

TIME RECEIVED

March 30, 2016 3:41:20 PM GMT+02:00

REMOTE CSID

0041227107501

DURATION

274

PAGES

12

STATUS

Received

FROM :

FAX NO. :0041227107501

30 Mar. 2016 14:36 P 1

PERUTUSAN TETAP MALAYSIA

KE PEJABAT BANGSA-BANGSA BERSATU
DAN BADAN-BADAN ANTARABANGSA
DI GENEVA

TEL.: (004122) 7107500
FAKS.: (004122) 7107501
(004122) 7107511 (LABOUR)
E-MAIL: mwgeneva@kln.gov.my



MISSION PERMANENTE DE LA MALAISIE

AUPRÈS DE L'OFFICE DES NATIONS UNIES
ET DES AUTRES ORGANISATIONS
INTERNATIONALES À GENÈVE

INTERNATIONAL CENTER COINTRIN (ICC)
1^{ER} ÉTAGE, BLOC H
20, ROUTE DE PRÉ-BOIS
CASE POSTALE 1834
CH-1215 GENEVA 15

Ref: SR (376) 826/8/10/2(a)

30 March 2016

Mr. David Kaye

Special Rapporteur on the promotion and protection
of the right to freedom of opinion and expression

Mr. Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly
and of association

**RESPONSE TO THE JOINT COMMUNICATION AL MYS 3/2015 DATED 18
AUGUST 2015 CONCERNING THE ALLEGED VIOLATIONS OF FREEDOM
OF EXPRESSION IN MALAYSIA, INCLUDING THE BLOCKING OF THE
WEBSITE "SARAWAK REPORT" AND HARASSMENT OF ITS
JOURNALISTS, AS WELL AS THE SUSPENSION OF TWO OTHER NEWS
OUTLETS, AND ARREST OF PEACEFUL PROTESTORS.**

Dear Sirs,

The Government of Malaysia had reviewed the Joint Communication ref: AL MYS 3/2015 dated 18 August 2015 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association (the Experts) concerning alleged violations of freedom of expression in Malaysia, including the blocking of the website "Sarawak Report" and harassment of its journalists, as well as the suspension of two other news outlets, namely the "Edge Financial Daily" and the "Edge Weekly" and arrests of peaceful protestors.

2. The Government of Malaysia regrets that the summary of the case contained in the Joint Communication and the corresponding observations are not entirely accurate. This response will account the accurate facts which clearly demonstrate blatant violation of Malaysian laws on the part of the operators of the Sarawak Report website and the other two news outlets i.e. the Edge Financial Daily and the

Edge Daily which led to the actions taken against them in accordance with the law, while observing the necessary safeguards as recognized by law. These facts also showed unequivocally that at all stages of the actions taken by the authorities, no harassment in any manner took place against any individuals related to the matter.

3. The Government of Malaysia's responses and comments on the issues raised in the Joint Communication are prepared in the interest of fair play and transparency, and are based on official records and information after due consultation with the relevant Malaysian authorities.

ISSUE 1 – Accuracy of the facts alleged in the case summary in the Joint Communication

Response:

(a) **Blocking of "Sarawak Report" news blog and suspension of other news outlets**

4. Sarawak Report has been publishing articles on issues related to Sarawak and the Government of Malaysia since 2010. On 16 July 2015, a complaint was lodged by the public to the Malaysian Communications and Multimedia Commission (MCMC) regarding articles published by Sarawak Report. MCMC had assessed the complaint and found that the articles violated section 233 of the Communications and Multimedia Act 1998 (Act 588) by Sarawak Report.

5. Under section 263(2) of Act 588, internet service providers under the Act shall, upon written request by the MCMC or any other authority, assist the MCMC or other authority as far as reasonably necessary in preventing the commission or attempted commission of an offence under any written law of Malaysia or otherwise in enforcing the laws of Malaysia, including, but not limited to, the protection of the public revenue and preservation of national security.

6. The MCMC is statutorily tasked to implement and enforce the provisions of the communications and multimedia law in Malaysia and is under the duty to educate the public and other media outlets through public statements regarding the sharing of information, especially content or articles that are misleading or false, that could create a state of unrest and threaten the stability of the nation, public order and economic stability. Misleading or false reporting, or the spread of misinformation, can destabilise the peace and harmony of a country, its economy and national security. As such, the Government reserves the right to take action against any party who falsely or misleadingly reports anything, or spreads such misinformation. Reposting stories or information from other sources which are false or misleading may also be in breach of Act 588.

7. While the Government will not censor the Internet, this does not mean that any person may disseminate illegal content with impunity and without regard to the law. To the extent that any act is illegal in the physical world, it will similarly be outlawed in the online environment. Hence, laws prohibiting dissemination of, for example, indecent / obscene or other illegal materials will continue to apply. In this regard, the Government will continue to take appropriate actions and enforce the relevant laws.

(b) Temporary Suspension of The Edge Financial Daily and The Edge Weekly

8. The Ministry of Home Affairs had suspended the publishing permit of *The Edge Financial Daily* and *The Edge Weekly* for three months from 27 July 2015 pursuant to section 7(1) of the Printing Presses and Publications Act 1984. This was due to the reporting on 1Malaysia Development Berhad by the two publications were prejudicial or likely to be prejudicial to public order, security or likely to alarm public opinion or is likely to be prejudicial to public and national interest. The said decision was nevertheless challenged in the court and the Kuala Lumpur High Court on 21 September 2015 quashed the said suspension order issued by the Ministry of Home Affairs. On 23 September 2015, the Ministry of Home Affairs filed an appeal against the decision. The case is now awaiting hearing before the Court of Appeal.

(c) Arrests of peaceful protesters

9. On 1 August 2015, thirty (30) individuals including a 14 year old child were detained in Kuala Lumpur by the Royal Malaysia Police, under section 143 of the Penal Code (participating in an unlawful assembly) and section 8 of the Explosives Act 1957 (possessing explosives under suspicious circumstances). The individuals had unlawfully assembled inside a commercial premise and caused disturbances to the daily activities of the premise. They also did not heed instructions from the police to disperse peacefully. Twenty-nine (29) of those who were arrested were brought to court to be remanded to facilitate investigations, and were released on police bail after the expiry of the remand. The 14 year old child was not remanded, and was released on police bail on the same day.

10. The three (3) activists who were detained on 31 July 2015 prior to the unlawful assembly were detained as they were suspected to have committed offences under section 124B of the Penal Code (activities detrimental to parliamentary democracy).

ISSUE 2 – Legal grounds for the charges against Ms. Rewcastle-Brown as well as how these measures are compatible with international human rights norms and standards governing freedom of opinion and expression

Response:

11. Police reports had been made against persons both within and outside the country which had been investigated under sections 124B and 124I of the Penal Code. In this regard, an arrest warrant had been issued in Malaysia against Ms Clare Rewcastle Brown @ Clare Louise Brown on 5 August 2015 in relation to the ongoing investigation by the Royal Malaysia Police under section 124B of the Penal Code in relation to allegations that the Sarawak Report website, an online publication, administered/ run by/ managed by Ms Clare Rewcastle Brown had on 30 July 2015 published a false report and draft charge sheet in the article entitled "*Arrest Warrant for the Prime Minister – The Real Reason The Attorney General Was Fired*" in order to implicate the Honourable Prime Minister of Malaysia with criminal offences.

12. With reference to the investigation which had been carried out by the Royal Malaysia Police under sections 124B of the Penal Code, the Government of Malaysia emphasizes that this is a serious offence under the Malaysian law.

13. Under section 124B of the Penal Code it is a criminal offence to commit an activity detrimental to parliamentary democracy by any means, directly or indirectly. The offence is punishable with imprisonment for a term which may extend to twenty years.

ISSUE 3 – Steps taken by the Malaysian Government to ensure that speech in Malaysia is granted all the protections afforded under international human rights law, in addition to any steps taken by Malaysia to ratify the International Covenant on Civil and Political Rights (ICCPR)

Response:

(a) Freedom of Speech and Expression in Malaysia

14. It is pertinent to emphasize that the Government of Malaysia is consistent in meeting its international commitment to ensure freedom of opinion and expression in Malaysia, for so long as the exercise of such freedom is in line with the applicable laws, rules and regulations. While Malaysia is not a state party to the ICCPR, freedom of opinion and expression, is protected under the Federal Constitution of Malaysia. In line with article 19 of ICCPR and article 29 of UDHR which provides that the enjoyment of all rights and freedoms is subject to restrictions and limitations as may be determined by law to meet the just requirements of national security and public order, the right to freedom of expression is not absolute and is restricted only

insofar as it infringes upon the rights of others or threatens the peace and harmony of the country.

15. The right to freedom of speech and expression is guaranteed under article 10 of the Federal Constitution of Malaysia. The Sedition Act 1948 represents limited restrictions of those rights which are clearly permitted by articles 10(2) and 10(4) of the Federal Constitution, and in consonant with Article 19 of ICCPR and Article 29 of UDHR.

16. In line with the Government's commitment to ensure that freedom of expression is guaranteed, amendments to the Printing Presses and Publications Act 1984 were implemented effective 15 July 2012 to provide more freedom for media practitioners, which included, amongst others:

- i. Publishers of periodicals no longer need to renew their permit every year. Only one application is needed to obtain a permit, which shall remain valid so long as it is not revoked.
- ii. Permit holders under the Act shall be given an opportunity to be heard before a decision is taken to suspend or revoke a periodical publication, and a judicial review can also be conducted.

17. The amendments towards the Printing Presses and Publications Act 1984 represent ongoing efforts undertaken by the Government in guaranteeing freedom of speech and expression in Malaysia, in line with democratic principles and the structure of a pluralistic Malaysian society.

18. In exercising such guarantee to freedom of speech and expression, media practitioners should exercise more responsibility in ensuring their reports are based on reliable, substantiated and verified sources. They should take into consideration the interests of society, citizens, and the country, and should not undermine unity, public well-being and national security.

(b) Ratification of ICCPR

19. With regard to ratification of ICCPR, the Government wishes to clarify Malaysia's position that any State that becomes a party to the ICCPR shall fully comply with certain provisions of this important human rights treaty without any form of reservation. Article 4 of the ICCPR identifies certain rights which are absolute, which a State Party can never derogate, even in times of public emergency that threatens the life of the nation. Malaysia at this stage will be compelled to uphold the provision of its current laws and policies in this aspect. The Government also understood that in the event that a State becomes a party to the ICCPR, immediate actions shall be undertaken from legislative, policies and administrative aspects. It is

actions shall be undertaken from legislative, policies and administrative aspects. It is further highlighted that as any accession to a treaty is the sovereign right of the State, Malaysia should be allowed policy space to decide on the possible accession when its domestic legal framework is in place to ensure full compliance with international obligations. The decision to accede to any international human rights instruments, including ICCPR, will be decided based on the domestic requirements of the country, taking into account elements which are unique to Malaysia, including its diverse social and cultural values, religions and local sensitivities. Further, Malaysia firmly believes that reserving its sovereign rights on accession to instruments does not in any way preclude the full enjoyment of human rights.

ISSUE 4 – The legal grounds for the arrests of the aforementioned peaceful protestors, and charges brought against them, and to indicate how these measures are compatible with international human rights norms and standards governing freedom of peaceful assembly

Response:

20. The Government reiterates that the arrests were carried out as a result of the actions of the individuals which contravened the law in force in Malaysia. The clarification provided in the preceding paragraphs for issues 1 and 2 are applicable. .

ISSUE 5 – Measures that have been taken in relation to Malaysia's commitment made at the Universal Periodic Review to consider repealing the Sedition Act of 1948 and bringing its domestic legislation into line with its international obligations

Response:

21. In the context of the complex racial and religious beliefs of Malaysian society, the Sedition Act 1948 is necessary and relevant to guarantee that freedom of speech, opinion, and expression are not abused and will not lead to racial and religious tensions that would threaten harmony, peace and security of Malaysia. Among the reasons behind the decision to charge certain individuals under the Sedition Act 1948 is because of the potential of the individuals' act, speech, words, or publication to turn into violence.

22. With regard to the possible review of the Sedition Act 1948, the Government on 12 September 2014 had issued a press release which emphasised that a balance must be struck between the freedom of expression and its limitations as provided through legislation. This is to protect the essential principles that have been upheld by the nation thus far under the Federal Constitution. It also highlighted that it was imperative that proposals to amend or replace the Sedition Act should result in strengthening national harmony as well as enhance peace and security. At the same

time, the proposals should ensure and protect Malaysians from radical, extreme and fanatical movements apart from curbing racial and religious extremism. Thus, until the Government completes its deliberations, the Sedition Act 1948 remains in force to preserve national harmony and security, and to prevent those who might undermine it.

23. In the recent case of *PP v Azmi Bin Sharom [2015] MLJU 594*, questions of law pertaining to the Sedition Act and its constitutionality was referred to the Federal Court, the apex court in Malaysia. The Federal Court had declared the Sedition Act 1948 as valid and constitutional and does not contravene Article 10(2)(a) of the Federal Constitution. The Court had ruled as follows:

...[30] By Art 10(2), Parliament is given the right to impose such restrictions as it deems necessary or expedient in the interest of the security of the Federation and other grounds enumerated in clause (2)(a). What this means is that Parliament or the legislature is not free to impose any restrictions as they fancy; the restrictions must fall within the parameters set out by clause (2) (a) of Art 10.

...[43] In this regard, we agree with the learned Judge in Sivarasa Rasiah, that the restriction that may be imposed by the legislature under Art 10 (2) is not without limit. This means to say that the law promulgated under Art 10 (2) must pass the proportionality test in order to be valid. This, in our view is in line with the test laid down in Pung Chen Choon discussed earlier. Having said that, we will now consider whether s 4(1) of the Act would pass the proportionality test. One thing is clear, this section is directed to any act, word or publication having a "seditious tendency" as defined in s 3 (1) paras. (a) to (f) of the Act. This in our view is consistent with Art 10 (2) (a) and Art 10 (4) of the Constitution, as it cannot be said that the restrictions imposed by s 4(1) is too remote or not sufficiently connected to the subjects/objects enumerated in Art.10 (2) (a). Furthermore, this is not a total prohibition as it is subject to a number of exceptions as provided in s 3(2) of the Act. As legislated, it is not seditious to show that any Ruler has been misled or mistaken in any of his measures, or to point out errors or defects in any Government or constitution as by law established. Upon close analysis, we agree with the plaintiff's submission that the restrictions imposed in s4 (1) fall squarely within the ambit or parameter of Art 10 (2) (a) of the Constitution..."

24. The Government takes a serious view on the fulfilment of its commitments and obligations as a member of the international community. The Government reiterates its commitment to the principles and purposes of the Universal Periodic Review mechanism which is an important intergovernmental process that could contribute significantly towards improving human rights at the domestic level, inter alia, by providing a platform for transparent, positive and constructive dialogue. The

Government has committed during the second cycle of the mechanism by accepting in principle the recommendation to repeal the Sedition Act.

25. In this regard, the Government reiterates its position as reflected in the Report of the Working Group on the Universal Periodic Review that the recommendations "accepted in principle" indicates that Malaysia was taking steps towards achieving the objectives of the recommendations but disagrees with the specific actions proposed or that Malaysia was not in a position to implement at this juncture, and that the recommendations will be kept in full view and will be revisited in accordance with national priorities and needs. As a developing country and maturing democracy, Malaysia requires the necessary time and space to continue making improvements to its legislation in the interest of the nation and its people.

26. It is pertinent to emphasize that the Government of Malaysia is consistent in meeting its international commitment to ensure freedom of opinion and expression for its people. While Malaysia is not a state party to the ICCPR, freedom of opinion and expression, as provided in both the ICCPR and the UDHR, is protected under the Federal Constitution of Malaysia. However, as with any other right, the right to freedom of expression is not absolute and is restricted only insofar as it infringes upon the rights of others or threatens the peace and harmony of the country. This is also in line with article 19 of ICCPR and article 29 of UDHR which provide that the enjoyment of all rights and freedoms is subject to restrictions and limitations as may be determined by law to meet the just requirements of national security and public order.

27. The right to freedom of speech and expression is guaranteed under article 10 of the Federal Constitution of Malaysia. The Sedition Act 1948 represents limited restrictions of those rights which are clearly permitted by articles 10(2) and 10(4) of the Federal Constitution.

ISSUE 6 – Measures that have been taken to ensure that human rights defenders, including academics, journalists, students, lawyers and civil society members at large, as well as politicians, are able to carry out their legitimate work in a safe and enabling environment without fear or threats of intimidations and harassment of any sort

Response:

28. Malaysia, particularly in recent times, had taken various steps to further strengthen fundamental freedoms in Malaysia. This would provide the civil society, including human rights defenders, an enabling environment to carry out activities without fear of harassments, stigmatization or criminalization of any kind. Amongst the measures taken by Malaysia that underscores its serious efforts and commitment

to protect human rights in Malaysia was the abolishment of the Internal Security Act 1960 (ISA) which was enacted for the purpose of curbing acts such as subversion and action prejudicial to public order.

29. The promotion and protection of the right to freedom of assembly in Malaysia has also been reaffirmed. The Peaceful Assembly Act 2012 ("PAA 2012) was promulgated to breathe life to Article 10 of the Federal Constitution to enhance the implementation of the right to assemble peaceably as guaranteed by the Federal Constitution.

30. The PAA 2012 is reflective of the international human rights regime and the prevailing laws of other jurisdictions, and thus there is no necessity for legislative amendments to be made to the existing provisions of the PAA 2012. Malaysia reiterates that in enacting this Act, similar laws of various countries and international standards and norms were referred to, including Peaceful Assembly Act 1992 (Queensland, Australia); Assembly Act 1999 (Finland); Public Order Act 1986 (United Kingdom) and Assembly Act 2008 (Germany), as well as OSCE Guidelines.

31. Prior to the enactment of the PAA 2012, the rights of citizens to assemble were governed by the Police Act 1967. The PAA 2012 is seen as a significant progress in terms of human rights elements especially from the perspective that it allow citizens to organize assemblies and participate in assemblies peaceably and without arms subject only to restrictions deemed necessary or expedient in the interest of the security of the Federation or any part thereof or public order, including the protection of the rights and freedoms of other persons. Other salient features of the PAA 2012 that are noteworthy are no requirement to apply for a licence and it does not explicitly grant the power to the police to approve or reject the notification submitted by the organizer. In other words, the permission of the police is not an explicit requirement in the Act. In addition, the organizers have the right to appeal against the restrictions and conditions imposed on the assembly, to the Minister.

32. Apart from the above measures, another measure taken was the establishment of the Human Rights Commission (SUHAKAM) vide the Human Rights Commission of Malaysia Act 1999. SUHAKAM serves as one of the avenues for the civil society including the human rights defenders to voice any grievances or complaints regarding infringement of human rights. SUHAKAM's functions is to, among others, inquire into complaints regarding infringement of human rights. In this regard, SUHAKAM has also conducted several public inquiries to look into matters involving allegations of infringement of human rights, and had engaged with the Royal Malaysian Police on several occasions.

33. Malaysia remains committed to take necessary steps and measures to continuously guarantee the right to freedom of assembly, subject to such restrictions as permitted by international norms and standards.

ISSUE 7 – Measures that have been, or will be, taken to guarantee the exercise of the right to freedom of peaceful assembly in the country

Response:

34. The Government reaffirms its commitments to the norms contained in various international human rights instruments in this matter. Malaysia has constantly adhered to the underlying norms as set forth in the UDHR. The Government also emphasizes that the right to freedom of opinion and expression, and the right to freedom of assembly and association are not absolute rights under international laws. In tandem with the acknowledgment of these rights, the Government would highlight that international laws also recognize that in certain circumstances, limitations or restrictions are necessary for the respect of the rights or reputations of others and the maintenance of social balance, peace and harmony. In particular, the Government reiterates its adherence to Articles 19 and 20 of the UDHR on the right to freedom of opinion and expression and the right for everyone to freedom of association respectively as well as Article 19 of the ICCPR on the right to hold opinions without interference and Article 22 of the ICCPR on the right to freedom of association with others.

35. The Government however maintains its understanding that these rights are not absolute by virtue of the restrictions as outlined in Article 29(2) of the UDHR and the exercise of derogating measures by the State as provided under Article 4(1) of the ICCPR respectively. Thus, Article 19 and 22 of the ICCPR permit some form of restrictions or limitations, whereby if a State Party chooses to limit or restrict this right within the limits prescribed, this is permissible and does not amount to a violation of the right in question.

36. In this regard, the Government notes that any form of duties to the community – as one finds in other jurisdictions – would therefore be a matter of domestic law. Article 10(1) of the Federal Constitution of Malaysia grants, among others, freedom of speech and the right to form associations to all citizen, which are only subject to Article 10(2) of the Federal Constitution itself which permits Parliament by law to impose restrictions in the interest of the security of the Federation, friendly relations with other countries, public order, morality, to protect the privileges of Parliament, to provide against contempt of court, defamation, or incitement to any offence. Specifically on the freedom of association, Article 10(2)(c) and (3) of the Federal Constitution guarantee this right subject only to restrictions imposed through any federal law on the grounds of national security, public order or morality or through any law relating to labour or education.

37. The Government understands that a State must be able to justify that certain limitation satisfies the test of legality, necessity, reasonableness and legitimate

purpose. The Government emphasizes that the measures taken are intended solely for the purpose of facilitating the exercise of the right to freedom of opinion and expression and the right to freedom of peaceful assembly in Malaysia which is in tandem with international standards. The Malaysian laws does not per se prohibit individuals the freedom of opinion and expression or to form, join or participate in any association but rather provides a framework for the authorities to monitor if such rights are being used for purposes prejudicial to or incompatible with the interest of the security of the country, public order or morality.

Conclusion

38. The Government of Malaysia regrets that the summary of facts contained in the Joint Communication is not entirely accurate. The Government observes that the case summary in the Joint Communication almost entirely corresponds and mirrored word-for-word to a 5 August 2015 press statement issued by Article 19, an international civil society organisation based in the United Kingdom. While respecting the important role played by civil society organisations on the issue of human rights, the Government regrets that the Joint Communication in this case relied primarily on one-sided information which was not verified, as well as several opinionated and politically loaded statements which were surreptitiously and ingeniously presented as facts.

39. The Government maintains that the actions taken by the Malaysian authorities in this matter, including the blocking of the website "Sarawak Report" were conducted pursuant to its domestic laws, which are valid and defensible measures in light of its sovereign responsibility in regulating matters relating to information and associations within its territory, as recognized in international law. Pursuant to the responses and observations as asserted in the foregoing paragraphs, the Government of Malaysia takes the position that there is no validity in the alleged violations of freedom of expression in Malaysia, including the blocking of the website of "Sarawak Report" and harassment of its journalists.

40. The Government gives its assurance that the rights which are presently available to all citizens with regard to the right to freely express their opinion and views and freely associate with others shall continuously be observed in accordance with the Federal Constitution and other domestic laws of Malaysia. The Government also reiterates its commitments on the protection, promotion and implementation of all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms.

41. Based on the foregoing, the Government of Malaysia requests the Experts to present the above observations to the attention of the Human Rights Council.

Please accept, Sirs, the assurances of my highest consideration



ZAHID RASTAM
Chargé d'Affaires a.i