



## Sisters in Islam

**Joint submission to the Universal Periodic Review of Malaysia by ARTICLE 19, CIVICUS World Alliance for Citizen Participation, Komuniti Muslim Universal (KMU) and Sisters in Islam (SIS)**

For consideration at the 45th Session of the Working Group in Jan / Feb 2024

18 July 2023

### **Executive Summary**

1. The submitting organisations observe that freedom of expression has deteriorated since Malaysia's last Universal Periodic Review in November 2018. In this submission, we address developments during this period in the following areas:
  - International commitments;
  - Legal framework;
  - Arrest, harassment and charges
  - Internet freedom
  - Inclusion, diversity and pluralism;
  - Freedom of peaceful assembly;
  - Media freedom
2. Malaysian people have experienced seismic upheavals in the past year. In late February 2020, the ruling *Pakatan Harapan* (PH) government collapsed after being in power for 22 months. On 1 March 2020, Malaysia's King appointed Muhyiddin Yassin as Prime Minister after determining that he commanded the support of a majority of elected MPs under the umbrella of the *Perikatan Nasional* (PN) coalition. The ascendance of the PN government coincided with the onset of the COVID-19 pandemic in Malaysia. The government implemented a strict Movement Control Order (MCO) that severely curtailed travel and social interactions.
3. The political turmoil continued, and there was a government and Prime Minister change in August 2021. Ismail Sabri's government replaced the PN coalition until October 2022 to give way to the 15<sup>th</sup> general election.

4. The change of governments has proven to be a significant setback for fundamental freedoms in Malaysia. While the PH government's track record on human rights was disappointing in many ways from 2018 to early 2020<sup>1</sup>, it took some steps to roll back repressive laws and policies. It was more open to engaging with civil society and the human rights community than its predecessor. The PN and Ismail Sabri's government halted this progress.
5. Malaysia held its 15th general election on 19 November 2022. On 25 November, Anwar Ibrahim was sworn in as the 10th Prime Minister and formed a unity government. On 3 April, Malaysia's parliament passed sweeping legal reforms to remove the mandatory death penalty and reduce the number of offenses punishable by death.<sup>2</sup> However, after almost six months in power, the Unity government still needs to do more to ensure human rights reforms in the country.
6. The deepening of polarisation over race, religion and reform has affected Malaysia as a society which has powerfully shaped its socio-political landscape. The damaging effects of this polarisation were evident most recently, after the 15th general election, when strong, identity-driven positions deepened the divisions between the majority and minorities within Malaysia.
7. The application of broad and vaguely-worded criminal laws which do not comply with international human rights law continues to be the government's primary means to limit dissent. Arrests, prosecutions, and censorship punctuate the period under review, with a notable increase since 2016 in applying the Communication and Multimedia Act 1998 (CMA) against those exercising their right to freedom of expression.
8. Moreover, successive governments have repeatedly used blasphemy provisions in Malaysia's legal framework to target individuals who challenge the majority's 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, principles of equality and non-discrimination.
9. The social climate for freedom of expression has also become markedly more conservative, with populist calls for censorship and direct attacks against persons expressing minority viewpoints from private actors, often in the name of protecting religion.

## **International commitments**

10. Appearing before the Human Rights Council in Geneva during its 40th Session in November 2018, the Malaysian government formally responded to the 268 recommendations made by

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<sup>1</sup> ARTICLE 19 and CIVICUS, 'New Government, Old Tactics', May 2018 [Online]. Available at: <https://www.article19.org/wp-content/uploads/2019/05/CIVICUS-New-Government-Old-Tactics-A4-v1.pdf>.

<sup>2</sup> OHCHR, 'Malaysia: UN experts hail parliamentary decision to end mandatory death penalty', 11 April 2023 [Online]. Available at: <https://www.ohchr.org/en/press-releases/2023/04/malaysia-un-experts-hail-parliamentary-decision-end-mandatory-death-penalty>.

108 UN member states during Malaysia's UPR in November 2018. The government accepted 147 recommendations in full and 37 in part, noting 84 recommendations.<sup>3</sup>

11. Malaysia received 44 recommendations specific to the accession of international human rights instruments.<sup>4</sup> However, we note that the recommendations accepted by the government have lacked the commitment to take specific actions. No progress has been made on this front.
12. The government attempted to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Still, it failed due to pressure from the opposition parties and right-wing Islamic groups.<sup>5</sup> The government then decided not to sign ICERD.<sup>6</sup> On 8 December 2018, with like-minded groups, the Islamic Party (PAS) organised a rally to celebrate the 'victory' over the government's decision not to sign the ICERD.<sup>7</sup>
13. On 5 April 2019, Malaysia's former Prime Minister Mahathir Mohammed announced<sup>8</sup> that Malaysia would not accede to the Rome Statute of the International Criminal Court after signing the Instrument of Accession to the Rome Statute of the ICC on 4 March 2019.<sup>9</sup> Similar pushbacks and protests arose from groups that used the narratives that the ICC signing would impact the power of royalty and Malay privileges.<sup>10</sup>
14. During this reporting period, we welcome the official visit of the UN Special Rapporteurs in the field of Sale and Sexual Exploitation of Children (September 2018),<sup>11</sup> Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation (November 2018),<sup>12</sup> Special Rapporteur on the Situation of Human Rights in Myanmar (July 2019)<sup>13</sup> and Special Rapporteur on extreme poverty and human rights (August 2019).<sup>14</sup> The former Special

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<sup>3</sup> OHCHR, 'Malaysia', Universal Periodic Review: Malaysia, [Online]. Available at: <https://www.ohchr.org/en/hr-bodies/upr/my-index>.

<sup>4</sup> United Nations General Assembly, Report of the Working Group on the Universal Periodic Review, Malaysia, A/HRC/40/11, [Online]. Available at: <https://www.upr-info.org/en/review/malaysia>

<sup>5</sup> Malay Mail, 'Putrajaya scheming to sign ICERD in another way, PAS claims', 25 November 2018 [Online]. Available at: <https://www.malaymail.com/news/malaysia/2018/11/25/putrajaya-scheming-to-sign-icerd-in-another-way-pas-claims/1696832>.

<sup>6</sup> Malaysiakini, 'Syed Saddiq: Ratifying ICERD doesn't mean Malays lose privileges', [Online]. Available at: <https://www.malaysiakini.com/news/452460>.

<sup>7</sup> Al Jazeera, 'Malaysia Malays rally amid worries over government weakness', 8 December 2018 [Online]. Available at: <https://www.aljazeera.com/news/2018/12/8/malaysia-malays-rally-amid-worries-over-government-weakness>.

<sup>8</sup> YouTube, '[LIVE] Press conference by Prime Minister Tun Dr Mahathir Mohamad', uploaded by NST Online, [Online Video]. Available at: <https://www.youtube.com/watch?v=vr81mYhjxMM>.

<sup>9</sup> The Straits Times, 'Malaysia joins ICC in boost for beleaguered court', [Online]. Available at: <https://www.straitstimes.com/asia/se-asia/malaysia-joins-icc-in-boost-for-beleaguered-court>.

<sup>10</sup> The Straits Times, 'Malaysia withdraws from the Rome Statute', [Online]. Available at: <https://www.straitstimes.com/asia/se-asia/malaysia-withdraws-from-the-rome-statute>.

<sup>11</sup> OHCHR, 'Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material: Addendum: Mission to Malaysia', [Online]. Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc4051add3-visit-malaysia-report-special-rapporteur-sale-and-sexual>.

<sup>12</sup> OHCHR, 'Report of the Special Rapporteur on the human rights of migrants: Addendum: Mission to Malaysia', [Online]. Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc4247add2-visit-malaysia-report-special-rapporteur-human-rights-safe>.

<sup>13</sup> Astro Awani, 'Contohi usaha Malaysia bantu baiki kehidupan Rohingya - Pelapor Khas PBB', [Online]. Available at: <https://www.astroawani.com/berita-malaysia/contohi-usaha-malaysia-bantu-baiki-kehidupan-rohingya-pelapor-khas-pbb-213005>.

<sup>14</sup> OHCHR, 'Report of the Special Rapporteur on extreme poverty and human rights: Addendum: Mission to Malaysia', [Online]. Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc4440add1-visit-malaysia-report-special-rapporteur-extreme-poverty-and>.

Rapporteur on Freedom of Religion or Belief was invited, but the trip was postponed due to the pandemic.<sup>15</sup>

15. On 14 October 2021, the UN General Assembly elected Malaysia to join the UNHRC from 2022 to 2024.<sup>16</sup> In line with pledges<sup>17</sup> made in its efforts to win the seat, the Malaysian government committed to human rights protections in Malaysia. However, there has been a deterioration in the state of human rights and fundamental freedoms under the former<sup>18</sup> and the current government.

## Legal framework

16. During its last UPR, the Malaysian government "fully accepted"<sup>19</sup> seven recommendations, "partially accepted"<sup>20</sup> 15 recommendations, and "noted"<sup>21</sup> four recommendations to "continue" efforts at enhancing or encouraging the exercise of the right to freedom of expression, right to information, freedom of religion and belief, media freedom, peaceful assembly and association. The Malaysian government also stated it remained committed to upholding the right to freedom of expression and opinion and in the process of amending relevant laws but also noted that a complete abrogation may not be possible.<sup>22</sup>
17. The Malaysian government accepted several recommendations to review laws that are incompatible with international human rights standards, including the Sedition Act, Communications and Multimedia Act, Printing Presses and Publications Act, Official Secrets Act, Anti-Fake News Act, Peaceful Assembly Act, Security Offences (Special Measures) Act, Prevention of Crime Act, Prevention of Terrorism Act and Penal Code.<sup>23</sup> However, the government only accepted in part, with more specific recommendations to amend these laws, citing the ongoing work of a Special Committee tasked with making recommendations on legal reform as a reason for not fully accepting these recommendations.<sup>24</sup>

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<sup>15</sup> Coalition of Malaysian NGOs in the UPR Process (COMANGO), 'Mid-Term Report for Malaysia's 3rd Cycle by Civil Society', [Online]. Available at: [https://komas.org/download/Mid-Term\\_Report\\_for\\_Malaysias\\_3rd\\_Cycle\\_by\\_Civil\\_Society\\_COMANGO.pdf](https://komas.org/download/Mid-Term_Report_for_Malaysias_3rd_Cycle_by_Civil_Society_COMANGO.pdf).

<sup>16</sup> Ministry of Foreign Affairs Malaysia, 'Malaysia elected to the United Nations Human Rights Council for the term 2022-2024', [Online]. Available at: <https://www.kln.gov.my/web/guest/-/malaysia-elected-to-the-united-nations-human-rights-council-for-the-term-2022-2024>.

<sup>17</sup> Ministry of Foreign Affairs Malaysia, 'Malaysia's candidature to the Human Rights Council Term 2022-2024: Voluntary commitments and pledges', [Online]. Available at: [https://www.kln.gov.my/web/usa\\_un-new-york/news-from-mission/-/blogs/malaysia-s-candidature-to-the-human-rights-council-term-2022-2024-voluntary-commitments-and-pledges](https://www.kln.gov.my/web/usa_un-new-york/news-from-mission/-/blogs/malaysia-s-candidature-to-the-human-rights-council-term-2022-2024-voluntary-commitments-and-pledges).

<sup>18</sup> ARTICLE 19, 'Government should respect human rights as it seeks UN Human Rights Council membership', [Online]. Available at: <https://www.article19.org/?s=Government+should+respect+human+rights+as+it+seeks+UN+Human+Rights+Council+membership>.

<sup>19</sup> Universal Periodic Review Recommendations Accepted in Full: 151.135 (Kenya), 151.136 (Slovakia), 151.143 (Georgia), and 151.147 (Czechia).

<sup>20</sup> Universal Periodic Review Recommendations Partially Accepted: 151.126 (United Kingdom of Great Britain and Northern Ireland), 151.137 (USA), 151.127 (USA), 151.128 (Bolivia), 151.129 (Albania), 151.131 (Croatia), 151.132 (Haiti), 151.138 (Uruguay), 151.140 (Brazil), 151.141 (Spain), 151.142 (Czechia), 151.143 (Georgia), 151.144 (Ireland), 151.145 (Lithuania), 151.146 (Switzerland). Available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/11/Add.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/11/Add.1).

<sup>21</sup> Universal Periodic Review Recommendations Noted: 151.143 (Georgia), 151.47 (Czechia), 151.136 (Slovakia), 151.135 (Kenya).

<sup>22</sup> Universal Periodic Review Recommendation Noted: 151.142 (Czechia). Available at: <https://daccess-ods.un.org/tmp/8010818.95828247.html>.

<sup>23</sup> Universal Periodic Review Recommendations partially accepted: 151.126 (UK and Northern Ireland), 151.137 (USA), 151.138 (Uruguay), 151.140 (Brazil), 151.141 (Spain), 151.144 (Ireland), 151.145 (Lithuania), and 151.146 (Switzerland).

<sup>24</sup> United Nations General Assembly, 'Report of the Human Rights Council on its fortieth session', [Online]. Available at: <https://daccess-ods.un.org/tmp/8010818.95828247.html>.

18. However, they partially accepted or noted all the specific recommendations to amend or revise legislation to unjustifiably infringe on fundamental freedoms, revealing the extent of the government's resistance to reform this field.
19. While Article 10(a) of the Federal Constitution of Malaysia guarantees the right to freedom of expression, it is not fully aligned with the ICCPR, as it does not require restrictions on the right to meet a strict necessity test, limiting the ability of the judiciary to constrain government abuses of this right.
20. The Sedition Act was amended in 2015,<sup>25</sup> removing some offences while increasing penalties for others, contradicting former Prime Minister Najib Razak's 2012 promise to repeal it entirely<sup>26</sup> and commitments made during the last UPR to do the same.
21. One of the key campaign promises made by the PH coalition was to abolish the Sedition Act.<sup>27</sup> However, after coming to power in 2019, there were concerns about the sincerity of its commitment as it initiated criminal proceedings under the law. In June 2018, police investigated Kadir Jasin, a veteran journalist and media advisor to the Prime Minister, under the Sedition Act, concerning a blog post concerning the expenditures of former King Sultan Muhammad V.<sup>28</sup>
22. In late 2018, Malaysia's Cabinet sent mixed messages concerning its intentions toward the Sedition Act. On 11 October 2018, the Communications and Multimedia Minister announced that the Cabinet had agreed to a moratorium on the application of the Sedition Act.<sup>29</sup> However, disappointingly, in November 2018, the government lifted the moratorium in response to violence at a Hindu temple in the state of Selangor, stating that the law would only be used concerning national security, public order and race relations.<sup>30</sup>
23. In May 2020, former Home Minister Hamzah Zainudin stated that the authorities would not hesitate to use all existing legislation — including the Sedition Act — against those spreading 'fake news that was seditious in nature'.<sup>31</sup>

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<sup>25</sup> The MalayMail Online, 'Sedition Act amendments passed, granting authorities wider powers', 10 April 2015; available at: <http://www.themalaymailonline.com/malaysia/article/sedition-act-amendments-passed-granting-authorities-wider-powers>.

<sup>26</sup> The recommendations of the United Kingdom and Australia to repeal the law were "noted" during the last UPR.

<sup>27</sup> The Star Online, "Dr M: Pakatan to repeal controversial laws, including fake news act", 3 April 2018, [Online]. Available at: <https://www.thestar.com.my/news/nation/2018/04/03/dr-m-pakatan-to-repeal-controversial-laws-including-fake-news-act/>.

<sup>28</sup> The Star Online, "IGP: Kadir Jasin to be investigated for sedition", [Online]. Available at: <https://www.thestar.com.my/news/nation/2018/06/07/igp-kadir-jasin-to-be-investigated-for-sedition/>.

<sup>29</sup> The Star Online, "Cabinet agrees to impose moratorium on Sedition Act", [Online]. Available at: <https://www.thestar.com.my/news/nation/2018/10/11/cabinet-agrees-to-impose-moratorium-on-sedition-act/>.

<sup>30</sup> Human Rights Watch, "Malaysia: Keep Moratorium on Abusive Laws", [Online]. Available at: <https://www.hrw.org/news/2018/12/05/malaysia-keep-moratorium-abusive-laws>.

<sup>31</sup> Malay Mail, "Home Ministry issues warning, won't hesitate to act against sedition, fake news", 14 May 2020, [Online]. Available at: <https://www.malaymail.com/news/malaysia/2020/05/14/home-ministry-issues-warning-wont-hesitate-to-act-against-sedition-fake-new/1866168>.

24. It was reported recently that, between 2018 and 2022, 367 investigations were opened under the Sedition Act. From the 367, 5 individuals have been convicted under the Act. The highest number of investigations was recorded in 2020, during the COVID-19 pandemic.<sup>32</sup>
25. Since 2016, Section 233 of the CMA has been one of the primary laws used by the previous regime to target human rights defenders and political opponents. Many provisions within the law are incompatible with international human rights law and threaten freedom of expression.<sup>33</sup> Section 233 provides criminal penalties of up to one-year imprisonment and a fine for using "network facilities or network service" to transmit communications that are "obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person."
26. On 20 September 2018, the Communications and Multimedia Minister stated that his ministry was considering new provisions to amend Section 233 of the Act.<sup>34</sup> Later, the Minister confirmed that the communications ministry had completed the proposed amendments to Section 233 and indicated its intention to seek feedback from concerned stakeholders.<sup>35</sup> A similar pledge was iterated by the Ismail Sabri government in 2021 during its candidacy announcement to join the UNHRC.<sup>36</sup> However, we have yet to see the proposed amendments to the law, raising concerns about the government's intentions and the lack of transparency in the reform process.
27. Since 2018, all the governments that have been in power between 2018 till now have continued to use the CMA to investigate and prosecute individuals for communications on social media platforms such as Facebook, TikTok or Twitter.
28. In addition to these, on 11 March 2021, the government passed Emergency (Essential Powers) (No. 2) Ordinance 2021 (the 'Ordinance') using powers conferred by a January 2021 Emergency Proclamation.<sup>37</sup> The Ordinance establishes several criminal offences relating to 'fake news' about the COVID-19 pandemic. The Fake News Ordinance was lifted on 27 July 2021 when the government ended the six other Emergency Ordinances established under the Emergency Proclamation.<sup>38</sup>
29. Other laws used to restrict the right to freedom of expression include:

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<sup>32</sup> Malaysiakini, "Group wants Malaysian govt to lift moratorium on Sedition Act", [Online]. Available at: <https://www.malaysiakini.com/news/656755>.

<sup>33</sup> ARTICLE 19, "Malaysia: Communications and Multimedia Act", [Online]. Available at: <https://www.article19.org/resources/malaysia-communications-multimedia-act/>.

<sup>34</sup> New Straits Times, "Ministry to look into amending Communications and Multimedia Act section, said its Deputy Minister", [Online]. Available at: <https://www.nst.com.my/news/nation/2018/08/403504/ministry-look-amending-communications-and-multimedia-act-section-said>.

<sup>35</sup> The Edge Markets, "Gobind: Amendment to Communication and Multimedia Act completed", [Online]. Available at: <https://www.theedgemarkets.com/article/gobind-amendment-communication-and-multimedia-act-completed>.

<sup>36</sup> ARTICLE 19, "Malaysia: Government should respect human rights as it seeks UN Human Rights Council membership", [Online]. Available at: <https://www.article19.org/resources/malaysia-government-should-respect-human-rights-as-it-seeks-un-human-rights-council-membership/>.

<sup>37</sup> The Commissioner of Law Revision Malaysia, 'Public Authorities Protection Act 1948', [Online]. Available at: [https://lom.agc.gov.my/ilims/upload/portal/akta/output/pua\\_20210112\\_PUA%207.pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/output/pua_20210112_PUA%207.pdf).

<sup>38</sup> Free Malaysia Today, "Emergency lifted, so do fines come down? Not really", 27 July 2021, [Online]. Available at: <https://www.freemalaysiatoday.com/category/nation/2021/07/27/emergency-lifted-so-do-fines-come-down-not-really/>.

- i. The Printing Presses and Publications Act 1984 (PPPA). The PPPA has been used to suppress political opposition, ban books that may be critical of the government or considered blasphemous to Islam, and curtail freedom of expression in general. Section 7 of the law grants the Home Minister "absolute discretion" to ban or censor "undesirable publications" based on vaguely worded criteria.
- ii. Peaceful Assembly Act 2012. This law criminalises public assemblies where organisers fail to notify authorities in advance. It is particularly problematic for spontaneous assemblies. It has frequently been used to investigate and intimidate organisers of protests, often for their failure to provide authorities five days' notice prior to an assembly.<sup>39</sup>
- iii. The Film Censorship Act 2002 (FCA). The FCA 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. The Act has been used to suppress the distribution of films about religion and other topics.
- iv. Section 504 and 505(b) of the Penal Code. Section 504 criminalises 'intentional insult with intent to provoke a breach of the peace', and Section 505(b) criminalises 'statements conducing to public mischief'.<sup>40</sup> Both carry a penalty of up to two years imprisonment, a fine, or both.
- v. Section 114 of the Evidence Act 1950. Section 114 criminalises 'A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved'. Section 114(a) was introduced through an amendment to the Evidence Act in 2012. The section creates a presumption of fact regarding the identity of the individual responsible for a publication, including on online platforms.
- vi. Sections 298 of the Penal Code [on uttering words, etc., with deliberate intent to wound the religious feelings of any person]. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any

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<sup>39</sup> The Commissioner of Law Revision Malaysia, 'Peaceful Assembly Act 2012', [Online]. Available at: [http://www.federalgazette.agc.gov.my/outputaktap/20120209\\_736\\_BI\\_JW001759%20Act%20736%20\(BI\).pdf](http://www.federalgazette.agc.gov.my/outputaktap/20120209_736_BI_JW001759%20Act%20736%20(BI).pdf).

<sup>40</sup> Attorney General's Chambers Malaysia, 'Penal Code [Act 574]', [Online]. Available at: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>.

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.

- vii. Section 298A (1) of the Penal Code. [on causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on the 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.
- viii. *Fatwa*. *Fatwas* are religious edicts issued by the state *fatwa* committees, and overall, they are not legally binding. However, *fatwas* that are gazetted have the force of law. In 2014, a Selangor state *fatwa* was issued and gazetted against Sisters in Islam (SIS), a women's rights organization that promotes the advancement of Muslim women's rights in Malaysia. The *fatwa* declares SIS as deviant for subscribing to liberalism and religious pluralism. The *fatwa* has significantly impacted the work of SIS in being able to speak up freely and openly on issues related to Muslim women's rights and the rights of marginalised persons and communities. SIS has taken up the case for a judicial review in the civil courts, which is still ongoing for nine years.

There has been no progress in the period under review to revise or reform these laws.

### **Arrest, harassment and charges**

- 29. The submitting organisations are particularly concerned about the application of the laws cited above to criminalise the work of human rights defenders.
- 30. Despite the former government's commitment to conducting a study and reviewing the security laws, including the Sedition Act, the authorities aggressively applied the law, primarily against government critics. Since lifting the moratorium, officials have continued to initiate criminal proceedings under the Sedition Act.



31. In March 2019, the Sedition Act was once again deployed to investigate the organizers of an International Women's Day march that included participants from LGBTQI+ groups, citing the lack of a permit to hold the event.<sup>41</sup>
32. On 24 April 2021, Fahmi Reza, a well-known political cartoonist and graphic designer, was arrested under Section 4(1) of the Sedition Act and Section 233 of the CMA.<sup>42</sup> A group of police officers forcibly entered Fahmi's home, leaving a hole in his front door. Fahmi Reza was released after 24 hours of detention. Fahmi has faced repeated judicial harassment for his political activism.<sup>43</sup>
33. On 2 June 2021, Iswardy Morni, a Parti Keadilan Rakyat member, was charged under Section 4(1)(a) of the Sedition Act for statements made on Facebook deemed seditious and insulting towards the King. Iswardy was granted bail on the condition that he not comment on the case publicly.<sup>44</sup>
34. In April 2022, Johor police arrested a campaign worker for the opposition Democratic Action Party (DAP) for sedition in relation to his comments on a Facebook post that allegedly encouraged ethnic Indians not to vote for the Malaysian Indian Congress, a party that is part of the ruling coalition. He was released on police bail.<sup>45</sup>

## Internet freedom

35. Section 233 of the CMA, which provides criminal penalties for online communications that are "obscene, indecent, false, menacing offensive in nature with intent to annoy, abuse, threaten or harass a person," is particularly problematic and has often been used to prosecute those exercising their right to freedom of expression.
36. It was reported early this year, notably 444 cases had been opened for investigation under Section 233 of the CMA from 2020 till 23 January 2023. Approximately 38 cases were prosecuted, 31 cases include convictions, and seven more cases are still under trial.<sup>46</sup>
37. During the reporting period, Section 233 of the CMA has been used alongside Section 505(b) of the Penal Code and Sedition Act. It is common for authorities to use multiple laws to investigate individuals but for the investigation to result in charges under only one (if any)

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<sup>41</sup> ARTICLE 19, "Malaysia: Attacks on Women's Day march inconsistent with the government's stated commitment to fundamental freedoms", [Online]. Available at: <https://www.article19.org/resources/malaysia-attacks-on-womens-day-march-inconsistent-with-the-governments-stated-commitment-to-fundamental-freedoms/>.

<sup>42</sup> Royal Malaysian Police, Facebook post, 23 April 2023, [Online]. Available at: <https://facebook.com/photo.php?fbid=4190896127587329&id=161086313901684&set=pcb.4190896217587320&source=48>

<sup>43</sup> ARTICLE 19, "Malaysia: End investigations into satire artist", [Online]. Available at: <https://www.article19.org/resources/malaysia-end-investigations-satire-artist/>.

<sup>44</sup> ARTICLE 19, "Malaysia: Drop sedition charges", [Online]. Available at: <https://www.article19.org/resources/malaysia-drop-sedition-charges/>.

<sup>45</sup> Malaysiakini, "DAP man held under Sedition Act over 'don't vote MIC' video released", [Online]. Available at: <https://www.malaysiakini.com/news/617958>.

<sup>46</sup> Ministry of Communications and Multimedia Malaysia, "444 cases investigated under Section 233 of CMA since 2020 - Fahmi", [Online]. Available at: <https://www.kkd.gov.my/en/public/news/23552-444-cases-investigated-under-section-233-of-cma-since-2020-fahmi>.

law. Alleging criminality under numerous laws is a frequent intimidation tactic of the Malaysian authorities, creating a threatening environment that chills freedom of expression.<sup>47</sup>

38. From our recent research and monitoring, the CMA has been used to criminalise speech related to 3Rs (insulting race, religion and royalty), political institutions, implementation of COVID-19 or MCO measures, insulting national symbols, comments on race and 'fake news'.<sup>48</sup>
39. On February 2021, Fahmi Reza was charged twice under Section 233 of CMA for two of his satirical graphics.<sup>49</sup> Both the charges against Fahmi were eventually given a discharge not amounting to an acquittal (DNAA) by the Kuala Lumpur Sessions Court on 26 August 2022<sup>50</sup> and 14 October 2022.<sup>51</sup>
40. On 1 July, two individuals were called for questioning<sup>52</sup> over the film entitled 'Chili Powder and Thinner'.<sup>53</sup> The film depicts Malaysian police officers torturing and abusing individuals in custody. Anna Har, Freedom Film Network's (FFN) co-founder, and the animator Amin Landak were questioned at the Bukit Aman Malaysia Police Headquarters. The police also raided the house of the animator and the FFN office. Several laptops, a desktop, mobile phones, and network devices were confiscated as part of the investigation.<sup>54</sup>
41. On 24 February 2023, two secondary school students were arrested and detained overnight by the police after they criticised History exam papers for their Malaysian Certificate of Education (SPM) in a TikTok video.<sup>55</sup> The minors were investigated under Section 233 of the CMA and Section 14 of the Minor Offences Act 1995. They were released on 26 February 2023 under police bail.<sup>56</sup>

## Inclusion, diversity, and pluralism

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<sup>47</sup> ARTICLE 19, "Rights in Reverse: One Year Under the *Perikatan Nasional* Government in Malaysia", [Online]. Available at: <https://www.article19.org/resources/rights-in-reverse-one-year-under-the-perikatan-nasional-government-in-malaysia/>.

<sup>48</sup> ARTICLE 19, "Rights in Reverse: One Year Under the *Perikatan Nasional* Government in Malaysia", [Online]. Available at: <https://www.article19.org/resources/rights-in-reverse-one-year-under-the-perikatan-nasional-government-in-malaysia/>.

<sup>49</sup> ARTICLE 19, "Malaysia: Second criminal charge against artist Fahmi Reza this year", [Online]. Available at: <https://www.article19.org/resources/malaysia-second-criminal-charge-against-artist-fahmi-reza-this-year/>.

<sup>50</sup> Free Malaysia Today, "Fahmi Reza given DNAA over ex-health minister Adham's case", [Online]. Available at: <https://www.freemalaysiatoday.com/category/nation/2022/08/26/fahmi-reza-given-dnaa-over-ex-health-minister-adhams-case/>.

<sup>51</sup> Malay Mail, "Fahmi Reza gets discharge not amounting to an acquittal over obscene social media post", [Online]. Available at: <https://www.malaymail.com/news/malaysia/2022/10/14/fahmi-reza-gets-discharge-not-amounting-an-acquittal-over-obscene-social-media-post/33605>.

<sup>52</sup> Malaysiakini, "Cops probe two over animation on teen detainee's brush with police brutality", [Online]. Available at: <https://www.malaysiakini.com/news/581360>.

<sup>53</sup> FreedomFilmFest, "Chili Powder and Thinner - #IPCMCNow #StandWithFFN Human Rights Animation", [Online video]. Available at: <https://www.youtube.com/watch?v=96gXDBkHCbA>.

<sup>54</sup> Free Malaysia Today, "Cops raid Freedom Film Network's office, cartoonist's home", [Online]. Available at: <https://www.freemalaysiatoday.com/category/nation/2021/07/02/cops-raid-freedom-film-networks-office-cartoonists-home/>.

<sup>55</sup> New Straits Times, "Duo detained over viral video of student criticizing SPM History paper", [Online]. Available at: <https://www.nst.com.my/news/crime-courts/2023/02/883517/duo-detained-over-viral-video-student-criticising-spm-history-paper>.

<sup>56</sup> New Straits Times, "Teens detained over SPM History paper remarks released on police bail", [Online]. Available at: <https://www.nst.com.my/news/crime-courts/2023/02/883817/teens-detained-over-spm-history-paper-remarks-released-police-bai>.

## I. Race and religion

42. During its last UPR, the Malaysian government noted recommendations to strengthen national unity, promote inter-ethnic tolerance and respect, and enact anti-discrimination legislation.<sup>57</sup> The government also partially accepted<sup>58</sup> to make efforts in the framework of freedom of religion and belief. Still, it has also noted<sup>59</sup> many recommendations regarding freedom of religion and belief.
43. In its feedback, the government states it is in the process of gathering input from various stakeholders to legislate a National Harmony Bill. This bill aims to promote national harmony, unity, reconciliation and non-discrimination.<sup>60</sup> Many public statements and actions throughout the reporting period suggest the government is not pursuing these objectives. The government is increasingly interpreting laws, supporting policies, and disseminating rhetoric to precisely the opposite end.
44. In 2020, then National Unity minister under the *Perikatan Nasional* government told the parliament that the draft bill on the National Harmony and its Reconciliation Commission that will tackle racial sentiments will be discontinued, as existing laws are adequate to tackle the race and religion issues.<sup>61</sup> This decision contradicts UPR recommendations, partially accepted and noted, which called for specific and measurable improvements for freedom of religion or belief, minorities like LGBTQI+, migrants and refugees in Malaysia.
45. An official narrative of "national unity" is premised on suppressing difference, particularly regarding religion, ethnicity and nationality, and has manifested itself in deteriorating respect for pluralism, inclusion and diversity. The Ministry of Islamic Affairs and various religious authorities, such as the Malaysian Islamic Development Department (JAKIM), Selangor religious authorities (JAIS), and the National Fatwa Council, have taken on a more interventionist role in public discourse, reflecting a general trend of public officials manipulating religious, ethnic, and national identities for political objectives.
46. In March 2019, JAKIM invited the public to lodge complaints about any media content, including content on social media platforms, that insults the Prophet Muhammad or Islam.<sup>62</sup> JAKIM established a new unit to monitor complaints and refer them to the police and the MCMC for further action.<sup>63</sup>

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<sup>57</sup> Universal Periodic Review Recommendations Noted : 151.55 (Uruguay), 151.56 (Australia), 151.57 (South Africa).

<sup>58</sup> Universal Periodic Review Recommendation Partially Accepted: 151.134 (Iraq).

<sup>59</sup> Universal Periodic Review Recommendations: 151.127 (USA), 151.129 (Albania), 151.131 (Croatia), 151.132 (Haiti), 151.133 (Haiti).

<sup>60</sup> Report of working group on the Universal Periodic Review Malaysia Addendum: [Online]. Available at:

[https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/11/Add.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/11/Add.1).

<sup>61</sup> Malay Mail, "Minister: Existing laws in Malaysia adequate, National Harmony Commission Bill not needed", 5 August 2020, [Online].

Available at: <https://www.malaymail.com/news/malaysia/2020/08/05/minister-existing-laws-in-malaysia-adequate-national-harmony-commission-bil/1891354>.

<sup>62</sup> Tee, K., 'In Malaysia, special unit formed to monitor insults against Islam', Malay Mail, 7 March 2019, [Online]. Available at:

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

<sup>63</sup> Perimbanayagam, K., 'MCMC opens channel for offensive "race, religion and royalty" content', New Straits Times, 17 August 2019, [Online]. Available at: <https://www.nst.com.my/news/nation/2019/08/513634/mcmc-opens-channel-offensive-race-religion-and-royalty-content>.

47. In Malaysia, blasphemy provisions have essentially established a hierarchy of beliefs. Provisions found in Sections 295-298A Penal Code, Sedition Act, CMA, and PPPA have been used to enforce this hierarchy of beliefs.<sup>64</sup> The enforcement of these provisions has disproportionately impacted minority communities, political dissidents, atheists, religious scholars and others who express opinions that challenge dominant religious views.<sup>65</sup>
48. In early July 2022, Malaysian authorities arrested Siti Nuramira Abdullah and her partner, Alexander Navin Vijayachandran, in relation to a video of Siti performing at the Crackhouse Comedy Club, a stand-up comedy venue, where she took off her hijab and a *baju kurung*.<sup>66</sup> On 13 July, after a 4-day remand, authorities charged her under Section 298A(1)(a) of the Penal Code for insulting Islam. On April 2023, Siti pleaded guilty and was fined RM 8,000 (approximately USD 2000).<sup>67</sup>
49. On 14 July 2022, Rizal Van Geysel, a co-founder of the Crackhouse Comedy Club, was arrested under Section 4(1) of the Sedition Act and Section 233 of the CMA<sup>68</sup> for three videos of him performing stand-up comedy that touched on racial stereotypes. On 22 July, Rizal was charged with three counts under Section 233 of CMA.
50. On 23 June 2023, the MCMC issued a statement saying that it intends to take legal action against Meta for perceived inaction to remove allegedly harmful content, including that which involves race, royalty, and religion, along with defamation, impersonation, online gambling, and fraudulent advertisements. The MCMC has said that they've given numerous warnings to Meta but that the company's responses have not been satisfactory, thus necessitating further legal action to protect online users.<sup>69</sup>

## II. LGBTQI+ community

51. The government noted<sup>70</sup> all the recommendations related to recognizing LGBTQI+ rights. The government gave feedback that religion and culture influence how LGBTQI+ communities are viewed in Malaysia. There are claims that the community is not at risk of

<sup>64</sup> ARTICLE 19, 'Briefing Paper: Blasphemy Provisions in Malaysian Law', [Online]. Available at: <https://www.article19.org/resources/briefing-paper-blasphemy-provisions-in-malaysian-law/>.

<sup>65</sup> ARTICLE 19 & CIVICUS, 'New Government, Old Tactics: Lack of Progress on Reform Commitments Undermines Fundamental Freedoms and Democracy in Malaysia', [Online]. Available at: <https://www.article19.org/wp-content/uploads/2019/05/CIVICUS-New-Government-Old-Tactics-A4-v1.pdf>.

<sup>66</sup> YouTube, "MalaysiaGazette TV: *Wanita Hina Islam Direman #MGFlash*", 10 July 2022, [Online video]. Available at: <https://www.youtube.com/watch?v=gPl9tG4fe0w&t=9s>.

<sup>67</sup> New Straits Times, "Siti Nuramira fined RM8,000 for uttering words hurtful to others", [Online]. Available at: <https://www.nst.com.my/news/crime-courts/2023/04/900402/siti-nuramira-fined-rm8000-uttering-words-hurt-feelings-others>.

<sup>68</sup> Asyraf, F., 'Comedian Rizal van Geysel arrested over viral videos', Free Malaysia Today, 14 July 2022, [Online]. Available at: <https://www.freemalaysiatoday.com/category/nation/2022/07/14/comedian-rizal-van-geysel-to-be-remanded-over-viral-videos/>.

<sup>69</sup> ARTICLE 19, 'Malaysia: Halt legal action against Meta', [Online]. Available at: <https://www.article19.org/resources/malaysia-halt-legal-action-against-meta/>.

<sup>70</sup> Universal Periodic Review Recommendations Noted: 151.77 (Argentina), 151.78 (Austria), 151.79 (Canada), 151.80 (Chile), 151.81 (France), 151.82 (Germany), 151.83 (Ireland), 151.84 (Ireland), 151.85 (Netherlands).

discrimination. In reality, the situation causes more hostility and danger for the community to live in Malaysia.<sup>71</sup>

52. On 19 December 2020, the Home Ministry gazetted a prohibition order on two publications, titled "Gay is OK! A Christian Perspective," under Section 7(1) of the PPPA, effective 27 November 2020.<sup>72</sup> The Minister imposed the ban and claimed that the book's reproduction was likely prejudicial to public order, morality, and public interest. On February 2022, the Kuala Lumpur High Court quashed a ban imposed by the Minister of Home Affairs, the High Court found no evidence that the book was prejudicial to public order.<sup>73</sup> The government has appealed the decision and the case is still ongoing.<sup>74</sup>
53. On 29 October 2022, a private drag queen Halloween party, Shagrilla, was raided by the police and the Federal Territory Islamic Religious Department (JAWI). JAWI detained 20 Muslim, LGBTQI+ individuals, including drag queens, who were accused of cross-dressing. All 20 were released on the same night.<sup>75</sup>
54. On 7 January 2023, the new Prime Minister, Anwar Ibrahim, made a statement that has caused harm and threatened the safety of the LGBTQI+ community in Malaysia. He said that his Unity government would not recognize the LGBTQI+ communities and the idea of a secular state and communist ideology.<sup>76</sup>
55. On 13 and 14 May 2023, Malaysian authorities raided<sup>77</sup> 11 nationwide outlets belonging to the Swiss watchmaker Swatch and seized over 100 colourful watches from their 'Pride Collection'.<sup>78</sup> The Home Minister also allegedly issued warning notices to 5 other stores.<sup>79</sup> The raids and watch seizures were carried out under the PPPA.<sup>80</sup>

### III. Refugees and migrants

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<sup>71</sup> ABC News Australia, 'Malaysian transgender influencer Nur Sajat flees to Australia', 23 October 2021, [Online]. Available at: <https://www.abc.net.au/news/2021-10-23/malaysian-transgender-influencer-nur-sajat-flees-to-australia/100556448>.

<sup>72</sup> New Straits Times, 'Home Ministry bans two books, including 'Gay OK?', 2020, [Online]. Available at: <https://www.nst.com.my/news/nation/2020/12/650656/home-ministry-bans-two-books-including-gay-ok>.

<sup>73</sup> ARTICLE 19, 'Malaysia: High Court lifts ban on 'Gay is OK: A Christian Perspective'', [Online]. Available at: <https://www.article19.org/resources/malaysia-high-court-lifts-ban-on-gay-is-ok-a-christian-perspective>.

<sup>74</sup> Free Malaysia Today, 'Court of Appeal reserves judgment on 'Gay is OK' book ban', 18 May 2023, [Online]. Available at: <https://www.freemalaysiatoday.com/category/nation/2023/05/18/court-of-appeal-reserves-judgment-on-gay-is-ok-book-ban/>.

<sup>75</sup> SAYS, 'It was traumatising': PDRM, Jawi raided a private drag queen Halloween party at REXKL, [Online]. Available at: <https://says.com/my/news/it-was-traumatising-pdrm-jawi-raided-a-private-drag-queen-halloween-party-at-rexkl>.

<sup>76</sup> Malay Mail, 'PM Anwar: LGBT, secularism, communism will never be recognised in unity govt', 7 January 2023, [Online]. Available at: <https://www.malaymail.com/news/malaysia/2023/01/07/pm-anwar-lgbt-secularism-communism-will-never-be-recognised-in-unity-govt/48847>.

<sup>77</sup> Malay Mail, 'Home Ministry seizes Pride collection from Swatch stores in Malaysia over LGBTQ rainbow', 22 May 2023, [Online]. Available at: <https://www.malaymail.com/news/malaysia/2023/05/22/home-ministry-seizes-pride-collection-from-swatch-stores-in-malaysia-over-lgbtq-rainbow/70458>.

<sup>78</sup> Reuters, 'Rainbow Swatch watches confiscated by Malaysia: company', 24 May 2023, [Online]. Available at: <https://www.reuters.com/world/asia-pacific/rainbow-swatch-watches-confiscated-malaysia-company-2023-05-24/>.

<sup>79</sup> New Straits Times, 'Home Ministry seizes rainbow-themed watches from Swatch boutiques', [Online]. Available at: <https://www.nst.com.my/news/nation/2023/05/912228/home-ministry-seizes-rainbow-themed-watches-swatch-boutiques>.

<sup>80</sup> SAYS, 'Home Ministry raids 11 Swatch stores, seize Pride collection watches', [Online]. Available at: <https://says.com/my/news/home-ministry-raids-11-swatch-stores-seize-pride-collection-watches>.

56. During the beginning of the COVID-19 pandemic, starting in the third week of April 2020, hateful messages targeting the Rohingya community in Malaysia have proliferated on social media platforms. Many posts included discriminatory and dehumanising language and images and called for Rohingya in Malaysia to be forcibly returned to Myanmar. Numerous online petitions calling for the expulsion of Rohingya were published on Change.org and other platforms. Some petitions garnered thousands of signatures. Online users threatened prominent Rohingya activists and their supporters with physical attacks, murder and sexual violence.<sup>81</sup>
57. On 20 April 2022, the incident of the escape of 528 detainees<sup>82</sup> from the Sungai Bakap Immigration Detention Depot, followed by the government's perpetuation of malicious narratives against Rohingya refugees,<sup>83</sup> raises urgent concerns about the government's commitment to protecting human rights, including the rights to equality and non-discrimination. The reckless and discriminatory comments<sup>84</sup> by Hamzah Zainudin, the then Minister of Home Affairs, including a senseless call for refugees to leave Malaysia 'if they want freedom', likely contributed to the wave of hate speech towards Rohingya refugees that circulated on social media.<sup>85</sup>

## Freedom of assembly

58. During its last UPR, the Malaysian government fully accepted two recommendations on revising the law and partially accepted four recommendations that called for reviewing the law with several other laws.<sup>86</sup>
59. While the authorities have facilitated assemblies, including protests against the government, concerns remain in the period under review.
60. The Peaceful Assembly Act (PAA) was amended in July 2019, removing provisions that make street protests a crime.<sup>87</sup> Further, organisers of assemblies or street protests now only need to notify the police officer in charge of a district (OCPD) five days before the event instead

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<sup>81</sup> ARTICLE 19, 'Malaysia: ARTICLE 19 and partner organisations urge Malaysia Prime Minister to respond to hate speech against the Rohingya', [Online]. Available at: <https://www.article19.org/resources/malaysia-article-19-and-partner-organisations-urge-malaysia-prime-minister-to-respond-to-hate-speech-against-the-rohingya/>.

<sup>82</sup> The Sun Daily, '528 Rohingya detainees escape immigration depot in Penang', [Online]. Available at: <https://www.thesundaily.my/local/528-rohingya-detainees-escape-immigration-depot-in-penang-GN9096778>.

<sup>83</sup> Malaysiakini, "'Ill-treated' refugees should leave M'sia if they want freedom: Hamzah", [Online]. Available at: <https://www.malaysiakini.com/news/619085>.

<sup>84</sup> Malaysiakini, "'Ill-treated' refugees should leave M'sia if they want freedom: Hamzah", [Online]. Available at: <https://www.malaysiakini.com/news/619085>.

<sup>85</sup> Immigration Department Malaysia, Facebook post, 4 March 2022, [Online]. Available at: <https://www.facebook.com/imigresen/posts/296222986022667>.

<sup>86</sup> Universal Periodic Review Recommendations: Fully accepted - 151.143 (Georgia) and 151.147 (Czechia); Partially accepted - 151.137 (USA), 151.141 (Spain), 151.146 (Lithuania) and 151.146 (Switzerland).

<sup>87</sup> Zainuddin, A. & Kaur, D., 'Parliament passes bill to decriminalise street protests', The Malaysian Reserve, 5 July 2019, [Online]. Available at: <https://themalaysianreserve.com/2019/07/05/parliament-passes-bill-to-decriminalise-street-protests/>.

of the previous ten-day notification period.<sup>88</sup> However, the PAA still lacks an exception to the notice requirement for spontaneous assemblies where it is not practicable to give advance notice.

61. The PAA has been frequently applied against activists and other public protesters in contravention of international human rights law. Such applications of the law include the following:

- i. Following the breakup of the Pakatan Harapan ruling coalition in February 2022, several protests were held to condemn the new government. On 1 March 2020, 100 protesters defied police warnings and rallied against the appointment of the new Prime Minister. Police reportedly opened investigations into at least 20 of the protesters for potential violations of the PAA.<sup>89</sup>
- ii. On 2 June 2020, police arrested five protesters who had gathered outside a hospital in Ipoh to highlight concerns about cleaners working in state-run hospitals. Those arrested include human rights defender Sarasvathy Muthu and members and supporters of the National Union of Workers in Hospital Support and Allied Services (NUWHSAS).<sup>90</sup>
- iii. *Sekretariat Solidariti Rakyat* or People's Solidarity Secretariat (SSR), announced that it would be organising a protest at the Dataran Merdeka on 31 July to protest against *the Perikatan Nasional's* administration and its COVID-19 response.<sup>91</sup> The intimidation against the #Lawan organisers began since then.<sup>92</sup> Many, especially the organising team, was arrested, detained and harassed by the police before, during after the rally. The police visited the houses of the organisers to summoned them for investigation.<sup>93</sup>
- iv. On 19 August 2021, Malaysian authorities arrested 31 protesters that attended a candlelight vigil organised by *Sekretariat Solidariti Rakyat* under the #Lawan banner to mourn the lives taken by COVID-19.<sup>94</sup>
- v. On 18 August 2022, two members of different political opposition parties (Hasbie Muda and Sabda Suluh Lestari Yahya) and a student activist (Aliff Naif Mohd Fizam) were charged under Section 9(5) of PAA for each organising a protest in July against

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<sup>88</sup> Carvalho, M. et al., 'Amendments to PAA passed, heads-up time reduced from seven days to five', *The Star*, 4 July 2019, [Online]. Available at: <https://www.thestar.com.my/news/nation/2019/07/04/amendments-to-paa-passed-heads-up-time-reduced-from-seven-days-to-five>.

<sup>89</sup> ARTICLE 19, 'Malaysia: End harassment of civil society and peaceful protesters', 5 March 2020, [Online]. Available at: <https://www.article19.org/resources/malaysia-end-harassment/>.

<sup>90</sup> ARTICLE 19, 'Malaysia: End harassment of union workers and peaceful protesters', [Online]. Available at: <https://www.article19.org/resources/malaysia-end-harassment-of-union-workers-and-peaceful-protesters/>.

<sup>91</sup> FMT reporters, 'Come out and protest against govt's failure, people urged', *Free Malaysia Today*, 21 July 2021, [Online]. Available at: <https://www.freemalaysiatoday.com/category/nation/2021/07/21/come-out-and-protest-against-govts-failure-people-urged/>.

<sup>92</sup> ARTICLE 19, 'Malaysia: Government must stop harassment and intimidation of peaceful protesters', [Online]. Available at: <https://www.article19.org/resources/malaysia-government-must-stop-harassment-intimidation-peaceful-protesters/>.

<sup>93</sup> ARTICLE 19, 'Malaysia: Police visits to homes of peaceful protesters excessive', [Online]. Available at: <https://www.article19.org/resources/malaysia-police-visits-to-homes-peaceful-protesters-excessive/>.

<sup>94</sup> ARTICLE 19, 'Malaysia: Arrest of vigil attendees the government's latest harassment against LAWAN protesters', [Online]. Available at: <https://www.article19.org/resources/malaysia-arrest-vigil-attendees-governments-latest-harassment-against-lawan-protesters/>.

the rise in the price of goods. All 3 were released on bail of RM 3,000 to RM 7,000 (approximately USD 750 – 1,750).<sup>95</sup>

## Media Freedom and censorship

62. During the last UPR, Malaysia "fully accepted" recommendations to "take steps to ensure a free, independent, pluralistic and diverse media landscape, including by reducing political influence on media outlets"<sup>96</sup> and partially accepted to "create a safe and enabling environment"<sup>97</sup> but no progress was made in terms of legislative changes to foster a better environment for the media in Malaysia.
63. In June 2020, Attorney General Idrus Harun filed an ex-parte application to initiate contempt of court proceedings against *Malaysiakini* and *Malaysiakini's* Editor-in-Chief Steven Gan over third-party comments made by its readers under an article titled 'CJ orders all courts to be fully operational from 1 July'.<sup>98</sup> On 19 February 2021, the Federal Court announced its verdict, convicting *Malaysiakini* and handing down a fine of RM 500,000 (approximately USD 124,000). On the same day, the court acquitted *Malaysiakini's* editor-in-chief. The Federal Court relied on Section 114A of the Evidence Act to make its ruling to demonstrate *Malaysiakini's* responsibility for user-generated content posted on its website.
64. On 3 July 2020, *Al Jazeera* released a 25-minute documentary entitled 'Locked Up in Malaysia's Lockdown.' The documentary reported on the arrests of undocumented migrant workers during the COVID-19 pandemic. On 10 July 2020, several *Al Jazeera* journalists involved in producing the documentary were questioned at the Bukit Aman police headquarters.<sup>99</sup> The national police chief justified the probe by saying the report had 'sparked public anger'.<sup>100</sup> On 4 August 2020, police raided *Al Jazeera's* office and seized two computers.<sup>101</sup>
65. The media have also faced significant obstacles in accessing information while reporting the COVID-19 pandemic. At times, access to press conferences has been limited to certain media outlets. On 6 April 2020, for example, the Prime Minister's Corporate Communication Unit issued a press invitation to a briefing on the outcome of a special Cabinet meeting in relation to the MCO. In the press invitation, only the government news outlets *BERNAMA* and Radio TV Malaysia (RTM) were invited to cover the live press conference.<sup>102</sup>

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<sup>95</sup> Free Malaysia Today, '2 politicians, activist charged over protests against price hikes', 18 August 2022, [Online]. Available at: <https://www.freemalaysiatoday.com/category/nation/2022/08/18/2-politicians-activist-charged-over-protests-against-price-hikes/>.

<sup>96</sup> Universal Periodic Review Recommendation: Fully accepted - 151.139 (Austria).

<sup>97</sup> Universal Periodic Review Recommendation: Partially accepted - 151.149 (Ireland).

<sup>98</sup> Malaysiakini, 'CJ orders all courts to be fully operational from July 1', 9 June 2020, [Online]. Available at: <https://www.malaysiakini.com/news/529385>.

<sup>99</sup> Al Jazeera, 'Al Jazeera journalists questioned over Malaysia documentary', 10 July 2020, [Online]. Available at: <https://www.aljazeera.com/news/2020/7/10/al-jazeera-journalists-questioned-over-malaysia-documentary>.

<sup>100</sup> Associated Press, 'Malaysian police grill Al Jazeera over report on immigrants', 10 July 2020, [Online]. Available at: <https://www.msn.com/en-gb/news/world/malaysian-police-grill-al-jazeera-over-report-on-immigrants/ar-BB16zyks>.

<sup>101</sup> Royal Malaysian Police, Facebook post, 4 August 2020, [Online]. Available at: <https://www.facebook.com/161086313901684/posts/3439676222709327/>.

<sup>102</sup> *Jemputan Media, Nota Kepada Pengarang Jabatan Perdana Menteri*, 6 April 2020, [Online]. Available at: <https://drive.google.com/file/d/17MSXSfe8QxmHco2Cks2bZ8q-tOclhWg/view>.



66. Film censorship also remains a concern. In March 2023, an independent film *Mentega Terbang* (Butter-fly), was banned because the film explores themes surrounding religion, grief, death, the afterlife, and existentialism. The actors, film, and production crew are all facing backlash following the more extensive visibility gained after its release on 19 January 2023 by the Asian streaming platform Viu. The attack against the filmmakers and actors ended with death and physical threats against them. On 6 March, Malaysia National Film Development Corporation (Finas) chief executive Md Nasir Ibrahim said that the probe is conducted according to the Finas Act 1981, especially regarding film production regulations.<sup>103</sup>

## Recommendations

The submitting organisations call on States to recommend the Malaysian government:

- Sign and ratify the ICCPR, and all other major international human rights treaties;
- Issue a standing invitation to all Special Procedures of the UN Human Rights Council, and prioritise arranging 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;
- Reform Article 10(a) of the Malaysian Constitution to bring it into conformity with international human rights law;
- Bring national laws into compliance with international human rights law, including the right to freedom of opinion expression, by repealing or reforming the Sedition Act 1948, the Printing Presses and Publications Act 1984, the Film Censorship Act 2002 and Section 114 of the Evidence Act 1950.
- Reform the Penal Code to protect the right to freedom of opinion and expression, including by repealing Sections 504 and 505(b), 298 and 298A (1) of the Penal Code;
- Cease the judicial harassment of persons, in particular journalists, social media users, human rights defenders, artists and cultural performers, for exercising their rights to freedom of expression, freedom of peaceful assembly and of association, and 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 Communications and Multimedia Act 1998 (CMA), including repealing Section 233(1)(a);
- Protect the right to freedom of peaceful assembly by repealing the Peaceful Assembly Act 2012;

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<sup>103</sup> The Vibes, 'Probe into *Mentega Terbang* not about content, but production: FINAS CEO', [Online]. Available at: <https://www.thevibes.com/articles/news/86990/probe-into-mentega-terbang-not-about-content-but-production-finas-ceo>.

- Develop, with the full and effective participation of civil society, a national action plan to promote inclusion, diversity and pluralism, including by implementing HRC Resolution 16/18 and the Rabat Plan of Action;
- 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, including by reforming the Penal Code and federal and regional Syariah Laws and by lifting bans on publications issued under those laws;
- 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 comprehensive anti-discrimination legislation to protect individuals at risk of discrimination, including on the grounds of ethnicity, nationality, religion or belief, or sexual orientation or gender identity;
- Enact a Federal Law guaranteeing the right of access to information in line with international human rights standards, including the principle of maximum disclosure in the public interest, and ensure that it is fully implemented;
- Ensure that any processes to review and reform legislation are fully transparent and ensure the full and effective participation of all concerned stakeholders, including civil society.