



BAR COUNCIL MALAYSIA

MEMORANDUM

**RELATING TO THE ARREST OF
FIVE BAR COUNCIL LEGAL AID CENTRE (KL) LAWYERS
AT BRICKFIELDS POLICE STATION ON 7 MAY 2009**

SUBMITTED TO

**YANG AMAT BERHORMAT DATO' SRI MOHD NAJIB BIN TUN ABDUL RAZAK
THE PRIME MINISTER OF MALAYSIA**

22 JUNE 2009

Bar Council Malaysia
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I. INTRODUCTION

On the night of 7 May 2009, five members of the Bar Council Legal Aid Centre (KL) ("KL LAC"), went to the Brickfields Police Station, in their capacity as Advocates & Solicitors, to provide legal representation to the detained persons who had been arrested earlier that same night whilst holding a candlelight vigil at the same police station over the recent arrest of political scientist Wong Chin Huat. They arrived at approximately 10 p.m., after the candlelight vigil had ended, and were there only to provide legal assistance to the detainees.

The KL LAC Lawyers requested access to the detained persons but the Police denied their request. Furthermore, the Police, without any reasonable grounds, proceeded to arrest the KL LAC Lawyers and only released them on police bail at around 3 p.m. the following day, 8 May 2009, notwithstanding the repeated requests by other lawyers for their immediate release ("the Incident").

The Malaysian Bar strongly condemns and denounces the wrongful arrest, detention and interrogation of the KL LAC Lawyers, and the blatant transgression of the rule of law and the constitutional right of every person to counsel and access to justice. The Malaysian Bar is outraged and deeply concerned that the KL LAC lawyers were arrested in the course of carrying out their professional obligations as advocates and solicitors, which is a travesty of justice.

The Malaysian Bar is committed to, *inter alia*, upholding the Rule of Law as enshrined in Rukunegara, which includes the fundamental right of lawyers to have access to their clients. The Bar has been statutorily enjoined under the Legal Profession Act 1976 to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour.

Pursuant to the Bar's purposes set out above, the Bar Council submits this memorandum to Yang Amat Berhormat Dato' Sri Mohd Najib bin Tun Abdul Razak, as the Prime Minister of Malaysia, and strongly calls upon the Government to take immediate and strong action to rectify this matter and to ensure it does not recur.

II. BACKGROUND FACTS

1. Five KL LAC lawyers (the “KL LAC Lawyers”) who were at the Brickfields police station to provide legal representation to their clients were arrested in the course of carrying out their professional obligations as advocates and solicitors.
2. They were:
 - Fadiyah Nadwa binti Fikri (“KL LAC Secretary”)
 - Murnie Hidayah binti Anuar
 - Puspawati binti Rosman
 - Ravinder Singh Dhaliwal (“KL LAC Chairperson”)
 - Syuhaini binti Safwan
3. At about 930 p.m. on Thursday, 7 May 2009, the KL LAC Lawyers found out that 14 individuals had been arrested at the Brickfields police station during a candlelight vigil held to express solidarity with BERSIH activist, Wong Chin Huat.
4. At approximately 10 p.m., the KL LAC Lawyers gathered in front of the Brickfields police station. They notified the Police that they were lawyers for those who had been detained during the candlelight vigil, and requested access to the detained persons, but were told to wait as DSP Jude Pereira was in a meeting.
5. The KL LAC Lawyers waited for approximately an hour while maintaining communication with their clients by telephone.
6. Their clients informed them that they had been asked to sign certificates to waive their right of access to legal practitioners of their choice (“the Waiver Certificates”).
7. The KL LAC Lawyers advised their clients not to sign such certificates.
8. The KL LAC Lawyers were subsequently informed that DSP Jude Pereira’s meeting had ended, at which point they requested to meet him to obtain clarification on their clients’ situation.
9. Although the KL LAC Lawyers could see DSP Jude Pereira standing a short distance away from them, they were told that he refused to see them. When the KL LAC Secretary called him on the telephone, he informed her that the clients had signed the Waiver Certificates.

10. The KL LAC Lawyers repeatedly told DSP Jude Pereira that their clients had informed them that they had refused to sign the Waiver Certificates. The KL LAC Secretary requested that DSP Jude Pereira approach them at the gate of the Brickfields Police Station to provide clarification.
11. DSP Jude Pereira approached the KL LAC Lawyers and informed them that the Waiver Certificates had been signed by their clients as he has invoked Section 28A(8) of the CPC, which allows the Police to deny an arrested person the right to legal counsel under certain conditions.
12. When the KL LAC Secretary asked DSP Jude Pereira to specify the grounds for invoking Section 28A(8) of the CPC, he was unable to provide an answer.
13. As DSP Jude Pereira continued to insist that the Waiver Certificates had been signed, the KL LAC Lawyers demanded to see the Waiver Certificates. However, DSP Jude Pereira walked away without any further explanation.
14. Immediately after, OCPD ACP Wan Abdul Bari bin Wan Abdul Khalid approached the gate of the Police Station and demanded that everyone disperse within three minutes, stating that what was happening outside the gate was an illegal assembly. After a while, he counted to three, the gate was opened and the KL LAC Lawyers were arrested, along with a journalist.
15. The four female lawyers were kept in Brickfields Police Station until approximately 4 a.m. on Friday, 8 May 2009, after which they were taken to the Travers Police Station, where they spent the rest of the night and morning. They were then taken back to the Brickfields Police Station and released on bail in the afternoon.
16. At approximately 3.45 a.m. on Friday, 8 May 2009, the KL LAC Chairperson, who was the only male lawyer in the group, was driven out of the Brickfields Police Station in a patrol car and taken to the Taman Tun Dr Ismail Police Station, from which he was released on bail in the afternoon.
17. Between that time and his release, the Police deliberately and persistently refused to disclose the location of the KL LAC Chairperson to his family members, and deliberately provided misleading information on the same.
18. The Police also refused to provide to the KL LAC Lawyers' family members or lawyers any information in relation to the Police's next course of action.
19. These facts can be corroborated by the KL LAC Lawyers themselves, as well as by many witnesses to the events at Brickfields Police Station on the evening of 7 May 2009, and the events of 8 May 2009, including the attempts to locate the whereabouts of the KL LAC Chairperson, which were to no avail.

20. In addition, a Malaysiakini video (included as Appendix D, and also accessible at <http://www.malaysiakini.tv/video/17034>) provides convincing visual evidence of the Incident.

III. CONCLUSION

21. The criminal justice system is part of the Rule of Law, which is a fundamental tenet of the Rukunegara and the foundation of social order.
22. The Rule of Law is non-negotiable and is a vital element of resolving disputes. Any differences and conflicts that arise must be resolved in accordance with the Rule of Law, without resorting to violence or disorder.
23. In today's Malaysia there is greater awareness and public scrutiny of current events and issues. It is therefore all the more important for public institutions to be, and to be seen to be, transparent, unbiased and accountable.
24. Law must be founded on principle and administered through an independent, stable and respected judicial system. It requires a profound respect for the Rule of Law, which has to be learned and earned.
25. It is therefore fundamental that the Government respects the Rule of Law. The responsibility to uphold the Rule of Law must be borne equally by our political leaders, judges, lawyers, legal academics and all citizens, which includes the enforcement agencies.
26. Section 28A(4) of the Criminal Procedure Code ("CPC") and Article 5(3) of the Federal Constitution ("FC") guarantee an arrested individual's right of access to a legal practitioner of his/her choice.
27. The presence of a lawyer when an accused is questioned or arrested promotes accountability because lawyers serve as a check-and-balance, on the spot, against police excess.
28. It must be remembered that the police force, as a law enforcement agency, commands far more physical and tangible power than any other public service agency, and hence a mechanism for accountability is all the more necessary.
29. Access to legal counsel is thus a cornerstone of our criminal justice system, and a crucial safeguard for the rights of a detained person. This principle must be defended jealously and tirelessly.

30. Although there is an exception to Section 28A(4) of the CPC, it cannot by any stretch of the imagination be turned into a right to arrest lawyers who are waiting to render legal representation to their clients.
31. Logically, in order to provide legal representation to the detained persons who had been arrested earlier during the night of 7 May 2009, the KL LAC Lawyers had to be present at the Brickfields Police Station and request access to the detained persons.
32. There is a crucial difference between the detention of the KL LAC Lawyers and previous incidents where lawyers were arrested when acting as private citizens.
33. The KL LAC lawyers were at the Police Station for the sole purpose of rendering legal assistance to the detained persons, and were not part of any alleged unlawful assembly at any time.
34. As such, the KL LAC Lawyers were wrongly and unnecessarily arrested, detained and interrogated by the Police without reasonable grounds and in the course of carrying out their professional obligations as advocates and solicitors.
35. The arrest, detention and interrogation were clearly a form of harassment to obstruct the lawyers from discharging their responsibility to provide legal representation to their detained clients. The arbitrary action of the police in arresting them while they were performing their duty has undermined the legal system and the rule of law.
36. Such arrest, detention and interrogation is a violation of Section 28A(4) of the CPC and Article 5(3) of the FC referred to in item 26 above, a gross abuse of police powers and a blatant transgression of the rule of law and the constitutional right of every person to counsel and access to justice.
37. The Malaysian Bar is neither seeking nor expecting preferential treatment nor exemptions from the law. It is seeking instead to uphold the fundamental right of lawyers to have access to their clients.
38. This unprecedented conduct by the Police has far-reaching consequences. Not only can arrested persons be denied access to their lawyers without challenge, but when those lawyers are forced to wait outside the Police Station, the lawyers themselves are at risk of arrest.
39. The Police in question acted outside the scope of their duties and demonstrated utter disrespect and blatant disregard for the criminal justice system that they are duty-bound to uphold and protect.

40. Police compliance with the law is crucial. In addition to setting an example through lawful conduct, such compliance helps to create a conducive atmosphere for the cultivation of respect for the police force, which in turn serves to promote their enforcement of the law.

IV. DEMANDS

41. The Incident was so abhorrent and shocking that the Malaysian Bar convened an Extraordinary General Meeting within eight days, at which it unanimously adopted a resolution (Appendix C) to, *inter alia*, demand the resignation of the Minister for Home Affairs, the Inspector-General of Police, OCPD ACP Wan Abdul Bari bin Wan Abdul Khalid and DSP Jude Pereira of the Brickfields Police Station.
42. Concern has also been expressed by international bodies, including The Law Association for Asia and the Pacific (LAWASIA), Union Internationale des Avocats and the Commonwealth Lawyers Association, which have expressed support for the Malaysian Bar's stand in this matter.
43. The Bar Council therefore calls on the Government to take immediate action to rectify this matter and to ensure it does not recur, as follows:
- 43.1. Undertake an independent, comprehensive and transparent investigation into this matter without further delay.
 - 43.2. Seek the resignation of the Minister for Home Affairs, the Inspector-General of Police, OCPD ACP Wan Abdul Bari bin Wan Abdul Khalid, and DSP Jude Pereira of the Brickfields Police Station.
 - 43.2. Take immediate disciplinary action against all officers who were responsible for the Incident, and pending the said action, suspend the officers from all duties.
 - 43.3. Issue a public statement immediately, to:
 - (a) Condemn the gross abuse of police powers;
 - (b) Make an unconditional apology to the LAC Lawyers, and commit that similar incidents would not recur;
 - (c) Commit itself and its institutions to upholding and defending the Rule of Law and fundamental rights in the Federal Constitution;

- (d) Commit itself and its institutions to ensure that Article 5(3) of the Federal Constitution, which guarantees an arrested individual's right of access to a legal practitioner of his/her choice, is upheld at all times.
- (e) Commit itself and its institutions to, in particular, upholding and defending the fundamental rights of advocates and solicitors to discharge their responsibilities to their clients in an environment free from threats and intimidation and unhindered by law enforcement agencies; and
- (f) Commit to establishing the Independent Police Complaints and Misconduct Commission (IPCMC) in its original form to serve as an independent external oversight mechanism.

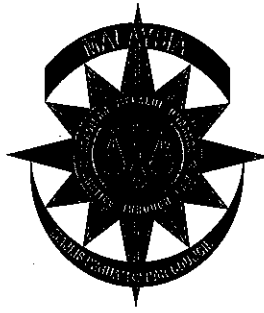
Submitted by:



Ragnath Kesavan
President
Malaysian Bar

Dated this 22nd day of June 2009

Appendix A



Majlis Peguam Bar Council Malaysia

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Arrests of lawyers a blatant transgression of the rule of law

The Malaysian Bar strongly condemns the arrest last night of five lawyers at the Brickfields Police Station who were there to represent their clients.

We are shocked and disgusted by this blatant transgression of the rule of law. By their action, the police personnel in question have demonstrated utter disrespect and blatant disregard for the criminal justice system that they are duty-bound to uphold and protect. They have violated the specific provisions in the Criminal Procedure Code guaranteeing access to lawyers. Although there is an exception to this provision, it cannot by any stretch of the imagination be turned into a right to arrest lawyers who are waiting to render legal representation to their clients.

The police action makes an absolute mockery of the constitutional right to legal representation and is a travesty of justice. We call on the Inspector-General of Police to immediately explain this gross abuse of police power.

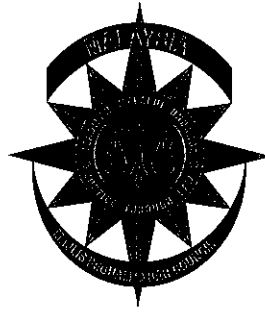
This unprecedented conduct by the police has far-reaching consequences. It means arrested persons can be denied access to their lawyers without challenge. And when their lawyers are denied access and are forced to wait outside the police station, the lawyers themselves are at risk of arrest.

We acknowledge all our colleagues who have come to the aid and defence of those arrested by the police simply because they have chosen to exercise their fundamental right to assemble peaceably. We salute our colleagues from the Kuala Lumpur Legal Aid Centre – Fadhah Nadwa Binti Fikri, Murnie Hidayah Binti Anuar, Puspawati Binti Rosman, Ravinder Singh Dhaliwal and Syuhaini Binti Safwan – who, without regard for their own safety and well-being, voluntarily went to the aid of those arrested, only to be arrested themselves. They have exhibited great courage and by their actions have demonstrated the highest standards of the Malaysian Bar. Their exemplary sense of duty and professionalism stands in stark contrast to the despicable conduct of the police.

Ragunath Kesavan
President
Malaysian Bar

Abolish the ISA! Release all detainees immediately.

8 May 2009



Majlis Peguam Bar Council Malaysia

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PRESS RELEASE

Criminal justice system is the foundation of social order

It is very clear, from the comments reported in the press in recent days, that the Minister for Home Affairs, the Inspector-General of Police and the Minister in the Prime Minister's Department, among others, have wholly misconstrued the position of the Malaysian Bar in respect of the arrests of Fadiyah Nadwa binti Fikri (Secretary), Murnie Hidayah binti Anuar, Puspawati binti Rosman, Ravinder Singh Dhaliwal (Chairperson) and Syuhaini binti Safwan from the KL Legal Aid Centre ("the LAC lawyers").

The crux of the issue is that the LAC lawyers were arrested in the course of carrying out their professional obligations as advocates and solicitors, in accordance with the law of the land. There is a crucial difference between such detention and previous incidents where lawyers were arrested when acting as private citizens. There are sufficient guidelines to regulate the role and responsibilities of lawyers, which stipulate that lawyers should not place themselves in a position of conflict. The LAC lawyers were at the police station to render legal assistance, and at no time were they part of the alleged unlawful assembly.

Section 28A (4) of the Criminal Procedure Code (CPC) and Article 5 of the Federal Constitution guarantee an arrested individual's right of access to a legal practitioner of his/her choice, and these provisions must be upheld. Logically, lawyers can only provide such legal assistance if they are present at the police station.

The Malaysian Bar is therefore neither seeking nor expecting preferential treatment nor exemptions from the law. It is seeking instead to uphold the fundamental right of lawyers to have access to their clients. It is this role that we are modelling.

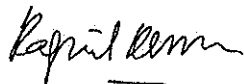
The presence of a lawyer when an accused is questioned or arrested promotes accountability because lawyers serve as a check-and-balance, on the spot, against police excess. It must be

remembered that the police force, as a law enforcement agency, commands far more physical and tangible power than any other public service agency, and hence a mechanism for accountability is all the more necessary. Access to legal counsel is thus a cornerstone of our criminal justice system, and a crucial safeguard for the rights of a detained person.

It is ironic that Datuk Seri Mohamed Nazri should now characterise the Malaysian Bar's intention to file suit over the arrests as "an attempt to intimidate enforcement authorities from discharging their duties" when, in reality, the arrests were clearly a form of harassment to obstruct the lawyers from discharging their responsibility to provide legal representation to their detained clients. It is not the action of the LAC lawyers that has undermined the legal system but rather the arbitrary action of the police in arresting them while they were performing their duty.

We shall proceed with legal action to determine the role and position of advocates and solicitors in such situations and to seek clarification of the scope of Section 28A (4) of the CPC, which we believe the police breached in this instance.

The government must accept dissent as a legitimate form of expression and a democratic norm. As much as it may be unpalatable, it must not be silenced but countered with reforms and concrete changes.



Ragnath Kesavan
President
Malaysian Bar

19 May 2009

Appendix C

Malaysian Bar resolution from its Extraordinary General Meeting held on 15 May 2009

Whereas on the night of 7 May 2009, five members of the Kuala Lumpur Legal Aid Centre, Fadiyah Nadwa binti Fikri (Secretary), Murnie Hidayah binti Anuar, Puspawati binti Rosman, Ravinder Singh Dhaliwal (Chairperson) and Syuhaini binti Safwan (collectively known as the "LAC Lawyers"), in their capacity as Advocates & Solicitors, had requested the police at the Brickfields Police Station for access to the detained persons who were arrested that same night whilst holding a candlelight vigil at the same Police Station over the recent arrest of political scientist Wong Chin Huat.

Whereas Article 5(3) of the Federal Constitution entrenches the fundamental right of a person to consult and be defended by the legal practitioner of his/her choice. Further, subsections 28A(2) to (7) of the Criminal Procedure Code ("CPC") set out in detail the rights of arrested persons including their right to communicate and consult with a legal practitioner of their choice.

Whereas the Police denied the LAC Lawyers access to the detained persons, the Police, without any reasonable grounds, proceeded to arrest the LAC Lawyers and only released them on police bail the following day at around 3 p.m., notwithstanding the repeated requests by other lawyers for their immediate release.

NOW IT IS HEREBY RESOLVED THAT THE MALAYSIAN BAR:

1. Strongly condemns and denounces the wrongful arrest, detention and interrogation of the LAC Lawyers.
2. Strongly condemns and denounces the blatant transgression of the rule of law and the constitutional right of every person to counsel and access to justice.
3. Strongly condemns the unnecessary arrest and detention of those exercising their constitutional right to assemble peaceably.
4. Strongly condemns the arbitrary, improper and frequent resort by the Police to section 28A(8) of the Criminal Procedure Code, thus denying an arrested person access to counsel and making the right provided under section 28A(3) meaningless.
5. Strongly condemns and denounces the appalling treatment of the LAC lawyers and all those held in custody, including compelling them to wear lock up uniforms and unnecessarily handcuffing them.
6. Strongly condemns and denounces the Police for deliberately refusing to disclose to

their family or their lawyers any information in relation to the LAC lawyers after their arrest, including their location and their next course of action.

7. Demands the resignation of the Minister for Home Affairs, the Inspector-General of Police, OCPD ACP Wan Abdul Bari bin Wan Abdul Khalid and DSP Jude Pereira of the Brickfields police station over this shameful incident.

8. Condemns the gross abuse of police powers and demands that the Government offer an unconditional apology to the LAC Lawyers.

9. Demands that the Government commit to and uphold the Rule of Law as enshrined in the Federal Constitution.

10. Reiterates its previous calls on the Government to establish the Independent Police Complaints and Misconduct Commission (IPCMC) in its original form to serve as an independent external oversight mechanism.

11. Demands that the Government uphold and defend the fundamental rights of advocates and solicitors to discharge their responsibilities to their clients in an environment free from threats and intimidation and unhindered by law enforcement agencies.

Proposed by: Rangunath Kesavan

Dated: 8 May 2009

The motion, as amended, was unanimously carried.