



## Open Letter to Malaysia's Institutional Reform Committee

28 May 2018

### Members:

Datuk KC Vohrah  
Datuk Mah Weng Kwai  
Datuk Ambiga Sreenivasan  
Prof Dr. Shad Saleem Faruqi  
Datuk Mohamed Arshad Raji

Cc: Mr. Gobind Singh Deo, Minister of Communications and Multimedia

**Re: Following through on election promises related to press freedom and freedom of expression.**

Your Excellencies:

Warm greetings from the Southeast Asian Press Alliance!

Please allow us to congratulate the entire Committee on your appointment to the very crucial task of identifying institutional reform measures that will underpin the envisaged economic reforms for Malaysia following the monumental victory of the Pakatan Harapan (PH) in the 14<sup>th</sup> General Elections on 9 May 2018. The task of the Committee is simple to state but will indeed take a “mammoth” effort to accomplish and implement.

The Southeast Asian Press Alliance (SEAPA) is a regional network of advocates from 12 organizations in seven countries working together to defend and promote genuine press freedom and freedom of expression in the region. With our member in Malaysia, the Centre for Independent Journalism, and other independent journalists we have been closely watching and advocating for greater press freedom in the country during the 20-year existence of our organization.

In the context of potentially monumental changes that may arise from the GE14 election results, we now write to offer a regional perspective on reform of the legal environment that will have an impact on the Malaysian media and free speech. We hope that, with this humble contribution, you may be able to set a trajectory to take stock of the experiences of other countries in their respective political environments.

### **On abolition of oppressive laws**

We take it that it is your primary task to review PH's election promises in the area of media and free speech (PH Manifesto Promise 27), particularly:

- the repeal of the Printing Presses and Publications Act of 1984, and
- the review of “draconian provisions” of the Communications and Multimedia Act of 1998,

among the main laws and provisions that affect the right of the peoples in Malaysia to realize their constitutional right to freedom of expression. The repeal of the Anti-Fake News Act of 2018 was also promised by the PH leadership in the lead up to the elections.

SEAPA is registered under Thai law as the Association of the Southeast Asian Press Alliance

In addition, other laws mentioned in the Manifesto – such as the Sedition Act 1948, Prevention of Crime Act 1959, Universities and University Colleges Act 1971, National Security Council Act 2016, as well as provisions of the Penal Code 1997 especially on peaceful assembly and activities harmful to democracy, Security Offences (special measures) Act 2012 (SOSMA), Peaceful Assembly Act 2012 and the Prevention of Terrorism Act (POTA) 2015 – loomed heavily to potentially punish acts of free speech, and deter other citizens from speaking their minds about government and officials.

The value of these identified law reform measures cannot be understated, as we, along with the regional and international right to freedom of expression community, have proposed the same measures to enable greater press freedom and a freer online space for Malaysians.

We wish to underline that such reforms must address the following fundamental issues:

- The prohibition of over-broad content that can be used a basis for denying publishing permits or prosecution of alleged offenders.
- The near absolute and arbitrary powers of the Home Minister in granting publishing permits, and other high government officials in determining culpability for offences under these laws.

These issues belie a securitised—as opposed to a human rights-based—framework in looking at news, opinion and public commentary that are critical of the government. It is worth repeating that international human rights principles allow for restrictions on the right to freedom of expression only if these are to be done under the law, necessary and proportionate, and for legitimate purposes. We are afraid that the record of Malaysia in this area most often complies only with the first condition of being restricted under certain laws. Looking back, we see that the abuses were based on the tenor of law enforcement characterized by intolerance of criticism of the government, and paranoia over the potential impact of critical speech.

We emphasize the enabling role of freedom of expression in the fulfilment of other human rights including the right to public participation, the promotion of transparency and accountability in a democracy. There are essential elements that contribute toward ensuring that economic reforms benefit the maximum number of people, so that any gap that arises is brought out to be discussed and addressed.

### **Concrete measures**

We therefore urge you **work on reforming the media with the help of civil society and the journalist community**, as they are surely willing and ready to contribute to the reform process. Their participation will ensure that the reform process remains transparent and the proposals for new laws and policies reflect the needs of Malaysian society and are in line with human rights principles and standards.

While awaiting fruition of the promise to abolish repressive laws, we suggest for the high leadership of the government to **issue a clear pronouncement** that will guide law enforcement authorities to change their methods geared toward changing the entrenched culture of restricting free speech. The Malaysian government must, from now on, show its strength not through swiftness and harshness of policing but by the capacity to accept criticism and listen to the underlying message behind ‘complaints’ that contribute to the national conversation.

Finally, we urge you to develop **practical measures to address the current structure of Malaysian media**. Particularly the conglomerate and state-owned outlets should reform their operations toward professional journalism standards relevant to the changed political landscape and consistent with the principles of media pluralism and editorial independence. Political interference in the newsrooms must end. As dominant players in the media industry, it is urgent to restore public confidence in these institutions by affirming and upholding professional and ethical practices. It may also be necessary to adapt specific measures to retrain their staff to adopt a more critical and substantial form of journalism.

### **Learning from the region's lessons**

As the Malaysian people spoke during the GE14, the country is now at a threshold and rare opportunity to implement and sustain the reforms promised during the campaign. We can all indeed learn lessons, both good and bad, from neighbours around Southeast Asia which faced similar opportunities and challenges, for instance:

- Indonesia's example of the importance of government guarantees to respect media independence through self-regulation mechanisms that sustain press freedom 20 years since the Reformasi transition;
- Myanmar's experience of the abolition of censorship that opened up media space for unprecedented media pluralism, and the development of new laws that finally recognized the rights of journalists in performing their professional duties; also we must recognize the importance of a systematic follow through so that press freedom itself does not falter and fall to systemic cultures and interests;
- The Philippines' quest to address violence against journalists that highlight the importance of addressing the contexts that give rise to impunity, despite the absence of media regulations;
- Thailand media's lessons on the importance of professionalism and ethics to see them through the ebbs and flows of democratic and media space.

Truly, press freedom victories from around the region are still in the minority of countries in Southeast Asia. The rest of the region are still in entrenched systems that suppress the media and freedom of expression. Recently, in the same countries mentioned above, there have been drastic reversals to threaten the space for media and civic space.

For this reason, Malaysia's current position for a positive transition for press freedom holds tremendous potential to set new and sustainable standards for the rest of the region. Reforms must be done in earnest, not only because of narrow political interests or vested agendas within and around media, but also for the risk of roll backs as we have seen in other countries.

In closing, let us offer our network capacity to provide technical expertise and share their experience-based feedback on the concrete proposals on how to promote press freedom and freedom of expression in Malaysia.

We wish you strength and perseverance to attain your goals for institutional reform to attain the goal of the new government to restore leadership in the region.

In solidarity with and respect Malaysia's electoral achievement,

Yours sincerely,

  
Edgardo Legaspi  
Executive Director