



ASIA-PACIFIC

Of Royalty, rumour and the power behind the throne: sedition in modern Malaysia

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Gossip via the web is a mainstay of the modern Malaysian information economy. Even — perhaps particularly — for the powerful and well-connected, however, the blogosphere may have its dangers. These were illustrated most recently on 6 May 2008, when Raja Petra Kamarudin, a prominent Malaysian blogger and member of the Selangor royal family, was charged with sedition in relation to comments he had posted on his website, *Malaysia Today*.

Raja Petra was a leading member of the Parti Keadilan Rakyat (PKR), the opposition party now headed by former Malaysian Deputy Prime Minister Anwar Ibrahim.¹ He has a history of courting — or perhaps unintentionally inviting — trouble with the law. At the same time his website is highly influential. According to one PKR politician, Nurul Izzah Anwar, *Malaysia Today* is the 'primary source of a lot of unearthing of scandals especially corrupt practices of the leadership and the government', and 'played a huge role in the last elections',² in which United Malays National Organisation (UMNO) lost its two-thirds majority in Parliament, and hence its ability to amend the *Constitution*, for the first time since the 'Emergency' or race riots of May 1969.

The offending comments related to a young Mongolian woman, Altantuyaa Shaariibuu, the daughter of a Mongolian doctor, who was raised in Russia and lived briefly in France. Altantuyaa reportedly spoke four languages — Mongolian, Russian, Chinese and English — and had trained as a teacher and as a model. At the time she was introduced to Abdul Razak Baginda, a defence analyst and member of the Malaysian Strategic Research think-tank at an international diamond convention in Hong Kong, it would appear she was a talented and well-connected young woman with a bright future.

Altantuyaa seems to have begun a relationship with Baginda. What went wrong in the relationship remains something of a mystery. In any case, in October 2006, fragments of bone later identified as hers were found in forested land near the Subang Dam in Shah Alam, near Kuala Lumpur. The exact cause of her death is also unclear. It appears she was shot twice and then C-4 explosives were used to blow up her remains. Alternatively, the explosive itself may have caused her death.

Two police officers were charged with her murder. They were Chief Inspector Azilah Hadri and Corporal Sirul Azhar Umar, both members of the elite Unit Tindakan Khas, the Malaysian SAS or counter-terrorism

unit. At the time of the killing they were assigned to the office of the Deputy Prime Minister, Najib Tun Razak, who was also the Minister for Defence. Abdul Razak Baginda was charged as an abettor. The trial began on 18 June 2007. It has been controversial, but lengthy and complex, with 151 days of evidence so far. On 31 October 2008 Baginda was acquitted, but the police officers were ordered to enter a defence.³

Raja Petra's blog implied that the Deputy Prime Minister, Datuk Seri Najib Razak, was involved in Altantuyaa's murder. In a statutory declaration filed on 18 June 2008, Raja Petra accused Datin Seri Rosmah Mansor, the wife of Malaysia's Deputy Prime Minister Datuk Seri Najib Razak, of being one of three people present when the victim was murdered. The others were Acting Colonel Aziz Buyong and his wife, Norhayati. Raja Petra's stated reasons for this were that he should 'have the right to hold the powerful accountable for wrongdoing.'

Raja Petra was charged under section 4(1)(c) of the *Sedition Act* for the original post. Buyong and Norhayati (who had not been charged with the murder) also announced that they would sue for defamation. Unlike Buyong and Norhayati, Deputy Prime Minister Najib's wife did not announce her intention to sue. However the Attorney-General's Chambers has lodged a police report alleging criminal defamation on Raja Petra's part — implying that they have formed the view, without any evidence of investigation, that the allegations in Raja Petra's statutory declaration are false. Raja Petra's sedition trial began on 6 October 2008.

There were further developments. Private investigator P Balasubramaniam filed a statutory declaration on 1 July 2008, stating that Abdul Razak had told him that Deputy Prime Minister Najib had also had a sexual relationship with Altantuyaa, and that he (Abdul Razak) 'had in effect inherited Altantuyaa as a lover from Najib, who passed her on because he didn't want to be harassed as deputy prime minister.'⁴ However, several days later he retracted this statutory declaration and the allegations suggesting Najib's involvement in her murder. He then disappeared. On 22 July 2008, lawyer Karpal Singh, acting for Altantuyaa's family, filed a notice of motion to call the Deputy Prime Minister as a witness in the murder trial. The application was rejected on the basis that Karpal had no *locus standi*, as only the prosecution or the defence could make such an application.

REFERENCES

1. The party was established in 1998 in response to Anwar's arrest for alleged sodomy. He was found guilty on corruption charges in April 1999 and jailed for six years for abuse of power: see Jesse Wu Min Aun, 'The Saga of Anwar Ibrahim', in Harding and HP Lee (eds), *Constitutional Landmarks in Malaysia: The First Fifty Years 1957–2007* (2007) 278–9.
2. Kok Leong Chan, 'Raja Petra Charged, Chooses Jail over Bail', *Malaysiakini*, 6 May 2008.
3. S Pathmawathy, 'Abdul Razak Baginda acquitted', *Malaysiakini*, 31 October 2008 (available at <malaysiakini.com/news/92191>).
4. Jed, Yoong, 'Malaysia's Najib Ducks a Court Appearance', *Asia Sentinel* (Hong Kong), 24 July 2008, <asiacentinel.com/index.php?option=com_content&task=view&id=1344&Itemid=31> at 11 January 2009.

5. 'Group Calls on Bar to Scrap Forum', *New Straits Times* (Malaysia), 28 June 2008; 'Ibrahim Ali objects to Bar's forum on social contract', *Malaysiakini*, 27 June 2008 (available at <http://www.malaysiakini.com/news/85191>). On 11 August 2008, the Malaysian Bar Council held a seminar, 'Seminar on sedition laws – Its Impact on Freedom of Speech in Contemporary Society'. Speakers included Raja Petra Kamaruddin.

6. 'Malaysian Blogger Slams Police, Held for Seditious', *International Herald Tribune* (United States), 8 August 2008, <iht.com/articles/ap/2008/08/08/asia/AS-Malaysia-Blogger-Sedition.php> at 11 January 2009.

7. They were later freed: see 'Indian Activists Charged with Seditious in Malaysia', *Rediff News* (India), 26 November 2008. <rediff.com/news/2007/nov/26malaysia.htm> at 11 January 2009.

8. See Gail Davidson, Tami Friesen and Michael Jackson, 'Lawyers and the Rule of Law on Trial: Seditious Prosecutions in Malaysia' (2001) 12 *Criminal Law Forum* 1–23.

9. Karpal Singh is currently leader of the Democratic Action Party.

10. Davidson, Friesen and Jackson, above n 8, 11.

11. See *Sedition Act 1948* (Malaysia) s 3(1), and also Davidson, *ibid*, 12. 'Seditious' is defined in s 2 of the *Sedition Act 1948* as 'having a seditious tendency'. According to s 3(1), a 'seditious tendency' is a tendency, *inter alia*, to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government; to promote feelings of ill-will or hostility between different races or classes of the population of Malaya; or to question any matter, right, status or privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federation Constitution or Article 152, 153 or 181 of the Federal Constitution. Under s 4, any person who, *inter alia*, does any act with a seditious tendency or utters any seditious words is guilty of an offence.

12. See *Mark Koding v Public Prosecutor* [1982] 2 *MLJ* 120.

13. See Davidson, Friesen and Jackson, above n. 8.

14. Kua Kia Soong, *May 13: Declassified Documents on the Malaysian Riots of 1969* (2007), *eg at pp* 1–3, p 41.

Malaysia and the law of sedition

The charges faced by Raja Petra are an indication of the Malaysian Government's apparently increasing willingness to use the charge of sedition against real or potential political opponents. In particular, sedition charges have recently been threatened or actually used against people who, according to the ruling party, have made political pronouncements with a tendency to upset the allegedly fragile racial balance enshrined in Malaysia's Constitution. The incidents of alleged sedition include:

- In June 2008 the Malaysian Bar Council was threatened with sedition in relation to a public seminar at which, it was planned, speakers would discuss the 'special privileges' granted under Malaysia's Constitution to the people of one race, the Malays. The Kelantan People's Action Council (MTRK) warned the bar council that 'they could be charged under the Sedition Act for inciting negative racial sentiments.' A representative of the group added that 'the social contract and *Ketuanan Melayu* should not be discussed again as it is already in the Constitution'.⁵
- In August 2008 another political blogger, Abdul Rashid Abu Bakar, was detained under the *Sedition Act* for having defaced the Royal Malaysian Police's logo by replacing its image of a tiger with that of a dog and indicating in his comments that he believed Chinese criminal gangs controlled police data systems. A police official stated that 'his comments were very seditious'.⁶
- In November 2007, three members of a Hindu forum known as the Hindu Rights Action Forum or Hindraf were charged with sedition following speeches they gave at a rally before 10 000 people protesting at the 'marginalisation' of the Indian community. At this rally, they tried to hand over a memorandum demanding that Queen Elizabeth II 'appoint her counsel to represent them in a class action suit against the British government for bringing Indians to the then Malaya as "indentured labourers" and then exploiting them'. They alleged that the British failed to incorporate the rights of the Indian community in the 1957 Constitution.⁷
- In May 2008 a prominent Opposition leader, and well-known lawyer, Karpal Singh QC, was threatened once again with sedition⁸ following comments he made about an alleged attempt by a sultan to have a religious official reinstated.⁹

Malaysia's constitutional right to free speech is subject to a limitation present in the *Sedition Act 1948*, originally a British colonial Ordinance designed to deal with the communist insurgency but now Malaysian statute by virtue of Article 162(1) of the *Federal Constitution*.¹⁰ The *Sedition Act* was amended during the State of Emergency declared on 15 May 1969, to prohibit any 'seditious tendency' to question certain 'sensitive' matters now incorporated in Article 63 of the Constitution, namely Malay privileges, citizenship, the national language, the sovereignty of the rulers, and any tendency to promote ill-will amongst Malaysians.¹¹ As Mark Koding and Karpal Singh discovered, neither politicians speaking in Parliament nor lawyers speaking in court are immune from these charges.¹²

Malaysia's sedition legislation is extremely broad and imprecise. Ever since the Malaysian Emergency of 1969 commentators have pointed out the susceptibility of such laws to political prosecutions and abuse.¹³ More recently, however, there seems to have been an increasing tendency not only to use the sedition laws against political opponents generally, but also to use them against opponents who can be characterised as having questioned Malaysia's racial balance. This is a potentially dangerous development in an environment in which the 'race card' is increasingly being played by a ruling party nervous about and desperate to retain its grip on power.

A final note about Deputy Prime Minister Najib, who is said to be the Prime Minister of choice of Malaysia's *eminence grise* Dr Mahathir Mohamed, and is likely to assume the Prime Ministership upon current Prime Minister Abdullah Badawi's impending demise. Najib's father, Tunku Abdul Razak, was also Malaysia's Deputy Prime Minister at the time of the 1969 riots. Recently declassified documents suggest — and according to one well-placed commentator, reveal — that Razak was the engineer and main beneficiary of what was in effect a coup d'état.¹⁴ In some respects, history appears to be repeating itself. It remains to be seen whether this will be as tragedy or farce.

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