

CYRILLA Global Policy Advocacy Workshop
Session 2 - Legal framework for global policy advocacy
Asia: Case 2

Group 2: Cho, Ankita, Yassmine, Zahra

Background:

On 7 February 2011, Mat Shuhaimi Bin Shafiei (“Shuhaimi”), a Malaysian politician and Member of the State of Selangor’s General Assembly, was charged with publishing allegedly seditious material for a December 2010 blog post containing the caption “Pandangan saya berasaskan Undang-Undang Tubuh Kerajaan Negeri Selangor, 1959” (“My opinion is based on the Constitution of the State of Selangor, 1959”). Before the trial for sedition took place, Shuhaimi filed a Notice of Motion with the trial court seeking to have the charge stricken from his record on the grounds that Section 4 of Malaysia’s Sedition Act – the provision under which he was charged – depended on the dismissal of any *mens rea* element typically required to prove criminality, and that this dismissal unconstitutionally restricted his Freedom of Speech and Expression as enshrined in Malaysia’s Federal Constitution, Article 10(1)(a).

Shuhaimi argued that Section 3(3) of the Sedition Act should be subject to the proportionality test typically applied to government restrictions on speech in Malaysian jurisprudence. The lower court dismissed these arguments. Shuhaimi then lodged an application before the Court of Appeal, appealing the order of the lower court. The Court of Appeal in a landmark decision ruled that Section 3(3) of the Sedition Act was unconstitutional, calling it “invalid and of no effect in law”. However, this judgment was appealed again by the State before the Federal Court of Malaysia, on the grounds of abuse of process by Shuhaimi.

Case link: <https://cyrilla.org/en/entity/n8aazk4dklk>

Exercise

As an activist, you consider the judgment of the Court of Appeal as important precedent that must be upheld. You seek to garner support for the case amongst your networks, and bring attention to this issue in global spaces.

In light of this, you consider the following questions:

a)

What are the relevant international human rights standards to the case?
1. Universal Declaration of Human Rights (UDHR) - Article 19 2. International Covenant on Civil and Political Rights (ICCPR) - Article 19

Can you point to any texts that illustrate how the standard is evolving in the digital age (e.g any soft law or general comments to a Treaty)?
<ul style="list-style-type: none"> • UNHRC Resolutions 32/12 (2016) • General Comment No. 34 on Article 19 of the ICCPR • Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye (A/HRC/38/35)

b)

What global enforcement mechanisms could be used?
United Nations Human Rights Council (UNHRC) —> via UPR and special rapporteurs on freedom of expression
Do you know of any precedents of the mechanism being used in relation to a similar case/s?
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c)

As a local advocate, how could you use your knowledge of these standards and enforcement mechanisms in an advocacy or campaign strategy?
<p>Raise Awareness</p> <ul style="list-style-type: none"> • Organize public awareness campaigns and educational workshops highlighting the international standards protecting freedom of expression. <p>Mobilize Support</p> <ul style="list-style-type: none"> • Engage with local and international NGOs, and media outlets to build a coalition advocating for the upholding of the Court of Appeal's decision. <p>Lobbying</p> <ul style="list-style-type: none"> • Lobby the National government and international bodies, including the UN Human Rights Council, to pressure for legislative reforms aligning with international human

rights standards.

Public pressure /Strategic litigationand legal support

Other questions (optional)

Do you know of any regional standards or mechanisms that could be relevant?

ASEAN Human Rights Declaration:

ASEAN Intergovernmental Commission on Human Rights (AICHR)