

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
MYS 1/2015:

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of Mr. **Eric Paulsen** and Mr. **Zulkiflee Sm Anwar Ulhaque** under the Sedition Act 1948.

Mr. Paulsen is co-founder of the human rights and law reform organisation, Lawyers for Liberty.

Mr. Ulhaque is a human rights defender and cartoonist, known as "Zunar", who draws political cartoons for newspapers, online on his website and for publishing in books with the aim of exposing corruption and abuses of power. In 2011, he won the Cartoonist Rights Network International Award for Courage in Editorial Cartooning.

Allegations of arrests of individuals under of the Sedition Act 1948 were the subject of previous communications sent on 1 October 2014, case no. MYS 6/2014, and on 23 December 2014, case no. MYS 8/2014, by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers. The Sedition Act 1948 was also the subject of a press release issued on 8 October 2014. We take note of the response provided to the communications sent on 1 October 2014, case no. MYS 6/2014. We acknowledge that due protection of the right to freedom of expression is enshrined in article 10 of the Malaysian Constitution, but remain concerned that the Sedition Act 1948 is implemented in a way that criminalizes the lawful exercise of the right to freedom of opinion and expression. We regret that we have not received a reply to the communication sent on 23 December 2014 and recall the importance of cooperation with the UN Special

Procedures, including providing a prompt response to the communications addressed to the Government.

According to the information received:

In the case of Mr. Eric Paulsen

On 9 January 2015, Mr. Paulsen posted a message on Twitter, which reportedly claimed that the Malaysian Islamic Development Department, also known as Jakim, was promoting extremism. On 12 January 2015, Mr. Paulsen was arrested in Kuala Lumpur by approximately 20 police officers and detained for investigation under the Sedition Act 1948. Also, the office of Lawyers for Liberty was raided by police, who confiscated Mr. Paulsen's mobile telephone and computer on 12 January 2015. On 14 January 2015, Mr. Paulsen was released, although his mobile telephone and computer have not been returned to him. On 5 February 2015, Mr Paulsen was charged under section 4(1)(c) of the Sedition Act 1948 by the Kuala Lumpur Sessions Court and was granted bail. The first hearing of Mr. Paulsen's trial has been scheduled for 27 April 2015.

In the case of Mr. Zulkiflee Sm Anwar Ulhaque, also known as "Zunar"

In September 2009, Mr. Ulhaque's office was raided by the authorities and 500 copies of his cartoon book, "Gedung Kartun" were confiscated.

In July 2010, five of Mr. Ulhaque's cartoon books were banned by the Malaysian Minister of Home Affairs because they were deemed detrimental to public order.

On 24 September 2010, Mr. Ulhaque was reportedly detained several hours before he was due to release a cartoon book, "Cartoon-O-Phobia", and the books were confiscated. He was held in custody for two days for investigation under Sedition Act 1948. In July 2012, a civil court held that Mr. Ulhaque's arrest and detention was unlawful and awarded him compensation.

On 6 November 2014, three of Mr. Ulhaque's sales assistants were reportedly arrested for investigation under the Sedition Act 1948, the Printing Presses and Publications Act and Penal Code whilst selling books of his political cartoons on the leader of the opposition party, Mr. Datuk Seri Anwar Ibrahim. It is alleged that 44 copies of the books were confiscated.

On 9 October 2014, the ban of two of Mr. Ulhaque's cartoon books, "Perak Darul Kartun" and "1 Funny Malaysia" was lifted by the Court of Appeal on the ground that the books did not threaten national security or prejudicial public order. This decision is being appealed by the Malaysian Government at the Federal Court as confirmed in a letter from the Malaysia Home Ministry to Mr. Ulhaque dated 10 November 2014.

On 16 November 2014, the webmaster of Mr. Ulhaque's website and online bookstore was reportedly summoned to the police station and interrogated under

the Sedition Act 1948. It is alleged that on 18 November 2014, the online payment gateway that administers the online sales of Mr. Ulhaque's cartoon books was forced to disclose details of customers who had purchased the book online under the Sedition Act 1948. On 20 November 2014, Mr. Ulhaque was interrogated at the Dang Wangi Police Station regarding the Printing Presses and Publications Act, the Sedition Act, Penal Code.

On 28 January 2015, the office of Mr. Ulhaque was raided by the police whilst he was on a book tour in London and over 150 copies of two of his books were confiscated, reportedly under the Printing Presses and Publications Act, Sedition Act and Penal Code.

On 10 February 2015, Mr. Ulhaque posted a message on Twitter, which criticised the independence and impartiality of Federal Court Judges for their decision to convict and sentence the opposition leader Mr. Anwar Ibrahim. Hours after posting the tweet, the Inspector-General of the police publicly commented on Mr. Ulhaque's message, calling to "track him down" and open investigations. That same day, at approximately 9pm, Mr. Ulhaque was arrested by five police officers and detained for investigation under section 4(1)(c) of the Sedition Act 1948 at Dang Wangi police station. On 13 February 2015, Mr. Ulhaque was released from detention, although he has been told to return to the police station on 26 February 2015.

Mr. Ulhaque may still face charges following two ongoing investigations under the Sedition Act 1948; one regarding the tweet he posted on the case of Mr. Anwar Ibrahim and the other on his cartoon books, "Pirates of the Carry-BN" and "Conspiracy to Imprison Anwar".

While we do not wish to prejudge the accuracy of these allegations, concern is expressed at the use of the Sedition Act 1948 to arrest, detain and charge Mr. Paulsen and to arrest and possibly charge Mr. Ulhaque, for exercising their right to freedom of expression and promoting human rights and accountability in Malaysia, in accordance with international human rights law, including the Universal Declaration on Human Rights (UDHR).

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.

2. Please provide information concerning the legal grounds for the respective charges and detention of Mr. Paulsen and Mr. Ulhaque, as well as how these measures are compatible with international human rights norms and standards, in particular article 19 of the UDHR.

3. Please provide information on the total number of persons currently charged and the number of persons currently detained, as well as the number of persons sentenced under the Sedition Act of 1948 in the last two years, indicating how these prosecutions are compatible with the aforementioned international human rights norms and standards, in particular article 19 and 20 of the UDHR.

4. Please indicate what measures have been taken in relation to Malaysia's commitment made at the Universal Periodic Review to consider repealing the Sedition Act of 1948 and to put Malaysian legislation in conformity with its international obligations.

5. Please indicate what measures have been taken to ensure that human rights defenders, academics, journalists, students, politicians, lawyers and civil society members, are able to carry out their legitimate work in a safe and enabling environment without fear of criminalization.

We would appreciate your response within sixty days.

While awaiting a reply, we urge that all necessary interim measures be taken to protect the rights of Mr. Paulsen and Mr. Ulhaque, halt the alleged violations and prevent their re-occurrence.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the right to freedom of expression as set forth in article 19 of the Universal Declaration of Human Rights (UDHR), which include the right to freedom of opinion and expression. This includes the freedom to hold opinions without interference and to impart information and ideas through any media.

We would like also to refer to the right to freedom of association, as set forth in article 20 of the UDHR and in the Human Rights Council resolution 24/5, in which the Council stresses the obligations of States to respect and fully protect the rights of all individuals to associate freely, online as well as offline.

The recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression which emphasizes that freedom of expression plays a central role in the effective functioning of a vibrant democratic political system, recalling States' responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated. He added that States must remove any regulation of or restriction upon political speech and expression, outside of restrictions that fall within well-recognized understandings of the permissible limitations on freedom of expression as recognized in international human rights law (A/HRC/26/30).

We take note of the commitment expressed by the Malaysian Government in March 2014 during the second cycle of the Universal Periodic Review (UPR), to "accept in principle" the recommendations to repeal the Sedition Act (recommendations 146.48. and 146.49, A/HRC/25/10, and para.7 A/HRC/25/10/Add.1) and acknowledge article 10 of the Federal Constitution on the right to freedom of speech.

We would like to refer the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. In particular, we would like to draw specific attention of your Excellency's Government to article 6, paragraphs (a), (b) and (c).

We recall the Human Rights Council Resolution 22/6, which provides for the right to "unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms". (OP 13).