

Executive Summary

1. The submitting organisations observe that the situation for freedom of expression has deteriorated since Malaysia's last Universal Periodic Review in 2013.¹ In this submission, we address developments during this time period in the following areas:
 - International commitments;
 - Legal framework;
 - Arrests, prosecutions and official harassment;
 - Internet freedoms;
 - Inclusion, diversity and pluralism;
 - Freedom of peaceful assembly;
 - Media freedom; and
 - Access to information.
2. In Malaysia, the government closely controls the flow of information. Topics that are considered taboo are frequently censored, and criticism of the government and royal family repressed. Social media users, artists, human rights defenders, journalists and protesters are often targeted for prosecution, in particular after raising concerns about government corruption, including on online platforms.
3. The application of broad and vaguely-worded criminal laws which do not comply with international human rights law continue to be the government's primary means to limit dissent. Arrests, prosecutions, and censorship punctuate the period under review, with a notable increase since 2015 in the application of the Communication and Multimedia Act 1998 (CMA) against those exercising their right to freedom of expression.
4. 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 coming from private actors, often in the name of protecting religion.

International commitments

5. During its last UPR, Malaysia "accepted in principle" numerous recommendations that it consider ratification of the International Covenant on Civil and Political Rights (ICCPR),² rejecting more explicit calls for ratification.³ No progress has been made on this front.
6. We welcome the official visit of the UN Special Rapporteur in the field of cultural rights to the country, and share the concerns outlined in her initial observations.⁴ We regret that in the period since Malaysia's last UPR, a standing invitation has not been issued to all special procedures.⁵ A visit request from the Special Rapporteur on freedom of opinion and expression has been pending since 2014, and no invitation has been extended to the Special Rapporteur on the right to freedom of peaceful assembly and of association.⁶
7. The submitting organisations are seriously concerned that, ahead of Malaysia's second UPR in 2013, the Department of Islamic Development Malaysia endorsed criticism of the Coalition of Malaysian NGOs (COMANGO) for submitting information to the UPR that "threaten[ed] Islam as the religion of Malaysia" and "threaten[ed] the sovereignty of Malaysia."⁷ Many of the same concerns raised by COMANGO and others in 2013 are again raised in this submission. We urge OHCHR and the Presidency of the Human Rights Council to pre-emptively address concerns around potential reprisals of this nature with the Malaysian government.

Legal framework

¹ All UPR Recommendations and responses to them cited in this submission are taken from the outcome of the 2nd cycle, as reflected with the Addendum (A/HRC/25/10/Add.1) and Corrigendum (A/HRC/25/10/Add.1/Corr.1).

² Recommendations "accepted in principle": 146.1 (Spain); 146.5 (Latvia); 146.9 (Uruguay); 146.11 (Algeria); 146.20 (Tanzania); 146.22 (Egypt); 146.24 (Slovakia).

³ Recommendations "not supported": 146.3 (Italy, Chad, Kazakhstan); 146.4 (Poland); 146.6 (Sierra Leone, Benin, Australia, Brazil, Maldives, Switzerland, Albania, Finland, Hungary, Ecuador); 146.8 (Czech Republic, France, Costa Rica).

⁴ "Preliminary observations by the United Nations Special Rapporteur in the field of cultural rights Karima Bennouna at the end of her visit to Malaysia", OHCHR, 21 September 2017; available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22121&LangID=E>

⁵ Recommendations "partially accepted": 146.39 (Latvia); Recommendations "not supported": 146.40 (Japan); 146.41 (Uruguay); 146.42 (Costa Rica, Guatemala, Montenegro, Hungary, Poland); 146.46 (Denmark).

⁶ Recommendation "fully supported": 146.44 (Brazil) 146.45 (Bulgaria); Recommendation "not supported": 146.209 (Switzerland).

⁷ Coalition of Malaysia NGOs, "Malaysia Universal Periodic Review: The COMANGO Report", 24 October 2013; available at: http://www.wao.org.my/news_details.php?nid=309&ntitle=Comango+Report+on+UPR

8. During its last UPR, the Malaysian government “fully supported” a recommendation to “continue” efforts at enhancing or encouraging the exercise to the rights to freedom of expression, peaceful assembly and association.⁸ However, with the exception of the Sedition Act 1948,⁹ all specific recommendations to repeal or revise legislation unjustifiably infringing freedom of expression were rejected, revealing the extent to which the government is resistant to reform in this field.¹⁰
9. While Article 10(a) of the **Federal Constitution of Malaysia** guarantees the right to freedom of expression, it remains at odds 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 the right.
10. **The Sedition Act** was amended in 2015,¹¹ removing some offences while increasing penalties for others, contradicting Prime Minister Najib Razak’s 2012 promise to repeal it entirely,¹² and commitments made during the last UPR to do the same.
11. Changes to the legislation through the 2015 revisions included:¹³
 - The removal of the government and judiciary, and the addition of “religion”, as protected institutions;
 - The amendment of language concerning offences to expressly include electronic communications;
 - The increase of custodial sentences to between three and seven years for repeat offenders from a previous maximum sentence of five years;
 - The creation of a new offence of “aggravated sedition”, with sentences between five and 20 years.
12. On 25 November 2016, in the case of Sri Muda State Assemblyperson, Mat Suhaimi Shafiei, the Court of Appeal struck down Section 3(3) of the Sedition Act 1948, stating that it contravenes Article 10 of the Federal Constitution, which protects freedom of expression, and therefore is invalid and unenforceable.¹⁴ However, on 8 January 2018, the Federal Court set aside the Court of Appeal ruling, permitting the continued use of Section 3(3) of the Sedition Act.¹⁵ Sedition cases involving cartoonist Zunar, Socialist Party Central Committee member Arutchelvan, parliamentarian N. Surendran and human rights lawyer Eric Paulsen are still pending in lower courts after the Federal Court ruling.
13. Since 2016, the CMA, analyzed below, has overtaken the Sedition Act 1948 as the primary law being used to prosecute individuals exercising their right to freedom of expression.
14. Other laws used to unjustifiably restrict the right to freedom of expression include:
 - **The Printing Presses and Publications Act 1984** (PPPA). The PPPA has been used to suppress political opposition, to ban books that may be critical of the government or considered to be blasphemous to Islam, and to curtail freedom of expression in general. Section 7 of the law grants the Home Minister “absolute discretion” to ban or censor “undesirable publications” based on vaguely worded criteria.
 - **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 and, as described below, was in 2017 used to convict a human rights defender who hosted a film screening.
 - **The Official Secrets Act 1972** (OSA). The OSA is a broadly-worded law that entrenches a culture of secrecy in all matters relating to public administration. The law contains numerous prohibitions backed by severe criminal sanctions, and gives state authorities prerogative to withhold an expansive range of information from public view without judicial scrutiny.

⁸ Recommendations “fully supported”: 146.163 (Indonesia).

⁹ Recommendations “accepted in principle”: 146.48 (United Kingdom); 146.49 (Australia).

¹⁰ Recommendations “not supported”: 146.36 (Slovakia); 146.47 (New Zealand); 146.50 (Austria); 146.157 (Czech Republic); 146.158 (Poland); 146.159 (Denmark); 146.162 (United States of America).

¹¹ “Sedition Act amendments passed, granting authorities wider powers”, The MalayMail Online, 10 April 2015; available at:

<http://www.themalaymailonline.com/malaysia/article/sedition-act-amendments-passed-granting-authorities-wider-powers>

¹² The recommendations of the United Kingdom and Australia to repeal the law were “noted” during the last UPR.

¹³ “What you need to know about the Sedition Act”, The MalayMail Online, 10 April 2015; available at:

<http://www.themalaymailonline.com/malaysia/article/what-you-need-to-know-about-the-amended-sedition-act>

¹⁴ “Prosecution must prove intention in sedition cases, court rules”, Malaysiakini, 25 November 2016; available at:

<https://www.malaysiakini.com/news/364132>

¹⁵ “2016 landmark decision on sedition quashed”, The Star Online, 9 January 2018; available at:

<https://www.thestar.com.my/news/nation/2018/01/09/2016-landmark-decision-on-sedition-quashed-federal-court-element-of-intention-not-necessary-to-secu/>

- **Security Offences (Special Measures) Act 2012 (SOSMA)**. SOSMA empowers police to arrest without a warrant persons suspected of “security offenses” and to detain them for up to 28 days without charge. In a 2016 case described below, SOSMA was used to detain a prominent leader of a mass protest movement.
- **Penal Code Section 186**, which provides a penalty of up to two years’ imprisonment for “obstructing public servant in discharge of his public functions”. Section 186 has frequently been used to prosecute individuals peacefully exercising their right to freedom of assembly.
- **Penal Code Section 505(b)**, which provides a penalty of up to two years’ imprisonment for “statements conducing to public mischief”. Section 505(b) has been used to prosecute individuals reporting on human rights concerns or other matters of public interest.
- **Penal Code Section 124B**, which provides a penalty of up to 20 years’ imprisonment for “activity detrimental to parliamentary democracy”. Section 124B’s vaguely worded prohibition of activities “directly or indirectly” impacting parliamentary democracy facilitates targeted persecution of government critics, and has been used to prosecute individuals protesting in or near Parliament or other government buildings.

15. There has been no effort in the period under review to revise these laws.

Arrests, Prosecutions and Official Harassment

16. The submitting organisations are particularly concerned about the application of the above laws to criminalise the work of human rights defenders.¹⁶

17. Cartoonist Zunar currently faces nine charges under the Sedition Act and up to 43 years imprisonment in relation to a series of tweets criticizing the Federal Court’s decision to convict opposition leader Anwar Ibrahim of sodomy in February 2015.¹⁷ Zunar’s cartoons have also been censored by government authorities: in October 2017, the Home Ministry exercised powers under the PPPA to ban Zunar’s book, “Sapuman: Man of Steal”, stating that its cartoons were deemed prejudicial to public order.¹⁸

18. On 19 November 2016, the day of the BERSIH 5 rally calling for clean elections, Maria Chin Abdullah, chairperson of the BERSIH 2.0 coalition, was detained under SOSMA.¹⁹ Maria was kept in solitary confinement for ten days before being released without any charges filed against her.²⁰

19. On 13 October 2015, Socialist Party activist Khalid Ismath was charged with 11 violations of Section 233 of CMA and three violations of the Sedition Act in relation to social media postings concerning the Johor royal family.²¹ He was detained for 22 days before the court released him on interim bail on 29 October 2015.²² He is currently awaiting trial before the lower court.

20. A concerning development in the period under review has been the use of travel bans against outspoken critics. On several occasions, local activists have been prohibited from leaving Malaysia while those from other countries have not been allowed to enter.²³ Those targeted with travel bans include opposition MP Tony Pua, civil society activist Dato Ambiga Sreenevasan, BERSIH 2.0 chairperson Maria Chin Abdullah, activists Hishamuddin Rais and Adam Adli, cartoonist Zunar and artist Fahmi Reza. Opposition politicians including Nurul Izzah Anwar,²⁴ Arutchelvan,²⁵ and Datuk Dr Jeffrey Kitingan,²⁶ as well as civil society activists such as Mandeep Singh,²⁷ are currently barred from travelling between West (Peninsular) and East (Sabah and Sarawak) Malaysia. The use of travel bans for political purposes was

¹⁶ We note with concern that no recommendations were made regarding human rights defenders during the 2nd UPR cycle for Malaysia.

¹⁷ “Cartoonist Zunar charged with nine counts of sedition”, The Star Online, 3 April 2015; available at:

<https://www.thestar.com.my/news/nation/2015/04/03/zunar-sedition-9-counts/>

¹⁸ “High Court grants cartoonist Zunar leave for judicial review of book ban”, The Star Online, 12 February 2018; available at:

<https://www.thestar.com.my/news/nation/2018/02/12/high-court-grants-cartoonist-zunar-leave-for-judicial-review-of-book-ban/>

¹⁹ “Marian Chin’s detention under Sosma is in accordance with the law says AG”, The MalayMail, 25 November 2016; available at:

<http://www.themalaymailonline.com/malaysia/article/maria-chins-detention-under-sosma-is-in-accordance-with-the-law-says-ag>

²⁰ “Maria Chin released after 10-day detention”, Malaysiakini, 28 November 2016; available at: <https://www.malaysiakini.com/news/364446>

²¹ “Activist slapped with 14 charges for posting on Johor Royalty”, Malaysiakini, 13 October 2015; available at:

<https://www.malaysiakini.com/news/315569>

²² “Activist Khalid Ismath granted interim bail”, Free Malaysia Today, 29 October 2015; available at:

<http://www.freemalaysiatoday.com/category/nation/2015/10/29/activist-khalid-ismath-granted-interim-bail/>

²³ “Joint Statement Malaysia: Cease Arbitrary Detention and Deportation of Human Rights Defenders”, SUARAM and others, 28 July 2017; available at:

<https://www.suaram.net/Draconian/travel-ban/>

²⁴ “Nurul Izzah barred from entering Sarawak”, The Sundaily, 6 December 2015; available at: <http://www.thesundaily.my/news/1630332>

²⁵ “PSM’s Arutchelvan barred from Sarawak”, The Star, 12 May 2016; available at: <https://www.thestar.com.my/news/nation/2016/05/12/psm-arul-barred-sarawak/>

²⁶ “Jeffrey Kitingan barred from entering Sarawak”, The Star Online, 11 March 2017; available at:

<https://www.thestar.com.my/news/nation/2017/03/11/jeffrey-kitingan-barred-from-entering-sarawak/>

²⁷ Bersih’s Mandeep barred from entering Sarawak”, Malaysiakini, 15 February 2016; available at: <https://www.malaysiakini.com/news/330481>

admitted in 2017 by Deputy Home Minister Nur Jazlan Mohamad, who framed overseas travel as “a privilege and not a right.”²⁸

Internet Freedom

21. During the last UPR, the Malaysia government did not support recommendations specific to addressing legislation restrictive of online freedoms, or more generally to protect freedom of expression online.²⁹
22. Nevertheless, responding to an increase in internet penetration levels in the period under review, the Malaysian government has sought to extend its control over online information flows, social media usage, and online dissemination of news relating to matters in the public interest. Arrests and prosecutions relating to online expression, as well as efforts to block online content, contradict official government commitments to avoid Internet censorship, as guaranteed in the Article 7 of the Multimedia Super Corridor’s Bill of Guarantees,³⁰ and under Section 3(3) of the CMA.³¹
23. Since 2016, the CMA, which does not comply with international human rights law,³² has been used predominantly to target social media users who are otherwise not public figures.
24. 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.
25. Between 1 January and 30 September 2017, 269 cases were investigated under the CMA, with 146 of those under Section 233(1)(a). In 56 cases, investigation papers were submitted to the Attorney-General’s Chambers.³³ A significant number of cases have resulted in individuals being remanded to the State of Johor, as many charges relate to criticism of the royal family of Johor.
26. In March 2014, then Inspector General of Police (IGP) Khalid Abu Bakar announced the establishment of a Police Cyber Investigation Response Centre (CIRC) tasked with monitoring social media communications and taking action against those who “spread rumours” and “seditious” and “incendiary” remarks online.³⁴ Senior police officials have been responsible for the online harassment of activists,³⁵ and police officers continue to monitor online communications.
27. In May 2017, the CEO of the independent online news portal Malaysiakini, Premesh Chandran, was charged under Section 244(1) of the CMA, concerning offences by corporate officers, for posting footage of a July 2016 press conference critical of the Attorney General’s decision to clear Prime Minister Najib Razak of corruption allegations.³⁶
28. Blocking of online content has also increased. The regulatory body overseeing internet content is the Malaysian Communication and Multimedia Commission (MCMC), established under Part 5 of the CMA. On 20 July 2015, acting under Section 211 of CMA, the MCMC blocked websites reporting on the 1MDB corruption scandal, including the UK-based *Sarawak Report*.³⁷ The websites of online news portal *The Malaysian Insider*³⁸ and regional news outlet *The Asia Sentinel* were blocked under the CMA in early 2016 after publishing content critical of the government.³⁹ On 8 September 2017, the MCMC used the CMA to block access to the website *Steam* for one day after it failed to comply with a 24 hour ultimatum to disable downloads of a computer game “Fight of Gods” it deemed to be blasphemous.⁴⁰ The ban was lifted the following day after *Steam* complied with the request.⁴¹

²⁸ “Passport to travel a privilege, not a right, Nur Jazlan claims”, The MalayMail , 18 May 2016; available at:

<http://www.themalaymailonline.com/malaysia/article/passport-to-travel-a-privilege-not-a-right-nur-jazlan-claims>

²⁹ Recommendations not supported: 146.158 (Poland), 146.159 (Denmark), 146.160 (Austria).

³⁰ Bill of Guarantees, available at: <https://www.mdec.my/msc-malaysia/bill-of-guarantees>

³¹ Section 3(3), CMA 1998, provides: “Nothing in this Act shall be construed as permitting the censorship of the Internet”; available at:

<https://www.mcmc.gov.my/legal/acts/communications-and-multimedia-act-1998-reprint-200>

³² Malaysia: Communications and Multimedia Act must be urgently revised, ARTICLE 19, 24 March 2017; available at:

<https://www.article19.org/resources/malaysia-communications-and-multimedia-act-must-be-urgently-revised/>

³³ Parliamentary reply by Deputy Communications and Multimedia Minister, Jailani Johari, 6 November 2017.

³⁴ “Meet Malaysia’s new Twitter police – “OfficialPcirc”, Malaysiakini, 3 February 2016; available at: <https://www.malaysiakini.com/news/329176>

³⁵ “IGP arrests another activist over tweet”, The MalayMail Online, 1 April 2015; available at: <http://www.themalaymailonline.com/malaysia/article/igp-arrests-another-activist-over-tweet>

³⁶ Malaysia: Drop charges against independent news portal Malaysiakini, ARTICLE 19, 18 May 2017; available at:

<https://www.article19.org/resources/malaysia-drop-charges-against-independent-news-portal-malaysiakini/>

³⁷ “Sarawak Report Blocked”, The Star Online, 20 July 2015; available at: <https://www.thestar.com.my/news/nation/2015/07/20/sarawak-report-blocked/>

³⁸ “Gov’t blocks The Malaysian Insider”, Malaysiakini, 25 February 2016; available at: <https://www.malaysiakini.com/news/331711>

³⁹ “Putrajaya blocks another news site critical of Nejb”, Malaysiakini, 21 January 2016; available at: <https://www.malaysiakini.com/news/327657>.

⁴⁰ “MCMC blocks Steam over “Fight of Gods”, The Sundaily, 8 September 2017; available at: <http://www.thesundaily.my/news/2017/09/09/mcmc-blocks-steam-over-fight-gods>

⁴¹ “MCMC lifts block on Steam, bans “Fight of Gods in M’sia”, The Sundaily, 9 September 2017; available at:

<http://www.thesundaily.my/news/2017/09/09/mcmc-lifts-block-steam-bans-fight-gods-msia>

29. In May 2017, a new “*advisory for group admins*” released by the MCMC encouraged administrators of social media platforms, including encrypted chat services, to actively monitor and remove “inappropriate” third-party content. The advisory, while not legally enforceable, implied that the MCMC could in the future hold social media administrators liable for content created by the user of their platforms.

Inclusion, diversity, and pluralism

30. During its last UPR, the Malaysian government accepted recommendations to “strengthen national unity and promote inter-ethnic tolerance and respect”, and to “strengthen mutual respect and tolerance [...] among religions and maintain social plurality.”⁴² Despite some public statements which suggest the government is pursuing these objectives,⁴³ the government is increasingly interpreting laws, supporting policies, and disseminating rhetoric to precisely the opposite end. This contradicts UPR recommendations, both accepted and rejected, which called for specific improvements in the situation for freedom of religion or belief.⁴⁴

31. **Sections 295-298A of the Penal Code** define various “offences relating to religion”. Section 298A, in particular, restricts the right to freedom of expression and freedom of religion or belief by providing for up to five years’ imprisonment for anyone “causing...disharmony, disunity, or feelings of enmity, hatred or ill will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion”. This provision has been used to penalize criticism or reporting on the activities of religious leaders and to restrict the activities and speech of religious minorities;⁴⁵ it is much broader than the expression States are required to restrict under Article 20(2) of the ICCPR, and does not comply with the requirements of Article 19(3) of the ICCPR.⁴⁶

32. The religious tolerance for which Malaysia has previously received positive recognition has regressed significantly in recent years. Identity politics are increasingly being exploited by public figures and Malaysians are now under more pressure to conform to racial and religious norms than they have been in previous decades.⁴⁷

33. An official narrative of “national unity” is premised on suppressing difference, in particular regarding religion, ethnicity and nationality, and has manifested itself in deteriorating respect for pluralism, inclusion and diversity.⁴⁸ The Ministry of Islamic Affairs and various religious authorities such as *Jabatan Kemajuan Islam Malaysia* (JAKIM),⁴⁹ 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.⁵⁰ These narratives appear to further a strategy of fomenting grievances and feelings of insecurity among the Malay Muslim majority, while distracting attention from government scandals and corruption.

34. Tolerance of minority opinions and dissenting viewpoints has likewise deteriorated. Individuals from marginalized groups, including Shia Muslims and other religious minorities, LGBT people, human rights defenders, women, journalists and artists have been acutely impacted by these developments.

35. On 25 September 2017, a Turkish journalist and intellectual, Mustafa Akyol, was arrested and questioned by the Federal Territories Islamic Affairs Department (JAWI) for teaching without credentials from religious authorities after giving a

⁴² Fully supported recommendations: 146.87 (China); 146.88 (the Russian Federation); 146.89 (Zimbabwe).

⁴³ “Najib speaks out against Muslim-only laundrette”, *The Star*, 21 October 2017; available at: <https://www.thestar.com.my/news/nation/2017/10/21/najib-speaks-out-against-muslim-only-laundrette/>

⁴⁴ Fully supported recommendations: 146.97 (Iran); recommendations “accepted in principle”: 146.153 (Canada); rejected recommendations: 146.152 (Italy); 146.156 (Austria).

⁴⁵ See, for example, Malaysia must reverse its crackdown on free expression as candidate for UN Human Rights Council membership, ARTICLE 19, 11 September 2017; available at: <https://www.article19.org/resources/malaysia-must-reverse-its-crackdown-on-free-expression-as-candidate-for-un-human-rights-council-membership/>; Arbitrary Use of Law is Oppressive to Society; Sisters in Islam, 18 December 2017; available at: <http://www.sistersinislam.org.my/news.php?item.1497.98>

⁴⁶ “Tackling Hate: Action on UN standards to promote inclusion, diversity and pluralism: protecting free speech and freedom of religion or belief for all”, ARTICLE 19, March 2018; available at: <https://www.article19.org/resources/tackling-hate-action-un-standards-promote-inclusion-diversity-pluralism/>

⁴⁷ “Preliminary Observations by the United Nations Special Rapporteur in the field of cultural rights Karima Bennouna at the end of her visit to Malaysia”, OHCHR, 21 September 2017; available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22121&LangID=E>

⁴⁸ Numerous “fully accepted” recommendations centred on concepts of “national unity”, but these are not being implemented consistently with international human rights law: 146.88 (Russian Federation); 146.90 (South Africa); 146.91 (Iran); 146.92 (Democratic People’s Republic of Korea); 146.93 (Democratic People’s Republic of Korea)

⁴⁹ “Deputy Minister Jakim’s role not just to protect Islam but to address Islamic State, Shia Issues”, the Malaymail Online, 9 November 2015; available at: <http://www.themalaymailonline.com/malaysia/article/deputy-minister-jakims-role-not-just-to-protect-islam-but-to-address-islami>

⁵⁰ “Increase role of National Fatwa Council”, International Institute of Advanced Islamic Studies Malaysia, 26 January 2017; available at: <http://www.iais.org.my/e/index.php/dirasat-sp-1862130118/shariah-law-governance-halal/item/306-increase-role-of-national-fatwa-council.html>

talk on the commonalities between the Abrahamic religions.⁵¹ He was subsequently released and allowed to leave Malaysia.⁵²

36. Also in September 2017, the Home Ministry, using powers conferred by the PPPA, banned several books authored by progressive Muslim scholars, including books condemning extremism, citing the likelihood of causing “alarm to the public”.⁵³
37. In August 2017, a Minister in the Prime Minister’s Department called for an investigation into reports that Muslims had participated in a gathering organized by Atheist Republic, an international organization, and called for such individuals to be “hunted down”.⁵⁴
38. In 2015, the Federal Court upheld a lower court ruling that allowed the Home Affairs Ministry to ban the use of the term “Allah” in a journal published by the Catholic Church.⁵⁵
39. In 2017, authorities banned the publication of “Breaking the Silence: Voices of Moderation—Islam in a Constitutional Democracy”, a book aimed at promoting moderate religious viewpoints, by a group of high-ranking former civil servants and diplomats known as the “G25”.⁵⁶
40. “Jurisdiction creep” has also seen an increasing number of religion or belief minorities targeted for violations of Syariah law.⁵⁷ In 2016 and 2017, the Parliament came close to legislating to incorporate the Syariah “Hudud” into Malaysian law, with its extreme punishments like amputation and stoning.⁵⁸ Public discourse around these initiatives has reflected increasing conservatism and religious fundamentalism in Malaysia. Those speaking out against this move have been targeted.
41. The gendered nature of violations and abuses in the period under review are a concern. Human rights defenders have faced smear campaigns, and extreme threats and abuse online, for speaking out in favour of greater inclusion, pluralism, and diversity, with women often experiencing a disproportionately severe backlash for expressing their views. Increased pressure on women to modify their dress in accordance with conservative interpretations of Islam contributes to an environment where women’s expression appears to be policed.⁵⁹ This is further reinforced through the persistence of negative gender-based stereotypes in public discourse, in particular in the media and politics.⁶⁰
42. In March 2015, the Business Radio Station (BFM) removed a video from its website that questioned the necessity of Hudud in Malaysian law after the video presenter Aisyah Tajuddin received death and rape threats. The video was part of the Kupas video series, a Malay-language programme featuring social commentary on current issues created in collaboration with online platform Projek Dialog.⁶¹
43. Numerous artistic and cultural practices have been prohibited in the State of Kelantan in the last 20 years, including the Mak Yong tradition, as the UN Special Rapporteur in the field of cultural rights has observed.⁶² The Entertainment and Places of Entertainment Control Enactment, passed by the Kelantan State Assembly in 1998, bans Mak Yong performance and other “un-Islamic” traditional activities.⁶³

⁵¹ “Turkish author Mustafa Akyol now held at Bukit Aman”, the MalayMail Online, 25 September 2017; available at:

<http://www.themalaymailonline.com/malaysia/article/turkish-author-mustafa-akyol-now-held-at-bukit-aman>

⁵² “Detained Turkish Author Finally Leaves Malaysia”, the Malaysian Insight, 27 September 2017; available at:

<https://www.themalaysianinsight.com/s/16170/>

⁵³ “Putrajaya bans books by progressive Muslim scholars Farouk Musa, Wan Ji”, The MalayMail Online, 3 October 2017; available at:

<http://www.themalaymailonline.com/malaysia/article/putrajaya-bans-books-by-progressive-muslim-scholars-farouk-musa-wan-ji>

⁵⁴ “Atheist Republic members need to be tracked down, says Malaysian Cabinet minister”, The Straits Times, 8 August 2017; available at:

<http://www.straitstimes.com/asia/se-asia/atheist-republic-members-need-to-be-tracked-down-says-malaysian-cabinet-minister>

⁵⁵ “Catholic Church ‘Allah’ Appeal Shot Down”, Al Jazeera, 21 January 2015; available at: <https://www.aljazeera.com/news/2015/01/catholic-church-150121100311536.html>

⁵⁶ “Malaysia govt sparks anger with ban on moderate Islam book”, The Strait Times, 1 August 2017; available at: <http://www.straitstimes.com/asia/se-asia/malaysia-govt-sparks-anger-with-ban-on-moderate-islam-book>

⁵⁷ The Malaysian Government rejected this criticism during its 2nd UPR. See, recommendation not supported, 146.50 (Austria).

⁵⁸ “Act 355 tabled, debate deferred to next sitting”, Malaysiakini, 6 April 2017; available at: <https://www.malaysiakini.com/news/378220>

⁵⁹ Concluding Observations of the UN Committee on the Elimination of Discrimination Against Women, 9 March 2018, *op. cit.*; at paras 19 – 20.

⁶⁰ *Ibid.*

⁶¹ “BFM takes down hudud video after death, rape threats”, The MalayMail Online, 20 March 2015; available at:

<http://www.themalaymailonline.com/malaysia/article/bfm-takes-down-hudud-video-after-death-rape-threats>

⁶² *Op. cit.*

⁶³ “This ancient Kelantanese dance was banned in Kelantan but it survived in another form”, *Cilisos*, 13 January 2018; available at: <https://cilisos.my/this-ancient-kelantanese-dance-was-banned-in-kelantan-but-it-survived-in-another-form/>

44. The government rejected all recommendations relating to the protection of the rights of lesbian, gay, bisexual and transgender (LGBT) people, and has since sponsored discriminatory initiatives against LGBT people in Malaysia.⁶⁴ The government religious authority Jabatan Kemajuan Islam Malaysia (JAKIM) launched in July 2016 an “Action Plan to Address Social Ills and LGBT Behaviour 2017 - 2021”, which incorporated 22 “strategic partners” from various ministries including the Ministry of Health, Ministry of Sports and Youth, and Ministry of Women, Development and Community, as well as state religious bodies and other regional state agencies. The Action Plan sought to coordinate cross-governmental policy-making and action to combat “gender confusion” and other so-called “social ills”.⁶⁵
45. Transgender women have experienced extreme human rights violations and abuses connected to their gender expression. Syariah laws prohibit “cross dressing” (or the act of “imitating” women), and provide the basis for officials harassing transgender women. On 7 November 2014, the Court of Appeal issued a landmark decision ruling that punishing transgender individuals for cross-dressing contravenes their right to freedom of expression.⁶⁶ Unfortunately, in October 2015, the Court of Appeal’s ruling was set aside by the Federal Court on the basis of “procedural non-compliance”. The ban on crossdressing therefore remains valid law in Malaysia.⁶⁷
46. In June 2017, lawyer and human rights defender Siti Kasim was charged with “obstructing a public servant” under Section 186 of the Penal Code after attending an event for transgender women more than a year earlier on 3 April 2016. Authorities from the Federal Territories Islamic Department (JAWI) raided the event and detained the organizer for almost 24 hours under Sections 9 and 35 of the Syariah Criminal Offences (Federal Territories) Act 1997, which prohibit “contempt or defiance of religious authorities” and “encouraging vice” respectively. Kasim faces up to two years’ imprisonment and a fine of RM 10,000 in this ongoing case.
47. In June 2017, LGBT rights advocates organized a “Big Gay Iftar” event during Ramadan. JAWI conducted an investigation into the event and stated that LGBT groups were being monitored by religious agencies and other groups.⁶⁸ Three months later, Minister in the Prime Minister’s Department Jamil Khir Baharom, called for cooperation in suppressing similar events in the future, adding, “The government takes seriously, the spread of lesbian, gay, bisexual and transgender (LGBT) culture among Malaysians, especially Muslims”.⁶⁹
48. It does not appear that the Government is taking any action to implement the recommendations of the UN Committee on the Elimination of Discrimination Against Women pertaining to the implementation of Syariah laws that illegitimately restrict freedom of expression.⁷⁰

Freedom of Assembly

49. During its last UPR, the Malaysia government accepted recommendations to “continue its efforts to further enhance the exercise and enjoyment of [...] the rights to freedom of peaceful assembly”,⁷¹ though specific recommendations to amend the problematic Peaceful Assembly Act were rejected.⁷²
50. While the authorities have facilitated peaceful assemblies, including protests against the government, in the period under review, concerns remain.
51. The Peaceful Assembly Act 2012 (PAA) continues to be applied to investigate and intimidate organisers of peaceful assemblies. Allegations normally center on failure to provide a 10-day notice of an assembly to the authorities (Section 9), a requirement inconsistent with international human rights law, but considered constitutional by the Court of Appeal. Section 4(1) of the PAA does not guarantee the right to freedom of peaceful assembly to non-citizens.
52. 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:

⁶⁴ Rejected recommendations: 146.98, (Germany); 146.99 (Croatia); 146.100 (France); 146.101 (Argentina); 146.102, (Chile); 146.103 (Netherlands); 146.104 (Canada).

⁶⁵ SUARAM Annual Human Rights Report 2016; available at: <https://www.suaram.net/wp-content/uploads/2018/02/SUARAM-Human-Rights-Report-2016.pdf>

⁶⁶ “Court of Appeal: Negri Sembilan Syariah law against cross-dressing unconstitutional”, the MalayMail Online, 7 November 2014; available at: <https://www.thestar.com.my/news/nation/2014/11/07/negri-sembilan-syariah-law-against-transgenders-unconstitutional/>

⁶⁷ “Malaysia court upholds ban on cross-dressing by transgender Muslims”, Reuters, 8 October 2015; available at: <https://www.reuters.com/article/us-malaysia-verdict-crossdressing/malaysia-court-upholds-ban-on-cross-dressing-by-transgender-muslims-idUSKCN0S21CE20151008>

⁶⁸ Jawi siasat iftar songsang, Sinar Harian, 19 June 2017; available at:

<http://www.sinarharian.com.my/nasional/jawi-siasat-iftar-songsang-1.691563>

⁶⁹ “Jamil: Cooperate with authorities to prevent repeat of 'big gay iftar'”, 7 September 2017; available at: <https://www.malaysiakini.com/news/394459>

⁷⁰ Concluding Observations of the UN CEDAW Committee, *op. cit.*, including recommendations on discrimination against LGBTI women, and on persecution of women human rights defenders, at paras 48 and 50.

⁷¹ Accepted recommendation: 146.163 (Indonesia); 146.164 (Russian Federation).

⁷² Rejected recommendations: 146.165 (Czechia), 146.166 (Switzerland), 146.167 (Canada).

- On 30 August 2017, 44 ethnic Rohingya refugees, most of whom are stateless in their country of origin, were detained for organizing a procession of over 1000 to the Myanmar embassy to protest human rights violations committed against Rohingya in the country;⁷³
- In March 2015, 79 individuals, including two Members of Parliament, were arrested during a protest against the implementation of the goods and services (GST) tax.⁷⁴ 25 of the individuals were charged under the Section 2(1)(d) of PAA for ignoring a police order to disperse.⁷⁵ The individuals were acquitted of the charges in 2017.

53. In addition to the PAA, Section 505(b) of the Penal Code, criminalising “statements conducing public mischief”, and Section 124B of the Penal Code, criminalising “activities detrimental to the parliamentary democracy”, are applied to criminalize peaceful assemblies.

54. Blanket prohibitions on the location of assemblies continue:

- In November 2016, The City Hall in Kuala Lumpur (DBKL), a public authority, banned “unlawful” gatherings at the Dataran Merdeka, a public square over which it claimed “ownership”.⁷⁶ Citing sections 11 and 12 of the PAA, it has stated that protest organisers have to get the consent of the owner to protest, and that the police have discretion to allow or disallow any gatherings.
- In November 2016, ahead of the BERSIH 5 rally, the Johor State Ruler Sultan Ibrahim Ibni Almarhum Sultan Iskandar stated that he would not allow any kind of street demonstration to take place in Johor despite the fact that the Sultan has no executive power under any law. He added that such demonstrations would only disturb public order and create divisions among the people.⁷⁷

55. Other provisions are also used to restrict assemblies. In November 2016, four students from Malaya University were subjected to disciplinary actions by the University for participating in the August 27 “Tangkap Mo1” rally calling for the arrest of persons implicated in the 1MBD scandal. The students were found guilty of breach of the University rules and regulations and were suspended for one semester and fined.⁷⁸ On 27 December 2016, the students filed a suit to challenge the constitutionality of the university’s subsidiary legislation.⁷⁹ On 28 August 2017, the High Court dismissed a bid by the student activists to seek a declaration that their universities’ regulations violated their rights to participate in a public rally.⁸⁰

56. Indigenous communities exercising their right to freedom of assembly have also experienced arrest, assault and harassment by state authorities. In January, state authorities in Kelantan dismantled a blockade erected by indigenous people to prevent logging activities.⁸¹ More than 40 indigenous activists have been arrested since 2016 while defending their land against logging activities in Kelantan.⁸²

Media Freedom

57. During its last UPR, the Malaysia government “accepted in principle” recommendations to “raise the standards of press freedom and to adapt the PPPA to facilitate independent news media coverage”,⁸³ and to promote the rights of journalists and bloggers to freely exercise their right to freedom of expression.⁸⁴ However, recommendations to repeal

⁷³ “Dozens of Rohingyas Arrested After Protest Against Myanmar Embassy”, the MalayMail Online, 30 August 2017; available at:

<http://www.themalaymailonline.com/malaysia/article/dozens-of-rohingyas-arrested-after-protest-against-myanmar-embassy>

⁷⁴ “Anti-GST activists nabbed after storming customs complex”, the Malaymail Online, 23 March 2015; available at:

<http://www.themalaymailonline.com/malaysia/article/anti-gst-activists-nabbed-after-storming-customs-complex>

⁷⁵ “MPs among 25 anti-GST protesters charged with illegal assembly”, The Malaysian Insider, 25 March 2015; available at:

<http://www.theedgemarkets.com/article/mps-among-25-anti-gst-protesters-charged-illegal-assembly>

⁷⁶ “DBKL: No unlawful gatherings allowed at Dataran Merdeka”, The Malaymail Online, 24 November 2016; available at:

<http://www.themalaymailonline.com/malaysia/article/dbkl-no-unlawful-gatherings-allowed-at-dataran-merdeka>

⁷⁷ “No street demos in my state, rules Johor Sultan”, Free Malaysia Today, 3 November 2016; available at:

<http://www.freemalaysiatoday.com/category/nation/2016/11/03/no-street-demos-in-my-state-rules-johor-sultan/>

⁷⁸ SUARAM Annual Report 2016; available at: <https://www.suaram.net/wp-content/uploads/2018/02/SUARAM-Human-Rights-Report-2016.pdf>

⁷⁹ “UM4 file suit to declare varsity violated their rights”, Free Malaysia Today, 27 December 2016; available at:

<http://www.freemalaysiatoday.com/category/nation/2016/12/27/um4-file-suit-to-declare-varsity-violated-their-rights/>

⁸⁰ “Tangkap MO1 rally: Court says UM, UKM didn’t violate students’ rights”, Free Malaysia Today, 28 August 2017; available at:

<http://www.freemalaysiatoday.com/category/nation/2017/08/28/tangkap-mo1-rally-court-says-um-ukm-didnt-violate-students-rights/>

⁸¹ “Kelantan Forestry Department defends Orang Asli blockade bust”, MalayMail Online, 24 January 2017; available at:

<http://www.themalaymailonline.com/malaysia/article/kelantan-forestry-department-defends-orang-asli-blockade-bust>

⁸² “41 orang asli arrested in operation at Gua Musang barricades”, The Star Online, 29 November 2016,

<https://www.thestar.com.my/news/nation/2016/11/29/orang-asli-gua-musang-arrested/#f0LJw7Oi7aKsvzqr.99>

⁸³ 146.169 (Austria)

⁸⁴ 146.160 (Austria)

the PPPA or bring it in line with international standards,⁸⁵ to ensure judicial oversight regarding the granting and revocation of media licenses,⁸⁶ and to repeal the OSA,⁸⁷ were rejected.

58. These laws and their application all remain deeply problematic for media freedom in Malaysia, and no positive reforms have been initiated.
59. In July 2015, the weekly and financial daily publications under The Edge group, had their publishing permits suspended for three months by the Home Minister under Section 7(1) of the PPPA after they reported on the 1MDB corruption scandal. The decision was challenged in court, and on 22 September 2015 the High Court overturned the suspension order on the basis that the Minister didn't comply with the law as he failed to give fair reasons for the suspension to the publisher.⁸⁸
60. In 2016, two journalists from the Australian Broadcasting Corporation's Four Corners, Linten Besser and Louie Eroglu, were briefly detained after posing several questions to Prime Minister Najib Abdul Razak over the 1MDB corruption scandal while he was attending an event in Kuching, Sarawak. They were released without charge and deported to Australia. Police officials claimed the pair crossed a security cordon, an allegation the journalists deny.⁸⁹
61. Civil defamation lawsuits are used to silence critical media, including in cases brought by politicians and political parties. On 3 June 2014, Prime Minister Najib Razak and his political party, United Malays National Organization (UMNO), filed a civil defamation suit against the online news portal Malaysiakini over two alleged defamatory articles in the "Yoursay" column of the web portal on May 14, 2014. The words in the articles had insinuated that the political party was incompetent, had no integrity, was racist and did not give priority to the welfare of the people. On 12 July 2017, the High Court advised both parties to seek a settlement out of court.⁹⁰ The case is still pending.⁹¹
62. In addition to legal restrictions, media independence and pluralism is undermined through the ownership of media in the country. Many media outlets are owned by political parties or held by persons associated closely with them. For instance, Media Prima Berhad, a corporation which has close links with the ruling United Malays National Organization (UMNO), owns English-language newspaper *New Straits Times*, Malay-language dailies *Berita Harian* and *Harian Metro*, and television stations TV3, NTV7, 8TV and TV9. UMNO itself owns *Utusan Malaysia*, while the Malaysian Chinese Association (MCA), UMNO's coalition partner, owns the largest-selling English-language daily in Malaysia, *The Star*.
63. Film censorship also remains a concern. In February 2017, human rights defender Lena Hendry was found guilty under Section 6(1)(a) and (b) of the Film Censorship Act 1998 for airing the documentary, "No Fire Zone", which had not been approved by the Film Censorship Board of Malaysia. She was later fined RM10,000. In December 2017 the Public Prosecutor and defence lawyers agreed to withdraw their respective appeals.
64. The Malaysian Film Censorship Board is known for cutting and censoring films under Home Ministry regulations which call for it to "protect the interests of the country and the people from bad influences and negative elements shown in films." This has led to delays in films being screened in Malaysia and to controversy over films that alleged to contain references to homosexuality, including Disney's "Beauty and the Beast".⁹²

Access to information and transparency

65. As noted above, during its previous UPR, Malaysia received a number of recommendations to improve transparency in the country, including by repealing the OSA.

⁸⁵ 146.157 (Czechia); 146.158 (Poland); 146.168 (Ireland); 146.162 (United States of America)

⁸⁶ 146.161 (Austria)

⁸⁷ 146.47 (New Zealand); 146.157 (Czechia)

⁸⁸ "Home Minister ordered to pay damages to The Edge over suspension order", *The MalayMail*, 30 August 2016; available at:

<http://www.themalaymailonline.com/malaysia/article/home-minister-ordered-to-pay-damages-to-the-edge-over-suspension-order>

⁸⁹ "Four corners crew will not be charged in Malaysia", *ABC News*, 15 March 2016; available at: <http://www.abc.net.au/news/2016-03-15/four-corners-crew-will-not-be-charged-in-malaysia/7246618>

⁹⁰ "Judge tells Najib, Malaysiakini to settle out of court", *Free Malaysia Today*, 12 July 2017; available at:

<http://www.freemalaysiatoday.com/category/nation/2017/07/12/judge-tells-najib-malaysiakini-to-settle-out-of-court/>

⁹¹ "Najib's bid to strike out defences in suit against M'kini postponed", *Malaysiakini*, 12 February 2018; available at:

<https://www.malaysiakini.com/news/411965>

⁹² "Beauty and the Beast: Malaysian film censors back down in 'gay moment'", *The Guardian*, 21 March 2017; available at:

<https://www.theguardian.com/film/2017/mar/21/beauty-and-the-beast-malaysian-film-censors-back-down-in-gay-moment-row>

66. No right of access to information is provided for in Malaysia' Constitution or through Federal legislation, notwithstanding demands from civil society, parliamentarians and the media. At the regional level, the States of Selangor and Penang have both adopted access to information laws, though implementation remains a concern.
67. The OSA is hugely detrimental to access to information and expression. It is used by government at all levels to prevent the disclosure of information that is in the public interest, and for which there is no legitimate reason to maintain secrecy. According to the Home Affairs Minister, 28 cases were brought under the OSA between 2011 and April 2016.⁹³
68. In November 2016, opposition parliamentarian Rafizi Ramli was sentenced under the OSA to 18 months imprisonment for disclosing the contents of a report on the controversial 1MDB corruption scandal during a press conference in March of the same year.⁹⁴ He is currently appealing his sentence.

Recommendations

The submitting organisations call on States to recommend in the upcoming UPR that 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;
- Fully implement the recommendations of the UN CEDAW Committee;
- 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 by repealing the Sedition Act 1948, the Printing Presses and Publications Act 1984, the Film Censorship Act 2002, the Security Offences (Special Measures) Act 2012 (SOSMA), and the Official Secrets Act 1972 (OSA);
- Reform the Penal Code to protect the right to freedom of opinion and expression, including by repealing Sections 124(b), and 505(b), and protecting against the abuse of Section 186;
- 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 by repealing Section 233(1)(a) and by ensuring that the MCMC can only block websites pursuant to a Court order;
- Judicially review all website blocking decisions of the MCMC, and reinstate websites that were blocked contrary to international freedom of expression standards;
- Protect the right to freedom of peaceful assembly by repealing the Peaceful Assembly Act 2012;
- Develop, with the full and effective participation of civil society and SUHAKAM, a national action plan to promote inclusion, diversity and pluralism, including by implementing the comprehensive recommendations put forward by in 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 legislation to protect individuals from bias-motivated crimes, including crimes motivated by a person's ethnicity, nationality, religion or belief, or sexual orientation or gender identity;
- Repeal or reform legislation that empowers government officials to use "travel bans" against persons who express views with which the government disagrees;
- Enact a Federal Law guaranteeing the right of access to information, 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.

⁹³ "28 OSA cases recorded between 2011 to 2016", The News Straits Times, 19 May 2016; available at: <https://www.nst.com.my/news/2016/05/146494/28-osa-cases-recorded-between-2011-2016>

⁹⁴ "18 month jail sentence against Raizi Upheld", The Star Online, 24 August 2017; available at: <https://www.thestar.com.my/news/nation/2017/08/24/18month-jail-sentence-against-rafizi-upheld/>