

Motion to establish an Independent Investigation Committee to enquire into the facts and circumstances relating to the preparation and execution of the statutory declaration purportedly affirmed by one Balasubramaniam Perumal on 4 July 2008 for the Malaysian Bar AGM on 16 March 2013

Whereas:

1. One Balasubramaniam Perumal (Bala) had on 3 July 2008 revealed a statutory declaration purportedly affirmed on 1 July 2008 (SD1) revealing, among others, certain facts concerning the murder of one Altantuya Shaariibuu (Altantuya). Bala was a material witness for the prosecution in *Shah Alam High Court Criminal Trial Nos. 46-3-2006 & 45-120-2006, Public Prosecutor v Azilah bin Hadri, Sirul Azhar bin Hj Umar and Abdul Razak bin Abdullah* (“Criminal Trial”), the trial of which resulted in the acquittal of Abdul Razak bin Abdullah and the convictions of Azilah bin Hadri and Sirul Azhar bin Hj Umar. The convictions are currently under appeal to the Court of Appeal.
2. SD1 contained matters that were and still are of great significance, not only for their relating to matters in controversy in the then on-going Criminal Trial but also for their pertaining to matters of the public administration of the country. Bala stated that he had made SD1 as he was of the view that material matters had been omitted by the police during investigations and not been brought to light by the prosecution in the course of his testimony in the Criminal Trial. These included Altantuya’s intimate relationship with the Prime Minister and the latter’s interference with the investigations into Altantuya’s death.
3. On 4 July 2008, Bala revealed a second statutory declaration (SD2) purportedly affirmed by him retracting SD1. Bala also said that he had been compelled to affirm SD1 under duress.
4. Subsequently, Bala revealed in an interview with *Malaysia Today* – that was sequentially released in parts from 13 November 2009 – that he signed SD2 as he was offered RM5 million and put to fear as to the safety of his family. He had not read the contents of SD2 before executing the same.
5. On 12 December 2012, one Deepak Jaikishan (Deepak) in a video interview with *TVPas* revealed a purported scheme among several persons to coerce Bala to retract SD1 by the affirmation of SD2 in a conspiracy to pervert the course of justice. Further, an advocate and solicitor(s) was engaged by these persons for Bala to prepare SD2 to be executed by Bala. SD2 was prepared without Bala’s instructions and a Commissioner for Oaths was arranged to have Bala affirm SD2 in a hotel room.
6. On 21 December 2012, Bala’s solicitor, one Americk Singh Sidhu issued a press statement stating, among others, that:
 - 6.1. Bala does not know the identity of the advocate and solicitor(s) who drafted SD2.
 - 6.2. Bala did not instruct any advocate and solicitor(s) to draft SD2.
 - 6.3. Bala was not present before the advocate and solicitor(s) when SD2 was being prepared.
 - 6.4. The contents of SD1 are true to the best of Bala’s knowledge and belief.

- 6.5. Bala was forced to sign SD2 because of threats to his family.
- 6.6. Bala is unable to lodge a complaint with the Advocates & Solicitors Disciplinary Board because he does not know the identity of the advocate and solicitor(s) who drafted SD2 in Bala's absence and without his instructions.
7. Deepak has since filed a defamation suit against the Prime Minister in which he has asserted the identity of two advocates and solicitors in his Statement of Claim in the said action.
8. The matters above have to date been publicly available on the worldwide web and been the subject of much discussion and consternation among Malaysians.
9. If the assertions of Bala and Deepak are true, then the preparation of SD2 may amount to acts of criminality under the Penal Code including perjury, giving false information regarding an offence and obstruction of justice under Part XI of the Penal Code. Further, those involved in the purported scheme to coerce Bala to retract SD1 may have engaged in abuse of power and corrupt practices punishable under the Malaysia Anti-Corruption Commission Act 2009. In this, the advocate and solicitor(s) concerned may have committed criminal offences or aided and abetted the commission of criminal offences. In doing so, they would have brought the legal profession into disrepute.
10. As a result of the intense speculation and scrutiny among right-minded Malaysians, rumours of the identity of the advocate and solicitor(s) involved in the preparation and execution of SD2 have been circulating in the public sphere. Public confidence in the legal profession and the Malaysian Bar may have been undermined, more so for a perception that the Bar has chosen to take no or minimal steps in addressing the matter to protect its members.
11. Given that:
 - 11.1. under section 42 of the Legal Profession Act 1976, the Malaysian Bar is to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour, and is further to maintain the high standards of conduct of the profession and the practice of law by its members;
 - 11.2. the Bar has consistently asserted the need to adhere to the highest standards of integrity in the administration of justice;
 - 11.3. the Bar has repeatedly adopted the position that law enforcement agencies such as the Royal Malaysia Police and the Malaysian Anti-Corruption Commission need not wait for official reports before commencing investigations into crimes that have come to light through media reports;
 - 11.4. the Bar has in the past relied and acted on video evidence to lodge official complaints with the appropriate authorities such as in the VK Lingam video clip of judicial-brokering;
 - 11.5. that it is imperative that the Bar be seen to be proactive with a view to determining the truth of the matter; and

- 11.6. that the Bar Council had permitted itself to be viewed as being reluctant to act decisively on the matter, particularly in light of the President of the Bar having reportedly characterised Deepak as being 'someone whose own background is cause for concern' (*Free Malaysia Today, 18 December 2012*) notwithstanding the fact that an enquiry has yet to be conducted into the matter.

It is hereby resolved that:

The Bar Council immediately establishes an Independent Investigation Committee to urgently enquire into the facts and circumstances relating to the preparation and execution of the statutory declaration purportedly affirmed by Balasubramaniam Perumal on 4 July 2008 with a view towards lodging an official complaint with the Advocates & Solicitors Disciplinary Board.

Dated this 7th day of March 2013

Proposed by Wan Hidayati Nadirah Binti Wan Ahmad Nasir

Seconded by Farida Binti Mohammad, New Sin Yew, Ida Daniella Binti Zulkifili, Tanya Marie Lopez, Farhana Binti Abdul Halim, Murnie Hidayah Binti Anuar, Nur Zatulitri Binti Md Yusof, Seira Sacha Bt Abu Bakar, Loke Yuen Hong, Nurashikin binti Mohamed Khalit, Ooi Seow Wen, Firdaus Binti Husni and Alvin Oh Seong Yew.