



Inter-Parliamentary Union

For democracy. For everyone.

## Malaysia

### MAL/15 - Anwar Ibrahim

#### *Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146<sup>th</sup> session (Geneva, 24-27 January 2015)*

The Committee,

*Referring* to the case of Dato Seri Anwar Ibrahim, an incumbent member of the Parliament of Malaysia, and to the resolution adopted by the Governing Council at its 194<sup>th</sup> session (March 2014),

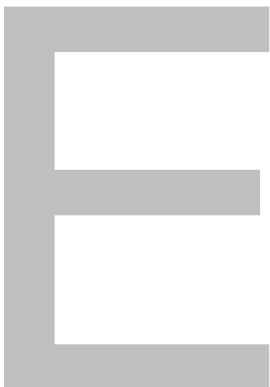
*Recalling* the following: Mr. Anwar Ibrahim, Finance Minister from 1991 to 1998 and Deputy Prime Minister from December 1993 to September 1998, was dismissed from both posts in September 1998 and arrested on charges of abuse of power and sodomy; he was found guilty on both counts and sentenced, in 1999 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 and ordered Mr. Anwar Ibrahim's release, as he had already served his sentence in the abuse of power case; *recalling* also that 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 was built on a presumption of guilt,

*Considering* that Mr. Anwar Ibrahim was re-elected in August 2008 and May 2013 and has since been the de facto leader of the opposition *Pakatan Rakyat* (The People's Alliance),

*Considering* the following: on 28 June 2008, 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 condominium; 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 indicate 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 Malaysia 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 has pleaded not guilty to the charge,

*Recalling* the following procedural flaws and incidents that occurred before and during the investigation and the proceedings before the first-instance court:

- Mr. Saiful testified in court that he was not examined until about 52 hours after the alleged incident, and the first doctor from Hospital Pusrawi (Pusat Rawatan Islam) reported that he had found no evidence of anal penetration; about two hours later, Mr. Saiful then visited Hospital Kuala Lumpur, a government hospital, and a report endorsed by three specialists from that hospital reached the same conclusion;
- The initial First Information Report to the police by the complainant was not released to Mr. Anwar Ibrahim's counsel for months, raising concerns about evidence-tampering, especially as regards DNA samples; moreover, it has been confirmed that Mr. Saiful visited the office and home of the then Deputy Prime Minister, Najib Tun Razak, a few days before he made the allegations (Mr. Najib initially denied that the meeting took place); Mr. Saiful reportedly also had a private meeting with a senior police officer, Mr. Rodwan Yusof, at a hotel the day before alleging that he had been sodomized;



- The main members of the prosecution team were involved in the earlier sodomy case; Attorney General Abdul Ganil Patail, at the time the main prosecutor, has been investigated by Malaysia's anti-corruption agency over allegations that he had fabricated evidence in that case;
- Mr. Anwar Ibrahim's lawyers were denied pretrial access to DNA samples and likewise denied access to, inter alia, statements made by the plaintiff and key prosecution witnesses, notes from doctors who examined Mr. Saiful, and original copies of CCTV surveillance system recordings made at the condominium at the time of the alleged incident,

*Recalling* that, on 9 January 2012, the first-instance judge acquitted Mr. Anwar Ibrahim, stating that there was no corroborating evidence to support Mr. Saiful'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,

*Recalling also* that the Attorney General lodged an appeal, that the appeal proceedings started on 7 September 2012, and that an IPU observer, Mr. Mark Trowell QC, attended most of the hearings in the case in 2013 and 2014,

*Recalling further* that, 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; that the IPU trial observer remarked in his report of 15 March 2014 regarding the hearings on 6 and 7 March 2014 that the Court of Appeal had returned with a decision on the second day of the hearings one hour after the conclusion of submissions, had not dealt in its oral remarks with any of the four critical issues raised by the defence counsel, and had given Mr. Anwar Ibrahim's lawyer, who had requested an adjournment so as to obtain a medical report concerning Mr. Anwar Ibrahim's heart and blood pressure, only an hour to prepare his client's arguments for mitigation of the sentence,

*Considering* that the ruling by the Court of Appeal was challenged before the Federal Court, that the Federal Court held hearings in the case from 28 October to 7 November 2014 and that those hearings were followed by the IPU trial observer, and that the Court is due to deliver its verdict on 10 February 2015,

*Considering also* that, on 18 August 2014, one of Mr. Anwar Ibrahim's lawyers, Mr. N. Surendran, was charged with sedition for stating that the Court of Appeal's conviction of Mr. Anwar Ibrahim was "flawed, defensive and insupportable", that Mr. Surendran was charged a second time, on 27 August 2014, for comments he made on a YouTube video on 8 August 2014, in which he claimed that Mr. Anwar Ibrahim's prosecution was a "political conspiracy" involving the government, and that Mr. Surendran has claimed that he was merely expressing his views on the appellate court's decision as Mr. Anwar Ibrahim's legal counsel and voicing the observations and arguments that he would subsequently present to the Federal Court, as he did in the course of the hearings that took place from 28 October to 7 November 2014,

*Considering further* that, if the Federal Court upholds Mr. Anwar Ibrahim's conviction, he will be disqualified from holding parliamentary office and will not be eligible to run for parliament for six years after he has completed his sentence, i.e. until July 2027,

*Recalling* that, during the hearing which the Committee held on 18 March 2014 with the Malaysian delegation to the 130<sup>th</sup> IPU Assembly (Geneva, March 2014), the leader of the delegation said that the matter was now before the Federal Court, that Malaysia's courts were fully independent, that the case had been pending since 2012 and, when asked if prosecution charges on sodomy were common in Malaysia, that she was only aware of Mr. Anwar Ibrahim's case,

*Noting* that Mr. Anwar Ibrahim's second trial on sodomy charges has been widely criticized as a bid to derail his political career,

1. *Trusts* that the Federal Court will give due consideration to all the arguments presented in this case, in a manner that will ensure that justice is fully done and seen to be done;

*recalls* its concerns in this regard about the rushed manner in which the final hearings were conducted and organized before the Court of Appeal, the apparent ease with which the main arguments presented by the defence, in particular concerning the integrity of the DNA samples, were dismissed, and the fact that the same law, although never or rarely invoked in Malaysia, has been invoked twice against Mr. Anwar Ibrahim;

2. *Is deeply concerned* that Mr. Surendran is facing charges of sedition in relation to the legitimate exercise of his role as legal counsel for Mr. Anwar Ibrahim; *considers* that, in a case like this with strong political connotations, including with regard to some of the allegations concerning the alleged victim (Mr. Saiful), it is crucial for Mr. Anwar Ibrahim's lawyers to be able to present their version of the facts in full, without fear of reprisals; *sincerely hopes*, therefore, that the Attorney General will drop the charges against Mr. Surendran;
3. *Believes* that, in the light of Mr. Anwar Ibrahim's case history and the issues in play, including the fact that, if upheld, the current conviction would eliminate him from the life of parliament for more than a decade, thus depriving the opposition of its main leader, it is critical for the IPU to closely follow the final stage in the proceedings against Mr. Anwar Ibrahim before the Federal Court;
4. *Requests* the Secretary General to make the necessary arrangements to ensure the presence of a trial observer at the final hearing(s);
5. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant, and any third party likely to be in a position to supply relevant information;
6. *Decides* to continue examining this case.