

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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Tuesday, April 05, 2016

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Attorney General Mohamed Apandi Ali,
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Dear Prime Minister, Minister of Home Affairs and Attorney General of Malaysia;

Re: IN THE MATTER OF Karen Cheah Yee Lynn, Shanmugam Ramasamy, Francis Pereira, and Charles Hector

MALAYSIA VIOLATES INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

This letter is provided by Lawyers' Rights Watch Canada ("LRWC"). LRWC is a committee of lawyers that promotes human rights and the rule of law internationally through education, legal research and advocacy for lawyers and other human rights defenders in danger because of their advocacy. LRWC has special consultative status with the Economic and Social Council of the United Nations. More information about the work of LRWC is available at <http://www.lrwc.org>.

History and Chronology

1. On March 19, 2016, a motion was tabled at the Annual General Meeting of the Malaysian Bar Association calling on Attorney General Mohamed Apandi Ali "to immediately resign as Attorney General, for the good of Malaysia, to restore public confidence and perception of the rule of law, in particular the administration of criminal justice in Malaysia." The motion was approved by members of the Malaysian Bar Association, with 744 members voting in favour, 62 voting against, and 12 abstaining.

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2. On or about March 31, 2016, following the motion referenced above, Secretary of the Malaysian Bar Association Karen Cheah Yee Lynn and the three lawyers who had moved the motion, namely, R. Shanmugam, Francis Pereira, and Charles Hector (the “Four Lawyers”), were arrested and placed under investigation for sedition pursuant to section 4(1)(a) of the *Sedition Act 1948*.
3. The arrests and investigation referenced above have been widely criticized by the international community, including Amnesty International and others. The arrests and investigation signal that lawyers in Malaysia are not free to express opinions on legal matters.
4. LRWC has, in the past, provided analysis of the use of the *Sedition Act 1948* as a tool of repression in Malaysia. LRWC’S analysis, [*Lawyers and the Rule of Law on Trial: Sedition in Malaysia*](#), and other LRWC work on this and related matters can be viewed online. The LRWC analysis cited above contains an extensive review and discussion of Malaysia's requirements to comply with international law, including the Universal Declaration of Human Rights, and its own domestic law.

LRWC SUBMISSION

5. According to the April 1, 2016 public statement by Amnesty International in relation to the aforementioned arrests and investigations,

Since the 2013 general elections, the Sedition Act - a draconian law from the colonial era - has become the favoured tool of repression by Prime Minister Najib Razak’s government to silence, harass and lock up hundreds of critics in Malaysia. Over the last year, the law has been used to target anyone speaking out about allegations of corruption involving the Prime Minister.

6. The use of the *Sedition Act 1948* in these circumstances violates Malaysia’s legal obligations arising from both domestic and international law to protect freedom of expression that are fundamental to a democratic society and to the integrity of the Malaysian legal system. Malaysia is contravening the international law obligations it has assumed as a member of the United Nations, of the Commonwealth and of ASEAN.
7. LRWC calls on the Malaysian Authorities to drop the investigations against the Four Lawyers immediately.

USE OF THE *SEDITION ACT 1948*

8. The use of the *Sedition Act 1948* to repress legitimate expression, in this case on a point of law, is contrary to international law and universally accepted principles of human rights.
9. The Advocates Association of Sarawak has publicly stated this week that the Four Lawyers who brought forward a motion in question had the right to do so under section 64(6) of the *Legal Profession Act*, and has urged the Malaysian Government to respect the statutory rights of the members of the Malaysian Bar and to honour the Prime Minister’s own 2012 promise of repealing the *Sedition Act 1948*.

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10. The use of the *Sedition Act 1948* is wholly incompatible with basic principles of human rights, including freedom of expression.
11. The use of the *Sedition Act 1948* to punish the free expression of opinions on matters of legal interest has been rejected as illegitimate by the courts in many common-law countries. The term “sedition” as it is understood in Malaysia and as reflected in the *Sedition Act 1948* is defined in a manner that is contrary to the definition of “sedition” in other common-law countries.
12. To understand this distinction, it is necessary to review the pertinent sections of Malaysia’s *Sedition Act 1948*, which are as follows:

2. Interpretation

“seditious” when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency;

3. Seditious tendency.

(1) a “seditious tendency” is a tendency—

- (a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;
- (b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the government, the alteration, otherwise than by lawful means, of any matter as by law established;
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;
- (d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any state or amongst the inhabitants of Malaysia or of any State; or
- (e) to promote feelings of ill-will and hostility between different races or classes of the population of Malays; or
- (f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions, of Part III of the Federation Constitution or Article 152, 153 or 181 of the Federal Constitution.

13. By all standards adopted in other common law jurisdictions, the provisions of the *Sedition Act 1948* would be characterized as laws in the nature of criminal defamation (e.g., libel). They do not deal with advocating violence to overthrow a government; rather, they purport to prohibit and criminalize criticism of the government.
14. In light of the legal history in Malaysia of using the *Sedition Act 1948* to stifle dissent, jurists have criticized the *Sedition Act 1948* as “draconian” and a “relic of colonial era laws”.¹

¹ Conviction of Karpal Singh undermines the Rule of Law in Malaysia, The Australian Bar Association, 24 February 2014; Lawasia Concern at Karpal Singh Conviction on Sedition Charges, LAWASIA, 26 February 2014; Law Society [of New Zealand] Shares Concern at Conviction of Karpal Singh, 27 February 2014; and Malaysia: Cease investigation of lawyers:

INTERNATIONAL LAW OBLIGATIONS

As a Member of the United Nations

15. Malaysia has been a member of the United Nations since September 17, 1957. Membership in the United Nations imposes obligations to respect human rights obligations contained, *inter alia*, in the United Nations Charter (“Charter”) and the UDHR.² The Charter requires states to “establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”³ The UDHR is the principal source of international legal norms with respect to human rights and articulates the rights and freedom referred to in the Charter. The Human Rights Council conducts an assessment of each state’s fulfillment of human rights obligations every four years through the Universal Periodic Review (UPR).
16. The UDHR protects the right to criticize political leaders as a key component of freedom of expression. A 2009 report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression emphasizes the following:

The right to freedom of expression cannot be exercised passively, but requires a lasting commitment by States to ensure the mechanisms that guarantee and protect it. Mechanisms for criticism, including of political leaders, are deemed important to hold individuals accountable.⁴
17. Malaysia’s failure to adequately protect freedom of expression in accordance its international law obligations was noted during the first Universal Periodic Review (UPR) of Malaysia in 2009. The *Sedition Act 1948* was identified as a tool used to restrict freedom of expression in Malaysia in a manner inconsistent with international standards and Malaysia’s international law commitments. Canada recommended that Malaysia “review and amend laws such as the Sedition Act... to enable its citizens to exercise fully the right to freedom of opinion and expression...”⁵
18. The *Sedition Act 1948* was again identified during the 2nd UPR in 2013 as a statute that restricts the exercise of freedom of expression in Malaysia in contravention of international law standards and of Malaysia’s international commitments. The UN Country Team (UNCT) for Malaysia noted that Malaysia “continued to use ... the Sedition Act 1948...to silence dissent...”. The UNCT further noted that although the Prime Minister had announced on July 11, 2012 that the *Sedition Act 1948* would be repealed and replaced by a *National Harmony Act*, no such action

Conviction of Karpal Singh a setback for the rule of law and freedom of expression, FIDH and SUARAM, 24 February 2014.

² G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

³ Charter of the United Nations, 26 June 1945, 59 Stat. 1031, T.S.993, Bevans 1153, entered into force 24 October 1954, articles 1(3), 55, 56.

⁴ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, 11th session, Agenda item 3, A/HRC/11/4, 30 April 2009, para 41, online at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.4.pdf>.

⁵ Report of the Working Group on Universal Periodic Review, A/HRC/11/30/Add.1, 5 October 2009, para. 15. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/163/60/PDF/G0916360.pdf?OpenElement>.

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has been taken. UNESCO recommended that Malaysia “continue with its positive efforts to repeal the Sedition Act and the Internal Security Act, which represent significant obstacles to freedom of expression.”⁶

As a Member of the Commonwealth

19. As a member of the Commonwealth since 1957, Malaysia has committed generally to promoting and maintaining the rule of law and specifically to protecting freedom of expression and other fundamental freedoms for all individuals. Malaysia has joined other Commonwealth members in specifically endorsing the UDHR. Malaysia has further committed to ensuring freedom of expression through the 1971 Declaration of Commonwealth Principles, the 1991 Harare Principles, the Latimer House Guidelines and the 2012 Charter of the Commonwealth.
20. The 1971 Declaration of Commonwealth Principles, the 1991 Harare Declaration and the 2012 Charter of the Commonwealth affirm the duty of Malaysia as a member state to ensure freedom of expression and the “inalienable right to participate in political processes.”

As a Member of ASEAN

21. As a member of ASEAN, Malaysia again affirmed its commitment to the UDHR, the Charter and the Vienna Declaration. The ASEAN Human Rights Charter enshrines the right to freedom of expression in article 23 which reads,

Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to see, receive and impart information whether orally, in writing or through any other medium of that person’s choice.

SUMMARY

22. Malaysia is required, in order to fulfill its domestic and international obligations, to immediately ensure the liberty of the Four Lawyers and cessation of the aforesaid investigations.
23. We further urge the Malaysian authorities to take immediate steps to repeal the *Sedition Act 1948*.

All of which is respectfully submitted,



Brian M. Samuels, Barrister and Solicitor



Gail Davidson, LRWC Executive Director

⁶ Compilation prepared by the Office of the High Commissioner of Human Rights, A/HRC/WG.6/17/MYS/2, 9 August 2013, paras. 27, 28, 30.

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