

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA
MYS 6/2014:

1 October 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18, and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning charges against an increasing number of politicians, Members of the Parliament, lawyers, human rights defenders, political activists, academics and journalists in Malaysia among them Messrs. **N. Surendran, Khalid Samad, R.S.N. Rayer, Rafizi Ramli, Viktor Wong and Azmi Sharom**, and Ms. **Teresa Kok**- under the Sedition Act of 1948 for publicly expressing opinions, publishing books, articles, notes or disseminating opinions and information through different channels, including through the Internet and traditional media. According to the information received, at least 23 individuals have been charged under subdivisions (a), (b), and (c) of Section 4(1) of the Sedition Act of 1948 in recent months.

According to the information received:

Mr. N. Surendran, a Member of Parliament from Padang Serai and defence lawyer of an opposition leader, was reportedly charged twice under the Sedition Act. He was reportedly charged under Section 4(1)(c) of the Sedition Act, for a press statement he released on 18 April 2014 and again, on 28 August 2014, under Section 4(1)(b) of the Sedition Act, for a video on YouTube dated 8 August 2014,

both for opinions expressed relative to the case of his client accused of sodomy, alleging the trial and conviction were politically motivated.

Mr. Khalid Samad, a Member of Parliament from Shah Alam, was reportedly charged on 26 August 2014, under Section 4(1)(b) of the Sedition Act, for suggesting during a press conference held in the Parliament premises on 26 June 2014 that an enactment allowing the Selangor Islamic Religious Council (MAIS) to control the State's religious authorities should be reviewed.

Mr. R.S.N. Rayer, a State Assemblyman in Seir Delima, State of Penang, was reportedly charged on 27 August 2014, under Section 4(1)(b) of the Sedition Act, for expressing opinions critical to the political party UMNO, on 20 May 2014 at a State assembly meeting and on 22 May 2014 at a Bukit Gelugur State election campaign near Island Glades, Penang.

Mr. Rafizi Ramli, a Member of Parliament, is reportedly under three separate investigations, including for charges brought in August 2014 under the Sedition Act, for information he allegedly provided to the media, for critical remarks against a political group and for writing a book titled "Reformasi 2.0: Fakta Kes Anwar Ibrahim" (translated as "Reforms 2.0: The Facts of Anwar Ibrahim's Case").

Ms. Teresa Kok, a Member of Parliament from Seputeh, was reportedly charged, under the Sedition Act, on 5 May 2014 for making a satirical video posted on the Internet in January 2014 called "Onederful Malaysia", which was critical of the Government.

Mr. Viktor Wong, political activist and director of the think tank Inter-Research and Studies, is reportedly being investigated, under the Sedition Act, for posting on 31 August 2014 on a note on Twitter, critical of the Inspector-General of Police.

Mr. Azmi Sharom, an associate professor of law at University Malaya, was reportedly charged on 2 September 2014, under Section 4(1)(b) and Section 4(1)(c) of the Sedition Act, for comments he made in an article entitled "Take Perak crisis route for speedy end to Selangor impasse, Pakatan told", published in *The Malay Mail Online* on 14 August 2014.

It is reported that the authorities have made increasing use of the Sedition Act of 1948 to prevent and criminalise the effective exercise of the right to freedom of opinion and expression, including of elected Members of the Parliament, politicians, political activists, human rights defenders, academics, lawyers, students and journalists. Including the above-mentioned cases, it is reported that at

least 23 persons have been charged under the Sedition Act of 1948 in recent months for publicly expressing opinions, publishing books, articles, notes or disseminating information through different channels, including through the Internet and traditional media. It is reported that the scope of the Sedition Act and its implementation are overly broad in that the Act criminalizes democratic speech, including criticism against the Government, its leaders and ruling political parties, and also prevents discussions on political, religious or ethnic issues.

Without prejudging the accuracy of the aforementioned allegations, we wish to express serious concern about the prosecutions under the Sedition Act of 1948 of individuals, including Members of the Parliament, politicians, political activists, human rights defenders, academics, lawyers, students and journalists, for what seem to be a legitimate exercise of the right to freedom of opinion and expression, as set forth in article 19 of the Universal Declaration of Human Rights (UDHR). This right includes the freedom to hold opinions without interference and to impart information and ideas through any media. The Sedition Act further has a detrimental impact on the exercise of the right to freedom of association, as set forth in article 20 of the UDHR and in the Human Rights Council resolution 24/5, in which the Council stresses the obligations of States to respect and fully protect the rights of all individuals to associate freely.

We recall the recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression which emphasise that freedom of expression plays a central role in the effective functioning of a vibrant democratic political system, recalling States' responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated. He added that States must remove any regulation of or restriction upon political speech and expression, outside of restrictions that fall within well-recognized understandings of the permissible limitations on freedom of expression as recognized in international human rights law (A/HRC/26/30).

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 6.

As regards lawyers, the above-mentioned allegations also seem to be in contravention of lawyers' rights to freedom of expression and not to be identified with their client's cause, as enshrined in the Basic Principles on the Role of Lawyers.

We also take note of the Government's commitment expressed in March 2014 during the second cycle of the Universal Periodic Review (UPR), in which your Excellency's Government "accepted in principle" recommendations to repeal the Sedition Act (recommendations 146.48. and 146.49, A/HRC/25/10, and para.7

A/HRC/25/10/Add.1) and we acknowledge article 10 of the Federal Constitution on the right to freedom of speech.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your prompt observations on the following matters:

1) Please provide any additional information and any comment you may have on the above-mentioned allegations.

2) Please provide information concerning the legal grounds for the prosecution of the individuals named above and how these measures are compatible with international human rights norms and standards, in particular articles 19 and 20 of the UDHR.

3) Please provide information on the total number of persons currently charged and the number of persons currently detained, as well as the number of persons sentenced under the Sedition Act of 1948 in the last two years, indicating how these prosecutions are compatible with the aforementioned international human rights norms and standards, in particular article 19 of the UDHR.

4) Please indicate what measures have been taken in relation to Malaysia's commitment made at the Universal Periodic Review to consider repealing the Sedition Act of 1948 and to put Malaysian legislation in conformity with its international obligations.

5) Please indicate what measures have been taken to ensure that human rights defenders, academics, journalists, students, politicians, lawyers and civil society members, are able to carry out their legitimate work in a safe and enabling environment without fear of criminalization.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

In light of the above, we also call your Excellency's Government to take all necessary measures to ensure full compliance of Malaysian legislation, including the Sedition Act of 1948, with international human rights law and standards, particularly in relation to the right to freedom of opinion and expression, as set forth in article 19 of the UDHR. We call on the authorities to refrain from using the Sedition Act of 1948 to prevent and criminalise the lawful exercise of the right to freedom of opinion and expression, especially the right to impart ideas and access to information, including when this is critical to the government and challenges decisions of the judiciary or ruling political parties.

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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

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Special Rapporteur on the rights to freedom of peaceful assembly and
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