

**MEMORANDUM
ON
THE NEW PROBE INTO THE
DEATH OF TEOH BENG HOCK**

**FROM
TEOH BENG HOCK TRUST FOR DEMOCRACY**

**TO
TAN SRI IDRUS HARUN
ATTORNEY GENERAL OF MALAYSIA**

ON

28th AUGUST 2020

1) EXECUTIVE SUMMARY

Teoh Beng Hock Trust for Democracy calls upon the Attorney General of Malaysia (AG) Tan Sri Idrus Harun to review the new probe into the death of Teoh Beng Hock under the section 342 (wrongful confinement) of penal code.

We urge the AG to look into the ruling of the court of appeal on 5 September 2014, which clearly stated there was criminal element in the death of Teoh. The AG should instead order the police to investigate the case under section 304 (culpable homicide) or 302.

2) BACKGROUND

In July 2009, Malaysian Anti-Corruption Commission (MACC) initiated a large-scale investigation against seven Pakatan Rakyat Selangor state assemblymen in relation to the use of state funds in their respective constituencies.

On 15 July 2009, MACC officers raided the office of Selangor State Executive Councillor Ean Yong Hian Wah and detained his political secretary Teoh Beng Hock at the headquarter of Selangor MACC located in Plaza Masalam, Shah Alam since 6pm.

The marathon interrogation against Teoh continued until mid-night. The next day, Teoh was found dead at the 5th floor roof top of Plaza Masalam. His death shocked the nation and led to several public protests.

Despite Teoh family, civil society and opposition parties called for a royal commission of inquiry (RCI) to probe Teoh's death and bring the perpetrators to justice, the Prime Minister Dato' Seri Najib Razak ordered an inquest and promised that he would leave no stone unturned.

During the inquest, prominent Thai Pathologist Dr. Pornthip, who was invited by Selangor state government to participate in the second autopsy, discovered pre-fall injuries on Teoh's neck and concluded that Teoh's death was 80% attributed to homicide.

On 5 January 2010, the coroner Azmil Mustapha Abas delivered an open verdict in the inquest into the death of political aide Teoh Beng Hock. The result caused public outcry. Subsequently, the Prime Minister announced setting up of a royal commission of inquiry to probe the cause of death of Teoh Beng Hock.

Disappointingly, the RCI commissioners chaired by the then Federal Court judge James Foong made a conclusion on 21 July 2011 that Teoh was driven to suicide due to the aggressive interrogation method deployed by MACC officers.

Teoh family continued to pursue justice for Beng Hock through application of judicial review of the inquest result. However, on 1 December 2011, Shah Alam high court rejected Teoh family's appeal and maintained the open verdict ruling.

On 5 September 2014, the Court of Appeal overturned the ruling and instructed the Inspector-General of Police to re-open the case.

The significance of the appellate court ruling was that it **concluded “one or more unknown persons caused the death of Teoh Beng Hock, including MACC officers”**. Which means their culpability of causing Teoh’s death must be pursued under the penal code.

Unfortunately, the police re-opened the case with no intention to discover the truth. After 20 months of investigation, the Minister at the Prime Minister’s Department Nancy declared “no criminal element” in Teoh’s death.

3) FRESH PROBE AND CHANGE OF INVESTIGATION DIRECTION

On 20 June 2018, one month after the 14th general election which witness the fall of BN federal government, Minister of Finance Lim Guan Eng announced that the cabinet had agreed to re-open the case of Teoh Beng Hock.

In response to the latest move, Teoh Beng Hock Trust for Democracy urged the new government to form a task force comprised of AG, police, SUHAKAM, Bar Council and SUARAM to conduct the fresh investigation. But the government ignored the call.

On 10 January 2019, Teoh Beng Hock Trust for Democracy submitted a memorandum to the representative of IGP Tan Sri Fuzi Harun, seeking an explanation that whether the police have received the instruction from AG chamber and why the new investigation has not been carried out.

Thereafter, Home Minister Tan Sri Muhyiddin Yassin said that the new investigation had been ongoing after the police received an instruction from AG to reopen the case in July 2018. Fuzi explained to the media that the police had submitted the report to the AG, but AG was asking for more information.

On 25 June 2019, Selangor police requested Teoh Lee Lan to give statement to assist their probe into Teoh’s case under section 342 wrongful confinement of penal code. We criticised the police had changed the investigation direction and disregarded MACC officers’ responsibility in causing the death of Teoh.

Section 342 of the Penal code states that “Whoever wrongfully confines any person shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand ringgit or with both.”

This is in stark contrast to the recommendations of Teoh Beng Hock Trust for Democracy and Teoh family that those MACC officers involved should be prosecuted under the Section 304 of culpable homicide or section 302 of murder that upon conviction the perpetrators will face severe punishment.

Indeed, the police have re-categorised the case from culpable homicide to a procedural responsibility. This has indifferently disregarded the criminal responsibility in causing the death of Teoh and give a lighter punishment to MACC officers.

4) Parliamentary Answers and the appointment of Solicitor-General

Lately, in Parliamentary answers to the question of YB Lim Lip Eng (Kepong) and YB Khoo Poay Tiong (Kota Melaka) in July and August 2020 respectively, the Home Minister said that the police had submitted the investigation paper to the AG chamber on 24 February 2020, but the AG Chamber instructed the police to continue the investigation.

We stress that the AG chamber must uphold rule of law of the land. Given that the Court of Appeal had ruled that there was pre-fall injury on the neck of Teoh, apparently criminal force had been applied to Teoh before he fell to the 5th floor of Plaza Masalam.

The AG and police must investigate the possibility of homicide or murder, it is morally wrong to ignore the evidence presented in front of the court of appeal and use wrongful confinement section to investigate the case.

We would like to register our strong protest of the appointment of Abdul Razak Musa as the new Solicitor-General on 9 July 2020. Abdul Razak is a controversial figure who demonstrated that Teoh strangling himself to death by a tie during the inquest.

Abdul Razak was also tarnished the image of the government by ridiculing the disability of the late Karpal Singh, which almost be cited for contempt. The AG Chamber should revoke Abdul Razak's appointment and strictly prohibit him from investigating the death of Teoh.

5) OUR DEMANDS

- (a) Acknowledge the ruling of the Court of Appeal that criminal force exist in the death of Teoh, and provide open explanation that why a pre-fall injury was investigated under the wrongful confinement provision (section 342).
- (b) The AG should instruct the police to investigate the death of Teoh Beng Hock under section 304 (culpable homicide) or 302 (murder). All MACC officers involved in the death of Teoh must be summoned for investigation.
- (c) Revoke the appointment of Abdul Razak Musa as Solicitor General and strictly prohibit him from investigating the death of Teoh.

ABOUT US

The mission of the Teoh Beng Hock Trust for Democracy is to commemorate the life of the late Mr Teoh Beng Hock, who died on July 16, 2009, being a victim of political persecution and custodial torture by the State. The Trust is established to make the legacy of Mr Teoh Beng Hock an invaluable asset to Malaysian society by working towards a democratic nation free from political persecution, torture and human rights violations.

Chairperson : Ng Geok Chee

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