



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 (Ms.)
MAL/29 - Sivarasa Rasiah
MAL/30 - Sim Tze Sin
MAL/31 - Tony Pua
MAL/32 - Chong Chien Jen
MAL/33 - Julian Tan Kok Peng
MAL/34 - Anthony Loke
MAL/35 - Shamsul Iskandar
MAL/36 - Hatta Ramli
MAL/37 - Michael Jeyakumar Devaraj
MAL/38 - Nga Kor Ming
MAL/39 - Teo Nie Ching

***Decision adopted by consensus by the IPU Governing Council
at its 198th session (Lusaka, 23 March 2016) ¹***

The Governing Council of the Inter-Parliamentary Union,

Referring to the aforesaid cases of nineteen opposition members of the Malaysian House of Representatives and to the decision it adopted at its 197th session (October 2015),

Taking into account the information provided by the leader of the Malaysian delegation to the 134th IPU Assembly (March 2016) and the information regularly provided by the complainants,

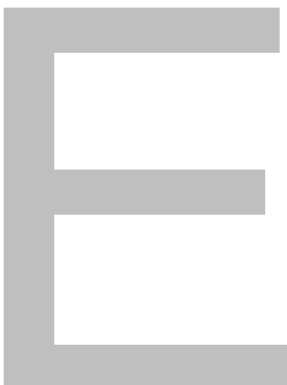
Having before it the cases of Mr. Chong Chien Jen, Mr. Julian Tan Kok Peng, Mr. Anthony Loke, Mr. Shamsul Iskandar, Mr. Hatta Ramli, Mr. Michael Jeyakumar Devaraj, Mr. Nga Kor Ming and Mr. Teo Nie Ching, which have been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the revised rules and practices),

Recalling the report of the Committee delegation (CL/197/11(b)-R.1) that went to Malaysia (29 June–1 July 2015),

Considering the following information with regard to the legal proceedings to which the parliamentarians have been subjected under the Sedition Act and information with regard to the act itself:

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The delegation of Malaysia expressed its reservations regarding the decision.



- Ms. Teresa Kok, Mr. N. Surendran, Mr. Ng Wei Aik and Mr. Sivarasa Rasiyah were charged under (a), (b) and (c) of Section 4(1) of the Sedition Act of 1948, while four other opposition members of parliament, namely Mr. Rafizi Ramli, Ms. Nurul Izzah Anwar, Mr. Nga Kor Ming and Mr. Teo Nie Ching, are being investigated under this act. With regard to seven of these parliamentarians, the action taken against them under the Sedition Act is wholly or partly related to criticism they voiced about the trial against Mr. Anwar Ibrahim;
- According to the complainants, Mr. Khalid Samad was also charged under the Sedition Act. According to the leader of the Malaysian delegation, Mr. Samad was being investigated on a charge of unlawful assembly, not sedition. According to the complainants, Mr. Tony Pua was investigated (in or since March 2014) under the Sedition Act for a tweet after Ms. Nurul Izzah Anwar was arrested overnight by the police for investigations. According to the leader of the Malaysian delegation, however, Mr. Tony Pua was subject to a legal suit brought by current Prime Minister Najib Razak;
- On 20 November 2015, the Attorney General withdrew the sedition charge against Ms. Teresa Kok;
- 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;
- In 2012, the current Prime Minister announced publicly that the Sedition Act would be repealed. The Government then decided not to repeal it, but to amend it, in the belief that the Sedition Act remained necessary to promote national harmony and tolerance. In April 2015, the House of Representatives and Senate passed most of the proposed amendments, notably the following: (i) criticism of the Government or the administration of justice is no longer considered seditious; (ii) promoting hatred between different religions is now seditious; (iii) sedition is no longer punishable with a fine but carries a mandatory minimum three-year prison term; (iv) sedition is punishable with up to 20 years' imprisonment if the seditious acts or statements lead to bodily harm and/or damage to property; (v) The act empowers the court to order the removal of seditious material on the Internet;
- The authorities have by and large affirmed 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 that went to Malaysia 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;
- Well before the passing of the amendments to the Sedition Act, the sedition charges and investigations against the aforesaid parliamentarians had been put on hold pending a ruling by the Federal Court on the petition by Mr. Azmi Sharom 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 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. Another constitutionality challenge, brought by Mr. N. Surendran, is, however, still before the Federal Court, which is due to rule on the matter on 14 April 2016;
- According to the leader of the Malaysian delegation, the matter of discontinuing previous legal action initiated under the original Sedition Act with regard to criticism of the Government or the administration of justice is entirely in the hands of the Attorney General, as he had the power to discontinue the proceedings at any time. He also stated

that the reasons why the Attorney General had not yet taken a decision with regard to pending files could be that he preferred to wait for the outcome of the constitutionality challenge and that the amendments had still not yet come into effect,

Considering the following information with regard to the legal proceedings to which the parliamentarians have been subjected under the Peaceful Assembly Act:

- Five parliamentarians, namely Mr. Chong Chien Jen, Mr. Julian Tan Kok Peng, Mr. Anthony Loke, Mr. Shamsul Iskandar and Mr. Sim Tze Sin, have reportedly been charged under Section 4(2)(c) of the Peaceful Assembly Act (PAA) in connection with their participation in demonstrations. Three others, namely Mr. Chua Tian Chang, Mr. Hatta Ramli and Mr. Michael Jeyakumar Devaraj, were reportedly briefly arrested in connection with such involvement. It appears that an investigation is ongoing. Mr. Teo Kok Seong and Mr. Rafizi Ramli are also reportedly being investigated for their role in demonstrations. All the parliamentarians concerned affirm that the legal action taken against them runs counter to their right to freedom of assembly, which the leader of the Malaysian delegation denies,

Considering that the complainants fear that, following the serious allegations that surfaced in 2015 about the abuse of the "1Malaysia Development Berhad" (1MDB) and mounting calls for the Prime Minister to resign, the authorities are tightening the screws on the opposition,

Considering, with regard to the recommendation made by the Committee delegation that travelled to the country that Malaysia should ratify the International Covenant on Civil and Political Rights, to which 168 countries are State Parties, the leader of the Malaysian delegation stated that Malaysia subscribed to the principles and ideas contained in the Covenant, but that challenges remained, including with regard to religious matters, which made it difficult to ratify the treaty at this point in time,

1. *Thanks* the leader of the Malaysian delegation for the information provided and for his continued cooperation;
2. *Is pleased*, in the belief that Ms. Teresa Kok was only exercising her right to freedom of expression, that the Attorney General decided to discontinue the charge filed against her under the Sedition Act; *decides* therefore to close her case;
3. *Fails to understand*, however, why the Attorney General has not yet used his discretionary powers to take the same action in the other cases, which amount to no more than criticism of the Government and the administration of justice, which conduct would also no longer be punishable under the amended Sedition Act; *sincerely hopes* therefore that such action will soon be taken; *wishes* to be kept informed of developments in this regard;
4. *Remains concerned* that the provisions of the Sedition Act as amended 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. *Sincerely hopes*, therefore, that the authorities will undertake soon, as some of them intimated during the mission, another review of the amended Sedition Act and that this will result in legislation that is fully compliant with international human rights standards; *wishes* to be kept informed of any steps taken in this regard;
6. *Eagerly awaits* the outcome of the Federal Court's deliberations on the remaining pending constitutionality challenge to the Sedition Act; *wishes* to receive a copy of its ruling once it is available;
7. *Is deeply concerned* about the reports of arbitrary arrests, investigations and charges against opposition members under the Peaceful Assembly Act; *wishes* to receive detailed information from the authorities about the legal justification and facts for the legal action taken under this act with regard to each parliamentarian;

8. *Wishes to understand*, in light of the conflicting information on file, to what legal action Mr. Khalid Samad and Mr. Tony Pua are subjected and the facts on which such action is based;
9. *Sincerely hopes* that the authorities will soon decide to join the overwhelming majority of nations that have ratified the International Covenant on Civil and Political Rights; *points out* in this regard that, if absolutely necessary, Malaysia can make reservations, understandings and declarations upon becoming a party to the covenant, as long as they do not contravene the object and purpose of the treaty;
10. *Calls on* the authorities 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 the rights to freedom of peaceful assembly and of association, to ensure that existing legislation is amended or repealed so as to comply with relevant international human rights standards;
11. *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;
12. *Requests* the Committee to continue examining this case and to report back to it in due course.