

JANUARY 2011

REPORT



ISPU

Anwar Ibrahim & The Consolidation of Democracy in Malaysia

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Table of Contents

5	Introduction
7	Who Is Anwar Ibrahim?
8	The Current Case
8	Suspicious Aspects
	The Evidence
	Charge not matching the accusation
	Charge ignored for lack of evidence
	Obstruction of Justice
12	The Development of the Case
13	International Reaction
14	Malaysia's Judicial System Is Tainted
14	Setting Malaysia in Context
17	Conclusion



Introduction

Internationally, the United States has traditionally been regarded as a strong supporter of democracy and its practice in the developing world. Since its entry into the Second World War on the side of the western European democracies, through its identification with democracy throughout the ensuing ideological struggle known as the cold war, and to George W. Bush's rhetorical championing of democratization and freedom, the United States has been recognized as a country that stands up for democracies and democratization.

Lately, however, its visible commitment to democracy promotion has waned. Malaysia – a Muslim-majority country that has the potential to join Turkey and Indonesia in the nascent league of Muslim democracies – has been undergoing a particularly nasty struggle recently, one that has pitted democratic forces against autocratic ones, and clean politics against corruption. But despite this, pronouncements from the State Department have been very weak.

Supporting the advance of democracy is not just about calling for reforms. It is also about keeping a watchful eye on ensuring that democratic advances are consolidated and that countries do not slip back into corruption and authoritarianism. If the United States is to retain its reputation of standing firmly on the side of democracy in the region, it must speak out now. At the very least, it must lend its support to the growing clamor for dropping the charges made against former Deputy Prime Minister Anwar Ibrahim.

The following memo offers a brief primer on the Anwar Ibrahim situation and why it is so important that the United States speak out on it.

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Who Is Anwar Ibrahim?

Anwar Ibrahim is the leader of the opposition in Malaysia's Parliament. He rose to prominence as finance minister and deputy prime minister to former Prime Minister Mahathir Mohamed before a power struggle between them led to Anwar being accused and convicted of corruption and sodomy – a crime in Malaysia. These charges are generally accepted as having been trumped up in the context of Malaysia's poorly regarded judicial system.¹ In fact, the year after the end of Mahathir's premiership in 2004 the Malaysian Court of Appeals threw them out. Anwar was released from solitary confinement, but few believed he had much of a political future left.

In the past, Malaysia's opposition parties had been fractious, divided, and, while usually winning a few seats in state and federal elections, were never much of a force at the national level. In 2008, however, Anwar forged a nascent coalition pact, the People's Alliance, that secured 47 percent of the popular vote in the March 2008 general elections. In addition to quadrupling its representation in Parliament, it took control of six of Malaysia's fourteen states and territories. Several months later, having regained his seat in Parliament and declared opposition leader, Anwar was suddenly a stone's throw away from the premiership and the most serious threat to the sitting government.

The People's Alliance coalition represents a watershed moment in Malaysian politics for several reasons: it is distinctly multi-racial, democratically oriented, and respects constitutional provisions with respect to personal freedoms, including free speech, freedom of assembly, and freedom of religion. Its appeal to progressive values stands in stark contrast to the ruling coalition, and its level of popularity among younger generations suggests that the opposition will continue to play a significant role in present and future Malaysian politics.

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¹ See for example, "Justice in Jeopardy: Malaysia 2000," a report by the International Bar Association and the ICJ Center for the Independence of Judges and Lawyers, April 2000, accessed online at www.ibanet.org/Document/Default.aspx?DocumentUId=A7623AD6-99EB-46ED-B9E2-23AAE20B7ACA; "Malaysia: Attacks on Justice 2000," by the International Commission of Jurists, August 2001, accessed online at www.icj.org/default.asp?nodeID=349&sessID=&language=1&myPage=Legal_Documentation&id=23243; and "Malaysia: Attacks on Justice 2005," by the International Commission of Jurists, accessed online at www.icj.org/dwn/database/MALAYSIA.pdf.

THE CURRENT CASE

With Anwar once again posing a very real threat to the old regime's entrenched power, fresh allegations of sexual misconduct, a crime that carries a maximum prison sentence of twenty years as well as whipping, have surfaced.

In many ways, the conduct of this trial resembles the pattern of abuse of power reflected in 1998: political interference, falsification of evidence, blackmailing, coercion and torture of witnesses, harassment of defense lawyers, and refusal to admit witness testimony favorable to the accused. The fact that the charges surfaced so soon after the election, not to mention just when Anwar was poised to win the next election, also casts doubt on their credibility.

The subsequent conduct of the investigation and trial seem to confirm that hidden hands want to influence its outcome.

The Allegations

Anwar's accuser, Saiful Bukhari Azlan, is a twenty-three-year-old college dropout who joined Anwar's campaign as an intern. After working for five months in that capacity, he filed a police report on 28 June 2008 alleging that Anwar had sexually assaulted him two days earlier. The number of suspicious aspects about this allegation, as well as of the subsequent trial's conduct, have cast significant doubt on what actually happened. Growing numbers of international observers agree that what we are seeing in Malaysia is a political conspiracy.

SUSPICIOUS ASPECTS

Evidence of Conspiracy

There is no shortage of evidence suggesting that the charges leveled against Anwar are a conspiracy. For example, just two days before he lodged his allegations with the police, the accuser met Najib Razak, who at that time was still the deputy prime minister.² When asked

² "Anwar's sodomy trial resumes in Malaysia," BBC News, 10 May 2010, accessed online at news.bbc.co.uk/2/hi/8671669.stm.

about the meeting, Najib first denied that it ever happened; his reasons for doing so remain unclear. He later changed his story, admitting that the meeting had taken place but had simply consisted of discussing scholarship opportunities for the college dropout. He then changed his story again, admitting that the accuser had come to him to complain about Anwar's alleged abuse.³ Najib, who at that time was the "prime minister in waiting" and the son of Malaysia's second prime minister, had been cultivated and groomed as a Malay political leader. It was he who had the most to lose from an ascendant Anwar Ibrahim.

The story grows ever more suspect. Just one day before the alleged incident, the accuser met Rodwan, a police officer who had played a role in the 1998 conspiracy against Anwar. (Testimony exists from that case to the effect that Rodwan had illegally removed samples of Anwar's blood from a police laboratory and sprinkled them on a mattress, which was subsequently paraded around the courtroom to show that Anwar's DNA was linked to an alleged crime scene. As it incontrovertibly demonstrated Rodwan's involvement in the conspiracy, it was expunged from the court record). Why would Saiful now meet specifically with this officer?

Another controversial aspect is the involvement of Attorney General Gani Patail, who is leading the charge today. In 1998 he was involved in the effort to fabricate evidence and covered up evidence that a senior police officer had beaten Anwar almost to death on the night of his arrest. Despite sworn testimony to this effect from a police officer who had taken part in the investigation, in 2009 Malaysia's Anti-Corruption Commission threw out an investigation into Gani's involvement in that particular scandal.⁴

Finally, is it not rather surprising that on the day after the alleged sexual assault that Saiful was back at Anwar's home, attending a meeting, serving tea, and conversing as if nothing had happened? Most people both within Malaysia and the international community do not find this version of events credible. Certainly, it is clear that the governing party has the most to gain from it.

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³ "Najib: Saiful Came To See Me On Sodomy Case," Bernama News, 2 July 2008, accessed online at www.bernama.com/bernama/v3/news_lite.php?id=343750.

⁴ See the letter by former police officer Mat Zain, which explains the circumstances and involvement of Gani Patail in covering up of this police assault on Anwar, accessed online at <http://uppercaise.wordpress.com/2010/10/12/mat-zain-open-letter>.

Charge Not Matching the Accusation

The second suspicious aspect is that the charge does not match the accusation. Saiful's accusations, as detailed in his court testimony, suggest forced sodomy, effectively rape. If the attorney general wants us to believe that he is just trying to see that justice is done, why is he pursuing Anwar for consensual homosexual sex, which is illegal in Malaysia, instead of rape?

By pursuing a different charge from the one made by the accuser, the attorney general is opening himself up to some potentially embarrassing questions. If he believes that Anwar raped Saiful, why not charge him for it? But if he really believes that Anwar and Saiful engaged in consensual sex, why only press charges against a popular opposition leader and not the former intern?

It is likely that he is not charging Anwar with rape for the simple reason that he knows the charge would not stand up in court. Anwar, who was almost disabled in 1998 after a policeman beat him almost to death, and is known to have a disabling back problem. It is therefore completely improbable that he could mount an attack on a younger, more agile man.

The Charge Ignored for Lack of Evidence

A third suspicious aspect is the lack of evidence that the alleged rape actually occurred. If Saiful was indeed assaulted, then surely there would be some evidence to prove it. However, forty-eight hours after the alleged incident and two examinations, one in a private hospital and the other in the Kuala Lumpur general hospital, the doctors involved ruled out any possibility of assault or penetration – the minimum amount of evidence necessary to proceed with a rape trial.⁵ Traditionally, if there is no physical evidence of assault in rape cases, then an allegation would hardly stand on its own. The only way it could do so is if there were some corroborating evidence. In this case, the corroborating evidence is the discovery of Anwar's semen on Saiful's body. Given that the forensic examinations took place a full forty-eight hours after the alleged incident took place, and given the history of manipulating DNA samples to prove Anwar's guilt in the nineties case, there are an infinite number of ways that DNA samples could have found their way

5 "Leaked medical report fans Anwar controversy," *The Malaysian Insider*, 29 July 2008, accessed online at www.themalaysianinsider.com/malaysia/article/Leaked-medical-report-fans-Anwar-controversy and "HKL Medical Report: No sign of penetration," *Malaysiakini*, 18 June 2009, accessed online at www.malaysiakini.com/news/106732.

onto Saiful's body. Moreover, DNA evidence has always proven to be extremely tenuous when used as the basis for sexual assault cases because (a) the evidence can be easily manipulated and (b) it is difficult to ensure that the crime scene remains untainted.⁶

Obstruction of Justice

A fourth reason for suspicion is the clear evidence of the ongoing obstruction of justice in this case. On the eve of Anwar's trial, his defense team had yet to receive much of the information, in the form of discovery, to effectively prepare their defense. Medical reports, CCTV recordings, and even witness statements had all been withheld by the prosecution. In fact, the court continues to reject the repeated attempts by Anwar's legal team to gain access to full discovery, and the judiciary has systematically denied his attorneys access to the facts of the case. As such, they are unable to prepare either their defense or for their cross-examination of witnesses. Trial by ambush characterized the 1998 experience, for testimonies were coerced and the judge's decisions were erratic and inconsistent with any legal precedents.⁷

The Malaysian judicial system has a bad reputation, given its interference with due process, pursuit of political persecutions, and succumbing to political interference. Given this reality, one would think that the Malaysian court would realize that ensuring a relatively smooth and open judicial process in this case would be in its interest. But when taken together, all of the procedural inconsistencies - from the case's unexplained transfer to a new judge in 2009 to the refusal to provide Anwar's legal team with complete access to the evidence both before and during the trial - put it in a bad light.

It looks like the Malaysian judicial system has not only abandoned the prospect of giving Anwar a fair trial, but that it has even abandoned any prospect of showing the world it is making any effort to do so.

⁶ In February 2010, a paper published in the journal *Forensic Science International: Genetics* showed that this was easy to do using such relatively simple techniques as producing in vitro DNA synthesized in vitro DNA and then applying it to the surfaces of objects or on to genuine human tissues that can then be planted at crime scenes. [www.fsigenetics.com/article/S1872-4973\(09\)00099-4/abstract](http://www.fsigenetics.com/article/S1872-4973(09)00099-4/abstract).

⁷ A complete account of the denial of discovery to Anwar's defense team is contained in the Mark Trowell report published August 2010, accessed online at www.ipu.org/hr-e/187/anwar.pdf.

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THE DEVELOPMENT OF THE CASE

As the case developed, it emerged that the accuser had had an illicit sexual affair with one of the team's deputy prosecutors. She was promptly removed from the case when the allegations surfaced. Neither she nor Saiful, and not even the attorney general, have denied the relevant allegations. In fact, the presiding judge even acknowledged in court that the affair had probably taken place.⁸ These facts are disturbing and would give many people reason to believe that this case is politically motivated and that its outcome has already been decided.

On 12 December 2010, Australian newspapers published an account of leaked United States' State Department cables indicating that the sodomy allegation were likely true and that the charges were part of a "set-up job" orchestrated by Anwar's political adversaries.⁹ After further assessment, however, the report was shown to be based on no more than hearsay – American officials spoke to Australian intelligence officers who had heard the gossip from Singaporean intelligence officers. Nevertheless, Malaysia's government-controlled media made the most of this unexpected opportunity by printing such headlines as "Wikileaks prove Anwar committed Sodomy." Anwar challenged those mentioned in the report to present their evidence.

In 2009, the American lobbying firm APCO was awarded a \$20 million contract to provide the Government of Malaysia with communications and lobbying services. Anwar subsequently accused it of involvement in the Malaysian government's internal affairs. Consequently, on 16 December 2009 he, along with three other senior opposition figures, were suspended from Parliament on the grounds that his accusations contained aspects that were untrue.

In June 2010 Anwar was denied an opportunity to defend himself before the deliberations of the Parliamentary disciplinary committee. In December 2010 he was once again denied a chance to be represented before the committee. As a result, a sentence was passed based on APCO's unchallenged written submission to the committee. Three opposition lawmakers were suspended for protesting Anwar's sentence and the refusal to let him defend himself before the committee.

Clearly the rules are changed and the procedures are altered when matters relating to Anwar come to the fore. It is difficult to conclude anything other than that the government regards him as a serious political threat.

⁸ "Affair claim in Malaysia's Anwar trial deemed true," Jakarta Post, 16 August 2010, accessed online at www.thejakartapost.com/news/2010/08/16/affair-claim-malaysia039s-anwar-trial-deemed-true.html.

⁹ Phillip Dorling and Nick McKenzie, "Caught in a political sex trap," Sydney Morning Herald, 12 December 2010, accessed online at www.smh.com.au/world/caught-in-political-sex-trap-20101211-18tee.html.

INTERNATIONAL REACTION

In the meantime, the trial marches on despite widespread domestic and international condemnation. Polling shows that only 10 percent of Malaysians believes that the charges have any substance.¹⁰ Some fifty Australian opposition MPs co-signed a letter to the Malaysian authorities calling for an end to the trial.¹¹ Another group of British MPs signed a motion similarly condemning the continued persecution of a prominent opposition leader.¹² The Canadian House of Commons also issued a statement supporting Anwar and his efforts to promote democracy in light of the “harassment” he faces in Malaysia. Vice President Joseph Biden issued a statement in support of Anwar in 2008 when he was still head of the Senate Foreign Relations committee.¹³ His successor, Senator John Kerry, has similarly expressed support for Anwar.¹⁴ John Malott, former American ambassador to Malaysia, said that imprisoning Anwar again would be a “serious setback for democracy in Malaysia.”¹⁵

Recently, former Vice President Al Gore and former Deputy Secretary of Defence Paul Wolfowitz co-authored a *Wall Street Journal* op-ed in which they condemned the trial and urged the Malaysian authorities not to allow the political process to be subverted by an abuse of judicial power.¹⁶ They also urged the Obama administration to be more proactive in its support for democracy and the rule of law. Prominent ex-heads of state have also added their voices to the chorus, including Indonesia’s Abdul Rahman Wahid¹⁷ and Canada’s Paul Martin¹⁸; the pages of the *Washington Post*, the *Wall Street Journal*, the *Financial Times*, and other media outlets; and such international organizations as the International Crisis Group.

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10 “Anwar’s summons,” *Wall Street Journal*, 7 August 2008, accessed online at <http://online.wsj.com/article/SB121805409639017877.html>.

11 “Drop Anwar charges, Australian MPs tell Malaysia,” *The Australian*, 12 February 2010, accessed online at www.theaustralian.com.au/news/nation/drop-anwar-charges-australian-mps-tell-malaysia/story-e6frg6nf-1225829351467.

12 “British MP defends Anwar,” *Malaysian Mirror*, 19 March 2010, accessed online at www.malaysianmirror.com/homedetail/6-national/34320-british-mp-defends-anwar.

13 “Anwar Ibrahim arrest raises ‘serious questions,’” 18 July 2008, *GMA News.tv*, accessed online at www.gmanews.tv/story/107683/anwar-ibrahims-arrest-raises-serious-questions-us.

14 “Chairman Kerry’s Statement on Former Malaysian Deputy Prime Minister Anwar Ibrahim,” 16 February 2010, accessed online at <http://foreign.senate.gov/press/chair/release/?id=fa5ae196-870b-4079-9873-16ddf65a56>.

15 John Malott, “What Anwar’s trial means for Malaysia,” *Wall Street Journal*, 19 July 2010, accessed online at <http://online.wsj.com/article/SB10001424052748704913304575371001840553096.html>.

16 Al Gore and Paul Wolfowitz, “Malaysia’s opposition on trial,” *Wall Street Journal*, 4 August 2010, accessed online at <http://online.wsj.com/article/SB1001424052748703545604575407213095238970.html>.

17 Sandra Day O’Connor and Abdurrahman Wahid, “To defend Anwar is to defend Malaysian democracy,” *Financial Times*, 7 August 2008, accessed online at www.ft.com/cms/s/0/1a03116e-6484-11dd-af61-0000779fd18c.html.

18 Paul Martin, “Speak out for Anwar Ibrahim’s sake,” *The Globe and Mail*, 24 February 2010, accessed online at www.theglobeandmail.com/news/opinions/speak-out-for-anwar-ibrahims-sake/article1480149.

MALAYSIA'S JUDICIAL SYSTEM IS TAINTED

But all of these calls for a fair trial ultimately miss the point, for the sad fact is that Malaysia's judicial system is not capable of giving him one – an assertion that has been fully documented by the International Commission of Jurists, the International Bar Council, and other independent organizations.¹⁹ In addition, the judiciary has been described as being “complicit in political persecutions by the government” and “too cowed” in the face of government interests to act independently.

In 2008 a Royal Commission of Inquiry investigation into the political manipulation of Malaysia's judiciary concluded there was an “insidious movement” to orchestrate the appointment of pro-government judges to Malaysia's Court of Appeal.²⁰ Since then, the Judicial Appointments Act, passed in December 2008, had given the executive the power to appoint judges unilaterally. Moreover, the net result of Malaysia's unenthusiastic campaign against corruption is that fewer Malaysians trust the campaign at all. Sixty-one percent of Malaysians polled recently were dissatisfied with the government's efforts to fight corruption, an increase of 10 percent from a similar survey taken six months earlier.

SETTING MALAYSIA IN CONTEXT

An American condemnation of this travesty of justice would demonstrate its commitment to democracy and serve American interests in a number of ways.

Any goodwill toward the United States comes from its association with liberty – a value that polling evidence shows is widely shared between Americans and Muslims. Malaysia is a country with the potential to demonstrate – particularly to its neighbors – that a Muslim-majority country can flourish with a strong economy and a strong democracy. These values and practices, however, need time to take root and are threatened by such practices as smearing one's political enemies for political gain. Condemning such practices both aligns the United States in the mind of the people – not just in Malaysia or in the immediate region, but in Muslim countries around the world – with liberty and democracy and reinforces its image as a force for good.

¹⁹ See footnote number 1.

²⁰ “Lingam report: Dr. M, other prominent figures involved,” *The Malaysian Insider*, 16 May 2008, accessed online at www.themalaysianinsider.com/malaysia/article/Lingam-report-Dr-M-other-prominent-figures-involved.

There is no downside risk to American support for democracy in Malaysia, because the relationship will remain close regardless of who wins. There is, however a risk in being seen to implicitly condone authoritarian practices and a corresponding benefit to America's soft power in being seen to support the parallel flourishing of democratic processes and market-orientated economic policies.

A democratic Malaysia alongside a democratic Indonesia would create a powerful Muslim anchor in Southeast Asia. Such a reality would enable the United States to develop productive, economically focused relationships, the evolution of which would only enhance its reputation in the Muslim world.

In the past there were reasons why publicly supporting Anwar was not in the United States' interests. But those reasons have mostly been superseded. The United States has committed to pulling its troops out of Iraq, so Anwar's previous opposition to this deployment is now in line with American policy. The United States has put considerable diplomatic pressure behind securing a peace deal between Israel and Palestine, thereby vitiating Anwar's previous objections that the United States had not worked hard enough to achieve this goal. In addition, the United States has made plans to begin a negotiated withdrawal from Afghanistan, something that Anwar began calling for years ago.

While the authors recognize that democracy promotion is not a stated interest of the Obama administration in the same way that it was for the Bush administration, improving relations with the Muslim world *is* a stated interest of the Obama administration in a way that it was not for the Bush administration. In Malaysia, the democrats are popular and the autocrats are unpopular. Supporting democracy there would make the United States more, not less, popular.

Malaysia thus provides the Obama administration with a golden opportunity to align its publicly stated interest in improving relations with the Muslim world with its unstated instinct that a democratic system serves a population better than an autocratic one. All it has to do is condemn the ongoing political persecution of Anwar, a clear and present danger to democracy's consolidation in Muslim-majority Malaysia.

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Conclusion

This trial has been unfair from the start. Every day it continues is a further blot on the Malaysian judiciary. The charges are tainted, inconsistent, and without credibility; the evidence, where it actually exists, is flimsy; and the process is skewed in favor of the government. In the interests of justice and Malaysia's international image, the case against Anwar Ibrahim must be dropped. The United States should say so clearly and in public. Doing so would not only enhance its values, but also serve its interests.

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