



Inter-Parliamentary Union

For democracy. For everyone.

Malaysia

MAL21 - N. Surendran
MAL22 - Teresa Kok (Ms.)
MAL23 - Khalid Samad
MAL24 - Rafizi Ramli
MAL25 - Chua Tian Chang
MAL26 - Ng Wei Aik
MAL27 - Teo Kok Seong

*Decision adopted by consensus by the IPU Governing Council at its 196th session (Hanoi, 1st April 2015)*¹

The Governing Council of the Inter-Parliamentary Union,

Referring to the cases of Mr. N. Surendran, Ms. Teresa Kok, Mr. Khalid Samad, Mr. Rafizi Ramli and Mr. Chua Tian Chang, members of the House of Representatives of Malaysia, and to the decision it adopted at its 194th session (October 2014),

Having before it the cases of Mr. Ng Wei Aik and Mr. Teo Kok Seong, 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),

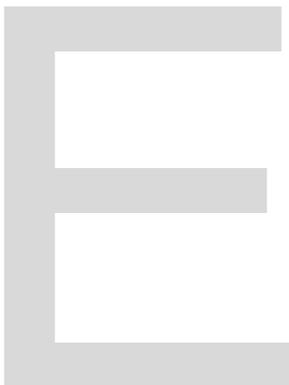
Taking into account the information provided by the Malaysian delegation to the 132nd IPU Assembly (Hanoi, March 2015) on the occasion of the hearing held with the Committee; *recalling also* the information provided to the Committee by the Malaysian delegation to the 131st IPU Assembly (October 2014); *taking into account also* the information regularly provided by the complainants,

Recalling that the following parliamentarians 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 of 1948:

- Ms. Teresa Kok, an opposition member of parliament for Seputeh in the Federal Territory of Kuala Lumpur, was charged on 5 May 2014 for making a satirical video called “Onederful Malaysia”, which was published on YouTube on 27 January 2014. The Malaysian delegation emphasized in October 2014 that, according to the charges, the video raised sensitive security issues in Sabah, contained insults and promoted disaffection against the judiciary;
- Mr. Khalid Samad, a member of parliament for Shah Alam in the State of Selangor, was charged on 26 August 2014, under Section 4(1)(b) of the Sedition Act, for suggesting during a press conference in the parliamentary lobby, held on 26 June 2014, that an enactment allowing the Selangor Islamic Religious Council (MAIS) to control the State's religious authorities should be reviewed. The Malaysian delegation emphasized in October 2014 that, according to the charges, his remarks included calls for the return to a constitutional monarchy and questioned the powers of the rulers;

1

The delegation of Malaysia expressed its reservation regarding the decision.



- Mr. N. Surendran, an opposition member of parliament for Padang Serai in the State of Kedah and lawyer for opposition leader Mr. Anwar Ibrahim, was charged twice within two weeks. His first charge, under Section 4(1)(c) of the Sedition Act, was for a press statement he released on 18 April 2014 entitled "Court of Appeal's Fitnah 2 written judgement is flawed, defensive and insupportable", in which he criticized the decision of the appellate court against the appeal of his client, Mr. Anwar Ibrahim, for a second sodomy conviction. The second charge, under Section 4(1)(b) of the Sedition Act, on 28 August 2014, was for a video on YouTube dated 8 August 2014 in which he stated that Mr. Anwar Ibrahim's second sodomy trial and conviction was part of a political conspiracy;
- Mr. Rafizi Ramli, an opposition member of parliament for Pandan in the Federal Territory of Kuala Lumpur, is currently under three separate sedition investigations. One is for providing the media with a letter allegedly written to Bank Rakyat from the Domestic Trade, Cooperatives and Consumerism Minister, Datuk Seri Hasan Malek. Another is for remarks he made against right-wing groups in the country in which he criticized their call to protest outside churches. The third is for writing a book called "Reformasi 2.0: Fakta Kes Anwar Ibrahim" (translated as "Reforms 2.0: The Facts of Anwar Ibrahim's Case");
- Mr. Chua Tian Chang, an opposition member of parliament for Batu, is also being charged with sedition over speeches he made at the Kuala Lumpur and Selangor Chinese Assembly Hall in Jalan Maharajalela, allegedly claiming that the United Malays National Organization staged the Sulu invasion into Sabah,

Recalling that the complainants affirm that the Sedition Act aims to stifle the opposition; they consider that the act is drafted so broadly so as to criminalize democratic speech, including criticism against the Government, its leaders, and ruling political parties,

Considering that, according to the complainants, the sedition charges and investigations have been put on hold pending a ruling by the Federal Court on the petition challenging the constitutionality of the Sedition Act 1948; on 24 March 2015, the Federal Court reserved judgement on the matter,

Recalling that the late member of parliament, Mr. Karpal Singh, was convicted on 21 February 2014 of sedition and sentenced to pay a fine of 4,000 ringgit; persons who are convicted of a crime for which the punishment is imprisonment of one year or more or a fine of 2,000 ringgit cannot be members of parliament; if convicted, parliamentarians charged with sedition face a maximum prison sentence of three years and a maximum fine of 5,000 ringgit,

Recalling that, according to the Malaysian delegation in October 2014, freedom of expression was fully respected in Malaysia, that the Sedition Act was nothing new and had been inherited from the former British rulers, that the existence of the Sedition Act had to be seen in the context of complex racial and religious relations in Malaysia and that parliamentarians charged with sedition were not targeted because of their opposition to the Government, but because they had allegedly violated the laws of Malaysia; the delegation also emphasized that the Attorney-General, in deciding whether or not to bring or pursue a case, placed great importance on whether or not it was in the public interest to do so; according to the Malaysian delegation, the Government has been actively exploring, through the establishment of a dedicated team, four different options to review the Sedition Act, namely: (i) maintaining the 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 Act; the matter was now in the hands of the Attorney-General's Office, which was due to make a proposal on how to go forward,

Considering that the Malaysian delegation to the 132nd IPU Assembly (Hanoi, March 2015) stated that the intention of the Government had now become to amend the Sedition Act and that specific legislation would be proposed to Parliament in the coming weeks; the Malaysian delegation stated that the new legislation would have to strike the right balance between protecting stability and social harmony on the one hand and freedom of expression on the other; one of the proposed amendments would entail the crime of sedition now also covering topics related to the territorial integrity of Malaysia as well as religion,

Considering that the complainants affirm that the amendments aim to further limit freedom of speech in Malaysia; they recall in this regard that the Prime Minister, after first announcing in 2012 that he intended to promote a comprehensive review of the Sedition Act with a view to abolishing it, made a U-turn at the end of November 2014 by publicly announcing the intention not to repeal but to bolster the act instead,

Considering that Mr. Chua Tian Chang was arrested on 20 March 2015 and held overnight in connection with his involvement in the allegedly unlawful Kita Lawan rally that took place on 7 March 2015 in protest against the conviction on 10 February 2015 of opposition leader Mr. Anwar Ibrahim on a sodomy charge and his sentence to a five-year prison term. Mr. Teo Kok Seong and Mr. Rafizi Ramli are also being investigated with regard to their involvement in the same rally. According to one of the complainants, the arrest and investigation infringe the member of parliaments' rights to freedom of expression and freedom of assembly. The complainants point out that the police have disregarded the Court of Appeal's ruling on Section 9(5) of the Peaceful Assembly Act, which held that the 10-day notice requirement is unconstitutional and that what is "fundamentally lawful cannot be criminalized". It appears that the basis for the investigation was subsequently changed to an alleged violation of 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",

Considering that the Malaysian delegation to the 132nd IPU Assembly reiterated its invitation for a delegation of the Committee to come to Malaysia so as to gain a better understanding of the complex issues at hand,

1. *Thanks* the Malaysian delegation for their cooperation and the information provided;
2. *Is concerned* about what appears to be a wave of criminal proceedings limiting the rights to freedom of expression and assembly, respect for which is essential for members of parliament to effectively carry out their functions; *considers* in this regard that the conviction of the late Mr. Karpal Singh bears out that the application of the Sedition Act can have the effect of punishing remarks that seem to fall squarely within the exercise of the right to freedom of expression, easily leading to the loss of the parliamentary mandate, as would have been the case had his sentence been upheld on appeal;
3. *Decides* therefore to monitor closely the legal proceedings regarding the parliamentarians under the Sedition Act, the Peaceful Assembly Act and/or Criminal Code; *would appreciate receiving* further details on the precise facts that have led to charges or to investigations, as well as clarification as to whether or not the legal proceedings under the Sedition Act are currently on hold pending the challenge of constitutionality of the act; *also wishes* to understand the exact legal basis for the steps taken against three parliamentarians in connection with the Kita Lawan rally;
4. *Is concerned* that, from the four options to review the Sedition Act, the authorities have chosen the one of keeping the act with amendments; *is particularly concerned* at reports that the amendments, rather than raising, may further limit guarantees of freedom of speech; *calls on* the Malaysian Parliament to do everything possible to ensure that, at this critical juncture, the new legislation fully complies with relevant international standards and fully guarantees that citizens and parliamentarians alike can speak out freely without fear of undue legal action; *wishes* to receive a copy of the amendments as soon as they become available; *assures* that the IPU stands ready to assist Parliament in its legislative work, including by sharing relevant experiences from other countries, should that be requested;
5. *Welcomes* the invitation extended by the Malaysian delegation for a Committee delegation to travel to Malaysia; *considers* that such a mission would be a good opportunity to enhance the Committee's understanding of the review of the Sedition Act and of Malaysian legislation governing the right to freedom of assembly that investigators have relied on in proceedings against members of parliament, and to identify opportunities for sharing other countries' relevant legislative experiences;
6. *Requests* the Secretary General to make the necessary arrangements for the mission to take place in the near future;
7. *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;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.