

SUARA RAKYAT MALAYSIA

Address: 433A, Jalan 5/46, Gasing Indah, 46000 Petaling Jaya, Selangor, Malaysia.

Telephone: +6 03 7784 3525

Fax: +6 03 7784 3526

Email: suaram@suaram.net

Web: www.suaram.net



Memorandum to SUHAKAM on Himpunan Mansuh ISA

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Background

The Abolish ISA Movement, or more popularly known in Malay as Gerakan Mansuhkan ISA (GMI) announced on 22 June 2009 that they will be having a mass rally, Himpunan Mansuh ISA, on 1 August 2009 at 2.00pm to call for the abolition of the Internal Security Act 1960 (ISA). GMI has been planning this rally since the beginning of this year.

Prior to the event, GMI informed the police about the public assembly. GMI had requested for the Bar Council Human Rights Committee (BCHRC) and SUHAKAM to send teams to conduct human rights monitoring during the assembly. GMI had also requested for the Legal Aid Centre (LAC) to assist with providing legal representation in the event of arrests of participants. While the BCHRC and LAC agreed to the requests, SUHAKAM denied GMI's request.

In a letter dated 30 July 2009, SUHAKAM commissioner Dato' Haji Khalid bin Haji Ibrahim informed GMI that SUHAKAM will not be sending a monitoring team for the assembly on the grounds that the public assembly did not have a permit from the police. The letter ended by reiterating that SUHAKAM supports the principle that the ISA, which allows for detention without trial, violates human rights and should be repealed.

Days leading up to the rally saw the Home Ministry repeatedly warning people against participating in the rally. The Home Minister, Datuk Seri Hishammuddin Tun Hussein, stated that he told the police to take action against those planning to participate in the rally¹. Consequently, the Home Minister told the Inspector-General of Police Tan Sri Musa Hassan to take stern action against participants of the rally². The Kuala Lumpur Chief Police Officer (CPO) Datuk Mohammad Sabtu stated that roadblocks within the city and at roads leading towards the city will be made two days before the event³. These warnings that were made are direct violation of peoples' right to assemble peacefully as guaranteed under Article 10 of the Federal Constitution of Malaysia.

On 1 August, hours before the time of the assembly, police conducted roadblocks on major roads leading into Kuala Lumpur city. Public transportation such as the Light Rail Transit (LRT) were

¹ *The Star* (2009) 'Police told to act against ISA marchers', 30 July,

<http://thestar.com.my/news/story.asp?file=/2009/7/30/nation/4419820&sec=nation>, accessed 5 August 2009.

² *Bernama* (2009) 'ISA Rallies: Home Ministry Warns of Stern Action', 30 July,

<http://www.bernama.com/bernama/v5/newsindex.php?id=429040>, accessed 5 August 2009.

³ *The Star* (2009) 'Anti- and pro-ISA groups warned over planned gatherings', 28 July,

<http://thestar.com.my/news/story.asp?file=/2009/7/28/nation/20090728200552&sec=nation>, accessed 5 August 2009.

closed at certain stations such as Masjid Jamek, Pasar Seni and Bandaraya⁴. At 2.00pm, more than 20,000 participants of the Himpunan Mansuh ISA gathered at three different locations in Kuala Lumpur – Sogo, Masjid Jamek and Masjid Negara. The Masjid Jamek and Masjid Negara groups then proceeded to march peacefully to Sogo.

The police were heavy-handed in attempting to disperse the protestors. The Federal Reserve Unit (FRU) tried to disperse the crowd with excessive use of tear gas and water cannons. Unlike previous use of water cannon to disperse protestors, the chemical-laced water that was used in the water cannon during the rally contained chemicals that severely stung the eyes and skin of the protestors, an indication of possible high dosage of chemicals. It was reported that at least 75 rounds of tear gas were fired at Sogo⁵.

In addition, tear gas and water cannons were used even when the crowd was dispersing. For instance, the crowd that marched to PAS Headquarters from Sogo started to disperse at around 4.30pm. However, the FRU fired tear gas and used water cannons against groups of protestors when they were leaving the location. Shots of tear gas and water cannons also continued at Sogo, Masjid Jamek and Pasar Seni after the crowd had dispersed. Muslim participants in the assembly who wanted to perform prayers at Masjid Jamek after the assembly were prevented from entering the mosque and attacked with more tear gas and water cannon. These sporadic attacks at various locations continued until around 6.00pm.

Other forms of police abuse that occurred during the assembly include tear gas canisters shot directly at participants and at areas crowded with street vendors, shoppers and bystanders. FRU personnel fired tear gas into a weekend street market near Jalan Tunku Abdul. Water cannon were also aimed at onlookers at the 6th floor of Sogo shopping centre. SUARAM has photographic evidence of a tear gas canister that was shot into a car where the canister broke through the windscreen and landed inside the car. Besides that, some individuals were treated roughly or beaten by police personnel during arrests. SUARAM was also informed that members of the press were also abused by police personnel during the assembly.

On the day of the anti-ISA rally, 1 August 2009, as early as 3.40am, 14 members of the Parti Islam Malaysia (PAS) security team, Unit Amal, were arrested. Even a few hours before the time of the assembly, police searched and started arresting individuals who were wearing or carrying anti-ISA shirts at Central Market, Sogo, Masjid Jamek and Masjid Negara. In total, 589 people were arrested on the day of the rally, including 44 children and 40 women⁶. 498 people were released on the same day and 91 were held at Bukit Jalil Police Station.

On 1 August, 13 people including a 16-year-old boy were brought before a magistrate judge for remand hearing. They were all denied legal representation and were remanded for 4 days. Some of the arrested women demanded to see lawyers but were told by a police officer that there were no lawyers present outside the police station. This is a deliberate act of preventing access to legal

⁴ *NST Online* (2009) 'Illegal rally: Masjid Jamek, Pasar Seni and Bandaraya stations temporarily closed', 1 August, <http://www.nst.com.my/articles/20090801154132/Article/index.html>, accessed 5 August 2009.

⁵ *The Straits Times* (2009) 'Tear gas, water used', 1 August, http://www.straitstimes.com/Breaking%2BNews/SE%2BAsia/Story/STISStory_411050.html, accessed 5 August 2009.

⁶ *Malaysiakini* (2009) 'Almost 600 arrested, including 44 children', 1 August, <http://malaysiakini.com/news/109730>, accessed 5 August 2009.

representation, a clear breach of Section 28 of the Criminal Procedure Code (CPC) and Article 5(3) of the Federal Constitution.

The child who was remanded had implicitly been denied legal representation when an order for remand was granted while he was asleep⁷. He was not given the opportunity to seek legal representation. He was detained overnight together with adults at Petaling Police Station, which is a violation of Section 85 of the Child Act 2001 (CA) that requires children to be separated from adults during police custody. The police did not inform his father of the arrest immediately⁸, as required under Section 87(a) of the Act.

Another two children, a 16-year-old and 13-year-old, were detained overnight at Petaling Police Station. They were arrested on the afternoon of 1 August, before the assembly began. The children were not given food until lawyers from the Kuala Lumpur Legal Aid Centre (KL LAC) brought food to the police station for them at around 10.00pm. In addition, the 13-year-old child was having a fever but his medical needs were not attended to until 2 August. This deprivation of food and denial of access to medical healthcare is inhuman and violates the principles of fundamental human rights.

In addition, the police have violated Section 19(5) of the CA by failing to notify the Welfare Department of the arrest and subsequent custody of the three children in order to appoint a Welfare Officer to attend to this matter. Subsequently, the Welfare Officers being "Protectors" under Section 18 of the CA, upon being notified by the KL LAC lawyers had refused to be present at the police station to safeguard the interest of the children. This is despicable and amounts to a breach of their administrative duty.

Besides the 14 individuals who were remanded on 1 August, another 77 persons, including 3 children, were detained overnight. On 2 August, remand hearings were conducted for the 77 individuals out of whom 59 people including 8 women and 2 children were released, 17 individuals including 5 women were remanded for 2 days, and 2 individuals were remanded for 3 days.

Many of those arrested were also denied the right to perform their prayers while in custody. This is a blatant transgression of the right to practice religion as guaranteed under Article 11 of the Federal Constitution and Article 18 of the Universal Declaration of Human Rights (UDHR).

On 3 August, 16 individuals were charged for illegal assembly, including one child, and another 13 individuals were charged under the Societies Act for distributing shirts for an unregistered society, Gerakan Mansuhkan ISA⁹. The child was charged in court together with adults, despite objections from lawyers.

⁷ *The Malaysian Insider* (2009) 'Anti-ISA rally: Police remand juvenile for 4 days', 2 August, <http://www.themalaysianinsider.com/index.php/malaysia/33995-anti-isa-rally-police-remand-juvenile-for-4-days>, accessed 5 August 2009.

⁸ *The Malaysian Insider* (2009) 'Father took two days to locate his arrested children', 3 August, <http://www.themalaysianinsider.com/index.php/malaysia/34075-father-took-two-days-to-locate-his-arrested-children>, accessed 5 August 2009.

⁹ *Malaysiakini* (2009) 'Anti-ISA rally: MP freed, 29 charged', 3 August, <http://malaysiakini.com/news/109793>, accessed 5 August 2009.

The police force have once again misused their power and reacted violently against participants of a peaceful assembly. The Government has failed to see the importance of peaceful public assembly as an integral instrument in strengthening a democratic nation. It is the right of the people as enshrined under Article 10 of the Federal Constitution to freely assemble without restrictions as long as it is peaceful. The use of force, including tear gas and water cannons, to disperse the peaceful assembly was highly unnecessary. The police force has committed many serious human rights violations in the name of maintaining order and security. Amongst the violations committed include denial of the right to peaceful assembly, right to legal representation, child rights, freedom of expression and freedom from torture.

Areas of Concern

SUARAM welcomes SUHAKAM's statement dated 3 August 2009¹⁰, in reaction to the 1 August 2009 events, emphasising on the right to peaceful assembly and reiterating the SUHAKAM position on repealing the ISA in support of the cause of the anti-ISA rally.

However, SUARAM notes with disappointment that SUHAKAM's call to the police and Government to respect the right to peaceful assembly is belated and contradictory. This is in view of the denial of GMI's request to SUHAKAM to conduct human rights monitoring during the assembly. SUHAKAM denied the request on the grounds that the assembly was not granted a permit from the police. We recall SUHAKAM's unequivocal position taken in its public inquiries on the cases of the Kesas Highway incident (2001), the Bloody Sunday incident in KLCC ((2006), as well as the Bandar Mahkota Cheras incident (2008). It is in this vein that SUARAM finds SUHAKAM's refusal to send an official monitoring team unacceptable. Clearly, the reason provided is in contradiction with SUHAKAM's past position on public assemblies.

One of the recommendations made in the SUHAKAM Public Inquiry into the Incident at KLCC on 28 May 2006 was that organisers of peaceful assemblies only need to notify the police of the details of the assembly¹¹. This recommendation disregards the need for a police permit for peaceful assemblies, a view that is in conformation to the right to peaceful assembly as enshrined in the (UDHR).

Considering the past track records of human rights violations committed by the police during public assemblies, SUHAKAM should have committed to conducting human rights monitoring as requested by the organisers of the rally. The Home Minister and police's warnings on taking action against participants of the rally in the days leading up to the rally also served as an indication of possible occurrence of human rights violations during the public assembly. SUHAKAM must not only make statements when human rights violations occur during public assemblies but take up a larger role in conducting human rights monitoring.

¹⁰ *Suhakam* (2009) 'The right to peaceful public assemblies should be respected', 3 August, http://www.suhakam.org.my/c/document_library/get_file?p_l_id=35723&folderId=47495&name=DLFE-4401.pdf, accessed 5 August 2009.

¹¹ *Suhakam* (2006) 'Report of Suhakam Public Inquiry Into the Incident at KLCC on 28 May 2006'.

With regards to the public assembly on 1 August 2009, the following issues and allegations need urgent attention from SUHAKAM:

1. Misuse of power and violence committed by the police to disperse participants of peaceful assembly, such as,
 - a. Excessive use of tear gas and water cannon with chemically-laced water
 - b. Inappropriate use of tear gas guns to fire directly at participants of the assembly and bystanders
 - c. Arrests were made in a violent manner
 - d. Members of the press were beaten by police
 - e. Selective arrests were made on those who were wearing or carrying Anti-ISA clothing
 - f. All the arrests made were unreasonable and mala fide
2. Violation of the right to freedom to peaceful assembly
 - a. Police set up roadblocks in the city and at roads leading into Kuala Lumpur to prevent participants from attending the public assembly
 - b. LRT stations near to the gathering points were closed on the day of the rally
 - c. Warnings from the Government and police for anyone intending to attend the rally
 - d. Search and arrests of individuals before the start of the assembly
 - e. Arrests of participants during the rally
3. Violation of the right to legal representation
 - a. 13 individuals, including a 16-year-old boy was brought before a judge for remand hearing without access to lawyers
 - b. A group of women who demanded to see lawyers were deliberately lied to by a police officer who said that there were no lawyers present at the police station. The lawyers were outside the police station at the time.
4. Violation of the rights of children
 - a. 44 children were arrested on the day of the event, some even before the event began
 - b. One child was given a 4 day remand order without legal representation and the police failed to inform his parents or guardian about the arrest. He was detained overnight at Balai Polis Petaling together with adult detainees. He was handcuffed.
 - c. Two boys were detained overnight at Balai Polis Petaling and were not given food for at least 8 hours. They were also both handcuffed.
 - d. As required in the Child Act 2001, the police did not inform the Welfare Department of the arrests of the children. When informed, the Welfare Officer refused to visit the children.
 - e. Malaysia has adequate laws in the Child Act 2001 that provides proper procedures of handing arrests and detention of children. Malaysia has ratified the United Nations Convention on the Rights of the Child (CRC) and is obligated to protect and uphold the rights of the child. However, these incidences indicate a blatant violation of child's rights.

Demands

SUARAM is of the view that the misuse of power and the violence committed by the police during this event are very serious and warrant immediate and effective actions to bring those responsible to justice.

Therefore, we urge SUHAKAM to:

1. Conduct an independent and open inquiry into the abuse of power by the police and the violence committed in the event
2. Upon conclusion of the inquiry, consider and where applicable, pursue with the Government of Malaysia, justice and disciplinary actions against police and FRU personnel who have committed misuse of power and violence in this event
3. Pressure the Government to review the Penal Code and Police Act 1967 with the purpose to remove all restrictions on the constitutional and human right to peaceful assembly
4. SUHAKAM must fulfill its human rights protection mandate by including preemptive actions in situations where human rights violations are expected to occur. We urge SUHAKAM to formulate an early warning mechanism to ensure that concerns of possible human rights violations are addressed adequately and effectively. In particular reference to public assemblies, we urge SUHAKAM to pressure the government to allow peaceful assemblies, facilitate meetings between organisers and the police prior to a public assembly, and monitor these assemblies
5. In view of the ongoing attacks of human rights defenders as clearly demonstrated by the arrests of hundreds of individuals in this rally, we call on SUHAKAM to clarify the functions and mandates of the human rights defenders desk, which was reported to have been established, and intensify its activities to ensure better protection of human rights defenders in the country.

Submitted by:

Suara Rakyat Malaysia (SUARAM)