

# Why is the Umno-BN government using the Sedition Act to arrest people now?<sup>1</sup>

Francis LOH

THE LEARNED JUDGES' 'GUILTY' DECISION in *Sodomy II*—which first went to trial on 3 February 2010 and then went the distance from the High Court to the Appeals Court before ending up in Federal Court—was criticised by many sectors of the Malaysian public from the ordinary rakyat to learned lawyers including the Bar Council.

International human rights groups like the ICJ also said the decision was a major blow to human rights and democratisation in Malaysia.

Quite naturally, people took to expressing their dissent and dissatisfaction too—for it seems as though the courts, the police, the Attorney General's chambers, quite apart from the UMNO-BN government in power, could no longer be relied upon to deliver justice and uphold the rule of law in the country.

In response to such protests in the form of rallies, media statements, blog posts and social media updates, and even a speech read on behalf of the detained Opposition Leader in Parliament, Malaysians witnessed a new wave of arrests and detention of Opposition politicians, activists, students, and even people who tweeted.

Yet Article 10 of the Federal Constitution grants us the right to express ourselves, to assemble and to associate. A recent Court of Appeal judgment in *Nik Nazmi Nik Ahmad v Public Prosecutor* [2014] 4 CLJ 944 unanimously reaffirmed this constitutional liberty as a fundamental right of all Malaysians. Moreover, the prime minister has proudly proclaimed in the United Nations, in Oxford and all over that we are a moderate country and a democracy.

In this regard, it is most disturbing that the authorities are now resorting to the anachronistic colonial-era Sedition Act 1948 (which the prime minister had earlier promised to get rid of) and the Peaceful Assembly Act, 2012 (which, ironically, can be used to limit our democratic right to freedom of assembly), as the bases of these recent arrests. In several cases, the detainees were being detained and investigated under both these Acts.

In yet other cases, these Acts have been used together with the Penal Code, which, drafted in the era of Emergency, 1948–1960, contains many restrictive clauses. Worse, there are now plans to introduce a Prevention of Terrorism Act, which will contain undemocratic features including detention without trial.

### **The Case of Nurul Izzah**

Nurul Izzah Anwar, the two-time *Lembah Pantai* Member of Parliament, was asked to appear at Dang Wangi police station on 16 March to answer queries concerning her participation in a Free Anwar rally at Sogo on 14 February. So she showed up at Dang Wangi at the allocated time.

She was then asked to present herself for investigations under section 4 of the Sedition Act too. She had volunteered to the investigating police officer in charge that she would do so as soon as she had completed her first round of questioning about the Sogo rally.

As her lawyer has stated, Nurul has nothing to hide, realising fully that the speech she gave, which was actually on behalf of her father who remains Opposition Leader in Parliament, was protected under parliamentary immunity (See statement by Suhakam chief Hasmy Agam).<sup>2</sup>

As it turned out, she was not allowed to give her statement to the police. So she had to be detained overnight<sup>3</sup> instead. As intimated to her by the arresting officer, he was under orders from above not to take her statement, but to detain her! According to her lawyer Sivarasa Rasiah,<sup>4</sup> the IGP blatantly lied when he suggested in public that Nurul was being detained in order to get a statement from her. In fact, Nurul Izzah had voluntarily gone to the police station to offer her statements on both matters.

The Opposition and civil society groups have called for the IGP to resign or to be sacked for blatantly lying about the details of Nurul's arrest. However, it appears that no one in authority was going to listen to the Opposition and CSOs even though they were highlighting the critical question of the integrity of the police system, indeed, of the IGP who leads the police force.

Fortunately, Nurul Izzah was let out the next day. No doubt, this was because the story of her unjust arrest had gone viral and was carried not only in the local alternative media but the regional and global mainstream media too, from Jakarta, Bangkok, and New Delhi to London, New York, Canberra and the Middle East. Everywhere. Incidentally, the claims by Nurul's lawyer of a lying IGP were NOT carried in the local mainstream media.

### **Prior to Nurul Izzah's case**

Such arbitrary harassment and bullying of Nurul Izzah is not an isolated incident. Many other Opposition leaders, CSO activists and students had been arrested prior to Nurul Izzah's case.

On 19 February at 7.00 p.m., PSM secretary-general Arutchelvan was detained under sec 4(1) (c) of the Sedition Act for stating that the Court's decision on 10 February to jail Anwar was a "political judgement beyond reasonable doubt." He was taken to the Dang Wangi Police Station.

On 20 February, Lawrence Jeyaraj was detained for tweeting about Sirul, Altantuya, the prime minister, Shafee, Saiful and the IGP over the Altantuya and Anwar Ibrahim cases. He was held until the next morning.

On 7 March, Saifullah Zulkifli was arrested to assist police in their investigations about the rally.

On 8 March, Nik Nadzmi Nik Ahmad, the Selangor State Government Executive Council member, was arrested and then remanded for three days. Apparently, he was investigated under section 9(5) of the Peaceful Assembly Act and section 143 of the Penal Code for "illegal assembly."

On 10 March, Fariz Musa, a PKR leader and head of Jingga 13, was similarly detained under section 143 of the Penal Code for ‘illegal assembly’.

On 10 March, Mohd Fakhurulrazi Mohd Mokhtar was also arrested and remanded for one day.

On 10 March, Pandan MP and PKR secretary general Rafizi Ramli was arrested under section 143 of the Penal Code and under Sec 9 (5) of the Peaceful Assembly Act. In his case, Rafizi was detained in Dang Wangi after having made a police report on the 1MDB financial mismanagement.

On 14 March, Manjeet Singh, an NGO activist, was held for investigations into the 7 March #KitaLawan rally. He was remanded for three days and released on 17 March

On 14 March, Adam Adli was similarly detained and remanded for three days. He too was freed on 17 March.

On 14 March, Rasah MP Teo Kok Seng was detained and remanded for one day.

### **Outside Klang Valley**

On 10 February, several elected Opposition leaders in Johor – Jimmy Puah (Bukit Batu PKR), Liow Cai Tung (Johor Jaya DAP), and Cheo Yee How (Pengkalan Rinting DAP) were called in to Seri Alam Johor District Police Headquarters under Section 9 of the Peaceful Assembly Act for their participation in a “solidarity gathering” in support of Anwar Ibrahim in Taman Molek, Johore Baru.

On 4 March, Tanjong MP Ng Wei Aik was asked to give a statement regarding his allegedly seditious statement regarding Anwar Ibrahim’s jailing, which appeared in the Chinese daily, Kwong Wah.

### **After Nurul Izzah’s case**

On 17 March, PKR human rights and legal bureau deputy chair S Jayathas was detained for questioning, also on the Sogo rally.

On 20 March, PKR vice president and Batu MP Tian Chua was called in for his involvement in the Sogo rally. He was released after a remand for his detention was disallowed.

On 22 March, Eric Paulsen, founder and executive director of Lawyers for Liberty, was taken in, one day ahead of a press conference that was to be called by Gerakan Hapus Akta Hasutan (GHAH), at Paulsen was scheduled to speak. The main item of the press conference was to highlight concern about police investigations under the Sedition Act against those who are legitimately expressing dissent. Also, GHAH, a movement supported by 133 CSOs in Malaysia that aims to get rid of the anachronistic Sedition Act, intended to highlight how police tweeting was creating a climate of intimidation and suppressing expression.

On 23 March 1989, anti-GST protestors were arrested following a peaceful sit-in protest at the Customs complex in Petaling Jaya to demand answers to 106 questions regarding the Goods and Services Tax (GST) to be implemented in April. Among those arrested were Sungei Siput MP Dr. Jeyakumar Devaraj and Kuala Krai MP Dr. Hatta Rami. Others included Che'gu Bard, and several other PSM leaders including its secretary general, Arutchelvan. Twenty-five of them were transferred from the Kelana Jaya police station to the Shah Alam District Police Headquarters.

### **Justice must be done and seen to be done...but where?**

The police appear rather anxious, even efficient, in detaining these Opposition leaders, activists and critics. In fact, they have violated the recent Court of Appeal ruling which reaffirmed that gathering peacefully is a fundamental right of every Malaysian.

Contrast this with their lack of enthusiasm and slow motion ways in dealing with Ibrahim Ali, who had called for the burning of Bibles.

Or their dealing with the cases of Ismail Sabri Yaakob,<sup>5</sup> the Minister for Agriculture and Agro-based Industry, who had called on Malays to boycott all Chinese traders, and Dr. Mashitah Ibrahim, the Minister in the Prime Minister's

department, who had irresponsibly and incorrectly stated in the last UMNO general assembly that a Chinese man had burnt pages of the Qur'an.

No doubt, the statements by these two ministers and Ibrahim Ali had caused some measure of "disharmony, disunity or feelings of hatred or ill will" and/or jeopardised "the maintenance of harmony or unity on grounds of religion". But our point is not that the Sedition Act should be used against them. Rather, the Sedition Act should be repealed, as the prime minister had promised. On their part, the Police must also begin to act efficiently and treat all citizens fairly.

Worse, the IGP himself had delayed arresting the Muslim convert who was ordered by a Civil Court to return the child he had seized from his ex-wife, who had custody of the child. Yes, he has argued that the Civil Court's order contradicted the Sharia Court's. Be that as it may, inaction on his part did cause loss of faith among the rakyat in the course of justice, not to mention in him as the IGP.

Six years on, Teoh Beng Hock has still not been given his due of justice, as a recent demonstration of 30 family members and friends of the deceased outside the MACC office reminded us. It was especially disturbing to read that three MACC officers who were involved in investigations into Teoh's death had since been promoted!

On 18 March, amidst this new round of arrests, the Court of Appeal sentenced 13 Pas supporters who had demonstrated against the appointment of Zambry Abdul Kadir as the MB of Perak in February 2009 to 10 months jail and a RM5,000 fine.<sup>6</sup>

### **About turn**

Just four years ago, in 2011, the prime minister announced the repeal of the draconian Internal Security Act, the Emergency Ordinance and the Banishment Act. A year later, he announced the repeal of the Sedition Act.

More recently, however, we have seen an about turn: detention without trial has been brought back via the Prevention of Crime Act, and the prime minister has recanted on his promise to repeal the colonial-era Sedition Act.

Worse, a Prevention of Terrorism Act (POTA), which will allow for detention without trial, will be introduced in this sitting of Parliament. Unlike the previous prime minister, who reintroduced parliamentary select committees to conduct public hearings on important laws and amendments prior to their introduction in Parliament, there has been no consultation whatsoever with parliamentarians, let alone with the public!

(Incidentally, it was also under the previous prime minister that a Royal Commission into the workings of the Royal Malaysian Police was conducted. Among others, the Commission, headed by a former IGP, had recommended the setting up of an Independent Police Complaints and Misconduct Commission. Under the current prime minister, this recommendation has been pending since 2005).

Apparently, POTA will allow the government to accumulate new powers with little checks and balances.

Why is there a need for such an Act at this time? If it is to facilitate detention without trial, the Prevention of Crime Act (Amendments) 2012 already allows for detention without trial for up to two years. The Security Offences (Special Measures) Act or Sosma, 2012, which replaces the ISA, allows for electronic surveillance to establish a case against suspects.

Detention under such unverifiable grounds of suspicion lends itself to abuse, and the legal fraternity and other groups concerned with human rights have already expressed their concerns about according extra powers without adequate checks and balances (Check out the overview of this Act in this Suaram assessment, a statement by Kua Kia Soong).<sup>7</sup>

### **Back to the arrests – Why now?**

The questions that arise are: why are they arresting all these people for expressing their dissatisfaction at this time? Indeed, why did the UMNO-BN government spend so much time, money and personnel going after Anwar Ibrahim? And why is there a need for more stringent control of citizens in this moderate and democratic country?

It seems clear that they are using this opportunity to destroy Anwar Ibrahim and his party PKR.

Not that they have not tried to destroy its partners, the DAP and Pas. Indeed, the overall plan since the UMNO-BN's poor performance in GE13 in 2013, has been to split the Pakatan Rakyat coalition.

Remember the attempts to deregister the DAP in the run up to the elections? And the Malaysia handouts when they spent millions and millions to buttress the MCA, Gerakan and SUPP, to little avail? And the RM1m-plus spent, supposedly by a private firm, on getting Mr Gangnam to perform in Penang prior to the prime minister taking over the microphone?

Or the current support by UMNO for the conservative Islamists within Pas to introduce hudud law in Kelantan which will drive a wedge between Pas and its partners,<sup>8</sup> especially the DAP?

In turn, a wedge is also being driven into the Muslim party to split those pushing for the implementation of Sharia law and a more exclusive Islamic state from those who consider themselves as progressives who are more inclined towards a more inclusive Islamic welfare state. Coincidentally, the former is in favour of working closely with UMNO, even forming a unity government with UMNO, as opposed to the latter, who value close ties with the Pakatan Rakyat.

It is commonly believed that it is Anwar and his party that held the central ground and pulled the coalition together. In fact, it wasn't only Anwar, but also the older group of leaders like Nik Aziz, Fadzil Noor, Hadi Awang, Karpal Singh, Lim Kit Siang and Syed Husin Ali who developed close ties with one another, and held the coalition together.

Several of these leaders are now gone and Anwar is in jail once again. For UMNO-BN, this appears the most opportune time to isolate the DAP by painting it as a chauvinistic party, to drive a wedge into Pas to break it up, to arrest and destroy the young enthusiastic leaders of PKR while their leader is in jail again, and to break up the Pakatan Rakyat ultimately.



Umno itself is experiencing an internal struggle too. Former prime minister Dr. Mahathir has openly called for the prime minister's stepping aside.

The recent declaration of support for the prime minister by the 14 BN component parties suggests all is not so well. Alas, perhaps the only common project that UMNO leaders agree upon is the destruction of Anwar Ibrahim and his party, and the breaking up the Pakatan Rakyat coalition.

For the rest of us, now even more than before, we need an independent judiciary, elected representatives who serve the people, an efficient and corrupt-free bureaucracy, and an excellent educational system that will allow us to earn decent salaries to cope with rising costs, what with the new GST.

Above all, we need an impartial police force that upholds the rule of law, not the rule by (their own) law, a police force that protects the people and delivers justice for all.

We must continue to struggle for all these.

## Notes

- <sup>1</sup> This essay appeared on 24 March 2015 on Aliran's online website/newsletter. It has been reproduced here with minor changes in formatting, etc. The editors would like to express their gratitude to Dr. Francis Loh for kindly granting permission to publish his essay in this issue of *Asian Studies*. The original essay may be accessed at <http://aliran.com/e-newsletters/2015-e-newsletters/why-is-the-umno-bn-government-using-the-sedition-act-to-arrest-people-now/>.
- <sup>2</sup> <http://www.themalaysianinsider.com/malaysia/article/police-overboard-with-nurul-izzahs-arrest-suhakam-says>
- <sup>3</sup> <http://aliran.com/coalitions/clean-and-fair-elections/mps-arrest-for-parliamentary-speech-unnecessary-malicious/>
- <sup>4</sup> <http://aliran.com/civil-society-voices/2015-civil-society-voices/igp-is-lying-to-the-public-about-nurul-izzahs-remand-lawyer/>
- <sup>5</sup> <http://aliran.com/web-specials/2015-web-specials/an-open-letter-to-ismail-sabri/>
- <sup>6</sup> <http://aliran.com/civil-society-voices/2015-civil-society-voices/hukuman-penjara-untuk-penunjuk-perasaan-adalah-zalim/>
- <sup>7</sup> <http://www.suaram.net/?p=6919>
- <sup>8</sup> <http://aliran.com/media-statements/2015-media-statements/hudud-umno-has-trapped-and-shackled-pas/>