

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300; 917-591-3452

#### ASIA DIVISION

Brad Adams, *Executive Director*  
Kanae Doi, *Japan Director*  
Meenakshi Ganguly, *South Asia Director*  
Phelim Kine, *Deputy Director*  
Elaine Pearson, *Australia Director*  
Sophie Richardson, *China Director*  
Phil Robertson, *Deputy Director*  
John Sifton, *Advocacy Director*  
Mickey Spiegel, *Senior Advisor*  
Patricia Gossman, *Senior Researcher*  
Andreas Harsono, *Senior Researcher*  
David Mathieson, *Senior Researcher*  
Sunai Phasuk, *Senior Researcher*  
Tejshree Thapa, *Senior Researcher*  
Jayshree Bajoria, *Researcher*  
Carlos H. Conde, *Researcher*  
Saroop Ijaz, *Researcher*  
Maya Wang, *Researcher*  
Linda Lakhdhir, *Legal Advisor*  
Riyo Yoshioka, *Senior Program Officer*  
Ahmad Shuja, *Research Associate*  
Storm Tiv, *Senior Associate*  
Shayna Baugnier, *Associate*  
Georgia Bright, *Associate*  
Daniel Lee, *Associate*

#### ADVISORY COMMITTEE

David Lakhdhir, *Chair*  
Orville Schell, *Vice-Chair*  
Maureen Aung-Thwin  
Edward J. Baker  
Robbie Barnett  
Robert L. Bernstein  
Jerome Cohen  
John Despres  
Mallika Dutt  
Kek Galabru  
Merle Goldman  
Jonathan Hecht  
Sharon Hom  
Rounaq Jahan  
Ayesha Jalal  
Robert James  
Joanne Leedom-Ackerman  
Perry Link  
Krishen Mehta  
Andrew J. Nathan  
Xiao Qiang  
Bruce Rabb  
Balakrishnan Rajagopal  
Ahmed Rashid  
Victoria Riskin  
James Scott  
Mark Sidel  
Eric Stover  
Ko-Yung Tung  
Francesc Vendrell  
Tuong Vu

#### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*  
Bruno Stagno Ugarte, *Deputy Executive Director for Advocacy*  
Dinah PoKempner, *General Counsel*  
James Ross, *Legal & Policy Director*  
Hassan Elmasry, *Co-Chair*  
Joel Motley, *Co-Chair*

HUMAN  
RIGHTS  
WATCH

HRW.org

July 19, 2016

YB Dato' Sri Mohd Najib bin Tun Abdul Razak  
Prime Minister of Malaysia  
Office of the Prime Minister  
Main Block, Perdana Putra Building  
Federal Government Administrative Centre  
62502 Putrajaya, Malaysia

### Re: Proposed Amendments to the Legal Profession Act

Dear Prime Minister Najib,

I am writing to express Human Rights Watch's serious concerns about the proposed amendments to the Legal Profession Act 1976 that your government has indicated will be introduced when Parliament meets in October. In our view, the amendments represent a serious threat to the independence of the Malaysian Bar, are inconsistent with international legal principles, and will harm global perceptions of the rule of law in Malaysia.

Human Rights Watch is an independent non-governmental organization that monitors and reports on human rights issues in more than 90 countries around the world. We have been reporting on human rights issues in Malaysia for two decades.

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."<sup>1</sup> 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."<sup>2</sup>

<sup>1</sup> 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](http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_29_L11.docx).

<sup>2</sup> 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>.

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 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 in Malaysia on issues related to human rights and the rule of law for several decades.

The Malaysian Bar and the Bar Council are governed by the Legal Profession Act 1976, and it is this statute that the government proposes to amend. It is our understanding that these amendments are being proposed by the government on its own initiative, that the Bar was not consulted during the drafting process, and that the Bar Council strongly opposes them. 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. Without the consent of the Bar itself, these proposed changes constitute an unacceptable interference with 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.<sup>3</sup>

This letter will highlight a few of the provisions of the government’s proposed amendments that we view as most problematic.

### **Selection of Members of the Bar Council**

Under 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.

The government’s proposed amendments to the Legal Profession Act would alter the process for selecting members of the Bar Council in a number of very troubling ways. Human Rights Watch is particularly concerned about the proposal that would authorize the minister in charge of legal affairs to appoint two members of the Bar Council. Attorney General Mohamed Apandi Ali wrote in a column for *Berita Harian Ahad* that “the government does not have any intention of controlling the Bar Council,” but noted that the amendments were necessary “to ensure a better relationship between the Bar Council and the government.”<sup>4</sup>

---

<sup>3</sup> Ibid., principle 24.

<sup>4</sup> “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>.

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.”<sup>5</sup> The proposed amendment contravenes these principles. 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, since those government-appointed representatives would likely be tasked with reporting back to the minister in charge of legal affairs, 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.

The bill would further interfere with the independence of the Bar by restricting eligibility for leadership positions to those elected to the Bar Council by the State Bar, thereby severely limiting those who can stand for office. The law 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 of the most committed and experienced lawyers from running the Bar Council, undermining its effectiveness.

The proposed bill would also completely rewrite the procedures for electing members of the Bar Council by, among other things, 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, and to limit their choices to individuals within their own state.<sup>6</sup> 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 government minister to determine how elections are conducted would constitute improper interference in the internal affairs of an organization that should be self-governing.

### **Change in Quorum Requirements**

An amendment that would alter the quorum requirement for the Bar’s annual general meetings raises further concerns. Under the current law, the required quorum for a general meeting of the

---

<sup>5</sup> UN Basic Principles on the Role of Lawyers, principle 24.

<sup>6</sup> “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>.

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.

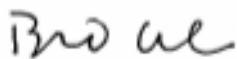
A quorum of more than 4,000 members would make it extremely difficult for the Malaysian Bar to hold a general meeting. With 17,000 members scattered around the country, gathering 4,000 of them in one place could be nearly impossible. This amendment appears to be intended to prevent the Bar from speaking 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 fulfill its responsibilities under the Legal Profession Act.

\*\*\*

Taken together, your government's 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. This will be seen internationally 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,



Brad Adams  
Asia Director

CC:  
Azalina Othman Said  
Minister in the Prime Minister's Department  
Pejabat Menteri  
Tingkat 15, Bangunan Parlimen  
50680 Kuala Lumpur, Malaysia  
Fax: +60-03-20781719