

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

PERMOHONAN JENAYAH NO. 44-18-2001

Dalam perkara satu permohonan  
oleh Hishamuddin bin Rais untuk  
arahan dalam hal Habeas Corpus

DAN

Dalam perkara Fasal 5(1), 5(2)  
5 (3) dan 149, Perlembagaan  
Persekutuan

DAN

Di dalam perkara seksyen 73 Akta  
Keselamatan Dalam Negeri, 1960  
( Akta 82 ).

DAN

Di dalam perkara Seksyen 365(1)  
Kanun Prosedur Jenayah  
[FMS Cap 6]

ANTARA

HISHAMUDDIN BIN RAIS

PEMOHON

DAN

KETUA POLIS NEGARA

RESPONDEN

## AFIDAVIT

424

Saya, Anni Mary Santiago ( No. K.P. ) seorang warganegara Malaysia yang beralamat di cukup umur, dengan sesungguhnya berikrar dan menyatakan seperti berikut :-

1. Saya adalah salah seorang peguambela dan peguamcara yang beramal di Tetuan Daim & Gamany, Tingkat 9, Wisma Yakin, 50100 Kuala Lumpur dan adalah peguamcara yang mengendalikan kes ini.
2. Saya mempunyai pengetahuan berkenaan fakta-fakta dan keadaan-keadaan berhubung dengan perkara ini kecuali di mana dinyatakan sebaliknya.
3. Saya memohon Mahkamah Yang Mulia ini untuk merujuk kepada afidavit yang diikrarkan bagi pihak pemohon bertarikh 12.4.2001 dan difailkan pada 12.4.2001 untuk menyokong Notis Usul pemohon ( selepas ini dirujuk sebagai "Afidavit pemohon " ) dan diberikan kuasa sepenuhnya oleh deponen afidavit pemohon untuk mengikrarkan afidavit ini.
4. Saya memohon kebenaran Mahkamah Yang Mulia ini untuk merujuk kepada perenggan 10 Afidavit Pemohon dan melampirkan sesalinan laporan-laporan pertubuhan-pertubuhan hak asasi yang dirujuk di perenggan 10 afidavit tersebut dan menandakannya sebagai eksibit "AS-1".
5. Seterusnya melalui surat bertarikh 13.4.2001, pihak polis telah memaklumkan peguamcara pemohon bahawa pemohon telah ditangkap di bawah seksyen 73(1) Akta Keselamatan Dalam Negeri 1960 dan siasatan masih diteruskan. Peguamcara pemohon telah membalas surat tersebut melalui sepucuk surat bertarikh 13.4.2001 yang memohon pihak polis memberi jawapan segera kepada permohonan keluarga dan peguam pemohon untuk dibenarkan berjumpa dengan pemohon. Sesalinan surat-surat ini dilampirkan dan ditanda sebagai eksibit "AS-2".

6. Saya seterusnya mengatakan bahawa sehingga kini masih tiada sebarang jawapan dari pihak polis berkenaan permohonan untuk berjumpa dengan pemohon.
7. Saya seterusnya merujuk kepada satu keratan akhbar 'The Star' bertarikh 13.4.2001 yang dilampirkan di sini dan ditanda sebagai eksibit "AS-3" ("keratan akhbar tersebut") dan kepada satu liputan di dalam keratan akhbar tersebut berjudul "Militant action will not win hearts and minds" yang ditulis oleh Wong Chun Wai.
8. Eksibit AS-3 akan dirujuk semasa perbicaraan untuk kesan sepenuhnya.
9. Maka, berdasarkan sebab-sebab yang dinyatakan di dalam afidavit yang telah diikrarkan bagi pihak Pemohon, tangkapan dan tahanan pemohon adalah tanpa sebab yang adil (without just cause), dan saya dengan segala hormatnya memohon suatu perintah seperti yang dipohon di dalam perenggan 1 dalam Notis Usul atau apa-apa perintah lain atau selanjutnya yang difikir patut dan wajar oleh Mahkamah yang Mulia ini.

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PEMOHON

DAN

RESPONDEN



Beikendian dengan affidavit oleh )  
Deponen bernama Anni Santhiago )  
Diiktarkan pada haribulan )

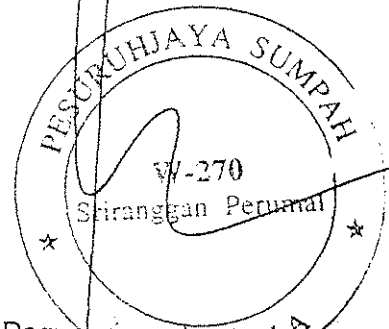
16 APR 2001

, 2001 di )  
Kuala Lumpur )  
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JURAT

Di hadapan saya

PESURUHJAYA SUMPAH



AFIDAVIT ini difailkan oleh Tetuan Daim & Gamany, Peguamcara bagi pihak Pemohon yang mempunyai alamat untuk penyampaian di Tingkat 9, Wisma Yakin, Jalan Masjid India, 50100 Kuala Lumpur. Tel No: 03-26984952/Faks: 03-26984953  
Ruj kami : SR/L. 7136/01

No. 38, Jin Tun Perak  
50050 Kuala Lumpur

## EKSHIBIT "AS-1"

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

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Dalam perkara satu permohonan oleh  
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Prosedur Jenayah [FMS Cap 6]

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DAN

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RESPONDEN

SIJIL PERAKUAN EKSHIBIT

Saya dengan ini mengakui bahawa Ekshibit berikut bertanda "AS-1"  
yang dirujuk dalam Afidavit Anni Santhiago telah diikrarkan di hadapan saya  
pada 16 haribulan April 2001.

Tt. 3, Wisma Tek Lee  
No. 38, Jln Tun Perak  
50050 Kuala Lumpur

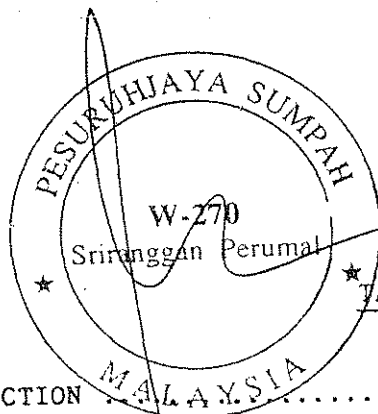
REPORT  
OF AN  
AMNESTY INTERNATIONAL  
MISSION  
TO  
THE FEDERATION OF MALAYSA

28 November - 30 November 1973



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Ini ialah salinan bertanda 'A-1' yang dirujuk dalam Affidavit oleh Anni May Santiago yang telah dibuat dihadapan saya pada 16/4/2001

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July 1979

## CHAPTER IV

ARREST AND INTERROGATIONI Preliminary Interrogation

The Government of Malaysia, through the Minister for Home Affairs, is invested with sweeping powers of arbitrary arrest and detention by executive order under the Internal Security Act (ISA) of 1960. Under Section 8 of the Act, the Minister is authorized to detain without trial for a two-year period any person he believes has acted or is likely to act "in a manner prejudicial to the security of Malaysia". Moreover, Section 8(7) enables the Minister to extend orders for further two-year periods, a power which successive Ministers for Home Affairs have not shrunk from using. This power has been used to justify indefinite detention without trial for periods of up to 15 years.

We have noted too that Section 73 of the ISA provides for an individual arrest and detention without warrant for up to 60 days before the Minister decides whether the person concerned will be served with a detention order. Indeed, very many, and possibly the majority, of persons detained under the Internal Security Act are released after this initial 60-day period of interrogation. Section 73 is used in a systematic way by the Malaysian authorities to intimidate and harass voices of dissent within Malaysian society.

Amnesty International has found that an almost uniform pattern emerges of a person's treatment during this 60-day period. Any police officer may arrest and detain an individual merely on "reasonable belief" that there are grounds which would satisfy the Minister to make a detention order against the person concerned. Most of the persons arrested under this Act are held in Kuala Lumpur, although facilities exist for holding people for the 60-day interrogation period in every state of Malaysia. Nearly all large police stations have Special Branch cells where persons held under the ISA can be detained and interrogated for 60 days prior to the Minister taking a decision as to whether the individual will be served with a two-year detention order. For example, at the police station in Jalan Tebrau in Johore Bahru in Johore State, there are eight small individual cells where political detainees can be held. At the High Street Police Station in Kuala Lumpur there are four sets of Special Branch cells. Seremban Prison in Negeri Sembilan State also has facilities for holding political detainees as do police stations at Muar in Johore State and Taiping in Perak State. However, it must be pointed out that the majority of persons arrested and held for 60 days under the ISA are imprisoned in undisclosed holding centers where they come into contact with no one other than their interrogators.

The detainee, almost invariably, is arrested late at night at home and taken to a police station and then transferred in a closed and often unmarked van to a Special Branch holding center. X (whose name is known to Amnesty International but is withheld at his request) was arrested at his home:

"At about 3 am I was awakened by a heavy knocking at my door and by the sound of several men in the courtyard.



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I opened the door and found to my astonishment eight police officers, four of them in plain clothes, and some of them with their guns drawn. They told me I was being arrested under the Internal Security Act. By this time the whole family had awoken and the children were crying. The officers searched every room of the house, including the children's bedroom. Meanwhile, I was told to get dressed. I remember thinking afterwards how little I had protested through the almost 30 minutes the police were at my home. I had heard and known friends who had been detained under the Internal Security Act and from the moment I was arrested an absolute despair at my situation descended upon me.

We left my home in two landrovers and drove for about 20 minutes around the outskirts of Kuala Lumpur. The landrovers stopped and I was bundled into a closed van. It was so fast I cannot recall whether it was marked or not. Inside the van I was strapped into a vertical coffin-like chamber. A desperate feeling of claustrophobia and nausea overcame me. For over two hours the van sped through the night until finally we came to a stop in an underground garage. I was bundled out through some darkened rooms into a large brightly lit room which was later to be my interrogation room. I looked at my watch - 6.10 am - it was the last occasion I would know the time or whether it was even day or night for two months."

The whereabouts of the detention center where X was detained were not disclosed to him throughout his 60 days' interrogation and Amnesty International knows of few cases where detainees knew where they were held. Strict precautions are taken to keep the prisoner incommunicado at all times. If, after a period of three or four weeks, the prisoner is allowed a family visit, he is invariably taken back to an ordinary police station, again in a closed van, to receive his visitors. In Kuala Lumpur prisoners held under the 60-day rule are taken back to the High Street Police Station for such visits. Afterwards they are returned to Special Branch Holding Centers. Amnesty International is aware that such interrogation centers exist in Kuala Lumpur at Jalan Gurney (Gurney Road), Bukit Aman and at Bluff Road, but undoubtedly several other secret detention facilities exist in the city.

When the prisoner first arrives at the interrogation center he is deprived of his clothes, watch and spectacles. He is issued with prison clothing, consisting of a T-shirt or singlet and ill-fitting trousers without a belt, so that at all times he is left in the humiliating position of having to hold them up. Throughout the 60-day period the prisoner is kept in complete solitary confinement. Of the many ex-detainees and detainees' families from whom Amnesty International has received testimony, not a single case has been reported of a prisoner who was not held in solitary confinement. Initially, a detainee is subjected to continuous interrogation for long periods without sleep. Periods of continuous interrogation from 48 to 72 hours are common, and in one case of seven days. The detainee is held in a dimly lit, windowless cell with

very poor ventilation infested with mosquitoes and other insects and not infrequently, even vermin. There is no furniture in the cell; the prisoner's bed consists of little more than a concrete platform with perhaps some wooden planks. After a few weeks some prisoners are issued with mattresses, but these are filthy, urine-stained and infested with bed bugs. Because of the poor ventilation, and the fact that many cells are underground, the prisoner's cell is extremely hot and uncomfortable, according to many prisoners often resembling an oven. These conditions are made worse by the complete denial to the prisoner of soap, toothbrush, towel and comb, or in many cases, any washing or toilet facilities whatsoever. After several weeks some prisoners are allowed to bathe, but they are not provided with a towel, and are forced to dry themselves in their clothes. Many prisoners develop serious bladder infections during their detention at Special Branch Holding Centers because of their lack of access to toilet facilities. There are no urinals or even a bucket in the cells so that a prisoner has to call the guard to go to the toilet. Many ex-detainees testified to Amnesty International that guards frequently refuse to allow prisoners to go to the toilet at night.\*

The following are three sample accounts that Amnesty International has received of the arrest and interrogation process in Malaysia.

1. Abdul Razak Ahmad is a lawyer and former Chairman of the Partai Sosialis Rakyat Malaya (Malayan People's Socialist Party):

"On 14 January 1975, at about 2.30 am, the Secret Police (officially known as the Special Branch) numbering about 10 people together with about 25 fully-armed members of the Federal Reserve Unit made their way to my house in a quiet residential area of Jalan Straits View, Johore Bahru.

On arrival they jumped over the locked gate and banged noisily at the door of my house. I was woken up from my peaceful sleep by the rude and loud noise which they made.

As soon as I opened the door I was immediately put under arrest. I was told that I was being arrested under the Internal Security Act, 1960.

The Secret Police then ransacked all the rooms in my house and took away periodicals, papers and files which belonged to Partai Sosialis Rakyat Malaya.

I was shocked by the arrest as I could find no reasons for the Secret Police taking such drastic action on me. While I was in detention I kept asking the Secret Police the reasons for my arrest but no reasons were forthcoming from them.

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\* For further background see Aziz Ishak, Special Guest: The Detention in Malaysia of an Ex-Cabinet Minister, Oxford University Press, Singapore, 1977, p 148. The author was Minister for Agriculture from 1955-63 and was detained for over a year in 1965-66 and then released under restrictive conditions until 1971.

I had been in Johore Bahru for only about one year when I was arrested. Previous to that I was working in Kuala Lumpur with FELDA (Federal Land Development Authority) for about four years.

I was arrested when I was in the midst of defending 48 people who were charged for illegal occupation of State land ....

During the first month of my detention I was kept in a very small unlit room measuring about 6' X 5' and later I was moved to a slightly bigger unlit room measuring about 12' X 10'. During the whole period of the detention I was kept in solitary confinement. I was only allowed out of the room to go to the toilet or for interrogation.

I was given prison clothes which were normally worn for about a week before a new change of clothes was allowed. I walked barefoot as no slippers were provided. I slept on wooden planks with no mattress. The room was full of mosquitoes at night and there were no insecticides.

I was given breakfast consisting of two pieces of bread with butter and a glass of tea at 8 am daily. I was given my lunch at 12.45 pm and dinner at about 5.30 pm daily and the meals consisted of a plate of rice with curry.

I was interrogated nearly every day and sometimes I would be taken to a very dark room which was entirely painted in black. A lamp would shine right in front of my face. Normally about four or five interrogators would be present. There would be at least two interrogations a day.

The interrogations were also intended to brainwash me. I was always reminded that what I had been doing was wrong and that the Government was right in whatever it was doing and that the people were to be blamed if Government policies which were intended to benefit them were not carried out successfully.

During the interrogations I was asked of my association with the squatters of Tasek Utara and the students who were charged in Court and the reasons why I became their counsel. The interrogators also asked me in minute detail of my political activities and my life history. I told the interrogators that I was not responsible for the actions of the squatters or the students as I had not known them before. In fact when the trouble at Tasek Utara started I was away in Kuala Lumpur.

I had not been informed of the reasons for my detention even at the time of my release from detention on 14 March 1975."

2. Lim Mah Hui was at the time of his arrest in 1975 a lecturer at the University of Malaya in Kuala Lumpur:

"I was picked up and put in a criminal lock-up and later in the same day I was taken by a group of Special Branch men to my residence where it was ransacked for 'subversive' documents. However none were available. After that I was left alone in solitary confinement for about three weeks before I was called up for interrogation.

Criminal suspects were allowed to share a same cell whereas political detainees were isolated individually in separate cells. The cell was about 8' X 10', and a wooden platform occupied half the space of the room. The platform proved to me more of a torture than a relief. It was filthy and infested with bugs. For the first week or so I was unable to catch more than two hours of sleep per night because most of the time was spent killing bugs. It proved impossible to sit without being bitten by bugs let alone lie or sleep. I asked for some insecticide but was not allowed any until about two weeks later.

We were fed with the same food that is given to the criminals. It consisted of a cup of black coffee, a piece of plain bread and a banana at 7 am. Lunch comes at 1 pm and consisted of a heap of rice, one tiny piece of fish, a sprinkling of vegetables and curry sauce. Dinner consists of the same things. Very often the fish or meat that is given is stale and inedible, which means often our diet consists only of starch. However, from time to time our relatives were allowed to bring in some extra food for us during their once a week visit.

A visit usually lasts about 15 minutes and at least one Special Branch man will be in the midst of us throughout the visit.

In the fourth week I was then called up for interrogation. The interrogation lasted for about 10 days with four or five hour sessions every day. Although no physical abuses were inflicted on me, threats were frequently made that we would be served with a detention order if we did not 'co-operate'. However our stay in the prison confirmed the fact that brutal beating and torture are very common in the process of 'interrogation' of suspects - both criminal and political detainees. Some of these were witnessed with our own eyes and some information from hints given by police personnel. We saw suspects brought back into the cells all beaten up and unable to sit or lie on their backs due to injuries sustained.

I was also not allowed a pillow or a decent blanket. The blanket given to me was a piece of cloth about 3' X 3' and again infested with bugs. I was not allowed any reading material for about three weeks. The process of keeping us isolated, of depriving us of reading material and subjecting us to harsh conditions is part of the process of trying to break down the detainees for 'confessions'."

3. Gurdial Singh Nijar, a lawyer, was also detained for 60 days in 1975. The following is his account of his experiences:

"The tiny 9' X 11' cell was dark and dingy. A dim light was switched on all the time. The walls were covered with cobwebs and urine marks - which probably accounted for the distinct stench in the room. The cell door - always locked - had bars but was boarded over by a green board; only by squinting through the narrow slits between the door and the wall could one see outside into an even more dimly lit narrow corridor. A raised cement platform served as a bed: a stinking thick army blanket was the only bedding material supplied. There is nothing else in the cell. Cockroaches, the occasional mouse and mosquitoes were my constant cell-mates. At the end of the fourth cell was a moderately maintained toilet-cum-bathroom.

Like almost all the others, they brought me into the cell in the early hours of the morning (about 4 am) so that for days thereafter the whole sleep-routine was upset.

Besides, being shut up day and night all alone with nothing to do, no one to talk to, one kept sleeping all the time. Complete disorientation results. The sense of day and night is soon lost. One tires of excessive sleep. No opportunity to exercise outside these stifling conditions is given. Urinating at night is made difficult as guards who have to unlock the cell door are either asleep or loath to respond. Of necessity, one's only recourse is to urinate into plastic cups. For the initial 10-day period or so, no reading material was permitted. Even so, reading for too long soon becomes painfully difficult in the dim light. Visits by family members are shrouded with uncertainty. The visits, in the presence of a Special Branch officer, were often abruptly discontinued. Taken cumulatively, it is easy to see how debilitating, both physically and mentally, these conditions can be. Perhaps this is not unknown to the powers that be.

The 'food' served exacerbates the matter. A tasteless and cold coffee in a stained plastic cup, a huge chunk of dry, white bread and a banana comprise the breakfast. Lunch and dinner were 'nasi bungkus': usually rice (half-cooked once too often) salted or curried fish and mashed up vegetables. The 'menu' was monotonously repetitive."

Throughout the 60-day interrogation period the prisoner, as has been noted, is kept in complete solitary confinement. Moreover, the prisoner is not allowed access to either a lawyer or a doctor. Recently, one lawyer who enquired about a person detained for interrogation was told by the local head of the Special Branch that he should know that no legal access is permitted to persons held for interrogation under Section 73. Indeed, a prisoner is fortunate, if after three or four weeks he is allowed a 15-minute visit from his wife or other near relation. Many prisoners arrested under Section 73 of the Internal Security Act have been denied even this elementary right. Nor, for that matter, are the families of detainees ever notified where their relative is detained.

## II Torture

Because of the complete lack of legal and medical safeguards, it is not surprising that ill-treatment and torture, both psychological and physical, of detainees often occurs during this 60-day period. On arrival at a Holding Center a detainee is allotted a "case officer" who is responsible for his interrogation.\* The whole interrogation procedure, together with the solitary confinement the prisoner is always kept in, is meant to induce a feeling of complete disorientation in the prisoner and thorough dependence on his interrogators as his only point of human contact. Several prisoners have experienced mental breakdowns as a result of this interrogation and very many are willing by the end of the 60-day period to make "confessions", acknowledging that they were a "security threat" to the Government and sympathized with the aims of the illegal Malayan Communist Party (MCP). Amnesty International believes that these "confessions" are extracted from the prisoner through extreme pressure amounting to psychological torture and in some cases physical torture. Many prisoners are subjected to threats, not only against themselves but also against their families, if they do not co-operate with the Special Branch and make a "confession". Detainees, for example, born in Singapore or in China are often threatened with deportation if they do not co-operate.

As elsewhere, physical ill-treatment of detainees would seem to depend much on the social background of the prisoner. Educated and middle class persons are rarely beaten, but persons of working class background are frequently physically assaulted during interrogation. But all are exposed to the threat of physical ill-treatment or torture. X, whose testimony we cited earlier noted that:

"When I was taken out of the police van I was taken through an underground corridor and then led into a room which had all the markings of a torture chamber. The floor was simply black earth and the room gave me the impression that no stains or marks would be left behind. I was taken from the room to the cell that was to be my home for the next two months. I was never again taken to that room. The same day, after I had fallen asleep after six hours' interrogation, I was awakened by a plain clothes policeman who entered my cell and sat on the end of the concrete platform that served as my bed. He smoked a cigarette without speaking. Finally, he extinguished the cigarette and rising caught me by the arm saying, 'I hope you come through this alright.' I remember trembling with fear after he left as to what he meant."

The Amnesty International delegates received a large number of complaints of this kind. The whole interrogation process seeks to induce in the prisoner severe mental and physical stress through solitary confinement and prolonged interrogation. As a recent report of the Malayan Bar Council noted, "Such methods of eliciting information constitute torture."\*\*

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\* Aziz Ishak, op cit, p 82ff.

\*\* Memorandum on Internal Security Act: Conditions of Detention of Persons held under the Internal Security Act, 1960 Memorandum submitted by the Malayan Bar Council to the Malaysian Government, 24 February 1979, p 2.

Quite apart from the psychological torture prisoners endure during their 60 days' interrogation, Amnesty International has received repeated allegations and reports of physical ill-treatment of political detainees. Pik Hwa, the oldest female detainee at Taiping Detention Camp and now about 60 years old, was reportedly beaten during her interrogation at Taiping Police Station before being transferred to the Taiping Detention Camp in 1976. The Amnesty International delegates also received reports that other female detainees had been stripped and beaten during interrogation.

Amnesty International is also gravely concerned that detainees from working class ethnic Chinese background who form the vast majority of detainees at Batu Gajah Special Detention Camp have been physically ill-treated and beaten during interrogation. For example, Goh Kean Seng, a teacher at a Chinese language school before his arrest in March 1974, was beaten with a broom across his chest during interrogation as a result of which he still suffers chest pains. Cold water was also poured over him and he was forced to do exercises repeatedly. Other relatives of long-term detainees at Batu Gajah and Taiping Detention Camps have consistently stated that they found their detained family members to have lost considerable weight and to have developed serious ailments as a result of their treatment during interrogation. Oon Siew Tian, a member of the now defunct Labour Party, arrested in December 1972, was reportedly beaten up during interrogation and has been treated in hospital several times since for tuberculosis.

The apparent purpose of the ill-treatment, whether physical or psychological, that a detainee is forced to endure is to induce a mental and spiritual collapse on the part of the detainee. Many prisoners develop severe psychotic depressions as a result of their treatment during interrogation. S is a former high official of the Labour Party:

"My experiences during interrogation were most terrible. It is difficult to say what is most unbearable, but particularly the complete lack of contact with anybody other than the interrogators and the complete loss of direction and time that the prisoner suffers there have an enormously depressive effect on most prisoners. Apart from periods of interrogation the prisoner is never allowed out of his cell for more than 20 minutes a day to go to the toilet and to wash. The toilet and shower are completely open and everything is done to humiliate the prisoner so that he has no sense of self-respect. In the daytime the cell was like an oven attracting heat, whilst at night it was quite cold. At times during the day it would become so hot that it was almost impossible to wear any clothes.

Then suddenly one day I was given by watch back. It seemed somehow a link with the outside world and I really doubt whether I would have retained my sanity if I did not have it. I remember finding the food and the timing of the meals as a particular strain; it was almost as if you were living in yesterday. Breakfast was at 6 am, so early that you could hardly eat anything; lunch was not until 2 pm, by which time you were usually starving and dinner followed only two hours later at 4 pm. The guards would never let you keep any food, so that after dinner, one was not fed for fourteen hours.

Mostly, the food was rice, often not properly cooked, with one salt-fish which was frequently rotten and the vegetable was usually half-cooked okra. Moreover, one was frequently disturbed at night so that it was impossible to maintain a proper sleeping pattern."

The monotony of the diet, the timelessness in which the prisoner is imprisoned, his complete isolation from the outside world and the continuing interrogation he has to undergo gradually have a mentally debilitating effect on all prisoners. Interrogation usually takes place in a brightly lit room with as many as four Special Branch officers grilling the prisoner at any one time. Sometimes the interrogators stand behind a battery of lights, while other interrogation rooms are air-conditioned to a temperature of 50 - 55 F, the temperature and humidity in the room being at such a level that the body does not recreate its own heat. Disorientation and constant harassment from the interrogators, who frequently change - sometimes daily\* - enhance the prisoner's feeling of complete helplessness at his predicament. As one ex-detainee remarked to the Amnesty International delegates, "You have a sense of terror ... you could die there and no one would know. When a man is humiliated like that, he becomes an animal with no self-respect."

The use of threats against the prisoner and his family during interrogation is both frequent and commonplace. Frequently these are used in an attempt to induce the prisoner to make a "confession". Thus in the case of the distinguished newspaper editor and writer, Samad Ismail, imprisoned since June 1976, reports have been received by Amnesty International that he and his family were threatened with deportation to Singapore, his place of birth, and possible imprisonment for life if he did not "confess". Other prisoners "confess" because they are promised release if they do so.\*\* Indeed, Amnesty International has received several reports that Abdullah Majid, former Deputy Minister for Labour and Manpower, "confessed" on television in 1976 because he was promised immediate release if he did so.

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\* Ex-detainee S noted, "I recall the first time I was taken from my cell to the interrogation room. My whole body was trembling. I was led through a darkened corridor and then into a fiercely lit room. There were six interrogators, all plain-clothes Special Branch men. Although I was always questioned by this group of six, usually in shifts of two for anything up to 12 hours, the officers would often change their names to induce further confusion."

\*\* Aziz Ishak, op cit, pp 116-121.



## CONCLUSION

Section 73 of the Internal Security Act gives to the police, in effect, virtually absolute powers to arrest and detain individuals for up to 60 days. Once in police custody the individual is completely defenceless and without any rights whatsoever. Invariably he is held in solitary confinement, totally cut off from family and friends in the outside world and denied access to legal counsel as well as outside medical treatment as a matter of course. It is impossible to estimate the number of persons subjected to 60-day solitary confinement and interrogation under the Internal Security Act, Section 73, but from information Amnesty International has received it appears by conservative estimate that several score and perhaps several hundred may be detained at any given time. The Malaysian authorities have never divulged information on this.

By any standards the treatment of detainees during these 60 days is cruel, inhuman and degrading and in complete violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners\*, which are generally recognized as the authoritative statement of international minimum standards. Internationally recognized standards emphasize that deprivation of liberty through detention is inherently punitive in itself. It must be stressed that detainees under the Internal Security Act have never received a fair and impartial adjudication of their guilt or innocence, and that, by definition, their detention is to be "preventive" not "punitive". The Standard Minimum Rules specifically recognize "Persons Arrested or Detained Without Charge" as a special category of prisoner who "are presumed to be innocent and shall be treated as such"\*\*, and who "shall benefit by a special regime"\*\*\*, including the right to have "food procured at their own expense from the outside"†, "to wear his own clothing"‡, "to procure at his own expense ... books, newspapers, writing materials"§, and "to be visited and treated by his own doctor or dentist"¶.

Regrettably, Malaysian practice in cases of preventive detention under Section 73 makes a mockery of these internationally-established minimum standards, a mockery of the presumption of innocence, and, in sum, a mockery of the individual prisoner's right to basic human dignity. The entire regime of initial arrest, detention and interrogation is designed with the express objective of breaking the detainee's spirit by the infliction of harsh punishment measures, including psychological torture in virtually all cases and physical torture in some cases.

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\* United Nations, N.Y. 36273, September 1977

\*\* Ibid, Part II, C, 84(2)

\*\*\* Ibid, Part II, C, 84(3)

† Ibid, Part II, C, 87

‡ Ibid, Part II, C, 88(1)

§ Ibid, Part II, C, 90

¶ Ibid, Part II, C, 91

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## MALAYSIA

### "OPERATION LALLANG": DETENTION WITHOUT TRIAL UNDER THE INTERNAL SECURITY ACT

DECEMBER 1988

SUMMARY

AI INDEX: ASA 28/18/88

DISTR: SC/PO/CO/GR

This report focuses on the detention without trial of at least 106 people in October and November 1987 under Malaysia's Internal Security Act (ISA), in what the authorities called "Operation Lallang". It is based on information received from a wide variety of sources collected since the arrests took place, and was the subject of discussions between the Malaysian Government and an Amnesty International mission to Malaysia in October 1988.

The report gives a detailed account of the events that preceded the mass arrests of prominent politicians, trade unionists, Chinese educationalists, environmentalists, and church and community workers. It analyses the government's White Paper on the arrests made public in March 1988 and reactions to it, and reviews the legal background to the detentions. It also describes detention conditions and the treatment of those detained, and concludes with a number of specific recommendations to the Malaysian Government.

More than half of those arrested were released before the end of a 60-day investigation period in detention, but at least 40 were given two-year renewable detention orders, and were sent to Malaysia's main ISA Detention Centre in Kamunting, Perak. Amnesty International adopted them as prisoners of conscience, known for their non-violent legitimate, social and political activities. At the time of the Amnesty International mission to Malaysia another 20 of these detainees had been released and since then a further four have been set free, though all had severe restrictions imposed on their right to freedom of expression, movement and association.

The report describes further how several of the detainees were subjected to both physical and psychological torture and ill-treatment during their initial 60-day detention in the Police Remand Centre near Kuala Lumpur, and gives details from sworn testimonies of former detainees. It concludes by calling on the Malaysian Government to release all prisoners of conscience remaining in detention immediately and unconditionally, and to lift the restriction orders imposed on those released. It also calls on the government to institute an independent investigation into the testimonies of torture and ill-treatment of the detainees and for the findings to be made public.

This summarizes a 32-page document, Malaysia: "Operation Lallang": Detention without trial under the Internal Security Act (AI INDEX: ASA 28/18/88), issued by Amnesty International in December 1988. Anyone wanting further details or to take action on this issue should consult the full document.

"OPERATION LALLANG": DETENTION WITHOUT TRIAL  
UNDER THE INTERNAL SECURITY ACT

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The social reform movement ALIRAN commented that as far as the activities of those described as Marxists were concerned, "their real concern was largely with pointing out the inadequacies of the present authoritarian, capitalist system". ALIRAN went on to say that "these social activists pursued their ideals through peaceful persuasion, using democratic channels of articulation and action... [that] their activities were legal and legitimate [and that there was] no suggestion anywhere in the White Paper that any of them advocated violence or used violence to achieve his or her goals".

With regard to the White Paper claim that the alleged "Marxist group" had links with "foreign organizations which are international communist fronts", ALIRAN pointed out that the two organizations in the Philippines identified in the paper, namely PETA and KMU, are established legal bodies recognized as such by the Philippine authorities. ALIRAN further stated that the former of the two organizations had been officially invited by the Malaysian Government to participate in an arts festival in Kuala Lumpur in 1985.

#### 6. Conditions in detention and treatment of those detained

Most of the arrests took place in the early hours of 27 October when 55 persons were detained in one arrest operation. These were followed by further arrests of individuals in their offices, homes and in public places like restaurants. Several individuals were detained at police stations when inquiring about others arrested. In all 106 persons had been arrested by 14 November 1987. In general, each arrest was carried out by a group of plainclothes police officers thought to be officers of Malaysia's Special Branch. Following the arrests, the homes and offices of the detainees were searched systematically and their identity cards, address books, and several books, files and letters confiscated. A day after the arrests began publication of four national newspapers was suspended by order of the Minister of Home Affairs with the result that, apart from the occasional official comment, there was an almost total blackout of information about the detentions.

For the first five days or so all the detainees were held in incommunicado detention and their whereabouts were unknown to their relatives. Those apparently detained in or around the capital were allowed to receive visits from their relatives from the sixth day of detention onwards, although only half an hour was generally permitted for such visits. These visits took place in a designated police station in Kuala Lumpur. Several families were, however, not allowed to see their detained relatives until the 29th day of detention. All detainees were brought to these meetings blindfold so did not know where they were being detained. Nearly two weeks after the arrests the families of some of those detained complained publicly about being denied visiting rights, and about being harassed by the police when trying to arrange such visits. These families also complained about plainclothes police officers being present throughout the visits when they were granted, and about the fact that their conversations were tape recorded. Detainees receiving medical treatment at the time of their arrest were reported to have been denied adequate specialist medical treatment.

All the detainees were held in solitary confinement throughout the 60-day investigation period. In most cases their personal belongings were taken away and replaced by a set of standard prisoners' clothing. Several

male detainees were left in their underwear for some days in their cells before being given any additional clothing. For varying periods of time and depending on their "cooperation" with the interrogators, the detainees were not provided with mattresses or bedding and had to sleep on concrete cell floors or on thin cardboard planks placed on concrete platforms. No reading material was permitted during the initial stages of their confinement.

Judging from the accounts of some of those released, and of family members of the detainees, the great majority of the detainees from Kuala Lumpur and its environs appear to have been held at the Police Rehabilitation Centre (PRC) at Kampung Batu, several miles north of the capital. Others were held at police stations in the place of their arrest or other designated lock-ups under the control of the Special Branch. Detainees were blindfolded every time they were moved about within the PRC or from the PRC to the police stations where they met their families.

The treatment accorded to the 106 detainees during their 60-day investigation appears to have varied considerably from person to person. Often it seemed to depend on the particular "case-officer" in charge of conducting the interrogation, or on the particular social and political status of individual detainees and the degree of their supposed "cooperation" with the interrogating officers. At times the interrogation is reported to have been conducted in a "correct" and formal manner, while at other times more heavy-handed techniques were employed by the interrogation officers.

This use of alternating interrogation techniques, apparently designed to humiliate and frighten the detainees, wear their defences down, identify their weaknesses and destabilize them both psychologically and physically, was applied to the detainees with varying degrees of intensity. In some instances they were apparently subjected to a barrage of verbal abuse, humiliation and threats against their person or their spouses by up to seven Special Branch officers at a time. They were reportedly made to stand barefoot in their prison clothes at the centre of a circle of interrogators who fired rapid questions which they were required to answer while facing the questioner. Those detainees who were too disorientated to respond quickly enough apparently received further verbal abuse, which, on several occasions, was shouted at them through newspapers shaped into cones and placed by their ears, and in some instances the detainees were slapped in the face by their interrogators.

Other detainees were reportedly made to do strenuous physical exercises for long periods of time. These involved standing on one leg or doing press-ups until they collapsed, whereupon they would be kicked by the interrogation officers and made to repeat an exercise. According to reports at least one detainee was repeatedly forced to walk blindfold around the interrogation room, knocking himself against the walls. Others were stripped naked during the interrogation process or were forced to crawl on the floor, collect cigarette butts intentionally scattered there and perform other humiliating acts. In general it was reported that such "interrogations" took place in purposely overcooled interrogation rooms where detainees were forced to stand in front of a cold air-conditioning duct. Some were reported to have also been doused with cold water in order to increase the strain and to have been shivering with cold.

Several detainees were said to have been beaten with sticks or rolled-up newspapers, and slapped, punched or pulled by the hair by their interrogating officers. In at least one instance the detainee was

apparently stripped naked, whereupon one of the officers lit the end of a bundle of rolled-up newspapers and threatened to burn his genitals, although he stopped short of actually doing so. Other mock sexual assaults have also been reported by some of the detainees. 111

The following sworn testimonies by four detainees who described their treatment in detention in their application for a writ of habeas corpus exemplify the ill-treatment meted out to some of the detainees:

"...During my 60-day arrest by the Police and subsequently during my detention at the Kamunting Detention Centre, Perak, various attempts were made ... to coerce or to induce me to renounce Christianity and to convert back to Islam against my will ... During the first two weeks of my detention, I was interrogated very vigorously by Special Branch officers about my personal faith and my religious activities. I was not allowed to sleep for days at a stretch and was warned that I would not get my food if I did not cooperate. One Inspector [name withheld] threatened to disturb my girlfriend if I did not give any information. I was assaulted by Inspectors [names withheld] on a number of occasions. On one occasion I was knocked to the ground and I injured my back. Since then, I have been passing blood in my urine and have been suffering from pains in my lower back constantly ... On one occasion during interrogation, Inspector [name withheld] forced me to strip naked and to enact the crucifixion of Jesus Christ. [He] also forced me to crawl on the floor in a naked state for about 10 minutes ... On one occasion ... a Police Constable forced me to stand on one leg with both my arms outstretched holding my slippers. He made me remain in this position for two hours. He then called in a woman constable and her young daughter and asked them to look at me..."

Another testimony stated:

"...I did not see a lawyer for the entire sixty days of my detention under Section 73 [of the ISA]. It was represented to me by the police that it would be unwise to request for legal counsel. I did not therefore request to see a lawyer ... During [this] initial 60-day detention ... I was kept in such circumstances and subjected to such treatment that was harsh, oppressive and punitive in nature ... I was not allowed to wear shoes and was kept in a filthy cell that was damp and hot. The cell was windowless, the only ventilation being some holes at the upper portion of a wall. It was lit by a single light bulb which was kept on all night ... At any time I was removed from my cell say to be taken to the interrogation room I was handcuffed and given opaque spectacles to wear. At all times ... I was kept in solitary confinement ... For a full month at least from my arrest, my entire bedding was a thin plywood sheet on a cement slab. I was only then given a mattress. The food that was supplied to me was barely tolerable ... I was not allowed any visits from my family until about the thirteenth day after my arrest ... I was interrogated mostly at night for continuous periods of up to six hours everyday in very cold air-conditioned rooms for about one month after my arrest. I was not allowed any rest or breaks during the interrogation sessions ... I was insulted and verbally abused during these interrogations and sometimes put in fear of violence on myself. On the ninth day after my arrest, I was beaten by [name withheld] who beat me with a stick about 1cm X 4cm X 1.2m on my legs and soles of my feet several times and also slapped me in the face with the back of his hand. Whilst beating me he hurled a lot [of] verbal abuse at me. He also threatened to strip me naked..."

According to a third testimony:

"...[As] soon after I was arrested at my house and during the whole of my detention for the initial 60 days under Section 73 of the Act, I was not allowed to see a legal counsel, despite my requests to both the Special Branch Officer and the Investigating Officer during my interrogation ... During the initial period of my detention I was subjected to severe physical, psychological and verbal abuses, threats and humiliation and was throughout kept in solitary confinement. The treatment meted out to me was harsh, oppressive or otherwise punitive in nature ... The hours of interrogation were very long almost non-stop for 24 hours in the first four days of my arrest with hardly any rest and putting me under duress and causing me to suffer amnesia. Further, having to sit on a plastic stool and forced to write for more than 80 hours over a period of about four days on events in my life, some of which occurred more than 13 years ago. The interrogations were conducted in a very tense, chilly and eerie atmosphere sometimes with threats of violence like "we can do this in a gentle or rough way" uttered by one of the police officers, and then the police officer would with his right palm punch slowly on his left palm, threatening "don't complain later that we didn't warn you" ... Threats and insidious suggestions of physical torture and mental abuse were repeatedly mentioned to me if I did not respond to their demands ... A police officer put fear into me ... by saying "if I squeeze your balls, how long can you last?" ... I was also subjected to the "cold treatment during interrogation with very cold air directed through the louvres onto my head causing me to shiver ... [I] experienced hallucination and woke up in cold sweat. For two or three nights I hallucinated that a big cobra was crawling beside me ... No access to any member of my family, my relatives or friends [was allowed] until the 14th day of my detention ... I was forced to wear blind-glasses blocking out any vision when moving to and from my cell and the interrogation room as well as when taken to visit my family members at the police station ... It was under such harsh and oppressive circumstances that I was requested to make statements..."

A fourth detainee testified:

"...During the initial period of my detention I was subjected to severe physical, psychological and verbal abuses and threats and humiliation ... forced to do strenuous physical exercise for long periods and over several days resulting in me suffering great pains, discomfort and exhaustion and body-ache such as having great difficulty to lift up my arms to feed myself because of the pain ... I was forced to stand on a leg with the arms outstretched and head bent backwards for long periods until I collapsed onto the floor... Immediately I was kicked by the police officer to stand up again on one leg, and this was repeated many times ... I was forced to walk blind-folded towards a wall resulting in knocking myself against the wall and this was repeated many times. The police officers stamped on my toes and fingers causing excruciating and prolonged pains. I was subjected to the "cold-treatment" which consisted of standing in front of a very cold air conditioner either naked or half naked several times and over several days and on one occasions after the police officer had thrown very cold water all over me... I was forced to strip naked. A police officer then rolled up a bundle of newspapers, lit up one end, and threatened to burn my genitals bringing the lighted end close to my genitals... [I was] deprived of mattress and

pillow up to the 20th and 27th day of my detention respectively. Before that I was forced to sleep on cold hard plywood on the cement floor... A police officer stated that he would ... make sexual advances to my wife... [I received] threats to take my life... The hours of interrogation were very long and several times they were more than 10 hours with one or two short breaks of 30-45 minutes... [I had] no access to any member of my family, my relatives or friends until the 29th day of my detention ..."

Throughout the 60-day period in detention none of the detainees was allowed access to defence counsel despite repeated requests to the authorities to allow legal consultation. Early representations by counsel to seek writs of habeas corpus from the courts thus had to be submitted without prior consultation with the detainees concerned.

During the latter part of the 60-day investigation period, the conditions of detention were apparently gradually relaxed, for example by allowing family members to make more frequent although still limited visits, by providing adequate bedding and by allowing the detainees to read selected newspapers and books. Throughout the 60 days, however, the detainees remained in solitary confinement.

Those detainees served with detention orders at the end of the 60-day investigation period were transferred to the Kamunting Detention Centre, Malaysia's main prison camp for ISA detainees near Taiping in Perak state, some 300 km north of the capital. Here they were grouped together in separate kawasans (blocks), and confined to concrete barracks. Communication within the barracks was unrestricted but no communication was allowed between kawasans, each being separated from the others by high walls of corrugated iron and barbed wire. The four women detainees were housed in a separate kawasan from the rest of the detainees.

The general conditions in Kamunting were said to be better than conditions during the investigation period, especially insofar as the detainees were no longer held in solitary confinement. However, detainees continued to protest about the fact that those who needed medical treatment were handcuffed before being taken to the general hospital in Taiping; about continuing restrictions of visits from family and friends; about the fact that it was forbidden to receive and send uncensored mail; and at the standard of food, which many described as inadequate. As before, family visits were conducted in the presence of and within the hearing of prison officers, as were legal consultations with defence counsel.

## 7. Habeas corpus applications by detainees

Shortly after the arrests of 27 October several families of the detained instructed legal counsel to challenge the lawfulness of the detentions in court by seeking writs of habeas corpus as provided for in Chapter 36 of the Criminal Procedure Code. Nine applications for writs were subsequently filed with the Kuala Lumpur High Court and a hearing date was set for 23 November 1987. When the hearing took place six international observers, including one from Amnesty International, attended the proceedings which lasted for two days. The hearing was presided over by the Chief Justice of Malaya sitting as a High Court Judge. The Attorney-General appeared in court on behalf of the respondent, named as the Inspector-General of Police. One of the applicants withdrew his application prior to the hearing as family members were concerned that any legal action undertaken might



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## **MALAYSIA**

### **Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy**

SUMMARY

AI INDEX: ASA 28/06/99

DISTR:SC/CC/CO

The detention of former Deputy Prime Minister Anwar Ibrahim and sixteen of his political associates under the Internal Security Act (ISA) in September 1998 has marked a watershed in the perception of respect for human rights and the administration of justice in Malaysia. For many years a legislative and administrative structure has developed in Malaysia, which has posed a grave threat to the rights and liberties safeguarded in the Malaysian Constitution and under international human rights law. The events that followed Anwar Ibrahim's dismissal from office including his detention and that of his supporters under national security legislation, their ill-treatment while held incommunicado, and the detention and ill-treatment of peaceful demonstrators, follow a pattern of violations that has been developing in Malaysia over decades.

This report shows how the executive branch of government has, step by step, undermined constitutional principles safeguarding basic human rights, accumulated legislative powers and influenced key national institutions in a way that have enabled it to curb fundamental rights. Institutions of the state, including the Royal Malaysia Police, the Attorney General's Chambers (Public Prosecutor's Office) and the Judiciary appear at times to have come under the improper influence of the Executive, and to have failed to robustly defend constitutional principles and to uphold respect for human rights.

The report highlights an array of restrictive laws allowing the government to deny or place unjustified restrictions on the enjoyment of fundamental human rights. This includes legislation which allows authorities to detain individuals without charge or trial for two year renewable periods, to outlaw unauthorized gatherings of more than five persons and to prevent students from taking part in opposition politics. Much of this legislation, inherited from the British former colonial government, has allowed the authorities to deny or place unjustified restrictions upon, the enjoyment of fundamental human rights.

This report presents the cases of individual men and women whose rights have been denied or restricted under these laws, including the right to peacefully express their opinions, form associations and protest in public, free from the threat of arbitrary arrest, ill-treatment and imprisonment. It examines how the police used excessive force to disperse peaceful protestors in 1998-9, and how a number of protestors were ill-treated in detention before facing trial and imprisonment.

The trial of Anwar Ibrahim on charges of 'corrupt practices' is examined in detail. Amnesty International reiterates its belief that he is a prisoner of conscience held solely for his peaceful political activity, and details its concerns that the conduct of Anwar Ibrahim's criminal prosecution were contrary to the principles of fair trial enunciated in international standards.

The report concludes with a series of recommendations to the Government of Malaysia to ensure that there are effective safeguards for the protection of the fundamental human rights to conduct a wide-ranging reform of restrictive legislation currently in force in Malaysia in accordance with international human rights standards.

In particular, Amnesty International recommends that the Malaysian Government:

- ◆ repeal or reform the Internal Security Act, and all other legislation that places unjustified restriction on human rights;
- ◆ end the practice of incommunicado detention, which facilitates torture and ill-treatment;
- ◆ respect the right of all Malaysians to engage in peaceful assemblies and demonstrations and to freedom of religious and other beliefs;
- ◆ review the cases of anyone imprisoned or in any other way penalized for their peaceful exercise of the freedom of opinion, expression and association, with a view to releasing those detained or reversing the punishment against others;
- ◆ end torture and ill-treatment in detention, and ensure that all reports of torture and ill-treatment are fully and independently investigated;
- ◆ ensure that the Royal Malaysia Police act at all times in accordance with international standards on the use of force and firearms;
- ◆ ensure that the proposed Malaysian Human Rights Commission is established in accordance with international principles on such institutions;
- ◆ ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), and The International Covenant on Economic, Social and Cultural Rights (ICESCR).

**KEYWORDS:** LEGISLATION / CONSTITUTIONAL CHANGE / EMERGENCY LEGISLATION / FREEDOM OF EXPRESSION / POLITICAL BACKGROUND / NATIONAL HUMAN RIGHTS COMMISSION / CENSORSHIP / ARBITRARY ARREST / PARLIAMENTARIANS / STUDENTS / TRADE UNIONISTS / TRIALS / POLICE / DEMONSTRATIONS / HUMAN RIGHTS INSTRUMENTS / TORTURE/ILL-TREATMENT / HABEAS CORPUS / RELIGIOUS GROUPS - ISLAMIC / POLITICALLY MOTIVATED CRIMINAL CHARGES / INCOMMUNICADO DETENTION / NON-GOVERNMENTAL ORGANIZATIONS / BANNING / USE OF EXCESSIVE FORCE / SEXUAL ORIENTATION / PHOTOGRAPHS

This report summarizes a 91-page document: MALAYSIA Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy (AI Index: 28/06/99) issued by Amnesty International in September 1999. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email: <http://www.amnesty.org/news/emailnws.htm>

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## **MALAYSIA**

### **Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy**



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an appeal asserting that the sentence was excessive, and in August 1999 the Court of Appeal ordered his release.

## CHAPTER 5: ILL-TREATMENT AND TORTURE IN INCOMMUNICADO DETENTION

Among the most persistent of Amnesty International's grave concerns about the application of the ISA in Malaysia has been the ill-treatment of ISA detainees, at times amounting to torture. While Malaysia has not ratified the UN Convention against Torture (CAT) or other relevant covenants, international human rights standards strictly prohibit torture and ill-treatment. Article 5 of the UDHR states:

'No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment'.

In December 1975 the UN General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Declaration).<sup>30</sup> The definition of torture was contained in Article 1 of the Declaration.<sup>31</sup>

The right to protection against torture and ill-treatment is one of the fundamental rights from which no derogation is permitted, even in times of emergency or war. Torture is prohibited under the Geneva Conventions, and Article 3 of the Torture Declaration states:

'No state may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment'.

In addition to the Torture Declaration, other international human rights standards such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 6)<sup>32</sup>, and the UN Standard Minimum Rules for the Treatment of Prisoners (Rule 31),<sup>33</sup> also prohibit torture.

Articles 6, 8 and 9 of the Torture Declaration also provide that interrogation methods and practices shall be kept under systematic review with a view to preventing any case of torture; that a prompt and impartial investigation shall be ensured whenever there are reasonable grounds to believe that an act of torture has been committed, and that any individual subjected to torture has the right to complain and have his case promptly and impartially examined.

Recognising that the risk of torture and ill-treatment increases when detainees are held incommunicado, international standards require prompt and regular access to detainees by legal counsel, medical practitioners and family members.

Under the ISA, techniques of interrogation by Special Branch police, including persuasion, deception, and coercion involving intense mental and physical pressure amounting to torture, have become entrenched. An almost uniform pattern in the ill-treatment of ISA detainees, primarily during the 60-day interrogation, was recorded by Amnesty International delegates during missions to Malaysia in 1978 and 10 years later following Operation Lallang in 1988.<sup>34</sup> In 1998 the treatment of Anwar Ibrahim and other ISA detainees (and of others arrested under the Penal Code) highlighted the continued risk and incidence of such ill-treatment.

In November 1998, during Anwar Ibrahim's trial for corrupt practices, Special Branch officers confirmed that interrogation techniques, based on those employed as 'standard operating procedure' against communist insurgents, continued to be used against ISA detainees in the 1990s. Special Branch officer DSP Abdul Aziz described techniques of 'turning over' and 'neutralising targets' who were suspected of threatening security, including techniques of instilling fear through threatening indefinite detention under the ISA and through non-stop interrogation underscored with implied threats of violence. The officer testified these methods of interrogation were outlined in the Special Branch Handbook, and that such techniques were normal practice among Special Branch officers in 'handling the country's enemies, for example the communist threat at one time'. He added that, using such methods, he was involved in the 'neutralisation' of the *Al Arqam* Muslim sect in 1994. (See page 22).

## 1. Case Studies

### Dr Munawar Anees



Munawar Anees.

Dr Munawar Anees, aged 51, is a microbiologist who was born in Pakistan. A married man with two children, he is an internationally recognised Muslim writer and intellectual who has founded several journals on Islamic studies. He moved to Malaysia in 1988, and became a friend of Anwar Ibrahim, writing occasional academic and policy speeches for him.

On 14 September 1998, he was arrested under ISA, and reportedly subjected to severe physical and psychological pressure during incommunicado detention to confess to sexual acts with Anwar

Ibrahim. On 19 September he was convicted of 'unnatural offences' under s377D of the Penal Code, after he pleaded guilty to having 'allowed himself to be sodomized' by Anwar Ibrahim. He later appealed his conviction and sentence, claiming that his confession had been coerced. He described his arrest and incommunicado interrogation in a sworn statement which detailed aggressive, disorientating and prolonged interrogation, threats of indefinite detention and, degrading treatment including being stripped, and being ordered to mimic homosexual acts. The appeal is pending, (see testimony: Appendix Three).

### Sukma Darmawan



Sukma Darmawan ©  
Reuters 1999

Sukma Darmawan is a 37-year-old Indonesian businessman with Malaysian citizenship. He was adopted by Anwar Ibrahim's father, a friend of Sukma's own father, when he came to Malaysia to study in 1977. Sukma Darmawan was arrested 'for investigation' under the Criminal Procedure Code on 6 September 1998. Police at first refused to reveal the grounds for his arrest<sup>35</sup>, and he was held incommunicado for 15 days, denied access to his family and to lawyers of his choice.

Sukma Damarwan was convicted on 19 September after he pleaded guilty of 'having allowed himself to be sodomized by Anwar' (Penal Code s377D). After his conviction, Sukma Darmawan was transferred from Kajang Jail back to Bukit Aman federal police headquarters where he was detained and denied access to lawyers appointed by his family. In a handwritten letter authenticated by family members, a copy of which was received by Amnesty International in late October 1998, Sukma Darmawan alleged that during pre-trial detention he was subjected to severe psychological and physical pressure during prolonged interrogation by police in order to make him confess and to implicate others, including being stripped naked in a cold room, humiliated, struck, and threatened with indefinite detention under the ISA.

In December 1998 Sukma Darmawan, in support of his appeal, lodged an affidavit to this effect, stating also that police had threatened to place bullets in his car and charge him with possession unless he implicated Anwar Ibrahim. In May 1999 the High Court dismissed Sukma Darmawan's appeal against his conviction and sentence, stating that there was no miscarriage of justice because he had admitted the facts, and had understood the consequences of his guilty plea. Sukma Darmawan appealed the ruling.

In April 1999 Sukma Darmawan was charged with three new offences: two involving sexual offences (see page 68), and one of fabricating false evidence (perjury) during a judicial proceeding<sup>36</sup>, by lodging a statutory declaration in which he stated that he had been threatened by police into making a confession.

In his subsequent joint trial with Anwar Ibrahim beginning on 7 June 1999 arguments were put forward over the admissibility as evidence of Sukma Darmawan's September 1998 confession, which he said had been coerced. During questioning in court Sukma testified that during prolonged periods of interrogation (8 hours a day over 10 days after arrest) police had threatened to place bullets in his car and charge him with possession, while promising him a light sentence if he accused Anwar Ibrahim of sodomy. He stated that police humiliated him by making him stand naked and by groping his genitals and pinching his nipples while taunting him with debasing words. He said he was given no food on the first day of detention and, though he suffers from asthma was placed wearing only underwear in a small, damp and cold cell. At one stage he was taken for a DNA test, given a painful anal examination by a doctor, and photographed naked from all angles by police. He also claimed he was prevented from retaining a lawyer of his own choice. He eventually confessed:

"I was frightened and sad. I was no longer strong. I could no longer take the continuous yells and threats...When I said I would obey them, they removed my handcuffs, returned my clothes and became polite...They wanted me to admit I had sex with Anwar."

Police denied all allegations, testifying that they did not threaten him to confess, did not raise their voices, and that Sukma gave his confession voluntarily and calmly. On 26 July the Judge ruled that the prosecution had proved beyond reasonable doubt that Sukma's confession had been made voluntarily in that there had been no inducement, threat or promise by police. The joint trial had not been completed by mid-August 1999.

**Anwar Ibrahim**



Anwar Ibrahim following his incommunicado detention in September 1998 © Reuters

On 20 September 1998, following his arrest under the Penal Code (s377B), Anwar Ibrahim was taken to Bukit Aman police headquarters. Later that night Anwar Ibrahim was served documents informing him he was detained under the ISA, and remained in incommunicado detention.

On 24 September Malaysia's most senior police officer, Inspector-General of Police (IGP) Abdul Rahim Noor, stated publicly that Anwar Ibrahim was 'safe and sound', and would soon be tried in court. On 29 September Anwar Ibrahim was brought to court after being held incommunicado for nine days. He showed visible signs of ill-treatment, including a swollen eye and a bruised arm. He complained that a few hours after his arrest, when he was handcuffed and blindfolded in his cell an unidentified police officer 'beat him



severely, causing serious injuries'. Anwar Ibrahim was denied access to a doctor until the fifth day of his detention.

On 5 January the Attorney General announced that an internal police inquiry had submitted a report to him on 19 November finding that the injuries sustained by Anwar Ibrahim were inflicted by the Royal Malaysia Police, but had failed to identify the perpetrator. On 7 January IGP Abdul Rahim Noor, announced his resignation, assuming responsibility for the injuries suffered by Anwar Ibrahim while in police custody.

On 27 January Prime Minister (and then Home Minister) Mahathir announced a Royal Commission of Inquiry to identify the assailant and to recommend appropriate action against any perpetrator. The Commission began proceedings on 22 February. Anwar Ibrahim testified that when he was sitting blindfolded and handcuffed he heard a person enter his cell:

"He stood up and within seconds of doing so, he felt a very strong punch on the left side of his forehead...He fell forwards...He was forcibly pulled up...and a series of blows were rained on him, all around the neck, face and head....he distinctly remembers seven hard blows..."<sup>37</sup>

Dr Halim Manzar, a forensic consultant, explained to the Commission why the injuries could not have been self-inflicted, as earlier suggested to journalists as a possibility by Prime Minister Mahathir.

"There were many injuries at potentially lethal places. This is a blunt trauma, the extent of the injuries is very severe and the positions of the injuries spread all over."

Abdul Rahim Noor admitted to the Commission that he had 'lost his cool' and that he, acting alone and under no direction or prompting, had assaulted Anwar Ibrahim. On 6 April the Commission issued its Report, recommending that charges of attempting to cause grievous hurt to Anwar Ibrahim (Penal Code s511 and s325) be brought against Abdul Rahim Noor, and concluding:

"We hope that our report will bring home the realisation that any Institution can only survive with its credibility and integrity intact if all its members are totally committed to the provisions enacted for its proper governance".

Abdul Rahim Noor pleaded not guilty to these charges and is due to stand trial in September 1999.

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# **MALAYSIAN**

## **Human Rights Report: Civil and Political Rights**

Suara Rakyat Malaysia (SUARAM)

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## Detention Without Trial

### *National emergencies, derogation and judicial independence*

The Malaysian Constitution provides a guarantee against arbitrary arrest and detention without trial under Article 5. Unfortunately it also contains Article 149 which allows Parliament to make valid laws which contravene Article 5. The left hand giveth while the right hand taketh away... One finds this recurring theme in the Constitution in which rights are provided in qualified language with many provisos and exceptions.

Article 149 allows laws to be passed by Parliament that negate rights to due process, freedom of speech, assembly and association merely by stating in the law itself that "action has been taken and further action is threatened by a substantial body of persons inside and outside of Malaysia to cause a substantial body of citizens to fear organised violence against persons and property." This can be done without a declaration of emergency. It is interesting to note that one of the members of the Reid Commission, the body of five persons entrusted to draft the first

Constitution, Justice Abdul Hamid from Pakistan objected to this Article 137 as it then was, in the following language:

*"If there exists any real emergency, and that should only be emergencies of the type described in Article 138 (now Article 150), then and only then should such extraordinary powers be exercised. It is in my opinion unsafe to leave in the hands of Parliament power to suspend constitutional guarantees only by making a recital in the Preamble that conditions in the country are beyond reach of the ordinary law. Ordinary legislation and executive measures are enough to cope with a situation of the type described in Article 137."*

Justice Hamid's forewarning of abuse has been proved correct.

Today, Article 149 provides the constitutional legal basis for two laws which provide for indefinite detention without trial - the Internal Security Act (ISA) 1960 and the Dangerous Drugs (Special Preventive Measures) Act (DDA) 1985. A third law also providing for detention without trial is the Emergency (Public Order and Prevention of Crime) Ordinance 1969. This was made by decree under emergency powers given

under Article 150 after the declaration of emergency in May 1969. Although full civilian government and rule by Parliament was reinstated in 1971, such emergency laws continue to be used as the emergencies have not been revoked. In real terms, no actual state of emergency exists.

According to the Home Affairs Ministry, 2,008 persons were detained without trial under these three laws as at the end of 1996 with the majority detained under the DDA (US Department of State 1996). Figures for 1997 are not available except for the ISA.

Detention without trial generally operates in two stages – an initial detention of up to sixty days upon the authority of the police and then a two year renewable order by the authority of the Minister for Home Affairs. During the first sixty days, detainees are typically held in solitary confinement and denied basic necessities such as their underclothes, spectacles and watches. No contact with lawyers is allowed. Round the clock interrogation is common particularly for the first few days. Family visits and basic necessities may be allowed if detainees “co-operate” during interrogation. Physical and psychological torture of detainees has been well documented in respect of detainees in the infamous detentions under Operation Lallang in October 1987 and of detainees

associated with “reformasi”. Anwar Ibrahim was brought to court with injuries, including a black eye. Malek Hussein and Dr. Munwar Anees, his associates, also claimed in their statutory declarations of physical and mental torture. There are no known instances of investigations opened against police officers for such abuses.

Judicial review of detentions without trial is very limited as the judiciary has chosen to apply the test of “subjective discretion” to determine the legality of the detention. As long as the Minister for Home Affairs files an affidavit to state that the detainee is a threat to national security, the Court will not investigate the detention further. Habeas corpus applications have therefore usually succeeded only on technical irregularities. In 1989, all these three laws were amended to reduce the use of such technical objections narrowing the scope of habeas corpus further. In any event, detainees freed by the Court are frequently re-arrested immediately by the police using the same law.

#### *The Internal Security Act 1960 (ISA)*

Over the last two to three years, the number of ISA detainees in detention has ranged from between one hundred to two hundred. Most of these arrests are not publicised. The government has regularly

refused to provide answers to questions in Parliament asking for details of the detainees including grounds of arrest. Only total numbers of detainees are provided.

On occasion, the police have provided details of highly publicised detentions such as the detentions of 14 Al-Arqam members in 1996 or the November 1997 detentions of 10 male Muslims on the alleged grounds of practising Shia Islam. Between the months of March and May 1998, a number of people, including police and immigration officers were arrested under the ISA for their alleged involvement in bringing in illegal Indonesian workers, following a two-month national campaign to repatriate illegal immigrant workers. The most recent and high-profiled detentions were of those in late September, following the sacking of former Deputy Prime Minister Anwar Ibrahim.

The 14 Al-Arqam members were detained for purportedly attempting to revive the movement which the government had banned in 1994. The Al-Arqam movement was also subjected to ISA detentions in 1994. The founder of the movement, Ashaari Mohamed, his wife and other leaders were detained. They were then produced on television where they "confessed" to deviationist teachings and agreed to stop the movement.

Very little is known about the 10 persons detained for purportedly being Shia Muslims apart from their names, age and date of detentions. Two of them are over 75 years in age. They were detained, according to the police, for "activities prejudicial to national security and Muslim unity". Two of them, university lecturers filed successful habeas corpus applications in the High Court but were re-arrested immediately after their release in court in December 1997. Subsequently the police released two of the 10 detainees (not those re-arrested). The remaining 8 were detained in Kamunting under 2 year detention orders. Opposition political parties including PAS and non-governmental organisations have called for their immediate release or for the authorities to charge them in open court. Six of the Shia detainees were released by early December and two of those released were imposed restricted residence orders which curtails their movement and their right to freedom of association and expression. The remaining detainee, Che Kamarulzaman remained in detention and was declared by Amnesty International as a prisoner of conscience.

No evidence of the use of violence has been publicly produced by the government in respect of these detainees. In any event, there exist many laws under which these detainees could be charged if the

government believed that they were organising for violence.

In early 1996, the government indicated its intention to review the ISA. No amendments have been presented to date. Non-governmental organisations and opposition political parties have consistently pressed for the repeal of all laws that allow detention without trial.

In December 1996, the Inspector-General of Police, the Deputy Minister for Home Affairs and the Prime Minister as Home Affairs Minister threatened to use the ISA against non-governmental organisers and participants of a public meeting convened to present cases of abuses of police powers to which the police had been invited. The organisers were labelled as "Marxist"

In August 1997, the government also threatened to use the ISA against stockbrokers and financial analysts and any individuals who were involved in purported "currency speculation" trading after the Malaysian ringgit took a sudden dip in value. Implied threats of arrest were used to warn persons speaking or writing to present a negative picture of the Malaysian economy.

Proposals and suggestions from government quarters to expand the use of ISA, could well indicate that the existence of the draconian act

can no longer be justified as easily in the past. For example, Science, Technology and Environment Minister Datuk Law Hieng Ding was to propose to the cabinet that the ISA be used for those caught for open burning in 1998.

In early 1998, a spate of ISA detentions took place involving people who had allegedly brought in, harbouring facilitated the entry of illegal migrants from Indonesia. They included a lorry driver, police officers and 'tekong' or ferrymen. The Inspector-General of Police said the police would with immediate effect, use the ISA to arrest anyone caught for harbouring and bringing them into Malaysia. Caning was also proposed. All this, in spite of having other existing laws which could be used to counter illegal entry into the country!

Two men from the Acehese Refugee Movement in Malaysia were detained under the ISA, following the worst outbreak of violence in the detention camp of Semenyih, Selangor in last March 1999. Yusri Habib Abdul Ghani and Razali Abdullah were accused of masterminding the riots which followed the forced repatriation of over 500 Acehese who claimed to be seeking refuge in Malaysia. Yusri Habib was later released with the assistance of the United Nations High Commissioner for Refugees office in Malaysia and was immediately repatriated to Norway

### Box 1: 1998 "Reformasi"- related ISA arrests

The following men were detained under the ISA between 20<sup>th</sup> September 1998 and 3<sup>rd</sup> of December 1998 following the sacking of then Deputy Prime Minister Anwar Ibrahim on 2<sup>nd</sup> September 1998. All were released at different times by early January, 1999. Seventeen of the men listed below are allegedly politically associated with Anwar Ibrahim, whereas the rest were associated with the 'reformasi' or pro-reform movement and demonstrations. Amnesty International declared seventeen of them to be prisoners of conscience. S. Nallakaruppan was an exception as he was detained earlier on 31<sup>st</sup> July 1998 under the ISA and later charged with unlawful possession of 125 rounds of live ammunition under Section 57(1)(b) of the ISA on 12<sup>th</sup> August 1998.

|                                      |                                                                      |
|--------------------------------------|----------------------------------------------------------------------|
| 1. Anwar Ibrahim                     | Former Deputy Prime Minister                                         |
| 2. Ahmad Zahid Hamidi                | Former UMNO Youth Chief                                              |
| 3. Ahmad Azam Abdul Rahman           | President of Angkatan Belia Islam Malaysia (ABIM)                    |
| 4. Mukhtar Redhuan                   | Deputy President of Angkatan Belia Islam Malaysia (ABIM)             |
| 5. Ruslan Kassim                     | Negeri Sembilan UMNO Youth                                           |
| 6. Shaharuddin Badaruddin            | Secretary-General of Angkatan Belia Islam Malaysia (ABIM)            |
| 7. Abdul Halim Ismail                | Deputy National President of Angkatan Belia Islam Malaysia (ABIM)    |
| 8. Dr. Zamri Abdul Kadir             | Lumut UMNO Division Youth Chief                                      |
| 9. Kamaruddin Jaafar                 | Tumpat UMNO Division Chief / Institute for Policy Studies (IKD)      |
| 10. Amidi Datuk Abdul Manen          | President of PKPIM                                                   |
| 11. Kamaruddin Mohd Nor              | Semarak State Assemblyman                                            |
| 12. Prof. Sidek Baba                 | International Islamic University (UIA) Student Affairs Deputy Rector |
| 13. Tamunif Mokhtar                  | Cheras UMNO Division Chief                                           |
| 14. S. Nallakaruppan                 | Former Magnum Corporation Berhad public affairs director             |
| 15. Ahmad Shabrimi Md. Sidek         | Secretary-General PKPIM                                              |
| 16. Asma'on Ismail                   | Panti State Assemblyman                                              |
| 17. Zulkifli Nordin                  | Lawyer for Sukma Dermawan                                            |
| 18. Abdul Malek Hussein              | UMNO member                                                          |
| 19. Lokman Adam                      | UMNO member                                                          |
| 20. Shaiful Khair Mohd Ariffin       | not known                                                            |
| 21. Abdul Rashid b. Ahmad            | not known                                                            |
| 22. Mahinder Singh Radhawa           | Engineer                                                             |
| 23. Hj. Shaari Hj. Sungip            | President of Jemaah Islah Malaysia (JIM)                             |
| 24. Zulkifli Othman                  | not known                                                            |
| 25. Fadhilah Abu Bakar               | not known                                                            |
| 26. Sharifudin b. Budin              | not known                                                            |
| 27. Mohd Nasir b. Hussein            | not known                                                            |
| 28. Abdul Rahman Ibrahim             | not known                                                            |
| 29. Mona Suffian b. Zulkarnain Putra | not known                                                            |
| 30. Mior Abdul Razak                 | Fashion Designer                                                     |
| 31. Dr. Munawar Anees                | Writer                                                               |

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under the third-country repatriation programme.

A police photographer and former journalist whose name remains unknown to date, were threatened with ISA for allegedly giving photographs of the aftermath of the riot in Semenyih camp to foreign media.

In August 1998, four people were detained under the ISA for allegedly spreading rumours over the internet on rumours of riots in Kuala Lumpur. They were later charged in September under the Penal Code (s.505.b) and their trial is still ongoing.

The highest profile ISA detention since the crackdown on 106 activists in 1987, was the arrests of 29 people under the ISA between September and December 1998 (*See Box 1: 1998 "Reformasi"-related ISA arrests*). This was related to the dismissal of Anwar Ibrahim, then Deputy Prime Minister and Finance Minister on 2<sup>nd</sup> September 1998, which also launched the pro-reform or "reformasi" movement, calling for the resignation of Prime Minister Dr. Mahathir Mohammad. The government also issued an ISA order restricting Dr. Wan Azizah Wan Ismail, wife of Anwar Ibrahim from speaking in public including nightly gatherings outside their home. The arrests also received worldwide attention from the media and international human rights organisations.

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As mentioned earlier, physical and mental torture is often associated with ISA detentions especially during the first 60 days where detainees are held incommunicado. The government had vehemently denied claims from former detainees. In November 1998, the intelligence wing of the Royal Malaysian Police, or the Special Branch, revealed in court the interrogation methods used. This included techniques of 'neutralising' and 'turning over' (used to change past confessions), threats of violence, threats of indefinite detention and physical humiliation and non-stop interrogation (*See Box 2: Torture Under the ISA*).

SUARAM received 219 names of persons still detained under the ISA in Kamunting by end of 1998. There were some detained the two year detention order. Most of them were in for cases such as alleged forgery of passports and the national identity cards and a number of them were detained for allegedly facilitating the passage of illegal immigrants from Indonesia to Malaysia.

As at 31 December 1997, there were 223 persons in detention under the ISA. Most of the ISA detainees currently held in Kamunting Detention Centre are detained for purportedly criminal offences such as forging documents, passports and identity cards. According to a government statement in October

## BOX 2: TORTURE UNDER THE ISA

## 1. Dr. Munawar Anees

Dr. Munawar was arrested under the ISA on 14<sup>th</sup> September 1998. He was charged and convicted on 19<sup>th</sup> September 1998 under the Penal Code (s.377.D) for 'unnatural sexual acts' after he pleaded guilty for allowing Anwar Ibrahim to sodomise him. He later appealed, citing forced confession. In a sworn affidavit, he detailed accounts of severe physical and psychological pressure during his detention, which included non-stop interrogation and degrading treatment such as having his hair shaved, being stripped and forced to 're-enact' homosexual acts in front of police officers.

## 2. Anwar Ibrahim

Anwar Ibrahim was arrested under the ISA on 20<sup>th</sup> September 1998. Nine days later, he was brought to court after being held incommunicado, with bruises and a black eye. He was allowed to tell the court that just hours he was brought into the Bukit Aman police headquarters, he was handcuffed and blindfolded and subsequently assaulted by an unidentified police officer until he lost consciousness. He was not allowed access to doctors until the 5<sup>th</sup> day of his detention.

*"I was boxed very hard on my lower jaw and left eye. I was also boxed on the right of my head and they hit me on the left side of my neck very hard. I was then slapped very hard, left and right until blood came out of from my nose and my lips cracked. I was half conscious and the police helped me clean up the nose and lips."*

Police investigation could not reveal the assailant despite having 2 months to investigate. Later during the Royal

Commission of Inquiry, Anwar testified that while in the cell, he felt a very strong punch on the left side of his forehead, then forcibly pulled up before a series of blows were rained on him, all around the neck, face and ear.

A doctor also told the Commission that the injuries were not self-inflicted as suggested earlier by Prime Minister Mahathir but were injuries at potentially lethal places. The Inspector-General of Police at that time, Abdul Rahim Boor confessed that he had assaulted Anwar.

## 3. Abdul Malek Hussein

Malek Hussein was detained on 25<sup>th</sup> September 1999. He was immediately interrogated while being stripped naked, handcuffed from the back and blindfolded. In a statutory declaration, he claimed that he was punched in the face, head and body. His feet were hit with a hard object. He claimed that he was hit not less than 60 times until he lost consciousness. After he regained consciousness, he claimed his mouth was forced opened and was force-fed urine twice. He also claimed his genitals were hit with a hard object, and cold water was poured on him while naked, in an air-conditioned room.

## 4. Mior Abdul Razak

Mior Abdul Razak first detained on 19<sup>th</sup> September 1999 for 14 days with a magistrate's order then further detained incommunicado for 107 days without being brought to court. He claimed in his statutory declaration that he was interrogated continuously and forced to act out sexual acts on a table and chair. He claimed he signed a statement under severe duress.

1996, there were 171 of such detentions at that time (*New Straits Times* 11 October 1996).

*Emergency (Public Order and Prevention of Crime) Ordinance (POPO)*

This law came into being after the declaration of emergency as a result of communal riots in May 1969. A National Operations Council ruled by decree and passed various emergency laws including POPO. Although Parliament was subsequently restored in 1971, the government has still not formally revoked the 1969 declaration of emergency.

Under this law, the Home Affairs Minister can issue a detention order for up to 2 years against a person if he deems it necessary to protect public order or to suppress violence or prevent crimes of violence. The police have used it routinely to detain without trial persons suspected of criminal activity.

Government figures suggest that 56 people remain detained under this Ordinance in 1996 compared to 447 in 1995 (US State Department Country Report 1996). The government has not made public the number of persons detained under this law in the year 1997.

A documented case of abuse of this law concerned detentions of two men in February 1994 in Temerloh,

Pahang. Reports received show that the two men were detained after assisting and advising workers in a worker-management dispute in Sungei Kawang Estate near Temerloh. One of the two men had also filed a defamation suit against the estate management. Reports suggest that the estate management then instigated the arrests. The investigating groups say that the two men had no history of involvement in any sort of criminal activity. The two men were released after the initial 60 day detention period and were then placed on restriction orders confining them to towns in other states.

*The Dangerous Drugs (Special Preventive Measures) Act (DDA)*

In 1985, the government passed the Dangerous Drugs (Special Preventive Measures) Act (DDA) promising in Parliament that it would only be used to arrest and detain without trial the big drug traffickers. The rationale provided was that the police often lacked sufficient evidence to put away these traffickers using the existing Dangerous Drugs Act which already provided the death penalty for trafficking.

Thousands of Malaysians have been detained since 1985 under this law. The scale of the drug problem in terms of drugs seized and numbers of registered addicts has in

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# EKSHIBIT "AS- 2"

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DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

PERMOHONAN JENAYAH NO. 44-18-2001

Dalam perkara satu permohonan oleh  
Hishamuddin Bin Rais untuk arahan  
dalam hal Habeas Corpus

DAN

Dalam perkara Fasal 5(1), 5(2), 5  
(3) dan 149, Perlembagaan  
Persekutuan

DAN

Di dalam perkara seksyen 73 Akta  
Keselamatan Dalam Negeri, 1960 ( Akta  
82 ).

DAN

Di dalam perkara Seksyen 365(1) Kanun  
Prosedur Jenayah [FMS Cap 6]

ANTARA

HISHAMUDDIN BIN RAIS

PEMOHON

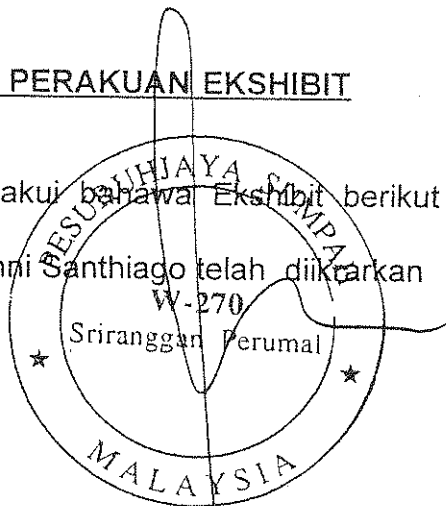
DAN

KETUA POLIS NEGARA

RESPONDEN

## SIJIL PERAKUAN EKSHIBIT

Saya dengan ini mengakui bahawa Ekshibit berikut bertanda "AS-2"  
yang dirujuk dalam Afidavit Anni Santhiago telah diiktirafkan di hadapan saya  
pada 16 haribulan April 2001.



Tkt. 3, Wisma Tek Lee  
No. 38, Jln Tun Perak  
50050 Kuala Lumpur



POLIS DIRAJA MALAYSIA,  
BUKIT AMAN  
50560 KUALA LUMPUR

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Telex : PDRM MA---30469

41

467

Ruj. Kami : AD 707/6/A

Tarikh : 13 April 2001

Daim & Gamany  
Penguambela & Peguamcara  
Tingkat 9, Wisma Yakin  
Jalan Masjid India  
50100 Kuala Lumpur  
(u/p : Fuan M. Moganambal)

Puan,

Penahanan Hishamuddin bin Rais  
Di Bawah Akta Keselamatan Dalam Negeri, 1960

Surat puan dalam bilangan SR/L.7140/01 bertarikh 12 April 2001 dirujuk.

2. Adalah dimaklumkan bahawa penama di atas telah ditangkap di bawah Seksyen 73(1) Akta Keselamatan Dalam Negeri (AKDN), 1960 pada 10 April 2001 kerana dipercayai telah terlibat dalam kegiatan-kegiatan yang boleh memudaratkan keselamatan Malaysia. Siasatan ke atasnya masih diteruskan di bawah Seksyen 73(3)(a)(b) dan (c) Akta Keselamatan Dalam Negeri (AKDN), 1960 sehingga penyiasatan ke atasnya tamat. Penama kini berada dalam keadaan baik, sihat dan tidak membimbangkan.

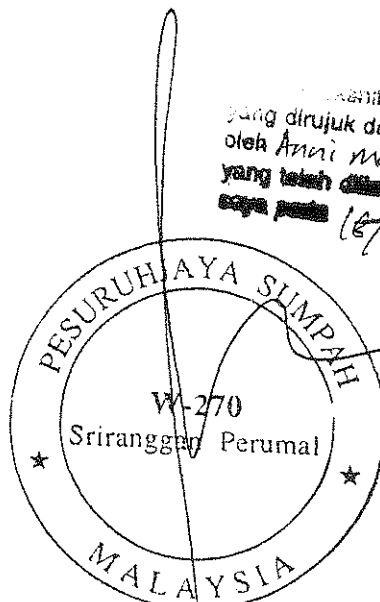
3. Sekiranya pihak puan mempunyai sebarang masalah berhubung dengan penahanannya, pihak puan boleh berhubung terus dengan kami.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

S. Philip  
( S. PHILIP )  
b.p Pengarah Cawangan Khas  
b.p Ketua Polis Negara



Penabit bertanda 'As-2'  
yang dirujuk dalam Affidavit  
oleh Anni Mary Santiago  
yang telah dibuat di hadapan  
saya pada 16/4/2001

P.4 NO. 750

12345678

13 APR 2001 16:07

Tkt. 3, Wisma Tek Lee  
No. 38, Jln Tun Perak

# DAIM & GAMANY

Advocates & Solicitors  
Peguambe : Peguamcara

9th Floor, Wisma Yakin  
Jalan Masjid India,  
50100 Kuala Lumpur.  
Tel : 26984932  
Fax : 26984953  
E-mail : gamany@tm.net.my

S. Thaivasigamany  
Sivarasa Rasiah  
Kamarul Hisham

Anni Santhiago  
M. Moganambal  
Balakisnan. A

Middle Temple  
B. A. (Hons.) Oxon., Middle Temple  
LL.B. (Hons.) Newcastle  
LL.M. (London) Gray's Inn

LL.B. (Hons.) London, C. L. P.  
LL.B. (Hons.) Wolverhampton, 468  
LL.B. (Qld) Australia

SYARIKAT DITUTUP PADA HARI SABTU

Please quote our reference when replying.

Our Ref : SR/L.7140/01

13 April 2001

Pengarah Cawangan Khas  
Ibupejabat Polis DiRaja Malaysia  
Bukit Aman  
50560 Kuala Lumpur

DENGAN TANGAN/FAKS  
03-26980503

Tuan,

PER: PENAHANAN HISHAMUDDIN BIN RAIS DI BAWAH AKTA KESELAMATAN DALAM  
NEGERI 1960

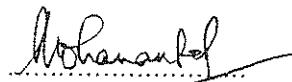
Kami merujuk kepada perkara di atas dan surat tuan bertarikh 12hb April 200.

Merujuk kepada kandungan surat kami bertarikh 12hb April 2001, sukacita sekiranya, pihak tuan dapat memberi jawapan segera kepada permohonan kami untuk membenarkan bapa saudara Pemohon, Encik Jalaluddin bin Manaf serta merta.

Dukacita sehingga hari ini tiada sebarang jawapan telah kami terima ekoran dari permohonan kami tempoh hari tersebut.

Sekian, terima kasih.

Yang benar  
Tetuan Daim & Gamany

  
M. Moganambal

sk. Anakguam  
/bktamn2

## EKSHIBIT "AS- 3" 469

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

PERMOHONAN JENAYAH NO. 44-18-2001

Dalam perkara satu permohonan oleh  
Hishamuddin Bin Rais untuk arahan  
dalam hal Habeas Corpus

DAN

Dalam perkara Fasal 5(1), 5(2), 5  
(3) dan 149, Perlembagaan  
Persekutuan

DAN

Di dalam perkara seksyen 73 Akta  
Keselamatan Dalam Negeri, 1960 ( Akta  
82 ).

DAN

Di dalam perkara Seksyen 365(1) Kanun  
Prosedur Jenayah [FMS Cap 6]

ANTARA

HISHAMUDDIN BIN RAIS

PEMOHON

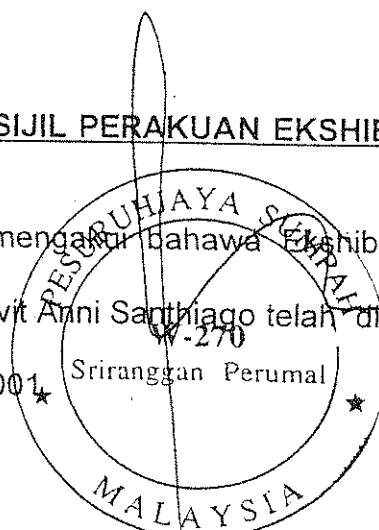
DAN

KETUA POLIS NEGARA

RESPONDEN

SIJIL PERAKUAN EKSHIBIT

Saya dengan ini mengesahkan bahawa Ekshibit berikut bertanda "AS-3"  
yang dirujuk dalam Afidavit Anni Santhiago telah dikrarkan di hadapan saya  
pada 16 haribulan April 2001.



Tkt. 3, Wisma Tek Lee  
No. 38, Jln Tun Perak  
50050 Kuala Lumpur

.....  
Pesaruhjaya Sumpah

# Militant action will not win hearts and minds

Comment by WONG CHUN WAI

WHEN the police raided the home of a *reformasi* activist in Kuala Lumpur recently, they checked his computer files and documents.

One interesting item they found was a report of his meeting with a prominent PAS leader.

The activist, a Parti Keadilan Nasional member who was among the seven arrested under the Internal Security Act, had tried to persuade the Terengganu politician to resort to militant action.

He was upset that the Terengganu Government was not prepared "to do anything ganas or fierce."

According to sources, the activist wanted the state to "fight fire with fire" and the people to "take to the streets."

Among the tactics he suggested were to set up blockades at the Petronas oil refinery in Kertih and to stop motorists from patronising Petronas petrol stations.

He also wanted car owners and petrol station operators to be treated as "enemies."

The documents seized also showed he wanted PAS to "form a human barricade" and to "make sure all economic activities come to a halt."

Comparisons were also made between *reformasi* here and the People Power movement in the Philippines.

In an interview with the Singapore Straits Times on March 3, Free Anwar Campaign director Raja Petra Raja Kamaruddin was quoted as saying that "our ultimate aim is the destruction of Mahathir and the release of Anwar Ibrahim from jail. The year 2001 is the year to oust Dr Mahathir."

Raja Petra, who claimed the opposition was "becoming more hardline," said state-by-state protests would be staged from tomorrow evening.

While opposition parties have taken a common stand in condemning the detention of the seven activists under the ISA, many oppositionists have also privately questioned the activists' intention to use force.

Some DAP leaders, for example, disagreed with the tactics of these "young upstarts" in Keadilan.

This bad blood is understandable, given the unhappiness against these Keadilan hot heads for blocking DAP candidacy in the Lunas by-election in November last year.

Keadilan and PAS have both managed to adopt a multi-racial approach so far, making even the Islamist party look moderate in several issues.

Plans for a series of demonstrations are unlikely to draw the response of the comfortable middle-class Malaysians.

There is a huge contrast between

Indonesia, the Philippines and Malaysia. In those two countries, there is stark poverty, hardship and starvation.

There, large-scale demonstrations can generate enough emotions to overthrow the governments, and the people are prepared to sleep on the streets to push for their political agenda.

But in Malaysia, the ordinary rakyat would rather voice his unhappiness against the Government through the ballot box.

These legitimate protest votes were registered in the Lunas by-election, which saw the defeat of the Barisan Nasional.

Militant actions are unacceptable among most Malaysians, who do not want their daily routine to be disrupted.

The political systems of neighbouring Indonesia and the Philippines are also different. While they have a presidential system, we have a parliamentary system.

There is no way *reformasi* activists can successfully force Datuk Seri Dr Mahathir Mohamad to step down as Prime Minister. But if they can, the Barisan still commands the majority in Parliament. The opposition has only 45 of the 193 parliamentary seats.

Detainees like Keadilan vice-president Tian Chua and Youth chief Mohd Ezam Mohd Noor are repeat offenders when it comes to illegal demonstrations.

Their tactics have not exactly gone down well with Malaysians if the results of the 1999 general election are to be used as a yardstick.

They were among the many opposition leaders defeated in that election. The only big gainer was PAS.

But we cannot deny that the use of the ISA has been openly questioned by many Malaysians.

Government politicians have predictably said the "detention without trial" order is necessary to ensure peace and stability.

They feel the Government must be prepared to break from international norms to protect the interest of the majority.

Barisan leaders say criticisms from overseas will come for the latest arrests. They say it is only a question of time when foreign pressure will be exerted against the Government.

Some foreigners have already displayed their resentment towards Malaysia for refusing to allow Datuk Seri Anwar Ibrahim overseas treatment for his back ailments.

But many Malaysians also feel this sledgehammer treatment of the seven relatively unknown politicians will only make them martyrs.

It will also encourage a fragmented opposition to become a more united force.

Others feel that the ISA no longer serves its purpose and that even with the use of the law, it is unlikely to create the fear intended on *reformasi* activists.

ISA detention used to be a stigma, but these politicians, who feel their older leaders are too docile, may now think it is a "status symbol."

Some also feel that the police need to produce more evidence of the purchase of arms by some *reformasi* supporters to overthrow the Government. They need to convince the people more of the alleged conspiracy.

The police have warned that more *reformasi* activists would be arrested in the next few days.

The Human Rights Commission of Malaysian (Suhakam) has called on the Government to release the seven detainees and charge them in an open court.

The political landscape has changed in Malaysia. Politics is evolving with changes in the political mindset and even strategies.

Militant action and the use of force cannot be accepted but political parties now need to adapt themselves to new political approaches to win the hearts and minds of the people, especially the young Malaysians.

Politics is the art of persuasion. Politicians shouldn't use force or the law to convince the people they are better.