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MALAYSIA

Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy

INTRODUCTION

The detention of former Deputy Prime Minister Anwar Ibrahim and sixteen of his political associates under the Internal Security Act (ISA) in September 1998 marked a watershed in public perceptions of human rights and the administration of justice in Malaysia.

For many years voices within Malaysia had warned that a legislative and administrative structure was emerging which posed a grave threat to the rights and liberties safeguarded in the Malaysian Constitution and under international human rights law.

The Malaysian authorities rejected such criticisms as being unpatriotic, or reflective of foreign values that were inappropriate to Malaysia's stage of economic, political and social development. Many Malaysians, contemplating the country's sustained political stability, ethnic harmony and economic growth, appeared prepared to accept a gradual erosion of their fundamental rights, and a parallel increase in the powers accumulated by the Executive branch of government. Cases of individuals detained without trial under national security legislation, or charged with criminal offences for the peaceful expression of dissenting opinion, were frequently regarded by fellow citizens as acceptable and necessary for the maintenance of prosperity and stability in a multi-ethnic, multi-religious society. Many accepted the government's claims that the rights of the individual were incompatible with, and secondary to, community interests.

However the events that followed Anwar Ibrahim's dismissal from office including his detention and that of his supporters under national security legislation, his ill-treatment while held incommunicado, his vilification and shaming in government-controlled mainstream media, and the manner in which criminal charges were brought against him, have challenged this public complacency.

The treatment of Anwar Ibrahim, a respected Malay leader widely expected to be the next Prime Minister, has provoked increasing numbers of Malaysians to question the extent to which the Executive branch of government has, step by step, undermined constitutional principles safeguarding basic human rights, and accumulated legislative powers and influence over key national institutions that have enabled it to act in a way that appears arbitrary and unjust. They have asked how, if the authorities could act in such a way against a person with the status and influence of the former Deputy Prime Minister, the rights of any other individual citizen could be guaranteed and protected.

This report aims to set the case of Anwar Ibrahim into a longer term context. It illustrates the incremental development of an array of restrictive laws - many of which were inherited from the British former colonial government, which have allowed the authorities to deny, or place unjustified restrictions upon, the enjoyment of fundamental human rights. It presents the cases of individual men and women affected by these laws, and examines their wider, intimidating effects on political life and the development of civil society in Malaysia. The report shows how 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 also seeks to highlight the interrelationship between civil and political rights, such as freedom of expression and association, and the enjoyment of social, economic and cultural rights. By providing the political space for full development of an independent civil society, helping to ensure government transparency and accountability, and ensuring widespread and participatory debate on issues of social and economic policy, these basic human rights are integral to genuine and sustainable national development.

The report concludes with recommendations for a wide-ranging reform of restrictive legislation currently in force in Malaysia, with a view to restoring respect for fundamental human rights and liberties enshrined in the Malaysian Constitution and in international human rights standards.

CHAPTER 1: POLITICAL AND ECONOMIC BACKGROUND

Malaysia's political context has been shaped by the process of balancing and harmonising varied communal interests in a multi-ethnic, multi-religious and multi-cultural developing nation. Since before independence in 1957 the ethnic Malay majority has been concerned to secure a political pre-eminence and constitutional 'special status' concomitant with its historical possession of the Peninsular homeland, and also to gain access to a proportional share of the country's economic rewards. The non-Malay minority communities, whose ancestors were immigrants, have sought to maintain their economic position, and to entrench their political, civil and cultural rights as Malaysian citizens, within a framework of Malay ascendency in political and administrative affairs.[i]

The major political parties were and remain based on particular ethnic groups. From independence until the early 1970s the ruling coalition, the Alliance Party, was made up of elite-led Malay, Chinese and Indian ethnic parties: the United Malays National Organisation (UMNO), the Malaysian Chinese Association (MCA) and the Malaysian Indian Congress (MIC). UMNO was, and remains, the ruling coalition's leading component. The major Opposition parties comprised the Malay Islamic Party (PAS - *Parti Islam SeMalaysia*) and the Chinese-based Democratic Action Party (DAP). Smaller, multi-ethnic parties included

the Socialist Party of Malaya (PSRM- *Parti Sosialis Rakyat Malaya*, later renamed PRM - *Parti Rakyat Malaysia*) and the Labour Party.

In 1969 serious ethnic rioting lasting several days broke out in the capital, Kuala Lumpur.[ii] Over 200 people were killed amidst widespread damage to property. A State of Emergency was declared, with government operations taken over by a National Operations Council (NOC) and the Constitution and Parliament suspended until 1971.

These traumatic events led to a permanent readjustment of the political equilibrium, with UMNO taking an overwhelmingly dominant role in the broadened and renamed *Barisan Nasional* (BN - National Front) ruling coalition. Citing the grave threat renewed communal violence would pose to national stability and economic progress, the authorities enacted further increases in Executive powers, tightening restrictions on the enjoyment of fundamental rights and liberties - particularly freedom of expression.

The sharp economic and professional imbalances between the more commercially-orientated Chinese community and poorer, mainly rural Malay communities were regarded as a major factor behind the 1969 riots. The UMNO-led government therefore launched the New Economic Policy (NEP) designed to reduce overall poverty and, through affirmative action, to increase Malay *bumiputera* (indigenes - literally 'sons of the soil') participation in the economy over a twenty year period.

From the mid-1970s Malaysia benefited from one of the most dynamic and fastest-growing economies in Asia; between 1985 and 1995 the economy was the eighth fastest-growing in the world.[iii] While the NEP succeeded in reducing poverty levels and boosting *bumiputera* corporate ownership, disparities of wealth within the Malay community also became more pronounced, contributing to increased intra-Malay political contention. In the run-up to the June 1998 UMNO General Assembly, Malay party members supportive of then Deputy Prime Minister Anwar Ibrahim signalled a potential leadership challenge through public criticism of allegedly corrupt patronage networks, cronyism and nepotism between UMNO and an 'inner circle' of mainly Malay corporate figures. Also, the Malay Islamic party, PAS, combines an Islamic political manifesto with critiques of economic inequalities within the Malay community.

The Asian financial crisis of 1997-98 provided the backdrop for these tensions and the breakdown of the political relationship between Prime Minister Dr Mahathir Mohamad and his deputy and protege, Anwar Ibrahim. As the Malaysian economy entered a sharp recession for the first time in 13 years (in 1997 GDP grew by 7.7 percent, in 1998 GDP contracted by 6.7 percent) the two leaders differed publicly over the appropriate economic policy response. Political tensions were exacerbated by events in neighbouring Indonesia where amid economic and social upheaval, student-led mass demonstrations, using the slogan *Reformasi* and attacking *Korupsi* (corruption), *Kolusi* (cronyism) and *Nepotisme* (nepotism), called for the removal of President Suharto (in May 1998 Suharto resigned after 32 years in power).

At the UMNO General Assembly in June 1998 Prime Minister Mahathir countered any potential leadership challenge by releasing a list of hundreds of UMNO members who had benefited from government share allocations and other privatisation projects, including Anwar supporters. In addition a book by author Khalid Jafri, *'Fifty Reasons Why Anwar Cannot Become Prime Minister'*, containing allegations of womanising, sodomy, corruption and treason involving Anwar Ibrahim, was distributed free to delegates.[iv]

In July 1998, as calls for greater transparency in government continued, two Malay newspaper editors[v] regarded as supportive of Anwar Ibrahim resigned, reportedly under pressure. On 28 August the Governor and the Deputy Governor of the central bank (Bank Negara) resigned, apparently in the wake of the economic policy dispute between the Prime Minister and his deputy.[vi] On 2 September the Prime Minister dismissed Anwar Ibrahim after he refused to resign from his ministerial posts. On 3 September affidavits were publicly released detailing allegations of corrupt practices and sexual misconduct involving Anwar Ibrahim *(see Appendix One)*, and on the same day he was expelled from UMNO.

Anwar Ibrahim proceeded to galvanise a wider *reformasi* grassroots movement by touring through the country calling for broadly-defined political and social change, including greater transparency and accountability in government and, shortly before his arrest on 20 September, for the resignation of Prime Minister Mahathir.

The wider *reformasi* movement consisting of an array of loosely-linked groups including Anwar supporters formerly within UMNO; *Gagasan* (Coalition for People's Democracy), mainly comprised of NGOs seeking to promote human rights and democratic freedoms; and *Gerak* (Malaysian People's Justice Movement), predominantly made up of PAS supporters but including two other opposition parties, DAP and PRM, and a number of mostly Islamic NGOs, which campaigned for issues of justice and for reform of the Internal Security Act (ISA).

Public gatherings and demonstrations, often largely spontaneous, supportive of Anwar Ibrahim and of *reformasi* continued after his arrest. Additionally, Anwar Ibrahim's wife, Dr Wan Azizah, assumed the leadership of a pro-reform social justice group, *Adil* (Just), which was formally launched as a political party, the *Parti Keadilan Nasional* (PKN - National Justice Party) in April 1999. The PKN and other opposition parties then began negotiations on forming a possible electoral alliance to oppose the *Barisan Nasional* in general elections widely expected to be called before the end of 1999.

A full discussion of Anwar Ibrahim's detention under the Internal Security Act (ISA) and his subsequent trial and conviction on charges of 'corrupt practices' can be found below *(see page 24, Arrest of Anwar; and Appendix Two).*

CHAPTER 2: INTERNATIONAL HUMAN RIGHTS STANDARDS AND MALAYSIA

The 30 Articles of the Universal Declaration of Human Rights (UDHR) provide that everyone has the right to life, liberty and security of the person, to equality before the law without discrimination, to a fair and public trial, to be presumed innocent before proven guilty, to freedom of movement, to freedom of thought, conscience and religion, to freedom of opinion and expression, and to freedom of peaceful assembly. It declares that no one shall be held in slavery, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, no one shall be subjected to arbitrary arrest, detention or exile.

The Declaration also asserts the right to work, to join trade unions, to a standard of living adequate for health and well-being, and to security in the event of sickness or old age, and reaffirms collective rights by stating that everyone has duties to the community in which alone the free and full development of a person's personality is possible.

These principles have been repeatedly reaffirmed since 1948, with governments from all regions of the world expressing support for the universal and indivisible nature of rights enshrined in the UDHR. In 1993, at the UN Conference on Human Rights in Vienna, the Malaysian government and 170 other governments, adopted by consensus a declaration stating:

> 'All human rights are universal, indivisible, interdependent and interrelated...While the significance of national and regional particularities and various historical, cultural and religious background must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect human rights and fundamental freedoms.'

Amnesty International bases its work on the principal foundations of international human rights law - that is, the UDHR and other international treaties and standards which have developed from it. These include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which entered into force in 1976, and which have been ratified, respectively, by 144 and 141 countries; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in 1987 and has been ratified by 114 countries.

Although Malaysia has not ratified the principal international covenants that flowed from the UDHR, and its government has often publicly questioned the application of such standards in the country's political, economic and social context, Malaysia is required as a member of the United Nations to uphold the principles the Declaration contains. Under the UN Charter, Malaysia has pledged to take joint and separate action with the UN for the achievement of universal respect for and observance of human rights and fundamental freedoms[vii]. In addition, Malaysia is required to act in accordance with resolutions and declarations of the UN on human rights, for example the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in December 1975.

International human rights law recognises the need to ensure that individuals and groups can enjoy their rights and freedoms without impinging on the rights and freedoms of other individuals or groups. This is acknowledged in the UDHR (Article 2) which states,

> 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...' (*emphasis added*).

But as the UDHR stipulates in Article 29(2),

> 'In the exercise of his rights and freedom, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society'.

Therefore while some limitations to particular rights are permitted in certain circumstances, there can be no total erosion of rights, and limitations must conform to particular requirements. For example, Article 19 of the ICCPR which guarantees freedom of expression allows restrictions on this right which are provided by law, '...and are necessary: (a) for respect of the rights or reputations of others' or '(b) for the protection of national security or of public order (*ordre public*), or of public health or morals'.

In customary international law, therefore, the only way in which States can justify their non-compliance with customary norms on some human rights is on the basis of public emergency which threatens the life of nation, or *force majeure*, self-defence or necessity. Rights which must be fully and unconditionally respected at all times include the right not to be arbitrarily deprived of life, the right to freedom from torture, the right to a fair trial and the right to protection against discrimination. Any declaration of a state of emergency, and thereby derogation of other human rights, must comply with four key principles:

a) there has to exist an exceptional situation which involves imminent danger;
b) the emergency must be officially proclaimed and of temporary duration;
c) the adoption of exceptional measures must only be a last resort, once other means have failed;
d) there must be proportionality between the danger and the measures adopted.

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution[viii] in September 1988 in which it reaffirmed the principles pertaining to states of emergency: the principle of non-derogability, official proclamation, exceptional threat and temporariness.

These principles, drawn from international custom and general principles of law, are similar to the basic principles of Article 4 of the ICCPR, which provides:

> "In time of public emergency which threatens the life of nation, and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law ". *(emphasis added*) .

Significantly, there are some fundamental rights which cannot be derogated from in any circumstances, in particular, the right to life and the right to physical integrity and freedom from torture and other cruel, inhuman or degrading treatment or punishment.

As this reports will show, the fundamental rights and freedoms guaranteed to Malaysia's citizens by the Malaysian Constitution and international human rights standards have been restricted by subsidiary legislation and executive action in breach of these strict limits set by international customary law.

CHAPTER 3: MALAYSIA'S CONSTITUTION AND INSTITUTIONS

1. Parliamentary Democracy

Malaysia's *Merdeka* (Freedom) Constitution, promulgated at Independence in 1957, reflected fundamental human rights and political liberties enshrined in the Universal Declaration of Human Rights (UDHR).

The Constitution laid down a separation of powers between the three branches of government under the authority of a constitutional Sovereign (the *Yang di-Pertuan Agong*). Thus a democratically-elected Parliament, an Executive responsible to Parliament, and an independent Judiciary were envisaged as providing the necessary checks and balances to secure and safeguard the fundamental rights and liberties of every Malaysian citizen.

Amnesty International is concerned that these constitutional safeguards have not been realized, that the checks and balances within constitutional government have weakened, and that human rights and fundamental liberties in Malaysia have been undermined.

2. The Executive

While the Yang *di-Pertuan Agong* is the nominal head of the Executive, nearly all his constitutional functions are subject to the advice of the Cabinet or 'a Minister acting under the general authority of the Cabinet'.[ix] Effective power therefore lies with the office of the Prime Minister, who determines the structure of government, the agenda of Cabinet business, the allocation of Cabinet seats, the timing of elections and, ultimately, what legislation goes before parliament. The Prime Minister (who, until early 1999, served simultaneously as Home Minister) also determines the appointment of Judges, the Attorney-General, and senior police and Special Branch police (security service) officers.

Additionally the Prime Minister as President of UMNO has great control over party matters, and as Chairman of the *Barisan Nasional* has considerable influence over UMNO's coalition partners, including over which parties are going to be included in the coalition.[x]

3. Parliament

Under the Constitution legislative authority is vested in a bicameral parliament. Since independence the Malaysian parliament has not played a significant role in checking the powers of the Executive, but has rather readily acquiesced to the Executive's repeated legislative initiatives curbing individual liberties.

Procedures for scrutinising proposed legislation in Parliament have tended to be curtailed, with important Bills being placed before parliament at short notice, and debated and voted upon at speed. The principle of executive accountability to parliament has not been robustly defended and upheld. When he was a parliamentary backbencher in the late 1960s, Dr Mahathir expressed his opinion on the role of Parliament in terms that suggest little has changed today:

> "in the main, Parliamentary sittings were regarded as a pleasant formality...which would have no effect on the course of the government. The sittings were a concession to a superfluous democratic practice. Its main value lay in the opportunity to flaunt the Government's strength. Off and on, this strength was used to change the constitution. The manner, the frequency and the trivial reasons for altering the constitution reduced this supreme law of the nation to a useless scrap of paper".[xi]

Since Independence general elections have been have been held at regular five-yearly intervals. The elections themselves have been reported as free and, arguably, fair. Opposition parties have protested strongly at unequal access to the government-controlled media, while the simple plurality 'first-past-the-post' system, UMNO's organisational strength and constituency delineations weighted in favour of Malay rural constituencies, have tended to contribute to the dominating size of the ruling coalition's parliamentary representation. The ruling coalition has consistently gained a two-thirds parliamentary majority, despite occasional fluctuations below fifty percent of the popular vote . In the last elections in 1995, the *Barisan Nasional* gained 65.1 percent of the vote and 162 out of 192 seats.[xii] This two-thirds parliamentary majority has allowed the Executive to effect amendments of the Constitution or to enact or amend restrictive legislation at will. Between 1957 and 1993 the Constitution was amended 34 times.

While elections continue to be marked by the central significance of inter-communal contention, an emerging trend has been the importance of non-Malay support for the ruling BN coalition, as intra-Malay electoral contention has intensified. Elections have increasingly included vigorous competition by Malay opposition parties including PAS, *Semangat '46* [xiii], and, observers speculate, in future, by the National Justice Party (PKN) and other groups supportive of *reformasi.*

4. The Judiciary

The role of the Judiciary in upholding the principles of the Constitution, including fundamental rights, has taken on an enhanced importance as the powers of the Executive have increased by way of emergency legislation and various other arbitrary powers awarded by statute.

Before the late 1980s the Judiciary was seen as a stalwart defender of the rule of law, if at times certain judicial interpretations of case law were regarded by critics as overly conservative. During the late 1980s the Executive came into increasing conflict with the Judiciary after a number of cases in which government decisions were overturned.

In March 1988 the Constitution[xiv] was amended to make the jurisdiction and powers of the court subject to the federal law rather than the Constitution, thus making it possible for parliament to limit or abolish judicial review by a simple majority vote rather than by the two-thirds required for a constitutional amendment.

In May 1988 continuing tensions between the Executive and Judiciary led to a judicial crisis when, just before a crucial court hearing over the legal status of UMNO, the *Yang di-Pertuan Agong* suspended the Lord President of the Supreme Court[xv], Tun Salleh Abbas. A tribunal of Supreme Court Judges then concluded he was '*guilty of misbehaviour in the form of bias against the government*' and he was dismissed in August 1988. Five of the remaining Supreme Court judges were also suspended, and two later dismissed, in connection with the legal proceedings surrounding the dismissal of the Lord President.

These traumatic events placed a question mark in the minds of many Malaysians over the ability of the Judiciary to maintain its independence, especially in cases seen to be sensitive politically. These doubts have lingered, and there is continuing concern that the Judiciary has not adequately checked the abuse by the Executive of its wide discretionary legal powers.

5. The Human Rights Commission of Malaysia

In April 1999 the government announced that a Bill would be put before Parliament to establish a Human Rights Commission for the protection and promotion of human rights in Malaysia. Concerned non-governmental organizations urged that the government make public the contents of the Bill, and hold consultations with interested groups. Calls by the Bar Council of Malaysia that the Bill be referred to a parliamentary select committee for wide public consultations were not acted upon and the Bill's contents were not made public until it was tabled in Parliament on 15 July. Debate took place over two days,

the House rejected proposed amendments put forward by Opposition leader Lim Kit Siang and the Bill passed on 20 July 1999.

Amnesty International is concerned that the Human Rights Commission Act may lead to the formation of a Commission that does not meet requirements stipulated in the UN Principles relating to the Status of National Institutions (the Paris Principles).[xvi] The organisation is concerned that Commission's mandate is to define human rights as being those fundamental liberties enshrined in Part II of the Constitution (*see below)*, and to have regard to the Universal Declaration of Human Rights (UDHR) only 'to the extent that it is not inconsistent with the Federal Constitution'.

Amnesty International believes that the Constitution as amended does not afford adequate protection of human rights, and allows for restrictions of fundamental rights that are not in conformity with international law. The organisation believes, therefore, that the first task of the Commission should to be to advise Parliament on a review of the Constitution to strengthen its human rights provisions to bring them into conformity with international standards.

6. Fundamental Rights and Liberties

Part II of the Constitution, entitled '*Fundamental Liberties',* contains nine Articles. They include, the right to life and the right to liberty of the person (including *habeas corpus*); equality under the law and freedom from discrimination; freedom of movement; freedom of speech, assembly and association; and freedom of religion. The relevant articles of the Constitution are reproduced in Appendix Two.

These rights are not absolute, however, and the Articles pertaining to freedom from discrimination (Article 8) and freedom of speech, assembly and association (Article 10), in particular, contain a number of qualifying clauses.

Some of these qualifications, for instance, major parts of Clause 2 of Article 10, were included in the original 1957 Constitution, empowering parliament to legislate any restriction to freedom of expression, association and assembly that it 'deems necessary or expedient in the interest of the security of the Federation...public order or morality'. Subsequently, Clause 2 and other qualifying clauses were tightened or added through constitutional amendment.

These clauses have allowed the fundamental principles of the Malaysian Constitution to be comprehensively undermined and, through legislation, for the balance of power between the separate branches of government to shift sharply towards the Executive.

The cumulative restrictions to fundamental rights have traditionally been justified by the perceived threats to security facing the post-war colony and the newly independent nation. In 1948 the British colonial authorities declared a State of Emergency to combat the grave challenge posed by the Communist Party of Malaya (CPM) and the armed insurgency of its guerrilla forces. The 1948 Emergency Ordinance gave sweeping powers to the authorities to issue regulations superseding existing laws and to suspend existing civil and political rights, including those safeguarding against arbitrary arrest and detention.

The military, civil and political campaign against CPM insurrection eventually prevailed and in 1960, three years after Independence, Malaysia's first Prime Minister, Tunku Abdul Rahman, declared the State of Emergency at an end. However authoritarian attitudes engendered during the 12-year crisis did not disappear, but were rather more deeply entrenched as, over the years, fundamental constitutional rights were progressively restricted or denied through a multiplicity of constitutional and legislative amendments, and through other new enactments.

Mindful of the threat posed by the communist insurgency, Article 149 of the original 1957 Constitution allowed for parliament, in the event of serious subversion or organised violence, to pass laws that were repugnant to the fundamental rights safeguarded elsewhere in the Constitution. In 1960 the authorities amended Article 149 to expand the definition of subversion, and to remove the one year time limit on such Emergency Ordinances by providing that they could continue indefinitely, unless both Houses of Parliament passed laws revoking them.

In addition, Article 150 of the Constitution empowered the Executive to exercise extraordinary powers if a State of Emergency was proclaimed - but only for periods of two months at a time. In 1960 Article 150 was also amended to allow Proclamations of Emergency, and any Ordinances issued under them, to continue indefinitely unless both Houses of Parliament annulled them. In 1981, in further amendments to Article 150, the Cabinet was authorised to declare an Emergency when it perceived a potential threat, and not as previously when such disruption was actually taking place. No judicial challenge to the legitimacy of the Proclamation, or the validity of subsequent Emergency Ordinances, was permitted.

Since Independence States of Emergency have been declared on four occasions, including during the Indonesia-Malaysia *Konfrontasi*[xvii] (Confrontation) in 1964, and after the racial riots of 1969. These two Proclamations have not been annulled by Parliament, and many of the Ordinances issued under them continue in force. Under the 1969 Emergency Proclamation, 92 Ordinances were promulgated, including the Emergency (Essential Powers) Ordinance No. 22 of 1970 under which Anwar Ibrahim was convicted of the offence of 'corrupt practices' in 1999.

CHAPTER 4: THE INTERNAL SECURITY ACT

1. Introduction

While the lifting of the 1948-1960 State of Emergency signalled the substantive defeat of the communist insurrection, never-the-less the government, on the basis of Article149 as amended, proceeded to enact the 1960 Internal Security Act (ISA). Rather than being merely an extension of the 1948 Emergency Regulations, regarded as extraordinary measures which automatically lapsed on an annual basis, the ISA was a permanent law, and gave the Executive sweeping powers including the ability to deprive a person of his or her liberty indefinitely without trial solely for 'preventive' reasons, and to prohibit meetings, ban publications and exclude books and periodicals.

The ISA's preamble referred to a situation in which 'action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia ....to cause a substantial number of citizens to fear, organised violence against persons and property; and...to procure the alteration, otherwise than by lawful means, of the lawful Government of Malaysia...." (emphasis added).

In the first instance, therefore, the authorities justified the ISA as necessary to effect the 'mopping up' of the communist guerrilla threat or, in the mid-1970s, to check a feared resurgence of armed insurgency in the context of communist advances in Indochina. Additionally, for many years the government asserted that the underground tactics of the proscribed Communist Party of Malaya (CPM) and its suspected infiltration of various front organisations could only be effectively countered through the use of the ISA. However these justifications became progressively weaker over the years - and lost all credibility with the signing of a formal peace treaty with exiled remnants of the CPM in Thailand in 1989. In recent years the government has evoked the memory of the 1969 ethnic riots and emphasised the maintenance of inter-communal harmony as a justification for maintaining the extraordinary powers extended by the ISA. However this position has been increasingly open to question as inter-communal tensions have receded in the context of sustained economic growth and increased prosperity.

In 1996 the government, indicating that the scope and frequency of ISA detentions had waned, announced that there were no longer any 'political' ISA detainees, and that all the remaining ISA detainees, reportedly numbering fewer than 230, were held for offences involving identity paper forgery and the 'smuggling' of illegal migrant workers. The last six remaining communist detainees were reported to have been released in 1995.[xviii]

The Internal Security Act (ISA) remains the core of the permanent, arbitrary powers to detain without trial available to the Executive. The arrest of Anwar Ibrahim and his supporters under the ISA in late 1998 shows the potential for this restrictive legislation to be used at any time against anyone for the peaceful exercise of their human rights.

As with other restrictive laws in Malaysia, the ISA, through a series of amendments, has incrementally extended Executive powers, while stripping away the judicial safeguards designed to protect against their abuse. Now, once a person is detained under the ISA, he or she has no effective recourse to legal protection, nor any opportunity to establish their innocence of the accusations levelled against them. As such the ISA is contrary to fundamental principles of international law, including the right to liberty of the person, to freedom from arbitrary arrest, to be informed of the reasons for arrest, to the presumption of innocence, and to a fair and open trial in a court of law.

The broad terms of the ISA fail to provide any precise definition or criteria for determining which individuals pose a danger to state or public security. The Executive has been given permanent, unfettered discretion to determine, according to their subjective interpretation, who, what and when a person or activity might pose a potential threat to the wider national interest, national security or public order - and to order indefinite detention without trial.

Beyond the violation of basic rights experienced by particular individuals, the ISA has had a wider, intimidating effect on civil society, and a marked influence on the nature of political participation and accountability in Malaysia. The ISA has been used to suppress peaceful political, academic and social activities, and legitimate constructive criticism by NGOs and other social pressure groups. It limits the political space for important debates on issues of economic policy, corruption and other social challenges.

Amnesty International has repeatedly called for the repeal of the ISA, or, at the very least, for its amendment to bring it in line with international standards. For over twenty years the organisation has called for the immediate and unconditional release of scores of ISA detainees whom it considered to be prisoners of conscience held solely for the peaceful expression of their political or religious beliefs. It has called for those other ISA detainees who may have advocated or been involved in violence to be either granted a fair, speedy and open trial, or else released. The organisation has also raised persistent serious concerns about patterns of grave ill-treatment, at times amounting to torture, of those detained under the law.

The authorities have continued to defend the ISA in recent years, arguing that it is used less and less against ‘political’ figures, but that it remains an essential deterrent to

maintain stability in a multi-ethnic, multi-religious society. Various reform proposals have been aired by ministers, including, in February 1996, potential amendments that would define offences to be covered by the Act (espionage, incitement to racial and religious hatred, economic sabotage and falsifying identification and travel documents). However such reform proposals have not been taken forward.

2. The Powers

(A) Detention Orders

Under the terms of Section 8 of the ISA the Minister of Home Affairs (Interior Minister) has the right to have any person detained if he is satisfied that the detention is necessary to prevent the person from,

> 's8(1) ...acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof...'

The Minister is empowered to 'make an order' directing that person to be detained for any period not exceeding two years. The detention order may be renewed indefinitely.

(B) Warrantless Arrests: The 60-day Interrogation Period

Additionally, Section 73(1) of the ISA allows the police to arrest without a warrant and detain pending enquires, for a period of up to 60 days, any person 'in respect of whom [the police officer] has reason to believe,

> "a) that there are grounds which would justify his detention under Section 8; and
>
> b) that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof."

Any person arrested in this manner may be held for up to 60 days if an officer above the rank of Deputy Superintendent reports the circumstances of the arrest and detention to a police officer designated by the Inspector General of Police (IGP), and if that officer deems that the inquiries cannot be completed within 30 days.

Since the initial powers of arrest can be exercised lawfully by any police officer without a warrant, the potential for abuse of police powers, especially by the Special Branch (security police) is largely unrestricted. If, after 60 days, the police choose not to

submit grounds to the Minister, and a detention order is not issued, the detainee is released.

(C) Restriction Orders: The Denial of Rights of Association, Expression and Movement

Additionally, under Section 8(5) of the ISA the Minister may impose on any person in respect of his activities, freedom of movement, or places of residence or employment, a restriction order containing any of the following restrictions and conditions;

> "b) for prohibiting him from being out of doors between such hours as may be specified in the order...;
>
> c) for requiring him to notify his movements in such manner at such times and to such authority or person as specified in the order;
>
> d) for prohibiting from addressing public meetings or from holding office in, or taking part in the activities of or acting as adviser to any organization or association, or from taking part in any political activities; and
>
> e)for prohibiting him from travelling beyond the limits of Malaysia or any part thereof specified in the order..."

Restriction orders, covering a period of up to two years, may be renewed indefinitely.

(D) Controls on Printing and Publications

Additionally, Section 22(1) empowers the Minister to ban the printing and circulation of publications that are deemed prejudicial to security and public order. He may do so if he finds that the publication,

> "f) contains any incitement to violence;
>
> g) counsels disobedience to the law or any lawful order;
>
> h) is calculated or likely to lead to the breach of the peace, or to promote feelings of hostility between different races or classes of the population; or
>
> i) is prejudicial to the national interest, public order, or security of Malaysia.

(E) Mandatory Death Penalty: Firearms, Ammunition and Explosives

Section 57 of the ISA prescribes a mandatory death penalty for certain offences to be tried in court,

"(1) Any person who without lawful excuse, the onus of proving which shall be on that person, in any security area carries or has in his possession or under his control -

a) any firearm without lawful authority therefor: or
b) any ammunition or explosive without lawful authority therefor,

shall be guilty of an offence and shall, on conviction, be punished with death."

(*see page 26: Nallakaruppan case*)

3. The Safeguards

After arrest by police, the authorities have no legal obligation to inform individuals held under the ISA of the allegations against them until the end of the 60-day investigation period. During this period detainees are held incommunicado, mostly in solitary confinement. Especially in the first weeks of detention access to legal counsel and to family members is denied - though family visits may be permitted during the later stages of police custody.

The failure to notify detainees of the reasons for their detention and the denial of access to their families and lawyers is in contravention of international standards, including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[xix]

(A) The Advisory Board.

After a maximum of 60 days detention, the Minister is required to sign a detention order, having referred to police reports, including findings of interrogations, which he may or may not take into account. The detainee has the right to see a copy of the order, along with a statement of the grounds on which the order is made and the allegations of fact on which the order is based.

Article 151 of the Constitution requires that any law sanctioning preventive detention should contain provisions which allow the detainee the opportunity to make representations to an Advisory Board, made up of three members appointed by the *Yang di-Pertuan Agong*
(advised by the Cabinet), and including a judge or retired judge. This is reflected in the provisions of the ISA (s.11). Under a 1989 amendment the provision (s.12.1) that the

Advisory Board had to make a recommendation within three months of a detainee's representation was altered to allow undefined periods before recommendations had to be made to the King. Having made a recommendation the Advisory Board is required to review the detainee's case every six months. This practice reportedly has often not occurred.

Under the ISA, unlike under the 1948 Emergency Regulations, the Advisory Board does not have the power to order the release of a detainee, but can only make recommendations for release or continued detention to the King at his discretion. The decision of the King is final and cannot be called into question by any court.

The effectiveness of the Advisory Board as a safeguard against abuse of ISA powers is further weakened by the fact that past judicial rulings have held that the vagueness or insufficiency of the allegations of fact on which the grounds for detention are based cannot render a detention order unlawful. To a great extent the assessment of the grounds for detention by the Advisory Board is influenced by the findings and recommendations of the police Special Branch, at times based on confessions extracted during prolonged and aggressive interrogation, often involving ill-treatment amounting, at times, to torture (*see page 27*).
Given these circumstances a number of ISA detainees have refused to participate in the Advisory Board review process.

(B) Judicial Review: Rendering *Habeas Corpus* Ineffective

The writ of *habeas corpus* is a key safeguard, recognised in international law, upholding the right of liberty of the person by ensuring the legality of administrative detention through a judicial review and determination. Article 5(2) of the Constitution reflects Principle 32(1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states:

> 'A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.'

In Malaysia a series of progressively restrictive legislative amendments, parallelled by judicial rulings interpreting these laws, have rendered the writ of *habeas corpus* essentially meaningless in relation to ISA detainees.

Malaysian judicial rulings and case law have established the principle that once the Minister determines the necessity to detain a subject pursuant to a valid detention order, the courts cannot 'go behind' that order, i.e. the courts cannot and will not

question the basis for detention. This applies when grounds for detaining a person adduced in court are not the same as those contained in the original detention order. Thus, the subjective finding of the Minister cannot be challenged unless it was given *male fide* - in bad faith[xx]. The onus of proving improper motive or *male fides* on the part of the authorities lies on the detainee.[xxi]

The scope of judicial review, including *habeas corpus*, was weakened further in 1989 when Parliament passed amendments to the ISA that prevented acts of the Minister taken under the ISA being brought into question by the courts. Section 8B(1) as amended read,

> "There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the *Yang di-Pertuan Agong* or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision."

Dr Mahathir said only the government was able to determine, from information it received, what action was necessary to preserve the country's stability and security and that,

> "It is not appropriate for us to follow the practice in other countries where courts play an interventionist role in substituting the decisions of the Executive as this is against the concept of 'separation of powers' between the Executive and the Judiciary. "[xxii]

In December 1997 two Muslim academics, Professor Lupti Ibrahim and lecturer Fadzullah Shuib, who had been detained the previous month under the ISA because of the practice of their Shi'a faith (*see page XX)*, had their *habeas corpus* petitions upheld after the court recognised a procedural error - a copy of the ISA police detention order had not been dated. The two were immediately re-arrested on leaving the court house and returned to detention under a new ISA order.

The only previous effective application for *habeas corpus* had been that of Jamaluddin Othman who was arrested in October 1987 (Operation Lallang) and served a two-year detention order for alleged involvement in a plan to propagate Christianity among Malays. The grounds for detention stated only that the respondent had participated in Christian meetings and seminars, and in October 1988 the High Court ruled that the Minister has no power under the ISA to deprive a person of his constitutional right to profess and practice his religion (Article 11). The ruling was upheld by the Federal Court.

4. The Detentions

(A) 1960 - 1980

The first two decades of the ISA were marked by the campaign against the Communist Party of Malaya (CPM) and their suspected sympathisers. However the use of the ISA went beyond suppressing communist insurgency and their supporters and extended to a far broader spectrum of political activity in Malaysia. The use of the ISA in this period was extensive: the number of people arrested and detained under the Act rose from 1119 between 1960 and 1969, to 1713 between 1970 and 1979.[xxiii] Detainees included hundreds imprisoned for peaceful political activity with periods of detention ranging from a few months to up to 12 years.[xxiv]

During the 1960s the principal multi-racial left-wing party, the Labour Party of Malaya, which mainly recruited from among the Chinese working-class, was weakened by a series of ISA arrests, as was its initial partner in the Socialist Front opposition alliance, the *Party Sosialis Rakyat Malaysia* (PSRM). By 1978, of the approximately 100 ISA detainees at the Batu Gajah detention camp, at least 22 were Labour Party activists arrested in the mid- and late 1960s. Additionally, during the 1963-5 Confrontation with Indonesia, opposition party members, particularly those belonging to the Socialist Front, were subject to arrest. The government, dominated by UMNO, claimed that most of the detained members of the Socialist Front were communist sympathisers.

In the aftermath of the 1969 racial riots the leader of the ethnic Chinese based opposition Democratic Action Party (DAP) Lim Kit Siang was detained under the ISA in 1970. In 1976, amid factional tensions within UMNO, six senior politicians, including two government ministers, two DAP parliamentarians, and the PSRM chairman, were arrested. Police stated the men had been detained,

> "...because of their involvement in the activities of the Communist United Front or in activities which could be regarded as assisting the advancement of the Communist United Front, whether directly or indirectly, deliberately or unknowingly".

In 1971 the ISA was amended to allow the detention of anyone perceived to be a threat to the essential services and economic life of the country. The Socialist Front was active in a resurgence of trades union activities, and party members and unionists were vulnerable to ISA detention. One trade unionist, Chang Ben San, was held for nine years after being arrested in 1969. In February 1979 22 members of the Airlines Employers Union (AEU) were detained under the ISA after a pay dispute at the state-run Malaysian Airline System (MAS) had led to a work to rule and a government order to deregister the union. The police announced that the unionists were being held to prevent them

continuing to act in a manner 'prejudicial to the maintenance of an essential service'. They were released in April 1979 but the de-registered union became defunct. (*see page 52, Trades Union Act*)

In 1974 amid increasing student protests in Kuala Lumpur and elsewhere, in solidarity with evicted Malay urban squatters and impoverished farmers in Baling in the north of the Peninsular, the authorities arrested over a thousand students for illegal assembly on university campuses and at the National Mosque. Over 20 students, academics and government critics were also arrested under the ISA in late 1994, including University of Malaya Professor of Anthropology Syed Husin Ali, who was detained for six years, and also then President of the Muslim Youth Movement (ABIM), Anwar Ibrahim, who was held for 22 months.(*see page 48, Universities Act*)

In 1976, in a move that was to have a long-lasting effect on press self-censorship in Malaysia, Ahmad Samad Ismail, the managing editor of the *New Straits Times* (NST) newspaper, and Samani Mohd Amin, News Editor of *Berita Harian,* were arrested under the ISA, allegedly for involvement in a communist subversion plot to weaken the belief in religion among Malays and convert them to communism.

(B) The 1980s and Operation Lallang (October 1987)

When Prime Minister Mahathir Mohamad took office in 1981 there were indications of a more liberal approach by the authorities toward peaceful dissenting activity. In 1982 Amnesty International welcomed the release of at least 168 ISA detainees during the Mahathir premiership.

The apparent decline in the number of ISA arrests during the 1980s raised hopes that the government might rely less on the ISA, but these proved illusory. In April 1987, against a backdrop of a sharp economic downturn and bitter factional divisions within UMNO, Prime Minister Mahathir only narrowly survived a leadership challenge by Tengku Razaleigh Hamzah in party elections. Tengku Razaleigh's defeated faction appealed to the courts to declare the results void citing voting by 'false' delegates and alleged vote-buying. The High Court ruled that failure to register a number of UMNO branches, as required under the Societies Act, made UMNO an illegal organisation and that no new elections could be held until lawfully constituted organisations were created.

Amid this political crisis, Dr Mahathir, citing signs of rising ethnic tensions,[xxv] ordered the launch in October 1987 of Operation Lallang ('Lallang' means weed). In this operation 106 people across a wide political and social spectrum were arrested under the ISA, accused of provoking racial and religious tensions. Those detained included 15 members of PAS, DAP leaders Lim Kit Siang and Karpal Singh and seven other DAP parliamentarians, two PSRM leaders and 16 members of the Barisan Nasional (BN)

ruling coalition. Other detainees included trade unionists, Chinese educationalists, Islamic teachers and Christian church and community workers and activists. At least 40 of the 106, none from the BN, were given two-year detention orders, and were adopted by Amnesty International as prisoners of conscience. The last detainees to be released, DAP leader Lim Kit Siang, and his son parliamentarian Lim Guan Eng, were set free in April 1989, several months after the other remaining Lallang detainees. Attempts to question the validity, through judicial review, of the Executive's grounds for the detention of individual Lallang detainees had proved almost completely ineffective.

(C) The 1990s

With the release of the final Lallang detainees in 1989, the numbers of political ISA detainees continued at low levels during the early 1990s. However the ISA continued to be used periodically against political and religious activists and other individuals regarded as a potential threat to national security or to the national interest. For instance, in 1991 Sabah Chief Minister Joseph Pairin Kitingan's brother, Jeffrey Kitingan, and six other members of *Bersatu Sabah Party* (PBS) were detained under the ISA for alleged involvement in a plot to withdraw Sabah from the Federation.

Al Arqam

The Muslim *Al Arqam* group, a mystical Sufi sect derived from within the Shi'a tradition, had an estimated 10,000 members and over 100,000 followers in Malaysia by the early 1990s. The group ran a extensive network of schools and communes, and had broad business interests. In 1994 the government accused *Al Arqam* of preaching 'deviationist' Islamic teachings and made charges, never substantiated, that the group was training over 300 'holy warriors' in Thailand for presumed use against the state. In justifying its suppression officials stated the sect not only posed a threat because of 'deviationism', but also because it was 'developing in isolation from the mainstream of Malaysian society'.[xxvi]

In August 1994, after the National Fatwa Council (the highest authority on Islamic law in Malaysia) ruled that the teachings and beliefs of the group contravened Islamic practice and tenets, the government declared *Al Arqam* unlawful under the Societies Act (see page 45). Some 150 members were subsequently arrested as a result of the banning, but were released on bail.

Seven senior members were detained under the ISA, including *Al Arqam* leader in exile Ashaari Muhammad, who had been handed over to Malaysian police by the Thai authorities in September 1994. In October 1994 Ashaari announced the disbanding of *Al Arqam*, saying that he had accepted the charges of 'deviationist' beliefs while discussing

religious issues with police during his detention. Amnesty International declared the detainees possible prisoners of conscience held solely for the peaceful expression of their religious beliefs. The organisation's concerns about possible ill-treatment of the *Al Arqam* detainees were confirmed when, during Anwar Ibrahim's trial in November 1998, a Special Branch officer stated that 'turning over' techniques had been used against *Al Arqam* detainees.

All the *Al Arqam* ISA detainees were subsequently released, though most were subject to orders restricting their freedom of movement and association. In mid-1996, 18 former members of *Al Arqam* were detained under the ISA, and nine were served two-year detention orders on suspicion of attempting to revive the movement. All were subsequently conditionally released.

Shi'as

The minority Shi'a Muslim community in Malaysia is estimated to number approximately 2000 people scattered through the country. In November 1997 ten Shi'as, in various locations, were arrested under the ISA. Amnesty International declared the detainees to be prisoners of conscience, held solely for their peaceful activities and religious beliefs, and called for their immediate release.

Government minister Abdul Hamid Othman stated that such use of the ISA was appropriate as 'religious disharmony is a national threat which places the country's political and economic development at an unsafe position'. The detainees were reportedly placed under pressure in detention to renounce their beliefs and underwent 'Islamic faith rehabilitation courses...aimed at making self-evaluation as a Malaysian Muslim citizen holding to the Sunni sect teachings'.

Three were released, subject to restriction orders, in early 1998, but seven, including Professor Lutpi Ibrahim, professor in Islamic studies at the University of Malaya, Fadzullah Shuib, lecturer at Mara Institute of Technology, Syed Sulaiman bin Syed Hassan, Zainal Adam, Said Muda, Ustaz Abdul Hassan and Che Kamarulzaman Che Ismail remained in detention. Six of the detainees were released in stages from late October 1998. The last Shi'a detainee, Che Kamarulzaman Che Ismail, was reported released in early 1999. All the men are reported to remain under restriction orders.

Other ISA arrests and threats

In December 1996 following the breakup of an international NGO forum on East Timor (see page 57), and a proposal by local NGOs to hold a 'Public Tribunal' forum to discuss alleged abuses of police powers (*see page 47*), Prime Minister Mahathir accused the NGOs of including 'leftists' and 'traitors'.[xxvii]

The Home Ministry threatened to detain participants of the proposed forum on policing under the ISA, forcing its cancellation. Dr Mahathir, commenting on the proposal, warned that the authorities might be 'forced' to use the ISA if the situation got worse, and that the ISA could not be abolished because of the existence of such 'irresponsible people'.[xxviii]

In April 1998, two Acehnese were arrested under the ISA for allegedly instigating riots in immigration detention camps in March, when large numbers of Indonesians from Aceh province tried to resist forcible deportation to Indonesia. One of these men was released after being detained incommunicado for 60 days without charge or trial, while the other, Razali Abdullah, was ordered detained for two years. He was released in January 1999.

In August 1998, four people were detained under the ISA for allegedly spreading false rumours, by forwarding messages through the Internet, of ethnic riots in Kuala Lumpur. They were charged in September under the Penal Code (s505b) for circulating statements likely to cause alarm, punishable with up to two years in jail, a fine or both. The accused pleaded not guilty, and the trials are continuing.

Additionally in September 1997, as the Asian financial crisis intensified, government officials threatened to use the ISA to detain local financial traders suspected of 'economic sabotage' by aiding foreign financial speculators to sell off stocks and the ringgit. No arrests took place.

(D) 1998: Arrest of Anwar Ibrahim, His Political Associates and Other *Reformasi* Supporters

From Anwar Ibrahim's detention under the ISA on 20 September 1998 until early 1999, Amnesty International recorded at least 27 other people arrested under the ISA. All are reported to have been released before the end of their 60-day interrogation period, and were not served detention orders and transferred to Kamunting detention camp. Some however, including Anwar Ibrahim, either remained in detention or were subsequently re-arrested, under separate criminal charges.

Prime Minister Mahathir Mohamad dismissed Anwar Ibrahim from his posts as Deputy Prime Minister and Finance Minister on 2 September 1998. The next day the police announced publicly that Anwar Ibrahim was under criminal investigation, and lodged at the High Court a number of affidavits alleging that Anwar Ibrahim had been involved in acts of sexual misconduct, tampering with evidence, bribery and threatening

national security. The Attorney-General stated that, subject to investigations, Anwar Ibrahim could be held under the Internal Security Act (ISA) or charged under the Official Secrets Act (OSA), the Penal Code, the Women and Girls Protection Act or the Prevention of Corruption Act.

Despite the threatened criminal charges facing him, public rallies in support of Anwar Ibrahim and of *reformasi* gathered momentum. On 20 September Anwar Ibrahim led some 35,000 demonstrators through the streets of Kuala Lumpur and called on Prime Minister Mahathir to resign. Later that night Anwar Ibrahim was arrested at his home. He was initially told he would be charged under the Penal Code s377B (see page 65), but a few hours later was informed he was detained under the ISA.

Subsequently, from 21 to 29 September 1998, police detained under the ISA 16 of Anwar's political associates who were perceived to have potential political influence within UMNO and the wider Malay community, especially the Islamic student movement. The detainees included UMNO National Youth chief Ahmad Zahid Hamidi and Negri Sembilan state UMNO Youth chief Ruslan Kassim; leaders of Muslim youth organisations, including Muslim Youth Movement (ABIM - *Angkatan Belia Islam Malaysia*) president Ahmad Azam Abdul Rahman and National Muslim Students Association president, Amidi Abdul Manan. Additionally, Kamarudin Jaafar, the head of the Institute for Policy Development (IKD), a think-tank closely linked to Anwar; Professor Siddiq Baba, Student Affairs Rector at the International Islamic University; and Zulkifli Nordin, a member of Anwar's legal defence team, were detained. Shaari Sungip, president of the Islamic NGO Jamaah Islah Malaysia (JIM), was detained on 13 October. Of this group all had been released by early November.

ISA arrests continued in October and in the following months, and appeared to expand from an original core of Anwar supporters to those who were suspected of organising the wider *reformasi* movement or coordinating the continuing *reformasi* demonstrations. They included UMNO Youth Culture Committee secretary Lokman Noor Adam and UMNO member Mohammad Khair Noor, arrested on 24 October, and UMNO member Abdullah Rasid Ahmad, arrested in 25 October. On 22 November, as he was being released from remand custody following his arrest for alleged illegal assembly on 15 November, Fadhillah Abu Bakr was detained under the ISA on suspicion of organising demonstrations. Similarly, businessman Monashofian Zulkairnan was arrested on 4 December under the ISA as he left a magistrate's hearing after six days remand custody for alleged illegal assembly. In February 1999 a computer technician, Shaharudin Abdul Kadir, was reportedly arrested under the ISA on suspicion of links to the *reformasi* movement. Police are reported to have removed computer disks and hardware from his residence at the time of detention.

All of the above are reported to have been released from ISA detention before the end of the 60 day interrogation period, but some faced further charges. ISA detainee Lokman Noor Adam was released on 18 December, but re-arrested and charged in May 1999 with alleged refusal to disperse from an illegal assembly on 17 October 1998. If found guilty he will prohibited from holding any office in a political party or registered society, (see page 45 - Societies Act, and page 63 - Prosecution of Demonstrators).

On 23 September Anwar Ibrahim's wife, Dr Wan Azizah, was served an ISA restriction order prohibiting her from holding gatherings in her home, speaking in public or carrying out political activities. Apart from family members, press and those with signed invitations, visitors were barred from entering her house and police roadblocks temporarily erected near her residence (see also page 39, Sedition Act). The government also issued a blanket ban against all demonstrations supportive of *reformasi*, and in late October officials warned that anyone attending an illegal assembly could be arrested and detained under the ISA. Demonstrations, however, continued.

Case Study

S. Nallakaruppan

S. Nallakaruppan, a businessman and tennis partner of Anwar Ibrahim, was arrested under the ISA on 31 July 1998 after police searched his residence in connection with an inquiry into the allegations of corruption and sexual misconduct involving Anwar Ibrahim published in a book[xxix] in May 1998.

During the search police found three sets of bullets and a pistol in a house safe. The pistol and two sets of bullets were lawfully held with firearms permits, but one set of 125 Fiocchi bullets did not have a valid permit. These bullets, along with their accompanying pistol, had previously been held lawfully under a permit, but when Nallakaruppan returned the pistol to his business partner (the principal licensee) on the expiry of the permit in 1992, he had neglected to return the accompanying 125 bullets. On 12 August 1998 Nallakaruppan was charged with unlawful possession of ammunition, under section 57(1(b) of the ISA, which carries a mandatory death sentence. He was reportedly denied access to family members and lawyers of his choice until September.

Police affidavits filed in the High Court on 3 September also accused Nallakaruppan of arranging Anwar Ibrahim's alleged sexual liaisons, and suggested that as they travelled together abroad Nallakaruppan had access to official secrets and may have threatened national security.

Concerns grew that while held incommunicado under ISA detention Nallakaruppan may have been put under improper pressure by police to implicate Anwar Ibrahim in various offences. According to the statutory declaration submitted by Nallakaruppan's attorney, Manjeet Singh Dillon, the prosecutors offered to reduce the charges to ones which would not carry the death penalty if Nallakaruppan would testify falsely against Anwar Ibrahim .

Nallakaruppan's trial under section 57 of the ISA began in November 1998 and was adjourned in December. In January 1999 Nallakaruppan gave a cautioned statement to police stating that he had procured women for Anwar Ibrahim around 1997. On resumption of his trial in February 1999 the charges were amended to section 8(a) of the Arms Act, which carries a maximum seven-year sentence. Nallakaruppan pleaded guilty to this amended charge, and was sentenced to three and a half years in prison. He lodged 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).[xxx] The definition of torture was contained in Article 1 of the Declaration.[xxxi]

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)[xxxii], and the UN Standard Minimum Rules for the Treatment of Prisoners (Rule 31),[xxxiii] 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.[xxxiv] 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

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,(s*ee testimony: Appendix Three*).

Sukma Darmawan

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[xxxv], 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[xxxvi], 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

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..."[xxxvii]

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.

CHAPTER 6: OTHER RESTRICTIVE LAWS

1. Laws Allowing for Detention Without Trial

Beyond the ISA, there are a number of other laws which provide for 'preventive' detention without trial in Malaysia, including;

(A) The Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EPOPCO)

While the original, declared objective of preventive detention under the ISA was to counter the remnants of communist insurrection, preventive detention under the EPOPCO (an ordinance promulgated under the State of Emergency proclaimed after the 1969 racial riots) was intended, originally, to restore the peace and order which had been seriously disturbed.

The Ordinance gave the Home Minister powers to issue a detention order of up to two years against a person if he deemed it necessary to protect public order, or for the 'suppression of violence or the prevention of crimes involving violence.' The Minister can also issue a restriction order controlling the suspect's freedom of movement and place of residence. Under a 1989 amendment all forms of judicial review of the discretionary powers of the Minister were denied, except those related to the Ordinances procedural requirements.

However EPOPCO's application has not been restricted to action necessary to restore public order or for suppressing violence or crimes involving violence committed during or immediately after a disturbance or incident. Rather it has become an extraordinary law to deal with categories of suspected criminals who are regarded as difficult to bring to justice by the ordinary process of law, either due to lack of evidence or the inability of the prosecution to find witnesses who are willing to give testimony. For example in January 1998 eight police officers were detained under the Ordinance for alleged criminal activities, while in May 1998 police detained a man being investigated for murder after a court ordered the man be released because of insufficient evidence.

(B) The Dangerous Drugs (Special Preventive Measures) Act 1985

Under the Dangerous Drugs (Special Preventive Measures) Act 1985 any police officer is given the power to arrest without a warrant suspected drugs traffickers. Suspects can be detained for up to sixty days for the purposes of police investigation. The Minister of Home Affairs may then 'in the interest of public order' issue a detention order of up to two years, renewable indefinitely, on any person he is satisfied 'has been or is associated with any activity related to or involving trafficking in dangerous drugs..'(Section 6(1)).

Once the Minister has issued an order, the detainee is entitled to a *habeas corpus* hearing before a court. In some instances the judge may order the detainees' release. Suspects may be held without charge for renewable 2 year periods, with periodic review by an Advisory Board, whose opinion is binding on the Minister, but is not open to judicial intervention, including *habeas corpus*, by any court, except on procedural grounds.

The Minister is also empowered to impose restriction orders,of up to two years renewable indefinitely on suspected drug traffickers related to their place of residence,

freedom of movement and supervision by local police. The police continue to detain suspected drugs traffickers under the Act frequently on leaving the court house after the suspects are acquitted in court on formal charges. During 1998 at least 1500 suspects were reported to have been detained under the Act.

2. Laws restricting Rights of Fair Trial and Freedom of Movement

(A) The Essential (Security Cases) Regulations (ESCAR)

In 1975 additional emergency powers, the Essential (Security Cases) Regulations (ESCAR), were issued which modified the normal rules of evidence and procedure relating to criminal trials in 'security' cases, defined by the Regulations as cases involving offences relating to unlawful possession of firearms, ammunition, or explosives. These security offences are specified within the ISA, but the Attorney General can also, at his discretion, declare any other alleged offence under any other law, a 'security' case subject to ESCAR procedures.

Under the ESCAR the normal standards of due process are severely curtailed. The Regulations breach international standards of fair trial set out in the UDHR, including the requirement that arrest or detention not be arbitrary, and that a defendant in a criminal trial be presumed innocent, and be given 'all the guarantees necessary for his defence'. ESCAR also runs counter to the minimum guarantees of fair trial set out in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, including the right to be informed promptly and in detail of the charge and the right to have adequate time and facilities for the preparation of a defence. There is also a denial of the right to examine witnesses against the defendant and to obtain the attendance and examination of witnesses on his behalf, undermining the principle of fairness and equality of arms (giving both defence and prosecution the same opportunities to present their cases).

Cases tried under ESCAR have to be heard by a single High Court Judge sitting alone, the court being specified by the prosecution, and without a preliminary inquiry. More than one accused and offence, even if not relevant to each other, can be tried at one hearing and witnesses can give evidence without their identity being disclosed, depriving the accused of necessary information to challenge the reliability of the witnesses. Hearsay and secondary evidence is admissible and given the same credibility as direct evidence. Testimony from children, self-incriminating statements to police and information from seized records or communications is admissible. If found guilty the judge must impose the maximum sentence. For certain ISA offenses a death sentence is mandatory. In combining ESCAR procedures and ISA offences the death penalty was therefore made mandatory for firearms possession cases. The special procedures of the ESCAR meant that defendants facing a capital charge under the ISA had the burden of proof placed upon them, and faced prosecution witnesses giving evidence *in camera*.

In 1978 the Judicial Committee of the Privy Council in Britain (at the time the highest court of appeal for Malaysia) declared the ESCAR, as a result of a constitutional irregularity, *ultra vires* (contrary to) the Constitution and void. However, in 1979 parliament enacted the Emergency (Essential Powers) Act (EEPA), a general blanket endorsement of actions taken or omitted in the course of an Emergency, as a means of validating both the ESCAR and the EPOPCO retrospectively and for the future.

The authorities argue that the ESCAR is rarely applied, and that the Attorney General would today use other laws at his disposal in which procedures for fair trial are better protected. However, as with other laws which undermine the right to fair trial and withdraw traditional safeguards against miscarriages of justice, Amnesty International believes that the ESCAR continues to pose a potential risk of misuse, is not necessary, and should be abolished.

(B) Restricted Residence Act (1933)

The Restricted Residence Act of 1933 allows the authorities to restrict the movement of criminal suspects for any period as required, without any judicial review or administrative hearings. The Minister can issue an order requiring any suspect to reside in a particular location, or prohibit him or her from entering any other designated area.

Once restricted the person is subject to police supervision, as directed, and may not 'without the permission of the Chief Police Officer....make any public speech or address any meeting, or publish... any...document which, in the opinion of the Chief Police Officer, has a seditious tendency, or contains any incitement to violence or is likely to lead to a breach of the peace'(Section 2A (ii)f). Persons contravening the terms of the Act, if the Attorney General sanctions a prosecution, are liable to imprisonment for up to three years.

Criminal suspects continue to be banished to remote locations within Malaysia far from their homes. The authorities justify the Act as a necessary tool used mainly for offences involving vice or gambling. In 1995 a number of soccer players suspected of having been involved in match-fixing were banished, and in March 1998 police stated that 37 persons had been banished under the Act since the beginning of 1997 for illegal gambling. Overall figures for those currently subject to the Act are not publicly known.

3. Laws restricting Freedom of Expression

> *'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek to receive and impart*

information and ideas through any media regardless of frontiers.'(Article 19 of the UDHR).[xxxviii]

(A) The Sedition Act (1948)

The Sedition Act places wide limitations on freedom of expression - especially regarding sensitive political subjects. The original Act, adopted by the colonial government in 1948, was directed against offences such as inciting disaffection against the government, inciting contempt for the administration of justice and provoking discontent among the people.

After the ethnic rioting of 1969, the Act was amended through Emergency Ordinance in 1970 to cover those topics with a 'tendency to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia'(Section 3(1)e), and to proscribe the questioning of 'any matter, right, status, position, privilege, sovereignty or prerogative protected by Part Three of the Federal Constitution or Article 152, 153 or 181' (Section 3(1)f). Part 3 of the Constitution addresses the question of citizenship, Article 152 designates Bahasa Malaysia as the national language, and Article 153 requires the government to 'safeguard the special position' of *bumiputeras* by affirmative action in favour of Malays in the civil service, educational institutions and the issuing of business licenses and permits. The sovereignty of the Malay Rulers, symbolising Malay dominance of the political structure, is addressed in Article 181.

Additionally, in 1971, the Constitution was amended to extend the application of the Sedition Act to Parliament itself, thus removing parliamentary privilege from MPs seeking to discuss any of these subjects and other issues considered sensitive. Under Article 48 of the Constitution a parliamentarian if fined more than RM2,000, or jailed for more than a year, is automatically disqualified from parliament. Under Section 4(1) of the Sedition Act any person who:

'a) does or attempts to do, or makes any preparation to do any act which has or which would, if done, have a seditious tendency;

b) utters any seditious words;

c) prints, publishes, sells, offers for sale, distributes, or reproduces any seditious publication; or

d) imports any seditious publications,

shall be guilty of an offence, and shall on conviction be liable...to a fine not exceeding RM5000 or to imprisonment....not exceeding three years or to both...'.

Section 3(1) gives a wide definition to the expression 'seditious tendency' including;

> 'a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;
>
> c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;
>
> d) to raise discontent or disaffection amongst the subjects of the *Yang di-Pertuan Agong*...or amongst the inhabitants of Malaysia or any State;
>
> e) to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia;'

The Act was used in 1971 to prosecute DAP parliamentarian Fan Yew Teng and party member Dr Ooi Kee Saik. Fan Yew Teng had published in the DAP newsletter *The Rocket* the text of a speech by Dr Ooi alleging that the ruling coalition policies in a number of sectors were racially discriminating. In 1975 Fan Yew Teng was found guilty and fined RM2000 or a six month sentence. He automatically lost his parliamentary seat. While a limited number of other prosecutions for sedition were initiated subsequently the most prominent case involved then Vice-Chairman of the Bar Council Param Cumaraswamy in late 1985.[xxxix]

In 1988, shortly before the judicial crisis (*see page 10*), Prime Minister Mahathir made a series of public statements, which some regarded as having a seditious tendency under the Act, questioning the role of the judges. He alleged that some judges were not 'neutral' and had attempted to influence policy by voicing political opinions outside the courtroom, which was 'against the system of parliamentary democracy and would result in a loss of confidence in the judiciary'[xl].

Subsequently, in the constitutional crisis of 1992-3 which revolved around the alleged misbehaviour of some Malay Rulers, apparently seditious criticism of the Rulers was widespread in the government-owned press. The Act was not invoked as, in 1992, parliament censured the Sultan of Johor, a former *Yang di-Pertuan Agong*, and in 1993 amended the constitution to remove the immunity from criminal prosecution enjoyed by hereditary rulers.[xli]

Case Study

Lim Guan Eng

No further cases under the Sedition Act were pursued until 1995 when opposition parliamentarian and deputy Secretary General of the Democratic Action Party (DAP) Lim Guan Eng was charged with 'exciting public disaffection with the administration of justice'. He was also charged under the Printing Presses & Publications Act (PPPA, see page 39) with 'maliciously publishing false news'.

Both charges related to allegedly seditious criticisms of the Attorney General's handling of allegations of statutory rape made against the former Chief Minister of Malacca and UMNO Youth President, Abdul Rahim Tamby Chik, in 1994. Under the Penal Code sexual intercourse with a minor with or without consent, constitutes rape.

Lim Guan Eng, speaking at a forum in his constituency of Malacca in January 1995, had voiced his concern at apparent 'double standards' in the handling of the (statutory rape) case, which involved one of his constituents, a 15-year old Muslim schoolgirl. The Attorney General had decided not to prosecute Abdul Rahim Tamby Chik, while a Magistrate's Court, after a period during which the girl was in the 'protective custody' of the police, had ordered the girl to be sent to a rehabilitation centre for 'wayward girls' for three years. The girl later gave birth at the centre. A DAP pamphlet published in Malacca in January referred to the girl as '*mangsa dipenjarakan*' meaning 'victim imprisoned', for which Lim Guan Eng was charged and convicted under the PPPA.

His statements reflected widespread public disquiet over the case, and the fact that the underage victim and not the alleged perpetrator appeared to have been punished. Criticism focussed on the fact that the police had detained the girl for ten days, denying access to family members, before gaining her father's permission to keep her in 'protective custody'. During late 1994 the father asked for his daughter to be returned home, and the girl's grandmother attended public meetings and sought Lim Guan Eng's assistance in attempts to reverse the Magistrate's order.

Local newspapers and women's groups criticized the Attorney General's public disclosure, in apparent violation of the Evidence Act, of the victim's sexual history, as he announced in October 1994 that charges would not be pursued against Abdul Rahim Tamby Chik due to 'insufficient evidence'.[xlii] The daughter of Prime Minister Mahathir, Marina Mahathir, described the authorities' treatment of the girl as appearing to be a 'gross mockery of justice' in an article in *The Star* newspaper.[xliii]

A number of other men, on the uncorroborated evidence of the girl, were charged with statutory rape and bound over by the courts. Disquiet over the case revived when,

during Lim Guan Eng's High Court trial in 1996-7, the girl testified that while under sixteen years of age she had sex with Rahim Tamby Chik, and a senior police officer testified that she had admitted this to them during questioning. It remained unclear why, when the girl was in police 'protective custody', she had been asked to lodge complaints against the other men but not against Abdul Rahim Tamby Chik.

In April 1997 the High Court of Malacca found Lim Guan Eng guilty of both offences and fined him RM15,000, enough to automatically disqualify him from parliament. The Attorney General subsequently cross-appealed, stating that the penalty was inadequate and pressing for a custodial sentence. In April 1998 the Appeal Court upheld the appeal and sentenced Lim Guan Eng to eighteen months imprisonment on each charge, to run concurrently.

In delivering sentence Appeal Court Judge Mr Justice Gopal Sri Ram was quoted as saying 'it is time that the court send a clear message that it cannot tolerate any attack on the judiciary'.

In August 1998 Amnesty International declared Lim Guan Eng a prisoner of conscience and called for his immediate and unconditional release. Lim Guan Eng is expected to be released in late August 1999 having had a portion of his prison term remitted on the grounds of 'good behaviour'. Amnesty International respectfully urges the *Yang-di Pertuan Agong* to reconsider his decision not to pardon Lim Guan Eng, so that he will not remain disqualified from being an member of parliament or holding elective office, or from holding any office or position in any political party or registered society, for a period of five years. As a convicted criminal Lim Guan Eng is also barred from pursuing his profession as an accountant.

Threat of Prosecutions Under the Sedition Act

Shortly after Anwar Ibrahim's dismissal from office on 2 September 1998 police announced he was being investigated under the Sedition Act for his public comments alleging a high-level political conspiracy against him. In addition, in late September his wife, Dr Wan Azizah, was called in for police questioning under the Sedition Act (s4.1) in relation to statements she made in an interview about her fears for her husband's well-being in police custody amid rumours that he might be injected with HIV in order to 'prove' charges of homosexuality. International journalists who had interviewed Dr Wan Azizah were visited in Singapore by Malaysian police as part of the investigation. Sedition charges were not pursued.

(B) The Printing Presses and Publications Act 1984 (PPPA)

The Printing Presses Ordinance of 1948, introduced by the colonial authorities at the beginning of the Emergency, required all newspapers and printing presses to obtain a licence, to be renewed annually. The Ordinance was revised as the Printing Presses Act in 1971 to additionally provide for powers to revoke the licenses of newspapers that aggravated national sensitivities or were detrimental to national development goals.

In 1984 the government introduced the Printing Presses and Publications Act (PPPA), which consolidated and tightened the restrictions imposed by previous printing laws, and covered all domestic publications including books, pamphlets and newspapers, and publications imported from abroad. Under the Act,

s(3)(3) 'The Minister may in his absolute discretion grant to any person a license to keep for use or use a printing press for such a period as may be specified in the license and he may in his absolute discretion refuse any application for such license or may at any time revoke or suspend such license for any period he considers desirable'.

Licensing offences under the Act are punishable by up to three years imprisonment or fines of up to RM20,000 or both. Similar powers are extended to controls on the importation and distribution of publications from foreign sources and require, at the Minister's discretion, the publishers thereof to make a financial deposit (subject to forfeit) before importation s(7)(2).

Following the political crisis of 1987 (including Operation Lallang) the PPPA was amended to allow the Minister of Home Affairs to have absolute discretion, <u>not subject to judicial review</u>, to ban or restrict 'undesirable' publications, and the future publications of the publisher concerned.

s(7)(1) If the Minister is satisfied that any publication contains any article, report, caricature ... which is in any manner prejudicial...to public order, morality, security...is likely to alarm public opinion...or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion...prohibit...the printing, importation...circulation, distribution or possession of that publication...

Additionally, amendments to Section 8 made it an offence to maliciously publish 'false news'. Malice was defined by whether or not the accused took 'reasonable measures' to verify the truth of the news.

s8A(1) 'Where in any publication there is maliciously published any false news, the printer publisher, editor and writer thereof shall be guilty of an offence....liable to imprisonment ...not exceeding three years or a fine...not exceeding RM20,000 or to both'

The wider effects of the Act upon freedom of expression, the media and the development of civil society in Malaysia have been far reaching. During the political tensions of 1987 three major newspapers, the English-medium *Star*, the Chinese *Sin Chew Jit Poh* and the Malay weekly *Watan* had their licenses revoked. They resumed publication in 1988 but the ban, and resulting changes in editorial staff , engendered a climate of self-censorship among journalists which continued through the 1990s and provoked serious domestic criticism of allegedly one-sided coverage by the mainstream press of the Anwar Ibrahim case and the *reformasi* movement in 1998-9.[xliv]

While many of the powers of the Act have been held in reserve, with the authorities relying on intimidation (affecting writers, associations and publishing companies) and self-censorship to restrict the expression and circulation of 'undesirable' dissenting opinions, periodic applications of the Act have included the refusal to allow the NGO, *Aliran* to publish in the Malay language their English periodical critiquing political and social justice issues; and the amendment of the publishing licenses of party affiliated periodicals such as the DAP's *The Rocket* and PAS's *Harakah* in 1991 to restrict them to sale to party members only. However the restrictions are not always rigorously enforced, as revealed when *Harakah's* circulation mushroomed dramatically during 1998 when readers became dissatisfied with mainstream press coverage of Anwar Ibrahim's case.

Foreign newspapers and journals, including particular issues of the *Far Eastern Economic Review*, *Asiaweek*, *Time* and the *International Herald Tribune* have periodically been banned under the Act. In November 1995 the government threatened to ban *Asiaweek* after it reported a rift growing between Prime Minister Mahathir and his deputy Anwar Ibrahim , and in April 1996 banned its sale to all government departments, citing allegedly malicious articles.

An emerging trend, however, has been the use, or threatened use by the authorities of Section 8, as amended,(covering 'malicious publication of false news'), against NGOs and other social commentators. In particular the prosecution of Irene Fernandez in 1996 (see below) has had an intimidating effect on NGOs seeking to monitor and critique issues of legitimate public interest and concern.

Case Study

Irene Fernandez

Irene Fernandez, director of Tenaganita, an NGO campaigning for women's rights, has been on trial since 1996 on charges of 'maliciously publishing false news' relating to her documentation of allegations of ill-treatment, sexual abuse and denial of adequate medical care to migrant workers, held as alleged illegal immigrants in detention camps. The allegations included reports of a series of deaths caused by malnutrition, beri-beri and other treatable illnesses.

During 1994-5, in the course of a research project into health and the incidence of HIV/AIDS amongst migrants workers in detention camps, Tenaganita staff interviewed over 300 migrant workers following their release from detention centres in Semenyih, Juru, Kelantan, Johore and Malacca. Most of the migrant workers interviewed were of Bangladeshi, Indonesian or Filipino nationality. Patterns of alleged ill-treatment, abuse and official corruption emerged.

In August 1995, Tenaganita issued a memorandum detailing the allegations, *and calling for the authorities to open the migrant camps for inspection and to set up an independent Commission of Inquiry to investigate. In September the* Deputy Minister of Home Affairs stated that 42 deaths due to 'natural causes' had occurred in the detention camps and announced the appointment of an independent Visitors' Panel to study conditions in the camps.[xlv]

In September 1995 a senior Police Field Force officer filed a complaint of criminal defamation against Irene Fernandez, and she and other *Tenaganita* volunteers involved in the research were repeatedly called in for questioning at police headquarters. In addition Irene Fernandez's lawyers were subjected to police questioning about witnesses related to the case in violation of international standards of fair trial.[xlvi]

In March 1996 Irene Fernandez was arrested and charged under Section 8 of the PPPA. Her trial began in the Magistrates' Court in Kuala Lumpur in June 1996 and had not been

completed by mid-1999. With Irene Fernandez having been present in court for over 150 days the trial is the longest running in Malaysia's legal history.

If found guilty Irene Fernandez may be sentenced to up to three years in prison or a fine or both. Amnesty International is concerned that Irene Fernandez is being prosecuted solely on account of her peaceful activities as a human rights activist. If convicted, the organization would consider her a prisoner of conscience, and call for her immediate and unconditional release.

(C) The Official Secrets Act (OSA) 1972

The Official Secrets Act (OSA) of 1972, based on the British OSA of 1911, was intended to curb the flow of information and communication to foreign agents that might be detrimental to national security. However the Act was also seen to impose wide, largely unjustified restrictions on the right to freedom of expression, and on the examination and discussion of public interest issues by the political opposition. By curbing access to public information and information relating to the public interest the electorate's right to know was curtailed and the means to uphold public accountability weakened.

The 1972 Act, which did not contain definitions of what constituted an 'official secret', gave the authorities broad powers to restrict and impose penalties on the unauthorised publication of any information in the hands of the government, no matter how insignificant or whether it was already in the public domain. In addition Section 16 stated that for 'any prosecution for an offence under the Act, unless the context otherwise requires':

s16 '(1) it shall not be necessary to show the accused person was guilty of a particular act tending to show a purpose prejudicial to the safety or interests of Malaysia

(2) notwithstanding that no act as stated in subsection (1) is proved against him, the accused person may be convicted if, from the circumstances of the case, his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of Malaysia...'

In 1976 DAP Secretary General Lim Kit Siang was found guilty of receiving and revealing information about the purchase of Swedish warships for the Malaysian Navy, a controversy which prompted allegations within and outside parliament of excessive expenditure and possible misuse of public funds. The judgment in his case established that once official documents came into possession of an unauthorised party it was *ipso facto* a violation of Section 8 (*see below*), if it could not be proved the transmission of the documents was with lawful authorisation. Lim Kit Siang was fined RM15000. However,

on appeal the Federal Court reduced the fine to less than RM2000, and Lim Kit Siang was therefore not automatically disqualified from Parliament.

In 1985 *New Straits Times* journalist Sabry Sharif pleaded guilty to violating the Act for writing a story on alleged irregularities in military aircraft purchases, and was fined RM7000. Also in 1985 two foreign journalists from the *Asian Wall Street Journal* were charged under the Act, fined RM10000, and expelled for the country for their investigation into a public controversy involving then Finance Minister Daim Zainuddin's alleged personal gains through the sale of bank shares to a state agency, Pernas. The same year *Far Eastern Economic Review* correspondent James Clad was charged under the OSA after he cited an allegedly confidential cabinet document, the essence of which Prime Minister Mahathir had revealed in an earlier press conference, in a review of trade relations between Malaysia and China. He pleaded guilty and was fined RM10000.

In 1984 the Act was amended to increase the penalties for spying and make it an offence to put oneself 'in the confidence of a foreign agent'. In 1986 the government proposed further major amendments, which provoked sustained criticism from a wide range of non-governmental groups, including the Bar Council of Malaysia and the National Union of Journalists. Among the objections expressed was that the amendments would curb investigative journalism and the media's ability to probe alleged political or financial malpractices involving officials, and also restrict the ability of parliamentarians and of wider civil society to scrutinise and critique policy.

Many critics argued that the proposed definition of an 'official secret', which covered virtually all government documents, was too wide, and that the introduction of a *mandatory* prison sentence of at least one year, regardless of the scale of the offence, would have a profoundly intimidatory effect on freedom of expression. Nevertheless, after adjustments to narrow the definition of official secrets, the amendments, including the mandatory prison terms, were enacted in December 1986. Under the Act as amended,

s8(1) 'if any person having in his possession or control any official secret...which -

(d) has been entrusted in confidence to him by any public officer, or

(e) he has made or obtained, or to which he has had access, owing to his position as a person who holds or has held office in the public service...

does any of the following -

(i) communicates directly or indirectly any such information or thing to any foreign country...or to any person other than a person to whom he is duly authorised to communicate it; or

(ii) uses any official secret or thing...for the benefit of a foreign country...or in any manner prejudicial to the safety or interests of Malaysia; or

(iii) retains in his possession or control any such thing as aforesaid when he has no right to retain it...

he shall be guilty of an offence punishable with imprisonment not for a term not less than one year but not exceeding seven years.'

In addition to retention and control of official secrets , the act of *receiving* any official secret was made an offence, and the onus placed on the defendant - for instance, an investigative journalist - to prove that he or she did not know that the document was secret before publishing.

s8(2) If any person receives an official secret...knowing or having reasonable grounds to believe...that the official secret....is communicated to him in contravention of the Act, he shall, unless he proves that the communication to him of the official secret....was contrary to his desire, be guilty on an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.'

The definition of what constituted an official secret remained wide, and subject to classification or declassification at the discretion of Ministers and their appointees. Sections 2(1) and 2(B) empowers Ministers and state Chief Ministers to classify, or to appoint any other public officer to classify, any additional official document as secret, as they saw fit. Their classification of any document and the subjective reasons behind the classification cannot be questioned by a court of law 'on any grounds whatsoever'(s16A).

Since the 1986 amendments, the OSA has been applied infrequently in cases which do not involve 'foreign agents' or alleged spying. However its intimidatory effects on media and on civil society have been maintained through periodic threats of prosecutions. In 1992 civil servants and journalists allegedly involved in the leak of official documents concerning the controversial purchase of cars for Kuala Lumpur City Hall were threatened with prosecution. In 1995 two *Harian Metro* journalists in Johor were arrested under the OSA and remanded in custody for reporting a local kidnapping case using information which the police regarded as 'classified'. Charges were not pursued. In April 1999 Deputy Prime Minister Abdullah Ahmad Badawi stated that he would issue guidelines to government media officers to clarify that the OSA should not be used by officials to suppress information from the public[xlvii].

4. Laws restricting Freedom of Association

'Everyone has the right to freedom of peaceful assembly and association' (Article 20 of the UDHR).

(A) The Societies Act 1966

The Societies Act of 1966 consolidated the various existing ordinances that regulated and restricted the formation and activities of societies, clubs, organisations, associations and political parties in Malaysia. The Act requires that all non-corporate groups of seven persons or more be formally registered as a society by a civil servant, the Registrar of Societies, responsible to the Minister of Home Affairs. If a society's designated 'office-bearers' (president, member of the governing body etc.) fail to conform to the orders of the Registrar they are liable upon conviction to a fine or imprisonment of up to five years. Ordinary members of an 'unlawful' society, or persons who allow such a group to meet on their premises, are liable to a fine or imprisonment of up to three years.

Restrictions were tightened through amendments to the Act in 1972, which empowered the Registrar to prohibit any society from having affiliations with foreign organisations, and more comprehensively in 1981 when, *inter alia,* the category of a 'political' society, subject to specific restrictions, was introduced. A 'political' society was defined as any group or body that sought to 'to influence in any manner the policies or activities of the Government of Malaysia, or of the Government of any State, or of any local authority'. Once designated 'political' a society's membership was effectively restricted: under previous legislation, members of certain professions, including university lecturers, are not allowed to take part in political activity, and would therefore be prevented from joining a political society.

The 1981 amendments, particularly the introduction of 'political' societies which suggested that the Act could be used against any pressure group seeking to comment on or influence government policy, provoked sharp public criticism across a broad political and social spectrum, including the Bar Council, the Trades Union Congress, the Muslim Youth Movement (ABIM), the social justice group *Aliran*, and Chambers of Commerce. Partly responding to these concerns the government in 1983 introduced fresh amendments which removed the designation of 'political' societies. However a range of restraints, including the effective denial of judicial review of the Minister's or Registrar's decisions, remained in place or were added. Under the Act, as amended:

s5(1) 'it shall be lawful for the Minister in his *absolute discretion* by order to declare unlawful any society...which in his opinion, is or is being used for purposes

prejudicial to or incompatible with the interest of the security of the Federation...public order or morality. (emphasis added)

s7(3) The Registrar shall refuse to register a society where -

a) It appears to him that such local society is unlawful under..this Act...or any other written law and is likely to be used...for...any purpose prejudicial or incompatible with peace, welfare, security, public order, good order or morality in the Federation.

d) the name under which the society is to be registered -
(i) appears to the Registrar to mislead...as to the true character or purpose of the society...
(iii) is, in the opinion of the Registrar, undesirable;

s13A(1) ...the Registrar...may at any time...make an order in writing -

(b) prohibiting the society from having, directly or indirectly, any affiliation, connection, communication or other dealing whatsoever, with any society, organisation or other body whatsoever outside Malaysia....'

The Societies Act provides the Executive with the means to block or impede the formation of any organisation which it considers to be undesirable. While prosecutions under the Act have rarely been pursued, the Act's intimidating effect, along with the potentially onerous bureaucratic requirements of the Registrar who can delay any decision indefinitely without explanation, have a negative impact on the development of independent civil society.

In 1996 government officials stated that there were over 22000 groups recognised as NGOs registered under the Societies Act or under the Companies Act (see below), with over 140 being active in providing services for their target groups.[xlviii] In December 1998 over 29000 organisations were registered with the Registrar of Societies, with 981 recorded as having been deregistered for various offences under the Act since 1966. Today, many NGOs maintain close, cooperative relationships with government ministries working on particular social issues. Local observers estimate that only around 30 NGOs can be said to take public stands at times critical of government policy. In 1994 50 NGOs endorsed a 'Malaysian Charter on Human Rights'. Among the signatories were human rights groups including *Suara Rakyat Malaysia* (SUARAM), *Persatuan Kebangsaan Hak Asasi Manusia* (HAKAM) and *Aliran*; women's groups including All Women's Action Society of Malaysia (AWAM) and Sisters in Islam, and consumer groups including the Education and Research Association for Consumers (ERA Consumer) and the Federation of Malaysian Consumers Association (FOMCA).

However a climate of official tolerance and dialogue is not guaranteed. Prevailing political conditions and controversies appear to determine the selective scrutiny of the Registrar, and periodic threats of action under the Act by government ministers. Examples of use of the Act include the dispatch of 'show-cause' letters by the Registrar, as in 1980 when the social justice group *Aliran* was required to show why it should not be deregistered after the group commented on the issue of pay increases to public servants and was accused of 'confusing the public' and acting in a way contrary to the aims of its constitution. Also groups which are regarded by the authorities as having potentially negative effects on society face long delays in the processing of their applications by the Registrar. Applications to register a Malaysian branch of Amnesty International were lodged in 1991; after a wait of over six years they were rejected without explanation.

Government reactions towards NGO campaigns and critiques fluctuate. In 1986 officials singled out seven NGOs as 'thorns in the flesh' and an array of NGO activists were subsequently detained under the ISA during Operation Lallang. However, following the 1992 Earth Summit a new mood of toleration and cooperation with NGOs became apparent. In 1996 former Education Minister Najib Razak said that NGOs 'present a plurality of opinion which is vital in a democratic set-up', although in the same year Prime Minister Mahathir Mohamad, angered by NGO opposition, on environmental and economic grounds, to the Bakun hydro-electric dam project in Sarawak, commented 'I am disappointed that Malaysian NGOs are so completely irresponsible and have no feeling of patriotism for their country'[xlix]. In early 1996 a Sarawak NGO (IPK -*Institut Pengajaran Komuniti),* which was registered under the Registrar of Businesses and active in a coalition of groups opposed to the Bakun Dam project, was deregistered.

In December 1996, following the breakup in November of a NGO forum on East Timor (see below) and a proposal to hold a forum to discuss alleged abuses of police powers (subsequently cancelled after the Home Ministry threatened to detain the participants under the ISA (*see page 24*)), the Prime Minister accused the NGOs of including 'leftists' and 'traitors' and of acting in collaboration with foreigners to undermine Malaysia's international image.[l] Describing 'good' and 'bad' NGOs the Prime Minister referred to 'bad' NGOs as 'nothing more than an extension of foreign NGOs which are not happy to see Malaysia's stability and prosperity'.[li]

Shortly afterwards the Home Ministry announced the launch of an investigation into NGOs, especially those which were registered under the Companies Act (1965) and also acted as 'pressure groups with political motives'. Trade Ministry officials put forward proposals to amend the Companies Act to make it compulsory for such companies to register under the Societies Act. In April 1998 the Companies Act Amendment Act was passed by a parliament empowering the Registrar of Companies to

refuse registration to organisations considered likely to be prejudicial to 'peace, national security or public interest'.

A significant number of NGOs have registered as companies, rather than as societies, because the procedural process is perceived as speedier and less problematic. Under the Companies Act, corporate bodies (including non-trading , non-commercial welfare foundations, institutes and academic research bodies) are permitted to register and are then required to submit annual financial reports audited by an external auditor. In January 1997 officers of the Registrar of Companies raided the office of three NGOs, including *Tenaganita* from where they seized financial accounts and supporting documents. In late 1995 the Registrar of Companies had conducted an investigation of *Tenaganita* accounts and found no cause for complaint.

During the political tensions and mass demonstrations that followed the dismissal and arrest of Anwar Ibrahim in September 1998 further threats to apply the Societies Act were made. In October 1998 Deputy Home Minister Ong Ka Ting declared illegal the newly-formed Malaysian Peoples' Justice Movement (*Gerak*) as it had not been officially registered, and warned that those found guilty under the Act of managing illegal groups faced imprisonment of up to five years[lii]. *Gerak*, comprising three opposition political parties and 11 NGOs, was founded in September 1998 to campaign for issues of justice and for reform of the ISA.

Government officials went on to urge groups that made up the *reformasi* movement to register as political parties and not to continue public protests. In April 1998 a number of *reformasi* groupings joined together and registered as the *Parti Keadilan Nasional* (PKN - National Justice Party) headed by Dr Wan Azizah, wife of Anwar Ibrahim. On 5 May 1999 Domestic Trade Minister Megat Junid Megat Ayob announced that further amendments to the Companies Act would be taken forward in parliament because,

> 'Some NGOs registered under the Registrar of Businesses or Registrar of Companies are heavily involved in socio-political activities...some of the NGOs took part in street demonstrations and stirred up anti-government feelings and there is a possibility that the activities are foreign-funded.'

Amnesty International remains concerned that the Societies Act can be used to deny the rights of individuals and groups to associate freely and to express their opinions of government activity. The effect of the Act is further compounded by restrictions on the right to have recourse to the courts when the Executive branch of government misuses its discretionary powers in registering societies.

(B) The Universities and University Colleges Act 1971

The Universities and University Colleges Act (UCCA) was enacted in 1971 primarily to provide an administrative basis for the establishment of new universities. However, in 1975, the government introduced a range of amendments imposing stringent restrictions on students' rights to freedom of association and freedom of expression.

The amendments followed a series of mass student demonstrations in support of urban squatter communities in Johor Baru and impoverished farmers in Baling in late 1974. The authorities arrested over a thousand students for illegal assembly on university campuses and at the National Mosque. Over 20 of the main student leaders and their suspected sympathizers were detained under the ISA, and held for several months (*see page 24*). Then President of the Muslim Youth Movement (ABIM), Anwar Ibrahim, was held for 22 months under the ISA, while University of Malaya (UM) anthropologist and former *Parti Sosialis Rakyat Malaya* (PSRM) leader Professor Syed Husin Ali was detained without charge for six years. Both denied allegations that they had either instigated unrest or threatened national security.

Under the Act,

s15(1) 'No person, while he is a student of the University, shall be a member of, or shall in any manner associate with, any society, political party, trade union or any other organisation...whatsoever...whether it is in the University or outside the University...in Malaysia or outside Malaysia...except as may be approved...by the Vice-Chancellor.

(2) No organisation, body or group of students of the University...shall have any affiliation, association or other dealing whatsoever with any society, political party, trade union or any other organisation...whatsoever...whether it is in the University or outside the University...in Malaysia or outside Malaysia... except as may be approved...by the Vice-Chancellor.

(3) No person, while he is a student of the University, shall express or do anything which may be construed as expressing support, sympathy or opposition to any political party or trade union or as expressing support or sympathy with any unlawful organisation, body or group of persons.

(4) No organisation, body or group of students of the University...shall express or do anything which may be construed as expressing support, sympathy or opposition to any political party or trade union or as expressing support or sympathy with any unlawful organisation, body or group of persons.

(5) Any person who contravenes...subsection (1), (2), (3) or (4) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM1000 or to imprisonment for a term not exceeding six months or to both...'

Section 15A places prohibitions on fund-raising by student groups, and section 15B extends criminal liability for any offence under the Act committed in the name of a student organisation to all the office-bearers of that organisation.

Additionally, under the powers of the amended Act, the government gazetted *Discipline of Staff Rules* in 1979 which placed restrictions on university staff engaging in political activity. Although staff were permitted to be members of political parties, they were prohibited from holding any position in a party, or standing as candidates or campaigning in an election. For instance, in 1990 Syed Husin Ali had to resign his post of Professor of Anthropology and Sociology at UM in order to become president of the renamed People's Party of Malaysia (PRM - *Parti Rakyat Malaysia*).

The Staff Rules also prohibit staff from making any public statement seen to side with a political party, or from publishing any material relating to political parties (unless such material was part of and based on their academic research). Political statements might only be made within academic seminars only with the permission of the Vice-Chancellor. The authorities would also periodically restrict publication of 'sensitive' material. In November 1997 the Cabinet, through the Education Ministry, directed academics not to make public statements about their research on the incidence and nature of the 'haze' (smog caused by regional forest fires) affecting Malaysia, as this might confuse or alarm the public or deter tourism.

In addition the powers of hiring and firing of staff were concentrated in the hands of government appointed Vice-Chancellors and councils dominated by government appointees. In this context many Malaysians were sceptical about the reasons (mainly economic) given by the University of Malaya for their decision not to renew the contract of Professor Chandra Muzaffar in February 1999 after he had taken a vocal public stance in support of *reformasi.*

The Act's restrictions on students served an effective deterrent: from the mid-1970s student activity in national politics declined precipitously. By the 1990s the majority of students appeared to have disengaged from public debate of political and social issues that might be regarded as controversial or merely unapproved by the ruling party.

Nevertheless the university authorities tolerated limited forms of campus political activism within the Student Representative Councils (the student unions) or other student welfare committees, whose elected officers might be tacitly recognised as being

predominantly pro-UMNO or pro-PAS. In addition, campus elections for approved societies, such as the Islamic Students Society (PMI), would at times reflect national political agendas or party loyalties. During the 1980s Islamic revivalism within campuses was apparent as Islamic student groups, such as the PMI, took a leading role in campus political and social life. However official parameters for such activism remained: in September 1989, when about 300 students at University of Malaya demonstrated against a campus concert given by pop singer Sheila Majid, police arrested 22 students and detained two (the secretary and treasurer of PMI) under the ISA for questioning. They were released after a week.

In 1998 such 'tacit' campus political activity increasingly alarmed the authorities as, for the first time in decades, off-campus student activism re-emerged through the *reformasi* 'movement'.[liii] The authorities responded by threatening use of the powers and sanctions of the Act and stressing that the role of students was to study, and not to be manipulated or misled by external political agents. Students were also reminded to be grateful for the scholarships and other advantages so many had received through affirmative action programmes for Malays, and told that by participating in demonstrations they were damaging Malaysia's reputation internationally. Such warnings were also given to Malaysian students studying abroad.

Case Study

Students and Reformasi

As students increasingly joined the *reformasi* demonstrations that gathered momentum in September 1998 in Kuala Lumpur and elsewhere, Education Minister Najib Tun Razak threatened disciplinary action under the UCCA , threatening suspension or expulsion against university lecturers or officials who incited students to demonstrate or participate in the *reformasi* movement.[liv]

The warning came as nine University Teknologi Malaysia (UTM) students were arrested by police for participating in an illegal assembly in Johor on 29 September. On their release the UTM authorities announced that the students would be subject to an internal university investigation which could lead to a warning which would influence

their scholarship and academic records; a warning and a fine; suspension for a semester or more; or expulsion[lv].

As more students were detained in mass arrests of demonstrators, their various universities and institutions, advised by the Education Ministry, issued 'show cause' letters requiring the students to explain their behaviour and if necessary be disciplined. In one demonstration on 17 April 1999, 36 students and academics were arrested, including two lecturers from the Institut Teknologi Mara (ITM), five students from ITM, seven students (including two Indonesians) from the International Islamic University (IIU), 11 students from private colleges, five from national schools and five from religious schools[lvi]. The ITM authorities issued 'show cause' letters, and stated that those students who were charged by police and found guilty would be suspended by the Institute. On 27 May 1999 Education Minister Najib Tun Razak stated that two students, one from a St John's Institute and one from ITM, had been expelled for rioting. Seven IIU students were 'let off with a stern warning' by their university for taking part in an illegal demonstration.

In May 1999 Prime Minister Mahathir said students were being targeted by groups seeking to overthrow the ruling coalition, and later commented that PAS in particular had been inciting students against the government. A series of 'dialogue sessions' were set up by the authorities to create a greater awareness among students of their 'role in nation-building' by excelling in their studies and working towards national goals. Selangor Chief Minister Abu Hassan Omar commented that 'we do not wish students to be brainwashed into becoming anti-government'.[lvii]

On 24 June, UMNO Youth Students and Training Council Chief , Zein Isma, praised the University of Malaysia (UM) for cancelling a debate organised by the university's Islamic Students Society entitled *Is student politicking relevant?*. 5000 participants were asked to leave the forum , to be addressed by the head of PAS Youth and a representative of the National Justice Party (KDN - *Keadilan)*, as it had been cancelled at the last minute due to an 'order from high officials'. In reference to the debate Zein Isma said that it was designed to instigate hatred towards UMNO and that 'the Universities and University Colleges Act allows for students to be involved in politics but only within the election process of the student councils in the universities". He added that university authorities should increase monitoring of students and staff.[lviii] In July Prime Minister Mahathir rejected calls for a review of the Act, saying that the opposition was subverting students against the Government: 'They [students] get scholarships and jobs in the Government but are told not to be grateful and to hate the Government...we have to correct that.'[lix]

(C) The Trade Unions Act 1956

By law most workers have the right to engage in trade union activity, and approximately 11 percent of the work force belongs to trade unions. Exceptions include specified categories such as defence and police officials. In addition foreign migrant workers are not permitted to form unions.

The Trades Unions Act restricts the rights of certain workers in a manner that contradicts international human rights standards and the guidelines of the International Labour Organisation (ILO). The Trades Union Ordinance of 1959 prevents office bearers or employees of political parties from holding office in trade unions, while the Essential (Trade Union) Regulations, promulgated under the 1969 Emergency and consolidated in an ordinance of 1980, made it unlawful for a union to use funds for a political objective.

It also directs that unions to be based on 'particular' or 'similar trades, occupations or industries' with similar being defined as 'in the opinion of the Registrar'. It is not possible for form large general unions covering workers in different fields. For this reason, the Malaysian Trades Union Congress (MTUC) is registered under the Societies Act, not the Trades Unions ordinance.

5. Laws restricting Freedom of Assembly and Peaceful Protest

The right to freedom of assembly and association is an intrinsic part of the right to freedom of expression. This fundamental connection is reflected in international human rights treaties and declarations, including Article 5 of the Declaration on the Rights of Human Rights Defenders[lx], adopted by consensus by the Working Group of the UN Commission on Human Rights in March 1998, which states:

> 'For the purpose of promoting an protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at national and international levels:
> a) to meet and assemble peacefully;
> b) to form, join and participate in non-governmental organisations, associations, or groups;
> c) to communicate with non-governmental or intergovernmental organisations.'

(A) The Police Act

The Police Act of 1967 was enacted to replace the 1952 Police Ordinance and the 1963 Royal Malaysia Police Act and outlined the organisation, duties and powers of the Royal Malaysia Police.

The Act placed restrictions, tightened through amendments in 1987, on every citizen's constitutional right to assemble peaceably. Under the Act all public assemblies of three or more persons require a police permit,

27(1) Any Officer...may direct as he may deem fit, the conduct in public places...of all assemblies, meetings and processions, whether of persons or vehicles...and may prescribe the route by, and the time at, which such assemblies or meetings may be held or such procession may pass.

27(2) Any person intending to convene or collect any assembly or meeting or to form a procession...in any public place...shall before convening...such an assembly....make to the officer-in-charge an application for a licence in that behalf, and if such officer is satisfied that the assembly...is not likely to be prejudicial to the interest of the security of Malaysia...or to excite a disturbance of the peace, he shall issue a license...defining the conditions...

Offences under the Act carry penalties of fines between RM2000 and RM15000, and up to one year imprisonment.

Through amendments to Section 27 in 1987 the process for applying for a police license was made more stringent. It became a requirement that an organisation, or three individuals jointly, had to make the application (27(2)a); that the police officer should refuse if he believed the three persons were in fact representing an organisation (27(2)b); and that the officer should be satisfied that the organisation was registered or 'otherwise recognised under any law' (27ss2b). Police officers were also empowered to stop any unlicensed meeting as an unlawful assembly, to arrest without a warrant participants, and to use force 'as is *reasonably necessary* for overcoming resistance'(s27b - emphasis added) if participants ignore orders to disperse. Amendments also reversed the original Act's non-coverage of meetings held on *private* premises, if the police believed such meetings were '...intended to be witnessed or heard or participated in by, persons outside the land or premises...' or if 'the activity is likely to be prejudicial to the interest of the security of Malaysia ...or to excite a disturbance of the peace'. (s27A(1) a and c).

It is clear that Section 27 has a restrictive and intimidatory effect on participatory politics, not least because any political gathering even in a private place without a police permit could well constitute an illegal assembly. For instance, any parliamentarian who attends such a meeting is potentially vulnerable to prosecution and if subsequently convicted of an offence under the Act, would be fined a minimum of RM2000 - enough to disqualify him or her from Parliament.

However, during formally announced election campaigns, usually only a few weeks in duration, the application of the Police Act is partially relaxed. Political parties submit lists of planned indoor political discussion forums (*ceramahs*), which are usually allowed to proceed without individual permits. In addition, though public rallies by political parties have

been prohibited since the mid-1970s, in practice mass gatherings within stadiums have been permitted by the authorities, However opposition parties complain that permits for both *ceramahs* and stadium rallies are granted overwhelmingly to the ruling UMNO party, thus disadvantaging the opposition during election campaigns.

Outside of election campaigns applications for permits need to be lodged two weeks in advance of a meeting, in triplicate, and applicants are entitled to be given notice of a refusal 48 hours before the planned meeting, so that an appeal can be made to the Chief Police Officer. However the discretionary powers given to police officers in issuing and cancelling permits have led to allegations of political partiality and of periodic police harassment of opposition parties and NGOs seeking to hold public gatherings. Instances of long, unexplained delays in issuing permits, and sudden cancellations of permits at the last moment, have prompted complaints at the arbitrariness of the process. Stringent conditions on the type of issues to be discussed, the selection of speakers and duration of the meeting can be imposed arbitrarily.

Indoor forums on private premises which are closed, invitation-only events do not require police permits. Additionally the authorities, if informed by letter, have, in practice, often allowed other small-scale indoor meetings or *ceramahs* to be held without the formal issue of a permit or direct police intervention. However this practice is not guaranteed.

In early 1998, as political and economic tensions prompted social unrest in neighbouring Indonesia, the authorities appeared concerned to curb public expressions of dissent in Malaysia. Between May and June 1998 a series of peaceful *ceramahs* and dinner-meetings organised by the DAP in various states to discuss the case of parliamentarian Lim Guan Eng were refused police permits or broken up. At times participants were arrested and held overnight. On other occasions police officers issued permits for DAP dinners, but imposed prohibitive conditions, including no speeches or singing. On 31 May a forum on the Lim Guan Eng case taking place inside a central Kuala Lumpur hotel and addressed by senior lawyers, entitled *The Gathering of Legal Eagles*, was halted by police and riot police citing lack of a permit - despite having previously been informed by letter. The participants were ordered to disperse. After appeals the forum was allowed to proceed the following month.

Earlier in May a permit allowing the Federation of Malaysian Consumer Associations (FOMCA) to hold a forum to discuss a serious water shortage affecting central Malaysia at the time was revoked at the last minute. A police official later advised the public not to turn to NGOs to resolve their water problems.

When political tensions increased sharply following the dismissal of Anwar Ibrahim in September1998, application of the Police Act intensified. On 24 October 1998 police came on to the platform at a forum held to discuss the repeal of the ISA in the Malaysian Trades Union Congress headquarters in Kuala Lumpur, and declared the meeting illegal. Police ordered the 200 participants to disperse within 10 minutes or else face arrest.

With mass street demonstrations taking place in Kuala Lumpur (see page 58) a succession of public meetings throughout Malaysia organised by supporters of Anwar Ibrahim and other groups supportive of *reformasi* were refused permits, or subjected to other forms of restraint. Nevertheless pro-Anwar rallies, *ceramahs* and street demonstrations went ahead regardless. One rally, addressed by Anwar Ibrahim, in the northern city of Kota Bahru on 18 September drew crowds of 50000.[lxi] Other incidents included:

- On 15 October 1998 police set up roadblocks in Kedah state to prevent people from attending a meeting organised by *Gerak.* Earlier, police refused permits for *Gerak* meetings in Johor, Malacca and Kelang.

- On 10 December 1998, World Human Rights Day, three leaders of the *Parti Rakyat Malaysia* (PRM) and a member of the DAP addressed a crowd of 15 people in the southern city of Johor Bahru, distributing pamphlets entitled *The need for reformation and human rights*. The four were arrested for holding an illegal assembly and for 'refusing to disperse', and were questioned for seven hours before being released on police bail.

- In April 1999 an indoor forum entitled *What is this thing called reformasi?'*organised by the Malaysian Social Science Association (PSSM) to be addressed by academics from Malaysian and Australian universities was cancelled after police refused to issue a permit.

- In May 1999 National Justice Party (KDN -*Parti Keadilan Nasional*) president Dr Wan Azizah called on the police to be fairer and more transparent in the issuing of permits as a number of meetings to launch KDN district branches had their permits revoked at the last minute.[lxii]

(B) The Penal Code

The Penal Code also places restrictions upon the right to peaceful assembly: the Code defines 'unlawful' gatherings and riots, police powers of dispersal and penalties upon conviction. Under the Code:

's141 An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is -

1st To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of Malaysia...or any public servant in the exercise of the lawful power of such public servant; or

2nd To resist the execution of any law, or of any legal process; or...

s145 Whoever joins in or continues in an unlawful assembly, knowing that such unlawful
assembly has been commanded...to disperse, shall be punished with imprisonment for a term which may extend to two years, or a fine, or with both.

s146 Whenever force or violence is used by an unlawful assembly or any member thereof...every member of such assembly is guilty of the offence of rioting.

s147 Whoever is guilty of rioting shall be punished with imprisonment for a term which may extend to two years, or a fine, or with both.

s148 Any person who attends, takes part in or is found at any riot and who has in his possession...any firearm...obnoxious substance, stick, stone or...missile....shall be punished with imprisonment for a term which may extend to five years....or a fine...

s151 Whoever knowing joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment...which may extend to six months, or with fine, or with both.'

Incidents in which the Police Act and/or the Penal Code have been applied include:

· On 9 November 1996 the second Asia Pacific Conference on East Timor (APCET II), a legal, closed-door, invitation-only NGO forum in Kuala Lumpur to discuss peaceful solutions to the East Timor question, and attended by over 90 local and international participants, was disrupted by a group of over 100 protestors, including leaders and members of UMNO Youth. After an unusual delay, police intervened. They arrested some of the demonstrators, deported the international participants and ordered the meeting to disperse, arresting 59 of the local APCET organisers and participants. The detained UMNO Youth and other demonstrators were released on police bail that evening. The 59 conference participants remained in detention in police lock-ups.[lxiii] The following day 28 of the participants, including all 20 women, were released on police bail, but the remaining detainees were brought before a magistrate and served two-day or four-day remand orders to allow continued investigations. These were extended until 14 November, when the High Court ruled that the extension of remand was unlawful, and ordered the 10 remaining detainees be immediately released. Subsequently no charges were pursued against the conference participants. The violent disruption of a peaceful forum prompted critical comment within and outside Malaysia and subsequently four of the demonstrators, including UMNO Youth assistant secretary Saifuddin Nasution Ismail, were charged under the

Penal Code (s146 - rioting) and the Police Act (s27A(2) - refusal to disperse). They were convicted and each fined RM1500.

· In March 1997 following a period of strained Malaysia-Singapore relations which prompted Singapore Senior Minister Lee Kuan Yew to apologise for his seemingly disparaging remarks about Malaysia's Johore state (where a political opponent, Tang Liang Hong, had sought refuge), ten Malaysian activists assembled outside the Singapore High Commission in Kuala Lumpur to hand in a memorandum protesting the treatment of political dissenters in Singapore. Police took no action stating 'it is a peaceful demonstration....no orders to disperse them were given'.

· In May 1997 nine activist supporters of the Burma Solidarity Group Malaysia opposed to a decision of the Association of East Asian Nations (ASEAN) to admit Burma as a member, attempted to hand over a memorandum to delegates attending a meeting of ASEAN Foreign Ministers in a Kuala Lumpur hotel. Police ordered them to disperse, and then arrested them as they did so. The nine were held overnight in a police lock-up, but were released after a magistrate refused to issue a remand order for extended custody, citing procedural failings.

· In July 1999 six human rights activists, including Irene Fernandez of *Tenaganita* and Arulchelvam Subramaniam of SUARAM, were charged with attending an illegal assembly after gathering in support of an urban settler community forcible evicted in Shah Alam in June 1999.

Case Study

i) The Reformasi Demonstrations 1998-99

Following the dismissal of Anwar Ibrahim as Deputy Prime Minister on 2 September 1998 peaceful street demonstrations, of a frequency and scale unprecedented in Malaysian history, gathered momentum in Kuala Lumpur. The demonstrators variously expressed support for Anwar Ibrahim, called for *reformasi*, and urged the resignation of Prime Minister Mahathir.

Most of the demonstrations, usually numbering between 2000 and 10000 people, took place in central Kuala Lumpur near the National Mosque, in *Merdeka* (Independence) Square, outside the Central Courthouse and the Tunku Abdul Rahman Street shopping area, and, from November 1998, increasingly in the ethnic Malay-majority central city district of Kampung Baru.

The majority of demonstrators were ethnic Malay, and included men and women from a wide range of ages and social, economic and political backgrounds. They included business people, office workers, students, civil servants, members of Islamic parties and youth groups, labourers, petty traders, unemployed persons and others. The peaceful gatherings, especially those from September to December 1998, would also frequently attract bystanders and shoppers, including women and juveniles. Crowds would clap, chant *reformasi* slogans, and display pictures of Anwar Ibrahim, with passing cars often sounding their horns in support.

The largest demonstration took place on 20 September 1998 when an estimated 35000 protestors marched through the capital and assembled in Merdeka Square, where Anwar Ibrahim and others gave speeches. After this rally a smaller group of demonstrators moved on towards the Prime Minister's residence, where police dispersed them with bursts of water cannon and tear-gas. Later that night Anwar Ibrahim was arrested at his residence.

Demonstrations continued through October with repeated reports of excessive use of force and ill-treatment by police during dispersals and arrests. On 22 October 1998 the Home Ministry stated that at least 16 illegal demonstrations had taken place since early September, and that 262 people had been detained. On 24 October 1998 police, using water cannon and tear gas, violently dispersed a peaceful demonstration of some 3000 people in the Tunku Abdul Rahman Street shopping area. Later that day, for the first time, violent skirmishes between protestors and police broke out. After evening prayers, in the ethnic Malay district of Kampung Baru, some 2000 protestors throwing rocks and iron bars clashed with riot police, and a number of demonstrators threw home-made petrol bombs. Two policemen and 12 protestors were injured. At least 241 demonstrators were arrested during the course of the day. Individuals, including women and a number of juveniles, appeared to have been arrested regardless of whether they were participating in the demonstrations, or were merely present at the scene. People were reported arrested inside restaurants, including from a McDonald's queue, from within shops, a hospital, and from homes in the immediate area of sporadically violent demonstrations that subsequently broke out.

Periodic demonstrations continued in the following months and were mainly peaceful. However in a series of renewed protests in the days following the verdict against Anwar Ibrahim on 14 April 1999 rubbish bins were burnt, a number of cars were

smashed, and some public telephone booths were burnt. Stones were also thrown at the windows of a police station, at a court-room, and at the police. On 17 April police arrested 58 men in a mosque, some apparently identified from photographs taken at previous rallies, and stated that they had seized stones, knuckle-dusters, two sling-shots and a petrol bomb from the suspects.

ii) Excessive Use of Force by Police During Crowd Dispersals, and Ill-Treatment in Detention

While the demonstrations remained markedly peaceful, with the exceptions noted above, excessive force and ill-treatment by Federal Reserve Unit (FRU - riot police) was used on numerous occasions while dispersing and arresting demonstrators. The actions of the FRU amounted to contravention of Article 5 of the UDHR, provisions of the Torture Declaration, and the UN Basic Principles of the Use of Force and Firearms by Law Enforcement Officials, Principle 13, which states:

> 'In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum necessary.'

Typically FRU personnel in armoured buses and accompanied by water cannon trucks (containing water mixed with a chemical irritant and/or yellow dye) would assemble near the demonstrators. A police officer would then announce the assembly illegal and order protestors to disperse. At times accompanied by bursts of water and tear-gas FRU personnel, wearing red crash-helmets and carrying black rubber truncheons and longer cane sticks *(rotan*), would often advance in formation beating on their riots shields, and then charge at the crowds - who were frequently peacefully gathered in busy shopping areas. At other times charges were sudden and unexpected. The FRU charges into crowds, and the chasing and arrest of demonstrators or bystanders were often accompanied by unprovoked, and apparently deliberately punitive, violent assaults.

On 28 September 1998 peaceful demonstrators and bystanders attempting to flee FRU charges were subjected to unprovoked kicking and beatings on their heads and

backs by FRU personnel using batons. An eyewitness reported one Malay youth being assaulted by 10 baton-wielding police who kicked him repeatedly and beat him around the legs as he lay on the ground.[lxiv] Reporters stated they saw electric cattle-prods used by police on detainees.[lxv] Plain-clothes policemen mingling with the crowd seized suspects, while FRU personnel chased fleeing protestors into a railway station, shops and restaurants. Around 100 people, including bystanders, were reported arrested.

Unconfirmed reports claimed that the police had been authorized to hit demonstrators on the area of the body between the left shoulder and the right knee. Injuries incurred by suspected demonstrators during dispersal, or in police trucks or lock-ups, after arrest included broken noses, hands, fingers and head wounds requiring stitches. Lawyers reported seeing detainees with criss-cross scars on their bodies allegedly caused by 'whipping' with *rotan* canes.

Tian Chua, chairman of the Coalition for People's Democracy (*Gagasan* - an alliance of political parties and NGOs supportive of reform) was arrested as he observed demonstrators being beaten during police dispersal operations near Merdeka Square on 28 September 1998. He later made an official complaint about the manner of his arrest, his ill-treatment whilst held in a police truck (where he used his mobile phone), whilst giving a cautioned statement (under s113 of the Criminal Procedure Code - CAC) at Selangor Police headquarters at Bukit Bintang, and later at the Campbell Street police station lock-up.

> " a FRU personnel...came up the [police] truck and began to beat the person he had arrested. After that, another FRU personnel came into the truck and also began beating and shouting to the person he had arrested. At that moment, I again called my colleague at the office and recorded the words of the FRU personnel...I mentioned their names...[the FRU officer] became angry and started beating me with his baton. I was hit on the shoulder, hand and leg...
>
> Among us, were two detainees who were seriously injured. One was still bleeding in the head while we were waiting to make our 113 statement. I tried to ask the police to get him some medical attention, but they did not bother...
>
> A Special Branch (SB) officer...who escorted us got very angry at this [chanting of *reformasi* by inmates in the Campbell Street police lock-up] and directed the officer in charge of the lock-up to open a cell. He then pulled out a detainee by his hair and immediately started to kick and beat him. Even though I was frightened, I could not put up with the sight of the SB's brutality. I shouted: '*Oi! Polis tidak boleh guna kekerasan*!' [Oi! Police cannot use force!].

> The Indian SB got very angry, and ran towards me (followed by a Malay SB), pulled my hair and forced me to stand. While getting up, I said, 'Stop it!' He immediately boxed my stomach. Because of this force, I fell to the floor. The SB kicked me again. I was kicked in the head and legs. The Malay SB followed suit and kicked my stomach. In my severe pain, I grabbed his boot in an attempt to stop his violence. He kicked me again."

Tian Chua was arrested in November and again on 14 April 1999 while observing a demonstration in Kampung Baru. In the latter incident witnesses saw Tian Chua being hit on the head and repeatedly kicked by plainclothes policemen on arrest. Other reports of beatings by police during and after arrest include;

- Rosman Mohd Ariffin, 24 year old student, was arrested at his home after demonstrations near the Prime Minister's residence on 20 September 1998, and charged with failure to disperse. He testified in court in March 1999 that he had asked permission from FRU personnel to cross the road, but had been hit and kicked from behind as he did so. He fell down as he attempted to run away and was struck repeatedly by five FRU officers before being held for five days in a police lock-up. Stated he signed a cautioned statement (CAC s113) due to fear and exhaustion. He also testified that he was in fear because 'I heard screams from people being hit with rubber hoses, punched and slapped while I was in detention.'

- Mohamad Safuan, 18 year old student, arrested on 17 April 1999. At a news conference he stated that evidence (a slingshot) was planted in his bag as he prayed at a mosque in central Kuala Lumpur to facilitate his arrest for alleged rioting. Claimed that a police officer also ordered him to put on a badge with opposition party colours. Further alleged that he was assaulted in a police station, and while in detention at Sungai Buloh Prison where 'a plain-clothed officer repeatedly hit me with a hockey stick on my back till the stick broke...I was slapped and punched...I was then placed in a small room and again assaulted by a uniformed policeman with the back of a shoe.'[lxvi] The student's parents lodged an official complaint about their son's alleged ill-treatment.

The arrests did not appear to be restricted to those actually taking part in gatherings: in April 1999 observers reported that police had arrested persons who were wearing badges, headbands and other symbols supportive of Anwar Ibrahim or *reformasi* before any demonstrations had begun or well after such gatherings had dispersed.

The authorities stated that foreigners and lawless elements had taken part in, or had paid for and incited, many of the demonstrations and stressed the difficulties faced by the police in maintaining public order. A number of Indonesians and Bangladeshi migrant

workers were amongst the hundreds arrested for allegedly participating in unlawful demonstrations. Other observers claimed that some of the incidents of violence, including stone-throwing, were carried out by undercover police acting as *agents provocateurs.*

iii) Prosecution of Alleged *Reformasi* Demonstrators

These mass arrests for alleged participation in unlawful assemblies or for alleged refusal to disperse, reports of ill-treatment and prolonged verbal abuse while in detention, and denial or restriction of access to legal counsel have raised serious concerns that minimum international standards for fair trial have not been respected .

a) Remand hearings and remand detention

According to reports received by Amnesty International over 1000 people in total were arrested between September 1998 and June 1999 in connection with *reformasi* demonstrations or distributing *reformasi* materials. Most were held in custody awaiting trial, vulnerable to ill-treatment, in overcrowded police lock-ups for periods of between three days and a week, before being released on police bail pending possible charges. Concerns have intensified that police requests for remand order extensions (under s117 of the CAC) were not prompted by the proper requirement of seeking to complete an investigation, but were misused as a form of punishment.

Detainees were frequently denied their right to contact either lawyers or family members to inform them of their arrest, in contravention of national law [lxvii] and international standards including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. [lxviii] A voluntary team of lawyers from the Bar Council's Legal Aid Centre set up to assist the *reformasi* detainees was often denied access to the detainees or, on being contacted by a detainee's family, had difficulties in being granted recognition by the police or the magistrate as the appointed legal representative of a particular detainee. Police stations would also fail to inform lawyers where and when remand hearings were due to take place.

Detainees, at times disorientated or suffering from the effects of ill-treatment, were brought to remand hearings without being properly informed and advised of their legal rights. By January 1999 it was estimated that 90 percent of detainees arrested had not had legal representation during remand proceedings. Lawyers were often not present at the hearing to question the grounds given by police for extended remand, and the procedures being followed. In one incident, when detainees arrested on 15 November 1999 were brought to a Magistrate's court for a remand hearing, lawyers were not called in to the courtroom until after the presiding magistrate had handed down an order for 7 days remand. In other cases where lawyers were present, the magistrate refused their requests for the grounds given by police to be read out.

During the periods of extended remand custody, access to lawyers was often denied or restricted on the grounds that they might 'interfere' with a police investigation. Additionally access to relatives and medical care was restricted or blocked.

b) The Trials of *Reformasi* Demonstrators

Of the *reformasi* detainees, at least 334 persons were subsequently charged in court under the Police Act and/or Penal Code. In January 1999 the first of eight trials began, and the 331 accused who pleaded not guilty continued to attend court in stages during the first half of 1999. The eight separate trials included that of 126 people (including 17 women) arrested at Merdeka Square and Tunku Abdul Rahman Street on 17 October 1998; that of 178 people arrested in Kampung Baru on 24 October; that of one person arrested returning from Kampung Baru on 18 November; that of 4 persons arrested in Kampung Baru on 21 November; and four other trials.

In the two trials involving 126 persons (begun in February) and 178 persons (begun in March) the large numbers of defendants tried together caused procedural difficulties which reportedly hampered their lawyers' capacity to defend their clients to the best of their ability. In some cases defence lawyers were only informed of the person who was to be named in court when the prosecution started their examination. In others, the trial started before the defence team were able to receive or study caution statements (CAC s113) given by the accused in police custody.

Meanwhile the accused (the majority of whom had never offended before) were required to be continuously present in the court-room throughout the trial, even if their individual cases were not coming up on a particular day, and a number have lost their jobs as a result of having to stand trial. Trials have proceeded, even if some of the accused were not present.

In the trial of the 178 persons charged with attending an illegal assembly and of rioting on 24 October 1998, all were acquitted of rioting and 172 were acquitted of attending an illegal assembly. On the charge of rioting the magistrate found, before the defence presented their case, that the charge was unsound as it contained two separate offences (under the Penal Code and the Police Act) and therefore had the effect of embarrassing all the accused. All were acquitted. On the charge of illegal assembly, in the case of 160 of the accused, the magistrate found an absence of evidence to connect the accused to the charges. He expressed concern at testimony regarding the identification of the accused, including that of an arresting officer who said 'I tried now to identify their faces during a roll call in the court.' The magistrate also noted that the police officer who had given the order to disperse agreed in court that not all of those present at the

demonstrations could see or hear him, and that none of the accused were identified as those present when the order was given.

Six of the 178 accused were found guilty of illegal assembly and sentenced to periods of between one and three months imprisonment, and to fines of between RM 2500 and RM5000. Three of these entered a guilty plea, including two Indonesian fruit sellers, Marzuki Ahamad and Mohd. Arfi Arif, who were made to serve an extra month's imprisonment as they were unable to pay the fine. Both had been remanded in custody since their arrest on 24 October 1998.

Three others, Mohd Ali Asana, 23, Mohd Nazib Asaari, 23, and Mohd Fadzli Mohd Saad 32, were convicted at the end of the trial. Mohd Nazib Asaari testified that he was arrested when walking towards a stall to have a drink. Mohd Fadli Mohd Saad, a traditional medicine retailer, testified that he was arrested inside a traditional medicine shop where he had been locked in by the shop owner, as the situation outside did not appear to be safe. The magistrate stated that he hoped that this sentence would have a deterrent effect on demonstrators, and ordered that all three serve a three month prison sentence and pay a fine of RM2500 each. The case is pending appeal to the High Court.

Of the 126 people charged after arrest on 17 October 1998, 38 were required to enter a defence. In July 1999, 21 of these were found guilty and received jail terms of three months each, and fines of between RM2500 and RM3500 each. Magistrate Kamarulzaman Abdul Rahman said 'The acts committed by these accused would...not only prejudice the maintenance of public order but also affect the security of the nation'. The accused lodged an appeal. Other trials had not been completed by August 1999.

Amnesty International would regard those imprisoned solely for the peaceful exercise of their right to freedom of assembly to be prisoners of conscience, and would call for their immediate and unconditional release.

6. Laws restricting the Right of Non-Discrimination and the Right to Privacy

(A) Section 377 of the Penal Code

There is no specific mention of homosexuality in the Malaysian Penal Code. However, so- called 'unnatural offences', involving any gender, deemed to be 'against the order of nature' are punishable by up to 20 years' imprisonment and whipping. Under the Section 377 of the Penal Code:

'A. 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.

B. 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.

D. 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 *Syariah* Islamic law same-sex relations between Muslims are illegal in many Malaysian states. For example, under the Syariah Criminal Offences (Federal Territories) Act 1997, *liwat* (sexual relations between males) and *musahaqah* (sexual relations between females) are prohibited. *Syariah* law also prohibits *khalwat*, that is close proximity or illicit sexual relations between Muslim men and women who are not married or not related. The standards of proof for such *Syariah* offences relating to decency are strict. To be found guilty of *liwat* four witnesses must be produced, Muslim and upstanding members of the community who have themselves witnessed the alleged offence.

In answer to a parliamentary question in May 1997 a minister stated that 45 reported cases had been investigated under s377A in 1996, and that 32 arrests had been made. However the numbers of subsequent prosecutions was not clarified. While arrests of 'cross-dressers', especially those alleged to be sex workers, occurs periodically in urban centres, prosecutions under the Penal Code of consensual sexual acts in private between adults appears to remain rare.[lxix] To Amnesty International's knowledge only a limited number of s377 cases have come to court in recent years, including that of a Penang Sessions Court Judge who was acquitted in August 1998 of having oral sex with a man (under s377D and s354 - using force with intent to 'outrage modesty'), and the series of prosecutions that followed the dismissal from office and accusations of sexual misconduct against Anwar Ibrahim in September 1998 (*see Appendix One*).

Case Study

Sukma Darmawan, Munawar Anees and Mior Abdul Razak

On 19 September 1998 Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees appeared in separate Sessions Courts in Kuala Lumpur 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 lawyers their families had appointed for them. Instead they were represented in court by lawyers arranged for them by the police. These lawyers entered guilty pleas that the men had 'allowed Anwar to sodomize them'. Both men were sentenced to six months imprisonment.

The hearings, each lasting less than one hour, raised concerns about respect for international fair trial standards. Neither defendant gave mitigating testimony, beyond answering in the affirmative when asked if they pleaded guilty and understood the consequences. Anwar Ibrahim, the alleged primary participant in the alleged offences, was not called to give evidence. Witnesses reported that both men had a 'glazed expression', and that Munawar Anees was trembling and appeared to be 'ranting and was not his normal self'.[lxx] The morning after the convictions, government-owned Malaysian newspapers - normally restrained in their coverage of such sexual matters - carried sensationalist front-pages, including the headlines 'We were sodomized.'[lxxi] Anwar Ibrahim's response was to deny the allegations, and to counter that the convictions were part of a conspiracy to discredit him. He stated that he bore no grudge or placed any fault with his adopted brother and his friend for pleading guilty, and that he believed the guilty pleas had been 'extorted under dire circumstances and emotional trauma.'

In October both men lodged appeals against their convictions and sentences, stating that their confessions had not been made voluntarily. Both men claimed that they were denied access to lawyers of their choice. In addition, both men made unsuccessful *habeas corpus* applications for their release from custody.

Dr Anees was released on 18 January 1999 with time off his sentence for 'good behaviour'. He had been admitted to hospital after suffering heart complaints before his conviction, and subsequently had been transferred to a psychiatric ward, under guard, where he served his sentence. After his release he left the country. Sukma Darmawan was released in 21 December 1998, after the High Court accepted an application for his release on bail pending the result the appeal process.

In April 1999 Sukma Darmawan was charged with three new offences: firstly that in May 1992 he had abetted Anwar Ibrahim to sodomize Anwar's driver Azizan Abu Bakar (s377B and s109); secondly that he himself had sodomized Azizan Abu Bakar on the same occasion (s377B); and thirdly that he had committed perjury in a declaration in December 1998 in which he stated that he had been threatened by police into making a

confession, and he had fabricated false evidence (perjury) by alleging ill-treatment in a statutory declaration. (see page 67)

At the same time, charges of perjury (s193) were also laid against clothes designer Mior Abdul Razak who had lodged a statutory declaration in February 1999 in which he alleged he was pressured to confess by police and stated that 'I have never been sodomized by Anwar'. Mior Adul Razak had been arrested on 19 September 1998 for investigations into alleged sexual offences involving Anwar Ibrahim. One of the five sexual offences charges laid against Anwar Ibrahim in September 1998 was that of having sodomized Mior Abdul Razak in 1992.

In his statutory declaration Mior Abdul Razak claimed police put him under intense mental pressure during prolonged interrogation, forced him to act out alleged sex acts, and threatened him with 20 years' imprisonment, until he agreed to 'confess'. After 14 days in remand custody Mior Abdul Razak stated he was kept under police supervision in an unidentified house before being returned to detention in Bukit Aman federal police headquarters 'for his protection'. He remained in detention for a total of 107 days before his release in late January 1999. He subsequently filed a suit against the police for unlawful arrest and detention, claiming damages for assault and battery and for injury to reputation and business.

In addition to the perjury charges laid against Sukma Darmawan and Mior Abdul Razal perjury charges were also laid against Anwar Ibrahim's former private secretary, Mohamad Azmin Ali,[lxxii] for allegedly giving false evidence (s193) at Anwar Ibrahim's trial for corrupt practices in March 1999 by testifying: 'I told the magistrate why my remand could not be extended because of the actions and threats of the police who had been very brutal and forced me to make confessions implicating Anwar Ibrahim, without any basis.' On 13 July 1999 a Sessions Court judge acquitted Mohamad Azmin Ali of perjury, stating the prosecution must prove that what had been said or that the evidence presented was false.

On 28 April 1999 the Attorney General informed the High Court that Anwar Ibrahim and Sukma Darmawan would be jointly tried on charges of sodomizing Anwar's former driver, Azizan Abu Bakar, and that Sukma Darmawan would be tried at the same time for abetting Anwar Ibrahim to sodomize Azizan. The Attorney General announced that remaining charges against Anwar Ibrahim including one of corrupt practices and four charges of sodomizing Munawar Anees, Mior Abdul Razak, Sukma Darmawan and Hairany Mohd Naffis, would be postponed indefinitely. Unlike the earlier prosecution of Munawar Anees and Sukma Darmawan, the Attorney General chose not to file charges against driver Azizan Abu Bakar for 'allowing himself to be sodomized'. The Attorney General also applied successfully to change the date of the alleged offences in the

charges against Anwar Ibrahim and Sukma from 1994 to May 1992 saying that it was a 'typo error'.

On the opening day of the joint trial of Anwar Ibrahim and Sukma Darmawan on 7 June 1999 the Attorney General applied again to change the date of the alleged offence, from May 1992 to between January and March 1993. The defence argued that the change was prompted by the notice of alibi submitted by the accused in May 1999, which stated that the building in which the offence was alleged to have taken place had not been completed by May 1992. The judge, rejecting the defence's argument that there had been an abuse of process by the prosecution and ruling that the defence had not produced evidence of *male fide* (bad faith), allowed the amendments.

After the Judge dismissed the defence application that Sukma Darmawan's September 1998 confession was inadmissible because it had been coerced, the joint trial continued in August 1999.

Amnesty International believes that laws which criminalize same-sex relations violate international human rights standards, including freedom of expression and conscience, freedom from discrimination and the right to privacy, and can lead to the imprisonment of people solely for expressing their sexual orientation. Amnesty International therefore considers anyone imprisoned solely for same-sex acts between consenting adults in private to be a prisoner of conscience, and would call for their immediate and unconditional release.

Amnesty International believes that charges laid against Sukma Darmawan, Munawar Anees, Mior Abdul Razak and Hairany Mohd Naffis were politically motivated, and part of a government campaign to secure a criminal conviction against Anwar Ibrahim and to discredit him publicly. The organisation is gravely concerned that the existence of such laws allows the authorities to use alleged homosexuality as a pretext against political opponents. Not only do accusations under such laws allow the discrediting of political opponents in cultures where homosexuals face discrimination, but they can also result in their arrest and imprisonment thereby removing them from further participation in political life.

Furthermore the organization is concerned that Sukma Darmawan, Munawar Anees and Mior Abdul Razak may have been ill-treated in order to coerce confessions under discriminatory legislation, and that they were denied the right to a fair trial.

RECOMMENDATIONS

Recommendations by Amnesty International to the Government of Malaysia

1. Ratification of International Human Rights Treaties

Amnesty International recommends that the government make a priority the ratification of :

⇨ The International Covenant on Civil and Political Rights (ICCPR);

⇨ The International Covenant on Economic, Social and Cultural Rights (ICESCR);

⇨ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

2. Reform of the Constitution

Amnesty International is concerned that the Malaysian Constitution, as currently amended, does not provide adequate safeguards for the protection of the human rights it enshrines. The organisation recommends that all necessary measures are taken to ensure:

⇨ that provisions relating to human rights in the Constitution are strengthened, and that all limitations on rights which negate the right itself and do not conform to international standards, are removed;

⇨ the absolute protection of certain rights at all times, including the right not to be deprived of life arbitrarily, freedom from torture and ill-treatment, and guarantees of fair trial;

⇨ that any limitations on rights are subject to specific criteria, including what is proportionate, legal and legitimate under national and international law, and should be subject to the scrutiny of the courts.

3. Reform of Legislation

Amnesty International is also concerned that a body of legislation exists which places unjustified restrictions on the enjoyment of fundamental human rights. The organisation therefore recommends the reform of emergency, national security and other restrictive laws which may infringe on the right of Malaysians peacefully to express their opinions, form associations and assemble in public free from the fear of arbitrary arrest, ill-treatment and imprisonment.

i. Emergency Laws

Laws related to or stemming from States of Emergency should only limit derogable rights in a manner that is necessary, proportionate and strictly required by the exigencies of the situation. Amnesty International believes emergency laws should be reviewed and reformed, so that they incorporate effective safeguards of the rights of detainees, including judicial review at any stage of detention, and access to legal representation at all times. Such laws include the Internal Security Act, the Emergency (Public Order and

Prevention of Crime) Ordinance, the Restricted Residence Act and the Dangerous Drugs (Special Preventive Measures) Act. In particular, Amnesty International calls for:

- ⇨ the Internal Security Act (ISA) to be either repealed or amended so that it no longer allows for those who peacefully express religious or political beliefs to be arrested and imprisoned;

- ⇨ the ISA to be repealed or amended so that those suspected of threatening national security have the opportunity to defend themselves before a court of law in proceedings that meet international standards of fairness;

- ⇨ those arrested under the ISA not to be held in incommunicado detention, and to be given immediate and regular access to independent lawyers, medical personnel, and members of their families.

ii . Other Restrictive Laws

Amnesty International is concerned that sections of other, non emergency-related legislation allow for government officials to violate human rights relating to the peaceful exercise of freedom of expression, association and assembly.

The organisation urges that such restrictive laws, including the Sedition Act, the Printing Presses and Publications Act, the Societies Act, the Universities and Universities Colleges Act, the Police Act and the Penal Code be reviewed with a view to reform. The organisation believes that clauses which may lead to violations of human rights should be removed, or amended to ensure that vague or ambiguous language does not lead to human rights violations. Reforms should also include the right to challenge administrative decisions made under a number of these laws, including before a court of law.

4. The Treatment of Detainees

Amnesty International also urges the authorities to take steps to end the practice of incommunicado detention, which facilitates torture and ill-treatment, and recommends:

- ⇨ that detainees are given immediate access to lawyers of their choice, medical assistance and their family;

- ⇨ that all reports of detainees being held incommunicado are fully and independently investigated, and those found responsible for a breach of procedure are held accountable;

- ⇨ that the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for Protection of Persons under Any Form of Detention or Imprisonment are observed;

- ⇨ swift and impartial investigations into any allegations of ill-treatment or torture by detainees whilst in police custody. The findings and methods of such investigations should be made public, and those suspected of such ill-treatment or torture brought promptly to justice;

- ⇨ review of interrogation rules, instructions, methods and practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

5. Freedom of Assembly and the Treatment of Demonstrators

Amnesty International urges the Malaysian authorities to respect the right of all persons in Malaysia to engage in peaceful assemblies and demonstrations. The organization recommends that:

- ⇨ sections relating to demonstrations and public assembly in the Penal Code and the Police Act are reviewed to ensure that they may not be used to imprison individuals for their peaceful exercise of the right to freedom of assembly;

- ⇨ member of the Royal Malaysia Police exercise maximum restraint in their treatment of demonstrators, and act at all times in accordance with international standards relating to the use of force and firearms by law enforcement officials including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These standards state *inter alia* that force should only be used when strictly necessary, and only to the minimum extent required under the circumstances;

- ⇨ the government take action to bring to justice before a civilian court those members of the law enforcement agencies suspected of being responsible for the use of excessive force against those involved in peaceful assembly, including superior officers who may have given the orders;

⇨ the government ensures the establishment of a human rights curriculum for police and that all security personnel, including those involved in dealing with demonstrations or civil unrest, are trained in international standards on the use of force, and that action is taken to enforce compliance with them.

6. Human Rights Commission of Malaysia Act 1999

Amnesty International is concerned that the Human Rights Commission Act may lead to the formation of a Commission that does not meet requirements stipulated in the UN Principles relating to the Status of National Institutions (the Paris Principles). The organisation is concerned that Commission's mandate is to define 'human rights' as being those fundamental liberties enshrined in Part II of the Constitution, and to have regard to the UDHR only 'to the extent that it is not inconsistent with the Federal Constitution'.

Amnesty International believes that the Constitution as amended does not afford adequate protection of human rights and allows for restrictions of fundamental rights that are not in conformity with international law. The organisation believes, therefore, that the first task of the Commission should be to advise Parliament on a review of the Constitution to strengthen its human rights provisions to bring them into conformity with international standards.

Amnesty International urges the authorities to take all necessary steps to address apparent shortcomings in the Human Rights Commission of Malaysia Act (1999). These steps should include:

⇨ widening the scope of the Commission's mandate to include human rights as defined in the Universal Declaration of Human Rights, without qualification of these rights by the Constitution.

⇨ the establishment of a clear procedure for the selection of members of the Commission that is transparent and impartial. The procedures established should guarantee the selection of Commissioners of integrity, who will be independent of government, have a proven expertise and competence in the field of protecting and promoting human rights, and are from a variety of religious, ethnic and professional backgrounds, including relevant professional groups and the non-governmental sector;

⇨ establishment of a fair and public procedure for the removal or dismissal of Commissioners which is independent and impartial and which protects their security of tenure;

- ⇨ the law should grant the Human Rights Commission recourse to the courts to obtain the imposition of administrative or legislative sanctions when the exercise of its power to investigate and take remedial action is obstructed;
- ⇨ the law should provide for the Commission to prepare its own budget and for its funding and resources to be allocated by Parliament;
- ⇨ the Commission should be authorised to undertake unannounced and unrestricted visits to prisons or other detention facilities;
- ⇨ the Commission should be entitled to institute investigations into matters which are the subject of judicial proceedings, unless it is shown that such investigations would prejudice the fairness of proceedings.

APPENDIX ONE:

THE CRIMINAL PROSECUTION OF ANWAR IBRAHIM

On 2 September Anwar Ibrahim was dismissed as Deputy Prime Minister and Finance Minister (see page 24). Within a day of his dismissal the Attorney General's office

made public an affidavit by a senior police officer which contained a series of allegations of sexual misbehaviour and corruption against Anwar Ibrahim. The affidavit was filed in the criminal case of S. NALLAKARUPPAN, a friend of Anwar Ibrahim, who was arrested on 31 July 1998 under the ISA and later charged with illegal possession of bullets (see page 26). The affidavit was in response to an application in the High Court challenging that Nallakaruppan was being unlawfully held in custody by the police instead of being in the custody of the prison authorities. Nallakaruppan also alleged that he was subjected to mental and physical pressure to force him to sign false statements. Requests by Nallakaruppan's defence lawyers to prevent the publication of the affidavit were refused by Judge Wahab Patail who ruled that the affidavits could be published since they were public documents.

Prior to Anwar Ibrahim's arrest, several persons close to him were arrested and detained. Sukma Darmawan was arrested under criminal procedure investigation provisions on 6 September 1998 and detained incommunicado for 13 days before his appearance in court. Munawar Anees was arrested on 14 September 1998 under the ISA and held incommunicado for five days. On 19 September both Sukma Darmawan and Munawar Anees appeared in separate Sessions Courts in Kuala Lumpur where they pleaded guilty to charges of being sodomized and were sentenced to six months' imprisonment. The allegations were that they had been sodomized by Anwar Ibrahim. Both men subsequently retracted their confessions and alleged that they had been gravely ill-treated in custody (*see pages 29 and 66)*.

Although the allegations against Anwar Ibrahim were of sexual misconduct and corrupt practices, he was arrested on 20 September and detained under the Internal Security Act (ISA) which allows for incommunicado detention without charge or trial for an initial period of up to 60 days (*see page 16*). During his detention under the ISA he was denied rights of access to his lawyers, contrary to the provisions of Principle 18(3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[lxxiii] He was also denied access to his family and medical treatment was delayed.

On 29 September Anwar Ibrahim appeared in a Sessions Court and was charged with corrupt practices and sodomy. At his appearance in court, he had a blackened eye and visible bruises to his forehead and face. In a statement to the Court, Anwar Ibrahim stated that he had been beaten while in custody. The former Inspector-General of Police later admitted before a Royal Commission established to investigate the assault that he had beaten Anwar Ibrahim in custody (*see page 31*). The ill-treatment of Anwar Ibrahim in custody was in direct contradiction of the prohibition of torture and ill-treatment in the Universal Declaration of Human Rights, the UN Declaration on Torture, and provisions of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Anwar Ibrahim was released from detention under the ISA on 14 October but has been denied bail and has remained in custody since his arrest. On 21 October the trial judge, Judge Augustine Paul, denied an application for Anwar Ibrahim to be released on bail mainly on the basis of prosecution allegations that there was a danger of witness tampering. On 8 January 1999, after the prosecution closed its case, a second bail application was lodged by the defence on the basis that there could no longer be a possibility of concern about witness tampering. This application was also refused. An appeal against the first decision of the Judge Augustine Paul to deny bail was lodged and the Court of Appeal rendered its decision on 16 January 1999. Although the Court of Appeal found that the appeal could have succeeded on its merits, it went on to dismiss the appeal on the basis that there could be no appeal to the Court of Appeal on a decision to refuse or grant bail.

In September 1998 Amnesty International declared Anwar Ibrahim and his political associates arrested under the Internal Security Act (ISA) to be prisoners of conscience detained solely for their non-violent political activity, association and expression, and called for their immediate and unconditional release. Amnesty

International believes Anwar Ibrahim's detention was motivated by political differences within the Malaysian government, and that charges were subsequently brought against him as a pretext to remove him from further participation in public life. This conclusion was reinforced by the unfair conduct of proceeding throughout his case, including his incommunicado detention and ill-treatment before the trial, the intimidation of the defence team and procedural decisions during the trial on the nature of the charges.

I. The Charges

Anwar Ibrahim was charged with five counts of corruption under Section 2 (1) of the Emergency (Essential Powers) Ordinance No. 22, 1970 and five counts for sodomy under section 377B of the Penal Code. However, under the Criminal Procedure Code no more than three offences may be tried together. The defence did not object to the prosecution's request that four charges, rather than three, be tried first.

The four charges of corrupt practice revolve around allegations that Anwar Ibrahim misused his power as a government minister to order the police to obtain retractions of allegations of sexual misconduct. One of the accusers, the sister of Anwar Ibrahim's private secretary, Ummi Hafilda Ali, wrote a letter to the Prime Minister alleging that Anwar Ibrahim had an affair with her sister-in-law Shamsidar Taharin. Another accuser, Azizan Abu Bakar, Anwar Ibrahim's former driver, alleged in an affidavit that Anwar Ibrahim sodomized him. Two counts allege that Anwar Ibrahim ordered the police to obtain a retraction of Ummi's allegations. Another two counts allege that Anwar Ibrahim ordered the police to obtain retractions of Azizan's sworn declaration.

The charges of corrupt practices were brought under the Emergency (Essential Powers) Ordinance of 1970 which was proclaimed under a state of Emergency declared in 1969. This Ordinance was repealed under the Anti-Corruption Act 1997 which was passed by the House of Representatives in early October 1998 and then sent, as required by the Constitution, to the Senate which has not yet either assented to that bill or proposed amendments to it. Pursuant to Article 69 of the Constitution bills passed by the House of Representatives and not approved by the Senate can become law but only after one year has lapsed from the time the bill was first passed by the House of Representatives. A submission based on this was made by defence counsel at the commencement of the trial, but was rejected by the trial judge.

II. Public Imputation of Guilt by the Prime Minister

At the time of Anwar Ibrahim's arrest and detention, the Prime Minister and other senior government officials publicly stated that he was guilty of the allegations of sexual misconduct and corruption made against him. When the Prime Minister made these statements, Anwar Ibrahim was being held under the ISA, and had not been charged with any ofence. In an interview with national and international journalists in his office on 22 September 1998 the Prime Minister stated, in reference to the guilty plea by Sukma Darmawan and Munawar Anees:

> "...What they said was the absolute truth....The fact is that the man [Anwar] had for years been masquerading as a religious person and yet had been committing these things not today, not yesterday, but for years..." "...When I discovered he was guilty of something that I cannot forgive, something that Malaysian society cannot accept...action had to be taken".

The Prime Minister also said in the same press conference that he had proof that their allegations were true, and that he had actually interviewed the people who were sodomized, the women with whom Anwar Ibrahim had had sex, and the driver who brought women to Anwar Ibrahim, and learnt that,

> "[Anwar] has not only performed sodomy...but during the process he was...I don't know how you call it...he was masturbating this man".[lxxiv]

When asked about Anwar Ibrahim's own accusations of corruption against him, Prime Minister Mahathir replied:

> " No. I am not going to ask him to prove the corruption. He can prove, he must remember that we also have a lot of proof about his own corruption. But that is something else. I am not interested in that. I am

> interested in these things that I cannot accept. I cannot accept a man who is a sodomist to become a leader in this country".[lxxv]

On 5 October at the High Court hearing, Raja Aziz Addruse, the lead counsel for the defence, complained that high public officials had publicly stated their views of Anwar Ibrahim's guilt of the offences. He expressed concerns that this would influence the Court and deny Anwar Ibrahim a fair and impartial trial. The lead prosecutor, Gani Patail, argued that it was important to maintain freedom of speech. Judge Augustine Paul entered an order that there should be no comment in the media on the innocence or guilt of the accused.

Amnesty International believes that when a person in a position of authority and in high political office makes such statements it is often accepted as truth by the general public. It is intended to influence the public against the accused. It undermines the independence of the judiciary in that the statements indicate that the courts should reach no other decision accept that the defendant is guilty of the offences of which he is accused. The imputation of guilt violates the defendant's right to presumption of innocence and is therefore prejudicial to holding of a fair trial.

III. The Trial

The trial of Anwar Ibrahim commenced in the High Court in Kuala Lumpur on 2 November 1998. The prosecution team consisted of six lawyers and was headed by Senior Deputy Public Prosecutor Abdul Gani Patail. The defence team consisted of nine lawyers. The lead counsel, Raja Aziz Addruse, is a senior and respected attorney and a leading human rights figure in Malaysia. The defence team consisted of some of the most experienced and able lawyers in the country who agreed to act *pro bono*.

The trial was held in open court with access to the public, especially the family of the accused, journalists and, after some initial difficulties, to representatives of human rights organizations, including Amnesty International,[lxxvi] and foreign embassies who attended as observers.

However, a request by defence counsel on the first day of the trial to the court to grant official observer status to foreign observers was rejected by the judge. Judge Augustine Paul stated, "[t]hey have no right to be here, in my opinion this is an insult to the court. It's like saying that the court won't be fair."[lxxvii] Prior to that, on 21 October 1998, Dr Mahathir was reported to have stated that the government would not entertain any application by foreign observers to be present at the trial ' as the presence of foreign observers will put pressure on this country's judges'.

The ruling by the judge appeared contrary to previous practice by the courts in Malaysia when foreign observers were welcomed and their presence recognized, for example in the Lim Guan Eng sedition appeal in August 1998, when the Federal Court granted observer status to representatives of Amnesty International and the International Commission of Jurists (ICJ), after an application was made by defence counsel. The request by the Malaysian Bar Council to have a watching brief at Anwar Ibrahim's trial was also rejected.

IV. Actions Against Defence Lawyers

Amnesty International is concerned that throughout the trial actions were taken against Anwar Ibrahim's defence lawyers which impinged on international fair trial standards, including Principles 16(a) and (c), 18 and 20 of the UN Basic Principles on the Role of Lawyers.[lxxviii]

One member of Anwar Ibrahim's defence team, Zulkifli Nordin, was detained under the ISA on 29 September and only released on 27 October, shortly before the trial commenced. During the first 48 hours of his detention, Zulkifli Nordin was reportedly deprived of sleep and interrogated almost continuously, in order to press him for information about his links to Anwar Ibrahim and the *reformasi* movement. Requests for access to legal counsel were turned down.

During the trial one of the prosecuting attorneys filed a police report complaining that some of his trial notes had gone missing. The report did not accuse the defence or any particular defence attorney. Nevertheless, the police searched the office of Pawancheek Marican, one of Anwar Ibrahim's defence counsel. The defence protested this search in court. Justice Paul turned aside the protest, stating: "It is my duty to protect the officers of the court. But where a police report has been made, that is different. I doubt I have the powers to tell the police to stop investigating."[lxxix]

One of the most serious interferences with the right of defence counsel to be able to defend the accused to the best of their ability were the contempt proceedings against a member of the defence team, Zainur Zakaria. He filed an affidavit in court accusing the prosecution of going out of its way to pressure a friend of Anwar Ibrahim, Nallakaruppan, to give information against Anwar Ibrahim. Nallakaruppan was prosecuted for possession of bullets and sentenced to 18 months' imprisonment (*See page 26*).

According to the statutory declaration submitted by Nallakaruppan attorney, Manjeet Singh Dillon, the prosecutors offered to reduce the charges if Nallakaruppan would testify falsely against Anwar Ibrahim. On 30 November Judge Paul found Zainur Zakaria in contempt of court for filing a slanderous pleading and imposed a sentence of three months' imprisonment. The judge ordered that Zainur Zakaria begin serving the sentence immediately, however the sentence was stayed by the Court of Appeal pending consideration of the appeal. Judge Augustine Paul also issued a warrant of arrest for Nallakaruppan's attorney, Manjeet Singh Dhillon, but withdrew the warrant when the attorney appeared in court and apologized for allowing his own affidavit to be filed in Anwar Ibrahim's case. It is important to note, however, that Manjeet Singh Dhillon did not retract the statements contained in the affidavit.

When the trial resumed on 23 March 1999 to hear the final submissions at the closure of the trial, defence counsel informed the judge that an application had been filed on 15 March 1999 but the pleadings had not been returned by the Registrar of the Court for delivery to the Attorney General's Chambers. The application was being made by the accused for the judge to remove himself from the trial. The judge refused a request for postponement by the defence counsel to enable enquiries to be made regarding the application and asked the defence to proceed with their final submissions. The lead counsel for the defence, Raza Aziz Addruse, informed the judge that the consideration of the application was of utmost importance before the final submissions were made and therefore the defence chose not to make final submissions. The judge stated that in terms of the Criminal Procedure Code the defence could choose not to make submissions, whatever its reasons. He indicated that this, however, made his task of rendering a judgement very difficult. He stated that as the contumelious (disdainful) behaviour of the entire defence team was an interference with the cause of justice, it amounted to contempt of court. He ended by saying that he would decide later whether he would take action himself against the defence team or refer the matter to the Attorney-General for prosecution.

V. Amendment of Charges

One of the central elements of the charges against Anwar Ibrahim was that he had directed the police to obtain retractions of allegations of sexual misconduct and sodomy which were true. The prosecution led extensive evidence by various witness to prove the veracity of these allegations. The witnesses included Ummi Hafilda Ali and Azizan Abu Bakar who had initially made these allegations, and an expert who testified regarding the presence of semen and vaginal fluids on a mattress on which Anwar Ibrahim is alleged to have engaged in sexual intercourse with Shamsidar Taharin.

At the end of the prosecution's case, the Deputy Public Prosecutor made an application to the judge to amend the charges. The application was allowed and the judge stated that the charges remained substantially the same. However, the judge proceeded to make a ruling that all the evidence relating to the allegations of sexual misconduct and sodomy would be expunged from the record. The judge made this ruling without any application being made either by the prosecution or defence for this evidence to be expunged and, in fact, against the protestations of both prosecution and defence counsels.

This ruling by the Court denied the defence the opportunity to rebut the evidence adduced by the prosecution and thereby test the veracity of the allegations and the credibility of the main prosecution witnesses. Furthermore, it prevented the defence and the accused from adducing any evidence which would restore the character and image of the accused which had been severely tarnished by the evidence presented by the prosecution.

The expunging of the record and the failure of the judge to allow the defence to challenge the allegations of sexual misconduct has impeded the accused from mounting an adequate defence to the charges he faces. It is contrary to the principles of fair trial enunciated in international standards including the UDHR and the Body of Principles on the Role of Lawyers. It also prevented the defence lawyers from defending the accused to the best of their ability.

On 14 April 1999 Anwar Ibrahim was found guilty of four charges of corrupt practice. He was sentenced to six years' jail on each of the charges, to run concurrently. Anwar Ibrahim subsequently filed an appeal against his conviction and sentence. On 7 July 1999 Anwar Ibrahim began a second trial, with Sukma Darmawan, on charges of sodomizing Azizan Abu Bakar. Previous charges laid against Anwar Ibrahim including one of corrupt practices, and four charges of sodomizing Munawar Anees, Mior Abdul Razak, Sukma Darmawan and Hairany Mohd Naffis, were postponed indefinitely. The joint trial continued in mid-August 1999.

Amnesty International believes that the conduct of Anwar Ibrahim's first High Court trial, and the various rulings by Judge Augustine Paul highlighted above, have been prejudicial to the fairness of the criminal prosecution of Anwar Ibrahim and contrary to the principles of fair trial enunciated in international standards.

Amnesty International maintains its position that the charges against Anwar Ibrahim were politically motivated on account of his peaceful political activities, that he is a prisoner of conscience, and that he should be immediately and unconditionally released.

APPENDIX TWO:

Part II of the Malaysian Constitution, entitled 'Fundamental Liberties'

Part II contains nine Articles. They include;

The Right to Life and the Right to Liberty of the Person (including *habeas corpus*)

Article 5(1) No person shall be deprived of his life or personal liberty save in accordance with the law.

Article 5(2) Where complaint is made to a High Court...that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

Article 5(3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

Article 5(4) When a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours...be produced before a magistrate and shall not be further detained in custody without the magistrate's authority.

Equality Under the Law and Freedom from Discrimination

Article 8(1) All people are equal before the law and entitled to equal protection of the law,

Article 8(2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law...

Freedom of Movement

Article 9(2) Subject to Clause (3) and to any law relating to the security of the Federation... public order, public health, or the punishment of offenders, every citizen has the right to move freely throughout the Federation and to reside in any part thereof.

Freedoms of Speech, Assembly and Association

Article 10(1) Subject to Clauses (2), (3) and (4),

(a) every citizen has the right to freedom of speech and expression,

(b) all citizens have the right to assemble peaceably and without arms,

(c) all citizens have the right to form associations.

(2) Parliament may by law impose -

(a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, of incitement to any offence;

Freedom of Religion

Article 11(1) Everyone person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.

APPENDIX THREE:

Reports of ill-treatment and torture of ISA detainees

(A) Statutory Declaration of Dr Munawar Anees (16 November 1998). Excerpts.

"... A third man came over and blindfolded me. I was... guided and dragged into some sort of a vehicle... I was finally placed in a cage-like metal contraption in that vehicle. This contraption, which I examined with my hands, was triangular in shape and very small so much so that I could only crouch in it....After some time I heard the sound of an engine starting and then the vehicle moved off.

... I found I was in a small room. There were four men in that room. They were all in plainclothes and they immediately adopted a very aggressive confrontational stance against me. They were exceptionally rude and coarse in the language they used. They asked me to strip naked. I tried to resist but had no option but to accede to their request. My clothes, slippers, watch and glasses were taken away...

... I saw that I was in a cell of approximately 8 feet square. There were two wooden platforms placed against the cell walls, one on each side. There was no other furniture of any sort. The cell had no window and ventilation was through two tiny rat holes at the bottom of one wall. There was no bedding or blankets...The room was brightly lit by an overhead light that was never switched off throughout my stay there.

...I was forced to sit...and, against my will, shaved bald...when I had finished sweeping up my hair I was once again blindfolded and handcuffed and returned to my cell.... After the 50th step I was asked to stop. One of the two swung me around and punched me in the stomach...

... one of the guards took my blindfold off. I saw I was facing an open room. It was brightly lit. I was dazed, fazed out, blinded by the intense light and for the first few minutes after the blindfold was removed could make no sense of things.....
.... There was then suddenly a barrage of questions directed at me. One interrogator would ask a question, I would be in the middle of my answer when another would cut in with a second question. I would turn to the second officer and the third would attack me with a different question. I would turn to the third and the first would yell at me demanding his answer....The questions were never related, there was no link between them though they were all directed at my personal particulars, about my work, something about everything but nothing indicative of any subversive or criminal activities. This style of questioning was consistently followed throughout my interrogation there though at times some of the interrogators would leave the room leaving behind two and, at times, one interrogator. I can only guess they went to rest but they never let me rest.

....They said that their senior Officer wanted results and once they had results they would let me sleep and would not disturb me. I told them that I had never had a homosexual relationship in my entire life. They said they knew that was my perception of things but that my perception of things was wrong, that they had to retrain my mind to see what was right and wrong, that they would show me how. Once again they went into how the Internal Security Act was there to help to rehabilitate minds and people. They said they would show me how. They said they did not want to fail with me and have me sent off to the detention centre. They said that my family would be completely destroyed if that happened.

The interrogation would then switch back to my work, my vulnerability being an alien in Malaysia, my family, and then, just as suddenly switch back to vulgarity and Anwar and homosexuality. They would make lewd remarks. Gradually they began to introduce Anwar's name more into the abuse and began to make him play a more active part in their lewd descriptions of homosexual and non-homosexual sex....As I acted out the demeaning, humiliating parts they gave me, they laughed and asked if it was good.

By the end of the second day the long hours of interrogation, the lack of sleep, and the lack of decent food had left me completely disoriented and exhausted. My health was deteriorating and I was extremely worried about my family.... I had no idea of time.... My cell had no pillow or anything that even remotely resembled comfort...The only way I could lie on the platform was in the fetal position.

> The light and the sound from the vent made sleep impossible....I had done nothing wrong but I was deeply frightened. I felt hopelessly outnumbered and very vulnerable.
>
> They warned me and then threatened me and abused me in turn. They threw questions at me but did not wait for answers....it became apparent that this routine and the haranguing was going to go on for ever. Truth and my denials were getting me nowhere. I was at the point of collapse and could not go on. I knew I had to play along with them.
>
> .... Suddenly one of the four screamed at me to stand up. I did so. All four came from behind the table and surrounded me in a very aggressive manner as if they were about to assault me. One of them literally had his face in mine. They all screamed at me, in my ears, loudly, again and again and again, that I had xxxx Anwar....They screamed and screamed and screamed, in my ears, at my face, at me, again and again, over and over asking me to say yes until I gave in and broke down saying yes, yes. They stopped screaming. That was what they wanted to hear. They were not interested that it was untrue.
>
> I was interrogated over long and continuous sessions. I was always removed from my cell as No: 26, always blindfolded and handcuffed. I was systematically humiliated by my captors who always remained unidentified. They stripped me of all self-respect; they degraded me and broke down my will and resistance; they threatened me and my family; they frightened me; they brainwashed me to the extent that I ended up in Court on 19 September 1998 a shivering shell of a man willing to do anything to stop the destruction of my being."

(B) Ten years earlier in 1988, following Operation Lallang, a similar pattern of interrogation was recorded by Amnesty International:

> 'statements recorded from detainees while in detention were often made after they had been subjected to prolonged interrogation under mental and physical duress, threatened with indefinite detention without trial, and deprived of sleep for long periods of time. The detainees were further said to have been humiliated during interrogation in deliberately over-cooled rooms and in some cases been subjected to mock sexual assaults, In cases where detainees were found to be 'uncooperative' interrogation officers are reported to have additionally resorted to beatings, slaps and punches'.

(C) In addition, the findings of an Amnesty International mission to Malaysia in 1978 included, *inter alia*, that:

> '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 centre...inside the van I was strapped into a vertical coffin-like chamber. A desperate feeling of claustrophobia and nausea overcame me'.
>
> 'The whereabouts of the detention centre...are not disclosed. Strict precautions are taken to keep the prisoner incommunicado at all times...When the prisoner first arrives at the interrogation centre he is deprived of his clothes, watches and spectacles. He is issued with prison clothing...Throughout the 60-day period the prisoner is kept in complete solitary confinement...Initially, a detainee is subjected to continuous interrogation for long periods without sleep. Periods of continuous interrogation from 48 to 72 hours were common...The detainee is held in a dimly lit, windowless cell with very poor ventilation...The prisoner is not allowed access to either a lawyer or a doctor. 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....Because of the complete lack of legal and medical safeguards, it is not surprising that ill-treatment and torture, both psychological and physical occurs during this 60-day period. 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 were willing by the end of the 60-day period to make 'confessions', acknowledging that they were a 'security threat' to the government and sympathised with the aims of the illegal Malayan Communist Party (MCP).... Many prisoners were also subjected to threats, not only against themselves, but also against their families.

As elsewhere, physical ill-treatment of detainees would seem 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 ill-treatment or torture. The whole interrogation process seeks to induce in the prisoner severe mental and physical stress....The monotony of the prisoners' diet, the timelessness in which prisoners were imprisoned, his complete isolation for the outside world and the continuing interrogation he s has to undergo gradually had a mentally debilitating effect on all prisoners. Interrogation usual took place in a brightly lit room with as many as four Special Branch officers grilling the prisoner at 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 changed -sometime daily - enhanced the prisoners's feelings of complete helplessness at his predicament.'

ENDNOTES

i.Malaysia has a total population of over 21 million people. Some 48 percent of the population is ethnic Malay, over 32 percent are ethnic Chinese and some 9 percent are ethnic Indian. Various native indigenous groups (including Kadazans, Bajaus and Ibans), mainly in Sabah and Sarawak, make up around 10 percent of the population. A Malay primacy within the polity is symbolised by the constitutional sovereignty of the Malay Rulers, particularly the *Yang di-Pertuan Agong* (King and Head of State), who is elected by, and from among, the nine hereditary state Sultans on a five-yearly rotation. Similarly, Bahasa Malaysia constitutes the official language. Islam constitutes the official religion of Malaysia and ethnic Malays are constitutionally required to be Muslim. However non-Malays are free to practice their own faiths.

ii. Political tensions had risen sharply after the 1969 Peninsular elections in which the UMNO-led ruling coalition lost its two-thirds parliamentary majority for the first time since Independence.

iii. 1985-1995 average GNP per capita growth rate was 5.7 percent; GDP growth averaged over 8 percent per annum, giving an average rise in per capita income of 5.7 percent. The urban population rose from around 33 percent in 1980 to over 55 percent in 1995, and by 1997 the average income per head reached US$4,850.

iv. The book *50 Reasons why Anwar should not be Prime Minister*, published in May 1998, alleged that Anwar Ibrahim was '*a womaniser and sodomite but also a murderer who has abused power and was at the same time a CIA agent and a traitor to the Nation*'. Anwar obtained a High Court interdict preventing the book's sale. The allegations it contained included those which had circulated in June 1997, when Anwar was Acting Prime Minister. Police investigations instituted on Dr Mahathir's return to Malaysia in August 1997dismissed the allegations as groundless. The Attorney General did not bring forward charges of sexual misconduct or corruption related to these allegations until September 1998.

v.Johan Jaafar of *Utusan Malaysia* and Ahmad Nazri of *Berita Harian*

vi. On 1 September Prime Minister Mahathir announced tight currency and stock-market controls in direct opposition to prevailing international pressure for greater liberalization.

vii. UN Charter, Articles 55(c) and 56.

viii. UN Sub-Commission Resolution 1988/24 - Question of Human Rights and States of Emergency, E/CN.4/1989/3)

ix. Article 40 of the Constitution.

x. See, *Law, Government and the Constitution in Malaysia*; A. Harding, Kluwer Law International, 1996.

xi. Dr Mahathir Mohamad ,*The Malay Dilemma*, 1970, Times Books International.

xii.The ruling UMNO-led coalition's worst result came in 1969 when it won only 48.5 percent of the vote and 66 of 103 seats, and risked losing its two-thirds parliamentary majority.

xiii.Tengku Razaleigh Hamzah formed *Semangat '46* after UMNO split in 1987. The party formed an alliance with PAS for the 1990 elections, but rejoined UMNO in 1998.

xiv. Article 121(1)(b)

xv. Equivalent to the Chief Justice of the US Supreme Court.

xvi. Paris Principles: Principles relating to the Status of National Institutions. Adopted by the UN Commission of Human Rights in March 1992: endorsed by the UN General Assembly in December 1993.

xvii. *Konfrontasi*: Indonesia opposed the 1963 inclusion of Sabah and Sarawak into the expanded Malaysian Federation and so launched a policy of *Konfrontasi* (Confrontation), including coercive diplomacy and military incursions, with a view to prompting international diplomatic interventions favourable to Jakarta's interests. After President Sukarno fell from power in 1966 *Konfrontasi* ended, and diplomatic relations were established in 1967.

xviii. In late 1998 government officials stated that 223 people remained in ISA detention. They disclosed that , in the period 1988-1998, no 'political' ISA detainees, except for suspected communists, had been held beyond the 60-day investigation period. Officials described the composition of these 876 'long-term' (over 60-days) ISA detainees as: 359 alleged Communists, 447 alleged identity paper forgers/'smugglers', 21 alleged 'religious extremists', nine alleged intelligence 'leakers', and one detainee allegedly involved in organising Achenese (Indonesian) separatists in exile in Malaysia.

xix. Adopted by the UN General Assembly resolution 43/173 of 9 December 1988.

xx. See *Freedom under Executive Power in Malaysia;* Rais Yatim; Endownment Sdn Bhd, Kuala Lumpur, 1995. See also,. Preventive Detention and Security Laws - A Comparative Survey; A. Harding & J. Hachard. 1993. Page 145 ' The question of *male fide* has to be decided in reference to the facts of each case. The onus of proving *male fide* is on the detainees. In the case of *Karam Singh v Menteri Hal Ehwal Dalam Negeri Malaysia* (1969) it was held that there is no onus on the part of the detaining authority to show its good faith.

xxi.After the Operation Lallang ISA arrests of October 1987, petitions for writs of *habeas corpus* on behalf of nine detainees were lodged at the High Court *during* the detainees' initial 60-day police detention. The petitions contended that the detentions were illegal and improper because, amongst other things, the arrests were conducted *male fide (*in bad faith). The authorities contended the only manner in which such a writ of habeas corpus could be entertained was if the detainees could prove that their arrest was effected because of an improper motive *(male fide)*. This placed the onus on the detainees to prove improper motive. Despite the fact that the detainees were not permitted to give testimonies the Court dismissed the petition. Three judges of the Supreme Court upheld the ruling. A numbers of applications for a writ of habeas corpus were also filed by ISA detainees *after* the issue of detention orders by the Minister. Karpal Singh, an lawyer and opposition Democratic Action Party (DAP) parliamentarian , who was permitted to represent himself, challenged the validity of his detention order on the grounds that *male fide* on the part of the detaining authority was evident in the whole process. One of the grounds for his arrest was proven to be factually wrong because he was not present at a place where he was alleged to have given 'the inciting speech'. The High Court ordered Karpal Singh's release, but he was re-arrested shortly afterwards under a new and separate detention order. The government subsequently appealed

this ruling to the Federal Court which overruled the High Court, stating that the sufficiency or insufficiency of the grounds of detention were not a matter for the courts to decide. They stated that the basis for an ISA detention,

> 'is something which exists solely in the mind of the Minister of Home Affairs and that he alone can decide and it is not subject to challenge or judicial review unless it can be shown that he does not hold the opinion which he professes to hold'.

xxii.*New Straits Times* (NST) 24/6/89.

xxiii.Source parliamentary questions 1993, 1994 by Kua Kia Soong MP.

xxiv. When an Amnesty International delegation visited Malaysia in 1978 government officials confirmed that they did not consider any of the detainees held at that time to be 'communist terrorists'.

xxv.The government focussed in particular on a dispute involving the proposed use of non Mandarin-speaking ethnic Chinese teachers in Chinese schools which had sparked an opposition DAP rally.

xxvi.*International Herald Tribune* 27/10/94.

xxvii. *Agence France Presse* (AFP) 18/12/96.

xxviii.NST 19/12/96.

xxix.'*50 Reasons why Anwar should not be Prime Minister*'.

xxx. Adopted by UN General Assembly resolution 3452 of 9 December 1975.

xxxi.Article 1 of the Torture Declaration:

1. '... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons...'.

2. 'Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment'.

xxxii.Principle 6: ' No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*. No circumstances whatever may be invoked as a justification for torture cruel or inhuman or degrading treatment or punishment.

*The term ' cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time'.

xxxiii. Minimum Rule 31: 'Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment shall be completely prohibited as punishments for disciplinary offences.'

xxxiv.'Report of an Amnesty International Mission to the Federation of Malaysia, 18 November - 30 November 1978' (AI Index: ASA 28/04/79) and; 'Malaysia 'Operation Lallang': Detention without Trial under the Internal Security Act' (December 1988, AI Index: ASA 28/18/88).

xxxv.NST 7/9/98.

xxxvi. Section 193 of the Penal Code, carrying a sentence of up to seven years jail and a fine.

xxxvii. Report of the Royal Commission of Inquiry.

xxxviii. Freedom of expression is not absolute. Every system of international and domestic rights recognises certain specified restrictions on freedom of expression, taking into account the overarching values of individual dignities and democratic society. Such restrictions include for example prevention of obscenity, and racial or ethnic hatred and the protection of personal reputation and public safety. Article 29 of the UDHR provides:

> 'In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by the law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society'.

xxxix. In 1985 Param Cumaraswamy had made an open appeal to the Pardons Board (whose advice the *Yang di-Pertuan Agong* is bound to accept in 'security' cases) to reconsider the unsuccessful petition for commutation of (ethnic Chinese) Sim Kie Chon, who had been given a mandatory death sentence under the ISA for possession of an unlicensed revolver and five rounds of ammunition. Mr Cumaraswamy raised concern at the manner in which the Pardons Board exercised its prerogative in light of an earlier, more serious ISA firearms possession case involving former (Malay) government Minister Mokhtar Hashim whose mandatory death sentence was commuted by the *Yang di-Pertuan Agong* after the minister had been found guilty of procuring the killing of a political rival. Mr Cumaraswamy was charged with uttering seditious words which were likely to create 'discontent and disaffection' among the people with the *Yang di Pertuan Agong*, the Rulers and the administration of justice. In a decision which was regarded as an important indicator of judicial independence in that period, and which limited the restrictions imposed by the Sedition Act on constitutional freedom of expression, the High Court found the defendant not guilty. In his judgement Mr Justice N.H Chan stated, 'in this country we do not have a jury for the trial of sedition cases...But we do have independent judges. The line between criticism and sedition is drawn by a judge who is independent of the party in power in the State',

xl.*The Star* 7/9/87.

xli.In a further curb on royal prerogatives the constitution was amended in 1994 so that all Acts of Parliaments were deemed to have been assented to by the *Yang di-Pertuan Agong* after thirty days following approval by both Houses, even if assent was not formally granted.

xlii.In January 1996 the Supreme Council of UMNO decided to reinstate Abdul Rahim Tamby Chik to all his party posts after the Attorney General dropped charges against him in a case involving allegedly corrupt links to land deals. The former Chief Minister and UMNO Youth President had resigned in October 1994 as controversy over the alleged rape case intensified. In October 1996 the UMNO Youth General Assembly voted him out as UMNO Youth President.

xliii.*The Star* 9/11/94.

xliv.On World Press Freedom Day on 3 May 1999 581 Malaysian journalists signed a Memorandum to the Home Minister calling for the repeal of the PPPA. They drew attention to the powers under the Act to shut down a newspaper, withdraw a publisher's license indefinitely and to 'arrest without a warrant any person found committing any offence under this Act'. They acknowledged the need for certain controls so that irresponsible journalism would not provoke social unrest and proposed the creation of an independent regulatory Press Council.

xlv. In October 1995 Amnesty International wrote to the Deputy Minister expressing concern that the Visitors' Panel - comprising former civil servants, media representatives and members of some NGOs - had not been granted authority to investigate the causes of the deaths in the detention centres. Amnesty International urged the Deputy Minister to establish a full independent inquiry into the deaths and to investigate all allegations of torture or ill-treatment, making the findings public. In April 1996 the Home Ministry confirmed that 71 migrant worker detainees (including 37 Bangladeshis) had died since 1992. The Ministry stated that an internal investigation committee had found that these deaths were not due to abuse or torture, and that health conditions and food, water and medical supplies in the camps were satisfactory. Allegations of sexual abuse of female detainees were dismissed. In December 1996 the Visitors' Panel concluded its investigation and submitted a report to the Home Ministry stating that it had found no evidence to suggest abuse and ill-treatment of migrant workers in the detention camps. To Amnesty International's knowledge the full report of the Visitors' Panel has not been made public.

xlvi. UN Basic Principles on the Role of Lawyers, which states in Principle 16 that:

> 'Governments shall ensure that lawyers are...able to perform all their professional functions without intimidation, hindrance, harassment or improper interference...'

xlvii. *NST* 4/5/99.

xlviii.*The Star* 23/06/96.

xlix. *Reuters* 10/07/96.

l. *AFP* 18/12/96

li. *NST* 19/12/96.

lii. *AFP* 30 Oct 98

liii. On 15 April 1999 a newly formed group calling itself the Malaysian National Council of Students submitted a memorandum to the Chief Justice of Malaysia expressing concern at the independence and fairness of the courts and calling for reforms in the Judiciary.

liv. *NST* 29/09/98.

lv. *NST* 30/9/98.

lvi. *NST* 27/4/99.

lvii. *NST* 16/6/99.

lviii. *NST* 24/6/99.

lix. *The Star* 25/7/99.

lx. Additionally, Article 2(1) of the Declaration on Human Rights Defenders states: Each state has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia* by adopting such steps as may be necessary to create all conditions necessary in social, economic, political as well as other fields and the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all these rights and freedoms in practice'.

lxi. *AFP* 19/9/97

lxii. *NST* 25/5/99.

lxiii. Under Article 5 (4) of the Constitution when a person is arrested and detained by police he or she must be brought before a magistrate within 24 hours. Under Section 117 of the Criminal Procedure Code (CAC) the police, if they believe investigations are not complete, can apply to the magistrate for a remand order to extend custody for maximum of a further 14 days.

lxiv. *AFP* 28/9/98.

lxv. *AFP* 28/9/98.

lxvi. *Associated Press*, 30/4/99.

lxvii. Malaysian Constitution, Article 5(3)

lxviii. Principle 15 'Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family of counsel, shall not be denied for more than a couple of days'. See also Principle 18(3):*(endnote* 73).

lxix. In 1997 seven men were detained under Section 28 of the Penang *Syariah* Criminal Offences Enactment (1996) and six of the men were fined RM 900 each or five months in jail for cross-dressing at a public place for immoral purposes. State Religious Department officers also raided a well-known Penang cabaret club, and arrested six cross-dressers between performances.

lxx. *South China Morning Post* 22/9/98 and *The Sun* 20/9/98.

lxxi. *NST* 20/9/99.

lxxii. On 16 September 1998 Mohamad Azmin Ali was remanded to prison to 'facilitate investigations' into the book *Fifty Reasons why Anwar should not be Prime Minister*. He was released unconditionally on 22 September 1998.

lxxiii. Principle 18(3) 'The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order'.

lxxiv. *Newsweek*, 5/10/98.

lxxv. *NST* 23/9/98.

lxxvi.Amnesty International observers attending the trial at stages in October-November 1997, and in January and March 1999.

lxxvii. *The Star* 3/11/98.

lxxviii. Principle 16: 'Governments shall ensure that lawyers are (a) able to perform all their professional functions without intimidation, hindrance, harassment or improper interference;...(c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics'.

Principle 18: ' Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.'

Principle 20: 'Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.'

lxxix. *Straits Times* 4/12/98.