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**ARTICLE 19 welcomes the opportunity to provide inputs for the report of the Special Rapporteur on Freedom of Religion or Belief to the 46th Session of the Human Rights Council.**

ARTICLE 19 believes that intolerance is more likely to flourish in environments where human rights are not respected, and responses to it must be grounded in international human rights law and driven by the understanding that the rights to freedom of expression, freedom of religion or belief, and equality, are mutually dependent and reinforcing.

The promotion of inclusion, diversity and pluralism and open space for dialogue, debate, and dissent is the best prevention and response to intolerance: more informed speech is needed to tackle hate. This also requires positive measures to enable those who face multiple and intersecting discriminatory barriers, including on the basis of gender, can fully exercise their right to freedom of expression.

This submission provides information on triggering factors for religious intolerance and violence in two countries where ARTICLE 19 conducts programmatic work on freedom of religion or belief: Myanmar and Malaysia. It concludes with recommendations to States.

1. **Myanmar**

**Hate Speech Against Muslims**

In the years leading up to the violent attack on Rohingya Muslims there was a surge in hate speech, including advocacy of discriminatory hatred constituting incitement to violence, directed against the Rohingya and other Muslim communities in Myanmar. In its investigation, the Independent International Fact-Finding Mission on Myanmar detailed ‘coordinated campaigns of hatred directed at Muslims and Rohingya’.[[1]](#footnote-1) Unfortunately, hate speech and language which may constitute incitement to violence has continued to circulate on online platforms in the years since.

The content of hate speech against Muslims has often focused on alleged threats to territorial integrity, Burmese purity, and religious sanctity, as well as the dangers of jihadism and sexual violence by Muslim men against Buddhist women.[[2]](#footnote-2) In advance of the campaign of violence against the Rohingya, the proliferation of hate speech was led by Buddhist nationalist groups such as the 969 Movement and the Organization for the Protection of Race and Religion. The ultra-nationalist monk Wirathu gained notoriety and hundreds of thousands of followers on Facebook while posting photographs allegedly depicting atrocities committed by Muslims and describing Muslims as “mad dogs” and “radical, bad people” and mosques as “enemy bases”.[[3]](#footnote-3)

In Myanmar, metaphors implying that Rohingya are foreigners are prevalent. Labels such as “Ae Soe” (“bad guest”), “Yay Myaw Kan Tin” (“unwanted person”), and “Anout Ta Kha” (“west gate”) are based on the premise that Rohingya are not indigenous to Myanmar.[[4]](#footnote-4) Rohingya have been described as “Bengali terrorists”, therefore constituting a national security threat, which would justify state-sanctioned and state-sponsored violence against them. One scholar notes that related posts on the Islamic State, Al-Qaeda forces within Myanmar, and allegations of Buddhist women being coerced to convert to Islam, were also prolific by 2015.[[5]](#footnote-5)

In 2016, the renowned constitutionalist, U Ko Ni, was targeted in a Facebook post that used derogatory language and called for violence: “Mout Kalar getting his foot in the door in Myanmar politics is not something we should sit by and watch. We need to do something right away.” The post was shared 450 times, with 60 comments and over 800 reactions.[[6]](#footnote-6) Less than a year later, U Ko Ni was assassinated publicly and in broad daylight in Yangon International Airport.[[7]](#footnote-7)

**Government Response**

While senior officials in both the USDP and NLD-led governments have made broad overtures toward tolerance and harmony, they have tended to publicly censure only the most extreme mouthpieces of the nationalist movement.[[8]](#footnote-8) Senior officials, including Aung San Suu Kyi, have consistently failed to address broader discriminatory sentiment among the general population, or to more forcefully advocate for the rights of the Rohingya and the country’s Muslim population.[[9]](#footnote-9)

The widespread hate speech and religious violence has been facilitated by prominent government officials perpetuating inflammatory rhetoric and participating in deliberate campaigns of misinformation directed at the Rohingya, including by denying atrocities perpetrated by state security forces in Rakhine State.[[10]](#footnote-10) In December 2016, the Information Committee in Aung San Suu Kyi’s office issued a press release dismissing reports of sexual violence as “rumours”. The same office has repeatedly dismissed reports of human rights violations as “fake news”. Some of the photographs shared by the Information Committee in order to advance the narrative that Rohingya individuals were burning their own villages have been demonstrated to have been staged.[[11]](#footnote-11)

In October 2016, a member of an official state-level commission investigating the Rakhine State crisis denied reports of the rape by military personnel, telling a BBC reporter that soldiers would not want to rape Rohingya women because they are ‘very dirty [and] have a very low standard of living and poor hygiene.’[[12]](#footnote-12) In December 2018, Myanmar’s Minister of Religion referred to Rohingya who had fled to Bangladesh as “Bengalis” and stated that, “the future goal of those over populated Bengalis is to march on Myanmar.”[[13]](#footnote-13)

**Legal Framework**

*Hate Speech Legislation*

Myanmar has been considering legislation aimed at addressing hate speech.[[14]](#footnote-14) The Ministry of Religious Affairs and Culture was responsible for developing the first versions of the proposed legislation, and in 2016 and 2017 shared drafts under the name “Interfaith Harmonious Coexistence Bill” and later “Protection against Hate Speech Bill”. These drafts relied heavily on censorship and criminal penalties as means of addressing “hate speech”, an approach that violates international human rights law.

The versions of the proposed legislation shared with civil society defined ‘hate speech’ to include speech that may cause ‘conflict’ or ‘dissension’ among religious people and groups. The definitions provided for these terms are impermissibly broad, and suggest neither the necessary proximity to the incitement of discrimination, hostility or violence to justify the restriction under ICCPR Article 20(2), nor the connection to protecting the human rights of others or other legitimate aims required by Article 19(3). Rather these provisions seem intended to protect religious beliefs or personal sentiment, a purpose that cannot be used to justify restrictions on speech.

*Penal Code*

The blasphemy provision of Myanmar’s Penal Code has been used to entrench the dominance of Buddhism in Myanmar. Article 295A of the Penal Code, which provides for up to two years of imprisonment for “outraging religious feelings”, has frequently been used against religious minorities and individuals speaking out against extremism.[[15]](#footnote-15) On 3 April 2020, three artists were charged under section 295A of the Penal Code after a complaint that a mural urging people to ‘stay home and save lives’, contained an image of the grim reaper that resembled a monk.[[16]](#footnote-16) The blasphemy provisions such as Article 295A are not in line with international standards, such as those set forth in the Rabat Plan of Action and Human Rights Committee General Comment 34.[[17]](#footnote-17)

*Incitement to Genocide*

While Sections 505(b) and (c) of the Penal Code prohibit the incitement of offences against the State, public tranquillity, or against any ‘class or community’, these sections cannot be read to prohibit incitement to genocide under Article III of the Genocide Convention, as the crime of genocide itself is not explicitly proscribed in law in Myanmar.

1. **Malaysia**

**Religious Intolerance**

In Malaysia, religious intolerance is a pressing concern, with religious minorities facing a heightened risk of discrimination and persecution. This is particularly the case for Shi’a and Ahmadiyah communities, who have been subject to harassment, arrest and prosecution by the authorities for professing their faith. This applies to both Malaysian and non-Malaysian nationals. In 2017, the United Nations Special Rapporteur in the field of cultural rights indicated that Shi’a communities are unable to worship freely and are subject to “obstacles in carrying out rituals which are both cultural and religious”.[[18]](#footnote-18)

We are also alarmed at the recent proliferation of hate speech and violent threats against Rohingya refugees and asylum seekers in Malaysia. In April 2020, hateful messages targeting the Rohingya community in Malaysia began to proliferate on social media platforms, including discriminatory and dehumanising language and images as well as calls for Rohingya in Malaysia to be forcibly returned to Myanmar. There have been numerous online petitions calling for the expulsion of Rohingya on Change.org and other platforms, with some gaining thousands of signatures. Online users have threatened prominent Rohingya activists, as well as their supporters, with physical attacks, murder and sexual violence.[[19]](#footnote-19)

It must be noted that these communities are not the only religious minorities facing persecution, yet their situation may be seen as emblematic of the intolerance faced by persons in religious minority sects in the country.

The legal framework for freedom of religion or belief and the response of authorities has fed into this religious intolerance in the country, and risks triggering hatred and violence.

**Legal Framework**

Malaysia has both federal and Islamic laws which aim to entrench the dominance of Sunni Islam and have been misused to harass and discriminate against religious minorities. These laws not only legitimise religious intolerance and hatred, but create an environment of fear which stifles much needed dialogue promoting inclusion, diversity and pluralism.

While the 1957 Constitution provides protections for freedom of religion or belief, they fall short of the protections required under international human rights law and standards. Article 11(1) states that "Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it". Despite this, Article 3(1) accords that “Islam is the religion of the Federation, while Article 11(4) imposes limitations on the right to propagate any religious doctrine or belief “among persons professing the religion of Islam”. In addition, Article 11(5) includes a more general limitation, prohibiting “any act contrary to any general law relating to public order, public health or morality,” the ambiguity of which makes it prone to inconsistent or arbitrary enforcement.[[20]](#footnote-20)

Malaysia’s Penal Code also defines various "offences relating to religion":

* Section 295 states that "Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons … shall be punished with imprisonment for a term which may extend to two years or with fine or with both".
* Section 298A further restricts freedom of religion or belief and freedom of expression by providing a sentence up to five years of jail term for anyone "causing… disharmony, disunity, or feelings of enmity, hatred or ill will or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion".[[21]](#footnote-21)

These provisions, used to penalise criticism or to restrict activities and speech of religious minorities, are much broader than the expression where States are required to restrict under Article 20(2) of the ICCPR and does not comply with the requirements under Article 19(3) of the ICCPR.

In 1996, the Fatwa Committee for Religious Affairs issued a Syariah order dictating that Sunni Islam is the permitted form of Islam in Malaysia, and imposing a prohibition on the proselytism, promulgation or professing of Shi’a Islam.[[22]](#footnote-22) In 1998, the state of Selangor issued another order declaring Ahmadiyah communities to be ‘kafir’ (infidels) and banning four books concerning the Ahmadiyah faith. The order went further in proclaiming that the state had a duty to ensure their conversion to Sunni Islam.[[23]](#footnote-23)

Section 233(1)(a) of the Communication and Multimedia Act, which deals with improper use of network facilities or network service by a person, has broad restrictions on freedom of expression that have also been imposed against religious minorities. It vaguely targets “any comment, request, suggestions or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person”.[[24]](#footnote-24)

**Response of the Authorities**

In Malaysia, there are frequent raids and other forms of harassment from law enforcement against religious minorities. In September 2019, for example, the Selangor Islamic Religious Council arrested more than 20 Shi’a Muslims in Gombak who had gathered to commemorate the Battle of Karbala ahead of Ashura Day.[[25]](#footnote-25) In the same month, the Johor Islamic Affairs Department detained 54 Shi’a followers and seized books and other items related to Shi’a teachings following a raid.[[26]](#footnote-26)

We note how prominent government officials have failed to speak out in support of the rights of religious minorities, challenge false or discriminatory narratives, and condemn hate speech. In fact, the intolerance against the Shi’a community has been incorporated in official public narratives by key officials. As an example, sermons prepared by the Selangor Islamic Religious Department have involved authorities describing Shi’a beliefs and practices as “deviant”, “heinous” and “nauseating”.[[27]](#footnote-27)

1. **Recommendations**

The two country situations explored above highlights how a proactive and positive approach toward inclusion, diversity and pluralism is needed to the challenge of rising intolerance. We put forward the following recommendations for tackling discrimination and violence against religious minorities to States:

* Adopt comprehensive and evidence-based national implementation plans on Human Rights Council Resolution 16/18 and the Rabat Plan of Action, and related resolutions on freedom of religion or belief, with the full and effective participation of diverse stakeholders;
* Prohibit the advocacy of discriminatory hatred constituting incitement to hostility, discrimination or violence in compliance with Articles 19(3) and 20(2) of the ICCPR and the guidance of the Rabat Plan of Action;
* Ensure an environment for open, robust debate and dialogue, including through a free and open internet;
* Ensure political leaders speak out in support of the rights of religious minorities, challenge false or discriminatory narratives, and condemn hate speech;
* Proactively support, including where appropriate by resourcing, independent civil society organisations engaged in human rights based approaches to tackling the root causes of hatred;
* Repeal blasphemy laws and other laws that illegitimately restrict expression in order to ensure open dialogue which facilitates inclusion, diversity and pluralism;
* Enact comprehensive anti-discrimination legislation;
* Ensure that the freedom of religion or belief is protected online, by refraining from measures that require private companies to take action that violates international human rights law, and encouraging social media companies to bring their practices in line with international human rights law;
* Ensure that all initiatives to counter hate, including on the basis of religion or belief, are gender-responsive and fully address the gender dimensions of intolerance, discrimination, and violence, ensuring the full and effective participation and leadership of women and LGBTQ persons in these processes; and,
* Ensure accountability and redress for all human rights violations, in particular of the right to freedom of religion or belief, freedom of expression and non-discrimination, ensuring equal access to justice.

We put forward the following recommendations to other stakeholders:

* Civil society, religious leaders, the media, and social media companies should create their own voluntary initiatives to promote inclusion, diversity and pluralism according to their human rights responsibilities, as identified in the Rabat Plan of Action and the Camden Principles on Freedom of Expression and Equality; and
* Online intermediaries should bring their policies and practices in line with Guiding Principles of Business and Human Rights, including by aligning their terms of service with international human rights law, and ensure greater transparency in relation to content moderation decisions, and a right for users to appeal decisions.

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