



Malaysia

Submission to the UN Universal Periodic Review

17th Session of the UPR Working Group

Submitted 11 March 2013

Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC, and Pax Romana

Ms Renate Bloem: Email renate.bloem@gmail.com

-

1. (A) Introduction

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** Pax Romana-ICMICA is an international network of Catholic intellectuals and professionals in over 60 countries who use their skills to uphold social justice and human rights at national, regional and global levels. It has consultative status with the U.N, Vatican, Council of Europe and various other rights based organizations and networks, and is headquartered in Geneva, Switzerland.
- 1.3** In this document, CIVICUS and Pax Romana outline concerns related to the environment in which civil society and human rights defenders operate in Malaysia, and discuss threats they face in the exercise of the freedoms of expression, association and assembly.
- 1.4** CIVICUS and Pax Romana are concerned by the harassment and violent attacks against peaceful protestors, human rights defenders, and journalists in Malaysia. In light of its stated intention to pursue democratic reform, restrictions on free speech and the repression of civil society remain urgent issues for redress by the Government of Malaysia.
- 1.5** CIVICUS and Pax Romana are alarmed by the failure of the Government to protect those voicing their right to the freedoms of expression, association and assembly. In most instances, the police and state agents are directly responsible for rights violations. This is particularly the case in the large crackdown on protests and the extensive powers given to police to manage them. Preventive arrests, pressures on bloggers and the media, and website blockings during local elections are key areas of concern.
 - In section B, CIVICUS and Pax Romana highlight the concerns relating to the practical protection of the freedom of expression, association and assembly.
 - In section C, CIVICUS and Pax Romana highlight the concerns over harassment and attacks against civil society activists and human rights defenders.
 - In section D, CIVICUS and Pax Romana highlight the concerns over harassment and attacks against journalists.
 - In section E, CIVICUS and Pax Romana make a number of recommendations in the areas of concerns listed.

2. (B) Concerns regarding freedom of expression, association and assembly

- 2.1** Article 10 of the 1957 Constitution of Malaysia provides qualified protection for freedom of speech and of the press, and for the rights of assembly and association. These freedoms are protected, but only provided they are compliant with those laws

set by Parliament. The Constitution gives legislators broad scope to limit these freedoms through references to permissible limitations in the interests 'of the security of the Federation', 'public order or morality', and in the case of freedom of expression, 'to provide against contempt of court, defamation, or incitement to any offence'.

- 2.2 Although Malaysia has still not ratified the International Covenant on Civil and Political Rights (ICCPR) and its protections for expression, assembly and association; the permissible limitations contained in the Constitution are identical to those in Articles 19, 21-22 of the ICCPR. In addition, the protections and limitations of the ICCPR are now generally accepted as state practice and likely to be applicable to human rights in Malaysia.

Freedom of Expression

- 2.3 Malaysia's political leadership has consistently advocated that restrictions on the freedom of speech are necessary in a multi-racial country. This position is applied in Malaysia's national laws. The Sedition Act 1948 currently prohibits criticizing the government, questioning the established order or questioning Malaysia's sovereignty. This severely limits the discourse on political speech and intimidates free speech advocates.
- 2.4 The Sedition Act is tabled for replacement by the National Harmony Act later in 2013. Although the National Harmony Act will retain many of its predecessor's main provisions, according to the Prime Minister, it will also permit criticism of the Government. It remains to be seen if the new law will prove a substantive step towards democratic reform.
- 2.5 The Printing Presses and Publications Act 1984 (amended in April 2012) also severely stifles freedom of expression. Although the amendments removed the requirement for the annual renewal of publication permits, the Minister of Home Affairs may still refuse, revoke or suspend a license to use the printing press. However, any decision of the Minister of Home Affairs on licensing is now subject to judicial review and a landmark decision in 2012 by the High Court did quash his decision to reject an application for a publishing permit by Mkini Dotcom.
- 2.6 Despite these positive steps, newspapers are still predominantly those linked to the Government. Two of the three major English-language, and most Malaysian, newspapers are owned by members of parties in the ruling coalition government, while the third major English newspaper and the four major Chinese-language are owned by business persons linked to the government.
- 2.7 Broadcasting in Malaysia is tightly controlled and is largely owned by the same party members and businesspersons as the newspapers. The Broadcasting Act 1988 allows the Information Ministry to decide who can own a broadcast station and what type of television service is suitable for the Malaysian public. This leads to widespread self-censorship among broadcast journalists.
- 2.8 Although there is 60% internet penetration in Malaysia and no active website blocking, protections under the Communication and Multimedia Act 1998 were

eroded in April 2012 by an amendment to the Evidence Act 1950. The new provision creates a dangerous legal presumption that any intermediary with a computer in their custody or control, from which a publication originates, is responsible for the publication.

- 2.9 Regulation of the internet is overseen by the Malaysian Communications and Multimedia Commission (MCMC), which is in turn overseen by the Minister of Information. The MCMC is known to have tracked online discussions in the past and instructed users to remove content, particularly on Islam, race or royalty. Bloggers have also faced legal harassment with accusations of sedition and defamation from the Minister of Information, which has increased wariness among some elements of the blogger community.
- 2.10 Bloggers targeted with judicial harassment include Amizudin Ahmat who was given a \$100,000 fine in January 2012 for allegedly defaming the Minister of Information, in a blog article. Blogger Syed Hussein al-Attas was also detained twice in 2012 for posting content deemed insulting to the Sultan of Johor under the defamation provisions of the Sedition Act 1948, although most of the 30 people filing the complaint against him were linked to the Prime Minister's party.

Freedom of Association

- 2.11 Civil Society Organisations (CSOs) and their freedom to form associations are heavily restricted by statutory law in Malaysia. Under the Societies Act 1966, only registered organizations can function as societies. There are reports of the government sometimes refusing to register certain groups or imposing restrictive conditions when allowing a society to register. The Communist Party and its affiliated organizations are still banned because they allegedly pose a national security threat. The Registrar of Societies continues to refuse registration to the Human Rights Party despite several filings for judicial review of this decision.
- 2.12 As a result of these difficulties, some CSOs and human rights organizations are forced to register as companies instead which presents legal and bureaucratic obstacles to fundraising to support their activities. Some CSOs have also reported that the government monitors their activities in a bid to limit their independence. Restrictions breaching the right to association are also imposed on persons belonging to the Malaysian Bar Council. The Legal Profession Act 1979 disqualifies a person from being a member of the Bar Council if they hold office in any trade union, political party, or organization which undertakes political activities.
- 2.13 In April 2012 Parliament passed amendments to loosen the University Colleges Act 1971 restrictions on student activism thus allowing students to engage in political acts. Previously, student organizations could be affiliated with other organizations but not with any political party. However, the new amendment still imposes restrictions on students, and requires universities to decide which organizations, with the exception of political parties, are deemed suitable for affiliation.
- 2.14 Restrictions on trade unions in Malaysia are stringent in breach of international freedom of association standards. The Trade Unions Act 1959 prohibits public officers

from joining any trade union, and officers of trade unions cannot hold office in political parties unless exemptions are sought. The Legal Profession Act 1979 disqualifies a person from being a member of the Bar Council or a Bar Committee if he or she holds office in any trade union, political party, or other organization which undertakes activities which can be construed as political.

2.15 In 2011, amendments to the Employment Act 1955, which the Malaysian Trade Union Congress has heavily criticised, eroded protection for workers as employers will no longer be directly responsible for the welfare of their employees. Instead employers are permitted to use contract, or labour from agencies to avoid union representation for workers.

2.16 Freedom of Assembly

2.17 Following the violent police crackdown on the Bersih 2.0 rally in July 2011 when 1,667 peaceful protesters were arrested, the Government hastily drafted and passed a new Peaceful Assembly Act in December 2011. The Act severely restricts the right to freedom of assembly by placing an absolute ban on street rallies and moving protests. It also bans children under 15 and non-citizens from participating, thus excluding migrant workers from joining assemblies. Stringent procedural restrictions are also placed on assemblies taking place and vast powers given to the police to handle them.

2.18 However despite the Peaceful Assembly Act, the largest public demonstration in Malaysia's history took place on 28 April 2012. Known as Bersih 3.0 and organized by the Coalition for Free and Fair Elections, an estimated 250,000 people took to the streets in Kuala Lumpur to demand electoral reform. Over 500 people were arrested. The police and Federal Reserve Unit fired gas and chemical-laced water cannons in addition to tear canisters causing a number of injuries.

2.19 Following the protest, the Government charged former deputy Prime Minister Anwar Ibrahim, along with the president and the deputy president of opposition party Parti Keadilan Rakyat, under the Peaceful Assembly Act for participating in the rally and engaging in a street protest.

2.20 The legislative framework restricting assemblies currently remains in place, and the Government's overlook of police brutality recorded during the Bersih protests, has enabled the Malaysian police to act with impunity.

3. (C) Concerns involving harassment, threats and attacks against civil society activists, human rights defenders and trade unionists

Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection of human rights defenders. However, reports show that this has not equated to substantive practice in Malaysia, particularly when CSOs and their staff are being vexatiously targeted by government officials.

(Targeting of government critics, human rights organisations and human rights defenders)

- 3.1 Suaram, a leading Malaysian CSO and human rights organisation, has faced a barrage of harassment from the Malaysian Government since it initiated a 2010 public inquiry into the payment of an illegal kickback to the Prime Minister. The kickbacks were reportedly to secure the sale of two submarines from French company Scorpene. At least six government agencies have since initiated a campaign to find Suaram's registration and operations illegal.
- 3.2 Government investigators have harassed Suaram staff and supporters, and threatened them with arrest while government-controlled media outlets and politicians have publicly attacked the organization. For example, in September 2012, a government minister accused Suaram of keeping "highly suspicious" accounts and said that "99.4 percent" of its activities were "money collecting."
- 3.3 Intimidation has also taken the form of media harassment. Government-controlled newspapers, News Straits Times, Berita Harian and Utusan Malaysia joined the voices at the end of 2012 accusing Suaram and other organisations, including Bersih 2.0, of being involved in a Zionist plot to destabilise the government.
- 3.5 Outspoken constitutional law professor Abdul Aziz Bari has also faced persecution for his remarks against the Selangor Sultan's decree on a Methodist Church. He was suspended from the International Islamic University and barred from campus in 2011 pending a police investigation. His suspension has since been lifted but he has not rejoined the University.
- 3.6 The Government has failed to act on sustained threats to civil society members from right wing groups, such as those against Ambiga Sreenevasan, co-chair of the civil society movement, and organiser of the Bersih 3.0 rally. She has been publically vilified, her effigy has been burnt and there have been calls to strip her of her citizenship. She also now faces a civil suit for damage caused during the rally.

(D) Concerns involving harassment, threats and attacks against journalists

- 4.1 Journalists have also been the recipients of heavy handed treatment by the state and newspapers connected with it. On 21 April 2012, government controlled newspaper Utusan Malaysia dismissed senior journalist and President of the National Union of Journalists Malaysia, Ha'ta Wahari. The dismissal was on allegations that he had tarnished newspaper's image after he publicly expressed concerns about the newspaper's biased news coverage.
- 4.2 Since 2011, Malaysia's journalists have come under repeated attack for their coverage of the Bersih rallies. Foreign journalists at the rallies have also been targeted by the security forces. Coverage was scant in leading Malaysian newspapers, and virtually non-existent in newspapers that supported the ruling coalition.

- 4.3 At the Bersih 3.0 rally, Merdeka Review reporter Chen Shaua Fui was attacked by police when she tried to take photos of demonstrators being beaten by police. There were also reported attacks by police on other members of the media, confiscation and/or destruction of their photographs and video recordings. This was compounded by government disinformation and attempts to minimize the size of the protest in the government-supporting press.
- 4.4 After the Bersih 2.0 rally in July 2011, the Minister of Home Affairs stated that the police had acted with professionalism at all times. Reports to the contrary include photographer Wong Onn Kin with Chinese newspaper Guang Ming Daily, being punched him in the head, detained temporarily and having his camera confiscated. There were also reports that police attacked Radzi Razak, a reporter with local English-language daily The Sun, and broke his rib.

5. (E) Recommendations to the Government of Malaysia

- 5.1 CIVICUS and Pax Romana call on the Government of Malaysia to create an enabling environment for civil society to operate in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, and the state's duty to protect. In light of this, the following specific recommendations are made.
- 5.2 Regarding threats to civil society activists and journalists, the Government of Malaysia should:
- Draft a national policy on the protection of civil society and media freedoms to allow civil society members and media personnel to discharge their professional responsibilities without fear of persecution.
 - Encourage political leaders and government officials to publicly support civil society and media activities through statements while also condemning attacks on civil society members and media professionals.
 - Ensure impartial and effective investigations into all cases of violence, harassment and intimidation of civil society activists and journalists to bring perpetrators to justice.
 - Establish a Judicial Commission of Inquiry to investigate reports of arbitrary arrests and torture of protestors at the Bersih rallies.
- 5.3 Regarding legislative restrictions on freedom of expression, the Government of Malaysia should ensure the following:
- Removal of the amendment to the Evidence Act 1950 that attributes responsibility of any publication produced from a computer to the intermediary in control.

- Amendments to Printing Presses and Publications Act 1984 removing the requirement to obtaining licensing consent from the Ministry of Home Affairs.
- 5.4 Regarding legislative restrictions on freedom of association, the Government of Malaysia should ensure the following:
- Amendment of the Employment Act 1955 to ensure employer responsible for the welfare of their employees.
- 5.5 Regarding legislative restrictions on freedom of assembly, the Government of Malaysia should ensure the following:
- Amendment of the Peaceful Assembly Act to conform with international human rights standards. In particular, restrictions banning street rallies and moving protests should be removed as well as restrictions on the participation of children under 15 and non-citizens in protests.
 - Immediate ratification of the Convention on the Rights of the Child, which protects the freedom of assembly of the child under Article 15.
- 5.6 Regarding access to UN Conventions, Special Procedures and Mandate Holders the Malaysian Government should ensure the following:
- Immediate Ratification of the ICCPR.
 - A standing invitation should be extended to the UN Special Procedures, specifically the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, and Special Rapporteur on Freedom of Peaceful Assembly and Association.

[2,797 words]