

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
MYS 2/2016:

23 March 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **decision by the Malaysian Communications and Multimedia Commission to block *The Malaysian Insider*, and plans to amend the Communications and Multimedia Act**. Similar concerns were addressed in a communication sent on 18 August 2015, see A/HRC/31/79, case no. MYS 3/2015.

According to the information received:

On 25 February 2016, the Malaysian Communications and Multimedia Commission (MCMC) blocked public access to *The Malaysian Insider* online news portal, one of the few independent newspapers in Malaysia, for allegedly violating sections 233 and 263(2) of the Communications and Multimedia Act 1998 (CMA). Section 233 of the CMA defines as an offence the use of network facilities to knowingly make or transmit information that is false, with the intention to harass others. The provision punishes such offenses with fines up to 50 000 Ringgit or with imprisonment up to one year. Section 263(2) of the CMA obliges a licensee to assist the MCMC to prevent the commission of offenses defined in the written law of Malaysia and to enforce the laws of the country. The MCMC has not provided any specific reason for its blocking of the website when it announced its decision. The Communications and Multimedia Minister has reportedly said that *The Malaysian Insider* has been blocked because one of the articles it published quoted a statement that could reportedly confuse the public. It is reported that the blocking was made in connection with an article that *The Malaysian Insider* had published about a corruption scandal involving the Prime

Minister. These allegations are reportedly unsubstantiated and it is alleged that sections 233 and 263(2) of the CMA cannot be invoked in this case.

It is alleged that the blocking of *The Malaysian Insider* is the latest in a series of similar actions. In July 2015, the whistle-blower website *Sarawak Report*, was blocked for allegedly publishing unverified information regarding the Prime Minister. Other websites, including *Medium*, *Outsyed the Box*, *Tabunginsider*, *Jinggo Photopages*, *Din Turtle*, *Asia Sentinel* and *Malaysia Chronicle* have also been blocked.

In addition, the government allegedly plans to amend the Communication and Multimedia Act to increase the fines from 50,000 Malaysian Ringgit to 500,000 Malaysian Ringgit for offences that fall under section 233 of the CMA. The amendments will reportedly also require all bloggers to register their blogs with the MCMC.

While we do not wish to prejudge the accuracy of the aforementioned allegations, we would like to express grave concern at the impact of the MCMC's decision to block public access to *The Malaysian Insider*, which would impose undue restrictions on the legitimate exercise of the right to freedom of expression, as enshrined in article 19 of the Universal Declaration of Human Rights (UDHR). In particular, we are concerned that no specific grounds have been specified for this action and that the decision allegedly is unsustainable under the legal grounds provided. While the standards of international law permits governments to restrict expression, such restrictions must be necessary and proportionate to protect the legitimate rights of others, public order and national security. Authorities will have to demonstrate that blocking a whole media site meets these standards.

We are also concerned that the decision to block *The Malaysian Insider* would exert a great deterrent effect on other media, stifling the reporting on issues of public interest and the dissemination of opinions and views that are critical of the government. We are also particularly concerned that the blocking of access to material on the Internet would prevent the legitimate exercise of the right to seek, receive and impart information and ideas through any media and regardless of frontiers, as provided in article 19 of the UDHR and create a deterrent effect on the work of human rights defenders.

We are also concerned at the proposed amendments to the CMA, which may lead to significant raise in fines and the requirement for bloggers to register with the MCMC, which may impose additional restrictions on the right to freedom of expression and the right to access information.

Further concerns relate to what appears to be the beginning of a recent emerging pattern of MCMC's reliance on the CMA to bar access to other websites which may also report on issues of public interest.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

Please provide any additional information and/or comment(s) you may have on the above mentioned allegations.

1. Please provide detailed information on the legal grounds invoked for MCMC's decision to block *The Malaysian Insider*, also indicating how this measure is compatible with international human rights standards, in particular article 19 of the UDHR.

2. Please provide detailed information on the legal procedures available to review the decision of the MCMC that resulted in the blocking of *The Malaysian Insider* by a judicial or independent body and on the measures taken to provide all the guarantee of a fair and impartial judicial procedure, as provided by international human rights norms and standards.

3. Please provide detailed information on the plans to amend the CMA, including the justifications for the significant increase in fines as well as the requirement of bloggers to register with the MCMC, indicating the measures taken to put the proposed amendments into conformity with international human rights standards.

We would appreciate receiving a response within 60 days.

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(s) responsible for the alleged violations. Additionally, we would like to appeal to your Excellency's Government to repeal the decision of the MCMC and to revise the application of the CMA to ensure its conformity with international human rights standards.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer to articles 19 of the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, which guarantee the rights to freedom of opinion and expression.

We also would like to recall article 29(2) of the UDHR which provides, *inter alia*, that the right to freedom of expression “shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”. We would like to stress that restrictions on the right to freedom of expression must be necessary and proportionate to protect one of these specific legitimate interests. Restrictions on the right to freedom of expression must not jeopardize the right itself, and must be of sufficient precision to be understood by individuals for them to behave accordingly.

We would like to refer your Excellency's Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

In that context we would also like to refer to article 6 of the aforementioned Declaration, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

The recent 2014 report of the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression which emphasizes that freedom of expression plays a central role in the effective function 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).

The 2011 report of the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted the internet as a key means by which individuals can exercise their right to freedom of opinion and expression as guaranteed under international human rights standards. In this regard, the Special Rapporteur emphasized the use of blocking measures as a particularly problematic way of restricting the right to freedom of opinion and expression. Even in situations where blocking is provided by law and justification is provided, blocking measures constitute an unnecessary or disproportionate means to achieve the purported aims, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond what has been deemed illegal. Such restrictions are particularly of concern where the blocking measures take place without the intervention of or possibility for review by a judicial or independent body. (A/HRC/17/27).

In his 2013 report to the UN General Assembly focused on the right to access of information (A/68/362), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stressed the need to pay particular attention to the protection of whistle-blowers and journalists while enforcing national laws on national security. He recommended that “Government officials who release confidential information concerning violations of the law, wrongdoing by public bodies, grave cases of corruption, a serious threat to health, safety or the environment, or a violation of human rights or humanitarian law (i.e. whistle-blowers) should, if they act in good faith, be protected against legal, administrative or employment-related sanctions. Other individuals, including journalists, other media personnel and civil society representatives, who receive, possess or disseminate classified information because they believe that it is in the public interest, should not be subject to liability unless they place persons in an imminent situation of serious harm” (A/68/362, para. 107).