

White Paper
On the Case of

Anwar Ibrahim
Citizen of Malaysia



v.

Government of Malaysia

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Executive Summary

Anwar Ibrahim, former Deputy Prime Minister of Malaysia and former political opposition leader, is serving a five-year sentence on fabricated sodomy charges. Anwar's infamous trial, which began in 2008 and concluded in February 2015, was replete with human rights violations and a lack of due process protections. Among them was a complete lack of credible evidence of the alleged act and blatant partiality in favor of the prosecution. In Malaysia, the trial was dubbed "Sodomy II" because, incredibly, Anwar was also accused and convicted on fabricated sodomy once before in 1998. As both cases are widely considered to be fabricated, it was also dubbed "Fitnah II," which in the local language means slander.

Despite systematic political persecution against him, Anwar has stayed active in politics throughout nearly all of his adult life. He served in succession as the Minister of Culture, Youth, and Sports in 1983, of Agriculture in 1984, of Education from 1986-91, and was appointed Minister of Finance from 1991-98. In 1993, Anwar also became Deputy Prime Minister for then Prime Minister Mahathir Mohamad, a position he held until 1998.

After he was released from prison in the first sodomy case in 2004, Anwar emerged as the leader of a new party dedicated to a unified Malaysia, not defined by race or religion, but dedicated to equality of opportunity, and economic and social justice. Anwar's party, the National Justice Party (later called the People's Justice Party), in coalition with other opposition parties, gained enough power and parliamentary seats in elections to threaten the establishment party, United Malays National Organization (UMNO), and current Prime Minister Najib Razak.

Anwar's current detention starting in February 2015 is punishment for having exercised his fundamental human rights to freedom of opinion and expression, and political participation. Najib considers Anwar – and the promise of a democratic Malaysia he represents – to be a threat to his hold on power as the coalition led by Anwar won 51 percent popular support in the last general election. The fabricated sodomy charges are an attempt to silence Anwar and prevent him from participating in Malaysian politics.

The UN High Commissioner for Human Rights, the European Union and Parliament, the Inter-Parliamentary Union (IPU), Association of Southeast Asian Nations (ASEAN), Parliamentarians for Human Rights, Amnesty International, Human Rights Watch, the US Government, the UK Government, the Australian Government, and leading intellectual leaders, among others, have publically criticized Anwar's politically-motivated conviction; many have called for his immediate release. The UN Working Group on Arbitrary Detention (Working Group) found Anwar's detention to be arbitrary and in violation of international law, and also urged his immediate release.

To date, the conditions of Anwar's detention are extremely troubling. He suffers from a serious shoulder injury, and he is being denied adequate necessary medical treatment, which constitutes cruel, inhuman, and degrading treatment, and may amount to torture. This was noted in the Working Group's opinion and in an October 2015 statement by the Inter-Parliamentary Union.

I. Background Context and Political Situation in Malaysia

Despite Malaysia's reputation as a moderate Muslim nation, the Malaysian Government has undertaken an intensifying crackdown on political opposition and dissent. When Najib Razak assumed office in 2009, there was hope that the country, which had been ruled by the same party since it gained independence from Britain in 1957, might be capable of making a true democratic transition.² Najib promised to eliminate preferences favoring ethnic Malays, reduce police powers, repeal a repressive anti-sedition law, and promote free and fair elections.³

Despite these promises, Najib has overseen an increasing crackdown against his political opponents and on basic freedoms, which started in 2013 when the ruling *Barisan Nasional* (BN) coalition lost the popular vote to the multi-ethnic People's Alliance (*Pakatan Rakyat* or PR) coalition in national elections.⁴ His ruling party, United Malays National Organization (UMNO), part of the BN coalition, clung to power only through the gerrymandering of electoral boundaries.⁵ In the aftermath of the election, Najib launched a campaign aimed at crippling the opposition.⁶ Crackdowns on peaceful assembly, restrictions on the media, censorship of books and films, and targeting of ethnic and religious minorities have been on the rise since then.⁷

Meanwhile, Najib's administration has also led Malaysia in a direction of increased Islamization. Senior leaders within Najib's UMNO party have openly supported calls for the implementation of Islamic criminal law, or *hudud*, from conservative Islamists in the north,⁸ Najib himself has supported court bans on non-Muslims using the word "Allah,"⁹ and Najib's administration has developed a "Sharia Index" to measure how well the Government is complying with Islamic principles across legal, economic, political and social issues with the ultimate goal of making them aligning more closely.¹⁰ This trend towards conservative and illiberal Islamization is worrying for the roughly one-third of the country's population who are non-Muslim.¹¹ Najib has even showered praise on the Islamic State of Iraq and the Levant (ISIL or ISIS), saying that if UMNO members were as brave as ISIS militants, the party would be strong.¹²

² Editorial Board, *Malaysia's Political Backslide*, WASHINGTON POST, Feb. 11, 2015, available at https://www.washingtonpost.com/opinions/malaysias-reversal/2015/02/11/d116f182-b21a-11e4-827f-93f454140e2b_story.html [hereinafter *Malaysia's Political Backslide*].

³ *Id.*

⁴ Phil Robertson, *Anwar Imprisoned, Malaysia Rights in Free Fall*, CNN, Feb. 16, 2015, available at <http://www.cnn.com/2015/02/16/opinion/malaysia-anwar-human-rights-watch/> [hereinafter Robertson].

⁵ *What's Malay for Gerrymandering?*, THE ECONOMIST, Aug. 9, 2014, available at <http://www.economist.com/news/asia/21611139-years-delineation-electoral-boundaries-will-determine-future-malaysian-politics-whats>.

⁶ *Malaysia's Political Backslide*, *supra* note 2; Robertson, *supra* note 4.

⁷ Robertson, *supra* note 4.

⁸ Al-Zaquan Amer Hamzah, *Islamic Law Debate Puts More Pressure on Malaysia PM*, REUTERS, Apr. 16, 2015, available at <http://www.reuters.com/article/us-malaysia-politics-islam-idUSKBN0N70BH20150416>.

⁹ *Malaysian PM Supports Court Ban on Non-Muslims Using the Word 'Allah'*, ABC, Jan. 24, 2014, available at <http://www.abc.net.au/news/2014-01-25/malaysian-pm-razak-says-christians-must-heed-27allah27-ban/5218608>.

¹⁰ *Non-Muslims in Malaysia Worry About Increasing Islamization*, CCTV NEWS, Feb. 16, 2015, available at <http://www.cctv-america.com/2015/02/16/non-muslims-in-malaysia-worry-about-increasing-islamization>.

¹¹ *Id.*

¹² *Najib Stirs Up Controversy With UMNO-ISIS Comment*, CHANNEL NEWS ASIA, Jun. 24, 2014, available at <http://www.channelnewsasia.com/news/specialreports/mh370/news/najib-stirs-up/1200122.html>; Najib has

Najib has also initiated the return of overbroad security measures to try and repress political dissent. In April 2015, Najib promoted a new Prevention of Terrorism Act that gives the Government the right to detain terror suspects for at least two years, with the possibility of extensions and restriction of movement for five years.¹³ Additionally, instead of repealing the colonial-era Sedition Act as promised, he has strengthened it with even more draconian provisions – changing the penalty for sedition from a fine and the possibility of jail to a mandatory jail sentence of three to seven years,¹⁴ and introducing a penalty of up to 20 years for seditious activities that result in physical harm or destruction of property.¹⁵ Especially concerning are the amendments targeting publications, enabling the Government to prohibit any publication that “appears to be promoting feeling of ill will, hostility or hatred” between different social, ethnic, or religious groups.¹⁶ UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein expressed concern over the amendments to the Sedition Act shortly before they passed, saying, “The UN Human Rights Office has long urged Malaysia to either repeal the 1948 Sedition Act or to bring it in line with international human rights standards...It is very disappointing that the Malaysian Government is now proposing to make a bad law worse.”¹⁷

Najib’s government continues to intimidate and silence any opposition. In addition to his political strategy of dividing the opposition by encouraging conservative Islamic positions and aggravating racial and religious tensions,¹⁸ Najib has also made use of time-consuming legal distractions that significantly interfere with the political work of opposition leaders and tarnish reputations. For example, Anwar’s daughter, Nurul Izzah Anwar, herself a Member of Parliament, was arrested on March 16, 2015 for sedition because of a speech she made in parliament that was critical of the judiciary and Anwar’s conviction.¹⁹ Human Rights Watch called her arrest “another step towards the destruction of rights-respecting democracy in Malaysia.”²⁰ Over twenty elected representatives from the opposition parties now face either sedition or other criminal charges that may disqualify them from further political participation. These include two of Anwar’s own lawyers, N. Surendran and Sivarasa Rasiah, also Members of Parliament, who were also charged for speeches criticizing Anwar’s conviction.

since condemned ISIS in a statement at the UN General Assembly. Statement by The Honourable Mohd Najib Tun Abdul Razak Prime Minister Of Malaysia, Sept. 26, 2014, *available at* http://www.un.org/en/ga/69/meetings/gadebate/pdf/MY_en.pdf.

¹³ *Lurch to Illiberalism*, THE ECONOMIST, Apr. 11, 2015, *available at*

<http://www.economist.com/news/asia/21648027-anti-terror-law-curtails-liberties-lurch-illiberalism>.

¹⁴ *Malaysia Toughens Sedition Law to Include Online Media Ban, Mandatory Jail*, REUTERS, Apr. 10, 2015, *available at* <http://www.reuters.com/article/us-malaysia-lawmaking-sedition-idUSKBN0N10AD20150410>.

¹⁵ Mong Palatino, *Malaysia Strengthens Sedition Act*, THE DIPLOMAT, Apr. 13, 2015, *available at* <http://thediplomat.com/2015/04/malaysia-strengthens-sedition-act/>.

¹⁶ *Id.*

¹⁷ *Malaysia: Draft Anti-Terror and Sedition Laws Seriously Undermine Freedom of Expression and Opinion*, OHCHR, Apr. 9, 2015, *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15810&LangID=E>.

¹⁸ *Disconnect: A Thuggish Government is Playing Racial Politics*, THE ECONOMIST, Apr. 11, 2015, *available at* <http://www.economist.com/news/leaders/21647972-thuggish-government-playing-racial-politics-najib-razak-should-be-dressed-down-disconnect> [hereinafter *Disconnect*].

¹⁹ *Anwar Ibrahim’s Daughter Arrested in Latest Move Against Malaysian Opposition*, THE GUARDIAN, Mar. 16, 2015, *available at* <http://www.theguardian.com/world/2015/mar/16/nurul-izzah-anwar-arrest-criticised-malaysia-opposition-anwar-ibrahim>.

²⁰ *Id.*

Additionally, Section 124 of the Penal Code, a legal measure added to the Government's arsenal in March 2012, vaguely criminalizes any "activity detrimental to parliamentary democracy," making such offenses punishable by up to 20 years in prison.²¹ This new law lay dormant for 2 years, but is now being used to target and silence members of the opposition. It has been regularly used to threaten peaceful student protesters as well as the members of an investigation into corruption allegations against Najib.²² Additionally, the investigation into Anwar's daughter Nurul Izzah was also initially investigated under Section 124B in March 2015.²³ It is estimated that, while at least 138 of these cases have been opened by Najib's administration in 2015 alone, not a single extremist or terrorist has been properly charged with the offense.²⁴

Najib's opponents also face unique barriers to participating in political processes, as they are occasionally prohibited from campaigning in BN strongholds. On May 2, 2016, Nurul Izzah was barred from entering Sarawak, one of Malaysia's semiautonomous states, after attempting to campaign in the local election, an election described by Najib as a "precursor" of the next general election in 2018.²⁵ Opposition Members of Parliament Tony Pua, Rafizi Ramli, and Teresa Kok were also barred from entering the state.²⁶

This campaign of intimidation has also extended to Malaysian media outlets sympathetic to the opposition. In March 2015, three editors and two executives at *The Malaysian Insider* were arrested under the Sedition Act after the news site published an article about a proposal to allow strict enforcement of Islamic law.²⁷ On April 3, 2015, cartoonist Zulkiflee Anwar Ulhaque, known as Zunar, was charged with nine counts of sedition for a series of tweets criticizing how the judiciary handled Anwar's case.²⁸ Most recently, on February 25, 2016, the Malaysian Communications and Multimedia Ministry blocked access to *The Malaysian Insider*'s portal, such that those who tried to access the news site were met with the message: "The website is not available in Malaysia as it violate(s) the National law(s)."²⁹ It has since closed down as a direct impact of that

²¹ Surendra Ananth, *Section 124B: A Neutral Comment on 'Activities Detrimental to Parliamentary Democracy'*, MALAY MAIL ONLINE, Aug. 3, 2015, available at <http://www.themalaymailonline.com/what-you-think/article/section-124b-of-the-penal-code-a-neutral-comment-on-activities-detrimental>.

²² *Section 124B of the Penal Code Must Not be Used to Curb Freedom of Assembly*, Aug. 28, 2015, available at http://www.malaysianbar.org.my/legal/general_news/press_release_%7C_section_124b_of_the_penal_code_must_not_be_used_to_curb_freedom_of_assembly.html.

²³ Elizabeth Zachariah, *Nurul Izzah Next to be Questioned by Cops Over Links with Justo*, THE MALAYSIAN INSIDER, Sept. 17, 2015, available at <http://www.themalaysianinsider.com/malaysia/article/nurul-izzah-next-to-be-questioned-by-cops-over-links-with-justo>.

²⁴ *How Najib Plans to Eliminate the Opposition*, SARAWAK REPORT, Oct. 8, 2015, available at <http://www.sarawakreport.org/2015/10/how-najib-plans-to-eliminate-the-opposition/>.

²⁵ *Malaysian State Bars Lawmaker Nurul Izzah Anwar from Campaigning*, THE NEW YORK TIMES, May 3, 2015, available at http://www.nytimes.com/2016/05/04/world/asia/malaysia-sarawak-election.html?_r=0.

²⁶ *Id.*

²⁷ Austin Ramzy, *Editors and Executives of News Website Malaysian Insider Are Arrested*, NEW YORK TIMES, Mar. 31, 2015, available at <http://www.nytimes.com/2015/04/01/world/asia/malaysian-insider-arrests.html>.

²⁸ *Malaysian Cartoonist Zunar Charged With Nine Counts of Sedition*, WALL STREET JOURNAL, Apr. 3, 2015, available at <http://www.wsj.com/articles/malaysian-cartoonist-zunar-charged-with-nine-counts-of-sedition-1428040017>.

²⁹ Tarrence Tan, *The Malaysian Insider Blocked by MCMC*, FREE MALAYSIA TODAY, Feb. 25, 2016, available at <http://www.freemalaysiatoday.com/category/nation/2016/02/25/the-malaysian-insider-blocked-by-mcmc/>.

Punitive action.³⁰

Najib has also employed these laws to attempt to silence critics on his 1Malaysia Development Berhad (1MDB Fund), which is \$12 billion in debt.³¹ 1MDB is the government-owned investment and development company that was set up by Najib in 2009 to address “strategic development” in Malaysia. PKR politician Rafizi Ramli and Public Accounts Committee member Tony Pua are two of the people who have been targeted for merely attempting to do their jobs and hold the Government to account for the apparent mismanagement and misappropriation of funds of 1MDB.³² The former political secretary to the previous Prime Minister Dr. Mahathir Mohamad, Matthias Chang, was also jailed recently for defending a client who made reports of corruption at 1MDB.³³

Recent events involving the misuse of 1MDB funds became personal for Najib when a July 2015 *Wall Street Journal* article publicized that \$700 million of unaccounted money were found in Najib’s personal accounts.³⁴ Since that revelation, Najib has removed four high-ranking cabinet members, including his Deputy Prime Minister, and fired the Attorney General investigating the allegations of corruption.³⁵ On October 8, 2015, Najib’s new Attorney General went so far as to throw out the Central Bank’s evidence of corruption at 1MDB. In February 2016, he shut down a major domestic investigation of the case by the Malaysian Anti-Corruption Commission.³⁶ At the end of March 2016, it was revealed that Najib has spent approximately \$15 million on luxury items, which are believed to have been paid for with money originating from the 1MDB Fund.³⁷ The Prime Minister’s stepson, Riza Aziz, also allegedly spent over \$50 million from 1MDB to purchase luxury properties in New York and Beverly Hills, according to a May 12, 2016 report by *The Wall Street Journal*.³⁸ One month after the Malaysian Parliament’s bipartisan Public Accounts Committee released its April 2016 report criticizing the 1MDB advisory board’s management of the fund and calling for the abolishment of the board, then headed by Najib, Malaysia’s Finance Ministry dissolved the advisory board.³⁹ In July 2016, the US Government filed a formal complaint to

³⁰ Yantoultra Ngui, *Malaysian Insider to Close After Government Blocked It Following 1MDB Coverage*, WALL STREET JOURNAL, Mar. 14, 2016, available at <http://www.wsj.com/articles/malaysian-insider-news-site-closing-1457942708>.

³¹ *Disconnect, supra* note 18; *More Smear Tactics and Black Ops by Najib’s PR Hit Team*, SARAWAK REPORT, May 12, 2015, available at <http://www.sarawakreport.org/2015/05/more-smear-tactics-and-black-ops-by-najibs-pr-hit-team-anwar-and-dr-m-both-targets-exclusive/> [hereinafter *More Smear Tactics*].

³² *How Najib Plans to Eliminate the Opposition, supra* note 24.

³³ *Id.*

³⁴ Eileen Ng, *Malaysian Leader Silences Critics, Media to Survive Scandal*, ASSOCIATED PRESS, Aug. 16, 2015, available at <http://bigstory.ap.org/article/ea6760c46ddc4a74baf01e3af17d680e/malaysian-leader-silences-critics-media-survive-scandal>.

³⁵ *Malaysia PM Najib Razak Sacks Deputy Over 1MDB Scandal*, BBC, July 28, 2015, available at <http://www.bbc.com/news/world-asia-33684987>.

³⁶ *How Najib Plans to Eliminate the Opposition, supra* note 24.

³⁷ Tom Wright & Bradley Hope, *1MDB Probe Shows Malaysian Leader Najib Spent Millions on Luxury Goods*, WALL STREET JOURNAL, Mar. 30, 2016, available at <http://www.wsj.com/articles/malaysian-leader-spent-millions-on-luxury-goods-1459383835>.

³⁸ Bradley Hope & Tom Wright, *Malaysian Leader Najib’s Stepson Allegedly Funded U.S. Property Deals with 1MDB Money*, WALL STREET JOURNAL, May 4, 2016, available at <http://www.wsj.com/articles/malaysian-leader-najibs-stepson-allegedly-funded-u-s-property-deals-with-1mdb-money-1463022324>.

³⁹ Shannon Teoh, *1MDB Parliamentary Probe Blames ex-CEO; Board of Directors Resign*, THE STRAITS TIMES, April 7, 2016, available at <http://www.straitstimes.com/asia/se-asia/malaysias-parliamentary-panel-blames-founding-chief-executive-for-1mdb-woes>; see also Yantoultra Ngui, *Malaysia to Dissolve 1MDB Board Headed by Prime Minister Najib Razak*, WALL STREET JOURNAL, May 4, 2016, available at

seize more than \$1 billion in assets purchased with 1MDB.⁴⁰ In September 2016, it was confirmed that Najib was named, through a pseudonym, in that complaint.⁴¹

Najib's frustration with the US Government's actions has led him to develop closer ties with China.⁴² In an attempt to cover-up financial misconduct related to the 1MDB scandal, Najib and his cabinet reportedly struck a deal with the Chinese state company China Communications Construction Company to pay off over \$7 billion in debt in July 2016.⁴³ Most recently, in early November 2016 Najib travelled to China to meet with Chinese President Xi Jinping to further solidify the countries' relationship.⁴⁴ Calling himself a "true friend" of China,⁴⁵ Najib concluded nearly \$34 billion worth of deals, including an unprecedented national defense contract to purchase four Chinese naval vessels.⁴⁶

Claiming to combat social unrest and political instability, the Government has also revoked the publishing license of two news outlets that reported on the corruption, threatened sanctions on social media sites that allow the spread of news, and rejected applications to protest by organizing groups.⁴⁷ In advance of an August 2015 demonstration in Kuala Lumpur, Najib's Home Minister banned the group's signature yellow T-shirts carrying the word "clean" in Malay – shirts owned by tens of thousands of people, fed up with a government that has proven to be far from clean.⁴⁸ On February 19, 2016, the High Court upheld the edict that declared the shirt a threat to national security.⁴⁹ And prior to that ruling, on December 22, 2015, the Government passed a new National Security Council bill that gives the Government the ability to declare "security zones," within which authorities would have nearly unrestrained powers to make arrests – leaving critics fearing that political opponents will once again be targeted under the guise of national security.⁵⁰ Under Najib's administration, those brave enough to criticize the regime are seldom surviving unscathed.

<http://www.wsj.com/articles/malaysia-to-dissolve-1mdb-board-headed-by-prime-minister-1462350611#:dI8Cq-f2rT2INA>.

⁴⁰ Louis Story, *U.S. Targets \$1 Billion in Assets, in Malaysian Embezzlement Case*, NEW YORK TIMES, July 20, 2016, available at <http://www.nytimes.com/2016/07/21/world/asia/1mdb-malaysia-us-assets-seized.html>.

⁴¹ Leslie Schaffer, *PM Najib is 'Malaysian official 1' named in DOJ probe, says minister*, CNBC, Sept. 1, 2016, available at <http://www.cnbc.com/2016/09/01/pm-najib-is-malaysian-official-1-named-in-doj-probe-says-minister-bbc.html>.

⁴² Jane Perez, *Leader of Malaysia, Miffed at U.S., Visits China With a Deal in Mind*, NEW YORK TIMES, Oct. 31, 2016, available at <http://www.nytimes.com/2016/11/01/world/asia/malaysia-china.html>.

⁴³ *Najib's Secret Deal With China To Pay Off 1MDB (And Jho Low's) Debts!*, SARAWAK REPORT, July 26, 2016, available at <http://www.sarawakreport.org/2016/07/outrage-najibs-secret-deal-with-china-to-pay-off-1mdb-and-jho-lows-debts-shock-exclusive/>.

⁴⁴ *Leader of Malaysia, Miffed at U.S., Visits China With a Deal in Mind*, *supra* note 42.

⁴⁵ Simon Denyer, *On Duterte's Heels, Malaysia Is the Next Asian Country to Embrace China*, WASHINGTON POST, Oct. 31, 2016, available at https://www.washingtonpost.com/world/asia_pacific/domino-theory-or-hedging-after-the-philippines-now-malaysia-embraces-china/2016/10/31/d30984ea-9f63-11e6-b74c-603fd6bbc17f_story.html.

⁴⁶ Joesph Sipalan, *Malaysia's Najib Risks Backlash At Home After Deals with China*, REUTERS, Nov. 7, 2016, available at <http://www.reuters.com/article/us-malaysia-china-idUSKBN1320EY>.

⁴⁷ Beh Lih Yi in Jakarta, *Sarawak Report Whistleblowing Website Blocked by Malaysia After PM Allegations*, THE GUARDIAN, July 20, 2015; see also Al-Zaquan Amer Hamzah, *Malaysia to Block Websites Promoting Anti-Government Rally*, REUTERS, Aug. 27, 2015, available at <http://www.reuters.com/article/2015/08/27/us-malaysia-protests-idUSKCN0QW0TL20150827>.

⁴⁸ Richard C. Paddock, *Malaysian High Court Upholds T-Shirt as a Security Threat*, NEW YORK TIMES, Feb. 24, 2016, available at <http://www.nytimes.com/2016/02/25/world/asia/malaysia-bersih-yellow-t-shirts-ban.html>.

⁴⁹ *Id.*

⁵⁰ Prashanth Parameswaran, *Malaysia Passes Controversial National Security Law*, THE DIPLOMAT, Dec. 24, 2015, available at <http://thediplomat.com/2015/12/malaysia-passes-controversial-national-security-law/>.

Recently, the Government has also been considering amending the Official Secrets Act of 1972 (OSA) as a further means of suppressing dissent. The amendments under consideration include the increased punishment of life imprisonment and ten lashes for those found guilty of leaking “state secrets.”⁵¹ The maximum current punishment is only seven-years imprisonment. Former Attorney General Tan Sri Talib Othman has called the proposal “disproportionate to the nature of the offence,”⁵² and media organizations around the world have raised serious concerns. For example, the Centre for Independent Journalism issued the statement that it “is appalled at the most recent assault against the right to freedom of expression and information and its critical role in upholding democracy in Malaysia. We refer to the proposal by Attorney-General Mohamad Apandi Ali to increase the punishment under the already heavy-handed Official Secrets Act ...to target journalists.”⁵³

In the wake of the opinion of the UN Working Group on Arbitrary Detention (Working Group) that Anwar is arbitrarily detained, on April 5, 2016 Malaysia’s Foreign Minister Datuk Seri Anifa Aman, in a written statement in Parliament, said that Anwar did not meet the criteria to qualify as a political prisoner, claiming that his trial was free from executive and legislative interference.⁵⁴ Anifah further stated that the Working Group is only comprised of five individuals and hence, its stance does not reflect that of the United Nations.⁵⁵ He also reiterated that the Working Group’s opinion is not legally binding.⁵⁶

Meanwhile, Najib has continued to bolster his grip on power and interferes with the opposition activities where possible. On May 3, 2016, Anwar’s daughter, Nurul Izzah Anwar, was barred from participating in a local election campaign in the Sarawak (a semiautonomous state) and forced to leave.⁵⁷ She was subjected, like many other political leaders and activists, to the ban on “unsavory elements” that was imposed a month earlier by Sarawak’s Chief Minister, Mr. Adenan Satem.⁵⁸ Mr. Adenan, who is also known to be a close ally of Mr. Najib, said in an interview that “there will be no lifting of the ban” but the opposition was “at liberty to come to Sarawak after the election.”⁵⁹

⁵¹ Hanis Maketab, *Malaysian Journalists Criticize Proposal to Increase Punishment for Whistleblowers*, ASIAN CORRESPONDENT, Feb. 10, 2016, available at <https://asiancorrespondent.com/2016/02/malaysian-journalists-criticize-proposal-to-increase-punishment-for-whistleblowers/>.

⁵² Anisah Shukry, *Punishment for Whistleblowers Uncalled for, Says Former A-G*, THE MALAYSIAN INSIDER, Feb. 9, 2016, available at <http://www.themalaysianinsider.com/malaysia/article/punishment-for-whistleblowers-uncalled-for-says-former-a-g>.

⁵³ CENTRE FOR INDEPENDENT JOURNALISM, *CIJ Condemns A-G’s Proposal for Heavier Punishment for Journalists, Informants*, Feb. 6, 2016, available at <https://www.facebook.com/notes/centre-for-independent-journalism/cij-condemns-ags-proposal-for-heavier-punishment-for-journalists-informants/1249746521707336>.

⁵⁴ Koi Kye Lee, *Anwar Ibrahim Doesn’t Meet ‘Political Prisoner’ criteria*, NEW STRAITS TIMES ONLINE, April 5, 2016, available at <http://www.nst.com.my/news/2016/04/137438/anwar-ibrahim-doesnt-meet-political-prisoner-criteria>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Richard C. Paddock, *Malaysian State Bars Lawmaker Nurul Izzah Anwar From Campaigning*, THE NEW YORK TIMES, May 3, 2016, available at http://www.nytimes.com/2016/05/04/world/asia/malaysia-sarawak-election.html?_r=0.

⁵⁸ *Id.*

⁵⁹ Peter Sibon, Lian Chenc and Karen Bong, *CM: It’s Our Right to Bar Unsavory Characters from Entering Sarawak*, BORNEO POST ONLINE, April 13, 2016, available at <http://www.theborneopost.com/2016/04/13/cm-its-our-right-to-bar-unsavory-characters-from-entering-sarawak/>.

Another strategy of Najib to strengthen his government is the rewarding of party loyalists. For example, on June 8, 2016, Shafee Abdullah, the Chief Prosecutor for Anwar's appeal, was appointed as Ambassador-at Large for Human Rights for a 2-year term (from 2016–2018).⁶⁰ According to the Malaysian Government, this appointment is a “manifestation of ... Malaysia's firm commitment to enhance engagement in addressing human rights issues with all stakeholders, including civil society organizations (CSOs), academia, Government agencies and international organizations on human rights issues.”⁶¹ This strategy also includes the removal of those less supportive to Najib. Accordingly, on June 24, 2016, Najib expelled his then-deputy Muhyiddan Yassin and Mukhriz Mahathir, son of former premier Mahathir Mohamad.⁶² A surprise meeting with Mahathir Mohamed and Anwar followed Najib's firing of Mahathir Mohamed's son. This was the first time the two rivals have met in 18 years; their meeting signals a potential unity in the wake of the scandal-tainted and repressive administration of Najib.⁶³

In the face of mounting protest against him, Najib has most recently begun preemptively arresting opposition leaders in an attempt to suppress popular dissent. Prior to a weekend rally on November 19, 2016, which drew crowds in the tens of thousands, Najib had eight rally organizers arrested.⁶⁴ They included Bersih chairwomen, Maria Chin Abdullah, who is now being held under the draconian Security Offences Act.⁶⁵ Amnesty International decried the “crude and heavy-handed attempt to intimidate” and designated those arrested as prisoners of conscience who must be released immediately and unconditionally.⁶⁶

II. Biography of Anwar Ibrahim

Anwar Ibrahim was born in a village near Penang, Malaysia on August 10, 1947. His parents were a hospital medical assistant and a housewife who became engaged in local grassroots politics early on. Anwar became involved in politics in 1971 as a pro-Islam student leader, founding the Muslim Youth Movement of Malaysia. He remained its president until 1982.⁶⁷ Although he was a leader of opposition groups – in fact he was jailed under the Internal Security Act for two years for organizing mass demonstrations in 1974 – Anwar accepted an invitation in 1982 to join the ruling United Malays National Organization (UMNO). Rising quickly through the ranks of the party, he served in succession as the

⁶⁰ *Press Release: Appointment of Ambassador-At-Large for Human Rights*, MINISTRY OF FOREIGN AFFAIRS PUTRAJAYA, June 8, 2016, available at <http://bit.ly/1U963B6>.

⁶¹ *Unmo Lawyer Shafee Appointed Malaysia's Human Rights Envoy*, MALAYMAIL ONLINE, June 9, 2016, available at <http://www.themalaymailonline.com/malaysia/article/umno-lawyer-shafee-appointed-malaysias-human-rights-envoy>.

⁶² Pooi Koon Chong and Manirajan Ramasamy, *Najib Rewards Party Loyalists in Malaysia Cabinet Rejig*, BLOOMBERG, June 27, 2016, available at <http://www.bloomberg.com/news/articles/2016-06-27/najib-rewards-loyalists-in-malaysia-cabinet-rejig-amid-tensions>.

⁶³ Joseph Sipalan, *Malaysia's Mahathir and bitter foe Anwar shake hands in first meeting after 18 years*, REUTERS, Sept. 5, 2016, available at <http://www.reuters.com/article/us-malaysia-politics-mahathir-idUSKCN11B1BB>.

⁶⁴ Richard Paddock, *Tens of Thousand of Protesters Call for Najib Razak, Malaysian Leader, to Resign*, New York Times, Nov. 19, 2016, available at <http://www.nytimes.com/2016/11/20/world/asia/tens-of-thousands-of-protesters-call-for-najib-razak-malaysian-leader-to-resign.html>.

⁶⁵ *Id.*

⁶⁶ *Malaysia: End Crackdown on Bersih Activists*, AMNESTY INT'L, Nov. 18, 2016, available at <https://www.amnesty.org/en/latest/news/2016/11/malaysia-end-crackdown-on-bersih-activists/>.

⁶⁷ *Profile: Anwar Ibrahim*, AL JAZEERA, May 6, 2013, available at <http://www.aljazeera.com/indepth/spotlight/malaysiaelections/2013/05/201351125934750972.html>.

Minister of Culture, Youth, and Sports in 1983, of Agriculture in 1984, of Education from 1986-91, and was appointed Minister of Finance from 1991-98. In 1993, Anwar also became Deputy Prime Minister for Prime Minister Mahathir.⁶⁸ He served as Deputy Prime Minister until 1998, when he was dismissed, on the pre-text of corruption and sodomy allegations, because of major disagreements with Mahathir about the political and economic direction of Malaysia's future.

III. Past Persecution: Sodomy I

In 1998, a booklet entitled "50 Reasons Why Anwar Cannot Become Prime Minister" was circulated among members of the UMNO General Assembly, containing graphic allegations against Anwar of sodomy, as well as accusations of corruption.⁶⁹ In the wake of the distribution of this booklet, then Prime Minister Mahathir dismissed Anwar on September 2, 1998. Mahathir claimed that Anwar's firing was the result of allegations made in the booklet, which were supported by sodomy allegations made by his former speechwriter, Dr. Munawar Anees, and his adoptive brother, Sukma Darmawan Sasmita Atmadja. Dr. Munawar's and Sukma's statements were actually made under duress after days of torture and incommunicado detention and were subsequently publicly recanted by both of them.⁷⁰ In reality, there had been growing disagreements between Mahathir and Anwar about political and economic issues. The charges of sodomy in 1998 were fueled by political aspirations and disagreements over the direction Malaysia should take for its future, much like the present-day allegations.

Eighteen days after his dismissal, on September 20, police arrested Anwar at his home, took him into custody, and held him in solitary confinement for nine days. On the first day of his solitary confinement, he was blindfolded and severely beaten by the then Inspector-General of Police Rahim Noor, sustaining head injuries.⁷¹ Medical treatment was only provided on the fifth day. On September 28, Anwar was charged with sodomizing his wife's driver and for corruption in attempting to interfere with the police investigation of the sodomy allegation. When he appeared in the Sessions Court in response to these charges, he showed visible signs of physical injury, including a black eye. Anwar was denied bail and remained in custody until trial.⁷²

Anwar's corruption trial took place from November 1998 to April 1999. He was ultimately convicted and sentenced to six years in jail on the corruption charges. During the time of Anwar's trial, then Prime Minister Mahathir publicly declared Anwar guilty of both corruption and sodomy several times, despite Anwar having yet to be convicted.⁷³ From June

⁶⁸ *Anwar Ibrahim; Malaysian Politician*, ENCYCLOPÆDIA BRITANNICA, available at <http://www.britannica.com/biography/Anwar-Ibrahim> [hereinafter BRITANNICA].

⁶⁹ *50 Reasons Why Anwar Cannot Become Prime Minister*, TODAY MALAYSIA, available at <https://todaymalaysia.wordpress.com/2008/05/21/50-reasons-why-anwar-cannot-become-prime-minister-yesterday-journalism-for-today-to-ponder/>.

⁷⁰ Mark Trowell QC, *THE TRIAL OF ANWAR IBRAHIM: SODOMY II* (2012), at 62–3, [hereinafter *Trowell: Sodomy II*].

⁷¹ Noor was later convicted for assaulting Anwar. *Rahim Noor's Confession: Black Eye and Blacker Deeds*, ALIRAN MEDIA, Mar. 1, 1999, available at <http://aliran.com/oldsite/ms990301.html> [hereinafter *Rahim Noor's Confession*].

⁷² *Trowell: Sodomy II*, *supra* note 70, at 64–5.

⁷³ Kasra Naji, *Malaysia's Anwar Found Guilty on Corruption Charges*, CNN, Apr. 14, 1999, available at <http://www.cnn.com/WORLD/asiapcf/9904/13/anwar.01/>.

1999 to July 2000, Anwar stood trial separately for the sodomy charges. He was again convicted and sentenced to an additional nine years in jail.

Anwar unsuccessfully appealed the corruption conviction in Malaysia's Court of Appeal in 2001. In July 2002, he lost his final appeal against the corruption conviction in the Federal Court of Malaysia. In September 2004, Anwar successfully appealed his sodomy conviction in the Federal Court of Malaysia, and was released from prison after six years of detention.⁷⁴ During Anwar's time in prison, Amnesty International labeled him a "prisoner of conscience" and, along with Human Rights Watch, openly questioned the fairness of his trial and discussed the lack of impartiality in Malaysia's judicial system.⁷⁵

After his release, Anwar continued his political work. In a 2006 interview with *Bloomberg*, Anwar openly condemned UMNO's new economic agenda, highlighting the corruption and the fact that the race-based policies of preferential treatment built into government policy were no longer relevant.⁷⁶ Anwar urged the Government to address the recurring budget deficit since 1999, which he blamed on excessive government spending,⁷⁷ and he proposed a new nondiscriminatory, needs-based affirmative action policy to replace the existing system of cronyism.⁷⁸

In 2007, Anwar helped organize a mass rally, protesting the corruption in the electoral system. Working with the Coalition for Clean and Fair Elections, or *Bersih* (meaning *clean* in Malay), Anwar attended and spoke at the rally. The demands made during the demonstration had been recorded earlier in a Joint Communiqué that defined the long-term objectives and working goals, which included a clean and transparent electoral roll, and fair print and broadcast media access for opposition parties.⁷⁹

On April 18, 2008, Anwar addressed some 40,000 supporters who came out to celebrate the expiration of his political disqualification and told them that "we will rule the country someday" before the police shut down the rally.⁸⁰ When Anwar was sworn in as a Member of Parliament later that year, he declared, "The prime minister has lost the mandate of the country and nation."⁸¹ Anwar also participated in two subsequent rallies for *Bersih* in 2011 and 2012. He challenged UMNO opposition to the *Bersih* demands, asking, "Why

⁷⁴ Trowell: *Sodomy II*, *supra* note 70, at 66–7.

⁷⁵ *Malaysia: Double Injustice Heaped on Anwar Ibrahim*, AMNESTY INT'L, Apr. 17, 2003, available at <https://www.amnesty.org/.../asa280152003en.pdf>; *Human Rights Watch Monitors Second Anwar Trial*, HUMAN RIGHTS WATCH, Jun. 11, 1999, available at <https://www.hrw.org/news/1999/06/10/human-rights-watch-monitors-second-anwar-trial>.

⁷⁶ Judy Mathewson & Kathleen Hays, *Malaysia's Anwar Says He Plans to Run for Parliament*, BLOOMBERG, Nov. 30, 2006, available at <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aAjtL0wmitME&refer=home>.

⁷⁷ Anwar Ibrahim, *Malaysian Opposition's Economic Policies*, REUTERS, Sept. 8, 2008, available at <http://www.reuters.com/article/2008/09/08/us-malaysia-anwar-economy-idUSKLR22430420080908>.

⁷⁸ *Id.*

⁷⁹ *The Formulation of the Joint Communiqué*, *Bersih 2.0*, last visited Mar. 20, 2015, available at <http://www.bersih.org/about-bersih-2-0/>.

⁸⁰ Vijay Joshi, *Malaysia Police Halt Anwar Speech*, FOX NEWS, Apr. 18, 2008, available at <http://www.foxnews.com/wires/2008Apr14/0,4670,MalaysiaAnwar,00.html>.

⁸¹ Roman Bose, *Anwar Back with Power in His Sights*, THE SYDNEY MORNING HERALD, Aug. 29, 2008, available at <http://www.smh.com.au/world/anwar-back-with-power-in-his-sights-20080828-451j.html>.

can't UMNO conduct free and fair elections? ... If they conduct free and fair elections, the fear is that they will lose."⁸²

IV. Current Situation

A. Sodomy II

1. Alleged Crime and Arrest

As discussed above, Anwar continued to actively engage with the Malaysian political opposition and to be an outspoken critic of the undemocratic means by which the ruling party exercised power after his release from prison on fabricated corruption and sodomy charges in September 2004. This second prosecution for sodomy is largely considered to be in response to his ongoing political activity.⁸³

In March 2008, Anwar's political team hired 23-year-old Mohd Saiful Bukhari to serve as an intern. Three months into his internship on June 24, Saiful was invited to meet with Najib. The next day, Saiful met privately with a senior police officer in a hotel room in Kuala Lumpur. Then, on June 28, Saiful presented himself at a local hospital, claiming that he had been raped by Anwar two days prior, which would have been the day after he met with the senior police officer.⁸⁴ He was examined at the hospital and rectal swabs were taken. Doctors did not find any injuries consistent with forcible anal penetration.⁸⁵ Notwithstanding the lack of medical evidence, Saiful filed a police report formally accusing Anwar of sodomy.

Pursuant to hospital protocol, the DNA samples taken from Saiful's anus during his hospital examination were put into clearly marked containers and then placed in a clear, plastic, heat-sealed, tamper-proof bag. Deputy Superintendent of Police Jude Pereira later collected the rectal swabs and was instructed to place the samples in a freezer (to prevent degradation) until they were sent to the chemist for evaluation.⁸⁶ Instead, Pereira cut open the tamper-proof bag, claiming he followed standard operating procedure because he wanted to put the containers into individual envelopes and re-label them.⁸⁷ After Pereira cut into the plastic bag and re-labeled the DNA samples, he ignored instructions to keep the samples in the police freezer.⁸⁸ Instead, Pereira placed them in his personal steel filing cabinet and kept them there for 42 hours.⁸⁹ Chemists received the DNA samples for evaluation a total of 98 hours (over 4 days) after the alleged sodomy.⁹⁰ On July 15, 2008, Anwar was arrested for

⁸² Boo Sy-Lyn, *Umno Fear Losing Power in Fair Polls*, MALAYSIAN INSIDER, June 12, 2011, available at <http://www.themalaysianinsider.com/malaysia/article/umno-fears-losing-power-in-fair-polls-says-anwar>.

⁸³ *Malaysia: End Persecution of Anwar Ibrahim and Other Government Critics*, AMNESTY INT'L, Oct. 27, 2014, available at <https://www.amnesty.org/en/latest/news/2014/10/malaysia-end-persecution-anwar-ibrahim-and-other-government-critics/>.

⁸⁴ Mark Trowell QC, *Report on the Prosecution Appeal Against the Acquittal of Datuk Seri Anwar bin Ibrahim on a Charge of Sodomy Observed on Behalf of the Inter-Parliamentary Union (IPU) at the Court of Appeal*, COMM. ON THE HUMAN RIGHTS OF PARLIAMENTARIANS, Putrajaya, Malaysia, Feb. 10 2015 [hereinafter *2015 IPU Report*] at 7–8.

⁸⁵ Trowell: *Sodomy II*, *supra* note 70, at 84.

⁸⁶ *Id.* at 193.

⁸⁷ *Id.* at 194.

⁸⁸ *Id.* at 193.

⁸⁹ *Id.*

⁹⁰ *Id.* at 181.

sodomy. He was formally charged for the offense of sodomy, though notably for consensual sodomy and not rape, on August 7, 2008, and released on bail.

2. Trial Court and Acquittal

The trial commenced in the High Court on February 3, 2010. Throughout the case, Anwar's due process appeals were ignored and dismissed by the judges at all levels.

The first application to compel disclosure of evidence – including samples taken, slides, notes, and documents relating to the medical and DNA evidence and the prosecution's witness list – was made before the start of proceedings in June 2009. While the High Court judge, Judge Mohamad Zabidin, ordered disclosure, the prosecution immediately appealed to the Court of Appeal, which reversed the order. The Federal Court upheld the Court of Appeal's decision and refused to order pre-trial disclosure. Additionally, Anwar applied to strike the sodomy charge for abuse of process on the basis that there was a lack of medical evidence. Zabidin promptly dismissed the application.⁹¹ The dismissal was appealed to both the Court of Appeal and the Federal Court, who also dismissed the application.

The trial started with testimony from Saiful, the alleged victim. During his testimony, Saiful surprised the defense when a deputy prosecutor handed him a tube of lubricant and Saiful identified it as the lubricant used during the alleged act.⁹² Until then, the defense was unaware that Saiful was claiming lubricant had been used, or that the tube existed.⁹³ Saiful told the Court that Anwar had asked him to bring the lubricant with him to the condominium apartment.⁹⁴ The independent observer of the proceedings, Mark Trowell, a QC from Australia, noted that this claim contradicted Saiful's previous testimony on the record, in which he stated that he did not know why Anwar had asked him to come to the apartment.⁹⁵ Saiful explained that the tube was not tendered earlier as evidence because he had offered the tube to Officer Pereira, but Pereira turned it down. Saiful explained that Pereira told him he would collect it later.⁹⁶

Anwar's defense team made multiple requests for Judge Zabidin to disqualify and recuse himself from the trial. The first request came after Zabidin refused to cite an UMNO-owned Malay newspaper for contempt of court when it published pictures taken at the condominium where the alleged act took place.⁹⁷ During the course of Saiful's testimony, the Court visited the condominium where the sodomy was alleged to have occurred. In his testimony, Saiful claimed that the alleged sodomy occurred on a carpet in Apartment 1.⁹⁸ There was no carpet in Apartment 1, yet Saiful identified the carpet from another apartment in the complex as the same one where the alleged event took place.⁹⁹ Despite the contradictory evidence, the newspaper printed a photo with a caption stating that Saiful had pointed to a bed – not even mentioned in his testimony – as the location of the alleged

⁹¹ *Id.* at 99.

⁹² *Id.* at 119.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 120.

⁹⁶ Mark Trowell QC, *THE PROSECUTION OF ANWAR IBRAHIM: THE FINAL PLAY* (2015), at 154 [hereinafter *Trowell: The Final Play*]

⁹⁷ *Trowell: Sodomy II*, *supra* note 70, at 120.

⁹⁸ *Trowell: The Final Play*, *supra* note 96, at 351.

⁹⁹ *Id.*

sodomy.¹⁰⁰ Not only had the newspaper defied a court order barring the media from entering the condominium and printed contradictory statements, but it furthermore improperly suggested in the headlines that Saiful had been sodomized repeatedly, which Saiful himself did not claim in his testimony. The High Court refused to hold the newspaper in contempt, claiming that the evidence about the bed had been given in open court – which simply was not true.¹⁰¹ The Federal Court chose to completely disregard this evidence, erroneously claiming that it was not material.¹⁰²

After the proceedings were underway, the High Court judge refused a second application for disclosure of evidence, this time including Saiful's police statement. On appeal, the Court of Appeal again refused to grant the defense access to documents.

In its third application for disclosure, the defense requested access to all medical notes and reports that were made by the doctors who examined Saiful. These documents were relevant to show the lack of medical evidence, as all four examining doctors concurred that there was no evidence of anal penetration. This evidence was also relevant to the question of whether Saiful informed the first examining doctor, Dr. Osman, that he had been sodomized with a plastic implement, as Dr. Osman had noted in his report. The Court never considered this information, and Dr. Osman was later baselessly determined to be an "untruthful" witness. Judge Zabidin refused disclosure of the medical notes, saying that there was no provision or legal basis for the defense to be supplied with documents.

The defense again requested that Zabidin recuse himself after he made intimidating remarks to defense lawyer Karpal Singh during legal arguments over the disclosure of highly relevant but previously undisclosed medical notes.¹⁰³ When Karpal reminded Zabidin that the world was watching, Zabidin responded that Karpal could himself be cited for contempt for raising concerns about the fairness of the trial. Zabidin later withdrew his comment, but refused to disqualify himself. Anwar's defense appealed to the Court of Appeal, which again dismissed the recusal request. Additionally, during the High Court proceedings, multiple concerns were raised about the lack of evidence and the integrity of the rectal swabs analyzed. These concerns were later raised by the defense on appeal to the Court of Appeal and the Federal Court, but such concerns were either completely ignored or otherwise dealt with inadequately.

During the trial, it was revealed that Saiful was engaged in a romantic affair with a female junior prosecutor in July 2010. While she was removed from the prosecution team, Anwar's defense team filed a police complaint requesting an investigation into whether the two violated the Official Secrets Act¹⁰⁴ by exchanging confidential prosecution documents. Anwar's defense team also applied to have the sodomy charge struck on the basis that the trial had been compromised. Zabidin dismissed the application, accepting the prosecution's claims that the junior prosecutor did not have access to key documents and that Saiful had no

¹⁰⁰ *Trowell: Sodomy II*, *supra* note 70, at 121.

¹⁰¹ *Id.*

¹⁰² *Trowell: The Final Play*, *supra* note 96, at 351.

¹⁰³ *Id.* at 158.

¹⁰⁴ Malaysian Official Secrets Act of 1972, § 8(1–2) (relating to any person who has in his possession or controls any official secret, and communicates it, and any person who receives any official secret).

influence over her actions.¹⁰⁵ The dismissal was appealed to the Court of Appeal and the Federal Court, both of which refused to hear the appeal.

When the defense began to present their case, they were unable to question a number of witnesses due to interference by the Government. The police interrogated the owner of the condominium (where the alleged act was said to have occurred) for more than 30 hours before he was scheduled to be called by the defense to testify. He was so intimidated by that interrogation that he did not testify. The defense identified a maid who had been working at the condominium at the time as an alibi witness, but she could not be located when it was time for her testimony. The Court never gave a reason for her absence.¹⁰⁶

Additionally, Zabidin refused to compel testimony from available witnesses. The defense had summoned Najib for questioning related to the June 2008 meeting with Saiful before the allegations were lodged. This testimony would have provided answers to several of the crucial questions raised, and Saiful himself had already testified to the meeting earlier in the proceedings. Zabidin refused to enforce the summons on the basis that the defense had “failed to show the relevancy and materiality” of Najib’s testimony to the trial, thereby ignoring the fact that the testimony could reveal the purpose of the meeting and whether there was bias or motivation for Saiful to make false allegations.

When the defense witnesses were allowed, the evidence they presented was often ignored. For example, defense witnesses testified that the DNA evidence presented against Anwar was extremely controversial and questionable. Expert witnesses, including those called by the prosecution, accepted that improperly-stored semen samples – such as those not stored in a freezer – would suffer degradation, meaning that the results of testing would be compromised and unreliable.¹⁰⁷ Two expert witnesses for the defense testified that semen collected even 36 hours after ejaculation could be compromised.¹⁰⁸ However, inexplicably the samples that were analyzed and subsequently presented as evidence against Anwar were in pristine condition and showed no signs of degradation, which invited the obvious inference that the samples had been tampered with.¹⁰⁹ In addition, the Differential Extraction Process, which was used to separate sperm cells from non-sperm cells in the rectal swab, was incomplete.¹¹⁰ Further, there was the presence of a third person’s DNA¹¹¹ in the sample taken from Saiful’s rectum, which suggested that Saiful “had either been penetrated to ejaculation by another male, or someone had contaminated the sample by handling it.”¹¹²

Despite treating Anwar unfairly during the trial, Justice Zabidin acquitted Anwar of the sodomy charge on January 9, 2012, because he questioned the reliability of the prosecution’s evidence on the DNA evidence, and thus he could not be satisfied of Anwar’s guilt. Unfortunately, that acquittal was immediately appealed, and two years later, on March

¹⁰⁵ *Trowell: Sodomy II*, *supra* note 70, at 168.

¹⁰⁶ *Id.* at 215.

¹⁰⁷ *Id.* at 194.

¹⁰⁸ *Id.* at 237–8.

¹⁰⁹ *Id.* at 262.

¹¹⁰ *Resolution (CASE N° MAL/15 - ANWAR IBRAHIM) Adopted Unanimously by the IPU Governing Council at its 194th Session*, GOVERNING COUNCIL OF THE INTER-PARLIAMENTARY UNION, Mar. 20, 2014 [hereinafter *2014 IPU Resolution*].

¹¹¹ *Id.* at 71.

¹¹² *Id.*

7, 2014, the Court of Appeal reversed the acquittal and sentenced Anwar to five-years imprisonment (discussed below).

3. 2013 Elections

Meanwhile, despite the ongoing legal battles, Anwar's political message was still influential. This was made clear during the 2013 general election in which the opposition won 51 percent of the popular vote, putting Najib's hold on power in question. Due to extensive gerrymandering, however, Najib and UMNO were able to maintain a majority of seats in parliament, but lost their popular mandate for governance. In contrast, Anwar Ibrahim's People's Alliance won 40 percent of the parliamentary seats, amid widespread allegations of electoral fraud,¹¹³ demonstrating his massive popularity and making Najib's position as the leader of Malaysia more precarious than ever.

4. Court of Appeal

Like the proceedings at the trial court, the Court of Appeal proceedings also displayed some serious improprieties and procedural flaws.

From the very beginning it was clear that Anwar's case would not be reviewed by an impartial judiciary. For the appeal, in a surprising and unprecedented move, the Attorney General appointed a private legal counsel Muhammad Shafee Abdullah as Chief Prosecutor, a cause for concern for multiple reasons. First, Shafee is directly linked to Najib, serving as his private confidante and legal counselor, and he is also an adviser and lead counsel for UMNO in numerous cases in court.¹¹⁴ Shafee also admitted being present in Najib's house the evening when the complainant Saiful came to see Najib, but Shafee insisted he had no part of that meeting and was only there to advise the Prime Minister's wife on other matters.¹¹⁵ Second, Shafee had a direct conflict of interest relating to Officer Pereira, who was a key witness in the trial. Shafee was the chairman of an inquiry panel that determined Pereira was an unreliable witness in another case. Even though Shafee first judged Pereira to be an unreliable witness in one case, in this case he insisted the officer was reliable and could even serve as the key witness. Shafee claimed that there was no conflict of interest because Pereira was a witness to the present case, not a party. Third, Shafee's professionalism was under scrutiny in October 2012, when the Advocates and Solicitors Disciplinary Board of the Malaysian Bar Council found him guilty of misconduct for violating the Legal Profession Publicity Rules 2001 and fined him 5,000 ringgit (US \$1,500). Anwar's defense team raised concerns on several occasions about the conflict of interest posed by Shafee's close ties to the Prime Minister and his personal conflicting positions about Pereira's credibility. However, those petitions were dismissed as an abuse of process made to delay the Government's appeal.

¹¹³ Niluski Koswangage, *Malaysia PM Faces Limited Future After Worst Electoral Showing*, REUTERS, available at <http://www.reuters.com/article/2013/05/06/us-malaysia-election-idUSBRE9430B720130506>.

¹¹⁴ Trowell: *The Final Play*, *supra* note 96, at 233.

¹¹⁵ See Stuart Grudgings, *Malaysia's Anwar Faces Sodomy Ruling as Rights Groups Question Court Motive*, REUTERS, Mar. 6, 2014, available at <http://www.reuters.com/article/us-malaysia-anwar-idUSBREA250CR20140306>.

Then, in a blatantly political manner, the Court of Appeal took steps to rush the appeal process so that Anwar would be disqualified from running in the Kajang province by-election. Anwar had been named publicly by the opposition parties to participate in a by-election for the state seat of Kajang in the state of Selangor, which was under opposition control. That seat would allow Anwar to be subsequently appointed as the Chief Minister of Selangor. On February 5, 2014, the Election Commission announced the by-election nomination date as March 11, 2014.

On February 12, 2014, the Court of Appeal ordered a stay of hearing of the prosecution appeal against Anwar's acquittal pending the disposal of Anwar's appeal to the Federal Court on a related interlocutory matter concerning the witness Pereira. The Court of Appeal then fixed February 28, 2014, as a case management date for the main appeal. Some days before that date, the dates of the hearing of the appeal were confirmed for April 7-10 through communications between Anwar's counsel Karpal Singh and the court registry.

However, on February 28, the case management date, Anwar's counsel Karpal Singh was abruptly told that the full appeal was being brought forward and would be heard on March 6-7. When Karpal protested and said he was involved in other part-heard criminal cases on those days, he was told that those judges would be directed to postpone his other cases. Then, on March 4, Anwar's appeal to the Federal Court was heard and struck off on a jurisdictional issue, thereby lifting the Court of Appeal stay and clearing the path for the Court to hear Anwar's sodomy case on March 6-7.

The appeal hearing to review the sodomy conviction and sentencing took place on March 6-7. After arguments had been given, the judges rejected Anwar's request to adjourn for one week before mitigation and sentencing. Instead, the Court of Appeal gave Anwar's defense team one hour to prepare. On Friday, March 7, the second day of the appeal, the panel rushed quickly through only 90 minutes of deliberation and rendered a unanimous decision, signed by all three judges.¹¹⁶ At 7:00pm, the proceedings concluded, and Anwar was sentenced to five-years imprisonment. It was obvious to most observers of the proceedings that the appeal hearing was brought forward and concluded quickly by March 7 in order to convict Anwar and disqualify him from nomination in the Kajang by-election scheduled on March 11.

5. Federal Court

The Federal Court affirmed the sentence and 5 years imprisonment on February 10, 2015, relying on its conclusions that Saiful was a credible witness and that the prosecution's evidence corroborated the allegations.¹¹⁷ A few moments after the Federal Court issued its judgment on conviction, and even before the arguments were heard on sentence, Najib's office issued a statement asking for "all parties to respect the legal process and judgment . . . Malaysia has an independent judiciary and there have been many rulings against senior government figures."¹¹⁸ Anwar was taken into custody that day at the Federal Court. One

¹¹⁶ Trowell: *The Final Play*, *supra* note 96, at 259–61.

¹¹⁷ 2015 IPU Report, *supra* note 84, at 2–3.

¹¹⁸ Eileen Ng, *Anwar Ibrahim's Sodomy Conviction Upheld; Court Sentences Opposition Leader to 5 Years in Prison*, THE WORLD POST, Feb. 11, 2015, available at http://www.huffingtonpost.com/2015/02/10/anwar-ibrahim-sodomy-conviction_n_6650188.html.

week later, on February 17, 2015, Amnesty International designated Anwar as a prisoner of conscience.¹¹⁹

On April 30, 2015, Anwar filed an application at the Federal Court requesting that a new panel of judges review his sodomy conviction and five-year sentence on the grounds of injustice. Then on June 10, 2015, Anwar filed an application to adduce fresh evidence in the forthcoming review hearing. This fresh evidence was in the form of sworn testimony given a few days prior on May 27, 2015 by the country's former national Criminal Investigation Department (CID) chief Ramli Yusuff, who testified under oath in a civil court proceeding that in 1998 he was requested by the former Attorney General Gani Patail to give fabricated evidence to implicate Anwar in the offence of sodomy, which he refused to do. That application was finally heard on November 16, 2015; a decision will be delivered on May 23, 2016.

Additionally, on May 6, 2015, Anwar filed an originating summons in response to the Election Commission Chairman Abdul Aziz's statements on April 27 and 29 that Anwar was not eligible to vote in the recent Permatang Pauh by-election because he was currently in prison. Anwar's counsel claimed that he was unfairly denied his constitutional right to vote under Article 119 of the Malaysian Constitution, which entitles a person to vote regardless of his imprisonment. Anwar named the Election Commission, its Chairman Abdul Aziz, and the Malaysian government as defendants.¹²⁰ The summons has completed hearing and a decision is to be delivered on June 15, 2016.

While these legal challenges are ongoing, Anwar has continued to be denied fundamental rights of due process, including the right to access and consult with his lawyers. Since August 2015, access to his counsel has been limited to one hour per week, which is wholly inadequate to address the 16 different civil and criminal cases currently pending. Anwar's lawyers repeatedly objected in writing to the Prison Director, the Director General of Prisons, and the Home Minister Dato' Seri Ahmad Zahid Hamidi, but no rectifying actions were taken. Therefore, on March 3, 2016, Anwar was forced to discharge his lawyers from working on a number of cases and will instead represent himself, having made requests for access to the Internet and legal literature to allow him to adequately prepare for cases.¹²¹

Meanwhile, two judges who upheld Anwar's conviction at the Court of Appeal were promoted to the Federal Court on March 21, 2016.¹²² Justice Balia Yusof Wahi led the three-member appellate bench, which he shared with Justice Aziah Ali.¹²³

On March 22, 2016, Anwar appeared in court representing himself for the first time in a related defamation suit.¹²⁴ After questioning the defendant Nallakaruppan and eliciting

¹¹⁹ *Malaysia: Free Prisoner of Conscience Anwar Ibrahim*, AMNESTY INT'L, Feb. 17, 2015, available at <http://www.amnesty.ca/get-involved/take-action-now/malaysia-free-prisoner-of-conscience-anwar-ibrahim>.

¹²⁰ M Mageswari, *EC and Govt. Ordered to File Affidavit Over Anwar's Right to Vote*, THE STAR, May 25, 2015, available at <http://www.thestar.com.my/News/Nation/2015/05/25/EC-asked-to-file-Anwar-voting-case/>.

¹²¹ Bernard Cheah, *Anwar to Represent Himself in Court*, THE SUN DAILY, Mar. 3, 2016, available at <http://www.thesundaily.my/news/1717694>.

¹²² Hafiz Yatim, *Two Judges Who Convicted Anwar Elevated to Federal Court*, MALAYSIKINI, Mar. 21, 2016, available at <https://www.malaysiakini.com/news/334589>.

¹²³ *Id.*

evidence clearing his name, and upon encouragement from the court to both parties, Anwar agreed to a consent order and withdrew his suit.¹²⁵

A month later, on May 23, 2016, Malaysia's Federal Court rejected an application by Anwar to compel ex-CID director Datuk Ramli Yusuff to provide new oral evidence in his Sodomy II case on the basis that such evidence is "irrelevant and insignificant."¹²⁶ That evidence, which only became available after the February 2015 conviction of Anwar, would have been relevant to prove the Government's history of fabricating evidence against Anwar.¹²⁷

In September 2016, it was announced that international human rights lawyer Kimberley Motley would be joining Anwar's international legal team to assist with ongoing litigation.¹²⁸ Motley was at first denied the opportunity to meet with Anwar after she had traveled to Malaysia to do so, but was later granted a brief visit.¹²⁹

On October 12, 2016 Malaysia's Federal Court heard Anwar's final appeal. The Court deferred a final judgment; no decision has been announced.

6. Request for Royal Pardon

Concurrent with the application for review filed with the Federal Court, Anwar's family - specifically his wife, Wan Azizah, and daughters, Nurul Izzah and Nurul Nuha - also applied for a royal pardon from King Abdul Halim of Kedah on February 24, 2015.¹³⁰ On March 16, 2015, the family's request for a royal pardon was denied, and Anwar thus officially lost his seat in parliament.¹³¹ The family and Anwar then filed a judicial review challenge in the High Court on the refusal of the pardon by the Pardons Board on June 24, 2015,¹³² citing the conflict of interest of the Malaysian Attorney General, who sits on the Pardons Board advising the King. His involvement with Anwar's case is well known, as he was a key player in both the 1998 sodomy case and the recent case.

¹²⁴ Ram Anand, *Facing Anwar, Nalla Denies Making RM60m Allegation*, MALAYMAIL ONLINE, Mar. 22, 2016, available at <http://www.themalaymailonline.com/malaysia/article/facing-anwar-nalla-denies-making-rm60m-allegation>.

¹²⁵ Hafiz Yatim, *Anwar Withdraws RM100m Suit Against Nalla*, MALAKYSIAKINI, Mar. 22, 2016, available at <https://www.malaysiakini.com/news/334801>.

¹²⁶ M. Mageswari, *Anwar Ibrahim Fails Bid to Call Ex-CID Director in Sodomy II Review*, THE STAR, May 23, 2016, available at <http://www.thestar.com.my/news/nation/2016/05/23/anwar-ibrahim-fails-in-bid-to-call-cid-chief-in-sodomy-ii-trial/>.

¹²⁷ *Id.*

¹²⁸ Kamles Kumar, *US Lawyer Takes on Anwar's Sodomy Case*, MALAYMAIL, Sept. 13, 2016, available at <http://www.themalaymailonline.com/malaysia/article/us-lawyer-takes-on-anwar-sodomy-case>.

¹²⁹ Adam Abu Bakar, *Motley Meets Anwar, Thanks Zahid for Allowing Meeting*, FREE MALAYSIA TODAY, Sept. 14, 2016, available at <http://www.freemalaysiatoday.com/category/nation/2016/09/14/motley-meets-anwar-thanks-zahid-for-allowing-meeting/>.

¹³⁰ *Anwar's Family Submits Petition for Royal Pardon*, FREE MALAYSIA TODAY, Feb. 24, 2015, available at <http://www.freemalaysiatoday.com/category/nation/2015/02/24/anwar-family-submits-petition-for-pardon/>.

¹³¹ *Anwar Ibrahim: Malaysian Jailed Opposition Leader Denied Royal Pardon*, BBC, Apr. 1, 2015, available at <http://www.bbc.com/news/world-asia-32142078>.

¹³² *Anwar Files Judicial Review Application for His Royal Pardon Request*, THE RAKYAT POST, June 24, 2015, available at <http://www.therakyatpost.com/news/2015/06/24/anwar-files-judicial-review-application-for-his-royal-pardon-request/>.

On March 27, 2016, Anwar again appeared in court representing himself in a hearing on this application for leave (permission to appeal) to commence judicial review to nullify the refusal to pardon by the Pardons Board. Such applications are normally heard in the chambers of the judge. Somewhat unusually on that day, the public courtroom was declared closed with no one allowed to enter except parties and their lawyers.¹³³ A foreign observer from Lawasia and the Inter-Parliamentary Union, Mr. Mark Trowell QC, was not allowed to observe the hearing in chambers despite an application by Anwar and the family's lawyers.¹³⁴ The hearing was adjourned until April 4, 2016 as Anwar had not yet received copies of submissions from the former Attorney General.¹³⁵ The hearing has since been completed and a decision is still pending. Anwar continues to represent himself.

B. Deteriorating Health Conditions



Despite assurances from the Malaysian Home Minister that Anwar would be treated humanely, he was originally held in solitary confinement in a bare cell infested with rodents and insects. His cell contained a thin foam mattress on a low bedframe, a bucket for bathing, and a squat toilet. It was extremely hot and humid with no form of proper ventilation or fan, so Anwar was forced to sleep on the floor where it was somewhat cooler. He continues to suffer from a chronic back and spinal injury as a result of a prior beating at the hands of Malaysian police.¹³⁶ This causes him constant, unnecessary pain every time he has to bend over or stand up from a sitting position, which was exacerbated by his sleeping on the floor.¹³⁷ Additionally, it was incredibly painful for Anwar to use the low toilet because it required serious bending of his back. Repeated requests for a bed, a medically appropriate mattress, a normal toilet, and a table and chair were denied for weeks.¹³⁸ An old right shoulder injury was also exacerbated due to these deplorable conditions for the first few weeks. On March 2, 2015, after public pressure, Malaysian prison authorities moved Anwar

¹³³ Hafiz Yatim, *High Court Bars All from Anwar Ibrahim's Case*, MALAKSIKINI, Mar. 28, 2016, available at <https://www.malaysiakini.com/news/335517>.

¹³⁴ *Id.*

¹³⁵ Hidir Reduan, *Anwar-Pardons Board Matter Put Off to April 4*, NEW STRAITS TIMES ONLINE, Mar. 28, 2016, available at <http://www.nst.com.my/news/2016/03/135602/anwar-pardons-board-matter-put-april-4>.

¹³⁶ *Rahim Noor's Confession*, *supra* note 71.

¹³⁷ *Anwar's Jail Conditions 'Endangering' His Health*, FMT NEWS, Feb. 16, 2015, available at <http://www.freemalaysiatoday.com/category/nation/2015/02/16/anwars-jail-conditions-endangering-his-health/> [hereinafter '*Endangering*' His Health].

¹³⁸ *Id.*

to the medical wing of the prison where a bed with a mattress, a sitting toilet, a proper shower and a small table and chair were provided.

Unfortunately, however, the move to the medical wing of the prison did not improve the increasingly worrisome health conditions of then 67-year-old Anwar. From his original weight of 72 kg (~158 lbs), Anwar has lost 6 kg (~13 lbs) and is now down to about 66 kg (145.5 lbs), posing a cause for concern. He has had dark stool, which was suspected to be melena and is indicative of bleeding in the intestines, thus requiring medical assessment and treatment. Anwar's blood pressure has been irregular and was recently as high as 163/108, despite Anwar being on medication. He has also been denied access to the vitamins and supplements that he was taking prior to his detention. On top of all this, he is suffering from a full thickness tear of his right shoulder capsule (from an injury which took place two years ago) that causes him increasing pain and discomfort.

After repeated requests from his lawyers and further public pressure, Anwar was finally admitted to Hospital Kuala Lumpur (HKL) on June 2, 2015 for a full check-up, observation, and medical treatment in light of his continued shoulder pain and other health concerns. Home Minister Ahmad Zahid Hamidi approved his transfer to the hospital four weeks after the prison doctor and prison authorities requested it.

During this brief five-day hospitalization in June, Anwar was examined by government orthopedic specialists and other doctors. For the shoulder injury, he was prescribed conservative management including intensive physiotherapy to alleviate the pain and regain mobility; this was provided daily during the hospitalization. But despite the ongoing constant pain, after he was discharged from the hospital Anwar was not provided the same treatment. The prescribed therapy was delayed for more than a month, and only then provided once every few weeks through a therapist going to the prison and showing him how to do the exercises, rather than proper intensive physiotherapy done in hospital conditions with full facilities.

The situation continued to deteriorate and Anwar's pain increased. It was only after Anwar's lawyers issued a press release complaining about the intense suffering he was undergoing that on June 30, 2015, Prime Minister Najib sent out a tweet stating he "wanted the relevant authorities to ensure he received the appropriate treatment." Anwar was re-hospitalized in early July for about five days, during which he was again able to receive daily intensive physiotherapy that helped alleviate his pain. Again, he was denied such regular physiotherapy after he was discharged and returned to prison; he was only provided physiotherapy in prison about once a month.

When the doctors reexamined Anwar in prison on August 21, 2015 he was prescribed very strong painkillers (Arcoxia) to manage the pain. The state-appointed physician currently responsible for Anwar's care, Dr. Jeyaindran Sinnadurai, Malaysia's Deputy Director General of Health, has since prescribed doubling the dosage, rather than provide regular and proper physiotherapy, despite the fact that Arcoxia has been found to increase the risk of a cardiac event. Meanwhile, the pain that began in Anwar's right shoulder has now spread to his left.

At this time, Anwar's family and lawyers have managed to obtain written reports from those doctors who had examined and treated Anwar in June and July. These medical reports were then referred to Associate Professor Dr. Ng Wuey Min from University Malaya

Medical Centre (UMMC), an orthopedic shoulder specialist who had treated Anwar when he first developed a cold shoulder prior to his detention. Based on these reports, Dr. Ng stated that the problem affecting Anwar's right shoulder appeared "serious" and "may require immediate surgery." Despite Anwar's desire to meet with Dr. Ng, the Government continued to deny Anwar the right to a physician of his choosing.

On August 27, 2015, Anwar was taken to HKL for an evaluation by eight of the Government's medical experts, the results of which were not shared with Anwar's family for almost a month. Their report referenced the results of an x-Ray and MRI in diagnosing Anwar with rotator cuff arthropathy in his right shoulder secondary to chronic irreparable massive rotator cuff tear. The doctors recognized two surgical options: arthroscopic debridement and biceps tenotomy or shoulder replacement surgery. While Anwar would like to have the latter surgery, the Government has since made it clear that they are only willing to perform the arthroscopic debridement and biceps tenotomy. This is extremely problematic, as the Government's own doctors have acknowledged that this surgery is only a "temporary measure to relieve pain but not strength and function of the shoulder." Even if successful, the surgery would render Anwar's shoulder unusable and osteoarthritis would, as the doctors admitted, be inevitable.

Anwar has expressed serious concern about the merely palliative surgery offered by the Government and is fighting for his right to choose his own medical procedure and have the shoulder replacement surgery. But even if the Government's doctors were approved to provide this preferred procedure, Anwar could not be expected to trust the Government with this surgery for a number of reasons. First, there is a clear conflict of interest with Dr. Jeyaindran, the physician appointed to Anwar by the Government, given that this doctor served as the prosecution's lead witness in the trial against Anwar and has repeatedly blocked necessary medical care. And it is not insignificant that Dr. Jeyaindran is Najib's personal physician. Second, the Government has proved an unreliable provider of care for Anwar, upping his pain medications in lieu of treatment and refusing him the prescribed regimen of rehabilitation – allowing him one session per month as opposed to the recommended one to three sessions per week. Finally, the Government has insisted on providing Anwar no more than one month of rehabilitation post-surgery, regardless of medical necessity. These circumstances would make any surgery provided by the Government extremely risky.

On September 28, 2015, the Government belatedly allowed Anwar to see Dr. Ng, who confirmed that the available options were arthroscopic debridement with biceps tenotomy, requiring one month of recovery, and shoulder replacement surgery, requiring six months of recovery. He concluded that Anwar needed major surgery. However, the Government is still denying the regular physiotherapy that he needs to manage the pain and to prevent long-term damage pending major surgery, and thus his health problems – and pain – continue to worsen with each passing day. Anwar only receives proper physiotherapy when he is admitted to a hospital, which has happened several times in the last six months. Most recently, Anwar was rushed from prison to a hospital near Kuala Lumpur after a blood pressure emergency on May 10, 2016.¹³⁹ On June 15, 2016, Anwar was again hospitalized due to severe back pain.

¹³⁹ P Prem Kumar, *Malaysia: Anwar Ibrahim Rushed from Prison to Hospital*, ANADOLU AGENCY, May 10, 2016, available at <http://aa.com.tr/en/politics/malaysia-anwar-ibrahim-rushed-from-prison-to-hospital/569565>.

In detention, Anwar has also faced constant psychological pressure by the prison authorities acting upon instructions from political authorities; he is kept in constant solitary confinement and denied contact with any other prisoners. There are regular occasions where he has been harassed several times an hour by prison guards who come by his cell to take pictures of him and to see what he is doing. Anwar was initially denied writing materials for the first month of his detention. Even though now he has been given access to books and writing materials, such access is often delayed through bureaucratic processes. Even his lawyers' files are searched to see if notes or messages are being carried through to him. Such harassment makes the work much more difficult for his lawyers, who are handling his various legal matters and litigation in court.

Since September 2015, Anwar's access to his lawyers has been further curtailed, as their access to him has been limited to only one hour per week. Given that Anwar has at least sixteen different legal matters, including the review of his conviction, various civil defamation cases and syariah (or Sharia) cases pending in many different courts at different levels of the legal system, this restriction has severely undermined his right of access to legal advisors and proper access to justice in the legal system. This has driven Anwar to make the drastic decision to represent himself in several of his cases. He still faces major obstacles in terms of preparing himself for those cases with no access to legal materials or the internet in prison.

Since Anwar's incarceration in February 2015, the Government only allows him to have no-contact visits from his family about once a month, again trying to increase the psychological pressures on him in an attempt to break his spirit and demoralize him. Repeated requests to the Government to allow contact visits have been ignored, leading Anwar's family to seek legal recourse in court. On May 18, 2016, Anwar and the nine members of his immediate family applied for allowance of physical contact during visits, stating that the Government's refusal violated Articles 5 and 8 of the Federal Constitution.¹⁴⁰

V. Legal Analysis

For the reasons set forth below, the detention of Anwar Ibrahim constitutes an arbitrary deprivation of his liberty¹⁴¹ under Categories II and III as established by the United Nations Working Group on Arbitrary Detention (Working Group).

A. Category II. Substantive Fundamental Rights

¹⁴⁰ Hidir Reduan, *Anwar Launches Legal Bid to be Allowed Physical Contact with Family*, NEW STRAITS TIMES ONLINE, May 18, 2016, available at <http://www.nst.com.my/news/2016/05/146347/anwar-launches-legal-bid-be-allowed-physical-contact-family>.

¹⁴¹ An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc.A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, at art.9(1) [hereinafter *ICCPR*]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* "No one shall be subjected to arbitrary arrest, detention or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc.A/810, at art.9 (1948) [hereinafter *Universal Declaration*]. "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law." Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter *Body of Principles*].

An arbitrary detention falls under Category II when such detention results from the exercise of fundamental rights protected by international law.¹⁴² These fundamental rights include the right to freedom of opinion and expression¹⁴³ and the right of political participation.¹⁴⁴ Anwar Ibrahim's detention is arbitrary under Category II because it resulted from his exercise of these fundamental freedoms, as detailed below.

Although Malaysia has not signed or ratified¹⁴⁵ the International Covenant on Civil and Political Rights (ICCPR), the Working Group applies the Universal Declaration of Human Rights (UDHR), which is interpreted through the ICCPR and the Body of Principles Regarding Any Form of Detention or Imprisonment. In addition, certain provisions of the UDHR are binding as customary international law. The Working Group has also always been willing to "rely heavily" on international legal principles to adjudicate individual cases because it issues opinions rather than judgments.¹⁴⁶

1. The Malaysian Government Detained Anwar Ibrahim Because He Exercised His Right to Freedom of Opinion and Expression

Freedom of opinion and expression are protected by Article 19 of the UDHR¹⁴⁷ and Article 19(1) of the ICCPR.¹⁴⁸ Freedom of expression includes the "freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."¹⁴⁹ In addition to the requirements of international law, the Malaysian Constitution protects the right to freedom of expression, providing that "every citizen has the right to freedom of speech and expression."¹⁵⁰

Freedom of expression includes the right to express a dissenting political opinion.¹⁵¹ The charge of sodomy brought against Anwar was a pretext for the curtailment of his right to freedom of opinion and expression as an opposition leader. Anwar has openly voiced his

¹⁴² Specifically, a Category II deprivation of liberty occurs, "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights." Office of the High Comm'r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B) [hereinafter *Fact Sheet No. 26*].

¹⁴³ *Universal Declaration*, *supra* note 141, at art. 19; *ICCPR*, *supra* note 141, at art. 19(1).

¹⁴⁴ *Universal Declaration*, *supra* note 141, at art. 21; *ICCPR*, *supra* note 141, at art. 22(1).

¹⁴⁵ *Status of Ratification of the Principal International Human Rights Treaties*, as of Mar. 18, 2015, available at <http://indicators.ohchr.org>.

¹⁴⁶ Jared M. Genser & Margaret Winterkorn-Meikle, *The Intersection of Politics and International Law: The United Nations Working Group on Arbitrary Detention in Theory and Practice*, 39 COLUM. HUM. RTS. L. REV. 101, 114 (2008).

¹⁴⁷ *Universal Declaration*, *supra* note 141, at art. 19.

¹⁴⁸ *ICCPR*, *supra* note 141, at art. 19(1).

¹⁴⁹ *Universal Declaration*, *supra* note 141, at art. 19 ("Everyone shall have the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"); *See also ICCPR*, *supra* note 141, at art. 19(2) ("Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice").

¹⁵⁰ CONSTITUTION OF MALAYSIA, art. 10(1)(a). *See also* <http://www.slideshare.net/nurulirdanazzira/malaysian-legal-system-the-restriction-freedom-of-expression>.

¹⁵¹ *Human Rights Committee General Comment No. 34 (2011) on Article 19: Freedom of Expression*, Sept. 12, 2011 (adopted at 102nd session July 11-29, 2011), CCPR /C/GC/34 at ¶ 11.

opinions on numerous occasions, including serious concerns about undemocratic practices in Malaysia, and specifically about Najib and his ruling UMNO party. The following examples are a small illustration of Anwar's public expression.

In a 2006 interview with *Bloomberg*, Anwar openly condemned UMNO's new economic agenda, highlighting the corruption and preferential treatment that was built into government policy.¹⁵² Anwar urged the government to address the recurring budget deficit since 1999, which he blamed on excessive government spending,¹⁵³ and he proposed a new nondiscriminatory affirmative action policy to replace the existing system of cronyism.¹⁵⁴

In 2007, Anwar helped organize a mass rally to protest against corruption in the electoral system. Working with the Coalition for Clean and Fair Elections, or *Bersih* (meaning *clean* in Malay), Anwar attended and spoke at the rally. The demands made during the demonstration had been recorded earlier in a Joint Communiqué that defined the long-term objectives and working goals, which included a clean and transparent electoral roll, and fair access to print and broadcast media for opposition parties.¹⁵⁵

Also that year, outside the country, the Government of Malaysia complained to the BBC for featuring individuals that it deemed to be "failed" opposition leaders, including Anwar.¹⁵⁶ The Malaysian Minister of Information questioned BBC's coverage, asking "why focus on people who have been rejected?" and ludicrously claiming that BBC "did not accord respect to the democratic decision of the Malaysian people in their rejection of the opposition political parties."¹⁵⁷

And on April 18, 2008, Anwar addressed some 40,000 supporters who came out to celebrate the expiration of his political disqualification, telling them that "we will rule the country someday . . ." before the police shut down the rally.¹⁵⁸ When Anwar was sworn in to his Parliamentary seat later that year, he declared, "the prime minister has lost the mandate of the country and nation."¹⁵⁹

Anwar also participated in two subsequent rallies for *Bersih* in 2011 and 2012. He challenged UMNO opposition to the *Bersih* demands, asking, "Why can't UMNO conduct free and fair elections? . . . If they conduct free and fair elections, the fear is that they will lose."¹⁶⁰

In response to these and many other comments, the Malaysian Government has targeted and persecuted Anwar in an attempt to discredit his image and silence him. This

¹⁵² *Malaysia's Anwar Says He Plans to Run for Parliament*, *supra* note 76.

¹⁵³ Anwar Ibrahim, *Malaysian Opposition's Economic Policies*, REUTERS, Sept. 8, 2008, available at <http://uk.reuters.com/article/2008/09/08/malaysia-anwar-economy-idUKKLR22430420080908>.

¹⁵⁴ *Id.*

¹⁵⁵ *The Formulation of the Joint Communiqué*, *Bersih 2.0*, last visited Mar. 20, 2015, <http://www.bersih.org/about-bersih-2-0/>.

¹⁵⁶ Jalil Hamid and Clarence Fernandez, *Malaysia Proteststo BBC After Anwar Coverage*, REUTERS, Apr. 25, 2007 available at <http://uk.reuters.com/article/2007/04/25/uk-malaysia-anwar-idUKKLR5886220070425>.

¹⁵⁷ *Id.*

¹⁵⁸ *Malaysia Police Halt Anwar Speech*, *supra* note 80.

¹⁵⁹ *Anwar Back With Power in His Sight*, *supra* note 81.

¹⁶⁰ *Umno Fear Losing Power in Fair Polls*, *supra* note 82.

pattern can be clearly seen in Anwar's first sodomy trial and continues with his current trial and detention.

While freedom of opinion and expression is not absolute, as states may impose narrow limitations, Anwar's expression does not fall within these exceptions. Article 19(3) of the ICCPR allows for a narrow limitation on the right to freedom of opinion and expression that is "necessary [f]or the respect of the rights or reputations of others; [or] ... [f]or the protection of national security or of public order (*ordre public*), or of public health and morals."¹⁶¹ The Human Rights Committee has also emphasized the narrowness of this limitation.¹⁶² The Malaysian Constitution allows Parliament to impose limits, if necessary, in the interest of national security, public order, or morality, or on issues relating to the position of the National Language, the special status of Malays and natives of any of the states of Sabah and Sarawak, and the legitimate interest of other communities and the sovereignty of the rulers.¹⁶³ Anwar's expression does not fall within these highly narrow confines justifying limitation by the Government of Malaysia because his expression of opinions is not a danger to the rights or reputations of others, nor a threat to national security, public order, or public health and morals.

Many international actors have criticized the Malaysian Government for persecuting Anwar and curtailing his freedom of opinion and expression. Richard Bennett, Amnesty International's Asia Pacific Director, issued a statement saying that the charges "are clearly politically motivated and a blatant attempt by the Malaysian authorities to silence and undermine a critical voice."¹⁶⁴ Upon announcement of the final guilty verdict, Amnesty International issued another statement that the decision "will have [a] chilling effect on freedom of expression."¹⁶⁵ Human Rights Watch called the conviction a "major setback for human rights in Malaysia,"¹⁶⁶ and Karim Lahidji, President of the International Federation for Human Rights (FIDH), described the verdict as a "disgraceful conclusion."¹⁶⁷ The *Washington Post* observed that the Government's case against Anwar Ibrahim was "as morally reprehensible as it was farcical."¹⁶⁸

Even though Anwar was exercising his right to freedom of opinion and expression, which is guaranteed under international and Malaysian law, he was sentenced to five years in jail on unsubstantiated allegations. Furthermore, because all of the evidence employed by the Malaysian Government in its cases against Anwar is fundamentally flawed and based on pre-textual allegations, Anwar's imprisonment amounts to nothing more than an attempt to silence multi-party democracy in Malaysia. As such, Anwar's current detention is in direct

¹⁶¹ ICCPR, *supra* note 141, at art. 19(3).

¹⁶² *General Comment 34*, *supra* note 151, at ¶ 23.

¹⁶³ CONSTITUTION OF MALAYSIA, *supra* note 150, at art. 10(2–4).

¹⁶⁴ *Malaysia: End Persecution of Anwar Ibrahim and Other Government Critics*, *supra* note 83.

¹⁶⁵ *Malaysia: Anwar Verdict Will Have Chilling Effect on Freedom of Expression*, AMNESTY INT'L, Feb. 10, 2015 available at <https://www.amnesty.org/en/press-releases/2015/02/malaysia-anwar-verdict-will-have-chilling-effect-freedom-expression/> [hereinafter *Chilling Effect on Freedom of Expression*].

¹⁶⁶ *Malaysia: Anwar's Conviction Sets Back Rights*, HUMAN RIGHTS WATCH, Feb. 10, 2015 available at <https://www.hrw.org/news/2015/02/10/malaysia-anwar-conviction-sets-back-rights> [hereinafter *Sets Back Rights*].

¹⁶⁷ *Malaysia: Anwar Ibrahim Sentenced to Five Years in Prison*, FIDH, Feb. 10, 2015 available at <https://www.fidh.org/en/region/asia/malaysia/16416-malaysia-anwar-ibrahim-sentenced-to-five-years-in-prison> [hereinafter *Anwar Ibrahim Sentenced to Five Years*].

¹⁶⁸ *Malaysia's Political Backslide*, see *supra* note 2.

violation of the international human right to freedom of expression and opinion, thus rendering his detention arbitrary under Category II.

2. The Malaysian Government Detained Anwar Ibrahim Because He Exercised the Right to Freedom of Political Participation

The Malaysian Government's arrest and detention of Anwar is also punishment for exercising his right to take part in public affairs and to be elected without unreasonable restrictions, as protected by Article 21 of the UDHR¹⁶⁹ and Article 25 of the ICCPR.¹⁷⁰ According to the Human Rights Committee, this right allows "[c]itizens . . . [to] take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring the freedoms of expression, assembly and association."¹⁷¹ Moreover, this right depends on the ability of individuals to run for office. As the Human Rights Committee has noted:

The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates . . . Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence, or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy.¹⁷²

In addition, the Working Group's jurisprudence supports this right; a violation of Article 25 occurs where individuals are detained solely for exercising their right to freedom of association and the right to take part in the conduct of public affairs.¹⁷³

Anwar's current detention is in response to his continued exercise of his right to participate in the conduct of public affairs as a member and leader of the opposition *Pakatan Rakyat* or People's Front (PR) coalition. After Anwar was released from his first unjust detention in September 2004, following six years in jail, he re-immersed himself in Malaysian politics and quickly rose to be the de facto leader of the *Parti Keadilan Rakyat* or People's Justice Party (PKR), one of the three main opposition parties.¹⁷⁴ He was also leader of the opposition coalition comprised of these three parties. Anwar could not hold any formal

¹⁶⁹ *Universal Declaration*, *supra* note 141, at art. 21 ("(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures").

¹⁷⁰ *ICCPR*, *supra* note 141, at art. 25 ("Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country").

¹⁷¹ *Human Rights Committee General Comment No. 25 (1996)*, CCPR/C/21/Rev.1/Add.7 at ¶ 8 [hereinafter *General Comment 25*].

¹⁷² *Id.* at ¶ 15 (emphasis added).

¹⁷³ See, e.g., *Tran ThiThuy, et al. v. Vietnam*, Opinion No. 46/2011, Adopted Sept. 2, 2011, ¶¶ 21, 22, 26.

¹⁷⁴ *Anwar Ibrahim: A Timeline of Political Turmoil*, ABC NEWS (Australia), Feb. 15, 2015.

posts in the PKR party while his five-year ban on political participation was in effect, but he was given the title of de facto leader.¹⁷⁵ As the ban was scheduled to expire in April 2008, Anwar announced his candidacy for Parliament in November 2006. However, the elections were moved up to March – a decision that drew heavy criticism because it was believed that the purpose was to further prevent Anwar from serving in an official capacity.¹⁷⁶ Nevertheless, Anwar remained engaged with the political opposition, campaigning actively for the PR.¹⁷⁷ The PR ended up with an historic win in which the opposition secured over one-third of the seats of Parliament, denying BN the two-thirds majority needed to make constitutional changes.¹⁷⁸ Later that year, Anwar easily won his own Parliamentary seat in a by-election, receiving 31,195 of the estimated 47,000 votes cast – more than twice those cast for his UMNO opponent.¹⁷⁹

It is in part because of the success of the opposition under Anwar's leadership that the Malaysian Government has persecuted Anwar. The Malaysian Government considers Anwar a threat to its hold on power, and therefore the Government created and tried Anwar on false allegations of sodomy, in an attempt to silence him and prevent him from participating in politics. Yet Anwar's political following remained strong, despite the attempts to discredit his image. When Anwar was surprisingly acquitted by the High Court in 2012 for a lack of credible evidence, the Malaysian Government refused to accept the decision of the High Court and immediately appealed the judgment. Anwar's political message was still influential despite the ongoing trial. This was made clear during the 2013 general election in which the opposition won 51 percent of the popular vote, putting Najib's hold on power in question. This significant accomplishment most certainly played a role in the Court of Appeal's decision to move up Anwar's appeal so that he would be barred from running in a key by-election (discussed in detail below). The Malaysian Government saw Anwar as a threat because of his political work, and as such the Government wanted to move forward with unjustly prosecuting him as quickly as possible. It manipulated the Court of Appeal to bring forward the appeal hearing to bar Anwar from running in the Kajang by-election. Furthermore, because of the final guilty verdict by the Federal Court, Anwar has been barred from Parliament and is unable to continue serving as a Member of Parliament and Leader of the Opposition. Through the Court of Appeal's determination of guilt and the Federal Court's affirmation of that verdict, the Malaysian Government not only discriminated against Anwar on the basis of his political participation, but also directly and unlawfully interfered with his ability to exercise the right to political participation.

In addition to concerns about freedom of expression and the lack of an independent judiciary, international organizations have been openly critical of the highly political motivations of Anwar's trial, conviction, and imprisonment. Phil Robertson, Deputy Asia Director for Human Rights Watch, characterized the Malaysian Government as "trying to knock out the opposition using the courts and weaken them [the opposition] further so that they cannot cause problems."¹⁸⁰ Sam Zarifi, Asia-Pacific Regional Director for the

¹⁷⁵ BRITANNICA, see *supra* note 68.

¹⁷⁶ See, e.g., *Malaysian PM Dissolves Parliament*, BBC, Feb. 13, 2008, available at <http://news.bbc.co.uk/2/hi/asia-pacific/7242179.stm>. (Another advantage for Mr. Badawi of holding the election next month is that charismatic opposition figure Anwar Ibrahim cannot stand for office).

¹⁷⁷ BRITANNICA, see *supra* note 68.

¹⁷⁸ *Malaysia - Freedom in the World 2013*, FREEDOM HOUSE, 2014.

¹⁷⁹ *Anwar Heads for Parliament After Election Victory*, SYDNEY MORNING HERALD, Aug. 27, 2013.

¹⁸⁰ Ron Corben, *Malaysia Judiciary Criticized Over Anwar Ibrahim Verdict*, VOICE OF AMERICA, Mar. 10, 2014, available at <http://www.voanews.com/content/malaysia-judiciary-criticized-for-anwar-ibrahim-verdict->

International Commission of Jurists, questioned the timing and speed of the case, saying “[a]ll this suggests very strongly that there is a political motive.”¹⁸¹

It is a violation of international law that the Malaysian Government denies Anwar his right to freedom of political participation, and this also renders his detention arbitrary under Category II.

B. Category III: Due Process Rights

The Working Group considers a deprivation of liberty to be a Category III arbitrary detention “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”¹⁸² Additionally, the Working Group will look to the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles).¹⁸³ Because the Malaysian Government violated numerous procedural requirements under both international and domestic law in this case, the continued detention of Anwar is arbitrary under Category III.

1. The Malaysian Government Failed to Provide Anwar Ibrahim an Independent and Impartial Tribunal

Article 10 of the UDHR establishes that every individual “is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”¹⁸⁴ This same right is established in Article 14(1) of the ICCPR, which affords individuals “a fair and public hearing by a competent, independent and impartial tribunal established by law.”¹⁸⁵

a. Saiful Met with Najib and Senior Police Before Making Allegations

Throughout Anwar’s trial, the Malaysian judiciary repeatedly demonstrated a lack of independence and impartiality; however, the collusion between the judiciary and the executive branch has been especially troubling. The first instance that raises serious concern was a meeting between the alleged victim, Saiful, and Najib on June 24, 2008 – a mere two days before Saiful accused Anwar of sodomy. Initially, Najib denied knowing Saiful, but was later forced to admit to the meeting after a photo was produced of Saiful with a staff member at the Deputy Prime Minister’s office.¹⁸⁶ At a news conference on July 3, Najib

/1867850.html.

¹⁸¹ *Id.*

¹⁸² *Fact Sheet No. 26*, *supra* note 142, at pt. IV(B).

¹⁸³ *Body of Principles*, *supra* note 141.

¹⁸⁴ *Universal Declaration*, *supra* note 141, at art. 10.

¹⁸⁵ *ICCPR*, *supra* note 141, at art. 14(1) (“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law....”).

¹⁸⁶ *Report on the Trial of Datuk Seri Anwar bin Ibrahim in the High Court of Malaysia observed on behalf of the Inter-Parliamentary Union (IPU)*, COMM. ON THE HUMAN RIGHTS OF PARLIAMENTARIANS 7, CL/1987/12(b)-R.2, Oct. 4, 2010 [hereinafter *2010 IPU Report*].

claimed that he met with Saiful in his “capacity as a leader and [Saiful] as an ordinary citizen who wanted to tell [the Prime Minister] something.”¹⁸⁷ Furthermore, the following day Saiful met privately with senior police officer Mohd Rodwan, who had been involved in the earlier sodomy trial and had allegedly planted fabricated DNA evidence against Anwar.¹⁸⁸ It was not until after these two meetings that Saiful went to the hospital and filed a police report alleging that Anwar sodomized him. The fact that the Prime Minister of Malaysia and a senior police officer both met privately with a young (23-year-old) alleged victim of a crime, prior to his filing a complaint with the police, raises serious questions. Shafee Abdullah, who was subsequently engaged to prosecute Anwar in the Court of Appeal and in the Federal Court, admitted to being present in Najib’s house when Saiful was there. It strongly suggests that Saiful was somehow influenced or coerced into making false accusations. This special relationship between Saiful and Najib, about which the Prime Minister initially lied, fundamentally undermines the credibility of Saiful’s allegations, as does the timing of Saiful’s meetings with the Prime Minister and police. The Malaysian Courts’ complete failure to take that relationship and the suspicious timing into consideration illustrates the clear lack of an independent judiciary.

b. Saiful’s Affair with Prosecutor During Trial

The controversy involving the alleged victim and the prosecution did not end with these initial concerns of conspiracy. During the trial, it was revealed that Saiful was engaged in a romantic affair with a female junior prosecutor in July 2010. She was removed from the prosecution team, but not before the situation had escalated to the extent that it raised concerns about the relationship fundamentally undermining the integrity and impartiality of the trial. Anwar’s defense team filed a police complaint requesting an investigation into whether the two violated the Official Secrets Act¹⁸⁹ by exchanging confidential prosecution documents, and also applied to have the sodomy charge struck on the basis that the trial had been compromised. High Court Justice Zabidin dismissed the application, accepting without question the prosecution’s claims that the junior prosecutor did not have access to key documents and that Saiful had no influence over her actions.¹⁹⁰ The dismissal was appealed to the Court of Appeal and the Federal Court, both of which refused to hear an appeal despite the obvious issues raised. The Courts’ refusals to consider the serious implications and due process abuses created by Saiful’s affair illustrate that the Malaysian Government failed to provide Anwar with an independent and impartial tribunal.

c. High Court Judge Refuses to Disqualify Himself Despite Bias Against Anwar

Zabidin had similarly dismissed an earlier application at the start of trial to strike the sodomy charge for abuse of process on the basis that there was a lack of medical evidence. That application was also appealed to and dismissed by both the Court of Appeal and the Federal Court. The fact that the case was able to move forward without any corroborating medical evidence, particularly in light of both Saiful’s meeting with the Prime Minister and his affair with a member of the prosecution, strongly suggests there was an ulterior motive

¹⁸⁷ *Id.* at 8.

¹⁸⁸ *Trowell: Sodomy II, supra* note 70, at 88.

¹⁸⁹ *Malaysian Official Secrets, see supra* note 104.

¹⁹⁰ *Trowell: Sodomy II, supra* note 70, at 168.

behind the prosecution of Anwar, and further illustrates that the Malaysian judiciary lacked impartiality at every level of Anwar's case.

Concerned about the independence of Zabidin, Anwar's defense team made multiple requests for him to disqualify and recuse himself from the trial. The first request came after Zabidin refused to cite an UMNO-owned Malay newspaper for contempt of court when it published pictures taken at the condominium where the alleged act took place.¹⁹¹ Not only had the newspaper defied a court order barring the media from entering the condominium, but it had also improperly suggested in the headlines that Saiful had been sodomized repeatedly, which Saiful himself did not claim in his testimony. Zabidin refused to disqualify himself despite the fact that his actions demonstrated a clear bias against Anwar.

The defense again requested that Zabidin recuse himself after he made intimidating remarks to defense lawyer Karpal Singh during legal arguments over the disclosure of highly relevant but previously undisclosed medical notes.¹⁹² When Karpal reminded Zabidin that the world was watching, Zabidin responded that Karpal could himself be cited for contempt for raising concerns about the fairness of the trial. Zabidin later withdrew his comment, but refused to disqualify himself even though he blatantly and publicly intimidated defense counsel not to raise due process concerns. It was not sufficient that Zabidin's comments were technically withdrawn because the threat of a contempt citation had been made, casting a pall over the entire legal defense. Anwar's defense appealed to the Court of Appeal, which again dismissed the recusal request. Justice Zabidin's clear bias and his consistent refusal to address blatant due process abuses are further proof that the Malaysian Government failed to provide Anwar with an independent and impartial tribunal.

d. Conflict of Interest and Incompetence of Lead Prosecutor

The decision of the Attorney General to appoint Muhammad Shafee Abdullah as Chief Prosecutor for the appeal demonstrates further that the Malaysian Government failed to act independently and impartially, as Shafee's connections to the ruling party and the key prosecution witness Jude Pereira (the investigating officer) reveal both a conflict of interest and an obvious bias against Anwar. Shafee is directly linked to Najib, serving as his private confidante and legal adviser, and is also legal adviser and lead counsel for UMNO, which highlights the political nature of his appointment.¹⁹³ He was also present in Najib's house when the complainant Saiful was there. Additionally, Shafee was the chairman of an inquiry panel that determined Pereira was an unreliable witness in another case. (That determination certainly calls into question Pereira's credibility in Anwar's case as well, especially given allegations that Pereira tampered with DNA evidence, discussed below.) Even though Shafee judged Pereira to be an unreliable witness in another case, in this case he insisted the officer was reliable. Shafee claimed that there was no conflict of interest because Pereira was a witness to the present case, not a party. Shafee's professionalism was further under scrutiny in October 2012, when the Advocates and Solicitors Disciplinary Board of the Malaysian Bar council found him guilty of misconduct for violating the Legal Profession Publicity Rules 2001 and fined him 5,000 ringgit (US \$1,500). Anwar's defense team raised concerns on several occasions about the conflict of interest posed by Shafee's close ties to the Prime Minister and his personal conflicting positions about Pereira's credibility; however, those

¹⁹¹ *Id.* at 120.

¹⁹² *Id.* at 158.

¹⁹³ *Trowell: The Final Play*, *supra* note 96, at 233.

petitions were dismissed as an abuse of process made to delay the Government's appeal. Shafee's connections and the fact that the Courts refused to address the concerns raised by the defense further illustrate that the Malaysian Government failed to provide Anwar with an independent and impartial tribunal.

These concerns were further validated after the Federal Court convicted Anwar, when Shafee made public, vitriolic attacks against Anwar and also participated in a public campaign organized by the ruling UMNO party, which sought to demonstrate that Anwar was guilty as charged.

e. Due Process Violations of the Court of Appeal's Decision

Under the ICCPR, "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."¹⁹⁴ When the Court of Appeal made its decision to reverse the High Court's acquittal, it did so with egregious violations of due process that fundamentally interfered with Anwar's right to be tried by a fair, impartial, and independent judiciary.

First, the timing of the appeal raises concerns. It was moved up one month from April 7-10, 2014 to March 6-7, illegally and on extremely short notice. This occurred despite the fact that defense lawyer Karpal Singh's office had been informed by phone in mid-February to hold the former dates open for the appeal, and despite the defense lawyers telling the Court that they were unavailable on the new dates because of previously scheduled court dates. Even more problematic, the Court of Appeal had previously issued a stay of appeal (on February 12) pending disposal of a distinct matter concerning the witness Pereira to the Federal Court. In fact, Anwar was supposed to have until March 6, 2014, to file the petition of appeal in that matter. Instead, on March 4, the Pereira appeal was illegally stricken, thereby lifting the Court of Appeal stay and making it possible for the Court to hear the case on March 6-7.

The context of the new timeframe is extremely relevant because the new dates led up to the eve of the March 11 nomination deadline for the Kajang by-election, from which Anwar would have been disqualified from contesting if found guilty. Moving the appeal to the new dates not only interfered with Anwar's right to prepare a defense by shortening the amount of time available to his defense team, but it also demonstrated – given the deadline for the by-election nomination – that the date was changed in order to ensure Anwar would be ineligible to run in the election and that the outcome was pre-determined by the Court.¹⁹⁵

Second, aside from the timing of the appeal, additional due process abuses undermined the fairness and called into question the independence of the three-judge appeal panel. During both days of the appeal, the proceedings extended beyond normal hours until 6:00-7:00pm (whereas usually the Court will adjourn for the day at 5:00pm for the day). According to the Malaysian Bar, concluding proceedings late is "not unheard of, [but] it is nevertheless rare" – providing further evidence that the appeal process in this case was not conducted in a typical fashion. On Friday, March 7, the second day of the appeal, the panel rushed quickly through only 90 minutes of deliberation and rendered a unanimous decision,

¹⁹⁴ ICCPR, *supra* note 141, at art. 5.

¹⁹⁵ Trowell: *The Final Play*, *supra* note 96, at 265–9.

signed by all three judges¹⁹⁶ – an astounding haste for the conclusion of a case that had been ongoing for nearly six years and an appeal that had only begun the day before.

Third, the judges rejected Anwar’s request to adjourn for one week before mitigation and sentencing. This was a reasonable request given that Anwar needed to obtain a medical report for use in considering the sentence to be imposed. Instead, the Court of Appeal gave Anwar’s defense team one hour to prepare and, in doing so, the Court denied itself relevant medical information “pertaining to the particulars or peculiarities” of Anwar’s medical condition. This has proven to be highly concerning in light of the conditions under which Anwar has been detained to date, which are exacerbating the pre-existing conditions from which he suffers as a result of age and his prior detention. At 7:00pm, the proceedings concluded, and Anwar was sentenced to five-years imprisonment. The Court of Appeal’s haste in scheduling, the speed at which the appeal was heard and the judgment was rendered, and the insistence on completing the mitigation and sentencing in a single day were, at the very least, extremely unusual. Paired with the context of the by-election nomination deadline the following Tuesday, these aspects of the proceedings collectively reveal that the Court of Appeal was not acting on its own accord; rather, the Court was influenced by political pressure and therefore was not acting as a fair, impartial, and independent judiciary.

f. Prime Minister’s Office Immediately Released Pre-Written Statement After Guilty Verdict

The lack of an independent judiciary was reaffirmed as the legal proceedings in the case drew to a close with the final appeal to the Federal Court of Malaysia. A few moments after the Federal Court issued its judgment on conviction, and even before the appeal by the prosecution on the sentence had been heard, Najib’s office issued a statement asking for “all parties to respect the legal process and judgment . . . Malaysia has an independent judiciary and there have been many rulings against senior government figures.”¹⁹⁷ Given that the statement was posted almost immediately after the judgment on conviction was released without even waiting for the sentencing decision, Najib’s office must have known the outcome of the case before the judgment was released. Under Malaysian law, the Federal Court lacks authority to provide the judgment to one side in advance of the ruling, and doing so thus reaffirms the lack of an independent judiciary.

g. International Condemnation of the Lack of an Independent Judiciary

This detention is the most recent act of the Malaysian Government in a long-running campaign to repress the political opposition in Malaysia and to silence Anwar in particular. Human Rights Watch described Anwar’s conviction as “a political vendetta,”¹⁹⁸ Amnesty International said it was a “deplorable judgment, and just the latest chapter in the Malaysian authorities’ relentless attempts to silence government critics,”¹⁹⁹ and FIDH added that it was “the disgraceful conclusion of a politically motivated trial.”²⁰⁰ UN High Commissioner for Human Rights spokesperson Rupert Colville expressed “disappointment” about the decision,

¹⁹⁶ *Id.* at 259–61.

¹⁹⁷ *Sodomy Conviction Upheld*, see *supra* note 118.

¹⁹⁸ *Sets Back Rights*, see *supra* note 166.

¹⁹⁹ *Chilling Effect on Freedom of Expression*, see *supra* note 165.

²⁰⁰ *Anwar Ibrahim Sentenced to Five Years*, see *supra* note 167.

which raised “concerns about the fairness of the judicial process.”²⁰¹

Foreign governments have also weighed in with concern. The US Embassy in Kuala Lumpur said it was “deeply disappointed and concerned . . . regarding the rule of law and independence of the courts,”²⁰² and Australia – traditionally a close ally of Malaysia – issued a statement from the Office of the Minister of Foreign Affairs expressing that it was “disappointed . . . and deeply concerned.”²⁰³ Hugo Swire, the United Kingdom’s Minister for State for the Foreign and Commonwealth Office, said “[Anwar’s] case raises worrying questions about the independence of the judiciary and rule of law in Malaysia.”²⁰⁴ A spokesperson of the European Union said the “conviction of opposition leader Anwar Ibrahim raises serious questions regarding due process of law.”²⁰⁵ Other countries – including Canada, New Zealand, Germany, and Switzerland – similarly concluded that the verdict had sufficiently raised serious questions about the independence of the Malaysian judiciary.²⁰⁶ Even within Malaysia, entities are questioning the Courts’ process and decision; the Malaysian Bar Council expressed concern over the “glaring anomalies” in the trial.²⁰⁷

2. The Malaysian Government Interfered with Anwar Ibrahim’s Right to Prepare a Defense and Withheld Key Evidence from the Defense

Under the ICCPR, a defendant must be allowed “to defend himself in person or through legal assistance of his own choosing.”²⁰⁸ In practice, this means that “[t]he accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair.”²⁰⁹ Furthermore, “the accused must have adequate time and facilities for the preparation of his defense.”²¹⁰ What constitutes “adequate time” depends on the circumstances of each case, but “the facilities must include access to documents and other evidence which the accused requires to prepare his case.”²¹¹ In addition, the ICCPR specifically guarantees a defendant

²⁰¹ *UN Rights Office ‘Disappointed’ to See Malaysian Opposition Leader Prison Sentence Upheld*, UN NEWS CENTRE, Feb. 10, 2015 available at <http://www.un.org/apps/news/story.asp?NewsID=50049#.VjPYZ66rQ-c>.

²⁰² *U.S. Embassy Statement on the Conviction of Anwar Ibrahim*, EMBASSY OF THE U.S. KUALA LUMPUR MALAYSIA, Feb. 10, 2015 available at http://malaysia.usembassy.gov/pr_emb_statement_anwar-021015.html.

²⁰³ *Media Release: Anwar Ibrahim Final Appeal*, AUSTRALIAN MINISTER OF FOREIGN AFFAIRS, Feb. 10, 2015 available at http://foreignminister.gov.au/releases/Pages/2015/jb_mr_150210.aspx?w=tb1CaGpkPX%2FIS0K%2Bg9ZKEg%3D%3D.

²⁰⁴ *Hugo Swire Concerned by Imprisonment of Malaysian Opposition Leader*, U.K. FOREIGN & COMMONWEALTH OFFICE, Feb. 10, 2015, available at <https://www.gov.uk/government/news/hugo-swire-concerned-by-imprisonment-of-malaysian-opposition-leader> [hereinafter *Hugo Swire Concerned*].

²⁰⁵ *Statement by the Spokesperson on the Conviction of Malaysian Opposition Politician Anwar Ibrahim*, EU, Feb. 10, 2015 available at http://eu-un.europa.eu/articles/en/article_16073_en.htm [hereinafter *Statement by the Spokesperson*].

²⁰⁶ *Condemning the Persecution of Anwar Ibrahim – Malaysian Progressives in the UK*, MALAYSIAN INSIDER, Feb. 23, 2015 available at <http://www.themalaysianinsider.com/sideviews/article/condemning-the-persecution-of-anwar-ibrahim-malaysian-progressives-in-the-u>.

²⁰⁷ *Id.*

²⁰⁸ *ICCPR*, *supra* note 141, at art. 14(3)(d).

²⁰⁹ Office of the High Comm’r for Human Rights, United Nations, General Comment No. 13: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Art. 14), Apr. 13, 1984 at ¶11 [hereinafter *General Comment 13*].

²¹⁰ *ICCPR*, *supra* note 141, at art. 3(b).

²¹¹ *General Comment 13*, *supra* note 209, at ¶9(3)(b).

the right “to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”²¹²

In this case, the Malaysian Government continuously denied Anwar the right to defend himself by interfering with his ability to challenge the improper conduct of the judiciary, limiting the time available to prepare a defense, withholding key prosecution evidence, and illicitly manipulating key alibi witnesses for the defense.

a. Interfered With His Ability to Challenge the Improper Conduct of the Judiciary

As discussed above, Anwar and his lawyers were consistently denied the right to challenge the improper conduct of the judiciary – including that of the High Court judge, the lead prosecutor, and the Court of Appeal. All petitions, requests, and appeals related to due process abuses were summarily ignored and dismissed or were otherwise inadequately addressed.

b. Limited the Time Available to Prepare a Defense

In addition, and also discussed above, the shortened timeframes at the Court of Appeal – including the unreasonable one-hour period given to the defense for mitigation and sentencing preparation – fundamentally interfered with the defense team’s ability to act diligently on behalf of Anwar. Collectively, these procedural abuses constitute a violation of the international norms of due process.

c. Withheld Key Prosecution Evidence

Anwar’s defense team was denied access to key prosecution evidence from the trial’s inception. The first application to compel disclosure of evidence – including samples taken, slides, notes, and documents relating to the medical and DNA evidence and the prosecution’s witness list – was made before the start of proceedings in June 2009. While the High Court judge ordered disclosure, the prosecution immediately appealed to the Court of Appeal, which reversed that order. The Federal Court upheld the Court of Appeal’s decision and refused to order pre-trial disclosure. Therefore, when the proceedings began, the defense team did not have access to the relevant and material information necessary to present Anwar’s defense. Anwar’s expert witnesses were particularly hampered by the lack of access to the exhibits or notes relating to the testing of the DNA samples.

After the proceedings were underway, the High Court judge refused a second application for disclosure of evidence, this time including Saiful’s police statement. This document would have been probative of the validity of Saiful’s claims regarding what happened on the day of the alleged incident. This is especially true in light of Saiful’s questionable credibility, due not only to his earlier meetings with Najib and a senior police officer, but also to the lack of medical evidence supporting Saiful’s sodomy allegation. On appeal, the Court of Appeal again refused to grant the defense access to the documents.

In its third application for disclosure, the defense requested access to all medical notes

²¹² ICCPR, *supra* note 141, at art. 14(3)(e).

and reports that were made by the doctors who examined Saiful. These documents were relevant to show the lack of medical evidence, as all four examining doctors concurred that there was no evidence of anal penetration. This evidence was also relevant to the question of whether Saiful informed the first examining doctor, Dr. Osman, that he had been sodomized with a plastic implement, which Dr. Osman had noted in his report. The court never considered this information, and Dr. Osman was later baselessly determined to be an “untruthful” witness. Judge Zabidin of the High Court completely ignored the relevance of the requested documents and refused their disclosure, saying that there was no provision or legal basis for the defense to be supplied with documents.

By continuously refusing to provide Anwar with the information necessary to build his defense, the Malaysian Government interfered with Anwar’s right to prepare a defense. This further illustrates that Anwar’s detention is arbitrary under Category III.

d. Interference With Defense Witness Testimony

Troubling incidents of government interference with Anwar’s defense witnesses – including with his alibi witnesses – ultimately prevented Anwar from presenting his defense. There is clear evidence that the Malaysian police harassed and intimidated individuals who were meant to be key alibi witnesses, thereby manipulating testimony or altogether preventing witnesses from testifying. For example, the police interrogated the owner of the condominium (where the alleged act was said to have occurred) for more than 30 hours before he was scheduled to be called by the defense to testify. He was so intimidated by that interrogation that he did not testify. The defense identified a maid who had been working at the condominium at the time as an alibi witness, but she could not be located when it was time for her testimony. The Court never gave a reason for her absence.²¹³

Additionally, the High Court judge refused to compel testimony from available witnesses. The defense had summoned Najib for questioning related to the June 2008 meeting with Saiful before the allegations were lodged. This testimony would have provided answers to several of the crucial questions raised, and Saiful himself had already testified to the meeting earlier in the proceedings. Justice Zabidin refused to enforce the summons on the absurd basis that the defense had “failed to show the relevancy and materiality” of Najib’s testimony to the trial, thereby ignoring the fact that the testimony could reveal the purpose of the meeting and whether there was bias or motivation for Saiful to make false allegations.

Through police intimidation of alibi witnesses as well as the Courts’ refusals to compel testimony, the Malaysian Government interfered with Anwar’s right to prepare a defense and thereby rendered his trial unfair and his detention arbitrary.

3. There Was No Valid Evidence to Find Anwar Ibrahim Guilty of Sodomy

As Anwar has consistently maintained, there is absolutely no physical evidence to corroborate Saiful’s allegation of sodomy, and the allegation itself is highly questionable and inconsistent. In determining Anwar’s guilt, the Malaysian courts handpicked statements from unreliable prosecution witnesses. At the same time, the Courts erroneously “rejected or

²¹³ *Trowell: Sodomy II*, *supra* note 70, at 215.

ignored the evidence that raised serious doubts about the reliability of so-called independent evidence and the credibility of the complainant,”²¹⁴ even when that evidence came from the same prosecution witness on whom the Courts relied in finding Anwar guilty. This included problematic DNA evidence from Saiful’s rectal swab, a lack of evidence of penile penetration, evidence relating to the location of the alleged incident, and whether lubricant was used.

The doubts raised by the individual pieces of evidence (or lack thereof) should have seriously called into question Saiful’s credibility and the truthfulness of his allegation. Taken collectively, there is an overwhelming lack of credible evidence against Anwar. A fair and impartial judiciary, especially one applying the criminal standard of proof – “beyond a reasonable doubt” – could not have concluded that Anwar was guilty. Therefore, the guilty verdict can only be characterized as a miscarriage of justice, unfair, and utterly prejudicial against Anwar.

a. Problematic DNA Evidence from Saiful’s Rectal Swab

The only evidence that could have truly corroborated Saiful’s allegations would have been positive DNA evidence from a rectal swab taken after the alleged incident. Without establishing this evidence beyond a reasonable doubt, the Malaysian courts should not have found Anwar guilty of sodomy. However, Anwar was found guilty despite the numerous questions and concerns regarding the reliability of the DNA, which were sufficient to cast at least a reasonable doubt on the evidence. These included concerns that the DNA sample was not properly stored and was tampered with, that the sample was taken too late, that the sample was improperly examined, and that the sample contained multiple DNA profiles.

Pursuant to hospital protocol, the DNA sample taken from Saiful’s anus during his hospital examination was put into a clearly marked container and then placed in a clear, plastic, heat-sealed, tamper-proof bag. Officer Pereira was then instructed to place the samples in a freezer (to prevent degradation) until they were sent to the chemist for evaluation.²¹⁵ Instead, Pereira cut open the tamper-proof bag, claiming later that he was merely following standard operating procedure because he wanted to put the containers into individual envelopes and re-label them.²¹⁶ Pereira compromised the integrity of the DNA evidence by opening the plastic bag, as he could have easily opened the containers, tampered with the DNA evidence, and resealed the containers with the existing tape. In his reasoning for initially acquitting Anwar, Judge Zabidin of the High Court wrote, “by cutting open the plastic bag confidence in the integrity of the samples was gone.”²¹⁷ The Court of Appeal, however, dismissed this reasoning and the defense’s similar arguments, agreeing instead with the false claims of the prosecution and even repeating Pereira’s claim that he was following standard procedures.²¹⁸

²¹⁴ *Senior Aussie Lawyer Says Judges in Anwar Trial Ignored Evidence*, MALAYSIAN INSIDER, Feb. 14, 2015 available at <http://www.themalaysianinsider.com/malaysia/article/senior-aussie-lawyer-says-judges-in-anwar-trial-ignored-evidence>.

²¹⁵ *Trowell: Sodomy II*, *supra* note 70, at 193.

²¹⁶ *Id.* at 194.

²¹⁷ *Id.*

²¹⁸ *Trowell: The Final Play*, *supra* note 96, at 260.

To make matters worse, after Pereira cut into the plastic bag and re-labeled the DNA samples, he blatantly ignored instructions to keep the samples in the police freezer.²¹⁹ Instead, Pereira placed them in his personal steel cabinet and kept them there for 42 hours.²²⁰ Pereira gave no explanation for the breach of standard operating procedure, and the Court did not consider this in its decision.

By the time the DNA samples were finally received by the chemists for evaluation, a total of 98 hours (over four days) had passed since the alleged sodomy.²²¹ Expert witnesses, including those called by the prosecution, accepted that improperly-stored semen samples – such as those not stored in a freezer – would suffer degradation, which means that the results of testing would be compromised and unreliable.²²² Two expert witnesses for the defense testified that semen collected even 36 hours after ejaculation could be compromised.²²³ In this case, the DNA semen samples taken from Saiful’s anus were not only improperly stored but were also tested long after the 36-hour cut-off. Therefore, the samples should have significantly degraded, possibly to a point that would render them unusable. However, the samples that were analyzed and subsequently presented as evidence were in pristine condition and showed no signs of degradation – which, according to scientific expertise, was impossible.²²⁴ Furthermore, the pristine condition of the samples when they were analyzed demonstrates a clear inconsistency in the prosecution’s narrative, and it raises the question of whether these samples were in fact taken from the complainant. The prosecution did not attempt to explain this glaring inconsistency, and the Courts again did not consider the lack of degradation to be a material fact. Instead, the concerns of the defense witnesses and the findings of expert testimony were ignored and the chemist’s report was accepted without question.²²⁵

However, the chemist’s report raised further concerns on its own about the reliability of the evidence. The Differential Extraction Process, which was used to separate sperm cells from non-sperm cells in the rectal swab, was incomplete. This raises the possibility that the matched DNA did not come from sperm cells, but rather from other, non-sperm cells, such as those that could be collected from the surface of a personal device.²²⁶ Additionally, the puzzling presence of a third person’s DNA²²⁷ in the sample taken from Saiful’s rectum suggested that Saiful “had either been penetrated to ejaculation by another male, or someone had contaminated the sample by handling it.”²²⁸ The prosecution was not asked to explain these inconsistencies, and the Court ignored the serious deficiencies and flaws in the chemist’s DNA report, focusing only on the presence of matched DNA in erroneously finding Anwar guilty.

The manner in which the DNA evidence was collected, mishandled, analyzed, and interpreted fundamentally undermined its credibility, yet the Courts nevertheless relied on this evidence in order to find Anwar guilty. Therefore, the decision of the Malaysian courts

²¹⁹ *Trowell: Sodomy II*, *supra* note 70, at 193.

²²⁰ *Id.* at 193.

²²¹ *Id.* at 181.

²²² *Id.* at 194.

²²³ *Id.* at 237–8.

²²⁴ *Id.* at 262.

²²⁵ *Id.* at 194–5.

²²⁶ *2014 IPU Resolution*, *supra* note 110.

²²⁷ *Id.*

²²⁸ *Id.*

was completely unfounded and unsubstantiated, and violated Anwar's right to be tried by a fair, impartial, and independent judiciary, making his detention arbitrary under Category III.

b. Lack of Evidence of Penile Penetration

There was absolutely no credible evidence that Saiful actually experienced penile penetration, which is a necessary element of the act of sodomy.²²⁹ The first doctor who examined Saiful came to this conclusion, as did three specialists who independently examined Saiful on the same day.²³⁰ The medical reports endorsed by all four doctors unequivocally state that conclusion.²³¹

Additionally, the first doctor reported that Saiful told him he had been sodomized with a plastic implement, not a penis.²³² Saiful denied making that statement, and the High Court never considered the question.²³³ Moreover, the prosecution sought to dismiss the first doctor's testimony²³⁴ by claiming that he was untruthful, without explanation and despite the fact that his report was recorded contemporaneously to the examination and his testimony was highly probative. The doctor did not know Saiful and had no motive to say anything other than the truth. Both the lack of credible evidence against Anwar as well as the High Court's willingness to ignore that fact violated Anwar's right to be tried by a fair, impartial, and independent judiciary, thus making his detention arbitrary under Category III.

c. Doubts About the Location of the Alleged Event

In his testimony, Saiful claimed that the alleged sodomy occurred on a carpet in Apartment 1 of a condominium.²³⁵ There was no carpet in Apartment 1, yet Saiful identified the carpet from another apartment in the complex as the same one where the alleged event took place.²³⁶ The prosecution did not introduce the carpet into evidence, nor did it attempt to explain whether the carpet had been moved after the alleged incident. Further complicating Saiful's testimony, an UMNO-backed Malay newspaper printed a photo with a caption stating that Saiful had pointed to a bed as the location of the alleged sodomy.²³⁷ The High Court refused to hold the newspaper in contempt, claiming that the evidence about the bed had been given in open court – which directly contradicted Saiful's testimony about the carpet.²³⁸

The Federal Court chose to completely disregard this evidence, erroneously claiming that it was not material.²³⁹ This decision prejudiced Anwar both because it was a missed opportunity to discredit Saiful as a witness and because the evidence was not considered when determining whether the alleged event actually took place. The Courts' refusals to

²²⁹ *Trowell: Sodomy II*, *supra* note 70, at 84.

²³⁰ *Id.* at 263–4.

²³¹ *Id.* at 84.

²³² *Id.*

²³³ *Id.* at 268–9.

²³⁴ *Id.*

²³⁵ *Trowell: The Final Play*, *supra* note 96, at 351.

²³⁶ *Id.*

²³⁷ *Trowell: Sodomy II*, *supra* note 70, at 121.

²³⁸ *Id.*

²³⁹ *Trowell: The Final Play*, *supra* note 96, at 351.

consider Saiful's contradictory statements further illustrate that Anwar was not tried by a fair, impartial, and independent judiciary, making his detention arbitrary under Category III.

d. Questionable Introduction of Lubricant Into Evidence

During his testimony, Saiful surprised the defense when a deputy prosecutor handed him a tube of lubricant and Saiful identified it as the lubricant used during the alleged act.²⁴⁰ Until then, the defense was unaware that Saiful was claiming lubricant had been used, or that the tube existed.²⁴¹ Saiful told the Court that Anwar had asked him to bring the lubricant with him to the condominium apartment.²⁴² The independent court observer, Mark Trowell, noted that this claim contradicted Saiful's previous testimony on the record, in which he stated that he did not know why Anwar had asked him to come to the apartment.²⁴³

Furthermore, Saiful explained that the tube was not tendered earlier as evidence because he had offered the tube to Pereira, but Pereira turned it down. Even if the alleged sodomy did occur, it is extremely unlikely that Pereira would turn down this piece of evidence, as he is an experienced police officer who would have recognized the importance of the lubricant and would have accepted the tube as evidence. Instead, Saiful explained that Pereira told him he would collect it later.²⁴⁴

The Courts' handling of the questions and doubts raised by the actions of both Saiful and Pereira is yet another example of how Anwar was not tried by a fair, impartial, and independent judiciary, making his detention arbitrary under Category III.

4. The Malaysian Government's Ongoing Denial of Medically Appropriate Detention Conditions for Anwar Ibrahim Constitutes Cruel, Inhuman, and Degrading Treatment

Article 5 of the UDHR and Article 7 of the ICCPR both state that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."²⁴⁵ Principle 24 of the Body of Principles further elaborates that "medical care and treatment shall be provided whenever necessary" to persons who are detained or imprisoned.²⁴⁶

The Malaysian Government's treatment of Anwar during his current detention has violated these international standards. After repeated requests from his lawyer and public pressure, Anwar was finally admitted to a hospital on June 2, 2015, for a check-up, observation, and medical treatment. Malaysian Home Minister Ahmad Zahid Hamidi finally approved Anwar's transfer to the hospital four weeks after the prison doctor and prison authorities requested it. Anwar's family has also requested that a doctor of Anwar's choice examine him while he is in the hospital, but they have not received an answer.

²⁴⁰ *Trowell: Sodomy II*, *supra* note 70, at 119.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.* at 120.

²⁴⁴ *Trowell: The Final Play*, *supra* note 96, at 351.

²⁴⁵ *Universal Declaration*, *supra* note 141, at art. 5; *ICCPR*, *supra* note 141, at art. 7.

²⁴⁶ *Body of Principles*, *supra* note 141, at Principle 24.

Prior to his transfer to Kuala Lumpur Hospital, Anwar was held by the Prison Department of Malaysia at the Sungai Buloh Prison, M20 in Sungai Buloh, Selangor. Despite assurances from the Malaysian Home Minister that Anwar would be treated humanely, he was originally held in solitary confinement in a bare cell infested with rodents and insects. His cell contained a thin foam mattress on a bedframe, a bucket for bathing, and a squat toilet. It was extremely hot and humid with no form of ventilation or fan, so Anwar was forced to sleep on the floor where it was somewhat cooler. He continues to suffer from a chronic back and spine injury as a result of a prior beating at the hands of Malaysian police.²⁴⁷ This causes him constant, unnecessary pain every time he has to bend over or stand up from a sitting position, which was exacerbated by his sleeping on the floor.²⁴⁸ Additionally, it was incredibly painful for Anwar to use the low toilet because it required serious bending of his back. Repeated requests for a bed, a medically appropriate mattress, a normal toilet, and a table and chair were denied for weeks.²⁴⁹ On March 2, 2015, after a month in these deplorable conditions, Malaysian authorities moved Anwar to the medical wing of the prison, where a bed with a mattress, a sitting toilet, and a small table and chair were provided. Unfortunately, the move to the medical wing of the prison did not improve the worrisome health conditions of 67-year-old Anwar.

Anwar is now down to 66 kg from his original weight of 72 kg, a drop of 6 kg, which could present a serious threat to his health should he continue to lose weight. He has had dark stool, which is suspected to be melena, is indicative of bleeding in the gut, and requires medical assessment and treatment. Anwar's blood pressure has been irregular and was recently as high as 163/108 despite being on medication. He has been denied access to the vitamins and supplements that he was taking prior to his detention.²⁵⁰ On top of all this, he is suffering from a full thickness tear of his right shoulder capsule (from an injury which took place a year ago) that still causes him pain and discomfort. Pending surgery, Anwar needs regular and intensive physiotherapy in hospital conditions with full facilities in order to reduce his pain and discomfort and to prevent long-term damage. Regrettably, he has been denied such treatment, leaving him to manage his pain mainly with painkillers.

Anwar was hospitalized four times – in June 2015, July 2015, January 2016, and May 2016 – but only for a few days at a time. Unfortunately, the daily physiotherapy he is provided in the hospital is ended immediately upon his discharge, despite the fact, which the doctors know, that he has benefited from such treatment. Additionally, during his hospitalization in June 2015, medical checks revealed a polyp growth on his kidney. Hospital authorities said that Anwar is not suffering from any “acute” disease; however, concerns remain as to whether his bodyweight will continue to deteriorate and pose risks to his overall health.

Anwar is also facing constant psychological pressure by the prison authorities who are acting under instruction from the political authorities. He is kept in solitary confinement and denied contact with other prisoners, and there are regular occasions where he is harassed every few hours by prison guards who come by his cell to take pictures of him and to see

²⁴⁷ *Rahim Noor's Confession*, see *supra* note 71.

²⁴⁸ *'Endangering' His Health*, see *supra* note 137.

²⁴⁹ *Id.*

²⁵⁰ *Denied His Vitamins & 3-Kilos Thinner, Anwar Still Insists 'Reform Agenda' Must Go On*, NEWS HUB, Mar. 14, 2015, available at <https://my.newshub.org/denied-his-vitamins-3-kilos-thinner-anwar-still-insists-reform-agenda-must-go-13459722.html#>.

what he is doing. It is unknown where or to whom these pictures are sent. In prison, he has been denied contact visits from his family and is only able to speak to them by phone across a glass panel. Since September, the prison authorities, acting on instructions from the political authorities, have also severely restricted his access to his lawyers, allowing him only one visit of one hour per week. Anwar has protested repeatedly against these conditions, but to no avail.

The Malaysian Government's withholding of medically appropriate detention conditions for Anwar and its continued perpetration of psychological abuse constitute cruel, inhuman, and degrading treatment could result in serious injury or death. It is reasonable to conclude that the purpose of this mistreatment is to inflict pain on Anwar in order to try to break his spirit and his will to fight his wrongful conviction.

VI. Opinion of the UN Working Group on Arbitrary Detention

The UN Working Group on Arbitrary Detention was established by Resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended in successive resolutions of the Commission and later the successor Human Rights Council, most recently by Resolution 24/7 of September 26, 2013. The Working Group consists of five independent experts, appointed by the UN Human Rights Council, that serve in their individual capacities. The current membership of the Working Group includes experts from Australia, Benin, Mexico, South Korea, and Ukraine.

In addition to conducting country visits and producing annual reports, the Working Group is the only one of the UN Special Procedures that adjudicates individual cases. After having received a complaint from a petitioner (referred to as the "source"), the government against whom the complaint is made is given 60 days to respond. If a response is received, the petitioner is given the opportunity to reply. The case is then considered at the next tri-annual session of the Working Group, at which point an opinion may be adopted.

After the Government of Malaysia sentenced and imprisoned Anwar, a petition was submitted to the Working Group. The petition recounted much of the information contained in this White Paper.

In its opinion adopted September 1, 2015, the Working Group considered the information presented, noting that Anwar's right to a fair trial, as guaranteed by Article 10 of the UDHR,²⁵¹ and his right to the presumption of innocence, as guaranteed by Article 11(1) of the UDHR,²⁵² had been violated.²⁵³ It went on to say that these violations "are of such gravity as to give [Anwar's] deprivation of liberty an arbitrary character"²⁵⁴ and "to conclude that the current sodomy charges against Mr. Ibrahim were politically motivated."²⁵⁵ The Working Group also found there to be "a violation of Mr. Ibrahim's right to freedom of

²⁵¹ *Universal Declaration*, *supra* note 141, at art. 10.

²⁵² *Universal Declaration*, *supra* note 141, at art. 11(1).

²⁵³ *Anwar Ibrahim v. Malaysia*, Opinion No. 22/2015, UN WORKING GROUP ON ARBITRARY DETENTION, A/HRC/WGAD/2015, Adopted Sept. 1, 2015, at ¶ 31.

²⁵⁴ *Id.* at ¶ 33.

²⁵⁵ *Id.* at ¶ 35.

opinion and expression and his right to take part in government under articles 19 and 21 of the UDHR.”²⁵⁶

Furthermore, the Working Group made a point of “record[ing] its concern about Anwar’s physical and psychological integrity while serving the five years of imprisonment,”²⁵⁷ even suggesting that his treatment “may have violated the prohibition of torture or other cruel, inhuman or degrading treatment,” referring the matter to the relevant Special Rapporteur for further consideration.²⁵⁸

As a result, the Working Group recommended that the Government of Malaysia “release Mr. Ibrahim immediately, and ensure that his political rights that were removed based on his arbitrary detention be reinstated.”²⁵⁹

VII. International Support for the Release of Anwar Ibrahim

International Organizations

- “In Malaysia, democratic space continues to be limited, with the Government applying ‘sedition’ and other charges to an ever-widening circle of journalists, human rights defenders, political opponents and critical voices. The enactment of the Prevention of Terrorist Act and the National Security Council Act, without proper human rights safeguards, and without transparent and consultative process, is also a matter of concern. The imprisonment of a former opposition leader, Anwar Ibrahim – whose detention has been ruled arbitrary by the Working Group on Arbitrary Detention – is emblematic of a broader democratic malaise.” – Zeid Ra’ad Al Hussein, **UN High Commissioner for Human Rights**²⁶⁰
- “The conviction and sentencing of opposition leader Anwar Ibrahim raises serious questions regarding due process of law. The European Union regards Malaysia as a key political and economic partner in South East Asia. In that spirit of partnership, the EU wishes to underscore that trust in the administration of justice is an essential component of the democratic process.” – Federica Mogherini, **High Representative of the European Union for Foreign Affairs and Security Policy**²⁶¹
- “The Inter-Parliamentary Union (IPU) is dismayed over the ruling handed down today by Malaysia’s Federal Court to uphold a sodomy conviction against opposition leader Anwar Ibrahim. This is the second time that Anwar Ibrahim will serve a prison term on sodomy charges in a country where such charges are very uncommon. ‘This decision based on flawed judicial proceedings is not only a blow to Mr. Anwar personally, but also to Malaysia’s democracy.’” – Ann Clwyd, MP and President of

²⁵⁶ *Id.* at ¶ 37.

²⁵⁷ *Id.* at ¶ 38.

²⁵⁸ *Id.* at ¶ 39.

²⁵⁹ *Id.* at ¶ 42.

²⁶⁰ *Statement by Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights, to the Human Rights Council 31st session, UNHCHR, Mar. 10, 2016 available at* <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17200&LangID=E>.

²⁶¹ *Statement by the Spokesperson on the Conviction of Malaysian Opposition Politician Anwar Ibrahim*, EU, Feb. 10, 2015.

Inter-Parliamentary Union's Committee on the Human Rights of Parliamentarians²⁶²

- “This is a deplorable judgment, and just the latest chapter in the Malaysian authorities’ relentless attempts to silence government critics. The ‘sodomy’ charges against Anwar Ibrahim have always been politically motivated, and he should be released immediately ... We consider Anwar Ibrahim to be a prisoner of conscience – jailed solely for peacefully exercising his right to freedom of expression.” – Richard Bennett, **Amnesty International’s** Asia Pacific Director²⁶³
- “The conviction of opposition leader Anwar Ibrahim after seven years of politically motivated proceedings under an abusive and archaic law is a major setback for human rights in Malaysia. ‘[The] government has persisted in its politically motivated prosecution of opposition leader Anwar Ibrahim at the expense of democratic freedoms and the rights to non-discrimination and privacy for all Malaysians. Allowing this travesty of justice to stand will further undermine respect for rights and democracy in Malaysia’” – Phil Robertson, **Human Rights Watch** Deputy Asia Director²⁶⁴
- “It is clear from the decision of the Federal Court today that the Government of Malaysia has once again inappropriately used Section 377B of the Penal Code against its political opponents. This is deplorable, especially since Section 377B criminalizes consensual same-sex relations and thereby violates a range of international law and standards, including on the rights to privacy, non-discrimination and equal protection.” – Justice Elizabeth Evatt, Commissioner of the **International Committee of Jurists**²⁶⁵
- “We, the undersigned human rights organizations, stand in solidarity with Anwar Ibrahim, condemn the politically motivated charges and trial that led to his imprisonment, and call for his immediate and unconditional release.” – **The International Federation for Human Rights (FIDH), Amnesty International, ASEAN Parliamentarians for Human Rights (APHR), and Others**²⁶⁶
- “The Governing Council of the Inter-Parliamentary Union ... fears that Mr. Anwar Ibrahim’s conviction, which precluded him from participating in parliamentary life for more than a decade, ... may be based on considerations other than legal; ... is deeply concerned that Mr. Anwar Ibrahim may not be receiving the treatment he needs in an effective and timely manner; [and] calls on the authorities to do

²⁶² *IPU Dismayed at Ruling on Anwar Ibrahim Case*, Feb. 10, 2015, available at <http://www.ipu.org/press-e/pressnote201502101.htm>.

²⁶³ *Malaysia: Anwar Verdict Will Have Chilling Effect on Freedom of Expression*, AMNESTY INT’L, Feb. 10, 2015.

²⁶⁴ *Malaysia: Anwar’s Conviction Sets Back Rights*, HUMAN RIGHTS WATCH, Feb. 10, 2015.

²⁶⁵ *Federal Court Judgment on Anwar Ibrahim’s ‘Sodomy II’ Appeal a Blow to Human Rights in Malaysia*, Feb. 10, 2015, available at <http://www.icj.org/federal-court-judgment-on-anwar-ibrahims-sodomy-ii-appeal-a-blow-to-human-rights-in-malaysia/>.

²⁶⁶ FIDH, Amnesty International, Article 19, APHR, Suaram, and Global Bersih, *Solidarity Statement for Prisoner of Conscience Anwar Ibrahim*, Aug. 10, 2015, available at <http://perseus-strategies.com/wp-content/uploads/2015/10/Solidarity-Statement-for-Prisoner-of-Conscience-Anwar-Ibrahim-from-International-Organizations.pdf>.

everything possible to address this situation” – **Governing Council of the Inter-Parliamentary Union**²⁶⁷

- “Malaysia’s conviction of Anwar Ibrahim was politically motivated, and he’s already suffered through a year in prison from this travesty of justice. Every day that Anwar is behind bars, confidence in the Malaysian justice system further erodes. The government should release Anwar and repeal the country’s abusive and archaic sodomy laws.” – Phil Robertson, Deputy Asia Director, **Human Rights Watch**²⁶⁸
- “The Malaysian authorities must immediately and unconditionally release former opposition leader Anwar Ibrahim, who has now spent a year in prison on politically motivated charges. Amnesty International regards Anwar Ibrahim as a prisoner of conscience, who has been targeted solely for peacefully exercising his right to freedom of expression.” – **Amnesty International**²⁶⁹
- “Anwar’s incarceration at Sungai Buloh prison remains a huge stain on Malaysia’s international reputation. Every additional day Anwar is kept behind bars, is a grim reminder on how far Malaysia has fallen, how undemocratic and oppressive the government has become towards its political adversaries.” – **Lawyers for Liberty**²⁷⁰
- “It’s time the authorities put an end to the persecution of Anwar Ibrahim and immediately and unconditionally release him. Any additional day Anwar spends behind bars is one more day of shame for the Malaysian government and further tarnishes its battered reputation.” – Karim Lahidji, President of the **International Federation for Human Rights (FIDH)**²⁷¹
- “Suara Rakyat Malaysia (SUARAM) condemns the continued detention of Anwar Ibrahim and call[s] for his immediate and unconditional release.” – Sevan Doraisamy, Executive Director of **Suara Rakyat Malaysia (SUARAM)**²⁷²
- “Abim demands that Anwar Ibrahim be released immediately and validly through legal means and vindicated from all convictions ...” – Mohamad Raimi Rahim, President of the **Muslim Youth Movement of Malaysia (Abim)**²⁷³
- “The Asian Forum for Human Rights and Development (FORUM-ASIA) and its member, Suara Rakyat Malaysia (SUARAM), call for the immediate and unconditional release of Anwar Ibrahim, opposition leader and former Deputy Prime Minister of Malaysia. The sodomy charges against him were politically motivated and are a stark reminder of the deteriorating democracy in Malaysia.” – **The Asian**

²⁶⁷ *Inter-Parliamentary Union Decision MAL/15 – Anwar Ibrahim*, Oct. 21, 2015, available at <http://perseus-strategies.com/wp-content/uploads/2015/10/D-Ibrahim-148-E.pdf>.

²⁶⁸ *Malaysia: End Anwar Ibrahim Incarceration*, HUMAN RIGHTS WATCH, Feb. 8, 2016.

²⁶⁹ *Malaysia: Authorities Must Release Anwar Ibrahim and End Crackdown on Dissent*, AMNESTY INT’L, Feb. 9, 2016.

²⁷⁰ *On the One Year Anniversary of Anwar Ibrahim’s Imprisonment*, LAWYERS FOR LIBERTY, Feb. 9, 2016.

²⁷¹ *One-Year Imprisonment of Anwar Ibrahim Marked*, FIDH, Feb. 10, 2016.

²⁷² *1 Year of Arbitrary Detention of Anwar Ibrahim*, SUARAM, Feb. 10, 2016.

²⁷³ Kyra Alegria, *Abim Demands the Release of Anwar After a Year of Imprisonment*, RAKYAT POST, Feb. 10, 2016.

Forum for Human Rights and Development (FORUM-ASIA)²⁷⁴

- “In February, the Federal Court upheld the conviction and five-year prison sentence of opposition leader and prisoner of conscience Anwar Ibrahim on sodomy charges dating to 2008. The charges were seen as politically motivated and an attempt to silence government critics” – **Amnesty International**²⁷⁵
- “*Considers* that, in light of the procedural irregularities, the serious doubts about the credibility of the evidence present against Mr. Anwar Ibrahim, the dubious circumstances surrounding the alleged sodomy and the new information that has since come to light in support of the affirmation that his trial was based on other-than-legal considerations, his conviction and continued detention are untenable... *Calls therefore* on the authorities to release Mr. Anwar Ibrahim forthwith and to take the necessary measures to enable him to return to parliamentary life.” – **Inter-Parliamentary Union (IPU)**²⁷⁶
- “Decisions on cases in Malaysia include calls for opposition leader Anwar Ibrahim to be released from prison following new information that his trial and subsequent conviction were not based on legal considerations. IPU is, nevertheless, pleased by assurances that Anwar Ibrahim would receive medical treatment by a doctor of his own choosing. The Organization, however, remains concerned by Malaysia’s amended Sedition Act and Peaceful Assembly Act which have been used against 19 other MPs exercising their right as parliamentarians to speak and assemble freely.” – **Inter-Parliamentary Union (IPU)**²⁷⁷

Political and Intellectual Leaders

- “I have learned the conviction and sentencing of Anwar Ibrahim with great sadness and concern. As a long standing friend of Anwar Ibrahim, I find the charges brought against him very difficult to believe. Anwar Ibrahim is an intellectually oriented leading political figure in the Muslim World who has been a strong advocate of compatibility of Islamic values with democracy, rule of law and human rights. As a friend of Malaysia and Malaysian people, I would like to encourage the Malaysian government to reconsider the impact of this verdict on its international standing and its commitment to human rights.” – **H.E. Abdullah Gül, Former President of Turkey**²⁷⁸
- “As believers in the right to the freedom of expression and the freedom of peaceful assembly, we call on the government of Malaysia to uphold the rule of law, and to

²⁷⁴ *Malaysia: Anwar Ibrahim’s One Year detention represents a serious set-back for democracy*, FORUM-ASIA, Feb. 10, 2016.

²⁷⁵ AMNESTY INT’L, AMNESTY INTERNATIONAL REPORT 2015/16: THE STATE OF THE WORLD’S HUMAN RIGHTS, 240, 2016, available at <https://www.amnesty.org/en/documents/pol10/2552/2016/en/>.

²⁷⁶ *Inter-Parliamentary Union Decision MAL/15 – Anwar Ibrahim*, Mar. 23, 2016, available at <http://perseus-strategies.com/wp-content/uploads/2016/04/IPU-Resolution-Malaysia-3.23.16.pdf>.

²⁷⁷ *Inter-Parliamentary Union Press Release – IPU Increasingly Worried by Reduced Space for Political Expression*, Mar. 23, 2016, available at <http://www.ipu.org/press-e/pressrelease201603231.htm>

²⁷⁸ *Statement of Support by H.E. Abdullah Gül for Anwar Ibrahim of Malaysia*, Feb. 13, 2015, available at <http://www.abdullahgul.gen.tr/news/397/90977/statement-of-support-by-he-abdullah-gul-for-anwar-ibrahim-of-malaysia.html>.

respect the human rights and fundamental freedoms of its citizens ... We strongly urge the Malaysian government that touts itself as a democratic country to immediately and unconditionally release Anwar Ibrahim from prison and uphold the principles of democracy.” – **John L. Esposito, Tariq Ramadan, Noam Chomsky, and 38 other public intellectuals and politicians**²⁷⁹

- “The Committee ... recognises Anwar Ibrahim as a Malaysian statesman, Leader of the Opposition in Parliament and a prominent moderate Muslim leader who has dedicated his political life to defend democracy, uphold the rule of law and sought social justice for all ... [and] demands the government of Malaysia to immediately and unconditionally release Anwar Ibrahim from prison.” – **Hon. Dr. Bacharuddin Jusuf Habibie**, Former President of Indonesia; **H.E. Abdullah Gül**, Former President of Turkey; **Hon. Albert Gore**, Former Vice President of the U.S., **Nobel Laureate**; **Hon. Mayor Joseph Ejercito Estrada**, Former President of the Philippines; **Hon. James Gordon Brown**, Former Prime Minister of the UK; **Sheikh Rashid al-Ghannushi**, Intellectual leader of the Ennahdah Movement, Tunisia²⁸⁰

Media

- “The criminal case used to imprison Mr. Anwar, who has been one of the foremost advocates of liberal democracy in the Muslim world, was as morally reprehensible as it was farcical. The opposition leader was charged with sodomy, which is still illegal in Malaysia but is rarely prosecuted. The 67-year-old married grandfather denied the charge, and the case against him was thin enough to be dismissed by a court in 2012. That Mr. Najib’s government managed to have that decision reversed by an appeals court and upheld by the Supreme Court demonstrated only that Malaysia still lacks an independent judiciary.” – **Washington Post Editorial Board**²⁸¹
- “[A] scandal in Malaysia is hiding in plain sight. We’re talking about the imprisonment of opposition leader Anwar Ibrahim, who is five months into a nonappealable five-year prison sentence on trumped-up sodomy charges. Nearby we publish an op-ed by Mr. Anwar, written in his jail cell, detailing the Najib government’s broader assault on the civil liberties of all Malaysians. While Mr. Anwar’s op-ed speaks for itself, it would help if others speak up for him.” – **Wall Street Journal Editorial Board**²⁸²
- “With the jailing of opposition leader Anwar Ibrahim last week, Malaysia appears to have again resorted to dubious law to eliminate political challenges.” – **Sydney**

²⁷⁹ John L. Esposito, Tariq Ramadan, and Noam Chomsky, and 38 others, *Global Call for the Release of Anwar Ibrahim*, Aug. 10, 2015, available at <http://perseus-strategies.com/wp-content/uploads/2015/10/Global-Call-for-the-Release-of-Anwar-Ibrahim.pdf>.

²⁸⁰ Hon. Dr. Bacharuddin Jusuf Habibie, Hon. Abdullah Gül, Hon. Albert Gore, Hon. Mayor Joseph Ejercito Estrada, Hon. James Gordon Brown, and Sheikh Rashid al-Ghannushi, *International Call to Seek Justice for Anwar Ibrahim and Restore Democracy in Malaysia*, Aug. 10, 2015, available at <http://perseus-strategies.com/wp-content/uploads/2015/10/World-Leaders-International-Call-to-Seek-Justice-for-Anwar-Ibrahim-and-Restore-Democracy-in-Malaysia.pdf>.

²⁸¹ Editorial Board, *Malaysia’s Political Backslide*, WASHINGTON POST, Feb. 11, 2015.

²⁸² Editorial Board, *Malaysia’s Missed Democracy Lesson*, WALL STREET JOURNAL, July 23, 2015, available at <http://www.wsj.com/articles/malaysias-missed-democracy-lesson-1437693288>.

Morning Herald Editorial Board²⁸³

- “[At the US-ASEAN Summit,] [t]he Cambodian, Malaysian and Thai leaders ... will want to portray their appearance alongside Mr. Obama to domestic audiences as proof of their legitimacy. The president can send a different message with the words he chooses ... he should talk about Anwar Ibrahim, the Malaysian opposition leader imprisoned a year ago ... In doing so, he can show that an invigorated U.S. engagement in Asia is based on values and is not just a contest for power with China.”
– ***Washington Post Editorial Board***²⁸⁴

Governments

- “I also raised concerns about freedom of expression ... I spoke with the prime minister about Anwar Ibrahim's situation.” – **John Kerry, US Secretary of State**, on his conversations with Najib²⁸⁵
- “The United States is deeply disappointed with Mr. Anwar’s conviction following a government appeal of the original verdict finding him not guilty. The decision to prosecute Mr. Anwar and the conduct of his trial have raised a number of serious concerns about rule of law and the fairness of the judicial system in Malaysia. These concerns are compounded by the government’s intent to expand its sedition law, which Najib had pledged to repeal, to prosecute government critics.” – **Bernadette Meehan, US National Security Council Spokesperson**²⁸⁶
- “The most significant human rights problems included government restrictions on freedoms of speech and expression, press and media, assembly, and association. Of particular concern were police intimidation; sedition and illegal assembly investigations; charges against dozens of activists, lawyers, and opposition politicians; and the continued politically motivated prosecution and jailing of opposition leader Anwar Ibrahim.” – **US Department of State Bureau of Democracy, Human Rights, and Labor**²⁸⁷
- “The United States is deeply disappointed and concerned by the rejection of Anwar Ibrahim’s final appeal and his conviction. The United States has followed the trial of Malaysian opposition leader Anwar Ibrahim closely. The decision to prosecute Mr. Anwar, and his trial, have raised serious concerns regarding the rule of law and the

²⁸³ *Anwar Case a Stain on Malaysia’s Reputation*, SYDNEY MORNING HERALD, Feb. 25, 2015.

²⁸⁴ Editorial Board, *Mr. Obama Should Not Remain Silent on Human Rights at the ASEAN Summit*, WASHINGTON POST, Feb. 4, 2016.

²⁸⁵ Zurairi Ar, *John Kerry Says Spoke to Najib about Anwar, Freedom of Expression*, THE MALAY ONLINE, Aug. 6, 2015, available at <http://www.themalaymailonline.com/malaysia/article/john-kerry-says-spoke-to-najib-about-anwar-freedom-of-expression>.

²⁸⁶ *Statement by NSC Spokesperson Bernadette Meehan on Conviction of Malaysian Opposition Leader Anwar Ibrahim*, Feb. 10, 2015, available at <https://www.whitehouse.gov/the-press-office/2015/02/10/statement-nsc-spokesperson-bernadette-meehan-conviction-malaysian-opposi>.

²⁸⁷ Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2015*, U.S. DEP’T OF STATE, April 13, 2016, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252777>.

independence of the courts.” – **Embassy of the US in Malaysia**²⁸⁸

- “Australia is disappointed by the decision of the Malaysian Federal Court to dismiss Opposition Leader Anwar Ibrahim’s final appeal against the charge of sodomy, which was handed down today. We are deeply concerned by the severity of the sentence and we have made our concerns known to the Malaysian Government. As a friend of Malaysia, Australia encourages the Malaysian Government to consider the impact of recent decisions, including the Anwar verdict and the retention of the Sedition Act, on its international standing and its commitment to human rights.” – Julie Bishop, **The Minister for Foreign Affairs for Australia**²⁸⁹
- “I am deeply concerned by the imprisonment of Malaysia’s opposition leader Anwar Ibrahim. His case raises worrying questions about the independence of the judiciary and rule of law in Malaysia. As such, we have consistently raised our concerns with the Malaysian government. Malaysia is an important partner and friend to the UK. We continue to believe that the integrity of the rule of law is a key part of its success, as are the values of moderation and tolerance. We encourage Malaysia to recognise the importance of international confidence in its judicial system and to restore trust in its commitment to human rights.” – **Hugo Swire, United Kingdom Minister for Asia**²⁹⁰
- “[T]his House is very concerned about the continued imprisonment of Malaysian opposition leader, Anwar Ibrahim, ... notes that his conviction and subsequent imprisonment on politically motivated charges has undermined Malaysian democracy and confidence in the Malaysian justice system ... [and] calls on the relevant Malaysian authorities to release Anwar Ibrahim ...” – Ann Clwyd MP, Martyn Day MP, Mark Duran MP, Alan Meale MP, Alasdair McDonnell MP, Kelvin Hopkins MP, Peter Bottomley MP, Jim Cunningham MP, Paul Flynn MP, Stephen Gethins MP, and Mark Williams MP, **Members of the UK Parliament**²⁹¹
- “Rule of law and rights concerns in Malaysia include opposition leader Anwar Ibrahim’s unjust jailing one year ago. He should be free.” – **Samantha Power, US Ambassador to the UN**²⁹²
- “In his remarks, the High Commissioner called on the Government of Malaysia to release Anwar Ibrahim. We echo this call. The Malaysian Government selectively uses laws to go after its critics and opponents, including Anwar Ibrahim. The legal process resulting in Anwar’s imprisonment was flawed, and the Malaysian

²⁸⁸ *U.S. Embassy Statement On The Conviction Of Anwar Ibrahim*, Feb. 10, 2015, available at http://malaysia.usembassy.gov/pr_emb_statement_anwar-021015.html.

²⁸⁹ *Anwar Ibrahim Final Appeal*, Feb. 10, 2015, available at http://foreignminister.gov.au/releases/Pages/2015/jb_mr_150210.aspx.

²⁹⁰ *Hugo Swire Concerned by Imprisonment of Malaysian Opposition Leader*, FOREIGN & COMMONWEALTH OFFICE, Feb. 10, 2015.

²⁹¹ EDM 1092: *First Anniversary of the Imprisonment of Malaysian Opposition Leader Anwar Ibrahim*, U.K. PARLIAMENT, Feb. 9, 2016.

²⁹² *Tweet by US Ambassador to the UN, Samantha Power – Feb. 10, 2016*, available at <https://twitter.com/AmbassadorPower/status/697449721263235072>.

government should release him without delay.” – **Keith Harper, US Ambassador to the UN Human Rights Council**²⁹³

- “The most significant human rights problems included government restrictions on freedoms of speech and expression, press and media, assembly, and association. Of particular concern were... the politically motivated prosecution and jailing of opposition leader Anwar Ibrahim.” – **US Department of State Bureau of Democracy, Human Rights, and Labor**²⁹⁴
- “I join in calling for the immediate release of @anwaribrahim in #Malaysia. He is a prisoner of conscience and should be free.” – **US Speaker of the House Paul Ryan**²⁹⁵
- “Corruption and political retribution have left prisoner of conscience Anwar Ibrahim of Malaysia wrongly jailed. Release him now. #humanrights” – **Ben Cardin, US Senator**²⁹⁶

Conclusion

Anwar Ibrahim’s ongoing detention, which is clearly punishment for exercising his fundamental right to freedom of opinion and expression and the right of political participation, is in violation of domestic and international law. His trial failed to meet international standards for due process of law, including the right to be tried before an independent and impartial judiciary, the right to be presumed innocent until proven guilty, and the right to medically appropriate detention conditions. Accordingly, as affirmed by the UN Working Group on Arbitrary Detention, Anwar’s detention is arbitrary and he should be immediately released from prison.

²⁹³ *Statement by U.S. Ambassador to the HRC Keith Harper at Interactive Dialogue with OHCHR High Commissioner Zeid*, Mar. 10, 2016, available at <https://geneva.usmission.gov/2016/03/10/item-2-interactive-dialogue-with-ohchr-high-commissioner-zeid/>.

²⁹⁴ COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015: MALAYSIA, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Apr. 13, 2016, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dldid=252777#wrapper>.

²⁹⁵ *Tweet by Congressman Paul Ryan – Oct. 12, 2016* (reported in *US Speaker Calls for Anwar’s Release*, MALAY MAIL, Oct. 12, 2016, available at <http://www.themalaymailonline.com/malaysia/article/us-speaker-calls-for-anwars-release>.)

²⁹⁶ *Tweet by US Senator Ben Cardin – Oct. 12, 2016*, available at <https://twitter.com/SenatorCardin/status/786219892404019201>.

Annexes

- Annex 1:** “Criminalizing Malaysia’s Opposition” by Nurul Izzah Anwar (*The New York Times*) – May 12, 2015
- Annex 2:** “Malaysia’s Growing Opposition Can’t Be Silenced” by Anwar Ibrahim (*The Wall Street Journal*) – July 23, 2015
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- Annex 14:** “My Plea From Prison: Malaysia Must Choose Freedom Over Repression” by Anwar Ibrahim (*The Washington Post*) – October 13, 2016

Annex 1: “Criminalizing Malaysia’s Opposition” by Nurul Izzah Anwar (*The New York Times*)

The New York Times

May 12, 2015

Criminalizing Malaysia’s Opposition

By Nurul Izzah Anwar

KUALA LUMPUR, Malaysia — Last Thursday, my mother was elected the new member of [Malaysia](#)’s Parliament from Permatang Pauh, a seat that was wrested away from the opposition through the politically motivated conviction of my father, Anwar Ibrahim, a former deputy prime minister and the country’s opposition leader. In February, the highest court in Malaysia sent him to prison for five years on trumped up charges of sodomy. He is serving his third prison sentence since 1999.

In March, I delivered a speech in Parliament focused on good governance and judicial reform on behalf of my father. The reading was deemed seditious by the government, and I was arrested and locked up overnight.

The Sedition Act, which criminalizes speech uttered “to excite disaffection” against the government, is one of this administration’s favorite cudgels. Its definition is so broad that it gives the government sweeping powers to arrest and lock up critics under the guise of punishing “sedition” or in the ostensible pursuit of maintaining public order.

In the last two years, it has been used successfully to harass or prosecute scores of people, mostly government officials, including several members of Parliament. The cartoonist Zulkiflee Anwar Ulhaque, better known as Zunar, was hit with nine charges under the Sedition Act — mostly based on tweets allegedly attacking the judiciary over the verdict against my father. His artwork and cartoons were confiscated, and he is now out on bail.

In addition to harassing me and persecuting my father, the state has applied constant pressure on my mother, a state assemblywoman, in hopes that she will wilt both physically and psychologically. The police have also hinted of their plans to interrogate my younger sister, Nurul Nuha, who is leading March 2 Freedom, a coalition to free my father.

We are running out of family members for officials to arrest on bogus charges.

What’s most alarming is that the government’s actions are part of a much larger pattern of threats to the rule of law and human rights. In recent months, every week or so brings news of the politically motivated detention of a government critic. I am out on bail now, but my arrest is intended to silence me and to warn other would-be government critics.

The United Malays National Organization, known as UMNO, and its allies have been in

power since independence in 1957. The tempo of state repression quickened two years ago after the 2013 parliamentary elections when the opposition won 51 percent of votes cast, versus 47 percent for the government.

Through gerrymandering and the creation of uneven electoral districts, the ruling coalition clung to power by holding on to 60 percent of the seats. The Electoral Integrity Project, an international organization, recently rated Malaysia as having the worst electoral-district boundaries in the world and among the worst election rules. This places Malaysia alongside countries like Zimbabwe, Angola and Egypt.

The opposition's showing at the polls two years ago was a political near-death experience for Prime Minister Najib Razak and the ruling party. It was answered with investigations, arrests and imprisonment.

Meanwhile, UMNO, whose main constituency has historically been the ethnic Malay Muslim majority, with help from its pliant coalition partners, has cynically raised the mercury on issues related to race, religion and the Malaysian royal family, so as to keep the multiethnic opposition coalition on the defensive.

Religious freedom in a country with sizable Christian, Buddhist and Hindu minorities is now endangered as public figures vying for popular support among Muslims have supported the persecution of religious minorities. Christians, who make up about 10 percent of the population, have been a prime target.

Last month, for example, in one high-profile incident, demonstrators in Petaling Jaya demanded that Christians remove a cross from the exterior of their church — and the cross was removed. And in 2013, Ibrahim Ali, a leader of Perkasa, a Malay supremacist organization, allegedly publicly endorsed the burning of Bibles.

Instead of focusing on dissenters, government officials should be doing their jobs. For one thing, Malaysia's economy needs revamping. A sizable portion of the working population in a young country of 30 million citizens still remains eligible for welfare cash handouts. We are too reliant on natural resources. The gap between the rich and poor has been growing and is now among the widest in the region. Our education system remains weak and incoherently structured, creating an unemployable class with poor career prospects.

The Pakatan Rakyat opposition coalition that my party is a part of aims to focus on structural reforms in key economic policies with the goal of creating a clean and more effective government. Reducing inequality and the cost of living, providing affordable housing, good governance and a serious fight against corruption are our priorities.

Malaysia's answer to extremism has been economic opportunity. Now that this deal is faltering, and now that the borders are porous — more than 1,000 refugees from Myanmar and Bangladesh landed on our shores on Monday — there is a risk that extremism could find a home here.

It's encouraging that Mahathir Mohamad, the country's former long-time prime minister, has recently become Prime Minister Najib's fiercest critic, attacking him as corrupt and incompetent.

But we need louder voices to condemn what's happening here. World leaders need to tell Mr. Najib and his cronies that trade and economic considerations, including the much talked about Trans-Pacific Partnership agreement, will not be placed above civil and political rights. It's time for Malaysia's friends around the world to stop giving our leaders a pass on sharply declining human rights and the rule of law.

Nurul Izzah Anwar is a member of the Malaysian Parliament and vice president-elect and election director of the People's Justice Party.

THE WALL STREET JOURNAL.

July 23, 2015

Malaysia’s Growing Opposition Can’t Be Silenced

By Anwar Ibrahim

Selangor, Malaysia – Since Prime Minister Najib Razak’s 2013 electoral victory, which was plagued by widespread allegations of gerrymandering, fraud and voter intimidation, Malaysia has taken a turn for the worse. Mr. Najib, who once promised democratic and economic reforms and pledged to allow “the voices of dissent” to be heard, has doubled down on political repression.

A former deputy prime minister of Malaysia and leader of the opposition, I am now in the fifth month of a five-year prison sentence that has been roundly condemned by governments and human-rights groups around the world. I spend my days in solitary confinement in meditation and in the company of the few books that are allowed into my cell. Meanwhile, allegations of corruption at the highest levels of Malaysian government have surfaced.

In 2012, the draconian Internal Security Act was repealed by the Najib government with much fanfare, only to be replaced by the Prevention of Crime and Prevention of Terrorism Acts, which are equally, if not more, repressive. Beyond encroaching on Malaysian citizens’ fundamental liberties, these new laws rob judges of their discretionary sentencing powers.

Instead of abolishing the outdated and much-abused Sedition Act of 1948 as promised, Mr. Najib’s government has deployed it as a weapon of mass oppression. In the past 18 months, more than 150 Malaysians have been arrested and many charged with sedition for an array of activities including accusing the government of voter fraud and criticizing the verdict in my trial. The arrested include students, professors, journalists, cartoonists, activists, human-rights lawyers and opposition politicians.

Mr. Najib’s finance ministry’s “strategic development fund,” 1Malaysia Development Bhd., or 1MDB, founded by Mr. Najib in 2008, is under intense scrutiny. As this newspaper reported on July 2, Malaysian investigators “have traced nearly \$700 million of deposits into what they believe are the personal bank accounts of Malaysia’s prime minister, Najib Razak.” Neither the original source nor ultimate destination of the money is clear.

A few weeks earlier, on June 18, this newspaper reported that during the 2013 election 1MDB “indirectly supported Prime Minister Najib Razak’s campaign.” The fund paid what appeared to be an inflated price for assets acquired from a Malaysian company; the company then contributed to a Najib-led charity that announced projects, such as aid to schools, that Mr. Najib was able to tout as he campaigned.

After these two stories were published, Mr. Najib's office put out a statement that "there have been concerted efforts by certain individuals to undermine confidence in our economy, tarnish the government and remove a democratically-elected prime minister." It called the Journal articles a "continuation of this political sabotage." Not surprisingly, foreign investors are increasingly wary. Malaysia's currency, the ringgit, recently fell to a 16-year low.

Meanwhile, the Najib government sows communal and religious animosity among the Muslim ethnic Malay majority and the country's large ethnic Chinese and Indian minorities. Mr. Najib's ruling coalition blamed a "Chinese tsunami" for its losing the popular vote in the 2013 parliamentary elections, regardless of a study showing this to be false. And despite Mr. Najib's claims of moderation internationally, the state-run media have vilified Shiite Islam. Last summer the prime minister urged his ruling United Malays National Organization members to be "brave" like Islamic State fighters in Iraq, causing him to later explain he doesn't support Islamic State or its radical brand of Islam.

Such actions undermine the fragile fabric of Malaysia's multiethnic and multireligious society. In four decades in public service I cannot recall a time when racial and religious sensitivities have become so inflamed, and at the same time so poorly managed by the country's political leadership.

Yet I stayed put in Malaysia to face a difficult third bout of unjust incarceration because we in the opposition believe in a brighter future made possible by good governance and the rule of law. We believe in the dismantling of Malaysia's system of race-based privileges that has devolved into nothing more than rent-seeking for the privileged few. We believe that corruption is a slow bleed that robs future generations of the education and business opportunities that will make them prosper.

Most important, we are joined by a new generation of young, millennial Malaysians with a commitment to building an inclusive, democratic and economically vibrant country.

Still, there is real danger ahead. Middle-income nations like Malaysia—after several decades of economic mismanagement, opaque governance and overspending—can devolve into failed states. The irresponsible manner in which the current leadership is handling religious issues to curry favor from the extreme right is fueling sectarianism. Increased political repression may drive some to give up on the political system altogether and consider extralegal means to cause change, thus creating a tragic, vicious cycle.

Yet there remains a clear path out of this mess: a return to the underpinnings of the Malaysian Constitution, which preserves and protects the rights of all Malaysians; a devolution of power from the executive, whose role now resembles that of a dictator more than a servant of the people; elections that are truly free and fair; and a free media unafraid to challenge authority.

Malaysia is ready for change. This is why, rather than flee my country, I chose to stay and continue the fight for peaceful, democratic reform from my prison cell. This is not easy and puts a tremendous burden on my family. I am grateful for their love and commitment. While I am physically behind bars my spirit remains with them, the people of Malaysia, and people all around the world who continue the struggle for dignity and for freedom.

Mr. Anwar, a former deputy prime minister of Malaysia (1993-98), is a former member of parliament for the People's Justice Party and until April was leader of the opposition.

Annex 3: “Malaysia’s Missed Democracy Lesson” by the Editorial Board (*The Wall Street Journal*)

THE WALL STREET JOURNAL.

July 23, 2015

Malaysia’s Missed Democracy Lesson

Obama again can’t find a voice for liberty and moderate Muslims.

By Editorial Board

Malaysia is in the midst of a first-class political scandal, thanks in part to reporting in this newspaper that \$700 million linked to a state-owned investment fund allegedly was transferred to the personal accounts of Prime Minister Najib Razak. Mr. Najib denies wrongdoing, and neither the original source nor ultimate destination of the money is clear.

Yet the larger scandal in Malaysia is hiding in plain sight. We’re talking about the imprisonment of opposition leader Anwar Ibrahim, who is five months into a nonappealable five-year prison sentence on trumped-up sodomy charges. Nearby we publish an op-ed by Mr. Anwar, written in his jail cell, detailing the Najib government’s broader assault on the civil liberties of all Malaysians.

While Mr. Anwar’s op-ed speaks for itself, it would help if others speak up for him. That goes especially for President Obama, who has long claimed an interest in cultivating the forces of moderation in the Muslim world. Too bad, then, that he refused to meet Mr. Anwar when he visited Malaysia last year, though he had time for a very public round of golf with Mr. Najib in Hawaii a few months later. Mr. Obama’s reticence on behalf of political freedom in the world, from Iran in 2009 to Malaysia today, is one of the mysteries of his Presidency. Out of realpolitik or indifference, he is mute.

At a White House event in June with young South Asian leaders, he answered a pointed question about Mr. Anwar’s imprisonment with a dainty answer about how “democracy is hard,” adding that “it’s important for America to recognize that we’re not perfect, either.” And what, exactly, did Mr. Obama have in mind? “I mean, the amounts of money, for example, that are involved in our elections these days is disturbing because it makes it seem as if a few people have more influence in the democracy than the many.”

We often hear from friends overseas that they find U.S. foreign policy perplexing and disheartening these days. Maybe it has something to do with a President who sees a moral equivalence between funding free speech at home and jailing a moderate opposition leader abroad.

Annex 4: Global Call for the Release of Anwar Ibrahim

Global Call For The Release of Anwar Ibrahim

We the undersigned, stand in solidarity with Anwar Ibrahim, and condemn the politically motivated charges that led to his five-year prison sentence.

10 August 2015, marks Anwar Ibrahim's 68th birthday and his 182nd day as a prisoner of conscience. Prior to his imprisonment, Anwar Ibrahim was the Leader of Malaysia's emerging Opposition, and a prominent moderate Muslim leader who dedicated his political life to defend democracy, uphold the rule of law and sought social justice for all.

Anwar Ibrahim's trial took place after he led the opposition coalition to an unprecedented electoral victory in Malaysia's general elections in 2013, winning 51% of the popular vote. Many believe that this blow to the incumbent government's power prompted Anwar Ibrahim's conviction and imprisonment. The trial that eventually led to Anwar Ibrahim's conviction was seen as biased and unfair by the independent observers who attended the proceedings. The unfair trial, coupled with the political motivations behind it led Amnesty International to declare Anwar Ibrahim a prisoner of conscience.

As supporters of an independent and fair judicial system, we condemn such politically motivated convictions that serve those in power.

The political machinations behind Anwar Ibrahim's conviction are clear as Malaysian citizens who dared to criticise the outcome have been investigated and/or charged under the country's draconian Sedition Act. Many see Anwar Ibrahim's conviction as the beginning of an intense crackdown on freedom of speech and freedom of peaceful assembly in the country. The crackdown, which is ongoing, has even extended to social media. Numerous police investigations have been triggered over social media postings that are perceived to be critical of the government.

As believers in the right to the freedom of expression and the freedom of peaceful assembly, we call on the government of Malaysia to uphold the rule of law, and to respect the human rights and fundamental freedoms of its citizens.

We also note with great concern Anwar Ibrahim's deteriorating health, and the difficulties he has faced in receiving proper treatment. Anwar Ibrahim's treatment in prison is indicative of wider problems within the Malaysian prison system. We strongly urge the Malaysian government that touts itself as democratic country to immediately and unconditionally release Anwar Ibrahim from prison and uphold the principles of democracy.

John L Esposito
*Georgetown
University*

Slavoj Žižek
*University of
London*

Nader Hashemi
Denver University

Charles
Butterworth
*University of
Maryland*

Mohammad Fadel <i>University of Toronto</i>	Louay Safi <i>Georgetown University</i>	Francis Fukuyama <i>Stanford University</i>	<i>Networks Of Democrats in the Arab World</i>
Farid Esack <i>University of Johannesburg</i>	Emad El-Din Shahin <i>Georgetown University</i>	Shahrough Akhavi <i>Columbia University</i>	Noam Chomsky <i>Massachusetts Institute of Technology</i>
Mohsen Kadivar <i>Duke University</i>	Ziauddin Sardar <i>Muslim Institute</i>	Abdelwahab El-Affendi <i>University of Westminster</i>	Larry Diamond, <i>Stanford University</i>
Ricardo G. Recto <i>Philippines Politician</i>	Christos Giannou <i>War Surgeon</i>	Saad Eddin Ibrahim <i>Egyptian Activist</i>	Tariq Modood <i>University of Bristol</i>
Amado D. Valdez <i>Philippine Association of Law Schools</i>	Harry L. Roque <i>Center for International Law Philippines</i>	Karen Armstrong <i>Author</i>	Tamara Sonn <i>Georgetown University</i>
Jarius and Marisa Bondoc <i>Columnist Philippines</i>	Luziminda C. Ilagan <i>Philippines Politician</i>	James Reardon-Anderson <i>Georgetown University</i>	Herherson "Sonny" <i>T. Alvarez Philippines Politician</i>
John Voll <i>Georgetown University</i>	Fernando O. Peña <i>Ninoy Aquino Movement</i>	Augusto N. Miclat Jr. <i>Initiatives for International Dialogue Philippines</i>	General Jose T. Almonte <i>Philippines</i>
Tariq Ramadan <i>Oxford University</i>	<i>Muslim Youth Movement of Malaysia</i>	Silvestre Bello III <i>Philippines Politician</i>	Margoux Salcedo <i>Philippines Journalist</i>
Alfred Stepan <i>Colombia University</i>	Richard Falk <i>Princeton University</i>	Ferdinand S. Topacio <i>Lawyer Philippines</i>	<i>Center for Citizen's Alliance</i>
Avi Shlaim <i>Oxford University</i>			

Annex 5: Solidarity Statement from International Organizations

SOLIDARITY STATEMENT FOR PRISONER OF CONSCIENCE ANWAR IBRAHIM

We, the undersigned human rights organizations, stand in solidarity with Anwar Ibrahim, condemn the politically motivated charges and trial that led to his imprisonment, and call for his immediate and unconditional release.

August 10, 2015, marks Anwar Ibrahim's 68th birthday and 182 days spent as a prisoner of conscience. Prior to his imprisonment, Anwar Ibrahim was the head of Malaysia's opposition and a prominent Muslim leader. The trial that led to his conviction was condemned as not meeting international standards for fair trials by numerous independent observers who monitored court proceedings.

Anwar Ibrahim's conviction on charges of sodomy on February 2015 raised serious doubts about the independence of Malaysia's judiciary. The irregularities in the proceedings appeared to chime with a long--- standing effort by the ruling coalition to disqualify him from holding political office and from fulfilling his elected role as a Member of Parliament and leader of the opposition.

We also note with great concern Anwar Ibrahim's deteriorating health and the difficulties he continues to face in receiving proper medical attention in Sungai Buloh Prison, Selangor State. Anwar Ibrahim's poor detention conditions are indicative of wider problems within the Malaysian prison system.

We call on the Malaysian authorities to uphold the rule of law and human rights, in particular the right to a fair trial, including by ensuring that the judiciary is completely independent from the executive branch.

We also express our grave concern over the continued crackdown on freedom of expression and political dissent in Malaysia. The ongoing arrest, detention and criminal proceedings against dozens of government critics under repressive laws, such as the 1948 Sedition Act, and the increasing harassment and censorship of independent media, represent a major setback for human rights in the country. The rights to freedom of expression and peaceful assembly are enshrined in the Universal Declaration of Human Rights and guaranteed by Malaysia's Constitution. The continued use of repressive legislation to suppress fundamental rights is severely damaging Malaysia's international reputation.

We therefore urge the Malaysian government to take immediate steps to repeal or amend all laws that impose unreasonable and disproportionate restrictions on the rights to freedom of expression and peaceful assembly. These laws include the 1948 Sedition Act, the 1959 Prevention of Crime Act, the 1984 Printing Presses and Publications Act, the 2012 Peaceful Assembly Act, and the 2012 Security Offences

(Special Measures) Act. Instead, human rights, including the rights to freedom of expression and peacefully assembly, should be protected by law in accordance with international human rights law and standards.

In addition, we call on the Malaysian government to repeal Article 377 of the Criminal Code and abolish sodomy as a crime. This colonial-era provision, which bans private consensual homosexual acts, is blatantly discriminatory and has no place in a modern and rights-respecting nation. United Nations (UN) human rights mechanisms have repeatedly called for a repeal of such legislation because it violates a number of key human rights, including the rights to equality and to privacy.

We firmly believe that the Malaysian government must listen to the people's calls for reforms. Authorities must respect all human rights promote transparency and good governance and uphold the rule of law.

*The International Federation for Human Rights
(FIDH) Amnesty International
Article 19
ASEAN Parliamentarians for Human Rights (APHR)
Suaram
Global Bersih*

Annex 6: World Leaders' International Call

INTERNATIONAL CALL TO SEEK JUSTICE FOR ANWAR IBRAHIM AND RESTORE DEMOCRACY IN MALAYSIA

The Committee,

Recognises Anwar Ibrahim as a Malaysian statesman, Leader of the Opposition in Parliament and a prominent moderate Muslim leader who has dedicated his political life to defend democracy, uphold the rule of law and sought social justice for all.

Recalls that Anwar Ibrahim was finance minister and deputy prime minister of Malaysia when he was dismissed from government in 1998. Upon his dismissal, Anwar was arrested, beaten and jailed for six years on politically motivated and trumped up charges.

Recalls that Anwar Ibrahim led the opposition coalition to an unprecedented electoral success in Malaysia's general elections in 2013, winning 51% of the popular vote.

Recalls that Anwar Ibrahim's unjust imprisonment on 10 February 2015 based on politically motivated charges has been widely condemned internationally, and Amnesty International has adopted Anwar Ibrahim as a prisoner of conscience.

Believes that the conviction and imprisonment of Anwar Ibrahim was the outcome of an ongoing political conspiracy to end Anwar Ibrahim's political life and to deprive the opposition of its parliamentary leader in Malaysia.

Resolves to call on the international community to pressure the government of Malaysia to uphold the rule of law, and to respect human rights and fundamental freedoms of its citizens.

Demands the government of Malaysia to immediately and unconditionally release Anwar Ibrahim from prison.

Signatories,

The Honorable **Dr. Bacharuddin Jusuf Habibie**, Former President of The Republic of Indonesia; The Honorable **Abdullah Gül**, Former President of the Republic of Turkey; The Honorable **Albert Gore**, Former Vice President of The United States of America, Nobel Laureate; The Honorable Mayor **Joseph Ejercito Estrada**, Former President of the Philippines; The Honorable **James Gordon Brown**, Former Prime Minister of The United Kingdom; and **Sheikh Rashid al-Ghannushi**, Intellectual leader of the Ennahdah Movement Tunisia

Annex 7: “Malaysia’s Prime Minister is a Questionable Ally” by the Editorial Board (*The Washington Post*)

The Washington Post

September 18, 2015

Malaysia's Prime Minister is a Questionable Ally

By: Editorial Board

The Obama administration has made a heavy bet on the Malaysian government of Najib Razak, whose majority Muslim nation collaborates on several key U.S. national security initiatives: counterterrorism, counterproliferation and balancing against China’s regional ambitions. In December, President Obama invited Mr. Najib to a round of golf during his Hawaiian vacation, a rare show of friendship for a foreign leader.

Since then, however, Mr. Najib has been evolving into an increasingly unseemly pal. In February, the country’s opposition leader, Anwar Ibrahim, was imprisoned on blatantly trumped-up charges, just under a year after the coalition Mr. Anwar led won the popular vote in national elections. That was the tip of a broader campaign to suppress the opposition; key leaders were indicted under a sedition law that Mr. Najib once promised to repeal, and a leading cartoonist was prosecuted for tweets. Mr. Anwar’s daughter, parliament member Nurul Izzah Anwar, was recently told she was being investigated under an anti-terrorism law.

Then came the news that close to \$700 million had been transferred to personal bank accounts of Mr. Najib before the 2013 election. The Wall Street Journal reported in July that Malaysian investigators believed the money came from companies linked to a troubled state investment fund headed by the prime minister. Mr. Najib responded with a brazen crackdown on those investigating the fund, firing a deputy prime minister and the attorney general and gutting a parliamentary investigative committee. Two newspapers that had been pursuing the scandal were shut down. When the opposition organized a massive protest demonstration last month, authorities banned the movement’s signature yellow color.

Mr. Najib once positioned himself as a reformer who would lead a quasi-authoritarian state to genuine democracy. Now he is trying to consolidate his position by appealing to the worst currents in Malaysian politics: ethnic chauvinism and Islamic fundamentalism. In answer to the opposition, the ruling party, which relies on support from the majority Malay population, staged its own rally in which senior officials crudely attacked the Chinese and Indian minorities. Mr. Najib is meanwhile toying with the idea of allowing Islamic sharia law to be imposed in one province, a key goal of Malaysia's fundamentalists.

In a visit to Kuala Lumpur last month, Secretary of State John F. Kerry said he had "raised concerns" with Mr. Najib about freedom of expression and Mr. Anwar's imprisonment. But mostly the Obama administration is sticking with the sullied prime minister. In July, the State Department delivered a questionable promotion to Malaysia in its human trafficking ratings; Mr. Obama is still scheduled to visit Malaysia for an Asian summit in November.

The administration appears to be counting on Mr. Najib to deliver Malaysia's support for the Trans-Pacific Partnership, an Asian free trade deal that Mr. Obama hopes to make part of his legacy.

Nevertheless Ms. Nurul, who visited Washington this week, had a good question for the administration officials she met: "For all that you are investing in Malaysia, are you getting your money's worth?" Mr. Najib may cooperate with U.S. intelligence agencies and the trade representative, but his repression and pandering to racists and Muslim extremists risks destroying the foundations of the alliance. The next time Mr. Obama meets his golfing buddy, he ought to make that clear.

Annex 8: Inter-Parliamentary Union Decision MAL/15 – Anwar Ibrahim (October 21, 2015)



Malaysia

MAL/15 - Anwar Ibrahim

Decision adopted by consensus by the IPU Governing Council at its 197th session (Geneva, 21 October 2015) ¹

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Dato Seri Anwar Ibrahim, a member of the Parliament of Malaysia, and to the decision adopted at its 194th session (March 2014),

Taking into account the report of the Committee delegation (CL/197/11(b)-R.1) which, at the invitation of the Malaysian parliamentary authorities, went to Malaysia (29 June–1 July 2015) to gain a better understanding of the issues at hand in the Malaysian cases, raise existing concerns and examine possible avenues for progress; *considering* that the delegation was allowed to meet with Mr. Anwar Ibrahim in prison; *also taking into account* the information provided by the leader of the Malaysian delegation to the 133rd IPU Assembly (October 2015) and by one of the complainants at two separate hearings with the Committee on 17 and 18 October 2015 respectively,

Recalling the following information on file:

- Mr. Anwar Ibrahim, Finance Minister from 1991 to 1998 and Deputy Prime Minister from December 1993 to September 1998, was dismissed from both posts in September 1998 and arrested on charges of abuse of power and sodomy; he was found guilty on both counts and sentenced, in 1999 and 2000 respectively, to a total of 15 years in prison; on 2 September 2004, the Federal Court quashed the conviction in the sodomy case and ordered Mr. Anwar Ibrahim's release, as he had already served his sentence in the abuse of power case; the IPU had arrived at the conclusion that the motives for Mr. Anwar Ibrahim's prosecution were not legal in nature and that the case was built on a presumption of guilt;
- Mr. Anwar Ibrahim was re-elected in August 2008 and May 2013 and became the de facto leader of the opposition *Pakatan Rakyat* (The People's Alliance);
- On 28 June 2008, Mohammed Saiful Bukhari Azlan, a former male aide in Mr. Anwar Ibrahim's office, filed a complaint alleging that he had been forcibly sodomized by Mr. Anwar Ibrahim in a private condominium; the next day, when it was pointed out that Mr. Anwar Ibrahim, who was 61 at the time of the alleged rape and suffering from a bad back, was no physical match for a healthy 24-year-old, the complaint was revised to claim homosexual conduct by persuasion; Mr. Anwar Ibrahim was arrested on 16 July 2008 and released the next day; he was formally charged on 6 August 2008 under section 377B of the Malaysia Criminal Code, which punishes "carnal intercourse against the order of nature" with "imprisonment for a term which may extend to 20 years" and whipping; Mr. Anwar Ibrahim pleaded not guilty to the charge and, in addition to questioning the credibility of the evidence against him, pointed to several meetings and communications which took place between Mr. Saiful and senior politicians and police before and after the assault to show that he is the victim of a political conspiracy;

¹ The delegation of Malaysia expressed its reservations regarding the decision.

- On 9 January 2012, the first-instance judge acquitted Mr. Anwar Ibrahim, stating that there was no corroborating evidence to support Mr. Saiful's testimony, given that "it cannot be 100 per cent certain that the DNA presented as evidence was not contaminated"; this left the court with nothing but the alleged victim's uncorroborated testimony and, as this was a sexual crime, it was reluctant to convict on that basis alone;
- On 7 March 2014, the Court of Appeal sentenced Mr. Anwar Ibrahim to a five-year prison term, ordered that the sentence be stayed pending appeal, and set bail at 10,000 ringgits,

Considering that, on 10 February 2015, the Federal Court upheld the conviction and sentence, which Mr. Anwar Ibrahim is currently serving in Sungai Buloh Prison in Selangor; as a result of the sentence, he will not be eligible to run for parliament for six years after he has completed his sentence, ie until July 2027,

Taking into account the report of the IPU observer, Mr. Mark Trowell QC, (CL/197/11(b)-R.2), who attended most of the hearings in the case in 2013 and 2014 and the final hearing on 10 February 2015; the rebuttal of his report by the authorities and the response to the rebuttal by Mr. Trowell,

Considering that the complainants affirm that the case against Mr. Anwar Ibrahim has to be seen against the backdrop of the uninterrupted rule of Malaysia by the same political party, UMNO, and the fact that in the 2013 general elections that monopoly was shaken by a united opposition which was able to obtain 52 per cent of the popular vote, although – according to the complainant, due to widespread gerrymandering and fraud – this did not translate into a majority of seats for the opposition; the complainants also point out that the alliance that Mr. Anwar Ibrahim was able to set up and keep together fell apart after he was incarcerated,

Considering that the Malaysian authorities have repeatedly stated that Malaysia's courts were fully independent and that due process had been fully respected in the course of the proceedings against Mr. Anwar Ibrahim, including by offering the counsel for defence many opportunities to present their arguments,

Considering that, on 30 April 2015, Mr. Anwar Ibrahim applied for a fresh judicial review of his conviction, under Rule 137 of the Federal Court rules, on grounds of unfairness, with the applicant asking for the adverse judgement to be set aside and a new bench constituted to rehear the appeal; in his nine-page affidavit, Mr. Anwar Ibrahim listed a number of grounds warranting a review of his case; he alleged, among other things, that the extraordinary swiftness, timing and content of the statement made by the Prime Minister's Office (PMO) on the day of his conviction gave the impression that it knew of the result of the case even before the court's ruling, which is normally subject to secrecy; the affidavit also points out that it is not the practice of the PMO to issue such a statement in any other criminal appeal; in the grounds to support his application, Mr. Anwar Ibrahim claimed that the judgement ought to be reviewed because the release of the PMO's statement on the date of judgement which sought to justify his conviction rendered the judgement objectively deficient; the affidavit also criticized the conduct of lead prosecutor Mr. Muhammad Shafee Abdullah who, according to Mr. Anwar Ibrahim, had conducted a "road show" following his conviction, thereby lending weight to his claim that his trial was backed by UMNO and that he was the victim of a political conspiracy,

Considering also that, on 10 June 2015, Mr. Anwar Ibrahim's lawyers filed an application to have the Federal Court hear retired senior police officer Mr. Ramli Yusuff's testimony to the alleged conspiracy to cover up the infamous "Black Eye" incident in 1998 during Mr. Anwar Ibrahim's detention before his first sodomy trial ("Sodomy I"); Mr. Ramli Yusuff had given evidence on 27 May 2015 in a separate case about his refusal to aid the then Assistant Inspector-General of Police, Tan Sri Musa Hassan, in a purported bid to fabricate evidence falsely showing that Mr. Anwar Ibrahim had self-inflicted his injuries; Mr. Ramli Yusuff had also said that he refused to lodge a police report falsely claiming that Mr. Anwar Ibrahim had lodged a false report of an assault by the then Inspector-General of Police, Mr. Tan Sri Rahim Noor; Mr. Ramli Yusuff claimed that the then Inspector-General of Police had said that he had been sent by the then Attorney General, Tan Sri Mohtar Abdullah and the then lead prosecutor of the case, Mr. Abdul Gani Patail, who subsequently became, and until very recently was, the Attorney General of Malaysia; Mr. Anwar Ibrahim said that the police officer's evidence was credible and of crucial importance, adding that the Federal Court would not have rejected his defence of a political conspiracy had the additional testimony been available to him earlier,

Considering that, on 24 February 2015, Mr. Anwar Ibrahim's family submitted an application for a royal pardon; on 16 March 2015 the Pardons Board rejected the application unofficially through an affidavit in reply; the family again submitted a petition for a royal pardon on the basis of a transgression of justice on 12 October 2015,

Considering that, since his imprisonment on 10 February 2015, Mr. Anwar Ibrahim has been examined by Dr. Jeyaindran Tan Sri Sinnadurai, who is also the Deputy Director General of Health; Mr. Anwar Ibrahim had been complaining to Dr. Jeyaindran about the pain in his right shoulder since early March 2015; however, according to his family, he was only sent to hospital in Kuala Lumpur after four months, namely on 2 June 2015; although the physician who examined him recommended intensive physiotherapy, this recommendation was not implemented, except for a few days from 7 to 12 July 2015; currently, according to Mr. Anwar Ibrahim's family, physiotherapy rarely takes place - once every few weeks, despite the constant pain; Mr. Anwar Ibrahim's medical report had been referred to Prof. Dr. Ng Wuey Min, Associate Professor at the University Malaya Medical Centre, an orthopaedic shoulder specialist who had treated him before; he concluded that the problem affecting Mr. Anwar Ibrahim's right shoulder was serious and may require arthroscopic surgery to ensure long-term healing; Mr. Anwar Ibrahim's family affirms that, on 21 August 2015, Mr. Anwar Ibrahim's family was informed that, on that very same day, the orthopaedics specialist, Dr. Fadhil, had met Mr. Anwar Ibrahim in prison and merely prescribed strong painkillers to manage the pain, the dose subsequently being doubled by Dr. Jeyaindran,

Considering that Mr. Anwar Ibrahim's family consider that Dr. Jeyaindran should not be in charge of Mr. Anwar Ibrahim's health treatment for the following reasons: (i) he was a witness who testified during the trial against Mr. Anwar Ibrahim; (ii) he is also the personal physician to the current Prime Minister of Malaysia; (iii) he has failed to implement any necessary treatment, which he personally recommended, namely intensive physiotherapy; (iv) he lacks the expertise in the area of Mr. Anwar Ibrahim's health problems; (v) the family affirms that Dr. Jeyaindran has taken three months to allow Mr. Anwar Ibrahim to be examined and for an MRI of his right shoulder to be taken, which has contributed to the pain becoming chronic and affecting his left shoulder; (vi) the family considers that Mr. Anwar Ibrahim needs to be taken immediately to the University Malaya Medical Centre hospital for a thorough examination by Prof. Dr. Ng Wuey Min of his right and left shoulder problems, including all tests such as MRI, etc, so that he can give an authoritative judgement as to effective treatment,

Recalling that, while in detention during the first sodomy trial ("Sodomy I"), Mr. Anwar Ibrahim suffered a severe spinal injury and developed symptoms of spinal cord compression; his plea for medical help then was not heeded,

- 1 *Thanks* the IPU trial observer and the parliamentary authorities for their extensive comments on the trial against Mr. Anwar Ibrahim;
- 2 *Thanks also* the Malaysian authorities, in particular the parliamentary authorities, for receiving the on-site mission and for facilitating the fulfilment of its mandate; *appreciates* that the mission was given the opportunity to meet with Mr. Anwar Ibrahim, albeit – contrary to its procedure – not alone;
- 3 *Is deeply concerned* about the trial observer's conclusion that, in light of the procedural irregularities and the evidence available, Mr. Anwar Ibrahim should have been acquitted; *considers* in this regard that the detailed official rebuttal does not dispel the serious concerns about the credibility of the alleged victim, the DNA evidence and the dubious circumstances surrounding the alleged sodomy;
- 4 *Fears* that Mr. Anwar Ibrahim's conviction, which precluded him from participating in parliamentary life for more than a decade, deprived the opposition of its main leader and ultimately led to the disintegration of the united opposition, may be based on considerations other than legal;
- 5 *Sincerely hopes* therefore, all the more so in light of new facts presented by his legal counsel and family, that the efforts to obtain a judicial review or royal pardon will bear fruit; *wishes* to be kept informed of progress in this regard;

6. *Is deeply concerned* that Mr. Anwar Ibrahim may not be receiving the treatment he needs in an effective and timely manner; *calls* on the authorities to do everything possible to address this situation, including by allowing him to be cared for by a doctor of his own choice and to receive the recommended long-term treatment to avoid irreparable damage to his health, if need be through surgery abroad; *wishes to receive* the views of the authorities on this point;
7. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report to it in due course.

Annex 9: Inter-Parliamentary Union Decision MAL/28 – Nurul Izzah Anwar (October 21, 2015)



Inter-Parliamentary Union
For democracy. For everyone.

Malaysia

MAL/21 - N. Surendran
MAL/22 - Teresa Kok (Ms.)
MAL/23 - Khalid Samad
MAL/24 - Rafizi Ramli
MAL/25 - Chua Tian Chang
MAL/26 - Ng Wei Aik
MAL/27 - Teo Kok Seong
MAL/28 - Nurul Izzah Anwar
MAL/29 - Sivarasa Rasiah,
MAL/30 - Sim Tze Sin
MAL/31 - Tony Pua

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015) ¹

The Governing Council of the Inter-Parliamentary Union,

Referring to the aforesaid cases and to the decisions it adopted at its 195th session (March-April 2015),

Taking account of the report of the Committee delegation (CL/197/11(b)-R.1) which, at the invitation of the Malaysian parliamentary authorities, went to Malaysia (29 June – 1 July 2015) to gain a better understanding of the issues at hand in the Malaysian cases, discuss the Committee's existing concerns and examine possible avenues for reaching a satisfactory solution,

Taking into account also the information provided by the leader of the Malaysian delegation to the 133rd IPU Assembly (October 2015) at the hearing held with the Committee; *also taking into account* the information provided by one of the complainants at the hearing held with the Committee on 18 October 2015 and the information regularly provided by other complainants,

Having before it the cases of Mr. Sivarasa Rasiah, Mr. Sim Tze Sin and Mr. Tony Pua, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

Considering that all the parliamentarians, with the exception of Mr. Teo Kok Seong and Mr. Sim Tze Sin, have been charged since May 2013 with sedition or are being investigated under (a), (b) and (c) of section 4(1) of the Sedition Act (1948) for exercising their freedom of speech, primarily to voice criticism of the Government and/or the judiciary,

Considering that Mr. Chua Tian Chang was reportedly arrested on 20 March 2015 in connection with his involvement in the KitaLawan rally on 7 March in 2015 in protest against Mr. Anwar Ibrahim's conviction on a sodomy charge; Mr. Teo Kok

¹ The delegation of Malaysia expressed its reservations regarding the decision.

Seong and Mr. Rafizi Ramli are also being investigated regarding their involvement in the same rally; Mr. Sim Tze Sin was charged for organizing or taking part in the KitaLawan rally; according to the complainants, the arrests and investigations infringe the rights of members of parliament to freedom of assembly; the complainants point out that this legal action is based on the Peaceful Assembly Act and section 143 of the Criminal Code, which states that, "whoever is a member of an unlawful assembly shall be punished with imprisonment for a term that may extend to six months, or with a fine, or with both",

Recalling that the Sedition Act dates from colonial times (1948) and originally sought to suppress dissent against the British rulers; it was seldom used in the past and was never invoked between 1948 and Malaysia's independence in 1957; only a handful of cases were pursued between 1957 and 2012; since then, however, hundreds of cases have been initiated under the Sedition Act,

Recalling that in 2012, Prime Minister Najib Razak announced publicly that the Sedition Act would be repealed. The discussions subsequently set in motion, however, explored its abolition as only one of four options, namely: (i) maintaining the Sedition Act with minor changes; (ii) abolishing it; (iii) replacing it with the National Harmony Act; or (iv) maintaining the Sedition Act along with the adoption of the National Harmony Bill,

Considering that the option finally chosen by the Government was to amend the Sedition Act and to pursue discussions on the adoption of a National Harmony and Reconciliation Bill; the official interlocutors told the Committee delegation that the Sedition Act remained necessary to promote national harmony and tolerance, and that the new legislation struck the right balance between protecting stability and social harmony on the one hand and freedom of expression on the other; members of the opposition, however, provided the following explanation to the Committee delegation for the Government's decision to keep and further tighten the Sedition Act: in the general elections in 2008, UMNO (United Malays National Organisation), which had been ruling Malaysia since independence in 1957, lost its two-thirds majority in parliament for the first time; in 2013 the opposition won the popular vote in the general elections, although it obtained only a minority number of seats in parliament; the opposition considered that those in power, in particular the radical elements, made their case for keeping the Sedition Act as a useful tool to ensure that UMNO's dominance would not be challenged in the future,

Considering that in April 2015 the House of Representatives and Senate passed most of the proposed amendments, notably the following:

- criticism of the Government or the administration of justice is no longer considered seditious;
- promoting hatred between different religions is now seditious;
- sedition is no longer punishable with a fine but carries a mandatory minimum three-year prison term;
- sedition is punishable with up to 20 years' imprisonment if the seditious acts or statements lead to bodily harm and/or damage to property;
- The Act empowers the court to order the removal of seditious material on the Internet,

Considering that, well before the passage of the amendments to the Sedition Act, the sedition charges and investigations against the parliamentarians had been put on hold pending a ruling by the Federal Court on the petition challenging the constitutionality of the original Sedition Act (1948); after reserving judgement on the matter on 24 March 2015, the Federal Court ruled on 7 October 2015 that the Sedition Act was constitutional; the complainants fear that the investigations and charges against the members of parliament will now be reactivated as the amendments will not be retrospective, even though, under the current Sedition Act, criticism of the judiciary and the Government is no longer punishable; *considering* that, according to the leader of the Malaysian delegation, the matter was entirely in the hands of the Attorney General, as he had the power to discontinue the proceedings at any time; he also stated that none of the proceedings had been reactivated, given that the Federal Court's ruling on constitutionality had been adopted only recently and that it might be several months before the Attorney General took a decision on how to proceed; the leader of the delegation offered to ask the Speaker of the House of Representatives formally to request the Attorney General to discontinue, in the public interest, any legal action against the parliamentarians under the old Sedition Act inasmuch as criticism of the Government and judiciary was concerned; *considering also* that the amendments have still not been gazetted and therefore have not yet come into effect,

Considering the information presented by the one of the complaints on 18 October 2015 with regard to developments in the legal proceedings against the cases of the parliamentarians:

- **Case of Ms. Teresa Kok:** the Court of Appeal has fixed 17 November 2015 to continue hearing on her appeal to transfer her trial to the High Court from the current Sessions Court;
- **Case of Mr. N. Surendran:** his cases under the Sedition Act are pending trial;
- **Case of Mr. Khalid Samad:** the sedition case is still ongoing and the hearing is set for 31 October 2015. Furthermore, in March 2015, he was investigated again for sedition for his involvement in the KitaLawan rally calling for the Prime Minister to step down;
- **Case of Mr. Teo Kok Seong:** he is investigated under section 143 of the Penal Code and section 9 (5) of the Peaceful Assembly Act, but has not been formally charged;
- **Case of Mr. Tian Chua:** the trial relating to his speech on 13 May 2013, challenging the election results and calling on people to protest, is due to proceed; he won the other "Lahat Datu" sedition case, but the Government has appealed the decision; Mr. Tian Chua is also being investigated under the Peaceful Assembly Act for specifically wearing a yellow T-shirt with the official wording of "bersih4", which represents the Clean and Free Election movement;
- **Case of Mr. Rafizi Ramli:** he was initially investigated under the Sedition Act for criticizing the demonstration in front of a place of worship - a church - but later charged under section 504 of the Criminal Code (uttering words with the intention to create public disorder); the submission is due for October 2015 after which sentencing is expected;
- **Case of Mr. Sivarasa Rasiah:** he is due to be charged under the Sedition Act for allegedly saying during the 7 March KitaLawan rally that the judiciary had been used by UMNO to incriminate Mr. Anwar Ibrahim;
- **Case of Mr. Sim Tze Sin:** he was charged this year under the Peaceful Assembly Act, section 4(2)(c), for organizing or taking part in the KitaLawan rally;
- **Case of Mr. Tony Pua:** he faces investigations under section 143 of the Penal Code and a travel ban as a consequence of his outspoken criticism against the 1MDB scandal; Mr. Tony Pua also faces defamation suits by the Prime Minister,

Considering that Malaysian politics has been engulfed in a scandal related to the 1Malaysia Development Berhad (1MDB), a debt-laden state investment fund; the Prime Minister has faced calls to resign over 1MDB's struggles in meeting obligations from a RM42 billion (US\$14 billion) accumulated debt in the last five years; the calls for his resignation grew louder after it was revealed in July 2015 that US\$700 million (RM 2.6 billion) allegedly linked to the firm, whose advisory board the Prime Minister chairs, was allegedly deposited into his private accounts; the complainants fear that in the current political climate the authorities will only tighten the screws on the opposition,

Considering that in the face of mounting protests against the scandals, scores of people have recently been arrested under sections 124B and 143 of the Criminal Code addressing "unlawful assemblies"; considering that Section 124B of the Criminal Code, which has never before been used, states: "Whoever, by any means, directly or indirectly, commits an activity detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to twenty years"; *considering* also in this regard that Ms. Nurul Izzah Anwar was first investigated under the Sedition Act but now also under section 124 B and J of the Criminal Code, which covers the offence of "being detrimental to parliamentary democracy"; she has not been formally charged,

1. *Thanks* the Malaysian authorities, in particular the parliamentary authorities, for receiving the on-site mission and for facilitating the fulfilment of its mandate;
2. *Fully endorses* the mission's findings and recommendations;
3. *Deeply regrets* that a golden opportunity was missed this year to abolish the Sedition Act, following the Prime Minister's earlier remarks in this regard in 2012;
4. *Welcomes* the fact that the amended Sedition Act no longer punishes criticism of the Government and the judiciary; *yet is deeply concerned* that its provisions remain excessively vague and broad, thus leaving the door open to abuse and setting a very low threshold for the type of criticism, remarks and acts that are criminalized, and that it includes a mandatory minimum three-year prison sentence for sedition;

5. *Deeply regrets* that the Federal Court ruled to uphold the constitutionality of the Sedition Act; *sincerely hopes* that the authorities, as some intimated in the course of the on-site mission, will initiate, in recognition of the fact that the amended Sedition Act is too repressive, a review of the Act with a view to bringing it into line with relevant international human rights standards;
6. *Recalls* the important principle in criminal law that if a lighter penalty is provided for after the offence occurs, that lighter penalty shall apply retroactively; *sincerely hopes* therefore that the present Attorney General will decide to discontinue the proceedings against the parliamentarians under the old Sedition Act in connection with criticism of the Government and the judiciary; *wishes* to receive the views of the Attorney General on this point;
7. *Is deeply concerned* about the continued arrests and investigations of opposition members and vocal critics under legislation, be it the Sedition Act, the Criminal Code or the Peaceful Assembly, that appears to be clearly at odds with respect for their right to freedom of expression and assembly; *is particularly worried* that the authorities are now resorting to Section 124B of the Criminal Code, which is overtly vague and broad in its language and carries a disproportionately harsh penalty;
8. *Wishes* to receive details from the authorities regarding the facts in support of the legal steps taken against the parliamentarians in relation to their participation in demonstrations;
9. *Calls on* the authorities, in particular Parliament, to make serious efforts towards swiftly ratifying the International Covenant on Civil and Political Rights and to make use of the expertise of the United Nations special procedures, in particular the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of peaceful assembly and association, to ensure that existing legislation is amended or repealed so as to comply with relevant international human rights standards;
10. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
11. *Requests* the Committee to continue examining this case and to report back to it in due course.

Annex 10: “What Obama Must Do in Malaysia” by Nurul Izzah Anwar (*U.S. News & World Report*)



November 17, 2015

What Obama Must Do in Malaysia

The U.S. must stand with all Malaysians who view fundamental human rights as inviolable.

By Nurul Izzah Anwar

As President Obama and leaders from Southeast Asia gather in Kuala Lumpur this week to discuss community building and regional economic integration at the ASEAN-U.S. summit, Malaysian Prime Minister Najib Razak will be in an awkward position according to a new United Nations decision determining that my father and former opposition leader Anwar Ibrahim is being held in violation of international law and must be immediately released. This comes on top of scathing reports from Human Rights Watch and Amnesty International released earlier this year.

While Najib touts his desire to "bring ASEAN closer to the people," scores of complaints and international challenges are showing his own government distancing itself from the people he governs by jailing critics, journalists and even elected opposition lawmakers. Najib is left bereft of popular support, with polls showing less than one in four Malaysians in favor of his leadership. The endgame of Najib's tactics in Malaysia are increased sectarian strife, economic imbalances and a ripe environment for the growth of extremism amongst large disaffected and disconnected swaths of the population.

Mired in international financial scandals and fomenting ethnic and religious tensions, Najib is struggling to maintain his grip on power. In a practice condemned by the international community, Najib has resorted to harassing and detaining those who dissent under the draconian colonial-legacy Sedition Act that he had long promised to repeal. The sham trial and conviction of Anwar Ibrahim on trumped-up and politically motivated charges is just one glaring example of the regime's desperation. He was instrumental in building a multiethnic and multireligious opposition capable of challenging the ruling party's hegemony, and it is really for this reason that he now languishes in jail at the age of 68, in desperate need of immediate surgery and rehabilitation.

Recently, his lawyers made public that the U.N. Working Group on Arbitrary Detention found he is being held in violation of international law and must be immediately released. Amnesty International has designated Anwar Ibrahim a prisoner of conscience. Human Rights Watch has described his conviction as a "travesty of justice." Numerous influential leaders have urged my father's immediate release from prison. Among them are former Turkish President Abdullah Gül, former Indonesian President B.J. Habibie and former U.K. Prime Minister Gordon Brown. My father also suffers from a shoulder muscle tear and is in constant pain. The government has repeatedly refused to provide him the regular rehabilitation recommended by its own doctors, and he now requires a major surgery.

As Anwar Ibrahim was fond of saying before his imprisonment – "In Malaysia we have freedom of speech, but not freedom after speech." Harsh judgments against elected officials and other critics who publicly challenge the ruling government include cases such as Tony Pua, a parliamentarian subjected to a travel ban for speaking out against the 1Malaysia Development Berhad investment fund; Rafizi Ramli, who might be convicted simply for publicly criticizing a government-allowed sectarian demonstration in front of a church; Sivarasa Rasiah, my father's lawyer who criticized his imprisonment; and Zunar, the political cartoonist whose crime was tweeting against the judges responsible for Anwar Ibrahim's conviction. There are also a dozen elected opposition members of parliament, including myself, who were jailed this past spring under Najib's unconscionable twisting and repurposing of overreaching anti-terrorism laws.

Without stern rebuke from the international community that is currently enabling and emboldening Najib, his party will continue to utilize the politics of hate and race to drive Malaysia into political, economic and security turmoil. Examples of this reality already abound. The ruling United Malays National Organization party fueled racial tensions by supporting the September 16 "red-shirt" rally, where speakers, including members of Najib's cabinet, hurled insults at the Chinese and other ethnic minorities. And the rising tides of racism are especially troubling when fanned by flames of religious extremism, which is another growing problem in Malaysia. These issues must be dealt with decisively to repair eroded foreign investors' confidence and for Malaysia to forge ahead in the integrated global economy, which includes the need for engagement with all Malaysian stakeholders on the Trans-Pacific Partnership agreement.

We need the United States to stand with all Malaysians who view fundamental human rights as inviolable and to reconsider its allegiance to such a corrupt government. Secretary of State John Kerry's remarks about his recent meeting with Najib were an important start. President Obama should emphasize to Najib that multiculturalism and democratic reforms represent the only viable way to mitigate religious extremism, as well as stem the tide of extremism, in our country. And he must call publicly for my father's release and that of other political prisoners.

The upcoming ASEAN-U.S. summit is an opportunity for President Obama to ask much more of Prime Minister Najib Razak's administration and lead the global community in confronting the government's violations of human rights.

Nurul Izzah Anwar is a Member of Parliament and Vice President of the People's Justice Party.

Annex 11: European Parliament Resolution on Malaysia

European Parliament

2014-2019



TEXTS ADOPTED
Provisional edition

P8_TA-PROV(2015)0465

Malaysia

European Parliament resolution of 17 December 2015 on Malaysia (2015/3018(RSP))

The European Parliament,

- having regard to its previous resolutions on Malaysia,
- having regard to its resolution of 15 January 2014 on the future of EU-ASEAN relations¹,
- having regard to the Statement by the EEAS Spokesperson of 15 April 2015 on the recently adopted amendment to the Sedition Act in Malaysia,
- having regard to the Statement by the EEAS Spokesperson of 17 March 2015 on the arrest of Nurul Izzah, opposition Member of Parliament in Malaysia,
- having regard to the Statement by the EEAS Spokesperson of 10 February 2015 on the conviction of Malaysian opposition politician Anwar Ibrahim,
- having regard to the EU Strategic Framework on Human Rights,
- having regard to the Statement by the UN High Commissioner for Human Rights of 9 April 2015 on draft anti-terror and sedition laws,
- having regard to the joint press release by the EEAS on the EU-ASEAN policy dialogue on human rights of 23 October 2015,
- having regard to the EU Guidelines on Human Rights Defenders,
- having regard to UN Universal Periodic Review session of October 2013,
- having regard to the report of the Special Rapporteur on trafficking in persons of June 2015,
- having regard to the second Universal Periodic Review of Malaysia before the UN

¹ Texts adopted, P7_TA(2014)0022.

Human Rights Council, and its recommendations, of October 2013,

- having regard to the Universal Declaration of Human Rights of 1948,
 - having regard to the United Nations Declaration on Human Rights Defenders of 1998,
 - having regard to the International Covenant on Civil and Political Rights (ICCPR) of 1966,
 - having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984,
 - having regard to the Association of Southeast Asian Nations Human Rights Declaration,
 - having regard to Rules 135(5) and 123(4) of its Rules of Procedure,
- A. whereas the EU regards Malaysia as a key political and economic partner in South-East Asia; whereas the EU and Malaysia are negotiating a Partnership and Cooperation Agreement and a Free Trade Agreement;
- B. whereas the space for public debate and free speech in Malaysia is rapidly narrowing as the government resorts to vaguely worded criminal laws to silence its critics and quell public discontent and peaceful expression, including debates on matters of public interest; whereas these laws include the Sedition Act, the Printing Presses and Publications Act, the Communications and Multimedia Act and the Peaceful Assembly act, amongst others;
- C. whereas on 3 December 2015 the National Security Council Bill was passed in the Malaysian Parliament by a majority vote; whereas the bill grants the National Security Council led by the Prime Minister sweeping powers to declare a state of emergency in any area deemed a security risk, giving broad powers of arrest, search and seizure without warrant;
- D. whereas under the Sedition Act alone at least 78 people have been investigated or charged since the beginning of 2014;
- E. whereas former opposition leader Anwar Ibrahim was sentenced on charges of sodomy in February 2015 following a politically motivated prosecution which resulted in criminal proceedings that failed to meet international standards of fair trial; whereas he has been denied appropriate medical care;
- F. whereas LGBTI people in Malaysia are criminalised under the country's anti-sodomy law and regional laws prohibiting cross-dressing, and face political hate speech, arbitrary arrest, physical and sexual assault, imprisonment, and other abuses;
- G. whereas Malaysian cartoonist Zulkiflee Anwar Ulhaque (Zunar) is facing charges under the Sedition Act following critical tweets against the government with regard to the sentencing of Anwar Ibrahim; whereas blogger Khalid Ismath and academic Azmi Sharom face similar charges;
- H. whereas the Malaysian Anti-Corruption Commission has questioned the Prime Minister in connection with graft allegations after the discovery of over 600 million euros in his

bank account without any justification of source and purpose, as well as on separate allegations that hundreds of millions of euros were missing from deals involving a state firm he launched, 1Malaysia Development Berhad (1MDB);

- I. whereas media outlets and publishing houses have faced restrictions under the Printing Presses and Publications Act following reporting about these allegations, and whereas lawyer Matthias Chang and politician Khairuddin Abu Hassan were arrested following their investigations into these allegations;
 - J. whereas the High Representative raised concerns regarding the abusive use of criminal laws during her visit to Malaysia on 5-6 August 2015;
 - K. whereas, according to the UN and NGOs, the Malaysian police forces have increasingly resorted to acts of torture, late night arrests, unjustifiable remands and selective prosecution;
 - L. whereas Malaysia continues to practice the death penalty with up to 1 000 prisoners currently on death row;
 - M. whereas Malaysia is a Member of the UN Security Council and the current ASEAN Chair, and the 27th ASEAN Summit was held in Kuala Lumpur from 18 to 22 November 2015;
1. Reaffirms the EU's strong commitment to the Malaysian people with whom the EU has strong and longstanding political, economic and cultural ties;
 2. Deplores the deteriorating human rights situation in Malaysia and in particular the crackdown on civil society activists, academics, media and political activists; expresses concern with regard to the spike in the number of people facing charges or arrest under the Sedition Act;
 3. Is particularly concerned about the adoption of the National Security Council Bill and urges its withdrawal; calls on the government to maintain a proper balance between the need to safeguard national security and the imperative to protect civil and political rights;
 4. Urges the Malaysian Government to immediately release all political prisoners, including former opposition leader Anwar Ibrahim, and to provide them with appropriate medical care, and to drop politically motivated charges, including those against cartoonist Zulkiflee Anwar Haque (Zunar), blogger Khalid Ismath, academic Azmi Sharom, political dissidents Khairuddin Abu Hassan and Matthias Chang, and human rights activists Lena Hendry and Maria Chin Abdullah;
 5. Urges the Malaysian authorities to repeal the Sedition Act and to bring all legislation, including the Prevention of Terrorism Act, the Printing Presses and Publications Act, the Communications and Multimedia Act, the Peaceful Assembly Act, and other relevant provisions of the penal code, in line with international standards on freedom of expression and assembly and the protection of human rights; calls on the Malaysian authorities to facilitate peaceful assemblies, and to guarantee the safety of all participants and their freedom of expression across the whole country;
 6. Urges the establishment of the Independent Police Complaints and Misconduct

Commission (IPCMC), as recommended by the Police Commission of Inquiry in 2005, to investigate allegations of torture and deaths in police custody;

7. Underlines the importance of independent and transparent investigations into the graft allegations, and of full cooperation with the investigators; urges the Malaysian Government to refrain from putting pressure on the Malaysian Anti-Corruption Commission and media;
8. Deeply deplores the rise of supremacist groups which contribute further to the creation of ethnic tensions;
9. Encourages the Malaysian Government to open a dialogue with opposition parties and civil society stakeholders;
10. Calls on the Malaysian Government to ratify key international human rights conventions, including the ICCPR, the ICESCR, the CAT, the ICERD, ILO Convention 169, the ICC Rome Statute, as well as the 1951 Convention Relating to the Status of Refugees and its optional protocol;
11. Asks the Malaysian Government to extend a standing invitation to all the UN Special Procedures, thereby enabling special rapporteurs to visit Malaysia without asking for an invitation;
12. Reiterates its position that the death penalty is a cruel, inhumane and degrading treatment, and calls on Malaysia to introduce a moratorium as the first step towards the abolition of the death penalty for all offences and to commute all death sentences to prison terms;
13. Calls on the EU and its Member States to coordinate policies towards Malaysia, in line with the EU Strategic Framework on Human Rights, in order to encourage reform on the above issues of concern through all possible means, including in the context of the UN where Malaysia is a non-permanent member of the Security Council in 2015-2016;
14. Urges the EU Delegation to Malaysia to step up efforts to finance projects on freedom of expression and reforming repressive laws, and to use all appropriate tools, including the European Instrument for Democracy and Human Rights, to protect human rights defenders; urges the withdrawal of the anti-sodomy law and calls on the EEAS, in line with the EU guidelines on the protection and promotion of the rights of LGBTI persons, to step up its work on the rights of LGBTI people in Malaysia who face violence and persecution, and to aim in particular towards the decriminalisation of homosexuality and transgenderism;
15. Reaffirms the importance of the EU-ASEAN policy dialogue on human rights as a useful tool to exchange good practices and promote capacity-building initiatives;
16. Calls on the Commission to make sure that human rights concerns are duly taken into account during future negotiations on an EU-Malaysia FTA and PCA;
17. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission/High Representative for Foreign Affairs and Security Policy, the parliaments and governments of the Member States, the parliament and government of Malaysia, the United Nations High Commissioner for Human Rights and

the governments of the ASEAN Member States.

Annex 12: “At ASEAN Summit, Malaysia’s PM is Foremost Among Crowd of Repressive Dictators” by Jared Genser (*Huffington Post*)



February 12, 2016

At ASEAN Summit, Malaysia’s PM is Foremost Among Crowd of Repressive Dictators

By Jared Genser

On Feb. 15 in Southern California, President Obama will host the leaders of the 10-country Association of Southeast Asian Nations. While the Sunnylands estate, surrounded by acres of lush green desert gardens, is no stranger to more informal diplomatic meetings, one can only imagine how many of the assembled leaders will enjoy trading stories about how to maintain their grip on power.

Among those attending will be Cambodian Prime Minister Hun Sen, who has ruled his country for 30 years with little tolerance for dissent; Thailand’s military junta leader; and the prime minister of Vietnam, president of Laos and Sultan of Brunei, all of whom rule their states with a heavy-handed authoritarian grip.

And yet, ironically, it is Prime Minister Najib Razak of Malaysia, whose country is viewed as an erstwhile and even pseudo-democratic ally of the United States, who stands alone this year among the sordid lot.

Najib was elected in 2009 and many Malaysians hoped he would steer the country toward moderation, tolerance and political reform. But captured by his conservative Muslim ethnic Malay base, he advanced divisive policies and oversaw a crackdown on civil society, the press and opposition politicians. As Najib ran for reelection in 2013, Anwar Ibrahim led the multiethnic and multi-religious opposition coalition, which won a shocking 51 percent of the vote, handing Najib’s party its worst ever loss since the country’s independence in 1957.

Nevertheless, because of extreme gerrymandering, Najib retained his grip on power.

Reneging completely on his pre-election promises to liberalize the country’s oppressive laws, Najib doubled down on repression. He resumed the politically motivated case against Anwar to remove him from the political scene, ultimately securing a conviction and sentence of five years imprisonment on bogus charges. Amnesty International labeled Anwar a prisoner of conscience. Human Rights Watch remarked that his conviction was a “travesty of justice.” And Ambassador Samantha Power recently joined the United Nations in calling for his immediate release.

Najib has also deployed the antiquated Sedition Act and other repressive laws as weapons of mass oppression. More than 150 Malaysians, including students, professors, journalists, cartoonists, activists and human-rights lawyers, who all dared to confront the government, have been arrested, charged or imprisoned.

But even worse, Najib's government has stoked animosity between his political base and the country's large ethnic Chinese and Indian communities as well as religious minorities. Last September, a "red shirt" rally in downtown Kuala Lumpur, addressed by government ministers, urged Malays to rally against a purported plot by the Chinese to usurp Malay political power.

State-run media organizations disparage Shiite Islam. And despite his claims of moderation, Najib famously urged his ruling political party at a national convention to be "brave" like so-called Islamic State fighters.

These domestic strategies appear designed to maintain support from his shrinking political base and intimidate and silence those speaking out domestically about Najib's twin corruption scandals – billions of dollars of unexplained losses in the state-run investment fund 1Malaysia Development Berhad and a "donation" of \$681 million he received into a bank account in his own name from the Middle East.

To forestall Malaysian investigations into 1MDB last July, Najib sacked his deputy prime minister and four ministers and replaced his attorney general. Meanwhile, Swiss authorities claim \$4 billion is missing from 1MDB. And the FBI opened an investigation into money laundering allegations last fall. And then in late January, the new attorney general – appointed by Najib – ruled that the money deposited into Najib's personal account had been a "gift" from the Saudi royal family but that \$620 million had been "returned." No explanation was provided about the intent of the gift or how the missing funds were spent.

The United States has courted Malaysia as a moderate Muslim country to be a key partner on counter-terrorism efforts in Southeast Asia. And no doubt Obama is grateful for Najib having signed and secured parliamentary ratification of the Trans-Pacific Partnership, which he counts as a crucial achievement.

Yet, at the same time, Obama's muted public response to Najib's repressive ways, the failure of the administration to examine Najib's role in fomenting radicalization through Malaysia's state-run media and the willingness of the United States to maintain its embrace of this particularly toxic Malaysian prime minister has been deeply disheartening to Malaysia's democrats and civil society leaders.

Conversely, strong American diplomacy in the case of the former president of the Maldives, Mohamed Nasheed – who, like Anwar, is a moderate Muslim democrat and has been sentenced to 13 years imprisonment on manufactured charges – led to Nasheed's recent travel abroad for medical reasons. Both men are leading voices in their countries against the forces of division and radicalization. One remains in prison.

When Obama meets Najib over canapés and toasts to the vibrancy of the U.S.-ASEAN relationship, it is time for a new direction. Obama must publicly demand Anwar's immediate release and the dismissal of politically motivated charges for sedition and other crimes facing

so many activist s in Malaysia. For Obama to remain silent is tantamount to giving Najib a license to act with impunity.

Jared Genser is the Founder of Freedom Now and international counsel to Liu Xiaobo.

Annex 13: Inter-Parliamentary Union Decision MAL/15 – Anwar Ibrahim (March 23, 2016)

- 8 -

CL/198/12(b)-R.1
Lusaka, 23 March 2016

Malaysia

MAL/15 - Anwar Ibrahim

Decision adopted by consensus by the IPU Governing Council at its 198th session (Lusaka, 23 March 2016) ²

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Dato Seri Anwar Ibrahim, a member of the Parliament of Malaysia, and to the decision adopted by the Governing Council at its 197th session (October 2015),

Taking into account the information provided by the leader of the Malaysian delegation to the 134th IPU Assembly (March 2016) and the information regularly provided by the complainants,

Recalling the following information on file:

- Mr. Anwar Ibrahim, Finance Minister from 1991 to 1998 and Deputy Prime Minister from December 1993 to September 1998, was dismissed from both posts in September 1998 and arrested on charges of abuse of power and sodomy. He was found guilty on both counts and sentenced, in 1999 and 2000 respectively, to a total of 15 years in prison. On 2 September 2004, the Federal Court quashed the conviction in the sodomy case and ordered Mr. Anwar Ibrahim's release, as he had already served his sentence in the abuse of power case. The IPU had arrived at the conclusion that the motives for Mr. Anwar Ibrahim's prosecution were not legal in nature and that the case had been built on a presumption of guilt;
- Mr. Anwar Ibrahim was re-elected in August 2008 and May 2013 and became the de facto leader of the opposition *Pakatan Rakyat* (The People's Alliance);
- On 28 June 2008, Mohammed Saiful Bukhari Azlan, a former male aide in Mr. Anwar Ibrahim's office, filed a complaint alleging that he had been forcibly sodomized by Mr. Anwar Ibrahim in a private condominium. The next day, when it was pointed out that Mr. Anwar Ibrahim, who was 61 at the time of the alleged rape and suffering from a bad back, was no physical match for a healthy 24-year-old, the complaint was revised to claim homosexual conduct by persuasion. Mr. Anwar Ibrahim was arrested on 16 July 2008 and released the next day. He was formally charged on 6 August 2008 under section 377B of the Malaysian Criminal Code, which punishes "carnal intercourse against the order of nature" with "imprisonment for a term which may extend to 20 years" and whipping. Mr. Anwar Ibrahim pleaded not guilty to the charge and, in addition to questioning the credibility of the evidence against him, pointed to several meetings and communications that took place between Mr. Saiful and senior politicians and police before and after the assault to show that he was the victim of a political conspiracy;
- On 9 January 2012, the first-instance judge acquitted Mr. Anwar Ibrahim, stating that there was no corroborating evidence to support Mr. Saiful's testimony, given that "it cannot be 100 per cent certain that the DNA presented as evidence was not contaminated". This left the court with nothing but the alleged victim's uncorroborated testimony and, as this was a sexual crime, it was reluctant to convict on that basis alone;
- On 7 March 2014, the Court of Appeal sentenced Mr. Anwar Ibrahim to a five-year prison term, ordered that the sentence be stayed pending appeal, and set bail at 10,000 ringgits;
- On 10 February 2015, the Federal Court upheld the conviction and sentence, which Mr. Anwar Ibrahim is currently serving in Sungai Buloh Prison in Selangor. As a result of the sentence, he will not be eligible to run for parliament for six years after he has completed his sentence, i.e. until July 2027,

² The delegation of Malaysia expressed its reservations regarding the decision.

Recalling the report of the IPU observer, Mr. Mark Trowell, QC, (CL/197/11(b)-R.2), who attended most of the hearings in the case in 2013 and 2014 and the final hearing on 10 February 2015; the rebuttal of his report by the authorities and the response to the rebuttal by Mr. Trowell; *recalling also* the report of the Committee delegation (CL/197/11(b)-R.1) which went to Malaysia (29 June – 1 July 2015),

Recalling that the complainants affirm that the case against Mr. Anwar Ibrahim has to be seen against the backdrop of the uninterrupted rule of Malaysia by the same political party, UMNO, and the fact that in the 2013 general elections that monopoly was shaken by a united opposition, which managed to obtain 52 per cent of the popular vote, although – according to the complainant, due to widespread gerrymandering and fraud – this did not translate into a majority of seats for the opposition. The complainants also point out that the alliance that Mr. Anwar Ibrahim was able to set up and keep together fell apart after he was incarcerated,

Recalling that the Malaysian authorities have repeatedly stated that Malaysia's courts were fully independent and that due process had been fully respected in the course of the proceedings against Mr. Anwar Ibrahim, including by offering the counsel for defence many opportunities to present their arguments,

Considering the following avenues of legal redress that are still pending:

- Judicial review of the sentence
 - On 30 April 2015, Mr. Anwar Ibrahim applied for a fresh judicial review of his conviction, under Rule 137 of the Federal Court rules, on grounds of unfairness, with the applicant asking for the adverse judgement to be set aside and a new bench constituted to rehear the appeal; in his affidavit, Mr. Anwar Ibrahim alleged, among other things, that the extraordinary swiftness, timing and content of the statement made by the Prime Minister's Office (PMO) on the day of his conviction gave the impression that it knew of the result of the case even before the court's ruling, which is normally subject to secrecy. The affidavit also points out that it is not the practice of the PMO to issue such a statement in any other criminal appeal. The affidavit also criticized the conduct of lead prosecutor, Mr. Muhammad Shafee Abdullah, who, according to Mr. Anwar Ibrahim, had conducted a "road show" following his conviction, thereby lending weight to his claim that his trial was backed by UMNO and that he was the victim of a political conspiracy;
 - On 10 June 2015, Mr. Anwar Ibrahim's lawyers applied to the Federal Court to call former Commercial Crimes Investigation Department chief Datuk Ramli Yusuff to testify at the review hearing. In an unrelated court hearing following Mr. Anwar Ibrahim's conviction in February 2015, Mr. Yusuff provided a sworn statement saying that he had been asked in 1998 to fabricate evidence against Anwar Ibrahim to cover up his claim that police chief, Mr. Rahim Noor, assaulted him while he was in custody. It became known as the notorious "black-eye incident". Mr. Yusuff claimed that he was asked to fabricate evidence against Anwar Ibrahim by the then Attorney General Mr. Mohtar Abdullah, Mr. Abdul Gani Patail and Mr. Musa Hassan. In 1998, Mr. Patail was a senior deputy public prosecutor prosecuting the first sodomy case against Mr. Anwar Ibrahim. He later became Attorney General. Mr. Hassan was the investigation officer in the first sodomy case. He later became the Inspector General of Police (IGP), who met with the complainant Mr. Mohd Saiful prior to the alleged incident in June 2008. According to Mr. Yusuff, he was asked to arrange for a doctor to give a false medical report to the effect that Mr. Anwar Ibrahim's eye injury had been self-inflicted. "I refused," Mr. Yusuff had testified, adding that, as a result, he was seen as being "disloyal" by Mr. Hassan and Mr. Patail. Mr. Anwar Ibrahim contended in his affidavit that all the main characters in the first sodomy case were also key players in the second sodomy case, lending credence to his belief that he was a "victim of political conspiracy and fabricated evidence";
 - The Federal Court heard the request made by Mr. Anwar Ibrahim's lawyers on 26 November 2015, in the presence of the IPU observer, and decided to reserve judgment;
- Pardon's petition
 - On 24 February 2015, Mr. Anwar Ibrahim's family submitted an application for a royal Pardon. On 16 March 2015, the Pardons Board rejected the application unofficially through an affidavit in reply. On 24 June 2015, Mr. Anwar Ibrahim and his family filed an

application for judicial review to seek permission from the High Court in Kuala Lumpur to review the Pardons Board's decision. The basis of their application was the presence on the Board of the then Attorney General, Mr. Patail, who has shown personal hostility against Mr. Anwar Ibrahim in the past, which fact they claimed was unacceptable, particularly since the then Prime Minister, Mr. Abdullah Ahmad Badawi, had reportedly promised that Mr. Patail would have no further involvement in the case. The application moreover stated that the Board's decision had been made following an affidavit produced by the Attorney General's chambers of 27 March 2015, whereby the application under Rule 113 was rejected. Mr. Anwar Ibrahim and his family stated that no such application had been made by the family under Rule 113 of the Prisons Regulations 2000. The defence counsel also invoked the "black-eye incident" and the testimony of Mr. Yusuff, and the fact that Mr. Patail had failed to disclose to the Board and the King that an order to investigate had been produced against the lead prosecutor, Mr. Muhammad Shafee Abdullah, following the false affidavit that the top lawyer had allegedly filed;

- The application to compel the Pardons Board to reconsider the pardon petition filed by Mr. Anwar Ibrahim's family is listed for hearing in the High Court on 28 March 2016. The IPU trial observer will attend and report on this proceeding.

Considering that the United Nations Working Group on Arbitrary Detention, with regard to the submission of a complaint about Mr. Anwar Ibrahim's situation, concluded on 1 September 2015 that, "The deprivation of liberty of Mr. Ibrahim is arbitrary, being in contravention of articles 10, 11, 19 and 21 of the Universal Declaration of Human Rights (UDHR), and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group." The Working Group "requests the Government to take the necessary steps to remedy the situation of Mr. Ibrahim without delay and bring it into conformity with the standards and principles in the UDHR"; "Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Mr. Ibrahim immediately, and ensure that his political rights that were removed based on his arbitrary detention be reinstated",

Considering also the following with regard to Mr. Anwar Ibrahim's health:

- Since his imprisonment on 10 February 2015, Mr. Anwar Ibrahim has been examined by Dr. Jeyaindran Tan Sri Sinnadurai, who is also the Deputy Director General of Health. Mr. Anwar Ibrahim had been complaining to Dr. Jeyaindran about the pain in his right shoulder since early March 2015. However, according to his family, he was only sent to hospital in Kuala Lumpur after four months, namely on 2 June 2015. Although the physician who examined him recommended intensive physiotherapy, this recommendation has not been properly implemented, despite the constant pain. Mr. Anwar Ibrahim's medical report had been referred to Prof. Dr. Ng Wuey Min, Associate Professor at the University Malaya Medical Centre, an orthopaedic shoulder specialist who had treated him before. He concluded that the problem affecting Mr. Anwar Ibrahim's right shoulder was serious and might require arthroscopic surgery to ensure long-term healing. Mr. Anwar Ibrahim's family affirms that, on 21 August 2015, it was informed that, on that very same day, the orthopaedics specialist, Dr. Fadhil, had met Mr. Anwar Ibrahim in prison and merely prescribed strong painkillers to manage the pain, the dose subsequently being doubled by Dr. Jeyaindran;
- Mr. Anwar Ibrahim's family considers that Dr. Jeyaindran should not be in charge of Mr. Anwar Ibrahim's health treatment for the following reasons: (i) he was a witness who testified during the trial against Mr. Anwar Ibrahim; (ii) he is also the personal physician to the current Prime Minister of Malaysia; (iii) he has failed to implement any necessary treatment, which he personally recommended, namely intensive physiotherapy; (iv) he lacks the expertise in the area of Mr. Anwar Ibrahim's health problems; (v) the family affirms that Dr. Jeyaindran took three months to allow Mr. Anwar Ibrahim to be examined and for an MRI of his right shoulder to be taken, which has contributed to the pain becoming chronic and affecting his left shoulder;
- On 25 February, and reportedly again on 15 March 2016, Mr. Anwar Ibrahim was hospitalized for three nights for medical check-ups. During the first check-up, Mr. Anwar Ibrahim recorded high blood pressure of 170/102, but was sent back to prison without finding out the cause of the high blood pressure;

- According to the leader of the Malaysian delegation, at the hearing held with the Committee on 18 March 2016, the authorities are going out of their way to allow Mr. Anwar Ibrahim to see any doctor of his choice, including, if that is his wish, by allowing him to fly in medical experts from abroad to treat him in Malaysia, but that he was not allowed to go abroad to undergo such treatment;
 - According to the complainants, Mr. Anwar Ibrahim is still not receiving the recommended medical care and is still not being cared for by an independent doctor specialized in the health issues he is facing,
1. *Thanks* the leader of the Malaysian delegation for the information provided and for his continued cooperation;
 2. *Considers* that, in light of the procedural irregularities, the serious doubts about the credibility of the evidence presented against Mr. Anwar Ibrahim, the dubious circumstances surrounding the alleged sodomy and the new information that has since come to light in support of the affirmation that his trial was based on other-than-legal considerations, his conviction and continued detention are untenable;
 3. *Calls therefore* on the authorities to release Mr. Anwar Ibrahim forthwith and to take the necessary measures to enable him to return to parliamentary life; *eagerly awaits* in this regard the outcome of the judicial decisions on the applications for a review of his sentence and for the reconsideration of his pardon petition;
 4. *Is pleased* that, for as long as Mr. Anwar Ibrahim remains in detention, he is allowed, as the leader of the Malaysian delegation pointed out, to be cared for by a doctor of his own choice and fully benefit from the medical expertise he wishes and the treatment he requires, including through, if needed, extensive care in hospital; *wishes* to be kept informed of the next steps in Mr. Anwar Ibrahim's medical treatment;
 5. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to supply relevant information;
 6. *Requests* the Committee to continue examining this case and to report back to it in due course.

Annex 14: “My Plea From Prison: Malaysia Must Choose Freedom Over Repression” by Anwar Ibrahim (*The Washington Post*)

The Washington Post

October 13, 2016

My Plea From Prison: Malaysia Must Choose Freedom Over Repression

By: Anwar Ibrahim

Sungai Buloh Prison, Malaysia —Yesterday, Malaysia’s Federal Court heard my final appeal to reverse the injustice of my politically-motivated detention at the hands of the Malaysian government. It won’t likely issue a final decision on my case for many months. What is really at stake in Malaysia, however, is a catastrophic slide to authoritarian kleptocracy by a country that was set to be the shining example of pluralistic democracy in a multi-religious Muslim majority country. My last appeal could well be the final opportunity for Prime Minister Najib Razak and the judiciary he cynically controls to set Malaysia again on a path of restoring its much tainted reputation on the global stage. But without the support of the international community and President Obama’s help, my fate is pre-determined.

I have struggled my entire life for the betterment of my country and the improvement of the lives of Malaysia’s citizens. I am coming up on having spent 10 years of my adult life over the course multiple imprisonments in jail. I am grateful for the strong support of the [United Nations](#) and organizations like [Amnesty International](#) and [Human Rights Watch](#), which have concluded I am illegally detained and have urged my immediate release. Although this has been particularly hard on my family, I am most worried about the unprecedented existential threat to Malaysia’s democracy and stability. We are at a crossroads where we can either emerge as a pluralistic democracy in Asia and in the Muslim world or where our nation will implode from grand corruption and different religious and ethnic groups being pitted against each other fighting for limited resources.

Najib’s overreach is even bringing my former political foes from the ruling party, including my political benefactor and later jailer Mahathir Mohamed, to defect to the opposition. But most democracies around the world have remained totally silent, and none have taken concrete measures to censure Najib and his government before the damage done by their corruption and authoritarianism is irreversible.

The opposition coalition I led in the 2008 elections shocked the ruling BN alliance led by the nationalist United Malay National Organization (UMNO), because a truly multi-racial and multi-religious coalition united to earn 48 percent of the popular vote. That only translated into 37 percent of the seats in the parliament, but it denied BN a two-thirds majority for the first time

since 1969. But our success led the government to frame me for crimes that I did not commit in a lengthy trial that was held over me for some six years.

So when our opposition coalition won 52 percent of the popular vote in the 2013 elections, Najib could not allow me to remain free. I was finally imprisoned by his judiciary last year. To maintain his grip on power, Najib has imposed severe restrictions on public protest, imprisoned countless people for exercising their basic rights of freedom of expression, and maintained almost total domination of the media. This government has also stoked enmity between ethnic Malay Muslims on one hand, and ethnic Chinese and Indians of Christian, Buddhist, and Hindu religious affiliations on the other

The outcome of Malaysia's last general election in 2013 showed the political opposition and the movement for reform winning a majority of the popular vote. It demonstrated the thirst of the Malaysian people for fundamental reform of our key institutions and for genuine democracy and the rule of law. However, the ruling Barisan Nasional (BN) or National Front that has held onto to control of the government for the entirety of our 59 years of independence, continues to subvert our liberty and hijack our democracy. Its efforts to hold power indefinitely include the adoption of new repressive legislation and a recent attempt by its submissive Election Commission to guarantee minority rule indefinitely through newly-proposed extreme gerrymandered districts. Left unchecked, in Malaysia this will pave the way for unbridled corruption, religious extremism, and inter-communal violence.

The international community has also learned about the wanton pilfering of public funds in the Malaysian state investment fund 1MDB which is linked to close associates of Najib. According to Malaysia's auditor-general, [some \\$7 billion of funds are missing](#). The corruption in this one case amounts to over \$2,800 per Malaysian taxpayer, in a country with median income of less than \$1,500 per month. While the U.S. Department of Justice is pursuing its own cases relating to the scandal, Malaysia's own Attorney General has refused to bring any charges at all in the country where most of the crimes were committed.

A critical mass of our citizens want democracy. I have been imprisoned to stop our opposition coalition from bringing together our diverse peoples to achieve a multi-ethnic and multi-religious Malaysia.

Malaysians who want to hold Prime Minister Najib and the Malaysian government to account for their misdeeds and bring about change for the better need meaningful support from the international community.

My imprisonment is something I will endure as a necessary sacrifice in the struggle for democratization of my beloved country. However, far more is at stake for Malaysia than just my personal freedom. The question at hand is whether Malaysia, a country with immense potential, will rise to achieve it, or whether it will instead become a failed state.

Anwar Ibrahim is founder of the People's Justice Party and a former deputy prime minister of Malaysia.