



ARTICLE 19



Briefing Paper: Blasphemy Provisions in Malaysian Law

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INTRODUCTION

Malaysia is an ethnically and religiously diverse democracy, but in recent years its multicultural consensus has frayed in the face of increasingly strident religious conservatism. Moreover, successive governments have repeatedly used blasphemy provisions in Malaysia's legal framework to target individuals who challenge majority religious views. These provisions are incompatible with international human rights standards. Their application to silence religious minorities and dissenters violates the rights to freedom of expression, freedom of religion or belief, and equality and non-discrimination.

In March 2019, the Department of Islamic Development Malaysia (Jakim) invited the public to lodge complaints about any media content, including content on social media platforms, that insults the Prophet Muhammad or Islam.¹ Jakim established a new unit to monitor complaints and refer them to the Royal Malaysia Police (PDRM) and the Malaysian Communications and Multimedia Commission (MCMC) for further action. In its first week, the Jakim unit received over 10,000 complaints. MCMC Chairman Al-Ishsal Ishak promised that the complaint mechanism would be used to expedite 'enforcement action' against anyone who contravened a vaguely worded ban on criticizing Islam or causing ethnic disharmony.²

In the year following the establishment of the Jakim unit, authorities arrested several people for allegedly blasphemous online posts. The Perikatan Nasional government, which came to power in March 2020, has continued these efforts. The Deputy Minister in the Prime Minister's Department (Religious Affairs) Ahmad Marzuk Shaary recently warned that any posts that insult Islam or the Prophet Muhammad will be treated as serious offences, emphasizing that Islamic teaching must be protected since Malaysia is a Muslim-majority country.³

Malaysia's Penal Code and other laws contain several provisions that have been used to censor and punish expression relating to religion and to entrench a hierarchy of religious beliefs. These include:

- Sections 298 and 298A(1)⁴ of the Penal Code;
- Sections 3(1) and 4(1) of the Sedition Act 1948;
- Section 233 of the of Communications and Multimedia Act 1998; and
- Section 7(1) of the Printing Presses and Publications Act 1984.

International human rights bodies and experts have repeatedly warned that blasphemy provisions are inconsistent with international human rights law, including the right to freedom of expression and the right to freedom of religion or belief. Blasphemy provisions are arbitrary and open to abuse. They inappropriately empower government authorities to decide the parameters of religious discourse. Minority groups and individuals holding unpopular opinions are often disproportionately targeted. The enforcement of blasphemy provisions is highly problematic, especially when criminal sanctions are applied. As a result, blasphemy provisions promote intolerance by restricting the rights to freedoms of expression, thought, and religion. Such prejudice can result in devastating consequences for society.

¹ Kenneth Tee, 'In Malaysia, special unit formed to monitor insults against Islam', *Malay Mail*, 7 March 2019, available at:

<https://www.malaymail.com/news/malaysia/2019/03/07/in-malaysia-special-unit-formed-to-monitor-insults-against-islam/1729974>.

² Kalbana Perimbanayagam, 'MCMC opens channel for offensive "race, religion and royalty" content', *New Straits Times*, 17 August 2019, available at: <https://www.nst.com.my/news/nation/2019/08/513634/mcmc-opens-channel-offensive-race-religion-and-royalty-content>.

³ 'Jakim to continue monitoring insults against Islam, Prophet Muhammad, says deputy minister', *Malay Mail*, 22 June 2020, available at:

<https://www.malaymail.com/news/malaysia/2020/06/22/jakim-to-continue-monitoring-insults-against-islam-prophet-says-deputy-mini/1877799>.

⁴ Section 298A has been declared unconstitutional by the Supreme Court in *Mamat bin Daud & others v Government of Malaysia* [1988] 1 MLJ 119 and it cannot be used except in the Federal Territories of Kuala Lumpur, Putrajaya and Labuan. See, e.g. CIVICUS, 'Criminal defamation laws used to prosecute online criticism of religion and monarchy', 26 March 2019, available at:

<https://monitor.civicus.org/updates/2019/03/26/criminal-defamation-laws-used-prosecute-online-criticism-religion-and-monarchy/>.

This briefing paper sets out the international law and standards relating to blasphemy provisions. The paper analyses the above provisions against those standards and makes recommendations for legal reform. It suggests steps the Malaysia government could take to combat the root causes of discrimination and intolerance. Restricting discourse does not resolve religious and racial tensions. Censorship, including the restriction of online expression, instead fosters intolerance and fear. It is imperative that the government of Malaysia protects the right to freedom of expression and promotes positive policy measures to nurture dialogue and promote understanding between diverse communities.

INTERNATIONAL HUMAN RIGHTS LAW & STANDARDS

Blasphemy provisions implicate a number of human rights, including the right to freedom of expression, the right to freedom of religion or belief, and the right to equality and non-discrimination.

Article 19 of the Universal Declaration of Human Rights (UDHR) guarantees the right to freedom of expression in broad terms, protecting the ‘freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers’.⁵ Article 19 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to ‘hold opinions without interference’ and the ‘freedom to seek, 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’.⁶

Any restrictions on freedom of expression must satisfy a three-part test. Restrictions must be provided by law, must only be imposed based on one of the legitimate aims set out in Article 19(3)—exhaustively listed as respect for the rights or reputations of others, the protection of national security, public order or public health or morals—and must conform to the strict test of necessity and proportionality.⁷

Article 18 of the UDHR and ICCPR protect the right to freedom of thought, conscience, and religion or belief.⁸ As with the right to freedom of expression, the right to freedom of religion or belief may be restricted by measures that are provided by law, pursuant to a legitimate aim, and necessary and proportionate to that aim.⁹

Article 2 of the UDHR and Articles 2 and 26 of the ICCPR guarantee the rights to equality and non-discrimination with regard to all rights under the ICCPR, including the rights to freedom of religion or belief and freedom of expression.¹⁰ Protecting the right to equality and non-discrimination includes ensuring that laws are not discriminatory on their face or applied in a discriminatory manner.

Although Malaysia is not a party to the ICCPR, there is consensus that the protections contained in Articles 2, 18, and 19 of the UDHR and the ICCPR are incorporated into customary international law, and hence binding on Malaysia.

International human rights law further calls on states to combat theories of racial superiority. The Convention on the Elimination of All Forms of Racial Discrimination requires that state parties condemn ‘all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and

⁵ Universal Declaration of Human Rights, Article 19, available at: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

⁶ International Covenant on Civil and Political Rights, Article 19, available at: <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

⁷ Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, 12 September 2011, para 22.

⁸ Article 18(1) of the ICCPR provides that: ‘Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.’

⁹ Article 18(3) enumerates exceptions to the freedom of religion: Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

¹⁰ Article 2(1) states: ‘Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ Article 26 states: ‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination'.¹¹

Blasphemy under international human rights law

Malaysia has enacted blasphemy laws to criminalize expression and to pre-emptively censor publications in order to protect religious beliefs. However, international human rights law protects people, not abstract concepts such as religions or belief systems. In General Comment 34, the Human Rights Committee stated clearly that blasphemy laws are incompatible with the right to freedom of expression.¹² The Human Rights Committee has emphasized that the use of blasphemy provisions—which can restrain publications or criminalize expression—to privilege one set of beliefs over another violates a number of human rights, noting, 'it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith'.¹³ The right to freedom of expression cannot be limited for the purpose of protecting religions or associated ideas or symbols from criticism or to shield the feelings of believers from offence or criticism.

The protection afforded to expression precludes censorship of content that does meet the three-part test. In General Comment No. 25, concerning participation in public affairs, the Human Rights Committee wrote, '[t]he free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint'.¹⁴ Several courts have rejected pre-publication limitations on content deemed offensive to religion.¹⁵

The UN Special Rapporteurs on both freedom of expression and freedom of religion or belief have similarly concluded that blasphemy laws violate international human rights law.

In 2018, the UN Special Rapporteur on freedom of religion or belief stated that:

*[B]lasphemy laws typically single out certain religions for special protection, thus not only encroaching on freedom of expression but also on freedom of religion or belief, in particular of members of religious minorities, converts, critics, atheists, agnostics, internal dissidents and others. Abundant experience in a number of countries demonstrates that blasphemy laws do not contribute to a climate of religious openness, tolerance, non-discrimination and respect. To the contrary, they often fuel stereotyping, stigmatization, discrimination and incitement to violence.*¹⁶

¹¹ International Convention on the Elimination of All Forms of Racial Discrimination, Article 4. For compliance of Article 4 of ICERD with Article 20(2) of the ICCPR, see ARTICLE 19, Prohibiting incitement to discrimination, hostility or violence, 2012, available at <https://www.article19.org/data/files/medialibrary/3548/ARTICLE-19-policy-on-prohibition-to-incitement.pdf>.

¹² Human Rights Committee (HR Committee), General Comment No. 34, CCPR/C/GC/34, 12 September 2011, para 48: 'Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant'.

¹³ Ibid.

¹⁴ Human Rights Committee General Comment 25, UN Doc. CCPR/C/21/Rev.1/Add.7, ¶ 25, (July 12, 1996).

¹⁵ Case of 'The Last Temptation of Christ' (Olmedo Bustos et al.) v Chile, IACHR Series C No 73, [2001] IACHR 3, IHRL 1456 para. 71 (IACtHR 5 February 2001); Unifaun Theatre Productions Ltd. and Others v. Malta, 37326/13, European Court of Human Rights, 15 May 2018.

¹⁶ 'Report of the Special Rapporteur on freedom of religion or belief' UN Doc A/HRC/31/18, 23 December 2015, available at: <https://undocs.org/en/A/HRC/31/18>.

Similarly, in 2019, the UN Special Rapporteur on freedom of expression noted that ‘anti-blasphemy laws fail to meet the legitimacy condition of Article 19(3) of the Covenant, given that Article 19 protects individuals and their right to freedom of expression and opinion. Neither Article 19 nor Article 18 of the ICCPR protect ideas or beliefs from ridicule, abuse, criticism or other “attacks” seen as offensive’.¹⁷ Courts in the Asia region, including in India and Korea, have also concluded that the right to freedom of expression includes the right to criticize religions.¹⁸

The Camden Principles on Freedom of Expression and Equality, developed by ARTICLE 19 in consultation with UN officials, academics, civil society and other experts, conclude that ‘states should not prohibit criticism directed at, or debate about, particular ideas, belief or ideologies, or religions or religious institutions’, unless such expression constitutes incitement to discrimination, hostility or violence.¹⁹

Positive measures to combat ‘hate speech’

Blasphemy is often associated with the concept of ‘hate speech’. Indeed, governments often justify the enforcement of blasphemy provisions by referencing the need to combat ‘hate speech’—most frequently in defence of the majority religion. However, ‘hate speech’ is itself not defined in international law and most ‘hate speech’ does not merit restriction.²⁰ In fact, much expression that is commonly labelled as ‘hate speech’ is protected by the right to freedom of expression and therefore may not be restricted.

Under Article 20 of the ICCPR, ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’. Such prohibitions do not necessarily require criminalization, and custodial sentences should be reserved for the most severe cases. Moreover, any restrictions must nevertheless meet the criteria of Article 19(3) of the ICCPR, described above.

While the most extreme form of expression should be prohibited, most so-called ‘hate speech’—including much speech that is intolerant or offensive—fails to meet this threshold. International law and standards provide several resources setting out best practices to combat ‘hate speech’ that, although it may be concerning, does not require restriction.

In 2011, the UN Human Rights Council (UN HRC), adopted Resolution 16/18 on ‘combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence, against persons based on religion or belief’. UN HRC Resolution 16/18 provides guidance and encouragement to States to prohibit discrimination on the basis of religion or belief, to promote inclusion, and to implement measures to guarantee the equal and effective protection of law while respecting the right to freedom of expression.²¹

¹⁷ ‘Promotion and protection of the right to freedom of opinion and expression’, UN Doc A/74/486, 9 October 2019, available at: https://www.ohchr.org/Documents/Issues/Opinion/A_74_486.pdf.

¹⁸ See, e.g. 9 Supreme Court of Korea, decision of 29 August 1997, 97da19755 (unofficial translation); CR P C Sections 95 and 92 Criminal Application No 1421 of 2007, judgment of 6 January 2010.

¹⁹ ARTICLE 19, Camden Principles on Freedom of Expression and Equality, May 2009, available at: <http://www.article19.org/resources/camden-principles-freedom-expression-equality/>.

²⁰ ARTICLE 19, ‘Hate Speech Explained: A Toolkit’, available at: <https://www.article19.org/resources/hate-speech-explained-a-toolkit/>.

²¹ UN HRC Resolution 16/18 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, UN Doc. A/HRC/Res/16/18, 24 March 2011, available at: https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf.

Further, the Rabat Plan of Action, which was adopted in 2012, details international human rights standards on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.²² The Rabat Plan of Action also notes the negative consequences of blasphemy laws and indicates that such laws are incompatible with international human rights obligations. The Rabat Plan of Action specifically calls upon states to eliminate blasphemy laws.²³

Both UN HRC Resolution 16/18 and the Rabat Plan of Action recommend specific actions that States can take to combat 'hate speech'; and promote tolerance. These include:

- Creating collaborative networks to build mutual understanding, promote dialogue and inspire constructive action;
- Creating mechanisms within governments to identify and address potential areas of tension between members of different religious communities and assist with conflict prevention and mediation;
- Training government officials—including military officers, police officers, justice sector officials and teachers—on effective strategies to promote tolerance and address incitement;
- Encouraging leaders to discuss within their communities the causes of discrimination and develop strategies to counter them;
- Speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence;
- Combating denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, including through education and awareness-building;
- Passing legislation protecting the right to equality on all grounds recognised under international human rights law; and
- Establishing a public policy and regulatory framework that promotes pluralism and diversity of the media.

The Istanbul Process, launched in 2011, is a series of inter-governmental meetings to promote and guide implementation of UN HRC Resolution 16/18. It was conceived of as a space for various stakeholders to exchange good practices and experiences in implementing UN HRC Resolution 16/18 outside of the sphere of multilateral politics. The Istanbul Process has enormous potential to be a strong vehicle for the implementation of UN HRC Resolution 16/18 and to help states identify and replicate innovative and human rights compatible approaches to promoting inclusivity, pluralism and diversity.²⁴

The United Nations Strategy and Plan of Action on Hate Speech, launched on 18 June 2019, aims to enhance UN efforts to address the root causes of hate speech and to enable the UN to respond effectively to the impact of hate speech on societies. The UN has listed 13 key commitments in the action plan and committed to address and implement actions at the global and national level and enhance their cooperation among relevant UN entities.²⁵ Most of the measures are positive policy measures focused on promoting tolerance and dialogue, rather than criminalising expression.

²² Rabat Plan of action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility of violence, UN Doc. A/HRC/22/17/Add.4, 5 October 2012, available at:

<https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/RabatPlanOfAction.aspx>.

²³ Ibid.

²⁴ For more information on the Istanbul Process, see: ARTICLE 19, 'UN HRC: 6th Session of Istanbul Process focuses on practical measures to implement UN HRC Resolution 16.18', 12 September 2016, available at: <https://www.article19.org/resources/un-hrc-6th-session-of-istanbul-process-focuses-on-practical-measures-to-implement-un-hrc-resolution-16-18/>.

²⁵ United Nations, 'Strategy and Plan of Action on Hate Speech', available at: https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf.

BLASPHEMY IN MALAYSIAN LAW

In Malaysia, several legal provisions criminalise or otherwise restrict blasphemy or alleged insult of religion or religious figures, beliefs or principles. The enforcement of these provisions has had a disproportionate impact on minority communities, political dissidents, atheists, religious scholars and others who express opinions that challenge dominant religious views. In Malaysia, blasphemy provisions have essentially established a hierarchy of beliefs.²⁶ Provisions found in the Penal Code, Sedition Act, Communications and Multimedia Act, and Printing Presses and Publications Act have been used to enforce this hierarchy of beliefs.

Sections 298 and 298A (1) of the Penal Code

Sections 298 and 298A(1) of the Penal Code make the insult of any religion a criminal offence, though these provisions are mainly used against those deemed to have wounded Islam.

Section 298 [on uttering words, etc., with deliberate intent to wound the religious feelings of any person]:

Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Section 298A (1) [on causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion]:

Whoever by words, either spoken or written, or by signs, or by visible representations, or by any act, activity or conduct, or by organizing, promoting or arranging, or assisting in organizing, promoting or arranging, any activity, or otherwise in any other manner—

(a) causes, or attempts to cause, or is likely to cause disharmony, disunity, or feelings of enmity, hatred or ill will; or

(b) prejudices, or attempts to prejudice, or is likely to prejudice, the maintenance of harmony or unity, on grounds of religion, between persons or groups of persons professing the same or different religions,

shall be punished with imprisonment for a term of not less than two years and not more than five years.

Section 3(1) and 4(1) of the Sedition Act 1948

Section 3(1) of the Sedition Act defines sedition to include 'any act when applied or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as having a seditious tendency'. 'Seditious tendency' is defined to include a range of animosity towards the State and its leaders and the promotion of 'feelings of ill-will and hostility between different races or classes of the population of Malaysia'.²⁷ In 2015, Parliament amended the Sedition Act to specifically cover 'religion' and to criminalise the act of 'causing to publish'; hence, the amended

²⁶ Dr. Agnes Callamard, 'Freedom of speech and offence: why blasphemy laws are not the appropriate response', ARTICLE 19, available at: <https://www.article19.org/data/files/pdfs/publications/blasphemy-hate-speech-article.pdf>.

²⁷ Ida Lim, 'What you need to know about the amended Sedition Act', *Malay Mail*, 10 April 2015, available at: <https://www.malaymail.com/news/malaysia/2015/04/10/what-you-need-to-know-about-the-amended-sedition-act/875651>.

provision now bars speech that ‘promotes ill will, hostility, or hatred on the grounds of religion’.²⁸ The amendments have been gazetted but have yet to come into effect.

The Sedition Act provides for severe criminal penalties. Convictions may result in prison sentences of three to seven years, or up to 20 years if the act results in physical harm or damage to property.

Section 233 of Communications and Multimedia Act 1998

Section 233(1)(a) of the Communication and Multimedia Act (‘CMA’), which deals with improper use of network facilities or network services, contains broad restrictions on freedom of expression that have also been deployed against those allegedly insulting Islam or the Prophet Muhammad. It prohibits ‘any comment, request, suggestions or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person’.²⁹

Those convicted under the law face up to one year’s imprisonment, a RM 50,000 fine, or both.³⁰

Section 7(1) of the Printing Presses and Publications Act 1984

Section 7(1) of the Printing Presses and Publications Act (PPPA) gives the Minister of Home Affairs ‘absolute discretion’ to ban media that is ‘in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest’.

Section 7(1) provides:

*If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.*³¹

* * *

Sections 298 and 298A(1) of the Penal Code, the Sedition Act, the CMA and PPPA violate international human rights law. They fail to protect a legitimate aim and are arbitrary and vague, leaving them open to discriminatory application. Furthermore, the Penal Code, the Sedition Act, and the CMA carry severe criminal penalties. The provisions of these laws discussed above have allowed for the Malaysian government to censor debate, creating a climate of fear that stifles the enjoyment of freedom of

²⁸ Ibid.

²⁹ Communications and Multimedia Act 1998, Section 233, available at: https://www.unodc.org/res/cld/document/mys/communications_and_multimedia_act_html/Malaysia_Communications_and_Multimedia_Act_1998.pdf.

³⁰ Ibid.

³¹ Printing Presses and Publications Act 1984, Section 7(1), available at: http://www.moha.gov.my/images/maklumat_bahagian/PQ/Act301.pdf.

expression and freedom of religion or belief and the ability to engage in healthy public discourse and dialogues about religion.

Use of Malaysia's blasphemy provisions

In a report covering the period from May 2018 to April 2019, ARTICLE 19 and CIVICUS documented eight cases concerning alleged insults to Islam or the Prophet Muhammad, which were investigated under Section 233 of the CMA and Section 298A of the Penal Code.³² An additional case involved a Facebook page that allegedly insulted Hinduism. In a particularly worrying case, Malaysian authorities arrested Alister Cogia and charged him under Section 298A(1)(a) of the Penal Code and Section 233 of the Communications and Multimedia Act 1998 for social media posts deemed offensive of Islam and the Prophet Muhammad. He was sentenced to 10 years imprisonment and an RM 50,000 fine. The prison sentence was later reduced to six years.³³

Malaysian authorities have used the Sedition Act for many years to target expression considered hostile to ethnic groups, including speech against religion, despite the fact that the current wording of the law does not expressly prohibit speech offensive to religion.³⁴ In 2015, Malaysia authorities arrested lawyer Eric Paulsen twice on charges under the Sedition Act. The first arrest related to criticism of Jakim; the second related to criticism of a Malaysian state introducing Sharia-based laws.³⁵ Also in 2015, the Kota Kinabalu High Court sentenced David Orok, a State Reform Party member, to 16 months' imprisonment on charges under Section 4(1)(c) of the Sedition Act. The prosecution related to a July 2015 Facebook post deemed offensive to Islam and the Prophet Muhammad.³⁶ In 2016, police held rapper Wee Meng Chee, also known as Namewee, in custody for four days while Malaysia's attorney general determined whether he should press charges under the Sedition Act. Chee shot part of a music video in a mosque, and used the words 'Allah' and 'Mecca' in a song.³⁷ The charges were ultimately dropped. The Pakatan Harapan coalition, which came to power in part on promises to abolish the Sedition Act, failed to reform the law. In 2018, the Communications and Multimedia Minister initially issued a moratorium on prosecutions under the law only to later retract the moratorium after a spate of violence erupted in relation to the destruction of a Hindu temple in Selangor.³⁸

The Perikatan Nasional administration, which became the ruling coalition in March 2020, has continued to use these provisions to punish those accused of blasphemy. On 5 March 2020, Ain Zafira Md Said, a college student, was fined RM 4,000 under Section 233(1)(a) of the CMA for allegedly insulting the Prophet Muhammad on Facebook.³⁹ Soon after, on 19 April 2020, police arrested a salesman and a college student after they posted a video on Instagram that allegedly mocked Islam. The two were remanded for four days while Malaysian authorities explored possible charges under Section 4(1) of

³² ARTICLE 19 & CIVICUS, 'New Government, Old Tactics: Lack of Progress on Reform Commitments Undermines Fundamental Freedoms and Democracy in Malaysia', available at: <https://www.article19.org/wp-content/uploads/2019/05/CIVICUS-New-Government-Old-Tactics-A4-v1.pdf>.

³³ Sulok Tawie, 'Court cuts jail time for Sarawakian convicted of insulting Islam, retains RM 50,000 fine', *Malay Mail*, 13 September 2019, available at: <https://www.malaymail.com/news/malaysia/2019/09/13/court-cuts-jail-time-for-sarawakian-convicted-of-insulting-islam-retains-rm/1790176>.

³⁴ Ibid.

³⁵ Human Rights Watch, 'Creating a Culture of Fear: The Criminalization of Peaceful Expression in Malaysia', 26 October 2015, available at: <https://www.hrw.org/report/2015/10/26/creating-culture-fear/criminalization-peaceful-expression-malaysia>.

³⁶ Ruben Sario, 'Politician David Orok sentenced to 16 months' jail for insulting Islam', *The Star*, 15 September 2015, available at <https://www.thestar.com.my/news/nation/2015/09/15/orok-jail-insulting-islam/>.

³⁷ 'Malaysian rapper accused of insulting Islam released on bail', *Reuters*, 25 August 2016, available at: <https://www.reuters.com/article/us-malaysia-rapper-idUSKCN110136>.

³⁸ Ibid.

³⁹ 'Uni student slapped with RM 4,000 fine for insulting Prophet Muhammad', *New Straits Times*, 5 March 2020, available at: <https://www.nst.com.my/news/crime-courts/2020/03/572037/uni-student-slapped-rm4000-fine-insulting-prophet-muhammad>.

the Sedition Act, Section 298 of the Penal Code, Section 14 of the Minor Offences Act 1955, and Section 233 of the CMA.⁴⁰

On 10 June 2020, Tham Wai Yuen was charged under the Section 298A(1) and Section 233(1)(a) of the CMA for allegedly insulting Islam on Facebook.⁴¹ In a similar incident, on 29 June 2020, the Kuala Lumpur Sessions Court convicted Koh Teen Ern, a factory worker, for a violation of Section 233(1)(a) of the CMA for posting a comment on Facebook that allegedly insulted Islam. He was fined RM 6,000.⁴²

On 17 July 2020, the Kuala Lumpur Sessions Court convicted Danny Antoni of violations of Section 298A(1)(a) of the Penal Code and Section 233(1)(a) of the CMA after he posted content to Facebook that allegedly insulted the Prophet Muhammad, Islam, and PAS President Datuk Seri Abdul Hadi Awang. He was sentenced to 26 months in prison.⁴³

On 5 August 2020, police opened an investigation of an unnamed man under Section 3(1)(a) of the Sedition Act after he uploaded a YouTube video in which he allegedly 'act[ed] indecently in front of a group of Muslims who were performing prayers' and insulted Islam.⁴⁴

Authorities have also relied on Section 7(1) of the Printing Presses and Publications Act to ban books or publications that relate to religion. In October 2017, the Ministry of Home Affairs banned 22 publications, including three books issued by the Islamic Renaissance Front (IRF). The IRF published the documents with the aim of 'advanc[ing] ... understanding of a compassionate and democratic Islam'. In early 2020, Malaysia's court of appeal overturned the ban.⁴⁵

RECOMMENDATIONS

Blasphemy provisions fail to accord with international human rights law and infringe on the rights to freedom of expression, freedom of religion or belief, and equality and non-discrimination. Reasonable restrictions on freedom of expression may be necessary to prevent advocacy of hatred based on nationality, race, or religion that constitutes incitement to discrimination, hostility or violence. However, the blasphemy laws identified above go well beyond such an aim. Instead, they target expression protected by international human rights law.

Malaysia should work to reform its laws to eliminate legal sanctions for blasphemy. The government of Malaysia should:

- Repeal Sections 298 and 298A of the Penal Code;
- Repeal the Sedition Act 1948;
- Reform or amend Section 233 of the Communications and Multimedia Act 1998;
- Repeal the Printing Presses and Publications Act 1984;

⁴⁰ 'Police nab salesman, college student in Ipoh for insulting Islam', *Malay Mail*, 19 April 2020, available at:

<https://www.malaymail.com/news/malaysia/2020/04/19/police-nab-salesman-college-student-in-ipoh-for-insulting-islam/1858299>.

⁴¹ Rahmat Khairulrijal, 'Jobless man claims trial to insulting Islam', *New Straits Times*, 10 June 2020, available at:

<https://www.nst.com.my/news/crime-courts/2020/06/599456/jobless-man-claims-trial-insulting-islam>.

⁴² 'Factory supervisor fined RM 6,000 for insulting Islam', *Free Malaysia Today*, 29 June 2020, available at:

<https://www.freemalaysiatoday.com/category/nation/2020/06/29/factory-supervisor-fined-rm6000-for-insulting-islam/>.

⁴³ 'Man sentenced to over 2 years' jail for insulting Prophet Muhammad, Islam', *New Straits Times*, 17 July 2020, available at:

<https://www.nst.com.my/news/crime-courts/2020/07/609390/man-sentenced-over-2-years-jail-insulting-prophet-muhammad-islam>.

⁴⁴ 'Police investigating man for allegedly insulting Muslims', *The Leaders Online*, 5 August 2020, available at: <https://theleaders-online.com/police-investigating-man-for-allegedly-insulting-muslims/>.

⁴⁵ ARTICLE 19, 'Malaysia: Repeal publications law to promote freedom of expression', 17 February 2020, available at:

<https://www.article19.org/resources/malaysia-repeal-publications-law-to-promote-freedom-of-expression/>.

- Adopt a comprehensive and evidence-based national implementation plan on Human Rights Council Resolution 16/18 and the Rabat Plan of Action and related resolutions on freedom of religion or belief, with the full and effective participation of diverse stakeholders;
- Ratify the ICCPR;
- Ensure prohibitions on the advocacy of discriminatory hatred constituting incitement to hostility, discrimination or violence are in compliance with Articles 19(3) and 20(2) of the ICCPR and the guidance of the Rabat Plan of Action; and
- Ensure an environment for open, robust debate and dialogue, including through a free and open internet.