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Malaysian Bar**

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**Resolution Adopted at the 78th Annual General Meeting of the Malaysian Bar
(Held on 16 March 2024)**

Resolution of Growing Concern over Delay of Government to Repeal Draconian Laws and Bring about Needed Reforms to Ensure Justice in Malaysia

Whereas:

1. **JUSTICE DELAYED IS JUSTICE DENIED.** We recall the many commitments and/or promises/assurances made by Pakatan Harapan, its leaders and its MPs in the past to repeal draconian laws and bring about needed reforms for a better more just Malaysia.
2. The Pakatan Harapan before GE15 did also specifically commit to the **review or repeal Sedition Act 1948, Communications and Multimedia Act 1998 and Printing Press and Publications Act 1984. Abolish the Universities and University Colleges Act 1971.**
3. In the GE14 Manifesto, which was more detailed, it is stated that ‘The Pakatan Harapan Government **will revoke** the following laws: • **Sedition Act 1948 • Prevention of Crime Act 1959 • Universities and University Colleges Act 1971 • Printing Presses and Publications Act 1984 • National Security Council Act 2016 • Mandatory death by hanging in all Acts.**
4. The said Manifesto also said that The Pakatan Harapan **Government will also abolish draconian provisions** in the following Acts: • **Penal Code 1997 especially on peaceful assembly and activities harmful to democracy • Communications and Multimedia Act 1998 • Security Offences (Special Measures) Act 2012 (SOSMA) • Peaceful Assembly Act 2012 • Prevention of Terrorism Act (POTA) 2015.**
5. Whilst Prime Minister Anwar Ibrahim’s government have successfully abolished the mandatory death penalty, and life imprisonment, it has not yet made good on its many other promises to repeal other draconian laws.

6. Below are some of the draconian laws that are yet to be repealed.

SEDITION ACT

7. With regard to the Sedition Act, the Malaysian Bar has called for its REPEAL, also through several Bar Resolutions over the years, including the Resolution adopted at the EGM of the Malaysian Bar on 19/9/2014. The Malaysian Bar also organised a Peaceful Assembly, Walk for Peace and Freedom 2014, calling for the abolition of the Sedition Act on 16 Oct 2014. It was attended by over 1,000 – 2,000 lawyers.
8. On 21/3/2023, Deputy law and institutional reforms minister Ramkarpal Singh says the government has **no plans to abolish the Sedition Act** at the moment. (FMT, 21/3/2023). In July, Prime Minister Anwar Ibrahim said the government would only apply the Act for provocative statements against the rulers.
9. Malaysian Bar president Karen Cheah on 30/7/2023 was reported saying the colonial-era legislation should be repealed. There is no need to retain the Sedition Act 1948 even for use only against those who insult royalty. (FMT, 30/7/2023)
10. However, since then, PAS president Abdul Hadi Awang, book editor Kean Wong and Wan Azri have since been charged under the Act.
11. Blogger Wan Muhammad Azri Wan Deris - also known as Papagomo - was charged at the Sessions Court here on Monday (Jan 8) with allegedly making seditious remarks linking the government to pro-Israel and pro-Western countries last year. Wan Azri, whose alter ego is believed to be Papagomo, pleaded not guilty in the sessions court to a charge of making a seditious statement against the government. His remark that the government was “pro-Israel and pro-Western nations” was allegedly made in a Facebook video on Nov 8, 2023. The charge was framed under Section 4(1)(b) of the Sedition Act 1948 (The Star, 8/1/2024)
12. On 4/2/2024, it was reported that the Police is investigating DAP leader Tony Pua under the Sedition Act 1948 over his Facebook posts criticising the Pardons Board’s decision to reduce Najib Abdul Razak’s prison sentence. (Malaysiakini).
13. The fact that the Sedition Act is yet to be repealed, and is still continuing to be used may be considered a betrayal by PM Anwar Ibrahim and the PH-led coalition.

Communications and Multimedia Act 1998

14. The Malaysian Bar has been calling for the repeal of the Act especially the draconian provisions contain therein. A Bar Resolution in 2016 calls for the repeal of section 263, section 233 and such vague provisions in the Communications and Multimedia Act 1998. The Bar Resolution in 2023, added a call to repeal section 252, which is an invasion of our privacy – as it allows the State ‘to intercept or to listen to any communication transmitted or received by any communications’.
15. ‘Section 233(1)(a) of the CMA is a serious encroachment on the freedom of speech and expression guaranteed by Article 10(1)(a) of our Federal Constitution. . . . Section 233(1)(a) of the CMA is also repugnant to the rule of law, as it is broad in scope, vague and ambiguous, with entirely subjective terms such as “offensive” and “annoy”. It can easily be misused to stifle speech and expression, to shut out contrary views, to quash dissent, to deny democratic space, and to suppress Malaysians. It is this imprecision that gives rise to the perception that the provision is yet another dressed-up political weapon in the armoury of the Government’ - *Extract from a 2015 Bar Statement*.
16. A total of 65 charges have been filed under Section 233 of the Communications and Multimedia Act 1998 out of 876 cases investigated in the five-year period between January 2018 and Nov 15, 2023, according to Deputy Communications and Digital Minister Teo Nie Ching. (*The Edge*, 27/11/2023). The current government shamelessly continue to use this draconian law including Section 233. It is immaterial as to how many is charged, but the THREAT of using this draconian provision impacts on the peoples’ freedom of expression and opinion.

Independent Police Complaints and Misconduct Commission (IPCMC)

17. It must be noted the IPCMC was recommended by 2004 Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police despite the fact that there already then was the Police Force Commission and other relevant law enforcement bodies that were responsible for crimes/misconducts committed by police officers, and thus a clear indication of the failure of existing mechanisms to deal with police crimes and misconducts – hence the need for a NEW Independent Commission to deal with police crimes/misconducts.
18. When Prime Minister Anwar Ibrahim came into power with PH-led coalition, the alternative IPCC Act, that replaced the earlier PH initiated IPCMC Bill, which was then undergoing possible amendments that may have finally given us a REAL IPCMC, was still not in force.

19. What could and should have been done, was **not to put into force that law but to send it back to Parliament** to be repealed or amended, more so since the PH and Opposition MPs in Parliament then were seen to strongly oppose the IPCC Bill. Sadly, the Home Minister put into force the Independent Police Conduct Commission Act 2022 on **1 July 2023** [PU(B) 574/2022], and thereafter started appointing Commissioners and spending monies.
20. The IPCC in reality turned out to be just a ‘sorting commission’ that refers complaints back to Police Force Commission and other relevant law enforcement agencies.
21. The REAL IPCMC must be able to independently investigate police crimes and misconducts, hold public inquiries and even prosecute. They should maybe also have the power to monitor Police Force Commission, and other relevant law enforcement agencies’ handling of crimes/misconducts allegedly committed by police officers.
22. Some other matters of concern, not all, are as follows: -
 - a) **Restoration of Local Government/Council Elections** – This government continues with political appointments of Local Councilors, and even local community leaders like Kampung heads. There is still not even the amendment of laws that will allow States to independently decide and conduct Local Government elections in their respective States. It is humorous to now hear that parties in the ‘unity government’ are fighting over appointment rights over what should be democratically elected by the people positions – ‘Umno Selangor has decided to relinquish the 20 local council posts in the state to its coalition partner, Pakatan Harapan (PH) ... While relinquishing the local council posts, Umno Selangor expressed the desire for 373 posts on the Village Development and Safety Committee in the state...’(NST, 20/1/2024).
 - b) **Political Appointments** – The practice continues where one of the first was the appointment of the Prime Minister’s daughters;
 - c) **Equal rights and allocation for all Members of Parliament** has still not happened. This is a DISRESPECT of the people - peoples’ democratic rights to choose their own peoples’ representative. If they elect the ‘wrong MP’, then they get no or lesser funds??
 - d) **Appointment of former Attorney General/Public Prosecutor**, so soon after he made the decision to discontinue criminal trial against the sitting Deputy Prime Minister, **as Chairman of Amanah Raya Berhad**, an entity that comes under the supervision of the Finance Ministry. A cooling off period of maybe 3 years before any retiring AG, Minister or senior public officer is appointed to GLC or corporate positions should be considered.

- e) After the 1MDB, **the dangers of the same person being Prime Minister and Finance Minister came to light**. Sadly, Anwar Ibrahim, despite earlier commitments, remains both Prime Minister and Finance Minister.
- f) **Asset Declaration of MPs and Cabinet Members** – It has still not happened after Anwar became Prime Minister more than 14 months ago. Asset declaration is a means to ensure that MPs or Cabinet Members, do not wrongfully enrich themselves or their family members during their term in office, and as such, there must be at least annual declarations to enable public scrutiny.
- g) **Body-cams and CCTV** – Decided on and budget/monies already available but still not implemented.
- h) **Right to Peaceful Assembly** – It is a right, and thus does not need government or police ‘gatekeepers’ to ‘control’ the exercise of one’s human right. Under Anwar Ibrahim’s rule, people exercising this right continue to be ‘harassed’. ‘It was reported that police have identified 25 persons of interest at the “Save Malaysia” rally who will be called in to have their statements recorded.’(The Star, 18/9/2023). Why did the police try to ‘sabotage’ the right to peaceful assembly - ‘Police have advised members of the public not to participate in the 100 Per cent Reform Demand Rally organised by the Coalition for Clean and Fair Election (Bersih) this Tuesday at Plaza Tugu Negara (National Monument) as it does not comply with the Peaceful Assembly Act 2012,... “Holding an assembly without notification is an offence under Section 9 (5) of the relevant act and the police are calling on the public not to participate in the illegal assembly,” he said in a statement here today...’(Malay Mail, 25/2/2024). Mind you that in 2014 the Court of Appeal ‘decided that Section 9(5) of the PAA was ultra vires art. 10 of the Constitution for criminalizing a breach of the restriction under s. 9(1) and was therefore unconstitutional’ – that is the non-giving of the required notice.

The Government’s silence may be seen as implied agreement with the actions of the police and unfortunately may DETER future exercising of the right to peaceful assembly. ‘Six people have been questioned by police in connection with the rally organised by the Coalition for Clean & Fair Election (Bersih) near Parliament last month. Kuala Lumpur police chief Comm Datuk Allaudeen Abdul Majid said police will call up three more people to have their statements recorded this week. “Once all statements have been recorded, we will refer the investigation paper to the Deputy Public Prosecutor for further action.” (The Star,5/3/2024)

On November 29, 2011, the Malaysian Bar organised the “Walk for Freedom 2011: Peaceful Assembly Bill Cannot and Must Not Become Law!” The Malaysian Bar, in a

Resolution adopted in 2023, reiterated the call that the draconian provisions in the Peaceful Assembly Act 2012 be repealed.

- i) **The compromise of Backbencher MPs – their duty is to be an effective check and balance to the Executive, and would this not be compromised if they are directly/indirectly appointed to positions in GLCs and other government linked entities**, more so if their appointments result in additional monetary compensations and/or powers?

Some examples of current backbencher MPs that have been appointed are:- Batu MP P. Prabakaran has been appointed as the new Malaysian Indian Transformation Unit (Mitra) special committee chairman (*Malay Mail*, 8/2/2024), Subang MP Wong Chen has been appointed the non-executive chairperson of Malaysia Debt Ventures (MDV) (*Malaysiakini*, 24/5/2023), PKR's Balik Pulau MP Bakhtiar Wan Chik was named to head finance ministry-owned investment arm MyCreative Ventures Sdn Bhd (FMT, 10/3/2023). PKR's Syed Ibrahim Syed Noh (Ledang MP) has been named as the non-executive chairman of the Malaysia Digital Economy Corporation (MDEC) [*Malay Mail*, 6/4/2023].

23. The Malaysian Bar, in upholding the cause of justice without fear or favour, has identified and called for the repeal of many draconian law and/or draconian provisions in certain laws, and have also made recommendations for the enactment of laws or needed amendments in existing laws over the years vide Press Statements, Resolutions of the Bar, Memorandums, Reports and Recommendations.

Therefore, it is resolved that:

- A. The Malaysian Bar expresses disappointment in the delay in the bringing about needed reforms, especially the repeal of draconian laws, draconian provisions in existing laws, the enactment of new laws and amendments in laws that are needed that justice is done in Malaysia, and calls on the Malaysian government to expedite the repeal of draconian laws, and bring about positive reforms needed for greater justice;
- B. The Bar Council, on behalf of the Malaysian Bar, once again communicate with the Prime Minister, Cabinet Ministers, Political Parties and peoples' representatives to remind again the bad laws that need to be speedily repealed, and new laws that need to be enacted to bring about needed reforms including the enactment of a REAL Independent Police Complaints and Misconduct Commission (IPCMC) Act; and
- C. The Malaysian Bar calls on Malaysia to uphold the cause of justice without fear or favour.