

HUMAN RIGHTS FEATURES

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Malaysia On Trial

Ten years after being found guilty of sodomy, and six years after that conviction was overturned by the Malaysian Supreme Court, Malaysian opposition leader Anwar Ibrahim finds himself in court again, facing, rather implausibly, a similar charge. In the interim, Anwar spent six years in prison, and following his release in 2004 led a coalition of opposition parties to a spate of unprecedented victories in Malaysia's general elections in 2008.

The motivations behind the charge are unmistakable – Anwar's recent political successes have struck fear in the ruling dispensation. A long trial, exacerbated by the glaring and persistent flaws in Malaysia's judicial system, threatens to undermine not only Anwar's rejuvenated political career but may also thwart Malaysia's tentative steps towards a more inclusive and democratic polity.

Background

The ruling Barisan Nasional (BN), which has been in power in Malaysia since the country gained its independence in 1957, has continuously imposed various harsh measures to limit the ability of opposition parties and leaders to challenge the party's rule.¹ Although Article 10 of the Malaysian Constitution guarantees the freedom of speech, freedom of assembly, and the freedom to form associations, it also imposes limitations on these freedoms for such broad purposes as security, public order and morality, and the protection of the privileges of Parliament or the Legislative Assembly.² Such broad limitations have allowed the ruling government to use national security and public order as an excuse to impose restrictions on these fundamental rights for political ends.³

¹ Abdul Rashid Moten, "2004 and 2008 General Elections in Malaysia: Towards a Multicultural, Biparty Political System?" *Asian Journal of Political Science*, Vol. 17, No. 2, pp. 173-194, 2009, available at:

<http://www.informaworld.com/smpp/content~content=a914342220~db=all~jumptype=rss>

² The Constitution of Malaysia, art. 10, available at: <http://confinder.richmond.edu/admin/docs/malaysia.pdf>.

³ See, e.g., Felicity Hammond, *Terrorism's Next Victim? Judicial Review of the Malaysian Internal Security Act 1960*, *Asian-Pacific Law and Policy Journal*, Spring 2007, available at: <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=8+Asian-Pacific+L.+%26+Pol'y+J.+270&srctype=smi&srcid=3B15&key=30831f8ce211b4f142538e9697420050>; Sani, Mohd Azizuddin Mohd 'Freedom of Speech and Democracy in Malaysia', *Asian Journal of Political Science*, Vol. 16, No. 1, pp. 85-104, 2008, available at:

<http://www.informaworld.com/smpp/content~content=a791748226~db=all~jumptype=rss>

As an important example, the government has used the Internal Security Act of 1960 and its amendments of 1989 to limit speech and assembly rights,⁴ and thereby limit the development of a free opposition movement. Similarly, the government has abused provisions in the Malaysia Penal Code (2002) that limit the freedom of assembly in order to, for instance, ban rallies by the BERSIH coalition ('Coalition for Free and Fair Elections') and HINDRAF (the Hindu Rights Action Front).⁵ The Home Ministry parliamentary secretary has gone so far as to defend the government's comprehensive ban on political gatherings and instead accuse the opposition groups of wasting police resources in their attempts to exercise their rights of assembly.⁶

In this harsh political climate, Anwar Ibrahim, a lifelong politician who began as a student activist and was Deputy Prime Minister from 1993 to 1998, is currently de facto leader of Malaysia's opposition coalition, Pakatan Rakyat (The People's Alliance).⁷ His popularity and his efforts to reform the political system while Deputy Prime Minister and after, have made Anwar a significant target of the government.⁸

Politically motivated charges

On 28 June 2008 Saiful Bukhari Azlan, a male aide, filed a complaint alleging that he was forcibly sodomized by Anwar.⁹ Anwar was arrested in July and formally charged on 6 August 2008.¹⁰ He has pleaded not guilty to the charge, which carries a maximum sentence of 20 years in prison in addition to a whipping.¹¹

The charges have been widely condemned as being "politically motivated"¹² and indeed various factors give pause for doubt as to the sincerity of the charges. For example, leaked medical reports of 28 July 2008 indicate that the complainant was not in fact sodomized,¹³ with the

⁴ Felicity Hammond, *op. cit.*

⁵ Maznah Mohamad, "Malaysia – Democracy and the end of Ethnic Politics" *Australian Journal of International Affairs*, Vol. 62, No. 4, pp. 441-459, December 2008, available at: <http://www.informaworld.com/smpp/587297555-51174995/content~db=all~content=a906184850>; Sani, Mohd Azizuddin Mohd, *op. cit.*

⁶ Sani, Mohd Azizuddin Mohd, *op. cit.*

⁷ Baradan Kuppusamy, "Malaysia faces severe test as Anwar stands trial", Inter Press Service, 9 February 2010, available at: <http://www.ipsnews.net/news.asp?idnews=50261>.

⁸ *Id.*

⁹ Eileen Ng, "Sodomy trial of Anwar starts", Associated Press, 2 February 2010, available at: <http://www.google.com/hostednews/ap/article/ALeqM5itV6T6P9vail9AeQdD2RbNsyTUVgD9DKII6O1>.

¹⁰ Sivarasa Rasiah, "Anwar Ibrahim and the Charge of Sodomy: The Sequel", available at: <http://themalaysianinsider.com/index.php/opinion/breaking-views/51534-anwar-ibrahim-and-the-charge-of-sodomy-the-sequel--sivarasa-rasiah> (last visited on 11 February 2010).

¹¹ "Malaysian opposition leader goes to trial", CNN, 2 February 2010, available at: <http://edition.cnn.com/2010/WORLD/asiapcf/02/01/malaysia.ibrahim/>

¹² See e.g., Mark Tran, "Malaysian politics return to the dock", *The Guardian* (UK), 8 February 2010, available at: <http://www.guardian.co.uk/commentisfree/2010/feb/08/malaysia-trial-anwar-ibrahim>. See also, "Malaysia's opposition leader Anwar faces 'show trial'", Amnesty International, 29 January 2010, available at: <http://www.amnesty.org/en/news-and-updates/malaysia-opposition-leader-anwar-faces-039show-trial039-20100129>; "Trial delay for Malaysia's Anwar", Al Jazeera, 2 February 2010, available at: <http://english.aljazeera.net/news/asia-pacific/2010/02/2010221244721582.html>; Barry Wain, "Malaysia on trial along with Anwar", *Sydney Morning Herald*, 5 February 2010, available at: <http://www.smh.com.au/opinion/politics/malaysia-on-trial-along-with-anwar-20100204-ng34.html>.

¹³ Lisa Goh, "Anwar Fails to Strike Out Sodomy Charges (Update)" *The Star News*, 1 December 2009, available at: <http://thestar.com.my/news/story.asp?file=/2009/12/1/nation/20091201101022&sec=nation> (last visited on 21

government subsequently being more concerned by the fact that the report had been leaked than by its actual exculpatory content.¹⁴ In addition, the initial First Information Report to police by the complainant was not released to Anwar's counsel for months, raising concerns about evidence tampering.¹⁵ It has also been confirmed that Saiful visited the office and home of then Deputy Prime Minister (now Prime Minister) Najib Tun Razak a few days before he made the allegations, supposedly seeking a scholarship¹⁶, a meeting which Najib initially denied took place.¹⁷ He also had a private meeting with a senior police officer Rodwan Yusof at a hotel the day before the alleged incident.¹⁸

The government has also been interfering with the case publicly; for example telling Anwar he should prove his innocence and agree to a DNA test.¹⁹ Moreover, Abdul Gani Patail, the current Attorney General, and Rodwan Yusof were alleged to have been involved in the fabrication of evidence against Anwar during the 1998 trials discussed below.²⁰ Furthermore, the current allegations themselves remain questionable in light of the facts that the alleged abuse continued over a period of two months without complaint and given that Anwar, who is 63 and had a bad back from an injury suffered when in prison, is alleged to have forcibly sodomized Saiful, a man in his 20s.²¹

These factors illustrate the failings of due process in the investigation and trial and give impetus to allegations that the charges against Anwar are politically motivated. Indeed, Anwar and his counsel tried, unsuccessfully, to have the sodomy charge struck out on the basis of the leaked medical report and Gani Patail's alleged involvement in the previous sodomy trial against Anwar.²²

January 2010). *See also*, "Malaysia" Politics drive upcoming Anwar trial", Human Rights Watch, 13 July 2010, available at: <http://www.hrw.org/en/news/2009/07/13/malaysia-politics-drive-upcoming-anwar-trial>.

¹⁴ Human Rights Watch, "Malaysia: Drop Political Charges Against Opposition Leader", *Human Rights Watch News*, 7 August 2008, available at: <http://www.hrw.org/en/news/2008/08/06/malaysia-drop-political-charges-against-opposition-leader> (last visited on 21 January 2010).

¹⁵ Human Rights Watch, "Malaysia: Political Motivations Undermine Anwar Case", 21 July 2008, available at: <http://www.hrw.org/en/news/2008/07/20/malaysia-political-motivations-undermine-anwar-case>.

¹⁶ "Anwar's accuser visited DPM at his home before lodging police report", *The Star News*, 4 July 2008, available at: <http://thestar.com.my/news/story.asp?file=/2008/7/4/nation/21741173&sec=nation> (last visited on 21 January 2010).

¹⁷ "Najib: Saiful came to see me on sodomy case", Bernama (Malaysian National News Agency), 3 July 2008, available at: http://www.bernama.com/bernama/v3/news_lite.php?id=343750.

¹⁸ Sivarasa Rasiah, "Anwar Ibrahim and the Charge of Sodomy: The Sequel", *op. cit.*

¹⁹ Human Rights Watch, "Malaysia: Political Motivations Undermine Anwar Case", *op. cit.*

²⁰ Lisa Goh, "Anwar Fails to Strike Out Sodomy Charges (Update)" *The Star News* (1 December 2009), available at: <http://thestar.com.my/news/story.asp?file=/2009/12/1/nation/20091201101022&sec=nation> (last visited on 21 January 2010).

²¹ Inter-Parliamentary Council, "Case No Mal/15 – Anwar Ibrahim – Malaysia", Inter-Parliamentary Council 169th Session, 14 September 2001, available at: <http://www.ipu.org/hr-e/169/Mal15.htm> (last visited on 21 January 2010), International Commission of Jurists "Malaysia - In Final Appeal, Anwar Must Get Fair Hearing" International Commission of Jurists (Independence of Judges and Lawyers Newsroom), 10 May 2004, available at: http://www.icj.org/world_pays.php3?id_mot=88 (last visited 29 January 2010).

²² Lisa Goh, *op. cit.*

Previous targeting

The contentions that the charges are politically motivated gain more credence in light of similar charges against Anwar noted above. In 1998, after supposedly being groomed to become the successor to then Prime Minister Mahathir bin Mohamed²³, Anwar had a falling out with the prime minister²⁴, was sacked from his position as deputy prime minister,²⁵ and was subsequently charged and sentenced to 15 years' imprisonment on charges of sodomy and corruption.²⁶ The charges, investigation, and trial all received significant international condemnation for their lack of fairness, their failures of due process, and their violation of Anwar's human rights.²⁷ The fabrication of charges, the withholding of exculpatory evidence²⁸, and the brutal physical assault on Anwar by the Inspector General of Police²⁹, provide but a few examples of the marred investigation and prosecution. After spending six years in prison, an Appeals Court reversed the sodomy charge against Anwar and released him in 2004, although he continued to be barred from politics until April 2008 on account of the corruption charge.³⁰

Anwar as a political threat

Anwar resumed his political activities in 2008, again making him a ripe target for the politically motivated charges upon which the present trial is based. In 2008, he campaigned on behalf of other opposition candidates³¹, called for a vote of no confidence in the ruling government by 16 September 2008³², and himself won a seat in Parliament during by-elections³³. Moreover, Anwar testified against the government, in particular against senior prosecutor Gani Patail (the present Attorney General) and the investigating officer who is now Inspector General of Police, for

²³ Dr. Chandra Muzaffar, "The Anwar Episode: An Analysis" *Malaysian Democracy* (4 October 1998), available at: http://www.c2o.org/malaysia/democracy/articles/981004_article_02.htm (last visited 29 January 2010)

²⁴ *Id.*

²⁵ Sani, Mohd Azizuddin Mohd, *op. cit.*

²⁶ *Id.*

²⁷ Amnesty Asia Pacific, "Anwar Ibrahim: The Campaign for the Release of a Prisoner of Conscience" Amnesty International press release, available at: <http://asiapacific.amnesty.org/apro/APROweb.nsf/pages/goodnewsAnwarIbrahim> (last visited 21 January 2010). See also, "Malaysia: Anwar's Release, A Historic Step to Restore Judiciary Independence", *Human Rights Solidarity* (Asian Human Rights Commission), Vol. 14, No. 5, 4 October 2004, available at: <http://www.hrsolidarity.net/mainfile.php/2004vol14no05/2371/> (last visited on 21 January 2010); and Inter-Parliamentary Council, "Case No Mal/15 – Anwar Ibrahim – Malaysia", *op. cit.*; International Commission of Jurists "Malaysia - In Final Appeal, Anwar Must Get Fair Hearing", *op. cit.*

²⁸ Aliran Executive Committee, "Rahim Noor's Confession: Black Eye and Blacker Deeds" Aliran Media Statement, 1 March 1999, available at: <http://www.aliran.com/oldsite/ms990301.html> (last visited on 21 January 2010).

²⁹ Aliran Executive Committee, *op. cit.*; Inter-Parliamentary Council, "Case No Mal/15 – Anwar Ibrahim – Malaysia", *op. cit.* See also Jane Lyons, "Back and Ready to Weave his Magic", *The Sydney Morning Herald*, 11-12 August 2007, available at: www.scribd.com/doc/17524535/Anwar-Ibrahim-profile-SMH.

³⁰ "Q&A: Anwar Ibrahim", *The Guardian* (UK), 10 September 2008, available at: <http://www.guardian.co.uk/world/2008/sep/10/malaysia>.

³¹ Abdul Rashid Moten, *op. cit.*

³² "Malaysia's Anwar calls for emergency no-confidence vote in PM", Agence France Presse, 18 September 2008, available at: http://afp.google.com/article/ALEqM5ghoqHNZyV6CgQ69wURZIA_4BG8Tg.

³³ Abdul Rashid Moten, *op. cit.*; Maznah Mohamad, *op. cit.*

fabricating evidence in his 1998 trial³⁴. These activities, combined with Anwar's popularity, provided significant motivation for the ruling government to fabricate charges against him in order to try to discredit him and keep him out of politics. Indeed it appears much more than coincidental that on the same day that Anwar was charged with sodomy, the date of the by-election that Anwar was contesting was announced.³⁵

Anwar's activities were and are particularly threatening to the ruling government because of the threat posed by the 2008 general election. Even though some speculate that the elections were called nearly a year early to prevent Anwar from running³⁶, the elections still proved relatively successful for the opposition coalition, Pakatan Rakyat (People's Alliance), which won 82 out of 222 parliamentary seats³⁷ and got majorities in five state assemblies³⁸. Thus, for the first time since 1969, the ruling BN party no longer held the two thirds majority required for amending the Constitution.³⁹ Moreover, the success of the opposition indicated the possibility of future threats to the BN's rule.

Conclusion

The continued attempts by the Malaysian government to sabotage the political career of Anwar Ibrahim represents but one prominent example of numerous ongoing actions by the ruling Barisan Nasional to stamp out those opposed to its rule. With the relative success of the opposition in the 2008 parliamentary elections and the small window of opportunity for significant reform of the BN's sometimes brutal dominance of Malaysian politics since independence, it is imperative that Anwar Ibrahim receive a fair trial not only for his own sake and the sake of human rights, but for the sake of Malaysia's democracy.

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³⁴ "Anwar hits back at sex allegations", Al Jazeera, 1 July 2008, *available at*: <http://english.aljazeera.net/news/asia-pacific/2008/07/20087195330440794.html>.

³⁵ Abdul Rashid Moten, *op. cit.*

³⁶ *Id.* See also Amnesty International, "Malaysia: Charges Against Anwar Politically Motivated", *op. cit.*

³⁷ Baradan Kuppusamy, "Anwar's win spells leadership change", Inter Press Service, 27 August 2008, *available at*: <http://ipsnews.net/news.asp?idnews=43690>.

³⁸ "Malaysia's courts in the dock over Anwar trial", Reuters, 31 January 2010, *available at*: <http://www.reuters.com/article/idUSTRE6100MW20100201>.

³⁹ *Id.*