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Committee on the Human Rights of Parliamentarians

Report on the mission to Malaysia

29 June - 1 July 2015

MAL/15 - Anwar Ibrahim

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

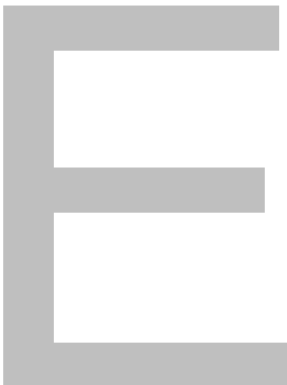
MAL/28 - Nurul Izzah Anwar

Executive Summary

From 29 June to 1 July, Committee members Senator Juan Pablo Letelier and Mr. Alioune Abatalib Gueye conducted a mission to Malaysia to gather first-hand information on the cases of nine Malaysian members of parliament.

A. Origin and conduct of the mission

1. The mission concerned three cases affecting a total of nine opposition members of the Malaysian House of Representatives which were submitted to the Committee on the Human Rights of Parliamentarians on different occasions. The cases raise a variety of issues and concerns: allegations of lack of fair-trial proceedings in the case of Mr. Anwar Ibrahim; allegations of violations of freedom of opinion and expression, violations of freedom of assembly and association and arbitrary arrest and detention in the cases of Mr. N. Surendran, Ms. Teresa Kok, Mr. Khalid Samad, Mr. Rafizi Ramli, Mr. Chua Tian Chang, Mr. Ng Wei Aik and Mr. Teo Kok Seong and in the case of Ms. Nurul Izzah Anwar.



2. In October 2014, the leader of the Malaysian delegation to the 131st IPU Assembly, Mr. Wee Ka Siong, invited the Committee to visit Malaysia to gain a better understanding of ongoing discussions on the review of the Sedition Act under which most of the aforementioned parliamentarians were being investigated and/or charged, together with other concerns in the cases before the Committee. He reiterated the invitation at the hearing held with the Committee during the 132nd IPU Assembly (Hanoi, March-April 2015).

3. The Committee designated its President, Ms. Ann Clwyd, and its member Mr. Alioune Abatalib Gueye to conduct the mission from 18 to 21 May 2015, which dates had been agreed with the authorities. The mission was subsequently postponed on account of an injury sustained by Ms. Clwyd. Following consultations, Committee member Senator Juan Pablo Letelier replaced Ms. Clwyd and the mission took place from 29 June to 1 July 2015. The delegation was accompanied by the IPU Human Rights Programme Manager and Secretary of the Committee, Mr. Rogier Huizenga, and two interpreters hired by the IPU.

4. The Committee delegation met the following persons:

- Parliamentary authorities and staff

- Senator Tan Sri Abu Zahar Ujang, President of the Senate, and other members of the Senate, including Senator Dato' Dr. Asyraf Wajdi bin Dato' Dusuki, Senator Dato' Jaspal Singh and Senator Tan Sri Dato' Sir Mohd Anwar Mohd Nor
- Tan Sri Datuk Seri Panglima Pandikar Amin Hj Mulia, Speaker of the House of Representatives
- Tan Sri Datuk Ronald Kiandee, Deputy Speaker of the House of Representatives

- Malaysian IPU Group

- Mr. Dato' Seri Mohamed Nazri Abdul Aziz, Chairman of the Malaysian IPU Group and other members of the Group, including Senator Loke Siew Fook, Senator Bathmavathi Krishnan and MP Ms. Alice Lau Kiong Yieng

- Judicial authorities

- Mr. Tan Sri Muhammad Shafee Abdullah, Lead Prosecutor for Mr. Anwar Ibrahim's Trial

- Government authorities

- Senator Datuk Paul Low Seng Kuan, Minister in charge of Governance and Integrity in the Prime Minister's Department
- Ms. Nancy Shukri, Minister in charge of Law in the Prime Minister's Department
- Mr. Datuk Dr. Wan Junaidi Tuanku Jaafar, Deputy Minister of Home Affairs

- Prison authorities

- Authorities in charge of Sungai Buloh Prison

- Parliamentarians concerned

- Mr. Anwar Ibrahim, in Sungai Buloh Prison
- Ms. Nurul Izzah Anwar
- Mr. N. Surendran
- Ms. Teresa Kok
- Mr. Khalid Samad
- Mr. Rafizi Ramli
- Mr. Chua Tian Chang
- Mr. Ng Wei Aik
- Mr. Teo Kok Seong

- Other parliamentarians

- Ms. Wan Azizah, Leader of the People's Justice Party
- Mr. Johari Abdul, Chief Whip of the People's Justice Party
- Mr. Gooi Hsiao Leung, People's Justice Party
- Mr. Hee Loy Sian, People's Justice Party

- National Human Rights Commission
- Mr. Tan Sri Hasmy Agam, Chairman
- Ms. Datuk Dr. Khaw Lake Tee, Vice-Chairman

- Malaysian Bar Council
- Mr. Steven Thiru, President
- Mr. George Varughese, Vice-President, Malaysian Bar
- Mr. Abdul Fareed Abdul Gafoor, Treasurer

- Suara Rakyat Malaysia (SUARAM)
- Dr Kua Kia Soong, Director, and two other staff members.

5. The delegation wishes to place on record its appreciation of the steps taken by the parliamentary authorities to ensure the fulfilment of its mandate, including the prison visit to Mr. Anwar Ibrahim. It nevertheless regrets that it was unable to meet the Attorney General, whose powers are particularly relevant to the cases at hand, and the Chief Justice.

B. Background to the three cases

- **The cases of Mr. N. Surendran, Ms. Teresa Kok, Mr. Khalid Samad, Mr. Rafizi Ramli, Mr. Chua Tian Chang, Mr. Ng Wei Aik and Mr. Teo Kok Seong**

The case concerns seven opposition members of the Malaysian House of Representatives, six of whom, with the exception of Mr. Teo Kok Seong, have been charged or are being investigated under the Sedition Act. One of the six members of parliament, Mr. Chua Tian Chang, was reportedly arrested on 20 March 2015 in connection with his involvement in the allegedly unlawful Kitawalan rally on 7 March in 2015 in protest against Mr. Anwar Ibrahim's conviction on a sodomy charge. Mr. Teo Kok Seong and Mr. Rafizi Ramli are also being investigated regarding their involvement in the same rally.

1. The case of Ms. Nurul Izzah Anwar

Ms. Nurul Izzah Anwar was arrested and briefly detained on 16 March 2015 under the Sedition Act 1948 for a speech she made in Parliament on 10 March 2015 in support of her father, Mr. Anwar Ibrahim. The complainant considers that Ms. Nurul Izzah Anwar's intervention in Parliament was protected under her right to freedom of expression, as well as to parliamentary privilege, and that the exceptions under the Sedition Act limiting such privilege are not applicable in this case. It considers the ongoing police investigation against her for this alleged offence to be illegal.

2. The case of Mr. Anwar Ibrahim

Mr. Anwar Ibrahim, former Deputy Prime Minister and Finance Minister of Malaysia, and former leader of the opposition, was charged with sodomy in 2008 for the second time and in the midst of an election campaign. The trial started in January 2010. From the outset there were concerns about the fairness of the proceedings, in particular regarding the defence's access to essential prosecution evidence. An IPU observer was present at a number of hearings and considered, after the revelation of a liaison between a member of the prosecution team and the complainant (the person allegedly sodomized), that the trial was compromised to the point where "the public interest would justify discontinuing the proceedings". Following the closure of the prosecution case, the judge ruled in May 2011 that the defence had a case to answer. Mr. Anwar Ibrahim was acquitted at first instance on 9 January 2012. The Attorney General launched an appeal. On 7 March 2014, Mr. Anwar Ibrahim was convicted and sentenced to a five-year prison term. An IPU trial observer attended and reported on the appeal proceedings in July, September and December 2013 and February and March 2014. Mr. Anwar Ibrahim appealed the sentence and was freed on bail. The hearings in the appeal took place from 28 October to 7 November 2014. The IPU trial observer attended most of those hearings. On 10 February 2015, the Federal Court confirmed Anwar Ibrahim's conviction and sentence, which he is serving in Sungai Buloh Prison in Selangor. The IPU trial observer produced a separate report containing his findings with regard to the Federal Court's ruling.

C. Information gathered during the mission

1. Sedition Act

• Origins, objective and new amendments

1. The Sedition Act dates from colonial times (1948) and originally sought to suppress dissent against the British rulers. According to the Malaysian Bar Council, it was seldom used in the past. In fact, between 1948 and Malaysia's independence in 1957 it was never invoked. Only a handful of cases were pursued between 1957 and 2012. Since then, however, hundreds of cases have been initiated under the Sedition Act. The Malaysian Bar Council and members from the opposition stated that this clearly demonstrated that the Act was being used as a political tool to stifle the opposition.

2. In 2012, current Prime Minister Najib Razak announced publicly that the Sedition Act would be repealed. The discussions subsequently set in motion, however, explored its abolition as only one of four options, namely: (i) maintaining the Sedition 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 Bill.

3. The option finally chosen by the Government was to amend the Sedition Act and to pursue discussions on the adoption of a National Harmony and Reconciliation Bill. The official interlocutors told the delegation that the Sedition Act remained necessary to promote national harmony and tolerance, and 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 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.

4. The Malaysian Bar Council and several others stated that, unlike the previous Prime Minister, who reintroduced parliamentary select committees to conduct public hearings on important laws and amendments before their introduction in Parliament, there had been no consultation whatsoever with parliamentarians, let alone with the public, on the proposed amendments to the Sedition Act. On 10 April 2015, the House of Representatives adopted, by a vote of 108 to 79, most of the proposed amendments after a heated 14-hour debate. The amendments were passed by the Senate on 28 April 2015. The chief amendments are the following:

- criticism of the government or the administration of justice is no longer considered seditious;
- promoting hatred between different religions is now seditious;
- sedition is no longer punishable with a fine but carries a mandatory minimum three-year prison term;
- sedition is punishable with up to 20 years' imprisonment if the seditious acts or statements lead to bodily harm and/or damage to property;
- The Act empowers the court to order the removal of seditious material on the Internet.

5. Not all proposed amendments were passed. The Government removed a clause allowing authorities to deny a suspect bail. It also withdrew an example of its definition of seditious tendencies from the proposed amendments. The line that was deleted is: "Illustration — A excites a person or a group of persons to demand for the secession of state B from Malaysia. Such act is seditious." The minimum mandatory prison sentence was lowered from five to three years.

6. Several authorities, including the Deputy Minister of Home Affairs, the Minister of Governance and Integrity, who also covers human rights, and the Minister of Tourism, who is also the head of the Malaysian IPU Group, conceded to the delegation that the new Act had gone too far in restricting freedom of speech. It was therefore important to revisit the law to make it less restrictive. Particular reference was made in this

regard to the mandatory three-year prison sentence which many felt was excessive and did not provide judges with the necessary discretion to address minor cases appropriately, including first-time offenders.

7. The amendments to the Sedition Act received Royal assent on 28 May 2015, were published in the Gazette on 4 June 2015, but have not yet entered into force (for official information as of 16 July 2015, see: http://www.federalgazette.agc.gov.my/eng_main/main_akta.php?jenis_akta=Pindaan).

- **Constitutionality challenge**

8. A petition challenging the constitutionality of the Sedition Act is at present before the Federal Court. The petition was filed by a university law professor Mr. Azmi Sharom, who faces charges of sedition. On 17 September 2014, he filed the application, saying that Section 4 of the Sedition Act violated Article 10 of the Federal Constitution, which guarantees freedom of speech, and that the Sedition Act was unconstitutional and invalid because it had not been passed by Parliament. On 5 November 2014, High Court judge Mr. Kamardin Hashim referred the constitutional challenge to the Federal Court. Article 10(2) of the Federal Constitution states that Parliament alone can enact a law imposing restrictions on freedom of expression, in addition to freedom of assembly and association.

9. During the mission the delegation raised questions about the effect of the constitutionality challenge on ongoing sedition cases and investigations. The delegation was repeatedly told that the other pending cases were adjourned until the Federal Court ruled on the constitutionality challenge.

2. Adoption of other legislation limiting human rights in the name of counterterrorism

2.1 Several opposition members, together with SUARAM and the Malaysian Bar Council, emphasized that the changes to the Sedition Act had to be seen in the context of other recent efforts to limit human rights unduly. Particular reference was made to the fact that on 7 April 2015 Malaysia's Parliament passed the Prevention of Terrorism Act, which allows the authorities to detain terrorism suspects without charge and judicial review for up to two years, and the political opposition as well as legal and rights groups urged its withdrawal. The authorities have expressed increasing alarm in the wake of the Islamic State group's bloody jihad in Syria, which police say has drawn dozens of recruits from traditionally moderate, Muslim-majority Malaysia.

2.2 The Prevention of Terrorism Act has revived concerns of a return to a previous draconian Internal Security Act (ISA) that allowed long detention without trial – and was repeatedly used against opposition politicians. The ISA was scrapped in 2012 amid public pressure for political reform. It was nevertheless replaced by the Security Offence (Special Measures) Act 2012 (SOSMA) and amendments to the Prevention of Crime (Amendment and Extension) Act 1959. According to the opposition, these two pieces of legislation allow detention without trial similar to that under the repealed ISA.

3. Individual sedition cases and other ongoing criminal procedures

3.1 Mr. N. Surendran

Mr. N. Surendran, who in addition to being an MP is the lawyer for Mr. Anwar Ibrahim, was charged twice with sedition. The 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 judgment 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. A court hearing of the case took place on 14 October 2014. Mr. Surendran believes that the sedition charges are totally unwarranted and have prevented him from presenting the best possible legal defence of his client.

3.2 Ms. Teresa Kok

3.2.1 *The grounds and facts underpinning the charges*

3.2.1.1 On 6 May 2014, Ms. Teresa Kok was charged in Kuala Lumpur's Sessions Court under Section 4(1)(c) of the Sedition Act following the publication of a video clip entitled "Teresa Kok Onederful Malaysia CNY 2014" which was made available on the website of Youtube on or about 1 February 2014.

3.2.1.2 The English translation of the charge is: "That you on 1 February 2014 about 9.00 morning at 90-02-07, Apartment Putra Ria Jalan Bangsar, in the district of Brickfields, in the state of Wilayah Persekutuan Kuala Lumpur, have published a seditious publication, a video clip entitled 'Teresa Kok Onederful Malaysia CNY 2014' which has a website link in <https://www.youtube.com/watch?v=JtsRcld70bk> wherein the translated transcript of the video clip in Malay language is as per ENCLOSURE A and the underlined seditious sentences therein; and therefore, you have committed an offence under Section 4(1)(c) of the Sedition Act 1948 which can be punished under Section 4(1) of the same Act."

3.2.1.3 Ms. Teresa Kok pleaded not guilty to the charge and applied for bail, which was granted by the Sessions Court at the bail sum of 4,000 Malaysian Ringgits.

3.2.1.4 It should be noted that the Youtube video concerns a political and social satire in Chinese involving four characters, Master Yan Yan, Mrs. Jit and Brother Wai and Ms. Teresa Kok as host in front of an audience. The specific statements made in the video which underpin the sedition charges are the following:

Host (Ms. Teresa Kok): What is your advice for those who wish to travel this year?

Master Yan Yan: Listen to me, Visit Malaysia Year, where should we go?

Of course you should travel to Malaysia!

Do you know? Recently Malaysia was "awarded" as number 6 of the most dangerous countries in the world, and it is the only country in Asia.

...

Master Yan Yan: Otherwise you can travel to Sabah to see pirates plus bonus show of kidnapping and scenes of open fire. Live performance, gonna be very exciting. Or else, let's go further down to Johor to see the mural painting of "Beware! Robber is at the corner". Very beautiful scenery.

...

Host: Living in Malaysia is very unsafe nowadays. I believe the audience would like to know, what can be done in order to ensure their safety?

Brother Wai: This is not a good year to step out of your house; therefore don't go out unnecessarily. If you really need to go out make sure that you don't wear too "bersih" (clean).

How about the colour? Wear more red colour shirts, avoid wearing yellow shirts and pants. Yellow might lead you to be brought to court. If more serious, it will cause bloody harm and damage to the body.

...

Host: How about our children who are still schooling? Any tips for them?

Brother Wai: The Star of Study for this year is good for people who are schooling; you don't need to bother about Chinese or Tamil education. One Malaysia One Language.

...

Audience 2: In this Year of the Horse, if I wish to start a business but only have limited capital, what can I do?

Mrs. Jit: You don't have money and still want to start a business?

Master Yan Yan, Mrs. Jit and Brother Wai: Sell Chinese!

Brother Wai: If you want to "sell Chinese", first you must join society, entrance fee is 25 Malaysian Ringgit only, after that you can be a "traitor".

Master Yan Yan: After becoming a "traitor", you will certainly rise very fast in your position and wealth and don't need to work so hard too.

Mrs. Jit: Very little capital investment, no risk and with high reward. What else is better than "selling Chinese"?

3.2.2 Challenge to the competence of the Kuala Lumpur High Court to hear the case

On 3 July 2014, Ms. Teresa Kok filed an application in Kuala Lumpur High Court in order to request the transfer of the proceedings in Kuala Lumpur Sessions Court to the Kuala Lumpur High Court, and that the charge against her should be tried in the Kuala Lumpur High Court. On 25 June 2015, the High Court rejected the request. In making the ruling, High Court judge Mr. Kamardin Hashim stated that: "The Sessions Court is competent enough to hear issues that are raised in this case. The case can be initiated in the Sessions Court under Article 145 of the Federal Constitution and Section 376 of the Criminal Procedure Code." Article 145 of the Federal Constitution provides the Attorney General with the decision to prosecute while Section 376 of Criminal Procedure Code states that the Attorney General has the control and direction of all criminal prosecutions and proceedings. Under Malaysian law, a case starting at the Sessions Court can only end at the Court of Appeal, while a case initially heard at the High Court can go all the way to the Federal Court. In essence, Ms. Teresa Kok's application to transfer the matter to the High Court was premised on the arguments that: (i) the offence of uploading a video content does not fall within the definition of "publication" in section 2 of the Sedition Act, wherefore a High Court judge would be most suitable to determine the issue; (ii) questions as to the extent of the Attorney General's powers under Article 145 of the Federal Constitution and Section 376 of the Criminal Procedure Code, and (whether it is an objective or subjective power) will be raised and tried in these criminal proceedings, wherein a High Court judge would be most suitable to determine the issue; (iii) it would be discriminatory if she is refused a hearing at the High Court, as almost all sedition cases involving lawmakers had been initiated there in the past.

3.3. Khalid Samad

3.3.1 On 26 August 2014, Mr. Khalid Samad was charged with sedition before the Sessions Court in Kuala Lumpur. The charge reads that on 17 June 2014 at around 11.30 a.m. while holding a press conference in the lobby of Parliament, Mr. Khalid Samad uttered seditious words as per the sentences underlined in Attachment A in relation to this charge; and that he has consequently committed a crime under Section 4(1) (b) of the Sedition Act and can be punished under Section 4(1) of the same Act.

3.3.2 With regard to the facts of the case, Mr. Khalid Samad held the press conference following several incidents in which officers from the Selangor Islamic Religious Department (JAIS) took action against non-Muslims. These actions included:

- (1) A raid on a Christian bookshop selling Bibles which were in Bahasa Malaysia (the Malay language) and subsequently confiscated;
- (2) A raid on a wedding held at a Hindu Temple where the bride was said to be of Muslim birth. The bride was then taken and detained for questioning.

3.3.3 Mr. Khalid Samad explained that, as a result of those measures, JAIS had come under heavy criticism in the social media. JAIS acts under the instruction of MAIS (Selangor Council for Islamic Affairs) which in turn is directly under the Sultan of Selangor. The Sultan is the head of Islamic affairs in the state. The State Government itself has no power or influence over MAIS and therefore also JAIS. The criticism was then directed at MAIS when it became clear that the State Government was unaware of that action by the religious department (JAIS). As the members of MAIS were hand-picked and appointed by the Sultan, with no involvement of the State Government, criticism in the social media then began to focus on the Sultan.

3.3.4 In response to this situation, during a press conference in Parliament, Mr. Khalid Samad mentioned the need for the State Government to study the need for taking the executive function from the religious Council (MAIS) by putting the religious Department (JAIS) under the responsibility of the State Government instead. According to Mr. Khalid Samad, the intention behind his proposal was to protect the institution of the Monarchy.

3.3.5 In this regard, attachment "A" referred to in the aforesaid charge states the following:

"Attachment A

So the third point is that we as Members of Parliament request the State Government to study. Yes.

The Enactment which gives executive powers to MAIS. Yes.

Wherein MAIS can direct JAIS and the such and if necessary. Yes.

If necessary to amend the said Enactment. Yes.

Because, as we know, MAIS is an institution which is seen to be close to the institution of the Sultan of Selangor. Yes.

And actions such as this can damage the image of the Sultan of Selangor himself. Yes.

We hope that the Selangor State Government can re-study the role and powers of MAIS and return to the Government policy or Constitutional Monarchy and not to give executive powers to the Institution of the Raja (Monarchy) which if was to be given may lead to the institution itself being brought into disrepute."

3.4. Mr. Rafizi Ramli

Mr. Rafizi Ramli told the delegation that he is facing three separate legal proceedings for having allegedly violated:

- (1) The Banking Act in connection with accusations he made in 2012, showing bank statements, to expose a Minister's alleged use of public money to buy condominiums;
- (2) The Peaceful Assembly Act for helping organize rallies to protest against the 2013 election results;
- (3) Article 504 of the Penal Code: Mr. Rafizi Ramli was first charged under the Sedition Act, but then under the Criminal Code for his comments criticizing plans to stage demonstrations in front of churches to protest against the Christians' use of the word "Allah" to refer to God.
- (4). Mr. Rafizi Ramli is also facing three seditions cases, one in relation to a tweet posting a picture of a judge in a black robe and white wig with dollar signs on it, in reference to the opposition's claims that the prosecution against Mr. Anwar Ibrahim was politically motivated, one for the book "Reformasi 2.0: Fakta Kes Anwar Ibrahim" that he wrote on the case of Mr. Anwar Ibrahim, and one in which he questioned the alleged preferential treatment afforded some friends of the Prime Minister's wife.

3.5 Mr. Chua Tian Chang

According to Mr. Chua Tian Chang, he had faced a sedition charge with regard to the following:

- In February 2013, a group of armed militants from Southern Philippines landed at Lahad Datu, a coastal town of Sabah state of Malaysia. The militants declared their mission was to "reclaim" Sabah as the sovereignty of the self-proclaimed Sultan Kiram. The intrusion ended on 24 March 2013 with crossfire between Malaysian security forces and the militant group, which resulted in fatal casualties on both sides.
- During the stand-off, Mr. Chua Tian Chang criticized UMNO's negligence in not taking the incident seriously. A news article by his party newspaper quoted him in an interview as saying that it was a conspiracy of the ruling UMNO party to take advantage of the armed conflict to intimidate the public.
- On 14 March 2013, Mr. Chua Tian Chang was arrested and charged under the Sedition Act for his comment on the Lahat Datu incident. On 15 March 2013, UMNO filed a defamation suit against Mr. Chua Tian Chang which it withdrew on 13 January 2014. On 26 September 2013, Mr. Chua Tian Chang failed in his bid to strike out the sedition charge and the High Court maintained that the

trial should proceed. On 29 November 2013, he applied to strike out the case in the Court of Appeal, which application was again dismissed and the court ruled that he should stand trial. On 14 November 2014 the Session Court acquitted Mr. Chua Tian Chang after a long trial.

- No information was provided during the mission regarding Mr. Chua Tian Chang's brief arbitrary arrest on 20 March 2015 in connection with his involvement in the allegedly unlawful Kita Lawan rally on 7 March 2015 in protest against Mr. Anwar Ibrahim's conviction on a sodomy charge.

3.6 Mr. Ng Wei Aik

3.6.1 A police report No. Mak Mandin/586/15 was lodged by the MCA Penang Deputy Youth Chief Mr. Ang Chor Keong on 16 February 2015 in Mak Mandin Police Station alleging that Mr. Ng Wei Aik had published a seditious article entitled "Let the Trumpet of Reformasi Resound" on 11 February 2015 in Kwong Wah Yit Poh (a local Chinese daily).

3.6.2 An investigation was opened on 26 February 2015 and the case was pursued under Section 4(1)(b) of the Sedition Act. On 3 March 2015, the editor of the Chinese daily was called in to assist the investigation. On 6 March 2015 Mr. Ng Wei Aik's statement was taken for two hours by the police.

3.6.3 Mr. Ng Wei Aik refers to the following remarks (unofficial English translation) which he made in the article that have led the authorities to start the investigation:

"The imprisonment of Anwar is just another victim of infighting between two political giants, in between Dr Mahathir and Najib.

"The release of Anwar in 2004 was due to no more threat for Abdullah after securing landslide victory in the General Elections.

"We need rule of law, and not rule by law. We need policy change, and not fancy change.

"With Anwar landed in jail, it is time for us to seek for reformasi again, until the next GE, until the days that rakyat can be the real decision makers of the country. Let us not continue to be misled by those stupid politicians!"

3.6.4 After he had his statement taken by the police, Mr. Ng Wei Aik lodged a complaint with the police on 8 March 2015 citing Section 3(2)(b) of the Sedition Act, which specifies that remarks pointing out errors or defects in any Government or constitution as by law established (with some exceptions) or in legislation or in the administration of justice with a view to the remedying of the errors or defects are not considered seditious.

3.6.5 According to Mr. Ng Wei Aik, he has not received any update on the police investigation.

3.7. Mr. Teo Kok Seong

No additional information was provided during the mission with regard to his case.

3.8. Ms. Nurul Izzah Anwar

The meeting with Ms. Nurul Izzah Anwar confirmed the information the Committee already had on file. The authorities stated that what had brought about the legal action against her was the reference in her statement to Parliament to the accusation made by her father that the judges who had sentenced him had sold their souls to the devil.

4. **The case of Mr. Anwar Ibrahim**

4.1. Prison visit

4.1.1 The delegation was allowed to visit Mr. Anwar Ibrahim at Sungai Buloh Prison, where he is serving his five-year term. Upon arrival, the IPU delegation was given a presentation by the prison administration which included the following information: The legal regulatory framework for the administration of the prison is the Prison Act (2008), the Prison Regulation (2000) and the United Nations Standard Minimum Rules for

the Treatment of Prisoners (1955). The prison contains different blocks and was completed in 1996. Its capacity is 2,500 inmates, although 4,000 prisoners were currently held on the premises. Twenty per cent of the detainees were convicts while the rest were remand detainees. The prison also contained a "clinic" to which Mr. Anwar Ibrahim had been moved in view of his medical condition on 24 February 2015 and where he enjoyed a hospital bed, chair and table, shower facilities, a fan and a sitting toilet. The prison also contained a psychological counselling room and a room for meetings with legal counsel: lawyers were able to pass by two to three times a week. Mr. Anwar Ibrahim was allowed to pray at the Berkah Block within the prison and to attend the prison mosque on Fridays.

4.1.2 According to the administrators, Mr. Anwar Ibrahim regularly went to the prison library on Wednesdays. He had received over 2,000 postcards and 300 books, which were all screened. Normally, prisoners were only allowed to keep three books simultaneously, but for Mr. Anwar Ibrahim that number had been increased to eight. There is no Internet access but he does receive newspapers. Mr. Anwar Ibrahim was allowed to go outside onto the sports terrain to get some fresh air or do some jogging in the morning. During his time in detention, he had received 36 visits from his lawyers, had taken part in 11 counsel sessions, and received five visits from the Selangor State Minister, to whom Mr. Anwar Ibrahim was still an adviser, nine family visits while in his prison cell and four such visits during his time in the clinic.

4.1.3 A panel of doctors was supervising Mr. Anwar Ibrahim's health. The Head of the Panel, Dr. Datuk Dr. Jeyaindran Sinnadurai, came in fortnightly to see him. Some of the health issues that had been identified were:

- Hypertension;
- Hypercholesterolaemia;
- Intermittent sinusitis and associated bronchitis;
- Prolapsed disc
- Right shoulder rotator
- Chronic gastritis

4.1.4 Mr. Anwar Ibrahim had been sent to the hospital on 2 June 2015, where he stayed for three days. During his stay several examinations were carried out. As part of the results, it was recommended that he undergo intensive and regular physiotherapy to address the shoulder injury for which surgery was not appropriate. It was also recommended that he undergo a CT scan for his kidney.

4.1.5 The prison administration stated that a one-third remission of prison sentences was the norm. Convicts were usually granted parole after serving half their sentence, but that did not apply to sexual offenders. The prison authorities emphasized that Mr. Anwar Ibrahim spent most of his time alone, first of all for security reasons. They also stated that he preferred to spend his time alone. In his meeting with the delegation, Mr. Anwar Ibrahim expressed his gratitude to the IPU and the Committee for their continued interest and involvement in his situation. He said that it was not his wish to stay alone, but that the authorities were keeping him isolated from others for security reasons. He added that they were deliberately delaying the medical treatment he needed.

4.2. Judicial review of his conviction and sentence

4.2.1 On 30 April 2015, Mr. Anwar Ibrahim applied for a fresh judicial review of his conviction and five-year jail term for sodomy. The review application was made under Rule 137 of the Federal Court rules on grounds of unfairness, with the applicant asking for the adverse judgment to be set aside and a new bench constituted to rehear the appeal. In his nine-page affidavit, Mr. Anwar Ibrahim listed a number of grounds warranting a review of his case. He alleged, among other things, that the extraordinary swiftness, timing and content of the statement made by the Prime Minister's Office (PMO) on the day of his conviction gave the impression that it knew of the result in the case even before the Court's ruling, which is normally subject to secrecy. The affidavit also points out that it is not the practice of PMO to issue such a statement in any other criminal appeal. In the grounds to support his application, Mr. Anwar Ibrahim claimed that the judgment ought to be reviewed because the release of the PMO's statement on the date of judgment which sought to justify his conviction rendered the judgment objectively deficient. The affidavit also criticized the conduct of Lead Prosecutor Mr. Muhammad Shafee Abdullah, who, according to Mr. Anwar Ibrahim, had conducted a

“road show” following his conviction, thereby lending weight to his claim that his trial was backed by UMNO and that he was the victim of a political conspiracy.

4.2.2 On 10 June 2015, Mr. Anwar Ibrahim’s lawyers filed an application to have the Federal Court hear retired senior police officer Mr. Ramli Yusuff’s testimony to the alleged conspiracy to cover up the infamous “Black Eye” incident in 1998 during Mr. Anwar Ibrahim’s detention before his first sodomy trial (“Sodomy I”). Mr. Ramli Yusuff had given evidence on 27 May 2015 in a separate case about his refusal to aid the then Assistant Inspector-General of Police Tan Sri Musa Hassan in a purported bid to fabricate evidence falsely showing that Mr. Anwar Ibrahim had self-inflicted his injuries. Mr. Ramli Yusuff had also said he refused to lodge a police report falsely claiming that Mr. Anwar Ibrahim had lodged a false report of an assault by the then Inspector-General of Police, Mr. Tan Sri Rahim Noor. Mr. Ramli Yusuff claimed that the then Inspector-General of Police had said he was sent by the then Attorney General Tan Sri Mohtar Abdullah and then Lead Prosecutor of the case Mr. Abdul Gani Patail, now the Attorney General of Malaysia. Mr. Anwar Ibrahim said the police officer’s evidence was credible and of crucial importance, adding that the Federal Court would not have rejected his defence of a political conspiracy had the additional testimony been available to him earlier. Mr. Anwar Ibrahim reportedly only became aware of Mr. Ramli Yusuff’s evidence from his solicitors based on the newspaper reports of the civil trial and his witness statement which was shown to him later.

4.3. Possibility of a royal pardon

On 24 February 2015, Mr. Anwar Ibrahim’s family submitted an application for a royal pardon. On 16 March 2015 the Pardons Board rejected the application. On 24 June 2015, Mr. Anwar Ibrahim and his family filed an application for judicial review today to seek permission from the High Court in Kuala Lumpur to review the Pardons Board’s decision. The basis of their application was the presence on the board of Attorney General Mr. Abdul Gani Patail, who has shown personal hostility against Mr. Anwar Ibrahim in the past, which fact they claimed was unacceptable, particularly since the then Prime Minister Mr. Abdullah Ahmad Badawi had reportedly promised that Mr. Abdul Gani Patail would have no further involvement in the case. The application moreover stated that the Board’s decision had been made following an affidavit produced by the Attorney General’s Chambers of 27 March 2015 whereby the application under Rule 113 was rejected. Mr. Anwar Ibrahim and his family stated that no such application had been made by the family under Rule 113 of the Prisons Regulations 2000. The defence counsel also invoked the black eye incident of 1998 and the testimony of Mr. Ramli Yusuff (see 4.2.) and the fact that Mr. Abdul Gani Patail had failed to disclose to the Board and the King that an order to investigate had been produced against the Lead Prosecutor Mr. Muhammad Shafee Abdullah following the false affidavit that the top lawyer had allegedly filed.

D. Findings and recommendations

1. General remark

The delegation greatly appreciated the open and forthcoming exchanges it had with the authorities, opposition MPs and other persons met. In many ways, it believes that the frankness marking those exchanges testifies to the vibrancy of Malaysia’s democracy and the willingness of all concerned to further strengthen the democratic process.

2. With regard to the Sedition Act

1. A sizeable part of the mission focused on the Sedition Act and its ramifications for human rights. Upon reviewing all the material at hand and listening to all the interlocutors, the delegation concludes that it is deeply regrettable that the Prime Minister’s original intention, as expressed publicly in 2012, to repeal the Sedition Act did not materialize. The delegation fully agrees with the Prime Minister’s observations at the time that the Sedition Act had to be seen as an archaic piece of legislation and as representing a bygone era. The delegation considers therefore that the discussion in Parliament in April 2015 on the review of the Sedition Act was a golden opportunity to eliminate this legislation once and for all, an occasion which was sadly missed. The delegation is also deeply concerned that the amendments to the Act, with its tremendous impact on free speech and relations between communities, was not the subject of timely, extensive and widespread public consultation with all relevant stakeholders.

2. On many occasions, the delegation was told that Malaysia was unique in that it comprised many ethnic and racial groups and that it was important and challenging to ensure peace and harmony among the different communities. The delegation emphasizes that the situation in Malaysia is far from unique in that most countries in the world were made up of multiple ethnicities and races. Another argument that the authorities repeatedly invoked is that Malaysian society was not mature enough to handle freedom of expression and speech wisely and that the Sedition Act was therefore an indispensable tool until people were fully educated. The delegation finds it hard to accept that the same citizens are considered mature enough to elect their national representatives but not enough to use their freedom of speech responsibly. The delegation is nevertheless aware that in Malaysia, as in many other countries, the use of social media and the rise of a new generation of youngsters have led to new challenges to ensuring that people treat each other with, at least, minimum levels of dignity and respect. At the same time, the delegation wishes to emphasize the limits of legislation, especially of criminal law, for combating hate speech and intolerance. What is needed is a multi-layered approach which promotes human rights and tolerance, encourages dialogue and understanding among different groups and builds the capacity of national authorities, security officials and journalists to create an environment conducive to preventing hatred, intolerance and incitement. In this regard, the delegation believes that most of the concerns that the authorities have expressed about challenges to stability and social cohesion can be effectively dealt with through the proposed National Harmony and Reconciliation Bill as it would put in place effective mechanisms for mediation and defusing tensions between communities whenever they arise. The delegation is eager to receive, if possible and available, a copy of the draft legislation as it exists and to be kept informed of progress towards its submission to Parliament.

3. The delegation stresses that freedom of speech is protected by the Federal Constitution of Malaysia. It agrees with the views expressed by many of the authorities that the exercise of this right is not absolute and is therefore subject to limitations. The delegation emphasizes, however, that international human rights law provides clear and strict guidance in this regard. Particularly relevant is the three-part test (legality, proportionality and necessity) for any restrictions. This test means that restrictions on free speech must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measure available; are not too broad, so as not to restrict speech in a wide or untargeted way; and are proportionate so that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions they authorize.

4. The delegation also points out that international human rights experts have clearly stated that, in terms of general principles, a clear distinction should be drawn between three types of expression: expression constituting a criminal offence; expression that is not criminally punishable, but may justify a civil suit or administrative sanctions; expression that does not give rise to criminal, civil or administrative sanctions, but still raises concerns with regard to tolerance, civility and respect for the rights of others. In this respect, the delegation wishes to observe that, as in any other democracy, public debate also entails hearing or listening to opinions that may be considered harsh or tactless by some. The delegation also believes it important that not every remark should be taken in the most literal and personal way.

5. The delegation welcomes some of the amendments to the Sedition Act that were passed in April 2015, in particular the fact that criticism of the Government and of the administration of justice is no longer considered seditious. The delegation is nevertheless concerned that, under the offence of "scandalizing the court", it may apparently still be possible to prosecute anyone criticizing the court.

6. Apart from these positive changes to the Sedition Act, the delegation is very concerned about most of its contents, in particular:

- The excessive vagueness and broadness of most of the provisions: it considers that such language as "to promote feelings of ill will", "to bring into hatred or contempt" or "to raise discontent or dissatisfaction" leaves the door open to abuse and sets a very low threshold for the type of criticism, remarks and acts that are criminalized;
- The new mandatory minimum three-year prison sentence. The delegation is deeply concerned that the courts no longer have the discretion to establish a fine as a penalty or a lower prison sentence.

The delegation is particularly concerned that as a result of the mandatory minimum sentence parliamentarians will automatically lose their mandates in the event of conviction;

- The fact that “intention” is not an essential element of the crime of sedition;
- The fact that bodily harm and/or damage to property as an aggravated offence does not need to establish the direct responsibility of the person uttering the seditious remarks.

7. Given these considerations, the delegation believes that the Sedition Act, as it stands, does not respect the right to freedom of expression to which Malaysian citizens are entitled under the Constitution and runs counter to Article 19 of the Universal Declaration of Human Rights. The delegation is particularly concerned that the provisions of the Sedition Act have the effect of criminalizing public debate. The delegation is therefore all the more concerned about reports which lend weight to the accusations that the Sedition Act is being used to silence opposition voices. The first is that we have witnessed an unprecedented wave of investigations and charges under the Sedition Act, a piece of legislation seldom used before. Secondly, the delegation is concerned about what seems to be a selective application of the Act since those related to or in favour of the ruling party have not faced legal action even when their comments can easily be regarded as more damaging to public order and social harmony. The delegation also believes that the maintenance of the Sedition Act has to be seen in the context of other legislation adopted in April 2015 that severely strains respect for human rights.

8. Given its conclusion that Malaysia would be better off without the Sedition Act, the delegation is hopeful about two developments. First of all, the petition before the Federal Court challenging the constitutional applicability of the Sedition Act offers an important occasion to set aside this piece of legislation. The delegation therefore sincerely hopes that the petition will succeed. Secondly, the delegation is encouraged by the statements made by several authorities according to whom the Sedition Act, as amended, is going too far and needs to be revisited. The delegation hopes that this will happen sooner rather than later and has noted that it is most likely to occur during the parliamentary session of March/April 2016. In that event, the delegation trusts that the authorities will conduct a full public and consultative process to review the Sedition Act.

3. With regard to the sedition charges and investigations against individual MPs

As to the cases against the eight MPs, the delegation had the opportunity to study in more detail the precise statements forming the basis for the sedition charges or investigations against them. In none of the cases did the delegation believe MPs to have overstepped the legitimate exercise of their freedom of speech and opinion. The delegation therefore calls on the Attorney General to use his discretionary powers to discontinue the investigations and dismiss the charges. In this light, the delegation also believes that, even though the charges and investigations started before the amendments to the Sedition Act were adopted, the MPs should benefit from the new Act inasmuch as it is more lenient towards the accused. The delegation points out in this regard that criticism of the administration of justice and the Government ceases to be punishable under the amended Sedition Act.

The delegation was repeatedly told that the sedition cases had been brought about by petitions from individual citizens. The delegation hopes that both the police and the Attorney General will use their discretion responsibly in the future and will not act upon complaints that may lead to frivolous investigations or prosecutions. The delegation also believes that an even-handed approach will, as some authorities claimed, prevent the opposition MPs from becoming “martyrs” as a result of exercising their freedom of expression.

4. With regard to the alleged infringement of the right to freedom of assembly

The delegation has also noted that, in at least three cases, parliamentarians were reportedly investigated and/or arrested under the Peaceful Assembly Act and/or the Criminal Code in connection with demonstrations in which they took part. According to the opposition MPs, the arrests and investigations infringe the members of parliament’s right to freedom of assembly. They have observed that the police 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". The delegation is eager to receive information from the authorities regarding the precise grounds and basis for the reported arrests, compliance with human rights standards and the status of the investigations.

5. With regard to Malaysia's cooperation with and adherence to international human rights mechanisms

The delegation notes that efforts to bring about the ratification of one or more human rights conventions are said to have been under way for many years. It sincerely hopes that these efforts, with the assistance of the Parliament, will bear fruit very soon. The delegation also emphasizes that the UN Human Rights Council, in the course of its UPR review of Malaysia, made a number of recommendations in this regard. The delegation notes in the particular the importance and relevance of Malaysia's acceding to the International Covenant on Civil and Political Rights and to the International Convention on the Elimination of all Forms of Racial Discrimination. Both instruments will offer critical guidance to the authorities when it comes to the implementation of several human rights, in particular freedom of expression. Indeed, the jurisprudence of the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination which supervise implementation of the Covenant and the Convention would provide excellent opportunities to advance the cause of human rights. Particularly relevant here is the guidance provided by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination in their general comment No. 34 (2011) and general recommendation No. 15 (1993), respectively.

It is also critical that, until the Sedition Act is repealed, a solid jurisprudence is developed in Malaysia which respects relevant international human rights stands in the area of freedom of speech. The delegation would like to draw the authorities' attention in this respect to the guidance and definitions provided by the Camden Principles on Freedom of Expression and Equality, dated April 2009.

The delegation also believes that the authorities stand to gain much from reaching out to relevant special procedures mandate holders of the UN Human Rights Council. Indeed, the delegation believes that it would be immensely beneficial to the Malaysian authorities to invite the UN Rapporteurs on the promotion and protection of the right to freedom of opinion and expression and on the rights to freedom of peaceful assembly and of association. In this regard, the delegation was encouraged to hear of the efforts made by SUHAKAM, Malaysia's National Human Rights Commission, and the observations of the Minister on Governance and Integrity that there were no objections to the ratification of major international human rights instruments and the visit of both Rapporteurs to Malaysia.

6. With regard to Mr. Anwar Ibrahim

As regards Mr. Anwar Ibrahim, the delegation urges the authorities to enable him to receive the medical treatment he needs. The delegation is gratified that the authorities sent him to a proper hospital for two days after the mission took place. The delegation trusts that the authorities will continue to provide Mr. Anwar Ibrahim with the necessary care swiftly and effectively and will allow him to interact regularly with other prisoners.

Geneva, 17 July 2015