

Malaysia: Drop the charges against the filmmakers of Mentega Terbang

17 January 2024

We, the undersigned nine human rights organizations that defend freedom of opinion and expression, condemn the criminal charges against the filmmakers of Mentega Terbang¹. On 17 January, the film's producer, Tan Meng Kheng, and director, Khairi Anwar Jailani, were [charged](#) under Section 298 of the Penal Code for 'hurting religious feelings', a blasphemy provision at the Kuala Lumpur Magistrate's Court. Khairi Anwar was fined RM 6,000 (approximately USD 1270), and the court ordered him to report to the police station monthly. Meanwhile, Tan Meng was fined RM 6,500 (approximately USD 1380). They both were ordered not to comment publicly about the case pending disposal of their cases. They were released under bail, and the next case hearing is fixed on 14 March 2024.

The film was banned in September 2023 under Section 26 of the Film Censorship Act (2002) on the ground that it is 'contrary to the public interest,' two years after its release in 2021. From early 2023, the filmmakers suffered a [distressing witch hunt](#) and faced threats from the State, non-State actors, and [social media users](#). Instead of protecting their safety and right to expression, the State now threatens them with legal action. The producer and director have filed a [legal challenge](#) against the ban in December 2023.

Section 298 of the Penal Code makes the insult of any religion a criminal offence. Monitoring of human rights violations shows that these provisions are largely used against those deemed to have allegedly insulted Islam. The enforcement of these provisions has had a disproportionate and negative impact on minority communities, [political dissidents](#), atheists, [comedians](#), artists, religious scholars, and others who express opinions and oftentimes, merely a reflection of lived realities on the ground, and especially as a response to questionable actions by those who wield power.

¹ "Mentega Terbang" which was released on streaming site in 2021 tells the story of 15-year-old Aishah as she struggles with questions about life after death in various religions when faced with her mother's terminal illness. Conservative groups complained that the film went against Islamic religious doctrine.

While Malaysia is not a party to the International Covenant on Civil and Political Rights (ICCPR), Article 19(2) of the ICCPR is considered part of customary international law and therefore binding upon Malaysia.

In [General Comment 34](#) on Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee stated clearly that blasphemy laws are incompatible with the right to freedom of expression except in specific circumstances laid out under Article 20(2) of the ICCPR, such as when the speech or expression in question constitutes incitement to discrimination, hostility or violence. 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 freedom of expression, thought, and religion. Such prejudice can result in devastating consequences for society.

Human rights law holds that restrictions on the freedom of expression placed by the State are permitted only if provided by law and in pursuit of a legitimate aim. Measures taken by the State must be necessary and proportionate to that aim.

In her [report](#) to the Human Rights Council after the visit to Malaysia in 2017, the Special Rapporteur in the field of cultural rights found that ‘there is an urgent need to review and clarify the criteria for censorship of books and films and to make the decision-making process more transparent so as to guarantee freedom of artistic expression’. She also stressed that ‘the government of Malaysia needs to develop concrete plans to guarantee freedom of artistic expression’ and encouraged the government to ‘support a diversity of spaces and platforms for people to engage meaningfully with one another about culture, including in relation to issues upon which they do not agree.’

Freedom of artistic expression is an essential component of nation-building and in fostering a culture that celebrates creativity. We call upon the government to

1. Immediately and unconditionally, drop the charges against Tan and Khairy. We also urge the Madani government to end the criminalisation of religious offence and the use of other vague provisions in the law to curtail freedom of expression and artistic freedom in Malaysia.

2. It is time for the government to adopt a comprehensive and evidence-based national implementation plan on Human Rights Council Resolution 16/18 and the Rabat Plan of Action to promote inclusion and implement measures to guarantee equal and effective protection of the law while respecting the right to freedom of expression.
3. In addition, we urge the Malaysian government to repeal or amend all laws restricting freedom of expression in Malaysia, including the Sedition Act, Film Censorship Act, Communication and Multimedia Act (CMA), Printing Presses and Publications Act (PPPA), Sections 504 and 505(b), and Sections 298 and 298A (1) of the Penal Code, and to ensure that they comply with international human rights laws and standards.
4. During the upcoming 4th Universal Periodic Review (UPR) session at the Human Rights Council in Geneva in January 2024, the government has another opportunity to renew its commitments to human rights protection by signing and ratifying the International Covenant on Civil and Political Rights (ICCPR), and all other major international human rights treaties.

Signatories

1. ARTICLE 19
2. Amnesty International Malaysia (AIM)
3. Centre for Independent Journalism (CIJ)
4. Freedom Film Network (FFN)
5. Gerakan Media Merdeka (Geramm)
6. Justice for Sisters (JFS)
7. KRYSS Network
8. Sisters In Islam (SIS)
9. Suara Rakyat Malaysia (SUARAM)