



CRITICAL

CRACKDOWN:

FREEDOM OF EXPRESSION UNDER ATTACK
IN MALAYSIA

AMNESTY
INTERNATIONAL



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CRITICAL CRACKDOWN: FREEDOM OF EXPRESSION UNDER THREAT IN MALAYSIA

Freedom of expression is under attack in Malaysia. Civil society activists, academics, opposition politicians, journalists, social media users and even cartoonists have been targeted by repressive laws used to stifle dissent.

In recent years, one of the laws most frequently used to restrict freedom of expression is the Sedition Act of 1948. The use of the law – increasingly against individuals simply expressing political, religious and other views – is leading many people to exercise self-censorship, with a chilling effect on freedom of expression in the country.

Among those who have been targeted by the government include:

- **Political cartoonist Zunar** is on trial for nine counts of sedition over tweets criticizing a Federal Court decision;
- **Law professor Azmi Sharom**, charged with sedition for offering his legal opinion on measures taken during a constitutional crisis;
- **Student activist Khalid Ismath** is on trial for three counts of sedition for social media comments allegedly offensive to the Johor State royal family;
- **Journalist Susan Loone**, arrested for reporting the words of a politician that were allegedly seditious;
- **Human rights lawyer Eric Paulsen**, on trial for a sedition charge for his tweets critical of a government religious agency; and
- **Opposition politician Rafizi Ramli** is on trial for sedition charges for several different criticisms of the government's political and economic policies.

2015 ALONE

91 INSTANCES OF THE
SEDITION ACT
WAS USED TO ARREST, INVESTIGATE
OR CHARGE INDIVIDUALS



Malaysian Prime Minister Najib Razak publicly committed in 2012 to repeal the Sedition Act, which had been little used before 2009. However, he has failed to deliver on this commitment and has instead sought to strengthen this repressive law.

The number of individuals arrested and charged with sedition has also increased dramatically since 2013. Between 2009 and 2012, there were around 30 cases of individuals charged under the Sedition Act. Since 2013, when general elections were last held, in which the government lost the popular vote but still returned to power, there have been 176 Sedition Cases involving various individuals, usually for comments or acts deemed critical of the government.

In 2015 alone, between 1 January and 31 December there were at least 91 instances of the Sedition Act being used to arrest, investigate or charge individuals, sometimes more than once. That is nearly five times as many as during the first 50 years of the Act's existence.

Despite their commitment to repeal the Sedition Act, the government presented an amendment to the law in April 2015, which was passed by Parliament days later, strengthening the scope of the Act and increasing the punishments that could be imposed under it.

ZUNAR THE CARTOONIST

Zulkiflee Anwar Ulhaque, known as “Zunar”, is a political cartoonist whose art has long been featured in online news portal Malaysiakini.com. Zunar has a gift for capturing current events in a single humorous image. He has used his cartoons to expose corruption and the abuse of power. As Zunar is fond of saying, “Neutrality is a form of escapism. Staying silent is not an option. Even my pen has a stand!”

Since 2009, Zunar’s cartoon books have often been confiscated or banned from sale, his office and printers raided, and his assistants harassed.

Now, Zunar is facing a record nine counts of sedition, one for each tweet he made following a Federal Court ruling on 10 February 2015, which upheld the conviction and five-year prison sentence of former opposition leader Anwar Ibrahim for sodomy. That case is widely seen by human rights groups as politically motivated and Amnesty International considers Anwar Ibrahim to be a prisoner of conscience.

The Inspector-General of Police Khalid Abu Bakar took to Twitter following the court judgment warning that action would ensue if anyone criticized the judiciary over the Anwar Ibrahim ruling.

Zunar was not the only one who took to social media or other forums to criticize the judgment. Several people affiliated with the political opposition have been charged with sedition for the comments they made in the weeks following the judgment, with some of these charges having been brought as recently as November 2015.

However, Zunar’s nine counts of sedition for his nine tweets place him far ahead of anyone else currently charged with sedition in Malaysia.



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When Zunar was charged on 3 April 2015 the prosecutor asked that he post bail of RM5,000 (USD1,130) for each charge. The magistrate set his bail at a reduced amount of RM22,500 (USD5,100) in total which was still a considerable and burdensome amount. His trial is ongoing.

If convicted, Zunar faces a long-term prison sentence for his peaceful criticism in the exercise of his right to freedom of expression. The persecution Zunar is facing has drawn international attention and Zunar was selected as a case for Amnesty International’s Write for Rights campaign in 2015.

ZUNAR IS FACING A RECORD

9 COUNTS OF SEDITION



ONE FOR EACH TWEET HE MADE

AZMI SHAROM THE PROFESSOR

Azmi Sharom, a law professor from the University of Malaya, was charged with sedition after comments he made regarding a political crisis in Malaysia’s Selangor state in August 2014, citing the 2009 constitutional crisis in Perak State.

The 2009 crisis involved the Perak State government losing a majority in the state legislative assembly after three legislators switched sides. A new government was formed after the assemblypersons visited the Perak Sultan, who then dismissed the former Chief Minister of the state.

Asked by an online news portal in August 2014 whether the political crisis in Selangor state could be solved in a similar manner, Azmi Sharom was of the opinion that the method chosen to resolve the Perak crisis was “legally wrong” and should not be repeated. “The best thing [is] to do it as legally and transparently as possible.”

On 2 September 2014, Azmi was charged under Section 4(1)(b) and Section 4(1)(c) of the Sedition Act 1948. He pleaded not guilty and posted bail of RM5,000 (USD1,130): “I was shocked to learn that I am being charged under the Sedition Act because of comments I made on the Perak crisis of 2009. My statements were based on established case law and democratic principles. They were given in my capacity as a law lecturer of 24 years standing,”

Azmi is the first academic to be charged with sedition in Malaysia. Given the broad scope of the Sedition Act, in particular its coverage of judicial, political and social matters, its use by the authorities could have a chilling effect on academic freedom of expression and the ability of scholars to contribute to public debate in Malaysia.



Furthermore, Azmi is a long-time columnist with an English-language newspaper where he often voices his opinion on social, legal and political matters. Although he continues to write, if he is convicted the space for writers and the media could be squeezed even further.

Azmi Sharom brought a legal challenge to the constitutionality of the Sedition Act in October 2014, but his petition was rejected by the Federal Court on 6 October 2015. His trial resumed on 15 December 2015 and is currently ongoing.



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“This charge is a blow to academic freedom and the freedom of expression. I will most definitely fight this charge. I hope that reason will prevail.”

KHALID ISMATH THE STUDENT ACTIVIST

Khalid Ismath is a 25-year-old student activist who created the first speakers' corner at Mara University of Technology (UiTM) and was involved in the Occupy *Dataran* movement calling for free education and the abolition of the National Higher Education Fund (PTPTN).

On 13 October 2015, Khalid Ismath had 14 charges laid against him for posting comments on Facebook that were allegedly offensive to the royalty of the State of Johor and the Malaysian Police.

The posts are an alleged abuse of power and were published on a solidarity page for Kamal Hisham Jaafar, a former legal adviser to the Johor Royal family, who is currently in detention on charges of corruption.

Khalid Ismath was charged with 11 counts under Section 233 of the Communications and Multimedia Act 1998 and three counts under Section 4 (1) of the Sedition Act at the Johor Bahru Sessions Court, in Johor state. Khalid Ismath was denied bail as the prosecution argued that he may abscond during trial.

A member of the Socialist Party of Malaysia (PSM), Khalid Ismath had first been detained on 7 October at the Johor Bahru Selatan police station under the 1998 Communications and Multimedia Act for posts on Kamal Hisham Jaafar's Facebook solidarity page. Following two days in police detention, during which time his phone and personal computer had been confiscated, Khalid Ismath was released on 9 October.

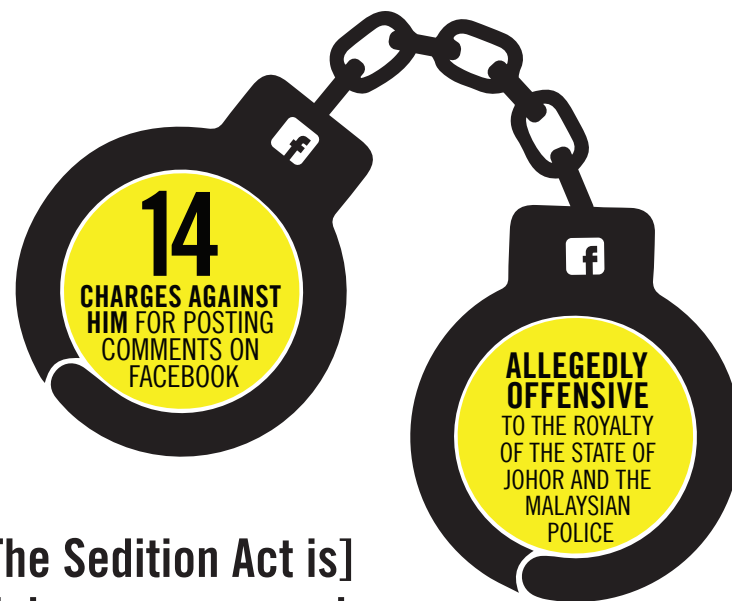


© Khalid Ismath

He was rearrested the same day under the Sedition Act for another Facebook comment made on the same solidarity page for Kamal Hisham Jaafar. He was detained for another four days before being formally charged on 13 October, and released on bail.

During his detention Amnesty International considered him a prisoner of conscience.

The charges against Khalid Ismath came one week after the Malaysian Federal Court's ruling that the Sedition Act was constitutional following Azmi Sharom's challenge.



**[The Sedition Act is]
“inhuman, oppressive
and must be opposed.”**

SUSAN LOONE THE JOURNALIST

On 4 September 2014, police arrested Susan Loone, a journalist with online news portal Malaysiakini.com, for investigation under Section 4(1)(c) of the Sedition Act for an interview she did with Penang State executive councilor Phee Boone Poh while he was in police custody.

Susan Loone was the first reporter to be arrested under the Sedition Act. Other journalists and publishers have subsequently been arrested for articles alleged to be seditious.

Phee Boone Poh was detained by the police for 24 hours because of his chairmanship of the state Voluntary Patrol Unit (PPS, *Pasukan Peronda Sukarela*), often involved in traffic control and safety, which had been declared illegal by the police as it was not registered with the Registrar of Societies.

Phee Boone Poh and 155 PPS members were arrested after taking part in an independence day parade on 31 August 2014. The police informed Phee Boone Poh that he was being investigated under Section 43 of the Societies Act 1966, which involves operating a secret society.

In Susan Loone's interview with Phee Boone Poh, he described how he was questioned for four hours and “treated like a criminal”. The interview led right-wing pressure group Perkasa and 13 other NGOs to lodge ten reports to the police against Susan Loone and Malaysiakini for allegedly defaming the police.

“If writing the truth, asking questions, taking a minister to task or making a powerful figure accountable are seditious, then let us all be seditious!”



According to Susan Loone, her article had reportedly angered the Inspector-General of Police and the police force because it cast them in a bad light. She was told by the police that her article was objectionable because it was widely accessible online. The police allegedly said to her that “if the story was published in local papers it doesn't matter as only local people will read it.”

Following her arrest, Susan Loone was held for close to nine hours during which she was questioned. To her surprise, during her questioning, she was asked her opinion of the political opposition. She protested that she had: “No opinion, just the facts. It's not important what I think. Just the facts.”

She was released on RM2,000 (USD450) bail, but the case has been left unresolved as the authorities have so far not filed charges against Loone, nor have they told her that she has been cleared. However, her article has had negative consequences for her work.

Susan Loone's news portal, Malaysiakini, has been refused a print publishing permit by the Home Ministry, with the Ministry citing her article as one reason.

It is an indication of the chilling effect of the Sedition Act that Susan Loone feels that her fellow journalists have censored themselves as a result of her arrest. “My reporter friends get a bit fearful that they will suffer the same thing.”

Personally, she is undeterred.



© Malaysiakini

RAFIZI RAMLI THE POLITICIAN

Rafizi Ramli, secretary-general of the People's Justice Party (*PKR, Parti Keadilan Rakyat*) and Member of Parliament, is currently facing five different sedition investigations alongside other criminal charges for his political activities.

Rafizi is best known for exposing financial scandals involving members of the government or those politically connected to them. He has also been an outspoken critic of government policy, particularly on economic matters.

The charges Rafizi faces under the Sedition Act, as well as other laws, demonstrate how repressive laws of this kind are used to curb freedom of expression and harass critics of the government.

In May 2014, Rafizi was investigated for sedition over a book he authored entitled *“Reforms 2.0: The Facts of Anwar Ibrahim’s Case”* (*Reformasi 2.0: Fakta kes Anwar Ibrahim*), which discussed the prosecution and trial of Anwar Ibrahim for sodomy.

Prior to this, Rafizi had been investigated under the Sedition Act in March 2014 for remarks against right-wing groups. This sedition investigation was later dropped and he was instead charged under Section 504 of the Penal Code, which is the “intentional insult with intent to provoke a breach of the peace”.

On 25 July 2014, Rafizi was investigated again for sedition over revealing the contents of a minister’s letter to Bank Rakyat. The letter purportedly requested preferential treatment for a politically-connected individual.

Following the controversial Federal Court decision to uphold the conviction of then-opposition leader Anwar Ibrahim for sodomy, Rafizi sent out a tweet on 10 February 2015 showing a judge in a black robe with dollar signs on his wig. The



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Inspector-General of Police (IGP) Khalid Abu Bakar then tweeted that Rafizi would be investigated under the Sedition Act, along with cartoonist Zunar and another opposition politician. The IGP claimed that the tweet was seditious in trying to make the public believe that the judges received payment.

A month later, on 27 March 2015, police arrested Rafizi under the Sedition Act, for issuing a circular that called on supporters to attend the *Kita Lawan* (We Fight) rally to demand the release of opposition leader Anwar Ibrahim. He was later released on bail.

Another arrest under the Sedition Act followed on 2 May 2015 for his participation in a 1 May peaceful protest critical of the Goods and Services Tax (GST).

Rafizi Ramli has yet to be charged in any of these sedition cases, although he has been charged with offences under other laws as a result of his whistleblowing activities, related to allegations of corruption by the authorities or the misuse of public funds.

However, even if these numerous cases do not result in charges being brought, their combined effect constitutes a form of intimidation and harassment. He could face, for the first offence, up to three years imprisonment and/or a fine not exceeding RM5,000 (USD1,130), and for subsequent offences, five years imprisonment.

Moreover, Under Article 48(1)(e) of the Federal Constitution he could be disqualified from Parliament if sentenced to imprisonment for a term of one year and more, or to a fine of not less than RM2,000 (USD450).

As several vocal opposition parliamentarians face investigations and possible prosecutions for sedition, there is concern among them that a conviction for sedition could thin their ranks in future elections.



ERIC PAULSEN THE HUMAN RIGHTS LAWYER

Eric Paulsen is the executive director and co-founder of Lawyers for Liberty. As a leading human rights lawyer, Eric Paulsen campaigns actively for the abolition of the Sedition Act in the Abolish Sedition Act Movement (GHAH, *Gerakan Hapus Akta Hasutan*), and also provides legal representation for several individuals accused of sedition.

On 5 February 2015, Eric Paulsen was charged with sedition for a tweet on 12 January criticizing the Malaysian Islamic Development Department (JAKIM), which is part of the Prime Minister’s Department, for “promoting extremism” via its official sermons.

In response to Eric Paulsen’s tweet, he received death threats and accusations through his WhatsApp, Facebook and Twitter accounts and phone calls claiming that he had insulted Islam. However, he stressed that, “I have never referred to the religion of Islam in my tweet, I only criticised Jakim as an agency under the Prime Minister’s Department.”

A month later on 22 March, Eric Paulsen was arrested again for sedition for tweets regarding the passage of an amendment in the Kelantan state legislature promoting the use of corporal and capital punishment under Sharia law.

When interviewed by a news portal about Paulsen’s arrest, the Inspector-General of Police (IGP) reportedly cautioned Eric Paulsen to “watch his habit and mouth” when commenting on sensitive issues such as religion.

In both cases the IGP took an active role in responding on Twitter and initiating investigation on Paulsen. Social media in Malaysia thus finds itself policed by the highest levels. Activists and other well-known critical voices appear at particular risk of being targeted for police action. The impact on individuals is protracted as the full process of trial, appeal and counter-appeal can easily take up to five years to resolve.



© Eric Paulsen

“The Sedition Act creates an extremely harmful, chilling effect whereby opposition, dissidents and activists don’t know when and where they can be arrested and charged for sedition. There’s no limitation. They could pick you up. You could be prosecuted for something you said months or years ago.

Even if the charges are baseless you still need to go through arrest, remand, charge, trial, appeal and eventually jail. The threshold for conviction is incredibly low. It’s an archaic law based on protection of Queen and country.”



THE SEDITION ACT 1948

AMNESTY INTERNATIONAL HAS LONG EXPRESSED CONCERNS ABOUT MALAYSIA'S SEDITION ACT, WHICH IS BEING USED TO CRIMINALIZE OPPOSITION ACTIVISM AND THE EXPRESSION OF VIEWS THAT ARE CRITICAL OF THE GOVERNMENT.

Originally enacted as the Sedition Ordinance 1948 by British colonial authorities, the law was targeted at anti-colonial activists and aimed to restrict their activities against the British government. Following independence, the Ordinance was reformulated into an Act.

Under Article (3) (1) "Sedition" itself is not defined in the Act, instead a "seditious tendency" is deemed to be a "tendency" to:

- (a) "bring into hatred or contempt or to excite disaffection against any Ruler or against any Government";
- (b) "to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established [which also includes secession];
- (c) "to bring into hatred or contempt or excite disaffection against the administration of justice in Malaysia or in any State";
- (d) "to raise discontent or disaffection" amongst the population;
- (e) "to promote feelings of ill will and hostility between different races or classes of the population of Malaysia";
- (f) "to question any matter, right, status, position, privilege, sovereignty or prerogative" related to the Malay language as the national language, the special privileges accorded to ethnic Malays and Natives of Sabah and Sarawak (otherwise known as *Bumiputera*), and the sovereignty of the Rulers.

Under section 4(1) any person who (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency; (b) utters any seditious words; (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or (d) imports any seditious publication, shall be guilty of an offence

Those found guilty could face, for the first offence, up to three years imprisonment and/or a fine not exceeding RM5,000 (USD1,130), and for subsequent offences, five years imprisonment.

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 any 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 specified 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. Any restrictions imposed which do not meet all elements of this "three-part test" constitute violations of the right.

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 potential for abusive application of the law. In fact, exciting "disaffection against any Ruler or against any Government", in itself should not be criminalized at all.

Malaysia's Sedition Act does not comply with international human rights law and standards, and additionally, violates the rights to freedom of expression as guaranteed in Malaysia's Constitution.

THE SEDITION ACT AMENDMENTS 2015

Prime Minister Najib Razak had originally undertaken to abolish the Sedition Act and set in motion a process under the National Unity Consultative Council to replace it with a National Unity Bill that, at least in its draft form, did away with most of the problematic provisions of the Sedition Act.

However, this policy was subsequently reversed and a decision made to preserve and strengthen the Sedition Act. In April 2015, an amendment to the Sedition Act was tabled and rushed through Parliament with less than a day of debate.

The amendment clearly reacts to current forms of dissent, particularly critical postings on social media such as Twitter and Facebook.

Despite removing criticism of government and judiciary from the definition of sedition, the amendment added religion to the list, which already included the rulers, race, secession, special rights of *Bumiputera*, and the status of the national language.

This means that wide areas of government policy and the substance of judicial decisions pertaining to the above matters, if criticized, can give rise to sedition charges. Government policy affecting issues of race, religion, and secession have attracted much controversy and debate from members of the public, including, but not limited to, politicians and activists.

The amendment also set higher penalties, with judges required to impose a sentence

of imprisonment. Previously, judges had discretion, in the case of a first offence, to impose a sentence of up to three years' imprisonment and/or a fine, and in the case of a subsequent offence, a sentence of up to five years. Under the law as amended, judges do not have discretion to impose a fine for a first offence, or to impose a sentence below three years; they are required to impose a prison sentence of between three and seven years.

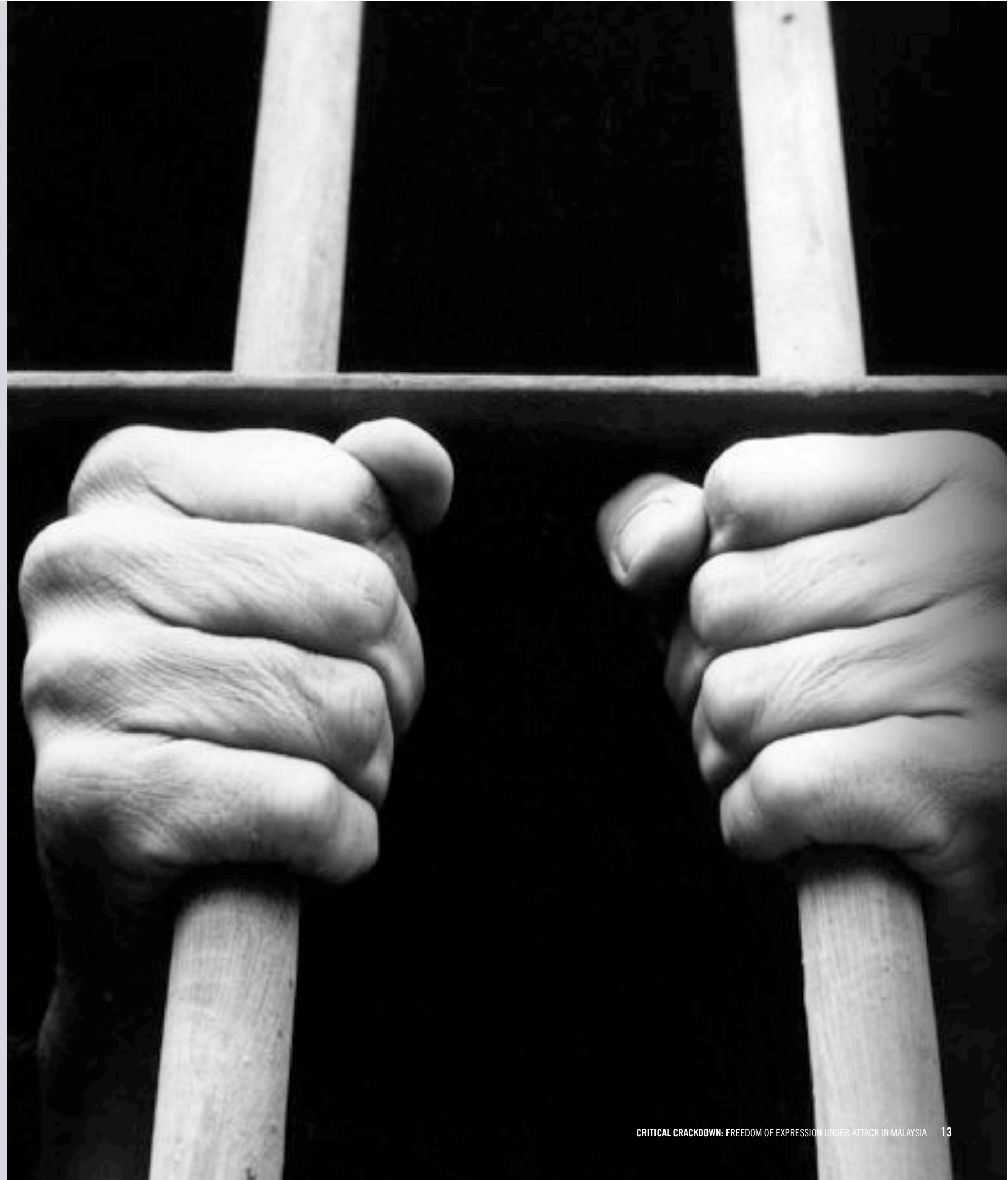
The amendment brings electronic media and sharing on social media under the Sedition Act. This reflects the high number of social media users falling foul of the police over their activities on Twitter and Facebook and the government's relative lack of control over these media.

Furthermore, the amendment gives the government power to prohibit publications and to prevent any person making or circulating such a publication from accessing any electronic device.

The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, warned at the time the amendment was passed that the new provisions would seriously undermine freedom of expression and opinion in Malaysia.

Despite being passed through Parliament in April 2015 the amendment still has not entered into force as of January 2016. Thus the existing Sedition Act is still being used.

The amendment clearly reacts to current forms of dissent, particularly critical postings on social media such as Twitter and Facebook.



RECOMMENDATIONS

AMNESTY INTERNATIONAL URGES THE MALAYSIAN AUTHORITIES TO IMMEDIATELY TAKE STEPS TOWARDS:

- Repealing the 1948 Sedition Act;
- Ensuring that convictions under the Act are quashed, and immediately and unconditionally release all those who are imprisoned or detained under the Act solely for the peaceful exercise of their right to freedom of expression; dropping charges under the Act against individuals who are facing trial; furthermore, pending the repeal of the Sedition Act, ensuring that no one further is arrested, investigated, charged or imprisoned under its provisions;
- Reviewing and amending all other laws which restrict the right to freedom of expression to ensure that they are in strict compliance with international human rights law and standards; and
- Ratify and Implement in law, policy and practice the International Covenant on Civil and Political Rights at the earliest opportunity.

**IT IS BETTER
TO LIGHT A CANDLE
THAN TO CURSE
THE DARKNESS**

CONTACT US

✉ info@amnesty.org

☎ +44 (0)20 7413 5500

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