

# Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations  
Promoting human rights by protecting those who defend them

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Monday, January 19, 2015

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Dear Prime Minister, Minister of the Interior, and Attorney General of Malaysia;

## **Re: Arrest of Eric Paulsen and Repeal of the Sedition Act and End to Arbitrary Detention**

I write on behalf of Lawyers' Rights Watch Canada (LRWC), a charitable organization of volunteer lawyers and jurists dedicated to the promotion of international human rights and the rule of law through advocacy on behalf of lawyers and other human rights defenders subject to persecution, legal research and education.

We condemn the 12 January 2015 arrest of Lawyers for Liberty Executive Director Eric Paulsen under the *Sedition Act 1948*. LRWC views his detention to be just the latest in a series of politically motivated attempts to prevent lawful speech and legitimate democratic dissent, contrary to Malaysian law and Malaysia's international law obligations arising from, *inter alia*, the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR), and customary international law.

Other politicians, lawyers, and activists prosecuted or threatened with prosecution under the *Sedition Act 1948* in 2014 alone include:

- The arrests of political opponents including Democratic Action Party (DAP) Vice President Teresa Kok in May; Party Keadilan Rakyat (PKR) Vice President Tian Chua in May; Ikatan Muslimim Malaysia (ISMA) President Abdullagh Rahman in June; Pan-Malaysian Islamic Party (PAS) Member of Parliament Khalid Samad in August 2014; DAP Penang State Assemblyman R.S.N. Rayer, also in August;

- The arrest in August of N. Surendran, the PKR Vice President, for statements made in conducting the defence of his client Anwar Ibrahim;
- The arrest in September of Malaysiakini website reporter Susan Loone following her interview with Penang state councillor Phee Boon Poh while he was in custody; and,
- The arrest in September of University of Malaya professor Dr. Azmi Sharom for comments allegedly made at a political event five years previously.

LRWC notes with regret that this list is by no means exhaustive, and that the situation with respect to abuse of sedition laws has grown worse since LRWC reported on their abuse in Malaysia in response to the sedition prosecutions of lawyer Karpal Singh in 2000 and in 2014<sup>1</sup>

While we were pleased that Mr. Paulsen has been released, the threat of charges and imprisonment against him and other politicians, lawyers, and journalists who are critical of government agencies or policies presents a grave danger to freedoms of expression, association, and participative democracy, and we call on the Government of Malaysia to repeal the *Sedition Act 1948*.

The arrest of Eric Paulsen and threats to prosecute him are based on allegations that he authored a tweet accusing the Malaysian Islamic Development Department (JAKIM) of promoting extremism in their Friday sermons, inconsistent with the Government of Malaysia's campaign against extremism in Malay society.<sup>2</sup> He was arrested by a force of more than a dozen officers in a night-time raid on his home and held for two days prior to his release,<sup>3</sup> actions which can only be considered to be intentional intimidation particularly when accompanied by the chilling public warning to "certain quarters" by the Inspector General of Police against "politicizing or manipulating" Mr. Paulsen's arrest.<sup>4</sup>

As a lawyer and the Executive Director of a human rights organization, Mr. Paulsen has the right and responsibility to speak out such issues of public concern. The right to do so is protected by the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Freedoms*.<sup>5</sup> As you know, the Declaration obliges states to promote and protect the right and responsibility of lawyers, human rights defenders and other members of civil society to

submit to governmental bodies and agencies and organization concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and freedoms (Article 8).

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<sup>1</sup> See *Lawyers and the Rule of Law on Trial: Sedition in Malaysia*, Tami Friesen, Gail Davidson, Michael Jackson Q.C., LRWC, July 2000 (Vancouver) <http://www.lrwc.org/lawyers-and-the-rule-of-law-on-trial-sedition-in-malaysia/> and Criminal Law Forum 12: 1-23, 2001 and *In The Matter of Karpal Singh: Malaysia Violates International Human Rights Obligations* 6 March 2014 letter from LRWC.

<sup>2</sup> "Lawyer arrested over tweet accusing JAKIM of extremism, group says", *The Malay Mail Online*, 12 January 2015, online: <<http://www.themalaymailonline.com/malaysia/article/lawyer-arrested-over-tweet-accusing-jakim-of-extremism-group-says>>.

<sup>3</sup> "Lawyer Freed After Two Day Remand Over Allegedly Seditious Jakim Tweet", *The Malay mail Online*, 14 January 2015, online: <<http://www.themalaymailonline.com/malaysia/article/lawyer-freed-after-two-day-remand-over-allegedly-seditious-jakim-tweet#sthash.8M55qGBQ.dpuf>>.

<sup>4</sup> "IGP warns certain quarters against politicizing arrest of lawyer Paulsen", *The Malay Mail Online*, 13 January 2015, online: <<http://www.themalaymailonline.com/malaysia/article/igp-warns-certain-quarters-against-politicising-arrest-of-lawyer-paulsen#sthash.3ne04Is0.dpuf>>.

<sup>5</sup> Resolution adopted by the General Assembly, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html> [accessed 19 January 2015]

The UN Human Rights Council recently adopted a resolution affirming the duty of states to recognize and protect the work of civil society to promote human rights and the rule of law and cautioning states against restricting the activities of civil society to serve the needs of national security (The [Civil Society Space](#) 23 Sept. 2014, A/HRC/27/L.24).

As you are aware, sedition laws are now almost universally viewed to be obsolete in common law jurisdictions,<sup>6</sup> and certainly must be limited to cases where there is evidence of an intention to incite violent overthrow of lawfully constituted authority coupled with action(s) and a capacity likely to achieve the prohibited result.<sup>7</sup> The prosecutions of N. Surendran and others cited above have been brought in respect of statements only, without reference either to the element of intent that is integral to criminal sanction or to the element requiring actual acts carried out in furtherance of that intent. Further, the treatment of sedition as essentially an absolute liability offense in Malaysia represents a gross over-reach in the state's legitimate interest in preventing criminal sedition and maintaining security, and threatens the right to presumption of innocence guaranteed under Article 14.2 of the ICCPR.

The *Sedition Act 1948* has been identified by many states and legal specialists as a tool used to restrict freedom of expression in Malaysia in a manner inconsistent with international standards and Malaysia's international law commitments. As a member of the United Nations (1957), the Commonwealth Secretariat (1957) and ASEAN, Malaysia is obliged to respect and protect fundamental freedoms including freedoms of expression and to participate in government. These rights and the companion state duties are enshrined in many declarations and statements of principles including the UDHR, the Harare Principles, the Latimer House Guidelines and the ASEAN Human Rights Declaration of 2012.

During the United Nations Universal Periodic Reviews of Malaysia in 2009 and in 2013 states recommended that Malaysia review and amend the *Sedition Act 1948* to enable its citizens to exercise fully the right to freedom of opinion and expression. In 2012 the Prime Minister promised to repeal the Act and replace it with a 'National Harmony Act'.

The prosecution of lawyers – as in the case of N. Surendran – for statements made in their capacity as legal counsel, is an attack on the rule of law. By seeking to impose criminal sanctions on lawyers for discharging the right and duty of lawyers to vigorously represent the interests of clients, Malaysia violates the right to legal representation and fair trial of the client(s) represented by the targeted lawyer, contrary to guarantees of adequate and independent counsel under the UDHR.

Such action also threatens the right of others (articulated by Article 10 of the UDHR) “to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”. Article 11, paragraph 1 of the UDHR further states that “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense”. The United Nations Basic Principles of the Role of Lawyers<sup>8</sup> requires states to ensure that counsel “shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional

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<sup>6</sup> Consider, e.g. “The offence of seditious libel is now obsolescent” Lord Denning, *Landmarks in the Law*, (London, Butterworths, 1984) at 295; “there is almost complete agreement in the common law jurisdictions that sedition should be made obsolete” L.W. Maher, ‘The Use and Abuse of Sedition’ (1992), *14 Sydney L.R.* 287 at 312.

<sup>7</sup> *Boucher v The King*, [1951] SCR. 265 at 285-286, per Watkins L.J.

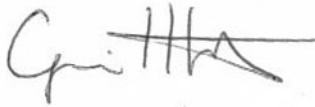
<sup>8</sup> The United Nations Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

appearances....” The threats to prosecute Mr. Paulsen and the prosecution of Mr. Surendran constitute particularly grievous abuses of human rights and of Malaysia’s international law obligations.

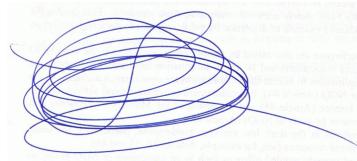
LRWC joins numerous other organizations in calling on the government of Malaysia to:

- Ensure that the *Sedition Act, 1948* is not used to wrongfully restrict the right and duty of Eric Paulsen to exercise his freedom of expression;
- End the arbitrary detention of lawyers, activists, and politicians on politically motivated charges;
- Repeal the *Sedition Act, 1948*; and
- Make such other statutory amendments and policy changes as are necessary to bring Malaysia’s domestic legislation and procedures into conformity with Malaysia’s international obligations and commitments to ensure and prevent violations of freedoms of expression, peaceful assembly, association, to participate in public affairs and fair trial rights.

Sincerely,



Gavin Magrath, Barrister and Solicitor



Gail Davidson, Executive Director, LRWC

Copied to:

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