

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,

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.

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 (Ms.)
MAL/29 - Sivarasa Rasiah
MAL/30 - Sim Tze Sin
MAL/31 - Tony Pua
MAL/32 - Chong Chien Jen
MAL/33 - Julian Tan Kok Peng
MAL/34 - Anthony Loke
MAL/35 - Shamsul Iskandar
MAL/36 - Hatta Ramli
MAL/37 - Michael Jeyakumar Devaraj
MAL/38 - Nga Kor Ming
MAL/39 - Teo Nie Ching

***Decision adopted by consensus by the IPU Governing Council
at its 198th session (Lusaka, 23 March 2016) ³***

The Governing Council of the Inter-Parliamentary Union,

Referring to the aforesaid cases of nineteen opposition members of the Malaysian House of Representatives and to the decision it adopted 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,

Having before it the cases of Mr. Chong Chien Jen, Mr. Julian Tan Kok Peng, Mr. Anthony Loke, Mr. Shamsul Iskandar, Mr. Hatta Ramli, Mr. Michael Jeyakumar Devaraj, Mr. Nga Kor Ming and Mr. Teo Nie Ching, 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),

Recalling the report of the Committee delegation (CL/197/11(b)-R.1) that went to Malaysia (29 June – 1 July 2015),

Considering the following information with regard to the legal proceedings to which the parliamentarians have been subjected under the Sedition Act and information with regard to the act itself:

- Ms. Teresa Kok, Mr. N. Surendran, Mr. Ng Wei Aik and Mr. Sivarasa Rasiah were charged under (a), (b) and (c) of Section 4(1) of the Sedition Act of 1948, while four other opposition members of parliament, namely Mr. Rafizi Ramli, Ms. Nurul Izzah Anwar, Mr. Nga Kor Ming and Mr. Teo Nie Ching, are being investigated under this act. With regard to seven of these parliamentarians, the action taken against them under the Sedition Act is wholly or partly related to criticism they voiced about the trial against Mr. Anwar Ibrahim;

- According to the complainants, Mr. Khalid Samad was also charged under the Sedition Act. According to the leader of the Malaysian delegation, Mr. Samad was being investigated on a charge of unlawful assembly, not sedition. According to the complainants, Mr. Tony Pua was investigated (in or since March 2014) under the Sedition Act for a tweet after Ms. Nurul Izzah Anwar was arrested overnight by the police for investigations. According to the leader of the Malaysian delegation, however, Mr. Tony Pua was subject to a legal suit brought by current Prime Minister Najib Razak;
- On 20 November 2015, the Attorney General withdrew the sedition charge against Ms. Teresa Kok;
- 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;
- In 2012, the current Prime Minister announced publicly that the Sedition Act would be repealed. The Government then decided not to repeal it, but to amend it in the belief that the Sedition Act remained necessary to promote national harmony and tolerance. In April 2015, the House of Representatives and Senate passed most of the proposed amendments, notably the following: (i) criticism of the Government or the administration of justice is no longer considered seditious; (ii) promoting hatred between different religions is now seditious; (iii) sedition is no longer punishable with a fine but carries a mandatory minimum three-year prison term; (iv) sedition is punishable with up to 20 years' imprisonment if the seditious acts or statements lead to bodily harm and/or damage to property; (v) The act empowers the court to order the removal of seditious material on the Internet;
- The authorities have by and large affirmed 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 that went to Malaysia 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;
- Well before the passing of the amendments to the Sedition Act, the sedition charges and investigations against the aforesaid parliamentarians had been put on hold pending a ruling by the Federal Court on the petition by Mr. Azmi Sharom 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 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. Another constitutionality challenge, brought by Mr. N. Surendran, is, however, still before the Federal Court, which is due to rule on the matter on 14 April 2016;
- According to the leader of the Malaysian delegation, the matter of discontinuing previous legal action initiated under the original Sedition Act with regard to criticism of the Government or the administration of justice is entirely in the hands of the Attorney General, as he had the power to discontinue the proceedings at any time. He also stated that the reasons why the Attorney General had not yet taken a decision with regard to pending files could be that he preferred to wait for the outcome of the constitutionality challenge and that the amendments had still not yet come into effect,

Considering the following information with regard to the legal proceedings to which the parliamentarians have been subjected under the Peaceful Assembly Act:

- Five parliamentarians, namely Mr. Chong Chien Jen, Mr. Julian Tan Kok Peng, Mr. Anthony Loke, Mr. Shamsul Iskandar and Mr. Sim Tze Sin, have reportedly been charged under Section 4(2)(c) of the Peaceful Assembly Act (PAA) in connection with their participation in demonstrations. Three others, namely Mr. Chua Tian Chang, Mr. Hatta Ramli and Mr. Michael Jeyakumar Devaraj, were reportedly briefly arrested in connection with such involvement. It appears that an investigation is ongoing. Mr. Teo Kok Seong and Mr. Rafizi Ramli are also reportedly being investigated for their role in demonstrations. All the parliamentarians concerned affirm that the legal action taken against them runs counter to their right to freedom of assembly, which the leader of the Malaysian delegation denies,

Considering that the complainants fear that, following the serious allegations which surfaced in 2015 about the abuse of the 1Malaysia Development Berhad (1MDB) and mounting calls for the Prime Minister to resign, the authorities are tightening the screws on the opposition,

Considering, with regard to the recommendation made by the Committee delegation that travelled to the country that Malaysia ratify the International Covenant on Civil and Political Rights, to which 168 countries are State Parties, the leader of the Malaysian delegation stated that Malaysia subscribed to the principles and ideas contained in the Covenant, but that challenges remained, including with regard to religious matters, which made it difficult to ratify the treaty at this point in time,

1. *Thanks* the leader of the Malaysian delegation for the information provided and for his continued cooperation;
2. *Is pleased*, in the belief that Ms. Teresa Kok was only exercising her right to freedom of expression, that the Attorney General decided to discontinue the charge filed against her under the Sedition Act; *decides* therefore to close her case;
3. *Fails to understand*, however, why the Attorney General has not yet used his discretionary powers to take the same action in the other cases, which amount to no more than criticism of the Government and the administration of justice, which conduct would also no longer be punishable under the amended Sedition Act; *sincerely hopes* therefore that such action will soon be taken; *wishes* to be kept informed of developments in this regard;
4. *Remains concerned* that the provisions of the Sedition Act as amended 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. *Sincerely hopes*, therefore, that the authorities will undertake soon, as some of them intimated during the mission, another review of the amended Sedition Act and that this will result in legislation that is fully compliant with international human rights standards; *wishes* to be kept informed of any steps taken in this regard;
6. *Eagerly awaits* the outcome of the Federal Court's deliberations on the remaining pending constitutionality challenge to the Sedition Act; *wishes* to receive a copy of its ruling once it is available;
7. *Is deeply concerned* about the reports of arbitrary arrests, investigations and charges against opposition members under the Peaceful Assembly Act; *wishes* to receive detailed information from the authorities about the legal justification and facts for the legal action taken under this act with regard to each parliamentarian;
8. *Wishes to understand*, in light of the conflicting information on file, to what legal action Mr. Khalid Samad and Mr. Tony Pua are subjected and the facts on which such action is based;
9. *Sincerely hopes* that the authorities will soon decide to join the overwhelming majority of nations that have ratified the International Covenant on Civil and Political Rights; *points*

out in this regard that, if absolutely necessary, Malaysia can make reservations, understandings and declarations upon becoming a party to the Covenant, as long as they do not contravene the object and purpose of the treaty;

10. *Calls on* the authorities 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 the rights to freedom of peaceful assembly and of association, to ensure that existing legislation is amended or repealed so as to comply with relevant international human rights standards;
11. *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;
12. *Requests* the Committee to continue examining this case and to report back to it in due course.