



**Contribution to the Universal Periodic Review Mechanism
17th session of the Working Group of the Universal Periodic Review (UPR)**

**A UPR Submission on Malaysia by the International Publishers Association
(IPA)**

11 March 2013

IPA welcomes the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the human rights situation in Malaysia. This submission provides:

- A. an overview of the latest developments in the field of freedom to publish in particular;
- B. a follow-up to the recommendations accepted by Malaysia in the field of freedom of expression during the country's first UPR review on 11 February 2009;
- C. a set of recommendations to the Malaysian government whose aim is to support the Malaysian authorities in improving the overall conditions for freedom of expression in the country.

A. Overview of Latest Developments in the Field of Freedom to Publish:

1. Freedom of expression is guaranteed under Article 10 the Federal Constitution. However, in practice, freedom of expression is limited.
2. Malaysia is among 17 States which have neither signed nor ratified the International Covenant on Civil and Political Rights (ICCPR).
3. Freedom of expression is severely limited by defamation laws, the Internal Security Act¹ (ISA), the Official Secrets Act, the Sedition Act, and the Evidence Act².
4. Freedom of expression is also severely limited by the 1984 Printing Press and Publications Act (PPPA), which gives the government the authority to revoke licenses.

¹ ISA was replaced by SOSMA in July 2012. See p. 3 of the present submission for more (3rd paragraph)

² See www.digitalnewsasia.com/node/165; The 2012 amendments to the 1950 Evidence Act [“(Amendment) No. 2 Bill 2012”] have far reaching consequences: a web owner or individual person is from now on presumed guilty for defamatory or illegal material posted on their web site/page, all of which can draw several years in prison.

5. Books are directly censored or banned for profanity, violence, and political and religious material.
6. As of July 2012, the Home Ministry's website listed 1,517 banned titles³. In 2012 alone, six books were banned from publication: *Allah, Liberty & Love – Courage to Reconcile Faith & Freedom* and its Malay language translation by Irshad Manji; "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.
7. On 23 May 2012, around 30 officers from the Islamic Department confiscated seven copies of the Malay translation of Irshad Manji's *Allah Liberty & Love - Courage to Reconcile Faith & Freedom (Allah Kebebasan dan Cinta*, published by ZI Publications) from Borders bookstore as the content was deemed to be contrary to Islamic teachings.
8. During the raid, the officers together with media personnel took photographs of the staff and recorded their identification card numbers, including non-Muslim staff.
9. The Islamic Department was investigating the case under S13 of the Federal Territory Syariah Offences Act 1997 for offences against the sanctity of Islam and its institutions⁴.
10. The book was banned the next day under S7 (1) of PPPA (the ban was gazetted on 29 May 2012). According to Deputy Home Minister Abu Seman, the book was believed to contain elements that can shake Muslims from their faith, Islamic teachings and elements which insulted Islam⁵. 'Allah Liberty & Love', according to Manji "...shows all of us how to reconcile faith and freedom in a world seething with repressive dogmas... This book is the ultimate guide to becoming gutsy global citizen⁶".
11. Subsequently, on 20 May 2012 the Selangor Islamic Affairs Department ("JAIS") raided ZI Publications office and confiscated copies of Manji's books under S16(1)(a) or (b) of the Religious Publications Offences against Islamic Law. The Director was taken to JAIS headquarters for questioning under S47 (1) of the Selangor Syariah Criminal Offences Enactment 2003⁷. He was charged with offences related to publishing, circulating and owning the book⁸. On 19 June 2012, Borders store manager was charged with distributing the book under S13 of the Federal Territory Syariah Offences Act 1997, which relates to the sanctity of Islam and its institutions⁹.

³ <http://www.themalaysianinsider.com/books/article/interesting-reading-the-banned-books-list>

⁴ Islamic authorities seize controversial book, Malaysiakini, 24/5/2012, <http://www.malaysiakini.com/news/198852> (last accessed: 14/11/2012)

⁵ Home Ministry bans Manji's 'Love Book', Malaysiakini, 24/5/2012, <http://www.malaysiakini.com/news/198958> (last accessed: 14/11/2012)

⁶ 'Allah, Liberty & Love' Malaysiakini, 19/5/2012, <http://www.malaysiakini.com/news/198421> (last accessed: 14/11/2012)

⁷ JAIS raids publisher's office, confiscates Manji's books, Malaysiakini, 29/5/2012, <http://www.malaysiakini.com/news/199328> (last accessed: 14/11/2012)

⁸ The three charges are under Section 16 (1) (a) of the Syariah Criminal Enactment (Selangor) 1995; the case will be re-mentioned on 19 May 2013. 'Publisher of Irshad Manji's book pleads not guilty', Malaysiakini.com, 7 March 2013

⁹ Store manager charged with distributing Manji's book, Malaysiakini, 19/6/2012, <http://www.malaysiakini.com/news/201256> (last accessed: 14/11/2012)

B. UPR Recommendations 11 Feb 2009, Response and Commentary

12. Of the 4 recommendations made to Malaysia on 11 February 2009 in the field of freedom of opinion and expression, Malaysia rejected one and gave a general response to the three others (sections in yellow are commentary and updates):

1. Repeal or amend the ISA and the Emergency Public Order and Preventive Ordinance in accordance with its international human rights obligations, and in the meantime refrain from applying them to political activists, journalists or others engaged in peaceful activities (**general response**)

The Security Offences (Special Measures) Act 2012¹⁰ (SOSMA) received the Royal Assent on 18 June 2012 and was set to commence on 31 July 2012¹¹ to replace the Internal Security Act 1960 (ISA). The preamble of SOSMA expressly states: “The act is to provide special measures relating to security offences for the purpose of maintaining public order and security and for connected matters”. According to local NGOs, public order and security were always broadly interpreted and have the reputation as a catch-all phrase to silent legitimate dissent, including through publications.

2. Review and amend laws such as the Sedition Act, the Printing Press and Publications Act (PPPA), and the Official Secrets Act, to enable its citizens to exercise fully the right to freedom of opinion and expression, including freedom of the press and freedom of information (**general response**).

While it was a positive step to do away with annual permit renewal with the amendment to PPPA in April 2012, the main issue (the fact that publishing permits must still be granted and the home minister has a right to revoke or suspend these permits) was not addressed according to local NGOs, implying that the government still has effective control over the Malaysian print media¹².

However, on 1 October 2012, in a landmark decision, the Kuala Lumpur High Court’s Appellate and Special Powers division quashed the Home Ministry’s decision not to grant a newspaper printing permit to Mkini Dotcom Sdn Bhd, which operates the *Malaysiakini* news portal. In particular, Justice Abang Iskandar Abang Hashim said that the home minister’s decision “affects the right of the plaintiff to the right to freedom of expression which also includes the right to a permit, and it is a

¹⁰ Passed in Dewan Rakyat on 17/4/2012, passed in Dewan Negara on 9/5/2012

¹¹ http://www.federalgazette.agc.gov.my/eng_main/main_akta.php?jenis_akta=Baru (last accessed: 21/11/2012)

¹² <http://cijmalaysia.org/2012/04/18/press-still-shackled-despite-pppa-amendments/>

fundamental liberty enshrined in the constitution". Hopefully, this decision will set a precedent¹³.

Throughout 2012, with at least four documented cases, the Sedition Act kept being used to silence legitimate dissent. In November 2012, Abdul Jalil was detained by the police under the Sedition Act and the Malaysian Communications and Multimedia Commission Act 1998 for allegedly insulting the Sultan of Johor on *Facebook*. According to his father, the police could not specify which Facebook statement was the problem¹⁴. Several other bloggers were arrested for allegedly insulting the Sultan too.

3. Adopt a law on the media in order to guarantee the freedom of expression and information (**general response**). Such a law was not passed.
4. Abrogate or amend legislation, such as the Internal Security Act (ISA), that restricts fundamental freedoms in the name of national security or the economic life of the state, fosters the arbitrary arrest and detention of persons without granting access to judicial review, hinders the right to a fair trial, and acts to repress the free expression of human rights defenders and other members of civil society (**rejected**).

C. Recommendations

13. IPA Recommendations to the Malaysian authorities to support them in improving the overall conditions for freedom of expression and freedom to publish in the country:

- a. With a view to rapid ratification, sign the International Covenant on Civil and Political Rights (ICCPR) as soon as possible; then implement the ICCPR's provisions into domestic legislation;
- b. Repeal or amend the 1984 Printing Press and Publications Act (PPPA) in order to lift the Minister's prerogative to revoke or suspend a publishing permit; Respect and apply to other cases the 1 October 2012 landmark decision by the Kuala Lumpur High Court's Appellate and Special Powers division giving priority to Freedom of Expression in a consistent manner so as to set a precedent;
- c. Stop the practice of book banning and lift the official ban on 1,517 titles;
- d. Stop using the Sedition Act as a tool to stifle dissent; Implement other Acts (e.g.: SOSMA, Evidence Act) in a way which gives priority to freedom of expression;
- e. Release those human rights activists who have been arrested solely for exercising their right to freedom of expression.

¹³ <http://www.humanrightspartymalaysia.com/2012/10/01/umno-high-court-grants-malaysiakini-publishing-permit-declares-bersih-not-illegal-but-refuse-to-register-hindraf-hrp-when-46870-000-ngos-approved/>

¹⁴ http://www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=43417:man-to-be-brought-to-palace-to-apologize-for-insulting-johor-sultan&Itemid=2