



**Joint Submission by ARTICLE 19 and SUARAM
to the UN Universal Periodic Review of Malaysia**

Seventeenth Session of the Working Group of the Human Rights Council, Oct 2013

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Executive summary

1. In this submission, ARTICLE 19 and SUARAM highlight violations of the right to freedom of expression and freedom of information in Malaysia. We also note with great concern that Malaysia has not yet signed or ratified the International Covenant on Civil and Political Rights (ICCPR), despite accepting recommendations from Algeria, Turkey, Belarus and Bhutan during its first UPR to take positive steps towards signing and ratifying international human rights treaties.
2. ARTICLE 19 and SUARAM observes the following trends since the first UPR:
 - A restrictive regulatory framework persists to restrict freedom of expression, including: overly restrictive national security legislation, extensive controls over printed media, and the recent reforms to the Evidence Act that severely limit online speech;
 - Crackdowns on peaceful assemblies have intensified, particularly in response to widespread calls for election reform, and have included attacks against journalists;
 - 6 books have been banned in 2012 alone;
 - An increase in religious extremism and intolerance, including: the deportation of a Twitter user to Saudi Arabia for online comments made regarding the Prophet, and lesbian, gay, bisexual, trans and intersex (LGBTI) human rights defenders have been prevented from organising public meetings;
 - Bloggers have been pursued by corporations through civil defamation proceedings and forced into settlements that severely restrict and chill the exercise of freedom of expression rights; and
 - A culture of secrecy prevails at the national level of government in particular, where no freedom of information law has been enacted.

Restrictive regulatory framework on freedom of expression

Security Offences (Special Measures) Act 2012

3. In September 2011, Prime Minister Najib Razak announced the repeal of the Internal Security Act (ISA), the provisions of which have been used to silence dissent and restrict freedom of expression, including that allow for detention without trial for up to two years. While ARTICLE 19 and SUARAM welcomed this announcement, we are seriously concerned with its replacement – the Security Offences (Special Measures) Act 2012 (SOSMA), in force since July 2012. Despite limited improvements, including the guarantee that no one shall be detained “for his political belief or political activity,” the Act fails to comply with international human rights standards.

4. The preamble of SOSMA expressly states that the Act is "to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters." In the past, under ISA, the terms "public order" and "security," were often broadly interpreted by the authorities and used as a catchall phrase to silent legitimate dissent. The term "connected matters" is also overly broad and may be interpreted by the authorities to permit crackdowns on critical voices.
5. Furthermore, SOSMA provides for arrest without warrant and allows for detention without charge for up to 28 days. It further bestows the Public Prosecutor with the broad power to intercept communications "if he considers that it is likely to contain any information relating to the commission of a security offence" (Section 6). Any information obtained through an interception is admissible as evidence where someone is charged for an offence; while there is no obligation on the side of law enforcement to disclose the procedure, method, manner or any means or devices, or any matter with regard to interception.

Printing Presses and Publications Act 1984

6. The Printing Presses and Publications Act 1984 (PPPA-84) has also 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. Despite relaxing the media-licensing requirement in April 2012 to a one-off licensing policy, the government still controls the distribution of permits to all newspapers, printing presses and publications, thereby exercising considerable control over media content. This lack of media independence is compounded with the Home Minister's power to, at any time, revoke or suspend a permit for any period he considers desirable under the PPPA-84.
7. In October 2012, in a case brought by *Mkini Dotcom*, publisher of newspaper *Malaysiakini*, to the Kuala Lumpur High Court, Justice Abang Iskandar Abang Hashim ruled that the Home Ministry's rejection of *Mkini Dotcom's* application for a publishing permit under the PPPA-84 violated the applicant's Constitutional right to freedom of expression. He stated that refusal to grant a permit was "improper and irrational" and "affects the right of the applicant to the right of freedom of expression". The Attorney-General and the Home Ministry have filed a notice of appeal against the Kuala Lumpur High Court's decision.

Evidence Act 1950

8. In May 2012, an amendment to the Evidence Act 1950 (EA) was passed by Parliament in an attempt to curtail slander and threats. Although the Internet is not explicitly mentioned, Section 114(a) of the Act is intended to provide punishment to computer users for publishing or re-publishing what is deemed unlawful content. The amendment reversed the burden of proof so that it is for the accused person to prove that they have not committed an offence. The provision presumes the accused liable for any content posted through their registered networks or data processing device; or content posted in the author's name, blog or website; or even transmitted from any individual's computer. This violates international standards on the right to freedom of expression as it allows individuals or intermediaries (such as online forum hosts) to be punished for on-line content that they have not created and have no control over.

Crackdowns on public demonstrations and gatherings

9. In July 2011, tens of thousands of people took to the streets of Kuala Lumpur demanding changes to the voting process including eradication of vote buying, equal access to the media for all parties and the cleaning-up of electoral rolls. The rally was led by the Coalition for Clean and Fair Elections (a

coalition of 84 organisations known as "Bersih 2.0"). The rally was faced with baton wielding riot police who used force to prevent the peaceful crowds from marching towards Stadium Merdeka. The police arrested more than 1600 protestors and fired water cannons and tear-gas to disperse demonstrators. Six leaders from the opposition *Parti Socialis Malaysia* (PSM) were detained in association with their support for the rally.

10. On 20 December 2011, only after one day of debate and without meaningful consultation with stakeholders, the Dewan Negara (the upper house of Parliament) passed the controversial Peaceful Assembly Act 2012 (PAA-12). The Act was passed against a widespread opposition from local civil society, the Malaysian Bar Council, international non-governmental organisations, and the UN. Contrary to its title, the PAA-12 imposes far greater limitations on the rights to freedom of assembly and of association, prohibits street parades ('assemblies in motion or processions') and imposes fines on individuals who violate the Act. ARTICLE 19 and and SUARAM consider many provisions of the Act to be in violation of the right to freedom of expression and the right to peaceful assembly and association.
11. The PAA-12 provides the police with excessive and unlimited authority including the power to arrest participants in demonstrations and the discretion to disperse public assemblies. A range of provisions arbitrarily restrict peaceful assemblies, including: age restrictions on organisers and participants; extensive restrictions on the permissible locations of assemblies; a ban on non-citizens from organising or participating in assemblies; a mandatory 10-day notice period for assemblies; and media access is secured on a highly conditional basis. Those found to be liable for breaching the numerous requirements, conditions and restrictions can be fined up to RM20,000.
12. Within a month of the Act coming into effect (in April 2012), several individuals were charged under it:
 - The *de facto* opposition leader, Anwar Ibrahim, Azmin Ali and Badrul Hisham Shaharin were charged under Section 4(2)(c) of the PAA-12 (violating Order and taking part in rally), Section 188 (breaching Magistrates' Order), and Section 147 (abetting in rioting) of the Penal Code. The charges stem from their participation in a Bersih rally on 28 April 2012.
 - Five individuals affiliated with SUARAM, Wong Kar Fai, Cynthia Gabriel, K. Arumugam, Fadiyah Nadwa Fikri and Sarah Devaraj, were investigated under Section 9 of the PAA-12 for holding a press conference at the lobby of Companies Commission of Malaysia on 18 September 2012 in solidarity with other members of civil society.
13. Further, in April 2012, Radzi Razak, a journalist with *The Sun* newspaper, was covering another Bersih 2.0 mass rally in Kuala Lumpur, where crowds breached a police barricade. Razak witnessed excessive police force that escalated rather than pacified the situation, including beating demonstrators, firing tear gas, and snatching cameras and phones from participants. Journalists and media professionals were also attacked and more than 500 people were arrested. Razak was hospitalised from injuries sustained after being charged by approximately 7 - 8 police officers who kicked him all over his body, despite it being clear that he was a journalist.
14. The Malaysian government continues to curtail the right to freedom of expression through the banning of books. In 2012, five books were banned (*Allah, Liberty & Love - Courage to Reconcile Faith & Freedom* by Irshad Manji, and the Malay language translation of the book; *Where Did I Come From?* by Peter Mayle; *Penghantar Ilmu-Ilmu Islam* by Murtadha Muthahhari; *Dialog Sunnah Syi'ah* by A. Syarafuddin Al-Musawi; and *Tafsir Sufi Al-Fatihah Mukadimah* by Jalaluddin Rakhmat).

15. On 23 May 2012, approximately 30 officers from the Federal Territories Islamic Affairs Department (JAWI) confiscated seven copies of Irshad Manji's book from a Borders bookstore as the content was deemed to be contrary to Islamic teachings. During the raid, JAWI officers together with media personnel took photographs of the staff and recorded their identification card numbers, including non-Muslim staff. The book was banned the next day under Section 7(1) of the PPPA-84. Subsequently, Manji's publishing house *Zi Publications* was raided by the Selangor Islamic Affairs Department and the director, Ezra Zaid, was taken in for questioning. The Borders store manager, Raina Nik Abdul Aziz, was charged with distributing the book under Section 13 of the Federal Territory Syariah Offences Act 1997, which relates to the sanctity of Islam and its institutions.
16. On 24 June 2010, the Malaysian Home Ministry banned "1 Funny Malaysia", a book of published works by popular political cartoonist and activist Zulkiflee Anwar Haque, (also known as Zunar). On 24 September 2010, Zunar was arrested just hours before the launch of 'Cartoon-O-Phobia', his latest compilation of political cartoons, and all copies of the book were seized. Zunar was initially arrested under the Sedition Act 1948, however government officials later claimed that he had also violated the PPPA-84. Both offenses carry punishment of up to three years' imprisonment and/or fines. On 15 June 2011, Zunar filed a civil suit against the government and police for damages incurred through his arrest and the confiscation of his books and cartoons. In July 2012, a civil court ruled that Zunar's treatment was unlawful and called for the compensation of damages. ARTICLE 19 and SUARAM welcome this development in Zunar's case.

Increase in religious extremism and intolerance

17. On 7 February 2012, Malaysian authorities detained Hamza Kashgari, a 23-year-old Saudi journalist for *Al-Bilad* newspaper in Jeddah, at Kuala Lumpur International Airport as he was en route to New Zealand, where he intended to seek asylum. Five days later, he was deported from Malaysia to Saudi Arabia to face charges of apostasy for a series of tweets about the prophet Mohammed. A few days prior to his arrest, Kashgari published a number of tweets reflecting an imaginary conversation with the prophet Mohammed, causing popular outrage and some calls for his death. Although Kashgari deleted the tweets, official clerics declared that he was guilty of apostasy, a crime that carries the death penalty. After a warrant was issued for his arrest by the Saudi Arabian authorities, he fled from Saudi Arabia and was detained in Malaysia and deported back. ARTICLE 19 and SUARAM consider Kashgari's detention and deportation by the Malaysian authorities to be in clear contravention of international law, including the principle of *non-refoulement* as well as the right to freedom of expression.
18. In November 2011, an annual Kuala Lumpur sexuality rights festival called *Seksualiti Merdeka* was banned by the police on the basis of being a deviant activity and would destroy religious freedom, create disharmony and enmity, disturb public order, and could pose a threat to national security. Starting from 7 November 2011, police began questioning and recording statements from 50 persons linked to *Seksualiti Merdeka*, including *Seksualiti Merdeka* organiser, Pang Khee Teik; Bar Council President, Lim Chee Wee; Bersih 2.0 Chairperson, S. Ambiga; Executive Director of EMPOWER, Maria Chin Abdullah; and Executive Director of Tenaganita, Irene Fernandez. In a statement to the press, Deputy

Inspector-General of Police Khalid Abu Bakar justified the police ban by saying that any event to do with the rights of lesbians and homosexuals is out of the question. Those who had been called for questioning were also investigated under the Penal Code. In response to the banning of *Seksualiti Merdeka*, Prime Minister Najib Razak pledged that the government will protect the sanctity of Islam and ensure that deviant cultures, such as the practice of lesbian, gay, bisexual, trans and intersex or queer activities, would have no place in Malaysia

19. In February 2009, the Home Minister prohibited the use of the word "Allah" by *Herald*, a national Catholic newsletter, as a precondition for it receiving a publishing permit. The Archbishop of Kuala Lumpur filed for a judicial review and in December 2009 the High Court ruled that the publishers of the newsletter had the constitutional right to use the word "Allah". However, in disagreement over this decision, fundamentalist groups resorted to attacking churches around the country.
20. In October 2011, International Islamic University Constitutional Law Professor Dr Abdul Aziz Bari was suspended by the University for expressing his opinion on a decree issued by the Sultan of Selangor in regard to the Selangor Islamic Affairs Department raid on Damansara Utama Methodist Church. Dr Abdul Aziz Bari criticised the Sultan, who claimed that no group should be prosecuted over the controversial church raid. Following the suspension, the professor received an envelope containing a bullet and a note warning him not to show disrespect to the Sultan.

Disproportionate defamation charges

21. In Feb 2011, Charles Hector was sued for defamation at the High Court of Malaya in Shah Alam by the Malaysian subsidiary of Asahi Kosei Japan Co. Ltd, a Japanese electronics company. The supposedly defamatory articles on Hector's blog, based on research he carried out, alleged that the company mistreated 31 Myanmar migrant workers. The company obtained an injunction against Hector's blog posts and additionally sought damages of RM10 million (approximately US\$ 3.2 million). Both parties reached a settlement where the law suit was dropped in exchange for symbolic damages of RM1 and the issuing of a public apology by Hector in two national newspapers at a cost of RM22,000.
22. ARTICLE 19 and SUARAM consider that Hector's blog articles were posted in good faith and concerned an issue of public interest, and therefore should have benefited from the privilege of reasonable publication under Malaysia's Defamation Act. The corporate harassment against him, the injunction, litigation and subsequent settlement terms constitute an unjustified restriction on Hector's freedom of expression rights, and are likely to have a significant chilling effect on freedom of expression in the country more generally.

Limitations on the right to freedom of information

23. Malaysia does not currently have a national freedom of information (FOI) law. Malaysia's Official Secrets Act 1972 and the PPPA-84 instead establish a culture of secrecy and fail to set a framework for the right to freedom of information. However, the states of Selangor and Penang both passed regional FOI laws in April 2011 and November 2011 respectively. While both laws represent positive steps forward, their enactment has revealed numerous weaknesses that have hampered the full implementation of the right.
24. The Selangor FOI law does not specify when public bodies are required to periodically disclose information, it stipulates penalties for applicants who use the information sought for purposes other than those specified in an application (Section 18(1)), and it fails to specify how appointments will be

made to the State information Board (Section 17(2)). These shortcomings are also reflected in the Penang FOI law, which essentially duplicated the Selangor law. The Penang law also allows for information requests to be considered rejected in the instance that public bodies do not respond within the designated time frame.

Recommendations

25. ARTICLE 19 and SURAM recommend that Malaysia:

- Sign and ratify the ICCPR, and other international treaties, in particular the 1984 Convention Against Torture, the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees;
- Review all legislation limiting the right to freedom of expression for its compliance with the Constitution and international standards on the right to freedom of expression and information and repeal or amend those that fail to meet these standards; restrictions must be: provided by law, pursue a legitimate aim, and be necessary in a democratic society;
- Ensure that all new legislation or amendments to existing laws meet international standards on freedom of expression;
- Repeal or substantially amend the Security Offences (Special Measures) Act 2012 and Printing Presses and Publications Act in compliance with international standards;
- Repeal and replace the Peaceful Assembly Act 2012, and ensure full participation and consultation with local and international stakeholders, including opposition party members and civil society organisations;
- Repeal all laws criminalising blasphemy and defamation;
- Conduct an immediate review of regressive media and censorship legislation, such as the Sedition Act of 1948 and of legislation curtailing the right to freedom of information, such as the Official Secrets Act;
- Extend a standing invitation to all of the UN Special Rapporteurs, including those of:
 - Freedom of opinion and expression
 - Freedom of religion and belief
 - Freedom of peaceful assembly and of association
 - Human rights defenders;
- Respect the principle under customary international law of *non-refoulement*, in particular in respect of persons with a well-founded fear of persecution on the basis of views that they have expressed;
- Respect the right to freedom of peaceful assembly for all people, including those calling for political reforms and people giving public expression to their sexual orientation or gender identity;
- Refrain from harassing, threatening, criminalising or arresting artists, writers, journalists, political activists and other human rights defenders for reasons connected to their peaceful activities, including the legitimate exercise of their freedom of expression rights;
- Release artists, writers, journalists, political activists and other human rights defenders currently in detention for reasons connected to their peaceful activities, including the legitimate expression of their views;
- Enact a national law on the right of access to information, and ensure that all pre-existing laws that restrict this right are reviewed and amended in accordance with international standards; and
- Ensure that the drafting process for all new or amended legislation includes widespread and meaningful public consultations.