

April 25, 2003

Dato Seri Mahathir Mohamed

Prime Minister of Malaysia

Jalan Dato Onn

50502 Kuala Lumpur, Malaysia

Dear Prime Minister,

The Lawyers Committee for Human Rights is gravely concerned about the ongoing trial of internationally renowned labor rights advocate, **Ms. Irene Fernandez**. Ms. Fernandez, who is Director of the women's rights and workers' rights group Tenaganita, was arrested and charged on March 18, 1996 under section 8A of the Printing Presses and Publications Act for publishing false news. She has been defending the charge in a protracted hearing since then (so far totaling in excess of 300 court days), bearing devastating court costs and facing the possibility of three years' imprisonment and fines of up to US\$5,000.

As you know, the basis of the charge against Ms. Fernandez is a report she published in July 1995, entitled "Abuse, Torture and Dehumanized Treatment of Migrant Workers at Detention Camps". Drawing on interviews with over three hundred former detainees from five detention camps, the report alleged that unsanitary conditions, inadequate food and water, frequent deaths from beatings and a lack of medical care, sexual abuse and corruption were prevalent in Malaysia's immigration detention centers.

Section 8A of the Printing Presses and Publications Act violates international human rights standards protecting freedom of expression found in international instruments including the Universal Declaration of Human Rights. Restrictions on freedom of expression are permitted only where absolutely necessary on specific grounds such as protection of national security or to ensure respect for the rights or reputation of others. The jurisprudence of international courts and treaty monitoring bodies makes clear that such restrictions must be narrowly interpreted. In particular, the measures taken to restrict exercise of freedom of expression must be proportionate. Thus, any penalty for expression that is considered to be false and malicious cannot be excessive. Criminal sanctions for maliciously publishing false news may, in themselves, be considered excessive, particularly when such sanctions potentially include several years of imprisonment. The Latimer House Guidelines for the Commonwealth provides, in Principle III.3(a), that "the criminal law and the use of defamation proceedings are not appropriate mechanisms for restricting legitimate criticism of the government". In addition, the importance of ensuring full freedom of expression for human rights defenders is recognized in the 1998 United Nations Declaration on Human Rights Defenders, an instrument which emphasizes the need to protect human rights defenders and to promote their activities. Article 6 of the Declaration in particular provides that "everyone has the right freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms".

This case also raises serious concerns about the independence of the judiciary. In a ruling on January 15, 2003, presiding Magistrate Juliana Mohamed declined to recuse herself from Ms. Fernandez's trial even though she is currently posted at the Law Revision Division within the Attorney-General's Chambers. Ms. Fernandez's counsel, M. Puravalen, had submitted that the magistrate should be transferred back to the Judicial and Legal Services Division if she continued to hear the case. Article 10 of the Universal Declaration on Human Rights guarantees everyone the right to a fair hearing by an

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independent and impartial tribunal of any criminal charges against him or her. Independence presupposes a separation of powers in which the judiciary is institutionally protected from undue influence by or interference from the executive branch. Independence rests on practical safeguards including conditions of tenure and terms of appointment of judicial officers. However, apprehension of bias is the overriding criterion for ascertaining a court's impartiality and this should prima facie be called into question when the presiding magistrate is simultaneously serving as a member of the executive.

Already the longest running trial in Malaysian history, the court ruled on March 13 that judgment would be delivered on March 17, 2004. Article 14(3)(d) of the International Covenant on Civil and Political Rights guarantees all defendants the right to be tried without undue delay. The assessment of what may be considered undue delay depends on all the circumstances of the case. The court's refusal to provide interpreters for key defense witnesses has exacerbated the delay in this case, leading to unreasonably lengthy proceedings. Indeed, the trial has had an extremely debilitating effect on the time, energy and resources of Ms. Fernandez and the human rights lawyers defending her. The effort entailed in attending court and preparing evidence and submissions has prevented Ms. Fernandez and Tenaganita staff from devoting time to the advocacy work they provide for migrant and other workers. The Lawyers Committee calls on the Malaysia government to immediately discontinue these proceedings against Ms. Fernandez.

We urge the government of Malaysia to reverse this trend of disregard for basic international human rights standards and to urgently withdraw all charges against Ms. Fernandez and other advocates who have been targeted for striving to improve conditions for migrant laborers in Malaysia. At a time of declining economic growth, Malaysia should be particularly attentive to its human rights record to bolster the confidence of foreign investors and governments. Major multinational companies, in particular, are increasingly reticent to source from countries with a poor labor and human rights record. By hampering the efforts of advocates such as Irene Fernandez to enforce minimum labor standards for Malaysian workers and prevent abuses of migrant laborers, the Malaysian government risks undermining its economic position in the region.

We will continue to monitor the case of Ms. Fernandez in the lead-up to final submissions by counsel and the delivery of the judgment in March 2004. We would appreciate any timely information concerning measures taken by you to address our concerns in this matter.

Sincerely,

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