

ABUSE OF POLICE POWERS AND ARBITRARY ARRESTS

Amnesty International Malaysia, Education and Research Association for Consumers, Malaysia (ERA Consumer) and Suara Rakyat Malaysia (SUARAM) strongly condemns the arrest of on Wong Chin Huat under the Seditions Act on 6 May 2009 and the abuse of police powers in cracking down peaceful candlelight vigils that was held at Brickfield Police Station with the detention of 5 Malaysian Bar Council legal aid lawyers who presented themselves at the Brickfield police station to provide legal assistance to detainees held there. We also take concern of another series of arrest on 6 and 7th May 2009 in Penang and Kuching on 7th May 2009.

On May 6th we record the arrests of 3 youths Sani Mohd Shah, Saufi Mihat, and Yasir Sheikh Abdul Rahman in Putrajaya and arrest made. We also condemns the mass arrests of members of Parliament and State Assembly civilians and civil society in Ipoh on 7th May 2009.

These arrests are clearly a blatant disregard to the fundamentals of human rights in Malaysia as enshrined in Federal Constitution and the Malaysian criminal justice system. It is also a case of abuse of power by the government machineries and a failure to protect and upheld the fundamental rights enshrined in the Federal Constitution. We are deeply shocked and disturbed by this blatant transgression of the rule of law.

MEMORANDUM TO HUMAN RIGHTS COMMISSION (SUHAKAM)

Written by

Wednesday, 13 May 2009 16:59 - Last Updated Monday, 18 May 2009 10:54

These arrests further illustrates the fact that the pledge for greater respect for human rights, the release of 13 Internal Security Act (ISA) detainees, and the call for "One Malaysia" by Prime Minister Najib Razak stands questionable.

We are also concerned on the injunction granted by the court which empowers police to arrest on sight any member of public seen within 500 meters of Perak State Secretariat Building. This is not the first time that the court granted such a rare order. Such an injunction which is addressed to the whole of Malaysian public is a traversity and a mockery of our Malaysian justice system. It aims to suppress freedom of expression and assembly and gives police arbitrary powers to arrest citizens exercising their legal rights.

Furthermore, the UN Code of Conduct for Law Enforcement Officials spells out in Article 5 that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment or invoke superior orders or exceptional circumstances, such as a threat to national security, to justify these actions.

We are also very concerned over the continuous act of obtaining blanket unilateral restraining orders against the general public as a means to crack down against public assemblies. We are of the view that the act of obtaining such restraining orders is a serious abuse of the legal process. This is because such applications are made and granted based solely on one party's prejudice that undermines the subjected parties' right to be heard in an open court.

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The court order also gives the police unlimited powers and enables greater abuse of power as it subjects the general public to great risk of arbitrary arrest, detention as well as torture and other form of ill treatment, and selective prosecution. We are of the opinion that the court order undermines the fundamental freedoms of assembly and movement guaranteed in our Federal Constitution.

We are also of concern over the continued arbitrary denial of right to legal representation despite the recent amendments to the Criminal Procedure Code as in S 28A. We are also concerned with the implementation of the form that waives the rights of the detainee to see their lawyer of choice by the police. We received information that the new form have become a standard practice.

We, in light of these incidences, urge SUHAKAM to:

- Conduct an independent inquiry on the above abuses and human rights violations. This is pursuant to Part III of Human Rights Commission of Malaysia Act.
- (12. (1) The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons,
inquire into allegation of the infringement of the human rights of such person or group of persons.)
- We strongly urge Suhakam to act and be proactive in conducting inquiry on its own motion and without having to wait for official complaints to be lodged by the members of public.
- We hereby call on Suhakam to secure the release of all those detained and to ensure the police and the authorities respect and protect the Constitutional Rights enshrined in the Federal Constitution.
- We also urge Suhakam to play an active role in monitoring and intervene in future events of peaceful assemblies and mediate with the police on our fundamental rights at the first point of violation.

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- We also call on Suhakam to pressure government to repeal all discriminative laws that restrict freedom of expressions and freedom of assembly in Malaysia.
- We also urge Suhakam to take a position on the recent amendment to the Criminal Procedure Code as in Section 28A in view to establish the legal rights to access to a lawyer of choice and the right to inform the family.

Background

On 5 May 2009, police arrested university lecturer and activist Wong Chin Huat under Section 4(1) of the Sedition Act. Wong represents the Coalition for Free and Fair Elections (BERSIH), a group of civil society organizations and political parties campaigning for reforms to the electoral process in Malaysia. Police arrested him on the same day BERSIH called on Malaysians to wear black on 7 May as a mark of protest against the ruling government's takeover of the Perak state government. Wong's arrest is a serious case of abuse of power by the government and the police. He was picked up by the police at about 8pm at his house in Seri Sentosa, Kuala Lumpur and eventually brought to the Commercial Crimes Investigation Department (CCID) at Bukit Perdana, where Wong was denied any access to lawyers - a grave violation of the basic right of detainees. In addition, at around 12.15am, just as lawyers were told they could meet Wong, two police vehicles transported Wong to an undisclosed location. Wong was only allowed access to lawyers when he was produced in court on 6 May 2009 where he was remanded by the Magistrate's Court for one day. The police also went on to extend the earlier 1 day remand granted by the court to another period of 3 days.

Within 24 hours of Wong's arrest, police arrested Mohamad Sabu, the Vice President of the Pan-Malaysian Islamic Party (PAS), part of the opposition coalition. It is believed that his arrest is related to his plan to hold a mass prayer session on 7 May at a mosque two kilometres from the state assembly.

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Political tensions have increased in Perak state since the Perak Sultan ordered its Chief Minister, Mohd Nizar Jamaluddin, a member of the People's Alliance (PA), the opposition coalition, to resign in February, following three defections from the PA to the ruling party. The government's representative, Zambry Abdul Kadir was then appointed as the new Chief Minister. A state assembly session will take place on the 7 May when Zambry is expected to formally take up his position.

Reports indicate that copies of a court order barring all supporters of political parties from gathering within 500 metres of the state assembly building have been posted in nearby areas. The Inspector General of Police, Musa Hassan has stated that police will take action against any persons breaching the order.

On 6th May police also arrested Sani Mohd Shah, Saufi Mihat, and Yasir Sheikh Abdul Rahman when the three men attempted to deliver a cake and a letter to Prime Minister Najib, commemorating the 31st birthday of Altantuya Shaariibu, a Mongolian model who was murdered three years ago. In April 2009 two members of the security forces were found guilty of her murder and sentenced to death. Razak Baginda, one of Prime Minister Najib's advisors, was acquitted of abetting the murder in October 2008.

This evening police arrested at least 14 people, part of a group who had gathered at Brickfields Police Station in Kuala Lumpur, in support of Wong Chin Huat who is being held there. They have all since been released.