reactions to peaceful assemblies, the arbitrary detention of protestors, abuses and even deaths in police custody.

In November 2007, Minister in the Prime Minister’s Department Nazri Abdul Aziz said that a bill for an oversight mechanism on police would be tabled in the then-ongoing parliament sitting.¹⁶ However, in December 2007, instead of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill which was recommended by the Royal Police Commission, a Special Complaints Commission (SCC) Bill¹⁷ was

¹³ Section 6(1) Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316).

¹⁴ Syed Hamid Albar, 6 May 2008, First Meeting of the First Session of the Twelfth Parliament, Hansard, DR.6.5.2008 (p. 13) <http://www.parlimen.gov.my/hindex/pdf/DR-06052008.pdf> (last accessed 27 November 2008).

¹⁵ Ibid. (p. 14)

¹⁶ Nazri Abdul Aziz, 6 November 2007, Third Meeting of the Fourth Session of the Eleventh Parliament, Hansard, DR.6.11.07 (pp. 43-44) <http://www.parlimen.gov.my/hindex/pdf/DR-06112007.pdf> (last accessed 3 December 2008).

¹⁷ Special Complaints Commission Bill, D.R. 57/2007.

proposed by the government. The proposed SCC Bill was opposed by civil society groups as it was seen as a much watered-down version of the IPCMC.¹⁸ The SCC Bill has since been shelved, and at end November 2008, the IPCMC has still not been established. The establishment of the IPCMC is already more than two and a half years past its deadline on May 2006, as set by the Royal Police Commission in its report submitted in 2005.

Many other recommendations relating to human rights protection, especially those found in Chapter 10 of the Royal Police Commission's report have generally either not been implemented or not fully implemented. For instance, as of December 2008, there is still no implementation on the Royal Police Commission's recommendations in relation to deaths in police custody. An example of this non-implementation is the recommendation that police must submit report of sudden death within one week, and an inquest must be held within one month. Inquests into deaths in police custody generally take a long time to resolve, with many long overdue cases still pending in the courts.

The latest available official statistics of deaths in police custody and prisons were provided by the Home Ministry on 8 July 2008. According to the Home Ministry, there were 1,535 cases of deaths in prisons, rehabilitation centres, and immigration detention centres in the period between 2003 and 2007, while 85 cases of deaths in police custody were recorded in official statistics in the same period.¹⁹ In 2008, based on media reports in the period between 1 January 2008 and 5 December 2008, SUARAM recorded 7 cases of deaths in police custody. There may well be more such cases that were unreported.

The failure to implement reforms, particularly in setting up the IPCMC, has resulted in various abuses of powers by the police. In May, during a protest by residents of Bandar Mahkota Cheras, Kuala Lumpur against the actions of a toll company to barricade a toll-free route, excessive and unwarranted force was used by the police, resulting in serious injuries to a 21-year old man. SUHAKAM conducted a public inquiry into this incident. As of 5 December 2008, the findings of the Commission have still not been made available.

¹⁸ See Memorandum of Civil Society Organisations to the Parliament on the Proposed Special Complaints Commission Bill, 18 December 2007.

¹⁹ Wan Ahmad Farid Wan Salleh, 8 July 2008, Second Meeting of the First Session of the Twelfth Parliament, Hansard, DR.8.7.2008 (p. 14) <http://www.parlimen.gov.my/hindex/pdf/DR-08072008.pdf> (last accessed 3 December 2008).

On 17 October 2008, Cheng Lee Whee, a secretariat member of SUARAM's Johor Bahru branch was arrested under Section 28 (Dissemination of false reports) of the ISA for "spreading information that could cause fear among the people", after she had lodged a report against the police for the arrests of 27 persons during an attempt to stop a forced eviction operation in a village near Johor Bahru. Section 28 of the ISA provides for an offence for making and spreading "false reports" likely to cause public alarm. She was released on 18 October 2008, after the police failed to obtain a remand from the Magistrate.

On 6 November 2008, lawyer N. Surendran was questioned by the police for statements he allegedly made during proceedings in court. Surendran was representing those who were arrested for a public assembly against the ISA on 24 October 2008. Surendran allegedly told the Magistrate that the police were negligent when one of the arrested individuals whom he represented, Mary Lourdes, a diabetic patient, had fainted in court as she did not have access to insulin during detention. In response to this, the Bar Council came out calling for an end to harassment on lawyers, saying that cases of lawyers being harassed or intimidated are on the increase.²⁰

FREEDOM OF SPEECH AND EXPRESSION

In 2008, Malaysia continued its downward slide in the *Reporters Sans Frontières* (RSF)'s press freedom index – dropping to 132nd position out of 195 countries²¹ – Malaysia's lowest ranking ever yet. In 2007, Malaysia was placed 124th.²²

On 21 April 2008, the government finally granted a permit to the People's Justice Party (*Parti Keadilan Rakyat*, PKR) to publish its official organ, *Suara Keadilan*, three years after an application was made. At the same time, Home Minister Syed Hamid Albar said, "[W]e need press freedom in order for us to have a check and balance in [the] government."²³ The

²⁰ Malaysian Bar Council, 13 November 2008, Press release: "Harassment of lawyers on the increase", http://www.malaysianbar.org.my/index2.php?option=com_content&do_pdf=1&id=19369 (last accessed 3 December 2008).

²¹ Reporters Sans Frontières (2008) *World Press Freedom Index 2008 – The rankings*, http://www.rsf.org/IMG/pdf/cl_en_2008.pdf (last accessed 27 November 2008).

²² Reporters Sans Frontières, 16 October 2007, Press release: "Worldwide Press Freedom Index 2007: Eritrea ranks last for the first time while G8 members, except Russia recover lost ground," http://www.rsf.org/article.php3?id_article=24025 (last accessed 27 November 2008).

²³ "Permit for PKR paper approved", *The Star*, 20 April 2008, <http://thestar.com.my/news/story.asp?file=/2008/4/20/nation/21000785&sec=nation> (last accessed 1 December 2008).

minister has also noted that he will re-look into the requirement of annual licence for the publication of newspapers.

However, just several days before *Suara Keadilan* was granted its permit, on 16 April 2008, the Home Ministry refused to grant Tamil-language newspaper *Makkal Osai* its publication permit for breaching various guidelines that are stipulated in the publication permit. The newspaper was finally granted its permit on 24 April 2008.

Makkal Osai is widely perceived to be critical of the leadership of the ruling-*Barisan Nasional* (BN) component party, Malaysian Indian Congress (MIC). The paper had given prominent coverage to the opposition, and also the rally organised by the Hindu Rights Action Force (HINDRAF) in November 2007 and the issues surrounding the rally and the group. The paper also is closely linked to the former deputy president of the MIC, S. Subramaniam, who has fallen out with the political party's president Samy Vellu. The paper had also, on at least two other occasions in the previous year, been attacked by the government and individuals linked to the MIC.²⁴

Such inconsistencies in the granting of publication permits plainly demonstrate the arbitrary powers held by the Home Ministry in making such decisions. Further, there is also no independent review of the decisions of the ministry.

In September, three newspapers – *Sin Chew Daily*, *The Sun* and *Suara Keadilan* – were issued show-cause letters by the Home Ministry. The three newspapers were asked to answer as to why action should not be taken against them and to provide proof that they have not breached guidelines of publication. The show-cause letters were issued in the same week when three individuals – blogger Raja Petra Kamaruddin, opposition member of parliament Teresa Kok, and journalist Tan Hoon Cheng – were arrested under the ISA. The timing of which the show-cause letters were issued to the three newspapers demonstrated the BN government's tough repression when facing serious political crisis and challenge to power.

²⁴ In April 2007, when *Makkal Osai* had one of its journalist reportedly threatened by MIC members and prevented from taking photographs while covering a by-election in Ijok, Selangor. In August 2007, when *Makkal Osai*'s licence was suspended for one month after the daily's publication of an image of Jesus Christ, holding a cigarette in one hand and a beer can in the other, was published on 21 August 2007 and was deemed unacceptable and a danger to public order.

The process of determining the banning of book titles and publications is also problematic, especially with regard to books on religion. This was seen in August 2008, when two books, including one by NGO Sisters in Islam (SIS), were banned by the Home Ministry because they contained “twisted facts on Islam that can undermine the faith of Muslims”.²⁵ According to Publications and Quranic Texts Control Division principal assistant secretary Abdul Razak Abdul Latif, the two titles, *Pelik Tapi Benar Dalam Solat* [*Strange but True in Prayers*] and *Muslim Women and the Challenge of Islamic Extremism*, were banned by a prohibition order under Section 7(1) of the Printing Presses and Publications Act 1984.

In June, journalists were barred from entering the Parliament lobby where press conferences were usually held. In protest of the denial of access, journalists from all print, online and electronic media boycotted all press conferences held outside the chamber, covering only the proceedings in the Parliament chamber. The ban was lifted after one day.

On 9 November 2008, a journalist from *Malaysiakini* was arrested together with 23 others in a peaceful assembly of about 300 people to commemorate the one year anniversary of the massive rally organised by the Coalition for Clean and Fair Elections (BERSIH) on 10 November 2007.

Throughout the year, there were clear attempts by the government to control political expressions in the Internet despite guarantees made by previous governments not to do so, including in a 10-point Bill of Guarantees conceived in 1996 by the government to attract investors of multimedia industries. The Bill of Guarantees states that the government “[will] ensure no Internet censorship”.²⁶ Further, the government had pledged “the promotion of a free media, including in cyberspace” in the Aide-Memoire of its candidature to the United Nations Human Rights Council in 2006.²⁷

On 6 May 2008, Raja Petra Kamaruddin was charged with sedition for his online article which alleged that Malaysian Deputy Prime Minister Najib Razak and his wife were involved in the October 2006 murder of

²⁵ “Govt Bans Two Books Containing Twisted Facts on Islam”, *Bernama*, 14 August 2008, http://www.bernama.com/bernama/v3/news_lite.php?id=352710 (last accessed 1 December 2008).

²⁶ MSC Malaysia Bill of Guarantees, <http://www.msomalaysia.my/topic/MSOM+Malaysia+Bill+of+Guarantees> (last accessed 1 December 2008).

²⁷ Malaysia (2006) “Aide-Memoire; Malaysia’s Candidature to the United Nations Human Rights Council”, dated 28 April 2006 (p. 1).

Mongolian national Atlantuya Shaariibuu. Raja Petra Kamaruddin was charged with sedition under Section 4(1)(C) of the Sedition Act.

Another individual, former banker Syed Akbar Ali was also charged with sedition on the same day as Raja Petra Kamaruddin on Tuesday, 6 May 2008. Syed Akbar Ali has been accused of allegedly posting seditious comments about Malays and Islam on one of Raja Petra Kamaruddin's article.

Raja Petra Kamaruddin and Syed Akbar Ali are the first individuals in Malaysia to be charged under the Sedition Act 1948 for postings in the Internet.

On 17 July 2008, Raja Petra Kamaruddin was arrested and charged for criminal defamation under Section 500 of the Penal Code for making a statutory declaration which contains allegations implicating Rosmah Mansor, the wife of Deputy Prime Minister Najib Razak, and two others, in the high-profile murder of Mongolian national Altantuya Sharibuu.

On 17 September 2008, blogger Syed Azidi Syed Aziz, better known as "Sheih", was arrested at his home in the northern Peninsula Malaysia state of Kelantan. He was detained for three nights under the Sedition Act for investigations over an image of the national flag upside down published in his blog.

In August, the hugely-popular and widely-read political blog, *Malaysia Today* was blocked by Internet service providers under the instructions of the Malaysian Communications and Multimedia Commission (MCMC). MCMC chief operating officer was reported as saying that the site was blocked because they found that "some comments on the website were insensitive [and] bordering on incitement".²⁸ On 11 September 2008, the ban on the website was lifted.

Another serious violation of freedom of expression is the denial of choice of dressing. Under several state *Syariah* enactments, it is an offence for men to dress as women.²⁹ Exacerbating to the existing restrictions, in October 2008, the National Fatwa Council issued a *fatwa* (edict) which ruled that young women who behave like men and engage in lesbian sex

²⁸ "Malaysia Today blocked! Order from MCMC", *Malaysiakini*, 27 August 2008, <http://www.malaysiakini.com/news/88683> (last accessed: 12 November 2008).

²⁹ In SUARAM's Human Rights Report 2007, we documented the case of Ayu, a transsexual, who was seriously beaten by officials from the Melaka Islamic Religious Affairs Department (*Jabatan Agama Islam Melaka*, JAIM) for committing the "offence" of "men dressing up as women in a public space". See SUARAM (2008) op. cit. (p. 127).

are forbidden in Islam. According to the National Fatwa Council chairman Abdul Shukor Husin, the *fatwa* was issued because “[t]here are teenage girls who prefer the male lifestyle including dressing up in men’s clothes [...and] [m]ore worryingly, they have started to engage in sexual activities”.³⁰

FREEDOM OF ASSEMBLY AND ASSOCIATION

The government’s intolerance towards public assemblies, as witnessed throughout 2007, continued in the year 2008. The year began with the arrests of 60 people during a rally against the rise in petrol price in Kuala Lumpur on 26 January 2008.

Throughout the year, similar protests, demonstrations and public assemblies were broken up by the police, often resulting in arrests. On 23 October 2008, 12 persons, including the six-year old niece of ISA detainee and the Hindu Rights Action Force (HINDRAF) leader P. Uthayakumar was arrested when they attempted to submit a letter to the Prime Minister. The group had attempted to submit a handwritten letter urging the Prime Minister to release all those detained under the ISA.

On 9 November 2008, 23 persons were arrested during a peaceful assembly to commemorate the first anniversary of the massive BERSIH rally held on 10 November 2007, including a member of parliament, state assemblypersons and journalists. A 53-year old woman named Dian Abdullah was attacked from behind by a few policemen, causing her to fall and injure the back of her head. Member of parliament Tony Pua and Selangor state assemblyperson Lau Weng San also alleged that they were manhandled and punched respectively.

On 23 November 2008, 9 persons were arrested in relation to an anti-ISA assembly organised by the Abolish ISA Movement (*Gerakan Mansuhkan ISA*, GMI). Seven individuals were arrested during the event while another two individuals, opposition member of parliament Salahuddin Ayub and Vice President of the opposition Pan-Malaysian Islamic Party (*Parti Islam Se-Malaysia*, PAS) Mohamad Sabu, were arrested when they visited the seven arrested at the police station where they were being held.

³⁰ “Malaysia Muslim body issues fatwa against tomboys”, *Reuters*, 24 October 2008, <http://in.reuters.com/article/lifestyleMolt/idINTRE49N2AM20081024> (last accessed: 12 November 2008).

However, in contrast to these examples, other demonstrations and assemblies, especially those which target parties other than the ruling government, were tolerated. On 23 November 2008 – the same day when nine participants of the anti-ISA assembly were arrested – another rally, held in support of the use of the ISA, was allowed to proceed. Another example of the Malaysian government’s toleration towards assemblies and demonstrations targeted towards parties other than the government was also seen in the month November, when demonstrations were held by the youth wing of the Malaysian Indian Congress (MIC), one of the main component parties in the ruling BN coalition, against the Sri Lankan government’s military offensive against the Tamil minority in northern Sri Lanka.

In September, the Socialist Party of Malaysia (*Parti Sosialis Malaysia*, PSM) was finally registered as a political party, 10 years after it first filed its application. However, the government’s recognition of the right to association proved to be inconsistent when it banned the HINDRAF on 15 October 2008. HINDRAF had, on 25 November 2007, organised a massive rally in Kuala Lumpur, and numerous other small-scale rallies nationwide, demanding equality and fair treatment for Indians, a minority ethnic group which HINDRAF claims has been marginalised and discriminated against in Malaysia. After the 25 November mass rally, which drew some 30,000 people, the government detained five leaders of HINDRAF under the ISA. The government had also embarked on an intensive propaganda campaign to demonise the organisation, linking it to “terrorists”.³¹

Since 2007, the government has also attempted to stop public assemblies by obtaining court orders barring individuals from access to places surrounding the venues of planned assemblies. These court orders allow the police to arrest individuals named in the court orders if they are spotted in the prohibited areas. In 2008, such court orders were obtained on at least two occasions:

- In January, the police obtained a court order barring five individuals identified as organisers of a demonstration against the rise in fuel price from being within a one-kilometre radius of the Kuala Lumpur City Centre (KLCC), the venue of the said demonstration. During the demonstration, 35 persons were arrested, including the five who were subsequently charged with violating the court order.

³¹ See SUARAM (2008) op. cit. (pp. 10-11).

- In July, the People's Justice Party (*Parti Keadilan Rakyat*, PKR) leader Anwar Ibrahim received a court order barring him and his supporters from being within 5 kilometres of the Parliament building. The court order was obtained after Anwar had expressed his intention of attending a parliament debate session on a non-confidence motion by the opposition coalition *Pakatan Rakyat* against the leadership of Prime Minister Abdullah Badawi.

In July, a joint military-police exercise was held four days before an anti-fuel price hike, raising serious concerns of an unprecedented involvement of the military in public assemblies. On 3 July 2008, Inspector-General of Police Musa Hassan stated the possible inclusion of the military to assist the police to maintain order.³² This proposal was strongly criticised by civil society organisations as it was seen as an effort to create an artificial environment of insecurity and to generate fear among Malaysians on the eve of a planned massive rally against the government's hugely unpopular policies.³³

FREEDOM OF RELIGION

Although freedom of religion is guaranteed by Article 11 of the Federal Constitution, it is nearly impossible for individuals who have renounced Islam and embraced another faith to obtain official recognition of their decision.

In May, the Penang *Syariah* Court allowed an application by Siti Fatimah Tan Abdullah to renounce Islam and return to Buddhism. Siti Fatimah, whose Chinese name is Tan Ean Huang, filed an application in May 2006 to convert out of Islam. She converted to Islam in July 1998 to marry an Iranian, Ferdoun Ashanian. After a few months of marriage, however, they separated, and Siti Fatimah claimed that she maintained her Buddhist faith. Although the judgement was welcomed by many, as Siti Fatimah was allowed to profess her Buddhist faith, civil society groups have expressed their concern at the fact that she had to obtain permission from the *Syariah* Court in order to do so.

³² "Army to help maintain order if need arises", *The Star*, 3 July 2008, <http://thestar.com.my/news/story.asp?file=/2008/7/3/nation/21723936&sec=nation> (last accessed 3 December 2008).

³³ See, "Reject calls for the use of armed forces in the preservation of public order", 4 July 2008, Joint statement of 27 Malaysian civil society organisations.

In March, Kamariah Ali, a woman who renounced Islam, was sentenced to a two years' term by the Terengganu state *Syariah* High Court. Kamariah Ali had declared herself an apostate in 2005, when she was arrested together with 58 other members of the Sky Kingdom, a religious sect led by Ayah Pin.

The codification of Islamic “norms”, “values”, and “morals” into state legislation imposes restrictions directly on Muslims and indirectly on non-Muslims. The *Syariah* criminal laws are enforced throughout the country and govern the lives of Muslims.

In April, the Islamic Institute of Understanding, Malaysia (IKIM) and the *Syariah* Judiciary Department reportedly passed a resolution at a seminar on *Syariah* Law, to propose that non-Muslims found committing *khalwat* (close proximity) be sentenced under the civil law. Under current laws, *khalwat* is an offence under various state Islamic enactments, but not the civil laws. IKIM and the *Syariah* Judiciary Department also proposed that the *Syariah* Courts (Criminal Jurisdiction) Act 1965 (Amendment) 1984 be amended to impose stiffer penalties of RM1,000 fine, or five years' jail or 12 strokes of caning for *Syariah* Lower Courts and RM20,000 fine, or 10 years' jail or 24 strokes of caning for *Syariah* High Courts. Another proposal was for a rehabilitation centre to be set up to deal with issues of “morals and faith”, such as prostitution and effeminate men. These proposals received strong criticisms particularly from civil society groups.³⁴

In January, the cabinet decided that the weekly Roman Catholic Church publication, *The Herald*, cannot use the word “Allah” in its publications. Minister in the Prime Minister's Department Abdullah Mohd Zin said that one of the reasons for the government to impose the restriction was because “the word ‘Allah’ refers to God according to the Muslim faith. [...] The use of the word ‘Allah’ by non-Muslims may arouse sensitivity and create confusion among Muslims in the country.”³⁵

³⁴ Among the concerns raised were that the proposal to criminalise *khalwat* among non-Muslims would in effect be imposing *Syariah* laws on them and that whipping as a punishment violates the right to be free from torture, inhumane and degrading treatment. Some groups also raised their concerns over the overzealousness of religious authorities in policing offences relating to “morals and faith” which would eventually lead to gross human rights violations.

³⁵ “Cabinet: ‘Allah’ for Muslims only”, *The Sun*, 4 January 2008.

LAW AND THE JUDICIARY

One year after the shocking revelation which showed senior lawyer V.K. Lingam having a telephone conversation with the then-Chief Judge of Malaya Ahmad Fairuz Sheikh Abdul Halim (former Chief Justice) on the issue of appointment and promotion of judges,³⁶ public confidence on the judiciary remains low.

In May, the Commission of Enquiry set up to investigate the “Lingam Tape” released its report. In its report, the Commission of Enquiry found that the video clip is authentic and that the person whom Lingam was speaking to on the telephone was indeed Ahmad Fairuz. The Royal Commission also noted:

“In the final analysis, [...] we are of the view that *there was, conceivably, an insidious movement by Lingam with the covert assistance of his close friends [...] to involve themselves actively in the appointment of judges*, in particular, the appointment of Ahmad Fairuz as the chief judge of Malaya and subsequently as Court of Appeal President.”³⁷ (Emphasis added.)

The Commission of Enquiry went on to state:

“It is sufficient for us to state here that the collective and cumulative actions of the main characters had the effect of *seriously undermining and eroding the independence and integrity of the judiciary as a whole.*”³⁸ (Emphasis added.)

Although the government has announced measures which would be taken to improve the independence of the judiciary, including setting up the Judicial Appointments Commission, serious questions relating to the judiciary in Malaysia continue to be raised throughout the year.

On 16 October 2008, Zaki Azmi was appointed the Chief Justice of Malaysia, only about one year after he was appointed directly to the

³⁶ The conversation, believed to be recorded in 2002, revolved around the urgent need to get Ahmad Fairuz Sheikh Abdul Halim, then-Chief Judge of Malaya (Judiciary’s third ranked post) appointed to the position of President of the Court of Appeal (second in rank) and then Chief Justice (the highest post in the Judiciary).

³⁷ Commission of Enquiry on the Video Clip Recording of Images of a Person Purported to be an Advocate and Solicitor Speaking on the Telephone on Matters Regarding the Appointment of Judges (2008) *Report (Vol. 1)*, Presented to Seri Paduka Baginda Yang Di-Pertuan Agong on 9 May 2008 (pp. 75-76)

³⁸ *Ibid.* (pp. 76).

Federal Court in September 2007, bypassing the convention of first serving in the High Court and the Court of Appeal. His rapid ascent to the highest position in the Malaysian judiciary has been criticised by some quarters as politically motivated due to his involvement with UMNO. Zaki was the legal adviser to UMNO and had served as the chairperson of the party's election committee as well as the deputy chairperson of its disciplinary committee. In November, doubts about his credibility were further raised when the *New Straits Times* quoted him as admitting that he had bribed court officials when he was a lawyer.³⁹ Zaki, however, clarified that the report had misinterpreted him. Zaki Azmi's controversial appointment as the top judge in the country did nothing to improve public confidence towards the judiciary.

The murder trial of Mongolian national, Altantuya Shaariibuu, also raised concerns regarding political interference in the judiciary. The trial, which commenced in 2007, saw the judge being replaced abruptly, while Attorney-General Abdul Gani Patail replaced the public prosecution team less than 24 hours before the start of the trial in June 2007. Further, a defence lawyer who represented one of the accused claimed that there was "interference from third parties" pressuring him to withdraw from the case.⁴⁰ These fuelled speculations of political interference in the trial given that one of the accused, Abdul Razak Baginda who was charged with abetting the murder, is known to be a close adviser to Deputy Prime Minister Najib Razak.

Speculations surrounding Najib Razak's involvement in the murder were further fuelled in 2008 when several revelations, including a statutory declaration made by private investigator P. Balasubramaniam on 1 July 2008, linking Najib Razak to Altantuya Shaariibuu. Among the stunning revelations in Balasubramaniam declaration was that Najib had informed Abdul Razak Baginda that Inspector-General of Police Musa Hassan would "take care" of the murder case which implicated Abdul Razak. Balasubramaniam, however, retracted this statutory declaration on 1 July 2008. After the retraction of his statutory declaration, Balasubramaniam disappeared from the country. On 31 October 2008, as had been widely speculated, the Shah Alam High Court acquitted Abdul Razak Baginda, ruling that the prosecution team had failed to prove a case against him. On 14 November 2008, the prosecution team announced that it will not appeal the decision made by the Shah Alam High Court.

³⁹ "Stop it now, corrupt court staff warned", *New Straits Times*, 8 November 2008.

⁴⁰ "Lawyer alleges interference in murder case", *Malaysiakini*, 4 June 2007, <http://www.malaysiakini.com/news/68133> (last accessed 1 December 2008).

Another court case in 2008 which is seen as highly political in nature is the sodomy case of Anwar Ibrahim, who in July, was accused by a former aide of sodomy. Anwar Ibrahim claimed trial, and in September, the prosecution team attempted to transfer the case from the Sessions Court to the High Court. This move, feared to be politically-motivated, was objected by Anwar Ibrahim's defence lawyers as the certificate for the transfer of courts was signed by Attorney-General Abdul Gani Patail, who, together with the Inspector-General of Police Musa Hassan, is being investigated for allegations of tampering with evidence in an investigation into the severe beatings on Anwar Ibrahim during his arrest in 1998. In October, Prime Minister Abdullah Badawi assured that the Inspector-General of Police and the Attorney-General will not be involved in the investigations into the sodomy allegations against Anwar Ibrahim. On 7 November 2008, the Kuala Lumpur Sessions Court ruled in favour of Anwar Ibrahim and decided that the case would proceed in the same court.

In August, a proposed DNA Bill was tabled in Parliament for the second time despite protests from the members of parliament from opposition parties. The Bill also received opposition from civil society, including the Bar Council, for the lack of consultation by the government with civil society, and also for the repercussions of such a law should it be passed. Among the flaws under the proposed law is that DNA sampling is not limited to serious offences and can be taken from any individual who has committed any offence; that the head and deputy head of the DNA data bank are police officers; that the Home Minister can give directions to the head of the data bank relating to their powers and functions, and the head of the data bank shall give effect to such directions; and that any information from the DNA data bank shall be admissible as conclusive proof of the DNA identification in any proceedings in any court.

The year, nevertheless, witnessed an important judgment made by the Shah Alam High Court, which resulted in the release of an ISA detainee. On 7 November 2008, blogger Raja Petra Kamaruddin was freed in a habeas corpus application as High Court Judge Syed Ahmad Helmy ruled that the detention of Raja Petra under the ISA was illegal and unconstitutional as the Home Minister had not followed proper procedure under Section 8 of the Act, under which Raja Petra was detained. Despite this judgment, taking other developments throughout the year, the Malaysian judiciary's independence remains in serious question.

REFUGEES, UNDOCUMENTED MIGRANTS AND ASYLUM-SEEKERS

Malaysia has still not ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol as well as all major United Nations human rights instruments that are relevant to asylum-seekers and refugees. Cases of exploitation of documented and undocumented migrant workers, and harassment of refugees and asylum-seekers continue to be reported on a regular basis.

As such, it was not at all surprising when the US Commission for Refugees and Immigrants (USCRI), in its *World Refugee Survey 2008* released in June 2008, placed Malaysia as one of the ten worst places for refugees.⁴¹ The USCRI survey was based on several categories, including: the country's track record on *refoulement* (deportation of refugees to their countries of origin where conflict or persecution may still occur); physical protection for refugees and asylum-seekers; the extent of refugees' detention and access to the courts; the refugees' freedom of movement and residence; and their right to earn a livelihood. In its report, the USCRI stated:

“Another country that picks and chooses the groups to which it offers protection, Malaysia gave it to some groups of Muslim refugees, but detained, caned, and deported others. [...] In some cases, Malaysian officials turned deportees directly over to human smugglers who extorted fees for smuggling the refugees back into Malaysia or sold them into slavery in Thai fishing boats or brothels if they could not pay.”⁴²

Despite Malaysia's non-ratification of international treaties relating to refugees and its non-recognition of refugees, Deputy Prime Minister Najib Razak defended Malaysia's poor track record on the protection of refugees, by saying that Malaysia to date has been quite cooperative “in terms of some refugees who make their way to Malaysia” seeking shelter.⁴³

In March, the Prisons Department handed over 11 immigration detention centres to the Immigration Department. As the Immigration Department lacks personnel, the detention centres have been handled by the People's

⁴¹ U.S. Committee for Refugees and Immigrants (2008) *World Refugee Survey 2008: Worst Places for Refugees*, Washington DC: USCRI (pp. 3-7)

⁴² *Ibid.* (p. 6).

⁴³ “Malaysia Disagrees with World Refugee Survey”, *Bernama*, 20 June 2008, http://www.bernama.com/bernama/v3/news_lite.php?id=340875 (last accessed 27 November 2008).

Volunteer Corps (*Ikatan Relawan Rakyat*, RELA), a corps made up of about 500,000 generally untrained volunteers. Since then, reports of serious abuses against detainees by RELA members have increased. Raids continued to be conducted even though the problem of overcrowding at immigration detention centres has reached a critical stage. A reflection of the unbearable and inhuman conditions of the detention centres was seen in the incident at the Lenggeng Immigration Detention Centre where an administration building was set on fire by detainees on 21 April 2008.

On 24 June 2008, Deputy Prime Minister Najib Razak announced that the Federal Government would “flush out illegal immigrants from Sabah and deport them to their home country”.⁴⁴ This announcement drew much criticism from civil society groups who feared that such mass scale operations often result in serious human rights violations.⁴⁵

In October, a fact-finding committee in the Philippines revealed that Filipino immigrants deported from Sabah have been beaten up by the police. It also revealed that thousands of Filipino remained in detention centres and suffering from inhuman conditions. A member of the fact-finding committee said, “Filipino detainees and those who were already deported to the Philippines have experienced severe beatings from Malaysian police while under detention.”⁴⁶ In August, the Malaysian government told more than 25,000 Indonesian tsunami refugees from Aceh to leave the country by early January 2009 or face deportation.⁴⁷

In 2007, the United States Department of State in its “*Trafficking in Persons Report*”⁴⁸ placed Malaysia on “Tier 3”⁴⁹ – the lowest of three categories of countries relating to human trafficking. This prompted the Malaysian government to legislate an anti-trafficking law. However, despite the legislation of the Anti-Trafficking in Persons Act in 2007, the government does not appear to be serious in tackling the issue of trafficking. This was clearly illustrated in the government’s lackadaisical response to a national television exposé of Malaysian immigration

⁴⁴ “Gov’t to launch massive ops against illegals in Sabah”, *Malaysiakini*, 25 June 2008, <http://www.malaysiakini.com/news/85045> (last accessed 27 November 2008).

⁴⁵ “Memorandum on the Government Crackdown on Irregular Migrants in Sabah”, Memorandum to the Malaysian government, endorsed by 21 civil society organisations, dated 6 August 2008.

⁴⁶ “Filipino deportees beaten up by police”, *Malaysiakini*, 4 October 2008, <http://www.malaysiakini.com/news/90712> (last accessed 27 November 2008).

⁴⁷ “Jan 2 deadline for Aceh tsunami refugees to leave”, *New Straits Times*, 26 August 2008.

⁴⁸ United States, Department of State (2007) *Trafficking in Persons Report*, Washington D.C: US Department of State.

⁴⁹ Countries which are placed in Tier 3 are those “whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.” *Ibid.* (p. 27).

officers' involvement in human trafficking in the Malaysia-Thai border. The exposé, aired on national television station NTV7, was brought up by opposition member of parliament Charles Santiago in July. In response, the government said that it would set up a special committee to investigate the matter. However, in October, Home Minister Syed Hamid Albar, during a parliament session in October said that the special committee did not find any officers involved in such trade, despite the existence of concrete evidences of human trafficking activities involving Malaysian immigration officers.

HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

When the Malaysian government sought election to the United Nations Human Rights Council in 2006, it cited the Human Rights Commission of Malaysia (SUHAKAM) as an example of its commitment towards the promotion and protection of human rights. In its Aide-Memoire to the United Nations Human Rights Council, it said:

“Laws, regulations and institutions related to human rights in Malaysia continue to evolve in step with the increasing aspirations of a democratic society. One of the measures was the establishment of SUHAKAM in 1999.”⁵⁰

However, since its establishment in 1999, SUHAKAM has often been criticised for its lack of independence from the government and ineffectiveness in promoting and protecting human rights. One of the main problems pertaining to SUHAKAM's independence is the fact that it is placed under the direct jurisdiction of the Prime Minister's Department, thus heavily compromising its independence from the government. SUHAKAM has, since its establishment, produced 8 annual reports⁵¹ and numerous other thematic reports on the state of human rights in Malaysia – none of which have been debated in the Parliament. In 2008, as in previous years, SUHAKAM's Annual Report 2007 was not debated. As such, most of SUHAKAM's more substantial recommendations have been ignored by the government, underscoring its ineffectiveness.

In April, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), in

⁵⁰ Malaysia (2006) op. cit. (p.1).

⁵¹ See SUHAKAM's Annual Reports of 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007.

its re-accreditation exercise on SUHAKAM, gave a notice to SUHAKAM to “provide, in writing, within one year [...], the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles”,⁵² failing which, SUHAKAM would be downgraded from its current “A” status to “B”. The key recommendations and observations made by the ICC in relation to SUHAKAM were:⁵³

1. The independence of the Commission needs to be strengthened by the provision of clear and transparent appointment and dismissal process in the founding legal documents, more in line with the Paris Principles.
2. With regard to the appointment, the Sub-Committee notes the short term of office of the members of the commission (two years).
3. The importance of ensuring the representation of different segments of society and their involvement in suggesting or recommending candidates to the governing body of the Commission.
4. The importance to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies.

The recommendations given to SUHAKAM by the ICC reaffirms the concerns regarding SUHAKAM’s independence and effectiveness which have been articulated by various human rights NGOs in the country since the Commission’s establishment. It also raises serious questions and doubts regarding the Malaysian government’s commitment to uphold the promotion and protection of human rights in the country.

An important mandate of the Commission, as spelt out in the Human Rights Commission Act 1999, is the power to conduct public inquiries into allegations of the infringement of human rights. In 2008, SUHAKAM conducted one public inquiry. The public inquiry, conducted in the months of July and August, was to probe on the excessive use of power by the police during a protest by residents of Bandar Mahkota Cheras, Kuala Lumpur against the actions of a toll company of barricading a toll-free road. As of 5 December 2008, the findings from the public inquiry have not yet been made public by SUHAKAM.

⁵² International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Sub-Committee on Accreditation*, Geneva, 21-23 April 2008 (p. 5). The document is available at <http://planetecommsolutions.com/nhri/Report%20Sub-Committee%20April%202008.pdf> (last accessed 1 December 2008).

⁵³ Ibid.

FREE AND FAIR ELECTIONS

Reacting to the shock result of the 2008 General Election, Prime Minister Abdullah Badawi said that the huge loss of votes and seats for the ruling BN coalition was clear proof of democracy at work in the country.⁵⁴ However, various monitoring groups reported that the 2008 General Election were conducted in conditions that were far from free and fair.

In August 2007, in response to demands by civil society for electoral reforms, the Election Commission (EC) announced that it has agreed to the use of indelible ink in elections. However, on 4 March 2008 – four days before polling day for the 2008 General Election – the EC announced that indelible ink will not be used in the 2008 General Election, citing public order and security issues.⁵⁵

Other electoral frauds and irregularities documented by election watchdog, the Coalition of Clean and Fair Elections (BERSIH), include the denial of registration of voters and multiple registration of voters, where some names, especially postal voters, are found to be registered multiple times at different constituencies.

Media coverage during the General Election was also unfair and biased towards the ruling-BN coalition. For example, according to a media monitoring group during the General Election campaign, 77% of news items in the English-language daily *New Straits Times* in the three days before polling day were either positive articles about BN, news relating to BN or negative news regarding the opposition.⁵⁶

The lack of neutrality and impartiality of the Election Commission (EC) also remains questionable. The EC is often perceived as a tool of the BN government. The Human Rights Commission of Malaysia (SUHAKAM) in its 2007 annual report noted:

⁵⁴ “Barisan reels from worst-ever election performance”, *The Star*, 9 March 2008, <http://thestar.com.my/news/story.asp?file=/2008/3/9/nation/20590068&sec=nation> (last accessed: 27 November 2008).

⁵⁵ “Shock reversal: Indelible ink plan reversed” *Malaysiakini*, 4 March 2008, <http://www.malaysiakini.com/news/79147> (last accessed 1 December 2008).

⁵⁶ “NST churns out pro-BN propaganda”, *Malaysian Media Monitor*, 7 March 2008, <http://www.aliran.com/elections/2008/03/nst-churns-out-pro-bn-propaganda.html> (last accessed 1 December 2008).

“Since EC members are currently appointed by the Prime Minister, the agency is unlikely to be able to act independently. To be independent, the EC should be made directly accountable to the Parliament.”⁵⁷

On 11 November 2008, the government appointed Home Ministry secretary-general Abdul Aziz Mohd Yusof as the new chairman of the EC, effective from 31 December 2008. Abdul Aziz will replace Abdul Rashid Abdul Rahman, whose service will end on 30 December 2008, reaching the mandatory retirement age of 66. Abdul Rashid has led the EC for eight years. The appointment process of the new chairman of the EC was criticised for the absence of consultation with the opposition.⁵⁸

CONCLUSION AND GENERAL TRENDS

The failure of the Malaysian government to respond to calls for reforms and respect for human rights most aptly illustrates the situation of human rights in Malaysia in 2008. The disastrous performance of the ruling-BN coalition in the General Election, the loss of confidence in the leadership of Prime Minister Abdullah Badawi within the BN, and the challenge mounted by the opposition coalition had set the context for the use of repressive laws by the government to silence its critics.

The imminent change in the country’s top political leadership in March 2009 is expected to bring about attempts by the ruling party to consolidate its power after its massive loss of popular support and the strong challenge posed by the opposition in 2008. Previous experiences have shown that such attempts to consolidate power often result in heightened persecutions and prosecutions of dissidents and critics of the government, and the general deterioration of human rights and fundamental freedoms in the country.

In summary, the general trends in the state of human rights in Malaysia observed for 2008 are:

1. The perpetuation of racial and religious intolerance, made worse by the heightened politicisation of race by the race-based ruling parties to strengthen support.

⁵⁷ SUHAKAM (2008) *Annual Report 2007*. Kuala Lumpur: SUHAKAM (p. 15).

⁵⁸ For instance, “EC Chairman’s Appointment – disappointment over no consultation, cautious hope for an impartial EC”, Immediate response by DAP Member of Parliament for Bukit Bendera, Liew Chin Tong, on the appointment of the Chairman of the Elections Commission on 11 November 2008.

2. The continued use of the Internal Security Act (ISA) and other repressive laws to arrest and detain critics and opposition of the government.
3. The perpetuation of the culture of impunity in the police force with further instances of abuses of police powers and the failure of the government to set up the Independent Police Complaints and Misconduct Commission (IPCMC).
4. The continued downward slide in the world rankings on media freedom, made worse by the persecution of critics and dissidents, especially bloggers.
5. Selective persecution and double standards in recognising the right to freedom of assembly, with those opposing government policies targeted for arrests and harsh crackdowns.
6. The non-recognition of the rights of refugees, migrants and asylum-seekers which resulted in serious violations of their rights, particularly in mass arrests, deportations and inhuman conditions of detention.
7. The eroding confidence towards the judiciary with no substantial reforms being taken despite the findings of the Commission of Enquiry on the “Lingam Tape” which confirmed the heavily compromised independence of the judiciary.
8. The loss of credibility of Malaysia at the international level for its lack of commitment in promoting and protecting human rights, best illustrated in the possible downgrading of the Human Rights Commission of Malaysia (SUHAKAM).