

The case of Lena Hendry and Freedom of Expression in Malaysia

by Fang Hui Lim

On 3 July 2013, Lena Hendry, human rights defender and at the time Programme Coordinator of the national human rights organisation Pusat Komunikasi Masyarakat (Pusat KOMAS), co-organised a private screening of the documentary 'No Fire Zone: The Killing Fields of Sri Lanka' at Selangor Chinese Assembly Hall in Kuala Lumpur, Malaysia. The screening was raided by around 30 officials from the Home Ministry, Police, and Immigration Department, and on 19 September 2013 Lena was charged under Section 6(1)(b) of the Film Censorship Act 2002(FCA) for organising the screening of said documentary without prior approval. The punishment for an offence under Section 6(1)(b) is a fine of between RM5,000 and RM30,000 and/or a maximum of three years in prison.

The screening of the documentary was not welcomed by the Sri Lankan Government as it shed light on the gruesome killings and human rights violations committed in the last stages of the 26-year long civil war. In particular, the film records the dramatic moments when the Sri Lankan regime encouraged 400,000 civilians to gather in 'No Fire Zones' and then systematically bombarded them. Since its release, the Sri Lankan Government has pressured Asian countries, including Malaysia, against screening the documentary.¹ Prior to the screening, the owners of the Kuala Lumpur and Selangor Chinese Assembly Hall received a letter from the Sri Lanka High Commission urging them to disallow the screening, as well as a phone call urging the Chairman of the venue not to proceed.²

After three years of court litigation, Lena Hendry was on 10 March 2016 acquitted by the Magistrates' Court as it found that the prosecution failed to prove its case against her. On 21 September 2016, however, the High Court reversed the acquittal, and on 21 February 2017 she was convicted by the Magistrates' Court. On 22 March 2017, she was sentenced to a fine of RM10,000 or spend a year in jail. After the sentence, the prosecution initiated an appeal for a higher penalty, but later withdrew it on 14 December 2017. Lena Hendry also decided to withdraw her appeal against her own conviction, as she has 'bigger battles to be fought outside',³ and she is currently completing a Master in human rights in the United Kingdom.

The right to freedom of expression has been severely curtailed over the past few years in Malaysia. Examples include: the arrest and detention of Maria Chin Abdullah, Chairperson of the Bersih2.0 movement; the detention of the cartoonist human rights defender Zunar in 2015; and the recent charges brought against lawyer and human rights defender Siti Kassim for obstructing a public servant in discharge of his public functions'.⁴ In recent years, civil society activists, academics, political opponents, and others speaking out against the Government have been charged under the Sedition Act and other

¹ 'Sri Lanka Pressures Asian Countries against from screening No Fire Zone', accessed 17 December 2017.

<http://www.pmaward.org/sri-lanka-pressures-asian-countries-against-screening-no-fire-zone/>

² International and Comparative Law Analysis on FCA. Accessed 16 December 2017

http://komas.org/download/lena_campaign_materials/International-and-Comparative-Law-Analysis-on-FCA-April-1-2014-Report_2.pdf

³ <https://www.thestar.com.my/news/nation/2017/12/14/human-rights-activist-lena-hendry-prosecution-withdraw-their-appeals/>

⁴ Aliran Admin, 'Malaysia must reverse its crackdown on free expression', Accessed 17 December 2017 <https://aliran.com/civil-society-voices/2017-civil-society-voices/malaysia-must-reverse-crackdown-free-expression/>

repressive laws used to stifle dissent.⁵The laws restricting the right to the freedom of expression in Malaysia include but are not limited to:

- (a) The Sedition Act 1948
- (b) The Communication and Multimedia Act 1998
- (c) Printing Presses and Publications Act 1984
- (d) State-based religious law governing Islamic publications
- (e) Film Censorship Act 2002⁶

The FCA is extremely broad in its coverage. Under Section 6(1)(a), it is stated that no person shall have in his possession, custody or control any film which has not been approved by the Malaysian Film Censorship Board. The Board, appointed by the Minister of Home Affairs, must also approve all films that are circulated, exhibited, distributed, displayed, manufactured, produced, hired or sold in Malaysia, according to Section 6(1) (b).⁷

The interpretation of 'film' is extremely broad, and could also include home videos. In today's technological era, capturing and sharing videos is extremely easy with a smartphone, therefore the current provisions seem unenforceable.⁸ Another issue to be raised is related to the availability of the film on the Internet. Since individuals can easily access them online, does it mean that all the individuals in possession of the movie can be charged?

There are a number of national and international laws and standards that should be taken into account when looking at Lena Hendry's case. At the national level, Article 10 of the Malaysia Constitution protects the right to freedom of speech and expression, but also outlines several restrictions, especially in the name of national security, maintaining public order, or morality.⁹

The sentencing of Lena Hendry is also extremely problematic when considering Malaysia's international obligations. Article 19 of the Universal Declaration of Human Rights (UDHR) states that everyone has a right to freedom of opinion and expression, and that everyone has the right to 'seek, receive and impart information and ideas through any media regardless of frontiers'.¹⁰

As pointed out by the America Bar Association, although Malaysia is not a state a party to the International Covenant on Civil and Political Rights (ICCPR), the Office of the Attorney General of Malaysia has stated that Malaysia responds and adheres to the principles laid down in a variety of human rights instruments, including documents it has not ratified, such as the ICCPR.¹¹ In this regard, Article 19 of the ICCPR indicates clearly that 'everyone shall have the right to hold opinions without

⁵ 'Repeal Sedition Act in Malaysia', accessed 17 December 2017, <http://aimalaysia.org/critical-crackdown>

⁶ 'Freedom of Expression', accessed 17 December 2017, http://www.suaram.net/?page_id=7756

⁷ Malaysia Film Censorship Act 2002, accessed 26 February 2018 http://www.commonlii.org/my/legis/consol_act/fca2002173/

⁸ 'We need to talk about Lena Hendry', accessed 14 February 2018, <http://www.loyarburok.com/2015/08/06/talk-lena-hendry/>

⁹ International and Comparative Law Analysis on FCA, accessed 16 December 2017

http://komas.org/download/lena_campaign_materials/International-and-Comparative-Law-Analysis-on-FCA-April-1-2014-Report_2.pdf

¹⁰ United Nations Universal Declaration of Human Rights <http://www.un.org/en/universal-declaration-human-rights/>

¹¹ International and Comparative Law Analysis on FCA, accessed 16 December 2017

http://komas.org/download/lena_campaign_materials/International-and-Comparative-Law-Analysis-on-FCA-April-1-2014-Report_2.pdf

interference', and more specifically to 'receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'.¹²

The United Nations Human Rights Committee has expressly stated that laws that penalise the expression of opinions about historical facts, violate the principles of the ICCPR. The screening, which Lena Hendry organised, shed a light on what occurred during the Sri Lankan Civil War. The ability to openly discuss past political events is a fundamental part of the values established by the ICCPR.¹³

Several advocacy actions were undertaken to support Lena Hendry, including the International Friends of Lena Hendry Letter Writing Campaign. During the campaign, physical copies of letters supporting her were sent to the Malaysia Embassy and shared on social media. At the same time, tweets using the hashtag #defendlena were addressed to the Attorney General of Putrajaya, the Home Minister Zahid Hamidi, and the Prime Minister, Najib Razak. Amnesty International also took urgent action by requesting the public to write to the Government to drop the charges against Lena Hendry. To raise awareness about the FCA, Pusat KOMAS, the Freedom Film Network, and Society for the Promotion of Human Rights (PROHAM), in partnership with the Make It Right Movement, co-organised the Film Censorship Law Forum in April 2017,¹⁴ while a memorandum was handed to the Malaysian Human Rights Commission (SUHAKAM) and a [short film](#) was produced in March 2017.¹⁵

A few solidarity actions also took place outside of Malaysia, with the Law Society of England and Wales expressing their concerns with a letter sent to the Government of Malaysia.¹⁶ At the regional level, the Asian NGO Network on National Human Rights Institutions (ANNI) urged SUHAKAM to: 'investigate and recommend the Attorney-General's Chamber to withdraw its case against Lena Hendry in line with recognised international human rights standards and principles; review all acts and laws that potentially breach the right to freedom of expression in Malaysia, including the 2002 Film Censorship Act, on whether they are in line with international human rights norms and practices; monitor the sentencing of Lena Hendry and exercise its legal mandate and responsibility to take pro-active action to defend human rights defenders in conducting their legitimate work are the concern that raised to SUHAKAM'.¹⁷ Demonstrations in support of Lena Hendry were also organised around the world, from Colombo, Sri Lanka to the British Parliament in United Kingdom.¹⁸

¹² United Nations International Covenant on Civil and Political Rights
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹³ From Our Member Pusat KOMAS, Malaysia-Press Statement: Free Lena Hendry-Victim of Unjust Censorship law, accessed 15 December 2017 <http://www.forum-asia.org/?p=23197>

¹⁴ <http://www.makeitrightmovement.com/film-censorship-law-forum/>

¹⁵ International Friends of Lena Hendry Press Release. Accessed 15 December 2017 <http://nofirezone.org/lena>

¹⁶ Lena Campaign Materials Accessed 14 December 2017

http://komas.org/download/lena_campaign_materials/The%20Law%20Society_DEC2013.pdf

¹⁷ 'Open Letter from ANNI Concerning the unjust conviction of Lena Hendry', accessed 15 December 2017 <https://www.forum-asia.org/?p=23365>

¹⁸ International Friends of Lena Hendry Press Release. Accessed 15 December 2017 <http://nofirezone.org/lena>

Malaysia should collaborate with the European Union (EU) to promote the right to freedom of expression, as the EU is doing in Sri Lanka, through specific programmes aimed at enhancing the quality of journalism, access to public information, and freedom of expression.¹⁹

Most importantly, the Malaysian Government should immediately repeal or amend all repressive laws, including the FCA, which restrict the right to freedom of expression. These laws should be in strict compliance with national and international human rights laws and standards.

¹⁹ EU support of freedom of expression in Sri Lanka. Accessed 14 December 2017 https://eeas.europa.eu/delegations/sri-lanka/25394/node/25394_nn