



Attention to:

Honorable Members of the Committee on Institutional Reforms
Level 32, Ilham Tower
Jalan Binja
50450 Kuala Lumpur, Malaysia

4 June 2018

SUBMISSION BY ARTICLE 19 TO THE COMMITTEE ON INSTITUTIONAL REFORMS, MALAYSIA

ARTICLE 19 is a UK-based international advocacy organization founded in 1987, focused on protecting and promoting freedom of expression and information. In many countries around the world, ARTICLE 19 works to counter hate speech while protecting the rights to freedom of expression and equality. ARTICLE 19 has been at the forefront of advocacy concerning the implementation of Human Rights Council Resolution 16/18 and the Rabat Plan of Action, which concern the suppression of hate speech, intolerance and violence on the basis of religion and belief.

For the last ten years, ARTICLE 19 has been monitoring developments in Malaysia relating to the rights to freedom of opinion, expression and information, as well as freedom of religion and belief. Since 2016, we have employed a full time programme officer to implement an innovative project designed to address three inter-related issues in Malaysia: (i) the use of hate speech and discriminatory language targeting religious and ethnic minorities on social media; (ii) moves by the government to limit on- and off-line speech through the application of criminal law provisions; and (iii) the capacity deficit of government institutions mandated to protect freedom of expression.

Following the election victory of the *Pakatan Harapan* coalition, we welcome the new government's quick formation of the Committee on Institutional Reforms, which is tasked with making recommendations to the government on priorities for legislative and structural reform.

In this submission, we address developments and recommendations in the following areas:

- Legal framework relating to freedom of expression;
- Censorship and judicial harassment;
- Inclusion, diversity, pluralism and responding to ‘hate speech’; and
- International commitments.

We hope that you will consider the points raised in this submission as you develop your own recommendations and plans for institutional reform in the country.

1. Legal framework relating to freedom of expression

While Article 10(a) of the Federal Constitution of Malaysia guarantees the right to freedom of expression, Malaysia’s legal framework contains numerous laws that severely restrict the enjoyment of the right and are incompatible with international human rights law and standards. Broad and vaguely-worded criminal laws have been wielded by government authorities to arrest, prosecute and imprison human rights defenders, government critics, opposition political figures and others seeking to exercise their right to freedom of expression. Moreover, various laws enable censorship and allow government officials to assert control over the flow of information and opinions.

We call on the Committee on Institutional Reforms to recommend that the government initiate a thorough and comprehensive legal reform program, ensuring the reform or repeal of all laws that have been used to restrict freedom of expression or that otherwise fail to align with international human rights law and standards.

Recommendations

Parliament should prioritize, during its first session under the new government, the reform and repeal of those laws which have been used most frequently to stifle criticism and dissent and to restrict the right to freedom of expression. Specifically, Parliament should:

- Repeal in its entirety the **Sedition Act 1948**, which authorities have used to prosecute politicians, human rights defenders, cartoonists and others for expressing opinions critical of the government, royalty and individuals from religious minorities.
- Repeal in its entirety the **Anti-Fake News Act 2018**, which defines “fake news” broadly, imposes criminal penalties for those involved in its dissemination, and gives government authorities broad censorship powers. (See ARTICLE 19’s legal analysis, included as Annex 1 and available at: <https://www.article19.org/resources/malaysia-anti-fake-news-act/>)

- Repeal in its entirety the **Official Secrets Act 1972**, a broadly-worded law backed by criminal sanctions, that entrenches a culture of secrecy in all matters relating to public administration and gives state authorities prerogative to withhold an expansive range of information from public view without judicial scrutiny.
- Review and amend the **Peaceful Assembly Act (PAA) 2012**, which has frequently been used to investigate and intimidate organisers of protests, often for their failure to provide authorities notice 10 days prior to an assembly.¹
- Review and amend the **Communication and Multimedia Act 1998**, which provides criminal penalties for online communications that are “obscene, indecent, false, menacing, or offensive in nature with intent to annoy, abuse, threaten, or harass a person” and has become a chief law used for imprisoning those who criticise government authorities. (See ARTICLE 19’s legal analysis, Annex 2 and available at: <https://www.article19.org/resources/malaysia-communications-and-multimedia-act-must-be-urgently-revised/>)
- Review and amend the **Printing Presses and Publications Act 1984**, which grants the Home Minister “absolute discretion” to ban or censor “undesirable publications” based on vaguely worded criteria and has been used to suppress political opposition, to ban books that may be critical of the government or considered to be blasphemous to Islam, and to curtail freedom of expression in general.
- Review and amend the **Film Censorship Act 2002**, which criminalises the circulation, distribution, display, production, sale or hire of any film not approved by the Film Censorship Board of Malaysia and extends this prohibition to the possession of such material.

2. Censorship and judicial harassment

The previous Barisan Nasional government closely controlled the flow of information in Malaysia. Topics that were considered taboo were frequently censored, and criticism of the government and royal family were repressed. Social media users, artists, human rights defenders, journalists and protesters were often targeted for prosecution, in particular after raising concerns about government corruption, including on online platforms. The application of broad and vaguely-worded criminal laws which do not comply with international human rights law gave power to the government to limit dissent online and offline.

The former government also extended its control over online information flows, social media usage, and online dissemination of news relating to matters in the public interest. Arrests and

¹ See draft model legislation by the Malaysia Bar Council: http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_view&gid=3462

prosecutions relating to online expression, as well as efforts to block online content, contradict protections under Article 7 of the Multimedia Super Corridor’s Bill of Guarantees² and Section 3(3) of the CMA.³

Therefore, we strongly urge the government to change the social climate for freedom of expression in Malaysia, create an environment that enables the enjoyment of the rights to expression and opinion, and take steps to end censorship and direct attacks, including by private actors, against persons expressing minority viewpoints.

Recommendations:

The government should take immediate steps to curb censorship, end the judicial harassment of those expressing controversial or critical opinions, and promote an enabling environment for the exercise of the right to freedom of opinion and expression, including by taking the following actions:

- Establish a **Parliamentary Select Committee** to ensure effective checks and balances and to safeguard the public interest against the abuse of power. The Parliamentary Select Committee should be provided with a mandate that includes the review of problematic laws and provisions that have been used to curtail freedom of expression and information, including
 - i. **Penal Code** sections 124(b), 186, and 505(b),
 - ii. The **Bernama Act**,
 - iii. The **Whistleblower Protection Act 2010**, and
 - iv. **National Security Council Act 2016**.
- Enact a **Right to Public Information Law** as a way of guaranteeing openness, transparency and good governance.
- Review and amend Section 59 and Section 59A of the **Immigration Act**, which gives the Director General of the Immigration Department broad powers to bar Malaysians from traveling abroad, and immediately lift any remaining travel bans imposed on human rights defenders, elected representatives or others because of their exercise of the right to freedom of expression or as part of a crackdown on dissent. Take further steps to ensure that foreigners are not arbitrarily barred from entering Malaysia for political reasons or to suppress their work as journalists or human rights defenders.
- Immediately take steps to end the judicial harassment of journalists, social media users, human rights defenders, artists, cultural performers and others for exercising their rights

² Bill of Guarantees, available at: <https://www.mdec.my/msc-malaysia/bill-of-guarantees>

³ Section 3(3), CMA 1998, provides: “Nothing in this Act shall be construed as permitting the censorship of the Internet”; available at: <https://www.mcmc.gov.my/legal/acts/communications-and-multimedia-act-1998-reprint-200>

to freedom of expression, association and peaceful assembly, as well as freedom of religion or belief, drop all pending criminal charges for such acts, and release all those detained for the exercise of these rights

- Reform the **Royal Malaysia Police (RMP)**, establish a dedicated Independent Police Complaints and Misconduct Commission (IPCMC) with a mandate to receive and investigate complaints about RMP misconduct and abuse, and endow the commission with all necessary powers to investigate abuses, compel cooperation from witnesses and government agencies, subpoena documents, and submit cases for prosecution.
- Reform the **Malaysian Communications and Multimedia Commission (MCMC)** as a regulator of online and broadcast content and include in its mandate the protection and promotion of human rights including the people’s constitutional right to freedom of opinion and expression, both online and offline.
- Ensure the judicial review of decisions to block websites by the MCMC, and reinstate websites that were blocked contrary to international freedom of expression standards.

3. Inclusion, diversity, pluralism and responding to ‘hate speech’

The religious tolerance for which Malaysia has previously received positive recognition has regressed significantly in recent years. Identity politics are increasingly being exploited by public figures, and Malaysians are under more pressure to conform to racial and religious norms than they have been in previous decades. The previous government’s official narrative of “national unity” was premised on suppressing difference, in particular regarding religion, ethnicity and nationality, and was manifested in deteriorating respect for pluralism, inclusion and diversity. Under the previous government, the Ministry of Islamic Affairs and various religious authorities such as Jabatan Kemajuan Islam Malaysia (JAKIM), Selangor religious authorities (JAIS), and the National Fatwa Council, took on a more interventionist role in public discourse, reflecting a general trend of public officials manipulating religious, ethnic and national identities for political objectives. Individuals from marginalized groups, including Shia Muslims and other religious minorities, LGBT people, human rights defenders, women, journalists and artists have been acutely impacted by these developments.

Recommendations

The new government should immediately take steps to promote an atmosphere of tolerance in Malaysia and to ensure that ethnic and religious minorities, as well as individuals expressing minority or controversial opinions, are able to enjoy their right to freedom of opinion, expression and religious belief freely and without fear. To this end, authorities should undertake to do the following:

- Ensure that all legislative and policy initiatives favour religious freedom and promote tolerance, in line with international human rights law and standards.⁴
- Enact an **Equality or Non-Discrimination Act**, in line with international human rights law and standards.⁵
- Develop, with the full and effective participation of civil society and SUHAKAM, a national action plan to promote inclusion, diversity and pluralism, including by implementing the comprehensive recommendations put forward in Human Rights Council Resolution 16/18⁶ and the Rabat Plan of Action,⁷ as well as the Camden Principles on Freedom of Expression and Equality.⁸ **(Annex 3-5)**
- Fully protect the rights to freedom of expression and to freedom of religion or belief, including the right to renounce or change one’s religion or belief, by, among other actions, reforming the **Penal Code** and federal and regional **Syariah Laws**;
- Review the role, mandate and power of religious agencies and institutions to ensure compliance with international standards relating to the freedom of religious belief.
- Address sexual and gender-based violence and gender-based discrimination at all levels and in all forms for both citizens and non-citizens by enacting a **Gender Equality Act** drawing definitions, principles and values from CEDAW and the CEDAW Committee’s General Recommendations;
- Enact legislation to protect individuals from bias-motivated crimes, including crimes motivated by a person’s ethnicity, nationality, religion or belief, or sexual orientation or gender identity.

4. International commitments

Malaysia has yet to ratify many key human rights treaties, including the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of Racial Discrimination. Although the previous

⁴ For a model policy directive, see, New Zealand, “Statement on Religious Diversity”, 2009, https://www.hrc.co.nz/files/5314/2387/7075/27-Aug-2009_09-44-53_Religious_Diversity_09_Web.pdf

⁵ For principles relating to non-discrimination law, see, European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2018, available at: <http://fra.europa.eu/en/publication/2018/handbook-european-law-non-discrimination>

⁶ Human Rights Council Resolution 16/18, Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf

⁷ OHCHR, The Rabat Plan of Action, available at: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

⁸ ARTICLE 19, Camden Principles on Freedom of Expression and Equality, available at: <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>

government “accepted in principle” numerous recommendations that it *consider* ratifying human rights treaties, it rejected more explicit calls for ratification. Following the UPR, the previous government made no progress towards ratifying human rights treaties and instead advanced laws and policies which further undermined the rights protected in those treaties. **(Annex 6: ARTICLE 19’s Joint UPR Submission)**

Recommendations:

The new government should immediately take steps, including the following, to strengthen international protections for human rights in Malaysia

- Sign and ratify **human rights treaties** including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of Racial Discrimination prior to its UPR at the Human Rights Council in November 2018.
- Demonstrate its commitment to creating an environment which safeguards the human rights of all by issuing a standing invitation to all special procedures of the UN Human Rights Council and prioritising visits for the **Special Rapporteurs** on freedom of opinion and expression, on freedom of peaceful assembly and of association, on human rights defenders, and on freedom of religion or belief.
- Fully implement the recommendations of the **UN Committee on the Elimination of All Forms of Discrimination against Women**.
- Reform Article 10(a) of the **Malaysian Constitution** to bring it into conformity with international human rights law.

ARTICLE 19 is committed to supporting the Committee on Institutional Reforms, and the new Malaysia government more broadly, in promoting the right to freedom of opinion, expression, information and freedom of religious belief. We stand ready to provide more information—including legal analysis, best practices, model legislation, and other expert advice—to support the recommendations contained in this submission.

If you require any further information or assistance, please contact:

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