



Inter-Parliamentary Union

For democracy. For everyone.

Malaysia

MAL/21 - N. Surendran
MAL/22 - Teresa Kok (Ms.)
MAL/23 - Khalid Samad
MAL/24 - Rafizi Ramli
MAL/25 - Chua Tian Chang
MAL/26 - Ng Wei Aik
MAL/27 - Teo Kok Seong
MAL/28 - Nurul Izzah Anwar
MAL/29 - Sivarasa Rasiah,
MAL/30 - Sim Tze Sin
MAL/31 - Tony Pua

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015) ¹

The Governing Council of the Inter-Parliamentary Union,

Referring to the aforesaid cases and to the decisions it adopted at its 195th session (March-April 2015),

Taking account of the report of the Committee delegation (CL/197/11(b)-R.1) which, at the invitation of the Malaysian parliamentary authorities, went to Malaysia (29 June – 1 July 2015) to gain a better understanding of the issues at hand in the Malaysian cases, discuss the Committee's existing concerns and examine possible avenues for reaching a satisfactory solution,

Taking into account also the information provided by the leader of the Malaysian delegation to the 133rd IPU Assembly (October 2015) at the hearing held with the Committee; *also taking into account* the information provided by one of the complainants at the hearing held with the Committee on 18 October 2015 and the information regularly provided by other complainants,

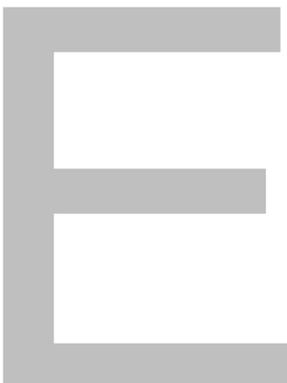
Having before it the cases of Mr. Sivarasa Rasiah, Mr. Sim Tze Sin and Mr. Tony Pua, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

Considering that all the parliamentarians, with the exception of Mr. Teo Kok Seong and Mr. Sim Tze Sin, have been charged since May 2013 with sedition or are being investigated under (a), (b) and (c) of section 4(1) of the Sedition Act (1948) for exercising their freedom of speech, primarily to voice criticism of the Government and/or the judiciary,

Considering that Mr. Chua Tian Chang was reportedly arrested on 20 March 2015 in connection with his involvement in the KitaLawan rally on 7 March in 2015 in protest against Mr. Anwar Ibrahim's conviction on a sodomy charge; Mr. Teo Kok

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The delegation of Malaysia expressed its reservations regarding the decision.



Seong and Mr. Rafizi Ramli are also being investigated regarding their involvement in the same rally; Mr. Sim Tze Sin was charged for organizing or taking part in the KitaLawan rally; according to the complainants, the arrests and investigations infringe the rights of members of parliament to freedom of assembly; the complainants point out that this legal action is based on the Peaceful Assembly Act and section 143 of the Criminal Code, which states that, "whoever is a member of an unlawful assembly shall be punished with imprisonment for a term that may extend to six months, or with a fine, or with both",

Recalling that the Sedition Act dates from colonial times (1948) and originally sought to suppress dissent against the British rulers; it was seldom used in the past and was never invoked between 1948 and Malaysia's independence in 1957; only a handful of cases were pursued between 1957 and 2012; since then, however, hundreds of cases have been initiated under the Sedition Act,

Recalling that in 2012, Prime Minister Najib Razak announced publicly that the Sedition Act would be repealed. The discussions subsequently set in motion, however, explored its abolition as only one of four options, namely: (i) maintaining the Sedition Act with minor changes; (ii) abolishing it; (iii) replacing it with the National Harmony Act; or (iv) maintaining the Sedition Act along with the adoption of the National Harmony Bill,

Considering that the option finally chosen by the Government was to amend the Sedition Act and to pursue discussions on the adoption of a National Harmony and Reconciliation Bill; the official interlocutors told the Committee delegation that the Sedition Act remained necessary to promote national harmony and tolerance, and that the new legislation struck the right balance between protecting stability and social harmony on the one hand and freedom of expression on the other; members of the opposition, however, provided the following explanation to the Committee delegation for the Government's decision to keep and further tighten the Sedition Act: in the general elections in 2008, UMNO (United Malays National Organisation), which had been ruling Malaysia since independence in 1957, lost its two-thirds majority in parliament for the first time; in 2013 the opposition won the popular vote in the general elections, although it obtained only a minority number of seats in parliament; the opposition considered that those in power, in particular the radical elements, made their case for keeping the Sedition Act as a useful tool to ensure that UMNO's dominance would not be challenged in the future,

Considering that in April 2015 the House of Representatives and Senate passed most of the proposed amendments, notably the following:

- criticism of the Government or the administration of justice is no longer considered seditious;
- promoting hatred between different religions is now seditious;
- sedition is no longer punishable with a fine but carries a mandatory minimum three-year prison term;
- sedition is punishable with up to 20 years' imprisonment if the seditious acts or statements lead to bodily harm and/or damage to property;
- The Act empowers the court to order the removal of seditious material on the Internet,

Considering that, well before the passage of the amendments to the Sedition Act, the sedition charges and investigations against the parliamentarians had been put on hold pending a ruling by the Federal Court on the petition challenging the constitutionality of the original Sedition Act (1948); after reserving judgement on the matter on 24 March 2015, the Federal Court ruled on 7 October 2015 that the Sedition Act was constitutional; the complainants fear that the investigations and charges against the members of parliament will now be reactivated as the amendments will not be retrospective, even though, under the current Sedition Act, criticism of the judiciary and the Government is no longer punishable; *considering* that, according to the leader of the Malaysian delegation, the matter was entirely in the hands of the Attorney General, as he had the power to discontinue the proceedings at any time; he also stated that none of the proceedings had been reactivated, given that the Federal Court's ruling on constitutionality had been adopted only recently and that it might be several months before the Attorney General took a decision on how to proceed; the leader of the delegation offered to ask the Speaker of the House of Representatives formally to request the Attorney General to discontinue, in the public interest, any legal action against the parliamentarians under the old Sedition Act inasmuch as criticism of the Government and judiciary was concerned; *considering also* that the amendments have still not been gazetted and therefore have not yet come into effect,

Considering the information presented by the one of the complaints on 18 October 2015 with regard to developments in the legal proceedings against the cases of the parliamentarians:

- **Case of Ms. Teresa Kok:** the Court of Appeal has fixed 17 November 2015 to continue hearing on her appeal to transfer her trial to the High Court from the current Sessions Court;
- **Case of Mr. N. Surendran:** his cases under the Sedition Act are pending trial;
- **Case of Mr. Khalid Samad:** the sedition case is still ongoing and the hearing is set for 31 October 2015. Furthermore, in March 2015, he was investigated again for sedition for his involvement in the KitaLawan rally calling for the Prime Minister to step down;
- **Case of Mr. Teo Kok Seong:** he is investigated under section 143 of the Penal Code and section 9 (5) of the Peaceful Assembly Act, but has not been formally charged;
- **Case of Mr. Tian Chua:** the trial relating to his speech on 13 May 2013, challenging the election results and calling on people to protest, is due to proceed; he won the other “Lahat Datu” sedition case, but the Government has appealed the decision; Mr. Tian Chua is also being investigated under the Peaceful Assembly Act for specifically wearing a yellow T-shirt with the official wording of “bersih4”, which represents the Clean and Free Election movement;
- **Case of Mr. Rafizi Ramli:** he was initially investigated under the Sedition Act for criticizing the demonstration in front of a place of worship - a church - but later charged under section 504 of the Criminal Code (uttering words with the intention to create public disorder); the submission is due for October 2015 after which sentencing is expected;
- **Case of Mr. Sivarasa Rasiah:** he is due to be charged under the Sedition Act for allegedly saying during the 7 March KitaLawan rally that the judiciary had been used by UMNO to incriminate Mr. Anwar Ibrahim;
- **Case of Mr. Sim Tze Sin:** he was charged this year under the Peaceful Assembly Act, section 4(2)(c), for organizing or taking part in the KitaLawan rally;
- **Case of Mr. Tony Pua:** he faces investigations under section 143 of the Penal Code and a travel ban as a consequence of his outspoken criticism against the 1MDB scandal; Mr. Tony Pua also faces defamation suits by the Prime Minister,

Considering that Malaysian politics has been engulfed in a scandal related to the 1Malaysia Development Berhad (1MDB), a debt-laden state investment fund; the Prime Minister has faced calls to resign over 1MDB's struggles in meeting obligations from a RM42 billion (US\$14 billion) accumulated debt in the last five years; the calls for his resignation grew louder after it was revealed in July 2015 that US\$700 million (RM 2.6 billion) allegedly linked to the firm, whose advisory board the Prime Minister chairs, was allegedly deposited into his private accounts; the complainants fear that in the current political climate the authorities will only tighten the screws on the opposition,

Considering that in the face of mounting protests against the scandals, scores of people have recently been arrested under sections 124B and 143 of the Criminal Code addressing “unlawful assemblies”; considering that Section 124B of the Criminal Code, which has never before been used, states: “Whoever, by any means, directly or indirectly, commits an activity detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to twenty years”; *considering* also in this regard that Ms. Nurul Izzah Anwar was first investigated under the Sedition Act but now also under section 124 B and J of the Criminal Code, which covers the offence of “being detrimental to parliamentary democracy”; she has not been formally charged,

1. *Thanks* the Malaysian authorities, in particular the parliamentary authorities, for receiving the on-site mission and for facilitating the fulfilment of its mandate;
2. *Fully endorses* the mission’s findings and recommendations;
3. *Deeply regrets* that a golden opportunity was missed this year to abolish the Sedition Act, following the Prime Minister’s earlier remarks in this regard in 2012;
4. *Welcomes* the fact that the amended Sedition Act no longer punishes criticism of the Government and the judiciary; *yet is deeply concerned* that its provisions remain excessively vague and broad, thus leaving the door open to abuse and setting a very low threshold for the type of criticism, remarks and acts that are criminalized, and that it includes a mandatory minimum three-year prison sentence for sedition;

5. *Deeply regrets* that the Federal Court ruled to uphold the constitutionality of the Sedition Act; *sincerely hopes* that the authorities, as some intimated in the course of the on-site mission, will initiate, in recognition of the fact that the amended Sedition Act is too repressive, a review of the Act with a view to bringing it into line with relevant international human rights standards;
6. *Recalls* the important principle in criminal law that if a lighter penalty is provided for after the offence occurs, that lighter penalty shall apply retroactively; *sincerely hopes* therefore that the present Attorney General will decide to discontinue the proceedings against the parliamentarians under the old Sedition Act in connection with criticism of the Government and the judiciary; *wishes* to receive the views of the Attorney General on this point;
7. *Is deeply concerned* about the continued arrests and investigations of opposition members and vocal critics under legislation, be it the Sedition Act, the Criminal Code or the Peaceful Assembly, that appears to be clearly at odds with respect for their right to freedom of expression and assembly; *is particularly worried* that the authorities are now resorting to Section 124B of the Criminal Code, which is overtly vague and broad in its language and carries a disproportionately harsh penalty;
8. *Wishes* to receive details from the authorities regarding the facts in support of the legal steps taken against the parliamentarians in relation to their participation in demonstrations;
9. *Calls on* the authorities, in particular Parliament, to make serious efforts towards swiftly ratifying the International Covenant on Civil and Political Rights and to make use of the expertise of the United Nations special procedures, in particular the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of peaceful assembly and association, to ensure that existing legislation is amended or repealed so as to comply with relevant international human rights standards;
10. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
11. *Requests* the Committee to continue examining this case and to report back to it in due course.