



*Permanent Representative of Malaysia
Geneva*

4 June 2020

Mr. David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion
Office of the High Commissioner for Human Rights (OHCHR)
Palais des Nations
1211 Geneva

Mr. Nils Melzer


Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment
Office of the High Commissioner for Human Rights (OHCHR)
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Dear Sir,

I refer to the Joint Communication dated 28 November 2019, bearing reference no. JAL
MYS 3/2019.

2. I wish to hereby transmit in the **ANNEX** the response of the Government of Malaysia to the afore-mentioned case.
3. In thanking the Human Rights Council's Special Procedures Mandate Holders for the understanding and cooperation, I express my sincere hope that the attached response from the Government of Malaysia will be fully taken into consideration.

Please accept, Sir, the assurances of my highest consideration.

Best regards,

DATO' DR. AHMAD FAISAL MUHAMAD

**THE GOVERNMENT OF MALAYSIA'S RESPONSE TO THE JOINT
COMMUNICATION CONCERNING THE SITUATION OF MR. WAN JI**

The Government of Malaysia refers to the Joint Communication submitted by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and Mr. Nils Melzer, Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment vide their letter dated 28 November 2019, bearing reference no. AL MYS 3/2019 ("the Joint Communication") to the Permanent Representative of Malaysia to the United Nations Office at Geneva and notes that it was mainly premised on information received regarding, among others, situation of Mr. Wan Ji bin Wan Hussin (Wan Ji). The Government's response to the issues, elucidated in the subsequent paragraphs, are prepared in the interest of fairness and transparency, and based on information and official record of the Government upon due consultation with the relevant Malaysian authorities.

ISSUE 1:

Factual and legal basis for the arrest and the charges against Mr. Wan Ji and compatibility with articles 9 and 19 of the UDHR

RESPONSE:

2. Mr. Wan Ji was charged on 10 September 2014 in the Sessions Court, Shah Alam, for an offence of publishing words deemed insulting against the Sultan of the State of Selangor¹ under Section 4(1)(c) of the Sedition Act 1948 [Act 15]. The case

¹ Malaysia has nine states (Perlis, Kedah, Selangor, Negeri Sembilan, Melaka, Johor, Pahang, Terengganu and Kelantan) headed by a Sultan who is ruler and assumes the role of the Yang Di-Pertuan Agong through a rotation system as decided by the Conference of Rulers under Malaysia's constitutional monarchy system. The Federal Constitution recognises the Yang Di-Pertuan Agong as Supreme Head of Malaysia.

was opened following a police report lodged by a civilian against Mr. Wan Ji for a post he published on his Facebook account "*Wan Ji At-ta'aduddi*" on 5 November 2012. This is consistent with the sovereign right of a State to carry out all legal measures to ensure that its national security, public order, and rights of all its citizens are protected.

3. Mr. Wan Ji claimed trial and was found guilty and convicted by the Sessions Court on 9 April 2019 and was sentenced to nine (9) months imprisonment.

4. Mr. Wan Ji subsequently appealed against the conviction whilst the prosecution cross-appealed on the sentence. The Shah Alam High Court, on 9 July 2019, dismissed Wan Ji's appeal and allowed the cross-appeal in which the High Court upheld the conviction and increased the imprisonment sentence from nine (9) months to twelve (12) months starting from 9 July 2019.

5. On 12 July 2019, Mr. Wan Ji applied for a stay of execution which was granted by the High Court. As such, he was held in prison only for three (3) days starting from 9 to 12 July 2019.

6. In this regard, it is counterfactual to surmise that the arrest and charges against Wan Ji is incompatible with articles 9 and 19 of the UDHR. In fact, the Malaysian authorities had acted in full conformity with relevant domestic and international laws including the UDHR in handling the case. The case was given the due legal process and Mr. Wan Ji was not subjected to arbitrary arrest, detention or exile, consistent with Article 9 of the UDHR. While the Government upholds the principles of freedom of opinion and expression as stipulated under Article 19 of the UDHR, it is also the imperative of the Government to ensure that freedom of opinion and expression are exercised responsibly to prevent the exploitation of social media as a platform for hate speech to thrive.

ISSUE 2:

Investigation into the alleged assault of Mr. Wan Ji by the prison warden in July 2019

RESPONSE:

7. Mr. Wan Ji's allegation that he was physically assaulted by a prison warden was taken seriously and acted upon immediately by the Government.

8. The Prison Department of Malaysia had taken swift action in responding to the allegation by immediately opening an internal investigation upon receiving the report. The investigation team consisted of four (4) officials of Kajang Prison and four (4) officials from the Prison Department.

9. Subsequently, the Royal Malaysia Police (RMP) also opened an investigation under Section 323 of the Penal Code after a police report was lodged by Mr. Wan Ji. A thorough investigation was carried out by the RMP and the investigation papers were submitted to the Public Prosecutor who upon examining the case found no clear and sufficient evidence to prove the allegation made by Mr. Wan Ji.

ISSUE 3:

Measures to repeal the Sedition Act of 1948 and conforming Malaysian legislation with its international obligation

RESPONSE:

10. The Sedition Act 1948 is still relevant in many aspects and plays a key role in preserving societal harmony and public order, especially in a multi-racial, multi-cultural and multi-religious country like Malaysia. Such legislation would prevent irresponsible persons from making seditious statements meant to spread disaffection and disrupt the

peace and harmony enjoyed by all Malaysians. And in the spirit of harmony and mutual respect in the Malaysian society, the Act was amended in April 2015 to include a provision to protect the sanctity and inculcating respect of different religions in Malaysia. The Government is carefully studying the Act before any decision to amend it is made in the future.

ISSUE 4:

Government's efforts towards the ratification of United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

RESPONSE:

11. Malaysia remains committed to ratifying the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) and is undertaking due process towards this end.

12. The Government has also intensified engagements with various stake-holders especially eminent experts CAT Committee, Convention Against Torture Initiative (CTI) and Association of the Prevention of Torture (APT) as well as civil society in this endeavour namely the ACT4CAT Coalition which comprises the Human Rights Commission of Malaysia (SUHAKAM), Malaysian Bar Council, Amnesty International Malaysia, Lawyers for Liberty, and *Suara Rakyat Malaysia* (SUARAM).

CONCLUSION

13. The Government reiterates its commitment to fulfilling its obligations in promoting and protecting human rights. Notwithstanding, all parties should acknowledge that there is no "one size fits all" human rights policy and the realization of the human rights agenda in a particular country must take into account its national context and specificities.

14. The Government of Malaysia requests the foregoing responses and observations be submitted to the kind attention of the Human Rights Council.
