

27th October Malaysian Day For the Abolition of Detention Without Trial laws

27th October should be recognized as the Malaysian Day For the Abolition of Detention Without Trial laws. In 1987 on this day, Operation Lallang happened, where about 106 persons, including human rights defenders, women activist, politicians, worker rights activist, religious groups and others were arrested and detained without trial under the Detention Without Trial law, Internal Security Act 1960.

Internal Security Act Repealed but Detention Without Trial lives on

In July 2012, the ISA was repealed. The Emergency (Public Order and Crimes Prevention) Ordinance 1969, another draconian detention without trial(DWT) law also is gone. However, the Dangerous Drugs (Special Preventive Measures) Act 1985 remained as the only remaining DWT law.

There was hope that soon all other remaining detention without trial laws would also be repealed, but this did not happen. A new DWT law was enacted, being Prevention of Terrorism Act 2015 (POTA). Then the Prevention of Crime Act 1959 (POCA) was amended to include detention without trial for a wide scope of alleged crimes.

DWT Scope no longer about 'national security' but expanded to cover so many crimes

The scope of preventive detention laws was expanded, and today it can be used even against persons alleged of committing any of the Penal Code offences including murder, robbery, theft and rape. It can be used against traffickers in dangerous drugs, including persons who live wholly or in part on the proceeds of drug trafficking; traffickers in persons, including persons who live wholly or in part on the proceeds of trafficking in persons; persons concerned in the organization and promotion of unlawful gaming; smugglers of migrants, including persons who live wholly or in part on the proceeds of smuggling of migrants; Persons who recruit, or agree to recruit, another person to be a member of an unlawful society or a gang or to participate in the commission of an offence; and Persons who engage in the commission or support of terrorist acts under the Penal Code.

As such, the two persons convicted of the murder of Altantuya Shaariibuu could have also been subjected to DWT laws but fortunately they were accorded their right to a fair trial.

Who gets subjected to DWT laws, and who gets charged and tried result in discrimination and a violation of Article 8(1) of the Federal Constitution that states 'All persons are equal before the law and entitled to the equal protection of the law.'

The reasons why one becomes a victim of DWT laws cannot be reviewed or challenged in court. This means that an innocent person can wrongly suspected by the administration of a crime, and can be detained without trial for up to 2 years, and extended thereafter indefinitely for 2 years at a time.

Besides detention, the said DWT law victim can also be subjected to Restriction Orders and/or Supervisory Orders that removes one's freedom of movement, association and other activities. All these can be done to victims of DWT laws without being accorded the right to defend one's self, in denial of the right to a fair trial, and worse the inability to challenge the reasons and orders in court.

Even the convicted criminal can walk free until their appeals, but not DWT law victims

Even a convicted criminal like former Prime Minister Najib Razak, have the right to 2 appeals in

court, and in the meantime is free to walk around freely and remain a Member of Parliament.

On the other hand, victims of DWT laws are denied their freedoms and rights, without even being tried and convicted by court. This injustice must end.

DWT laws even remove judicial discretion during remand proceedings, as Magistrates have no choice but to allow remand as provided by these DWT laws.

DWT law victims are denied the right to fair trial, he does not have the right to defend himself at all.

DWT laws - Protection and/or Preferential treatment of 'criminals'

Persons who committed murder, robbery, drug trafficking and a range of offences could escape trial and convictions resulting in long prison sentences and even death, if the DWT laws are used, and these who did commit crimes can end up being released in a couple of years. A murderer could be free in 2 years, when if tried and convicted, he would have been sentenced to death.

A trial is open to the public, and reasons not to charge may be because there maybe something that the government may want to hide from the general public. As such DWT laws can be abused to protect other criminals, and even their bosses or persons who instructed them to commit crime.

DWT laws – promotes incompetence of police and law enforcement

If DWT laws are used then the police and/or prosecution simply do not have to work hard to find evidence to prove someone is really guilty. Would simply subjecting one to DWT laws mean criminal investigation files are closed? This may mean that the innocent may languish in DWT detention, whilst the truly guilty may still be free out there.

It is certainly not for the police or the government to decide who is guilty and who is not – that is role and duty of judges and courts after a fair trial. One must never forget the presumption of innocence until proven guilty after a fair trial before independent judges.

How many victims of DWT laws? What is the alleged crimes?

Malaysia is not transparent in disclosing the number of current victims of the DWT laws, and for what allegation are they being made victims of DWT laws.

The victims may not be prominent politicians or personalities, but all Malaysians ought to be concerned about this large group of victims of DWT laws, who are denied even their fundamental right to a fair trial.

MADPET (Malaysians Against Death Penalty and Torture) reiterates the call for the immediate abolition of all Detention Without Trial Laws. Everyone should be accorded the right to a fair

trial.

MADPET also calls for the immediate and unconditional release of all those currently detained or restricted under DWT laws.

MADPET urges political parties and/or coalition to all political parties to take a clear stand for the abolition of all Detention without Trial Laws. A clear party position prevents U-turns when they come into power.

MADPET proposes longer periods of remand for certain serious 'national security' crimes, to enable police and law enforcement to complete their investigation, and for an immediate moratorium on the use of DWT laws pending abolition.

MADPET urges the government to forthwith provide quarterly report on the number of victims of the different DWT laws, whether they be detained, restricted and/or under other orders.

Charles Hector

For and on behalf of MADPET(Malaysians Against Death Penalty and Torture)

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