M'sian gov't must respect international law
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By Michelle Yesudas

COMMENT I came to Geneva to present at a public forum at the UN building amid an intensifying crackdown on civil society in Malaysia, receiving frenzied updates on the increasing number of activists, dissidents, and opposition politicians being arrested and detained at home.

At the UN, Article 19 briefed me on how states, including Malaysia, are gathering to consider how to strengthen efforts to implement Human Rights Council resolution 16/18 – a commitment they made in 2011 to tackle religious intolerance not through censorship but by promoting freedom of expression, freedom of religion or belief, and creating space for genuine dialogue.

On Malaysian shores, our reality is far from the promise of UN resolution 16/18.

Free speech is currently experiencing a heavy-handed assault by the state, under the guise of the government playing the guardian of 'national unity' and the 'sanctity of religion'.

The Malaysian context of the erosion of freedoms and violence is more subtle than places such as Pakistan and Myanmar.

It has been a slow socialisational process that promotes self-censorship and siege mentalities, banishing talk of religion and progressive politics from the public sphere, where only the state's narrative is accepted and a politics of division flourishes.

A host of criminal laws exist to censor free expression in Malaysia, from the widely used Sedition Act, the Peaceful Assembly Act, Penal Code Offences, and religious/syariah laws.

These laws are tasked with guarding against incitement to hatred, ill-will amongst races, the integrity of the religion, and the 'harmony' of the public sphere at large.

We are currently experiencing a climate that is dark and stifling after the recent conviction and imprisonment of Malaysia's opposition leader Anwar Ibrahim on trumped-up charges of 'sodomy'.

Voices critical of this outcome, both online and offline, have been hauled up, arrested, detained, repeatedly investigated almost on a daily basis.

Sedition Act tool to silence

The primary tool in silencing dissent in Malaysia today is the Sedition Act, and anything deemed 'seditious' will be a crime and punishable with imprisonment or a fine.

The trouble is that the definition of what is 'seditious' is as vague as it is broad, open to arbitrary application, resulting in absurd and outrageous investigations.

A 17-year-old was recently investigated for clicking 'like' on an 'I Love Israel' page, and so was cartoonist Zunar for caricaturing the judiciary on Twitter.

In 2012, when Prime Minister Najib Razak promised to repeal the Sedition Act in anticipation of Malaysia's second cycle of the UN universal periodic review (UPR) and the 13th General Elections, we did not anticipate a record-breaking abuse of this law to follow. With the UPR and international scrutiny out of the way, activists were hauled up for criticising election results, two of whom have been sentenced to more than nine months' jail.

In 2015, the crackdown intensified, raining down on dissidents repeatedly, with activists such as Adam Adli and cartoonist Zunar detained and investigated.

On a personal level, my organisation Lawyers For Liberty has also been impacted. Our cofounder N Surendran and Eric Paulsen have both been charged for sedition.

This came at a time when the Malaysian public was divided between those showing solidarity with those killed in Paris with the #JeSuisCharlie hashtag, and those condoning the attacks and showing sympathy for the use of violence.

Eager to vilify those perceived as disrespecting religious sensitivities, the hashtag #YouAreCharlie had taken off.

In Paulsen's (left) case, this was dangerous. He had just published a tweet accusing Malaysia's Department of Islamic Affairs of promoting violence through the weekly sermons it prepares for dissemination across the country.

In a hostile climate, what followed were a series of frenzied personal attacks on him through social media, death threats, and even the police chief (a prolific tweeter) promising (on Twitter) to investigate him under the Sedition Act.

Paulsen lodged a police report on the death threats, but it was he who was ambushed that evening by 15-20 policemen in a surprise arrest.

He was then detained for three days for "investigation", his office and home were raided, and his laptop and phone were confiscated. In mainstream media, he was continuously demonised. He was then charged with sedition on Feb 5, but is yet to face trial.

Both the police and pro-government voices had pushed for extreme action against Paulsen by manipulating his criticism of a state institution to make it an insult against Islam, therefore legitimising calls for violence and thereby justifying state intervention to appease the extremists.

This situation isn't unique. An opposition lawmaker was also investigated for sedition after raising her concern that a Selangor sermon promoted 'victim blaming' mentality and misogyny, by stating that women that are not dressed modestly invite rape.

I ask: how is this in line with the spirit of UN resolution 16/18, or any rational concept of international human rights law?

Protecting freedom of expression in Malaysia, as well as true freedom of religion or belief, requires Najib living up to his promise to repeal the Sedition Act.

Politics of division

A more subtle and insidious problem in Malaysia is the politics of division, where religious and ethnic identities are manipulated for political gains.

The state uses its institutions to create opposing dichotomies - 'Muslim vs non-Muslim', 'bumiputera (ethnic Malays and the Sabah/Sarawak Natives) vs the non-bumiputera - in its policies and rhetoric.

State funding and broader support to Muslim fundamentalist 'NGOs' add fuel to the fire, legitimising extreme state action against dissidents under the guise of satisfying the populace; it creates a siege mentality and relies on a rejection of the universality of human rights, demanding for an exceptionalist Asian/Islamic model instead.

The government's refusal to ratify the International Covenant on Civil and Political Rights is a major obstacle to moving past this.

Malaysia's Department of Religious Affairs only provides protection for its version of the religion of Islam, often rendering the Malay word for religion 'agama' as synonymous to Islam. From this platform they present the State religion and its sentiments, tied closely to official ideas of our nation and culture, as constantly under attack by a vicious plot by the Jews, Christians, Shiite Muslims, and Communists.

These absurd and discriminatory conspiracy theories are a consistent theme for Friday sermons, and are echoed by political leaders.

Individuals who question these sermons are then branded as heretics or deviants, and their opinions are delegitimised and the space for debate and dialogue is closed.

Rules for Muslims

It is a misperception to see what is happening in Malaysia as 'the majority' versus 'the minorities'; it is more complex. The 'us vs them' tension is a tool to consolidate the government's hold on power, and 'majorities' also fall victim to this.

The use of the Sedition Act and the politics of division cannot be separated from the state's

imposition of religious rules on Muslims, and the widening ambit of syariah laws that increasingly affect the lives of non-Muslims as well.

Again, we see religion used as a tool to control individuals and to privilege the state, at the expense of free speech and dialogue.

The Federal Constitution holds Islam as the religion of the federation, provides a position of privilege for those born as bumiputera, ethnic Malays, and natives of Sabah and Sarawak, and excludes significant portions of the population (people of Indian or Chinese heritage, or more recent migrants and refugees).

A separate legal regime covers Muslims in Malaysia, subjecting them to an extra layer of control.

Islamic syariah laws for those born as a Muslim (conversion out of Islam is not possible in most Malaysian states) ensure that they do not worship in any manner contrary to the state's version of Islam.

It is a criminal offence to act in contempt of religious authorities, to disseminate an opinion contrary to fatwa and for a man to dress 'like' a woman in public; these laws are implemented at the arbitrary discretion of the state.

This promotes a one-dimensional, government version of Sunni Islam; hate is propagated through state-drafted Friday sermons, and the legal impossibility of leaving the religion or criticising it means the majority in Malaysia are some hostages of the state.

It is not shocking for this control of the Muslim majority to spill over to affect non-Muslims too. Religious authorities recently gatecrashed a non-Muslim wedding, suspecting the bride of being a Muslim and committing an offence by participating in non-Muslim rituals, non-Muslim funerals being disrupted and bodies removed by authorities that suspect the deceased may have converted to Islam during their lifetime, husbands convert to Islam and take their children with them, without their mother's knowledge, to ensure custodial rights are granted according to Islamic laws, where the non-Muslim spouse will not have a forum.

A non-Muslim has even been charged for 'close proximity' between unmarried and unrelated people of different genders, which is not a crime in secular criminal law, only Islamic syariah law, just because her name sounded 'Muslim'.

What now?

The erosion of the Malaysian public sphere has been a slow process - through selective prosecution using archaic laws, state-sanctioned persecution, and the state manipulating religion and ethnic identity politics to protect itself and its interests from criticism.

Malaysians will continue to fight for this public space, even if it means facing imprisonment, multiple prosecutions, and harassment by the authorities.

We need the promise of resolution 16/18 to be turned into a reality for us Malaysians. However, while debates at the UN are important, change will come from within Malaysia itself.

While we, civil society, creatively attempt to engineer new methods of fighting for our rights against this authoritarian system, we ask the UN and the international community to support us and to call on the Malaysian government to respect international law.

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