

'Malaysia, repeal ISA in its entirety'
Malysiakini.com
August 27, 2010

Dear Foreign Minister Anifah Aman,

The Solicitors' International Human Rights Group (SIHRG) takes the opportunity to write an open letter to you following your recent visit to the UK and comments made on Aug 8 regarding the Malaysian Internal Security Act 1960 (ISA) to members of the UK and Malaysian civil society outside the Malaysian High Commission at Belgrave Square.

SIHRG welcomes and applauds your attempts to engage with civil society on Aug 8 and address the difficult issues raised by Malaysia's continued use of the draconian ISA in light of the recent disturbing clampdown in Malaysia of numerous planned peaceful protests and mass arrest of anti-ISA protestors.

Such conduct by the Malaysian authorities has had a chilling effect on civil society and has brought to sharp focus how laws such as the ISA, if not repealed, will continue to cast a blight on Malaysia's image in the eyes of the international community, undermine the country's professed commitment to the rule of law and democratic values.

The Malaysian government has accepted in recent times that all is not well with the ISA and the country's other preventive laws. This recognition of a need for change has instigated yet another review of these legislations. SIHRG recognises that this is a step forward.

However, provisions of the ISA have a wholly corrosive effect on fundamental liberties, and are inconsistent with Malaysia's commitment to uphold the rule of law and abide by international norms. For these reasons SIHRG is of the view that there is an overwhelming need for Malaysia to show a strong irrevocable commitment to democratic values by repealing the ISA in its entirety.

Malaysian preventive laws, the most notorious being the ISA, allow for arbitrary detention of individuals at the will of the authorities, sometimes for prolonged periods, without trial or charges ever being proffered against them.

These laws deny the detainee the right to a fair and public hearing by an independent and impartial tribunal and severely restrict a detainee's right to access legal counsel. Individuals detained under the ISA and other preventive laws are deprived from any of the ordinary safeguards found under the country's regular penal procedures.

The systematic and pervasive use of preventive laws engenders a climate of fear among the public and undermines public confidence in the justice system.

You reiterated the Malaysian Government's stand that it has ruled out repealing the ISA because the state is obliged to guarantee national security and the security of its citizens and the ISA is an important weapon in the state armoury to effectively combat terrorism.

SIHRG considers that there are compelling reasons for the Malaysian government to reconsider its stand.

1. Indefinite incarceration of detainees has not been proven to be an effective method of preventing, reducing and/or alleviating terrorist attacks or terrorist related violence. In fact it is likely to be counterproductive (as has been the UK's past experience).

Malaysia, like many other countries, can develop a legal response to terrorism which allows it to protect the collective security of its people whilst giving effect to the rule of law and maintain core democratic values. The balance is important, not least to lend legitimacy to the legal measures adopted by allowing appropriate judicial and parliamentary scrutiny of executive decisions.

2. During its recent visit to Malaysian detention centres in June this year, the UN Working Group on Arbitrary Detention found evidence of a link between arbitrary detention and torture and ill-treatment.

The detainee and prisoner interviews conducted by the Working Group observed that those detained under preventive laws were more vulnerable to state abuse as they are more likely to be tortured and/or ill-treated, in order to obtain confessions or evidence (facilitated by the fact that many are held initially in incommunicado detention), they are not informed of their right to contact relatives or to consult a lawyer (with some detainees interviewed stating that they were positively discouraged from consulting a lawyer).

3. There have been many instances reported in the media of lawyers either unable to access their clients detained under the ISA or face difficulties in getting such access. Lawyers perform a public role to ensure there is high public confidence in the proper functioning of the country's justice system.

In recognition of this important public role, Malaysia and other states unanimously adopted the UN's Basic Principles on the Role of Lawyers in September 1990 at the Eighth United Nations Congress in the Prevention of Crime and Treatment of Offenders .

4. The exceptionally wide powers available to the state under the ISA and other preventive laws are disproportionate to the perceived threat to national security and inappropriate to the nature of terrorism related crimes.

Malaysia has already enacted specific legislations to deal with crimes related to terrorism. A strong state response to terrorism need not include the state's routine use of extraordinary measures normally reserved for times of emergency.

5. Arbitrary detention without any prospect of trial or charge and the lack of a remedy to effectively challenge the legality of the detention is an unacceptable infringement of personal security and freedom and the presumption of innocence, a fundamental principal of modern criminal law and Malaysian penal law.

SIHRG is committed to promoting and monitoring human rights around the world. It counts the right of individuals to be given reasons for their detention and to be afforded the opportunity to challenge the legality of the deprivation of personal freedom before an independent and impartial tribunal as a basic civil right and a cornerstone of the rule of law.

SIHRG abhors torture in all its forms and supports any positive measures adopted by states to eliminate and/or prevent any form of illegitimate violence perpetrated against its citizens.

Malaysia has repeatedly expressed to the international community that it does not condone torture. In your recent visit to the UK you too agreed that 'the use of torture is completely unacceptable'.

SIHRG considers that these are strong value statements that must and must be seen to be

reflected in good governance. The ISA is an outdated colonial era relic which neither resonates with the Malaysian people nor the progressive forward looking attitude of the state.

SIHRG therefore strongly urges the Malaysian Government to take this timely opportunity to close the chapter on the country's unhappy history with the Internal Security Act by repealing the Act in its entirety.

The writer is chairperson, SIHRG.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.

Source : <http://www.malaysiakini.com/news/141246>