



Inter-Parliamentary Union
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Malaysia

MAL/15 - Anwar Ibrahim

Decision adopted by consensus by the IPU Governing Council at its 200th session (Dhaka, 5 April 2017) 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 it adopted at its 198th session (March 2016),

Taking into account the information provided over time by the Malaysian authorities and the information regularly provided by the complainants,

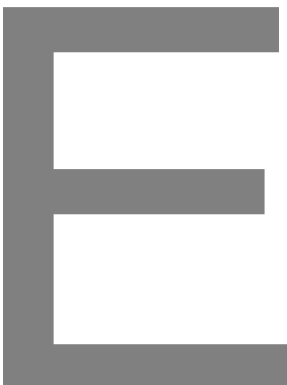
Taking into account the report of the trial observer, Mr. Mark Trowell QC, on the judicial review of the conviction and sentence after appeal of Dato Seri Anwar bin Ibrahim (CL/200/12(b)-R.1),

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. 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, Mr. 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 apartment complex. 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. Mohammed Saiful Bukhari Azlan and senior politicians and police before and after the assault to show that he was the victim of a political conspiracy;

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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. Mohammed Saiful Bukhari Azlan'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;
- 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. 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 had showed personal hostility against Mr. Anwar Ibrahim in the past when he was the lead prosecutor in the first sodomy trial against him ("Sodomy I"), 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 defence counsel also invoked the testimony of retired senior police officer, Mr. Ramli Yusuff, about the alleged conspiracy to cover up the infamous "Black Eye" incident in 1998 during Mr. Anwar Ibrahim's detention in the course of "Sodomy I" 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;
- On 30 April 2015, Mr. Anwar Ibrahim applied for a fresh judicial review of his conviction, under Rule 137 of the Federal Court rules, which is effectively to prevent injustice,

Recalling the report of the IPU observer, Mr. Mark Trowell QC (CL/197/11(b)-R.2), who had attended most of the hearings in the case in 2013 and 2014 and the final hearing on 10 February 2015 and raised serious concerns about the trial proceedings, 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) that visited Malaysia (29 June–1 July 2015),

Recalling 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",

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

Considering the following new developments:

- On 14 December 2016, the Federal Court unanimously dismissed the application for a judicial review of Mr. Anwar Ibrahim's sentence, on the basis that there had been no miscarriage of justice, as reported and analysed by the IPU trial observer;

- On 18 January 2017, the Court of Appeal set aside the decision of the High Court of 15 July 2016, declining Mr. Anwar Ibrahim's leave for judicial review and its refusal to refer the question of whether it was possible to challenge in court the Pardon Board's decision to the Federal Court;
- On 23 March 2017, a motion on an urgent matter of public importance was submitted to the House of Representatives by its member, Ms. Nurul Izzah Anwar, regarding the Government's position on the official notice by Mr. Anwar Ibrahim's lawyers to the Minister and the Commissioner General of Prisons to demand his release under section 43 of Act 537 and section III of the Prison Regulations (2000), allowing prisoners to be released on licence following a risk assessment and adherence to requirements set forth by the authorities. In support of the motion, Ms. Nurul Izzah Anwar stated that it was just and consistent with the public interest that the Government had granted the release and that the campaign in support of Mr. Anwar Ibrahim regaining his liberty had garnered immense support. In response, the Speaker of the House of Representatives found that the motion concerned a matter which had already been decided by the judiciary, through an open trial, and noted that the Commissioner General of Prisons' Office had concluded that the application did not fulfil the conditions set forth by the regulations,

Recalling that the complainants state 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 that this majority had been shaken by a united opposition in the 2013 general elections; that the latter had 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; and that the complainants also point out that the alliance that Mr. Anwar Ibrahim set up and kept together fell apart after he was incarcerated,

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

- According to the complainant, since his imprisonment on 10 February 2015, Mr. Anwar Ibrahim has not been receiving the recommended medical care and was not being cared for by an independent doctor specialized in his health issues, including treating the serious and constant pain in his right shoulder, which might require arthroscopic surgery to ensure long-term healing;
- According to the leader of the Malaysian delegation, at the hearing held with the Committee on 18 March 2016, the authorities were going out of their way to allow Mr. Anwar Ibrahim to see any doctor of his choice, including, if that was 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;

1. *Thanks* the IPU trial observer for his report, of which it takes note with interest;
2. *Regrets* that the application for judicial review to the Federal Court was fruitless, as it offered an opportunity to remedy the shortcomings in the judicial proceedings;
3. *Reaffirms its view* 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;
4. *Calls once more, therefore, on* the authorities to use all possible legal means to release Mr. Anwar Ibrahim forthwith and to take the necessary measures to enable him to return to parliamentary life;
5. *Is eager* to receive details on the steps taken to allow Mr. Anwar Ibrahim 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 latest and next steps in Mr. Anwar Ibrahim's medical treatment;

6. *Considers* that the case of Mr. Anwar Ibrahim, along with the other Malaysian cases under examination by the Committee on the Human Rights of Parliamentarians, requires a follow-up visit to Malaysia to address the outstanding serious concerns and questions;
7. *Requests* the Secretary General to seek the agreement of the authorities for the visit and to convey this decision to the competent authorities, the complainants and any third party likely to be in a position to assist;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.