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MALAYSIA

**Briefing for
ASEM Foreign Ministers Meeting
March 1999**



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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

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Briefing for ASEM Foreign Ministers Meeting March 1999

As ASEM Foreign Ministers gather in Berlin in March 1999, Amnesty international is calling on them in their meetings with the Foreign Minister of Malaysia and their ASEM counterparts to address the human rights issues detailed below as part of the political dialogue process.

Human rights concerns highlighted by detention of Anwar Ibrahim

The detention of former Deputy Prime Minister **Anwar Ibrahim** and his political associates in September 1998 under the Internal Security Act (ISA) has refocused international and domestic attention on longstanding human rights concerns in Malaysia - in particular the government's selective use of restrictive legislation for political purposes.

Amnesty International believes that the Malaysian authorities continue to apply restrictive laws, including the ISA, the Sedition Act, the Societies Act, the Printing Presses & Publications Act and the Police Act, to impose unjustified restrictions on freedom of expression, association and peaceful assembly.

Dissenting political voices, social activists and others members of civil society remain vulnerable to arbitrary arrest, prosecution and imprisonment for peacefully expressing their opinions.

The Internal Security Act (ISA)

The ISA empowers police to arrest without a warrant any person suspected of acting in 'any manner prejudicial to the security of Malaysia'. Police can question them for a period of up to 60 days before a Minister signs a detention order of up to two years, renewable indefinitely. Detention orders are not open to judicial review, and *habeas corpus* petitions have proved ineffective.

In 1987, over 100 people, including prominent politicians, trade unionists, Chinese educationalists, Islamic teachers and church and community workers were arrested under the ISA, accused of provoking racial and religious tensions. At least 40 of those given two-year detention orders were adopted by Amnesty International as prisoners of conscience.

In November 1997 ten men were arrested under the ISA on account of their Shi'a Islamic faith. Most had been released by December 1998, but Amnesty International considers **Che Kamarulzaman Che Ismail**, who remains in detention, to be a prisoner of conscience held solely for the peaceful practice of his religious beliefs.

In September 1998 Anwar Ibrahim and sixteen political associates were arrested under the ISA after Anwar had become the focus for a broad-based popular movement calling for political and social reforms. Amnesty International declared Anwar Ibrahim and the other ISA detainees associated with him to be prisoners of conscience detained solely for their non-violent political activity, expression and association, and called for their immediate and unconditional release.

By December all of Anwar's associates had been released, with Anwar being the only detainee to be charged with criminal offences - sodomy and corrupt practices - and denied bail.

Amnesty International believes Anwar was detained, and was subsequently brought to trial on account of his non-violent political activities and expression of dissent within the government. The organization believes the timing and manner of the filing of charges against him reflected political motives, and that the charges are being used by authorities as a pretext to remove Anwar from further participation in public life.

At least eight other people were arrested in late 1998 under the ISA on suspicion of being involved in the 'reform movement' or organising 'pro-reform' rallies. In February 1999 a computer technician was arrested under the ISA, reportedly for activities supportive of reform.

Amnesty International calls for,

- **Those detained under the ISA to be charged with a recognizably criminal offence or else be immediately and unconditionally released;**
- **the ISA to be amended so that it no longer allows for those who peacefully express religious or political beliefs to be arrested and imprisoned;**
- **the ISA to be amended so that those suspected of threatening national security have the opportunity to defend themselves before a court of law, and are not held incommunicado at unknown locations.**

Incommunicado detention and the ill-treatment of detainees

Amnesty International is concerned that detainees held under the ISA and other legislation are held at times incommunicado at unknown locations, and that they are at increased risk of ill-treatment in the course of aggressive, prolonged and disorientating interrogation. Questioning of ISA detainees in the past have caused conditions of aggravated mental and physical distress induced by sleep deprivation, threats, slaps and punches and by prisoners being forced to stand for prolonged periods under excessively cold air-conditioners.

On 29 September 1998 Anwar Ibrahim was brought to court after being in incommunicado detention for nine days. He showed visible signs of ill-treatment including a swollen eye and a bruised arm. He complained that after his arrest he was handcuffed and blindfolded and that the police then “*beat him severely, causing serious injuries*”. He was not allowed to see a doctor until the fifth day of his detention. On 22 February a Royal Commission began a public inquiry into the assault and the former head of the Royal Malaysia Police, Rahim Noor, admitted that he had assaulted Anwar while Anwar was handcuffed and blindfolded in a police cell.

Amnesty International is also concerned that two men, **Dr Munawar Anees** and **Sukma Darmawan**, who were each sentenced to six months in prison in September after pleading guilty to ‘allowing themselves to be sodomised’ by Anwar, were denied a fair trial and were reportedly ill-treated and degraded in order to coerce their confessions. Both men retracted their confessions and appealed the sentences. Sukma Darmawan was released on bail in December 1998, and Dr Anees was released in January 1999 after his sentence was reduced for ‘good behaviour’.

Dr Anees stated that, while held incommunicado, he was made to strip, was insulted and shaved bald. Sukma Darmawan was also reportedly subjected to severe physical and psychological pressure and ill-treatment, including being stripped naked in a very cold room, beaten and threatened with indefinite detention under the ISA.

- **Amnesty International remains concerned that detainees are at times held incommunicado detention, some at unknown locations.**
- **Amnesty International believes that incommunicado detainees remain at particular risk of ill-treatment and urges that they be given immediate and regular access to independent lawyers, medical personnel, and members of their families.**
- **Amnesty International calls for prompt, independent and full investigations into the reported ill-treatment of Anwar Ibrahim, Munawar Anees and Sukma Darmawan, for the findings to be made public, and for those found responsible to be brought to justice.**

Violations of the right of assembly, association and peaceful protest

While the frequency and scale of ‘pro-reform’ demonstrations have reduced in recent months, in late 1998 police armed with water cannons, teargas, shields and batons repeatedly broke up peaceful ‘pro-reform’ demonstrations, usually having ordered protesters to disperse on the

grounds that the gathering did not have the required police permit and constituted an illegal assembly.

There is concern at the methods applied by the police, including use of excessive force, to disperse peaceful rallies. Hundreds of protesters have been detained amid reports of ill-treatment during and immediately after arrest, and whilst in police station detention cells ('lock-ups').

Those arrested during demonstrations have had their access to legal counsel restricted or denied in the period prior to remand hearings on charges of illegal assembly or rioting, especially when these hearings were held in police stations rather than in courthouses. At the remand hearings the majority of detainees have been released on bail by magistrates, pending possible trial under the Police Act or Penal Code - which allow maximum punishments of imprisonment for six months or a year respectively. However magistrates have at times ordered detainees to be remanded in custody for periods from five to fourteen days, for further police investigation. On 2 February 1998 126 people arrested in October and charged with 'failure to disperse and/or taking part in an illegal assembly' began their trial.

The authorities have also moved to restrict the right of assembly in indoor forums and other peaceful gatherings. On 24 October police ordered the dispersal of a meeting held at the Malaysian Trade Unions Congress headquarters in Kuala Lumpur to discuss repeal of the ISA. Participants were given ten minutes to leave or else face arrest.

Officials have threatened to apply the Societies Act, allowing imprisonment of up to five years for those found guilty of managing unregistered societies, against those linked to the Malaysian People's Justice Movement (*Gerak*) -- a group comprising a cross-section of opposition political parties and non-governmental organizations who seek the repeal of the ISA.

The Malaysian authorities have, in addition, threatened to invoke the Universities and University Colleges Act, which prohibits students from involvement in opposition political activities. The Education Ministry has stated that it has identified a number of students involved in the reform movement, and that authorities at Universiti Kebangsaan Malaysia (UKM) and the Universiti Teknologi Malaysia have suspended students or written "show cause" letters to students requiring that they answer for their behaviour or be suspended or expelled.

- **Amnesty International urges the Malaysian government to respect the right of Malaysians to engage in peaceful association, assembly and protest.**
- **Amnesty International calls on the Royal Malaysia Police to exercise maximum restraint in their treatment of demonstrators, and to act at all times in accordance with international standards relating to the use of force and firearms**

by law enforcement officials. These standards state *inter alia* that force should only be used when strictly necessary, and only to the minimum extent required under the circumstances.

- **Amnesty International urges that all those detained in connection with demonstrations be given full and prompt access to legal counsel, that any incidents of ill-treatment allegedly occurring whilst in police custody be swiftly and impartially investigated, and that those found responsible be brought to justice.**

Lim Guan Eng and Irene Fernandez

Amnesty International believes the government's selective application of restrictive laws and apparent misuse of judicial procedures is reflected in other prominent cases - in particular those of jailed parliamentarian Lim Guan Eng, and charged women's rights activist Irene Fernandez.

Opposition parliamentarian **Lim Guan Eng** is serving an 18-month sentence at Kajang Prison having been imprisoned on 25 August 1998. He has been jailed on account of his criticisms of the Malaysian government's handling of allegations of statutory rape made against the former Chief Minister of Malacca, Abdul Rahim Tamby Chik, in 1994. He was charged and sentenced under the Printing Presses & Publications Act for '*maliciously printing false news*', and under the Sedition Act for '*causing public disaffection with the administration of justice*'.

Amnesty International believes the arbitrary and selective application of these laws against Lim Guan Eng reflects political motives, and that the government's successful legal appeals for the imposition of a custodial sentence to replace the fines originally imposed by the High Court were designed to remove a prominent political critic from participation in public life.

The organisation is concerned at reports of a deterioration of Lim Guan's Eng's health whilst in prison and urges that he be given unrestricted access to adequate medical care.

- **Amnesty International believes Lim Guan Eng to be a prisoner of conscience and is calling for his immediate, unconditional release.**

Irene Fernandez, director of *Tenaganita*, a non-governmental organization campaigning for women's rights, returns to court in April 1999, to face charges relating to her documentation of allegations of ill-treatment, sexual abuse and denial of adequate medical care of migrant workers, held as alleged illegal immigrants in detention camps. Her trial, which began in 1996, is the longest running in Malaysian legal history.

She has been charged with allegedly publishing 'false news' in the report, and if found guilty may be imprisoned for up to three years' imprisonment. Amnesty International is concerned that Irene Fernandez is being prosecuted solely on account of her peaceful activities as a human rights activist.

- **If convicted and jailed, Amnesty International would consider Irene Fernandez a prisoner of conscience, and call for her immediate and unconditional release.**