

# MALAYSIA

## Convictions for sodomy follow unfair trials

Amnesty International believes **Sukma Darmawan Sasmitaat Madja** and **Dr Munawar Anees** are prisoners of conscience who have been detained solely on account of their close association with former Deputy Prime Minister and prisoner of conscience Anwar Ibrahim. The organization is calling for their immediate and unconditional release.

Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees were convicted on 19 September 1998 of "unnatural offences" on the basis of allegations that they had "allowed themselves to be sodomized" by Anwar Ibrahim. Under Malaysian law "sodomy" is illegal. Both men were sentenced to six months' imprisonment. Amnesty International believes the charges against them to be politically motivated, without basis, and part of a government campaign to secure a criminal conviction against Anwar Ibrahim and to discredit him publicly. The organization has grave concerns that Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees may have been ill-treated in order to coerce confessions while they were held in incommunicado detention. They have since retracted their guilty pleas, stating they were not given voluntarily. Both men were convicted after hasty trials which raise serious concerns about their fairness.

Amnesty International condemns the criminalization of homosexual relations under Malaysian law, not only because it can be applied as a pretext to imprison political opponents, but because the law itself represents a violation of internationally recognized human rights, including freedom of expression and conscience, freedom from discrimination and the right to privacy. Amnesty International would also consider anyone imprisoned solely for homosexual acts between consenting adults in private to be a prisoner of conscience and would call for their immediate release.

**Dr Munawar Anees**, aged 50, is a microbiologist who was born in Pakistan. A married man with two children, he is a respected Muslim writer and intellectual who has founded several journals on Islamic studies. He moved to Malaysia in 1988 and became a close friend of Anwar Ibrahim, occasionally writing speeches for him. On 14 September 1998 he was arrested under Section 73(1) of the draconian Internal Security Act (ISA) which allows the police to arrest without warrant any person suspected of "acting in a manner prejudicial to the security of Malaysia". The act allows for indefinite detention without trial. Those detained under the ISA may be held incommunicado for up to 60 days and denied access to lawyers and family.

Amnesty International is gravely concerned for the health of Dr Munawar Anees. He was admitted to hospital in Kuala Lumpur on 27 September 1998 suffering from a heart ailment and is reported to be in a weak condition.

**Sukma Darmawan Sasmitaat Madja**, a 37-year-old Indonesian businessman with Malaysian citizenship, is Anwar Ibrahim's adopted brother. He was arrested without charge on 6 September 1998. According to a press report<sup>1</sup> police initially refused to reveal the reasons for his arrest. He is also reported to have been held incommunicado and denied access to his family and lawyers of his choice.

### **The sodomy trials**

On Saturday 19 September 1998 both men appeared in separate courts, charged under Section 377D of the Penal Code with "outrages on decency". The prosecution claimed that the offences had taken place at Anwar Ibrahim's residences in 1993 and 1998 but no exact dates or times were specified. During pre-trial detention neither of the men had been allowed any access to their families or to the lawyers their families had appointed for them. Instead they were represented in court by lawyers believed to have been appointed for them. Their lawyers entered guilty pleas that they had "allowed Anwar to sodomize them". Neither defendant is believed to have been permitted to speak at their trial and Anwar Ibrahim was not called to give evidence. The trials are reported to have been concluded after a very brief hearing. Both men were sentenced to six months in prison.

According to a news report<sup>2</sup> one eyewitness, a former parliamentarian, said the men had appeared in court with glazed expressions on their faces, and one appeared to be "ranting and was not his normal self".

The morning after the convictions Malaysian newspapers carried sensationalist headline stories that the men had been "sodomized by Anwar". Anwar Ibrahim's response was to deny the allegations and to counter that the convictions were part of a conspiracy to discredit him. In a statement he said that he bore no grudge or placed any fault with his adopted brother and his friend for pleading guilty to the charges against them and said he believed the guilty pleas had been "extorted under dire circumstances and emotional trauma".

On 29 September 1998 newly appointed lawyers for Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees told *Reuters* that both men had decided to appeal against their convictions on the basis that their guilty pleas had not been made voluntarily.

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<sup>1</sup> *New Straits Times*, 7 September 1998

<sup>2</sup> *South China Morning Post*, 22 September 1998

### **Background: The arrest of former Deputy Prime Minister Anwar Ibrahim, prisoner of conscience**

On 2 September 1998 Prime Minister Mahathir Mohamad dismissed Anwar Ibrahim from his posts as Deputy Prime Minister and Finance Minister, amid allegations that he had been involved in acts of sexual misconduct, tampering with evidence, bribery and threatening national security. Public rallies in support of Anwar and in favour of his calls for broad political and social reform began to gather momentum. On 20 September 1998 Anwar Ibrahim led some 30,000 demonstrators through the streets of the capital Kuala Lumpur calling on Prime Minister Mahathir to resign.

Prime Minister Mahathir later publicly branded Anwar Ibrahim a "sodomist" who was "unfit to rule the country". He said, *"He has [...] hoodwinked the whole nation and appeared to be very religious. If he becomes prime minister, God help this country... We cannot have a leader who is easily swayed by his lust... We cannot accept a leader who has strange behaviour"*.<sup>3</sup>

On 20 September 1998, the day after Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees were convicted, police broke into Anwar Ibrahim's home and arrested him under the ISA. He was held in incommunicado detention for nine days before being charged with sodomy and corruption. On 29 September he appeared in court for the first time, with a swollen eye and bruises on his arm. He told the court he had been severely beaten by the police while blindfolded and handcuffed, then denied access to a doctor for five days. A doctor later confirmed that he had been assaulted. In the light of Anwar's severe ill-treatment in custody, Amnesty International fears that Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees may have suffered similar, or worse treatment to force them to confess to the charges of sodomy.

Anwar Ibrahim's trial on charges of sodomy and corruption is due to begin on 2 November 1998. The fact that he continues to be held under the ISA and has been denied bail reinforces Amnesty International's belief that his prosecution is politically motivated. The organization believes him to be a prisoner of conscience, detained solely for his peaceful political activities.

Amnesty International also considers four of Anwar Ibrahim's political associates arrested under the ISA between 20 and 24 September to be prisoners of conscience and is calling for their immediate and unconditional release. By 8 October 12 other prisoners of conscience, also held under the ISA, had been released.

### **Freedom of expression in Malaysia**

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<sup>3</sup>Agence France Presse, 25 September 1998

Freedom of expression in Malaysia is severely curtailed by an array of repressive legislation, including the ISA, the Sedition Act and the Printing Presses and Publications Act. Those who express dissenting political opinions, human rights activists and others are vulnerable to prosecution and imprisonment for the peaceful expression of their views. Members of the public protesting against the recent arrest of Anwar Ibrahim and his political associates and calling for political and social reform have also been arrested and beaten in custody. The recent events in the country constitute a serious erosion of fundamental human rights.

### **Sections of the Malaysian Penal Code applying to "unnatural offences"**

There is no specific mention of homosexuality or homosexual acts in the Malaysian Penal Code. However, so called "unnatural offences" deemed to be "against the order of nature" are punishable by up to 20 years' imprisonment and whipping.

Section 377A of the Penal Code states:

*"Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature."*

Section 377B of the Penal Code states:

*"Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping".*

Section 377D of the Penal Code states:

*"Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years".*

In addition, under *Shariah* law in several Malaysian states homosexual acts between Muslims are illegal and can incur jail terms of up to three years as well as mandatory whipping.

Laws which criminalize same-sex relations violate international human rights standards. They can lead to the imprisonment of people solely for expressing their sexual orientation, including by having same-sex relations between consenting adults in private. They pose a threat to human rights defenders working against discrimination based on sexual orientation. Accusations of homosexuality may also be used as a pretext against political

opponents. Not only do such accusations discredit them in a culture where anti-gay discrimination is widespread, but they can also result in arrest and imprisonment.

**Amnesty International's recommendations:**

- Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees are prisoners of conscience who should be immediately and unconditionally released;
- Pending his release, Dr Munawar Anees must be allowed specialist medical care for his heart condition;
- Anwar Ibrahim and the four other prisoners of conscience detained under the ISA should be immediately and unconditionally released;
- The practice of incommunicado detention should be ended. All detainees should be allowed access to lawyers of their choice, their families and doctors at all stages of their detention;
- All reports of ill-treatment in custody should be immediately and impartially investigated. Anyone found responsible should be brought to justice.
- The Internal Security Act (ISA) should be amended in line with international standards so that it no longer allows for those who peacefully express their opinions to be arrested and imprisoned. Those suspected of threatening national security should have the opportunity to defend themselves before a court of law.

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<p><b>KEYWORDS:</b> POLITICALLY MOTIVATED CRIMINAL CHARGES 1 / PRISONERS OF CONSCIENCE / TRIALS / HOMOSEXUALS / POLITICIANS / TORTURE / ILL-TREATMENT</p>
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