

Prime Minister Tan Sri Dato' Haji Muhyiddin bin Haji Mohd. Yassin
Pejabat Perdana Menteri, Blok Utama
Bangunan Perdana Putra
Pusat Pentadbiran Kerajaan Persekutuan
62502 Putrajaya, Malaysia

Copy: Datuk Seri Hamzah Zainudin, Minister of Home Affairs
Dato' Sri Hishamuddin Tun Hussein, Minister of Foreign Affairs
Datuk Seri Saravanan Murugan, Minister of Human Resources
Tan Sri Othman Bin Hashim, Chairman, Human Rights Commission of Malaysia

11 May 2020

Re: Violent Threats and 'Hate Speech' against Rohingya Community in Malaysia

Your Excellency Tan Sri Dato' Haji Muhyiddin bin Haji Mohd. Yassin, Prime Minister of Malaysia,

We, the undersigned 84 organizations, write concerning the response of the Government of Malaysia to threats of violence and 'hate speech' directed at ethnic Rohingya refugees and asylum seekers in Malaysia.

Starting in the third week of April 2020, hateful messages targeting the Rohingya community in Malaysia have proliferated on social media platforms. Many posts included discriminatory and dehumanizing language and images as well as calls for Rohingya in Malaysia to be forcibly returned to Myanmar. Numerous online petitions calling for the expulsion of Rohingya were launched on Change.org and other platforms. Some petitions garnered thousands of signatures. Online users threatened prominent Rohingya activists, as well as their supporters, with physical attacks, murder and sexual violence.

We recognize the important role that Malaysia has played in hosting refugees, including Rohingya refugees arriving from Myanmar and Bangladesh. However, we are concerned that your government has to date failed to adequately respond to the recent surge in 'hate speech' and violent threats being directed at the Rohingya population. Moreover, statements by Malaysian officials, including the Minister of Home Affairs, could heighten tensions and incite violence and discrimination against the Rohingya.

We urge you to act immediately to address the recent proliferation of 'hate speech' and violent threats against the Rohingya community and to ensure that incendiary rhetoric does not trigger discriminatory acts or physical attacks.

Drawing on international human rights standards, this letter lays out steps that your government should take to effectively address 'hate speech', threats and incitement. Specifically, government officials should consistently, unequivocally and publicly condemn all forms of hate directed at the Rohingya. Authorities should investigate and prosecute threats of violence and expression that constitutes incitement to violence or discrimination in a manner that is consistent with the standards set out in the Rabat Plan of Action. Your government should also step up efforts to implement positive policy measures to counter 'hate speech' and intolerance in line with Human Rights Council Resolution 16/18 and the Rabat Plan of Action. Both documents are attached to this letter.

Background

The recent wave of ‘hate speech’ and violent threats against the Rohingya appears to be driven by a perception among some members of the Malaysian public and politicians that the Rohingya community is demanding citizenship or other legal rights in Malaysia. Many Malaysian social media users have expressed outrage at a Facebook post falsely claiming that the founder of a Rohingya organization demanded that Malaysia grant the Rohingya citizenship. The Rohingya activist in question has unequivocally denied making the statement and on April 23 filed a police report stating the social media posts are false and defamatory.

‘Hate speech’¹ and threats of violence against Rohingya have appeared on many social media platforms, including YouTube, Facebook and Twitter. Many comments draw on negative stereotypes and utilize derogatory or dehumanizing language, including comparisons to animals. Malaysians have launched petitions on Change.org and Avaaz demanding that the Malaysia government forcibly return Rohingya refugees to Myanmar.

Rohingya leaders and activists reported receiving death threats and harassment in recent weeks after it was falsely claimed they were demanding Malaysian citizenship for the Rohingya. Additionally, those supporting the Rohingya community in Malaysia have also been targeted. Malaysian human rights defender Tengku Emma Zuriana Tengku Azmi, the European Rohingya Council’s representative to Malaysia, was the target of vicious gender-based attacks after publishing a letter objecting to Malaysia’s pushback of boats containing Rohingya asylum seekers.²

Human rights organizations have worked diligently to alert social media companies to the use of their platforms to foment hate against the Rohingya. Facebook, Twitter, Change.org and Avaaz removed content that violated their community standards and terms of service. However, new posts and petitions containing hateful and discriminatory content continue to appear.

Official response

The rapid proliferation of threats of violence and ‘hate speech’ against the Rohingya community immediately followed the government’s decision in April to repel boats containing Rohingya refugees attempting to land in Malaysia.³ This action by the Malaysia government violated the principle of non-refoulement under international human rights law and threatened the lives of hundreds of Rohingya. Malaysia also has an obligation under international law to respond to boats in distress and enact and coordinate rescue operations.

To date, the Malaysia government has sent mixed messages concerning the discriminatory and threatening speech directed at the Rohingya. On 27 April, Senior Minister Datuk Seri Ismail Sabri Yaakob expressed sympathy for the Rohingya and called for Malaysians to be ‘peaceful’ and ‘considerate’ while avoiding allegations that can foment anger. However, on 30 April, this message of tolerance was undermined by an official statement by the Minister of

¹ There is no universally accepted definition of ‘hate speech’ in international human rights law, and various institutions have put forward their own definition of the term. Understood broadly, ‘hate speech’ is any expression of discriminatory hate towards people. This broad definition encompasses speech that, while offensive, nevertheless is protected by the right to freedom of expression.

² CSOs condemn online gender-based attacks on woman human rights defender Tengku Emma Zuriana, April 28, 2020, <https://bit.ly/3c3m86z>.

³ Fortify Rights, Malaysia: Deploy Search and Rescue for Rohingya Boats, Ensure Safe Disembarkation, April 17, 2020, <https://bit.ly/2KXHl0i>.

Home Affairs that emphasized Rohingya's lack of legal status or rights in Malaysia and justified measures 'to stop the intrusion of illegal immigrants'.

Malaysian authorities have also sought to cast blame on the Rohingya community for the recent spread of 'hate speech' and discriminatory rhetoric. Police officials have opened investigations against Rohingya social media users who have posted videos containing derogatory language about Malaysians. The statement by the Minister of Home Affairs references criminal complaints against Rohingya refugees and the opening of investigations against 'UNHCR card holders', but does not specify what actions, if any, are being taken to investigate those threatening violence against the Rohingya or human rights defenders who have raised their voices to support the Rohingya.

Obligation to address 'hate speech' against Rohingya

The 'hate speech' directed at the Rohingya community raises serious concerns about the Malaysia government's commitment to protect human rights, including the rights to equality, non-discrimination, life and security of person. These rights are protected by customary international law, which is binding on all states, and reflected in the Universal Declaration of Human Rights.⁴

Moreover, although Malaysia has not ratified core human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the human rights guarantees in the Constitution of Malaysia allow wide scope for interpretation. Given the fundamental importance of human rights, and their recognition in the Malaysian Constitution, it is of the utmost importance that every effort be made to ensure that Malaysian laws are interpreted, to the extent possible, in a manner that respects human rights.

Human rights experts and international bodies have called on states to combat the proliferation of 'hate speech', xenophobia and intolerance in recent years.⁵ In the New York Declaration for Refugees and Migrants, the UN General Assembly condemned 'racism, racial discrimination, xenophobia and related intolerance', and committed to 'take a range of steps to counter such attitudes and behavior, in particular with regard to hate crimes, hate speech and racial violence'.⁶

Restrictions on the right to freedom of expression

International human rights law protects the right to freedom of expression, though the right is not absolute. Freedom of expression may be restricted in order to advance a legitimate state interest when restrictions are lawful, necessary and proportionate, as set out in Article 19(3) of the ICCPR.⁷ 'Hate speech' includes language that, while offensive, is protected by the right to freedom of expression. However, threats of violence against individuals—such as death threats and threats of sexual violence received by Rohingya activists and their supporters—may be restricted in line with the legitimate state interest in protecting the rights of others, including the rights to security of person, equality, non-discrimination and life.

⁴ See Universal Declaration of Human Rights (UDHR). Adopted as a resolution of the UN General Assembly, the UDHR is not strictly binding on states. However, many of its provisions are regarded as having acquired legal force as customary international law since its adoption in 1948; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

⁵ United Nations, Strategy and Plan of Action on Hate Speech, 19 May 2019, <https://bit.ly/2Wnt6q1>; Hate speech: UN experts make joint call for action by states and social media firms, 23 September 2019, <https://bit.ly/2Wky7G6>; New York Declaration for Refugees and Migrants, UN Doc A/RES/71/1, 3 October 2016, <https://bit.ly/2WnL2qX>.

⁶ New York Declaration for Refugees and Migrants, UN Doc A/RES/71/1, 3 October 2016, <https://bit.ly/35rNlrs>.

⁷ C.f. Article 19(3), which elaborates on the right to freedom of expression found in the UDHR.

Further, Article 20(2) of the ICCPR requires the prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The Rabat Plan of Action provides practical legal and policy guidance to states on implementing Article 20(2) of the ICCPR, which requires states parties 'to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'.⁸ These international standards provide the Malaysia government guidance on measures that states can take to combat 'hate speech', violent threats and incitement.

Malaysia's Penal Code contains provisions aimed at protecting individuals from violence and threats of violence. These provisions may provide a legal basis for the investigation or prosecution of individuals who are inciting or threatening violence against the Rohingya. The application of civil or administrative law, or other policy measures, offer further avenues for addressing discrimination. It is imperative that these measures are implemented without discrimination or bias and consistent with international human rights standards relating to freedom of expression. In particular, restrictions on speech to protect the rights of the Rohingya must be lawful, necessary and proportionate to that aim.

Policy measures to address 'hate speech' and intolerance

Prohibitions of incitement to discrimination, hostility or violence are insufficient to combat intolerance and discrimination.⁹ Human Rights Council Resolution 16/18 sets out an action plan for states to address intolerance, stigmatization, discrimination and incitement to violence. The Rabat Plan of Action also suggests actions that states may take to address intolerance beyond merely penalizing incitement. Policy measures suggested by these standard-setting documents include education and awareness-raising, protecting media freedom and diversity, passing equality legislation, promoting community engagement on the causes of discrimination, building networks and mechanisms to respond to tension between communities, and training government officials on effective strategies to promote tolerance.

Recommendations

Your leadership in addressing 'hate speech' and threats directed at the Rohingya is essential to prevent violence, discrimination and other human rights abuses. We urge you and your government to speak out in support of the rights of the Rohingya, emphasizing their status as refugees fleeing persecution and human rights violations and unequivocally condemning 'hate speech', intolerance and discrimination directed at the Rohingya community. We ask that you and your government challenge false or discriminatory narratives and highlight your government's commitment to uphold the human rights of the Rohingya. As Prime Minister, we urge you to ensure all government officials and bodies do the same when addressing the situation of the Rohingya in Malaysia.

We further call on you to lead the Malaysia government's efforts to prevent incitement to discrimination, hostility or violence against the Rohingya. Authorities must ensure threats and other human rights abuses against the Rohingya and their supporters are investigated, and perpetrators held accountable. Investigation and prosecutions should be conducted without discrimination or bias and in a manner that is consistent with international human rights standards.

⁸ Rabat Plan of action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility of violence, UN Doc. A/HRC/22/17/Add.4, 5 October 2012, <https://bit.ly/3c7XNN2>.

⁹ ARTICLE 19, Camden Principles on Freedom of Expression and Equality, May 2009, <https://bit.ly/2YArr9l>.

Finally, we call on you to lead in the development and implementation of a holistic set of measures to address 'hate speech', intolerance and discrimination. In particular, the government of Malaysia should:

- Create an enabling environment for the right to freedom of expression and equality in Malaysia, including by passing comprehensive anti-discrimination legislation in line with international human rights standards.
- Implement positive policy measures to promote equality, non-discrimination and intercultural understanding in line with Human Rights Council Resolution 16/18 and the Rabat Plan of Action.
- Ratify the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Relating to the Status of Refugees and its 1967 Protocol.

We stand ready to support you to implement the measures suggested in this letter. To request further information or to set up a meeting or call to discuss our recommendations please contact Matthew Bugher, ARTICLE 19 Head of Asia Programme, at matthew@article19.org or +66-617464208.

Sincerely,

1. Advocates for Non-Discrimination and Access to Knowledge (ANAK)
2. Aliran Kesedaran Negara (ALIRAN)
3. Agora Society
4. ALTSEAN-Burma
5. Amnesty International Malaysia
6. Arakan Information Center
7. ARTICLE 19
8. Bangladesh Institute of Human Rights
9. Beyond Borders Malaysia
10. Boat People SOS
11. Building and Wood Workers International, Asia-Pacific
12. Buku Jalan Shah Alam
13. Burma Campaign UK
14. Burmese Rohingya Association in Japan
15. Burmese Rohingya Community in Denmark
16. Canadian Burmese Rohingya Organization
17. Canadian Rohingya Development Initiative
18. Center for Orang Asli Concerns
19. Centre for Independent Journalism
20. Christian Solidarity Worldwide
21. CIVICUS: World Alliance for Citizen Participation
22. COAST Trust
23. Community Development Centre
24. Coxsbazar CSO NGO Forum
25. EMPOWER Malaysia
26. European Rohingya Council
27. FIDH - International Federation for Human Rights
28. Foreign Spouses Support Group

29. Fortify Rights
30. FORUM-ASIA
31. Global Centre for the Responsibility to Protect
32. Human Rights Watch
33. Imagined Malaysia
34. Institute for Genocide and Mass Atrocity Prevention at Binghamton University
35. Institute on Statelessness and Inclusion
36. International Campaign for the Rohingya
37. International Commission of Jurists
38. International Human Rights Clinic, Harvard Law School
39. Islamic Renaissance Front
40. Jaringan Rakyat Tertindas (JERIT)
41. Justice For Sisters
42. Kuala Lumpur & Selangor Chinese Assembly Hall Youth Section
43. KRYSS Network
44. Malaysian Action for Justice and Unity Foundation (MAJU)
45. Malaysia Muda
46. NONGOR
47. North South Initiative
48. Our Journey
49. Queer Lapis
50. Pelangi Campaign
51. People's Empowerment Foundation
52. People Like Us Support Ourselves (PLUsos)
53. Pergerakan Tenaga Akademik Malaysia (GERAK)
54. Persatuan Sahabat Wanita Selangor
55. PHALS Coxsbazar
56. Progressive Voice
57. Projek Dialog
58. Pusat KOMAS
59. Refugees International
60. Restless Beings
61. Rights Realization Centre
62. Rohingya Association of Canada
63. Rohingya Students Network
64. Rohingya Today
65. Rohingya Youth for Legal Action
66. Rohingya Women's Education Initiative
67. RW Welfare Society
68. Salam for Democracy and Human Rights
69. Sabah Human Rights Centre
70. Save Rivers, Sarawak
71. Saya Anak Bangsa Malaysia
72. Seksualiti Merdeka
73. Sinar Project
74. Sisters In Islam (SIS)
75. Society for Threatened Peoples
76. South Asian Network for Refugees, IDPs and Migrants (SANRIM)
77. Suara Rakyat Malaysia (SUARAM)
78. Tenaganita
79. Teoh Beng Hock Trust for Democracy

80. University Malaya Association of New Youth
81. Voice of the Children
82. WITNESS
83. Women's Aid Organisation
84. Yayasan Chow Kit