

Lawyers' Rights Watch Canada



November 14, 2016

Prime Minister Najib Razak
Office of the Prime Minister
Government of Malaysia
Putrajaya, Malaysia

Re: Proposed amendments to the Legal Profession Act 1976

Dear Prime Minister Najib,

We, the undersigned international human rights and legal organizations, are writing to express our serious concerns about the proposed amendments to the Legal Profession Act 1976, which your government has indicated will be introduced in the Parliament. We urge you to reconsider pursuing these amendments, as they pose a serious threat to the independence of the Malaysian Bar, and the right to freedom of association, and threaten the environment in which lawyers are able to freely speak out on matters of concern and public interest.

As the United Nations Human Rights Council affirmed in 2015, an independent legal profession is among the “prerequisites for the protection of human rights and the application of the rule of law, and for ensuring fair trials and the administration of justice without any discrimination.”¹ The UN Basic Principles on the Role of Lawyers state that governments shall ensure that lawyers can perform all of their professional functions “without intimidation, hindrance, harassment or improper interference.”²

The Malaysian Bar, created by statute in 1947, is an independent bar association whose aim is “to uphold the rule of law and the cause of justice and protect the interest of the legal profession as

¹ UN Human Rights Council, Resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, June 30, 2015, UN Doc. A/HRC/29/L.11. http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_29_L11.docx.

² UN Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), principle 16., <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

well as that of the public." It is managed by a 38-member Bar Council, elected annually from among its members. Consistent with its stated purpose, the Malaysian Bar has been an outspoken voice and a key guardian in Malaysia on the Constitution, judicial independence, human rights issues, and the rule of law for several decades.

The Malaysian Bar and the Bar Council are governed by the Legal Profession Act 1976, which the government proposes to amend. These amendments could effectively silence the Malaysian Bar and prevent it from speaking out on critical matters relating to the administration of justice in Malaysia. We note that the Bar has expressed critical views regarding certain policies and measures of the government relating to the administration of justice.

It is our understanding that government is proposing these amendments on its own initiative, and that it failed to substantively or adequately consult the Bar during the drafting process. The Bar Council strongly opposes these amendments. The government's proposed amendments would impose wholesale changes on the way in which the Bar elects its governing council and organizes its annual meeting.

We stand with the Malaysian Bar and the Bar Council in strongly opposing these amendments. We believe that these amendments would, if adopted, seriously undermine the independence of the Malaysian Bar. They would constitute an unacceptable interference in the Bar's right to form a "self-governing association" and to "exercise its functions without external interference," as set out by the UN Basic Principles on the Role of Lawyers.³

This letter highlights three areas in which certain provisions of the government's proposed amendments are particularly problematic.

Selection of Members of the Bar Council

Under the current provisions of the Legal Profession Act, the members of the Bar Council consist of: (a) the president and vice-president of the Malaysian Bar; (b) 12 members elected throughout the country by way of postal ballot; (c) the chairmen of each of the 12 State Bar Committees, each of whom has been elected by the members of the respective State Bar; and (d) one member elected by each of the 12 State Bars at their annual general meeting. All members are thus lawyers who have been selected by other members of the Bar.

Under the proposed amendments, the Minister in charge of legal affairs would be allowed to appoint two members of the Bar Council. This contravenes Principle 24 of the UN Basic Principles on the Role of Lawyers state that the executive body of a professional legal association "should be elected by its members" and "exercise its functions without external interference."⁴ The Bar Council should be free to discuss and debate issues relating to actions taken by the government without the inhibiting presence of representatives of the government. Moreover, their presence could compromise the confidentiality of Bar Council deliberations. Given the Bar Council's role in promoting human rights and the rule of law, it is crucial that it be able to operate without this government interference.

Attorney General Mohamed Apandi Ali wrote in a July column for *Berita Harian Ahad* that "the government does not have any intention of controlling the Bar Council," but claimed that he

³ Ibid., principle 24.

⁴ UN Basic Principles on the Role of Lawyers, principle 24.

believed the amendments were necessary “to ensure a better relationship between the Bar Council and the government.”⁵

Election of Bar Council Officers

The proposed amendments would further interfere with the independence of the Bar by restricting eligibility for leadership positions to those elected to the Bar Council by the various State Bars, thereby severely limiting those who can stand for office. The proposed amendments would preclude the current president and vice-president and the leaders of the State Bar committees from any leadership role in the Bar Council. In doing so, this amendment effectively blocks many committed and experienced lawyers from running the Bar Council, undermining its effectiveness.

The proposed amendments would also completely rewrite the procedures for electing members of the Bar Council by, among other ways, eliminating the postal ballot and replacing those currently elected by postal ballot with an additional member elected at the annual general meeting of each State. While the Attorney General asserted that the amendments were intended to make the Bar Council “more transparent and democratic,” the impact of the changes would be to reduce the number of Bar Council members each member of the Bar can vote for from 14 to 3, with the choice limited to individuals within their own State.⁶ Such a fundamental change in the way the association’s governing body is elected should be initiated and approved by those most affected – the members of the Bar – rather than unilaterally imposed upon the Bar by the government.

Government Control Over Election Rules

The proposed amendments would give the minister in charge of legal affairs far-reaching power to determine the Bar’s electoral rules and regulations. Allowing a state official to determine how elections are conducted would constitute improper interference in the internal affairs of an organization that should be self-governing and free from interference.

Change in Quorum Requirements

Another proposed amendment would problematically alter the quorum requirement for the Bar’s annual general meetings. Under the current law, the quorum for a general meeting of the Malaysian Bar is 500 of the bar’s approximately 17,000 members. The government’s proposed amendments would change that quorum to 25 percent of the members of the Bar, or over 4,000 members, an unreasonably high number.

A quorum of more than 4,000 members would make it extremely difficult for the Malaysian Bar to hold a general meeting. With 17,000 members scattered around the country, gathering 4,000 of them in one place could be nearly impossible. This amendment appears to be intended to prevent the Bar from speaking out on matters of concern, since it is at these annual meetings that the Bar passes resolutions on issues of public interest. The inability to hold general meetings will also have a severe impact on the Bar’s ability to fulfil its responsibilities under the Legal Professions Act.

⁵ “AG: Amendment of Legal Profession Act to make Bar Council more transparent and democratic,” New Straits Times, July 4, 2016, <http://www.nst.com.my/news/2016/07/156653/ag-amendment-legal-profession-act-make-bar-council-more-transparent-and>.

⁶ “AG: Amendment of Legal Profession Act to make Bar Council more transparent and democratic,” New Straits Times, July 4, 2016, <http://www.nst.com.my/news/2016/07/156653/ag-amendment-legal-profession-act-make-bar-council-more-transparent-and>.

Taken together, the proposed amendments, if adopted, would undermine the independence of the Malaysian Bar and repress its strong and principled voice on legal matters of public interest. Internationally this will be seen as nothing short of tampering with the rule of law in Malaysia.

We strongly urge you to reconsider introducing this harmful bill in Parliament.

Sincerely,

Dimitris Christopoulos, President, FIDH

Rafendi Djamin, Director, Southeast Asia and the Pacific, Amnesty International

Robert Hårdh, Executive Director, Civil Rights Defenders

Anselmo Lee, Secretary General, Asia Democracy Network

Catherine Morris, Research Director, Lawyers' Rights Watch Canada

Phil Robertson, Deputy Director, Asia Division, Human Rights Watch

Amy Smith, Executive Director, Fortify Rights

Charles Santiago, Chairperson, ASEAN Parliamentarians for Human Rights

Sam Zarifi, Regional Director for Asia and the Pacific, International Commission of Jurists

CC:

Azalina Othman Said, Minister in the Prime Minister's Department

Mohamed Apandi Ali, Attorney General

Paul Low Seng Kuan, Minister in the Prime Minister's Department

Anifah Aman, Minister of Foreign Affairs