

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 rights to freedom of peaceful assembly and of association

REFERENCE: AL
MYS 3/2015:

18 August 2015

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 rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolutions 25/2 and 24/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received 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, and arrest of peaceful protesters.**

According to the information received:

Blocking of "Sarawak Report" news blog and suspension of other news outlets

On 19 July 2015, the Malaysian Communication and Multimedia Commission (MCMC) allegedly blocked the website "Sarawak Report", an independent news blog after it had reportedly published documents alleging a financial scandal involving Malaysian Prime Minister Najib and the State-owned development firm 1Malaysia Development Berhad (1MDB). Prime Minister Najib is Chairman of the Board of Advisors of 1MDB, and is its sole shareholder and signatory.

According to the documents published by "Sarawak Report", it is alleged that misappropriated funds from 1MDB may have indirectly supported Prime Minister Najib during his 2013 election campaign. In its decision of 19 July 2015, the MCMC claimed that this information was leaked and violated sections 211 and 233 of the 1998 Communications and Media Act, which ban the dissemination of material that is "indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten, or harass any person." The "Sarawak Report" news blog remains blocked in Malaysia.

On 4 August 2015, Malaysian authorities reportedly issued an arrest warrant for Ms. **Clare Rewcastle-Brown**, a British journalist who is the founder and editor of the “Sarawak Report” news blog. Ms. Rewcastle-Brown has been accused of “activities detrimental to parliamentary democracy” under sections 124B and 124I of the Penal Code and of “forging false documents” and obtaining material through “criminal leakages.” She has previously been denied entry into Malaysia and sources indicate that this move is clearly designed to obstruct any further travel to Malaysia. The Malaysian authorities are reportedly now pressing for her to be placed on Aseanapol and Interpol Red Notice Wanted Lists.

On 24 July 2015, two other independent news entities, the “Edge Financial Daily” and the “Edge Weekly”, had their publishing licenses suspended by the Ministry of Home Affairs, who claimed these newspapers had violated section 7(1) of the Printing Presses and Publications Act of 1984 (PPPA) by being “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.” Since ordering the block on the “Sarawak Report”, the MCMC has reportedly issued public statements warning other media outlets against repeating the website’s claims, threatening legal action.

Arrests of peaceful protestors

The crackdown is reportedly not limited to independent media, but has extended to those seeking to exercise their right to freedom of peaceful assembly. On 1 August 2015, three activists from Gabungan Anak Muda Demi Malaysia (“The Coalition of Youth for Malaysia”) were arrested for organizing a peaceful protest in Kuala Lumpur. These arrests were reportedly made preemptively to discourage others from attending the meeting. However, a further 29 individuals did attend and were subsequently arrested, including a 14-year old child. The protesters are facing a number of charges, including organizing “unlawful assemblies” and engaging in “activities detrimental to parliamentary democracy”, pursuant to sections 123 and 124 of the Penal Code, respectively.

The above-mentioned peaceful protest was reportedly organized in response to the corruption scandal involving public officials and 1MDB and the majority of arrests occurred after protesters began calling for Prime Minister Najib’s resignation. Several protesters allegedly suffered minor injuries during the protest as a result of the use of police force.

The recent attack on independent voices in Malaysia has reportedly taken place against the backdrop of a sharp increase in criminal investigations and charges brought against political opponents, lawyers, academics, human rights defenders and artists under the Sedition Act of 1948. This Act criminalizes any expression of “seditious words” or “tendenc[ies]” that incite hatred or disapproval of the government or question any right, privilege, or sovereignty prerogative stated in the Malaysian Constitution.

Without prejudging the accuracy of the forgoing allegations, we express serious concern that the apparent crackdown on independent voices in the media, including the blocking of access to material on the Internet, impedes the legitimate right of citizens to access information, and their ability to seek, receive, and impart information and ideas. Particular concern is expressed at the use of the Sedition Act of 1948 to arrest, detain and charge human rights activists, for exercising their right to freedom of expression, promoting human rights and accountability in Malaysia. The arrest of citizens engaging in peaceful protest against alleged Government misconduct contravenes the right to freely assemble and undermines transparency and accountability, which are essential to a functioning democracy.

Dissenting voices and independent media outlets must be protected in order to report on matters of national concern and whistleblowers should not face criminal penalties for disseminating information in the public interest. The intimidation of journalists and dissenting voices places individuals under physical threat and also has a chilling effect on free speech and can lead to other human rights violations.

In connection to 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.

As is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention and since we are expected to report on these cases to the Human Rights Council, we would be grateful for your observations and cooperation by responding to the following matters:

1. Are the facts alleged in the case summary above accurate?
2. Please provide information on the 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.
3. Please provide information on the 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).
4. Please confirm the legal grounds for the arrests of the aforementioned peaceful protestors, and the charges brought against them. Please indicate how these measures are compatible with international human rights norms and standards governing freedom of peaceful assembly.
5. 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 bringing its domestic legislation into line with its international obligations.

6. Please indicate what measures 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 intimidation and harassment of any sort.
7. Please further indicate what measures have been, or will be, taken to guarantee the exercise of the right to freedom of peaceful assembly in the country.

We would appreciate receiving a response within 60 days.

In view of the importance of matters concerning freedom of expression and opinion and freedom of peaceful assembly, 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 the international instruments listed in the Annex.

Additionally, we would like to notify your Excellency's Government of our intent 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 to seek clarification on these matters.

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

Please accept, your 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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer to articles 19 and 20 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 and freedom of peaceful assembly respectively.

Additionally, we wish to refer your Excellency's Government to articles 23 and 24 of the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, which similarly guarantees these rights.

We would also like to refer to 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 assemble peacefully.

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).

In his 2013 report to the UN General Assembly focused on the right to access of information (A/68/362), the previous 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).

We also take note of the commitment expressed by the Malaysian Government in March 2014 during the second cycle of the Universal Periodic Review (UPR), to "accept in principle" the recommendations to repeal the Sedition Act of 1948 (recommendations 146.48 and 146.49), A/HRC/25/10, and para. 7 A/HRC/25/10/Add.1) and acknowledge article 10 (1) of the Federal Constitution on the right to freedom of speech.