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The Crime of Sedition: At the Crossroads of Reform and Resurgence

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The Crime of Sediton: At the Crossroads of Reform and Resurgence

April 2022

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHORS

This report was prepared by **Adam M. Smith, Charline Yim, and Marryum Kahloon**, attorneys at Gibson, Dunn & Crutcher LLP. Invaluable research assistance was provided by Lizzy Brilliant, Edmund Bannister, Soohyun Stephanie Hahn, and Carolyn Ye. All views expressed herein are the authors' own and do not represent the views of Gibson, Dunn & Crutcher LLP or any other entity or organization.

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ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

The **Clooney Foundation for Justice** (“CFJ”) advocates for justice through accountability for human rights abuses around the world. **TrialWatch** is an initiative of CFJ. Its mission is to expose injustice, help to free those unjustly detained, and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable—including journalists, protesters, women, LGBTQ+ persons, and minorities—and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Ranking exposing countries' performance and use it to support advocacy for systemic change.

EXECUTIVE SUMMARY



The offense of “*sedition*”—often characterized as criminalizing the incitement of rebellion against the government—is an archaic crime that is frequently used to target political speech. Introduced in the sixteenth century in England specifically to suppress dissent, sedition laws spread through the British colonies. These laws still persist in some legal systems, and while there are reforms underway in some of those jurisdictions, in a few outliers, the offense continues to be prosecuted—and in some there has been a resurgence in cases.

Sedition laws have been criticized by the United Nations (“**U.N.**”), human rights experts, courts, legislatures, advocates, and others for being a weapon used by governments to violate the right to freedom of expression. Moreover, the significant criminal penalties that usually accompany sedition laws have a chilling effect on political debate and can undermine democratic processes.

On their face, most sedition laws share several commonalities. Notably, most do not require any evidence that allegedly seditious speech would be likely to incite violence, and most are vague and overbroad, allowing them to be misused and manipulated to suppress free speech. For instance, in the last ten years, sedition laws have been used by governments to prosecute a student activist for protesting an election, a government official for a critical Facebook post, and a journalist for a satirical cartoon. In 1951, the Supreme Court of Canada noted that “*probably no crime has been left in such vagueness of definition*” as the offense of sedition.¹

A growing number of States have either repealed or reformed their sedition laws. In this report, we focus on the status of sedition laws in the jurisdictions that form the Commonwealth of Nations (“**Commonwealth States**”).² At least eight Commonwealth States have repealed the offense—in many cases explicitly recognizing that sedition laws are “*obsolete*” and can be used to violate international human rights norms. Most recently, in October 2021, Singapore’s Parliament voted to repeal its sedition law, with the Home Affairs and Law Minister explaining that “[t]he excitement of disaffection against the Government shouldn’t be criminalised.”³

¹ *Boucher v. The King* [1951] 2 DLR 369, 382 (Kellock J).

² We have reviewed recent developments in the following 54 jurisdictions: Antigua and Barbuda, Australia, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kingdom of Eswatini, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Rwanda, St Lucia, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, St Kitts and Nevis, St Vincent and The Grenadines, Tanzania, The Bahamas, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, Vanuatu, and Zambia. These jurisdictions were selected based on the similarities in their sedition laws and the common historical antecedent to those laws. The analysis in this report was compiled from primary and secondary source material by attorneys not qualified in those jurisdictions. In this regard, these summaries are designed to provide only a high-level overview to highlight some of the key issues and considerations.

³ *Second Reading of Sedition (Repeal) Bill – Speech by Mr K Shanmugam, Minister for Home Affairs and Minister for Law*, MINISTRY OF HOME AFFAIRS, Oct. 5, 2021, available at <https://www.mha.gov.sg/mediaroom/parliamentary/second-reading-of-sedition-repeal-bill-speech-by-mr-k-shanmugam/>.

In several Commonwealth States, domestic courts have ruled the sedition offense unconstitutional. And in others, parliaments or courts have significantly narrowed vague or overbroad sedition laws, limiting their application to situations where speech is likely to incite violence and seeking to clarify ambiguities (although the effectiveness of such reforms in practice is unclear in some jurisdictions⁴). Finally, based on public records, it appears that a large number of Commonwealth States have not prosecuted the offense in at least the last decade.

Nevertheless, in certain Commonwealth States where sedition laws remain in effect, the use of these charges has escalated in recent years as part of a broader trend of stifling dissent through the law, sometimes even in the face of ongoing legal challenges.⁵ For instance, according to the civil society organization Article 14, in India nearly 13,000 individuals have faced sedition charges since 2010.⁶ In Hong Kong, after 50 years of disuse, authorities have recently revived its sedition law to prosecute political expression.⁷ CFJ's TrialWatch initiative, which monitors criminal trials against the most vulnerable, has documented misuse of sedition laws across a range of jurisdictions both within and outside Commonwealth States, including Pakistan, India, Hong Kong, and Thailand.⁸

This report examines the movement to repeal or reform sedition laws, the reasons for these efforts, and abuses that take place where the charge of sedition continues to be used. It proceeds in three parts: first, a brief overview of sedition laws and the criticisms they have faced at the international and regional levels; second, an update on the substantial progress Commonwealth States have made to reform these laws; and third, an overview of several examples of States where prosecutors have weaponized sedition laws to stifle dissent, including examples arising from TrialWatch's monitoring experience.

⁴ For instance, in India while the courts have sought to narrow the definition of sedition, that has not stopped the misuse of the law. *Cf. infra* note 102 and accompanying text.

⁵ This includes India and Pakistan. See, e.g., Utkarsh Anand, SC, *Does India need a colonial sedition law?*, HINDUSTAN TIMES, Jul. 16, 2021, available at <https://www.hindustantimes.com/india-news/sc-does-india-need-a-colonial-sedition-law-101626369489813.html> (“*Putting the central government to notice on a clutch of petitions that have pressed for striking down Section 124A [the sedition law], the court emphasised that it was concerned about ‘misuse of the law and lack of accountability of executive and the investigating agencies.’*”); Hasnaat Malik, *Sedition law part of colonial legacy: legal experts*, THE EXPRESS TRIBUNE, Oct. 7, 2020, available at <https://tribune.com.pk/story/2267316/sedition-law-part-of-colonial-legacy-legal-experts-1> (“*In February, the Lahore High Court (LHC) issued notices to the federal and provincial governments on a petition that claimed that Section 124-A of the PPC was against the fundamental rights of the citizens as enshrined in the Constitution.*”).

⁶ ARTICLE 14, *Sedition: A Decade of Darkness*, available at <https://sedition.article-14.com/>.

⁷ *Hong Kong Special Administrative Region v. Tam Tak-Chi* [2022] HKDC 208 (Mar. 2, 2022); Eric Lai, *Hong Kong's Sedition Law is Back*, THE DIPLOMAT, Dec. 3, 2021, available at <https://thediplomat.com/2021/09/hong-kongs-sedition-law-is-back/>.

⁸ While Thailand and Hong Kong are not Commonwealth States, their sedition law and related practice is sufficiently similar that it provides a useful example of how such laws can be misused.

THE ORIGINS OF AND FLAWS IN THE SEDITION OFFENSE



A. THE ORIGINS

The crime of sedition originated in England in the sixteenth century as a lesser form of the existing offense of treason.⁹ In its early form, sedition comprised “*slanders or libels upon the reputations and/or actions, public or private, of public officials, magistrates, and prelates, which sought to divide and alienate*”¹⁰ subjects from their rulers, and was used to punish expression that challenged the government or those associated with it. The objective of criminalizing sedition was to prevent political dissent, and the prosecution of sedition was typically motivated by “*overtly political motives.*”¹¹

For example, in 1605, Lewis Pickering was convicted of “*libel of magistrates*” (i.e., libel of a government official) after he had written a rhyme about a recently deceased Archbishop and gave the rhyme to a friend.¹² Although there was no finding that the rhyme was likely to create any danger of violence, the presiding judge held that the rhyme was “*poison*” to the Commonwealth as a whole and implicitly amounted to criticism of the reigning King. The judge further held that it was “*not material whether the libel be true.*”¹³

Over time, as new common law and statutory offenses of sedition developed in different jurisdictions around the world, a common characteristic emerged: the requirement of a “*sedition intention*” underpinning any act or speech charged as “*sedition.*” The classical common law definition of seditious intention is:

*[A]n intention to bring into hatred or contempt, or to excite disaffection against the person of, Her Majesty, her heirs or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty’s subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst Her Majesty’s subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.*¹⁴

⁹ See Roger B. Manning, *The Origins of the Doctrine of Treason*, 12(2) ALBION 99 (1980), pp. 99-100.

¹⁰ *Id.* at p. 100.

¹¹ THE LAW COMMISSION, *Working Paper No. 72: Codification of the Criminal Law Treason, Sedition and Allied Offences* (1977), ¶ 68.

¹² Philip A. Hamburger, *The Development of the Law of Seditious Libel and the Control of the Press*, 37 STAN. L. REV. 661(1985), p. 693.

¹³ *Id.* at p. 694.

¹⁴ James Fitzjames Stephen, *A DIGEST OF THE CRIMINAL LAW* (1887), p. 66 (art. 93). However, there is no seditious intention where there is “[a]n intention to show that Her Majesty has been misled or mistaken in her measures, or to point out errors or defects in the government or constitution as by law established, with a view to their reformation, or to excite Her Majesty’s subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill-will between classes of His Majesty’s subjects, is not

There are noticeable ambiguities in this definition of seditious intention, including whether the standard is objective or subjective, and whether there must also be an intention to cause violence and disorder. In 1951, the Supreme Court of Canada observed that “*probably no crime has been left in such vagueness of definition*” as the offense of sedition and found that the standard for seditious intention was fundamentally unclear.¹⁵

B. FLAWS IN THE SEDITION OFFENSE

As a criminal charge, the offense of sedition presents several problems under human rights law. Some sedition laws, on their face, clearly target and criminalize speech that is protected under the International Covenant on Civil and Political Rights (“**ICCPR**”). Other sedition laws that contain vague and broad language can be misused to punish and suppress free expression.

Article 19 of the ICCPR states that everyone has the right to hold opinions and to freedom of expression, including “*freedom to seek, receive and impart information and ideas of all kinds*.”¹⁶ This includes views considered to be “*offensive*.”¹⁷ The U.N. Human Rights Committee (“**Committee**”) has explained that governments must take “*extreme care*” to ensure that any law that may restrict freedom of expression meets the strict requirements of the ICCPR, namely that any restriction is necessary, provided by law, and only for the purposes of (a) respecting the rights or reputations of others, or (b) protecting national security, public order, public health, or morals.¹⁸ The Committee has further clarified that criminal laws cannot be invoked “*to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information*.”¹⁹

To ensure that the right to freedom of expression is protected, the Committee has emphasized that restrictions “*must not be overbroad*,” and has recognized the “*particularly high*” value of “*uninhibited expression*” in “*circumstances of public debate in a democratic society concerning figures in the public and political domain*.”²⁰ Moreover, “*the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties*” because “*all public figures . . . are legitimately subject to criticism and political opposition*,” such that States “*should not prohibit criticism of institutions, such as the army or the administration*.”²¹ The Committee has specifically criticized several sedition laws in a number of States on this ground.²²

a seditious intention.” James Fitzjames Stephen, A DIGEST OF THE CRIMINAL LAW (1887), p. 66 (art 93).

¹⁵ *Boucher v. The King* [1951] 2 DLR 369, 382 (Kellock J).

¹⁶ ICCPR, 999 U.N.T.S. 171, art. 19.

¹⁷ U.N. Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, Sept. 12, 2011, ¶ 11, available at <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

¹⁸ *Id.* ¶ 30 (citing ICCPR, article 19(3)).

¹⁹ *Id.*

²⁰ *Id.* ¶ 34.

²¹ *Id.* ¶ 38.

²² See, e.g., U.N. Human Rights Committee, Concluding Observations, Thailand, CCPR/C/THA/CO/2, Apr. 25, 2017, ¶ 36 (“*The State party should also refrain from using its criminal provisions, including . . . the Sedition*”).

The U.N. Human Rights Council has likewise called on States to “refrain from imposing restrictions” on “[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.”²³

In recent years, regional courts have also confirmed that sedition laws—among other laws restricting criticism of a government²⁴—violate international human rights standards where those laws impose overbroad and unfettered restrictions on free expression. For instance, in 2018, the Community Court of Justice of the Economic Community of West African States (“**ECOWAS Court**”) considered a case brought by four Gambian journalists who had been convicted for the offenses of sedition, false news, and criminal defamation under The Gambia’s Criminal Code, which broadly adopted the common law definition of seditious intention. The ECOWAS Court concluded that the law on sedition “espouses expressions of inexactitude which are also so broad as to be capable of diverse subjective interpretations,” therefore amounting to “inacceptable instances of gross violation of free speech and freedom of expression.”²⁵ The ECOWAS Court held that The Gambia’s law on sedition violated international standards and ordered The Gambia to “immediately repeal and/or amend” the law.²⁶

Act and other regulations, as tools to suppress the expression of critical and dissenting opinions.”); U.N. Human Rights Committee, Concluding Observations, Hong Kong Special Administrative Region, CCPR/C/79/Add.117, Nov. 15, 1999, ¶ 18 (“The Committee is concerned that the offences of treason and sedition under the Crimes Ordinance are defined in overly broad terms, thus endangering freedom of expression guaranteed under article 19 of the Covenant.”); U.N. Human Rights Committee, Concluding Observations, Hong Kong Special Administrative Region, CCPR/C/HKG/CO/2, Apr. 21, 2006, ¶ 14 (“The Committee is concerned that the current definition of the offences of treason and sedition in the Crimes Ordinance is too broad (articles 19, 21, 22).”); U.N. Human Rights Committee, Concluding Observations, Hong Kong Special Administrative Region, UN Doc CCPR/C/CHN-HKG/CO/3, Mar. 9, 2013, ¶ 14 (The Committee “remains concerned at the broad wording of the definition of the offences of treason and sedition currently in Hong Kong, China’s Crimes Ordinance.”).

²³ U.N. Human Rights Council, *Resolution 12/16: Freedom of Opinion and Expression*, Oct. 12, 2009, U.N. Doc. No. A/HRC/RES/12/16, cl. 5(i).

²⁴ See, e.g., *Herrera-Ulloa v. Costa Rica* (Preliminary Objections, Merits, Reparations, and Costs), IACtHR, Ser. C, No. 107, Jul. 2, 2004, ¶¶ 132-33 (finding Costa Rica violated a journalist’s right to freedom of expression by convicting him of criminal defamation, and finding the defense of truth to a conviction still constituted an “excessive limitation on freedom of expression” because “it has a deterrent, chilling and inhibiting effect on all those who practice journalism” and “[t]his, in turn, obstructs public debate on issues of interest to society”); *Vajani v. Hungary*, ECtHR, App No. 33629/06, Jul. 8, 2008, ¶¶ 48-58 (finding that the applicant’s criminal conviction for wearing a red star at a lawfully organized, peaceful demonstration by a registered political party, with no known intention of defying the rule of law, and without requiring any proof that the display of the red star amounted to totalitarian propaganda, constituted a violation of the right to freedom of expression).

²⁵ *Federation of African Journalists and Ors. v. The Gambia*, ECW/CCJ/JUD/04/18, Mar. 13, 2018, p. 37. See also *id.* at p. 47 (“In analyzing the Criminal laws of the Gambia, one can certainly infer that these laws do not guarantee a free press within the spirit of the African Charter on Human and Peoples Rights and the International Covenant on Civil and Political Rights (ICCPR). The restrictions and vagueness with which these laws have been framed and the ambiguity of the mensrea (seditious intention), makes it difficult to discern with any certainty what constitutes seditious offence.”).

²⁶ *Id.* at p. 61. The Supreme Court of The Gambia subsequently ruled on the constitutionality of the same provisions as were at issue before the ECOWAS Court, upholding the vast majority of the laws, while striking down the sedition law insofar as it related to the government as an institution. See *Gambia Press Union and Ors. v. The Attorney General* [2018] SC Civil Suit No. 1/2014, May 9, 2018, ¶ 53 (finding that “[a] government is an institution that, by its very nature, can expect to and will be subject to varying degrees of expressions of opinion, positive or negative, whether from the media or individual citizens or otherwise.”).

Similarly, in 2019, the East African Court of Justice (“EACJ”) held that Tanzania’s seditious offense “fail[ed] the test of clarity and certainty required” and “hinged on the possible and potential subjective reactions of audiences to whom the publication is made. This makes it all but impossible, for a journalist or other individual, to predict and thus plan their actions.”²⁷ The EACJ also held that the penalty for seditious (a custodial sentence) would be disproportionate unless the government put forward “serious and very exceptional circumstance for example, incitement to international crimes, public incitement to hatred, discrimination or violence.”²⁸ Accordingly, the EACJ held that the relevant provisions were incompatible with the Treaty for the Establishment of the East African Community and ordered Tanzania to take the necessary measures to amend its laws to bring them into compliance.²⁹

²⁷ *Media Council of Tanzania v. The Attorney General of the United Republic of Tanzania*, EACJ Reference No. 2 of 2017, Mar. 28, 2019, ¶ 99.

²⁸ *Id.* ¶ 102 (adopting the African Court of Human and Peoples’ Rights judgment in *Konaté v. Burkina Faso*, ACtHPR, App. No. 004/2013, Dec. 5, 2014).

²⁹ *Id.* § F. While Tanzania has not implemented the EACJ’s judgment and continues to charge journalists with seditious offenses, Tanzanian judges have acquitted charged persons on technical grounds. See, e.g., *Mbowe and Ors. v. The Republic* [2021] High Court of Tanzania, Criminal Appeal No. 76 of 2020, pp. 53-59 (for example, where the prosecution has failed to define with specificity the “*Lawful Authority of the government intended to be brought into hatred, contempt and disaffection*”).

RESPONSES IN COMMONWEALTH STATES



A. STATES THAT HAVE REPEALED SEDITION LAWS

As of the date of this report, legislatures in **eight Commonwealth States** have repealed their sedition laws, namely: Kenya (1997), Ghana (2001), New Zealand (2007), the United Kingdom (2009), Jamaica (2013), Maldives (2018), Sierra Leone (2020), and Singapore (2021). Many of these States have done so precisely because of the potential for, and documented experience of, abuse.

In **Kenya**, the government repealed the offense of sedition in 1997.³⁰ However, prosecutors continued to charged journalists with “*sedition*” or “*sedition libel*” under the separate criminal defamation offense³¹ until 2017 when the Supreme Court of Kenya declared criminal defamation to be unconstitutional, finding that:

*The overhanging effect of the offense of criminal defamation is to stifle and silence the free flow of information in the public domain. This, in turn, may result in the citizenry remaining uninformed about matters of public significance and the unquestioned and unchecked continuation of unconscionable malpractices.*³²

The Supreme Court further held that:

*[T]here is an appropriate and satisfactory alternative civil remedy that is available to combat the mischief of defamation. Put differently, the offense of criminal defamation constitutes a disproportionate instrument for achieving the intended objective of protecting the reputations, rights and freedoms of other persons. Thus, it is absolutely unnecessary to criminalize defamatory statements.*³³

In **Ghana**, the government repealed the offense of sedition in 2001³⁴ following a commitment by then newly-elected President John Agyekum Kufuor to “*expand the boundaries of freedom*” in Ghana.³⁵ Current President Nana Akufo-Addo has said that the repeal of this offense “*contributed significantly to the deepening of democracy in our country, enhancing public accountability as a strategic goal of public policy.*”³⁶ He further stated that as a public

³⁰ Statute Law, Act No. 10 of 1997 (Kenya), p. 884.

³¹ Penal Code 2012 (Kenya), § 194. See also ARTICLE 19, *Individual Submission to the Universal Periodic Review of Kenya*, Jun. 15, 2014, available at <https://www.article19.org/resources/article-19-individual-submission-universal-periodic-review-kenya/>.

³² *Okuta & Anor v. Attorney General & Ors* [2017] eKLR, Feb. 6, 2017, p. 11.

³³ *Id.* at p. 13.

³⁴ The Criminal Code (Repeal of Criminal Libel and Seditious Laws) (Amendment) Act 2001 (Ghana).

³⁵ *Criminal libel law repealed*, IFEX, Jul. 31, 2001, available at <https://ifex.org/criminal-libel-law-repealed/>.

³⁶ *I prefer boisterous even reckless media, to a supine one – Akufo-Addo*, GHANAWEB, Jun. 1, 2021, available at <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/I-prefer-boisterous-even-reckless-media-to-a-supine-one-Akufo-Addo-1275667>.

official and despite being “one of the public figures most persistently vilified in sections of the Ghanaian media,” repealing this law was “necessary in the public interest in our emerging democracy.”³⁷

In 2007, the **New Zealand** government emphasized that it was repealing the offense³⁸ because “sedition provisions infringe on the principle of freedom of expression and have the potential for abuse” and “the present law of sedition attacks the democratic value of free speech for no adequate public reason” due to its “broad and uncertain” formulation.³⁹

The United Kingdom, the State where this criminal offense originated, repealed both the statutory and common law offenses of sedition over a decade ago in 2009.⁴⁰ Commenting on the decision to repeal its sedition laws, Parliamentary Under Secretary of State at the Ministry of Justice Claire Ward noted:

*Sedition and seditious and defamatory libel are arcane offenses – from a bygone era when freedom of expression wasn’t seen as the right it is today. . . . The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom.*⁴¹

In **Jamaica**, a Special Select Committee appointed by the House of Representatives to review Jamaica’s defamation law recommended that “the common law offences of criminal libel including . . . seditious libel be abolished.”⁴² The Committee noted that it had received submissions from a local NGO representing journalists and an expert in defamation law supporting such a reform on the basis “that the international standard was that no one should be locked up for what they say.”⁴³ Accordingly, in 2013, Jamaica abolished criminal libel and the offense of seditious libel.⁴⁴

In November 2018, the **Maldives** repealed the Defamation and Freedom of Speech Act which had restricted speech that “may endanger national security” because it was “expressed in a manner that [was] detrimental to the sovereignty or independence of the nation.”⁴⁵ In describing his pledge that the government would not implement regulations or

³⁷ *Id.* However, as of March 2022, the Ghanaian press has been targeted by law enforcement officials with at least three journalists detained on press-related offenses, and a fourth journalist hospitalized following a police attack. See *Ghana sees disturbing surge in press freedom violations*, REPORTERS WITHOUT BORDERS, Feb. 16, 2022, available at <https://rsf.org/en/news/ghana-sees-disturbing-surge-press-freedom-violations>.

³⁸ Crimes (Repeal of Seditious Offences) Amendment Act 2007 (NZ).

³⁹ *Government moves to repeal sedition laws*, Jun 9, 2007, available at <https://www.beehive.govt.nz/release/government-moves-repeal-sedition-laws>.

⁴⁰ See Coroners and Justice Act 2009 (UK), § 73.

⁴¹ *Criminal libel and sedition offences abolished*, PRESSGAZETTE, Jan. 13, 2010, available at <https://pressgazette.co.uk/criminal-libel-and-sedition-offences-abolished/>.

⁴² Report of the Joint Select Committee to Consider and Report on the Report on the Review of Jamaica’s Defamation Law, December 2010, p. 9.

⁴³ *Id.*

⁴⁴ The Defamation Act 2013 (Jamaica), § 7.

⁴⁵ *President ratifies the bill to repeal the Defamation and Freedom of Speech Act*, PRESIDENT’S OFFICE: REPUBLIC OF MALDIVES, Nov. 22, 2018, available at <https://presidency.gov.mv/Press/Article/19826>; Defamation and Freedom of Speech Act 2016 (Maldives), § 9(a)(1).

measures that would undermine the media's independence, President Ibrahim Mohamed Solih emphasized that "*the role of journalists is not to constantly praise the government but to report accurate information to the public,*" and so journalists "*should not be averse to criticizing the incumbent administration should the need arise.*"⁴⁶ Moreover, "[p]rincipled and independent journalism is crucial to keeping the public well-informed, enriches public conversations on important issues and is a vital component of ensuring government accountability to its citizens."⁴⁷

When **Sierra Leone** repealed criminal libel and sedition laws in 2020,⁴⁸ the President noted that sedition had "*been used as a regime to unduly target and imprison media practitioners and silence dissident views.*"⁴⁹

Most recently, in October 2021, **Singapore** repealed the offense of sedition.⁵⁰ In introducing the bill to repeal the offense, the Minister of Home Affairs and Law noted that the offense of sedition now had "*limited application*" because it had been replaced by laws that could regulate conduct "*in a more targeted and calibrated manner.*"⁵¹

Courts in at least **two Commonwealth States**⁵² have declared sedition laws

⁴⁶ *This government will not undermine the independence of the media - President Solih*, PRESIDENT'S OFFICE: REPUBLIC OF MALDIVES, May 3, 2019, available at <https://presidency.gov.mv/Press/Article/21074>. See also *President Solih Reiterates Commitment to Press Freedom and Human Rights*, PRESIDENT'S OFFICE: REPUBLIC OF MALDIVES, Dec. 10, 2018, <https://presidency.gov.mv/Press/Article/19993>; *Freedom of press is paramount to holding the government accountable – President Solih*, PRESIDENT'S OFFICE: REPUBLIC OF MALDIVES, Dec. 12, 2018, <https://presidency.gov.mv/Press/Article/20028>.

⁴⁷ *This government will not undermine the independence of the media - President Solih*, PRESIDENT'S OFFICE: REPUBLIC OF MALDIVES, May 3, 2019, available at <https://presidency.gov.mv/Press/Article/21074>.

⁴⁸ Independent Media Commission Act 2020 (Sierra Leone).

⁴⁹ *Major Boost for Press Freedom as Sierra Leone Scraps Criminal Libel Law after 55 Years*, MEDIA FOUNDATION FOR WEST AFRICA, Jul. 24, 2020, available at <https://www.mfwa.org/major-boost-for-press-freedom-as-sierra-leone-scraps-criminal-libel-law-after-55-years/>.

⁵⁰ Sedition (Repeal) Act 2021, No. 30 of 2021 (Singapore).

⁵¹ *First Reading of Sedition (Repeal) Bill*, MINISTRY OF HOME AFFAIRS, Sept. 13, 2021, available at <https://www.mha.gov.sg/mediaroom/press-releases/first-reading-of-the-sedition-repeal-bill/>.

⁵² In one Commonwealth State, **Nigeria**, the Court of Appeal declared the offense of sedition to be unconstitutional and incompatible with the right to freedom of expression. See *Nwankwo v. The State* [1985] 6 NCLR 228. Nevertheless, the offense has not been repealed from the Nigerian Penal Code and continues to be used against journalists, in particular. See, e.g., Michael Jegede, *The Sedition Charge Against Ebere Wabara*, SAHARA REPORTERS, Apr. 4, 2014, available at <http://saharareporters.com/2014/04/04/sedition-charge-against-ebere-wabara>; *Two journalists charged with sedition over presidential jet story*, COMMITTEE TO PROTECT JOURNALISTS, Jun. 27, 2006, available at <https://cpj.org/2006/06/two-journalists-charged-with-sedition-over-preside/>. However, the Nigerian Court of Appeal's words are worth recalling: "[W]e are no longer the illiterates or the mob society our colonial masters had in mind when the law was promulgated . . . the safeguard provided under section 50 (2) is inadequate more so, where the truth of what is published is no defence. To retain section 51 of the Criminal Code in its present form, that is even if not inconsistent with the freedom guaranteed by our Constitution, will be a deadly weapon and to be used at will by a corrupt government or tyrant. I hereby express my doubt about its retention in our Criminal Code more so, and as said earlier, there is adequate provision in the same Criminal Code on criminal libel. Let us not diminish from the freedom gained from our colonial masters by resorting to laws enacted by them to suit their purpose. The decision of the founding fathers of the present Constitution which guarantees freedom of speech which must include freedom to criticise should be praised and any attempt to derogate from it except as provided by the constitution must be resisted. Those in public office should not be intolerant of criticism in respect of their office so as to ensure that they are accountable to the people. They should not be made to feel that they live in an ivory tower and therefore belong to a different class. They must develop thick skins and where possible, plug

unconstitutional. In **Uganda**, in 2017, the Constitutional Court of Uganda struck down the offense as unconstitutional for vagueness in the case of journalist Andrew Mujuni Mwenda. Mwenda and the Eastern Africa Media Institute initiated a constitutional petition after Mwenda was convicted of sedition and for “*promoting sectarianism*” for insulting the President of Uganda on his radio show.⁵³ The Constitutional Court held that “*the wording creating the offence of sedition is so vague that one may not know the boundary to stop at, while exercising one’s right*” to freedom of expression.⁵⁴ Accordingly, “*the way impugned sections were worded have an endless catchment area, to the extent that it infringes one’s right*” to freedom of expression.⁵⁵

In the **Kingdom of Eswatini** (formerly known as Swaziland), the High Court declared sections of the Sedition and Subversive Activities Act to be unconstitutional after finding that the law limited the right to freedom of expression and the government failed to articulate a cogent explanation for why such a restriction was reasonable or justifiable.⁵⁶ The High Court concluded that absent such an explanation, any restriction or limitation of the right was constitutionally unlawful and impermissible.⁵⁷

B. STATES THAT HAVE MODIFIED SEDITION LAWS

Among those Commonwealth States that maintain sedition laws, some, through their courts or parliaments, have narrowed the scope of their sedition offenses in an effort to reduce the risk of misuse to suppress free expression. In particular, many States have amended the definition of sedition to limit the offense to speech or expression that urges violence and/or to add a requirement that the State demonstrate that the speaker had a violent intent. The Australian Law Reform Commission observed:

*[T]here has been a general trend in the common law courts to narrow the scope of sedition offences in accordance with the contemporary emphasis on the importance of freedom of expression and open political debate. A distinction has thus been drawn between the expression of political opinion with reformist aims and the advocacy of revolutionary or violent political action.*⁵⁸

In **Australia**, provisions of federal criminal law that previously used the word “*sedition*” have been amended to now refer to “*urging violence*” to better reflect the “*plain English*

their ears with wool if they feel too sensitive or irascible.”

⁵³ *Mwenda & Ors v. Attorney General* [2010] UGCC 5, Aug. 25, 2010, pp. 22, 25 (“*The particulars alleged that during a live talk show, he uttered words with the intention to bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established or the Constitution.*”).

⁵⁴ *Id.* at p. 23.

⁵⁵ *Id.*

⁵⁶ *Maseko & Ors v. The Prime Minister of Swaziland & Ors*, Case No. 2180/2009, Sep. 16, 2016, ¶¶ 19, 21.

⁵⁷ *Id.* This judgment remains subject to appeal, and authorities in Eswatini continue to charge journalists with the offense of sedition despite the High Court’s finding. See Anneke Meerkotter, *Sedition Charges Impact On Freedom Of Expression In Eswatini*, SOUTHERN AFRICA LITIGATION CENTRE, Jul. 22, 2019, available at <https://www.southernafricalitigationcentre.org/2019/07/22/questionable-sedition-charges-quell-freedom-of-expression-in-eswatini/>.

⁵⁸ AUSTRALIAN LAW REFORM COMMISSION, *Fighting Words: A Review of Sedition Laws in Australia*, Report 104, Jul. 2006, ¶ 2.6.

description of the elements of the offence” and to discard the “*historical meaning*” of the term “*sedition*.”⁵⁹

In **Canada**, “*sedition*” has been clarified as applying to a person “*who (a) teaches or advocates, or (b) publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada.*”⁶⁰

In **Fiji**, the High Court held that the existence of a “*sedition*” cannot be presumed, and, at a minimum, the court must find the existence of an “*objective intention*.”⁶¹ Accordingly the prosecution bears a burden “*to prove beyond reasonable doubt that the said deemed intention of the accused is the only inescapable and indisputable inference of the intention of the accused.*”⁶² In this case, the accused had published an article calling for a national reconciliation process to address the concerns of indigenous communities. The prosecution contended that the article exhibited a “*sedition*” because it “*promote[d] feelings of ill-will and hostility between different classes of the population of Fiji.*”⁶³ In response, the High Court held that the defense was able to demonstrate “*a reasonable possibility that the intention of the article is to point out issues in order to remove ill feelings among all the citizens or point out errors or defects in the government.*”⁶⁴ Accordingly, the accused was acquitted.⁶⁵

⁵⁹ *Government response to recommendations, Fighting Words: A Review of Sedition Laws in Australia*, AUSTRALIAN LAW REFORM COMMISSION, Sep. 13, 2016, available at https://www.alrc.gov.au/wp-content/uploads/2019/08/government_response_to_fighting_words_a_review_of_sedition_laws_in_australia.pdf.

⁶⁰ Criminal Code 1985 (Canada), § 59(4). See also *Halton Hills (Town) v. Kerouac*, 2006 CanLII 12970 (ON SC), ¶ 26 (“*Laws against sedition may limit free speech that advocates the violent overthrow of the state: to the extent that this speech is fettered, it is on the basis that society as a whole may guard against its own continued existence*”); *R. v. Keegstra* [1990] 3 SCR 697 (finding that the Supreme Court “*required that the traditional definition of criminal sedition be narrowed to encompass only the intention to incite people to actual violence, disorder or unlawful conduct*” and that the Supreme Court “*was not prepared to accept historical legal limitations on expression where they conflicted with the larger Canadian conception of free speech.*”).

⁶¹ *State v. Waqabaca & Ors*, Crim. Case No. HAC 361 of 2016, May 22, 2018, ¶ 28.

⁶² *Id.*

⁶³ *Id.* ¶¶ 10, 16.

⁶⁴ *Id.* ¶¶ 52-53.

⁶⁵ *Id.* ¶ 88.

SEDITION IN PRACTICE: THE USE OF SEDITION LAWS TO STIFLE POLITICAL OPPOSITION AND THE RIGHT TO FREEDOM OF EXPRESSION



Where sedition laws remain on the books, they are too often misused by government authorities to punish journalists, human rights advocates, and others for criticizing government policy or actions. Below, we address examples from Commonwealth and non-Commonwealth States alike where government authorities have weaponized sedition laws to suppress criticism and curtail dissent, in violation of international human rights standards including the right to freedom of expression. The States addressed in this Part are Hong Kong, Malaysia, Pakistan, India, and Thailand, where TrialWatch has documented first-hand the misuse of these laws to prosecute government critics.⁶⁶

As shown below, the laws in these States share certain commonalities: they have broad and vague definitions of what constitutes sedition, and, despite some promising efforts to reform or reconsider sedition laws, they continue to be used by the police and prosecutors to harass government critics and activists. Moreover, for those convicted in these jurisdictions, the penalties for sedition can be severe: in India and Pakistan, for example, sedition can result in a life sentence. Even where a case does not go to trial, often the “[c]harge is the [p]unishment”⁶⁷ because of harassing pre-trial processes.

A. HONG KONG

After over 50 years of disuse and a period when reform—or even repeal—seemed possible,⁶⁸ Hong Kong authorities have again begun to charge individuals with sedition.⁶⁹ In the past year, this has included individuals who published a series of children’s books

⁶⁶ As discussed *supra* at note 8, while Thailand and Hong Kong are not Commonwealth States, their sedition laws are substantially similar to those of Commonwealth States. See, e.g., Crimes Ordinance (Cap. 200) (Hong Kong), § 9 (definition of “*Seditious intention*” substantively mirrors the classical common law definition of “*seditious intention*”); Criminal Code 1956 (Thailand), § 116 (criminalizing words, writing or conduct that seeks “1. To bring about a change in the Laws of the Country or the Government by the use of force or violence; 2. To raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country; or 3. To cause the people to transgress the laws of the Country”).

⁶⁷ Jacob Mchangama & Raghav Mendiratta, *Time To End India’s War on Sedition*, LAWFARE, Jun. 25, 2021, available at <https://www.lawfareblog.com/time-end-indias-war-sedition>.

⁶⁸ The Hong Kong Bills Committee said in 1997 that “[t]he offence of sedition is archaic, has notorious colonial connotations and is contrary to the development of democracy. It criminalises speech or writing and may be used as a weapon against legitimate criticism of the government.” Report of the Bills Committee on the Crimes (Amendment) (No. 2) Bill 1996 (Papers) 13 June 1997, LegCo Paper No. CB(2)2638/96-97, ¶ 18, available at <https://www.legco.gov.hk/yr96-97/english/bc/bc56/papers/report!! .htm>.

⁶⁹ See Eric Lai, *Hong Kong’s Sedition Law Is Back*, THE DIPLOMAT, Sept. 3, 2021, available at <https://thediplomat.com/2021/09/hong-kongs-sedition-law-is-back/> (“While sedition offenses remained on the books, the new Hong Kong administration after 1997 continued the tradition of refraining from pursuing such charges.”).

that showed sheep defending their villages from wolves.⁷⁰ In June 2021, a 17-year-old secondary school student was arrested for allegedly being part of a conspiracy to publish seditious materials.⁷¹

Under Hong Kong law, the offense includes use of “*seditious words*,” which are defined as words that “*have a seditious intention*.”⁷² Seditious intention, then, is defined to include “*rais[ing] discontent or disaffection*.”⁷³ The U.N. has expressed its “*grave concern with the broad definition of what constitutes seditious speech, concerned that the broad definition may restrict legitimate expression*.”⁷⁴

The recent sedition charges in Hong Kong are taking place against the backdrop of the implementation of the 2020 National Security Law, which has also been used to target speech and conduct seen as challenging government authorities.⁷⁵ For instance, TrialWatch monitored the trial of radio host Tam Tak-chi—the first person to go to trial for sedition since the 1960s—who was convicted on March 2 (a TrialWatch Fairness report on the case is forthcoming).⁷⁶ In his case, the charges were based on his publicly chanting protest slogans such as “*Liberate Hong Kong*” and “*Five Demands Not One Less*” in 2020. His trial was presided over by a national security judge, designated by the Chief Executive of the Hong Kong Special Administrative Region. In addition, in December 2021, two editors from online media outlet *Stand News* were arrested and charged with conspiracy to publish seditious publications, as were the owner, Jimmy Lai, and staff of the *Apple Daily* (both news outlets have since ceased operations).⁷⁷

Prior to the trial of Tam Tak-chi, the offense of sedition was last used in the 1960s by the British colonial government against Chinese-language news media and other anticolonial demonstrators.⁷⁸ The resurrection of sedition charges after the 2019 pro-democracy protests suggests these charges are being used to target political speech.

⁷⁰ See Danny Kwok & Sara Cheng, *Children’s tales of sheep and wolves incite sedition, HK police say*, REUTERS, Jul. 22, 2021, available at <https://www.reuters.com/world/asia-pacific/hong-kong-police-arrest-five-suspicion-inciting-childrens-hatred-2021-07-22/>.

⁷¹ Candace Chau, *Hong Kong teen remanded in custody over allegedly seditious material*, HKFP, Jun. 8, 2021, available at <https://hongkongfp.com/2021/06/08/hong-kong-teen-remanded-in-custody-over-allegedly-seditious-material/>.

⁷² Crimes Ordinance (Cap. 200) (Hong Kong), §§ 9-10.

⁷³ *Id.* § 9.

⁷⁴ Letter from U.N. Special Procedures to the Permanent Mission of the People’s Republic of China, Ref. OL CHN 7/2020, Apr. 23, 2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25196>. See also *supra* n. 22.

⁷⁵ See Rebecca Mammen John, TrialWatch Fairness Report, *HKSAR v. Tong Ying-kit*, Dec. 2021, available at <https://cfj.org/wp-content/uploads/2021/12/Tong-Ying-kit-Fairness-Report-December-2021.pdf>.

⁷⁶ See *Hong Kong Special Administrative Region v. Tam Tak-Chi* [2022] HKDC 208 (Mar. 2, 2022).

⁷⁷ Greg Torode & James Pomfret, “*Colonial wine from new, authoritarian bottles*”: *Hong Kong re-tools sedition law*, REUTERS, Jan. 11, 2022, available at <https://www.reuters.com/world/asia-pacific/colonial-wine-new-authoritarian-bottles-hong-kong-re-tools-sedition-law-2022-01-11/>.

⁷⁸ Chris Lau, *What is Hong Kong’s colonial-era sedition law, and how does it fit into landscape of national security legislation?*, SOUTH CHINA MORNING POST, Sept. 9, 2020, available at <https://www.scmp.com/news/hong-kong/politics/article/3100740/what-hong-kongs-colonial-era-sedition-law-and-how-does-it>.

B. MALAYSIA

According to the U.N., between January 2014 and April 2015, at least 78 individuals were investigated or arrested in Malaysia under the Sedition Act.⁷⁹ More recently, in June 2020, police questioned the founding director of the Centre to Combat Corruption and Cronyism, Cynthia Gabriel, on suspicion of sedition because she issued a public letter calling on the Malaysian Anti-Corruption Commission to investigate allegations of influence trading in the government.⁸⁰ And in July 2020, reporters with *Al Jazeera* were investigated under the Sedition Act in connection with a report on migrant workers in Malaysia; the office was subsequently raided by police until the inquiry stalled with the expiration of the reporters' visas.⁸¹

Malaysia's Sedition Act criminalizes "any act, speech, words, publication or other thing" "having a seditious tendency."⁸² "Seditious tendency" is in turn defined to include a tendency to bring others "into hatred or contempt or to excite disaffection."⁸³ Former U.N. Special Rapporteur on Freedom of Expression David Kaye has observed that the Sedition Act is incompatible with international standards and "could result in disproportionate restrictions of freedom of expression" and lacked basic "parameters" or definitions around acts that constitute "sedition."⁸⁴ In November 2016, a Malaysian court ruled that a provision of the sedition law that provided that the intent (*mens rea*) of a charged person was irrelevant to a finding of whether a message carried a "seditious tendency" was unconstitutional.⁸⁵ The court concluded that "totally displac[ing] proof of intent" was "wholly unsustainable and a breach of the guarantee of equality before the law."⁸⁶

However, this decision was ultimately set aside on procedural grounds by the Federal Court in January 2018.⁸⁷ And despite the Malaysian government's promises in 2019 to repeal or replace the Sedition Act,⁸⁸ it remains on the books, and sedition arrests and prosecutions continue. For instance, following a trial monitored by TrialWatch,⁸⁹ one of the defendants

⁷⁹ U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *Malaysia: Draft anti-terror and sedition law seriously undermine freedom of expression and opinion*, Apr. 9, 2015, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15810&LangID=E>.

⁸⁰ *Anti-graft activist critical of Muhyiddin govt taken in for police questioning*, MALAY MAIL, Jun. 10, 2020, available at <https://www.malaymail.com/news/malaysia/2020/06/10/anti-graft-activist-critical-of-muhyiddin-govt-taken-in-for-police-question/1874261>.

⁸¹ AMNESTY INTERNATIONAL, CIVICUS & INTERNATIONAL COMMISSION OF JURISTS, *Joint Statement: End Harassment and Intimidation of Media Workers and Critics*, Jul. 11, 2020, available at <https://www.amnesty.org/download/Documents/ASA2827122020ENGLISH.pdf>.

⁸² Sedition Act 1948 (Malaysia), §§ 2, 4(1).

⁸³ *Id.* § 3.

⁸⁴ Letter from U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Permanent Mission of Malaysia, Ref. OL MYS 6/2018, Dec. 28, 2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24287>, p. 3.

⁸⁵ *Shafei v. Kerajaan* [2017] 1 MLJ 451, ¶ 40.

⁸⁶ *Id.*

⁸⁷ *Kerajaan v. Shafei* [2018] 2 MLJ 133.

⁸⁸ *Malaysia's Sedition Act to be repealed or replaced with new law: Minister*, THE STRAIT TIMES, May 19, 2019, available at <https://www.straittimes.com/asia/se-asia/malaysias-sedition-act-to-be-repealed-or-replaced-with-new-law-minister>.

⁸⁹ See Joan Barata, TrialWatch Fairness Report, *Malaysia v. Malaysiakini & Steven Gan* (Oct. 2021),

in that trial was brought in for questioning on suspicion of sedition for his criticism of the verdict.⁹⁰

C. PAKISTAN

In Pakistan, authorities have recently used sedition and related charges to stifle political activism, including on university campuses. While the charges do not lead to a conviction in many cases, the accused are forced to spend time and resources litigating frivolous cases. In one recent case, a “*First Instance Report*” (“**FIR**”) was registered by a private complainant against the journalist Absar Alam based on an allegation that he had “*used highly offensive language against Pakistan’s military and Prime Minister Imran Khan on twitter and social media.*”⁹¹ However, in principle only government authorities are entitled to register such complaints.⁹²

Under Pakistani law, sedition includes “*attempts to excite disaffection toward*” the government, with “*disaffection*” defined to include “*disloyalty and all feelings of enmity.*”⁹³ While the courts have imposed some guardrails, they are routinely disregarded by prosecutors.⁹⁴ Responding to the case against Alam, the Human Rights Commission of Pakistan condemned the FIR, stating that they “*believe this is yet another attempt by the government to silence any voices of dissent and curb freedom of expression.*”⁹⁵

TrialWatch is monitoring one example: an academic who was charged with sedition (among other offenses) for a November 2019 protest organized by student groups to urge an end of surveillance by universities.⁹⁶ After the authorities sought a detention order against the academic (on the theory that he might be an ongoing risk to public order), the court found the proposed detention order *prima facie* inconsistent with Pakistani law, noting that “*dissenting voices do not endanger or threaten the existence of the state and should not be suppressed unlawfully and arbitrarily.*”⁹⁷

available at https://cfj.org/wp-content/uploads/2021/10/Malaysiakini-and-Steven-Gan_October-2021_Malaysia_Fairness-Report.pdf.

⁹⁰ See Sebastian Strangio, *Malaysian Newspaper Editor Under Investigation for Criticizing Court Ruling*, THE DIPLOMAT, Feb. 23, 2021, available at <https://thediplomat.com/2021/02/malaysian-newspaper-editor-under-investigation-for-criticizing-court-ruling/>.

⁹¹ See Rehan Piracha, *Cybercrime cases against senior journalists widely condemned*, VOICEPK.NET, Sep. 12, 2020, available at <https://voicepk.net/2020/09/cybercrime-cases-against-senior-journalists-widely-condemned/>.

⁹² Code of Criminal Procedure 1898 (Pakistan), § 196A. See PLD 2017 Islamabad 64.

⁹³ Penal Code 1860 (Pakistan), § 124-A.

⁹⁴ See, e.g., Reema Omer, *Sedition and its discontents*, DAWN, Feb. 3, 2020, available at <https://www.dawn.com/news/1532177>.

⁹⁵ *High Treason Case Filed Against Journalist Absar Alam*, NAYA DAUR, Sept. 12, 2020, available at <https://nayadaur.tv/2020/09/high-treason-case-filed-against-journalist-absar-alam/>.

⁹⁶ This is part of a pattern. On November 20, 2019, for instance, at least 17 students at Sindh University were charged with an array of offenses, including sedition, for chanting anti-Pakistan slogans and writing anti-government slogans in chalk. Mohammad Hussain Khan, *Sedition case registered against Sindh University students for ‘chanting anti-Pakistan slogans’*, DAWN, Nov. 20, 2019, available at <https://www.dawn.com/news/1517820/17-sindh-university-students-booked-for-sedition-vc-says-students-were-protesting-over-water-shortage>.

⁹⁷ CLOONEY FOUNDATION FOR JUSTICE, *End Harassment of Dr. Ammar Ali Jan in Pakistan*, Mar. 12, 2021,

D. INDIA

In India, sedition charges are proliferating. Despite Mahatma Gandhi's famous speech in which he explained that India's sedition law was "*designed to suppress the liberty of the citizen*,"⁹⁸ it continues to be used broadly against actual or perceived government critics. According to Article 14, a civil society organization in India, since 2010, there have been more than 800 sedition cases filed in India, involving over 13,000 individuals.⁹⁹

India's sedition law criminalizes those who bring or attempt to bring "*into hatred or contempt, or excite[] or attempt[] to excite disaffection towards*" the government.¹⁰⁰ As in Pakistan, "*disaffection*" is defined to include "*disloyalty and all feelings of enmity*."¹⁰¹ While Indian courts have sought to narrow the definition of sedition,¹⁰² government authorities continue to use this law to investigate and charge a wide range of individuals. Even if the number of individuals convicted of sedition (and exposed to its severe life sentence) is limited, in India a person acquitted of sedition "*may have already suffered years of legal expenses, a prolonged investigation by the authorities, multiple court appearances and even incarceration during the trial*."¹⁰³ For many subject to pretrial detention or other limitations on their life and employment due to these charges, "*the [c]harge is the [p]unishment*."¹⁰⁴

The Supreme Court has recently indicated its intention to review India's sedition law,

available at <https://cfj.org/wp-content/uploads/2021/03/End-Harrassment-of-Dr.-Ammar-Ali-Jan-in-Pakistan.pdf>.

⁹⁸ See Ramachandra Guha, *Threat to speech: Law 'designed to suppress the liberty of the citizen' used against Gandhi and Indians now*, THE TELEGRAPH INDIA, Aug. 3, 2019, available at <https://www.telegraphindia.com/opinion/threat-to-speech-law-designed-to-suppress-the-liberty-of-the-citizen-used-against-gandhi-and-indians-now/cid/1695710>.

⁹⁹ ARTICLE 14, *Sedition: A Decade of Darkness*, <https://sedition.article-14.com/>.

¹⁰⁰ Penal Code 1860 (India), § 124A.

¹⁰¹ *Id.*

¹⁰² See, e.g., *Kedar Nath Singh v. State Of Bihar*, 1962 Supp. (2) S.C.R. 769 (finding that penalization of sedition is a constitutionally valid restriction on the right to freedom of expression only when "*appli[ed] to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence*").

¹⁰³ See Jacob Mchangama & Raghav Mendiratta, *Time To End India's War on Sedition*, LAWFARE, Jun. 25, 2021, available at <https://www.lawfareblog.com/time-end-indias-war-sedition>. See also *Sedition weapon*, THE INDIAN EXPRESS, Jun. 2, 2021, available at <https://indianexpress.com/article/opinion/editorials/sedition-law-supreme-court-ipc-kedar-nath-case-7340178> (noting that "*the process often becomes the punishment*"); Meher Manga, *Sedition law: A threat to Indian democracy?*, OBSERVER RESEARCH FOUNDATION, Jul. 26, 2021, available at <https://www.orfonline.org/expert-speak/sedition-law-threat-indian-democracy/> ("*Yet, what is more concerning is once arrested under the sedition law, it is extremely difficult to get bails as the trial process can be stretched for long. This leads to harassment of innocent people and induces a fear in others to speak against the government.*"); *Stifling Dissent: The Criminalization of Peaceful Expression in India*, HUMAN RIGHTS WATCH, May 24, 2016, available at <https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india>; *India: End Bias in Prosecuting Delhi Violence*, HUMAN RIGHTS WATCH, Jun. 15, 2020, available at <https://www.hrw.org/news/2020/06/15/india-end-bias-prosecuting-delhi-violence>; Aditya Sharma, *India's Absurd Sedition Law – And What It Enables*, THE DIPLOMAT, Mar. 22, 2021, available at <https://thediplomat.com/2021/03/indias-absurd-sedition-law-and-what-it-enables/> ("*India's notoriously slow legal system means that those accused of sedition face years of legal harassment, even considering the farcical and futile nature of most sedition cases.*").

¹⁰⁴ See Jacob Mchangama & Raghav Mendiratta, *Time To End India's War on Sedition*, LAWFARE, Jun. 25, 2021, available at <https://www.lawfareblog.com/time-end-indias-war-sedition>.

acknowledging its “*enormous power of misuse*.”¹⁰⁵ Previously, India’s Law Commission called for reform, noting that “*there have also been instances where people have been charged with sedition for making statements that in no manner undermine the security of the nation*.”¹⁰⁶

TrialWatch is monitoring trials in which this charge is being marshaled against journalists and advocates for reporting on allegations of government misconduct—speech that is protected under human rights law and is also integral for a flourishing democracy. For instance, TrialWatch is monitoring cases against journalists for tweeting about the January 2020 farmers protest in Delhi.

E. THAILAND

In Thailand, while sedition was rarely charged prior to recent military coups,¹⁰⁷ since 2010, thousands of people have been arrested on *lèse-majesté* and sedition charges for expressing political opposition.¹⁰⁸ Since pro-democracy protests ignited in the summer of 2020, over 100 people have been charged with sedition.¹⁰⁹

Thai law defines sedition as speech to “*raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country*.”¹¹⁰ In its most recent review of Thailand, the U.N. Human Rights Committee urged Thailand to stop using criminal law (including Article 116 of the Criminal Code, which criminalizes sedition) “*as tools to suppress the expression of critical and dissenting opinions*.”¹¹¹

In several cases now and previously monitored by TrialWatch, Thailand’s sedition law has been applied to punish government critics for nonviolent conduct and speech. For example, in one case, five alleged members of an organization that advocates a republican-style government were charged with sedition and “*membership in a secret society*” for activities such as distributing flyers and t-shirts in support of their alleged cause.¹¹² In an ongoing

¹⁰⁵ See Upmanyu Trivedi, *India Top Court to Consider Quashing Colonial-Era Sedition Law*, BLOOMBERG Jul. 15, 2021, available at <https://www.bloomberg.com/news/articles/2021-07-15/india-top-court-to-consider-quashing-colonial-era-sedition-law>.

¹⁰⁶ LAW COMMISSION OF INDIA, *Consultation Paper on “Sedition”* (2018), available at <https://lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf>, ¶ 7.3.

¹⁰⁷ HUMAN RIGHTS WATCH, *To Speak Out is Dangerous: Criminalization of Peaceful Expression in Thailand*, Oct. 24, 2019, available at <https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalization-peaceful-expression-thailand> (“*Prosecutions for sedition, a law rarely used before the coup, skyrocketed, with almost any criticism of military rule or the junta treated as a basis for charges.*”).

¹⁰⁸ Pravit Rojanaphruk, *Thai Federation and the Limits of Free Expression*, KHAOSOOD ENGLISH, Sep. 16, 2018, available at <http://www.khaosodenglish.com/opinion/2018/09/16/opinion-thai-federation-and-the-limits-of-free-expression/>; Shashank Bengali, *Arrests, killings strike fear in Thailand’s dissidents: ‘The hunt has been accelerated’*, LOS ANGELES TIMES, May 28, 2019, available at <https://www.latimes.com/world/la-fg-thailand-dissidents-20190528-story.html>.

¹⁰⁹ THAI LAWYERS FOR HUMAN RIGHTS, *TLHR Overall Situation in April 2021*, May 13, 2021, available at <https://tlhr2014.com/en/archives/29637>.

¹¹⁰ Thailand Criminal Code, § 116.

¹¹¹ U.N. Human Rights Committee, *Concluding observations on the second periodic report of Thailand*, Apr. 25, 2017, U.N. Doc. No. CCPR/C/THA/CO/2, ¶ 36.

¹¹² Columbia Law School Human Rights Clinic & Demetra Sorvatzioti, TrialWatch Fairness Report, *Thailand*

key case against 22 pro-democracy leaders, which TrialWatch is monitoring, the prosecution has alleged that “*attack[ing] the performance of the current government, demand[ing] resignation of the Prime Minister, constitutional amendment and monarchy reform . . . constituted sedition.*”¹¹³

v. Does 1-5 of the Organization for Thai Federation, Aug. 2020, available at <https://cfj.org/wp-content/uploads/2020/08/OTF-Fairness-Report-July-2020.pdf>.

¹¹³ Indictment, *State v. Panusaya (Rung) Sithijirawattanakul*, Mar. 8, 2021.

CONCLUSION



As this report demonstrates, in recent years, many States have recognized that their sedition laws are incompatible with their human rights obligations—notably their obligation to protect the right to freedom of expression—and that these laws have historically been used in bad faith to chill and punish political dissent, reporting, and debate, which are vital in a healthy society. While sedition laws are not the only laws being used to target speech around the world,¹¹⁴ the continued (and in some cases, increasing) use of these laws—which often have significant penalties and may be used to make a public example of an accused—is of serious concern. In those States that have not yet joined the reform movement, legislatures and courts should take immediate action.

¹¹⁴ TrialWatch is for instance monitoring other trials in some of these same countries involving charges such as “*offensive communication*” and *lèse-majesté*. See, e.g., CLOONEY FOUNDATION FOR JUSTICE, *Charges Against Blogger Dian Abdullah in Malaysia Should be Dismissed*, Mar. 23, 2021, available at https://cfj.org/news_posts/charges-against-blogger-dian-abdullah-in-malaysia-should-be-dismissed/; CLOONEY FOUNDATION FOR JUSTICE, *Increased Risks for Activists Charged with Insulting Royalty in Thailand*, Aug. 20, 2021, available at https://cfj.org/news_posts/increased-risks-for-activists-charged-with-insulting-royalty-in-thailand/; CLOONEY FOUNDATION FOR JUSTICE, *‘Dangerous Precedent’ Set at Hong Kong’s First Trial Under National Security Law*, Dec. 13, 2021, available at https://cfj.org/news_posts/dangerous-precedent-set-at-hong-kongs-first-trial-under-national-security-law/.