

November 13, 1991

MALAYSIAN GOVERNMENT MOVES TO STIFLE INDEPENDENT BAR

Asia Watch, a New York-based human rights organization, called on the Malaysian government today to withdraw a motion to impose government controls over the only independent lawyers association in the country, the Malaysian Bar Council.

The government's move threatens to silence one of the most vibrant independent institutions in Malaysian civil society. The action has prompted fears of a new wave of political repression against lawyers in a country where the independence of the judiciary has been systematically curtailed over the past five years.

The Malaysian Bar Council was established by the 1977 Legal Professions Act as a legal, nongovernmental professional association of all members of the legal profession. It operates under a charter licensed by the government. Under its current charter, it is permitted to voice an independent position on broad issues of the administration of justice, as well as to set professional standards among its members.

On November 11, Prime Minister Mahathir bin Mohamad, head of the ruling United Malays National Organization (UMNO), announced his intention to amend the Malaysian Bar's charter to annul a clause which establishes the Bar Council's political independence and to make provision for the government, rather than the Bar Council, to discipline members. The amendment is scheduled for a vote in the UMNO General Assembly within the week. If ratified at the convention, its passage would appear likely, since UMNO controls two-thirds of the seats in Parliament.

The move was seen as a clear message that independent institutions are no longer welcome to participate in discussions of key political and legal issues in the country. In particular, the action was viewed as retaliation for the Bar Council's vigorous defense of judicial independence. Members of the Bar say its independence will be seriously compromised if the amendment becomes law.

Recent history shows that they have legitimate cause for concern. In recent years, the government's attitude toward the Bar Council has been one of undisguised hostility. Prime Minister Mahathir has accused it of "playing too much politics and devoting less time to legal work."¹ The government alleges that the Bar and its members have been "spreading lies overseas" and discrediting the government by describing government attacks on the Supreme Court in 1988. The Bar Council has called on the government to prove this allegation.

¹"The Decline in the Rule of Law in Malaysia," A Report of the Committee on International Human Rights of the Association of the Bar of the City of New York, December, 1990.

Problems for the Bar Council began in 1988, after the Bar passed a vote of no confidence in the newly appointed Lord President of the Supreme Court (the equivalent of the U.S. Supreme Court Chief Justice), Tun Hamid Omar, following a series of politically motivated efforts to curtail the Supreme Court's independence.

In May 1988, at a time when Prime Minister Mahathir had been publicly complaining about a series of judicial decisions against the government, and while several politically sensitive cases were pending before the Supreme Court (Malaysia's highest court), the previous Lord President Tun Salleh was suspended and a Tribunal was appointed to hear charges against him. Two months later, five Supreme Court judges who had met in emergency session to consider an application for a stay of the Tribunal proceedings were themselves suspended--and two eventually dismissed--after they ordered a stay. The Lord President was also dismissed. The circumstances surrounding the dismissals caused an international outcry by the legal community in Malaysia and abroad.²

For its part, the Bar reacted with dispatch and resolve. At an Extraordinary General Meeting in May 1988 attended by 1,002 of the 2,600 members of the Bar, it passed several resolutions criticizing the government's actions, including one expressing grave concern "at the damage done to the impartial administration of justice." Soon after, it issued a detailed critique of the Tribunal's proceedings in its decision to dismiss the judges.

On November 11, 1991, Mahathir said the Bar Council had "gone against the rule of law" when it lodged a contempt of court proceeding against the Lord President Tun Hamid Omar in 1990. Mahathir added that the Bar Council's longstanding opposition to administrative detention without charge or trial under the Internal Security Act (ISA) was also against the rule of law since "the ISA is also part of the rule of law which was passed by Parliament."³

Adopted in 1960, the ISA was intended to be used in the context of an armed insurgency by the Communist Party of Malaya. Under Mahathir, however, it has been used to stifle dissent.

The ISA enables any police officer to arrest without warrant anyone considered likely to pose a threat to the security of Malaysia. Those arrested can be detained for 60 days without charge or review, and the Minister of Home Affairs has the authority to extend the detention orders for up to two years, renewable indefinitely. Prime Minister Mahathir is also Minister of Home Affairs.⁴

A June 1989 amendment passed by the Malaysian Parliament further stripped political detainees of legal recourse by abolishing judicial review of habeas corpus petitions by ISA detainees.

If the new government controls over the Bar Council are adopted, the ruling party has indicated it

²The Sabah Law Association and the Advocates' Association of Sarawak issued a statement saying that "History will vindicate them" INSAF, *The Journal of the Malaysian Bar*, November, 1988, p.82; The International Commission of Jurists found that the decisions were made on "wholly unpersuasive grounds."

³*The Star*, November 11, 1991.

⁴For a detailed analysis of the ISA, see Beatrice S. Frank et.al., *The Decline in the Rule of Law in Singapore and Malaysia*, Association of the Bar of the City of New York (New York: 1990).

will use its policing powers to disbar lawyers who have been most outspoken. An UMNO delegate, Khadijah Mohamed Som, said in an address to the UMNO General Assembly that if "lawyers from the Bar Council have discredited the country abroad, they should be permanently blacklisted" and they should be replaced with UMNO lawyers.

This would hardly be surprising, since lawyers with outspoken positions say they have already experienced difficulties practicing under the current judiciary. Some have said they are reluctant to practice before the Supreme Court because they feel it would be a disservice to their clients in view of the likelihood of retaliation for their outspoken criticism of the government tampering with the Court. In 1988, the Chairman of the Bar Council predicted that, now that the judiciary has been dealt with, such attacks would "pave the way for setting up a controlled Bar Council."⁵

Violations of recognized role of lawyers, freedom to associate

In its effort to silence the Malaysian Bar Council, the current proposal before the UMNO General Assembly would violate the internationally recognized freedom of association and basic principles on the role of lawyers which were adopted by the Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders.

In September 1990, Malaysia joined 126 other U.N. member nations in adopting that resolution by consensus. The principles affirm lawyers' rights to freedom of expression, belief, association and assembly. In particular, Article 23 asserts that lawyers

"shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization."

Asia Watch calls upon the Malaysian government to withdraw plans to amend the Legal Professions Act of 1977. Already fragile after the traumatic reshuffling of the Supreme Court's membership in 1988, the rule of law in Malaysia is in serious jeopardy if the independence of the Bar can be compromised by the ruling party for reasons of political expediency. Equally important, Malaysian democracy is threatened if professionals and others can be prohibited from joining together independently whenever the government dislikes the criticisms that emerge from the assembled group.

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⁵*New Straits Times*, November 3, 1988.

For Further Information

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Asia Watch was founded in 1985 to promote internationally recognized human rights in Asia. The Chair is Jack Greenberg and the Vice Chairs are Harriet Rabb and Orville Schell. The Executive Director is Sidney Jones. Julie Friedman is the Orville Schell Fellow.

Asia Watch is part of Human Rights Watch, which also includes Africa Watch, Americas Watch, and Helsinki Watch and Middle East Watch. The Chairman of Human Rights is Robert L. Bernstein and the Vice Chair is Adrian DeWind. The Executive Director is Aryeh Neier and the Deputy Director Kenneth Roth.