

Malaysia: Criminalisation of blasphemy – 2022 update

In July 2022, ARTICLE 19 documented a number of concerning cases in which individuals were prosecuted for allegedly blasphemous speech. Malaysian authorities have investigated individuals under Section 298A of the Penal Code, Section 233 of the Communications and Multimedia Act 1998 (CMA), and the Sedition Act. These cases are a continuation of long-standing practice of successive Malaysian governments in silencing expression deemed blasphemous, particularly that relating to Islam, the majority religion in the country.

In January 2021, ARTICLE 19 published a briefing paper in which it highlighted the legal framework used to target allegedly blasphemous expression.¹ The briefing paper also set out international standards relating to the crime of blasphemy and made several recommendations to the government of Malaysia, including explicit calls to repeal legislation out of step with international law and standards.

This update to that briefing paper sets out recent cases of concern and reiterates the international standards to which Malaysia is bound. As a new member of the Human Rights Council, it is imperative that Malaysia makes a serious commitment to reforming its legal framework and immediately cease investigation and prosecution of those who are exercising their right to freedom of expression.

RECENT CASES OF CONCERN

Crackhouse Comedy Club

Siti Nuramira Abdullah and Alexander Navin Vijayachandran

In early July, Malaysian authorities arrested Siti Nuramira Abdullah and her partner, Alexander Navin Vijayachandran, in relation to a video of Siti that was uploaded to two of the couples' joint social media accounts—on 5 June on Instagram and 16 June on YouTube.² The video shows Siti performing at Crackhouse Comedy Club, a stand-up comedy venue, where she is wearing a hijab and a *baju kurung*.³ She gradually takes these off to reveal a miniskirt underneath. While undressing she remarks that she has memorised parts of the Quran. According to organisers at Crackhouse Comedy Club, both Siti and Alexander were immediately banned from the venue after the set finished.⁴

On 9 July 2022, authorities arrested Siti. On 13 July, after a 4-day remand, authorities charged her under Section 298A(1)(a) of the Penal Code; she pleaded not guilty.⁵ The court granted bail on RM20,000 (approximately 5,000 USD) with one surety. She is also required to report to the Brickfields police station once a month and must surrender her passport to the court. If found guilty, Siti could face up to five years in prison.

¹ ARTICLE 19, Briefing Paper: Blasphemy Provisions in Malaysian Law, January 2021, available at: <https://www.article19.org/wp-content/uploads/2021/01/2021.01.20-Malaysia-blasphemy-briefing-paper-final.pdf>.

² *Malaysiakini*, Woman arrested for allegedly insulting Islam at comedy club, 10 July 2022, available at: <https://www.malaysiakini.com/news/627848>.

³ YouTube, MalaysiaGazette TV: Wanita Hina Islam Direman #MGFlash, 10 July 2022, available at: <https://www.youtube.com/watch?v=qPl9tG4fe0w&t=9s>.

⁴ *The Sun Daily*, DBKL shuts Crackhouse Comedy Club, 10 July 2022, available at: <https://www.thesundaily.my/local/dbkl-shuts-crackhouse-comedy-club-HB9434786>.

⁵ Zarrah Morden, Woman in viral stand-up comedy video pleads not guilty to subverting harmony, bail set at RM20,000, *Malay Mail*, 13 July 2022, available at: <https://www.malaymail.com/news/malaysia/2022/07/13/woman-in-viral-stand-up-comedy-video-pleads-not-guilty-to-subverting-harmony-bail-set-at-rm20000/17148>.

On 11 July, authorities arrested Alexander for posting the same video to the two joint social media accounts.⁶ On 13 July, he was charged in court under Section 233(1)(a) of the CMA and pleaded not guilty.⁷ He was granted bail on RM20,000 (approximately 5,000 USD). Section 233(1)(a) carries a penalty of up to RM50,000 (approximately 12,500 USD), up to one year of jail time or both.

On 10 July, Kuala Lumpur City Hall suspended Crackhouse Comedy Club's operations with a warning from the Deputy Minister of Federal Territories, Datuk Seri Jalaluddin Alias. He said authorities would not tolerate any activities deemed offensive to sensitivities on religion, race and the country's sovereignty and urged the public to report such activities.⁸

On 19 July, the Federal Territory Islamic Religious Department (Jawi) detained Siti at the Syariah High Court with intention to charge her under Section 7 of the Syariah Criminal Offences (Federal Territories) Act, which refers to insulting, or bringing into contempt, the religion of Islam.⁹ She was released the same day without charge.¹⁰

Rizal Van Geyzel

On 14 July, Rizal Van Geyzel, a co-founder of Crackhouse Comedy Club, was arrested under Section 4(1) of the Sedition Act and Section 233 of the CMA.¹¹ Police stated the arrest was for three videos of him performing stand-up comedy that touched on racial stereotypes. The police had applied for a four-day remand but were only granted one day. Rizal was released on the evening of 15 July.¹² Four days later, the Crackhouse Comedy Club was vandalised with paint splashes on its sign and entrance, affecting neighbouring establishments as well.¹³ In addition, Rizal lodged a police report on 19 July after his wife received death threats in calls made to her mobile phone.¹⁴ On 22 July, Rizal was charged with three counts under Section 233(1)(a) of the CMA for the offence of improper use of network facilities to make an obscene posting with the intent to annoy another person.¹⁵ Based on reporting by *Malaysiakini*,¹⁶ one of the videos that was sighted in the charge sheet was a video posted by Rizal on Facebook on 4 July, of a short clip of his stand-up comedy set in which he jokes about his mixed race heritage and Malay stereotypes.¹⁷

Other blasphemy cases

Over the last month, two other individuals have been charged for allegedly insulting Islam through videos posted online—Mohd Nor'muzil Mohd Razalli¹⁸ and Syaidinar Abu Bakar.¹⁹ Both have been convicted under Section 233(1)(a) of the CMA.

⁶ *Malaysiakini*, Cops arrest boyfriend of woman under probe for allegedly insulting Islam, 11 July 2022, available at:

<https://www.malaysiakini.com/news/627921>.

⁷ Faisal Asyraf, Freelance writer charged with uploading insulting content, *Free Malaysia Today*, 13 July 2022, available at:

<https://www.freemalaysiatoday.com/category/nation/2022/07/13/freelance-writer-charged-with-uploading-insulting-content/>.

⁸ *Bernama*, Crackhouse Comedy Club ordered to close temporarily, *New Straits Times*, 10 July 2022, available at:

<https://www.nst.com.my/news/nation/2022/07/10/812267/crackhouse-comedy-club-ordered-close-temporarily>.

⁹ *The Star*, Comedy club case: Siti Nuramira nabbed by Jawi officers after posting bail, 19 July 2022, available at:

<https://www.thestar.com.my/news/nation/2022/07/19/comedy-club-case-siti-nuramira-nabbed-by-jawi-officers-after-posting-bail>.

¹⁰ Nurbaiti Hamdan, Comedy club case: Jawi holds off on charging Siti Nuramira for now, *The Star*, 20 July 2022, available at:

<https://www.thestar.com.my/news/nation/2022/07/20/comedy-club-case-jawi-holds-off-on-charging-siti-nuramira-for-now>.

¹¹ Faisal Asyraf, Comedian Rizal van Geyzel arrested over viral videos, *Free Malaysia Today*, 14 July 2022, available at:

<https://www.freemalaysiatoday.com/category/nation/2022/07/14/comedian-rizal-van-geyzel-to-be-remanded-over-viral-videos/>.

¹² Qistina Nadia Dzulqarnain, Crackhouse's Rizal van Geyzel to be freed from police custody tonight, *The Vibes*, 15 July 2022, available at:

<https://www.thevibes.com/articles/news/65897/crackhouses-rizal-van-geyzel-to-be-freed-from-police-custody-tonight>.

¹³ Gajendra Jeya Kumar, Crackhouse Comedy Club vandalised with red paint, posters torn, *Malaysiakini*, 19 July 2022, available at:

<https://www.malaysiakini.com/news/628852>.

¹⁴ Ashley Yeong, Crackhouse Comedy Club's owner lodges police report after family receives death threats, *Malay Mail*, 19 July 2022, available at:

<https://www.malaymail.com/news/malaysia/2022/07/19/crackhouse-comedy-clubs-owner-lodges-police-report-after-family-receives-death-threats/18312>.

¹⁵ Zarah Morden, Comedian Rizal Van Geyzel pleads not guilty to three counts of cyber crime, *Malay Mail*, 22 July 2022, available at:

<https://www.malaymail.com/news/malaysia/2022/07/22/comedian-rizal-van-geyzel-pleads-not-guilty-to-three-counts-of-cyber-crime/18796>.

¹⁶ Low Choon Chyuan, Comedy club owner slapped with three charges under CMA, *Malaysiakini*, 22 July 2022, available at:

<https://www.malaysiakini.com/news/629220>.

¹⁷ Rizal van Geyzel, Just a silly joke only Malaysians will get, *Facebook*, 4 July 2022, available at: <https://fb.watch/eO-U7zRGQe/>.

¹⁸ YouTube Harijan Metro: Polis tahan lelaki berkait hina Islam, 17 July 2022, available at: <https://www.youtube.com/watch?v=7XifUIDuNoE>, and

The Sun Daily, Food rider fined RM 50,000 for insulting Islam, 21 July 2022, available at: <https://www.thesundaily.my/home/food-rider-fined-rm50000-for-insulting-islam-LI9479951>.

¹⁹ Nor Fazlina Abdul Rahim, Penganggur hina Islam dipenjara setahun, *Berita Harian*, 25 July 2022, available at:

<https://www.bharian.com.my/berita/nasional/2022/07/980027/penganggur-hina-islam-dipenjara-setahun>.

INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

Malaysia's blasphemy laws criminalise 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 No. 34, the Human Rights Committee stated clearly that blasphemy laws are incompatible with the right to freedom of expression.²⁰ The Human Rights Committee has emphasised that the use of blasphemy provisions—which can restrain publications or criminalise 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.'²¹ 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.'²² Several courts have rejected pre-publication limitations on content deemed offensive to religion.²³

Neither Article 19 nor Article 18 of the International Covenant on Civil and Political Rights (ICCPR) protect ideas or beliefs from ridicule, abuse, criticism or other "attacks" seen as offensive.²⁴ Courts in the Asia Pacific region, including in India and Korea, have also concluded that the right to freedom of expression includes the right to criticise religions.²⁵

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.²⁶

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.²⁷ 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

²⁰ Human Rights 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'.

²¹ *Ibid.*

²² Human Rights Committee General Comment No. 25, UN Doc. CCPR/C/21/Rev.1/Add.7, ¶ 25, (July 12, 1996).

²³ 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.

²⁴ UNGA, Report of the Special Rapporteur on the 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.

²⁵ See for example, 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.

²⁶ ARTICLE 19, Camden Principles on Freedom of Expression and Equality, May 2009, available at: <http://www.article19.org/resources/camden-principles-freedom-expression-equality/>.

²⁷ ARTICLE 19, Hate Speech Explained: A Toolkit, available at: <https://www.article19.org/resources/hate-speech-explained-a-toolkit/>.

necessarily require criminalisation, 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 concerning, does not require restriction.

In 2011, the Human Rights Council (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.’ 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.²⁸

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.²⁹ 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.³⁰

Both 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.

²⁸ 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.

²⁹ 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>.

³⁰ *Ibid.*

RECOMMENDATIONS

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

- Cease the prosecution of individuals targeted for expression protected under international laws;
- Protect all those within its borders from vigilante attacks, including those whose expression may be considered offensive;
- 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;
- 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.