

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL MYS 3/2019

28 November 2019

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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/18 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the conviction of Mr. **Wan Ji** under the Sedition Act in connection with a social media post deemed offensive to the Sultan of Selangor.

Concerns about various provisions of the Sedition Act and the adverse effect of its implementation for freedom of expression have been raised in the past by various Special Procedures' mandate holders (See, for instance, AL MYS 2/2019; AL MYS 1/2015; AL MYS 6/2014, amongst others).

Mr. Wan Ji is a preacher and member of the Parti Keadilan Rakyat (PKR).

According to the information received:

On 10 September 2014, Mr. Wan Ji was arrested after allegedly posting a Facebook message deemed seditious and insulting against the Sultan of Selangor on 5 November 2012. He was transferred to Kuala Lumpur later that same day and charged in the Sessions Court, Shah Alam under Section 4(1) (c) of the Sedition Act 1948. On 9 April 2018, Mr Wan ji was convicted by the Sessions Court and sentenced to nine months imprisonment. The Court however granted a stay of execution pending appeal to the High Court and allowed him to be released on a bail of RM 5,000 with one surety.

On the same day, on 9 April 2018, Mr. Wan Ji filed an appeal against the conviction at the Shah Alam High Court. The Public Prosecutor cross-appealed against the sentence. On 9 July 2019, the High Court dismissed the appeal against conviction. The High Court upheld Mr. Wan Ji's conviction and extended his prison sentence from nine months to one year. He is now serving his jail sentence at the Kajang prison, Selangor.

It is reported that in the first week of July 2019, Mr. Wan Ji was physically assaulted by the prison warden. A police complaint was subsequently filed, but no investigation has reportedly taken place so far.

Concerns are expressed at the conviction of Mr. Wan Ji, which seems related to the exercise of his right to freedom of expression. Further concern is expressed at the prosecution of individuals under the Sedition Act for what seem to be a legitimate exercise of the right to freedom of opinion and expression, despite the Government's accepted recommendation to review laws that are incompatible with international human rights standards, including the Sedition Act, during its Universal Periodic Review from November 2018.

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

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 therefore be grateful for your observations on the following matters:

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

1. Please provide information about the factual and legal basis for the arrest and the charges against Mr Wan Ji, and explain how they can be deemed compatible with your obligations under international human rights law, in particular with articles 9 and 19 of the UDHR.
2. Please advise if an investigation has been opened into the alleged assault of Mr. Wan Ji by the prison warden in July 2019 and if not, we urge your Excellency's Government to conduct the investigation in an impartial and independence manner and in accordance with the guidelines laid out in the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).
3. Please indicate what measures have been taken or are envisaged 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.
4. We welcome the commitment of the Government of Malaysia, made in September 2018, to ratify the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Please advise when Malaysia intends to proceed with the ratification process.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to articles 9 and 19 of the Universal Declaration on human rights that protect the right to liberty and security of persons and the right to freedom of opinion and expression.

We also wish to refer to resolution 12/16 of the Human Rights Council, which calls on States to refrain from imposing restrictions on discussion of government policies and political debate and reporting on human rights.

Concerning the Sedition Act of 1948, we note the comments in Parliament made by the Prime Minister on 11 July 2019, during which it was announced that the Government was in the process of drafting a new law to replace this Act. Reportedly, some civil society organisations have recently called on the Government to impose a moratorium on the Sedition Act pending its repeal and amendment. In a recent statement the Attorney General is quoted as saying : "This Chambers is studying the options open to it with respect to Mr Wan Ji's appeal before the Court of Appeal, but having regard to his conviction by two Courts, the margin of discretion in my office is substantially limited...Upon assuming office in June 2018, I decided, having regard to alternative laws in our statute books (including provisions in the Penal Code), to only turn to the Sedition Act as a measure of last resort".

We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."