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Datuk Seri Najib Tun Razak
Prime Minister's Office of Malaysia
Main Block, Perdana Putra Building
Federal Government Administrative Centre
62502 Putrajaya
Malaysia

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Prime Minister

OPEN LETTER: USE OF THE SEDITION ACT TO RESTRICT FREEDOM OF EXPRESSION IN MALAYSIA

I am writing to express Amnesty International's deep concern about the alarming use of the colonial era 1948 Sedition Act to stifle peaceful dissent in Malaysia, as part of a recent crackdown on freedom of expression in the country.

Our organization is particularly disappointed with your announcement of 27 November 2014, in which you said that Malaysia will retain and expand the Sedition Act. We note that, in July 2012, you publicly committed to repealing the Act, and over the last two years have given numerous assurances to the Malaysian public and the international community that the Act would be repealed.

We urge you to reconsider your recent decision, and to take immediate steps to repeal the Sedition Act, release all those currently detained under its provisions and drop all charges brought under the Act.

CRIMINALIZING FREEDOM OF EXPRESSION

Amnesty International is aware of at least 44 people who have been investigated, charged or convicted under the Sedition Act since 2013.

- On 5 September, former student activist **Safwan Anang** (male) was sentenced to 10 months in prison by the Sessions Court in Kuala Lumpur. He had been charged with sedition under Article 4(1)(b) of the Sedition Act on 29 May 2014 after he gave a speech at a political rally on 13 May 2013, allegedly calling for a change in government in a way that was interpreted to be seditious. After his conviction he was released on bail pending an appeal. His conviction for sedition should be quashed.
- On 23 May 2014, **Adam Adli Abd Halim** (m) was sentenced to one year in prison by the Sessions Court in Kuala Lumpur, for remarks made at the same rally for calling on the people to take to the streets over the general election results. Should he be imprisoned to serve his sentence, Amnesty International would consider him a prisoner of conscience. His conviction for sedition should be quashed.

Amnesty International is aware of at least a further 16 people currently facing charges under the Sedition Act.

- Student **Ali Abdul Jalil** (m) was charged on 8 September 2014 under Article 4(1)(c) of the Sedition Act for posting "seditious" comments on Facebook on 21 January 2014 and again on 18

**AMNESTY
INTERNATIONAL**



**AMNESTY INTERNATIONAL INTERNATIONAL
SECRETARIAT**

Peter Benenson House, 1 Easton Street
London WC1X 0DW, United Kingdom

T: +44 (0)20 7413 5500
1157

F: +44 (0)20 7956

E: amnestyis@amnesty.org W: www.amnesty.org

August 2014. He was released later that day after posting bail but was immediately rearrested and charged at Shah Alam Session Court with two further counts under Article 4(1)(c) of the Act. He was taken to Sungai Buloh prison, Selangor state, where he was held for 15 days. He was released again on bail on 23 September; however, he was immediately rearrested and sent to Johor Bharu Selatan prison, before being released on 29 September 2014. He is now facing three charges under Article 4(1)(c) of the Sedition Act. Amnesty International is additionally concerned by allegations that Ali Abdul Jalil was verbally and physically ill-treated by a prison officer in Sungai Buloh prison, who punched him in the stomach, slapped his face, and hit his leg with a baton and rubber pipe. Amnesty International is not aware of any independent investigation into the allegations of ill-treatment. Amnesty International calls for an investigation into his allegations of ill-treatment. The charges against him should be dropped.

- **Dr Azmi Sharom** (m), an academic from the University of Malaya, was charged with sedition on 2 September 2014 under Articles 4(1)(b) and 4(1)(c) for his alleged seditious remarks relating to the 2009 political crisis in the state of Perak published by an online news portal on 14 August 2014. Dr Azmi Sharom is currently challenging the constitutionality of the Sedition Act. If found guilty and imprisoned under these charges, Amnesty International would consider him a prisoner of conscience. The charges against Dr Azmi Sharom should be dropped.
- **N. Surendran** (m), an opposition member of parliament for Padang Serai and leading human rights lawyer, was charged under Article 4(1)(b) on 19 August 2014 for criticizing the Court of Appeal ruling on 7 March 2014 which found Anwar Ibrahim guilty of “sodomy”. He was charged again on 28 August under Article 4(1)(c) for his comments in a YouTube video in which he allegedly criticized the prime minister for mounting a political conspiracy against opposition leader Anwar Ibrahim. If found guilty and imprisoned under these charges, Amnesty International would consider him a prisoner of conscience. The charges against N. Surendran should be dropped.

INVESTIGATIONS FOSTERING A CLIMATE OF FEAR

Amnesty International is also concerned about an increasing number of “investigations” under the Sedition Act. Among those investigated for so-called “seditious” actions are opposition politicians, journalists, and in one case, a teenager who did nothing more than click “like” on a social media page entitled “I love Israel”. Amnesty International is concerned that these investigations are an attempt to silence critical voices and dissent by creating a climate of fear. The investigations and any further proceedings under the Sedition Act against these people should be immediately abandoned.

- On 2 October 2014, a police complaint was filed against human rights activist **Ambiga Sreenevasan** (female) for so-called “seditious” remarks made about Biro Tata Negara (BTN) or the National Civics Bureau at a conference in Kuala Lumpur. She is now being investigated under Article 4(1)(b) of the Sedition Act.
- On 26 September 2014, opposition leader **Anwar Ibrahim** (m) was questioned by the Ampang District Police, Selangor state, as part of an investigation into allegedly “seditious” statements made in a speech at a political rally in Taman Melawati, Kuala Lumpur on 25 March 2011.
- *Malaysiakini* journalist **Susan Loone** (f) was arrested and questioned under the Sedition Act on 4 September 2014. She was arrested in the state of Penang and taken to the Northeast District Police Headquarters in Penang, where she was held for more than eight hours before being released. Her arrest came just days after she published an article on 1 September, which allegedly defamed the police. The article was based on an interview with Phee Boon Poh, the chairperson of the Penang Voluntary Patrol Unit (PPS), in which he claimed he had been “treated like a criminal” following his arrest on 31 August. Susan Loone is currently on bail and waiting for the charging date. If found guilty of defaming the police and imprisoned solely for publishing this article, Amnesty International would consider her a prisoner of conscience.

HUMAN RIGHTS ANALYSIS

Amnesty International has long expressed concerns about Malaysia's Sedition Act, which has been used in the past to criminalize opposition activism and voices critical of the government.¹ The law criminalizes a wide array of acts, including those "with a tendency to excite disaffection against any Ruler or government" or to "question any matter" protected by the Constitution. Those found guilty can face three years in prison, be fined up to 5,000 Malaysian Ringgit (approximately US\$1,570) or both.

The right to freedom of opinion and expression is enshrined in Article 19 of the Universal Declaration of Human Rights. This right includes the "freedom to hold opinions without interference" and to "seek, receive and impart information and ideas through and media and regardless of frontiers". Although international human rights law does permit certain restrictions on freedom of expression, these restrictions must meet a strict three-part test: they must be provided by law; be limited to specific purposes such as national security, public order or respect of the rights or reputation of others; and be necessary and proportionate to the achievement of one of those permissible purposes.² Any restrictions imposed which do not meet all elements of this "three-part test" constitute violations of the right.³

Concerns regarding restrictions to the freedom of expression were expressed by fellow UN member states during the second cycle of Malaysia's Universal Periodic Review in 2013. The states that have expressed concern or made recommendations to repeal the Sedition Act include: Australia, Czech Republic, France, Poland, the United Kingdom and the United States of America.

The restrictions on the right to freedom of expression imposed in Malaysia's Sedition Act are phrased in an excessively broad and vague manner, potentially resulting in both an overreach of the law and a discriminatory application of the law. In fact the formulation "with a tendency to excite disaffection against any Ruler or government" already sets a very low threshold for the type of criticism of officials that is criminalized, whereas such criticism should not be criminalized at all.⁴ The Sedition Act, originally promulgated in order to suppress criticism of British rule in what was then Malaya, does not comply with international human rights law and standards, and violates the rights to freedom of expression as guaranteed in Malaysia's Constitution.

RECOMMENDATIONS

We therefore urge you, as Prime Minister, to take steps towards:

- Immediately repealing the 1948 Sedition Act;
- Immediately quashing the convictions of individuals who have been sentenced under and unconditionally release all those who have been detained under the Sedition Act; furthermore, pending the repeal of the Sedition Act, ensuring that no one further is arrested, investigated, charged or imprisoned under its provisions;
- Ensuring prompt independent, impartial and effective investigations into all allegations of torture and other ill-treatment by police and bringing those responsible to justice in trials which meet

¹ See for example, Amnesty International, *Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy* (Index: ASA 28/006/1999), September 1999.

² See Article 19 of the Universal Declaration of Human Rights; Article 19 of the International Covenant on Civil and Political Rights.

³ See, for example, Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011), para. 27. The Committee has clarified that this general comment also provides guidance with regard to elements of the right to freedom of peaceful assembly – see Communication no. 1790/2008 *Govsha, Syritsa, and Mezyak v. Belarus*, Views adopted 27 July 2012, para. 9.4.

⁴ See for instance Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 38: "all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition."

international standards of fairness, which do not impose the death penalty, and ensure victims are granted reparations;

- Reviewing and amending all other laws which restrict the right to freedom of expression, in strict compliance with international human rights law and standards; and
- Ratifying the International Covenant on Civil and Political Rights at the earliest opportunity, incorporating its provisions in domestic law, and implementing it in policy and practice.

We express our sincere hope and confidence that you will consider and support these recommendations.

Yours sincerely

Salil Shetty
Secretary General, Amnesty International