



On the eve of Malaysia Day in 2011, Prime Minister Najib Razak had announced and pledged to abolish the draconian and outdated Internal Security Act 1960 and three emergency proclamations, the Restricted Residence Act 1933 and the Banishment Act 1959. The Prime Minister had also pledged to review Section 27 of the Police Act 1967 and the Printing Presses and Publications Act 1984. According to Prime Minister Najib, the promises were made to “...*accommodate and realize a mature, modern and functioning democracy, to preserve public order, enhance civil liberties and maintain racial harmony...*”

Whilst these may appear that the government is finally responding to the people’s demands, the delivery and implementation of the promises were least desirable for human rights and civil liberties.

As can be seen below, the changes made by the government were aimed at legalizing government’s powers over its people and falsely promote the government’s compassion towards human rights and civil liberties. It would appear that the government had attempted to create a mechanism to wrest control and ownership over fluid subjects like human rights and civil liberties by flexing its legislative muscles.

It seems to suggest that the government is now empowered and could abuse, deny and restrict human rights and civil liberties with proper safeguard from barrage of unconstitutional legislations. The wordings in the legislations do not lie. It reflects the intention of the Parliament and the lawmakers.

Internal Security Act 1960 to Security Offences (Special Measures) Act 2012

Barely 2 months the announcement to abolish the ISA, The Home Minister had ordered 13 individuals from Sabah to be detained under the ISA for alleged links to terrorism. Hitherto, 30 individuals (who have not been tried) are still being detained in Kamunting Detention Centre despite the repeal of the Act. Worse, the nation witnessed the return of the ISA, widely regarded as the “*New ISA*” by the people, the Security Offences (Special Measures) Bill (as it then was).

Lifting of the Emergency (Public Order and Crime Prevention) Ordinance 1969

The Emergency (Public Order and Crime Prevention) Ordinance 1969 was finally lifted on 24th November 2011. However, like the unfulfilled promise of ISA, the detainees were not fully released until 2012. This the government argued that safety measures must be employed before ordering release, indicating that detainees, many of whom were petty offenders may return to their street crime lifestyle.

Of late, the police had blamed the ex-detainees for recent surge in crime statistics to justify their non-achievement on the National Key Results Area on crime reduction. It was convenient to blame the ex-detainees for the government's decades of mistakes. Moving out of the comfort zone where the government had always retained the final say was not an easy feat, which explains why the police continue to acclimatize fear to remind the people of the loss of a preventive detention law. The ex-detainees' rights to life and advancement were destroyed beyond salvation.

Section 27 of the Police Act 1967 to the Peaceful Assembly Act 2012

The Peaceful Assembly Act 2012 (a bill then) was hastily passed without public consultation with the sole intention to replace Section 27 of the Police Act 1967. The act bans street protest in toto and contains list of prohibited places where assembly is not allowed. Strict requirements for notification prior to an assembly are in place without which would render an assembly illegal notwithstanding even if it is peaceful and unarmed. The Act also bans participation of non-citizens in an assembly. The restrictions and requirements are so wide and encompassing in that it considered even daily activities like wedding receptions, funeral processions, religious assemblies and open houses during festivities. There were hefty fines if the requirements are not met. In other words, the Act is an extension from the Police Act 1967 in order to endow special powers to the police.

Printing Presses and Publications Act 1984

The requirement of annual renewal of permit has been removed. The irony is, the Home Minister retains the final say to suspend or revoke a newspaper's license. The government had proposed the setting up of the National Media Consultative Council chaired by Home Minister Hishammuddin Hussein and Information, Communications and Culture Minister Rais Yatim and 20 other government officials to promote media-government collaboration and to instill patriotism. Leading critical media like Malaysiakini, Malaysian Insider, Free Malaysia Today and Merdeka Review were not invited to be part of the initiative. Instead, Blog House Malaysia was invited. The government had also earlier attempted to extend the Act to online media. The result, as we see today, is the introduction of s114A of the Evidence Act 1950.

From Independent Police Complaints and Misconduct Commission to Enforcement Agency Integrity Commission

To date, the Independent Police Complaints and Misconduct Commission (“IPCMC”) recommended by the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police has not been implemented.

Instead, the Enforcement Agency Integrity Commission (“EAIC”) was established in 2009 and commenced operation in 2011. With only 170 cases as of June 2012, the EAIC blamed the victims for not trusting the EAIC and not coming forth with complaints. The EAIC also claimed that since there are 19 enforcement agencies under its purview, the EAIC is better than the IPCMC. The fact remains that the original objectives of the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police were targeted at the police force only and the EAIC having only recommendation powers, is not an answer to end police’s abuse of powers.

Through our monitoring, SUARAM has documented a total number of 25 individuals killed in police shooting in 2011, an increase from 2010 records of 18 cases. There were a total number of 10 deaths in custody compared to 7 in 2010.

Other law enforcement agencies

The Malaysian Anti-Corruption Commission made the headlines again with the death of yet another witness in their custody, Ahmad Sarbaini. The cause of death was attributed to severe head injuries and 'positional asphyxia' due to his fall from the third floor of the MACC building in Jalan Cochrane, Kuala Lumpur. The magistrate ruled that the theory that Ahmad Sarbaini was murdered could not be supported, nor was there any evidence of suicide, foul play or third party involvement in his death. He returned a verdict of misadventure.

On 21st July 2011, the RCI released its report which concluded that Teoh Beng Hock had been driven to commit suicide by the aggressive, relentless, oppressive and unscrupulous interrogation that he underwent at the hands of three Malaysian Anti-Corruption Commission ("MACC") personnel.

Subsequently, an application for a review of the Royal Commission of Inquiry findings was dismissed by the High Court as the findings of a commission appointed by the Yang di-Pertuan Agong cannot be challenged in court.

Refugees

Malaysia made the international headlines when the refugees swap between Australia and Malaysia was aborted mainly because of Malaysia's failure to ratify the United Nations' 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

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

Racism on the rise

2011 again saw the growing incidence of threatening racist demonstrations and violent protests

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by far-right supporters from Perkasa, Suara Anak Anak Mamak Pulau Pinang, Pertubuhan Kebajikan Sejati Malaysia and other supporting NGOs in Penang. Among the demands made by these groups include the resignation of Penang Chief Minister Lim Guan Eng, Komtar assemblyman Ng Wei Aik, condemnation of Bersih 2.0 and a motorcycle race track.

In schools, instances of teachers and head teachers expressing racist and racial slurs continue to be documented by SUARAM.

Freedom of Assembly

Despite calls from international observers i.e. the United Nations Special Rapporteurs and international human rights organisations, the situation remains bleak and hopeless. On 9th July 2011, a total of 1,667 persons were arrested for BERSIH 2.0 rally. In comparison to BERSIH 3.0 earlier this year, whilst the numbers of arrests have reduced, the police have employed disproportionate and excessive powers pre, during and post BERSIH 3.0. A total of 909 tear-smoke shells were used in comparison to 262 in BERSIH 2.0. The government through its agencies had also initiated civil suits against BERSIH 2.0 Steering Committee members, claiming damages to public properties.

Freedom of Association

Several incidents marred 2011 as can be gleaned from the de-registration of Malacca Chinese Assembly Hall, the striking off of Malaysian Medical Association and the rejection of Human Rights Party's registration. At this moment, SUARAM is being subjected to continuous harassment and intimidation from government agencies.

Freedom of assembly and association together with other fundamental freedoms in Malaysia are undoubtedly granted and regulated by the police and other enforcement agencies, not the Federal Constitution. With the introduction of the Peaceful Assembly Act 2012, we see a further erosion of these freedoms.

Suppression of freedom of expression

Constitutional Law Professor, Dr Abdul Aziz Bari was suspended by the International University of Islam for commenting on the Sultan of Selangor's pronouncement on the raid by the Selangor State government's Islamic Department JAIS' on the Damansara Utama Methodist Church.

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

Freedom of movement

On 22nd July 2011, French human rights lawyer, William Bourdon who was in Malaysia to brief his client, SUARAM and to present a speech at a fundraising dinner organised by SUARAM

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was deported back to France. Bourdon was appointed by SUARAM to represent SUARAM in the on-going case in the French courts relating to suspected corruption in the purchase of two Scorpene submarines by the Malaysian government from the French naval arms producer DCNS.

On 12th August 2011, British lawyer, Imran Khan, counsel for the Human Rights Party was detained and deported back to London on grounds of national security. He had arrived in Malaysia on a fact finding mission to investigate the marginalisation of Indians in Malaysia in regard to Hindraf's class action suit against the United Kingdom government.

Bersih 2.0 Steering Committee members Chairperson S. Ambiga, Wong Chin-Huat and Haris Ibrahim together with other activists including Steven Ng and Ong Boon Keong were barred from entering Sarawak during and after the state elections.

Freedom of religion

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

In March 2011, there was controversy over the stamping of 5,100 Malay-language Bible with *“For Christians Only”* on the cover of the bibles. This had been done without the consent of the importer, Bible Society of Malaysia. In May 2011, the Democratic Action Party was implicated by the UMNO-owned paper Utusan Malaysia to be involved in an alleged plot by Christian priests to replace Islam with Christianity as the official religion of Malaysia. Perkasa chief, Ibrahim Ali, warned of violence against the Christian community following allegations of the establishment of a Christian State. The Law Minister Nazri Aziz said that no action would be taken against Ibrahim Ali because doing so would amount to stifling his freedom of speech.

Freedom of information

Selangor and Penang state governments surpassed the federal government by introducing their respective Freedom of Information Enactments. However, far from being a protection to the freedom of information, civil society stressed the importance of maximum disclosure and narrow exemptions; the protection of whistle-blowers; the routine publication of information; simple procedures to enable the public to gain access to information at a minimal cost; and the need for an independent administrative oversight body.

Free and fair elections

In an attempt to salvage the government's mishandling of BERSIH 2.0 rally, a Parliamentary Select Committee on Electoral Reforms ("PSC") was commissioned to review and make recommendations to reform the current electoral system. Prime Minister Najib again stirred up a storm of dissent when he said that the PSC recommendations can be implemented after the 13th

General Election. He attempted to justify this by claiming that the government of the day retains the discretion to dissolve the Parliament at any time during its tenure.

On 14th November 2011, six Malaysians living abroad in the United Kingdom through their counsel filed an application for a judicial review seeking to quash the Election Commission's decision not to register them as absent voters, thus depriving them their right to vote. In the event the High Court quashes the said Election Commission decision, the nation would be looking at 700,000 to 1,000,000 Malaysians living abroad voting by way of postal votes.

SUHAKAM's inquiry into rights of indigenous peoples lauded

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

Of late, in a desperate act for support, the government through its self-appraisal exercise had utilised radio and television airwaves to pronounce *"Janji DiTepati"* (Promise delivered) through various public service announcements and advertisements alike. The 'delivered' promises campaign depicted satisfaction from the rakyat who had benefitted from superficial initiatives like
Kedai Rakyat1 Malaysia
and
Bantuan Rakyat 1Malaysia.

As any reasonable man would agree, these superficial initiatives do not address the main issues of the rakyat i.e human rights and civil liberties and do not change the fact that rights continued to be denied, restricted and regulated with 'safeguards' from the new legislations.

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Until and unless the main issues are addressed, the Prime Minister cannot claim “*Janji DiTepati*”.

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

Released by,

Nalini Elumalai

Executive Director of SUARAM

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