

**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: OL  
MYS 8/2014:

23 December 2014

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; 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.

We thank you for your prompt response to our press release dated 8 October 2014 concerning the recent and numerous cases of persons charged under the Sedition Act of 1948, issued following to a joint Urgent Appeal (JUA MYS 6/2014) of 1 October 2014 sent by the 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. The response from your Excellency's Government will be included in the next joint communications report of Special Procedures.

We commend your Excellency's Government for taking a serious view on fulfilling your commitments and obligations under international human rights law. Additionally, we appreciate the opportunity to engage your Excellency's Government in a dialogue regarding those obligations in the context of the rights to freedom of opinion and expression.

We recently received additional information about the statement of the Prime Minister of Malaysia made on 27 November 2014 at his political party's annual general assembly, expressing the Government's intention not only to retain, but also to strengthen, the Sedition Act of 1948. We are concerned about this statement and that, despite having previously expressed plans to abolish the Act, your Excellency's Government will continue to use the Sedition Act in a way that would silence the voices of political opponents, journalists, academics, lawyers, human rights defenders and

activists, among others. As our urgent appeal of 1 October of this year noted, the Sedition Act has served as the legal basis for a recent wave of detentions and prosecutions in Malaysia; at least 23 individuals have been charged under the Sedition Act of 1948 in recent months. We have also received information alleging that since the issuance of our last communication, there are new cases of persons detained and charged under the Act for activities reportedly related to the legitimate exercise of the right to freedom of opinion and expression.

Your Excellency's Government explains that “[a]mong the reasons behind the decisions to charge certain individuals under the Sedition Act of 1948 is because their act, speech, words, or publication have incited violence.” However, it is unclear what specific violence, if any, has ensued as a result of freedom of expression in these recent sedition cases. Moreover, we are concerned that the overly broad language of the Sedition Act and the lack of clear and definite terms of what constitutes a violation under the Act do not conform to the fundamental principle of legality and the principles guiding article 19 of the Universal Declaration of Human Rights (UDHR). As expressed below, States must provide clear guidance as to how its restrictive laws will be carried out.

We continue to have serious concerns that the wave of arrests and charges under the Sedition Act do not meet the requirements of necessity and proportionality for invoking an exception to freedom of opinion and expression. Restrictions on freedom of opinion and expression should only be invoked in limited and genuine instances of threats to national security and public order. The alarmingly high number of recent investigations, arrests, and charges brought under the Sedition Act provides evidence that the restriction on freedom of opinion and expression is not being applied in a strict and narrow manner as required by international norms.

We are concerned that, under the Sedition Act, law enforcement agencies enjoy unfettered discretion to arrest and charge individuals who are merely exercising their right to freedom of opinion and expression, as set forth in article 19 of the UDHR. We have not seen any evidence showing that these individuals’ publications, speeches, and other actions have caused or are causing any kind of harm that would justify the restriction of the right to freedom of opinion and expression. In addition to our joint urgent appeal of 1 October 2014, we had expressed similar concerns in three previous communications addressed to your Excellency's Government in 2013 (see joint Urgent Appeal MYS 4/2013 of 3 June 2013; joint Urgent Appeal MYS 5/2013 of 19 June 2013; and joint Allegation Letter MYS 8/2013 of 16 August 2013).

As your Excellency's Government notes, the right to freedom of expression may only be restricted when provided by law and when the restriction is necessary for the protection of national security and public order. Your Excellency's Government points out that article 10 of the Federal Constitution guarantees the right to freedom of speech and expression. Your Excellency's Government further explains that the Sedition Act of 1948 represents limited restrictions of those rights, which are permitted by articles 10(2) and 10(4) of the Federal Constitution. Article 10 of the Federal Constitution allows

Parliament to impose laws restricting the right to freedom of opinion and expression in the interests of public order and national security.

Although the right to freedom of expression is not absolute, the national security and public order exception requires a very high standard and should be narrowly construed. In order to impose restrictions on the freedom of expression, the restriction should be necessary and proportional. Laws restricting this right must provide guidance to those charged with their execution, enabling them to understand what sorts of expression are properly restricted and what sorts are not. Sedition laws relating to national security should be crafted and applied in a way that is both necessary and proportional to the restricted law. Additionally, the restrictions should not be overly broad. When restricting freedom of opinion and expression, the State should demonstrate in a specific and individualized fashion, the precise nature of the threat, and the necessity and proportionality of the specific action taken.

In light of the international norms that have developed in recent decades, we express deep concern that the Sedition Act of 1948 and the recent wave of cases brought under the Act in Malaysia are inconsistent with the right to freedom of opinion and expression, as enshrined in international human rights norms and standards.

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 observations on the following matters:

1) Please provide information regarding the guidance given to law enforcement officials for the execution of the Sedition Act of 1948. Specifically, how are officials defining “incitement to violence” and what type of violence justifies an arrest or charges under the Sedition Act of 1948?

2) Please provide specific instances of violence allegedly incited by individuals arrested and charged under the Sedition Act of 1948.

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

We again urge your Excellency’s Government to take all necessary measures to ensure that its legislation and its application remain in full compliance with international human rights law and standards. While we understand time is required to review and improve legislation, we request that your Excellency’s Government take all necessary interim measures to halt the application of the Sedition Act, thereby preventing the recurrence of further violations.

We would appreciate receiving a response within 60 days.

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

Maina Kiai

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

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