



Inter-Parliamentary Union

For democracy. For everyone.

Malaysia

MAL21 N. Surendran
MAL23 Khalid Samad
MAL24 Rafizi Ramli
MAL25 Chua Tian Chang
MAL26 Ng Wei Aik
MAL27 Teo Kok Seong
MAL28 Nurul Izzah Anwar (Ms.)
MAL29 Sivarasa Rasiah
MAL30 Sim Tze Sin
MAL31 Tony Pua
MAL32 Chong Chien Jen
MAL33 Julian Tan Kok Peng
MAL34 Anthony Loke
MAL35 Shamsul Iskandar
MAL36 Hatta Ramli
MAL37 Michael Jeyakumar Devaraj
MAL38 Nga Kor Ming
MAL39 Teo Nie Ching (Ms.)
MAL40 Azmin Ali

***Decision adopted by the Committee on the Human Rights of Parliamentarians
at its 152nd session (Geneva, 23 January to 3 February 2017)***

The Committee,

Referring to the aforesaid cases of opposition members of the Malaysian House of Representatives and to the decision adopted by the IPU Governing Council at its 198th session (March 2016) with regard to case numbers Mal/21 to Mal/38,

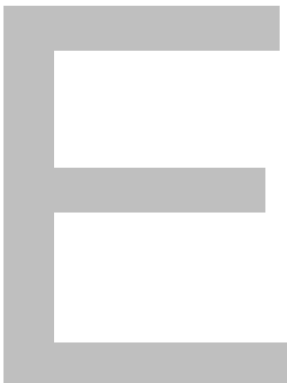
Taking into account the information regularly provided by the complainants,

Having before it for the first time the cases of Ms. Teo Nie Ching (Mal/39) and Mr. Azmin Ali (Mal/40), which have been examined 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 visited Malaysia (29 June to 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:

- Mr. N. Surendran, Mr. Ng Wei Aik and Mr. Sivarasa Rasiah, three parliamentarians belonging to the opposition, have been charged under section 4(1) (a), (b) and (c) of the Sedition Act of 1948, while five other opposition members of parliament, namely Mr. Rafizi Ramli, Ms. Nurul



Izzah Anwar, Mr. Tony Pua, Mr. Nga Kor Ming and Ms. Teo Nie Ching are being investigated for this crime; with regard to most 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, which was denied by the leader of the Malaysian delegation to the 134th IPU Assembly (March 2016), who said that he was being investigated on a charge of unlawful assembly, not sedition; with regard to Mr. Tony Pua, the leader of the Malaysian delegation pointed out that he was subject to a legal suit brought by the current Prime Minister, Najib Raza, without, however, clarifying whether Mr. Tony Pua was also being investigated under the Sedition Act;

- On 29 September 2016, Mr. Chua Tian Chang was sentenced to a three-month prison term and fined RM 1,800 for sedition in connection with a speech he had made at a forum at the Kuala Lumpur and Selangor Chinese Assembly Hall on 13 May 2013, which had called for street demonstrations to challenge the corrupt election results; he has appealed the sentence;
- 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 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;
- According to the leader of the Malaysian delegation to the 134th IPU Assembly (March 2016), 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; 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;
- 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 judgment on the matter on 24 March 2015, the Federal Court ruled on 7 October 2015 that the Sedition Act was constitutional; however, other constitutionality challenges, including one brought by Mr. N. Surendran, are still pending,

Considering that, on 30 December 2016, Mr. Azmin Ali was reportedly investigated under section 500 of the Criminal Code and section 233 of the Communications and Multimedia Act for a speech he made in 2016, reportedly on the firearms business belonging to the daughter of the Inspector General of Police, Mr. Tan Sri Khalid Abu Bakar, who was the biggest shareholder in Nilai Arms & Ammunitions (NAA),

Considering that five parliamentarians, namely Mr. Chong Chien Jen, Mr. Julian Tan Kok Peng, Mr. Anthony Loke, Mr. Shamsul Iskandar and Mr. Sim Tze Sin, were charged under section 4(2)(c) of the Peaceful Assembly Act due to their participation in demonstrations; the charge against Mr. Anthony Loke was subsequently dismissed; four others, Mr. Teo Kok Seong, Mr. Chua Tian Chang, Mr. Hatta Ramli and Mr. Michael Jeyakumar Devaraj, were briefly arrested due to their alleged involvement in demonstrations; on 13 October 2016, the Petaling Jaya Session Court granted the latter two parliamentarians a discharge, but this did not amount to an acquittal,

Considering that the complainants affirm 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 have been tightening the screws on the opposition; *considering also* that, on 14 November 2016, Mr. Ramli was sentenced under the Official Secrets Act to an 18-month prison term for unauthorized possession of the 1MDB audit report and for exposing it to the media,

Recalling, 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. *Is deeply concerned* about Mr. Ramli’s conviction; *fails to understand* how he was punished for making information available on a topic that is of vital interest to society as a whole and requires effective parliamentary oversight, and hence should not be shrouded in secrecy; *wishes* to receive a copy of the verdict and to be kept informed of the appeal proceedings;
2. *Regrets* that it appears that the Attorney General has not yet used his discretionary powers to discontinue charges in cases filed under the previous Sedition Act, which amount to no more than criticism of the Government and the administration of justice and would therefore no longer be punishable under the amended Sedition Act; *sincerely hopes* that such action will soon be taken; *wishes* to be kept informed of developments in this regard;
3. *Is concerned*, in light of its long-standing concerns about the repercussions for the legitimate exercise of freedom of expression, about the conviction of Mr. Chua Tian Chang on a charge brought under the old Sedition Act; *wishes* to receive a copy of the verdict to fully understand the facts and legal reasoning underpinning the conviction and to be kept informed of the appeal proceedings;
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; *sincerely hopes*, therefore, that the authorities will soon undertake another review of the amended Sedition Act, as they intimated during the mission, 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;
5. *Eagerly awaits* the outcome of the deliberations on the remaining pending constitutionality challenges to the Sedition Act; *wishes* to receive a copy of the rulings once they become available;
6. *Reiterates its wish* to receive detailed information from the authorities about the legal justification for the legal action taken, and the facts on which it was based, against six parliamentarians under the Peaceful Assembly Act (PAA); *decides* to close further examination of the cases of the three other parliamentarians, namely Mr. Anthony Loke, Mr. Hatta Ramli and Mr. Michael Jeyakumar Devaraj, given that they had either been discharged or the charge under the PAA had been dismissed;
7. *Reiterates its wish*, in light of the conflicting information on file, to receive official documentation on the legal action to which Mr. Khalid Samad and Mr. Tony Pua are subject and the facts on which the action is based; *wishes also* to receive official information on the factual and legal grounds for the alleged investigation into Mr. Azmin Ali;
8. *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 and declarations upon becoming a party to the Covenant, as long as they do not contravene the object and purpose of the treaty;

9. *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;
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. *Decides* to continue examining this case.